IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
PLANNING COURT

B E T W E E N:

Uttlesford District Council Claimant

- and –

Secretary of State for Housing, Communities and Local Government
Defendant

- and -

(1) Stansted Airport Limited
(2) Stop Stansted Expansion
Interested Parties

CLAIM DOCUMENTS,

INCLUDING POLICY DOCUMENTS

[Hyperlinks are provided throughout the Statement of Facts and Grounds. The list below is provided to assist the Court with the key documents]

Decision Letters

1 Decision Letter dated 26 May 2021 (corrected 21 June 2021)

2 Costs Decision Letter dated 26 May 2021

Inquiry Documents

3 Existing planning permission (8 October 2008)

4 UDC's Decision Notice (29 January 2020)

5 STAL's Statement of Case (including Table of Relevant Documents at App. 4) (July 2020)

6 UDC's Statement of Case (including Apps. 1 and 6) (September 2020)

7 Environmental Statement Addendum Ch. 12 (Carbon Emissions)

8 Environmental Statement Addendum Ch. 13 (Climate Change)

9 Condition 15

10 STAL Position on UDC Condition 15 (5 February 2021)

11 Submissions of UDC in relation to Condition 15 (9 February 2021)

12 STAL's Response to UDC Submissions on Condition 15 (25 February 2021)

13 UDC's Reply to STAL Response to UDC Submission on Condition 15 (2 March 2021)

14 UDC's Closing Submissions (12 March 2021)

15 STAL's Closing Submissions (12 March 2021)

16 STAL's Application for Costs (12 March 2021)

17 UDC's Response to STAL's Costs Application (9 April 2021)

18 Press Statement: UK enshrines new target in law to slash emissions by 78% by 2035 (20 April 2021)

19 Manston DCO Inspectors' Report extracts (5.5.28 and 6.5.71) (18 October 2019)

20 Manston DCO SoS's Decision (9 July 2020)

Policy Documents

21 The Aviation Policy Framework (March 2013)

22 The Airports National Policy Statement (June 2018)

23 Making Best Use of existing runways (June 2018)

24 NPPF (Feb 2019) paras. 7-9, 55, 148

25 The Government Response to the Committee on Climate Change's 2020 Progress Report to Parliament (Ministerial Foreword, Executive Summary, Annex 1 Recommendations for the Dept. of Transport), (October 2020)

26 The Sixth Carbon Budget – The UK's path to Net Zero, CCC (Foreword) (9 December 2020)

27 The Sixth Carbon Budget, CCC, Policies, Chapter 8 (9 December 2020)

28 Ministerial Guidance (PPG on Appeals, section on Costs)

29 Ministerial Guidance (PPG on Conditions)

The Planning Inspectorate

Appeal Decision

Inquiry held over 30 days between 12 January 2021 and 12 March 2021
Site visits made on 17 December 2020 and 10 March 2021

by Michael Boniface MSc MRTPI, G D Jones BSc(Hons) DipTP MRTPI and Nick Palmer BA (Hons) BPl MRTPI

Panel of Inspectors appointed by the Secretary of State

Decision date: 21 June 2021

Appeal Ref: APP/C1570/W/20/3256619
London Stansted Airport, Essex

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Stansted Airport Limited against the decision of Uttlesford District Council.
- The application Ref UTT/18/0460/FUL, dated 22 February 2018, was refused by notice dated 29 January 2020.
- The development proposed is airfield works comprising two new taxiway links to the existing runway (a Rapid Access Taxiway and a Rapid Exit Taxiway), six additional remote aircraft stands (adjacent Yankee taxiway); and three additional aircraft stands (extension of the Echo Apron) to enable combined airfield operations of 274,000 aircraft movements (of which not more than 16,000 movements would be Cargo Air Transport Movements) and a throughput of 43 million terminal passengers, in a 12-month calendar period.

This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 26 May 2021. It amends the appearances list only.

Decision

1. The appeal is allowed and planning permission is granted for airfield works comprising two new taxiway links to the existing runway (a Rapid Access Taxiway and a Rapid Exit Taxiway), six additional remote aircraft stands (adjacent Yankee taxiway); and three additional aircraft stands (extension of the Echo Apron) to enable combined airfield operations of 274,000 aircraft movements (of which not more than 16,000 movements would be Cargo Air Transport Movements) and a throughput of 43 million terminal passengers, in a 12-month calendar period at London Stansted Airport, Essex in accordance with the terms of the application, Ref UTT/18/0460/FUL, dated 22 February 2018, subject to the conditions contained in the attached Schedule.

Application for Costs

2. At the Inquiry an application for costs was made by Stansted Airport Limited against Uttlesford District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The Inquiry was held as a wholly virtual event (using videoconferencing) in light of the ongoing pandemic. The Panel undertook an accompanied site visit to the airport on 10 March 2021 and an unaccompanied visit around the surrounding area on the same day. An unaccompanied visit to the publicly accessible parts of the airport and surrounding area also took place on 17 December 2020.

4. On 18 May 2018, during the course of the planning application, the Council agreed to a request from the appellant to change the description of development to include a restriction on cargo air transport movements. This is the basis upon which the Council subsequently determined the application. The appeal has been considered on the same basis.

5. The Council resolved to grant planning permission for the development on 14 November 2018 but subsequently reconsidered its position before formally refusing planning permission. In light of the Council's reasons for refusal, its subsequent statement of case in this appeal and given the length of time that had passed since the application was made, an Environmental Statement Addendum (October 2020) (ESA) was produced to update the original Environmental Statement (February 2018) (ES). The Council consulted on the ESA so that all parties had an opportunity to consider its content. As such, the Panel is satisfied that no party is prejudiced by its submission at the appeal stage.

6. The ES and ESA were prepared in accordance with the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regulations), including technical appendices and a non-technical summary. They cover a range of relevant topics, informed at the ES stage by a Scoping Opinion from the Council. The Panel is satisfied that the totality of the information provided is sufficient to meet the requirements of Schedule 4 of the EIA Regulations and this information has been taken into account in reaching a decision. Accordingly, while some of the evidence is critical of the ES and ESA, including in respect to their conclusions regarding carbon emissions, there is no significant contradictory evidence that causes the ES or the ESA to be called into question.

7. A local campaign group known as Stop Stansted Expansion (SSE) was granted Rule 6 status and participated as a main party to the Inquiry. However, shortly before the Inquiry opened it elected to rely on its written evidence for several topics so that a witness was not made available for cross-examination on those topics[1]. As such, this evidence was untested and has been considered by the Panel on this basis.

8. Rule 6 status was also granted jointly to Highways England and Essex County Council (the Highway Authorities) who initially opposed the proposal on highway grounds. However, these issues were resolved before the exchange of evidence and the Highway Authorities subsequently withdrew from the appeal proceedings, subject to appropriate planning obligations being secured.

9. The Council's fourth reason for refusing planning permission referred to the adequacy of infrastructure and mitigation measures needed to address the

[1] Historical Background, Noise, Health and Well-Being, Air Quality, Surface Access (Rail)

impacts of the development. This reason was partly addressed following agreement with the Highway Authorities about the scope of highways mitigation required, including at Junction 8 of the M11. The adequacy and need for other forms of mitigation are addressed in the body of this decision in relation to relevant topics and/or in relation to the discussion on conditions and planning obligations, such that this is not a main issue in the appeal.

10. Upon exchange of evidence between the parties, it became clear that the Council accepted that planning permission should be granted for the development, subject to conditions and obligations. However, there remained significant divergence between the parties as to the form and extent of any conditions and much time was spent discussing this matter over the course of the Inquiry.

11. On 20 April 2021, the Government announced that it would set a new climate change target to cut emissions by 78% by 2035 compared to 1990 levels and that the sixth Carbon Budget will incorporate the UK's share of international aviation and shipping emissions. The parties were invited to make comment and their responses have been taken into account in reaching a decision[2].

Main Issues

12. The main issues are the effect of the development on aircraft noise, air quality and carbon/climate change.

13. However, it is first necessary to consider national aviation policy and some introductory matters.

Reasons

National Aviation Policy and Introductory Matters

14. The Aviation Policy Framework (March 2013) (APF) sets out the Government's high-level objectives and policy for aviation. It recognises the benefits of aviation, particularly in economic terms, and seeks to ensure that the UK's air links continue to make it one of the best-connected countries in the world. A key priority is to make better use of existing runway capacity at all UK airports. Beyond 2020, it identifies that there will be a capacity challenge at all of the biggest airports in the South East of England.

15. There is also, however, an emphasis on the need to manage the environmental impacts associated with aviation and a recognition that the development of airports can have negative as well as positive local impacts. Climate change is identified as a global issue that requires action at a global level, and this is said to be the Government's focus for tackling international aviation emissions, albeit that national initiatives will also be pursued where necessary.

16. More recently, the Government published the ANPS[3] and MBU[4], on the same day, as early components of the forthcoming Aviation Strategy. The ANPS is primarily concerned with providing a policy basis for a third runway at Heathrow and is relevant in considering other development consent

[2] Having heard a significant amount of evidence on carbon and climate change during the Inquiry, the matters raised by the announcement did not necessitate reopening the Inquiry. Nor was it necessary for the ES to be further updated, as the announcement does not have a significant bearing on the likely effects of the development
[3] Airports National Policy Statement: new runway capacity and infrastructure at airports in the South East of England (June 2018)
[4] Beyond the horizon, The future of UK aviation, Making best use of existing runways (June 2018)

applications in the South East of England. It is of limited relevance to the current appeal as it is not a Nationally Significant Infrastructure Project (NSIP). Although the ANPS does refer to applications for planning permission, it notes the findings of the Airports Commission on the need for more intensive use of existing infrastructure and accepts that it may well be possible for existing airports to demonstrate sufficient need for their proposals, additional to (or different from) the need which is met by the provision of a Northwest Runway at Heathrow.

17. MBU builds upon the APF, again referencing work undertaken by the Airports Commission which recognised the need for an additional runway in the South East by 2030 but also noted that there would be a need for other airports to make more intensive use of their existing infrastructure. On this basis, MBU states that the Government is supportive of airports beyond Heathrow making best use of their existing runways[5]. There is no requirement flowing from national aviation policy for individual planning applications for development at MBU airports, such as Stansted, to demonstrate need[6] for their proposed development or for associated additional flights and passenger movements. This was not disputed by the Council and whilst SSE took a contrary view, even its witness accepted that there was a need for additional capacity within the London airport network, beyond any new runway at Heathrow[7].

18. The in-principle support for making best use of existing runways provided by MBU is a recent expression of policy by the Government. It is given in full knowledge of UK commitments to combat climate change, having been published long after the Climate Change Act 2008 (CCA) and after the international Paris Agreement. It thoroughly tests the potential implications of the policy in climate change terms, specifically carbon emissions. To ensure that Government policy is compatible with the UK's climate change commitments the Department for Transport (DfT) aviation model was used to look at the impact of allowing all MBU airports to make best use of their existing runway capacity[8]. This methodology appears to represent a robust approach to the modelling.

19. International aviation emissions are not currently included within UK carbon budgets and are instead accounted for through 'headroom' in the budgets, with a planning assumption for aviation emissions of 37.5Mt of CO_2. Whilst the Government has recently announced that international aviation will expressly form part of the sixth Carbon Budget, its budget value has not yet been defined.

20. Of course, the headroom approach of taking account of emissions from international aviation which has been used to date means that accounting for such carbon emissions as part of the Carbon Budget process is nothing new. What is set to change, however, is the process by which it is taken into account. As of yet, there has been no change to the headroom planning assumption. Nor has there been any indication from the Government that

[5] There is nothing in MBU which suggests that making best use proposals cannot involve operational development of the type proposed in this case
[6] Notwithstanding conclusions in relation to Manston Airport, which is not comparable to the current proposal (being a Development Consent Order scheme, involved an unused airfield and was a cargo-led proposal rather than passenger)
[7] Brian Ross in response to questions from the Inspector
[8] Emissions from UK airports not included in the model are unlikely to be significant as they are small and offer only short-range services

there will be a need to restrict airport growth to meet the forthcoming budget for international aviation, even if it differs from the current planning assumption. The specific carbon/climate change implications of this appeal are considered in more detail below.

21. MBU sets out a range of scenarios for ensuring the existing planning assumption can be met, again primarily through international agreement and cooperation, considering carbon traded or carbon capped scenarios. It concludes that the MBU policy, even in the maximum uptake scenario tested, would not compromise the planning assumption.

22. Notwithstanding that conclusion, no examples of MBU-type airport development having gained approval since the publication of MBU were brought to the attention of the Inquiry[9] and whilst numerous other airports have plans to expand, none of those identified appear to have a prospect of receiving approval before this scheme. As such, it can be readily and reasonably concluded that this development would not put the planning assumption at risk.

23. Consistent with the APF, MBU differentiates between the role of local planning and the role of national policy, making it clear that the majority of environmental concerns, such as noise and air quality, are to be taken into account as part of existing local planning application processes. Nonetheless, it adds that some important environmental elements should be considered at a national level, such as carbon emissions, which is specifically considered by MBU. The Council apparently understood this distinction in resolving to grant planning permission in 2018. However, it subsequently changed its position, deciding that carbon is a concern for it as local planning authority despite MBU, and this led, at least in part, to the refusal of planning permission, as well as to its subsequent case as put at the Inquiry.

24. Since publication of MBU, UK statutory obligations under the CCA have been amended to bring all greenhouse gas emissions to net zero by 2050, compared to the previous target of at least 80% reduction from 1990 levels. In addition, the Government has indicated a new climate change target to cut emissions by 78% by 2035 compared to 1990 levels, effectively an interim target on the journey to net zero. Notwithstanding these changes, MBU has remained Government policy. There are any number of mechanisms that the Government might use to ensure that these new obligations are achieved which may or may not involve the planning system and may potentially extend to altering Government policy on aviation matters.

25. These are clearly issues for the Government to consider and address, having regard to all relevant matters (not restricted to aviation). The latest advice from the Committee on Climate Change (CCC) will be one such consideration for the Government but it cannot currently be fully known to what extent any recommendations will be adopted. The Government is clearly alive to such issues and will be well aware of UK obligations[10].

[9] With the potential exception of the Southampton Airport scheme, which involved a runway extension to accommodate larger aircraft. No detailed evidence in relation to this scheme was provided by the parties, but it would not alter the Panel's conclusions on MBU support even if an increase in capacity resulted from the scheme

[10] Not least from the recent Supreme Court Judgement in respect of the ANPS - R (on the application of Friends of the Earth Ltd and others) v Heathrow Airport Ltd [2020] UKSC 52

26. The ES and ESA contain detailed air traffic forecasts which seek to demonstrate the difference between a 'do minimum' scenario, where the airport makes use of its existing planning permission within its relevant restrictions, and the 'development case' scenario where the appeal development were to proceed. The forecasts are prepared in accordance with industry guidance and practise by a professional in this field working as a Director in the aviation department for a global consulting service.

27. The Council, whilst highlighting the inherent uncertainty in forecasts and projections into the future, did not dispute the appellant's position on forecasting, concluding that the predictions were reasonable and sensible[11]. SSE made a series of criticisms of the inputs and assumptions used by the appellant, but these were largely based on assertion and often lacked a clear evidential basis. Different opinions about the likely number of passengers per air transport movement, fleet replacement projections, dominance of / reliance on a single airline at Stansted and cargo expectations were all rebutted by the appellant with justification for the inputs and assumptions used. The Panel was not persuaded that the conclusions in the ES and ESA were incorrect or unreliable. Indeed, they are to be preferred over the evidence of SSE on this matter, which was not prepared by a person qualified or experienced in air traffic forecasting. Accordingly, the forecasts contained within the ES and ESA are sufficiently robust and the best available in this case.

28. The appellant's forecasts do not align with those prepared by the Government in 2017 (DfT forecasts) which are used as the basis for conclusions in MBU, as referred to above. However, there is no reason why they should. The DfT makes clear that its forecasts are a long-term strategic look at UK aviation, primarily to inform longer term strategic policy. They do not provide detailed forecasts for each individual airport in the short-term and the DfT acknowledge that they may differ from local airport forecasts, which are prepared for different purposes and may be informed by specific commercial and local information not taken into account by the DfT. As such, the DfT states that its forecasts should not be viewed as a cap on the development of individual airports.

29. On this basis, the Panel does not accept that a divergence between the appellant's and the DfT's forecasts indicate any unreliability in the data contained in the ES and ESA. Nor is there any justification for applying a reduction to the appellant's forecasts[12]. Furthermore, SSE's forecasting witness recently challenged the validity and reliability of the DfT forecasts in the High Court while acting for SSE, thereby further calling into question the credibility of their now contradictory evidence to this Inquiry.

30. It remained unclear throughout the Inquiry, despite extensive evidence, why the speed of growth should matter in considering the appeal. If it ultimately takes the airport longer than expected to reach anticipated levels of growth, then the corresponding environmental effects would also take longer to materialise or may reduce due to advances in technology that might occur in the meantime. The likely worst-case scenario assessed in the ES and ESA, and upon which the appeal is being considered, remains just that. Conversely,

[11] Proof of Hugh Scanlon, UDC/4/1

[12] This is notwithstanding examples of previous air traffic forecasts for Stansted and other airports that have not be borne out for whatever reason. Any reduction to account for perceived optimism bias would be arbitrary and unlikely to assist the accuracy of the forecasts

securing planning permission now would bring benefits associated with providing airline operators, as well as to other prospective investors, with significantly greater certainty regarding their ability to grow at Stansted, secure long-term growth deals and expand route networks, potentially including long haul routes.

31. SSE argued that the 'do minimum' case had been artificially inflated to minimise the difference from the 'development case'. However, there is no apparent good reason why the airport would not seek to operate to the maximum extent of its current planning restrictions if the appeal were to fail. Indeed, as a commercial operator, there is good reason to believe that it would. The fact that it does not operate in this way already does not mean it cannot or will not in future. In fact, the airport has seen significant growth in passenger numbers in recent years, since Manchester Airports Group took ownership, albeit that these have latterly been affected by the pandemic.

32. As such, there is no good reason to conclude that the air traffic forecasts contained within the ES and ESA are in any way inaccurate or unreliable. Of course, there is a level of uncertainty in any forecasting exercise but those provided are an entirely reasonable basis on which to assess the impacts of the proposed development. The Panel does not accept that there has been any failure to meet the requirements of the EIA Regulations, as concluded above.

Aircraft Noise

33. The overarching requirements of national policy, as set out in the National Planning Policy Framework (the Framework) and the Noise Policy Statement for England (NPSE), are that adverse impacts from noise from new development should be mitigated and reduced to a minimum and that significant adverse impacts on health and quality of life should be avoided. It is a requirement of the NPSE that, where possible, health and quality of life are improved through effective management and control of noise.

34. The APF states that the overall policy is to limit and, where possible, reduce the number of people significantly affected by aircraft noise. The APF expects the aviation industry to continue to reduce and mitigate noise as airport capacity grows and that as noise levels fall with technology improvements the benefits are shared between the industry and local communities.

35. While the APF states that the 57 dB LAeq 16 hour contour should be treated as the average level of daytime aircraft noise marking the approximate onset of significant community annoyance, the 2014 Survey of Noise Attitudes (SoNA) indicates that significant community annoyance is likely to occur at 54 dB $L_{Aeq\ 16\ hour}$. The latter metric has been used by the Civil Aviation Authority in its *Aviation Strategy: Noise Forecast and Analysis – CAP 1731.* It has also been used in the Government's consultation *Aviation 2050, The future of UK aviation.* The Council and the appellant agree that the 54 dB $L_{Aeq\ 16\ hour}$ contour should be the basis for future daytime noise restrictions in this case.

36. The NPSE describes the concepts of Lowest Observed Adverse Effect Level (LOAEL) and Significant Observed Adverse Effect Level (SOAEL). The LOAEL is set at 51 dB $L_{Aeq\ 16\ hour}$ in the DfT's Air Navigation Guidance and is the level above which adverse effects on health and quality of life can be detected. These levels apply to daytime hours. The corresponding levels at night are

a LOAEL of 45 dB $L_{Aeq\ 8\ hour}$ and onset of significant annoyance at 48dB $L_{Aeq\ 8\ hour}$.

37. The World Health Organisation's (WHO) Environmental Noise Guidelines 2018 (ENG) recommend lower noise levels than those used in response to SoNA. The Government has stated in *Aviation 2050* that it agrees with the ambition to reduce noise and to minimise adverse health effects, but it wants policy to be underpinned by the most robust evidence on these effects, including the total cost of action and recent UK specific evidence which the WHO did not assess. These factors limit the weight that can be given to the lower noise levels recommended in the ENG.

38. Aircraft modernisation is reducing aircraft noise over time. It has been demonstrated that the daytime 57 dB and 54 dB noise contours will decrease in extent over the period to 2032, both with and without the development, albeit that the 54 dB contour would be slightly larger in the development case (DC) compared to the do minimum (DM) scenario. The 51 dB LOAEL contour is however predicted to increase slightly in extent compared to the 2019 baseline.

39. The night-time 48 dB contour is also predicted to decrease in extent and this reduction would be greater in the DC than in the DM scenario. This is based upon there being a greater amount of fleet modernisation, including fewer of the noisier cargo flights.

40. The ESA compares the DC with the DM scenario at 2032, which is when the maximum passenger throughput is predicted to be reached, and at 2027 which is identified as the transition year. In 2032 there would be an increase in air noise levels during the daytime of between 0.4 and 0.6 dB which is assessed as a negligible effect. There would be a beneficial reduction in night-time noise of between 0.3 and 0.8 dB in the DC compared to DM, but this is also assessed as negligible.

41. Saved Policy ENV11 of the Uttlesford Local Plan 2005 (ULP) resists noise generating development if this would be liable to adversely affect the reasonable occupation of existing or proposed noise sensitive development nearby. The ESA demonstrates that this would not be the case.

42. It is necessary to ensure that the benefits in terms of the reduction in noise contours over time arising from fleet modernisation, and the reduction in night noise are secured in order that these are shared with the community in accordance with national policy in the APF. The Council's position is that the development is acceptable in terms of aircraft noise, subject to suitable mitigation measures. Condition 7 defines the maximum areas to be enclosed by 54 dB $L_{Aeq\ 16hour}$, and 48 dB $L_{Aeq\ 8\ hour}$ noise contours and requires that the area enclosed by each of those contours is reduced as passenger throughput is increased, in accordance with the findings of the ESA.

43. There is no control of the night-time noise contour under the existing permission. This is instead subject to control under the Government's night flight restrictions which impose a Quota Count. It is noted that the Secretaries of State in granting the last planning permission considered that there was no need for such a condition because of the existing controls.

44. However, the night flight restrictions do not cover the full 8 hour period used in the L_{Aeq} assessment. Consequently, if only the night flight restrictions were to

be relied upon, there would be no control of aircraft noise between 23:00 and 23:30 hours and between 06:00 and 07:00 hours. The ESA has demonstrated that the reductions in night noise would be beneficial to health. For these reasons, inclusion of the $L_{Aeq\ 8hour}$ restriction in condition 7 would be necessary. In coming to this view, the Panel has taken into account the dual restrictions that would apply. However, the night noise contour requirement in condition 7 would be necessary to secure the benefit and it has not been demonstrated that the night noise restrictions would be sufficient in this respect.

45. The Panel has considered SSE's submissions concerning the methodology used in the ES and ESA. The use of L_{Aeq} levels in the assessment is in accordance with Government policy and reflects the conclusions of SoNA, but the ES and ESA also include assessments of the number of flights exceeding 60 and 65 dB(A) and maximum single event noise levels. The assessments of aircraft noise are comprehensive, and the methodology used is justified and widely accepted as best practice, including by the Government and industry. The Council considers that the methodology used is robust. The Panel has also considered the evidence on air traffic forecasts and, for the reasons given elsewhere in this decision, is satisfied that the assumptions regarding fleet replacements are robust.

46. SSE has referred to the number of complaints about noise increasing in recent years. However, it is also relevant to consider the number of complainants which has significantly decreased. These factors have been taken into account in the ES and ESA.

47. The existing sound insulation grant scheme (SIGS) provides for financial assistance to homeowners and other noise-sensitive occupiers, to be used to fund sound insulation measures. This uses a contour which is based on 63 dB $L_{Aeq\ 16\ hour}$ for daytime and the aggregate 90 dBA SEL footprint of the noisiest aircraft operating at night.

48. The submitted Unilateral Undertaking (UU) provides for an enhanced SIGS whereby a 57 dB daytime contour is used, thereby increasing its extent and the number of properties covered. This is consistent with the evolving perceptions of the level of significant adverse effects and exceeds the levels recommended for such measures as stated in the APF. The use of this contour together with the 90 dBA SEL footprint as qualifying criteria would provide mitigation against both daytime and night-time noise. The latter criterion recognises that sleep disturbance is more likely to arise from single events than average noise levels over the night-time period.

49. The UU also applies to specific identified noise-sensitive properties including schools, community and health facilities and places of worship. An assessment of these properties has been undertaken using the daytime 57 dB contour used for residential properties, the number of flights above 65 dB and the maximum sound levels of aircraft flying over properties. Inclusion of properties in the list in Schedule 2 Part 1 of the UU means that bespoke measures may be discussed between the property owner and the airport operator and that further noise surveys may be undertaken. Thaxted Primary School does not qualify for inclusion in the list under the criteria used. However, submissions were made to the Inquiry that the school should be included. It has provisionally been included in the list subject to the Panel's decision.

50. Thaxted Primary School is outside, but adjacent to the boundary identified for the SIGS. This is represented by the 57 dB $L_{Aeq\ 16\ hour}$ and 200 daily flights above 65 dB (N65 200). The school is well outside the 63 and 60 dB contours, the former being the level that Government policy recognises, in the APF, as requiring acoustic insulation to noise-sensitive buildings and the latter the level to which this may potentially be reduced.

51. Departing aircraft predominantly take off towards the south-west, away from the school. Those that do take off towards the north-east turn onto standard routes away from the school before reaching it. The school is, however exposed to noise from arriving aircraft.

52. Standards for internal noise levels in schools are set out in *Building Bulletin 93 – Acoustic design of schools: performance standards* (BB93). These use $L_{Aeq\ 30mins}$ as a metric because school pupils experience noise over limited periods and not over the full daytime period. No assessment has been undertaken using this metric. It is, however, possible to determine the effect of the proposal having regard to the maximum sound levels of aircraft flying over the property in question.

53. It has been demonstrated that the school would not be exposed to L_{Amax} flyover levels of 72 dB or more. The Council agrees that this maximum level would ensure that internal noise levels would not exceed 60 dB, with windows open. This provides a good degree of certainty that noise levels would be in accordance with BB93 which states that indoor ambient noise levels should not exceed 60 dB $L_{A1,\ 30\ mins}$.

54. No representations have been made either by the school or the education authority with regard to inclusion of Thaxted Primary School in the list. It has not been demonstrated that the school should be included in the list in terms of any specific need for mitigation. For these reasons the inclusion of Thaxted Primary School in the list of properties in Schedule 2 Part 1 of the UU would not be necessary and on this basis this provision would not meet the tests in the Community Infrastructure Levy Regulations 2010 (the CIL Regulations).

55. The noise assessments in the ES and ESA take into account ground noise from aircraft. The Council's reason for refusal concerns only aircraft noise and not noise from ground plant and equipment or surface access. The Panel has considered the evidence provided by SSE in respect of the latter, but these do not alter its conclusions on this main issue.

56. It has been demonstrated beyond doubt that the development would not result in unacceptable adverse aircraft noise and that, overall, the effect on noise would be beneficial. Subject to the mitigation provided by the UU and the restrictions imposed by condition 7, the development would accord with Policy ENV11 of the ULP and with the Framework.

Air Quality

57. Although air pollution levels around the airport are for the most part well within adopted air quality standards, an area around the Hockerill junction in Bishop's Stortford has nitrogen dioxide levels that are above those standards. This is designated an Air Quality Management Area (AQMA). The development would increase emissions from aircraft, other airport sources and from road vehicles,

but this would be against a trend of reduction in air pollution as a result, amongst other things, of increasing control of vehicle emissions.

58. The pollutants which are assessed are oxides of nitrogen (NOx), particulate matter (PM_{10}) and fine particulate matter ($PM_{2.5}$). Ultrafine particulates (UFP) are recognised as forming a subset of $PM_{2.5}$ and they are likely to affect health. However, there is no recognised methodology for assessing UFP and the most that can be done is a qualitative, rather than quantitative assessment.

59. Policy ENV13 of the ULP resists development that would involve users being exposed on an extended long-term basis to poor air quality outdoors near ground level. The Policy identifies zones on either side of the M11 and the A120 as particular areas to which the Policy applies.

60. Paragraph 170 of the Framework states that development should, wherever possible, help to improve local environmental conditions such as air quality. Paragraph 181 states that planning decisions should sustain and contribute towards compliance with relevant limit values or national objectives for pollutants, taking into account the presence of AQMAs and the cumulative impacts from individual sites in local areas. Opportunities to improve air quality or mitigate impacts should be identified.

61. Emissions of NOx, PM_{10} and $PM_{2.5}$ would increase slightly in the DC compared to the DM scenario. They would also increase in comparison to the 2019 baseline. However, pollutant levels resulting from other sources, notably road traffic, are forecast to decline. The ES and ESA demonstrate that there would be no exceedance of air quality standards at human receptors and that air quality impacts would be negligible. The overall effect of the development in terms of air quality would be in accordance with the Framework and with the Clean Air Strategy, which refers to the need to achieve relevant air quality limit values. While the Framework seeks to improve air quality where possible, it recognises that it will not be possible for all development to improve air quality.

62. While the proposed development would not improve air quality, the UU secures a number of measures to encourage the use of public transport and to reduce private car use, including single occupancy car trips. The airport has a Sustainable Development Plan which, whilst not binding, commits to reducing air pollution. It has already achieved significant increases in use of public transport, thereby limiting emissions and these initiatives would be continued. The measures would have other objectives such as reducing carbon emissions, which would not necessarily benefit air quality but nonetheless the provisions of the UU would overall be likely to secure improvements in air quality.

63. Although it has raised a number of issues concerning the methodology used and the robustness of the assessments during the appeal process, the Council made no request for further information under the EIA Regulations.

64. SSE has commented on a number of aspects of the air quality assessments, including the transport data used, the receptors assessed and modelling. The appellant has provided clarification of the aspects that have been queried by SSE and has justified the approach taken and the assumptions made. The appellant's responses provide sufficient reassurance that the assessments are soundly based and that they are conservative.

65. The air quality assessment depends on the assessment of road traffic in terms of vehicle emissions. Surface access is dealt with elsewhere in this decision, but the transport modelling forms a robust assessment which has been accepted by the Highway Authorities. Consequently, this forms a sound basis for the air quality assessment.

66. The Clean Air Strategy includes a commitment to significantly tighten the current air quality objective for fine particulates, but no numerical standard has yet been set. The current objective for $PM_{2.5}$ is 25µg/m^3. The 2008 WHO guidelines recommend an ultimate goal for annual mean concentrations of $PM_{2.5}$ of 10µg/m^3. The Clean Air Strategy commits to examine the action that would be necessary to meet this limit but no timescale for this has been set.

67. The ESA assesses the largest concentration of $PM_{2.5}$ in 2032 to be 11.6µg/m^3 in the DC. This is well below the current objective but slightly above the more ambitious WHO guideline. The great majority of the modelled concentrations would be below that guideline value. The assessment also shows that the effect of the development by comparison to the DM scenario would be negligible. The proposal would not unacceptably compromise the Clean Air Strategy in reducing concentrations of $PM_{2.5}$ and accords with the current objective.

68. The Bishop's Stortford AQMA is within East Hertfordshire District Council's (EHDC) administrative area. Policy EQ4 of the East Hertfordshire Local Plan 2018 requires minimisation of impacts on local air quality. That Policy also requires, as part of the assessment, a calculation of damage costs to determine mitigation measures. The ES and ESA demonstrate that there would be negligible effects for which the UU secures mitigation measures. EHDC has consequently raised no objection to the proposal.

69. The AQMA is centred around a traffic signal-controlled road junction which is enclosed by buildings on all sides. The A1250 is at a gradient on both sides of the junction. It is likely that the high monitored levels of pollutants here result from emissions from queuing traffic and the enclosing effect of the buildings. Nitrogen dioxide (NO_2) levels have been declining here in recent years, with a reduction in levels between 2012 and 2019. However, NO_2 levels remain above the air quality standard for 3 of the 4 locations monitored and significantly above the standard for 2 of those locations.

70. An adjustment factor has been used to compensate for the difference between modelled and measured concentrations of NO_2 in the AQMA. Uttlesford District Council is concerned that this factor is unusually high, but it has been undertaken in accordance with Defra's Local Air Quality Management Technical Guidance TG16 and on this basis, is not considered unreasonable. This guidance was used together with the Emission Factor Toolkit and Defra's background pollutant concentrations maps in predicting future improvements in air quality. Sensitivity tests using less optimistic assumptions regarding future improvements in air quality were incorporated in the ES and ESA. While there is acknowledged uncertainty in predicting future levels, a rigorous approach has been used in the assessment.

71. It is not disputed that airport activities contribute less than 1% to NOx concentrations in Bishop's Stortford. The appellant's transport modelling demonstrates that any increase in traffic along the A1250 and through the Hockerill junction would, at worst be 1.3% of current traffic flow in the DC

compared to DM. This extra traffic would not necessarily be evenly distributed throughout the day. Queuing traffic would tend to increase emissions and the adjacent buildings would have an enclosing effect. Nonetheless, this level of additional traffic would be unlikely to appreciably affect pollution levels in the AQMA.

72. It is common ground that UFPs result from combustion sources including burning of aviation fuel, which contains higher levels of sulphur than fuel used for road vehicles. It is also agreed that there is no reliable methodology for assessing the quantity of UFPs that would result from the development. It is the quantity of these particulates, rather than their mass, that is particularly relevant in terms of implications for human health.

73. Although the development would result in increases in $PM_{2.5}$, the ES and ESA demonstrate that those increases would be negligible compared to the DM scenario. It is also the case that ambient levels of $PM_{2.5}$ are predicted to reduce over time. The assessment considers the mass of $PM_{2.5}$. While assumptions can be made about the mass of UFPs as a subset of $PM_{2.5}$ reducing over time, it is not possible to conclude on the number of UFPs in the absence of any recognised assessment methodology. That said, the Health Impact Assessment considered epidemiological research, which includes the existing health effects of $PM_{2.5}$ and thus UFPs as a subset. This concluded that there would be no measurable adverse health outcomes per annum.

74. The Aviation 2050 Green Paper proposes improving the monitoring of air pollution, including UFP. While the significance of UFP as a contributor to the toxicity of airborne particulate matter is recognised, footnote 83 of the Green Paper notes that the magnitude of their contribution is currently unclear.

75. The Council, while raising concern over UFPs, is nonetheless content that permission could be granted subject to conditions requiring monitoring of air quality. The UU secures such monitoring, and condition 10 requires implementation of an air quality strategy, which is to be approved by the Council.

76. The nearby sites of Hatfield Forest and Elsenham Woods are Sites of Special Scientific Interest (SSSI). Policy ENV7 of the ULP seeks to protect designated habitats.

77. The ES and ESA assessments were undertaken in accordance with Environment Agency[13] and Institute of Air Quality Management (IAQM)[14] guidance. The ESA demonstrates that the development would result in long-term critical loads for NOx concentrations at the designated sites being increased by less than 1%.

78. Previous monitoring has shown that 24-hour mean NOx concentrations can greatly exceed annual mean concentrations. Condition 10 requires a strategy to minimise emissions from airport operations and surface access. A condition has also been suggested which would require assessment of 24-hour mean NOx concentrations at the designated sites and provision of any necessary mitigation. The IAQM guidance states that the annual mean concentration of NOx is most relevant for its impacts on vegetation as effects are additive. The 24-hour mean concentration is only relevant where there are elevated concentrations of sulphur dioxide and ozone which is not the case in this

[13] Environment Agency H1 guidance
[14] Institute of Air Quality Management: Land-Use Planning & Development Control: Planning for Air Quality (2017)

country. Natural England has accepted the assessment and has not requested use of the 24-hour mean concentration.

79. The UU includes obligations to monitor air quality, and to discuss with the Council the need for any measures to compensate for any adverse effect on vegetation within the designated sites. Because monitoring of air quality and necessary mitigation in respect of the SSSIs would be secured by the UU, the suggested condition to assess 24-hour mean NOx concentrations would not be necessary.

80. The ES concluded that there would be no significant effect at ecological receptors. The Council considers that the development would be acceptable in air quality terms subject to imposition of suitable conditions to limit the air quality effects and to secure mitigation measures.

81. For the reasons given, it has been demonstrated that the development would not have an unacceptable effect on air quality and that it accords with Policies ENV7 and ENV13 of the ULP.

Carbon and Climate Change

82. There is broad agreement between the parties regarding the extremely serious risks associated with climate change. These risks are acknowledged and reflected in Government policy. Indeed, in this regard, the Framework states, amongst other things, that the environmental objective of sustainable development embraces *mitigating and adapting to climate change, including moving to a low carbon economy*. It adds that *the planning system should support the transition to a low carbon future in a changing climate* … and … *should help to shape places in ways that contribute to radical reductions in greenhouse gas emissions*.

83. Nonetheless, in spite of that general accord there remains much disagreement between the main parties to the Inquiry over how the effects of the development on climate change should be assessed, quantified, monitored and managed, including into the future.

84. The Government has recently made it clear that it will target a reduction in carbon emissions by 78% by 2035 compared to 1990 levels and that the sixth Carbon Budget, scheduled to be introduced before the end of June 2021, will directly incorporate international aviation emissions rather than by using the headroom / planning assumption approach of the previous budgets. The first of these measures will introduce a target for reducing emissions prior to the net zero target of 2050, acting as an intermediate target, and is set to be enshrined in law.

85. The latter measure will alter the way in which such emissions are accounted for. The Government intends to set the sixth Carbon Budget at the 965 MtCO2e level recommended by the CCC. As outlined above, carbon emissions from international aviation have always been accounted for in past carbon budgeting. There is no good reason to assume that the coming change in how they are accounted for will significantly alter Government policy in this regard or that the Government intends to move away from its MBU policy.

86. Indeed, the Government's press release expressly states, amongst other things, that *following the CCC's recommended budget level does not mean we are following their policy recommendations*. Moreover, it also says that *the*

Government will 'look to meet' this reduction through investing and capitalising on new green technologies and innovation, whilst maintaining people's freedom of choice, including on their diet. For that reason, the 6CB will be based on its own analysis, and 'does not follow each of the Climate Change Committee's specific policy recommendations.'

87. As outlined in the *National Aviation Policy and Introductory Matters* subsection, there is in-principle Government policy support for making best use of existing runways at airports such as Stansted, and MBU thoroughly tests the potential implications of the policy in terms of carbon emissions. International aviation carbon emissions are not currently included within UK carbon budgets, but rather are accounted for via an annual 'planning assumption' of 37.5MtCO_2. MBU policy establishes that, even in the maximum uptake scenario tested, this carbon emissions planning assumption figure would not be compromised.

88. The contents of the ES and ESA, which - unlike MBU - specifically assess the potential impacts of the appeal development, support the conclusions of MBU in this regard. Indeed, they indicate that the proposed development would take up only an extremely small proportion of the current 'planning assumption'. For instance, the ESA shows in 2050 that the additional annual carbon emissions from all flights resulting from the development are likely to be in the region of 0.09MtCO_2, which would equate to only 0.24% of the 37.5MtCO_2 planning assumption[15].

89. This assessment assumes that the airport would not seek to use its permitted total of 274,000 ATMs in the event that the appeal were to be dismissed. Yet, in practice, it seems more likely that it would, as a commercial operator, seek to maximise flights. Consequently, the relative increase in carbon emissions resulting from the development would be likely to be less than as predicted in the ESA compared to what might happen if the proposed development were not to proceed.

90. In light of the CCC's recommendations and the Government's 20 April 2021 announcement, the 37.5MtCO_2 planning assumption, as a component of the planned total 965 MtCO_2e budget, may well change. Even if it were to be reduced as low as 23MtCO_2, as is suggested might happen by the Council's carbon/climate change witness with reference to the advice of the CCC on the sixth Carbon Budget, an increase in emissions of 0.09MtCO_2 resulting from the appeal development in 2050 would be only some 0.39% of this potential, reduced figure.

91. Unsurprisingly, the carbon emission figures in the ESA vary across the years modelled to 2050 and over the three scenarios employed from 2032 ('Pessimistic', 'Central' and 'Best practice'). For instance, the predicted additional annual carbon emissions from flights increases steadily from the base-year of 2019 over the years to 2032 leading to a predicted increase of some 0.14MtCO_2 in 2032[16], which equates to 0.38% of the planning assumption. Notwithstanding these variations, in each case the annual values for all years and scenarios would, nonetheless, remain only a very small

[15] 0.09MtCO_2 is the difference between the 'Annual Development Case Central' and the 'Annual Do Minimal Central' scenarios of the ESA
[16] 0.14MtCO_2 is the difference between the 'Development Case Pessimistic' and the 'Do Minimum Pessimistic' scenarios of the ESA

proportion of both the Government's established planning assumption and a potentially reduced assumption of 23MtCO_2.

92. Of course, these are annual emissions figures and, as such, they need to be summed in order to give the full, cumulative amount of predicted additional carbon emissions resulting from flights associated with the appeal development for any year on year period, such as the 2019 to 2050 period used in the ESA. Consequently, the cumulative additional emissions predicted in the ESA for the entire 2019-2050 period or for the 2032-2050 period are far greater than the 0.09MtCO_2 forecast for the year 2050. However, the Government's planning assumption of 37.5MtCO_2 is also an annual figure, as is the figure of 23MtCO_2, such that the relative cumulative amounts of carbon emissions would remain proportionately small.

93. Notwithstanding reference to a range of planned airport development as part of the appeal process, the fact that no examples of MBU-type development having been approved since the publication of MBU were brought to the attention of the Inquiry lends further support to the conclusion that this development alone would not put the planning assumption at risk[17].

94. Although UK statutory obligations under the CCA have been amended since the publication of MBU to bring all greenhouse gas emissions to net zero by 2050, with an additional target of a 78% reduction in carbon emissions by 2035 set to be introduced, MBU remains Government policy. Given all of the foregoing and bearing in mind that there are a range of wider options that the Government might employ to meet these new obligations and that aviation is just one sector contributing to greenhouse gas emissions to be considered, there is also good reason to conclude that the proposed development would not jeopardise UK obligations to reach net zero by 2050 or to achieve the planned 2035 intermediate target. On this basis, given the very small additional emissions forecast in relative terms, there is also no reason to expect that the Council's climate emergency resolution should be significantly undermined.

95. The aviation emissions assessments of the ES and ESA are reported as CO_2 only rather than in the wider terms of carbon dioxide equivalent emissions (CO_2e), which also includes nitrous oxide (N_2O) and methane (CH_4), and which the Government has adopted for its sixth Carbon Budget. While it may have been beneficial to have used CO_2e in preference to CO_2 in the ES and ESA, this was not a matter raised by the Council during scoping, nor at any other stage prior to the exchange of evidence. The approach of the ES and ESA, in this regard, is also consistent with the DfT's 2017 Forecasts and with the MBU policy. Consequently, the approach adopted in the ES and ESA is not flawed or incorrect as such. In any event, the evidence indicates that were N_2O and CH_4 to have been included in the ES and ESA assessments, the results would not change significantly on the basis that N_2O and CH_4 account for in the region of only 0.8 to 1.0% of total international aviation CO_2e emissions.

96. In addition to carbon and carbon dioxide equivalent emissions, other non-carbon sources have the potential to effect climate change. Nonetheless, they are not yet fully understood, with significant uncertainties remaining over their effects and how they should be accounted for and mitigated. There is currently no specific Government policy regarding how they should be dealt

[17] Subject to footnote 9 above

with and uncertainty remains over what any future policy response might be. Moreover, no evidence was put to the Inquiry which clearly and reliably establishes the extent of any such effects.

97. The nature of non-carbon effects resulting from aviation has parallels with carbon effects in that they are complex and challenging, perhaps even more so than carbon effects given the associated greater uncertainties, and that they largely transcend national boundaries. Consequently, in the context of MBU development, it is reasonable to conclude that they are matters for national Government, rather than for individual local planning authorities, to address. It is also noteworthy that the current advice on this matter from the CCC to the Government appears largely unchanged compared to its previous advice.

98. In this context, therefore, the potential effects on climate change from non-carbon sources are not a reasonable basis to resist the proposed development, particularly bearing in mind the Government's established policy objective of making the best use of MBU airports. Moreover, if a precautionary approach were to be taken on this matter, it would be likely to have the effect of placing an embargo on all airport capacity-changing development, including at MBU airports, which seems far removed from the Government's intention.

99. The reason for refusal relating to carbon emissions and climate change refers only to the proposed development's effects resulting from additional emissions of international flights. Nonetheless, the evidence put forward as part of the appeal process also refers to wider potential effects on climate change, including carbon emissions from sources other than international flights.

100. Discussion and testing of the evidence during the Inquiry process revealed no good reasons to conclude that any such effects would have any significant bearing on climate change. Indeed, the Statement of Common Ground on Carbon between the appellant and Council states that *the emissions from all construction and ground operation effects (i.e. all sources of carbon other than flight emissions) are not significant.* It adds that *Stansted Airport has achieved Level 3+ (carbon neutrality) Airport Carbon Accreditation awarded by the Airport Council International*.

101. Given the conclusions outlined above regarding the potential effects of the appeal development arising from international flights, the evidence does not suggest that the combined climate change effects of the development would be contrary to planning policy on such matters, including the Framework, or that it would significantly affect the Government's statutory responsibilities in this regard. Furthermore, no breach of the development plan associated with carbon/climate change is cited in the relevant reason for refusal and none has been established as part of the appeal process.

102. Accordingly, for all of the foregoing reasons, having due regard to current national aviation policy and wider planning policy, including the development plan and the Framework, the proposed development would not have a significant or unacceptable effect on carbon/climate change.

Other Matters

103. Other topic areas considered during the Inquiry that are not expressly assessed above included Local Context, Health & Well Being, Ecology, Socio-Economic Impacts, and Surface Access (Road & Rail). Before assessing the

planning balance, these are considered in turn, followed by any remaining matters raised by interested parties during both the planning application stage and the appeal process.

Local Context

104. The airport is located in a pleasant rural context. Hamlets, villages and small towns, many of which have conservation areas and listed buildings, are dispersed amongst countryside. Nonetheless, the operational development proposed in this case would all be well contained within the airport boundaries.

105. The only material effect apparent in the wider area would be from increased passenger flights over time. Other types of flight are not expected to increase to their current caps as a result, given that the overall limit on annual air transport movements would not change. The main consequences of this for local people are discussed above. Given the Panel's conclusions on these matters, it is not expected that the proposed development would alter the airport's rural context or affect nearby heritage assets in any way bearing in mind the current permitted use of the airport and its likely future use were the appeal to be dismissed.

Health & Well Being

106. The Health Impact Assessment (HIA) considers health impacts arising from noise and air quality both from airport operations and from surface access, and socio-economic factors. The ES and ESA conclude that health effects in terms of air quality would be negligible and that there would be a minor beneficial effect from a reduction in the number of people exposed to night-time air noise. The ES and ESA further conclude that the development would have a major beneficial effect on public health and wellbeing through generation of employment and training opportunities and provision for leisure travel.

107. Research underpinning the WHO ENG guidelines was considered as part of the HIA, and the ES and ESA have taken a more precautionary approach than those guidelines. Whilst criticisms are made by other parties, no alternative detailed assessment has been put forward that would cast doubt on the findings of the ES and ESA or indicate that the likely effects would differ from those assessed. The conclusions of the ES and ESA are considered reliable.

Ecology

108. Given the conclusions of the Air Quality sub-section, in light of the wider evidence, including the findings of the ES and ESA, and subject to the identified suite of mitigation to be secured via the UU and conditions, there is no good reason to believe that the appeal development would have any effects on biodiversity and ecology that would warrant the refusal of planning permission.

Socio-Economic Impacts

109. The ES and ESA demonstrate that the proposal would be of social and economic benefit by enabling increased business and leisure travel. Leisure travellers would benefit from increased accessibility to foreign destinations. Businesses would benefit through increased inward investment. The economy would benefit through increased levels of employment and expenditure. Associated with employment growth, training facilities would be supported. Representatives of business, including local and regional business

organisations, transport operators, and the Stansted Airport College expressed their support for the proposal at the Inquiry. The social and economic benefits of the proposal are not disputed by the Council.

110. SSE and interested parties have questioned several of the assumptions made in the ES and ESA, including those regarding the level of job creation, the suitability of those jobs for local people and the effect of the proposal on the trade balance. The appellant has demonstrated, however, that the assumptions made in the ES and ESA are appropriate and robust. The evidence base that has been used and the modelling undertaken are also questioned but these are sufficient to demonstrate the benefits. Furthermore, even if some of the assumptions made by SSE and interested parties proved to be correct, such as a lower level of job creation than expected, a considerable number of beneficial jobs would still be created.

111. It is likely that increased economic prosperity in the south-east and east of England would not be at the expense of growth elsewhere in the country but would rather assist the growth of the UK economy as a whole. There is no reason to believe that the development would divert investment from other parts of the country that need investment or prejudice the Government's 'levelling-up' agenda, particularly as the development seeks to meet an established need for airport expansion in the south-east of England.

Surface Access

112. As outlined above, both Highways England and Essex County Council withdrew from the appeal proceedings following the identification of a mechanism to secure the delivery of a suite of highways related mitigation. No objections have been made to the appeal scheme by Network Rail or by the rail operators that serve Stansted. Indeed, there is broad support from those quarters. There are, nonetheless, remaining concerns expressed by other parties, including SSE, regarding surface access.

113. Notwithstanding that criticism is made of the methodology, assumptions and evidence that has led the statutory highway authorities and rail operators to their respective current positions, they appear to be well founded, based on a good understanding of the operation of the airport and the surrounding surface access infrastructure, both rail and highway, including capacity and modal share. This includes in respect to dealing with two-way car trips and the likely effects of the development on the highway network through Stansted Mountfitchet and Takeley, which were the subject of considerable discussion at the Inquiry. No alternative traffic counts, surveys, modelling or comprehensive assessment of the potential effects of the development in respect to surface access have been put to the Panel.

114. The Framework states that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. The evidence put to the Inquiry falls far short of demonstrating that this would be the case.

115. Subject to securing and delivering the range of proposed mitigation, which includes improvements to Junction 8 of the M11 and the Prior Wood Junction, as well as to the local road network and to public transport, the development would have no significant effects in terms of surface access. Moreover,

Stansted Airport is and would continue to be well served by the strategic highway network and wide ranging public transport services, including its integrated rail, bus and coach stations.

Other Considerations

116. There was much discussion during the Inquiry and in written evidence about previous expansion at the airport and the conclusions of decision makers at that time. The last planning permission to increase the capacity of the airport was granted in 2008. Putting aside that previous applications did not involve the form of development sought here, planning policy and other considerations have changed significantly since that time and it is not possible to draw any meaningful parallels with the consideration of this appeal.

117. Public engagement occurred in advance of the planning application, as set out in the Statement of Community Involvement (February 2018), the results of which informed the development now under consideration. Further extensive consultation took place at both the planning application and appeal stages and a significant number of responses have been received, both supporting and opposing the scheme, covering a range of topics. The Panel is satisfied that all statutory requirements have been met in these regards and that interested parties have had good opportunity to comment and engage with the planning application and appeal processes.

118. The planning application and appeal have progressed in accordance with normal process and procedure and there is no evidence before the Inquiry that suggests otherwise. It was necessary to hold the Inquiry using a virtual format in accordance with the Planning Inspectorate's Interim Operating Model and in light of restrictions in place as a result of the pandemic. This allowed the appeal to progress in an efficient and expedient way, whilst upholding the opportunity for interested parties to engage with the process. Indeed, many local people and organisations spoke at the Inquiry over several days. It would not have been appropriate to unnecessarily delay the appeal pending potential changes in Government or local policy. Appeals must be determined in accordance with the circumstances at the time of the decision.

119. The respective Secretaries of State were asked several times to recover the appeal for their own determination but declined to do so, determining that the issues involved are of no more than local significance. There is no requirement for appeals to be recovered and the Panel has properly considered the proposals on behalf of the Secretary of State, having had regard to all the evidence, including the case made by the Council and comments from local people. There is a statutory right to appeal planning decisions which is vital to the operation of the planning system and the public costs involved are not a material consideration.

120. In addition to the foregoing matters, concern has been expressed by a range of interested parties, including by Parish Councils. These cover a range of topics, including: local infrastructure, services and facilities, and their potential cost to the public sector; vibration; malodour; rat-running; public safety and risk; water resources, sewerage and flooding; wider pollution issues, including littering and from light; effects on agriculture; parking, including 'fly parking' and the cost of drop-off at the airport; demand for more housing, including affordable housing; the combined effects of planned airport development elsewhere; the 'monopoly' held by the appellant at the airport; the local

economy being said to be over-reliant on the airport; current and potential future flight paths; the effects of stacking aircraft; the physical works proposed are said not to be needed to support the proposed changes to flight and passenger numbers; the existing quality of the airport, including security, management and size; a new airport should be developed in the Thames Estuary instead of the appeal scheme; damage to the highway network, including erosion, and to property; stress for residents and businesses associated with uncertainty over development and activity at the airport; and alleged aviation fuel dumping.

121. These matters are largely identified and considered within the Council officer's reports on the appeal development. They were also before the Council when it prepared its evidence and when it submitted its case at the Inquiry and are largely addressed in its evidence and in the various statements of common ground. The Council did not conclude that they would amount to reasons to justify withholding planning permission. The Panel has been provided with no substantiated evidence which would prompt us to disagree with the Council's conclusions in these respects subject to the UU and the imposition of planning conditions.

122. Some of the submissions from interested parties refer to potential interference with human rights. Given the foregoing conclusions, particularly in terms of the appeal process and the main issues, any interference with human rights that might result from the appeal being allowed would not be sufficient to give rise to a violation of rights under Article 1 of the First Protocol to the Convention, as incorporated by the Human Rights Act 1998.

123. Interested parties have also referred to a number of matters which are either not planning matters or not relevant to the appeal. These include property values, compensation claims, and the conduct and motives of the appellant and of Council members and officers. Any potential future development or further increase in capacity at the airport would require a further planning application which would be subject to the Council's consideration. The lawfulness or otherwise of past development at the airport is a matter for the Council, as local planning authority.

Planning Obligations

124. Planning obligations made under S106 of the Town and Country Planning Act 1990 as a Unilateral Undertaking, dated 26 March 2021 (the UU), were completed after the Inquiry closed in line with an agreed timetable. In the event that planning permission were to be granted and implemented it would be subject to the obligations of the UU, which would include the securing of:

- Noise Mitigation - a new enhanced sound insulation grant scheme for a defined area in the vicinity of the airport to replace existing measures. This would include a greater number of properties than the existing scheme through use of a lower noise contour;
- Transport
  - Mechanisms and funding to secure improvements to Junction 8 of the M11 and to the Priory Wood Junction, local road network improvements and monitoring, and local bus service improvements;
  - The airport operator shall join the Smarter Travel for Essex Network;

- Expanded Sustainable Transport Levy (to replace the existing Public Transport Levy) to be used to promote the use of sustainable transport by passengers and airport staff;
- Enhanced rail users discount scheme, with higher rate of discount and revised eligibility;
- Revised targets for mode share (applying 'reasonable endeavours' to achieve those targets) – non-transfer passenger mode share of 50% by public transport, of 20% (by 39mppa) and 12% (by 43mppa) by 'kiss and fly', and 55% (by 39mppa) of staff access by single occupancy private car; updated working arrangements for the airport's Transport Forum, Airport Surface Access Strategy and Travel Plan; and a study of and pursuant improvements to the on-site bus and coach station;

- Skills, education and employment – continuance of the Stansted Airport Employment Forum and Combined Local Benefits, including the on-site education centre for local children and schools, the on-site airport Employment Academy, Stansted Airport College, and local supply chain support;
- Community - a new, replacement Community Trust Fund to help mitigate any adverse health and / or quality of life effects arising from the development as a result of increased noise levels and a reduction in the amenity of local green spaces;
- Air Quality and Ecology – protection and enhancement of environmentally sensitive sites, including air quality and ecological monitoring at the airport, Eastend Wood and Hatfield Forest, and pursuant compensation;
- Water quality – retention of the requirement to monitor local watercourses; and
- Monitoring – payments to support the Council's costs associated with monitoring the UU's planning obligations.

125. The Council has submitted detailed statements (the CIL Statements), which address the application of statutory requirements to the planning obligations within the UU and also set out the relevant planning policy support / justification. Having considered the UU in light of Regulation 122 of the CIL Regulations and Government policy and guidance on the use of planning obligations, we are satisfied that most of the obligations therein would be required by and accord with the policies set out in the CIL Statements.

126. The exception to this is the inclusion of Thaxted Primary School within the SIGS in Schedule 2 Part 1 of the UU, for the reasons outlined in the *Noise* section above. For those reasons, its inclusion is not necessary and as such does not accord with the CIL Regulations. Subject to this exception, the SIGS is necessary to ensure the development accords with national and local policy requirements to minimise and mitigate adverse noise impact and to avoid significant adverse impact.

127. Subject to the above noted exception, the Panel is satisfied that the remainder of the obligations are directly related to the proposed development, fairly and reasonably related to it and necessary to make it acceptable in planning terms. Furthermore, the UU and its terminology are sufficiently precise and enforceable.

Conditions

128. Conditions were suggested by all three main parties to the appeal in the event that planning permission were to be granted, and these have been taken into account in formulating the conditions imposed.

129. A five year period for the commencement of development has been imposed rather than the standard three year period promoted by the Council, to allow greater flexibility in light of the anticipated impact of the pandemic on the airport and wider aviation industry. Although not suggested by any party, it is also considered necessary in the interests of certainty to specify the plans approved and with which the development must accord.

130. A scheme of water resource efficiency measures is secured to minimise water consumption in accordance with Policy GEN2 of the ULP. It is also considered necessary to secure a surface water drainage scheme in order to avoid flooding as a result of the development.

131. A Construction Environmental Management Plan is needed to minimise the impact of the works on neighbouring occupants and to ensure that acceptable living conditions are maintained in accordance with Policy GEN4 of the ULP.

132. A Biodiversity Management Strategy is necessary in light of findings contained within the submitted ecological surveys. There is a need to conserve and enhance protected and priority species in accordance with statutory obligations and Policy GEN7 of the ULP.

133. For the same reason, the mitigation and enhancement measures and/or works identified in the Preliminary Ecological Appraisal (Feb 2018), Preliminary Ecological Appraisal Update (October 2020) and Ecology Mitigation Strategy (February 2018), are necessary. The Preliminary Ecological Appraisal Update is referenced as the most up to date appraisal, which includes measures beyond those contained in the Ecological Mitigation Strategy, in particular, provisions for the protection of ground nesting birds. A licence will also be required from Natural England, who do not object to the appeal proposal, for the translocation of protected species.

134. Condition 7 restricts noise emanating from aircraft in line with that permissible under the extant planning permission up to 35 million passengers per annum. After that, a progressive improvement in noise conditions is secured over time in line with the ES/ESA predictions to protect the living conditions of neighbouring occupants in accordance with Policy ENV11 of the ULP, and consistent with the APF's objective to share the benefit of improvements to technology with local communities.

135. There are currently no noise restrictions imposed by planning condition for night flights and Stansted, as a designated airport, is controlled by separate night flight operating restrictions imposed by the DfT. These operate on a Quota Count system over a 6.5 hour night-time period, meaning that there is a 1.5 hour period that remains uncontrolled, beyond the 16 hour daytime period imposed by condition 7. In order to ensure certainty that the noise impacts of the development will be as anticipated in the ES/ESA, and to avoid harm to the living conditions of local residents, it is considered necessary to impose a night-time restriction by condition in this case, alongside the daytime restrictions and notwithstanding some existing DfT control.

136. In order to clarify the terms of the planning permission and to ensure that the development and associated effects do not exceed those assessed, conditions are attached which restrict the total number of aircraft movements, the number of cargo air transport movements and passenger throughput during any 12 month period.

137. There is dispute between the parties regarding whether and to what extent it is necessary to control the effects of noise, air quality and carbon arising from the development.

138. Condition 7, discussed above, satisfactorily secures a betterment in noise conditions over time so as to make the development acceptable, such that there is no need or justification for imposing further measures in respect to noise.

139. The effect of the development on local air quality is expected to be very small and would not put nationally prescribed air quality standards or limits at risk in the area. Nevertheless, the appellant proposes a condition to secure an Airport Air Quality Strategy that would be updated over time in a continued effort to minimise emissions and contribute to compliance with relevant limit values or national objectives for pollutants. The provision of electric vehicle charging points can also be secured by separate condition as a measure necessary to minimise air pollution associated with the development. This is considered sufficient to make the development acceptable in planning terms, in accordance with Policy ENV13 of the ULP and the objectives of the Framework.

140. International aviation emissions are not currently directly included in UK carbon budgets and Government policy is clear that there is sufficient headroom for MBU development at all airports, including Stansted. Carbon emissions associated with the development from sources other than international aviation are expected to be relatively small and would not themselves materially impact upon carbon budgets, including the planned sixth Carbon Budget which will directly include international aviation emissions, or otherwise conflict with the objectives of the Framework. As such, a condition limiting carbon is not necessary.

141. The appeal proposal accords with current policy and guidance and there is no evidence that it would compromise the ability of future generations to meet their own needs. The conditions discussed above are sufficient to make the development acceptable in planning terms.

142. The Council proposes alternative conditions to deal with noise, air quality and carbon. Its primary case involves a condition, referred to during the Inquiry as 'condition 15', which would impose restrictions based upon the impacts assessed in the ES/ESA, along with future more stringent restrictions (using some interpolated data from the ES/ESA) and a process that would require the Council's reassessment and approval periodically as the airport grows under the planning permission, allowing for a reconsideration against new, as yet unknown, policy and guidance. In light of the Panel's conclusions on these matters, there is no policy basis for seeking to reassess noise, air quality or carbon emissions in light of any potential change of policy that might occur in the future. Furthermore, it would be likely to seriously undermine the certainty that a planning permission should provide that the development could be fully implemented. This appeal must be determined now on the basis of

current circumstances and the proposed 'condition 15' is not necessary or reasonable.

143. As an alternative to 'condition 15', two other conditions (dealing with air quality and carbon) are suggested by the Council. These would also impose future restrictions defined by the Council. Again, it follows from our conclusions on the main issues that these are not necessary to make the development acceptable in planning terms, so these have not been imposed.

144. It is also unnecessary to require an assessment of impacts of the full proposed airport expansion on 24-hour mean NOx concentrations at Elsenham Woods SSSI and Hatfield Forest SSSI given that this has not been requested by Natural England and the ES/ESA indicates that the development would not be significant in ecology terms.

145. SSE suggested a separate set of conditions, though many were broadly in line with those agreed between the Council and the appellant as considered above. No additional trigger for the commencement of development is needed as this permission must necessarily have been implemented for passenger numbers to exceed 35 million in any 12-month period. Noise restrictions beyond that imposed by condition 7 are suggested by SSE but these seek arbitrary limits with no certainty that they would be achievable. They are not necessary or reasonable in light of the Panel's findings as outlined above. Similarly, no evidence was put to the Inquiry which would justify imposing specific restrictions on helicopter movements. Publication of passenger throughput figures on the airport's website is not necessary to make the development acceptable, as conceded by SSE during the Inquiry.

146. SSE also sought a requirement for the provision of a taxi holding area close to the terminal to minimise unnecessary empty running, whereby taxis drop off at the airport but do not pick-up a return fare. A taxi company is already based at the airport and the appellant explained that it has recently provided a holding area within the mid-stay car park that might assist with such concerns. Regardless, extensive sustainable transport measures are secured by planning obligations so that a specific requirement of this type is unnecessary.

147. Additional air quality and carbon requirements to those sought by the Council were suggested by SSE but given the Panel's conclusions on these matters, these are not reasonable or necessary. Finally, SSE sought restrictions on future applications for development at the airport in terms of passenger numbers or a second runway, though recognised the difficulties of complying with the tests for conditions. Such restrictions are not relevant to the development being sought and would not be necessary or reasonable.

148. The wording of conditions has been amended as necessary to improve their precision and otherwise ensure compliance with the tests for conditions contained in the Framework. So far as the conditions require the submission of information prior to the commencement of development, the appellant has provided written confirmation that they are content with the wording and reasons for being pre-commencement requirements.

Planning Balance

149. The development plan, so far as it is relevant to this appeal, is the ULP. Although dated, it contains a number of policies[18] relevant to this proposal which are not materially inconsistent with the objectives of the Framework and continue to provide a reasonable basis upon which to determine the appeal, alongside other material considerations.

150. Policy S4 of the ULP provides for development directly related to or associated with Stansted Airport to be located within the boundaries of the airport.

151. Policy ENV11 of the ULP seeks to avoid harm to noise sensitive uses. The evidence indicates that the overall effect of the proposal on aircraft noise would be beneficial. Even at their peak, noise levels would not exceed that permissible under the existing planning permission. After that, it is expected that noise would reduce as a result of factors such as fleet mix and advances in technology. This improvement in noise conditions over time can be secured by condition in line with Government policy to share the benefits of airport expansion with local communities. As such, there would be no conflict with Policy ENV11 or the similar objectives of the Framework to protect living conditions.

152. Not all development can have the effect of improving air quality and by its very nature, there would inevitably be some additional air pollution from the proposed development which must weigh against the proposal. However, the ES/ESA assesses the impacts as being negligible at all human receptors and no exceedances of the air quality standards are predicted for any of the pollutants at human receptors in the study area. NOx concentrations at all ecological receptors are predicted to be below the critical level/air quality standard of 30µg/m^3 for all scenarios tested. The predicted changes in nitrogen deposition at the Hatfield Forest SSSI and NNR and Elsenham Woods SSSI remain less than 1% of the sites' lower critical loads. Ongoing monitoring of air quality within the SSSIs is provided for within the submitted Unilateral Undertaking. Overall, there would be no material change in air quality as a result of the development. As such, there would be no conflict with Policy ENV13 of the ULP, which seeks to avoid people being exposed on an extended long-term basis to poor air quality; or the similar objectives of the Framework.

153. Carbon emissions are predominantly a matter for national Government and the effects of airport expansion have been considered, tested and found to be acceptable in MBU. It is clear that UK climate change obligations would not be put at risk by the development, including in light of the Government's 20 April 2021 announcement. Carbon emissions from other sources associated with the development, such as the operation of airport infrastructure, on site ground based vehicles and from people travelling to and from the site are relatively small and would be subject to extensive sustainable transport measures secured by conditions and obligations that would minimise impacts as far as possible. Therefore, this matter weighs against the proposal only to a limited extent and could not be said to compromise the ability of future generations to meet their needs, or otherwise conflict with the objectives of the Framework taken as a whole.

[18] Relevant ULP policies were reviewed by the Council and the appellant for the purposes of the appeal

154. The Highway Authorities are satisfied that the development would not unacceptably affect highway safety or capacity and the Panel agrees. All infrastructure and mitigation measures required to make the development acceptable in planning terms can be secured by conditions or planning obligations. On this basis, there would be no conflict with ULP Policies GEN1, GEN6, GEN7, ENV7, ENV11 or ENV13 so far as they require infrastructure delivery or mitigation.

155. The Council and the appellant agree that the proposed development accords with the development plan, taken as a whole. It is further agreed that the Framework's presumption in favour of sustainable development should apply as a result of the proposals' accordance with an up-to-date development plan[19]. In these circumstances the Framework states that development should be approved without delay.

156. In addition, the scheme receives very strong support from national aviation policy. Taken together, these factors weigh very strongly in favour of the grant of planning permission. Furthermore, the development would deliver significant additional employment and economic benefits, as well as some improvement in overall noise and health conditions.

157. The Council has recently withdrawn its emerging Local Plan such that it has no prospect of becoming part of the development plan and attracts no weight in the determination of this appeal. There are a number of made Neighbourhood Plans in the local area, but none contain policies that have a bearing on the outcome of the appeal.

158. Overall, the balance falls overwhelmingly in favour of the grant of planning permission. Whilst there would be a limited degree of harm arising in respect of air quality and carbon emissions, these matters are far outweighed by the benefits of the proposal and do not come close to indicating a decision other than in accordance with the development plan. No other material considerations have been identified that would materially alter this balance.

Conclusion

159. In light of the above, the appeal is allowed.

Michael Boniface	*G D Jones*	*Nick Palmer*
INSPECTOR	INSPECTOR	INSPECTOR

[19] Framework paragraph 11(c)

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Philip Coppel, of Queens Counsel and Asitha Ranatunga, of Counsel	Instructed by Elizabeth Smith, Interim Legal services Manager, Uttlesford District Council
They called	
James Trow BSc(Hons) MIOA MIEnvSc	Managing Director, Noise Consultants Ltd
Dr Mark Broomfield BA DPhil	Associate Director, Ricardo Energy and Environment Ltd
Dr Mark Hinnells BA(Hons) MA MSc PhD	Senior Consultant, Ricardo Energy and Environment Ltd
Hugh Scanlon BA(Hons) MPhil MRTPI	Senior Director, Lichfields

FOR THE APPELLANT:

Thomas Hill, of Queens Counsel and Philippa Jackson, of Counsel	Instructed by Alistair Andrew, Head of Planning Services, Manchester Airport Group (MAG)
They called	
Tim Hawkins BSc MSc	Chief of Staff, MAG
Dan Galpin BSc(Hons)	Director, ICF
David Thomson BSc MSc	Senior Director, RPS
Vernon Cole BSc(Hons) MSME MBA CEng MIOA FIMechE IIAV	Acoustic Consultant, Cole Jarman Ltd
Dr Michael Bull BSc PhD CEng CSci CEnv IAQM MIEnvSc IChemE	Director, Ove Arup & Partners Ltd
Dr Andrew Buroni BSc(Hons) MSc PhD RSM RSPH	Director, RPS
Mike Barker BSc(Hons) MSc CIEEM	Director of Ecology, RPS
Neil Robinson BSc MSc MBA	CSR & Future Airspace Director, MAG
George Vergoulas BSc(Hons) MSc CEnv MIEnvSc MIEMA	Associate, Ove Arup & Partners Ltd
Philip Rust CEng MICE CIHT	Director, Steer Group
Edith McDowall BA(Hons) MPhil	Director, Optimal Economics
Louise Congdon BA(SocSci) MA	Managing Partner, York Aviation

Alistair Andrew BA(Hons) DipTP (UC) MRTPI	Head of Planning Services, MAG

FOR STOP STANSTED EXPANSION:

Paul Stinchcombe and Richard Wald, both of Queens Counsel	Instructed by Brian Ross, Deputy Chairman of Stop Stansted Expansion (SSE)
They called[20]	
Ken McDonald FCA	Founder, Secretary and Trustee of The Hundred Parishes Society and SSE Executive Committee Member
Brian Ross[21] BCom(Hons) MBA FRSA MSPE	Deputy Chairman of SSE
Peter Lockley MA	Barrister
Michael Young BA(Hons) FCA	SSE Executive Committee Member
Bruce Bamber BSc MA MSc MCIHT	Director of Railton TPC Ltd

INTERESTED PERSONS:

Derek Connell	The Three Horseshoes Public House, Duton Hill
Vere Isham	Broxted Parish Council
Dr Graham Mott	Elsenham Parish Council
Cllr Jenny Jewell	Great Canfield Parish Council
Neville Nicholson	Helions Bumpstead Parish Council
Dr Zoe Rutterford	Henham Parish Council & Chickney Parish Meeting
Cllr Neil Reeve	High Easter Parish Council
Julia Milovanovic	Moreton Bobbingworth & The Lavers Parish Council
Peter Jones	Stansted Mountfitchet Parish Council
Cllr Barrett	Stebbing Parish Council
Cllr Geoff Bagnell	Takeley Parish Council
Cllr Duncan McDonald	Much Hadham Parish Council
Richard Haynes JLL	Thaxted Parish Council
John Devoti	Howe Green and Great Hallingbury Residents
Alex Daar	Chairman of East Hertfordshire Green Party
Tim Johnson	The Aviation Environment Federation
Alex Chapman	New Economics Foundation
Jonathan Fox	Local Resident
Michael Belcher	Local Resident
Maggie Sutton	Local Resident

[20] Although other proofs of evidence were submitted in support of SSE's case, including those of Peter Sanders CBE MA DPhil, Prof Jangu Banatvala CBE MA MD(Cantab) FRCP FRCPath FMedSci DPH, Martin Peachey MA(Cantab), John Rhodes MA(Oxon), Dr Claire Holman and Colin Arnott BA MPhil MRTPI, only the five witnesses listed were called to give evidence at the Inquiry

[21] Mr Ross gave evidence in respect to the Inquiry topics of 'air traffic forecasting and predictions', 'socio-economic impacts' and 'planning matters'. For the latter of these topics he adopted the proof of evidence of Mr Arnott

Simon Havers	Local Resident
Irene Jones	Local Resident
Mark Johnson	Local Resident
Edward Gildea	Uttlesford Green Party
Raymond Woodcock	Local Resident
Cliff Evans	Local Resident
George Marriage	Local Resident
Quintus Benziger	Local Resident
Jonathan Richards	Local Resident
Vincent Thompson	Local Resident
Peter Franklin	Local Resident
Roger Clark	Local Resident
Martin Berkeley	Local Resident
Suzanne Walker	Local Resident
David Burch	Director of Policy, Essex Chamber of Commerce
Andy Walker	Director of Policy, Suffolk Chamber of Commerce
Freddie Hopkinson	CBI East
Harriet Fear MBE	Chair, Cambridge Ahead
Pete Waters	Executive Director, Visit East of England
Dr Andy Williams	UK VP Strategy, AstraZeneca
Martyn Scarf	UK Director, World Duty Free
Chris Hardy	Managing Director, National Express
Jonathan Denby	Director of Corporate Affairs, Greater Anglia
Karen Spencer MBE	Principal, Stansted Airport College
Robert Beer	The Easter and Rodings Action Group

SCHEDULE OF CONDITIONS FOR APPEAL REF APP/C1570/W/20/3256619:

1. The development hereby permitted shall be begun before the expiration of 5 years from the date of this decision.

2. Prior to reaching 35mppa, a scheme for the provision and implementation of water resource efficiency measures during the operational phases of the development shall be submitted to and approved in writing by the local planning authority. The scheme shall include the identification of locations for sufficient additional water meters to inform and identify specific measures in the strategy. The locations shall reflect the passenger, commercial and operational patterns of water use across the airport. The scheme shall also include a clear timetable for the implementation of the measures in relation to the operation of the development. The approved scheme shall be implemented, and the measures provided and made available for use in accordance with the approved timetable.

3. Prior to the commencement of construction works, a Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the local planning authority. The construction works shall subsequently be carried out strictly in accordance with the approved CEMP, unless otherwise approved in writing by the local planning authority.

   The CEMP shall incorporate the findings and recommendations of the Environmental Statement and shall incorporate the following plans and programmes:

   (a) External Communications Plan
      (i) External communications programme
      (ii) External complaints procedure

   (b) Pollution Incident Prevention and Control Plan
      (i) Identification of potential pollution source, pathway and receptors
      (ii) Control measures to prevent pollution release to water, ground and air (including details of the surface/ground water management plan)
      (iii) Control measures for encountering contaminated land
      (iv) Monitoring regime
      (v) Emergency environmental incident response plan
      (vi) Incident investigation and reporting
      (vii) Review/change management and stakeholder consultation

   (c) Site Waste Management Plan
      (i) Management of excavated materials and other waste arising
      (ii) Waste minimisation
      (iii) Material re-use

   (d) Nuisance Management Plan (Noise, Dust, Air Pollution, Lighting)
      (i) Roles and responsibilities
      (ii) Specific risk assessment – identification of sensitive receptors and predicted impacts
      (iii) Standards and codes of practice
      (iv) Specific control and mitigation measures
      (v) Monitoring regime for noise

(e) Management of Construction Vehicles
  (i) Parking of vehicles of site operatives
  (ii) Routes for construction traffic

The CEMP shall include as a minimum all measures identified as "Highly Recommended" or "Desirable" in IAQM "Guidance on the assessment of dust from demolition and construction," Version 1.1 2014 commensurate with the level of risk evaluated in accordance with the IAQM guidance, for construction activities which are within the relevant distance criteria from sensitive locations set out in Box 1 and Tables 2, 3 and 4 of the IAQM guidance.

The CEMP shall provide for all heavy goods vehicles used in the construction programme to be compliant with EURO VI emissions standards, and for all Non Road Mobile Machinery to be compliant with Stage V emissions controls as specified in EU Regulation 2016/1628, where such heavy goods vehicles and Non Road Mobile Machinery are reasonably available. Where such vehicles or machinery are not available, the highest available standard of alternative vehicles and machinery shall be used.

4. Prior to commencement of the development, a detailed surface water drainage scheme for the airfield works hereby approved based on the calculated required attenuation volume of 256m^3, shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be fully implemented before any of the aircraft stands and taxiway links hereby approved are brought into use. The scheme shall be implemented in accordance with the approved details as part of the development, and shall include but not be limited to:
   - Detailed engineering drawings of the new or altered components of the drainage scheme;
   - A final drainage plan, which details exceedance and conveyance routes, and the location and sizing of any drainage features; and
   - A written report summarising the scheme as built and highlighting any minor changes to the approved strategy.

5. A Biodiversity Management Strategy (BMS) in respect of the translocation site at Monks Farm shall be submitted to, and approved in writing by, the local planning authority prior to the commencement of construction works. The BMS shall include:

   - Description and evaluation of features to be managed;
   - Ecological trends and constraints on site that might influence management;
   - Aims and objectives of management;
   - Appropriate management options for achieving aims and objectives;
   - Prescriptions for management actions;
   - Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five year period);
   - Details of the body or organisation responsible for implementation of the Strategy; and
   - Ongoing monitoring and remedial measures.

   The Strategy shall also set out (where the results from monitoring show that conservation aims and objectives of the BMS are not being met) how

contingencies and/or remedial action shall be identified, approved by the local planning authority and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The BMS shall be implemented in accordance with the approved details.

6. All ecological mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the Stansted − Ecology Mitigation Strategy (RPS, February 2018) forming part of Appendix 16.1 and 16.2 of the Environmental Statement and in the Conclusions and Recommendations of the Preliminary Ecological Appraisal Update (RPS, 5 October 2020), Appendix 16.A of the Environmental Statement Addendum.

7. The area enclosed by the 57dB(a) Leq, 16h (0700-2300) contour shall not exceed 33.9 sq km for daytime noise.

   By the end of the first calendar year that annual passenger throughput exceeds 35million, the area enclosed by the following contours shall not exceed the limits in Table 1:

Table 1

54 dB $L_{Aeq, 16hr}$	57.4 km^2
48 dB $L_{Aeq, 8hr}$	74.0 km^2

   By the end of 2032 or by the end of the first calendar year that annual passenger throughput reaches 43million (whichever is sooner), Stansted Airport Limited, or any successor or airport operator, shall reduce the areas enclosed by the noise contours as set out in Table 2. Thereafter the areas enclosed by the contours as set out in Table 2, shall not be exceeded.

Table 2

54 dB $L_{Aeq, 16hr}$	51.9 km^2
48 dB $L_{Aeq, 8hr}$	73.6 km^2

   For the purposes of this condition, the noise contour shall be calculated by the Civil Aviation Authority's Environmental Research and Consultancy Department (ERCD) Aircraft Noise Contour model (current version 2.4), (or as may be updated or amended) or, following approval by the local planning authority, any other noise calculation tool such as the Federal Aviation Administration Aviation Environmental Design Tool (current version 3.0c) providing that the calculations comply with European Civil Aviation Conference Doc 29 4th Edition (or as may be updated or amended) and that the modelling is undertaken in line with the requirements of CAA publication CAP2091 (CAA Policy on Minimum Standards for Noise Modelling). All noise contours shall be produced using the standardised average mode.

   To allow for the monitoring of aircraft noise, the airport operator shall make noise contour mapping available to the local planning authority annually as part of demonstrating compliance with this condition. Contours should be provided in 3dB increments from 51 dB $L_{Aeq,16hr}$ and 45 dB $L_{Aeq, 8hr}$.

8. The passenger throughput at Stansted Airport shall not exceed 43 million passengers in any 12 calendar month period. From the date of this permission, the airport operator shall report the monthly and moving annual total numbers of passengers in writing to the local planning authority no later than 28 days after the end of the calendar month to which the data relate.

9. There shall be a limit on the number of occasions on which aircraft may take-off or land at the site of 274,000 Aircraft Movements during any 12 calendar month period, of which no more than 16,000 shall be Cargo Air Transport Movements (CATMs). From the date of the granting of planning permission, the developer shall report the monthly and moving annual total numbers of Aircraft Movements, Passenger Air Transport Movements and CATMs in writing to the local planning authority no later than 28 days after the end of the calendar month to which the data relate.

   The limit shall not apply to aircraft taking off or landing in any of the following circumstances:

   a) The aircraft is required to land at the airport because of an emergency, a divert or any other circumstance beyond the control of the operator and commander of the aircraft; or

   b) The aircraft is engaged on the Head of State's flight, or on a flight operated primarily for the purposes of the transport of Government Ministers or visiting Heads of State or dignitaries from abroad.

10. Prior to the airport first handling 35mppa, an Airport Air Quality Strategy (AAQS) shall be submitted to and approved in writing by the local planning authority. The AAQS shall set out how the airport operator shall take proportionate action to contribute to compliance with relevant limit values or national objectives for pollutants through:

    a) Measures to minimise emissions to air from its own operational sources;

    b) Measures to influence actions to be undertaken to improve air quality from third party operational sources; and

    c) Measures that reduce emissions through the Airport Surface Access Strategy (ASAS), the Sustainable Transport Levy and the Local Bus Network Development Fund.

    Thereafter, the AAQS shall be reviewed at the same time as the ASAS reviews (at least every 5 years or when a new or revised air quality standard is placed into legislation) and submitted to and be approved in writing by the local planning authority. At all times the AAQS shall be implemented as approved, unless otherwise approved in writing by the local planning authority.

11. Within 6 months of the date of this planning permission a scheme for the installation of rapid electric vehicle charging points at the airport shall be submitted to and approved in writing by the local planning authority. The scheme shall indicate the number and locations of the charging points and timetable for their installation. The approved scheme shall be fully implemented in accordance with the approved timetable and retained thereafter.

12. The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan: NK017817 – SK309; Site Plan: 001-001 Rev 01; Mike Romeo RET: 001-002 Rev 01; Yankee Remote Stands: 001-003 Rev 01; Runway Tango: 001-004 Rev 01 and Echo Stands: 001-005 Rev 01.

The Planning Inspectorate

Costs Decision

Inquiry held over 30 days between 12 January 2021 and 12 March 2021

Site visits made on 17 December 2020 and 10 March 2021

by Michael Boniface MSc MRTPI, G D Jones BSc (Hons) DipTP DMS MRTPI and Nick Palmer BA (Hons) BPl MRTPI

Panel of Inspectors appointed by the Secretary of State

Decision date: 26 May 2021

Costs application in relation to Appeal Ref: APP/C1570/W/20/3256619
London Stansted Airport, Essex

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Stansted Airport Limited for a full award of costs against Uttlesford District Council.
- The inquiry was in connection with an appeal against the refusal of planning permission for airfield works comprising two new taxiway links to the existing runway (a Rapid Access Taxiway and a Rapid Exit Taxiway), six additional remote aircraft stands (adjacent Yankee taxiway); and three additional aircraft stands (extension of the Echo Apron) to enable combined airfield operations of 274,000 aircraft movements (of which not more than 16,000 movements would be Cargo Air Transport Movements) and a throughput of 43 million terminal passengers, in a 12-month calendar period.

Decision

1. The application for an award of costs is allowed in the terms set out below.

The Submissions for Stansted Airport Limited

2. The application for costs was made in writing. In summary, it says that the development should clearly have been allowed by the Council having regard to relevant policies and considerations so that there would have been no need for the appeal, and the significant costs involved, whatsoever. Indeed, that was the resolution of the Council in 2018 and there were no changed circumstances to justify the subsequent refusal of planning permission. This was the consistent advice of the Council's professional officers and legal advisors.

3. The decision to refuse planning permission resulted from a discussion that did not weigh issues in a planning balance, take account of proposed mitigation or consider the potential for making the development acceptable using conditions. No additional information was sought by the Council, informally or formally through the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regulations).

4. By the exchange of evidence, the Council had returned to a position that planning permission should be granted, subject to conditions and obligations. Each of the Council's respective witnesses agreed that matters of noise, air quality and carbon could be overcome by the imposition of conditions. Yet, the Council did not seek to impose conditions and refused planning permission.

5. The Council's reasons for refusal are imprecise, vague and unsubstantiated. They do not stand up to scrutiny and there was no material difference between the position in respect of noise, air quality and carbon between its resolutions in 2018 and 2020. Nor did the Environmental Statement Addendum (October 2020) (ESA) materially alter these assessments.

6. The Council persisted in arguing for the imposition of a condition (so called 'condition 15'), which is clearly unlawful and fails to meet the tests contained in the National Planning Policy Framework, unnecessarily prolonging the Inquiry.

The Response by Uttlesford District Council

7. The response to the costs application was made in writing. In summary, it says that the application was not made as soon as possible and should have been made sooner. This deprived the Council of the ability to address costs matters during the Inquiry, such that it is prejudicial and resulted in procedural unfairness. The decision by the Council to refuse planning permission was justified at the time the decision was taken and took account of all relevant matters. Its refusal reasons were sufficiently clear, and its decision was fully substantiated at appeal. The conditions pursued by the Council (including 'condition 15') were fully justified, lawful and accord with the relevant tests for planning conditions. The Council did not act contrary to established case law and had regard only to relevant and material considerations.

Reasons

8. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

9. Applications for costs should be made as soon as possible and before the close of the Inquiry, in accordance with the PPG. Various indications were made by the appellant from the opening of the Inquiry that an application for costs was likely and so the other main parties should have been well aware of this possibility. Whilst the application could have been made earlier in the appeal process in relation to unreasonable behaviour known to the appellant well before the Inquiry opened, which would have been best practice, it was not unreasonable to wait for the conclusion of evidence in anticipation that the Council might yet substantiate its case and obviate the need for a costs application.

10. Regardless, the application was properly made in writing before the close of the Inquiry. This accords with the PPG, which provides guidance rather than statute and should not be interpreted in an overly legalistic manner. The Council was granted the full 4-week period requested in which to consider the matter and respond. There can be no suggestion that it was disadvantaged or deprived of an opportunity to deal with the issues raised.

11. The application, setting out full details of the case against the Council, was made in writing and the Panel concluded that a written response would be the most efficient and effective way of dealing with the matter, allowing the Council to fully consider the content of the application and make a detailed response. Having heard much from the Council during the Inquiry about the reasonableness of its conduct and conclusions, apparently in anticipation of

such issues being raised, there was nothing to be gained from hearing further oral evidence on what are largely matters of fact and public record.

12. There is nothing unusual in dealing with costs applications in writing and, given the foregoing, in this case the written process adopted was not unfair or prejudicial to the Council. Indeed, had the appellant not applied for costs, the Panel might have initiated such an award, which would necessarily have followed a written process after the conclusion of the Inquiry.

13. The Council resolved to grant permission for the development on 14 November 2018 but subsequently reconsidered its position more than a year later and then formally refused planning permission. Whilst there is nothing wrong with a different committee exercising different planning judgement, such a drastic change in position by a public body should be fully and robustly justified.

14. In 2018, the Council rightly based its deliberations on the Environmental Statement (February 2018) (ES) available at that time and accepted its conclusions that there would be negligible impacts arising from the proposed development. It was further concluded that the development would accord with the development plan and that there were no material considerations indicating a decision other than in accordance with the development plan.

15. Despite advice from its officers that there had been no material changes in policy or circumstances that would justify a different decision in 2020, the Council formally refused planning permission for four reasons. This was notwithstanding the negligible impacts that had been identified and accepted within the ES, the conclusions of which remained substantially unchallenged.

16. Having identified significant policy support for the development, any new concerns would have needed to be significant and have some prospect of tipping the favourable planning balance. At no time was additional information sought from the appellant under Regulation 25 of the EIA Regulations that might have overcome any such concerns or provided an answer to other queries of the Council.

17. The reasons for refusal were unquestionably vague and generalised, suggesting that the appellant had failed to demonstrate the effects on aircraft noise and air quality despite the extensive evidence presented and accepted on these topics. The reasons for refusal left the actual and specific concerns of the Council opaque, even having regard to the committee minutes. Ultimately, the issues relied upon at appeal, some of which had been discussed during the committee, could not reasonably have been expected to materially alter the favourable planning balance. Indeed, the Council's own appeal evidence was that the planning balance was favourable, such that planning permission should be granted.

18. The reasons for refusal became vaguer still at reason 3 which sought to rely on a conflict with general accepted perceptions and understandings of the importance of climate change. Climate change and related policy matters had been considered at length by the Council in light of extensive submissions on the topic. Whilst the 2050 Target Amendment to the Climate Change Act 2008 occurred after the initial resolution to grant, no material change in relevant and applicable policy was identified by the Council, nor were the negligible impacts of the development altered. It was not credible or respectable for the Council to identify this as a matter that should now result in the refusal of permission.

19. The final reason for refusal related to a failure to provide necessary infrastructure and mitigation. However, it remains unclear what was needed that could not have been secured by condition; was not already provided for in the S106 agreement before the Council; or could not have been secured through negotiations on the submitted planning obligations. It was open to the Council to impose whatever conditions it saw fit applying the relevant tests.

20. Attempts to substantiate these reasons for refusal during the appeal were not convincing. Nor was the reliance on additional information provided in the ESA, which identified only marginal changes in the assessment of effects from the ES. The Council nevertheless maintained its case and presented evidence relating to all four refusal reasons.

21. This was notwithstanding the Council's witnesses individually accepting that the issues raised could be overcome by conditions or obligations, and its planning witness having accepted in written evidence that the development was acceptable in planning terms overall. Again, it was concluded that the development would accord with the development plan and should be granted planning permission subject to conditions and obligations. Such an approach could and should have been taken at the time of the Council's decision and did not warrant the Council's continued opposition to the proposal at appeal. So far as conditions were pursued, much time was taken at the Inquiry dealing with 'condition 15', an unnecessarily onerous and misconceived condition that patently fails to meet the relevant tests.

22. The strength of evidence in favour of the proposal is such that the application should clearly have been granted planning permission by the Council. Its reliance on a perceived direction of travel in policy or emerging policy that may never come into being in the form anticipated is not a sound basis for making planning decisions. As such, the appeal should not have been necessary.

23. The Panel therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

24. The Panel has had regard to the various court judgements and other documentation supporting the Council's response in reaching its conclusions.

Costs Order

25. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Uttlesford District Council shall pay to Stansted Airport Limited, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

26. The applicant is now invited to submit to Uttlesford District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Michael Boniface	*G D Jones*	*Nick Palmer*
INSPECTOR	INSPECTOR	INSPECTOR

Communities and Local Government

Department for Transport

Alistair Watson
CMS Cameron McKenna LLP
Mitre House
160 Aldersgate Street
London
EC1A 4DD

Our Ref APP/C1570/A/06/2032278

8 October 2008

Dear Mr Watson

TOWN AND COUNTRY PLANNING ACT 1990 – SECTIONS 78 AND 266 .
APPEAL BY BAA PLC AND STANSTED AIRPORT LTD
APPLICATION REF: UTT/0717/06/FUL
STANSTED AIRPORT, STANSTED, ESSEX, CM24 1QW

1 We are directed by the Secretaries of State for Communities and Local Government and for Transport ("the Secretaries of State") to say that consideration has been given to the report of the Inspector, Alan Boyland, BEng(Hons) DipTP CEng MICE MIHT MRTPI, who held a public inquiry on dates between 30 May and 19 October 2007 The appeal was made under Section 78 of the Town and Country Planning Act 1990, against the refusal by Uttlesford District Council (UDC) to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted. The application sought the removal of condition MPPA1 and variation of condition ATM1 attached to a planning permission ref UTT/1000/01/OP, dated 16 May 2003 The relevant conditions state that:

MPPA1 The passenger throughput at Stansted Airport shall not exceed 25 million passengers in any twelve calendar month period.
Reason To ensure that the predicted effects of the development are not exceeded

ATM1 Subject to ATM2 below, from the date that the terminal extension hereby permitted within Site "A" opens for public use, there shall be at Stansted Airport a limit on the number of occasions on which aircraft may take-off or land at Stansted Airport of 241,000 ATMs during any period of one year of which no more than 22,500 shall be CATMs (Cargo Air Transport Movements)
Reason: To protect the amenity of residents who live near the airport and who are affected by, or may be affected by aircraft noise

2 The decision on this appeal has been taken jointly by the Secretaries of State in accordance with section 266 of the Town and Country Planning Act 1990 because the application for planning permission was made by a statutory

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undertaker to develop either operational land, or land which would become operational if planning permission were to be granted.

Inspector's recommendation and summary of the decision

3 The Inspector recommended that the appeal be allowed and planning permission granted, subject to conditions. For the reasons given below, except where stated, the Secretaries of State agree with the Inspector's conclusions and with his recommendation A copy of the Inspector's report (IR) is enclosed for the main parties to the inquiry, and copies of the Inspector's conclusions are enclosed for other interested parties All references to paragraph numbers, unless otherwise stated, are to the IR

Procedural Matters

4 The Secretaries of State note that in a supporting letter submitted with the planning application, it was indicated that the application sought the variation of condition ATM1 to a new level of 264,000 Air Transport Movements (ATMs), including limits of 243,500 Passenger ATMs (PATMs) and 20,500 Cargo ATMs (CATMs) (IR1 1) The Secretaries of State also note that by letter dated 20 March 2007, BAA/STAL indicated that it would offer to the inquiry a planning condition that would control air passengers to "about 35 million passengers per annum (mppa)" and that this was confirmed orally at the inquiry (IR3 50) The Secretaries of State agree with the Inspector's approach in considering the appeal as set out in paragraph IR3.51 and have done so on the same basis

5. The Secretaries of State have, like the Inspector (IR1 17, 2.8-2.12 and 14 3-14 12), taken into account the Environmental Statement and Supplementary Environmental Statements which were submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 and in response to further requests for information under Regulation 19 of those Regulations (as detailed in IR1 17) Like the Inspector, and for the reasons given in paragraphs IR14.3-14 12, the Secretaries of State consider that sufficient information has been provided for them to assess the environmental impact of the application and that this information complies with the requirements of the above regulations

6 The Secretaries of State note that UDC resolved to substitute their original reasons for refusal as set out in paragraph IR1.2 Like the Inspector, the Secretaries of State have considered the appeal on this basis and agree that no-one has been prejudiced in doing so (IR1.3)

7 An application for an award of costs regarding this appeal has been made against UDC, Essex County Council (ECC) and Hertfordshire County Council (HCC) (IR1 23) This application is the subject of a separate letter

Matters arising after the close of the inquiry

8 On 12 March the Secretaries of State referred back to inquiry parties on the basis that they were not yet in a position to determine the appeal. This is because they received new information from the appellant's lawyers, CMS

Cameron McKenna in a letter dated 18 February, relating to aspects of the air quality modelling that was used to predict the likely effects of the proposed development on concentrations of oxides of nitrogen (NOx) in the vicinity of the airport. This information was sent to inquiry parties, along with initial representations which had been received from Saffron Walden & District Friends of the Earth (FOE) dated 19 February, Stop Stansted Expansion (SSE) dated 25 February, UDC dated 29 February, Cameron McKenna dated 29 February, Much Hadham Parish Council dated 12 March, The National Trust dated 3 March, and a copy letter from SSE to Alistair Watson of CMS Cameron McKenna dated 25 February. These initial representations had been received by the Secretaries of State because the CMS Cameron McKenna letter of 18 February had been copied to inquiry parties at the same time it was sent to the Secretaries of State. The Secretaries of State wrote to all rule 6 parties on 18 March 2008 seeking the further information requested by SSE of BAA. This information was provided by BAA's solicitors, CMS Cameron McKenna (and copied to all rule 6 parties) on 3 April. On 10 April the Secretaries of State extended the deadline for responses to their reference back to 18 April. Responses to this reference back were received from CMS Cameron McKenna dated 3 April and 10 April, SSE dated 9 April and 18 April, Much Hadham District Council dated 14 and 20 March and 8 April, The National Trust dated 18 April, UDC dated 11 April, and Saffron Walden & District FOE dated 14 April. The Secretaries of State wrote to inquiry parties on 23 April circulating these responses and inviting final comments on them. They received responses from CMS Cameron McKenna dated 8 May, SSE dated 9 and 21 May and 5 and 27 June, Much Hadham Parish Council dated 7 and 26 May, Saffron Walden & District FOE dated 6 and 21 May and UDC dated 13 May. The Secretaries of State have taken full account of all post-inquiry correspondence in reaching their decision. The issues raised are considered in paragraphs 33-38 below.

9. On 17 July the Secretaries of State once again referred back to inquiry parties on the basis that they were not yet in a position to determine the appeals. This is because the Secretaries of State wished to ensure that there was an appropriate regime in place in respect of night noise and they were not persuaded that such a regime would be achieved by imposing either the BAA or UDC form of proposed condition offered at the inquiry to control night noise (IR13.17). Responses to this reference back were received from Saffron Walden & District FOE dated 2 August, Much Hadham Parish Council dated 4 August, UDC dated 12 August (also on behalf of East Herts DC, and Essex and Herts County Councils), SSE dated 11 August, The London Chamber of Commerce and Industry dated 12 August (not a Rule 6 party), and UPS (not a Rule 6 party), British Airways (not a Rule 6 party) and CMS Cameron McKenna, all dated 14 August. The Secretaries of State wrote to inquiry parties on 15 August circulating these responses and inviting comments on them. They also indicated that any further information would be considered, before coming to a final view on the appeal. They received responses from Much Hadham Parish Council, CMS Cameron McKenna and SSE all dated 1 September, Saffron Walden & District FOE dated 20 August, and UDC dated 3 September (also on behalf of East Herts DC, and Essex and Herts County Councils). They also received responses from the Board of Airline Representatives UK dated 20 August (not a Rule 6 party), Airport Coordination Limited dated 21 August (not a Rule 6 party), International Air Transport

Association dated 26 August (not a Rule 6 party) and Stansted ACC dated 29 August These representations were also copied to inquiry parties for comment Further responses were received from Saffron Walden & District FOE dated 14 September and CMS Cameron McKenna, SSE and UDC (also on behalf of East Herts DC, and Essex and Herts County Councils) dated 15 September

10 Whilst taking account of the representations from non-Rule 6 parties in their consideration of matters set out in their letter of 17 July, the Secretaries of State have given these limited weight, given that they took no part in the inquiry process. The issues raised are considered in paragraphs 46-49 below

11. After the inquiry closed the Secretaries of State also received separate written representations from SSE dated 30 January, The Rt Hon Sir Alan Haselhurst MP dated 1 March and a large number of representations from members of the public The Secretaries of State have considered this correspondence very carefully, but it does not appear to constitute new evidence or raise new issues relevant to this application that either affect their decision, or require them to refer back to the parties for further representations before reaching their decision

12 In order to take a fully informed decision on the appeal, the Secretaries of State wrote to CMS Cameron McKenna on 16 April requesting clarification on matters relating to the two section 106 Unilateral Undertakings dated 19 October 2007 offered by Stansted Airport Limited (STAL). This letter was also sent to the prospective beneficiaries of the undertakings, UDC, ECC, and HCC. They received a response from CMS Cameron McKenna dated 30 April which was also copied to the councils set out above. On 12 September the Secretaries of State wrote to CMS Cameron McKenna requiring that they provide new unilateral undertakings which stand alone from the existing s106 agreement dated 14 May 2003 between UDC, ECC and STAL. These were received on 26 September. A further letter was received from CMS Cameron McKenna on 7 October, copied to the councils set out above This letter included the wording of an obligation which had been inadvertently omitted from the undertakings received on 26 September. The Secretaries of State have taken full account of this correspondence in reaching their decision, and this issue is considered further in paragraph 50 below.

13 After the inquiry, and during the reference back exercises referred to in paragraphs 8-9 above, the Secretaries of State received written requests from some interested parties to re-open the inquiry. The Secretaries of State carefully considered these requests but concluded that the further information sought by way of reference back to parties was directly related to material which was considered at the inquiry They therefore considered that these matters could be adequately dealt with by means of a reference back They consider that, following receipt of the further representations as detailed above, they had sufficient information on matters relating to the appeal to proceed directly to a decision, and that sufficient opportunity had been afforded parties to respond to these matters

14 Copies of any of the above correspondence may be obtained on written request

Policy Considerations

15 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise In this case, the development plan comprises the Regional Spatial Strategy for the East of England (the East of England Plan) (published after the close of the inquiry on 12 May 2008) along with the saved policies within the Essex and Southend-on-Sea Replacement Structure Plan (2001) (ESSP), the Uttlesford Local Plan (2005) (ULP), the Essex and Southend Waste Local Plan (2001), and the Essex Minerals Local Plan (1997). The Secretaries of State agree with the Inspector that relevant development plan policies include those set out in IR3 13-3.22 The relevant policies identified in the ESSP and ULP were saved on 26 September 2007 and 19 January 2008 respectively. The Secretaries of State do not afford any weight to the unsaved policies

16. The Secretaries of State agree with the Inspector that, at the time of the inquiry, the relevant emerging East of England Regional Spatial Strategy (ERSS) policies include those set out in IR3.24-3 32 They have compared the changes between the ERSS and published East of England Plan and do not consider that there have been material alterations on matters relevant to this appeal to an extent that it would affect their decision, or require them to refer back to parties for further representations prior to reaching their decision All references to specific policies refer to those in the published East of England Plan

17. The Secretaries of State note that the UDC Development Plan Document Core Strategy is nearing adoption They have therefore afforded it some weight in determining this appeal

18. In terms of national policy, the Secretaries of State agree with the Inspector that the Air Transport White Paper (ATWP) and The Future of Air Transport Progress Report (ATPR) are material considerations and agree with the Inspector's summary of relevant aspects of these as set out in IR3 34-3 41 Like the Inspector (IR14 60), they agree that the ATWP should be accorded considerable weight as a material consideration in this appeal. They also note that it is agreed between the appellants and the Council that significant weight can be attached to the policies in the ATWP (IR3.43).

19. The Secretaries of State agree with the Inspector that other relevant elements of national policy include those set out in IR3 42 They consider these to be material considerations

20 The Inspector notes in IR1 24-1.25 three documents which were published after the close of the inquiry and which might be material to the decision on this appeal. The Secretaries of State consider that these documents are material considerations and have therefore given them careful consideration in determining this appeal.

21 In the case of the Attitudes to Noise from Aviation Sources in England Study (ANASE), published on 2 November 2007, the Aviation Minister, Jim Fitzpatrick, made a statement on the findings of this document This statement is clear in setting out the policy context stating "it does not give us the robust figures on which it would be safe to change policy" It further states that the "approach to a sustainable aviation industry remains the one set out in the ATWP and the ATPR" In view of this, the Secretaries of State do not consider that the ANASE raises any new issues relevant to this application that either affect their decision or require them to refer back to the parties for further representations prior to reaching their decision on the application

22 Since the inquiry closed, the Planning and Climate Change Supplement to Planning Policy Statement 1 (PPS Climate Change Supplement) has been published, the consultation draft of which was considered at the inquiry. The Secretaries of State have compared the changes between the consultation draft and the final PPS Climate Change Supplement and do not consider that there have been material alterations on matters relevant to this appeal to an extent that it would affect their decision or require them to refer back to parties for further representations prior to reaching their decision.

23 The Secretaries of State note that neither the Planning Bill nor Climate Change Bill have been enacted, and afford them little weight, as they might be subject to change

24. The Secretaries of State have also taken into account as material considerations the "Consultation on the Commission's proposal to include aviation in the European Union emissions trading scheme" (March 2007) and the "Consultation on the Emissions Cost Assessment" (August 2007) Like the Inspector, (IR14 79) the Secretaries of State give these limited weight Since the close of the inquiry, agreement has been reached between the Council of Environment Ministers and the European Parliament over the terms of aviation's inclusion in the EU emissions trading scheme The Government has also published the response to consultation on the emissions costs assessment. The Secretaries of State do not consider that either of these developments raise issues which are material to their decision on this appeal and, in the case of the emissions costs assessment, the Government has made clear that it is a national analysis and will not be carried out on an ad-hoc basis to inform the consideration by the planning system of individual airport development proposals

25 The Secretaries of State have also taken into account the consultation paper on draft PPS4 Planning for Sustainable Economic Development, published in December 2007 However, as this document is still at consultation stage and may be subject to change, they afford it little weight.

Introduction to Inspector's conclusions

26 The Secretaries of State agree with the Inspector's reasoning and conclusions on those introductory matters addressed in IR14 1-14.2 and IR14.13-14 37 They also confirm that, like the Inspector (IR14 2), nothing in their conclusions should be taken as an expression of a view on the need for, or acceptability of,

any proposal for a second runway at Stansted, nor, again like the Inspector (IR14 21), do they regard Graham Eyre's conclusions as constraining or prejudicing theirs on the current proposal. They agree with the Inspector that the air traffic forecasts considered at the inquiry represent a satisfactory basis for consideration of the appeal proposal (IR14.29) They also agree that the 25mppa at 2014/15 case represents an effective fallback position against which the appeal proposal should primarily be assessed (IR14 34)

Main Issues

27 The Secretaries of State agree with the Inspector's assessment of the main issues as set out in IR14.38-14.44 They agree with the Inspector that a planning inquiry is not the appropriate forum for challenging the merits of Government policy (IR14.41).

The extent to which the proposals accord in principle with current Government policy and with the statutory development plan

Government Policy on Air Transport

28. The Secretaries of State agree with the Inspector's reasoning and conclusions on Government policy on air transport as set out in IR14 46-14 71. They agree that while the ATWP is not part of the statutory development plan, it should be accorded considerable weight as a material consideration in this appeal (IR14 60) They also agree that the policy in the ATWP establishes an urgent need to provide additional runway capacity in the south east, with priority being given to making best use of existing runways and in particular it supports making full use of the existing runway at Stansted (IR14 71) They further agree that this is, nevertheless, subject to all normal planning considerations (IR14 71)

Government Policy on Climate Change

29 The Secretaries of State agree with the Inspector's reasoning and conclusions on Government policy on climate change as set out in IR14 72-14 80. They share the Inspector's view that Government policy seeks to reconcile growth in aviation to meet the needs identified in the ATWP with action to address climate change (IR14 77) They also agree with the Inspector's conclusion that questions of the appropriateness and effectiveness of Government policies on aviation and climate change, and their compatibility, are matters for debate in Parliament and elsewhere, rather than through this appeal (IR14.80). The Secretaries of State have addressed the matter of material considerations relating to climate change published after the close of the inquiry in paragraph 22 above

The Statutory Development Plan

30. The Secretaries of State agree with the Inspector's reasoning and conclusions on the statutory development plan and the then emerging regional spatial strategy as set out in IR14.81-14 90 They agree that in terms of principle the appeal proposal is not in conflict with the development plan (IR14.87), including

the East of England Plan (IR14.90). They also agree that given the East of England Plan's acknowledgement of the objectives of the ATWP, the thrust of the requirements that are set out on these matters can be seen as creating a context for control, mitigation or compensation of the effects of airport growth rather than policy obstacles to this (IR14 89)

The effects of the proposals on the living conditions and health of residents in the area, particularly in terms of aircraft noise and air pollution and the effects of aircraft noise on the quality of life of the area in terms of the educational, cultural and leisure activities of local communities

31 The Secretaries of State agree with the Inspector's reasoning and conclusions on the living conditions and health of residents in the area, and the effects of aircraft noise on the quality of life of the area as set out in IR14.91-14 154 They agree with the Inspector that while concerns about effects on children's development and education are very understandable, and while acknowledging the doubts about the noise data, there is no convincing evidence to support a conclusion of significant harm in this respect (IR14 120) They also share the Inspector's view that the fact that visitor numbers to Hatfield Forest have increased as the Airport has grown suggests that aircraft noise is not as great a detractor from their enjoyment of the Forest as the National Trust suggests (IR14 124). They further agree with the Inspector's conclusion that, for those within the contours and to a reducing extent some way beyond, noise from the increased ATMs arising from the G1 development would be harmful to the living conditions and health of residents and to the quality of life in the area including cultural and leisure activities (IR14 147). Finally, the Secretaries of State agree with the Inspector that the impacts of the proposal on health due to changes in levels of air pollution would be likely to be very small, and that as a result there would be no significant conflict with ESSP policy BIW9 or ULP policies GEN2 and GEN4 in relation to these matters (IR14 154)

The effects of increased housing pressures arising from expansion of the airport on the nature and character of communities in the area

32. The Secretaries of State agree with the Inspector's reasoning and conclusions on the effects of increased housing pressures arising from expansion of the airport on the nature and character of communities in the area as set out in IR14 155-14 168. The Secretaries of State agree that, while the evidence is tenuous, some intensification of adverse effects could be expected with the proposal, involving further erosion of traditional social linkages in smaller settlements and increased unauthorised activity (IR14 167). They also agree that with respect to SP Policy BIW9, under criterion 6 there is no evidence that there would be a requirement for new housing or associated community facilities as a result of the development that could not be met, but that the findings do indicate some adverse effects with regard to impact on residential areas (IR14 168)

The effects of increased air pollution from aircraft and surface traffic on Hatfield Forest and nearby woodlands

33. The Secretaries of State have carefully considered matters relating to the effects of increased air pollution from aircraft and surface traffic on Hatfield Forest and nearby woodlands, including the further information provided on this matter by those parties following the reference back exercise, referred to in paragraph 8 above.

34 Article 4(1) of Directive 1999/30/EC requires assessment of NOx levels in ambient air to be assessed in accordance with Article 7 That article states that criteria for the location of sampling points for measuring NOx levels in ambient air are set out at Annex VI And paragraph 1(b) of Annex VI states that "sampling points targeted at the protection of ecosystems or vegetation should be sited more than 20 km from agglomerations or more than 5km from other built-up areas, industrial installations or motorways" With regard to the precise application of a 5km "exclusion" zone around other built up areas, industrial installations, or motorways, the Secretaries of State accept, like the Inspector, that the effect of the Directive is a matter of legal interpretation However, the Secretaries of State agree with the Inspector that BAA puts forward a compelling case as to the scientific, economic and practical reasons for believing that such a zone exists (IR14.171) and thus conclude that it would be applicable to Hatfield Forest and nearby woodlands

35. Notwithstanding this conclusion, the Secretaries of State agree with the Inspector's conclusion in IR14.172 that it is important to protect the ecology of nearby woodlands and that NOx levels above 30µg/m^3 in Hatfield Forest and Eastend Wood are a cause for concern, irrespective of whether the limit value under the Directive applies here. They therefore regard this matter to be a material consideration in this case, particularly given the status of Hatfield Forest and Eastend Wood as SSSIs They have therefore weighed this in the balance in determining this appeal and their assessment and conclusion is set out below.

36 The Secretaries of State consider, like the Inspector, that BAA's choice of model is robust (IR14 173) However, they accept that NOx levels used as the basis for modelling predictions submitted to the inquiry were based on inaccurate data They have carefully considered the revised information provided by Cameron McKenna on this matter, in particular, that the predicted extent of pollution would be greater than that submitted to the inquiry. Notwithstanding the concerns expressed by interested parties regarding the accuracy of the further information provided, they are content that this now represents a robust and accurate assessment.

37. As part of their consideration of the representations received on this matter, the Secretaries of State noted the requests from a number of the main parties to consult the Department of Environment Food and Rural Affairs (DEFRA) on this issue Whilst considering these requests carefully, they concluded that, in the light of the representations received, it was not necessary to consult Defra in relation to this aspect of the appeal

38. On the basis of this revised modelling, and considering all inquiry evidence on this point and subsequent representations, the Secretaries of State, whilst acknowledging that any assessment should be based on a more extensive NOx impact than that assessed by the Inspector, nevertheless consider that his broad assessment of the key issues here holds good. On the matter of NOx levels to 2014/15, the Secretaries of State observe that there is no dispute that, regardless of the precise existing levels of NOx in Hatfield Forest, due to falling background levels, the situation in 2014 will be an improvement on the current position even with the effects of the proposal (IR14 176) So, whilst accepting that it is likely that there would be a slight reduction in the rate at which the NOx concentrations are expected to improve, the Secretaries of State are satisfied that there would be an improvement over existing levels. In addition, the Secretaries of State have (again notwithstanding the additional remodelling), taken into account the fact that the agreed difference between the 25 and 35 mppa cases is relatively small (IR14 176). In view of these factors, though they consider that NOx levels are a cause for concern, they afford limited weight to the impact of NOx on Hatfield Forest and nearby woodlands, and conclude that this would not on its own be sufficient to justify refusing planning permission

39. The Secretaries of State have carefully considered the further air quality concern about the potential effect of nitrogen deposition on vegetation, and agree with the Inspector's assessment of this in IR14.179-14 181 They note that nitrogen deposition will be at a lower level than now in 2014 even with the proposal, as a result of wider reductions (IR14.179) They also note that no specific evidence has been put forward either of existing damage to Hatfield Forest and Eastend Wood associated with air quality, or of adverse effects that might arise from the likely differences in air quality between the 25 and 35 mppa cases (IR14.180) In view of this, and given that the relevant policies of the development plan are framed in terms of avoiding adverse effect and material harm to nationally important nature conservation sites, they agree that there is no evidence to establish that the proposal would breach the tests set out in these policies. Given that PPS9 takes a similar approach in relation to development potentially affecting SSSIs, they also agree that there would be no conflict with this national guidance (IR14.180) Having determined this, they conclude that the potential effect of nitrogen deposition on vegetation would not be in conflict with the development plan or national guidance

40 The Secretaries of State are also satisfied that, on the basis of this assessment, the proposal would be in compliance with policies ENV 1 and ENV 5 of the East of England Plan

<u>The effects of expansion of the airport on the demand for water</u>

41. For the reasons given in paragraphs IR14.182-14.187, the Secretaries of State agree with the Inspector that the water efficiency measures put forward with the proposal comply with East of England Plan policy WAT1, and meet the requirement of ULP policy GEN2 to minimise water consumption (IR14 186) They also agree that with respect to sewerage and drainage, the evidence demonstrates that the proposal would not in itself lead to problems of capacity, and that scope exists to make adequate provision to meet anticipated future needs that would arise from it (IR14 187)

The adequacy of the road network to accommodate increased road traffic arising from expansion of the airport without detriment to its safe and efficient operation and the adequacy and capacity of the rail and coach access to the airport to accommodate demand arising from expansion of the airport without increasing reliance on use of the private car

42. The Secretaries of State agree with the Inspector's reasoning and conclusions on the adequacy of the road network and the adequacy and capacity of the rail and coach access to the airport as set out in IR14.188-14.224. They agree that, subject to conditions and the mitigation proposed in respect of other roads, the additional traffic arising from the G1 development would not cause significant harm in respect of safety or road capacity, in accordance with ULP policy GEN1 (IR14.223) They also agree that BAA's stated aim of increasing the public transport mode share for air passengers from 40% to 43% by 2014 would, if realised, reinforce to a modest degree the shift to more sustainable travel which is sought by Government policy, ULP policy GEN1, and East of England Plan policy T12 (IR14 224). The Secretaries of State note the Inspector's comments regarding public transport improvements being contingent on the necessary capacity on the rail network being provided (IR14.224) In this respect the Department for Transport's rail white paper *Delivering a Sustainable Railway* and High Level Output Specification (HLOS), published in July 2007, includes a clear position on capacity enhancement anticipated for this route They are therefore satisfied that appropriate enhancement measures will be forthcoming, albeit that these remain subject to regulatory determination and achievement of agreement with the Train Operating Company (National Express East Anglia) in 2008/9 As for the timing of proposed works, they note that the Inspector recognises that the scope and timescale of improvements have yet to be confirmed (IR14 219)

The economic (including employment) benefits of the proposal

43 The Secretaries of State agree with the Inspector's reasoning and conclusions on the adequacy of the economic (including employment) benefits of the proposal as set out in IR14 225-14.264. They agree that there is evidence that the proposal would deliver large direct economic benefits, although they accept that the evidence does not reliably quantify this (IR14.262). They also agree that the proposal would generate some employment growth of relatively modest scale, although in line with the East of England Plan projections (IR14 262) Overall, they agree with the Inspector that the proposal would give rise to economic benefits that carry weight in favour of the proposal, as well as according with ESSP policy BIW9 (IR14.264).

Whether or not it would be premature to make a decision on the appeal at this time

44 For the reasons given in IR14 265-14 273, the Secretaries of State agree with the Inspector that it would not be premature to make a decision on the appeal at this time (IR14 273)

Other matters

45 The Secretaries of State agree with the Inspector's reasoning and conclusions on those other matters addressed in IR14.274-14.283. They agree that the Health Impact Assessment supports the agreed position in the Statement of Common Ground that the proposal would have no unacceptable health effects (to the extent that planning permission should be refused), and that there would be no breach of Structure Plan policy BIW9 in this respect (IR14.278) They also agree with the Inspector's assessment of landscape, tranquillity and light pollution issues.

Conditions

46 The Secretaries of State agree with the Inspector's assessment of planning conditions as set out in IR14.284-14.329, except with respect to the matters addressed below. They have adopted the Inspector's recommended form of conditions except where indicated

47 With regard to the proposed condition AN2, the Secretaries of State have carefully considered the inquiry evidence, the Inspector's reasoning and conclusions (IR14 302-14.308), and all representations received on this point following their letter of 17 July (see paragraph 9 above) The Secretaries of State consider that the imposition of condition AN2, whether as proposed by the Inspector (IR Annex D, conditions) or as offered by BAA (IR 13.17) would be contrary to the advice given in paragraph 22 of Circular 11/95 The Use of Conditions in Planning Permissions They reach this conclusion on the basis that there is an established night noise regime[1] governed by the Aerodromes (Noise Restrictions) (Rules and Procedures) Regulations 2003 (the 2003 Regulations) and the Civil Aviation Act 1982 (CAA 1982)

48 Under the 2003 Regulations Stansted has a set noise abatement objective which operates over a 6.5 hour period from 11.30pm to 6am. In addition to this, Stansted is currently subject to noise quota and movement limits under the CAA 1982 which are designed to work in tandem with the noise abatement objective to keep noise at an acceptable and agreed limit Either form of condition AN2 is, in practical effect, a new noise abatement objective set over an 8 hour period (11pm to 7am) which would regulate the shoulder periods (11-11 30pm and 6-7am) at Stansted, but without associated movement or quota limits Such regulation over an 8 hour period was specifically rejected as part of an extensive consultation on the night noise regime which took into account the views of a much wider range of participants. The effect of regulation over an 8 hour period would also run contrary to a consensus reached as part of the night noise consultation exercise that there should be a uniform approach to regulation of night noise at Heathrow, Gatwick and Stansted In addition the Secretaries of State have taken into account concerns expressed, which they share, over the enforceability of a condition in the form of AN2 without associated quota and movement limits; whether the condition is necessary given the projected movement limits for the shoulder periods, and the fact that

[1] Contained in the decision document Night Flying Restrictions at Heathrow, Gatwick, and Stansted dated June 2006

the current night noise is subject to review, work on which is likely to start in 2010 with a new regime proposed in 2012

49 For these reasons the Secretaries of State do not intend to impose condition AN2 which means that the existing regime which covers Stansted, as well as the other main London airports, will remain in place In view of the fact that planning permission is therefore being granted on the basis of an agreed and established regime as regards any night noise impact of that permission, they do not consider that the removal of this proposed condition is prejudicial nor do they consider it weighs against the proposal

Obligations

50 The Secretaries of State have considered the evidence put forward and discussed at the inquiry (IR13 40), along with the further information provided on this matter by those parties referred to in paragraph 12 above, and the Inspector's consideration of the matter (IR14 193) They have carefully considered the two new s106 Undertakings dated 26 September and conclude that these new obligations are acceptable and meet the tests set out in Circular 5/05 (Planning Obligations), in that their provisions are reasonable and necessary to ensure an acceptable form of development

Overall Conclusion

51 The Secretaries of State consider that the proposal would accord with the ATWP, including that it seeks to reconcile growth in aviation to meet the needs identified in the ATWP. They also consider that in terms of principle, the appeal proposal is not in conflict with the development plan. The proposal would also be acceptable and in line with the development plan, the ATWP, and national policies in other respects, including that: there is no evidence that the proposal would breach relevant local and national policies relating to nitrogen depositions on vegetation; there would be adequate provision of water resources, including that sewerage and drainage capacity would be adequate, the road network and rail and coach access would be adequate, and, that there would be large direct economic benefits

52. Factors weighing against the proposal are: that additional noise would be harmful to the living conditions and health of residents and to the quality of life in the area; that there would be some negative health effects due to changes in levels of air pollution, though these would be small and not a significant conflict with the development plan, that there could be further erosion of traditional social linkages in smaller settlements and increased unauthorised activity and some adverse effects with regard to impact on residential areas, and, that NOx levels are a cause for concern in terms of their impact on Hatfield Forest and nearby protected woodland

53 Having weighed up all relevant considerations, the Secretaries of State are satisfied that the factors which weigh in favour of the proposal, notably compliance with the ATWP and the development plan, outweigh the harm identified They therefore do not consider that there are any material

considerations of sufficient weight which would justify refusing planning permission

Formal Decision

54. Accordingly, for the reasons given above, the Secretaries of State agree with the Inspector's recommendation They hereby allow the appeal and grant planning permission for the removal of condition MPPA1 and variation of condition ATM1 attached to planning permission ref UTT/1000/01/OP, dated 16 May 2003, subject to the conditions set out in Annex A

55. An applicant for any consent, agreement or approval required by a condition of this permission has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the local planning authority fail to give notice of their decision within the prescribed period

56 This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than that required under section 57 of the Town and Country Planning Act 1990

57 This letter serves as the Secretary of State's statement under Regulation 21(2) of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999

Right to challenge the decision

58. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within 6 weeks of the date of this letter.

59 A copy of this letter has been sent to UDC, all parties who appeared at the inquiry, and all other parties who requested a copy of the decision letter

Yours sincerely

Richard Watson

Yours sincerely

John Faulkner

General

GEN1 The following development is permitted within the sites identified on plan STN/GAP/1014/K/104/PA.

Site "A" - Extension to the passenger terminal and ancillary development
Site "B" - New aircraft apron and ancillary development
Site "C" - Cargo shed accommodation and ancillary development
Site "D" - Aircraft hangar facilities and ancillary development
Site "E" - Multi storey car parking and ancillary development
Site "F" - Long term car parking and ancillary development
Site "G" - Redevelopment of existing surface car park for staff car parking and ancillary development
Site "H" - Grade separation of Junction 3
Site "J" - Dualling of Bassingbourn Road from Junction 3 (Bassingbourn Roundabout) to Pincey Roundabout
Site "K" - Office accommodation and ancillary development
Site "L" - Office accommodation and ancillary development
Site "M" - Ground handling facilities and ancillary development
Site "N" - Flight catering and airline support accommodation and ancillary development
Site "P" - Additional fuel tank and ancillary development at the Fuel Farm
Site "Q" - Eastward extension of the two main rail tracks at the rail station and ancillary development (including additional vertical circulation)
Site "R" - Extension of the terminal forecourt and ancillary development
Site "S" - Dualling of Thremhall Avenue from Junction 3 (Bassingbourn Roundabout) to Junction 11 (Coopers End Roundabout)

GEN2 Any application for the approval of reserved matters made pursuant to this planning permission shall be made to the local planning authority before the expiration of 8 years from the date of this permission

GEN3 The development hereby permitted shall be begun either before the expiration of 10 years from the date of this permission, or before the expiration of 2 years from the date of approval of the last reserved matter to be approved, whichever is the later

Extension to the passenger terminal and ancillary development

A1 The development hereby permitted within Site "A" shall be carried out in accordance with plans 2156/SK100-SK107

A2 The terminal extension hereby permitted within Site "A" shall have a gross floor area not exceeding 29,000 sqm

A3 The existing terminal, plus the terminal extension hereby permitted within Site "A" shall contain in total no more than 6,500 sqm of landside retail floorspace

New aircraft apron and ancillary development

B1 The development hereby permitted within Site "B" shall be carried out in accordance with plan STN/GAP/1014/K105/PA

B2 No development on Site "B" shall commence until details of a blast deflector to be erected between points A and B on plan STN/GAP/1014/K105/PA have been submitted to and

approved in writing by the local planning authority The blast deflector as approved shall be completed prior to the first use of Site B by aircraft and thereafter retained in perpetuity

Cargo shed accommodation and ancillary development

C1 Approval of the details of the siting, design and external appearance of the building(s) hereby permitted and the landscaping of the site (herein referred to as "reserved matters") shall be obtained from the local planning authority in writing before any development hereby permitted within Site "C" is commenced

C2 Plans and particulars of the reserved matters referred to in condition C1 above shall be submitted in writing to the local planning authority and the development hereby permitted shall only be carried out as approved

C3 The cargo shed accommodation hereby permitted within Site "C" shall follow the general alignment and form of the existing FedEX cargo shed, and shall not exceed a height of 15m above the existing ground level of Site "C"

Aircraft hangar facilities and ancillary development

D1 Approval of the details of the siting, design and external appearance of the building(s) hereby permitted and the landscaping of the site (herein referred to as "reserved matters") shall be obtained from the local planning authority in writing before any development hereby permitted within Site "D" is commenced

D2 Plans and particulars of the reserved matters referred to in condition D1 above shall be submitted in writing to the local planning authority and the development hereby permitted shall only be carried out as approved

D3 The aircraft hangar facilities hereby permitted within Site "D" shall not exceed a height of 35m above the existing ground level of Site "D"

Multi storey car parking and ancillary development

E1 Approval of the details of the siting, design and external appearance of the building(s) hereby permitted and the landscaping of the site (herein referred to as "reserved matters") shall be obtained from the local planning authority in writing before any development hereby permitted within Site "E" is commenced

E2 Plans and particulars of the reserved matters referred to in condition E1 above shall be submitted in writing to the local planning authority and the development hereby permitted shall only be carried out as approved

E3 Approval of details of a lighting strategy for the multi-storey car parking hereby permitted shall be obtained from the local planning authority in writing before any development hereby permitted within Site "E" is commenced. The strategy shall subsequently be implemented as approved prior to first use of the multi-storey car parking hereby permitted, and shall thereafter be retained in operation

E4 The top deck of any sections of the multi-storey car parking hereby permitted shall not exceed a height of 108m AOD, excluding items such as lift towers and emergency escape shafts

Long term car parking and ancillary development

F1 Approval of the details of the siting, design and external appearance of the building(s) and parking area(s) hereby permitted and the landscaping of the site (herein referred to as

"reserved matters") shall be obtained from the local planning authority in writing before any development hereby permitted within Site "F" is commenced

F2 Plans and particulars of the reserved matters referred to in condition F1 above shall be submitted in writing to the local planning authority and the development hereby permitted shall only be carried out as approved.

F3 Approval of details of a lighting strategy for the car parking hereby permitted shall be obtained from the local planning authority in writing before any development hereby permitted within Site "F" is commenced The strategy shall subsequently be implemented as approved prior to first use of the car parking hereby permitted, and shall thereafter be retained in operation.

Redevelopment of existing surface car park for staff car parking and ancillary development

G1 Approval of the details of the siting, design and external appearance of the building(s) and parking area(s) hereby permitted and the landscaping of the site (herein referred to as "reserved matters") shall be obtained from the local planning authority in writing before any development hereby permitted within Site "G" is commenced

G2 Plans and particulars of the reserved matters referred to in condition G1 above shall be submitted in writing to the local planning authority and the development hereby permitted shall only be carried out as approved

G3 Approval of details of a lighting strategy for the car parking hereby permitted shall be obtained from the local planning authority in writing before any development hereby permitted within Site "G" is commenced The strategy shall subsequently be implemented as approved prior to first use of the car parking hereby permitted, and shall thereafter be retained in operation

Grade separation of Junction 3

H1 Approval of the details of the siting, design and external appearance of the roadway hereby permitted and the landscaping of the site (herein referred to as "reserved matters") shall be obtained from the local planning authority in writing before any development hereby permitted within Site "H" is commenced

H2 Plans and particulars of the reserved matters referred to in condition H1 above shall be submitted in writing to the local planning authority and the development hereby permitted shall only be carried out as approved

Dualling of Bassingbourn Road from Junction 3 (Bassingbourn Roundabout) to Pincey Roundabout

J1 Approval of the details of the siting, design and external appearance of the roadway hereby permitted and the landscaping of the site (herein referred to as "reserved matters") shall be obtained from the local planning authority in writing before any development hereby permitted within Site "J" is commenced

J2 Plans and particulars of the reserved matters referred to in condition J1 above shall be submitted in writing to the local planning authority and the development hereby permitted shall only be carried out as approved

Office accommodation and ancillary development

K1 Approval of the details of the siting, design and external appearance of the building(s) hereby permitted and the landscaping of the site (herein referred to as "reserved matters") shall be obtained from the local planning authority in writing before any development hereby permitted within Site "K" is commenced

K2 Plans and particulars of the reserved matters referred to in condition K1 above shall be submitted in writing to the local planning authority and the development hereby permitted shall only be carried out as approved

K3 The office development hereby permitted within Site "K" shall not exceed a height of 18m above the existing ground level on Site "K"

Office accommodation and ancillary development

L1 Approval of the details of the siting, design and external appearance of the building(s) and parking area(s) hereby permitted and the landscaping of the site (herein referred to as "reserved matters") shall be obtained from the local planning authority in writing before any development hereby permitted within Site "L" is commenced

L2 Plans and particulars of the reserved matters referred to in condition L1 above shall be submitted in writing to the local planning authority and the development hereby permitted shall only be carried out as approved

L3 The office development hereby permitted within Site "L" shall not exceed a height of 18 3m above the existing ground level on Site "L"

Ground handling facilities and ancillary development

M1 Approval of the details of the siting, design and external appearance of the building(s) hereby permitted and the landscaping of the site (herein referred to as "reserved matters") shall be obtained from the local planning authority in writing before any development hereby permitted within Site "M" is commenced

M2 Plans and particulars of the reserved matters referred to in condition M1 above shall be submitted in writing to the local planning authority and the development hereby permitted shall only be carried out as approved

M3 The office development hereby permitted within Site "M" shall not exceed a height of 11 5m above the existing ground level on Site "M"

Flight catering and airline support accommodation and ancillary development

N1 Approval of the details of the siting, design and external appearance of the building(s) hereby permitted and the landscaping of the site (herein referred to as "reserved matters") shall be obtained from the local planning authority in writing before any development hereby permitted within Site "N" is commenced

N2 Plans and particulars of the reserved matters referred to in condition N1 above shall be submitted in writing to the local planning authority and the development hereby permitted shall only be carried out as approved

N3 The flight catering and airline support accommodation hereby permitted within Site "N" shall not exceed a height of 15m above the existing ground level on Site "N"

Additional fuel tank and ancillary development at the Fuel Farm

P1 Approval of the details of the siting, design and external appearance of the structure(s) hereby permitted and the landscaping of the site (herein referred to as "reserved matters") shall be obtained from the local planning authority in writing before any development hereby permitted within Site "P" is commenced

P2 Plans and particulars of the reserved matters referred to in condition P1 above shall be submitted in writing to the local planning authority and the development hereby permitted shall only be carried out as approved

P3 The fuel tank hereby permitted within Site "P" shall not exceed a height of 16m above the existing ground level on Site "P"

Eastward extension of the two main rail tracks at the rail station and ancillary development (including additional vertical circulation)

Q1 Approval of the details of the siting, design and external appearance of the rail tracks and additional vertical circulation hereby permitted and the landscaping of the site (herein referred to as "reserved matters") shall be obtained from the local planning authority in writing before any development hereby permitted within Site "Q" is commenced

Q2 Plans and particulars of the reserved matters referred to in condition Q1 above shall be submitted in writing to the local planning authority and the development hereby permitted shall only be carried out as approved

Q3 The areas enclosed by red chain lines on the unnumbered plan entitled 'Zone 1 – Platform construction and extensions, Scale 1 1000' in appendix 1 to the Stansted Generation 1 Surface Access Statement of Common Ground version 2 between BAA Limited and Stansted Airport Limited, Highways Agency, Essex County Council and Hertfordshire County Council dated September 2007 shall be safeguarded for the provision of additional rail platform capacity to enable 12-car rail services to operate at Stansted Airport Railway Station, and the development hereby permitted shall not be implemented in a manner that would prevent that additional platform capacity being provided

Dualling of Thremhall Avenue from Junction 3 (Bassingbourn Roundabout) to Junction 11 (Coopers End Roundabout)

S1 Approval of the details of the siting, design and external appearance of the roadway hereby permitted and the landscaping of the site (herein referred to as "reserved matters") shall be obtained from the local planning authority in writing before any development hereby permitted within Site "S" is commenced

S2 Plans and particulars of the reserved matters referred to in condition S1 above shall be submitted in writing to the local planning authority and the development hereby permitted shall only be carried out as approved

Highways

HA1 Within 18 months of the date of grant of planning permission the following highway schemes shall be completed and open to traffic in accordance with the drawings set out below

- M11 Junction 8 as shown on plan Carillion-URS 95274/I/HM/050 Rev A

- Priory Wood Roundabout as shown on plan Carillion-URS 95274/I/HM/051 Rev A, excluding the widening works at Round Coppice Road.
- Bassingbourn Roundabout as shown on plan Faber Maunsell 51029/100/1 Rev 2

or as otherwise may be agreed in writing by the Local Planning Authority

HA2 Within 18 months of the date of grant of planning permission a highway safety scheme for the A120 between Priory Wood and Bassingbourn Roundabouts shall be submitted to and approved in writing by the Local Planning Authority The extent of the scheme will be signing and white lining to improve safety for weaving traffic between points A and B shown on plan Halcrow FL1148050/SK/04/RevA The safety scheme approved shall be implemented and completed within 6 months of the date of its approval

HA3 Within 6 months of the date of grant of planning permission a scheme to monitor the impact of the development on the motorway and trunk roads and Airport Roads (to include Automatic Traffic Counters or equivalent devices as necessary that are compatible with the Highway's Agency's Traffic Monitoring Commission) at

- Priory Wood roundabout
- The eastern access and exit to and from the Airport from the A120

shall be submitted to and approved in writing by the Local Planning Authority The monitoring scheme approved shall be implemented within 12 weeks of the date of its approval and maintained and kept in operational use by the applicant until written notice to the contrary is given to the applicant by the Local Planning Authority The data gathered by the monitoring scheme shall be reported to the Highways Agency, Essex County Council, Hertfordshire County Council and the Local Planning Authority by the applicant on a 6 monthly basis

HA4 When the fiftieth greatest hourly traffic flow in the initial 8760 hours recorded within the traffic monitoring scheme as described in Condition HA3 from the establishment of the scheme or in any continuous 8760 hours period thereafter exceeds the flow of 2000 vehicles per hour on Thremhall Avenue (from M11 Junction 8)(the trigger point), the highway widening scheme for Round Coppice Road/Priory Wood Roundabout as shown on plan Carillion-URS 95274/I/HM/051 Rev A (or as otherwise may be agreed in writing by the Local Planning Authority) shall be completed and open to traffic within 12 months from the date of the trigger point

HA5 When the fiftieth greatest hourly traffic flow in the initial 8760 hours recorded within the traffic monitoring scheme as described in Condition HA3 from the establishment of the scheme or in any continuous 8760 hours period thereafter exceeds the flow of 3000 vehicles per hour on the A120 eastbound at Parsonage Road overbridge (the second trigger point), the highways scheme for the A120 on-slip as shown on plan Faber Maunsell 51029/100/2 Rev 1 (or as otherwise may be agreed in writing by the Local Planning Authority) shall be completed and open to traffic within 12 months from the date of the second trigger point

Air noise

AN1 The area enclosed by the 57dB(A) Leq16hr (0700-2300) contour, when calculated and measured by the Civil Aviation Authority's Aircraft Noise Contour Model 2.3 or as may be amended, shall not exceed 33 9 sq km using the standardised average mode from the date of grant of this permission Any necessary account shall be taken of this requirement in declaring the capacity of Stansted Airport for the purpose of Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports Forecast aircraft movements and consequential noise contours for the forthcoming year shall be reported to the Local Planning Authority annually on the 31st January each year

Landscaping

LAN1 All the planting in the schemes of landscaping submitted and approved pursuant to conditions C1, D1, E1, F1, G1, H1, J1, K1, L1, N1, P1, Q1, and S1 shall be undertaken in accordance with the timescale set out in the relevant approved plan Any trees, shrubs or hedges (or part thereof) which comprise part of the scheme of landscaping and which within a period of 5 years from the date of planting die, are removed or become seriously damaged or diseased shall be replaced in the next planting reason with others of similar size and species

Archaeology

ARC1 No development hereby permitted shall take place within a site identified in condition GEN1 until the developer has secured on that site the implementation of a programme of archaeological work in accordance with a written scheme of investigation which shall previously have been submitted to and approved in writing by the local planning authority

ARC2 The developer shall afford access at all reasonable times to any archaeologist nominated by the local planning authority to allow the observation of the excavations and the recording of items of interest and finds within any site identified in condition GEN1

Water quality

WAT1 No development hereby permitted shall take place within a site identified in condition GEN1 until

a) a detailed investigation of that site has been carried out, the method and extent of which shall previously have been agreed in writing with the local planning authority, to establish the degree and nature of any contamination present and to determine its potential for the pollution of the water environment, and

b) details of appropriate measures to prevent pollution of groundwater and surface water of and from that site have been submitted to and approved in writing by the local planning authority The approved measures shall subsequently be carried out as approved

WAT2 The water quality monitoring of the biological interests of local brooks approved by the local planning authority pursuant to condition 'WAT3' of planning permission Ref UTT/1000/01/OP shall be continued.

WAT3 The construction of any storage facilities for oils, fuels or chemicals shall not be carried out until details have been submitted to and approved in writing by the local planning authority The construction of the storage facilities shall subsequently be carried out as approved

WAT4 No soakaways shall be constructed in contaminated ground

WAT5 A plan for the de-silting and general maintenance of the attenuation ponds shall be submitted to and approved in writing by the local planning authority before development commences Works shall then proceed in accordance with the details submitted

WAT6 During construction, no solid matter shall be stored within 10m of the banks of local watercourses (Tye Green and Pincey Brook)

WAT7 No development hereby permitted within Sites A,C,E,K,L and N shall take place until the developer has submitted and gained approval from the local planning authority of a written statement providing details of water efficiency measures that will be incorporated into the relevant development The water efficiency measures set out in the approved statement shall thereafter be provided and retained

WAT8 Unless otherwise agreed in writing by the local planning authority no development hereby permitted within sites A, C, E, K, L and N shall be brought into use until a water meter has been fitted within the relevant development, which shall be used for the metering of all water supplied to the developments thereafter

WAT9 A flow monitoring survey of water usage and metering across the airport water supply network shall be carried out and the results submitted to the local planning authority and the Environment Agency within 6 months of the airport's passenger throughput reaching 25 mppa on a moving annual total basis

WAT10 The results of the flow monitoring survey shall be used to develop a Water Management Strategy that shall be submitted to and approved in writing by the local planning authority within 6 months of the completion of the flow monitoring survey The Strategy shall include details of, and appropriate performance measures for

(1) a rolling metering programme for the installation of water meters on the airport's existing unmetered buildings;

(2) proposals for bringing forward of water efficiency measures for the airport's existing buildings, and

(3) a rolling water leakage detection programme to provide for identification and management of network leaks

WAT11 Surface water drainage works shall be carried out in accordance with details which shall have been submitted to and approved in writing by the local planning authority before development commences

WAT12 No development hereby approved by this permission shall be commenced until the local planning authority has given written confirmation that it is satisfied that adequate sewerage infrastructure will be in place to receive foul water discharges from the site No buildings (or uses) hereby permitted shall be occupied until such infrastructure is in place

Construction

CON1 No development hereby permitted shall take place within a site identified in condition GEN1 until a construction management plan for that site has been submitted to and approved in writing by the local planning authority. The plan as submitted shall include a) routes to be used by contractors' vehicles moving to and from the site (and the appropriate signing thereof), and b) temporary noise protection measures relating to the site. The plan shall subsequently be implemented as approved for the duration of the development being carried out on that site

CON2 No development hereby permitted shall take place within a site identified in condition GEN1 until construction management proposals specific to that site (e g. hours of working, wheel washing and dust suppression measures) have been submitted to and approved in writing by the local planning authority The proposals shall subsequently be implemented as approved for the duration of the development being carried out on that site

Waste recycling

WR1 No development hereby permitted within a site identified in condition GEN1 shall take place until the developer has submitted and gained approval from the local planning authority of a written statement providing details of waste recycling measures that will be incorporated into the relevant development The waste recycling measures set out in the approved statement shall thereafter be provided and retained

Energy efficiency

EE1 No development hereby permitted within a site identified in condition GEN1 shall take place until the developer has submitted and gained approval from the local planning authority of a written statement providing details of energy efficiency measures that will be incorporated into the relevant development The energy efficiency measures set out in the approved statement shall thereafter be provided and retained

Nature conservation

NAT1 No development hereby permitted shall take place within Site "B" identified in condition GEN1 until a nature conservation management plan has been submitted to and approved in writing by the local planning authority The plan as submitted shall a) identify an area of land of not less than 20 hectares which shall be maintained thereafter as suitable open grassland surrounded by an irregular broad fringe of longer grass and scrub, and b) identify suitable area or areas of land which shall be created and maintained thereafter as habitats suitable for the Brown Hare and Skylark, including a timescale for their creation and proposals for their maintenance The nature conservation management plan shall subsequently be implemented as approved

NAT2 No development hereby permitted shall take place within Sites "B", "D", "F", "G", "H", "J", "L", "N", "P" or "S" identified within condition GEN1 until a survey of that site identifying its nature conservation status has been submitted to and approved in writing by the local planning authority

NAT3 No development hereby permitted shall take place within Sites "B", "D", "F", "G", "H", "J", "L", "N", "P" or "S" identified within condition GEN1 until a translocation scheme for any protected species identified in the surveys pursuant to condition NAT2 has been implemented in accordance with details which shall previously have been submitted to and agreed in writing by the local planning authority

Air transport movements

ATM1 Subject to ATM2 below, from the date that the terminal extension hereby permitted within Site "A" opens for public use, there shall be at Stansted Airport a limit on the number of occasions on which aircraft may take-off or land at Stansted Airport of 264,000 ATMs (Air Transport Movements) during any 12 calendar month period, of which no more than 243,500 shall be PATMs (Passenger Air Transport Movements) and no more than 20,500 shall be CATMs (Cargo Air Transport Movements)

ATM2 The limit in condition ATM1 shall not apply to aircraft taking-off or landing at Stansted Airport in any of the following circumstances of cases, namely
(a) the aircraft is not carrying, for hire or reward, any passengers or cargo,
(b) the aircraft is engaged on non-scheduled air transport services where the passenger seating capacity of the aircraft does not exceed ten,
(c) the aircraft is required to land at the airport because of an emergency or any other circumstance beyond control of the operator and commander of the aircraft, and
(d) the aircraft is engaged on the Queen's flight, or on a flight operated primarily for the purposes of the transport of government Ministers or visiting Heads of State or dignitaries from abroad
The total number of take-offs and landings by aircraft in categories (a) and (b) above combined shall not exceed 10,000 in any 12 calendar month period

ATM3 For the purposes of condition ATM2(a) an aircraft is not to be taken as carrying, for hire or reward, any passengers or cargo by reason only that it is carrying employees of the

operator of the aircraft or of an associated company of the operator And for the purpose of condition ATM2(b) an aircraft is engaged in non-scheduled air transport services if the flight on which it is engaged is not part of a series of journeys between the same two places amounting to a systematic service

ATM4 For the purposes of condition ATM3, a company shall be treated as an associated company of the operator of the aircraft if either that company or the operator of the aircraft is a body corporate of which the other is a subsidiary or if both of them are subsidiaries of one and the same body corporate

ATM5 From the date of the granting of planning permission the developer shall report the monthly and moving annual total numbers of ATMs (Air Transport Movements), PATMs (Passenger Air Transport Movements) and CATMs (Cargo Air Transport Movements) in writing to the local planning authority no later than 28 days after the end of the calendar month to which the data relate

Passenger throughput

MPPA1 The passenger throughput at Stansted Airport shall not exceed 35 million passengers in any twelve calendar month period

MPPA2 From the date of the granting of planning permission the developer shall report the monthly and moving annual total numbers of passengers in writing to the local planning authority no later than 28 days after the end of the calendar month to which the data relate

UTTLESFORD DISTRICT COUNCIL

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Mr A Andrew
Stansted Airport Limited (STAL)
Enterprise House
Bassingbourn Road
Stansted Airport
CM24 1QW

Dated:29 January 2020

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED) TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2015

Application Number: UTT/18/0460/FUL
Applicant: Stansted Airport Limited (STAL)

Uttlesford District Council **Refuses Permission** for:

Airfield works comprising two new taxiway links to the existing runway (a Rapid Access Taxiway and a Rapid Exit Taxiway), six additional remote aircraft stands (adjacent Yankee taxiway); and three additional aircraft stands (extension of the Echo Apron) to enable combined airfield operations of 274,000 aircraft movements (of which not more than 16,000 movements would be Cargo Air Transport Movements (CATM)) and a throughput of 43 million terminal passengers, in a 12-month calendar period at Stansted Airport

The refused plans/documents are listed below:

Plan Reference/Version	Plan Type/Notes	Received
001-002 RE 01	Other	22/02/2018
001-003 RE 01	Other	22/02/2018
001-004 RE 01	Other	22/02/2018
001-005 RE 01	Other	22/02/2018
NK017817 - SK309	Location Plan	22/02/2018

Permission is refused for the following reasons:

1 The applicant has failed to demonstrate that the additional flights would not result in an increased detrimental effect from aircraft noise, contrary to Uttlesford Local Plan Policy ENV11 and the NPPF.

2 The application has failed to demonstrate that the additional flights would not result in a detrimental effect on air quality, specifically but not exclusively PM2.5 and ultrafine particulates contrary to Uttlesford Local Plan Policy ENV13 and paragraph 181 of the NPPF.

3 The additional emissions from increased international flights are incompatible with the Committee on Climate Change's recommendation that emissions from all UK departing

flights should be at or below 2005 levels in 2050. This is against the backdrop of the amendment to the Climate Change Act 2008 (2050 Target Amendment) to reduce the net UK carbon account for the year 2050 to net zero from the 1990 baseline. This is therefore contrary to the general accepted perceptions and understandings of the importance of climate change and the time within which it must be addressed. Therefore, it would be inappropriate to approve the application at a time whereby the Government has been unable to resolve its policy on international aviation climate emissions.

4 The application fails to provide the necessary infrastructure to support the application, or the necessary mitigation to address the detrimental impact of the proposal contrary to Uttlesford Local Plan Policies GEN6, GEN1, GEN7, ENV7, ENV11 and ENV13.

In determining this application, the Local Planning Authority had regard to the following Development Plan Policies:

Policy	Local Plan	Local Plan Phase
NPPF3 - National Planning Policy Framework 3		
S4 - Stansted Airport Boundary	Uttlesford Local Plan 2005	Uttlesford Local Plan Adopted 2005
AIR1 - Development In The Terminal Support Area	Uttlesford Local Plan 2005	Uttlesford Local Plan Adopted 2005
AIR2 - Cargo Handling/Aircraft Maintenance Area	Uttlesford Local Plan 2005	Uttlesford Local Plan Adopted 2005
AIR3 - Development In The Southern Ancillary Area	Uttlesford Local Plan 2005	Uttlesford Local Plan Adopted 2005
AIR4 - Development In The Northern Ancillary Area	Uttlesford Local Plan 2005	Uttlesford Local Plan Adopted 2005
AIR5 - The Long Term Car Park	Uttlesford Local Plan 2005	Uttlesford Local Plan Adopted 2005
AIR6 - Strategic Landscape Areas	Uttlesford Local Plan 2005	Uttlesford Local Plan Adopted 2005
AIR7 - Public safety Zones	Uttlesford Local Plan 2005	Uttlesford Local Plan Adopted 2005
GEN1 - Access	Uttlesford Local Plan 2005	Uttlesford Local Plan Adopted 2005
GEN3 - Flood Protection	Uttlesford Local Plan 2005	Uttlesford Local Plan Adopted 2005
GEN4 - Good Neighbours	Uttlesford Local Plan 2005	Uttlesford Local Plan Adopted 2005
GEN5 - Light Pollution	Uttlesford Local Plan 2005	Uttlesford Local Plan Adopted 2005
GEN6 - Infrastructure Provision to Support Development	Uttlesford Local Plan 2005	Uttlesford Local Plan Adopted 2005
GEN7 - Nature Conservation	Uttlesford Local Plan 2005	Uttlesford Local Plan Adopted 2005
ENV2 - Development affecting Listed Buildings	Uttlesford Local Plan 2005	Uttlesford Local Plan Adopted 2005

ENV7 - The protection of the natural environment designated sites	Uttlesford Local Plan 2005	Uttlesford Local Plan Adopted 2005
ENV9 - Historic Landscape	Uttlesford Local Plan 2005	Uttlesford Local Plan Adopted 2005
ENV11 - Noise generators	Uttlesford Local Plan 2005	Uttlesford Local Plan Adopted 2005
ENV12 - Groundwater protection	Uttlesford Local Plan 2005	Uttlesford Local Plan Adopted 2005
ENV13 - Exposure to poor air quality	Uttlesford Local Plan 2005	Uttlesford Local Plan Adopted 2005

Gordon Glenday
Assistant Director Planning

Notes:

1 Appeals to the Secretary of State

If you are aggrieved by the decision of your local planning authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the Secretary of State under section 78 of the Town and Country Planning Act 1990.

As this is a decision on a planning application relating to the same or substantially the same land and development as is already the subject of an ENFORCEMENT NOTICE [reference], if you want to appeal against your local planning authority's decision on your application, then you must do so within 28 days of the date of this notice.

If an ENFORCEMENT NOTICE is served relating to the same or substantially the same land and development as in your application and if you want to appeal against your local planning authority's decision on your application, then you must do so within: 28 days of the date of service of the enforcement notice, or within 6 months [12 weeks in the case of a householder appeal] of the date of this notice, whichever period expires earlier.

As this is a decision to REFUSE planning permission for a HOUSEHOLDER (HHF) application, if you want to appeal against your local planning authority's decision then you must do so within 12 weeks of the date of this notice.

As this is a decision to refuse planning permission for a MINOR COMMERCIAL application, if you want to appeal against your local planning authority's decision then you must do so within 12 weeks of the date of this notice.

As this is a decision to refuse express consent for the display of an ADVERTISEMENT, if you want to appeal against your local planning authority's decision then you must do so within 8 weeks of the date of receipt of this notice.

If you want to appeal against your local planning authority's decision then you must do so within 6 months of the date of this notice (for those not specifically mentioned above).

Appeals can be made online at: https://www.gov.uk/planning-inspectorate

If you are unable to access the online appeal form, please contact the Planning Inspectorate to obtain a paper copy of the appeal form on tel: 0303 444 5000.

The Secretary of State can allow a longer period for giving notice of an appeal but will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.

The Secretary of State need not consider an appeal if it seems to the Secretary of State that the local planning authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.

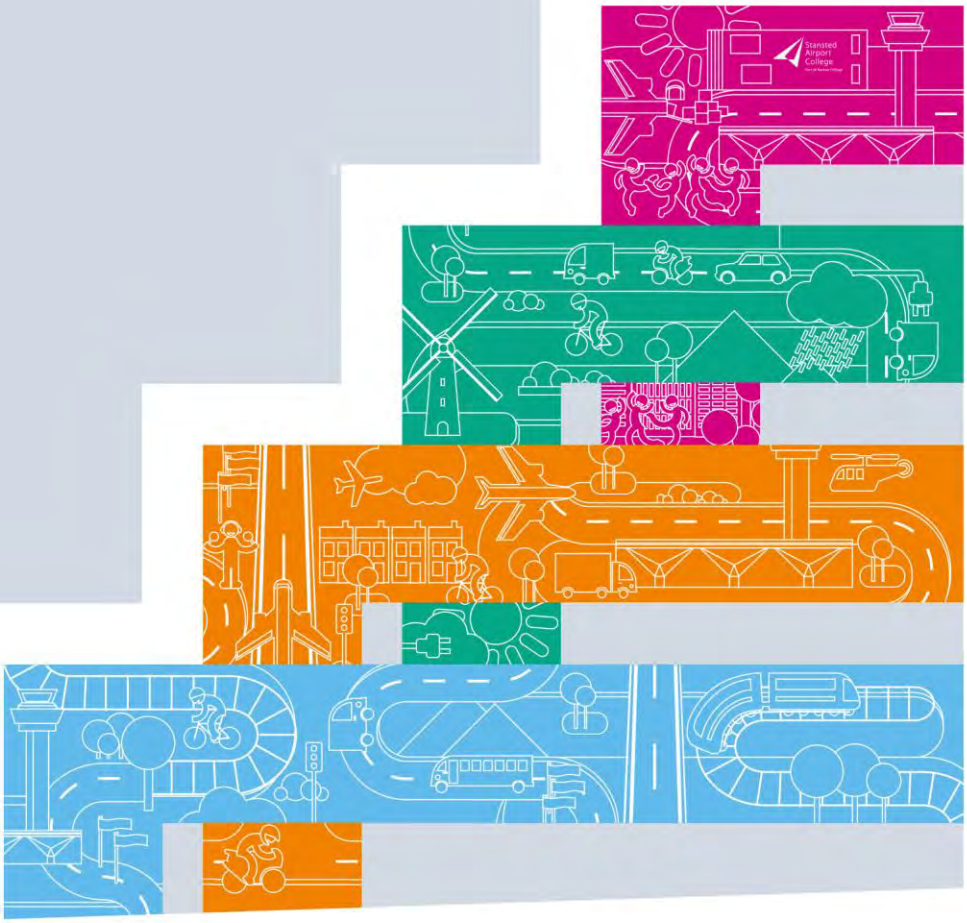
If you intend to submit an appeal that you would like examined by inquiry then you must notify the Local Planning authority and Planning Inspectorate (inquiryappeals@planninginspectorate.gov.uk) at least 10 days before submitting the appeal. Further details are on GOV.UK https://www.gov.uk/government/collections/casework-dealt-with-by-inquiries

TRANSFORMING LONDON STANSTED AIRPORT

35+ PLANNING APPEAL

Statement of Case

July 2020



MAG London Stansted Airport

Contents

1 Introduction 2
2 Context 5
3 The Appeal Proposal 10
4 Ground of Appeal 14
5 Evidence and Witnesses for the Appellant 25
6 Conclusion 26
References 27

List of Appendices

Appendix 1- Decision Notice January 2020

Appendix 2- List of Relevant Policies

Appendix 3- Draft January 2020 Section 106 Agreement

Appendix 4- Table of Relevant Documents

1 Introduction

1.1 This is the Statement of Case ('SoC') on behalf of Stansted Airport Limited ('STAL' or 'the Appellant') that accompanies its appeal against the refusal by Uttlesford District Council ('UDC') of planning application UTT/18/0460/FUL.

1.2 The application was for:

> *"Airfield works comprising two new taxiway links to the existing runway (a Rapid Access Taxiway and a Rapid Exit Taxiway), six additional remote aircraft stands (adjacent Yankee taxiway); and three additional aircraft stands (extension of the Echo Apron) to enable combined airfield operations of 274,000 aircraft movements (of which not more than 16,000 movements would be Cargo Air Transport Movements (CATM)) and a throughput of 43 million terminal passengers, in a 12-month calendar period at Stansted Airport"*

1.3 The proposal now the subject of this appeal (the 'appeal proposal' or the 'development') would enable London Stansted Airport ('Stansted') to make best use of its existing runway, in line with the Government's aviation policy. Growth to 43 million passengers per annum ('mppa') is also consistent with the 2015 Stansted Airport Sustainable Development Plan ('SDP').

1.4 STAL's case is that the development is acceptable in planning terms, brings significant social and economic benefits and that any adverse environmental effects can be adequately mitigated and managed. By enabling best use to be made of Stansted's existing capacity, the development supports the delivery of national aviation policy. The development also complies with the Development Plan for Uttlesford and the National Planning Policy Framework ('NPPF').

1.5 Stansted's growth prospects over the next decade are strong and there is a compelling case to enable the airport to make best use of existing capacity. Making best use of Stansted's capacity will help support the UK's future economic growth, create employment opportunities and can be achieved while fully protecting the interests of communities around the airport. The airport's positive impact on economic growth and job creation is even more important given the extraordinary short-term impacts of COVID-19.

1.6 This SoC summarises the background to the appeal and outlines the case which will be made in response to each reason for refusal identified by UDC.

Background: Summary Timeline

1.7 The appeal proposal has been the subject of a local authority decision-making process for over two years:

Table 1: Summary timeline of events

Date	Action
22 February 2018	STAL submitted its application following extensive pre-application consultation, starting with the development of the SDP in 2015. The application included a full suite of supporting documents including an Environmental Statement ('ES').
14 November 2018	Planning Committee resolved to grant permission, subject to a Section 106 Agreement in accordance with the agreed Heads of Terms and consistent with measures proposed in the ES.
20 March 2019	Secretary of State rejected a 'call in' request by objectors on the grounds that the application did 'not involve issues of more than local importance'[1].
12 April 2019	The STAL signed Section 106 Agreement is sealed by Essex County Council ('ECC') and sent to UDC for signature.
25 April & 28 June 2019	Two Extraordinary Council Meetings ('ECM') were held. UDC sought two independent legal opinions, both of which concluded that the draft Section 106 Agreement did 'faithfully reflect' the November 2018 resolution, subject to one (resolved) point and that there would be 'no impediment to issue' the permission[2].
28 June 2019	The second Council ECM resolved not to issue the planning permission until the UDC Planning Committee had considered: (i) the adequacy of the proposed Section 106 Agreement between UDC and Stansted Airport Ltd, having regard to the Heads of Terms contained in the resolution approved by the Council's Planning Committee on 14th November 2018; and (ii) any new material considerations and/or changes in circumstances since 14 November 2018 to which weight may now be given in striking the planning balance or which would reasonably justify attaching a different weight to relevant factors previously considered.

July 2019 to January 2020	UDC sought third independent legal opinion on the points above, to inform Planning Committee 'workshops' and the negotiations between STAL and UDC to review the Section 106 Agreement.
17 & 24 January 2020	Application returned to Planning Committee with a clear recommendation from Officers for approval. The recommendation was supported by legal advice from Leading Counsel that confirmed that the Section 106 Agreement was appropriate and that there had been no material change in circumstances affecting the planning balance. Despite the consistent and unequivocal advice from the full range of legal and planning professional sources consulted, the Planning Committee refused permission on four grounds [copy of decision notice at Appendix 1]. 1. *The applicant has failed to demonstrate that the additional flights would not result in an increased detrimental effect from aircraft noise, contrary to Uttlesford Local Plan Policy ENV11 and the NPPF.* 2. *The application has failed to demonstrate that the additional flights would not result in a detrimental effect on air quality, specifically but not exclusively PM2.5 and ultrafine particulates contrary to Uttlesford Local Plan Policy ENV13 and paragraph 181 of the NPPF.* 3. *The additional emissions from increased international flights are incompatible with the Committee on Climate Change's recommendation that emissions from all UK departing flights should be at or below 2005 levels in 2050. This is against the backdrop of the amendment to the Climate Change Act 2008 (2050 Target Amendment) to reduce the net UK carbon account for the year 2050 to net zero from the 1990 baseline. This is therefore contrary to the general accepted perceptions and understandings of the importance of climate change and the time within which it must be addressed. Therefore, it would be inappropriate to approve the application at a time whereby the Government has been unable to resolve its policy on international aviation climate emissions.* 4. *The application fails to provide the necessary infrastructure to support the application, or the necessary mitigation to address the detrimental impact of the proposal contrary to Uttlesford Local Plan Policies GEN6, GEN1, GEN7, ENV7, ENV11 and ENV13.*

2 Context

The Appeal Site

2.1 Stansted is in Essex, some 56km north-east of London and 50km south-east of Cambridge. The airport occupies a 957ha site[3] in a predominantly rural setting, with defined and mature landscaped boundaries. The site is bounded to the west by the M11 and to the south by the A120.

2.2 Stansted is the UK's fourth largest airport in terms of the number of passengers handled. The airport has a full range of modern facilities and infrastructure to accommodate short-haul and long-haul services. The airport's single runway can handle all types and sizes of aircraft, and its modern airfield is set out to provide an efficient operating environment.

2.3 In 2019, Stansted served 22 passenger airlines who between them carried 28.3 million passengers to destinations spread across Europe, Middle East, Central and North America. Ryanair is the largest airline operating at London Stansted, handling 74% of total passengers in 2019.

2.4 The airport is a catalyst for economic growth in the East of England. As a major gateway to the UK the airport supports the regional and national tourism industry. Stansted is also a major source of local employment and has strategies in place to maximise benefits for local communities, including job creation and training schemes, and the on-site Stansted Airport College. Stansted stimulates inward investment and productivity by providing international and domestic connectivity for businesses in its catchment, and it supports local businesses by awarding contracts to them wherever possible.

2.5 The airport is well connected by rail and road, benefiting from frequent train services to London, Cambridge and Birmingham, high-frequency coach services to a range of destinations, and purpose-built road connections to the M11 and A120.

Planning History

2.6 Since its major redevelopment in the early 1990s, Stansted's growth has been managed in a series of planned and distinct phases, as summarised below. The full planning history is set out in the Planning Statement accompanying the application.

Table 2- Planning History

Permission / Controlling Act	Date	Description
Outline Permission to 15mppa	1985 Phase 1 Reserved Matters - 1986 & 1987	Major development as London's 3rd airport. Permission conceived in two phases: 8mppa and 15mppa.
Parliamentary Limit on aircraft movements	1987 – 2004	Limit on aircraft movements introduced following 1985 Airports Policy White Pater. Revoked further to '15+' 2003 Permission (see below).
Reserved Matters (8-15mppa)	1999	Details for Phase 2 of the original permission.
15+ (Growth to 25mppa)	May 2003	Terminal, airfield & infrastructure expansion. Growth permitted to 25mppa and up to 241,000 air transport movements (ATMs).
25+ (Growth to 35mppa)	October 2008	2003 permission varied to permit 35mppa, 264,000 ATMs and 10,000 'other' movements, including GA (on appeal).

2.7 STAL's current masterplan for the future growth of the airport was set out in the SDP, which was published in 2015 following extensive public consultation. The SDP provides the overarching framework to guide sustainable development and growth of the airport to make best use of its existing single runway. The SDP made clear that the timing of an application for growth beyond 35mppa would be influenced by the rate of growth at the airport and wider policy considerations[4].

The Development Plan

The Development Plan - Uttlesford Local Plan 2005

2.8 UDC has twice sought to update its Local Plan over the last eight years. On 30 April 2020 it withdrew the last draft plan following issue of the Joint Inspectors' Report.

2.9 Accordingly, the 2005 Uttlesford Local Plan ('ULP') remains the adopted Development Plan for this appeal. Although some 15 years old, most environmental policies that have been saved by direction (e.g. those concerning noise, air quality etc) are not inconsistent with current national policy. The relevant polices are listed in Appendix 2. The ULP's airport-specific policies only refer to the airport's physical boundary and development zones and there is no strategic policy that directs growth; instead the benefits of the airport are referenced in district-wide vision statements.

National Policy

Aviation Policy Framework ('APF') 2013

2.10 The Government is clear about the benefits of UK aviation to the whole economy. The APF contains a policy objective of making the UK one of the best-connected countries in the world, and for the aviation sector to make a significant contribution to economic growth of the UK. To achieve this aim, the APF commits to a 'short to medium' term priority to make better use of existing runway capacity at all UK airports[5]. National policy support for the sustainable growth of the UK's aviation industry recognises the significant economic and social benefits this brings, whilst also ensuring that environmental issues are fully addressed. This strong, in principle support for realising the economic and social benefits of aviation was recently re-stated by the Secretary of State for Transport[6] and evidenced by the recent Manston Airport decision[7].

Beyond the horizon, the future of UK aviation: Making best use of existing runways ('MBU') 2018

2.11 Following many years' work by the Airports Commission, in June 2018 the Government issued a policy statement to support UK airports (beyond Heathrow) making best use of their existing runways, subject to local economic and environmental considerations.

2.12 This policy document updated the 2013 Aviation Policy Framework on the issue of making best use of existing capacity and accompanied the Government's Airports National Policy Statement ('ANPS') supporting the construction of a new runway at Heathrow. The MBU policy was explicitly brought forward by Government in recognition of the value of providing early clarity on this important aspect of aviation policy[8].

2.13 The 2018 MBU policy clearly states the respective roles for local planning authorities and for government in considering proposals for airport expansion. The policy makes clear that Government expects local impacts, such as noise and air quality, to be taken into account

as part of the local planning application process because these impacts will be felt by local communities.[9]

2.14 However, the MBU policy is unequivocal that aviation's carbon emissions are an important matter that should be considered at the national level, rather than as part of the local decision-making process[10]. The core MBU policy is at 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 prejudge the 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."

2.15 This remains the Government's current position on UK airports policy[11].

National Planning Policy Framework ('NPPF') 2019 (updated)

2.16 The current iteration of the NPPF is dated February 2019. Airport policies are limited. In respect of plan making, NPPF states that planning policies should "provide for any large-scale transport facilities that need to be located in the area, and the infrastructure and wider development required to support their operation, expansion and contribution to the wider economy"12.

2.17 NPPF has several policies relevant to the appeal which are detailed in Appendix 2.

Noise Policy Statement for England ('NPSE') 2010

2.18 The NPSE, published in 2010, does not set out specific noise level guidelines for noise sensitive development; these are covered in other documentation (CAA's SoNA 2014[13] and relevant appeal decisions[14]). The overall vision of the NPSE is to:

"Promote good health and a good quality of life through the effective management of noise within the context of Government policy on sustainable development".

2.19 The NPSE vision and aims should be interpreted in line with a set of shared UK principles that underpin the Government's sustainable development strategy[15]. The principles are:

- Ensuring a Strong Healthy and Just Society
- Using Sound Science Responsibly
- Living Within Environmental Limits
- Achieving a Sustainable Economy

- Promoting Good Governance

2.20 The NPSE defines "significant adverse" and "adverse" impact in line with the World Health Organisation's definitions: NOEL – No Observed Effect Level; LOAEL – Lowest Observed Adverse Effect Level and SOAEL – Significant Observed Adverse Effect Level.

2.21 A full list of other relevant policy documents that will be referred to in the appellant's case is contained within Appendix 4.

3 The Appeal Proposal

Development Description

3.1 The full development description is at paragraph 1.2 above. In summary, the proposal is for airfield infrastructure comprising:

a) Two new taxiway links to the runway (Rapid Access Taxiway (RAT) and Rapid Exit Taxiway (RET));
b) Six additional remote aircraft stands (adjacent Yankee taxiway); and
c) Three additional remote aircraft stands (forming an extension of the Echo Apron).

3.2 The proposed airfield infrastructure will facilitate making best use of the existing runway. It will enable Stansted to handle the forecast passenger aircraft movements through accommodating peak air traffic demands, especially for overnight aircraft parking, and to provide operational resilience and flexibility. The existing overall cap on annual aircraft movements of 274,000 is retained, but the annual cargo air transport movements are limited to 16,000. The proposed airfield infrastructure provides the ability to handle 43mppa, within the movement limits, which is an increase from the current limit of 35mppa. A tighter day-time noise contour is also proposed.

3.3 The change to the operating limits at the airport (the 'planning controls') are proposed as the current condition limiting passengers to 35mppa would not enable London Stansted to make best use of its existing runway. Government policy supports UK airports (beyond Heathrow) in making best use of their existing capacity, subject to local economic and environmental considerations.

3.4 The current planning controls on movements contain defined limits for certain categories of aircraft: passenger and cargo air transport movements ('PATM' and 'CATM') and 'other' aircraft[16] effectively resulting in a cumulative limit of 274,000 aircraft movements per year ('AM')[17]. It is proposed to retain the overall 274,000 AM limit as a combined total cap, simplifying the current controls, reducing the limit on cargo flights and providing flexibility which will allow more PATMs, thus enabling the airport to handle additional passengers.

Application Documents and ES Structure and Conclusions

3.5 The application comprised a full suite of documents that included a Planning Statement, Design and Access Statement ('DAS') and Statement of Community Involvement ('SCI'). The Planning Statement (Chapter 8) set out the benefits of the development, summarised as:

- delivering national aviation policy through making best use of existing airport capacity;
- improved regional competitiveness through better connectivity for the East of England & London;
- economic benefits across the region, employment and improving skills and education;
- greater choice and consumer benefits including reduced need to travel to Heathrow or Gatwick;
- compatibility with the long-term masterplan and well-established planning framework;
- no significant adverse environmental impacts and the addition of new mitigation measures; and
- securing long term certainty for all airport stakeholders on the impacts and planning conditions associated with the airport making best use of existing capacity.

3.6 The application was also subject to a formal Environmental Impact Assessment ('EIA'). The technical, geographic and temporal scope of the EIA was determined in consultation with UDC, statutory bodies and other stakeholders and, ultimately, through the issue of a formal Scoping Opinion by UDC on 22nd December 2017.

3.7 The following key topic areas were 'scoped in' to the ES:

- Surface Access and Transport (and included a full Transport Assessment ('TA'));
- Noise;
- Air Quality;
- Socio-Economic Impacts;
- Carbon Emissions;
- Climate Change;
- Public Health and Wellbeing (incorporating a Health Impact Assessment);
- Water Resources and Flood Risk; and
- Cumulative Effects.

3.8 Temporary construction effects were addressed in a dedicated chapter and also within each topic chapter.

3.9 The overarching conclusion of the ES is that the appeal proposal would result in **negligible** to **minor adverse** (at worst) effects on the environment. These effects are deemed not to be significant in EIA terms. The Socio-Economic impacts would be beneficial.

Table 1: Summary of the ES Conclusion

Topic	Phase	Residual Effect (with mitigation)
Surface Access & Transport	Construction	Negligible
	Operation	Negligible / Minor Adverse
Air Noise	Construction	N/A
	Operation	Negligible
Ground Noise	Construction	Negligible
	Operation	Negligible
Surface Access Noise	Construction	Negligible
	Operation	Negligible
Air Quality	Construction	Negligible
	Operation	Negligible
Socio-Economic Impacts	Construction	Negligible
	Operation	Minor to Major Beneficial
Carbon Emissions	Construction	Negligible
	Operation	Negligible
Climate Change	Construction	N/A
	Operation	Negligible
Public Health and Wellbeing	Construction	Negligible
	Operation	Negligible
Water Resources and Flood Risk	Construction	Negligible
	Operation	Negligible
Non-Significant topics (inc. Ecology, Land and Soil, Archaeology & Built Heritage, Landscape and Visual, Waste & Major Accidents and/or Disasters)	Construction	No effects / Negligible
	Operation	No effects / Negligible

3.10 The ES was peer reviewed by UDC and its specialist consultants, both of whom supported the ES conclusions on the assessed effects of the development. Further, the preparation of the 2018 Committee Report was overseen by UDC's appointed Legal Counsel, and the report carefully and extensively describes the detail of the assessments and the basis for the conclusions. The topic conclusions were carefully reviewed and endorsed by the Council's technical advisers, as was the overall conclusion that, following mitigation, there were no significant adverse environmental effects.

Preparation of an ES Addendum

3.11 Much has of course occurred globally that impacts macro-economic factors since the preparation of the 2018 ES, principally the effects of the worldwide COVID-19 pandemic. Given the passage of time, and the likely date for any public inquiry, it is the Appellant's intention to produce an ES Addendum which will serve to 'refresh' relevant aspects of the original ES. It is intended that the timing and scope of this work will be discussed with the Planning Inspectorate ('PINS') in due course (see Section 5 below).

3.12 COVID-19 has had a devastating impact on the global aviation industry, with passenger numbers substantially reduced over the period since March 2020 because of stringent travel restrictions imposed by most governments to control the spread of the virus. In common with all UK airports, Stansted has been severely impacted by the reduction in air travel during this period.

3.13 There are clear signs that the aviation market is beginning to recover as many governments lift travel restrictions and airlines begin to restore services. However, there are a range of key uncertainties that are likely to determine the rate at which aviation demand recovers to previous levels, such as future trends in infection rates, changes in consumer behaviour and short-term economic factors.

3.14 Traffic levels at Stansted in the short-term will be heavily influenced by these specific factors, and it is likely that passenger volumes will remain below 2019 levels over the next few years. As countries recover, however, aviation demand will increasingly be determined by reference to key drivers such as economic growth, disposable incomes and trade.

3.15 For this reason, the Appellant is confident about Stansted's growth prospects over the next decade and believes there remains a compelling case to enable the airport to make best use of existing capacity despite the extraordinary short-term impact of COVID-19. This is because making best use of Stansted's capacity will help support the UK's future economic growth, create employment opportunities and can be achieved while fully protecting the interests of communities around the airport.

4 Ground of Appeal

4.1 It is the Appellant's view that the appeal proposal:

a) is for a form of sustainable development in the terms set out in NPPF; and

b) is in overall compliance with the Development Plan.

4.2 The appeal proposed delivers national and regional policy objectives and will deliver substantial social and economic benefits. The ES confirms that there will be no significant adverse environmental effects when account is taken of the existing permissions and the comprehensive package of mitigation measures proposed.

4.3 On this basis, there was no reasonable or sound basis for UDC to reverse its original resolution to grant planning permission and ultimately, after a lapse of 14 months, to refuse permission. These actions, and its formulation of unclear, imprecise reasons for refusal18 have led to an avoidable appeal, creating delay and uncertainty, and wasted expenditure for the Appellant.

4.4 This section addresses the four reasons for refusal in turn. However, at the outset, it is evident that there is a common element to UDC's reasons for refusal of planning permission; it is appropriate to address this matter first.

Creation of "Additional Flights"

4.5 Refusal reasons 1-3 each reference "*the additional flights*" as a consequence of the development. This is at odds with the fact that the appeal proposal does not seek permission for more flights beyond the 274,000 rolling 12-month movement limit already permitted under the 2008 planning permission. The impact of this number of flights was previously assessed in great detail and found acceptable by two Inspectors19 and the Secretaries of State acting jointly. STAL does not consider that UDC can properly argue that the Secretaries of State's decision as to the acceptability of 274,000 AMs at Stansted, should now be set aside or ignored as a key benchmark for assessing the appeal proposal. This AM figure has already been consented and has been in the contemplation of the Council and local communities for over a decade.

4.6 An ES was required to support the original application. The standard approach to ES assessment is to assess two development cases to enable environmental impacts to be compared – 'With' and 'Without Development' (labelled "Do Minimum" in the ES). The 'Do Minimum' case was 249,000 AMs and the 'With Development case' was 274,000 AMs. Both were considered at 2028 – being the year when 43mppa was predicted to be

reached and the year of greatest difference (and therefore of worst-case environmental impacts) between the two cases. This approach has not changed: it was agreed by UDC in its scoping opinion[20] and set out in both the 2018 and 2020 Committee Reports[21]. The worst-case impacts were all judged to be acceptable.

4.7 However, the use of this conventional ES methodology (in order to predict 'worst case' effects) in no way precludes the airport from operating to the maximum possible extent under the existing planning caps (i.e. 35mppa and 274,000 movements). Indeed, in the absence of the altered passenger cap sought by the appeal proposal, it would make commercial sense for STAL to seek to maximise the benefits of its existing permission and utilise to the greatest extent possible its consented movement limits in each sector (passenger, cargo and other), rather than simply cease all growth in AMs after 2028 in the "without development" case.

4.8 UDC's Planning Committee allowed itself to become distracted by public objectors from the fact that permission already exists for the number of AMs assumed in the ES. It appears to be attempting to deny STAL permission for an increased number of passengers passing through the airport (utilising but not exceeding a previously approved number of AMs) on the specious basis that UDC knows better than the Secretaries of State as to the acceptability of the impacts of consented movements.

4.9 This is all notwithstanding that: the impacts set out in the ES have been judged by UDC and its own consultants to be acceptable and that STAL would inevitably have sought to exploit its existing permission post 2028 in any event to utilise the commercial potential of its permitted AMs, if it was obliged to "fall back" on the 2008 consent without a varied passenger limit.

4.10 The "additional flights" concept which runs through the Council's first three reasons for refusal is thus a flawed and misleading construct which:

- avoids the fact of the existing number of flights already permitted at Stansted by the Secretaries of State;
- ignores the acknowledged acceptability of the impacts assessed in the ES; and
- overlooks the fact that STAL would, in any event, have found other ways to utilise the commercial potential of the permitted AMs if so obliged.

UDC Reason for Refusal 1: Noise

> *The applicant has failed to demonstrate that the additional flights would not result in an increased detrimental effect from aircraft noise, contrary to Uttlesford Local Plan Policy ENV11 and the NPPF.*

4.11 The ES follows long established practice and well recognised methodologies. Contrary to UDC's assertion, the evidence set out in the ES demonstrates clearly that changes in noise levels are expected to be less than 1dB across the full study area for both the daytime and night-time periods. This constitutes a 'negligible' ES impact in terms of applied significance criteria.

4.12 The refusal reason is contrary to the ES conclusions and is not based on any alternative technical evidence or any clear justification. In reaching its decision, UDC's Planning Committee debated two issues:

- WHO 2018 Environmental Noise Guidelines

  Published before the November 2018 Planning Committee, these global guidelines make recommendations for aircraft noise exposure that are significantly lower than current UK policy. However, while agreeing with the ambition to reduce noise and to minimise adverse health effects, the UK Government explicitly prefers to use the UK specific research and evidence that the WHO report did not assess. Thus, WHO guidance can only carry very limited weight in the planning assessment. Even if the lower WHO exposure thresholds were to be applied, the ES would still only assess the change in noise impacts to be negligible.

- Grounding of Boeing 737-MAX8 Aircraft

  The Committee speculated (without seeking expert advice) on the impact that the temporary grounding of Boeing 737MAX8 aircraft would have on future noise levels around Stansted. However, the Committee failed to recognise that the temporary grounding of a single aircraft type will not have a material impact on the overall rate of fleet modernisation at Stansted over the next decade.

  The fleet mix used to assess noise impacts in the ES included a growing proportion of newer aircraft over time and these assessments showed a future year 57dB LAeq,16h daytime noise contour smaller than the currently permitted 33.9km2 contour. This reflects the fact that short-haul aircraft typically have a relatively short service life and the aircraft manufacturing industry has strong record for delivering continuous improvements in noise performance.

Aviation authorities grounded all 737-MAX8 aircraft in March 2019 due to safety concerns with the new aircraft and its re-introduction has been delayed, pending re-certification. The temporary grounding of this aircraft type is not likely to affect delivery and operation of 'next generation' aircraft more generally at Stansted in the longer term, either because the aircraft will re-enter service or because airlines will switch to other new aircraft types.

Thus, the ES assumptions regarding aircraft numbers and 'next-generation' fleet mix in the assessment year remain sound. The Council has not set out any assessment of the impact that it considers that the grounding of B737-MAX8 will have on future noise levels around Stansted, and it incorrectly gave undue weight to short-term events in reaching its decision.

4.13 In any event, irrespective of predicted changes in fleet mix, STAL is willing to be bound by planning condition to a tighter noise contour limit than that currently permitted. This commitment provides clear assurance to decision makers and local communities that Stansted's future operations will be contained within these noise limits and will ensure compliance with the Government's objective of 'sharing the benefits' of noise reduction[22].

4.14 The appeal proposal seeks no increase to the 274,000 movements already permitted. Together with the continuing reductions in aircraft noise levels, the appeal proposal is fully compatible with the development plan, NPPF, NPSE and the Government's objective that the aviation industry should use technological developments to reduce noise in affected communities.

4.15 The ES demonstrates that the development would have negligible noise impacts and is accompanied by a binding commitment from the airport to operate within a tighter noise contour in the future. In light of this evidence, it was unreasonable for UDC to conclude that STAL had failed to demonstrate that the development would not lead to increased noise impacts.

UDC Reason for Refusal 2: Air Quality

> *The application has failed to demonstrate that the additional flights would not result in a detrimental effect on air quality, specifically but not exclusively PM2.5 and ultrafine particulates contrary to Uttlesford Local Plan Policy ENV13 and paragraph 181 of the NPPF.*

4.16 A full air quality assessment is part of the ES, the scope of which was agreed with UDC. The ES uses well established methodologies and criteria, consistent with every other recent

UK airport air quality assessment. It includes changes in concentrations of nitrogen dioxide ('NO_2'), nitrogen oxides ('NOx'), and particulate matter ('PM10' and 'PM2.5') and changes in nitrogen deposition at sensitive ecological sites.

4.17 The ES shows that the changes in both NO_2 and PM10/PM2.5 concentrations would be negligible. Due to general improvements in vehicle emissions and reductions in background pollutant concentrations, NO_2 levels would be lower in the future with the appeal proposal, compared with today.

4.18 No new exceedances of air quality standards were predicted and by 2028 all receptors show pollutant concentrations below the relevant UK standards. There is consequently no exposure to poor air quality over the long-term. The assessment showed negligible impacts on air quality within the two Air Quality Management Areas ('AQMA') in the vicinity. The appeal proposal therefore does not conflict with the Development Plan or the NPPF.

4.19 Ultrafine particulates were not included within the agreed scope of study and UDC did not request their inclusion during the scoping process or at any time thereafter. As noted by the Air Quality Expert Group ('AQEG'), models for ultrafine particulates have not been used routinely in the UK for future projections. However, the assessment of PM10 and PM2.5 concentrations provides a good representation of the scale of change in particulates. Since only negligible impacts were predicted for both PM10 and PM2.5 concentrations, it is reasonable to conclude that there would also be negligible impacts from ultrafine particles.

4.20 The ES demonstrates that there are no adverse health impacts resulting from the development, as the changes in PM10 and PM2.5 concentrations were both shown to be negligible. In considering the application, UDC did not identify any technical or scientific evidence to support its assertion that the assessment and conclusions set out in the ES are flawed. Instead, UDC's refusal on air quality grounds was based on the Committee's misplaced perception of adverse health impacts. In STAL's view, this does not represent an acceptable approach to decision making in this context.

UDC Reason for Refusal 3: Carbon Emissions

> *The additional emissions from increased international flights are incompatible with the Committee on Climate Change's recommendation that emissions from all UK departing flights should be at or below 2005 levels in 2050. This is against the backdrop of the amendment to the Climate Change Act 2008 (2050 Target Amendment) to reduce the net UK carbon account for the year 2050 to net zero from the 1990 baseline. This is therefore contrary to the general accepted perceptions and understandings of the importance of climate change and the time within which it must be addressed. Therefore, it would be inappropriate to approve the application at a time whereby the Government has been unable to resolve its policy on international aviation climate emissions.*

4.21 The scope of the carbon assessment in the ES was agreed by UDC at the scoping phase. The assessment adopted widely accepted standards and carbon factors, including a "life cycle" approach. The ES concluded that the development *"is unlikely to materially impact the UK's ability to meet its 2050 aviation target of 37.5MtCO_2".*

4.22 UDC did not dispute the ES methodology, metrics or technical assessment of carbon emissions arising from the development. The Planning Committee identified no objective, technical or scientific reason for challenging the conclusions in the ES. Instead, the Committee determined that it could not approve the application because, in its view, the Government had been unable to resolve its policy on international climate emissions. In reaching this view, the Committee failed to take into account the clear legal and policy framework that exists in relation to these issues.

4.23 Section 30 (1) of the Climate Change Act 2008 provides as follows:

> *"Emissions of greenhouse gases from international aviation or international shipping do not count as emissions from sources in the United Kingdom for the purposes of this Part, except as provided by regulations made by the Secretary of State."*

4.24 Such regulations have not been made. The Government's approach to aviation carbon emissions is set out in the APF and MBU policy, with an update having been given in the Department for Transport's Decarbonising Transport – Setting the Challenge (March 2020), in terms of the Government's current aims and targets, policies to meet those targets and its planned future work[23].

4.25 MBU makes clear policy statements: First, aviation carbon emissions should continue to be addressed through international co-operation[24] and are the preserve of national (and international) policy[25]. Second, local planning authorities should instead focus on local

environmental impacts (e.g. noise and air quality) when considering planning applications for 'making best use' of existing runway capacity. Finally, MBU confirms Government's support for airports making best use of existing runways[26] and considers that any resultant change in emissions is consistent with national commitments to reduce emissions[27].

4.26 Specifically, MBU considered the aviation carbon emissions arising from all airports, including those in the South East, making best use of their existing runways. It concluded that this was likely to be consistent with the 'headroom' of 37.5MtCO_2 for the aviation sector, assumed when the UK carbon budget was first set. This was based on an estimate of emissions associated with forecast demand and the state of knowledge at the time regarding the likely impact of mitigation measures to be adopted by the industry.

4.27 Since then, the potential for mitigating aviation emissions has improved and includes an internationally agreed scheme to address CO_2 emissions[28]. Furthermore, based on substantial research and technical evidence, Sustainable Aviation'[29] 2020 Decarbonisation Roadmap[30] concludes that an increase of approximately 150 million passengers per annum above 2018 levels would be compatible with the net zero commitment.

4.28 Informed by advice from the Committee on Climate Change (CCC), the Government recently adopted a target of net zero emissions by 2050 for the whole of the UK and amended the Climate Change Act[31], but did not amend Section 30 (1), as referenced above. The CCC had previously advised Government that for aviation, growth of 60% above 2009 traffic levels was consistent with a commitment to reduce emissions by 80% by 2050. The CCC's more recent advice[32] is consistent with the industry's view that the potential for mitigating emissions from aviation has improved. The CCC advise that growth of 60% above 2009 traffic levels continues to be compatible with the revised national target, which is now net zero emissions at 2050.

4.29 The Government intends to consult on the CCC's advice and update its assessment of the evidence that underpins its MBU policy. The advice from the CCC has been consistent and compatible with the Government maintaining current policy that supports growth in air traffic associated with airports making best use of existing runways and makes clear that aviation emissions will continue to be the preserve of national policy'.

4.30 MBU remains in force, with airports supported in making best use of existing runways. Therefore, the ES conclusion that the appeal proposal is unlikely to materially impact the UK's ability to meet its 2050 aviation target remains sound and UDC's reason for refusal is contrary to government policy.

4.31 UDC was also wrong to conclude that government policy is 'unresolved' with respect to aviation emissions and it failed to address the clear government policy on how aviation

carbon emissions should be considered in local planning decisions. The reason for refusal cites, without substantiation as to the relevance to the development, 'general [sic] accepted perceptions and understandings' about the importance of climate change and wider concerns about carbon emissions. Accordingly, the reason for refusal is neither clear nor precise, and does not specify a policy on which the Council's decision is based.

UDC Reason for Refusal 4: Section 106: Mitigation and Insufficient Infrastructure

> *The application fails to provide the necessary infrastructure to support the application, or the necessary mitigation to address the detrimental impact of the proposal contrary to Uttlesford Local Plan Policies GEN6, GEN1, GEN7, ENV7, ENV11 and ENV13.*

4.32 The November 2018 resolution to approve the application included draft planning conditions and Section 106 Heads of Terms. In the period up to the January 2020 decision, the Committee spent considerable time undertaking a 'line by line' review of the full Section 106 Agreement text. In good faith, STAL participated in extensive negotiations on the detail of the obligations.

4.33 Following these negotiations, an amended draft Section 106 Agreement was presented to the Planning Committee in January 2020 to incorporate a number of minor revisions. The amended agreement was recommended by Officers and endorsed by UDC's own further independent legal opinion as being in full compliance with Regulation 122 of the Community Infrastructure Levy Regulations 2010.

4.34 In the Planning Committee's debate in January 2020, a motion to refuse the application was passed without any substantive debate in respect of the amended Section 106 Agreement (the debate focussed the potential for new material considerations only (Item 2 of the June 2019 Council resolution)). Despite this, the fourth reason for refusal (set out above) was hastily added and there is no record of any specific concerns or debate about these issues from the Committee.

4.35 As a consequence, it is not clear what UDC's position is on the amended Section 106 Agreement. In particular, it not clear whether UDC now considers the amended agreement to be unacceptable and, if so, the reasons for this change in position. This lack of clarity is compounded by the fact that ECC has already signed the Section 106 Agreement in support of the surface access mitigation measures that it contains.

4.36 The January 2020 draft Section 106 Agreement meets the tests set in both NPPF and Regulation 122 of The Community Infrastructure Levy Regulations 2010. A copy of this revised Section 106 Agreement is included at Appendix 3.

Other Matters

4.37 The Council has not set out any other reason why permission should be refused. Its Decision Notice is required to be complete and precise. On this basis, STAL assumes that UDC accepts the ES and its conclusions in respect of the following topics:

- Surface Access and Transport;
- Ground Noise;
- Surface Access Noise;
- Socio-Economic Impacts;
- Water Resources and Flood Risk; and
- The ES 'non-significant' topics – Biodiversity, Land & Soil, Cultural Heritage, Landscape, Waste and Major Accidents and/or Disasters.

Issues Raised by Third Party Objectors

4.38 The extensive public consultation by STAL and by UDC is fully set out in the SCI and the Committee Report respectively. There were a large number of objections from local residents and by Parish and Town Councils. There was also equally significant support from local residents and regional and local organisations. At the time of the application's presentation to UDC's Planning Committee in November 2018, there were no objections from statutory consultees (including for example Highways England, Network Rail or, Natural England). This has remained the case.

4.39 The contents of the objections submitted generally overlap with the Council's reasons for refusal, however other issues were raised and are summarised below.

4.40 Those in support of (or neutral as to) the development, generally refer to the economic, employment and social benefits of further growth at Stansted. The importance of Stansted to the local and regional economy features heavily, along with the significance of Stansted as one of the largest employment sites in the East of England.

Impacts on Health

4.41 Reasons for refusal 1 and 2 refer to the health effects of noise and air quality. The broader topic of 'Public Health' is not a reason for refusal, and UDC do not contest the findings of the Health and Wellbeing chapter of the ES nor the Health Impact Assessment (HIA) that demonstrated no material risk to public health. No health objection was made by any statutory consultee or health stakeholder,

4.42 The Appellant's case is that the development is acceptable in respect of impacts on health.

Prematurity and 'Need'

4.43 The Government's MBU Policy is clear in its support in principle for the appeal proposal, subject to local environmental issues being addressed. In order to retain a competitive UK airport industry, the Government's policy is to allow airport operators to bring forward applications as they see fit.

4.44 Airports are long term infrastructure businesses that need to plan and invest for the future. This, in turn, requires clarity and confidence in the long-term prospects of airports and the regions that they serve.

4.45 There is no national or Development Plan policy requirement for a 'need' case to be proven to a local planning authority. The well-established approach in paragraph 11 of NPPF should apply.

4.46 Stansted's growth has been accommodated through a long-term masterplan, within a clearly defined site and with a comprehensive package of mitigation measures and controls. Growth has taken place without breaching environmental limits, and the appeal proposal follows this same approach. There is a compelling strategic case for raising the passenger cap and contributing to the ambitions of regional and sub-regional growth strategies of which the airport forms a key part[33].

Economic Impacts

4.47 The NPPF and national aviation policy promote the need to build a strong, competitive economy and achieve sustainable economic growth. The airport will be a key economic driver as the UK recovers from the impacts of COVID-19 and also builds an economic future following Brexit.

4.48 Air travel provides the ability easily to access international and domestic destinations. Stansted's extensive route network across Europe, and with an increasing number of long-haul destinations, leads directly to improved connectivity, easing the movement of people and goods, and attracting inward investment and visitors. The airport and its supply chain are already major local employers and help raise educational standards and skills; the appeal proposal will increase this substantially in the future and will deliver on the economic policies and aims of our stakeholders, including LSCC, LEPs and the district and county councils. There is clear support for the development from a range of local industry, economic and trade organisations as well as local authorities.

Airspace Change

4.49 There is a nationwide programme led by the CAA[34] to modernise the UK's airspace, improve its efficiency and bring environmental benefits.

4.50 The airspace around Stansted is already capable of handling the permitted 274,000 AMs. This development does not therefore require or rely on any future airspace change, and airspace is beyond the remit of local planning authorities.

5 Evidence and Witnesses for the Appellant

5.1 The appeal case will rely on the original application documents and all supplementary information supplied to UDC. These, and a schedule of other documents relevant to the appellant's case, are set out in Appendix 4.

Proposed ES Addendum

5.2 The ES was prepared in February 2018, although the application was not refused until January 2020. It is proposed to submit an ES Addendum, so that the Inspector and all parties to the Appeal have the benefit of an up to date assessment of the likely significant environmental effects of the appeal proposal.

5.3 A Scoping Opinion will be sought from PINS, but is likely to cover updates to:

- Key baseline data (including air quality, road traffic, forecasts and employment)
- Assessment years
- Surface Access modelling
- Air noise contours
- Air quality
- Carbon
- Sensitivity tests for specific topics
- Minor updates to the public health and wellbeing / HIA; socio-economic assessment (including latest employment data) and ecology assessment (TBC)

Witnesses

5.4 As presently advised, the Appellant intends to call witnesses to address:

- The strategic case for growth;
- Aviation Forecasts
- Planning;
- Macro-economic & Socio-economic case;
- Air Noise;
- Air Quality;
- Carbon;
- Surface Access;
- Health; and
- EIA process and conclusions.

6 Conclusion

6.1 The determination of this appeal must be made in accordance with the Development Plan unless material considerations indicate otherwise (Section 70 (2) of the Town and Country Planning Act and Section 38 (6) of the Planning and Compulsory Purchase Act 2004).

6.2 It is the Appellant's case that the appeal proposal is in accordance with the Development Plan, and there are no material considerations (including the NPPF) that would indicate otherwise. The application should not have been refused and it was unreasonable for UDC to have reached the conclusions that it did.

6.3 The Appellant will make the case that the appeal proposal is a sustainable form of development and will not result in:

- a detrimental effect from aircraft noise;
- a detrimental effect on local air quality;
- incompatible increases in carbon emissions; or
- a lack of necessary infrastructure to support the development.

6.4 Moreover, when weighed with the significant social and economic benefits that the development will bring, the appellant will contend that there is a compelling case for the appeal to be allowed.

6.5 A draft statement of common ground is proposed alongside this SoC, which contains a draft list of Core Documents and a list of acronyms. The Appellant will seek to agree matters with UDC in the required timescales.

References

[1] Letter to UDC from MHCLG, 20 March 2019

[2] UDC Officer report to Full Council, page 3, 28 June 2019

[3] This is the whole airport site and the entire Operational Area

[4] Stansted Sustainable Development Plan 2015: Land Use, page 30

[5] Aviation Policy Framework, 2013, paragraph 9 & 10

[6] DfT & Rt Hon Grant Shapps MP, Written statement to Parliament: Aviation update: 27 February 2020

[7] DfT, Manston Airport Development Consent Order, 09 July 2020

[8] HM Government, Beyond the horizon: The future of UK aviation. A call for evidence on a new strategy, 2017, paragraph 7.21; and Rt Hon Chris Grayling MP, Statement to House of Commons, 5 June 2018

[9] HM Government, Beyond the horizon: The future of UK aviation. Making best use of existing runways, 2018, paragraphs 1.9

[10] HM Government, Beyond the horizon: The future of UK aviation. Making best use of existing runways, 2018, paragraphs 1.11. & 1.12

[11] This remains the case as the Court of Appeal judgement [2020] EWCA Civ 214, 27 February 2020, has been granted leave to appeal (07 May 2020) to the Supreme Court and a hearing is scheduled for October 2020.

[12] NPPF, Paragraph 104(e)

[13] CAP 1506: Survey of Noise Attitudes 2014: Aircraft, CAA (2017)

[14] Appeal reference APP/R5510/A/14/2225774: DGLG and DfT Decision, 02 February 2017 and Inspector's report, 09 November 2015

[15] Noise Policy Statement for England (NPSE), 2010, paragraph 1.8

[16] PATMs and CATMs are landings or take offs of aircraft engaged in the transport of passenger or freight or mail on commercial terms. All scheduled movements, including those operated empty, loaded charter and air taxi movements are included. As defined by CAA in its airports data collection process. 'Other movements' are all other aircraft movements that are not PATMs or CATMs.

[17] 2008 Planning Permission Ref: UTT/0717/06/FUL, Condition ATM2

[18] Regulation 35 (1)(b) The Town and Country Planning (Development Management Procedure) (England) Order 2015

[19] Boyland assisted by Phillimore. Appeal reference APP/C1570/A/06/2032278: Inspector's report 14 January 2008, paragraph 1.7 "*I have been very ably assisted by fellow Inspector Mr Terry Phillimore MA MCD MRTPI. I fully agree with those parts of the conclusions he has drafted and adopt them as my own. The recommendation is entirely my own.*"

[20] UDC, Scoping Opinion, Reference UTT/17/1640/SO, 21 December 2017

[21] UDC, Committee Reports for the application Reference UTT-18-0460-FUL, November 2018 and January 2020

[22] Aviation Policy Framework, 2013, paragraph 3.12

[23] Paragraphs 2.45 to 2.58

[24] Paragraph 2.5 of APF 2013

[25] Paragraph 1.11 MBU

[26] Paragraph 1.29 MBU

[27] Paragraphs 1.11 and 1.25 MBU

[28] Decarbonising Transport: Setting the Challenge, (2020), DfT, paragraph 2.52

[29] Sustainable Aviation is an industry coalition bringing together major UK airlines, airports, manufacturers, air navigation service providers and key business partners. See https://www.sustainableaviation.co.uk/

[30] Decarbonisation Road-Map: A Path to Net Zero, (2020), Sustainable Aviation

[31] Statutory Instrument 2019 No. 1056: The Climate Change Act 2008 (2050 Target Amendment) Order 2019

[32] CCC, Meeting the UK aviation target – options for reducing emissions to 2050 (2009), page 145; and CCC, Net Zero – Technical Report (2019), pages 173-174

[33] Plans include the London Plan, Growth Strategies for South East LEP & Greater Cambridge & Greater Peterborough LEP, The London Stansted Cambridge Corridor, A120 Corridor/Haven Gateway and the Economic Plan for Essex. All documents referred to in Appendix 4

[34] CAP1616: Airspace Design'. Stansted, at the time of writing, is at Stage 1B: Design Principles

Appendix 4

Table of Relevant Documents

Core Document	Date
Application Drawings	
Location Plan (Drawing reference: NK017817-SK309)	14 February 2018
35+ Airfield Infrastructure Works: Site Plan (Drawing reference: STAL-001-PLA-001-001-01)	13 February 2018
35+ Airfield Infrastructure: Mike Romeo RET (Drawing reference: STAL-001-PLA-001-002-01)	13 February 2018
35+ Airfield Infrastructure: Yankee Remote Stands (Drawing reference: STAL-001-PLA-001-003-01)	13 February 2018
35+ Airfield Infrastructure: Runway Tango (Drawing reference: STAL-001-PLA-001-004-01)	13 February 2018
35+ Airfield Infrastructure: Echo Stands (Drawing reference: STAL-001-PLA-001-005-01)	13 February 2018
Application Documents	
Application Cover Letter	22 February 2018
Full Planning Application Form	22 February 2018
Planning Statement	February 2018
Design and Access Statement	February 2018
Environment Statement Volume 1: Chapter 1: Introduction Chapter 2: Environmental Impact Assessment Methodology Chapter 3: Description of Site, Proposed Development, Policy Context and Alternatives Chapter 4: Aviation Forecasts Chapter 5: Development Programme and Construction Environmental Management Chapter 6: Surface Access and Transport Chapter 7: Air Noise Chapter 8: Ground Noise Chapter 9: Surface Access Noise Chapter 10: Air Quality Chapter 11: Socio-Economic Impacts Chapter 12: Carbon Emissions Chapter 13: Climate Change	February 2018

Chapter 14: Public Health and Wellbeing Chapter 15: Water Resources and Flood Risk Chapter 16: Non-Significant Topics Chapter 17: Cumulative Effects Chapter 18: Summary of Mitigation and Residual Effects	
Environment Statement Volume 2: Appendix 1.1 Statement of Competency Appendix 2.1 Scoping Request Appendix 2.2 Alteration to the Request for Scoping Opinion Appendix 2.3 Summary of Representations in Scoping Report Appendix 2.4 Scoping Opinion Appendix 2.5 Scoping Opinion Requirements Appendix 3.1 Planning and Aviation Policy Appendix 7.1 Glossary of Acoustic Terminology Appendix 7.2 Planning and Assessment Framework Appendix 7.3 Noise Contours Appendix 7.4 Background Noise Measurements Appendix 7.5 Complaints Analysis Appendix 8.1 Ground Noise Appendix 8.2 Construction Noise Appendix 9.1 Surface Access Noise Figures and Schedules Appendix 10.1 Modelled Receptors Appendix 10.2 Emissions Methodology Appendix 10.3 Traffic Data Appendix 10.4 Model Setup and Verification Appendix 10.5 Predicted Pollutant Concentrations Appendix 11.1 Socio-Economic Study Areas Appendix 11.2 Socio-Economic Effects Appendix 12.1 Carbon Emissions Appendix 13.1 In-Combination Climate Change Impact Assessment Appendix 13.2 Climate Change Resilience Assessment Appendix 13.3 Validation of UKCP09 Weather Generator Appendix 14.1 Health Impact Assessment Appendix 15.1 FRA and Drainage Strategy Part 1, Part 2, Part 3 Appendix 16.1 PEA (incorporating information to inform a HRA) Appendix 16.2 Ecology Mitigation Strategy Appendix 16.3 NE Discretionary Advice Service	February 2018

Environment Statement Volume 3: Transport Assessment	February 2018
Environment Statement Volume 4: Non-Technical Summary of the Environmental Statement	February 2018
Statement of Community Involvement	February 2018
Essex Biodiversity Validation Checklist	22 February 2018
Essex Drainage Checklist	February 2018
Certificate of Ownership (B)	22 February 2018
Supplementary Documents	
Letter to UDC from STAL: Amendment to application description	18 May 2018
Letter and Consultation Response and Clarifications	5 July 2018
Revision to Annex 1: Information for Epping Forest	19 July 2018
Letter to UDC from STAL and Table: Annex 2: Information on SSSI Impacts	19 July 2018
Figures for Annex 3B: Noise	May/June 2018
Letter to UDC from STAL and Technical Note: Impact of 35+ Planning Application on Epping Forest Site of Special Scientific Interest (SSSI)	10 August 2018
Letter to UDC from STAL re Clarification on Natural England and ECC responses to HRA/AA	18 September 2018
Letter to UDC from STAL: Night Noise	21 September 2018
Letter to UDC from STAL: Surface Access and development of the bus network	27 September 2018
Letter to UDC from STAL: Response to East Hertfordshire District Council comments	18 October 2018
Memo: Consultation Response Issues – Information Document for ECC	29 October 2018
Letter to UDC from STAL on Surface Access and Technical Note: Parsonage Road Traffic	30 October 2018

Letter to UDC from STAL: Response to ECC surface access correspondence	6 November 2018
Letter to UDC from STAL inc. Technical Note on Foul Water Discharge	28 September 2018
Letter to UDC re S106 Community Benefit Measures	17 Oct 18
Draft Section 106 Agreement	27 March 2019
Letter to UDC from STAL re Rail Commuter Scheme	30 May 2019
Letter to UDC from STAL re Rail Commuter Scheme	14 June 2019
Letter to UDC from STAL re S106 Clarifications	08 January 2019
Revised Draft Section 106 Agreement	January 2020
Certificate of Ownership (B) - Additions	9 March 2018 and 23 October 2018
Revised Location Plan (Ref: NK017817 - SK309)	23 October 2018
Planning History	
Decision Notice for Growth to 25mppa (Application No: UTT/1000/01/OP)	16 May 2003
2003 Section 106 Agreement between Uttlesford District Council and Essex County Council and Stansted Airport Limited	14 May 2003
Decision Notice for Growth to 35mppa (Application No: UTT/0717/06/FUL)	8 October 2008
2008 Deed of Unilateral Undertaking, Stansted Airport Limited to Uttlesford District Council and Essex County Council	26 September 2008
Addendum to Deed of Unilateral Undertaking, Stansted Airport Limited to Uttlesford District Council and Essex County Council (Nature Conservation)	7 October 2008
2008 Deed of Unilateral Undertaking, Stansted Airport Limited to Hertfordshire County Council	26 September 2008
Letter to UDC from STAL: Request for Environmental Impact Assessment Scoping Opinion	1 June 2017
35+ Environmental Impact Assessment Scoping Report	June 2017
Uttlesford District Council Scoping Opinion	21 December 2017

Core Documents – Policy, Guidance and Reference Documents	Date
Planning and Aviation	
Aviation Policy Framework	March 2013
Beyond the horizon, the future of UK aviation: Making best use of existing runways	June 2018
Airports National Policy Statement: new runway capacity and infrastructure at airports in the South East of England, Department for Transport	June 2018
Draft Airports National Policy Statement: New runway capacity and infrastructure at airports in the South East of England	February 2017
Revised Draft Airports National Policy Statement: new runway capacity and infrastructure at airports in the South East of England, Department for Transport	October 2017
National Planning Policy Framework (Revised 2019)	February 2019
National Planning Policy Framework	2012
National Planning Policy Guidance (at the date of submission)	2017
Uttlesford Adopted Local Plan	2005
East Herts District Plan	2018
Planning and Compulsory Purchase Act 2004	2004
Town and Country Planning Act	1990
Community Infrastructure Levy Regulations 2010	2010
UK Aviation Forecasts, Department for Transport	October 2017
Airport Commissions Appraisal Framework, Airport Commission	April 2014
Heathrow Cranford Decision, DCLG/DfT	2 February 2017
The London Plan	2016
London Airspace Modernisation project ATS Route Network Step 1B Design Principles, NATS	2018
CAP1616: Airspace Design – Guidance on the regulatory process for changing the notified airspace design and planned	January 2020

and permanent redistribution of air traffic, and on providing airspace information (Third Edition), Civil Aviation Authority	
CAP 1616c Airspace change guidance: changes made in the third edition of CAP 1616, Civil Aviation Authority	January 2020
CAP 1711: Airspace Modernisation Strategy, Civil Aviation Authority	2018
STAL and MAG	
Stansted Airport Sustainable Development Plan (Land Use, Economy & Surface Access, Community and Environment documents)	2015
Stansted Airport Corporate Social Responsibility Report 2018/19	2019
MAG Corporate Social Responsibility Report 2018/19	2019
MAG Corporate Social Responsibility Strategy: Working together for a brighter future	2020
Air Quality	
The Air Quality Standards Regulations 2010, SI 2010/1001	2010
Ultrafine Particles (UFP) in the UK, Air Quality Experts Group	2018
The Air Quality Standards (Amendment) Regulations 2016, SI 2016/1184	2016
Clean Air Strategy 2019, HM Government	2019
Carbon	
Climate Change Act	2008
Meeting the UK Aviation Target - Options for reducing emissions to 2050, Committee on Climate Change	2009
Convention on Civil Aviation (Chicago Convention) Ninth Edition	2006
Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA)	2016
Decarbonisation Road-Map: A Path to Net Zero, Sustainable Aviation	2020

Sustainable Aviation Fuels Road-Map: Fuelling the future of UK aviation, Sustainable Aviation	2020
Aviation Industry Commitment to Action on Climate Change, Air Transport Action Group	2008
The EU Emissions Trading Scheme	2005
The UK's Small Emitter and Hospital Opt-Out Scheme - Guidance Document, Department of Energy and Climate Change	2015
The future of UK carbon pricing: UK Government and Devolved Administration's response	June 2020
The Clean Growth Strategy; leading the way to a low carbon future, HM Government	2017
Construction 2025: industrial strategy for construction - government and industry in partnership, Department for Business, Innovation & Skills	July 2013
Low Carbon Routemap for the Built Environment - Technical Report, Green Construction Board	2015
PAS2080:2016: Carbon Management in Infrastructure (British Standard)	2016
Valuation of energy use and greenhouse gas (GHG) emissions, Department for Business, Energy & Industrial Strategy	2017
ICAO Aircraft Engine Emissions Databank	2017
Air Pollutant Emissions Inventory Guidebook, EMEP/EEA	2016
Heathrow Airport's North-West Runway Carbon Footprint Assessment, AMEC	2014
Greenhouse Gas reporting conversion factors, DEFRA	2017
Airport Air Quality Manual, ICAO	2011
Fleet fuel efficiency model (FFEM) output, Department for Transport	2017
Rail infrastructure, assets and environment - 2014/15 Annual Statistics Release, Office of Rail and Road	2016
IEMA Principles Series: Climate Change Mitigation & EIA	2010

Climate Change Act 2008 (2050 Target Amendment) Order 2019	2019
2017 Progress Report, Sustainable Aviation	2017
Net Zero - The UK's contribution to stopping global warming, Committee on Climate Change	2019
Net Zero - The UK's contribution to stopping global warming - Technical Report, Committee on Climate Change	2019
Letter to Department for Transport: International aviation and shipping and net zero, Committee on Climate Change	September 2019
Reducing UK emissions: 2020 Progress Report to Parliament, Committee on Climate Change	June 2020
Transport Secretary's statement on coronavirus (COVID-19): 12 June 2020	June 2020
Press Release: PM commits £350 million to fuel green recovery	July 2020
Hansard, Volume 672, Aviation: Heathrow Expansion	27 February 2020
Ecology	
Epping Forest SAC Designation, JNCC	2020
RSK Preliminary Ecological Appraisal	2015
RSK Habitat Creation and Management Plan	2015
RSK Biodiversity Monitoring Strategy	2015
Uttlesford District Council Local Plan Issues and Options Consultation: Representations on behalf of the National Trust.	2015
Epping Forest SAC Conservation objectives, Natural England	2020
Elsenham Woods SSSI Citation, Natural England	2020
Epping Forest Site Improvement Plan, Natural England	2020
Hatfield Forest SSSI Citation, Natural England	2020

Noise	
Noise Policy Statement for England	March 2010
Survey of noise attitudes 2014: aircraft, Civil Aviation Authority	February 2017
Environmental Noise Guidelines for the European Region, World Health Organization	2018
GRADE: an emerging consensus on rating quality of evidence and strength or recommendations. BMJ. 336(7650):924-6, Guyatt GH et al.	2008
Global burden of disease in 2002: data sources, methods and results. Geneva World Health Organisation, Mathers CD et al.	2003
The burden of disease and injury in Australia. Canberra: Australian Institute of Health and Welfare cat. No. PHE 17, Mathers C, Vos T, Stevenson C.	1999
Burden of disease from environmental noise: quantification of healthy life years lost in Europe. Copenhagen: WHO Regional Office for Europe, JRC	2011
Socio-Economic	
The Economic Plan for Essex	2014
Growth Deal and Strategic Economic Plan, South East Local Enterprise Partnership	March 2014
Greater Cambridge and Greater Peterborough Local Enterprise Partnership Economic Plan	2013
Findings and Recommendations of the London Stansted Cambridge Corridor Growth Commission. The Next Global Knowledge Region: Setting the Ambitions and Delivering the Vision	July 2016
Cambridge and Peterborough Combined Authority Business Board (formerly LEP) (website)	2020
Haven Gateway Partnership Visions and Objectives (website)	2020
Uttlesford Economic Development Strategy and Action Plan 2018-21 (previously 2016-18)	2020
Uttlesford Corporate Plan 2020-24 (previously covered 2017-21)	2020

Harlow Local Development Plan (Pre-Submission Publication)	2018
Epping Forest District Local Plan (Submission Version)	2017
2019 London Stansted Airport Employee Travel Survey Analysis	2019
2015 London Stansted Airport Employee Travel Survey Analysis	2015
ONS Labour Productivity Time Series	2020 (latest)
ONS Subnational Population Projections	2018 (latest)
East of England Forecasting Model	2018 (latest)
GLA Employment Projections	2017 (latest)
ONS Regional Gross Value Added	2017 (latest)
ONS Business Register and Employment Survey	2018 (latest)
ONS Mid-Year Population Estimates by Local Authority	2019 (latest)
ONS Annual Population Survey	Q1 2020 (latest)
ONS Annual Survey of Hours and Earnings	2019 (latest)
ONS Census of Population	2011
ONS Job Seekers Allowance	Q2 2020 (latest)
Department for International Trade Inward Investment Results 2019-20	2019/20 (latest)
EY's Attractiveness Survey	2020 (latest)
ONS Travel Trends	2019 (latest)
HMRC Regional Trade Statistics	2019 (provisional)
HMRC Overseas Trade Data	
Oxford Economics "The Economic Contribution of the Aviation Industry in the UK"	2006
Oxera "What is the Contribution of Aviation to the Uk Economy"	2009
Transport and Surface Access	
Guideline for the Environmental Assessment of Road Traffic, Institute of Environmental Management and Assessment	1993

Essex Local Transport Plan (2011-2016), Essex County Council	2011
Hertfordshire Local Transport Plan (2011-2031), Hertfordshire County Council	2016
Local Plan Transport Study, Uttlesford District Council	2016
Department for Transport Trip End Model Presentation Programme (TEMPro)	2016
Stansted Airport Employee Survey 2019	2020
Stansted Airport Bus and Coach Strategy	2016
Stansted Airport Cycling and Walking Strategy	2016
Stansted Airport Travel Plan 2014-2019	2019
Annual Passenger Survey, Civil Aviation Authority	2020
London and South East Market Study, Network Rail	2013
Network Rail East Midlands Route Study, 2016	2016
Guidance on Transport Assessment, Department for Transport	2007
LA 104 - Environmental assessment and monitoring	2019
Anglia Route Study 2016, Network Rail	2016

Stansted Airport 35+ Planning Appeal

PINS Appeal ref APP/C1570/W/20/3256619 Planning Application ref UTT/18/0460/FUL

Statement of Case on behalf of Uttlesford District Council

Wednesday, September 16, 2020

Contents

Schedule of abbreviations 1

1.0 Introduction 2

The Appeal Site 2

Relevant background and the 2008 Appeal 3

The Application 7

The Consideration of the Application 8

2.0 Uttlesford District Council's concerns 11

Change in traffic activity 11

Robustness of the demand forecast 13

Policy /guidance/ legislative changes published after February 2018 15

3.0 Approach to Environmental Statement Addendum 17

4.0 Reasons for Refusal 18

R1 Air Noise 18

R2 Air Quality 24

R3 Carbon Emissions 27

R4 Necessary Infrastructure and Mitigation 30

5.0 Conclusion 32

APPENDICES

Appendix 1: Statement of Case references

Appendix 2: Decision Notice January 2020

Appendix 3: Draft Section 106 Agreement January 2020

Appendix 4: List of relevant policies

Appendix 5: Core documents (policy, guidance, reference documents)

Appendix 6: Climate change: relevant legislative, guidance, and policy changes since the Climate Change Act 2008 was enacted

Schedule of abbreviations

AQMA	Air Quality Management Area
AM	Aircraft Movements (comprising PATM, CATM and all other aircraft movements)
APIS	Air Pollution Information System
ATM	Air Transport Movements (comprising PATM and CATM)
CAA	UK Civil Aviation Authority
CATM	Cargo Air Transport Movements
CCC	Committee on Climate Change
ES	Environmental Statement
EU	European Union
FAA	US Federal Aviation Administration
GDP	Gross Domestic Product
HIA	Health Impact Assessment
LOAEL	Lowest Observed Adverse Effect Level
MAG	Manchester Airports Group
mppa	Million terminal passengers per annum
MtCO2	Metric tons of carbon dioxide equivalent
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NPSE	Noise Policy Statement for England
PATM	Passenger Air Transport Movements
PINS	The Planning Inspectorate
PM2.5	Particulate Matter (fine particles)
RfR	Reason for Refusal
S106	Section 106 Agreement
SoC	Statement of Case
SSSI	Site of Special Scientific Interest
STAL	Stansted Airport Limited (the company)
UDC	Uttlesford District Council
UK	United Kingdom
WHO	World Health Organisation

1.0 Introduction

1.1 This is the Statement of Case ('SoC') on behalf of Uttlesford District Council ('UDC') in relation to Stansted Airport Ltd's appeal against the refusal by UDC of planning application UTT/18/0460/FUL ('the Application'). UDC is the local planning authority for an area which includes Stansted Airport.

1.2 The PINS Appeal reference number is APP/C1570/W/20/3256619.

1.3 At the point of determination by UDC, the Application was for:

"Airfield works comprising two new taxiway links to the existing runway (a Rapid Access Taxiway and a Rapid Exit Taxiway), six additional remote aircraft stands (adjacent Yankee taxiway); and three additional aircraft stands (extension of the Echo Apron) to enable combined airfield operations of 274,000 aircraft movements (of which not more than 16,000 movements would be Cargo Air Transport Movements (CATM)) and a throughput of 43 million terminal passengers, in a 12-month calendar period at Stansted Airport".

The Appeal Site

1.4 The Airport is an extensive 950-hectare facility next to the intersection of two strategic highway routes, the M11 which connects to the M25 and A14, and the A120 which connects eastwards to the Haven Ports. It is served by a branch from the West Anglia Main Line with rail services to London Liverpool Street and Cambridge and other regional destinations. It lies in a rural area of market towns and attractive villages richly endowed with heritage assets. Uttlesford, East Hertfordshire and Harlow are subject to growth pressures for new homes in particular which pose difficult challenges in terms of creating sustainable developments that protect the character of the area and address the need for affordable housing, and minimise exposure to flight paths of aircraft landing and taking off from Stansted.

1.5 Whilst there has been an airport at Stansted since WWII, its current genesis lies in the report of Sir Graham Eyre QC on the Airports Inquiry 1981 – 1983. This paved the way for the development of a major passenger airport at Stansted. But Sir Graham Eyre was clear as he could be that this had to be subject to limits (2008 Appeal, IR, 14.13):

'Without a shadow of a doubt a judgment can now be made as to the environmental consequences of the construction and operation of a second runway at Stansted. Notwithstanding the long timescale involved, a judgment can be made on the quality of the landscape. The precise details of the landscape may change as they have in the past but the overall nature, character, quality and topography are sufficiently immutable characteristics for an opinion to be expressed here and now on the environmental implications of airport construction on the scale contemplated by development in the safeguarded area in the same way as the Inspector expressed his view in relation to a second runway at Gatwick. The expression "environmental disaster" was coined by Professor Sir Colin Buchanan in relation to a four-runway airport at Cublington with a capacity of some 100 mppa. I would not be debasing the currency if I express my judgment that the development of an airport at Stansted, with a capacity in excess of 25 mppa and requiring the construction and operation of a second runway and all the structural and operational paraphernalia of a modern international airport as we know the animal in 1984, would constitute nothing less than a catastrophe in environmental terms. I accept that today the other factors in the equation which might result in a requirement for such an airport in the next century cannot be definitively identified but I can conceive of no circumstances in which the development of such an airport at Stansted could be justified.

I would also acknowledge the attraction of the selection of a location now which has a potential capability of solving the problems of airport capacity in the long-term future whatever need or demand arises. However, I strongly doubt if there is one location in the UK whether inland, coastal or estuarial or whether greenfield site or not which would meet so outrageous and unreasonable a criterion. I take so strong a view on this aspect that if I believed, as so many do, that a grant of planning permission for an expansion at Stansted to a capacity of 15 mppa would inexorably lead to unlimited and unidentifiable airport development in the future to an unknown capacity, I would, without hesitation, unequivocally recommend the rejection of BAA's current application in relation to the main site.'

Relevant background and the 2008 Appeal

1.6 Civil aviation flights have operated from Stansted Airport since 1946, but until the opening of the current passenger terminal in 1991 passenger numbers were generally less than 1 mppa. The following are the principal decisions relating to the Airport's growth.

1.7 On 5 June 1985 the Secretaries of State for Environment and for Transport granted outline planning permission, subject to conditions, for:

The expansion of Stansted Airport by the provision of a new passenger terminal complex with a capacity of about 15mppa east of the existing runway, cargo handling and general aviation facilities, hotel accommodation, taxiways (including the widening of a proposed taxiway to be used as an emergency runway), associated facilities (including infrastructure for aircraft maintenance and other tenants' developments) and related road access (UTT/1150/80/SA).

1.8 The Airports White Paper 1985 issued at the same time as the planning permission introduced a statutory limit of 8 mppa. Its subsequent lifting required Parliamentary approval.

1.9 On 16 May 2003 Uttlesford District Council granted planning permission, subject to conditions, for:

Extension to the passenger terminal; provision of additional aircraft stands and taxiways, aircraft maintenance facilities, offices, cargo handling facilities, aviation fuel storage, passenger and staff car parking and other operational and industrial support accommodation; alterations to airport roads, terminal forecourt and the Stansted rail, coach and bus station; together with associated landscaping and infrastructure (UTT/1000/01/OP). ('The 2003 Planning Permission')

1.10 It is important to note that the 15+ application was submitted in August 2001 and the process of its careful consideration and determination by UDC took nearly 2 years. The planning permission was subject to 169 conditions and obligations and it provided a detailed framework for the regulation and development of the Airport.

1.11 Conditions MPPA1 and ATM1 provided as follows:-

'The passenger throughput at Stansted Airport shall not exceed 25 million passengers in any 12-calendar month period' (condition MPPA 1)

'...there shall be at Stansted Airport a limit on the number of occasions on which aircraft may take – off or land at Stansted Airport of 241,000 ATMs during any period of 1 year of which no more than 22,500 shall be CATMs.' (condition ATM1).

1.12 In 2006, the then owners of the Airport (BAA plc and Stansted Airport Ltd.) sought planning permission for the development of the Airport without complying with conditions MPPA1 or ATM1. Specifically, the then developers sought removal of conditions MPPA1 (setting a 25 mppa cap) and a variation of condition ATM1 so that 241 000 ATMs (of which up to 22 500 could be CATMs) was raised to 264 000 ATMs (of which up to 20 500 could be CATMs and up to 243 500 could be PATMs).

1.13 The application was accompanied by a suite of documents including an Environmental Statement. The Non-technical Summary of the ES, after describing the proposed development, put as its main plank of support that the development would secure the government's policy as set out in the Air Transport White Paper (para. 2.1.2):

'The White Paper identifies the role of Stansted Airport in contributing to meeting the growth in demand, and among its priorities identified the importance of <u>making full use</u> of the capacity of Stansted's existing runway to assist in meeting this demand.' (emphasis added)

1.14 By Decision Notice dated 30 November 2006 the application was refused. The developers appealed and an inquiry opened on 30 May 2007.

1.15 On 14 January 2008, the Inspector published a 642-page report recommending that the appeal be allowed subject to certain conditions. Of the ten main issues identified by the Inspector (IR, 14.43), the third, fourth, sixth, and eighth were:

3) The effects of the proposals on the living conditions and health of residents in the area, particularly in terms of aircraft noise and air pollution;

4) The effects of aircraft noise on the quality of life of the area in terms of the educational, cultural and leisure activities of communities;

6) The effects of increased air pollution from aircraft and surface traffic on Hatfield Forest and nearby woodlands;

8) The adequacy of the road network to accommodate increased road and traffic arising from expansion of the airport without detriment to its safe and efficient operation.

1.16 In relation to noise and "air pollution" and how this was to be assessed, the Inspector noted (IR, 14.98):

'... The more pertinent 'primary assessment case' is the comparison between the 202,000 ATMs forecast for the '25 mppa at 2014/15' case (which broadly represents the predicted situation if the appeal were dismissed) and the 263,200 ATMs forecast for the '35 mppa at 2014/15' case that would broadly be expected to arise in the event of the appeal being allowed with a 35 mppa limit or no direct restriction on passenger throughput.'

1.17 The Inspector noted with regret the failure of the parties to agree on the perceptibility of the resultant increase in noise, before commenting (IR, 14.106):

'... I share the view of UDC that it is straining credibility to suggest that noise from an additional 170 ATMs per day (on average, in summer) would not be perceptible even though the Leq would increase by less than 1.5dBA.'

1.18 In respect of the health effects, he commented (IR, 14.114):

'It is undisputed that, subject to the reservations discussed above, the area of the 57 dBA L_{eq} daytime contour in the 35 mppa case would be larger than in the 25 mppa case at 2014/15, with the ES putting the increase at 6.4 km² and including an additional population of 1250...'

1.19 And later (IR, 14.116):

'... It is widely predicted that increased aircraft movements would exacerbate all these effects and diminish the number and lengths of the periods of respite between noise events, and I have seen or heard nothing to lead me to doubt this.'

1.20 He concluded (IR, 14.147):

'For the above reasons I consider that for those within the contours, and to a reducing extent some way beyond, noise from the increased ATMs arising from the G1 development would be harmful to the living conditions and health of residents and to the quality of life in the area including cultural and leisure activities ...'

1.21 In relation to access to Stansted Airport, the Inspector opened with (IR, 14.200):

'The M11 motorway and A120 which meet near the Airport, provide the main road access to it, though of course many other roads are also used ...'

1.22 And in relation to rail links he observed (IR, 14.212):

'It is undisputed that there are problems of peak-hour capacity on STEX, particularly as it now also serves commuters from the stops en route (having previously been largely a dedicated airport service). There is also a widely-held view that due to limited track capacity and the priority afforded to STEX trains there is also a knock-on adverse effect on other services on the line.'

1.23 The Inspector's reservation about the impact of the development was an important qualification to his conclusion (see IR, 14.224).

1.24 The Inspector recorded his overall conclusions at IR, 14.331-14.345, including:

(1) *'To sum up, I have concluded that the principle of making full or best use of the existing runway at Stansted Airport is in accordance with Government aviation policy in the Future of Air Transport White Paper (ATWP)...'* (IR, 14.331, emphasis added)

(2) '*I have concluded that additional air noise, and to a lesser extent, ground noise would be harmful to the living conditions and health of residents and to the quality of life in the area. Some, but not all, of this harm could be mitigated. The proposed development would thus conflict with criteria in Structure Plan and Local Plan policies, but the policies require this to be weighed against the need for the development, which in this case is established by the ATWP. I note also that the number of people affected is relatively small in relation to numbers around many other airports.*' (IR, 14.334)

(3) '*The area around the Airport is mainly attractive countryside offering a high quality of life for residents, who have a strong sense of community…*' (IR, 14.336)

(4) '*Subject to junction improvements which could be secured through planning conditions the traffic arising from the proposed G1 development could satisfactorily be accommodated on the road network in accordance with the relevant Local Plan policy. On the basis that additional capacity is provided as planned on the rail network serving the Airport, the already high public transport modal share for travel to and from the Airport could be maintained and even increased slightly in accordance with national policy that encourages the use of more sustainable modes.*' (IR, 14.339)

1.25 The Inspector concluded that the appeal should be allowed with a large number of conditions including:

Air Transport Movements

ATM1: Subject to ATM2 below, from the date that the terminal extension hereby permitted within Site "A" opens for public use, there shall be at Stansted Airport a limit on the number of occasions on which aircraft may take-off or land at Stansted Airport of 264,000 ATMs (Air Transport Movements) during any 12 calendar month period, of which no more than 243,500 shall be PATMs (Passenger Air Transport Movements) and no more than 20,500 shall be CATMs (Cargo Air Transport Movements).

ATM2: The limit in condition ATM1 shall not apply to aircraft taking-off or landing at Stansted Airport in any of the following circumstances of cases, namely:

(a) the aircraft is not carrying, for hire or reward, any passengers or cargo;

(b) the aircraft is engaged on non-scheduled air transport services where the passenger seating capacity of the aircraft does not exceed ten;

(c) the aircraft is required to land at the airport because of an emergency or any other circumstance beyond control of the operator and commander of the aircraft; and

(d) the aircraft is engaged on the Queen's Flight, or on a flight operated primarily for the purposes of the transport of government Ministers or visiting Heads of State or dignitaries from abroad.

The total number of take-offs and landings by aircraft in categories (a) and (b) above combined shall not exceed 10,000 in any 12 calendar month period.

ATM5: From the date of the granting of planning permission the developer shall report the monthly and moving annual total numbers of ATMs (Air Transport Movements), PATMs (Passenger Air Transport Movements) and CATMs (Cargo Air Transport Movements) in writing to the local planning authority no later than 28 days after the end of the calendar month to which the data relate.

Passenger throughput

MPPA1: The passenger throughput at Stansted Airport shall not exceed 35 million passengers in any twelve-calendar month period.

MPPA2: From the date of the granting of planning permission the developer shall report the monthly and moving annual total numbers of passengers in writing to the local planning authority no later than 28 days after the end of the calendar month to which the data relate

1.26 On 8 October 2008 the Secretaries of State, informed by the Inspector's Report, gave their decision. They recorded that they agreed with the Inspector's reasoning and conclusions (see especially IR, para. 26.32, 42-46). Specifically, the Secretaries of State recorded (SoS, para. 31):

'... They further agree with the Inspector's conclusion that, for those within the contours and to a reducing extent some way beyond, noise from the increased ATMs arising from the G1 development would be harmful to the living conditions and health of residents and to the quality of life in the area including cultural and leisure activities...'

1.27 And under the rubric 'Overall Conclusion' (SoS, para. 52):

'Factors weighing against the proposal are: that additional noise would be harmful to the living conditions and health of residents and to the quality of life in the area; that there would be some negative health effects due to changes in levels of air pollution, though these would be small and not a significant conflict with the development plan; that there could be further erosion of traditional social linkages in smaller settlements and increased unauthorised activity and some adverse effects with regard to impact on residential areas; and, that NOx levels are a cause for concern in terms of their impact on Hatfield Forest and nearby protected woodland.'

1.28 Like the Inspector, the Secretaries of State were (SoS, para. 53):

'... satisfied that the factors which weigh[ed] in favour of the proposal, notably compliance with the ATWP' (Air Transport White Paper) - which they had earlier identified as 'making full use of the existing runway at Stansted' (SoS, para. 28, emphasis added) – 'and the development plan, outweigh the harm identified...' (para. 53).

1.29 Thus, as at 8 October 2008, the Secretaries of States' considered conclusion was that a 35 million annual passenger throughput at Stansted represented 'full use of the existing runway at Stansted' within the meaning of the ATWP (emphasis added).

The Application

1.30 On 22 February 2018, STAL submitted an application for the development that is the subject of this appeal. Although the 2006 application had represented that 'full use of the capacity of Stansted's existing runway' amounted to about 35mppa and 264 000 ATM, the new application contended that that "full" use now meant 43mppa. The 2018 application, like its predecessor, was accompanied by a suite of documents including an Environmental Statement ('the ES'). The Non-Technical Summary of the ES, after describing the proposed development, provides that the development is in line with the Government's suggested policy of encouraging airports to maximise the use of existing capacity, especially runway capacity, as the best way of meeting demand over the next ten years (NTS, p.2). The Introduction to the ES provides that (para. 1.1):

'This new infrastructure will enable Stansted Airport ('the airport') to make better use and more efficient use of its existing single runway, which will in turn enable it to increase its passenger throughput to 43 million in accordance with the aspirations set out in the 2015 Stansted Airport Sustainable Development Plan (SDP).'

1.31 No other policy statement is identified in the opening part of the ES.

1.32 At the heart of STAL's application is the conception that "full use" of Stansted's single runway does not have a fixed meaning in terms of flights or passengers. It would appear to grow so as to coincide with the business interests of the airport operator. Thus, while "full use" was repeatedly used in the 2008 inquiry to mean 35 million passengers per year, STAL's suite of documents now includes a "Land Use Sustainable Development Plan 2015" that says (p.28):

'Beyond 35mppa, the airport could continue to grow, subject to the raising of the planning cap. We believe there is a strong case to make the most efficient and full use of the current single runway and we will ask that the Airports Commission recommends this in its final report. Growth in passenger numbers is expected to continue to rise through to the late 2020s, reaching the full capacity of the single runway in the early 2030s.

The ultimate capacity of the airport's single runway is likely to be between 40-45 million passengers a year. The exact capacity will be a product of our route network, aircraft size, the spread of traffic through the day and year and the capacity drivers described earlier. However, for the assessment of certain environmental and surface access effects we have used a figure of 43mppa as the maximum throughput the airport could achieve with a single runway; owing to capability limits of the runway and the associated infrastructure.'

1.33 This sits uncomfortably with STAL's "Statement of Community Involvement" (Feb 2008), where it was reported (p.11):

'Feedback from the engagement programme and consultation showed support in principle of, and an understanding of the case for, making efficient and full use of Stansted's single runway. Understandably, consultation responses referred to detailed points relating to the likely impacts and how these could be mitigated and minimised, which were considered in finalising the SDP.'

The Consideration of the Application

1.34 The main practical consequence of implementation of the Application will be a significantly greater number of PATMs than is currently practicable. It will unpick the protection afforded by the dual-cap restriction that was imposed by the Secretaries of State in 2008. While one can legitimately conjecture differently as to what exactly the numbers of additional PATMs will be in any given year, what is not reasonably capable of dispute is that averaged over a year it will permit not less than 100 extra flights per day. And the number may be considerably greater than 100. Given this implication, the application was rightly subject to detailed evaluation by the Council following extensive and full engagement with local communities, businesses including those based on the Airport and people who work at the Airport and relevant interested parties. The application proposals were recognised to be a very important development for UDC, that proposed a future development strategy for Stansted, but also one that raised clear and detailed concerns amongst residents about the potential for acute and enduring effects that would be in place for decades to come, should it be approved.

1.35 How the Application was considered by the Council:

- **14 November 2018 Planning Committee** – resolved to grant approval for the Application, subject to conditions and subject to the completion of an agreement imposing legally binding planning obligations ("S106 Agreement"). The precise form that the S106 Agreement should take, in accordance with the amended recommendation, was resolved to be delegated to officers. The planning application was assessed against the backdrop of the STAL ES 2018.
- **25 April 2019 Extraordinary Council Meeting (Full Council)** – to consider the motion:

  'To instruct the Chief Executive and fellow officers not to issue a Planning Decision Notice for planning application UTT/18/0460/FUL until the related Section 106 Legal Agreement between UDC and Stansted Airport Limited and the Planning Conditions have been scrutinised, reviewed and approved by the Council's Planning Committee after the local elections'.

  This motion was defeated.
- **28 June 2019 Extraordinary Council Meeting (Full Council)** – to consider the motion:

  'To instruct the Chief Executive and fellow officers not to issue the Planning Decision Notice for planning application UTT/18/0460/FUL until members have had an opportunity to review and obtain independent legal corroboration that the legal advice provided to officers, including the QC opinion referred to by the Leader of the Council on 9th April 2019, confirms that the proposed Section 106 Agreement with Stansted Airport Limited fully complies with the Resolution approved by the Planning Committee on 14 November 2018 such that officers are lawfully empowered to conclude and seal the Agreement without further reference to the Planning Committee'.

  The meeting was originally scheduled for 3 June but was deferred until 28 June to allow further time for consideration of legal advice. Between 25 April and 28 June, informal meetings and briefing meetings were held with Members and legal advice was sought.

  At the Extraordinary Meeting of Full Council on 28 June officers were instructed not to issue a Planning Decision Notice for planning application UTT/18/0460/FUL until the Planning Committee had considered:

  (i) the adequacy of the proposed Section 106 Agreement between UDC and Stansted Airport Ltd, having regard to the Heads of Terms contained in the resolution approved by the Council's Planning Committee on 14th November 2018;

  (ii) any new material considerations and/or changes in circumstances since 14 November 2018 to which weight may now be given in striking the planning balance or which would reasonably justify attaching a different weight to relevant factors previously considered.
- **Further briefing sessions were held with Members.** These sessions enabled the Officers to fully brief on the content of the draft obligations as well as to explain material changes in circumstances that had occurred since the original 14 November Planning Committee
- **17 and 24 January 2020 Planning Committee** – resolved to refuse permission, having regard to a) noise from the development as fully implemented; b) air quality, specifically PM 2.5 and ultrafine particles, resulting from the development as fully implemented; and c) generally accepted perceptions and understandings of climate change.

1.36 The Planning Committee (with input from Full Council), in its consideration of the planning application, demonstrably showed through the sequence of meetings from November 2018

through to January 2020 that it needed to be convinced about the nature and scale of effects that would result from the implementation of the planning permission, and importantly, that it would be possible to adequately mitigate those effects. The Planning Committee identified gaps in the various assessments set out in the submitted ES dated February 2018, as well as raised concerns regarding the nature of the data relied upon within this assessment. It concluded that the information provided as at January 2020 fell short of that required to properly assess the environmental impacts associated with the application. Without this information, it was not possible to conclude on the nature of impacts arising, and as a consequence, the adequacy of the proposed mitigation, leading to refusal of the application.

1.37 The Planning Committee refused the application, on 29 January 2020, with four stated reasons for refusal:

1 The applicant has failed to demonstrate that the additional flights would not result in an increased detrimental effect from aircraft noise, contrary to Uttlesford Local Plan Policy ENV11 and the NPPF.

2 The application has failed to demonstrate that the additional flights would not result in a detrimental effect on air quality, specifically but not exclusively PM2.5 and ultrafine particulates contrary to Uttlesford Local Plan Policy ENV13 and paragraph 181 of the NPPF.

3 The additional emissions from increased international flights are incompatible with the Committee on Climate Change's recommendation that emissions from all UK departing flights should be at or below 2005 levels in 2050. This is against the backdrop of the amendment to the Climate Change Act 2008 (2050 Target Amendment) to reduce the net UK carbon account for the year 2050 to net zero from the 1990 baseline. This is therefore contrary to the general accepted perceptions and understandings of the importance of climate change and the time within which it must be addressed. Therefore, it would be inappropriate to approve the application at a time whereby the Government has been unable to resolve its policy on international aviation climate emissions.

4 The application fails to provide the necessary infrastructure to support the application, or the necessary mitigation to address the detrimental impact of the proposal contrary to Uttlesford Local Plan Policies GEN6, GEN1, GEN7, ENV7, ENV11 and ENV13.

2.0 Uttlesford District Council's concerns

2.1 UDC identified 3 fundamental issues with the appeal planning application and the information submitted in support of it, which underpin the RfRs and remain valid today:

1 A clear implication arising from STAL's proposals is that they will give rise to a change in air traffic activity at the airport, from that considered and approved in the 2008 appeal, and the environmental impacts arising from this change have not been adequately assessed;

2 There has been a change in circumstances since the ES was published in February 2018, which gives rise to concerns around the robustness of the demand forecast exercise undertaken in support of the application, and whether the forecast can be relied upon for the assessment of environmental impacts; and

3 There has been a change of policy position since the application was submitted in 2018, that was not considered within the application submission, adding to the shortcomings in assessment work.

Change in traffic activity

2.2 The airport currently has a dual-capped restriction on traffic activity: Aircraft Movements (AM) per annum and annual terminal passengers (mppa).

2.3 It is proposed to retain a dual capped restriction, but with changes to the composition of the annual cap on AM and lifting the annual terminal passenger cap from 35mppa to 43mppa.

2.4 Both changes have the potential to give rise to an increase in environmental impact.

2.5 Table 2.1 Review of traffic activity and caps provides a summary of the categories of movements which make up the existing and proposed cap, as well as the categories of movements which formed part of the STAL ES 2018.

Table 2.1 Review of traffic activity and caps

Scenario	Total passengers ('000)	PATM ('000)	CATM ('000)	Other ('000)	Total AM ('000)
MOVEMENT CAP					
2008 existing cap (by Appeal)	35,000	243.5	20.5	10	247
2018 proposed cap*	43,000	undefined	16	undefined	247
ES BASELINE					
2016 (Existing Baseline)*	24,300	152	12	16	181
2021 (Construction Baseline)*	32,600	199	13	19	231
2023 (Do Minimum Baseline)*	35,000	213	14	19	247
ES TRANSITIONAL YEAR (2023)					
2023 Transition Year (Do Minimum Scenario)*	35,000	213	14	19	247
2023 Transition Year (Development Case)*	36,400	219	14	20	253
ES PRINCIPAL ASSESSMENT YEAR (2028)					
2028 Principal Assessment Year	35,000	212	17	20	249

Scenario	Total passengers ('000)	PATM ('000)	CATM ('000)	Other ('000)	Total AM ('000)
(Do Minimum Scenario)*					
2028 Principal Assessment Year (Development Case)*	43,000	253	16	5	274

Source: STAL ES 2018*, Appeal APP/C1570/A/06/2032278

2.6 It is acknowledged that the number of AM would not exceed the total number of AM permitted under conditions attached by the Secretaries of State for Communities and Local Government and Transport when granting planning permission for the G1 25 mppa plus proposals in 2008.

2.7 However, STAL's suggestion in its SoC (para. 4.5) that, as no change to the annual cap on AM is requested, there could be no additional flights that have not already been approved, is misleading. It masks the increase, in practice, of PATM – and an increase which is actually acknowledged and assessed within the STAL ES 2018.

2.8 The increase would result in a change to the composition of the approved annual cap on AM and a significant increase in approved PATMs, which together will give rise to environmental effects – none of which can be said to have been "approved" in 2008. This is in addition to the proposed increase in the terminal passenger throughput, from 35 mppa to 43 mppa, which represents a 23% increase in passenger numbers from that previously approved. The increase in terminal passenger throughput would be reliant on the absorption of permitted AM by PATM. To expand on this:

- The planning application seeks permission to vary the previous conditions, which limit the number of annual AM at the airport, by: removing the limit on PATM, removing the Other limit, and lowering the CATM limit - while retaining the overall limit for total AM.
- This change in the composition of the annual cap on AM would allow for the number of PATM to increase with the take-up of converting the 'Other' sub-category into PATM and the reduction of CATMs into PATM.
- To achieve an uplift in passenger throughput, from 35 mppa to 43 mppa, whilst not increasing the total number of AM, STAL would be reliant on increasing its PATM.
- The proposed cap does not specify a maximum PATM limit. Potentially it could absorb all Other AM and the reduction of CATM.

2.9 This has the following consequences:

- Lifting the terminal passenger throughput cap and a change to the composition of the annual cap of AM would in practice result in more of the available AM cap (within the 2008 limits) being utilised for PATM, risking additional adverse environmental effects compared to a no development scenario (termed the Do Minimum case in the submitted ES), which need to be properly evaluated.
- A change to the composition of the annual AM cap would see an increase in PATM and a reduction of Other AM. Some Other AM have a lower environmental impact than PATM, meaning such a change risks additional adverse environmental effects, which need to be properly evaluated.
- The air traffic forecasts presented in the original ES take advantage of the requested changes in the passenger and aircraft movement caps to increase throughput at the Airport to 43 mppa in 2028. This is achieved in part by an assumption of more flights during the course of the day in shoulder periods and other periods which in 2019 were less busy, but also an

increase in average passenger loads. This risks adverse environmental effects throughout the day and during periods of the day when historically there has been some respite from AM, as well as a step-up in pressures placed on supporting infrastructure with the increase in passenger throughput. These effects need to be properly evaluated.

2.10 STAL has confirmed that an increase in PATM is required within its own traffic forecasts supporting its planning application. STAL clearly show that increasing the terminal passenger cap from 35 mppa to 43 mppa (as applied for) would result in an additional 40,500 Passenger ATMs per annum[1] as well as a change to the composition of the AM cap (an increase in PATM, a decrease in CATM and a decrease in Other AM). The Development Case (2028 Principal Assessment Year), assessed within the ES, comprised 253,000 PATM, 16,000 CATM and 5,000 Other AM. This is summarised in Table 2.1 Review of traffic activity and caps of this Statement of Case.

2.11 Importantly, what has not been made clear in the ES, and STAL has failed to demonstrate, is how STAL has arrived at this AM composition, and whether it is the 'worst-case' scenario – both from an operational and environmental perspective. This needs to be properly evaluated. Instead it focuses on a '+ / - 10%' aircraft mix sensitivity test, which focused on replacement rate of Next Generation aircraft within the PATM category, and not the fundamental point of split between the different categories of AM (PATM, CATM, Other AM).

2.12 Importantly, UDC is of the view that, a proposal to change the composition of the AM cap to enable the increase PATMs, and how this is implemented in practice (worst-case scenario), should be subject to a similar degree of justification by the Appellant and a similar degree of scrutiny by the Inspector as was applied during the original determination of the caps by the Secretaries of State in 2008 following a Planning Inquiry.

2.13 As such, STAL has failed to demonstrate that the additional PATM would not produce an increased detrimental effect from aircraft noise or such an effect on air quality. It was imperative, and it remains imperative, for STAL to grapple with this change and to demonstrate that that additional noise and that detrimental effect on air quality is within acceptable limits or can be effectively mitigated.

2.14 The Appellant relies upon the 2008 decision, and in particular the cap of 274,000 AM, for establishing an acceptable capacity for the airport. The above account demonstrates that the changes being sought to the composition of the approved cap will change the nature of the activities at the airport. It is also the case that in reality, the local residents of UDC will experience an increase in the number of flights from the airport as a result of this appeal application.

Robustness of the demand forecast

2.15 The demand forecast underpins the nature of the development/operational scenario assessed, and as such, the assessment of impacts arising from the proposals.

2.16 The demand forecast should be based on realistic forecasts of demand and consider a 'worst-case' scenario when assessing the potential for environmental impact.

2.17 Since 2018, there has been a change in circumstances which creates uncertainty around whether the demand forecast can be relied upon for the assessment of environmental impact.

[1] STAL ES Vol 1, Para. 4.56

Aircraft fleet

2.18 The future of the B737MAX is an important consideration for UDC, given that the Airport's most important airline, Ryanair, is a major customer for this aircraft. In March 2019 the B737MAX was grounded worldwide. Since the Council's decision in January 2020, the type remains grounded and has suffered further cancellations of firm orders and options. However, some test flights have been made to modified aircraft, but the type has yet to receive certification from the US Federal Aviation Administration (FAA), which would normally be quickly followed by certification by other airworthiness authorities around the world. However, such is the concern about how the B737MAX originally received certification, its re-certification by these other authorities may take longer than normal. Airline customer confidence reflecting passengers' concerns is a further issue.

2.19 The B737MAX is not the only new aircraft type that might operate from the Airport, should it not be re-certified. However, re-fleeting by Ryanair to the primary alternative, the Airbus A321neo, would be likely to be a major and lengthy undertaking.

2.20 Replacement of existing aircraft with newer, more environmentally-friendly aircraft may be more challenging for Ryanair and other airlines in view of the severe financial impact on the aviation industry during 2020 as a result of the Covid-19 Pandemic. Although reduced demand and operation are likely to be short/medium term factors, the financial impact on the aviation industry is likely to be a longer-term consideration.

Impact of Covid-19 Pandemic

2.21 The Covid-19 Pandemic has had a dramatic impact on air traffic levels, and UDC anticipates that STAL's ES Addendum will contain revised traffic forecasts. There is much speculation, but many observers anticipate that it will be 2024 or later before demand again reaches 2019 levels: growth from there will be delayed for several years. Overall demand will be influenced by changes in GDP, and disposable incomes in an economy over the next few years experiencing high levels of unemployment. Air fares and taxes may be higher than might have been anticipated, and if so this would further slow recovery. Additionally, some potential passengers may be deterred from flying by fear of infection, and this may be particularly true of the older, 'grey' market which in recent years has been a significant component of demand, with about one passenger in six being 60 years or older.

2.22 All airports are different with different airline partners, route structures and passenger demographics, so that there will be different rates of recovery across UK airports. The Airport will need to compete for its traffic with other airports. The dynamics of the London Airport system are important to the rate of recovery, and this effect will be stronger in the future than in the past as each London airport now has different private sector owners so enhanced competition for traffic may be anticipated. The Airport will also have to cope with the closure of easyJet's base at the Airport.

2.23 In addition to the drastic impact on traffic volumes, the Pandemic has also severely damaged airline finances in many countries including the UK, with cash reserves depleted, capitalisation levels lowered, and debt levels raised. Airline finances in general are rarely robust at the best of times, so that in the aftermath of the Pandemic the ability of the industry to secure financing for new aircraft may well be much reduced. As noted above, this may well increase the life of existing fleets and delay the introduction of more environmentally-friendly aircraft.

2.24 These changes in circumstance give rise to concerns around whether the demand forecast can be relied upon for the assessment of environmental impact. STAL has failed to demonstrate that these changes would not produce an increased detrimental effect from aircraft noise or such an

effect on air quality. With regard to aircraft fleet issues, UDC sought this justification and an understanding of impact but insufficient information was provided by STAL. This has informed the Reasons for Refusal.

Policy /guidance/ legislative changes published after February 2018

2.25 The following is a summary of changes of policy/ guidance documents/ legislative changes, since February 2018 when the application was submitted, which have informed the RfR.

- Noise
- Air Quality
- Climate change

Table 2.2 Policy /guidance/legislative changes published after February 2018

Policy/ guidance document / legislative changes	Date
Noise	
World Health Organisation Environmental Noise Guidelines for the European Region	10 October 2018
Commission Directive (EU) 2020/367	4 March 2020
The Airports (Noise-related Operating Restrictions) (England and Wales) Regulations 2018	2018
ICCAN Review of the Survey of Noise Attitudes 2014, December 2019	December 2019
European Environment Agency, Environmental noise in Europe — 2020, March 2020	March 2020
Heathrow Expansion Project, Preliminary Environmental Information Report, June 2018	June 2018
Planning Practice Guidance – Noise, Ministry of Housing, Communities and Local Government, July 2019	July 2019
Air Quality	
Clean Air Strategy 2019	January 2019
Local Authority Air Quality Management Technical Guidance (09)	February 2009
Climate change	
DfT Beyond the horizon, the future of UK aviation: Making best use of existing runways ('MBU')	June 2018
DfT Airports National Policy Statement: new runway capacity and infrastructure at airports in the south east of England"	June 2018
DfT Aviation 2050 — the future of UK aviation: Consultation and supporting documents	Dec 2018
CCC advice on aviation (warning that stronger action may be needed beyond constraining aviation emissions to 2005 levels)	Feb 2019
The Climate Change Act 2008 (2050 Target Amendment) Order 26 June 2019	June 2019
CCC letter: Net-zero and the approach to international aviation	Sept 2019
ACI Commit To 'Net Zero' by 2050	Oct 2019
Sustainable Aviation Zero Carbon Roadmap	Feb 2020
ANPS declared illegal in R (Friends Of The Earth) V Secretary Of State For Transport And Others	Feb 2020

Policy/ guidance document / legislative changes	Date
DfT Decarbonising Transport: Setting the Challenge A consultation paper	March 2020
CCC Reducing UK emissions: 2020 Progress Report to Parliament	June 2020

2.26 STAL has failed to demonstrate how it has addressed the above policy/ guidance documents. UDC raised concerns about the extent and sufficiency of the Environmental Information from its first consideration of the application in November 2018. This has informed the Reasons for Refusal. Each policy change is further explained within Section 4 Reasons for Refusal.

3.0 Approach to Environmental Statement Addendum

3.1 The preparation of an Addendum is essential given the passage of time since the ES (submitted with the Planning Application on 22 February 2018) was prepared.

3.2 The Appellant's Statement of Case says (para. 3.11):

"... Given the passage of time, and the likely date for any public inquiry, it is the Appellant's intention to produce an ES Addendum which will serve to 'refresh' relevant aspects of the original ES. It is intended that the timing and scope of this work will be discussed with the Planning Inspectorate ('PINS') in due course."

3.3 This is further outlined in Section 5 of the Appellant's SoC in paragraphs 5.2 and 5.3;

"5.2 The ES was prepared in February 2018, although the application was not refused until January 2020. It is proposed to submit an ES Addendum, so that the Inspector and all parties to the Appeal have the benefit of an up to date assessment of the likely significant environmental effects of the appeal proposal.

5.3 A Scoping Opinion will be sought from PINS, but is likely to cover updates to:

Key baseline data (including air quality, road traffic, forecasts and employment)

- Assessment years
- Surface Access modelling
- Air noise contours
- Air quality
- Carbon
- Sensitivity tests for specific topics
- Minor updates to the public health and wellbeing / HIA; socio-economic assessment (including latest employment data) and ecology assessment (TBC)"

3.4 UDC is not aware of any guidance offered by PINS on the scoping of the ES Addendum. In early September 2020, UDC requested the Appellant to provide further information about the potential extent of the updates. Receipt of this is awaited, but UDC understands that this will not include assessments to address all of the matters raised in this SoC above, in circumstances where the gaps in assessments and the information provided fell short, in the judgement of the Planning Committee in its debate on 24 January 2020, when determining the application. The phrase "Minor updates to the public health and wellbeing/ HIA" does not convey confidence that the 'refresh' will conclusively address the proper concerns on which UDC's decision on the Application is founded.

4.0 Reasons for Refusal

R1 Air Noise

4.1 UDC's concern as to the impacts of aircraft noise arising from the development on the local environment was rooted in local and national policy:

(1) Policy ENV11 of UDC's adopted Local Plan provides that noise generating development will not be permitted if it would be liable to affect adversely the reasonable occupation of existing or proposed noise sensitive development nearby, unless the need for the development outweighs the degree of noise generated.

(2) Planning decisions should mitigate and reduce to a minimum, potential adverse impacts resulting from noise from new development, and avoid noise giving rise to significant adverse impacts on health and the quality of life (para. 180(a) of the NPPF, referencing the NPSE).

(3) Preventing new development from contributing to unacceptable levels of noise pollution is a key component of the national policy objective of enhancing the natural and local environment (para. 170(e) of the NPPF).

4.2 The focus of UDC's concern is on air noise rather than ground noise or surface access noise. In a number of key respects, the noise assessment contained in the ES was deficient by not demonstrating the full effects from aircraft noise on the local environment. As a result, there was a failure to demonstrate that the development would not result in an increased detrimental effect from aircraft noise.

Failure to consider and apply the WHO Environmental Noise Guidelines 2018 (ENG18)

4.3 The need for the environmental information supporting the application to reflect WHO's forthcoming guidelines on the impacts of aviation noise, whether within the ES or in a supplement, was a specific request raised in UDC's Scoping Opinion of 21 December 2017:

"In the event that the World Health Organisation ("WHO") new evidence on the impacts of aviation noise is published before a determination to grant planning permission, the ES assessment must incorporate this evidence (for example, by way of supplementary assessment)."

4.4 The ES was received by UDC on 22 February 2018. Whilst the WHO Environmental Noise Guidelines 2018 were published after that on 10 October 2018, that was about 1 month before the application was first considered on 14 November 2018 and over 1 year before the Decision Notice issued on 29 January 2020. WHO ENG 18 were discussed at the November 2018 Planning Committee and further considered by the Planning Committee in meetings from April 2019 onwards.

4.5 The Applicant therefore had ample opportunity to provide updated information for the Planning Committee accounting for WHO ENG18 prior to the determination of the application, as requested by UDC in the Scoping Opinion. Rather than provide that information to assist in presenting a full picture of the noise impacts, STAL's position appears to have been that the WHO ENG18 were not material to the assessment of the application, which appears to be maintained in STAL's SoC (para. 4.12).

4.6 Whilst it is accepted that existing UK Aviation Noise Policy is not based on WHO ENG18, concerns have been raised about Survey of Noise Attitudes 2014: Aircraft (SONA14), the UK

evidence base currently underpinning policy[2]. In that context, WHO ENG18 represents a relatively recent material consideration which should be considered in aviation noise assessments.

4.7 The WHO Environmental Noise Guidelines for the European Region provide guidance on protecting human health from the harmful effects of exposure to environmental noise. The aim of the ENG18 is to support legislation and policy-making process on local, regional and national level. The guidelines provide "strong recommendations" and as such the WHO state that they should "serve as the basis of policy-making processes".

4.8 In the light of concerns raised as to the evidence base behind UK Aviation Noise Policy, it is becoming common practice for noise assessments supporting airport noise developments to consider WHO ENG18 as a supplementary assessment[3] so as to:

- provide an additional understanding of the effects of the development should alternative dose-response relationships be applied; and
- to consider potential effects which may occur below the UK policy Lowest Observed Adverse Effect Level (LOAEL)[4].

4.9 Such an assessment was not carried out at the date of refusal of the application. It remains to be seen whether it will be included in the ES Addendum.

4.10 Since the Decision Notice, the adoption of WHO ENG18 into relevant European legislation, provides a regulatory basis for its consideration, such that it should no longer be ignored in decision making. Annex III of Directive 2002/49/EC concerns the establishment of assessment methods for the harmful effects of environmental noise. On 4 March 2020, Directive 2020/367/EC replaced Annex III of Directive 2002/49/EC so as to formally adopt the WHO ENG18 dose-response relationships for harmful effects induced by the exposure to environmental noise as the means of assessing noise and health. Directive 2002/49/EC is transposed into domestic law through the Environmental Noise (England) Regulations 2006 requiring designated major airports including Stansted to produce strategic noise maps and action plans.

4.11 Further, EU Regulation 598/2014, on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Union airports, is transposed into domestic law through the Airports (Noise-related Operating Restrictions) (England and Wales) Regulations 2018. The 2018 Regulations apply to Stansted airport and make the local planning authority the competent authority in relation to the imposition, modification, or discharge of a noise-related operating restriction.

4.12 The application proposes modifications within the terms of the 2018 Regulations through the revision of a noise contour restriction, and the modification of the passenger cap. As a result, the setting of such restrictions was a matter for UDC under the provisions of the 2018 Regulations. In those circumstances, it was reasonable that further assessment work taking into account the provisions of the wider regulatory framework was made available to UDC.

[2] https://iccan.gov.uk/wp-content/uploads/2019_12_18_ICCAN_Review_of_Survey_of_Noise_Attitudes.pdf
[3] For example: Heathrow Expansion Project, Preliminary Information Report (PEIR) Appendix 17.1
[4] Noting that LOAEL is the point at which policy determines 'adverse' effects to commence, this is not to say the effects do not occur below to the LOAEL. We note that T17 of ES defines the 'No Observed Effect Level' as being less than or equal to the LOAEL (51 dB LAeq, 16h and 45 dB LAeq,8hr). This is incompatible with the NPSE.

Failure fully to assess the impacts of noise on health, and significance

4.13 Both Government aviation noise policy[5] and the overarching noise policy[6] require the consideration of noise impacts on health and quality of life.

4.14 Whilst the Appellant's SoC[7] contends that UDC do not contest the findings of the Health Impact Assessment or the Health and Wellbeing Chapter of the ES (Chapter 14), the Appellant rightly recognises that the health effects of noise underpin RfR1 (as with air quality and related health effects under RFR2). There are a number of points to be made.

4.15 First, Chapter 14 of the ES applies various dose response relationships to determine potential health outcomes arising from aircraft noise. The methodology adopted is to align changes in health endpoints by calculating effects from noise exposure data which is summarised in 3 dB and 5 dB bands depending upon the selected metric[8]. With reference to the information presented in Chapter 7 of the ES, this presents data to show that the changes in noise exposure is generally below 1 dB (para. 14.62). As such, the selection of such large bands for calculating effects such as annoyance and sleep disturbance potentially masks the effects of small changes in noise exposure over a population. In such cases, the more appropriate approach is to determine the noise exposure at the population reference point and calculate the corresponding effect. This approach is advocated in Directive 2020/367.

4.16 Further or alternatively, smaller banding should be used when calculating the effects. Precedent for such an approach is set in the Government 'WebTAG' aviation noise workbook, which is used when making noise-related decisions for airspace change applications. This utilises 1 dB bands when calculating and monetising the effects of day and night-time noise exposure. Associated Government guidance[9] states *"Our preference is for the 1dB option to be used wherever possible in the context of assessing the impacts of airspace changes as it produces a more accurate calculation of the monetised value of the impact."*

4.17 The approach adopted for noise related health effects therefore has the potential to understate the health effects.

4.18 Secondly, whilst Chapter 14 of the ES presents health endpoints, the ES could have gone further in presenting a full picture of the effects of the development by including an assessment of:

a) Aircraft Noise Awakenings; and

b) Valuation of noise effects using Defra guidance *'Environmental noise: valuing impacts on sleep disturbance, annoyance, hypertension, productivity and quiet'* entailing the calculation of Disability Adjusted Life Years (DALYs).

4.19 Thirdly, Chapter 14 of the ES applies significance criteria which are principally set based on 'perception' (Table 14.2). This concept relies on the ability for a person to detect whether there has been a change in the sound environment. However, such approaches usually apply to steady state sounds, rather than intermittent sounds such as aircraft events, especially when this approach is applied to long-term average noise exposure.

4.20 Recent aircraft noise assessment approaches have identified that such effects could be significant, taking into account Government noise policy, noise level change and magnitude at individual receptors, and the overall effects change in health outcomes when that change is

[5] Air Navigation Guidance 2017
[6] Noise Policy Statement for England 2010
[7] Paragraph 4.41
[8] Environmental Statement, Tables 14.1.4 and 14.1.5
[9] Paragraph 1.14 Guide to WebTAG Noise Appraisal for non-experts

considered over a population[10]. That is, a small change over a large population may be more significant in health terms than a large change over a small population. Critically these approaches rely on understanding the effect of a change in aircraft noise exposure and the nature of the associated events making up that exposure, rather than whether a change in the exposure is perceptible. Perception is not a matter which is considered by the dose-response relationships underpinning policy and guidance. There is no better example of this than sleep disturbance i.e. the individual is not normally awoken to gauge 'perception' and indeed perception plays no part in the changes in sleep states associated with aircraft noise events, which occur when the receptor is essentially unconscious.

4.21 For the above reasons, the noise related health effects of the development may not have been fully reported in a manner reflecting Government policy, guidance and the wider evidence base.

Potential understatement of effects on Schools

4.22 The ES considers effects on educational receptors[11]. However, the approach taken is to assess the effect by adopting an averaged 16-hour (0700-2300) assessment metric. By adopting that metric, the effect on educational receptors is potentially understated.

4.23 The diurnal pattern of movements for the busy summer day forecasts are presented in F12 of Appendix 7.3 of the ES and show that increases in aircraft movements will occur during the school hours i.e. 0900-1600hrs. However, there is less of an increase outside of these hours during the day.

4.24 Consideration of noise impacts over relatively short time periods (e.g. 1-hour and 30 minutes) is a key consideration as part of the acoustic design performance standards for schools, as advocated by BB93[12]. Appendix 7.2 and 7.3 of the ES do not make direct reference to these standards or elaborate on the findings of the RANCH project in determining the potential effects of the development.

4.25 It is therefore considered that the potential effects of the Development on schools may not be sufficiently demonstrated and could have been potentially understated.

Assumed Aircraft Noise Performance

4.26 The forecasts for both the do-minimum and development scenarios in the 2018 ES make assumptions as to the fleet mix and, importantly, the number of latest generation aircraft types flying from the airport in each year. General concerns as to the robustness of the demand forecast are considered above.

4.27 In the context of aircraft noise, both the B737max and A320neo types are important to reducing the impact of Stansted's forecast growth to the current ATM limit.

4.28 At the time the ES was published, the 737max and A320neo types had only recently entered service. By 2019, the CAA reports[13] that on average over 4 arrivals and departures of the A320neo were occurring each day at Stansted, however no 737max types were operating at Stansted.

4.29 The noise modelling underpinning the Chapter 7 of the ES for these aircraft types is based on forecast aircraft noise performance, accounting for the noise certification data available for

[10] Leeds Bradford Airport Project Sky, Environmental Statement 2020
[11] Environmental Statement, Chapter 10
[12] BB93: acoustic design of schools - performance standards
[13] ERCD Report 1903

these types[14]. This is calculated by altering the aircraft noise characteristics for the known, previous generation of these types and adjusting these to reflect the improvements in noise output indicated by certification data. However, the modelling used for Stansted (CAA ANCON) is based on a validation of flight performance and noise using the Airport's radar and noise monitoring systems[15]. It therefore follows that the noise performance of these aircraft may not be as assumed. Whilst the ES presents sensitivity tests considering different fleet mixes, it stops short of considering a scenario where the noise performance of these types was not as indicated by the certification.

4.30 Given B737max types are not in service, and that the A320neo types will have been in operation at other noise designated airports, it is important that sensitivity tests on these aircraft's noise performance is carried out using measured data to support the findings of the ES.

Relevance of the Revised 57 dB Contour Restriction and Potential Influence of Covid-19

4.31 The Appellant makes the point that, in any event, regardless of predicted changes in fleet mix, improved noise performance can be secured through the tightening of its 57 dB contour restriction so that the current restriction, 33.9km^2 reduces to 28.7km^2 from 2028. This commitment would be legally binding through a planning condition (SoC, para. 4.13).

4.32 However, the Government's current policy moves away from the measure of 57 dB $L_{Aeq,16hr}$ to seek better alignment with overarching noise policy (NPSE) through the setting of aviation LOAELs. This has resulted in the setting of a Lowest Observed Adverse Effect Level (LOAEL) for aviation noise at 51 dB $L_{Aeq,16hr}$ and 45 dB $L_{Aeq,8hr}$ for day and night respectively.

4.33 When these metrics are reviewed, it is apparent that the area and number of people affected by aircraft noise above the LOAEL will increase above the limits conditioned by the 25+ Permission by 2023, before beginning to fall. As such the development would contribute towards an increase in the areas within which Government policy would indicate adverse effects occur.

Table 4.1 Comparison of Areas, Households and Populations Above Government Policy Daytime LOAELs

Scenario	LAeq,16h (dB)	Area (km2)	Households	Population
25+	>51	99.1	6,150 (+19)	15,350 (+46)
2016 Baseline	>51	82.9	4,950	12,600
2023 Do Minimum	>51	101.7	6,650 (+4)	16,850 (+10)
2023 Development Case	>51	104.4	6,950 (+4)	17,550 (+10)
2028 Do Minimum	>51	87.4	4,700	11,800
2028 Development Case	>51	97	6,000 (+1)	15,250 (+2)

4.34 The Appellant's SoC points to continued reductions in aircraft noise levels. Whilst this would bring the impacts into line with the 57 dB LAeq, 16hr metric, as demonstrated above, it is not necessarily the case for a metric which policy aligns to the onset of adverse effects.

4.35 For night-time noise, the information presented in the ES also points to an increase in night-time noise compared to a scenario where the development did not occur.

4.36 It is recognised that any proposal for a noise contour restriction of any form needs to align with forecasts. However, given the uncertainties associated with the recovery of operations at Stansted Airport due to the Covid-19 pandemic, there is a risk that the setting of a contour restriction based on the current ES forecasts may allow for a different type of impact beyond what is consented. For example, if the noise contour is set too wide, this potentially allows the

[14] Environmental Statement, Chapter 10 Table 7.6
[15] https://www.caa.co.uk/Consumers/Environment/Noise/Features-of-the-ANCON-noise-modelling-process/

airport to operate with larger aircraft than previously assumed at the time of consent, which may result in a different set of impacts and effects according to other metrics (e.g. N65/N60) than understood at the time of the consent.

Night-time Noise Effects and Insulation Scheme

4.37 The ES sets Significance Observed Adverse Effect Levels (SOAEL) for day and night-time periods. These are set at 63 dB LAeq,16hr and 54 dB LAeq,8hr respectively (Table 7.3).

4.38 The Airport has an insulation policy which currently provides 50% of the total cost of acoustic insulation for residences exposed to noise levels in excess of 63 dB $L_{Aeq,16hr}$ and 57 dB $L_{Aeq,8hr}$ for day and night respectively, with provision made for aircraft noise events exceeding 90 dB SEL.

4.39 The Appellant proposes to implement an 'Enhanced Sound Insulation Grant Scheme' if permission is granted (paras. 7.301-304). This scheme allows for insulation works to be provided directly by STAL as well as updating the daytime elements of the existing scheme.

4.40 When the noise contours for 2028 are reviewed, the 57 dB $L_{Aeq,16hr}$ contour has roughly the same extent as the 54 dB $L_{Aeq,16hr}$ contour[16]. On this basis, properties experiencing noise effects above the selected daytime SOAEL (significant in policy terms) would receive at least £8,000 per index property under the Enhanced scheme, whereas those exposed to the night-time SOAEL (also significant in policy terms) would receive £5,000 per index property. Given that sleep disturbance is widely considered to be more harmful than annoyance, and that Government policy is clear that night noise is *'regarded as the least acceptable aspect of aircraft operations'*[17], there appears to be an inconsistency between the scheme proposals and the resultant contribution towards the mitigation of the effects in that:

- Major infrastructure projects, including airport development projects, have set noise insulation policies which specifically align insulation eligibility with noise exposure above SOAEL as this is recognised as a means to *"avoid significant adverse effects on health and quality of life"*[18].
- The area and numbers of households exposed to selected SOAEL increases over time with the Development (500 households in 2016, to around 1,100 in 2023 with the Development, an increase of 200 households compared to the do-minimum)[19].
- The development would result in the new introduction of dwellings and populations to noise exposure which the Appellant acknowledges is 'significant' in the context of Government noise policy.

4.41 It is noted that with respect to night noise, no apparent calculations of Sleep Disturbance are provided in Chapter 7, and as outlined in para. 4.19 above, further information relating to the effects could have been provided.

4.42 It is recognised that night noise at the Airport is regulated by the Government given Stansted's status as a 'noise designated' airport. However, these restrictions apply to the noise quota period i.e. 2330-0600 and not to the shoulder periods. As such, there remain periods of the night where Stansted does not have a defined movement or noise quota limit i.e. 2300-2330 and 0600-0700. As such, there are no movement restrictions during these times and no other noise-related restrictions which affect aircraft movements during these times. In that context, it is not clear from the ES whether aircraft activity during these times is representative of a worst case or whether further growth in movements and or noise during these hours is possible.

[16] Figure 2028DC/LAeq/Day compared to Figure 2028DC/LAeq/Night
[17] Aviation Policy Framework, Para 3.34
[18] See Heathrow Cranford Agreement decision where PINS recommended insulation be provided at SOAEL upwards
[19] Environmental Statement Appendix 7.3 Table T31, compared to Tables T43 and T37

4.43 It can be noted that UDC raised the importance of night noise and that it should be fully explored as part of the Scoping Opinion (*'Night noise must also be addressed robustly and comprehensively … Night time noise assessment is important … Night noise restrictions must be reviewed and their impact on aircraft movements assessed and explained.")*.

R2 Air Quality

4.44 Pursuant to Policy ENV13 of UDC's adopted Local Plan, development that would involve users being exposed on an extended long-term basis to poor air quality outdoors near ground level will not be permitted. Planning decisions should sustain and contribute towards compliance with relevant limit values or national objectives for pollutants, taking into account the presence of Air Quality Management Areas (para. 181 of the NPPF). Wherever possible, development should help to improve local environmental conditions such as air quality, taking into account relevant information such as management plans (para. 170(e) of the NPPF).

4.45 Against that policy background, UDC is rightly concerned that its residents should benefit from the highest level of protection against air pollutants. It is all the more important that the air quality impacts are properly assessed, understood, and adequately mitigated where the environmental effects of the development will be felt for generations. Particularly with regard to PM2.5 and ultrafine particles, where national policy is evolving, it is reasonable to expect that the proposed development will be adequately future proofed in relation to national commitments.

4.46 In a number of respects, the ES supporting the application is either unclear, does not provide sufficient information, or has the effect of understating the air quality impacts, with the result that there has been a failure to demonstrate that there will not be a detrimental effect on air quality for local residents. The issues set out below relate to sections of Chapter 10 (Air Quality) of the ES.

Failure properly to address Policy ENV13 in the identification of sensitive receptors

4.47 Policy ENV13 of the Local Plan provides that a zone 100 metres on either side of the central reservation of the M11 and a zone 35 metres either side of the centre of the A120 require particular focus with regard to extended long term exposure to poor air quality. While the assessment appears to include some receptors in this zone, no evaluation of impacts in these zones was carried out or reported in the ES. As a result, the impacts in these areas have not been properly assessed in accordance with the policy.

Failure to apply EHDC's Air Quality Planning Guidance

4.48 East Hertfordshire District Council has published supplementary guidance for air quality assessment for projects which could affect Air Quality Management Areas (AQMAs) in its District. Whilst this is referred to in Chapter 10 of the ES[20], its guidance is not applied. The Guidance requires classification of proposals and provision of appropriate mitigation. There is no reference to the classification of the proposed development in the ES. Whilst mitigation of impacts in the Bishop's Stortford AQMA was the subject of discussion between EHDC, UDC and the Appellant, in the event no undertaking to provide mitigation was agreed between the parties.

[20] Environmental Statement paragraph 10.23

Approximation, simplification, and understatement of forecast emissions within the Emissions Inventory Compilation Methodology

4.49 Whilst it is accepted that the emissions inventory has in some respects been compiled in accordance with good practice, there are a number of information shortfalls that are consistent with a potential understatement of the forecast emissions and that cannot be left unanswered in an important application such as this:

1 There is an over reliance on generic aircraft activity data, much of which are taken from non-UK sources, to forecast emissions. For example, US sources have been used for approach and initial-climb/climb-out times, rather than acquiring local data from the airport's radar systems.

2 The methodology makes a number of assumptions that are not backed up by supporting data. For example, it is assumed that all departures utilise reduced thrust at 85% power rating. There is no guarantee that this is conservative as it is not backed up by supporting evidence.

3 For the future assessment years, the NOx Emission factors for CFM International's LEAP aircraft engines appear to be too low, when comparing the 2016 LEAP 1-A data used to the most recent emissions data for these aircraft engine emissions. Specifically, STAL has not identified which variant of the LEAP 1-A and 1-B engines it relies on for its NOx emissions factors.

4 The assumed speeds of airport road vehicles appear to be too high as it is likely there will be a significant amount of idling. Furthermore, no account has been taken of real world emission factors: diesel vehicles in particular do not perform to the same standards in the real world as they do under test conditions.

4.50 These issues could result in an increase in estimated emissions from the airport.

Failure adequately to assess air quality impacts on Bishop's Stortford Air Quality Management Area

4.51 Chapter 10 of the ES includes consideration of potential impacts at locations within the nearby Bishop's Stortford AQMA[21]. However, the information provided does not support the conclusion that there would be no significant impacts in this AQMA.

4.52 Firstly, the calculated baseline concentration of nitrogen dioxide in the AQMA of 57 µg/m3 is substantially below the levels of up to 76 µg/m3 recently measured[22]. This will tend to result in an under-estimate of impacts when projecting forward for future years.

4.53 Secondly, the assessment is based on the modelled results at a small number of identified locations[23], and fails to reflect the fact that similar impacts can be expected to arise at a large number of sensitive locations in the centre of Bishop's Stortford.

4.54 Thirdly, the assessment assumes that expected improvements in air quality will take place as forecast. It is good practice to sensitivity test the study findings to support this assumption[24]. In view of the high measured levels of air pollution in Bishop's Stortford, it is likely that this approach will identify a significant risk of higher impacts than those set out in the ES.

[21] Environmental Statement paragraph 10.95ff.
[22] Environmental Statement Table 10.7 and paragraph 10.121
[23] Environment Statement paragraphs 10.121 to 10.125
[24] Moorcroft and Barrowcliffe et al. (2017) "Land-use Planning & Development Control: Planning for Air Quality. London: Institute of Air Quality Management," Version 1.2 Section 6.22i

Failure adequately to assess airborne particulate matter

4.55 The ES indicates that levels of fine particulate matter (referred to as PM2.5) in the vicinity of the proposed development are forecast to comply with the current air quality standard for PM2.5[25]. However, there is a commitment in the Clean Air Strategy 2019 to review this air quality standard, to bring it into line with current scientific understanding of the environmental and health effects of PM2.5[26]:

"We will progressively cut public exposure to particulate matter pollution as suggested by the World Health Organization. We will set a new, ambitious, long-term target to reduce people's exposure to PM2.5 and will publish evidence early in 2019 to examine what action would be needed to meet the WHO annual mean guideline limit of 10 µg/m3"

4.56 Adopting a more precautionary guideline, such as the World Health Organisation guideline for PM2.5 referred to in the Clean Air Strategy, would be likely to result in a risk of significant impacts arising from the proposed development being identified. The Clean Air Strategy 2019 was published in January 2019, after the ES was published, but before UDC's refusal in January 2020. It is a material consideration carrying considerable weight as to the direction of travel on policy protection against air pollutants such as PM2.5.

4.57 UDC is rightly concerned that its residents should benefit from the highest level of protection against such pollutants. STAL failed to demonstrate that the proposed development would not result in a detrimental effect on PM2.5 levels in the local area.

4.58 Particles with a diameter of less than 0.1 microns ($PM_{0.1}$) are often referred to as "ultrafine particles". These particles can have specific health effects, and a recent report by Defra's Air Quality Expert Group[27] included specific consideration of the effects of aviation on levels of ultrafine particles, finding significant increases in the vicinity of airports and a growing contribution into the future. UDC is concerned that no information on ultrafine particulates was provided in the ES to enable consideration of the risks posed by ultrafine particles, and identification of any suitable measures that may be required to ensure that local residents are not exposed to unacceptable risks.

Failure adequately to assess air quality impacts on ecological receptors, namely habitat sites

4.59 The assessment of impacts on nearby designated habitat sites due to airborne exposure pathways within the ES[28] is incomplete. Specifically:

1 The ES does not consider the potential impacts on designated habitat sites due to acid deposition, and does not include an assessment against the air quality guideline for 24 hour mean concentrations of oxides of nitrogen, despite both issues being clearly referenced for the relevant Sites of Special Scientific Interest on the Nature Conservation Agencies' Air Pollution Information System (APIS) website[29].

2 The study does not consider the potential impact of ammonia emissions from road traffic or aircraft on designated nature conservation sites.

[25] Environmental Statement paragraph 10.125
[26] Clean Air Strategy 2019 page 7
[27] Air Quality Expert Group "Ultrafine particles (UFP) in the UK", July 2018 *https://uk-air.defra.gov.uk/library/reports.php?report_id=968*
[28] Environmental Statement para. 10.127ff.
[29] http://www.apis.ac.uk/ accessed 7 September 2020

3 The study indicates that concentrations of oxides of nitrogen are close to the annual mean air quality guideline at Elsenham Woods SSSI[30]. As noted above, it is good practice to sensitivity test the study findings to support the assumption that background levels will decline in future. In view of the high levels of air pollution at this site, it is likely that this approach will identify a significant risk of higher impacts than those set out in the ES.

4 The study states that site-specific advice on sensitivity to nitrogen deposition should be sought in relation to Thorley Flood Plain and Little Hallingbury Marsh SSSIs[31]. However, there is no indication that such advice was sought, and as a result no impacts are reported at these sites.

Failure properly to assess cumulative and combined effects

4.60 The ES indicates that cumulative effects have been assessed by incorporating the effects of committed future development into the traffic forecasts[32]. However, this would only provide an assessment of cumulative effects if these committed development traffic flows are incorporated into the proposed development scenario traffic forecasts, but not incorporated into the "do minimum" scenario traffic forecasts. As this does not appear to have been done, the assessment does not adequately consider cumulative effects with other committed developments.

4.61 The ES should also consider combined effects of the development – for example, whether the combined impacts of noise and air pollution associated with the proposed development could result in an impact which is greater than that identified when considering these issues separately. This does not appear to have been carried out.

Inconsistency with Stansted Airport's own Sustainable Development Plan

4.62 STAL published a Sustainable Development Plan in 2015 which is referred to in the Incorporated Mitigation section of the ES[33]. This plan commits Stansted Airport Ltd to aims which include the following:

- Reduce air pollution;
- Reduce emissions generated by ground vehicles and aircraft;

4.63 Far from contributing to achieving these objectives, the information set out in the ES demonstrates that the proposed development would result in an increase in air pollution[34], and would increase emissions from ground vehicles and aircraft[35].

4.64 This proposed development is therefore not only incompatible with relevant local (ENV13) and national policy (para. 181, NPPF), it also works against STAL's own stated objectives.

R3 Carbon Emissions

4.65 At the heart of this Reason for Refusal, UDC was not satisfied that the Application was consistent with the Government's Paris Agreement obligations and Net Zero target, namely its duty to reduce greenhouse gas emissions to at least 100% lower than the 1990 baseline, when taking into account advice on growth and emissions issued by the Committee for Climate Change, and the direction of travel of policy in this area.

[30] Environmental Statement para. 10.130
[31] Environmental Statement para. 10.132
[32] Environmental Statement paragraph 10.136
[33] Environmental Statement para. 10.112
[34] Environmental Statement paragraphs 10.122 to 10.125
[35] Environmental Statement Tables 10.9 and 10.10

4.66 Policy on climate change and carbon emissions from aviation has changed significantly since the ES was published in February 2018. Appendix 6 'Climate change: relevant legislative, guidance, and policy changes since the Climate Change Act 2008 was enacted' attached to this SoC includes relevant legislative, guidance, and policy changes since the Climate Change Act 2008 was enacted, alongside the timeline of the Application, demonstrating the rapidly changing climate policy background against which it was considered. Appropriate reference will be made in UDC's evidence to this background and the increasingly restrictive direction of travel it reveals, but the following specific points can be noted.

4.67 First, as regards the ES, Chapter 12 on Carbon Emissions:

1 Did not refer to the Paris Agreement[36], concluded in December 2015 as an agreement within the UN Framework Convention on Climate Change, which was ratified by the UK in November 2016.

2 Did not acknowledge that the UK Aviation Forecasts 2017 (published by the DfT) referred to in para. 12.17, included passenger forecasts for Stansted which showed Stansted remaining at 35 mppa until 2050. These forecasts are used as the basis for policy including the Airports National Policy Statement and the Aviation 2050 consultation. Whilst UK wide demand is recorded as growing from 267 mppa in 2016 to 395-437 mppa under the low and high scenarios in 2050, no justification was provided in the ES as to why Stansted's intended growth should be in preference to other UK airports.

4.68 Secondly, during the period of consideration of the Application:

1 In February 2019, the Committee for Climate Change, in responding to Aviation 2050, warned the Government, by reference to the Paris Agreement, that stronger action may be needed to constrain aviation emissions to 2005 levels (37.5 MtCO2e). The letter noted that achieving aviation emissions at or below 2005 levels in 2050 will require contributions from all parts of the aviation sector, including steps to limit growth in demand, and actual reductions in emissions rather than reliance on offsets. This was taken forward to the CCC's Net Zero Report (May 2019), in which it was recommended that the UK should legislate as soon as possible to reach net zero greenhouse gas emissions by 2050 covering all sections of the economy, including international aviation, as an appropriate contribution to the Paris Agreement, and achieve that through a number of steps, including more limited aviation demand growth.

2 In June 2019, the target figure in s.1 of the Climate Change Act 2008 was amended from at least 80% to at least 100% reduction of greenhouse gases below 1990 levels.

3 Whilst s.30(1) of the Climate Change Act, which excludes greenhouse gas emissions from international aviation from the target, has not yet been amended, CCC's letter of September 2019 on net-zero and the approach to international aviation confirmed that:

- the Government clarified to Parliament that the target must cover the whole economy including international aviation.
- Its advice that 2050 was an appropriate date for net-zero to be achieved was based on formal inclusion of international aviation emissions within the target.

The letter of September 2019 also advised that:

- the Government should assess its airport capacity strategy in the context that zero carbon aviation is highly unlikely to be feasible by 2050.

[36] Chapter 13 of the ES (Climate Change) did refer to the Paris Agreement (para. 13.15), but it has not been taken into account in assessing Carbon Emissions.

- CCC's scenarios for its net-zero advice suggest aviation emissions could be reduced from 36.5 MtCO2 in 2017 to around 30 MtCO2 in 2050 through a combination of steps, including by managing demand growth.
- Growth should be limited to no more than 25% above current levels by 2050, and further demand reduction is possible beyond that.

4.69 Thirdly, since UDC's refusal of permission in January 2020:

1 In February 2020 the Court of Appeal declared the designation of the ANPS to be unlawful and prevented it from having any legal effect unless and until the SoS had undertaken a review of it in accordance with the relevant provisions of the Planning Act 2008. In so doing, the Court held that the statutory regime for the formulation of government policy in a national policy statement under the Planning Act 2008 was not fully complied with, in that the Paris Agreement ought to have been taken into account by the SoS, but was not. What that meant, in effect, is that the Government had not taken into account its own firm policy commitments on climate change under the Paris Agreement (*R (Plan B Earth) v SOST, Heathrow Airport Ltd. Arora Holdings Ltd. et al.* [EWCA] Civ 214 at paras. 280 and 283 per Lindblom LJ). This brings into sharp focus the need for considerations arising from the Paris Agreement to be addressed as part of this application, as a material consideration.

2 Consistent with its September 2019 letter, CCC's 2020 Progress Report to Parliament (June 2020) recommended the formal inclusion of international aviation within UK climate targets when setting the Sixth Carbon Budget, and that the UK's airport capacity strategy is reviewed by 2021 in light of COVID-19 and Net Zero.

4.70 Against the above background, UDC contend that the ES supporting the Application did not present a clear picture on carbon emissions assessed against the full policy background on climate change, and STAL failed to update that picture to address reasonable concerns raised during consideration of the application as to the direction of travel of climate change policy.

4.71 Importantly, STAL's continued reliance upon the non-amendment to s.30(1) of the Climate Change Act 2008, the Aviation Policy Framework 2013, and Beyond the horizon, the future of UK aviation: Making best use of existing runways 2018, fails to provide any assurance to UDC that the direction of travel of national policy on climate change has been properly acknowledged and assessed, and suffers from the same flaw as the ANPS in not taking account of the Paris Agreement and the commitment to net-zero. There are a series of material considerations set out above which must be taken into account and properly assessed.

4.72 Moreover, UDC will contend that airport expansion plans across the UK, of which this is one example, should be considered against CCC's recommendations that demand growth should be limited to at most 25% above current levels, that there is potential to reduce emissions further through constraints on demand, and that the Government's airport capacity strategy should be re-assessed in the light of aviation playing its part in a Net Zero strategy.

4.73 UDC will contend that the conclusions of the Sustainable Aviation 2020 Decarbonisation Roadmap carry very little weight given the uncertainties around the economic and technical measures it relies upon, and the extent to which it relies on carbon offsetting. In particular, the Roadmap does not account for Radiative Forcing Effect (the effects which fuel combustion in the upper atmosphere is known to cause, which is significantly larger than equivalent combustion on the ground). Whilst its effects are uncertain, they are not yet accounted for in carbon budgeting, which is a consideration which undermines the extent to which weight can be placed on the Roadmap.

4.74 It is acknowledged that STAL's proposals could be supported by a clear decarbonisation plan so as to meet the above policy objectives, but this has not been demonstrated. Whilst UDC is

unconvinced by the material currently put forward, it is acknowledged that progress is being made by the aviation industry on, for example, emissions from new generation engines. That brings into question the extent to which new generation engines will be forthcoming, in what form, and at what time, which are matters referred to in the above sections of this SoC and not repeated here.

4.75 Finally, without prejudice to UDC's case on emissions, the extent to which the increases in annual passenger capacity could be linked to the delivery of carbon emission targets in stages will be explored.

R4 Necessary Infrastructure and Mitigation

4.76 UDC accepts that RFR4 could be overcome by a planning obligation / unilateral undertaking and planning conditions that provide the necessary infrastructure to support the appeal proposal, and the necessary mitigation to address its impacts. It will show how the planning obligation and planning conditions recommended to the Planning Committee in January 2020 were deficient in certain respects, in the light of changes in applicable policy and guidance since the application was submitted. The concerns raised by the Planning Committee were reflected in correspondence received from STAL prior to the refusal of the Application in January 2020 (letter from MAG dated 8 January 2020 and accompanying Table).

4.77 There were two objectives to the package of measures that were proposed by the applicant. The first was to ensure that provision was made to ensure that the highway network had adequate capacity to accommodate the road traffic generated by the development. This was underpinned by the proposed S106 Agreement and S278 Agreement. However, the majority of the obligations related to second objective of mitigating the environmental impacts of the proposals. UDC's case will show how the environmental assessment was deficient as policy and guidance has moved on, and therefore, the package as at January 2020 would not have adequately mitigated the impacts of the development such that harm may have resulted.

4.78 With regard to the capacity of the highway network, since the Planning Committee considered the S106 Agreement containing STAL's obligations to address the effects of its proposals in January 2020, there has been a material change in circumstances. The interim capacity improvement project for M11 J8 has been put on hold following a significant shortfall in funds to provide for its delivery. It was to have been funded on a multi-agency basis, with contributions from Essex County Council, Highways England, Cambridgeshire and Peterborough LEP, and STAL. Although there is a detailed scheme that is ready for implementation, it cannot proceed until future opportunities arise to bid for its funding.

4.79 STAL's proposed interim plus scheme to address the surface access impacts of its proposals is predicated on the successful implementation of the interim scheme that is now on hold for an indefinite period.

4.80 STAL will therefore need to bring forward new proposals to ensure that the impacts of surface access trips generated by its development proposals can be accommodated on the road network at this strategic junction.

4.81 Furthermore, COVID-19 has impacted on surface access trips to and from the airport, for air passengers and workers, and those using the airport to access coach and rail services. While the number of such trips has been depressed, there has been a shift away from public transport. At present there is significant uncertainty as to whether the modal split will return to the 2019 position as traffic recovers over time, or whether consumer preferences will have shifted significantly, with a greater proportion of trips by car including kiss and fly.

4.82 To the extent that the concerns raised in relation to aircraft noise, air quality, and carbon emissions are not explained or met by mitigation through the S106 Agreement and planning conditions, the proposals may give rise to harm.

5.0 Conclusion

5.1 This is an application that will bring about a significant change in air traffic movements at Stansted Airport. The practical reality is that the implementation of this application will yield a significantly greater number of PATMs than is currently possible. The protection afforded by the dual-cap restriction that was imposed by the Secretaries of State in 2008 will fall away. This is but the latest increase in residents' memory that has seen the transformation of what was a barely used airport in the 1980s into one of the busiest in the country. The limits of the ability of the site and its surroundings to accommodate these changes is evident from previous expansion proposals at Stansted. This is not an instance of a development where the vast majority of residents have bought into an area knowing that it was in the vicinity of one of the country's busiest airports. This is an instance in which most have had to put up with it becoming just that.

5.2 Given both the nature of the change proposed, and the sensitivity of the site, the Application was rightly subject to detailed evaluation by the Council. The Application proposals were recognised to be a very important development for UDC, reflecting amongst other considerations, the economic importance of the Airport to the District, but also one that raised clear and detailed concerns amongst residents about the potential for real and substantive environmental effects, should it be approved. UDC had a heavy and enduring responsibility to its constituents. That responsibility could only be properly discharged by anxious scrutiny of the proposal and the evidence put forward to support it.

5.3 The Planning Committee, in its consideration of the Application, demonstrably showed through the sequence of meetings from November 2018 through to January 2020 that it needed to be convinced about the nature and scale of effects that would result from the implementation of the planning permission, and importantly, the ability for those effects to be adequately mitigated. As an outcome of this process, it concluded that the information provided as at January 2020 fell short of that required to properly assess the environmental impacts associated with the Application. Without this information, it was not possible to conclude on the nature of impacts arising, and as a consequence, the adequacy of the proposed mitigation, leading to refusal of the application.

5.4 UDC will call expert witnesses to demonstrate that there are assessments that should be undertaken in relation to air noise, air quality and carbon emissions and the associated consequences for health and wellbeing of local communities. These may require additional mitigation and alternative controls. If necessary measures are not feasible or enforceable, the appeal should be dismissed.

5.5 The current position is that UDC proposes to call expert witnesses to advise the Inquiry on the following matters:

- Aviation Forecasts and the implications for air transport and other aircraft movements at Stansted;
- Air Noise (and related health effects);
- Air Quality (and related health effects);
- Carbon Emissions; and
- Planning.

Appendix 1 Statement of Case references

1 STAL ES Vol 1, Para. 4.56

2 https://iccan.gov.uk/wp-content/uploads/2019_12_18_ICCAN_Review_of_Survey_of_Noise_Attitudes.pdf

3 For example: Heathrow Expansion Project, Preliminary Information Report (PEIR) Appendix 17.1

4 Noting that LOAEL is the point at which policy determines 'adverse' effects to commence, this is not to say the effects do not occur below to the LOAEL. We note that T17 of ES defines the 'No Observed Effect Level' as being less than or equal to the LOAEL (51 dB LAeq, 16h and 45 dB LAeq,8hr). This is incompatible with the NPSE.

5 Air Navigation Guidance 2017

6 Noise Policy Statement for England 2010

7 Paragraph 4.41

8 Environmental Statement, Tables 14.1.4 and 14.1.5

9 Paragraph 1.14 Guide to WebTAG Noise Appraisal for non-experts

10 Leeds Bradford Airport Project Sky, Environmental Statement 2020

11 Environmental Statement, Chapter 10

12 BB93: acoustic design of schools - performance standards

13 ERCD Report 1903

14 Environmental Statement, Chapter 10 Table 7.6

15 https://www.caa.co.uk/Consumers/Environment/Noise/Features-of-the-ANCON-noise-modelling-process/

16 Figure 2028DC/LAeq/Day compared to Figure 2028DC/LAeq/Night

17 Aviation Policy Framework, Para 3.34

18 See Heathrow Cranford Agreement decision where PINS recommended insulation be provided at SOAEL upwards

19 Environmental Statement Appendix 7.3 Table T31, compared to Tables T43 and T37

20 Environmental Statement paragraph 10.23

21 Environmental Statement paragraph 10.95ff.

22 Environmental Statement Table 10.7 and paragraph 10.121

23 Environment Statement paragraphs 10.121 to 10.125

24 Moorcroft and Barrowcliffe et al. (2017) "Land-use Planning & Development Control: Planning for Air Quality. London: Institute of Air Quality Management," Version 1.2 Section 6.22i

25 Environmental Statement paragraph 10.125

26 Clean Air Strategy 2019 page 7

Appendix 6 Climate change: relevant legislative, guidance and policy changes since the Climate Change Act 2008 was enacted

Table 5.1 Climate change: policy changes and planning application timelines

Date	Policy changes	Planning application timeline
2008	Climate Change Act 2008	
Dec 2012	International aviation and shipping emissions and the UK's carbon budgets and 2050 target	
March 2013	CCC Aviation factsheet	
Dec 2015	Paris Agreement	
Dec 2016	Sustainable Aviation CO2 Road-Map	
2017	UK Aviation Forecasts	
Feb 2018		Stansted Planning application 22 Feb 2018
June 2018	DfT Beyond the horizon, the future of UK aviation: Making best use of existing runways ('MBU')	
June 2018	DfT Airports National Policy Statement: new runway capacity and infrastructure at airports in the south east of England"	
		First planning committee date resolves to approve the application
Dec 2018	DfT Aviation 2050 — the future of UK aviation: Consultation and supporting documents	
Feb 2019	CCC advice on aviation (warning that stronger action may be needed beyond constraining aviation emissions to 2005 levels)	
June 2019	The Climate Change Act 2008 (2050 Target Amendment) Order 26 June 2019	Extraordinary council meeting resolves not to issue consent, two days later, 28 June 2019
July 2019	Uttlesford District Council declare climate emergency and commit to making Uttlesford carbon neutral by 2030	
Sept 2019	CCC letter: Net-zero and the approach to international aviation	
Oct 2019	ACI Commit To 'Net Zero' by 2050	
24 January 2020		Extraordinary Planning Committee refuse application
Feb 2020	Sustainable Aviation Zero Carbon Roadmap	
Feb 2020	ANPS declared illegal in R (Friends Of The Earth) V Secretary Of State For Transport And Others	
March 2020	DfT Decarbonising Transport: Setting the Challenge A consultation paper	

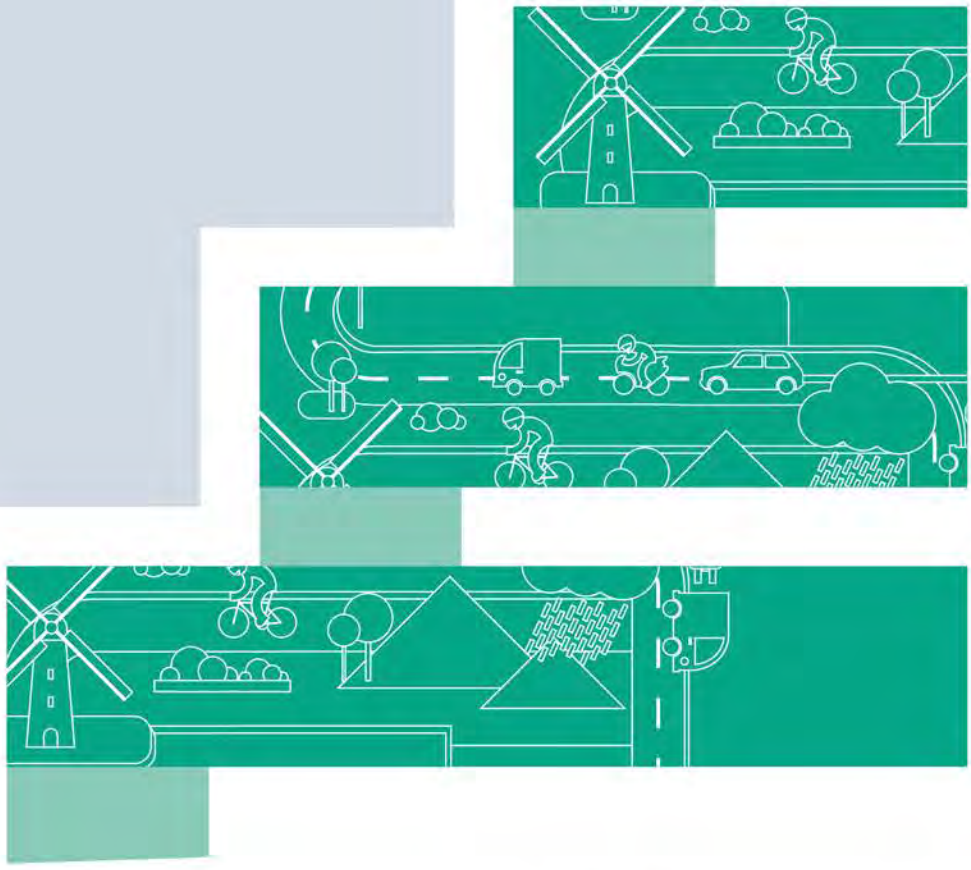
: Appendix 6 Climate change: relevant legislative, guidance and policy changes since the Climate Change Act 2008 was enacted

Date	Policy changes	Planning application timeline
June 2020	CCC Reducing UK emissions: 2020 Progress Report to Parliament	
July 2020		Notice of appeal and Statement of Case

TRANSFORMING LONDON STANSTED AIRPORT

35+ PLANNING APPEAL

Chapter 12
Carbon Emissions



MAG
London Stansted
Airport

12 CARBON EMISSIONS

12.1 Introduction

12.1.1 This chapter, prepared by Arup, presents the findings of the updated carbon emissions assessment undertaken for the proposed development (now the subject of the Appeal) which takes account of the revised aviation forecasts, baseline and assessment years. It considers the carbon impacts associated with the proposed development and should be read in conjunction with Chapter 12 (Carbon Emissions) of the 2018 ES, as it focusses principally on changes that have occurred since submission of the 2018 ES.

12.1.2 The carbon assessment methodology for this ES Addendum (ESA) remains unchanged from the 2018 ES. This chapter describes:

- Revisions to legislation, guidance and planning policy as it affects the carbon assessment;
- Any necessary revisions to the assessment parameters, including assumptions and limitations, and significance criteria;
- Updated impact assessment; and
- An assessment of cumulative and residual effects.

12.1.3 As before, the assessment quantifies current carbon emission levels and those projected to occur in the future, both with the proposed development (Development Case - DC) and without the proposed development (Do Minimum - DM) scenarios. The revised assessment years are listed below:

- Baseline year: 2019;
- Full capacity year: 2032 (the Principal Assessment Year); and
- Transition year: 2027 (the year in which the current limit of 35mppa is reached).

12.1.4 Carbon emissions from flights have been assessed and extrapolated to 2050, the UK's net zero target year.

12.1.5 This chapter should be read in conjunction with Chapter 12 of the 2018 ES, together with the corresponding 2018 ES Appendix 12, and the revised detailed emissions calculations contained at Appendix 12 to this ESA.

12.2 Summary of Conclusion from 2018 ES

12.2.1 The 2018 ES concluded that carbon emissions arising from the proposed development are unlikely to materially impact the UK's ability to meet its 2050 national carbon target. This target includes a planning assumption for aviation of 37.5MtCO_2 and this level of emissions is therefore consistent with the national carbon budget. Stansted Airport's 2050 contribution to UK aviation carbon emissions were estimated to range between 4% and 5.3% which is not substantially different from the 4% contribution the airport accounted for in 2016 as set out in the DfT 2017 Aviation Forecasts[xi].

12.2.2 Stansted Airport's projected aviation carbon emissions depend on the speed and rate at which the aviation sector modernises airspace, invests in research and development, and introduces sustainable fuels.

12.2.3 Construction carbon emissions are also not expected to materially impact the UK Government's ability to meet its national carbon reduction target. The proposed scheme's construction emissions were estimated to account for 0.001% of the UK's third carbon budget (2018-2022) and 0.09% of all UK construction emissions in 2022. Construction emissions were expected to be mitigated through the CEMP and CoCP once a main contractor is appointed.

12.3 Updates to Legislation, Policy and Guidance

12.3.1 Since the 2018 ES, there have been updates to the legislation, policy and guidance that inform the assessment of carbon emissions. The updates are summarised below.

International

Carbon Offset and Reduction Scheme for International Aviation (CORSIA)

12.3.2 The second edition of the 'Environmental Technical Manual (Doc 9501), Volume IV - Procedures for demonstrating compliance with the CORSIA'[i] was published in February 2019, intended to provide the most up-to-date information about the scheme. The CORSIA requires states that have aeroplane operators that perform international flights to monitor, report and verify CO_2 emissions from these flights.

12.3.3 By July 2020, 88 States, including the UK, had agreed to participate voluntarily in the pilot phase of the CORSIA scheme from 2021 onwards. The International Civil Aviation Organization (IACO) reaffirmed commitment to CORSIA at the 40th ICAO Assembly in 2019 and prioritised work towards a long-term climate goal for international aviation.

European

European Union Emissions Trading Scheme (EU ETS)

12.3.4 The EU ETS underwent a revision for phase 4 (2021-2030) in early 2018. This included an increased pace of emission cuts (declining at an annual rate of 2.2% from 2021 onwards, compared to the 1.74% currently) in order to reduce emissions by 43% compared to 2005 levels and achieve the EU's overall greenhouse gas emissions reduction target for 2030.

12.3.5 The UK will remain in the EU ETS during the transition period following Brexit. The UK Government has stated it would be open to considering a link between any UK Emissions Trading Scheme and the EU ETS[ii]. If a link is not agreed, the UK Emissions Trading System will operate as a standalone system or a Carbon Emissions Tax will be implemented. The UK Government has stated that any future system will be at least as ambitious as the current scheme[iii].

UK

The Climate Change Act 2008 (2050 Target Amendment) Order 2019

12.3.1 In June 2019 the Climate Change Act 2008[iv] was amended to introduce a target for 100% reduction of greenhouse gas emissions compared to 1990 levels in the UK by 2050. This amendment is consistent with the recommendations laid out in the CCC Net Zero report. Section 30 ('Emissions from international aviation or international shipping') was not amended. This section explicitly excludes emissions of greenhouse gases from international aviation or international shipping.

Committee on Climate Change (CCC) Net Zero - The UK's contribution to stopping global warming

12.3.2 The CCC published 'Net Zero – The UK's contribution to stopping global warming'[v] in May 2019. The report recommended a new emissions target for the UK of a 100% reduction in greenhouse gas emissions from 1990 to 2050. The CCC recommended that the target covers all sectors of the economy, including domestic and international aviation. The report indicates greater potential to reduce aviation emissions, however aviation is projected to emit more than any other sector in 2050 and the report indicates further measures will continue to be necessary to manage future demand. The CCC's scenarios continue to allow for growth of 60% (compared to 2005 levels).

12.3.3 In September 2019 Lord Deben, CCC Chairman, issued a letter to the Secretary of State for Transport'[vi] providing a rationale for the inclusion of international aviation and shipping (IAS) emissions in UK carbon targets. The letter highlighted the need for Greenhouse Gas Removals (GGR) to offset remaining emissions in the IAS sectors and the need for government to establish a new market for GGRs. The latest CCC Progress Report to Parliament[vii] reflected these recommendations. The UK Government published a response[viii] to the recommendations posed in the CCC Progress Report making clear that they would consider inclusion of IAS emissions in their carbon budgets if there is insufficient progress at an international level.

Aviation Strategy and Making Best Use Policy

12.3.4 The DfT published 'Beyond the Horizon: The future of UK aviation, next steps towards an Aviation Strategy'[ix], in April 2018. The document states that "the government must ensure that growth is sustainable and is balanced with local and global environmental concerns".

12.3.5 In June 2018, the DfT published 'Beyond the Horizon: The future of UK aviation, making the best use of existing runways'[x]. This is the key aviation policy statement relevant to this proposed development. It recognises that there is uncertainty over future climate change policy and international arrangements to reduce CO_2 emissions and reflects this uncertainty via carbon traded and carbon capped scenarios. Whilst recognising that each airport development will need to be judged by the relevant local planning authority, the policy makes clear that aviation carbon emissions should be considered at a national level and that the two scenarios considered in the policy or other measures would be available to meet the planning assumption under the policy.

12.3.6 In December 2018 the DfT published the Aviation 2050 Green Paper 'Aviation 2050: the future of UK Aviation'[xi] as part of development of an Aviation Strategy. This outlines proposals for the new Aviation Strategy to include a range of measures including efficiency improvements, operations and air traffic management, sustainable aviation fuels and market-based measures. The Green Paper reflects the Airports Commission's recommendation to be supportive of all airports to make the best use of existing runways, subject to environmental issues being addressed. As part of the Aviation Strategy the DfT used its own Aviation Model[xii] to forecast CO_2 emissions from flights departing UK airports to assess the impact of allowing all airports to make the best use of their existing runway capacity (with and without the Heathrow Airport North West Runway scheme).

Sustainable Aviation – Decarbonisation Road Map

12.3.7 Sustainable Aviation updated the 'Decarbonisation Road-Map: A Path to Net Zero'[xiii] in February 2020. This lays out a road map for accommodating a 70% growth in passengers from 2016 levels by 2050, whilst reducing carbon emissions to net zero through efficiency improvements, sustainable aviation fuels, efficient operations and airspace and market-based measures.

Department for Transport (DfT) Transport Decarbonisation Plan

12.3.8 The DfT published 'Decarbonising Transport: Setting the Challenge'[xiv] in June 2020 which sets out plans for the Transport Decarbonisation Plan (TDP) expected to be published by the end of 2020. The TDP will detail plans to coordinate a cross-modal approach to deliver the transport sector's contribution to both carbon budgets and net zero. The preliminary report highlighted leading on international efforts for emissions reductions as a key opportunity for the UK to reduce aviation emissions.

Local Planning Policy

12.3.9 The Uttlesford Local Plan[xv] adopted in January 2005 remains the most recent plan for Uttlesford District Council (UDC). The current plan has no policies relevant to carbon emissions. Although preparation of a new Regulation 19 Local Plan has taken place since 2015, it was decided in a council meeting in April 2020 to withdraw this plan and to start work on a new Local Plan. Alongside the preparation of the new Local Plan there will be a corresponding new Development Scheme which sets out the programme and documentation of the new Local Plan.

Carbon Assessment Guidance

12.3.10 There have been no updates to the guidance documents listed in the 2018 ES Chapter 12.

12.3.11 The Institute of Environmental Management (IEMA) guidance for assessing greenhouse gas emissions is expected to be published in late 2021.

12.4 Assessment Methodology

12.4.1 The assessment methodology used to assess the proposed scheme's construction and operational carbon emissions remains identical to that used for the 2018 ES; data sources have been updated. To avoid repetition, please refer to Chapter 12 and Appendix 12.1 in the 2018 ES for a detailed outline of the methodology, and original supporting assumptions and data sources.

12.4.2 This section highlights the differences and updates to input data (such as revised aviation forecasts by ICF) and carbon conversion factors (such as the latest UK Government grid electricity carbon factors). This chapter references ESA Appendix 12.1 where additional supporting information is presented.

Construction

12.4.3 Construction carbon emissions remain the same as reported in the 2018 ES as there have been no changes in the proposed new infrastructure/ construction assets. Construction is now expected to take place over a 12-month period between mid-2025 and mid-2026. For further details on the plant used for construction and the underlying assumptions refer to 2018 ES Appendix 12.1.

Operation

12.4.4 The operational activities considered in this ESA remain the same as in the 2018 ES and include:

- Flights;
- Landside activities;
- Airside activities; and

- Surface access transport.

12.4.5 Carbon emissions have been assessed and reported for the following scenarios:

- 2019 Baseline Year;
- 2027 (DM and DC);
- 2032 (DM and DC); and
- 2050 (DM and DC for flights only).

Flights

12.4.6 As in the 2018 ES, carbon emissions from flights were assessed using two different models. Landing and Take-Off (LTO) emissions were modelled using the ADMS-Airport atmospheric dispersion model (version 5.0.0.1), which is an update to the model used in the previous 2018 ES. Further details are provided in Chapter 10: Air Quality of this ESA.

12.4.7 Climb, Cruise and Descent (CCD) fuel consumption and carbon emission were calculated using the latest EMEP/EEA Emissions Calculator 2019[xvi], available as part of the EMEP/EEA Air Pollutant Inventory Guidebook[xvii]. This is an update from the 2016 calculator used in the previous 2018 ES.

12.4.8 Similar to the 2018 ES assessment, ICF provided the latest aircraft fleet composition and projected annual aircraft movements (ATMs) which informed this ESA (see Chapter 4 for more detail on forecasts). For more detail on aircraft modelling categories (MCAT) refer to Appendix 12, Section 12.3.

12.4.9 The future year fleet includes new aircraft (e.g. Boeing B737MAX) and new engine types. New aircraft and engines are more efficient than the ones they replace. The Boeing 737MAX and Airbus A320/1 Neo are 11% and 20% more fuel efficient than their predecessors respectively, according to ICAO[xviii].

12.4.10 ICF's fleet mix forecasts do not extend beyond 2032. As with the 2018 ES, a 'top down' assessment approach was adopted whereby a range of possible projections were applied in order to estimate carbon emissions from flights between 2032 and 2050, assuming that the currently permitted 274,000 annual movements is not exceeded. A detailed explanation on how the 'top down' assessment methodology was applied, and the three scenarios modelled (pessimistic, best practice, and central) to address uncertainty, is contained in the carbon chapter of the 2018 ES.

12.4.11 The annual percentage improvement factors used for each scenario are presented in Table 12-1. For the pessimistic scenario, a 0.9% annual improvement rate was applied based on the CCC's Net Zero Technical Report[xix]. The 'best practice' scenario applied an overall annual improvement rate of 2.73%. This 'best practice' rate is composed of an annual improvement rate of 1.46% for aircraft and engines (sourced from the DfT[xx]), a 4.6% reduction in emissions by 2050 from 2016 levels due to improvements in air traffic management and operations (0.14 % annual improvement rate) and a 32% reduction in emissions by 2050 from 2016 levels due to the uptake of sustainable aviation fuels (1.13% annual improvement rate) (both sourced from Sustainable Aviation's Carbon Road Map[xxi]). The 'central' scenario assumed a mid-range point between the 'pessimistic' and 'best practice' scenario.

Table 12-1: Annual aviation improvement factors applied for each assessment scenario between 2032 and 2050

Further improvement factors	This assessment		
	Pessimistic	Central	Best practice
Aircraft & engine efficiency	0.9%	1.18%	1.46%
Air traffic management & operations	0.0%	0.07%	0.14%
Sustainable aviation fuels	0.0%	0.56%	1.13%
Total	**0.9%**	**1.81%**	**2.73%**

12.4.12 For further detail on the annual aviation efficiency improvement factors applied and a complete list of the latest factors and respective sources refer to the Appendix 12, Section 12.3.

Airport Energy Plant

12.4.13 Airport electricity and gas carbon emissions were estimated for the 2027 and 2032 assessment years based on average consumption figures per passenger. For further detail on the methodology refer to the 2018 ES Carbon Emissions chapter.

12.4.14 Appendix 12, Section 12.1 presents Stansted Airport's 2019 metered electricity and gas consumption data. Also presented in Appendix 12 (Figure 12.1) is the rate at which the UK's grid will be decarbonised which been updated for this ESA to reflect the latest UK Government projections.

Airside Activities

12.4.15 Airside activities include carbon emissions from the following sources and activities:

- Ground support equipment (GSE);
- Aircraft auxiliary power units (APU's);
- Aircraft engine testing; and
- Fire training ground exercises.

12.4.16 For a detailed description of the airside activities listed above and assessment methodology refer to the 2018 ES Carbon Emissions chapter, which remains the same for these aspects of the assessment. For the ESA airside fuel consumption data please refer to Appendix 12, Section 12.2

Surface Access Transport

12.4.17 Surface access transport-related carbon emissions are based on outputs from the updated Transport Assessment (TA) undertaken by Steer Group (see Chapter 6: Surface Access and Transport). The assessment methodology remains the same as set out in the 2018 ES Carbon Emissions chapter.

12.4.18 The latest data used to assess surface access transport carbon emissions is presented in ESA Appendix 12 .1 (Section 12.4), along with the underlying assumptions and sources.

Significance Criteria

12.4.19 As stated in the 2018 ES, there is currently no specific guidance or standard on how to determine whether carbon emissions are significant or not for EIA purposes. IEMA[xxii] states, amongst other principles, that:

"*GHG emissions from all projects will contribute to climate change; the largest inter-related cumulative environmental effects…as such any GHG emissions or reductions from a project might be considered to be significant…*"

12.4.20 In line with IEMA's principles, a best practice approach has been adopted, where carbon emissions associated with the proposed change from 35mppa to 43mppa have been reported and contextualised. In the 2018 ES, Stansted Airport's carbon emissions were contextualised against the CCC's 'Core Scenario'. The 'Core Scenario' aligns with the UK Government's previous 80% carbon target by 2050, which assumes international aviation emissions from UK flights of 37.5 $MtCO_2$.Following the adoption of the more stringent net zero target, the UK Government is planning to consult on this aspect of its aviation policy. In parallel, the Committee on Climate Change (CCC) is planning to provide advice on the UK's 6th carbon budget, including further advice on international aviation and shipping[vii]. At the time of the preparation of this ESA, the Government has not indicated what level of aviation emissions would be consistent with the net zero target. On the basis of its further ambition scenario, the CCC suggests that a lower level of 30$MtCO_2$ could be assumed.

12.4.21 In this ESA, aviation and non-aviation emissions have been contextualised separately in terms of their relative contribution to specific sectors. Construction emissions have been compared with the UK's fourth carbon budget (2023 to 2027). Operational emissions have been compared to the current 2050 aviation planning assumption of 37.5$MtCO_2$.

12.5 Baseline Conditions

12.5.1 This section describes the carbon emissions at Stansted Airport for the 2019 Baseline Year and updated future baseline years (DM scenario) of 2027 and 2032. As presented in

12.5.2 **Table 12-2**, the total carbon emissions for Stansted Airport in 2019 are 1.8$MtCO_2e$ and projected to reach approximately 2.3$MtCO_2e$ in 2027 and 2.4$MtCO_2e$ by 2032.

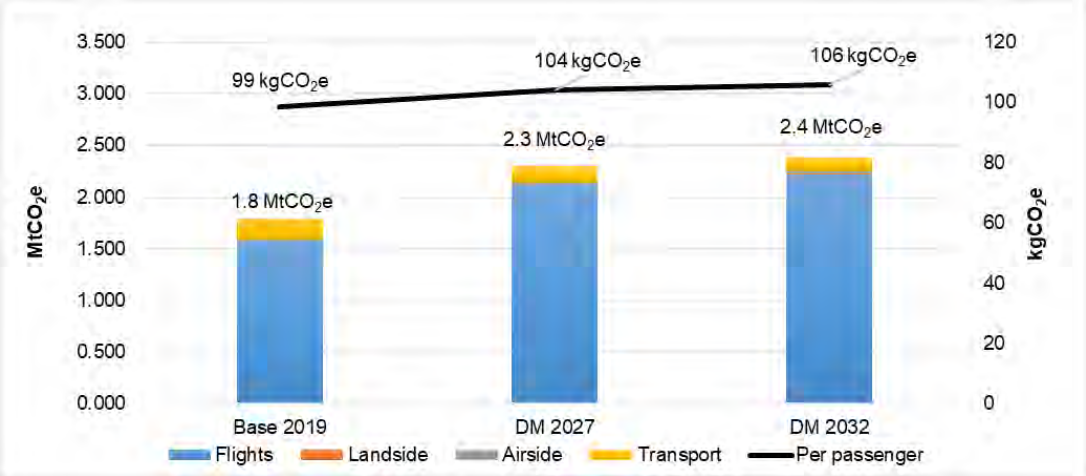
Table 12-2: Carbon emissions for 2019 Baseline Year and future baseline years (2027 and 2032)

	Unit	Base 2019	DM 2027	DM 2032
Passenger numbers	mppa	28.3	35	35
ATMs	No.	200,411	245,080	251,608
Carbon				
Flights	$MtCO_2$	1.569	2.114	2.224
Landside activities[1]	$MtCO_2e$	0.003	0.004	0.004
Airside activities	$MtCO_2e$	0.015	0.019	0.019
Surface access transport	$MtCO_2e$	0.208	0.167	0.132
Total	**$MtCO_2e$**	**1.795**	**2.303**	**2.379**
Per passenger[2]	**$kgCO_2e$/ passenger**	**99**	**104**	**106**

[1] Landside activities capture carbon emissions from gas consumption only. Electricity related carbon emissions are zero to reflect Stansted's electricity supply contract from 100% renewable sources. Based on UK grid carbon intensity factors Stansted Airport's electricity carbon footprint would be 0.024$MtCO_2e$ (1.3% of total 2019 Baseline carbon emissions). Electricity carbon emissions are projected to almost half in scale by 2032 under the DC scenario down to 0.012$MtCO_2e$.

12.5.3 **Figure 12-1** plots total carbon emissions and carbon intensity (measured in $kgCO_2e$ per passenger) next to each other. It shows that Stansted Airport's total carbon emissions are projected to increase from 2019 to 2027 as the airport reaches its current operational limit of 35mppa and followed by a slower increase out to 2032. Carbon emissions per passenger mirror this trend, increasing from 99$kgCO_2e$/passenger in 2019 to 104$kgCO_2e$/passenger in 2027 and close to levelling-off at 106$kgCO_2e$/passenger by 2032. It should be noted that flight emissions under the DM scenario do not include potential carbon reduction measures associated with more efficient airspace design or the uptake of sustainable fuels such as biofuels.

Figure 12-1: Carbon emissions for the 2019 baseline year and future baseline years



12.6 Incorporated Mitigation

Construction

12.6.1 The construction-related mitigation measures outlined in Chapters 5 and 12 of the 2018 ES remain the same and valid for the ESA and so are not repeated here.

Operation

12.6.2 Stansted Airport has been measuring its carbon footprint since 2009: the latest measurements are reported in the 2018/19 Corporate and Social Responsibility (CSR) Report[xxiii]. Manchester Airport Group's (MAG) 2020 CSR Strategy[xxvi] describes the Group's approach towards carbon management, its sphere of influence and beyond. In 2017 Stansted Airport achieved Level 3+ Airport Accreditation Scheme awarded by the Airports Council International[xxiv]. Having achieved carbon neutrality, Stansted Airport is committed to eliminating its reliance on fossil fuels and operating a zero-carbon airport and reducing the need for offsets. The following sections detail Stansted Airport's commitments and current activities in reducing operational carbon emissions.

[2] The $kgCO_2e$ per passenger figure is only representative of the average carbon footprint of departing passengers per (excluding freight and general aviation ATMs) at Stansted Airport. For example, in 2019 86% of ATMs at Stansted Airport were commercial flights, 85% for 2027 and 83% by 2032.

Flights

12.6.3 Stansted Airport is committed to implementing Sustainable Aviation's Decarbonisation Road-Map[xxv] with regards to its own operations, as well as supporting others (i.e. airlines) in delivering their carbon reduction commitments. The improvements discussed in the Decarbonisation Road-Map have been used as a basis for projecting the flight carbon emissions from 2032 to 2050, as detailed in paragraphs 12.4.10 to 12.4.11.

12.6.4 Moreover, Stansted Airport is working in partnership with Sustainable Aviation, airlines and other key stakeholders to develop policies and systems which will reduce aircraft carbon emissions. Stansted is in a strong position with the ability to promote and influence low-carbon aviation through its many programmes.

Airport Energy Plant

12.6.5 Stansted Airport is reducing carbon emissions from its buildings through a series of measures that include regular reviews of energy and fuel consumption, waste reduction and investing in low carbon technology. For example, 5,450 airfield light fittings have been replaced with energy efficient LED technology saving 432,808 kWh annual, equivalent to the electricity used by 136 homes.

12.6.6 Any residual carbon emissions are offset through investment schemes which are independently verified, but Stansted Airport's focus is to operate a zero-carbon airport without the need of offsets by 2038.

12.6.7 In 2017, Stansted Airport achieved Level 3+ Airport Carbon Accreditation which means that the airport has managed to reduce all carbon emissions under its control. Stansted Airport is also accredited to the international environmental management standard ISO14001. Certification to ISO14001 requires defined policy, robust management, auditing and continual improvement in environmental systems and processes. The future approach to environmental strategy is set out in the MAG 2020 Corporate Social Responsibility Strategy[xxvi]. A strategic priority is to achieve net zero carbon by no later than 2038 and to transition to a fleet of ultra-low emission vehicles by 2030. There will a continued focus on the energy efficiency of airport buildings and plant, the continued purchase of renewable electricity and addressing residual emissions through high-quality auditable carbon offset schemes. The airport will continue to be certified to ISO14001 and the energy management systems certified to ISO15001.

Surface Access

12.6.8 Stansted Airport is committed to delivering a high quality and reliable transport infrastructure which focuses on the delivery of sustainable travel choices. In fact, it has aligned many of its targets with the United Nation's Sustainable Development Goals (UN SDG's)[3]. One of the UN SDG's targets is "by 2030, provide access to safe, affordable, accessible and sustainable transport systems for all". Stansted Airport is liaising with local communities around the airport and actively incentivising the use of public transport for both passengers and staff. For example, staff and passengers alike can benefit from an 80% discount if public transport is used in combination with the airport's travel card.

[3] The UN SDG's are a collection of 17 goals and 169 underlying targets to achieve a better and more sustainable future for all by 2030. https://www.un.org/sustainabledevelopment/sustainable-development-goals/

12.6.9 Stansted Airport leads the UK in terms of public transport use, with over 50% of passengers travelling to and from the airport by rail, coach or bus.

12.7 Assessment of Effects

Overall effects

12.7.1 This section presents the overall assessment results for the DM and DC scenarios under the 'pessimistic', 'central' and 'best practice' scenarios. As shown in

12.7.2 **Table 12-3**, the total carbon emissions from Stansted Airport in 2032 are projected to be 2.5MtCO_2e for the DC[4], compared with 2.4MtCO_2e for the DM[5] scenario. Most of these carbon emission increases are from flights (93%) with surface access accounting for another 6%.

12.7.3 Total emissions in 2032 are predicted to increase by approximately 7% (an increase of 0.17MtCO_2e) in the DC scenario compared with the DM scenario. This mirrors the 9% increase in ATMs between the two scenarios, the main reason behind the increase in emissions. Other activities also see an increase in carbon emissions between the two scenarios but with a smaller contribution to the overall carbon footprint. Landside and transport carbon emissions increase by 23% which mirrors the increase from 35mppa to 43mppa as both assessments are based on passenger numbers. Whilst transport emissions are higher under the DC scenario in comparison to DM, emissions are lower in 2032 in comparison to the 2019 baseline. This reflects the DfT's surface transport decarbonisation plans, which offset the increase in passenger numbers. Airside carbon emissions increase by 8% between DC and DM which aligns with the increase in ATMs.

Table 12-3: Overall carbon assessment results showing annual carbon emissions for different assessment years between 2019 and 2032

	Unit	2019 - 2032				
		Base 2019	DM 2027	DC 2027	DM 2032	DC 2032
Passenger numbers	mppa	28.3	35	37.4	35	43
ATMs	No.	200,411	245,080	257,110	251,608	274,000
Carbon						
Flights	MtCO_2	1.569	2.114	2.193	2.224	2.360
Landside activities[6]	MtCO_2e	0.003	0.004	0.004	0.004	0.005
Airside activities	MtCO_2e	0.015	0.019	0.020	0.019	0.021
Surface access transport	MtCO_2e	0.208	0.167	0.217	0.132	0.162
Total	**MtCO_2e**	**1.795**	**2.303**	**2.434**	**2.379**	**2.547**
Per passenger[7]	kgCO_2e/	99	104	104	106	102

[4] Development Case (DC) represents the scenario whereby capacity is increased to 43mppa by 2032 through the proposed development construction work at Stansted Airport

[5] Do Minimum (DM) represents the baseline scenario whereby current maximum capacity (35mppa) is reached by 2027 and levelled off thereafter

[6] Landside activities capture carbon emissions from gas consumption only. Electricity related carbon emissions are zero to reflect Stansted Airport's electricity supply contract from 100% renewable sources. Based on UK grid carbon intensity factors Stansted Airport's electricity carbon footprint would be 0.024MtCO_2e (1.2% of total 2019 Baseline carbon emissions). Electricity carbon emissions are projected to almost half in scale by 2032 under the DC scenario down to 0.012MtCO_2e.

	Unit	2019 - 2032				
		Base 2019	DM 2027	DC 2027	DM 2032	DC 2032
	passenger					

12.7.1 After 2032 only flight emissions have been assessed and reported out to 2050 (the UK's climate change target year). With the uncertainty of future aircraft efficiencies, a range (Pessimistic, Central, Best Practice) of flight emissions were modelled, as shown in

12.7.2 **Table 12-4**. By 2050 annual carbon emissions from flights are projected to fall below the 2032 DM and DC scenarios ranging between 1.20MtCO_2 to 1.98MtCO_2. This is mainly due to the anticipated improvements discussed in paragraphs 12.4.10 and 12.4.11.

Table 12-4: Overall carbon assessment results showing annual carbon emissions for 2050 (Development Case) for flights only

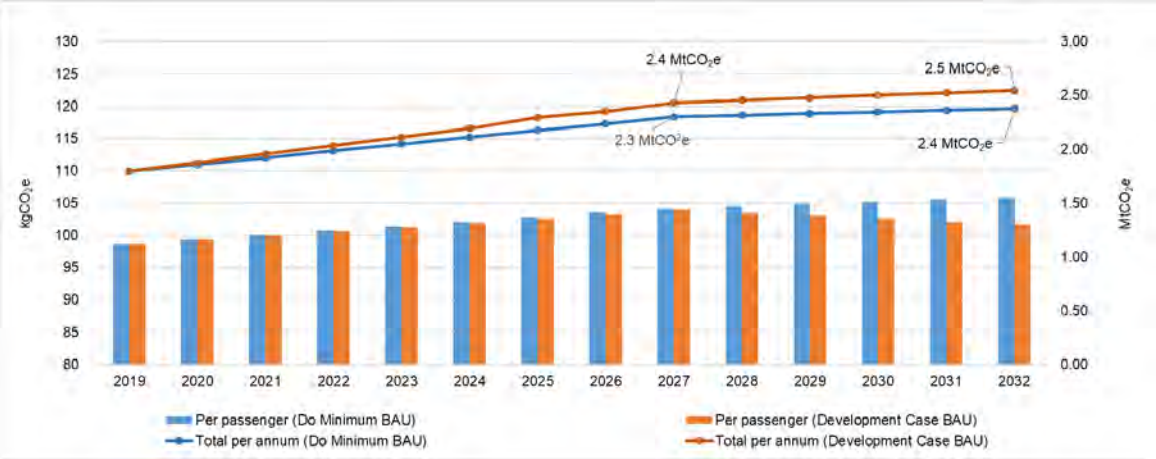
	Unit	Development Case (2050)		
		Pessimistic	Central	Best Practice
Passenger numbers	mppa	43	43	43
ATMs	No.	274,000	274,000	274,000
Carbon				
Flights	MtCO_2	1.978	1.590	1.202

12.7.3 Figure 12-2 shows the interpolated time series of annual carbon emissions and carbon intensity between the 2019 Baseline Year and the 2032 future assessment year. The figure shows an increase in total annual carbon emissions in 2027 and 2032 in comparison with the DM scenario for the same year. This reflects the increase in ATMs and passengers between the two scenarios.

12.7.4 Stansted Airport's carbon intensity, expressed as kgCO_2e per passenger, also increases but only under the DM scenario. Under the DC scenario carbon emissions per passenger (including all emission sources) peak at 104kgCO_2e in 2027 and subsequently decline to 102kgCO_2e by 2032. This reflects the DC forecasts where there is a higher uptake of new and more efficient aircraft (in comparison to the DM scenario) serving more flights.

[7] The kgCO_2e per passenger figure is only representative of the average carbon footprint of departing passengers at Stansted Airport, excluding freight and general aviation emissions.

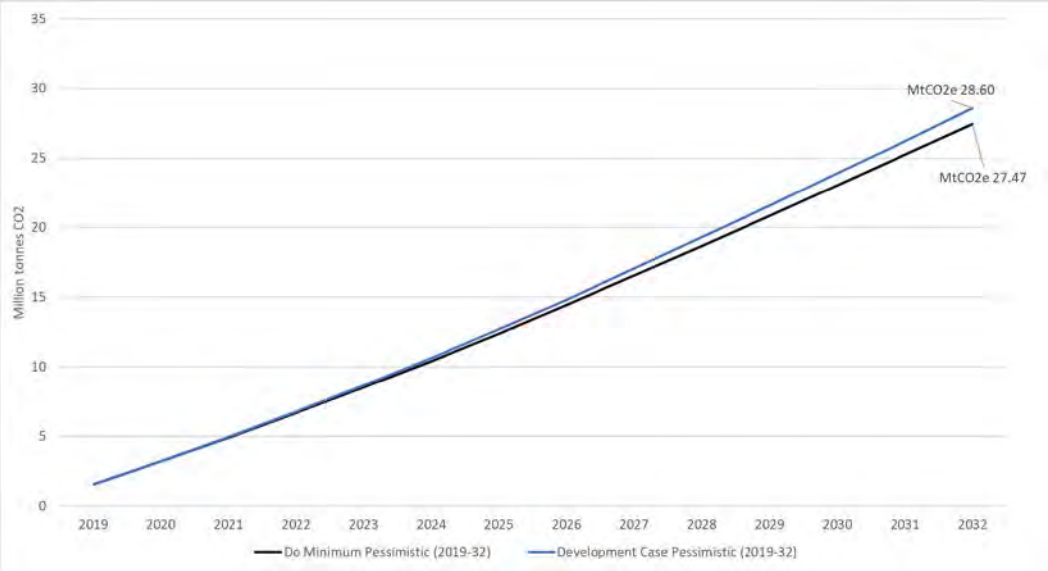
Figure 12-2: Interpolated time series for overall annual carbon emissions and carbon intensity from 2019 to 2032



12.7.5 **Figure 12-3** presents the overall cumulative carbon emissions for the DM and DC scenarios from 2019 to 2032. The cumulative emissions are 27.5MtCO2e under the DM scenario and 28.6MtCO2e under the DC scenario by 2032. Carbon emissions are approximately 1.1MtCO2e higher under the DC scenario in comparison to the DM scenario.

12.7.6 The assessment results for the period between 2032 and 2050 are presented under the *operational stage effects* section as only flight emissions were quantified for this period.

Figure 12 3: Interpolated time series for overall cumulative carbon emissions from 2019 to 2032



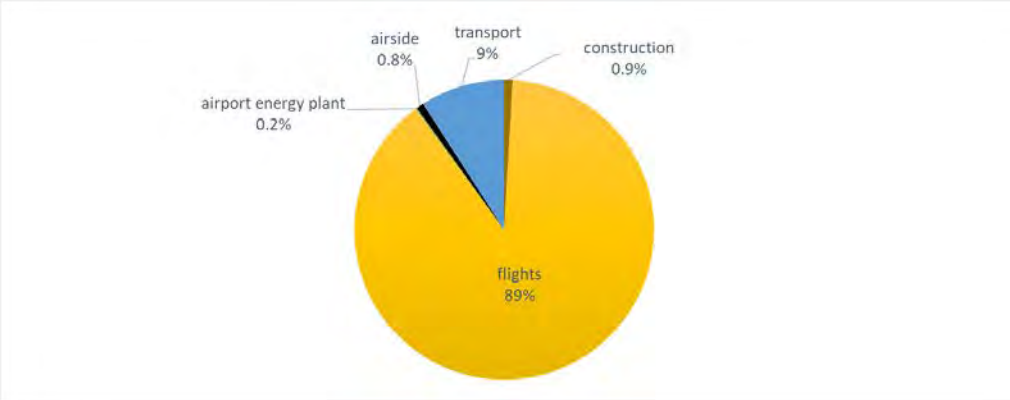
Construction Stage Effects

12.7.7 The underlying construction assumptions and estimated carbon emissions remain the same as in the 2018 ES.

12.7.8 The construction of the aircraft parking stands and taxiways will contribute an estimated 0.022MtCO2e. This includes carbon emissions associated with the production of concrete and steel use (0.020MtCO2e) and plant equipment fuel use (0.002MtCO2e). This represents 0.9% of

Stansted Airport's 2026 total annual emissions, the year in which the proposed scheme is planned to be completed (see Figure 12-4).

Figure 12 4: Annual (2026) carbon emissions by contributing airport activity



12.7.9 Construction of the proposed development falls within the UK's fourth carbon budget (2023-2027) of 1,950MtCO_2e suggested by the CCC. To put this into context, construction emissions would account for approximately 0.001% of the total allocated budget.

12.7.10 For further detail on the construction carbon assessment refer to the 2018 ES Appendix 12.1.

Operational Stage Effects

Flights

12.7.11 Table 12-5 and Table 12-6 present the annual flight carbon emissions for different assessment years between 2019 and 2050. Flight emissions amount to approximately 2.22MtCO_2 for the DM scenario and 2.36MtCO_2 for the DC in 2032. The difference of 0.14MtCO_2 between the DM and DC is due to the additional capacity created by the Development Case. Annual flight carbon emissions are projected to decrease between 2032 and 2050, reducing to between 1.2MtCO_2 and 1.9MtCO_2 by 2050. Flight carbon emissions accounted for 88% of carbon emissions at Stansted Airport in 2019 and would account for 93% in 2032 under the DC. Of these, the majority can be attributed to emissions taking place during the Climb Cruise Descent (CCD) cycle of aircraft departing from Stansted Airport.

12.7.12 By 2032, between the DM and DC scenarios, there would be a 23% increase in passengers, a 9% increase in ATMs, and a 6% increase in flight carbon emissions. The carbon intensity per passenger of the DC scenario by 2032 is projected to improve by approximately 5%, compared to the 2032 DM scenario, from 102kgCO_2/passenger to 98kgCO_2/passenger. This is because forecasts show a higher uptake of new and more efficient aircraft under the DC scenario serving more flights in comparison to the DM scenario.

12.7.13 Post 2032, total annual passenger numbers would remain level at 43mppa whereas total flight carbon emissions fall due to improvements in aircraft and engine design and associated technological advancements. As such, carbon intensity per passenger is projected to reduce to between 50kgCO_2/passenger and 82kgCO_2/passenger by 2050.

Table 12-5: Flight carbon results showing annual carbon emissions between 2019 and 2032

	Unit	2019 - 2032				
		Base 2019	DM 2027	DC 2027	DM 2032	DC 2032
Passenger numbers	mppa	28.3	35	37.4	35	43
ATMs	No.	200,411	245,080	257,110	251,608	274,000
Carbon						
LTO	$MtCO_2e$	0.113	0.143	0.148	0.150	0.157
CCD	$MtCO_2e$	1.456	1.970	2.045	2.074	2.203
Total flights	**$MtCO_2e$**	**1.569**	**2.114**	**2.193**	**2.224**	**2.360**
Per passenger[8] (flights only)	**$kgCO_2e$/ passenger**	**92**	**100**	**98**	**102**	**98**

Table 12-6: Flights carbon results showing annual carbon emissions in 2050

	Unit	Development Case (2050)		
		Pessimistic	Central	Best Practice
Passenger numbers	mppa	43	43	43
ATMs	No.	274,000	274,000	274,000
Carbon				
LTO	$MtCO_2e$	0.131	0.105	0.080
CCD	$MtCO_2e$	1.846	1.484	1.122
Total flights	**$MtCO_2e$**	**1.978**	**1.590**	**1.202**
Per passenger[9] (flights only)	**$kgCO_2e$/ passenger**	**82**	**66**	**50**

12.7.14 Figure 12-3 presents linear-extrapolated annual flight carbon emissions between 2019 and 2050 from the assessment results shown in Table 12-5 and Table 12-6. The figure shows that for DM and DC, flight emissions would rise annually until 2032 when the 35mppa and 43mppa capacity is anticipated to be reached respectively. Thereafter, annual carbon emissions would start to decrease as a result of aircraft technological improvements. The rate of the decrease would depend on the rate of improvement in aircraft and engine efficiency, air traffic management modernisation and use of sustainable fuels.

12.7.15 By 2050, the annual flight emissions from Stansted are projected to reduce to between 1.20$MtCO_2$ (Best Practice scenario) and 1.98$MtCO_2$ (pessimistic scenario which assumes zero improvements in fuel burn from better airspace management or sustainable aviation fuels). This represents between 3.2% and 5.3% of the 37.5$MtCO_2$, which was assumed when setting the UK carbon budget.

12.7.16 The flight carbon emissions reported in the ESA are slightly lower than reported in the 2018 ES. For example, under the DC scenario the updated 2032 flight emissions (2.360$MtCO_2$) are 6% lower than reported in the 2018 ES (2.504$MtCO_2$ in 2027). This reflects the different assessment years, combined with the updated forecasts and the latest fuel-burn assessment model (refer to

[8] The $kgCO_2e$ per passenger figure is only representative of the average carbon footprint of departing passengers at Stansted Airport, excluding freight and general aviation emissions.

[9] The $kgCO_2e$ per passenger figure is only representative of the average carbon footprint of departing passengers at Stansted Airport, excluding freight and general aviation emissions.

paragraphs 12.4.6 and 12.4.7). In addition, more recent aviation efficiency improvement projections have been published and applied to flight carbon projections between 2032 and 2050 (see Table 12-1).

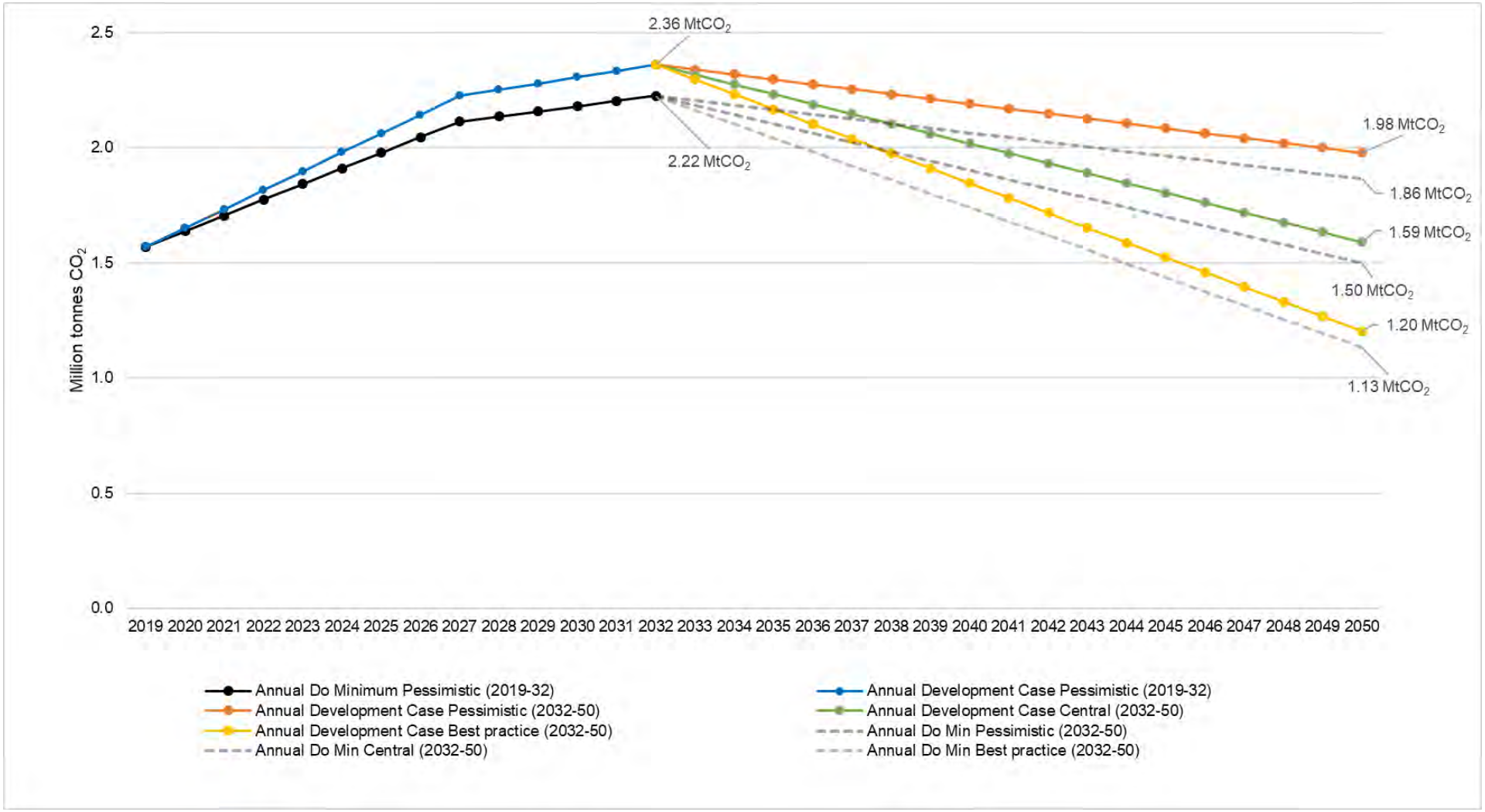


Figure 12-3: Annual flight emissions for the Do Minimum and Development Case scenarios under Pessimistic, Central and Best Practice scenarios between 2019 and 2050

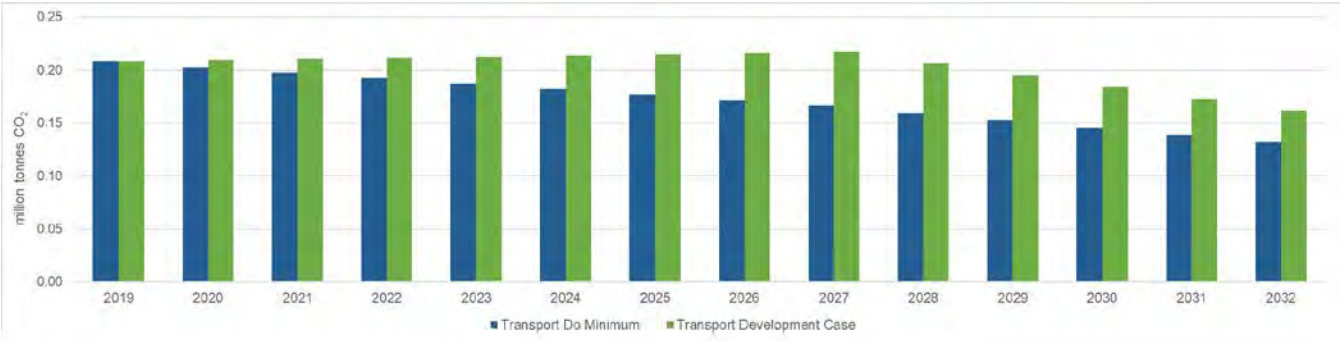
Surface Access

12.7.17 Transport carbon emissions relating to employee and passenger travel to Stansted Airport are the second largest source of emissions after flights, accounting for 12% of the airport's total annual emissions in 2019 (0.21MtCO_2e), 9% (0.22MtCO_2e) in 2027 and 6% (0.16MtCO_2e) by 2032 under the DC scenario.

12.7.18 Figure 12.6 illustrates the change in annual transport carbon emissions between the DM and DC scenarios. Under the DM scenario transport emissions decrease steadily between 2019 and 2032. This is because passenger numbers peak at 35mppa in 2027, whilst road vehicle efficiencies steadily help reduce carbon emissions. Under the DC scenario, transport carbon emissions are forecast to peak by 2027 followed by a decrease to 2032. It appears that the increase in passenger numbers from 28mppa to 37mppa between 2019 and 2027 outweighs vehicle efficiencies (e.g. increases in electric vehicles at the expense of diesel and petrol). As growth in passenger numbers slows down between 2027 and 2032 (from 37mppa to 43mppa) the impact from vehicle efficiency improvements begin to outweigh passenger numbers and carbon emissions steadily decrease.

12.7.19 For further information regarding the vehicle fleet mix and efficiency projections adopted refer to the Carbon ESA Appendix 12, Section 12.4.

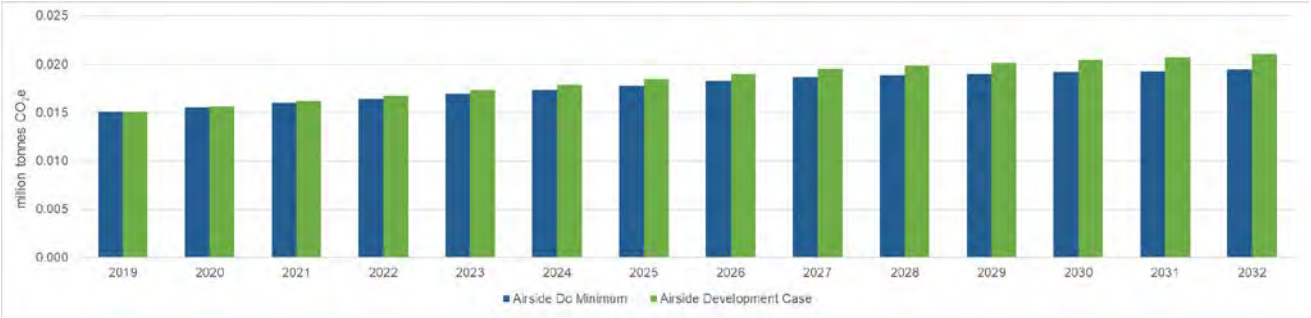
Figure 12-4: Interpolated time series of transport carbon emissions from 2019 to 2032



Airside Energy Plant

12.7.20 Airside carbon emissions include aircraft APUs, GSE, aircraft engine testing and use of the fire training ground. **Figure 12-5** presents the change in annual airside carbon emissions between the DM (35mppa) and DC (43mppa) scenarios. Under both scenarios the annual airside emissions are predicted to rise steadily, from 0.015MtCO_2e in 2019 to 0.019MtCO_2e under the DM scenario and 0.021MtCO_2e under the DC scenario in 2032. This increase mirrors the increase in passenger and ATM numbers.

Figure 12-5: Interpolated time series of Airside carbon emissions from 2019 to 2032

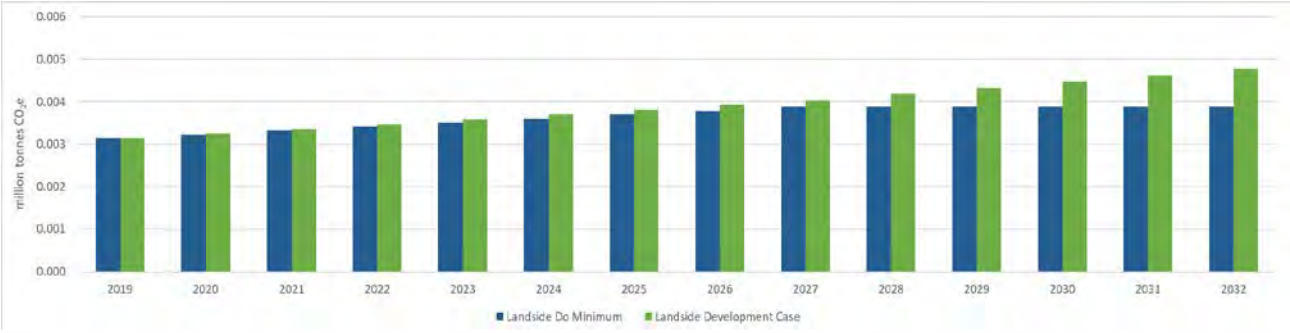


Airport Energy Plant

12.7.21 Carbon emissions from gas consumption at Stansted Airport account for 0.2% of annual carbon emissions generated in 2019. Electricity consumption is not included and reported as zero-carbon emissions reflecting the 100% 'green' tariff supply contract.

12.7.22 Figure 12-6 shows how airport energy plant carbon emissions are expected to increase gradually in line with passenger numbers under both scenarios. Airport energy plant emissions are projected to peak in 2027 (0.004MtCO_2e) under the DM scenario in line with the 35mppa limit and stay level thereafter. Under the DC scenario carbon emissions peak at 0.005MtCO_2e in 2032 aligning with the 43mppa proposed planning limit. Under the DC scenario (43mppa) landside carbon emissions are estimated to be higher (by 23% in 2032) than in the DM scenario because of the larger number of passengers travelling to the airport and using the airport's buildings, infrastructure and facilities.

Figure 12-6: Interpolated time series of Landside carbon emissions from 2019 to 2032



12.8 Mitigation Measures

12.8.1 Chapter 12 of the 2018 ES and Section 12.6 above describe the mitigation and enhancement measures for activities that Stansted Airport has direct (airport energy plant or construction) and indirect (aviation and surface access) influence over.

12.9 Summary of Residual Effects

Introduction

12.9.1 The Government's policy is to stabilise aviation carbon emissions at 2005 levels (i.e. 37.5MtCO_2) reflecting the CCC's 'core' scenario advice of meeting the now superseded 80% reduction target by 2050. The CCC, under its 'further ambition' scenario, which aligns with the UK's current net zero target, identifies further potential to reduce aviation emissions to 30MtCO_2 by 2050, whilst acknowledging the difficulty in fully decarbonising the aviation sector. However, the 30MtCO_2 proposed by the CCC has not been adopted as UK policy. The DfT is yet to publish its latest UK Aviation Strategy and, at the time of writing, the UK carbon budget assumes emissions of 37.5Mt for aviation. Therefore, as explained in section 12.3 above, Stansted Airport's carbon impact is contextualised against the figure of 37.5MtCO_2.

12.9.2 It is important to note that the Paris Agreement does not impose any obligations on the UK. Carbon obligations (i.e. budgets and targets) are determined nationally by Government, taking account of advice from the CCC. 37.5MtCO_2 at 2050 is the level of aviation emissions that has

been allowed for when setting the current UK carbon budget. This headroom is a national figure and is not sub-divided between airports.

Residual Effects

12.9.3 By 2050 Stansted Airport's share of emissions is not projected to change substantially, ranging between 3.2% and 5.3% of the 37.5MtCO_2. This is despite a 23% increase in passenger numbers from 35mppa to 43mppa. Stansted Airport's annual aviation carbon emissions are projected to decrease between 2032 and 2050 (see Figure 12-3). The rate of decrease will depend on the speed at which the aviation sector modernises airspace, introduces new aircraft technologies and sustainable fuel (see Table 12-1). Stansted Airport can influence but not control emissions from the wider aviation sector. However, in any scenario, the 35 + development is unlikely to materially impact the UK's ability to meet its carbon reduction target.

12.9.4 Construction carbon emissions account for approximately 0.001% of the UK's total fourth carbon budget (2023-2027). This represents a fraction of the UK's allocated carbon budget set by the CCC, and construction emissions will be further reduced through the CEMP and CoCP once a Main Contractor is appointed (see ES Chapter 5). Construction emissions are not expected to materially impact the UK Government's ability to meet its 2050 carbon target as construction works will be complete by 2026.

12.10 Cumulative Effects

12.10.1 All human activities produce carbon emissions and the UK's net zero target will require substantial change from all sectors of the economy, including aviation. For the purposes of this assessment the proposed development's carbon impact has been set in the context of the current UK carbon budget.

12.10.2 Stansted Airport's proposed development is consistent with the UK Government's policy of making best use of existing runways[ix]. This growth rate is compatible with the UK's aviation and wider carbon commitments as long as the aviation sector continues to improve its operations, upgrades its fleet with more efficient aircraft and invests in sustainable fuels. As set out in the Sustainable Aviation Decarbonisation Roadmap, the sector believes that growth in UK aviation can be consistent with the government's carbon targets with 'residual emissions' being addressed through market-based mechanisms.

12.10.3 Summary

12.10.4 **Table 12-7** and **Table 12-8** compare overall carbon results between the ESA and the 2018 ES. Carbon emissions are projected to be marginally lower than reported in the 2018 ES. This reflects the latest data updates (including flight forecasts and modelling assumptions). The difference in carbon emissions between the two assessments is not regarded as a 'material change' and the conclusions remain the same (see Sections 12.10 and 12.10.3).

Table 12-7: Comparison of overall carbon assessment results between this (ESA) assessment and the 2018 ES.

		Baseline 2019	DM 2027	DC 2027	DM 2032	DC 2032
2020 ESA total carbon emissions	$MtCO_2e$	1.795	2.303	2.434	2.379	2.547
		Baseline 2016	**DM 2023**	**DC 2023**	**DM 2028**	**DC 2028**
2018 ES total carbon emissions	$MtCO_2e$	1.740	2.529	2.563	2.478	2.753

Table 12-8: Comparison of estimate Development Case 2050 flight emissions between this (ESA) assessment and the 2018 ES.

	Unit	Development Case (2050)		
		Pessimistic	Central	Best Practice
2020 ESA flight carbon emissions	$MtCO_2e$	1.978	1.590	1.202
2018 ES flight carbon emissions	$MtCO_2e$	2.031	1.768	1.484

REFERENCES

[i] ICAO (2019) Environmental Technical Manual (Doc 9501), Volume IV — *Procedures for demonstrating compliance with the Carbon Offsetting and Reduction Scheme for International Aviation.*

[ii] HM Government (2020) The Future Relationship with the EU: The UK's Approach to Negotiations. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/868874/The_Future_Relationship_with_the_EU.pdf

[iii] Department for Business, Energy & Industrial Strategy (2020) Guidance: Meeting climate change requirements from 1 January 2021. Available at: https://www.gov.uk/government/publications/meeting-climate-change-requirements-if-theres-no-brexit-deal/meeting-climate-change-requirements-if-theres-no-brexit-deal#aviation

[iv] The Climate Change Act 2008 (2050 Target Amendment) Order 2019. Available at: https://www.legislation.gov.uk/ukdsi/2019/9780111187654

[v] Committee on Climate Change (2019) Net Zero – The UK's contribution to stopping global warming. Available at: https://www.theccc.org.uk/publication/net-zero-the-uks-contribution-to-stopping-global-warming/

[vi] Committee on Climate Change (2019) Letter to Secretary of State: Net-zero and the approach to international aviation and shipping emissions. Available at: https://d423d1558e1d71897434.b-cdn.net/wp-content/uploads/2019/09/Letter-from-Lord-Deben-to-Grant-Shapps-IAS.pdf

[vii] Committee on Climate Change (2019) Reducing UK emissions – 2019 Progress Report to Parliament. Available at: https://d423d1558e1d71897434.b-cdn.net/wp-content/uploads/2019/07/CCC-2019-Progress-in-reducing-UK-emissions.pdf

[viii] HM Givernemtn (2019) Leading on Clean Growth: The Government Response to the Committee on Climate Change's 2019 Progress Report to Parliament – Reducing UK emissions. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/839555/CCS0819884374-001_Government_Response_to_the_CCC_Progress_Report_2019_Web_Accessible.pdf

[ix] HM Government (2018) Beyond the Horizon: The future of UK aviation. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/698247/next-steps-towards-an-aviation-strategy.pdf

[x] HM Government (2018) Beyond the Horizon: The future of UK aviation, making the best use of existing runways. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/714069/making-best-use-of-existing-runways.pdf

[xi] HM Government (2018) Aviation 2050: the future of UK Aviation. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/769695/aviation-2050-web.pdf

[xii] DfT (2017) UK Aviation Forecasts: Moving Britain Ahead. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/878705/uk-aviation-forecasts-2017.pdf

[xiii] Sustainable Aviation (2020) Decarbonisation Road-Map: A Path to Net Zero. Available at: https://www.sustainableaviation.co.uk/wp-content/uploads/2020/02/SustainableAviation_CarbonReport_20200203.pdf

[xiv]Department for Transport (2020) Decarbonising Transport: Setting the Challenge. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/878642/decarbonising-transport-setting-the-challenge.pdf

[xv] Uttlesford District Council (2005) Uttlesford Local Plan

[xvi] EMEP/EEA Emissions Calculator (2019) 1.A.3.a Aviation 1 Master emissions calculator 2019. Available at: https://www.eea.europa.eu/publications/emep-eea-guidebook-2019/part-b-sectoral-guidance-chapters/1-energy/1-a-combustion/1-a-3-a-aviation-1/view

[xvii] EMEP/EEA (2019) Air pollutant emission inventory guidebook – Technical guidance to prepare national emissions inventory. Available at: https://www.eea.europa.eu/publications/emep-eea-guidebook-2019

[xviii] ICAO (2017) ICAO Aircraft Engine Emissions Databank. Available at: https://www.easa.europa.eu/document-library/icao-aircraft-engine-emissions-databank

[xix] Committee on Climate Change (2019) Net Zero – Technical report. Available online at: https://d423d1558e1d71897434.b-cdn.net/wp-content/uploads/2019/05/Net-Zero-Technical-report-CCC.pdf

[xx] DfT (2017) UK Aviation Forecasts: Moving Britain Ahead. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/878705/uk-aviation-forecasts-2017.pdf

[xxi] Sustainable Aviation (2020) Decarbonisation Road-Map: A Path to Net Zero. Available at: https://www.sustainableaviation.co.uk/wp-content/uploads/2020/02/SustainableAviation_CarbonReport_20200203.pdf

[xxii] IEMA (2010) IEMA Principles Series: Climate Change Mitigation & EIA. Available at: https://www.iema.net/assets/templates/documents/climate20change20mitigation20and20eia.pdf

[xxiii] Manchester Airports Group (2019) London Stansted Airport Corporate and Social Responsibility (CSR) Report 2018/19. Available at: https://live-webadmin-media.s3.amazonaws.com/media/7951/mag-stansted-csr-report-2019-web-2110.pdf

[xxiv] Airports Council International (2018) Airports' CO2 reduction and 4 new carbon neutral airports announced in Europe. Available at: https://www.aci-europe.org/press-release/158-airportco2-press-release-airports-co2-reduction-and-4-new-carbon-neutral-airports-announced-in-europe.html

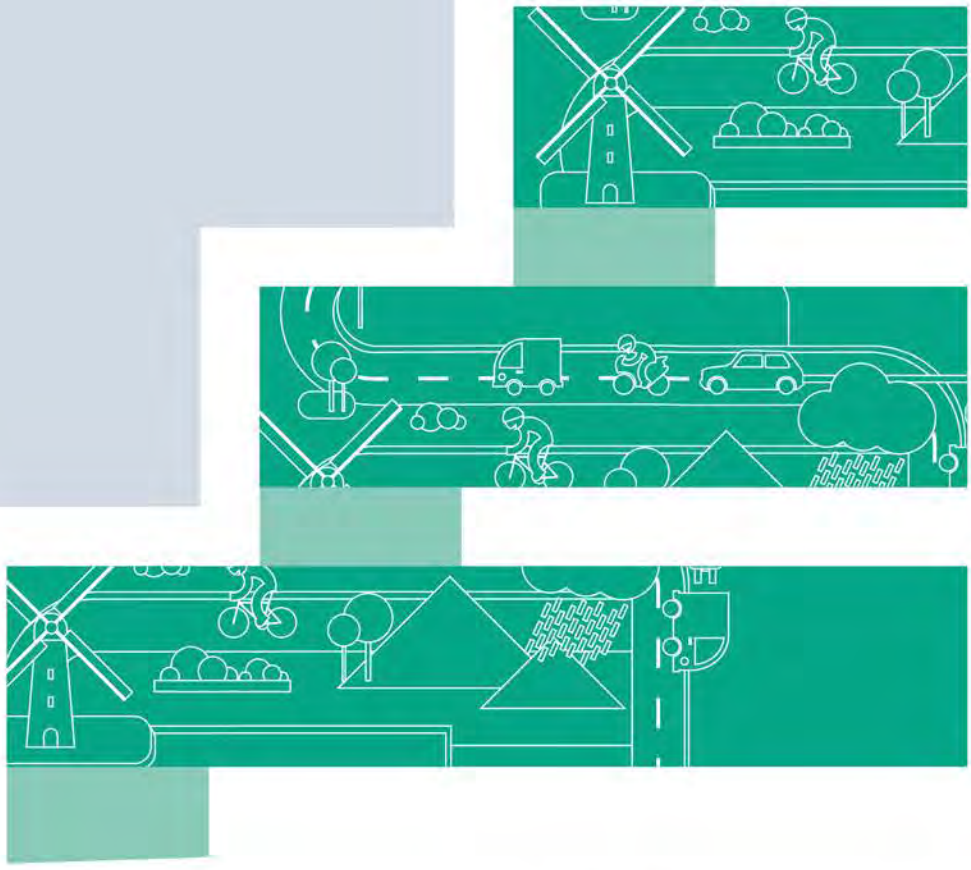
[xxv] Sustainable Aviation (2020) Decarbonisation Road-Map: A Path to Net Zero (a plan to decarbonise UK aviation). Available at: https://www.sustainableaviation.co.uk/wp-content/uploads/2020/02/SustainableAviation_CarbonReport_20200203.pdf

[xxvi] MAG (2020) Working together for a Brighter Future: Our Corporate Social Responsibility Strategy for 2020-2025. Available at: https://www.magairports.com/media/1653/csr-strategy-document-2020-2025-online.pdf

TRANSFORMING LONDON STANSTED AIRPORT

35+ PLANNING APPEAL

Chapter 13
Climate Change



MAG
London Stansted
Airport

13 CLIMATE CHANGE

13.1 Introduction

13.1.1 Arup, as original authors of Chapter 13 of the 2018 ES, have reviewed the previous climate change assessment, accounting for the passage of time and any associated changes in baseline environmental conditions, planning policy and updated aviation forecasts.

13.1.2 The chapter considered the combined effects of the proposed development and potential climate change impacts on the receiving environment and community, and the resilience of the design, construction and operation of the proposed development to potential climate change impacts.

13.2 Updates to Legislation, Policy and Guidance

13.2.1 There are some changes in legislation and policy relevant to the climate change assessment from those reported in Chapter 13 of the 2018 ES. These include (but are not limited to) the following.

13.2.2 The UK climate projections have been updated to UKCP18 which have superseded the UKCP09 climate projections that were used in the 2018 ES.

13.2.3 The Institute of Environmental Management and Assessment (IEMA) has published new guidance on the assessment of climate change resilience and adaption[1], which supersedes the 2015 IEMA guidance on Climate Resilience and Adaptation in EIA.

13.2.4 The National Planning Policy Framework (NPPF) (DCLG, 2019) and the associated Environment Agency (EA) planning practice guidance (Environment Agency, 2017) require a risk-based approach to avoid vulnerability associated with flooding risk and climate change.

13.3 Baseline Conditions

13.3.1 No additional analysis of historic climate data (i.e. weather-events post-2017) has been undertaken. No additional analysis of the future baseline or future extreme weather events has been undertaken using the UKCP18 projections or H++ climate change scenarios. However, it is not anticipated that there would be material changes to the UKCP09 projections.

13.4 Assessment of Effects

13.4.1 The revised aviation forecasts included in this ESA are not considered to give rise to any new or materially different effects from those identified previously and no re-assessment of effects is required. No new climate change hazards have been considered given that there are no relevant changes to the proposed development.

13.4.2 No changes in the in-combination climate change effects are anticipated given that there are no material changes in the effects identified by the other environmental topics for both the construction and operation phases.

[1] IEMA (2020) Environmental Impact Assessment Guide to: Climate Change Resilience & Adaptation

13.4.3 No change in the climate change resilience effects is anticipated given that there are no changes to the airport assets included in the proposed development.

13.5 Mitigation Measures

13.5.1 New mitigation measures have not been considered or assessed. However, it is anticipated that no new or different 'incorporated' or proposed 'further' mitigation measures to those set out in the 2018 ES are necessary.

13.6 Summary

13.6.1 Based on the review done to date it is expected that the assessment undertaken and conclusions reached in the 2018 ES in respect of climate change remain valid, notwithstanding the fact that these effects may manifest at a later date due to the revised forecasts and delayed construction works.

Condition 15

(1) This Condition describes the modalities required for maintaining the contemporaneity of environmental mitigation measures for the development that has been approved by the planning permission.

(2) Paragraphs (4) to (14) of this Condition take effect from 1 January of the first year in which the ppa at the Airport exceeds 35 million, and the remainder of this Condition (including the Schedules) takes effect upon the first commencement of the development.

(3) Without derogating from paragraphs (4) to (14) of this Condition, an airport operator must not at any time exceed any part of:
    (a) the noise exposure standards specified in Schedule A to this Condition;
    (b) the air quality standards specified in Schedule A to this Condition; or
    (c) the carbon emission standards specified in Schedule A to this Condition.

(4) An airport operator must not at any time in a year operate the Airport where for that year the ppa at the Airport exceeds or will exceed the maximum ppa.

(5) Where an airport operator wishes to have the Airport to have ability to exceed the maximum ppa, the airport operator must, not less than 4 months before the start of the year in which the Scheme is to first have effect, submit to the LPA:
    (a) a draft Environmental Modalities Scheme; and
    (b) all data it holds relevant to the draft Environmental Modalities Scheme, including (without limitation) for the preceding 2 years breakdowns (using conventional metrics for the data type) of:
        (i) ppa;
        (ii) aircraft noise exposure at the Airport, in the vicinity of the Airport and under flight paths;
        (iii) data in respect of:
            (A) emissions to air from the Airport;
            (B) air quality measurements at the Airport and in the vicinity of the Airport; and
            (C) the impact of the Airport on air quality, based on air quality modelling and any other assessments, and
        (iv) data in respect of carbon emissions:
            (A) from aircraft at the Airport and on flight paths into or our of the Airport;
            (B) from motor vehicles at the Airport or in the vicinity of the Airport in journeying to or from the Airport; and
            (C) from buildings and machinery at the Airport.

(6) The draft Environmental Modalities Scheme must specify on a year-by-year basis:
    (a) the number of ppa that the airport operator proposes be permitted at the Airport under this Condition, being a number that is not more than 2 million ppa greater than the maximum ppa;
    (b) on the footing that the ppa for the year reaches the proposed new maximum ppa, the best estimate of aircraft movements departing from and arriving at the Airport, divided by aircraft type and engine type;
    (c) the measures that the airport operator will take or cause to be taken:
        (i) to reduce aircraft noise exposure at the Airport, in the vicinity of the Airport and under flight paths;
        (ii) to improve air quality at the Airport and in the vicinity of the Airport; and
        (iii) to reduce carbon emissions:
            (A) from aircraft at the Airport and on flight paths into or our of

the Airport;

(B) from motor vehicles at the Airport or in the vicinity of the Airport in journeying to or from the Airport; and

(C) from buildings and machinery at the Airport; and

(d) the improvements that the measures in (c) are expected to secure in relation to:

(i) aircraft noise exposure at the Airport, in the vicinity of the Airport and under flight paths;

(ii) air quality at the Airport and in the vicinity of the Airport; and

(iii) carbon emissions:

(A) from aircraft at the Airport and on flight paths into or our of the Airport;

(B) from motor vehicles at the Airport or in the vicinity of the Airport in journeying to or from the Airport; and

(C) from buildings and machinery at the Airport,

including all the material relied upon to validate the expected improvements.

(7) Without limiting the improvements in environmental matters that the LPA may need before approving it, the draft Environmental Modalities Scheme must demonstrate that the measures in sub-paragraph (6)(c) will, in relation to each of the environmental matters in sub-paragraphs (6)(d) and for the number of ppa that the airport operator is proposing be permitted at the Airport, secure that no part of an environmental standard exceeds a limit specified in Schedule B.

(8) The LPA must evaluate a duly completed draft Environmental Modalities Scheme and, as part of that process, may specify further information that it requires from the airport operator to complete that process.

(9) In evaluating a draft Environmental Modalities Scheme the LPA must take account of:

(a) all legislative provisions relevant to the draft Environmental Modalities Scheme, including (without limitation) aircraft noise, noise control, carbon emissions and air quality;

(b) all international instruments that the United Kingdom has ratified relevant to the draft Environmental Modalities Scheme, including (without limitation) aircraft noise, noise control, carbon emissions and air quality; and

(c) all policies, whether national, regional or local, relevant to the draft Environmental Modalities Scheme, including (without limitation) aircraft noise, noise control, carbon emissions and air quality,

as each of the above is at the time of evaluation.

(10) In approving a draft Environmental Modalities Scheme, the LPA may make such modifications and impose such conditions, limitations and restrictions as it considers expedient, including (without limitation):

(a) limiting the increase in the maximum ppa to 1 million or more;

(b) limiting the period for which the scheme is effective to 2 years or more; and

(c) requiring the airport operator to submit (but not less than 2 years after approval) a revised Environmental Modalities Scheme.

(11) In making modifications and imposing conditions, limitations and restrictions under paragraph (10) of this Condition when approving a draft Environmental Modalities Scheme, the LPA must strive to maximise improvements to each of the matters listed in sub-paragraph (6)(d) of this Condition, having regard to what is realistically achievable during the period for which the Environmental Modalities Scheme will be effective.

(12) In addition to complying with paragraph (3) of this Condition, the airport operator must at all times comply with all the requirements of the Environmental Modalities Scheme, including all conditions, limitations and restrictions.

(13) Upon an Environmental Modalities Scheme taking effect, any earlier Environmental Modalities Scheme ceases to have effect.

(14) Where:

(a) the LPA has not within 4 weeks of receipt of a draft Environmental Modalities Scheme approved it (whether with or without modifications, conditions, limitations or restrictions); or

(b) the LPA has approved a draft Environmental Modalities Scheme but has made modifications or imposed conditions, limitations or restrictions that are unacceptable to the airport operator,

the airport operator may refer the issue as an impasse to be resolved in accordance with the alternate decision-maker procedure in the Schedule C to this Condition.

(15) In this Condition (including the Schedules):

"the Airport" means Stansted Airport;

"airport operator" means Stansted Airport Ltd and any other person who, in respect of the Airport, is an airport operator within the meaning of s 82(1) of the *Airports Act 1986*;

"airport reference point" has the same meaning as is given to the term "aerodrome reference point" in Annex 14 to the Convention on International Aviation;

"environmental matters" means aircraft noise exposure, emissions to air and carbon emissions;

"Environmental Modalities Scheme" means an Environmental Modalities Scheme approved in writing by the LPA pursuant to this Condition;

"the Expert" means the expert agreed or appointed to resolve the impasse under the alternate decision-maker procedure in this Condition;

"evening hours" means 19:00hrs to 23:00hrs in a day, Stansted time;

"flight paths" means routes by which aircraft approach or leave the Airport, up to 7,000 ft above mean sea level;

"LPA" means the local planning authority, being Uttlesford District Council;

"maximum ppa" means the higher of:

(a) 35 million ppa; and

(b) the number of ppa allowed under the Environmental Modalities Scheme having effect;

"night hours" means 23:00hrs to 7:00hrs the following day, Stansted time;

"normal operating hours" means 07:00hrs to 23:00hrs in a day, Stansted time;

"passenger" means a passenger whose journey by air involves either taking off from or landing at the Airport, and:

(a) a passenger who changes at the Airport from one aircraft to another, whether carrying the same flight number or not, (sometimes called a "terminal passenger" on an "interlining passenger" or a "transfer passenger") is counted twice; and

(b) a passenger who arrives at and departs from the Airport on the same aircraft (sometimes called a "transit passenger") is counted once only (and not both on arrival and on departure);

"policies" means policies relating to or touching upon planning, environmental or aviation matters;

"ppa" means passengers per year;

"vicinity" means the area encompassed by a 15km x 15km square aligned north-south and east-west, having as its centre the airport reference point of the Airport; and

"year" means calendar year.

(16) For the purposes of the Schedules and this paragraph:

"Carbon Emissions methodology" means the methodology used to calculate carbon emissions from aircraft including the LTO cycle and the CCD cycle, other airport sources and road vehicles set out in Schedule D, or any update to this methodology agreed between the airport operator and the LPA;

"CCD cycle" means the aircraft climb cruise descent cycle and includes all emission from flight higher than 3,000ft;

heights are measured from mean sea level;

$L_{Aeq\ 16h}$ is calculated from measurements recorded throughout the normal operating hours of each day in the period 16 June to 15 September (inclusive), and is expressed as an average for the normal operating hours of a day;

$L_{Aeq\ 8h}$ is calculated from measurements recorded throughout the night hours of each day in the period 16 June to 15 September (inclusive), and is expressed as an average for the night hours of a day;

L_{den} is calculated from measurements recorded throughout each day of a year, with $10dB_A$ added to each measurement for night hours and $5dB_A$ added to each measurement for evening hours;

"LTO cycle" means all the seven phases of an aircraft landing and take off cycle, comprising: (i) approach to landing; (ii) landing; (iii) reverse thrust; (iv) taxiing-in and taxiing-out; (v) take-off; (vi) initial climb (to main throttle back); and (vii) hold (throttle back to 3,000 ft);

"the NO_x methodology" means the methodology used to calculate NO_x emissions from the LTO cycle, other airport sources and road vehicles set out in Schedule D, or any update to this methodology agreed between the airport operator and the LPA;

"other airport sources" means auxiliary power units, helicopters, engine testing, ground support equipment, fire training sources, and heating plant;

"the $PM_{2.5}$ methodology" means the methodology used to calculate $PM_{2.5}$ emissions from the LTO cycle, other airport sources and road vehicles set out in Schedule D, or any update to this methodology agreed between the airport operator and the LPA;

"road vehicles" means airport-related vehicles (whether or not airside), vehicles travelling to or from the Airport, and vehicles in car parks, regardless of the vehicle's motive power;

"Total NO_x emissions from operations at the Airport" are to include all emissions from the LTO cycle of aircraft using the Airport, from other airport sources and from road vehicles, and are to be calculated in accordance with the NO_x methodology; and

"Total $PM_{2.5}$ emissions from operations at the Airport" are to include all emissions from the LTO cycle of aircraft using the Airport, from other airport sources and from road vehicles, and are to be calculated in accordance with the $PM_{2.5}$ methodology.

SCHEDULE A

Basal environmental standards (paragraph (3))

Environmental standard	Part of the environmental standard	Limit
Noise exposure from the Airport, in the vicinity of the Airport and under flight paths.	Maximum area of 54dB $L_{Aeq\ 16h}$	57.4km^2
	Maximum area of 48dB $L_{Aeq\ 8h}$	74.0km^2
Air quality at the Airport and in the vicinity of the Airport.	Total NO_x emissions from the LTO cycle.	536.9T **plus** (35.4T per 1 mppa above 28.3 mppa) per year
	Total NO_x emissions from other airport sources.	44.7T **plus** (15.4T per 1 mppa above 28.3 mppa) per year
	Total NO_x emissions from road vehicles.	84.4T **less** (6.5T per 1 mppa above 28.3 mppa) per year
	Total $PM_{2.5}$ emissions from the LTO cycle.	6.0T **plus** (0.179T per 1 mppa above 28.3 mppa) per year
	Total $PM_{2.5}$ emissions from other airport sources.	1.8T **plus** (0.343T per 1 mppa above 28.3 mppa) per year
	Total $PM_{2.5}$ emissions from road vehicles.	3.39T **less** (0.0015T per 1 mppa above 28.3 mppa) per year
Carbon emissions both from aircraft, and from motor vehicles, at the Airport and in the vicinity of the Airport.	Total carbon emissions per year from aircraft on flight paths and from aircraft at the Airport.	2.114 $MtCO_2$
	Total carbon emissions per year from landside activities at the Airport.	0.004 $MtCO_2$
	Total carbon emissions per year from airside activities at the Airport.	0.019 $MtCO_2$
	Total carbon emissions per year from road vehicles at the Airport or in the vicinity of the Airport in journeying to or from the Airport	0.167 $MtCO_2$

SCHEDULE B

>35 million ppa basal environmental standards (paragraph (7))

Environmental standard	Part of the environmental standard	Limit		
Noise exposure from the Airport, in the vicinity of the Airport and under flight paths.	Maximum area of 54dB $L_{Aeq\ 16h}$	51.9km^2		
	Maximum area of 48dB $L_{Aeq\ 8h}$	73.6km^2		
Air quality at the Airport and in the vicinity of the Airport.	Total NO_x emissions from the LTO cycle.	773.8T **plus** (13.4T per 1 mppa above 35 mppa) per year.		
	Total NO_x emissions from other airport sources.	55.0T **plus** (0.037 per 1 mppa above 35 mppa) per year.		
	Total NO_x emissions from road vehicles.	41.0T **less** 1.375T per 1 mppa above 35 mppa per year.		
	Total $PM_{2.5}$ emissions from the LTO cycle.	7.2T **plus** (0.013T per 1 mppa above 35 mppa) per year.		
	Total $PM_{2.5}$ emissions from other airport sources.	4.1T **plus** (0.213T per 1 mppa above 35 mppa) per year.		
	Total $PM_{2.5}$ emissions from road vehicles.	3.38T per year.		
Carbon emissions both from aircraft, and from motor vehicles, at the Airport and in the vicinity of the Airport. Formula expression: **Y** means the number of years between the year in which 43mppa is first reached and 2050		**BETWEEN 35MPPA AND 43MPPA (UP TO 2050)**	**UPON FIRST ATTAINING 43MPPA (UP TO 2050)**	**FROM 2050 ONWARDS**
	Total carbon emissions per year from aircraft on flight paths and from aircraft at the Airport.	2.114 $MtCO_2$ plus 0.0307 $MtCO_2$ per 1 mppa above 35mppa	2.36 $MtCO_2$, decreasing by (0.77/Y) $MtCO_2$ for each year after the year in which 43mppa is first reached.	1.590 $MtCO_2$
	Total carbon emissions per year from landside activities at the Airport.	0.004 $MtCO_2$ plus 000125 $MtCO_2$ per 1 mppa above 35mppa	0.005 $MtCO_2$, decreasing by (0.005/Y) $MtCO_2$ for each year after the year in which 43mppa is first reached.	0.00 $MtCO_2$
	Total carbon emissions per year from airside activities at the Airport.	0.019 $MtCO_2$ plus 0.00025 $MtCO_2$ per 1 mppa above 35mppa	0.021 $MtCO_2$, decreasing by (0.021/Y) $MtCO_2$ for each year after the year in which 43mppa is first reached.	0.00 $MtCO_2$
	Total carbon emissions per year from road vehicles at the Airport or in the vicinity of the Airport in journeying to or from the Airport	0.167 $MtCO_2$ plus 0.000625 $MtCO_2$ per 1 mppa above 35mppa	0.162 $MtCO_2$.	0.162 $MtCO_2$

SCHEDULE C

Alternate decision-maker

(1) This Schedule constitutes the alternate decision-maker procedure referred to in paragraph (14) of this Condition.

(2) Where the airport operator wishes to refer an impasse to be resolved in accordance with this alternate decision-maker procedure, the airport operator must give the LPA written notice:

(a) identifying all the issues that the airport operator wishes to refer to an expert alternate decision-maker for resolution;

(b) specifying the outcome that the airport operator seeks in relation to each issue, the basis for that outcome, and all the facts, policies and matters relied upon in support of that outcome; and

(c) identifying the expert by whom the airport operators wishes the impasse to be resolved.

(3) The LPA may, not more than 7 days after receiving the written notice under (2), notify the airport operator that it does not agree to the expert identified by the airport operator, and the airport operator may thereupon request the President of Royal Town Planning Institute, or the president of another professional institute with requisite expertise, to appoint an expert to determine the dispute. Where the LPA does not, within 7 days after receiving the written notice under (2), notify the airport operator that it does not agree to the expert identified by the airport operator, the airport operator must notify the expert that the appointment has been mutually agreed by the airport operator and the LPA.

(4) The Expert is to act as an independent expert alternate decision-maker, and not as an arbitrator.

(5) Within 21 days of the appointment of the Expert, the LPA must give the Expert a document setting out the outcome that the LPA seeks in relation to the impasse, the basis for that outcome, and all the facts, policies and matters relied upon in support of that outcome, as well as any comments on the points made in the airport operator's notice; and the LPA must, at the same time, provide a copy to the airport operator.

(6) The airport operator may, within 7 days of receiving the LPA's document, give the Expert a document responding to the points made by the LPA in its document; and the airport operator must, at the same time, provide a copy to the LPA.

(7) The Expert will not permit oral representations of any kind to be made to him by the parties, nor shall the Expert listen to witnesses or experts or receive written evidence (other than as received under (5) or (6)).

(8) Each party must, within 7 days of being requested, provide the Expert with such further information as the Expert may reasonably require for the purposes of his determination, supplying a copy to the other side at the same time.

(9) The Expert's written determination, which is to be given without reasons, must be issued within 6 weeks after his appointment (unless delayed for reasons beyond the control of the independent expert) and will be final and binding on the parties.

(10) The costs of the reference to the Expert (including VAT) is to be borne by the LPA.

(11) The Expert's decision will constitute the decision of the LPA.

(12) Within 7 days of the Expert's decision, the LPA must publish an Environmental Modalities Scheme that gives full effect to it.

SCHEDULE D

The NO_x Methodology and the $PM_{2.5}$ methodology will be specified by copying the following sections from the ES and ESA with associated tables and figures:

ES Chapter 10 Sections 10.24 to 10.32, Sections 10.47 to 10.70, and Sections 10.87 to 10.91
ES Appendix 10.2 and Appendix 10.3
ES Addendum Chapter 10 Sections 10.4.1 to 10.4.7, 10.4.14 to 10.4.41
ES Addendum Appendix 10.A Sections 3 and 4

"Carbon Emissions methodology" means ES Ch 12 §§12.26-12.55.
ES-Vol-2 Appendix 12.1 paras 12.1.1 to 12.1.17
ES Addendum Chapter 12, paras 12.1.1 to 12.1.5
ES Addendum Appendix 12, paras 12.1.1 to 12.4.3 and associated tables and charts.

STAL Position on UDC Condition 15

5th February 2021

This commentary should be read in conjunction with Alistair Andrew's Rebuttal (STAL/13/4) Section 3

As a general point, this condition is unprecedented in its length and reliance on mechanisms inappropriate to conditions. PPG advises "rigorous application of the 6 tests: necessary; relevant to planning; relevant to the development to be permitted; enforceable; precise; and reasonable in all other respects". None of this proposed condition meets all of the 6 tests.

As quoted at paragraph 3.8 of the Rebuttal, the PPG states that:

> *"For non-outline applications, other than where it will clearly assist with the efficient and effective delivery of development, it is important that the local planning authority limits the use of conditions requiring their approval of further matters after permission has been granted"*
>
> *"Conditions that unnecessarily affect an applicant's ability to bring a development into use, allow a development to be occupied or otherwise impact on the proper implementation of the planning permission should not be used. A condition requiring the re-submission and approval of details that have already been submitted as part of the planning application is unlikely to pass the test of necessity."*

STAL does not consider that the condition meets these requirements. The replicated Condition 15 text below is marked up with some featured examples of fundamental conflicts with condition tests and lawful use of a planning condition. These are provided, without prejudice, to any more detailed comments STAL may be required to make in respect of this condition during the Inquiry.

Condition 15

1. This Condition describes the modalities required for implementing the approval of environmental matters that has been conferred by the planning permission.
2. Paragraphs (4) to (14) of this Condition take effect from 1 January of the first year in which the ppa at the Airport exceeds 35 million, and the remainder of this Condition (including the Schedules) takes effect upon the first commencement of the development.
3. Without derogating from paragraphs (4) to (14) of this Condition, an airport operator must not at any time exceed any part of:
    a. the noise exposure standards specified in Schedule A to this Condition;
    b. the air quality standards specified in Schedule A to this Condition; or
    c. the carbon emission standards specified in Schedule A to this Condition.
4. An airport operator must not at any time in a year operate the Airport where for that year the ppa at the Airport exceeds or will exceed the maximum ppa.
5. Where an airport operator wishes to have the Airport to have ability to exceed the maximum ppa, the airport operator must, not less than 4 months before the start of the year in which the Scheme is to first have effect, submit to the LPA:
    a. a draft Environmental Modalities Scheme; and
    b. all data it holds relevant to the draft Environmental Modalities Scheme, including (without limitation) for the preceding 2 years breakdowns (using conventional metrics for the data type) of:
        i. ppa;
        ii. aircraft noise exposure at the Airport, in the vicinity of the Airport and under flight paths;
        iii. data in respect of:
            (A) emissions to air from the Airport;
            (B) air quality measurements at the Airport and in the vicinity of the Airport; and
            (C) the impact of the Airport on air quality, based on air quality modelling and any other assessments, and
        iv data in respect of carbon emissions:
            (A) from aircraft at the Airport and on flight paths into or out of the Airport;
            (B) from motor vehicles at the Airport or in the vicinity of the Airport in journeying to or from the Airport; and
            (C) from buildings and machinery at the Airport.
6. The draft Environmental Modalities Scheme must specify on a year-by-year basis:
    a. the number of ppa that the airport operator proposes be permitted at the Airport under this Condition, being a number that is not more than 2 million ppa greater than the maximum ppa;

Commented [AA1]: Meaning?

Commented [AA2]: What does "approval of environmental matters" mean? Imprecise.

Commented [AA3]: What does 'first commencement' mean?

Commented [AA4]: What is this trying to say?

Commented [AA5]: Not enforceable as a condition

Commented [AA6]: Not precise

Commented [AA7]: Not precise

Commented [AA8]: Imprecise. Unnecessary – this has been the function of ES., ESA and other supporting documentation as required.

Commented [AA9]: unjustified

b. on the footing that the ppa for the year reaches the proposed new maximum ppa, the best estimate of aircraft movements departing from and arriving at the Airport, divided by aircraft type and engine type;

c. the measures that the airport operator will take or cause to be taken:

i. to reduce aircraft noise exposure at the Airport, in the vicinity of the Airport and under flight paths;

ii. to improve air quality at the Airport and in the vicinity of the Airport; and

iii. to reduce carbon emissions:

(A) from aircraft at the Airport and on flight paths into or out of the Airport;

(B) from motor vehicles at the Airport or in the vicinity of the Airport in journeying to or from the Airport; and

(C) from buildings and machinery at the Airport; and

d. the improvements that the measures in (c) are expected to secure in relation to:

i. aircraft noise exposure at the Airport, in the vicinity of the Airport and under flight paths;

ii. air quality at the Airport and in the vicinity of the Airport; and

iii. carbon emissions:

(A) from aircraft at the Airport and on flight paths into or out of the Airport;

(B) from motor vehicles at the Airport or in the vicinity of the Airport in journeying to or from the Airport; and

(C) from buildings and machinery at the Airport, including all the material relied upon to validate the expected improvements.

7. Without limiting the improvements in environmental matters that the LPA may need before approving it, the draft Environmental Modalities Scheme must demonstrate that the measures in sub-paragraph (6)(c) will, in relation to each of the environmental matters in sub-paragraphs (6)(d) and for the number of ppa that the airport operator is proposing be permitted at the Airport, secure that no part of an environmental standard exceeds a limit specified in Schedule B.

8. The LPA must evaluate a duly completed draft Environmental Modalities Scheme and, as part of that process, may specify further information that it requires from the airport operator to complete that process.

9. In evaluating a draft Environmental Modalities Scheme the LPA must take account of:

a. all legislative provisions relevant to the draft Environmental Modalities Scheme, including (without limitation) aircraft noise, noise control, carbon emissions and air quality;

b. all international instruments that the United Kingdom has ratified relevant to the draft Environmental Modalities Scheme, including (without limitation) aircraft noise, noise control, carbon emissions and air quality; and

Commented [AA10]: imprecise

Commented [AA11]: this process would involve a reconsideration of matters that are for determination through the current appeal process.

Commented [AA12]: Imprecise.

Commented [AA13]: Imprecise. Also not necessary. PPG: "Conditions requiring compliance with other regulatory regimes will not meet the test of necessity and may not be relevant to planning"

c. all policies, whether national, regional or local, relevant to the draft Environmental Modalities Scheme, including (without limitation) aircraft noise, noise control, carbon emissions and air quality,

as each of the above is at the time of evaluation.

10. In approving a draft Environmental Modalities Scheme, the LPA may make such modifications and impose such conditions, limitations and restrictions as it considers expedient, including (without limitation):

    a. limiting the increase in the maximum ppa to 1 million or more;

    b. limiting the period for which the scheme is effective to 2 years or more; and

    c. requiring the airport operator to submit (but not less than 2 years after approval) a revised Environmental Modalities Scheme.

11. In making modifications and imposing conditions, limitations and restrictions under paragraph (10) of this Condition when approving a draft Environmental Modalities Scheme, the LPA must strive to maximise improvements to each of the matters listed in subparagraph (6)(d) of this Condition, having regard to what is realistically achievable during the period for which the Environmental Modalities Scheme will be effective.

12. In addition to complying with paragraph (3) of this Condition, the airport operator must at all times comply with all the requirements of the Environmental Modalities Scheme, including all conditions, limitations and restrictions.

13. Upon an Environmental Modalities Scheme taking effect, any earlier Environmental Modalities Scheme ceases to have effect.

14. Where:

    a. the LPA has not within 2 months of receipt of a draft Environmental Modalities Scheme approved it (whether with or without modifications, conditions, limitations or restrictions); or

    b. the LPA has approved a draft Environmental Modalities Scheme but has made modifications or imposed conditions, limitations or restrictions that are unacceptable to the airport operator, the airport operator may refer the issue as a dispute to be determined in accordance with the dispute resolution procedure in the Schedule C to this Condition.

15. In this Condition (including the Schedules):

"the Airport" means Stansted Airport;

"airport operator" means Stansted Airport Ltd and any other person who, in respect of the Airport, is an airport operator within the meaning of s 82(1) of the Airports Act 1986;

"airport reference point" has the same meaning as is given to the term "aerodrome reference point" in Annex 14 to the Convention on International Aviation;

"environmental matters" means aircraft noise exposure, emissions to air and carbon emissions;

"Environmental Modalities Scheme" means an Environmental Modalities Scheme approved in writing by the LPA pursuant to this Condition;

"the Expert" means the expert agreed or appointed to resolve the dispute under the

Commented [AA14]: Imprecise.

Commented [AA15]: How is this lawful under a planning condition 'discharge'?

Commented [AA16]: Imprecise.

Commented [AA17]: Imprecise, not necessary.

Commented [AA18]: Imprecise and (particularly to the extent that they require steps outside application red line) unenforceable

Commented [AA19]: Inappropriate for a condition to replace the statutory appeal process applicable to discharge of a planning condition.

Commented [AA20]: Unlawful for decision maker (LPA or Secretary of State on appeal) to delegate role to independent dispute resolution process.

Commented [AA21]: Risk of making permission personal

Commented [AA22]: Imprecise.

Commented [AA23]: Imprecise.

Commented [AA24]: Unlawful

dispute resolution procedure in this Condition;

"evening hours" means 19:00hrs to 23:00hrs in a day, Stansted time;

"flight paths" means routes by which aircraft approach or leave the Airport, up to 7,000 ft above mean sea level;

"LPA" means the local planning authority, being Uttlesford District Council; "maximum ppa" means the higher of:

a. 35 million ppa; and

b. the number of ppa allowed under the Environmental Modalities Scheme having effect; "night hours" means 23:00hrs to 7:00hrs the following day, Stansted time;

"normal operating hours" means 07:00hrs to 23:00hrs in a day, Stansted time;

"passenger" means a passenger whose journey by air involves either taking off from or landing at the Airport, and:

a. passenger who changes at the Airport from one aircraft to another, whether carrying the same flight number or not, (sometimes called a "terminal passenger" on an "interlining passenger" or a "transfer passenger") is counted twice; and

b. passenger who arrives at and departs from the Airport on the same aircraft (sometimes called a "transit passenger") is counted once only (and not both on arrival and on departure);

"policies" means policies relating to or touching upon planning, environmental or aviation matters; "ppa" means passengers per year;

"vicinity" means the area encompassed by a circle with a 7.5km radius having as its centre the airport reference point of the Airport; and

"year" means calendar year.

16. For the purposes of the Schedules and this paragraph:

LAeq 16h is calculated from measurements recorded throughout the normal operating hours of each day in the period 16 June to 15 September (inclusive), and is expressed as an average for the normal operating hours of a day;

LAeq 8h is calculated from measurements recorded throughout the night hours of each day in the period 16 June to 15 September (inclusive), and is expressed as an average for the night hours of a day;

Lden is calculated from measurements recorded throughout each day of a year, with 10dBA added to each measurement for night hours and 5dBA added to each measurement for evening hours;

"LTO cycle" means all the seven phases of an aircraft landing and take off cycle, comprising: (i) approach to landing; (ii) landing; (iii) reverse thrust; (iv) taxiing-in and taxiing-out; (v) take-off; (vi) initial climb (to main throttle back); and (vii) hold (throttle back to 3,000 ft);

"N02 concentrations from operations at the Airport" are to include all emissions from the LTO cycle of aircraft using the Airport, from other airport sources and from road

vehicles, measured at the N02 measurement locations, and are to be calculated in accordance with the N02 methodology;

"the N02 measurement locations" means [to *be confirmed];*

"the N02 methodology" means *[to be confirmed];*

"the NOx methodology" means [to *be confirmed];*

"other airport sources" means auxiliary power units, helicopters, engine testing, ground support equipment, fire training sources, and heating plant;

"PM2.s concentrations from operations at the Airport" are to include all emissions from the LTO cycle of aircraft using the Airport, from other airport sources and from road vehicles, based upon measurements taken at the PM2.s measurement locations, and are to be calculated in accordance with the PM2.s methodology;

"the PM2.s measurement locations" means [to *be confirmed];*

"the PM2.5 methodology" means *[to be confirmed];*

"road vehicles" includes airport-related vehicles (whether or not airside), non-airport related vehicles, and vehicles in car parks;

"Total NOx emissions from operations at the Airport" are to include all emissions from the LTO cycle of aircraft using the Airport, from other airport sources and from road vehicles, measured at the N02 measurement locations, and are to be calculated in accordance with the NOx methodology; and

"Total PM2.s emissions from operations at the Airport" are to include all emissions from the LTO cycle of aircraft using the Airport, from other airport sources and from road vehicles, based upon measurements taken at the PM2.s measurement locations, and are to be calculated in accordance with the PM2.s methodology.

SCHEDULE A

Basal environmental standards (paragraph (3)

Environmental Standard	Part of the environmental standard	Limit
Noise exposure from the Airport, in the vicinity of the Airport and under flight paths.	Maximum area of 51dB LAeq 16h	108.7km2
	Maximum area of 54dB LAeq 16h	57.4km2
	Maximum area of 63dB LAeq 16h	8.7km2
	Maximum area of 45dB LAeq 8h	129.0km2
	Maximum area of 54dB LAeq 8h	22.5km2
	Maximum area of 55dB Lden	76.8km2
Air quality at the Airport and in the vicinity of the Airport.	Total NOx emissions from operations at the Airport, calculated in accordance with the prevailing most widely accepted methodology.	LTO cycle: Not more than 536.9 T per year Other airport sources: Not more than 44.7 T per year Road vehicles: Not more than 457.4 T per year
	Total PM2.5 emissions from operations at the Airport, calculated in accordance with the prevailing most widely accepted methodology.	LTO cycle: Not more than 6.0 T per year Other airport sources: Not more than 1.8 T per year Road vehicles: Not more than 18.6 T per year
	Total NO2 concentrations from operations at the Airport, calculated in accordance with the prevailing most widely accepted methodology.	
	Total PM2.5 concentrations, calculated in accordance with the prevailing most widely accepted methodology.	
Carbon emissions both from aircraft, and from motor vehicles, at the Airport and in the vicinity of the Airport.	Total carbon emissions per year from aircraft on flight paths and from aircraft at the Airport.	2.114 MtCO2
	Total carbon emissions per year from landside activities at the Airport.	0.004 MtCO2
	Total carbon emissions per year from airside activities at the Airport.	0.019 MtCO2
	Total carbon emissions per year from motor vehicles at the Airport or in the vicinity of the Airport in journeying to or from the Airport	0.167 MtCO2

Commented [AA25]: Reference should be made to Mr Cole's Evidence on the noise contour limits.

Multiple daytime contours have been now been agreed to be reduced to 54db only, but the incorporation of a night time control is duplicative of existing Gov controls and is unnecessary.

Commented [AA26]: Reference should be made to Dr Bull's Evidence on the appropriateness of these AQ limits.

These are the 2019 Baseline figures and are inappropriate as this will limit the airport to a level of operation that lower than currently permitted.

Commented [AA27]: Reference should be made to Mr Robinson's Evidence on the appropriateness of using carbon emissions limits.

For example, control of international aircraft emissions is not appropriate in a local authority planning condition.

It is not clear how the landside, airside and motor vehicle categories can be considered to meet all the 6 conditions tests.

SCHEDULE B

>35 million ppa basal environmental standards (paragraph (7)

Environmental Standard	Part of the environmental standard	Limit		
Noise exposure from the Airport, in the vicinity of the Airport and under flight paths.	Maximum area of 51dB LAeq 16h	99.5km2		
	Maximum area of 54dB LAeq 16h	51.9km2		
	Maximum area of 63dB LAeq 16h	8.1km2		
	Maximum area of 45dB LAeq 8h	125.5km2		
	Maximum area of 54dB LAeq 8h	20.9km2		
	Maximum area of 55dB Lden	75.7km2		
Air quality at the Airport and in the vicinity of the Airport.	Total NOx emissions from operations at the Airport, calculated in accordance with the prevailing most widely accepted methodology.	LTO cycle: Not more than 536.9 T per year Other airport sources: Not more than 44.7 T per year Road vehicles: Not more than 457.4 T per year		
	Total PM2.5 emissions from operations at the Airport, calculated in accordance with the prevailing most widely accepted methodology.	LTO cycle: Not more than 6.0 T per year Other airport sources: Not more than 1.8 T per year Road vehicles: Not more than 18.6 T per year		
	Total NO2 concentrations from operations at the Airport, calculated in accordance with the prevailing most widely accepted			
	Total PM2.5 concentrations, calculated in accordance with the prevailing most widely accepted methodology.			
Carbon emissions both from aircraft, and from motor vehicles, at the Airport and in the vicinity of the Airport.	Total carbon emissions per year from aircraft on flight paths and from aircraft at the Airport.	2.114 MtCO2 at 35mppa*	2.360 MtCO2 at 43mppa*	1.590 MtCO2 at 43mppa and no later than 2050*
	Total carbon emissions per year from landside activities at the Airport.	0.004 MtCO2	0.005 MtCO2 at 43mppa*	0 MtCO2 at 43mppa and no later than 2050*
	Total carbon emissions per year from airside activities at the Airport.	0.019 MtCO2	0.021 MtCO2 at 43mppa*	0 MtCO2 at 43mppa and no later than 2050*
	Total carbon emissions per year from motor vehicles at the Airport or in the vicinity of the Airport in journeying to or from the Airport	0.167 MtCO2	0.162 MtCO2 at 43mppa*	0 MtCO2 at 43mppa and no later than 2050*

* With a linear interpolation between 35 and 43mppa, and between the year in which 43mppa is reached and 2050

Commented [AA28]: See Sch A comment

Commented [AA29]: See Sch A comment

Commented [AA30]: See Sch A comment

SCHEDULE C

Commented [AA31]: Refer to comment on 14 (b) above

Dispute resolution procedure

1. This Schedule constitutes the dispute resolution procedure referred to in paragraph (14) of this Condition.
2. Where the airport operator wishes to refer a dispute to be determined in accordance with this dispute resolution procedure, the airport operator must give the LPA written notice:
    a. identifying all the issues that the airport operator wishes to refer to an expert for resolution;
    b. specifying the outcome that the airport operator seeks in relation to each issue, the basis for that outcome, and all the facts, policies and matters relied upon in support of that outcome; and
    c. identifying the expert by whom the airport operators wishes the dispute to be resolved.
3. The LPA may, not more than 7 days after receiving the written notice under (2), notify the airport operator that it does not agree to the expert identified by the airport operator, and the airport operator may thereupon request the President of Royal Town Planning Institute, or the president of another professional institute with requisite expertise, to appoint an expert to determine the dispute. Where the LPA does not, within 7 days after receiving the written notice under (2), notify the airport operator that it does not agree to the expert identified by the airport operator , the airport operator must notify the expert that the appointment has been mutually agreed by the airport operator and the LPA.
4. The Expert is to act as an independent expert and not as an arbitrator.
5. Within 21 days of the appointment of the Expert, the LPA must give the Expert a document setting out the outcome that the LPA seeks in relation to the dispute, the basis for that outcome, and all the facts, policies and matters relied upon in support of that outcome, as well as any comments on the points made in the airport operator's notice; and the LPA must, at the same time, provide a copy to the airport operator.
6. The airport operator may, within 7 days of receiving the LPA's document, give the Expert a document responding to the points made by the LPA in its document; and the airport operator must , at the same time, provide a copy to the LPA.
7. The Expert will not permit oral representations of any kind to be made to him by the parties, nor shall the Expert listen to witnesses or experts or receive written evidence (other than as received under Cs) or (6)).
8. Each party must, within 7 days of being requested, provide the Expert with such further information as the Expert may reasonably require for the purposes of his determination, supplying a copy to the other side at the same time.
9. The Expert's written determination, which is to be given without reasons, must be issued within 6 weeks after his appointment (unless delayed for reasons beyond the control of the independent expert) and will be final and binding on the parties.
10. The costs of the reference to the Expert (including VAT) is to be borne in the first instance by the airport operator. The Expert must in his decision determine the liability for such costs.
11. The Expert's decision will be final and binding on the parties.
12. Within 7 days of the Expert's decision, the LPA must publish an Environmental Modalities Scheme that gives full effect to it.

IN THE MATTER OF THE TOWN & COUNTRY PLANNING ACT 1990 SECTION 78 AND AN APPEAL BY STANSTED AIRPORT LIMITED

APP/C1570/W/20/3256619

(UTT/18/0460/FUL)

SUBMISSIONS OF UTTLESFORD DISTRICT COUNCIL IN RELATION TO CONDITION 15

Introduction & summary

1. Of the four reasons given by UDC for the decision under appeal (CD12.10), three revolved around detrimental environmental effects:
   - aircraft noise;
   - air quality; and
   - carbon emissions.

2. Following receipt of STAL's Addendum ES in October 2020 (CD7, CD8, CD9 and CD10), UDC proposed a condition that at once both sought comprehensively to resolve the differences between it and STAL in relation to all three environmental effects and to be independent of forecasting issues — "Condition 15."

3. Condition 15 imposes numeric limits on noise exposure, air quality emissions and carbon emissions from the development, which are set out in two schedules to the condition. Schedule A sets out the numeric limits that apply from commencement of the development and Schedule B sets out the numeric limits that apply from the start of the first year in which the passengers per annum exceeds 35 million: Condition 15 §§1-3. Of the remainder of Condition 15, §§4-14 set out the mechanism by which Schedule B operates and §§15-16 define various terms. In splitting the numeric limits in this way and providing for phased release of increased passenger numbers, Condition 15 serves to ensure that the benefit of the developer being allowed to increase the current maximum number of passengers per annum (35 mppa) is shared with those living in the vicinity of the airport, both now and in the future. It does so in a way that does not pre-empt the needs of future generations.

4. The condition was first proposed by UDC on 8/12/20 in its planning expert's proof of evidence (Hugh Scanlon) at pp 81-91 (UDC/4/1) (the missing schedule B was supplied shortly afterwards (CD26.1)). Mr Scanlon concluded his proof by summarising the attractions of Schedule 15 (§§10.13-10.14):

> "...a proposed condition is promoted that would act to remove these concerns [ie as to whether the predicted impacts will be realised], initially 'locking in' those impacts in respect of noise, air quality and carbon to be consistent with those predicted by the Appellant, restricting operations other than in accordance with the Appellant's own identified environmental parameters. It would then link growth with achieving compliance with new policy as it emerges, to ensure that the improvements predicted in the aviation sector are shared with the local community, a constant theme associated with aviation policy. In doing so, it would provide reassurances consistent with the commitments as set out within STAL's Stansted Sustainable Development Plan which promised a proactive management of the

environment, to reflect a changing policy context.

Revisiting the planning balance with such a condition in place, would significantly add to the positives of the Appeal proposals, to the extent that the balance would weigh strongly in favour of the development being positively considered."

5. STAL made no response to UDC's proposed Condition 15 until 5/1/12, when rebuttal proofs of evidence were exchanged. In his rebuttal proof (STAL/13/4), STAL's Mr Alistair Andrew stated that Condition 15 "cannot be agreed to by STAL" (§3.2).

6. Mr Andrew did not engage with the figures in Schedules A and B, but objected to the very principle of Condition 15:

> "3.5 To agree to a proposition that would effectively allow growth only in annual increments (assuming a growth as per ESA ICF forecasts and UDC's current suggested wording) would be unreasonable, provide no certainty to any party, would impose a great burden upon STAL and UDC, would be damaging to investment confidence across a range of stakeholders and contrary to the creation of a sound planning framework, including UDC's preparation of its new local plan."

Mr Andrew asserted that Condition 15 failed all six tests set out in §55 of the NPPF (CD14.6) and that, accordingly, it could not "be considered appropriate, practical [or] lawful" (§3.7). Mr Andrew continued:

> "3.9 The effect of the suggested condition would be to subject the airport to a pseudo planning application, at least four times beyond 35mppa (since UDC suggest no more than 2mppa increments is acceptable). This would not only involve considerable logistical challenges to ensure the required data is available and audited, but would also place UDC as the LPA under a considerable and repeated burden. The timeline of the regular operation of this condition is likely to be extensive. It is also hard to have confidence in how UDC would approach its responsibilities when account is taken of its consideration of each of the 2003, 2008 and 2018 applications.
>
> 3.10 In the event that agreement cannot be reached, the condition seeks to remove the statutory provision of appeals in relation to planning conditions and replace it with a non-statutory dispute resolution process. This may need to be the subject of separate legal submissions.
>
> 3.11 Furthermore, there are elements of the proposed wording that are simply not enforceable by condition, such as the 4-month deadline suggested for submissions of details. The reliance on other regulatory regimes as is suggested also does not meet the tests.
>
> 3.12 There are of course numerous aspects of the wording that are imprecise and that are too numerous to list here, but which can be discussed at the programmed Planning Conditions Session of the Inquiry.
>
> 3.13 As an overall approach the suggested condition is, in my judgment, fundamentally flawed, departs from the well-established role of planning conditions and fails the six condition tests."

7. Each of UDC's experts spoke to Condition 15 in his proof of evidence:
   - Mr James Trow, dealing with noise (UDC/1/2 §§7.23-7.26, 8.11);
   - Dr Mark Broomfield, dealing with air quality (UDC/2/2 §§18, 59, 62, 67, 99, 114-115 and 118-120); and
   - Dr Mark Hinnells, dealing with carbon emissions (UDC/3/1 §§88-89 and 102-108).

8. Each of STAL's experts has failed to discuss the figures in Schedules A and B with his

respective UDC counterpart:

- Mr Vernon Cole, dealing with noise (his rebuttal does not mention Condition 15: STAL/4/4);
- Dr Michael Bull, dealing with air quality (his rebuttal does not mention Condition 15: STAL/5/4); and
- Mr George Vergoulas, dealing with the technical aspects of carbon emissions (his rebuttal does not mention Condition 15: STAL/9/3).

No explanation has been forthcoming from STAL for this failure.

9. Each of UDC's experts has given evidence that he would have been happy to discuss the figures in Schedules A and B with his STAL counterpart. STAL has previously acknowledged the sense in linking a phased release of increased passenger numbers to environmental improvements. See, for example, §§5.1-5.2 of the 22/6/18 memorandum (CD19.24) from Mr Cole admitting that there was no reason why:

> "... a condition that limits the noise envelope in a manner that progressively tightens it over the years, i.e. meeting government policy of fairly sharing out the benefits from new technology..."

could not be applied to this development. This was reproduced in STAL's letter to UDC dated 5 July 2018 in support of STAL's application CD11.2 p 126.

10. It is not clear what is driving the uncooperativeness of STAL. One possible explanation for this is that each of STAL's experts has been under instruction not to discuss any part of Condition 15 with his UDC counterpart.

11. At any rate, following urgings from the Panel, at 17:31hrs on Friday, 5/2/21 STAL provided UDC with a 9-page document entitled "STAL Position on UDC Condition 15" ("**the STAL Position Statement**"). None of the points made in the STAL Position Statement could not have been made in December 2020. The STAL Position Statement says that it must be read in conjunction with Mr Andrew's rebuttal proof (STAL/13/4), stating, this time around, that "none of this proposed condition meets all of the 6 tests" (sic).

12. By the time of the STAL Position Statement, STAL had had almost two months to gather its thoughts. Nevertheless, STAL continues to decline setting out its position in full, stating instead:

> "The replicated Condition 15 text below is marked up with some featured examples of fundamental conflicts with condition tests and lawful use of a planning condition. These are provided, without prejudice, to any more detailed comments STAL may be required to make in respect of this condition during the Inquiry."

UDC does not consider that STAL has any legitimate reason for withholding its "more detailed comments" on Condition 15.

13. The points made in STAL Position Statement and Mr Andrew's rebuttal proof of evidence are of three varieties:

(1) Objection to Condition 15 on the basis that it fails the six requirements for a valid planning condition.
(2) Textual queries about words in the main body of Condition 15.
(3) Disagreement about figures shown in Schedules A and B.

14. These will be considered in turn. Given that STAL complains that Condition 15 is unlawful, it is first necessary to set out the law.

A legally valid planning condition

The legislative source

15. Section 70(1) of the *Town and Country Planning Act 1990* ("**TCPA 1990**") provides that a local planning authority may grant planning permission:

> "'...either unconditionally or subject to such conditions as they think fit...."

16. Section 72(1) of the TCPA 1990 provides:

> "**Without prejudice to the generality of section 70(1)**, conditions may be imposed on the grant of planning permission under that section—
>
> (a) for regulating the development or use of any land under the control of the applicant (whether or not it is land in respect of which the application was made) or requiring the carrying out of works on any such land, so far as appears to the local planning authority to be expedient for the purposes of or in connection with the development authorised by the permission;
>
> (b) for requiring the removal of any buildings or works authorised by the permission, or the discontinuance of any use of land so authorised, at the end of a specified period, and the carrying out of any works required for the reinstatement of land at the end of that period." (emphasis added)

17. Section 100ZA of the TCPA 1990 provides (so far as is relevant):

> "(1) The Secretary of State may by regulations provide that—
>
> (a) conditions of a prescribed description may not be imposed in any circumstances on a relevant grant of planning permission for the development of land in England,
>
> (b) conditions of a prescribed description may be imposed on any such grant only in circumstances of a prescribed description, or
>
> (c) no conditions may be imposed on any such grant in circumstances of a prescribed description.
>
> (2) Regulations under subsection (1) may make provision only if (and in so far as) the Secretary of State is satisfied that the provision is appropriate for the purposes of ensuring that any condition imposed on a relevant grant of planning permission for the development of land in England is—
>
> (a) necessary to make the development acceptable in planning terms,
>
> (b) relevant to the development and to planning considerations generally,
>
> (c) sufficiently precise to make it capable of being complied with and enforced, and
>
> (d) reasonable in all other respects.
>
> (3) Before making regulations under subsection (1) the Secretary of State must carry out a public consultation.
>
> (4)-(13) ....."

The Secretary of State has not made any regulations under s 100ZA(1), but has under s 100ZA(6): see *Town and Country Planning (Pre-commencement Conditions) Regulations 2018* (SI 2018/566).

18. The express power to impose types of condition under TCPA 1990 s 72(1) does not limit the

generality of the power under s 70(1). So, too, the express provision in TCPA 1990 s 91 ("General condition limiting duration of planning permission"). Collectively, the provisions evidence a Parliamentary intent that the generality of s 70(1) is not to be whittled down but is instead to be governed by the ordinary precepts of administrative law. The statutory framework provides clear powers through which conditions can be amended or removed, under ss 96A and 73 of the TCPA 1990. Section 96A confers power to make non-material changes by imposing new conditions or removing or altering existing conditions. There is also the complementary power under s 73 to develop land without compliance with conditions previously attached. Breach of a condition constitutes a breach of planning control: TCPA 1990 s 171A(1)(b). The enforcement of such breaches is secured through the discretion conferred on a local planning authority by TCPA 1990 ss 172(1)(a) (Enforcement Notice) and s 187A (Breach of Condition Notice).

19. So far as this appeal is concerned, the power of the Secretary of State in relation to the imposition of conditions is identical to that of the local planning authority under ss 70 and 72: see TCPA 1990 s 79(4).

20. In short, TCPA s 70(1) confers as general a power to impose any conditions on a grant of planning permission as can be, subject always to the controlling principles of administrative law.

Case-law

21. It is not uncommon for legislation to confer power on a decision-maker to approve an application for a permission, licence, authorisation etc of one sort or another "either unconditionally or subject to such conditions as the decision-maker thinks fit." Where power is so conferred on a decision-making body, it may only be used in the way in which Parliament intended, and Parliament is presumed to have intended that a power should be exercised so as to promote the policy and objectives of the relevant legislation. As such, in order to identify the authorised purpose for which a statutory power is conferred, it is necessary to identify the policy and objects of the relevant legislation: *Padfield v MAFF* [1968] AC 997 at 1030, 1045, 1053-1054; *R v SSETR, ex p Spath Holme Ltd* [2001] 2 AC 349 at 381, 396, 404.

22. This is elementary administrative law.

23. Section 70 of the TCPA 1990 is an instance of such a power. The cases dealing with s 70 do no more than apply to the planning sphere the general principles of administrative law that are applicable to all such powers.

24. The breadth of the power in the TCPA 1990 to impose conditions has been long been recognised by the courts:

> "The words that I have italicised [ie 'subject to such conditions as they think fit' in the 1971 Act predecessor of TCPA 1990 s 70] would appear on their face to confer an unlimited power, but it is plain that the power is subject to certain limitations. If authority for that proposition is needed it is to be found in the speech of Lord Reid in *Kingsway Investments (Kent) Ltd v Kent County Council* [1971] AC 72 at 86. In order to be valid, a condition must satisfy three tests. First, it must have a planning purpose. It may have other purposes as

well as its planning purpose. But if it is imposed solely for some other purpose or purposes, such as furtherance of the housing policy of the local authority, it will not be valid as a planning condition: see *R v Hillingdon London Borough Council, Ex parte Royco Homes Ltd* [1974] QB 720. Second, it must relate to the permitted development to which it is annexed. The best known statement of these two tests is that by Lord Denning in *Pyx Granite Co Ltd v Min of Housing and Local Government* [1958] 1 QB 554 which has been followed and applied in many later cases, Lord Denning said at p 572:

> 'Although the planning authorities are given very wide powers to impose 'such conditions as they think fit,' nevertheless the law says that those conditions, to be valid, must fairly and reasonably relate to the permitted development. The planning authority are not at liberty to use their powers for an ulterior object, however desirable that object may seem to them to be in the public interest.'

One reason, relevant to the instant case, why it would be wrong to secure removal of buildings by the use of a condition unrelated to the permitted development is that it would enable the planning authority to evade its liability to pay compensation for removal under section 51 of the Act of 1971. Thirdly, the condition must be 'reasonable' in the rather special sense of *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223, 229. Thus it will be invalid if it is 'so clearly unreasonable that no reasonable planning authority could have imposed it' as Lord Widgery CJ said in *Kingston-upon-Thames Royal London Borough Council v Secretary of State for the Environment* [1973] 1 WLR 1549 at 1553." *Newbury District Council v Secretary of State for the Environment* [1981] AC 578 at 607-609.

25. The Supreme Court has as recently as 2019 reiterated this statement of principle: *R (Wright) v Resilient Energy Severndale Ltd* [2019] UKSC 53, [2020] 2 All ER 1. Importantly, as the Supreme Court noted at [42]:

> "Statute cannot be overridden or diluted by general policies laid down by central government (whether in the form of the NPPF or otherwise), nor by policies adopted by local planning authorities."

The Supreme Court has similarly stated the law in relation to the Scottish equivalent of the TCPA 1990: *Aberdeen City and Shire Strategic Development Planning Authority v Elsick Development Company Limited (Scotland)* [2017] UKSC 66, [2018] 1 P & CR 14 at [28]-[32].

26. In summary, then, the touchstone for assessing the legal validity of a planning condition is that it must:
    (1) serve a planning purpose;
    (2) fairly and reasonably relate to the development permitted; and
    (3) not be unreasonable in the public law "irrationality" sense.

27. Policy and guidance are subordinate to statute and to statements of law from the courts — particularly statements from the Supreme Court and, before it, the House of Lords. Policy and guidance must, so far as possible, be read so as to accord with statute and with the statements of law from the courts.

Policy & guidance

28. Paragraph 55 of the NPPF (CD14.6) provides (so far as relevant):

> "Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Agreeing conditions early is beneficial to all

parties involved in the process and can speed up decision making...".

29. The Ministry of Housing, Communities & Local Government has published non-statutory guidance on the use of planning conditions. This states:

"Paragraph 55 of the National Planning Policy Framework makes clear that planning conditions should be kept to a minimum, and only used where they satisfy the following tests:

1. necessary;
2. relevant to planning;
3. relevant to the development to be permitted;
4. enforceable;
5. precise; and
6. reasonable in all other respects.

These are referred to in this guidance as the 6 tests, and each of them need to be satisfied for each condition which an authority intends to apply.

....

How can the local planning authority and the applicant reduce the need for conditions?

Rigorous application of the 6 tests can reduce the need for conditions and it is good practice to keep the number of conditions to a minimum wherever possible. ...

Are there any circumstances where planning conditions should not be used?

Any proposed condition that fails to meet one of the 6 tests should not be used. This applies even if the applicant suggests or agrees to it, or it is suggested by the members of a planning committee or a third party. Specific circumstances where conditions should not be used include:

- **Conditions which unreasonably impact on the deliverability of a development:** Conditions which place unjustifiable and disproportionate financial burdens on an applicant will fail the test of reasonableness. In considering issues around viability, local planning authorities should consider policies in the National Planning Policy Framework and supporting guidance on viability.
- **Conditions reserving outline application details:**
  .....
- **Conditions requiring the development to be carried out in its entirety:**
  .....
- **Conditions requiring compliance with other regulatory requirements (eg Building Regulations, Environmental Protection Act):**
  .....
- **Conditions requiring land to be given up:**
  .....
- **Positively worded conditions requiring payment of money or other consideration:**
  ....

Can conditions be used to require the applicant to submit further details after permission has been granted?

For non outline applications, other than where it will clearly assist with the efficient and effective delivery of development, it is important that the local planning authority limits the use of conditions requiring their approval of further matters after permission has been granted.

Where it is justified, the ability to impose conditions requiring submission and approval of further details extends to aspects of the development that are not fully described in the application (eg provision of car parking spaces).

Where it is practicable to do so, such conditions should be discussed with the applicant

> before permission is granted to ensure that unreasonable burdens are not being imposed. The local planning authority should ensure that the timing of submission of any further details meets with the planned sequence for developing the site. Conditions that unnecessarily affect an applicant's ability to bring a development into use, allow a development to be occupied or otherwise impact on the proper implementation of the planning permission should not be used. A condition requiring the re-submission and approval of details that have already been submitted as part of the planning application is unlikely to pass the test of necessity.
> ...."

30. The guidance is just that – guidance. It cannot supplant statute or statements of law from the courts. It would be a mistake to read the "six tests" in the guidance as supplanting or even qualifying the generality of TCPA s 70 or the above-quoted statements of law: *R (Girling) v Parole Board* [2006] EWCA Civ 1779, [2007] QB 783 at [23]; *R v SSE, ex p Lancashire CC* [1994] 4 All ER 165 at 172. As the Supreme Court has said:

> "Guidance is advisory in character; it assists the decision make but does not compel a particular outcome."

R (Alvi) v SSHD [2012) UKSC 33, [2012] 1 WLR 2208 at [120].

31. In this regard, the first of the "tests" identified in the guidance – that the condition is "necessary" – is best understood in the public law use of the word "necessary." In this sphere, the word "necessary" does not mean indispensable, but is understood to mean reasonably necessary in order to achieve an objective mandated by the legislation: see *South Lanarkshire Council v Scottish Commissioner* [2013] UKSC 55, [2013] 1 WLR 2421 at [8], [19]-[27]. This will often involve a consideration of the importance of the statutory objective and the means deployed to secure it to see whether the latter are proportionate to the former.

Application

32. Condition 15 is perfectly lawful.

33. Indisputably, it serves a planning purpose; it fairly and reasonably relates to the proposed development permitted; and it cannot sensibly be characterised as "irrational" in the sense that no reasonably local planning authority could seek to impose it.

34. In this regard, the following points may be made:
    (1) Condition 15 revolves around the environmental effects of the proposed development. The premium placed on evaluating the environmental effects of certain developments is statutorily recognised by TCPA s 71A and the various regulations made under that provision: see *Neighbourhood Planning (General) Regulations 2012* (SI 2012/637); *Town and Country Planning (Permission in Principle) Order 2017* (SI 2017/402); and *Town and Country Planning (Environmental Impact Assessment) Regulations 2017* (SI 2017/571).
    (2) Condition 15 is rooted in the Aviation Policy Framework and the expressed need for the benefits of aviation to be shared with the local communities around airports which experience its environmental effects: CD14.1, §3.3. Applied here, if STAL is to have the benefit of the additional 8mppa which it seeks, national aviation policy requires that those benefits be shared through the capacity increase being

tied, as a minimum, to the environmental benefits which STAL says it can achieve over the period they have assessed.

(3) The scale of the proposal is large and its potential environmental effects long lasting. On any view, an application to increase the passenger throughput of one of London's airports by 8mppa is a major proposal, falling not far short of the 10mppa which would make it a nationally significant infrastructure project: see *Making Best Use* CD14.2 §1.27. At the same time, the environmental effects of the operation of the airport with its increased cap will be felt by the communities around it for generations. In these circumstances, the objective of sustainable development - to meet the needs of the present without compromising the ability of future generations to meet their own needs (NPPF (CD14.6) §8) - is met by ensuring that the capacity release is tied to the environmental benefits which it is said can be achieved over the long-term.

(4) The long-term environmental benefits promoted by STAL are contingent upon aviation forecasts which STAL's Mr Galpin has acknowledged in cross-examination are inherently uncertain in circumstances where uncertainties in inputs compound the uncertainty of the output. Such uncertainties are further compounded by the unprecedented uncertainties arising from the COVID-19 pandemic, the effects of which continue to evolve, and which will affect the economy, fleet mix, and longer-term attitudes to travel. All of this has the very real potential to bring about different environmental impacts than those presented. The uncertainties of the aviation forecasts relied upon by STAL to assess the environmental effect of their development, justify the imposition of a condition which ties the airport to the environmental benefits which they say will be achieved.

(5) The impact of the COVID-19 pandemic is that the increase above the current 35mppa cap will not occur until 2027 with the new capacity reached over 10 years from now in 2032 or 2034. That is not what STAL envisaged when it made its application in 2018. Nor is it consistent with the timescale within which planning permissions are envisaged to be implemented under the TCPA 1990, under which planning permissions are subject to a default 3-year implementation period by condition: TCPA 1990 s 91. That set back in the timescales for the likely use of the increased cap is set against a direction of travel in policy on aircraft noise, air quality, and carbon emissions which is tightening and likely to be more restrictive when the increased cap comes to be used. It is consistent with the clear responsibility on airports to manage and mitigate their impacts, that the mitigation should be judged against standards applicable at the time when the increased cap comes to be used.

(6) The phasing of requirements is specifically supported by Government policy: see *Airports National Policy Statement: new runway capacity and infrastructure at airports in the South East of England*, June 2018, CD14.3 at §1.20; DfT *Aviation 2050*, CD14.27 at §3.14; *Clear Air Strategy 2019* CD16.4 p 7 ("We will progressively cut public exposure to particulate matter pollution as suggested by the World Health Organization...") and p 30 ("The WHO therefore recommend a step-by-step approach to achieve progressive reductions. Reflecting this, we will set a bold new goal to progressively cut public exposure to particulate matter

pollution, as suggested by the WHO. By implementing the policies in this Strategy, we will reduce $PM_{2.5}$ concentrations everywhere, so that the number of people living in locations above the WHO guideline level of 10 ì g/m$_3$ is reduced by 50% by 2025, compared to our 2016 baseline. Areas above the 10 ì g/m guideline limit in 2025 will have lower concentrations than today, and we will set out our plans to reduce $PM_{2.5}$ concentrations even further in due course.").

(7) Condition 15 is directed to securing planning objectives. Paragraph 9 of Condition 15, in requiring UDC to "take account of" legislation, international instruments and policies relevant to aircraft noise, noise control, carbon emissions and air quality, the condition is not "requiring compliance with other regulatory regimes." Rather, it is striving to secure that what is approved is consistent with the requirements of legislation, international instruments and policies. This is very sensible. There is no authority to support the proposition that a planning condition must be set with no regard to its consistency or inconsistency with the requirements of legislation, international instruments and policies.

(8) Condition 15 is not requiring the re-submission and approval of detail that have already been submitted as part of STAL's application for planning permission. Rather, it re-purposes the detail submitted by STAL as part of its application for planning permission, using its figures to populate Schedule A: see CD8.3 §§27.1.4, 28.1.2, STAL/4/3 p 43, App 9 (noise), STAL/5/2, p 32 (air quality), STAL/9/2 §6.1.2 (carbon emissions). Schedule B then builds on those figures to require improvement in each of those three environmental detriments in a way that is certain, using metrics that STAL's own experts have used.

35. STAL complains that a condition which requires the submission of schemes for increased capacity to be assessed by the Council against future environmental standards does not provide the long-term certainty which its investors need. Whether the "long-term certainty that investors need" is a legitimate planning consideration is questionable. But putting this to one side, the complaint ignores the tight timescales written into Condition 15 for the assessment of the scheme, the availability of a quick, streamlined, alternative, expert decision-making procedure, and the fact that its own Sustainable Development Plan commits it to the objectives which Condition 15 fairly transforms into commitments.

36. STAL's complaint that Condition 15 would involve considerable logistical challenges for STAL and UDC should be considered in context: STAL/13/4, §3.9:

(1) The 8mppa increase is forecast to be achieved across a 6-8 year period (2027-3032/3034).

(2) STAL was able to produce a lengthy ESA, with revised forecasts and chapters covering all of the environmental impacts of its proposal, within 9 months of the decision to refuse (Jan 2020 – Oct 2020).

(3) Condition 15 is limited to the 3 areas of aircraft noise, air quality, and carbon emissions.

(4) If permission were granted this year, the airport would have a 6-year lead in time (by 2027) to prepare itself to comply with the procedure under Condition 15 based on its own forecasts.

(5) Through its SDP, STAL commits to monitor and reduce its environmental impacts.

(6) It is consistent with those aims that the airport should have up to date data available as to its environmental impacts which it can submit to the Council as part of its Environmental Modalities Scheme.

(7) It is in the interests of the Council to work collaboratively to ensure that the scheme submitted is processed and decided upon. In any event, its decision-making process will be subject to a swift dispute resolution procedure.

37. There can be no sensible suggestion that Condition 15 is not relevant to planning, nor that it is relevant to the development to be permitted. Schedule A seeks to ensure that up to 35 mppa the environmental effects assessed by STAL in its EIA are met, which are all referrable to its proposal. Thereafter, the aim of Condition 15 is to go beyond this: Schedule B ensures that the proposed development delivers improvements in air quality in accordance with the requirements of NPPF and airport/aviation policy (CD16.4), Aviation Policy Framework 2013 (CD14.1) and Aviation 2050 Green Paper 2018 (CD14.27).

38. The complaint that Condition 15 is not enforceable or precise does not bear analysis. The reality is that if STAL wants to activate its increase in capacity, it will be in its interests to comply with the timescales. If the 4-month deadline is not complied with, or the decision is not made by UDC in time, the decision will be made externally in what is a swift process.

39. As to whether Condition 15 is reasonable in all other respects, STAL's complaints about the supposed uncertainties for its investors should be considered against the level of certainty and transparency which Condition 15 will bring about. It delivers reassurances to the local community whilst also providing STAL with certainty on the face of its planning permission regarding its ability to grow sustainably. Should an impasse arise, it allows for an expert assessor to stand in the shoes of UDC as decision-maker. In complaining that this circumvents the statutory rights of appeal, Mr Andrew does not understand the difference between having an expert stand in the shoes of the decision-maker and an adjudicative process following the making of a decision: cf STAL/13/4, §3.10. Schedule C provides for an independent primary decision-maker whose decision stands as that of UDC. Where a decision is made by that independent primary decision-maker under Schedule C, it is that decision which stands as the decision of UDC and that is susceptible to challenge by STAL.

40. One of the core principles underpinning the Aviation Policy Framework is collaborative working CD14.1, p 8, §3. To similar effect are: the Final Report of the Airports Commission: CD14.28, pp 10, 12, 34, §§11.50, 13.3 and 13.96; Dept for Aviation, *Aviation 2050* CD14.27 at §§3.35, 7.28; NPPF (CD14.6) §180.

41. MAG's *Corporate Social Responsibility Report 2018-19* CD15.7, p 10, under the heading "Achieving the UN's Sustainable Development Goals" states, in relation to "tak[ing] urgent action to combat climate change and its impacts":

> "Our airports have a proven track record, reducing emissions from our operations and achieving carbon neutrality. Our airports can go further, reducing remaining emissions, improving the climate resilience and climate preparedness of our operations and cultivating collaborative approaches to reduce the impacts of the wider aviation industry."

And later, in relation to reducing emissions (p 20):

> "Working with the wider aviation industry is essential to finding solutions to these complex

problems. We run a 'Collaborative Environmental Management' group, engaging partners across our sites to tackle environmental issues. To support this work across the whole of the UK, MAG was a founding member of Sustainable Aviation, a collaboration of companies from across the UK's aviation industry working to improve the sustainability of the sector. MAG's Group CSR and Future Airspace Director, Neil Robinson, is the current Chair of Sustainable Aviation."

Similarly p 34. To similar effect is STAL's *Sustainable Development Plan 2015* CD15.5 at pp 20, 22.

42. Condition 15 supplies a paradigm framework for collaborative working. Given STAL's published position, it should be welcoming it, not repudiating it.

43. STAL complains that Condition 15 is long. The complaint is misplaced. Quite apart from being shorter than most of the documents before this Inquiry, it seeks to cover the three main topics of disagreement between STAL and UDC. If STAL is able to identify a single surplus word in Condition 15, UDC will remove it.

44. To reiterate: Condition 15 is perfectly lawful. It serves to address three important planning purposes – noise, air quality and carbon emissions resulting from the proposed development. These formed three of the four reasons for refusal. Condition 15 fairly and reasonably relates to the proposed development. It is not "irrational" in the public law sense of the word. Its language is precise. Its operation is certain.

Textual queries

45. The textual queries attached to STAL's 5 February 2021 document are, for the most part, linguistic niceties. The responses to them are:

STAL comment number	Condition 15 para number + STAL complaint	UDC response
AA1	1 "modalities" Meaning?	It means the process. UDC is happy to substitute the word if that helps STAL.
AA2	1 "approval of environmental matters" Meaning? Imprecise	The words mean what they say. UDC is not aware of anything imprecise about their meaning; but if STAL identify any ambiguities, UDC is happy to resolve them.
AA3	2 "first commencement" What do the words mean?	The words mean what they say. UDC is not aware of anything imprecise about their meaning; but if STAL identify any ambiguities, UDC is happy to resolve them.
AA4	3 "Without derogating from paragraphs (4) to (14) of this Condition" What is this trying to say?	What this is saying is: "Without limiting the generality of paragraphs (4) to (14) of this Condition." It is a common formula of words in commercial contracts.
AA5	5 "not less than 4 months before the start of the year" Not enforceable as a condition	No justification is provided for the complaint that this is not enforceable as a condition.

STAL comment number	Condition 15 para number + STAL complaint	UDC response
AA6	5b “all the data it holds relevant to the draft Environmental Modalities Scheme, including (without limitation)” Not precise	UDC is not aware of anything imprecise about their meaning; but if STAL identify any ambiguities, UDC is happy to resolve them..
AA7	5b “using conventional metrics for the data type” Not precise	The metric are those used in Schedules A and B, being metrics used by STAL’s own experts. UDC is not aware of anything imprecise about their meaning; but if STAL identify any ambiguities, UDC is happy to resolve them.
AA8	6 “specify on a year-by-year basis” Imprecise and unnecessary	UDC is not aware of anything imprecise about their meaning; but if STAL identify any ambiguities, UDC is happy to resolve them. The scheme does not duplicate the ES or ESA in that it requires more of the developer than was offered in either of those documents. Neither of those documents provided for the level of improvement above 35mppa that is demanded by Schedule B.
AA9	6a “2 million ppa” Unjustified	Entirely justified: this ensures that those living in the vicinity of the airport will also enjoy a benefit from the development as it exceeds 35mppa.
AA10	7 “Without limiting the improvements in environmental matters that the LPA may need before approving it...” Imprecise	UDC is not aware of anything imprecise about their meaning; but if STAL identify any ambiguities, UDC is happy to resolve them.
AA11	7 “Schedule B” This process would involve a reconsideration of matters that are for determination through the current appeal process.	Incorrect. This misunderstands both the purpose and operation of Schedule B. See Scanlon proof cited at §4 of this position statement.
AA12	9a “All legislative” Imprecise	UDC is not aware of anything imprecise about their meaning; but if STAL identify any ambiguities, UDC is happy to resolve them.
AA13	9b “All international instruments” Imprecise and not necessary.	UDC is not aware of anything imprecise about their meaning; but if STAL identify any ambiguities, UDC is happy to resolve them. As to it being unnecessary, see §34(7) of this position statement
AA14	9c “All policies, whether national, regional or local...” Imprecise	UDC is not aware of anything imprecise about their meaning; but if STAL identify any ambiguities, UDC is happy to resolve them.
AA15	10 “such conditions, limitations and restrictions” How is this lawful?	The “conditions, limitations and restrictions” do not negate the overall grant of permission to increase passenger numbers: they are directed to setting the counterbalancing environmental benefits that need to accompany them. The developer does not have to accept the changes: hence paragraph 14(b) and Schedule C of Condition 15.

STAL comment number	Condition 15 para number + STAL complaint	UDC response
AA16	10 “expedient” Imprecise	UDC is not aware of anything imprecise about their meaning; but if STAL identify any ambiguities, UDC is happy to resolve them.
AA17	11 “LPA must strive to maximise improvements” Imprecise and not necessary.	UDC is not aware of anything imprecise about their meaning; but if STAL identify any ambiguities, UDC is happy to resolve them. At to necessity, see §34 above.
AA18	12 “comply” Imprecise and unenforceable	UDC is not aware of anything imprecise about their meaning; but if STAL identify any ambiguities, UDC is happy to resolve them. UDC is not aware of any reason why this would not be enforceable; but if STAL explains the basis for the complain, UDC will address it.
AA19	14a “Within 2 months” Inappropriate to replace the statutory appeal process.	This complaint misunderstands Schedule C. See §39 above.
AA20	14b Entire subpara. Unlawful for decision maker to delegate role of independent dispute resolution process	This complaint misunderstands Schedule C. See §39 above.
AA21	15 “Stansted Airport Ltd” Risk of making permission personal.	Misconceived complaint. Read the words that follow: “and any other person...”
AA22	15 “aircraft noise exposure, emissions to air and carbon emissions” Imprecise	UDC is not aware of anything imprecise about their meaning; but if STAL identify any ambiguities, UDC is happy to resolve them. Moreover, these are the same terms as STAL’s experts have used without seemingly having any problems about precision of meaning.
AA23	15 “Environmental Modalities Scheme” Imprecise	UDC is not aware of anything imprecise about their meaning; but if STAL identify any ambiguities, UDC is happy to resolve them.
AA24	15 “the Expert” Unlawful	This complaint misunderstands Schedule C. See §39 above.
AA25	Sch A Noise exposure contours	See comments at §§46ff below.
AA26	Sch A Air quality figures	See comments at §§46ff below.
AA27	Sch A Carbon emission figures	See comments at §§46ff below.
AA28	Sch B Noise exposure contours	See comments at §§46ff below.
AA29	Sch B Air quality figures	See comments at §§46ff below.
AA30	Sch B Carbon emission figures	See comments at §§46ff below.

STAL comment number	Condition 15 para number + STAL complaint	UDC response
AA31	Sch C Entire Schedule	This complaint misunderstands Schedule C. See §39 above.

Schedules A and B

46. All limit values contained within Schedules A and B are taken from the ESA, reflecting the approach of tying the growth in passenger numbers to the environmental effects which have been assessed by STAL.

Noise

47. The selection of the contour area restrictions within Schedules A and B are intended to reflect the 2027 and 2032 development case scenarios, and therefore provide certainty on noise impacts from the Airport as it grows, and a legal requirement for STAL to reduce its noise impact as it grows to 43mppa.

48. As explained by Mr. Trow in evidence, the daytime and night-time maximum area contours in Schedule A all relate back to policy and other pertinent values used in the control of aircraft noise (e.g. LOAEL and SOAEL for daytime and night-time, with the 55dB Lden reflecting the minimum mandatory reporting threshold under the Environmental Noise Regulations 2006).

49. Schedule B uses the same contour levels but reduces the maximum area for each, as the minimum improvement to be achieved, in line with the ESA and national policy to limit and where possible reduce exposure to aircraft noise.

Air Quality

50. As explained by Dr. Broomfield in evidence, maximum limits set by reference to emissions of total NOx and PM2.5 are an appropriate means by which air quality can be regulated. It is accepted that total NO2 and PM2.5 concentrations (the last 2 boxes) are not additionally required.

51. In Schedule A, the total NOx emissions are taken from the breakdown of emissions contained in Table 10.5 of the ESA. Similarly, the total PM2.5 emissions are taken from Table 10.6 of the ESA. Both relate to the 2019 baseline in seeking to set a limit which does not exceed that which has been experienced.

52. In Schedule B, the maximum limits are unchanged to reflect the policy objective of improving air quality when set against its growth. It is acknowledged that, as proposed, in some respects the limits would permit higher emissions than those permitted under the existing permission. As a result alternative limits are being considered and attempts have been made to contact Dr Bull to discuss.

Carbon Emissions

53. As explained by Dr. Hinnells in evidence, the total carbon emissions in Schedule A for each aspect of the development are as follows:
    (1) In Schedule A and B for 35mppa (ES addendum Table 12-3, Do minimum case 2027).
    (2) In Schedule B, figures for 35mppa, are from the same Table; figures for 43mppa are from the same Table 12-3, Development Case 2032; whilst figures for 2050 are from ESA Table 12-6 Central case.
    (3) A linear interpolation between 35mppa and 43mppa is proposed in line with the ESA interpolations.

54. The aim is to ensure that the ESA is used as a proposed cap for carbon emissions. If future national policy goes beyond this then at each phase of additional development, emissions limits can be revised down in line with national policy.

Generally

55. UDC's experts remain open to discussion on the limit values contained within the schedules.

Conclusion

56. UDC urges STAL to re-visit its opposition to Condition 15. UDC remains committed to working with STAL to resolve any concerns it has as to the approach and details of Condition 15.

PHILIP COPPEL QC + ASITHA RANATUNGA
Counsel for UDC

9 February 2021

STANSTED AIRPORT 35 + PLANNING APPEAL

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

STAL RESPONSE TO UDC SUBMISSIONS ON CONDITION 15

Introduction and summary

1. UDC devotes a great deal of energy in its submissions to criticising STAL for its alleged failure to engage in detailed negotiations with UDC, concerning the wording of UDC's proposed 'condition 15'. However, Mr Andrew has provided a comprehensive response to condition 15 in his rebuttal proof of evidence. For the reasons he explains in some detail, STAL does indeed object "to the very principle of condition 15".[1] This is because condition 15 is clearly unlawful and does not meet the policy tests for the imposition of conditions under paragraph 55 of the NPPF, for reasons which we expand upon below. The Panel was therefore right to express its serious reservations about this condition at the outset of the Inquiry.

2. For the avoidance of doubt, STAL has been and remains fully committed to agreeing the main schedule of conditions with UDC. Indeed, it has engaged in a continuum of discussions with UDC in relation to an appropriate set of planning conditions and obligations to accompany the appeal proposals over a period of several years. These discussions have continued right up to the present day and informed STAL's contributions to the Preliminary Conditions Session on 12th February, 2021. For completeness, STAL's expert witnesses have also held specific discussions on condition 15 with UDC's witnesses, although it has not been possible to reach agreement in relation to this condition. Ultimately, however, STAL's position remains that there is nothing to be gained by having detailed discussions about the wording of condition 15. It is a distraction from the main issues in this appeal, including the formulation of a lawful and workable set of planning conditions to be imposed on the grant of any permission.

[1] UDC submissions §6

3. These submissions respond to UDC's submissions of 9th February 2021 and address the – in STAL's submission insuperable - legal difficulties with condition 15. The planning and policy objections to this condition will be addressed further, insofar as necessary, by Mr Andrew in his evidence.

The legislative and policy framework

4. Section 70(2) Town and Country Planning Act 1990 and 38(6) Planning and Compulsory Purchase Act 2004 provide the statutory framework for planning decision-making. By virtue of these provisions, decisions must be taken in accordance with the development plan unless material considerations indicate otherwise.

The imposition of planning conditions

5. The principles governing the imposition of planning conditions on the grant of permission are extremely well-established.

6. Section 70(1) of the 1990 Act provides that a local planning authority may grant planning permission "either unconditionally or subject to such conditions as they think fit."

7. However, the power to impose conditions is not unlimited and the tests for determining the lawfulness of planning conditions are well known. To be lawful, a condition must satisfy three tests: (i) it must fairly and reasonably relate to a planning purpose, (ii) it must fairly and reasonably relate to the permitted development, and (iii) it must not be so unreasonable that no reasonable planning authority could have imposed it (see *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation [1948] 1 K.B.223*): see ***Newbury District Council Respondents v Secretary of State for the Environment*** [1981] AC 578 at 599-600.

8. The application of these tests has also been the subject of extensive judicial consideration and the relevant authorities are considered below.

Discharge of matters required pursuant to a condition

9. Article 27 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 contains detailed procedural requirements for the determination of applications made under planning conditions:

> "(1) Subject to paragraph (3), an application for any consent, agreement or approval required by a condition or limitation attached to a grant of planning permission must—
> (a) be made in writing to the local planning authority and must give sufficient information to enable the authority to identify the planning permission in respect of which it is made; and
> (b) include such particulars, and be accompanied by such plans and drawings, as are necessary to deal with the application.
> (2) The authority must give notice to the applicant of their decision on the application within a period of 8 weeks beginning with the day immediately following that on which the application is received by the authority, or such longer period as may be agreed by the applicant and the authority in writing.
> (3) Paragraphs (1) and (2) do not apply to an application for approval—
> (a) of reserved matters1; or
> (b) under Schedule 2 to the Permitted Development Order2."

Appeals against refusal or non-determination of applications to discharge planning conditions

10. Section 78(1) of the 1990 Act provides that:

> "(1) Where a local planning authority—
> …
> (b) refuse an application for any consent, agreement or approval of that authority required by a condition imposed on a grant of planning permission or grant it subject to conditions
> …
> the applicant may by notice appeal to the Secretary of State.

11. Sub-section 2 contains an equivalent right of appeal against a failure by the Local Planning Authority to determine such an application within the prescribed time periods.

The policy tests in the NPPF

12. Paragraph 55 of the NPPF establishes the six tests that must be satisfied in order for a planning condition to be imposed:

> "Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects."

13. The guidance in the PPG[2] explains how these six tests should be applied. It also gives specific examples of conditions, which would not meet the six tests. These include, insofar as relevant, conditions which unreasonably impact on the deliverability of a development, or which unnecessarily affect an applicant's ability to bring the development into use or the proper implementation of the planning permission.

Response to UDC

(i) A condition which seeks to defer until a later date the question of whether permission should be granted in the first place will fail the 'Newbury' tests and will be unlawful

14. In ***R. (on the application of London Borough of Hillingdon Council) v Secretary of State for Transport, Secretary of State for Housing, Communities and Local Government v High Speed Two (HS2) Limited*** [2020] EWCA Civ 1005, the Court of Appeal reviewed the relevant authorities and held that a condition which stated that a planning approval would be valid *only after* archaeological investigations were undertaken and if those investigations did not discover anything of archaeological significance would not fairly and reasonably relate to the proposed development and would be Wednesbury unreasonable.

15. Under the heading "Conditional or deferred decisions: Grampian conditions", the Court reviewed the relevant authorities and held as follows:

> "88. More recently in *Alison Hook v Secretary of State for Housing, Communities and Local Government and Surrey Heath Borough Council [2020] EWCA Civ 486* the Court was concerned with the validity of a planning condition within the context of Section 70 TCPA 1990 and whether a condition restricting occupancy of a building under a planning permission to an agricultural worker was consistent with the principle that a planning condition must fairly and reasonably relate to the development permitted. The Court helpfully summarised the law on planning conditions more generally (in paragraph 33):
> "It is settled law that, to be valid, a planning condition must satisfy three basic requirements. First, it must be imposed for a "planning" purpose and not for any ulterior purpose. Secondly, it must fairly and reasonably relate to the development permitted by the planning permission. Thirdly, it should not be so unreasonable that no reasonable planning authority could have imposed it (see the speeches in the House of Lords in *Newbury District Council v Secretary of State for the*

[2] UDC §29

Environment [1981] 1 A.C. 578 ; the judgment of Lord Hodge in *Elsick Development Company Ltd. v Aberdeen City and Shire Strategic Development Planning Authority [2017] UKSC 66; [2017] P.T.S.R. 1413* , at paragraphs 43 to 46; and the judgment of Lord Sales in *R. (on the application of Wright) v Resilient Energy Severndale Ltd. and Forest of Dean District Council [2019] UKSC 53* , at paragraphs 32 to 42)."

89. In our judgment, applying the test set out above, such a condition would fall foul of the second and third basic requirements: (i) the condition is integral to the validity of the approval which is intended to confer a permit to conduct the development works, but at the time the condition is imposed the authority does not know whether the development works are to be " *permitted* " and therefore it cannot fairly and reasonably relate to it (second basic requirement); and (ii) it is irrational and unreasonable for an authority to be compelled to give what is intended to be a definitive approval to a request but also subject it to a condition that requires the authority to consider *later* whether the approval should have been granted in the first place (third basic requirement)." [emphasis added]

16. As the Court of Appeal made clear, it would be irrational for an authority to grant permission for development on the one hand but to make the grant of permission subject to a condition, which purports to revisit the question of whether the principle of the planning permission should have been granted at a later stage. Moreover, such a condition plainly cannot be said fairly and reasonably to relate to the development, since the imposition of planning conditions is meant to be integral to the approval of the development in the first place.

17. This recent judgment of the Court of Appeal therefore provides a complete answer to UDC's proposal to grant planning permission on the one hand but to make the grant of permission subject to a condition which would require the submission (on a repeat basis) of multiple schemes for any increment above 35mppa[3] to be assessed by the Council *de novo* on the basis of what would, in effect, be a series of temporally discrete environmental statements (scoped to include forecasting, traffic impacts, noise, air quality, public health and carbon) against whatever future environmental standards might then be said to apply and in the light of whatever other circumstances might then be said to prevail. It is perfectly possible to suppose that UDC would, in the future exercise of its discretion, choose to deny STAL approval for any or all such increments. Such a

[3] See the definition of "maximum mppa"

condition would thus fail the second and third limbs of the ***Newbury*** test, for the reasons clearly elucidated by the Court of Appeal above.

(ii) *Condition 15 would undermine the purpose of the 1990 Act, which is to provide certainty and finality through a statutory decision-making process*

18. Far from providing certainty, as suggested by UDC[4], the ability to revisit the principle of the grant of permission at a later stage so as to take account of *inter alia* future (as yet unknown) changes in policy would also run completely contrary to the fundamental objective underpinning the planning system of providing certainty and finality in relation to planning decisions: see, for example, ***Connors v SSCLG*** [2017] EWCA Civ 1850 at §90 (in the context of an argument that the Secretary of State had power to revoke decision letters issued on a s78 appeal);

> "As [Cranston J]] said, in paragraph 59 of his judgment, it is "not arguable that the Secretary of State has power to revoke his decision letters on these appeals". He based this conclusion, correctly, on the concept of the planning legislation as a complete statutory code – recognized as such by the House of Lords in its decision in *Pioneer Aggregates (UK) Ltd. v Secretary of State for the Environment* [1985] A.C. 132 (see, in particular, the speech of Lord Scarman at p.140H to p.141C). The statutory scheme contains no power for the Secretary of State to review or revoke a decision dismissing an appeal under section 78, or an appeal under section 174, and no power to revisit a recovery direction once he has made his decision on the substantive appeal. Parliament did not provide, in any circumstances, for the revocation of such a decision or a recovery direction made prior to it. To have done so would have been contrary to the fundamental objective of providing, through planning decisions made under the statutory regime, certainty and finality for those affected by them."

19. STAL's entirely legitimate concerns about the uncertainty and harm to investment confidence and long-term strategic planning[5], which would result from the imposition of a condition which effectively seeks to reconsider the principle of the grant of permission, potentially on an annual basis, are not therefore only relevant to the reasonableness of the condition. They go directly to the underlying statutory purpose of the relevant legislation (which includes the 1990 Act, as well as delegated legislation made under it, which together form the "statutory code" referred to by Lord Scarman).

[4] UDC §39
[5] Andrew rebuttal p/e at §3.3-3.5

20. For the reasons set out above, condition 15 would undermine this statutory purpose and would therefore be ultra vires and unlawful.

(iii) *The "alternative expert decision-making procedure" is ultra vires the powers under the 1990 Act*

21. In its submissions, UDC seeks to emphasise the merits of the "quick, streamlined, alternative expert decision-making procedure", which is said to be provided by condition 15.

22. However, as noted above, it is trite law that planning legislation provides a complete statutory code for the determination of planning applications and planning decisions. UDC's "alternative" decision-making procedure would be wholly outwith the 1990 Act and therefore plainly ultra vires: see ***Pioneer Aggregates (UK) Ltd. v Secretary of State for the Environment*** [1985] A.C. 132 and, in particular, the speech of Lord Scarman at p.140H to p.141C, referred to by the Court of Appeal in ***Connors***:

> "Parliament has provided a comprehensive code of planning control. It is currently to be found in the Town and Country Planning Act 1971 , as subsequently amended. Part II of the Act of 1971 imposes upon local planning authorities the duty of preparing and submitting to the Minister development plans formulating their policy and their general proposals for the development and use of land in their area…
>
> The provisions in the Town and Country Planning Act 1971 governing the duration, modification, revocation, and termination of planning permission are extensive; see sections 41 to 46 . It is unnecessary to analyse them in detail. Perhaps the most significant common feature of the various procedures is the involvement of public authority, local and central, when questions as to duration, modification, revocation, or termination of planning permission arise…"

23. The statutory scheme contains no power for a Local Planning Authority to revisit the principle of the development at a later date, following the decision to grant permission. Nor does it contain any power to refer disputes over the discharge of planning conditions to a third-party expert body (akin to a private law dispute resolution procedure), nor for that third party to reach a final and binding decision on such matters.

24. On the contrary, the proposed dispute resolution procedure in Schedule C of condition 15 would seek to circumvent the statutory appeal process against the refusal of an approval required by any planning condition, or the non-determination of such an application

within the statutory time period, which is established by section 78 of the 1990 Act. It would also seek to bypass the involvement of central government in the decision-making process altogether, contrary to the provisions of the statutory code and its purpose: see ***Pioneer Aggregates***, above.

25. As such, the establishment of an "alternative" and binding decision-making procedure would clearly be unlawful, since only the Secretary of State has jurisdiction to reach a final adjudication on a dispute concerning a Local Planning Authority's refusal to discharge a planning condition: see ***Connors v SSCLG*** at §113:

> "We are concerned here, and only concerned, with the self-contained statutory code for land use planning, and specifically the statutory arrangements for decision-making on planning appeals under the relevant provisions in Part III and Part VII of the 1990 Act. The statutory scheme confers the power, or jurisdiction, to determine appeals made under sections 78 and 174 on the Secretary of State. It also makes separate and distinct provision, under section 77, for the "call-in" of an application for planning permission before a local planning authority, by which the Secretary of State "may give directions requiring applications … to be referred to him instead of being dealt with by local planning authorities". We are not considering that power. <u>We are considering the Secretary of State's jurisdiction to deal with appeals made to him. That jurisdiction, as one might expect, begins and ends in the hands of the Secretary of State</u>."

26. For these reasons, Mr Andrew's concern that the condition would impermissibly remove the statutory provisions relating to appeals and replace it with a non-statutory dispute resolution process is clearly well founded as a matter of law.[6]

(iv) *<u>The dispute resolution mechanism would amount to an unlawful delegation of the power/ duty to determine an application for any approval required by a condition</u>*

27. Section 101(1) <u>Local Government Act 1972</u> establishes the general principle that, subject to any express provision contained in any Act, a local authority may arrange for the discharge of any of their functions "(a) by a committee, a sub-committee or an officer of the authority; or (b) by any other local authority."

28. There is no statutory power to delegate the decision concerning the discharge of planning conditions to a third party "expert" body, as proposed under condition 15 and the

[6] Andrew rebuttal at §3.10 and c/f UDC §39

purported delegation of this decision to a body not entrusted with the statutory power/ duty to determine such applications would be unlawful, applying well-established legal principles: see, for example, ***Lavender (H) & Son Ltd v Minister of Housing and Local Government*** [1970] 1 W.L.R. 1231, where the decision of a minister entertaining a planning appeal, who dismissed the appeal purely on the strength of policy objections entered by another minister, was quashed because he had effectively surrendered his discretion to another party. See, further, ***R. v Secretary of State for Trade and Industry Ex p. Lonrho Plc*** [1989] 1 W.L.R. 525 at 583 per Lord Keith: "the discretion … must be exercised by him and not at the dictation of another minister or body".

29. As noted above, condition 15 provides that the decision of the expert established for the purposes of schedule C will be binding on both STAL and UDC. In so doing it purports to dictate the outcome of the application for discharge of the condition and to remove the discretion conferred on the Local Planning Authority to determine such applications. In our view UDC seeks through schedule C impermissibly to import private law dispute resolution mechanisms (which might well be appropriate in a contractual context) into the statutory planning code. It is clearly unlawful for this reason also, applying well-established public law principles.[7]

(v) *Failure to satisfy the six tests set out in paragraph 55 of the NPPF*

30. Having cited the six tests for planning conditions set out at paragraph 55 of the NPPF, UDC goes on to claim, surprisingly, that these tests are "guidance" only and are therefore only "advisory in character".[8]

31. This is simply wrong. The requirement that planning conditions should be necessary, relevant to planning and to the development to be permitted, enforceable, precise, and reasonable in all other respects is contained in national planning policy and is derived from well-established judicial authority, including the decision of the House of Lords in ***Newbury***. The lawfulness of the policy tests set out in paragraph 55 of the NPPF is clearly beyond challenge. These tests must therefore be given full weight by the Panel when considering whether to impose this condition.

[7] C/f §21-22 of UDC's submissions
[8] UDC §30

32. As to paragraph 34 of UDC's submissions, and in summary:

a. The fact that condition 15 seeks to regulate the environmental effects of development plainly cannot be justification for the imposition of a completely novel type of planning condition, which seeks to revisit the principle of the development following the grant of permission. It is commonplace for conditions to be imposed for the purpose of regulating environmental impacts, including in respect of major development projects. The fact that condition 15 is not "necessary" to regulate the environmental impacts of the scheme is underlined by the fact that UDC has been unable to identify any precedent for the imposition of a 'phased release' condition of the kind proposed here. Moreover, and fundamentally, there is no evidence that this development will give rise to any significant environmental effects, so as to justify the imposition of this condition in the first place. The condition is clearly neither "necessary" nor "directly related" (i.e. proportionate) to the negligible environmental impacts that have been assessed as arising from this development.

b. National aviation policy is supportive of airports making best use of existing runway capacity now and it provides the policy framework for permission to be granted now to deliver this growth. Indeed, it is clear that the rationale for publishing MBU was to meet an immediate and pressing demand for additional capacity, before new runway capacity in the SE becomes operational[9]. There is no support whatsoever in national aviation policy for the "phasing" of the release of "MBU" capacity[10], nor any suggestion that the grant of permission for much needed additional capacity should be deferred and made contingent on future decisions by a Local Planning Authority, to be assessed against an unknown policy framework. Given that the development is fully compliant with national aviation policy, it is also clearly not "necessary" to impose this condition to make the development acceptable in planning terms.

c. There is nothing about the scale or duration of this development, which could conceivably necessitate adopting the novel approach proposed by UDC. This is a modest proposal for an increase in capacity falling below the NSIP threshold, limited infrastructure works, and no increase in ATMs. The Secretaries of State have been asked by SSE to call in the application or to treat it as an NSIP and have

[9] CD14.3 §1.6 and CD 14.30 §7.21
[10] UDC §34(6)

declined to do so, on the basis that it is not of a scale or significance to require it to be determined at a national level. Those decisions are now firmly beyond challenge.

d. To the extent that UDC's vague and unspecified concerns over 'uncertainties' in the aviation forecasts prepared by Mr Galpin are said to justify the imposition of condition 15, this argument is also wholly misconceived. If UDC had any genuine concerns about STAL's forecasting case, including the COVID base and low scenarios, it was incumbent upon it to adduce evidence to substantiate those concerns and to seek to challenge STAL's evidence at this Inquiry. Instead, it is clear that UDC originally intended to call a witness on forecasting matters, Dr Chris Smith, but that his evidence was withdrawn at some time before exchange of proofs[11]. Given that STAL's requests for UDC to disclose Dr Smith's advice have been summarily rejected by UDC, it can be inferred that his advice did not support the argument that there was any deficiency in STAL's forecasts. Mr Scanlon also confirms in his evidence that Mr Galpin's forecasts are both reasonable and appropriate.[12]

e. As to the three-year implementation time period, STAL has suggested that this be extended to 5 years having regard to the revised forecasts and the COVID pandemic. This would address UDC's concerns about any perceived inconsistency between the forecasting years and the three-year implementation period under the 1990 Act.

f. It is not possible to know whether the "environmental modalities scheme", which STAL would be required to comply with in order to grow beyond 35mppa, would overlap with other regulatory regimes[13]. However, this only serves to illustrate the fundamental problem with a planning condition, which seeks to revisit the principle of the grant of permission at a later stage to be assessed against future, as yet unknown, changes in legislation and policy. As Officers correctly emphasised to Members in January 2020, even if the overall "direction of travel" is towards a tightening of controls over environmental impacts, it cannot be assumed that the Government would seek to achieve these objectives through the planning system. The approach advocated by UDC would also drive a coach and horses through the statutory approach to making planning decisions under the 1990 Act, in accordance with the statutory development plan unless outweighed by other material

[11] See, for example, Broomfield p/e, Appendix 1 at §132
[12] Scanlon p/e §7.11, §8.5
[13] UDC §34(7)

considerations (and on the evidence before the decision maker). The approach proposed by UDC is plainly unreasonable and unlawful.

33. The guidance in the PPG, referred to above, confirms the non-compliance of condition 15 with the six tests in paragraph 55. Condition 15 would clearly affect STAL's ability to bring the development into use, and/ or the proper implementation of the planning permission, and/ or the deliverability of the development. Indeed, STAL would be unable to make use of the additional capacity granted under the terms of the permission at all, without submitting a series of applications under the "scheme" to UDC (each equivalent to a new planning application and necessitating the production of a document akin to a full ES) and securing its further consent at each stage.

34. These are not merely "logistical challenges"[14]: by definition, a condition which hampers the delivery of the very development which it is intended to enable will clearly be unreasonable and unlawful: see ***HS2***, above.

35. It is also all very well for UDC to say that it is in its interests to work "collaboratively to ensure that the scheme submitted is processed and decided upon."[15] However, as noted by Mr Andrew in his rebuttal, in light of its handling of previous applications, and the inordinate delay that has ensued since this application was first submitted, STAL could have no confidence in securing UDC's "cooperation" in relation to the elaborate series of further decisions envisaged by this condition. The condition is clearly unworkable in practice.

36. We also note that condition 15 envisages that the environmental limits in Schedule A will apply following implementation of the permission but *before* the Airport reaches 35mppa. However, STAL already has permission to grow to 35mppa and to 274,000atms under the consent granted by the Secretary of State in 2008, which contains no equivalent constraints to those imposed under condition 15 and which remains in force. Clearly, STAL would therefore want to utilise the existing consent up to the 35mppa cap, while nonetheless taking steps to implement the 35+ consent within the time limits imposed by condition.

[14] UDC §36
[15] UDC §36

37. It is unnecessary for condition 15 to seek to regulate development already benefitting from the current permission. Moreover, this would create real practical and evidential difficulties for both STAL and UDC, in seeking to unravel the two parallel and overlapping permissions following implementation of the new permission.

38. STAL has explained its detailed concerns (and the concerns of its expert witnesses) about the drafting of condition 15 and the inputs into Schedules A and B in its response dated 5 February 2021, by reference to the six policy tests. These concerns remain and have not been satisfactorily addressed by UDC's submissions. Nor are these merely "textual queries" or "linguistic niceties"[16]. The concerns outlined by STAL go to the heart of the lawfulness and policy compliance of the condition proposed by UDC.

Conclusion

39. For the reasons set out above, STAL remains of the view that condition 15 is unlawful and wholly non-compliant with the policy tests in paragraph 55 of the NPPF. We do not consider that there is any way to overcome the insuperable legal and policy obstacles identified above and we therefore urge the Panel to reject the imposition of this condition.

40. In the meantime, and as emphasised above, STAL remains fully committed to working with UDC to seek to agree, insofar as possible, the "main" schedule of conditions which is currently under discussion and was reviewed at the Preliminary Conditions Session on 12th February, 2021, in advance of the Second Conditions Session scheduled for 4th March 2021.

THOMAS HILL QC
PHILIPPA JACKSON

39 Essex Chambers
LONDON WC2A 1DD

24 February 2021

[16] UDC §45

IN THE MATTER OF THE TOWN & COUNTRY PLANNING ACT 1990 SECTION 78 AND AN APPEAL BY STANSTED AIRPORT LIMITED

APP/C1570/W/20/3256619

(UTT/18/0460/FUL)

UDC'S REPLY TO "STAL RESPONSE TO UDC SUBMISSION ON CONDITION 15"

Introduction

1. This is UDC's response to *STAL's Response to UDC Submissions on Condition 15*, dated 24/2/21 ("**STAL Response**") [**26.8**].

2. UDC stands by everything that it wrote in its 9/2/21 submissions ("**UDC Submissions**") [**26.6**]. Those are not repeated here, but this document must be read in conjunction with that document. And, like all documents in this Inquiry, they must be read as a whole.

3. STAL maintains that Condition 15 is "clearly unlawful" and that it does "not meet the policy tests...under §55 of the NPPF" (§1). As will be seen, neither complaint bears analysis.

4. In order to make sense of their complaints, STAL is compelled to misstate what Condition 15 does. Once again, to be clear:
   (1) Condition 15 does not "defer" or "re-visit" the principle of the development. That is made clear in §1 of the Condition.
   (2) Condition 15 does not introduce uncertainty — quite the opposite. It spells out the process, telling the developer what information is required and the applicable metrics.

5. What Condition 15 does do is define the mitigation measures needed to regulate the environmental effects of the permitted development.

6. STAL says that it "has been and remains fully committed to agreeing the main schedule of conditions": **STAL Response §2**. The "main schedule of conditions" that STAL says it is so committed to agreeing has, in condition 7, a noise contour with the same metrics and figures as in Schedules A and B of Condition 15 (not agreed only so far as a night-time metric is concerned). Draft condition 10 (not yet agreed) provides for an air quality and carbon management strategy resembling features of what is proposed in Condition 15. Until recently there has been inexplicable refusal on the part of STAL to discuss Condition 15 or any part of it notwithstanding its importance to the main issues that separate STAL from UDC. The evidence of STAL's own expert witnesses was to the effect that they were prohibited from discussing Condition 15.

The legislative source

7. Although somewhat brief, STAL Response §§4-6, does not quarrel with UDC's complete analysis of the legislative source for planning conditions: UDC Submissions §§15-20.

The case-law

8. The STAL Response §§7, 8, 14, 15, 18 and 22 do not take issue with any of the statements of principle set out in UDC Submissions §§21-27. STAL's issue is with the application of those principles, as to which see below.

Policy & guidance

9. The STAL Response §12 refers to the same paragraph of the NPPF as referred to in UDC Submissions §28. And the STAL Response §13 makes passing reference to the Ministry Guidance (ie PPG), more fully dealt with in UDC Submissions §29.

10. The STAL Response does not engage with UDC Submissions §§30-31.

First STAL argument: Condition 15 defers to a later date whether permission should be granted

11. The principle of law stated in STAL Response §§14-16 is uncontroversial.

12. However, it is a leap of logic from there to STAL's assertion that Condition 15:

> "makes the grant of permission subject to a condition which would require the submission (on a repeat basis) of multiple scheme for any increment above 35mpppa to be assessed by the Council *de novo*...." STAL Response §17

13. This is simply incorrect. Condition 15 is solely concerned with spelling out the mode by which the airport operator is to satisfy UDC that, as it steps up the mppa *as the planning permission permits it to do*, the airport operator will comply with contemporaneous environmental standards on noise, air quality and carbon emissions. Paragraph 1 of Condition 15 makes this as clear as could be:

> "This Condition describes the modalities required for implementing the approval of environmental matters that has been conferred by the planning permission."

14. Current policy ***requires*** that development ***must not*** "compromis[e] the ability of future generations to meet their own needs" (NPPF §7). Cementing environmental standards on an operational development that will endure for decades to what is acceptable in 2021 would do the very thing that the NPPF proscribes. Fixing environmental standards for 30+ years of airport operations to what is acceptable in 2021 is not "sustainable development." It is the antithesis of that. What the NPPF calls for in an operational development such as the present, is a ***dynamic*** condition that is responsive to the needs of future generations. Those needs can change quite dramatically over relatively short periods, as the transition in the last decade from loving to loathing diesel cars illustrates. The NPPF demands that shifts like that are acknowledged and accommodated in a long-term operational development such as the present.

15. It is a red herring to pretend that Condition 15 "purports to revisit the question of whether the principle of the planning permission should have been granted at a later stage": STAL Response §16. Condition 15 define the mitigation measures needed to regulate the environmental effects of the permitted development. The dynamic nature of the mitigation measures (ie wedded to contemporaneous rather than historic environmental standards) is embedded into the principle of the development being permitted, fixing how it is to operate. There is no "re-visiting" of the principle of the development involved.

16. The condition considered by the Court of Appeal in *R (LB Hillingdon) v SST* [2020] EWCA Civ 1005 was very different in kind and in operation from Condition 15, as is apparent from just what little appears in STAL Response §14. Condition 15 is not a "Grampian condition." If planning permission is granted with Condition 15, the airport operator can grow its operations up to 35mppa without doing more than what is required by Schedule A. That is sufficient to dispel the notion that Condition 15 is a "Grampian condition."

17. *R (LB Hillingdon) v SST* [2020] EWCA Civ 1005 does not provide a "complete answer" or indeed any answer. That this is the only authority STAL can find to support its first argument serves to expose its weakness.

Second STAL argument: Condition 15 undermines the TCPA because of lack of certainty and finality

18. This is founded upon STAL's first argument that Condition 15 gives UDC "the ability to revisit the principle of the grant of planning permission at a later stage..."

19. In fact, a moment's reflection on how Condition 15 would operate shows that it does nothing of the sort. Thus:
    - — up to 35mppa, regardless of what later changes there are in policy, the environmental standards are as spelled out in Schedule A;
    - — thereafter, once the mode by which airport operator is to meet contemporaneous environmental standards for a 2mppa step up is agreed upon with UDC, again, regardless of what later changes there are in policy, the environmental standards for that increased mppa are as agreed under Condition 15.

    There is nothing that takes away from the airport operator what is permitted by the grant of planning permission. As UDC has repeatedly said, Condition 15 defines the mitigation measures needed to regulate the environmental effects of the permitted development.

20. In expressly tying the evaluation of a modalities scheme to the contemporaneous policies (see para (9)), Condition 15 gives STAL the certainty it claims to crave.

21. Condition 15 does not undermine the underlying statutory purpose of planning legislation: it gives expression to it.

Third STAL argument: the Schedule C is ultra vires

22. STAL Response §22 argues that:

    > "it is trite law that planning legislation provides a complete statutory code for the determination of planning applications and planning decisions."

23. Like many propositions that are described as "trite" this is an over-simplification.

24. Planning legislation interlocks with other legislation including, in particular, the *Local Government Act 1972*. Paragraph (14) of Condition 15, in conjunction with Schedule C, provides for an alternate decision-maker in the event of an impasse. The decision of the alternate decision-maker is the decision of UDC. Schedule C makes clear that it is not an arbitral process. Because the decision of the alternate decision-maker is the decision of

UDC, that decision is subject to TCPA s 78. There is no "circumvention" of the statutory appeal process: cf STAL Response §24. The alternate decision-maker is the alter ego of UDC.

Fourth STAL argument: An unlawful delegation

25. Condition 15 does not contain a delegation of power. Section 101 of the *Local Government Act 1972* is off the point.

26. It is commonplace for local authorities to engage outside consultants etc to assist them in the performance of their functions. There is nothing unlawful about that. That is all that happens under paragraph (14) of Condition 15, in conjunction with Schedule C: an outside person is engaged to break an impasse in the operation of a condition.

Fifth STAL argument: Condition 15 fails §55 of NPPF

27. STAL Response misreads §§28-31 of UDC's submissions:
    - §28 set out para 55 of NPPF;
    - §29 set out Ministerial guidance, ie the PPG;
    - §30 made clear that the Ministerial guidance is just that - guidance.

    Instead STAL confuses the Ministerial guidance with the NPPF (STAL Response §30) and then proceeds to say how wrong UDC is (STAL Response §31).

28. As the quotation from *Newbury* in §24 of UDC's conditions makes clear, the House of Lords required that a condition satisfy three (not six) tests.
    (1) The condition must have a planning purpose. It cannot seriously be disputed that regulating noise, carbon emissions or air quality detriments from a development is not a planning purpose. Faced with this, STAL is forced to complain about the novelty of Condition 15. The fact that a condition may be novel says nothing about whether it does or does not have a planning purpose. But in any event, the phasing aspect of Condition 15 is not novel. STAL's own expert, Mr Cole, had on 22 June 2018 agreed to the principle of a condition that limits the noise envelope in a manner that progressively tightens over the years: see CD 19.24.
    (2) The condition must relate to the permitted development to which it is annexed. Condition 15 certainly does that.
    (3) The condition must be reasonable in the *Wednesbury* sense. Given that Condition 15 strives to satisfy the requirement in NPPF §7 of not "compromising the ability of future generations to meet their own needs" it cannot be seriously suggested that it is *Wednesbury* unreasonable.

29. The remainder of the STAL Response (§§3-38) is a confused catalogue of complaints, repeating points STAL had made earlier (re-visiting the principle of development, condition novelty, coaches and horses being driven through the TCPA etc etc) with matters that are irrelevant to the condition (no aviation forecast by UDC, the disappearance of Dr Smith, NSIP thresholds, making best use of capacity etc, etc), but not focussed on the law as declared by the House of Lords in *Newbury*.

30. When one does focus on the law as declared by the House of Lords in *Newbury*, condition

15 satisfies all three tests. It is lawful.

And finally

31. Following various meetings, UDC has made modifications to the version of Condition 15 attached to the letter dated 18/12/20 [**CD26.1**]. A marked-up copy is also attached, showing the changes between that version and the current one (for some reason the changes to Schedule C didn't appear, but these are explained below). In summary:
    (1) Where agreement has been reached between the respective experts of STAL and UDC (ie noise, apart from the need for a night-time contour), these are shown in the figures in Schedules A and B. Where progress has been made but agreement not yet reached between the respective experts of STAL and UDC (ie air quality and carbon emissions), UDC's current, evolved position is recorded.
    (2) The language, but not the effect, of Schedule C has been modified to better record the intendment, ie to provide a decision-making alternate to break any impasse. The timing (see para (14)) has also been reduced to ensure that it slots in with Art 27 of the TCP(DMP)(Eng) Order 2017. Hopefully, this will allay some of STAL's stated misgivings about condition 15.
    (3) The content of Schedule D will be derived from STAL's ES. The reason for including it in Sch D is that a person reading it in, say, 25 years' time may not have ready access to STAL's ES. That reader should be able to work out from the four corners of the condition exactly what it means without having to locate other documents. Given that it is taken from STAL's ES, its wording should certainly not be controversial. At the moment, just the ES references have been added.
    (4) Para 1 has been modified to allay STAL's stated concern that it re-visits the principle of the development or somehow constitutes a "Grampian" condition.
    (5) Some definitions have been technologized, as suggested by UDC's experts.

PHILIP COPPEL QC + ASITHA RANATUNGA
Counsel for UDC

2 March 2021

APP/C1570/W/20/3256619 (UTT/18/0460/FUL)

AIRFIELD WORKS COMPRISING TWO NEW TAXIWAY LINKS TO THE EXISTING RUNWAY (A RAPID ACCESS TAXIWAY AND A RAPID EXIT TAXIWAY), SIX ADDITIONAL REMOTE AIRCRAFT STANDS (ADJACENT YANKEE TAXIWAY); AND THREE ADDITIONAL AIRCRAFT STANDS (EXTENSION OF THE ECHO APRON) TO ENABLE COMBINED AIRFIELD OPERATIONS OF 274 000 AIRCRAFT MOVEMENTS (OF WHICH NO MORE THAN 16 000 MOVEMENTS WOULD BE CARGO AIR TRANSPORT MOVEMENTS (CATM)) AND A THROUGHPUT OF 43 MILLION TERMINAL PASSENGERS, IN A 12 MONTH CALENDAR PERIOD AT STANSTED AIRPORT

CLOSING SUBMISSIONS ON BEHALF OF

UTTLESFORD DISTRICT COUNCIL

[Page number references are to the printed page unless otherwise stated]

Introduction

1 These submissions follow the main issues identified for the Case Management Conference on 24 September 2020 and are addressed in the order in which they were heard.

Aviation Forecasting

2 Aviation forecasting underpins the assessment of when and how the operations permitted by the development are expected to progress. Consequently, aviation forecasting figures are critical to the assessment of the environmental impacts on each of the issues raised by the Council, namely aircraft noise, air quality, and carbon emissions. Aviation figures and the environmental impacts arising from the development are for that reason inextricably linked. The ESA of 16 October 2020 moved forward the forecasting baseline by 3 years, from 2016 – 2019, and sought to account for the effects of the COVID-19 pandemic. The revised forecasts predict that Stansted [CD10.1, p.3]:

(1) will recover to its pre-COVID levels (2019) by 2023;

(2) is likely to reach its current passenger cap of 35mppa by 2027; and

(3) is likely to reach 43mppa by 2032.

3 If these forecasts are borne out, this will impinge upon the environmental impacts of this proposal. For example, by comparison with STAL's earlier forecasts, there will be a greater uptake of new generation, lower noise aircraft, and greater reductions in carbon emissions due to aircraft improvement factors.

4 But that is a big "if". Past growth at Stansted airport has been erratic. It shows no pattern. There are, moreover, uncertainties inherent in aviation forecasting generally. The past 12 months have served to illustrate this. So did the banking crisis a dozen or so years ago. Aviation forecasting is littered with known unknowns and unknown unknowns. The aviation forecasts provided for Stansted in this appeal need to acknowledge this. A number of points can be made.

5 First, the DfT provides credible, objective evidence as to the limitations of aviation forecasting generally, and specifically with regard to Stansted.

6 As to aviation forecasting generally, Sarah Bishop's evidence given to the High Court in 2019, as a Senior Civil Servant at the DfT on aviation policy, notes that '*.. there is inherent uncertainty in any forecast…*' [CD17.66, §12]. The inherent uncertainties in aviation forecasting are consistent with Mr. Galpin's acceptance that any forecasting exercise will give rise to a '*large range of outcomes*' (XX of DG). Whilst the approach to aviation forecasting followed by STAL might be '*standard in the industry*' [STAL/2/2, §3.2], aviation forecasting is also an exercise which is not regulated by any professional institute (XX of DG). Reasoned views to this inquiry can sensibly differ.

7 As to aviation forecasting at an airport level, the DfT highlights the heightened uncertainties involved [CD17.65, §87-89]. There is '*uncertainty in the short term around forecasts for individual airports*'. That is because '*[a]irport demand can be affected by a broader set of short-term drivers*'. These views, which are given in the context of distinguishing the DfT's longer term forecasts to inform policy decision-making, are plainly applicable to the forecasts provided by ICF in 2020, covering a period of a little over 10yrs to 2032.

8 When considering aviation forecasting for Stansted specifically, the DfT identify the short term drivers that will lead to yet further uncertainty. There is inherent uncertainty in any forecast,

'*.. especially at airport level where there are strong overlapping catchments that may make forecasting demand less predictable (the overlap of Stansted and Luton Airport catchments is a good example of this)*' [CD17.66, §12]. Further, the example given of a short term driver giving rise to uncertainty, namely the conclusion of commercial deals between airports and airlines which could affect route frequencies or destinations year on year [CD17.65, §87], is of particular relevance to the situation Stansted finds itself in now. Stansted's reliance on Ryanair is well documented, with Ryanair accounting for over 80% of passenger volume in 2016 [CD3.4, §4.29], with strong growth between 2013-2018 [CD7.4, §4.1.5], including the take up of the majority of slots left by Easyjet following the closure of their Stansted base [STAL/2/2, §4.5]. Yet the 10yr growth agreement entered into in 2013 is due to expire in 2yrs time, as confirmed by Mr. Hawkins [CD23.32; XX of TH]. Aviation forecasts that are based on the ongoing commitment of Ryanair to Stansted – and in turn, the transition of Ryanair's fleet mix to new generation aircraft and the resulting proportion of such new, cleaner aircraft – are dependent on a number of factors [STAL/2/2, §4.9], including a new commercial deal for Ryanair to stay at Stansted, which is yet to be negotiated or agreed.

9 Secondly, despite the impression given by STAL that the DfT's forecasts are of limited assistance for the current proposal, Mr. Galpin rightly did not seek to criticise them when asked in evidence. They are not '*incorrect*' but provide a '*different approach*' (XX of DG). That is consistent with the DfT's own position, that where there is an interest in a short-term forecast, the Department recommends the use of alternative forecasts or sensitivities, '*to be considered alongside the Department's forecasts…*' [CD17.65, §89]. The forecasts are provided for different purposes, but their validity is rightly not questioned. The DfT makes valid points as to the uncertainties of forecasting at an airport specific level. It would also be wrong to suggest that their forecasts are not relevant in assessing proposals at that level.

10 Thirdly, the extent to which aviation forecasts of passenger growth have not been realised, both in relation to Stansted and Manchester Airport, is well demonstrated in Mr. Ross's evidence [SSE/3/2, section 5.1]. The second runway application at Manchester Airport in 1997, the 2003 Stansted consent, the Stansted G1 application in 2006, and the MAG Masterplan for Manchester Airport of 2007 all included aviation forecasts which were not realised in practice (and in fact overestimated the demand). There is no suggestion that any of those forecasts were not produced with the assistance of reputable aviation forecasters. These facts have not been seriously challenged by STAL, apart from noting that the actual out-

turn at Manchester Airport in 2005 was 29mppa (not 22.5mppa), as against a forecast given of 50mppa (XX of BR).

11 Fourthly, the uncertainties of forecasting identified by the DfT were all made the year before the COVID-19 pandemic. That pandemic has made all forecasts look like a dream. Mr. Galpin's observation that leisure traffic has shown itself resilient to various crises, such as the Global Financial Crisis and previous epidemics [STAL/2/2, §4.3], fails fully to acknowledge the unprecedented effects of the COVID-19 pandemic. The COVID Base and COVID Low cases presented and applied in the ESA do provide an answer to the uncertainties arising from the COVID-19 pandemic, but it would be wrong to assign any great degree of confidence to such forecasts, given the impact of the pandemic is still unfolding and evolving. Mr. Galpin acknowledged in XX that every input in forecasting has a large range of outcomes, and the pandemic is the paradigm example of uncertainties piled on top of each other.

12 UDC does not seek to challenge the forecasts provided by providing its own competing analysis which necessarily would suffer from the same limitations. For the reasons just given, aviation forecasting is an inherently uncertain exercise involving a wide range of assumptions and conjectures, and all the more uncertain when assessing airport specific forecasts in the shorter term, all compounded by having to grapple with a health pandemic, the effects of which are still unknown and uncertain. That is the explanation for UDC's decision not to offer a competing forecast. Wild theories about UDC having something to hide are just that: wild theories best left to the lower forms of social media.

13 Mr. Scanlon provides entirely sensible and credible observations as to the uncertainties surrounding aviation forecasts at the current time: the need to make assumptions about the potential impact of COVID on both long and short term attitudes to travel; predictions as to the future changes to fleet make up of future operators at Stansted; the uncertainties arising from Brexit; predictions as to long term attitudes to travel given the increasingly popular desire to reduce the carbon footprint of holidays (and business travel); and finally, consideration which must be given to the future role of Heathrow's 3rd runway in the London Market. Mr. Scanlon's evidence, that UDC does not suggest that the updated forecasts in the ESA do not represent a reasonable account of future growth in demand, should be read in its proper context with the points he goes on to make. It is a mischaracterisation of his evidence to quote selectively from it, as STAL has repeatedly sought to do in XX of UDC's witnesses. This inquiry should ask itself why would STAL have resorted to such tactics if it had legitimate

criticisms to make. The uncertainties involved in aviation forecasting to which Mr. Scanlon speaks, particularly following an unprecedented health pandemic, give rise to the scope for alternative outcomes.

14 All of this supports the need for tying measures to limit the environmental effects of the proposal to something more certain than passenger forecasts[1]. That more certain measure is actual passenger numbers as they happen. It is that certainty which Condition 15 proposed by UDC would bring about, consistent with the national aviation policy's objective of sharing the benefits of aviation growth. We consider Condition 15 later on in these submissions. Suffice it to say that STAL's trenchant opposition to countenance anything of the sort was and is both regrettable and unreasonable.

The effects of the development on aircraft noise

15 The Environmental Statement Addendum, published 1 month after UDC's Statement of Case, took the opportunity to respond to the matters raised by UDC [CD10.1, p.2]. On aircraft noise, UDC accepts that the ESA presents a more favourable outcome than that presented in the Environmental Statement, as reflected in the Statement of Common Ground on this topic [CD25.3]. As referred to above, that is a function of the updated environmental and noise exposure forecasts which take account of slower expected rates of recovery from the COVID-19 pandemic and changes to aircraft mixes, against an updated baseline, and forecast years which are set back by 4yrs to 2027 and 2032 respectively.

16 The conclusions in the ESA therefore alleviate many of the valid concerns that animated the Reason for Refusal. The fact that the issues which remain are narrow, and focussed on appropriate mitigation measures, should in no way dilute their importance, for a number of reasons:

[1] This is consistent with the approach which was followed by the Inspector in the 2008 G1 appeal. He had concerns about the forecasting evidence, noted the inherent uncertainty of forecasting growth of air traffic at Stansted, but acknowledged that there was 'scope' to limit that through the dual cap restriction of ATMs and passenger throughput in conditions [CD12.3a, §§14.24-14.29]. Thirteen years on, against an evolved and evolving policy context for aircraft noise, air quality, and carbon emissions, UDC seeks to deal with the uncertainties of forecasting through limiting the environmental effects of the development on those specific matters, in addition to restrictions on ATMs and passenger throughput.

(1) The uncertainties inherent in forecasting, particularly following the COVID-19 pandemic, cannot provide confidence that the forecast noise improvements will actually be realised.
(2) That uncertainty is compounded by the conclusion of the forecasts here, that the current 35mppa cap will not be exceeded for another 6yrs (2027), with the proposed 43mppa capacity forecast to be reached 11yrs from now (2032).
(3) The general principle behind aviation policy in this area is the expectation that '*future growth in aviation should ensure that benefits are shared between the aviation industry and local communities*', meaning that '*the industry must continue to reduce and mitigate noise as airport capacity grows*' [CD14.1, §3.3].
(4) It is that general principle which lies behind the overall policy '*to limit and, where possible, reduce the number of people in the UK significantly affected by aircraft noise*', as part of a policy of sharing the benefits of noise reduction with industry [CD14.1, §3.12].

17 Mitigation which provides appropriate noise limits against current policy, recognising how that is evolving - and with a view to future-proofing the development given the lengthy timescales involved - will provide the certainty required and meet the policy objective.

Daytime limits

18 Both UDC and STAL agree that it is necessary to limit noise from the airport having regard to the Government's noise policy objective [CD25.3, p.2]. Happily, it is now agreed that for daytime contour restrictions, a 54dB LAeq 16hr noise contour restriction is appropriate, as reflected in Condition 7, submitted after the noise evidence was given, on 11 February 2021 [CD26.7]. It has also been incorporated into Condition 15.

19 Despite protestations to the contrary by Mr. Cole, the use of a 57dB LAeq 16hr contour restriction for the daytime does not reflect current noise policy. Maintaining such an antiquated threshold for a noise contour would also have the effect of allowing noise effects above recognised policy thresholds without repercussion.

20 As to how noise policy has evolved, Mr. Trow comprehensively set out in his oral evidence how the 57dB LAeq 16hr metric has been overtaken in noise policy on aviation. As relevant, and taken in chronological order:

(1) The 57dB metric was established back in 2003 when the White Paper was published. It was based on research from 1985 and set the approximate threshold for the onset of

significant community annoyance, in circumstances where the Government had already embarked on a review of its evidence base [CD14.24, p.34].

(2) The Aviation Policy Framework of 2013 itself observed that there was some evidence that people's sensitivity appears to have increased in recent years, reflecting the ANASE attitudinal study of 2007. The APF committed to providing noise exposure maps for noise designated airports down to a 57dB level to provide '*historic continuity*' and to keep its policy under review [CD14.1, §3.14-3.15, 3.18]. In any event, its policy was to limit and where possible reduce the number of people significantly affected by aircraft noise (ibid. §3.12].

(3) The DfT's Air Navigation Guidance of 2017 provided guidance to the CAA on its environmental objectives. It referenced a significant reappraisal of the Government's airspace and noise policies since January 2014 [INQ12, p.6], namely SONA14, the most recent major attitudinal survey on aviation noise conducted in England, which found that the level of annoyance at the 57dB threshold referred to in the APF, actually occurred at the 54dB threshold [CD19.2, §8.16-8.17], indicating a need for a policy change. In considering the APF policy to limit and where possible reduce the number of people significantly affected by adverse impacts from aircraft noise, the role of local authorities in land use planning and in setting noise controls through conditions was recognised [INQ12, p.10]. In applying that policy and aligning its noise policy for aviation with the overarching Noise Policy Statement for England, the Guidance recognised [INQ12, §3.5-3.6]:

   (a) that there was no one threshold at which all individuals could be considered to be significantly adversely affected by aircraft noise;

   (b) that the LOAEL was regarded as the point at which adverse effects begin to be seen on a community basis; and

   (c) that the proportion of the population likely to be significantly affected could be expected to grow as the noise level increased above the LOAEL.

   As a result, ANG 2017 recommended that a LOAEL of 51dB (daytime) and 45 dB (night-time) should be used by the CAA for assessing the noise impacts of airspace changes.

(4) Should there be any doubt as to the status of the 54dB metric following ANG 2017, it is the 54dB metric which is included as a criterion for the exercise of the SoS's power to call in proposals under the Civil Aviation Authority (Air Navigation) Directions 2017 [INQ12a, Art. 6(5)].

(5) Since the publication of SONA14 in February 2017, no noise policy has supported the use of the 57dB metric.

(6) The DfT's Consultation Response on UK Airspace Policy (October 2017) expressly states that its policies '*provide an update to some of the policies on aviation noise contained within the APF, and should be viewed as the current government policy.*' [CD14.65, p.6, §9]. The Government's view that the 54dB metric is appropriate because it is consistent with the findings of SONA14 is confirmed at paras. 2.11 and 2.68ff., with a commitment to set a LOAEL at 51dB for daytime, since this is the lowest point at which adverse effects begin (§2.72).

(7) The Aviation 2050 Green Paper of December 2018 confirms that new noise policies were introduced in 2017 (reflecting the ANG 2017 and SONA14) [CD14.27, §1.3]. The uncertainty as to how the policy in the APF is to be interpreted, measured, and enforced is to be addressed (inter alia): by setting a new objective to limit, and where possible, reduce total adverse effects on health and quality of life from aviation noise, bringing aviation noise policy in line with airspace policy updated in 2017; by routinely setting noise caps as part of planning approvals for increases in passenger numbers; and by requiring all major airports to set out a plan which commits to future noise reduction, and to review this periodically [§3.113-5].

21 As set out above, there are a number of statements on aviation noise policy which indicate that the 57dB metric is no longer cited as an appropriate metric to use in controlling aviation noise. Government policy on aviation policy cannot be said to be '*silent*' on this issue, as Mr. Cole argued [STAL/4/4, §3.2]. If anything, aviation policy has been 'silent' in not referring to or providing any endorsement of the 57dB metric since February 2017.

22 Faced with the clear thrust of policy on this issue, it is perhaps unsurprising that Mr. Cole and STAL have now agreed to use the 54dB metric in Condition 7. That this is a major change of position by STAL cannot sensibly be denied. As recently as 5 January 2021 in his rebuttal, Mr. Cole remained wedded to the 57dB metric, contending that there was no evidence in Mr. Trow's proof that setting a noise contour limit at the LOAEL, or any other alternative, provides a superior or more robust control over air noise than a higher value such as the 57dB metric [STAL/4/4, §3.10]. By belatedly accepting the 54dB limit as appropriate in Condition 7, Mr. Cole exposed the bluster of his original convictions. In fact, as explained by Mr. Trow in evidence in chief, there are 2 reasons why sticking to the historic 57dB metric with a tighter contour would not be robust:

(1) The only proper purpose of having a noise contour restriction is to limit the effects of aviation noise on the population. Where it is consistently recognised in policy (since 2017) that significant community annoyance now arises above a 54dB threshold (and adverse noise effects are experienced above the LOAEL level of 51dB), setting the daytime noise threshold at 57dB would not be appropriate. It would in effect allow adverse noise effects between the 54dB and 57dB thresholds to be experienced without repercussion (in that there would be no incentive for STAL to seek to reduce noise to the lower level).

(2) The argument that setting a limit on the 57dB contour area has consequential effects on the area of the contour at all other noise levels, only works if aircraft noise performance and flight characteristics remain fixed. As explained in Mr. Trow's rebuttal, that has not been the case at Stansted [UDC/1/4, pp.8-10]. In fact:

- As accepted by Mr. Cole [STAL/4/2, §10.1.1], the noise modelling in the ES confirms that whilst the 57dB daytime contour area is forecast to be smaller in 2023 (both DC and DM) than currently permitted by the extant condition, the 51dB daytime contour area is expected to be larger.
- The new information on contour comparisons provided by Mr. Cole [STAL/4/2, §10.1.3] demonstrates that the effects of aircraft noise above the LOAEL are greater than as would have been reported for the 2008 consent; and the impact of the Boeing 737-800 aircraft type has been progressively worse than as modelled based on information known at the time of the 2008 consent.
- The reason for these changes cannot be explained away as due to changes in the ANCON model. They arise from the worsening performance of the Boeing 737-800.
- The worsening performance of the Boeing 737-800 remains relevant for the assessment for this appeal and will have a major bearing on noise exposure. The ESA shows that the Boeing 737-800 aircraft type made up approximately two thirds of the total average summer's day movements in 2019 (67.5%). Even in the 2032 DC, the Boeing 737-800 is forecast to make up about a quarter of the average summer's day movements (23.8%), with about half (46.2%) of the total forecast to be made up of the Boeing 737max with its modelled noise profile.

23 Nor does STAL's assertion that it was UDC who sought the 57dB contour restriction - and that if UDC had asked for a 54dB metric restriction, it would have been agreed - stand up to scrutiny. Notably, it was an argument that first emerged during XX of Mr. Trow. Despite

voluminous documentation as to the process by which the noise aspects of the application were considered between STAL and the Council, there is no document which STAL can point to before this inquiry which evidences the fact that it was UDC who required that a restriction using the 57dB contour be used for this application. The memo from Bickerdike Allen did not cover the 57dB contour restriction [CD19.38] and UDC's Environmental Health Manager (Protection) generally accepted the findings of the ES and did not further object [CD13.1b, §9.201]. UDC did not raise an issue with STAL's proposal to use the 57dB contour, but that is not the same thing as actively seeking it, and Mr. Trow is clear that he would have required a value consistent with current policy i.e. a 51dB and / or 54dB contour restriction (XX of JT). In reality, STAL's stance on this point is nothing more than an exercise in face saving for this inquiry.

Night-time limits

24 STAL's belated agreement through Condition 7 to limit aircraft noise using the daytime 54dB metric (0700-2300hrs) drags it into line with government policy. Given that agreement for daytime aircraft noise has at long last been reached, continued refusal to countenance a similar control through a Condition for the night-time defies reason.

25 Both the ES and ESA report effects against an 8hr night-time period (2300 – 0700hrs) [CD3.7, §7.38, Table 7.3; CD7.7, §7.5.1], consistent with Government policy and CAA guidance (e.g. the production of night noise contours against an 8hr night time period in the APF at [CD14.1, §3.15], and the setting of an LAeq8hr level for night time noise in the ANG 2017 [INQ12, §3.5]).

26 ANG 2017 provides useful guidance on how the Government's overall policy on aviation noise should be interpreted: '*the total adverse effects on people as a result of aviation noise should be limited and, where possible, reduced, rather than the absolute number of people in any particular noise contour*' [INQ12, §3.5]. As explained by Mr. Trow, the clear thrust of this guidance is that the overall policy should not be addressed by a single contour or threshold, but by the use of multiple contours so as to address the total adverse effects on people [UDC/1/2, §3.57].

27 As explained by Mr. Trow in oral evidence, with specific relevance to night-time noise restrictions, CAP1731 proposes a limit scheme under which both day and night-time contour limits are set. The DfT commissioned the CAA to undertake analyses and give consideration of how airport noise may be limited, leading to the publication of CAP1731 in February 2019.

The review of suitable noise metrics, targets, and limits undertaken involved a mix of metrics, with consistent use of an 8hr night-time period [CD19.36, pp.5-6]. The limit scheme proposed by the CAA, expressly in order to address the APF's overall policy objective, comprises (as relevant) a nationally set absolute Quota Count limit or noise contour area limit at a particular noise level for both day and night, aggregated across all major airports, and a locally set absolute Quota Count or noise contour area limit at a particular noise level for both day and night for each airport [p.7]. Daytime and night-time noise contours and / or noise quotas are recommended [p.64-65].

28 Against that background, STAL's obstruction to the setting of a night-time restriction on the basis that it is not necessary is both inconsistent with the above approach of policy, and inconsistent with their position on the daytime noise contour. The setting of a night-time restriction would mirror the restriction which STAL agrees should be imposed for the daytime period. It would also be in line with the overall national policy for aviation noise as interpreted and applied in the above documents.

29 The ESA predicts that the aircraft noise arising from the development in 2032 will be lower than if there were no development in the same year. Importantly, that assessment and its outcome is reported against an 8hr night-time period. The only way to ensure that the lower noise effects are actually experienced as predicted is to set a night-time limit according to that 8hr night-time period.

30 Moreover, the assessment in the ESA is predicated on the DfT's night flying restrictions remaining in place, which apply to Stansted as a noise designated airport under s.80 of the Civil Aviation Act 1982. The extent to which the night flying restrictions for Stansted are limited and liable to change can be illustrated as follows [UDC/1/2, §3.17]:

(1) The restrictions imposed under s.78 of the Civil Aviation Act 1982 are subject to consultation, review, and redefinition every 5yrs. The current consultation on night flying restrictions is at [CD19.37].

(2) The restrictions for Stansted were last set in 2017, came into force in October 2017, and will remain in place until October 2022 when they will be subject to change. Whilst the current consultation indicates a move towards an 8hr set of restrictions after 2024 (to allow for the recovery from the pandemic), it confirms that the night-time noise abatement objective for Stansted is measurable over the 8hr period.

(3) The movement and noise quota limits apply to the noise quota period, namely from 2330hrs to 0600hrs. That means that the shoulder periods of 2300-2330hrs and 0600-0700hrs are not regulated by the night-time restrictions and would not be caught by the agreed daytime noise contour restriction (0700-2300hrs).

31 As a result, a night-time contour restriction covering the 8hr period between 2300-0700hrs:

(1) provides certainty that the predicted noise effects will actually be realised, where the DfT night flying restrictions are subject to change and cannot be guaranteed. Mr. Cole's assurance that it is unlikely that Stansted will be de-designated without some sort of similar restrictions being imposed by the DfT is unsubstantiated speculation. Even if his guess proves right for the next 5yr period, this scheme is for the long term, which cannot safely be predicted.
(2) Secondly, the contour would cover the full night-time period from 2300-0700hrs in circumstances where the DfT night-flying restrictions would otherwise leave the shoulder periods (amounting to 1.5 night-time hours) unregulated. It is not a question of the proposed condition being more onerous than the DfT restrictions; rather it ensures that the noise assessment as reported in STAL's own ESA is secured in practice.
(3) Thirdly, the contour meets the Government's objective of limiting and, where possible, reducing the number of people significantly affected by aircraft noise, as part of the Government's policy of sharing the benefits of noise reduction with industry.

32 The setting of a night-time contour restriction in addition to a daytime restriction at a local level is clearly envisaged in recent DfT endorsed publications such as CAP1731. There is no suggestion that this might lead to a duplication of controls between national and local restrictions in a way which would be unworkable. The DfT night flying restrictions and planning condition limiting night-time noise would be enforced by separate regulatory bodies. It would not lead to over-regulation, since STAL would be tied to the noise effects which they have predicted in their ESA. For that reason, local communities would have confidence that proportionate action is being taken at a local level, in line with the core principle of transparency under the APF [CD14.1, §3].

33 STAL has rightly not disputed that the appeal proposal falls within Regulation 3 of the Airports (Noise-related Operating Restrictions) (England and Wales) Regulations 2018, that the 2018

Regulations apply to Stansted as an airport within Regulation 2, and that UDC is therefore the competent authority, empowered to ensure that the balanced approach is followed, in accordance with EU Regulation 598/2014 [UDC1/2, §3.25ff.]. Importantly, the Regulations could have prevented the imposition of night-time noise restrictions in circumstances where night-flying restrictions were already in place pursuant to the Civil Aviation Act 1982. The 2018 Regulations do not fetter UDC's power to impose noise related operating restrictions by reference to the 1982 Act.

34 Overall, there is no legal or policy impediment to such an approach. On the contrary, the imposition of a night-time contour restriction is both necessary and would be fully consistent with the application of aviation policy on noise at a local level. UDC's Position Statements on the night-time noise contour restriction [CD26.13] and on the DfT's night flying consultation [CD26.28 (mislabelled as CD26.27)] should be read with these submissions.

Inclusion of Thaxted Primary School within the Enhanced Sound Insulation Grant Scheme

35 With respect to the proposed Enhanced Sound Insulation Grant Scheme incorporated into the Unilateral Undertaking, UDC recognises the fact that STAL has gone beyond the minimum noise level thresholds set out in the APF, above which acoustic insulation is expected to be offered for schools [CD14.1, §3.37]. Such an approach brings the scheme into line with more recent and emerging noise policy. In particular:

(1) Two of the key findings of SONA14 were that people had become more sensitive to noise than as stated by the ANIS study (though not as sensitive as reported by the ANASE study), and that the level of annoyance at the 57dB threshold, marking the approximate onset of significant community annoyance, was found to occur at the lower 54dB level [UDC/1/2, §4.9].
(2) The Aviation 2050 Green Paper of December 2018 states that noise insulation schemes are '*an important element in giving impacted communities a fair deal*'. For that reason, the Government proposes to extend the noise insulation policy threshold beyond the current 63dB contour to the 60dB contour [CD14.27, §3.122].

36 The issue is whether, when assessed against appropriate criteria, including those set by STAL, there is a case for the inclusion of Thaxted Primary School within the Enhanced Sound Insulation Grant Scheme.

37 The eligibility criteria chosen for STAL's Enhanced Sound Insulation Grant Scheme should be considered in context [STAL/4/2, §8.2.1-3]. There are three aspects to this context:

> 57 dB LAeq 16hr average

First, the use of a 57 dB contour in establishing eligibility is not used in assessment guidance for schools. Since an average 16hr period is applied (0700-2300hrs), that has the potential to understate the effect on schools where noise would be experienced during the shorter school day [UDC/1/2, §6.45].

N65 > 200 average across 16hrs

Secondly, the use of a N65 16hr average is also not used in assessment guidance for schools, and the same point as to the use of an average 16hr period potentially understating the effect over the shorter school day can be made.

In any event, when applied to Thaxted Primary School, the number of noise events from aircraft with levels above 65 dB LAmax at Thaxted Primary School is 181, which is only just short of the criteria for eligibility of 200 [CD19.25, §2.2]. Given that the Boeing 737-800 type used for the assessment (see below) has maximum noise levels reported for Thaxted of 62dB and 60dB, the maximum event levels at Thaxted are above 65dB as a result of other aircraft types.

> 72 dB LAmax based on operations from a single aircraft type (Boeing 737-800)

Thirdly, the 72 dB LAmax has been converted to an internal level of 60dB LAmax by allowing a 12dB reduction from the external free field level through an open window. This criterion has also been applied for the noise originating from a single aircraft type. To that extent, the modelling undertaken is a proxy for a "pure" LAmax level assessment.

38 More generally, when assessing the application of these criteria to Thaxted Primary School, there are two considerations that should never be lost sight of:

(1) First, as Mr. Trow explained in evidence in chief, Thaxted Primary School is clearly within the 54dB LAeq 16hr contour for the 2027 and 2032 development forecasts in the ESA [e.g. CD8.3(m) for 2032]. The LAmax levels should be much higher than those presented if

those events were influencing the LAeq. This suggests either that aircraft other than the Boeing 737-800 have a more dominant effect at Thaxted Primary School in terms of individual levels, or that the LAmax level for the Boeing 737-800 is understated.

(2) Secondly, the proximity of the N65 200 contour for eligibility is vanishingly small and can be said to be within the thickness of the contour line as drawn on the plan, contrary to Mr. Cole's bold assertion in XX that it was outside of the contour [CD8.3(ee)]. It is acknowledged by Cole Jarmon that the detailed grid data on which the contours are plotted can vary between 10m and 100m depending on the metric [CD19.25, §1.1]. The uncertainty in the modelling referred to above could easily result in Thaxted Primary School coming within the eligibility criteria.

39 Importantly, the Department for Education's Acoustic Design of Schools: Performance Standards of 2015 (Building Bulletin 93) is plainly relevant and applicable to sound insulation proposals such as that proposed by STAL [INQ14]. As explained by Mr. Trow in evidence in chief, BB93 itself envisages that it might be used in considering mitigation measures within the planning regime [§0.3.7]. The Heathrow Cranford decision of 2017 shows that BB93 has been used for assessment purposes [CD14.16, §330ff.], and the Leeds Bradford assessment applied BB93 by considering short term noise events during the school day [CD19.40, see Fig. 10.12].

40 Mr. Cole accepted in XX that if any of the schools included in the Enhanced Sound Insulation Scheme list (including Thaxted) were to be refurbished, then consideration of aircraft noise against the guidelines would be required. Given the potential that any one of the schools in the list might refurbish their premises during the life of the proposal here, that begs the question as to why the eligibility criteria for the sound insulation scheme as proposed has not fully considered the guidelines in BB93.

41 The position is that:

(1) Of STAL's eligibility criteria, only the 72 dB LAmax criterion has a basis under BB93, as accepted by Mr. Cole in XX. However, this is only considered for two aircraft types.

(2) The guidelines provide that, in order to protect students from noise, indoor ambient noise levels should not exceed specific 30mins guideline design values [INQ14, p.21]. Yet, as explained by Mr. Trow in evidence in chief, no 30min levels are presented in the ESA for any of the schools.

42 In that context, Mr. Cole's oral evidence that Thaxted Primary School has experienced similar levels in 2019 to those forecast to be experienced in 2032, that the school has not complained about aircraft noise previously, and it has not objected to the current proposals, is devoid of substance. It would be unsurprising if a particular school were not aware of the studies potentially linking aircraft noise and children's cognition and learning, or conscious of that being a particular issue at their school, let alone have the time to make noise complaints about it year on year. There could be many reasons, which have nothing to do with the substance of any noise impacts, as to why an educational establishment fails to object to a planning application.

43 The publications and studies that have highlighted the potential effects of aircraft noise on children within school environments are well summarised in Mr. Trow's evidence and need not be repeated here [UDC/1/2, §4.28ff.]. What they underline is the need for particular care in assessing which schools might be included in a sound insulation scheme to mitigate the aircraft noise effects of a long-term proposal such as this. Whether on the basis of the proper application of the eligibility criteria in STAL's scheme, or applying the guidelines in BB93, or both, there is a compelling case for the inclusion of Thaxted Primary School in the sound insulation scheme. Mr. Trow and UDC's position is not that a bespoke mitigation package should be committed for each of the schools listed in any event. UDC's proposed amendments to the UU (now agreed by STAL [CD26.15]) seek that a reappraisal of the need for insulation at each school is conducted prior to any work being undertaken, when the aircraft noise can actually be experienced, which provides a proportionate response.

44 Finally, as to the means by which the noise impacts of the appeal scheme should be mitigated, it is notable that Mr. Cole himself acknowledged the principle of a noise envelope condition which progressively tightens over the years [CD19.24, §5.1-5.2]. Mr. Cole's claimed bewilderment at the complexity of Condition 15 should be considered against his acceptance of the principle which Condition 15 seeks to achieve. It provides a set of limits backed by minimum requirements, the currency of which is maintained with each major increase in passenger numbers. Specifically, the Condition requires STAL, as a minimum, to meet the noise exposure forecasts which they present to this inquiry, and to improve upon them where possible and supported by policy. It is the only meaningful way in the context of this proposal to ensure that the benefits of future growth in aviation are shared with the local communities surrounding the airport, and that the aviation industry '*continues to reduce and mitigate noise*

as airport capacity grows', which is the principle lying at the heart of government policy on aviation noise [CD14.1, §3.3]. STAL has offered no alternative that properly accommodates this principle.

The effect of the development on air quality

Extant policy on air quality

45 The clear thrust of national planning policy on air quality is that development should look to improve air quality and to identify opportunities to do so to achieve that objective. The overarching objective of section 15 of the NPPF (Conserving and enhancing the natural environment) is that planning decisions should contribute to and enhance the natural and local environment by wherever possible helping to improve environmental conditions such as air quality [CD14.6, §170(e)]. With specific reference to air pollution, the same section of the NPPF provides that planning decisions should sustain and contribute towards compliance with relevant limit values or national objectives for pollutants, and that opportunities to improve air quality or mitigate impacts should be identified [§181].

46 National aviation policy does not relax those objectives with regard to airports and expansion plans. On the contrary, it envisages airports taking a leading role in delivering ongoing improvements in the air quality impacts of aviation. The APF states the Government's policy on air quality in unqualified terms, namely to seek improved international standards to reduce emissions from aircraft and vehicles, and to work with airports and local authorities as appropriate to improve air quality [CD14.1, §3.48]. In the same section, in the context of minimising the air quality impact of surface transport journeys, the expectation on airports is stated to be: '*.. to take this responsibility seriously and to work with the Government, its agencies and local authorities to improve air quality*' [§3.51].

47 Dr. Bull rightly accepted in XX that extant policy specific to aviation includes the objective of working with airports to improve air quality, and that the expectation of working with Government to improve air quality is of relevance to this application. It is that objective, taken from the APF, which is referred to in STAL's Sustainable Development Plan 2015, as the policy of relevance at a national level [CD15.5, p.24]. Dr. Bull was also right to accept that the aim of the SDP to '*Reduce air pollution*' is based on that part of national policy [p.29]. It is therefore very surprising that the Air Quality chapter in the ES omits reference to the aviation policy objective of improving air quality when summarising the APF. Dr. Bull was forced to

acknowledge this omission in XX [CD3.10, §10.10]. He sought to excuse the omission by saying that it was covered elsewhere in the Chapter. This answer said more about his allegiance to his client than anything else. Improving air quality as a specific aviation policy objective is not referred to anywhere in the relevant sections of the ES [§10.4-10.23] or ESA [CD7.10, §10.3.1-10.3.12]. The information provided on the effect of the proposed development on emissions [CD7.10, Tables 10.5 and 10.6] and concentrations [CD8.6 Tables 32-39] of air pollutants demonstrates a consistent picture of worsening air quality.

48 This understatement of relevant aviation policy on air quality is mirrored by a lack of action by STAL to show that they have lived up to the air quality objectives they have set themselves in their SDP. A key purpose of the SDP is to provide '*guidance and information*' to statutory agencies and the local community against strategic objectives, which include one to '*Actively manage and contain environmental impacts*' over a 5yr period [CD15.5, pp.4-5]. Yet against two of its stated aims, to '*reduce air pollution*' and '*reduce emissions generated by ground vehicles and aircraft*', it is notable that Dr. Bull was unable to point to any evidence that demonstrates what improvements in air quality have been achieved and (on ground vehicles and aircraft) what steps have been taken. This is another remarkable omission, since it is this mitigation which is referred to as incorporated mitigation in the ES and ESA [CD3.10, §10.112; CD7.10, §10.6.1]. The objectives set out in the SDP are just words if not backed by measurable actions.

49 There is nothing in MBU which suggests any dilution of the extant policy objectives which are referred to above and carried forward into the SDP. STAL sought to salvage the position in its Re-ex of Dr. Bull by referring him to para. 1.22. That did not resuscitate STAL's position, as it merely summarises extant policy on local environmental impacts as relevant to aviation. There is no suggestion that extant aviation policy on air quality is somehow relaxed where airports look to make best use of their existing runways. The SDP provides further proof of this. The SDP is stated to be a document that will evolve and be kept under review '*at least*' every 5yrs [CD15.5, p.5]. Yet no review has been undertaken by STAL to suggest that MBU provides any different approach to air quality (or any other environmental impact) from that contained in extant aviation policy. That is because MBU does not provide any different approach or dispensation for airports in these areas[2].

[2] Reference to MBU within Aviation 2050 also does not signal any relaxation of policy on air quality [CD14.27, §3.6].

Emerging aviation policy on air quality

50 Emerging aviation policy signals an even greater ambition from Government to improve air quality, an ambition which is expressly tied to the commitment in the Clean Air Strategy 2019 to an ongoing tightening of air quality standards.

51 The Green Paper '*Aviation 2050: The future of UK aviation*' sets out the Government's most up to date thinking on aviation policy on air quality, as part of its final consultation on policy proposals for the long term Aviation Strategy to 2050 and beyond [CD14.27, p.8, December 2018].

52 With regard to environmental impacts generally, whilst future expansion in response to forecast demand is welcomed, it is noted that it must be sustainable, with affected communities supported '*and the environment protected*'. The investments in cleaner aircraft and improvements in road and rail access are acknowledged, but even with these improvements, it is noted that '*there are challenges that need to be addressed. Growth can have significant environmental impacts which affect local communities and increase emissions… Therefore, while the government supports continued growth in aviation over the next 30 years, it also believes that the UK must be more ambitious on environmental protection to ensure that growth is sustainable.*' [p.48, §3.2-3.3].

53 As to air quality specifically, the Government's scale of ambition with regard to air pollution could not be clearer in Aviation 2050:

(1) The Government recognises that air pollution is the top environmental risk to health in the UK and it remains determined to improve air quality. [§3.123]
(2) Whilst recognising the UK's compliance with air quality legislation for most pollutants (with nitrogen oxides an exception), '*.. much work remains to be done*' by reference to the Air Quality Plan and draft Clean Air Strategy (subsequently finalised and published in 2019) [§3.123].
(3) In the context of sustainable journeys to airports, the Government expects airports to make the most of their regional influence to provide '*innovative solutions and incentives against ambitious targets which reduce carbon and congestion and improve air quality*' [§3.101].

54 The proposed measures for air quality in Aviation 2050 reflect the Government's ambitions [§3.127]. '*The government recognises the need to take further action to ensure aviation's contribution to local air quality issues is properly understood and addressed*' (emphasis added). Both understanding and meeting these objectives will be met by proposed measures which include the improvement of monitoring of air pollution, including ultrafine particles (UFP), and:

- '*requiring all major airports to develop air quality plans to manage emissions within local air quality targets*' which will be achieved '*through establishing minimum criteria to be included in the plans*'.

55 The Clean Air Strategy 2019 is applicable extant policy, which is in any event incorporated into emerging aviation policy by reference (Aviation 2050 [§3.123]), as Dr. Bull accepted in XX. Its commitment progressively to cut exposure to particulate matter pollution as suggested by the WHO, and to set a new, ambitious, world leading target '*to reduce human exposure to PM2.5*' over the long term, over and above the ambitious emissions ceilings set by 2020 and 2030 is an integral part of the Strategy [CD16.4, pp.7, 28 (emphasis added)]. Mr. Andrew's reference in evidence in chief to p.52 of the Strategy added nothing: he referred to government seeking to improve international standards, but omitted to refer to the references on the right hand column of the same page to the action considered in the Aviation Strategy on (inter alia) potential requirements and guidance for airports to produce air quality plans. The omission undermines his credibility as a witness. As accepted by Dr. Bull in XX, the upshot of the Strategy is that:

(1) There is an expectation that there will be a world leading goal to reduce human exposure to PM2.5 in the next couple of years.
(2) The aviation industry and airports will be expected to play their part in meeting that goal [see p.52] through the development of air quality plans with minimum criteria.
(3) Given the shorter term strategies in the CAS for 2020 and 2030 [p.28], it is probable that the long term goal for the reduction of human exposure to PM2.5 will need to be achieved after 2032 when the proposal here is forecast to reach capacity.

56 The clear thrust of both extant and emerging aviation policy on air pollution set out above stands in stark contrast to Dr. Bull's interpretation of it: namely, that the inclusion of the words

'*where possible*' in para. 170 of the NPPF somehow acknowledges that some types of project by their very nature will result in proportionate increases in emissions; that it may not be possible to achieve absolute improvements in air quality; and that the above concessions necessarily apply to any airport seeking to make best use of their existing runway [STAL/5/4, §5].

57 This defiance of the thrust of aviation policy on air pollution, and the role which airports are expected to play in reducing it, is consistent with STAL's trivialisation of the policy objective of improving air quality in the ES and ESA (see above).

Increases in emissions of key pollutants

58 As agreed by Dr. Bull in XX, whether in 2032 comparing the Development Case with the Do Minimum Case, or against the 2019 baseline, the proposal will give rise to increases in key pollutants [see also UDC/2/2, Table 1, §20]:

Nitrogen oxides

- 48 tonnes/yr increase in 2032 comparing the Development Case with the Do Minimum Case
- c.10% increase in 2032 in the Development Case against the 2019 Base

PM2.5

- 0.9 tonnes/yr in 2032 comparing the Development Case with the Do Minimum Case
- c.20% increase in 2032 in the Development Case against the 2019 Base

PM10

- 2.1 tonnes/yr in 2032 comparing the Development Case with the Do Minimum Case
- c.23% increase in 2032 in the Development Case against the 2019 Base.

59 As to the breakdown of those emissions, Tables 10.5 and 10.6 of the ESA show that for NOx and PM10 pollutants, the proposal will give rise to increases arising from the Landing and Take Off cycle of aircraft, other airport sources, and airport related road vehicles, all within the control of the airport [CD7.10, pp.17-19]. As to road related pollutants, whilst they are observed to reduce significantly from 2019, that is not due to any steps taken by STAL, but because of national level changes to the emissions controls of vehicles.

60 Against a proper interpretation and application of policy, it is simply not sufficient for an airport to suggest, as STAL does, that the increases in concentration will not be significant against air quality standards and to claim that the proposal is therefore policy compliant. There are increases in key pollutants which are a priority for national and local policy, are adverse, and are within the control of the airport which will be producing them. They are contrary to the extant policy framework applicable to airports to improve air quality and reduce air pollution, and emerging policy requiring further action by airports to achieve those objectives.

Mitigation on Air Quality

61 All of this begs the question as to what mitigation is offered by STAL to offset these increases in emissions from its proposal. As referred to above, with regard to the incorporated mitigation referred to in the ES and ESA, STAL does not demonstrate how historic commitments referred to in the SDP have met the objective of improving air quality.

62 In a similar fashion, with regard to its current proposal, there is an abject failure to demonstrate how the objectives of improving air quality and reducing air pollution will be met and to what degree. The UU essentially rolls forward measures contained in previous s.106 Agreements from 2003 and 2008 with minor amendments [CD26.15]. A number of points can be made:

(1) The measures contained within the UU are within a Transport Section which seeks to bring about highway improvements (Part 2). There is no bespoke mitigation package proposed for improving air quality, and any potential improvements could at most only indirectly result from certain measures coming forward.

(2) The Transport Targets in clause 8 of the Transport Section are just that; targets for mode share percentages which STAL is required to use only '*Reasonable Endeavours*' to meet. That so-called "obligation" could be easily met by '*the expenditure of such effort and / or sums of money and the engagement of such professional or other advisers as in all the circumstances may be reasonable*' (clause 1.32).

(3) As to specific mode shares under clause 8:

- The target for public transport mode share is to '*maintain*' a 50% mode share for non-transfer air passengers. That is a distinctly lacklustre target given that in its most

recent reported figures, STAL is suggesting that it has, in fact, already achieved a 54% public transport mode share [CD23.34, p.3, 54.22% for Bus & Coach and Rail for the Moving Annual Target]. In this context, a target to achieve a 50% mode share does not represent an improving picture for air quality (indeed, it could be said to represent a worsening).

- The target for single occupancy private car use by Stansted Airport staff is to reach and thereafter maintain 45% by the 43mppa date. The reduction from 55% is marginal when it is noted that the target date is 43mppa, which is forecast to occur 11yrs from now, requiring the operator to deliver less than a 1 percentage point improvement per year.

(4) The means by which alternative modes of transport, car-sharing (by Stansted staff and employees), and sustainable modes of transport are to be achieved is through a Sustainable Transport Levy, with the funds made available to the Stansted Area Transport Forum to be allocated at their discretion, pursuant to the Terms of Reference in Annexure 8 (clause 5). There is nothing in this mechanism which will ensure that the allocation of funds will necessarily be targeted towards measures that would improve air quality (e.g. the allocation of funds for low carbon fuels such as bio-diesel may not result in a net improvement in emissions).

(5) The Local Bus Network Development Fund is to be administered at the discretion of the SATF (clause 4). The priority given to grants to fund ultra-low emissions vehicles or electric vehicles is subject to justification by a business case, the demonstration of which is not made contingent on air quality matters, and might well be focussed solely on matters such as economic viability.

63 As a result, the measures in the Transport Section of the UU are not specific to air quality, lukewarm with regard to mode share, and heavily qualified, leading to uncertainty as to whether air quality improvements would actually be achieved. Moreover, there is no assessment provided in the ES, ESA, or Dr. Bull's evidence that demonstrates the extent to which these measures would improve air quality. All this, in circumstances where that is the objective of extant and emerging policy.

The impact on air pollution in the Bishops Stortford AQMA

64 There can be no doubt that there is a longstanding air quality problem at Hockerill Junction within Bishop's Stortford Town Centre. An Air Quality Management Area was declared in 2007

by East Hertfordshire District Council and for nearly 15yrs the air quality standard for nitrogen dioxide levels (40µg/m3) has not been met. The narrow historic roads, the canyon effect of the unbroken taller buildings, and the gradient of Hockerill Street up to the junction, and the Dunmow Road away from the junction, are features which exacerbate the air quality issues arising from congested vehicular traffic in this location. The measured annual mean nitrogen dioxide concentrations between 2012 and 2019 are well illustrated by Dr. Broomfield's Table 2 [UDC2/2, p.24]. As Dr. Bull accepted in XX, measured levels of the pollutant nitrogen dioxide are:

- well above the air quality standard for every year (2012 – 2019) on the Dunmow Road and London Road arms of the junction (in some cases by a margin of 50% (c.60µg/m3);
- above the air quality standard for Hockerill Street for every year (2012 – 2019);
- above the air quality standard for Stansted Road in 2013-5 inclusive.

65 These levels of nitrogen dioxide are currently unacceptable, and the policy objective of the NPPF is to enhance the local environment by preventing new development from contributing to unacceptable levels of air pollution [CD14.6, §170(e)].

66 The proximity of the AQMA to junction 8 of the M11 providing access to the airport, the fact that the AQMA provides a ready means of access to the airport from the centre and south of Bishops Stortford and an alternative means of access to the bypass to the north and west, and the stated objective of STAL to create significant employment and training opportunities for people from the local area including Bishops Stortford, all clearly suggest that there is likely to be a causal link between the use of the airport and traffic through the Hockerill junction. Dr. Bull accepted in XX that, as the local authority charged with the duty to bring down air quality levels in the AQMA, East Herts District Council can be expected to be aware of the factors contributing to the air quality issues in the AQMA. It is all the more significant therefore that in its Local Plan, adopted as recently as October 2018, EHDC should cite the historic road network in Bishops Stortford '*combined with its proximity to Stansted Airport*' as causative factors resulting in congestion and poor air quality [CD14.10, §24.5.3]. EHDC's view in its published Local Plan cannot easily be dismissed as wrong or explained away. As Dr. Bull accepted in XX, the Local Plan was subject to independent scrutiny and an assessment of its soundness, following a statutory process through which STAL would have been consulted and given an opportunity to make representations.

67 EHDC's published view of the impact of the airport on traffic through the AQMA is shared by Dr. Broomfield. Whilst he does not dispute the traffic flow figures contained within Mr. Rust's Rebuttal as to the 61 additional annual average daily total trips on the A1250 immediately east of Hockerill Junction arising from the proposed development [STAL/10/3, Table 2.1], he carefully set out his reasons for considering that to be potentially significant:

(1) It should be noted that the daily total impact for the other arms of the junction will be less, but not zero.

(2) The figure provided is an annual average daily total. Dr. Bull's fixation with arithmetically calculating this to be one trip every half hour fails to reflect the reality of how that annual daily average would actually occur, accounting for the ebb and flow of traffic, shift patterns of employees driving from the area to work at Stansted, avoidance of the bypass due to accidents etc.

(3) During evidence in chief, Dr. Bull dismissed the idea that an increase of 61 additional annual average daily vehicle movements could have a significant air quality effect. However, this increase is not far below the agreed screening threshold of 100 vehicles per day in IAQM Guidance [CD16.9, p.21, Table 6.2] and in the particularly challenging circumstances of the Hockerill Street junction, which are not well represented by the model results presented by Dr. Bull, such an increase in vehicle movements could well result in more harmful increases in air pollution in this highly sensitive area than envisaged by Dr. Bull [see UDC2/2, section 5.3].

(4) The measured levels of nitrogen dioxide in the AQMA show consistently high levels above the air quality standard over a number of years (see above). By contrast, the reduction in more recent years is at a slow rate. Attempts by Dr. Bull to explain these reductions by reference to the poor performance of Euro V controls before 2015 are unlikely to explain these marginal reductions when viewed in context. The fact that Euro VI emissions controls for cars became available from 2015 would not be expected to bring about a step change in emissions, as fleet mixes take time to change. Euro controls on buses and HGVs without performance problems were in place before 2015, as was the availability of hybrid and (more latterly) electric cars. Yet these factors did not result in reductions in air pollution in the AQMA. Separately, it can be noted that the upgrades to the relevant bus fleet to latest emissions standards for services in East Herts referred to by Mr. Andrew have not had the effect of materially reducing the air pollution in the AQMA [UDC/13/4, §2.17].

(5) STAL's forecasts are overly optimistic compared with measured trends. The measured trends between 2012-2019 show a reduction in levels of air pollution which is less than that forecast by STAL, as demonstrated by Dr. Broomfield and accepted by Dr. Bull in XX [UDC/2/2, §79 as corrected in UDC/2/5]. The application of an adjustment factor to accommodate this is not uncommon, but the adjustment factor of 8.5 required here is relatively high and rare on Dr. Bull's own evidence (an adjustment factor above 8 was applied in only 2 out of the 40 air quality studies referred to by Dr. Bull [STAL/5/4, Fig.1]). As explained by Dr. Broomfield, the need to apply a relatively high adjustment factor of 8.5 should ring alarm bells about the accuracy of the model used, but in any event shows that even small increases in modelled emissions in the AQMA would have a proportionately higher impact in real terms.

(6) When interpreting the significance of any increase in emissions, the actual number of properties affected should be borne in mind. Here, the 2 measurement locations within the AQMA represent a total of 57 properties within the AQMA which is within the town centre, which could be frequented by and lead to exposure of the population in this area [UDC/2/2, §77].

68 Viewed against the above context, Dr. Broomfield's assessment stands out for its detachment and is informed by his professional judgment. By contrast, the hyperbole of Dr. Bull's oral evidence in chief, that he was astonished that the level of traffic flow here could even be considered to be significant, fails to take account of the full circumstances explained by Dr. Broomfield. In any event, Dr. Bull did not depart from his written evidence that the airport related activities do make a contribution to air pollution in Bishops Stortford (albeit, on his case, very small) [STAL/5/2, §99].

69 Notably, Dr. Broomfield's assessment is consistent with the note of WYG (White Young Green, who advised the Council at the application stage) dated 15 August 2018 [CD16.14], which took account of the Technical Notes undertaken by STAL in July 2018 including [CD11.2(g)], and concluded:

'*.. The scheme will increase pollutant emissions as a result of additional vehicle movements within the Bishop's Stortford Air Quality Management Area where levels of pollutants are already above the level where health effects are likely to be observed in the most sensitive members of the population. As such these health effects should be considered against the benefits of the scheme and an appropriate balance of mitigation should be sought.*'

70 The fact that WYG were identifying an air quality impact in the AQMA, which necessitated appropriate mitigation, cannot sensibly be denied. Although WYG considered that the potential worst effect would remain '*just*' within the negligible banding, they noted that there '*still remained an air quality effect in the AQMA*' [Task 1]. Dr. Bull strove in XX to explain away these comments as not relating to the application, but to the issues within the AQMA generally. His attempt at explanation was simply not credible. Whilst EHDC did ultimately withdraw their objection to the application, the lack of any damage costs assessment in line with their own Air Quality Planning Guidance remains a concern, given the ongoing tightening of air quality standards envisaged in national policy, and the fact that health and associated economic impacts can occur even at levels below the currently established air quality standards. There is a need for the mitigation to be properly assessed and quantified. The lack of a damage costs assessment was also noted in WYG's note [Task 3].

Ultra-fine Particles

71 Ultrafine Particles (namely those with a diameter of less than 0.1 microns) and the specific health effects which ambient UFPs can cause, were the subject of a comprehensive report by the Air Quality Expert Group, an expert committee of Defra [CD16.2]. Dr. Bull's evidence that there is increasing interest in UFPs, but that it is not a new issue [STAL/5/2, §103], is fully reflected in the terms of that report and in its publication date of July 2018, several months before the application was first considered by UDC in November 2018.

72 The relevant parts of the AQEG report were not disputed by Dr. Bull in XX:

(1) UFPs are believed to contribute to the toxicity of airborne particulate matter but the magnitude of their contribution is currently unclear [Exec. Summary, p.10].
(2) Emissions of UFPs arise primarily from combustion sources and especially transport-related sources which burn sulphur-containing fuels. Emissions from aviation are significant in the vicinity of major airports [Exec. Summary, p.11].
(3) Policies and actions to control ambient PM2.5 and PM10 will not always control UFPs [Exec. Summary, p.11].
(4) Measures designed to mitigate concentrations of PM2.5 and PM10, of which UFPs are part, may also affect UFPs, but because very small particles individually have very little mass, the sources, behaviour and impacts of UFPs in the atmosphere can differ from those

of the substantially fewer, larger particles that dominate the currently regulated PM2.5 and PM10 fractions [p.12].

(5) Future projections show an increasingly important contribution of UFPs from aviation [p.23].

(6) Aviation fuel has a far higher sulphur content than fuels for road vehicles, and the growth of air traffic is likely to cause increased UFP concentrations in the vicinity of airports, unless the fuel sulphur content is reduced [p.87].

(7) One recommendation of the report is to establish a permanent site, monitoring ultrafine particulate number concentration and size distribution in the vicinity of a major airport [p.94].

73 Shortly after the AQEG report, the Government's thinking on UFPs and aviation was included in the Aviation 2050 Green Paper in December 2018 [CD14.27]. The Government's recognition of the need to take further action to ensure aviation's contribution to local air quality issues is properly understood and addressed, includes a proposed measure to improve the monitoring of air pollution, including UFPs, by standardising processes for airport air pollution monitoring and communication [§3.127].

74 Given the increasing interest in UFPs and aviation, both at an advisory level to central government, and in emerging aviation policy, it is surprising that the ES and subsequent submissions during the application process omitted to address the issue of UFP. At the very least, UFPs should have been identified as a potential impact of the proposed development, consistent with the need for transparency in assessing the effects of aviation growth, which is a core principle underpinning the APF [CD14.1, p.8].

75 The position is that there will be an increase in emissions of PM2.5 arising from the development and a consequential increase in UFPs, the effects of which may be harmful to human health. Applying a precautionary approach to a recognised issue, where projections show an increasingly important contribution of UFPs from aviation, and the proposal will allow for aviation growth over the long term, there is a need to regulate UFPs. The fact that the impacts of UFPs cannot be accurately or reliably quantified, should not be an impediment to an appropriate condition regulating their production. As accepted by Dr. Bull in XX, UFPs are likely to be subject at least to a monitoring requirement in the near future. Limiting the PM2.5 emissions through Condition 15 Schedule A would be one way in which to achieve regulation

in the short term. Pursuant to that Condition, the scheme submitted when the airport is due to exceed 35mppa will need to grapple with policy as it has evolved at that stage, subject to the limit set in Schedule B. A responsive condition, such as that provided by Condition 15, will enable the potential impacts of UFPs to be managed, and for the evaluation and management of impacts of UFPs to improve as data and methods become available.

Air Quality Conditions

76 Each of the air quality impacts identified by UDC is capable of being mitigated through an appropriate condition and / or mitigation package. Specifically, the understatement of relevant aviation policy on air pollution, the failure to demonstrate how the mitigation proposed will achieve the policy objective of improving air quality, the potentially significant contribution which the proposal will make to air quality in the Bishops Stortford AQMA, and the need to regulate UFPs, can all be addressed via conditions which limit the amount of key pollutants generated by the proposal.

77 As increases in the permitted passenger numbers are realised, Condition 15 maintains the currency of air quality standards by evaluating them by reference to the standards applicable at the time of realisation of a lockstep increase in passenger numbers, together with ongoing management. As with the other environmental impacts of the proposal, the air quality limits set within Schedules A and B of Condition 15 are derived from STAL's ESA, essentially tying the realisation of the growth in passenger numbers permitted to the environmental effects that have been assessed, and that are within STAL's control, delivering the improvements in air quality which are now required by extant and emerging policy relevant to aviation. Given the responsibility on airports to improve air quality, those limits are set by reference to the Do Minimum case [CD26.11].

78 Given the proximity to the airport of Hatfield Forest and Elsenham Woods, which are Sites of Special Scientific Interest, the lack of any assessment of short term (24hr mean) levels of oxides of nitrogen for these (and any) ecological sites needs to be addressed. Dr Broomfield's suggested Condition 18 is supported by his updated evidence in response to STAL in his Rebuttal [UDC2/4, pp.3-5]. The airport could constitute a large individual source to generate an acute NOx peak, and even without that, NOx emissions can readily exceed the 24hr critical level specified on the APIS website, as demonstrated by the most recent air quality report for

Stansted. As such, location specific evidence justifies the need for this assessment to be undertaken.

Whether the development would conflict with UK obligations to combat climate change

Extant policy on carbon emissions

79 Decarbonisation through radically reducing greenhouse gases (the most important of which is CO2) forms an integral part of achieving sustainable development in the NPPF [CD14.6]:

- Mitigating and adapting to climate change, including moving to a low carbon economy form part of the environmental objective of sustainable development, with a view to protecting and enhancing the natural environment (§8(c)).
- Section 14 of the NPPF, on meeting the challenge of climate change, goes on to frame the objective in the following terms:
  '*The planning system should support the transition to a low carbon future in a changing climate… It should help to: shape places in ways that contribute to radical reductions in greenhouse gas emissions…*' (§148).

80 This objective, and the strong terms in which it is framed, are not new in national planning policy (cf. the similar wording of the NPPF 2012 as to the key role of planning in shaping places '*to secure radical reductions in GHG emissions*' [CD14.7, §93]). It reflects the urgent need to tackle climate change. At a high level, the achievement of this objective engages the essence of sustainable development, namely '*meeting the needs of the present without compromising the ability of future generations to meet their own needs*' [CD14.6, §7].

81 Mr. Robinson, as STAL's witness on carbon policy, accepted in XX that the policy in para. 148 of the NPPF was relevant here, that carbon emissions are a type of GHG, and that the Government was looking to achieve a radical reduction in carbon emissions as an integral part of the achievement of sustainable development. It is a misreading of national policy to confine para. 148 to flooding and coastal change (as suggested through Re-ex of Mr. Robinson). That the objective of para. 148 is not stated to be specific to aviation in the NPPF does not detract from its importance to this proposal. Put another way, para. 148 applies to the whole economy, and aviation is not exempt.

82 Given his acceptance of the relevance of this part of national policy, it is surprising that nowhere in Mr. Robinson's evidence is this part of the NPPF considered. It is yet more surprising that it is not discussed or considered at all in the ES or ESA on carbon emissions [CD3.12, §12.6-12.25; CD7.12, §12.3.1-12.3.9]. This misreading of, and failure to address, an important planning policy document puts a big question mark over the reliability of Mr. Robinson's evidence.

83 Similarly, the rapidly evolving policy framework on carbon in recent years - and throughout the consideration of this application and appeal - is in large part due to the Paris Agreement 2015 and its greater ambition to achieve "net zero" greenhouse gas emissions during the second half of the 21st century (at least 100% lower than the 1990 baseline)[3], with the consequential amendment in June 2019 of the UK Government's fundamental objective in relation to climate change enshrined in the Climate Change Act 2008, so as to impose a duty on the Secretary of State to achieve the net zero target. Yet no reference is made to the Paris Agreement in the carbon emissions chapters of the ES and ESA.

84 As to aviation specific policy, whilst the APF places emphasis on action to be taken at an international and European level, it equally states that the Government '*will also take unilateral action at a national level where it is appropriate and justified in terms of the balance between benefits and costs.*' [CD14.1, p.41, §2.5]. Importantly for this application, MBU simply does not say what STAL wants it to say. Mr. Robinson's conclusion in his proof, that carbon emissions associated with airports have already been considered by Government in formulating MBU '*and they are not therefore a matter for local planning decision making*' [STAL/8/2], completely unravelled in XX. He accepted that:

(1) One of the key policies to be relied upon in planning decision making was the NPPF [a policy which he had inexplicably omitted to consider].
(2) Whilst paras. 1.11-1.13 of MBU provide that carbon emissions are important environmental elements which should be considered at a national level, that does not preclude their consideration at a local level.
(3) There is nothing in MBU which states that carbon emissions must not be taken into account by local planning authorities when considering decisions on airport growth.

[3] Less than 2 degrees and preferably no more than 1.5 degrees of warming, implying any and all sources of warming need to be addressed, particularly, but not limited to carbon dioxide emissions.

(4) The interpretation of MBU in (2) and (3) above is consistent with the evidence of Sarah Bishop of the DfT referred to in Mr. Robinson's proof [STAL/8/2, §3.5], that there is '*no requirement*' for LPAs to assess airport planning applications against wider national carbon emission ambitions. Carbon emissions can be a matter for the LPA to take into account.

85 Putting to one side the serious damage done to the credibility of his evidence, these concessions were rightly made. It is important to recognise that MBU does not seek to limit the wide ambit of local environmental impacts which can be considered by local planning authorities in considering airport growth applications[4].

86 First, it is stated that the Government understands the concerns of communities living near airports over '*Local environmental impacts*, '<u>particularly</u> noise, air quality and surface access.' [CD14.2, §1.22, emphasis added]. They are not confined to those stated.

87 Secondly, within the '*Policy statement*' - where the policy to be applied by LPAs should be found [§1.25 – 1.29] – the Government states that it '*believes there is a case*' for airports making best use of their existing runways. But [§1.26]:

- It is for airports to submit their application to local planning authorities;
- '*This policy statement does not prejudge the decision of those authorities…*'
- The policy '*leaves it up to local rather than national government, to consider each case on its merits*'.

This part of the policy could easily have stated that carbon emissions are not for LPAs to consider. It does not say that.

[4] Indeed, UDC's position on carbon is entirely consistent with the interpretation and approach to similar policy endorsed by the Court of Appeal in the recent case of *R (Client Earth) v SoS for BEIS and Drax Power Ltd.* [2021] EWCA Civ 43, in which the Court rejected a challenge on the interpretation of the Overarching National Policy Statement for Energy (EN-1) on carbon emissions. The relevant policy in EN-1 stated that (as relevant): Government has determined that CO2 emissions are not reasons to prohibit the consenting of projects or to impose more restrictions on them than are set out in the energy NPS, and that therefore the decision maker does not need to assess individual applications in terms of carbon emissions against carbon budgets (§30). In interpreting that policy, the Court held that it does not diminish the need for relevant infrastructure or undo the positive presumption, '*But nor does it prevent greenhouse gas emissions from being taken into account as a consideration attracting weight in a particular case. How much weight is for the decision-maker to resolve. It follows that, in a particular case, <u>such weight could be significant, or even decisive, whether with or without another "adverse impact"</u>*'. (§87, per Lindblom LJ, emphasis added).

88 Thirdly, MBU expressly envisages that the forthcoming Aviation Strategy will progress the wider policy towards tackling aviation carbon [§1.12]. Again, the '*Policy statement*' expressly requires consideration of such policies. Airports will need to demonstrate how they will mitigate against '*local environmental issues*', which are not defined or restricted, taking account of '*new environmental policies emerging from the Aviation Strategy*' [§1.26, emphasis added]. As a result, it is acknowledged within MBU itself that the analysis of carbon emissions does not provide the complete answer on carbon. Rather, MBU expressly advocates consideration of emerging environmental policies, which includes carbon, through the Aviation Strategy.

89 That last point shows how STAL has overstated its case as to the consideration given to carbon emissions in MBU. Paras. 1.11 – 1.21 show that an analysis has been undertaken which '*[o]n balance*' suggests it is likely that measures would be available to meet the planning assumption under the policy. However, that is very much the start of the analysis. It is not a "cumulative assessment" of UK wide airport expansion, since it does not name or assess any single or cumulative set of airport proposals. It does not "pre-authorise" any airport expansion in terms of carbon emissions, both as suggested by STAL.

90 Fourthly, and in any event, in terms of its assessment of carbon emissions, MBU is not an aviation policy which is calibrated to net zero. It was formulated at a time when the carbon reduction target was 80%. Approximately 1yr after its publication in June 2018, the Climate Change Act 2008 was amended to reflect net zero and a 100% carbon reduction target [CD17.24, 26 June 2019]. Given this change in the law, it is unreal to suggest that this will not affect both domestic and international aviation emissions. Emissions from international aviation and shipping (IAS) are currently required to be taken into account in setting carbon budgets under s.10(2) of the 2008 Act (with budgets set allowing headroom for projected future emissions from IAS). Moreover, the clear indication from the Government's latest report on reducing UK emissions [CD17.64, p.106, Oct 2020] and the formal recommendation of its statutory adviser on the 6th Carbon Budget [CD17.77, p.162, Table 8.1, 9 Dec 2020], both of which post-date the amendment to the 2008 Act, is that IAS are now likely to be formally included in UK climate targets when setting the 6th Carbon Budget. In any case, nothing precludes national and local policy and action, in addition to international action.

91 As a result, the carbon analysis that lies behind MBU is out of date and should carry little weight in the context of net zero and emerging policy which seeks to take account of it.

Alternatively, adopting the same approach endorsed by the Supreme Court with regard to the ANPS (published at the same time as MBU and complementary to it) applications under MBU must take into account carbon emissions policy (targets and budgets) as it has evolved at the time of the application, in this case accounting for net zero and the direction of travel of emerging policy (*R (Friends of the Earth Ltd et al.) v Heathrow Airport Ltd.* [2020] UKSC 52, paras. 10, 98).

92 Finally, in response to the amendment to the Climate Change Act 2008 to reflect net zero, UDC passed its own resolution declaring a climate emergency, to commit to achieving net-zero status by 2030, and to produce a bold plan of action to achieve that aim [CD17.34, 30 July 2019]. The resolution, which is a material consideration in its own right, and underpinned by a change in the law on climate change, was passed approximately one month after the amendment to the 2008 Act, and during its consideration of this application, seeking to enable growth at Stansted Airport by 8mppa. Against that background, the interpretation of MBU advocated by Mr. Robinson (until his abandonment of it in XX), to the effect that a local planning authority is prevented from considering carbon emissions in relation to airport expansion in its area, makes no sense.

93 When viewed together, STAL's refusal to acknowledge relevant and longstanding national planning policy on radically reducing carbon emissions, its misinterpretation of aviation policy in MBU so as to suggest that carbon emissions are a matter to be dealt with at a national level and cannot be considered by LPAs in local decision making (before resiling from that position in oral evidence), its overstatement of the carbon analysis lying behind MBU as "pre-authorising" airport growth in carbon terms, and its failure to accept that MBU is now out of date in carbon terms, reflect an airport which is failing to acknowledge and grapple with its responsibilities on carbon emissions. Against a context where, since 1990, the rest of the economy has achieved very significant reductions in CO2, whilst aviation's emissions have more than doubled [CD17.33, 4th para.], STAL's approach at this inquiry, that in policy terms these are not matters for local decision making, is both stark and unbalanced. It is symptomatic of an applicant that has not played its part in the planning process in a way that fostered trust and confidence in any thing it said.

Direction of travel and emerging policy on carbon emissions

94 Even before the amendment to the Climate Change Act in 2019, in order to implement its long term vision and pathway for addressing UK aviation's impact on climate change, the

Government in late 2018 was proposing to require all planning applications for capacity growth to provide a full assessment of emissions, drawing on all feasible, cost-effective measures to limit their climate impact, and demonstrating that their project will not have a material impact on the Government's ability to meet its carbon reduction targets [CD14.27, Dec 2018, p.74, §3.96].

95 A statute is an unassailable Parliamentary statement of what the public interest demands. The amendment to the Climate Change Act to reflect net zero in June 2019 was, on any view, a material consideration in the consideration of the application. In addition, a number of statements from the Committee for Climate Change during 2019 - whilst the application was under consideration by UDC - also showed a clear direction of travel on carbon emissions and aviation [summarised at UDC3/1, §26; UDC3/2, p.3]. According to the CCC:

(1) The Climate Change Act (before amendment) and ratification of the Paris Agreement implied that even stronger action on the reduction of GHGs was required, including in aviation.
(2) IAS emissions should be formally included in UK carbon targets.
(3) The Government should assess its airport capacity strategy against the context that zero-carbon aviation is highly unlikely to be feasible by 2050, the reductions envisaged in aviation emissions could be reduced further with lower levels of demand, and novel fuels are highly speculative and should not be relied upon.
(4) Against the current planning assumption as well as in the context of net zero, limiting growth in aviation demand will be required, which could include the management of airport capacity.

96 The Government's Response to the CCC's 2020 Progress Report to Parliament [CD17.64, Oct 2020] represents emerging policy. It plainly signals a seismic shift in approach, noting that '*[r]eaching net zero will involve fundamental changes across the UK economy. Under any feasible scenario, meeting net zero will require reductions in emissions across the economy on a scale not previously seen…*' [p.7]. In line with that shift in approach, in response to the CCC's recommendation formally to include IAS emissions within UK climate targets, the Government clearly acknowledges that an international approach to such emissions is not sufficient on its own, that a contingency measure is required at a domestic level, and that it is '*minded to*

include international aviation' in carbon budgets if international measures do not go far enough or fast enough [pp.105-6].

97 The CCC's recommendations for the UK's 6th Carbon Budget (2033-2037), represent the culmination of its previous statements and its most up to date, formal, position [CD17.75, 9 December 2020, '6CB']. It is the most comprehensive advice the CCC has ever produced, describes the path to net zero, and is a blueprint for a fully decarbonised UK against the increased ambition implied by the net zero target [p.5]. The scale of what is required in policy terms, engaging every sector - including aviation - is plainly relevant, particularly when considering the timescale of STAL's proposed growth in this application, envisaged to come forward between 2027 and 2032 [p.5, emphasis added]:

'*The implication of this path is clear; the utmost focus is required from government over the next ten years. If policy is not scaled up across every sector .. the UK will not deliver Net Zero by 2050. The 2020s must be the decisive decade of progress and action.*'

98 The policy recommendations for aviation include the formal inclusion of IAS emissions within UK climate targets, working with ICAO to set a long-term goal for aviation consistent with the Paris Agreement, committing to a net zero goal for UK aviation, monitoring of the non-CO2 effects of aviation, and longer-term support for Sustainable Aviation Fuels and technologies [CD17.77, p.162, Ch. 8, Table 8.1]. Importantly for this inquiry, demand management is an integral part of the approach, with a formal recommendation on airport growth consistent with the CCC's previous statements:

'*There should be 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.*'

99 As explained by Mr. Lockley in examination in chief, the effect of the recommendation is that passenger demand should not be allowed to grow ahead of the development of e.g. SAFs [pp. 169-170]. The passenger analysis behind that policy approach is set out in 6CB. The demand growth envisaged by 2050 arises from passenger numbers of 365 million, in circumstances where current UK airport capacities are at least 370 million passengers [CD17.79, Box 8.1, p.262]. The recommendation is that further airport growth in passenger numbers should not

be permitted unless actual progress on decarbonisation can be demonstrated by reference to the uptake of SAFs or other measures.

100 UDC has never disputed that the Government's planning assumption of 37.5MtCO2 for the aviation budget has not changed, nor the compatibility of 60% in growth against a 2005 base [UDC/3/2, p.2-3]. But this does not sit in splendid isolation from what is going on in other sectors. The point made both by Dr. Hinnells and Mr. Lockley is that given the 100% reduction target as a result of net zero, there is inevitably less headroom for emissions from aviation to be made up by other sectors, which has been the case to date, and so aviation will inevitably be squeezed. The policy recommendations in 6CB, including the need for demand management, must be considered in that light.

101 The policy recommendations made by the CCC cannot easily be dismissed as non-binding[5]. As accepted by Mr. Robinson in XX, the CCC was created by the Climate Change Act 2008 as an expert body to give advice to the Government on, amongst other things, carbon budgets. Before setting a carbon budget, the SoS must take into account the advice of the CCC (s.9(1)(a)). If the SoS sets the carbon budget at a different level from that recommended by the CCC, the SoS must publish a statement setting out the reasons for that decision (s.9(4)). As for the 6CB, this is the first to be produced by the CCC following the ratification of the Paris Agreement and the amendment to the 2008 Act to reflect the net zero target. Mr. Robinson was right to concede in XX that it would only be in exceptional circumstances that the CCC's advice would not be followed.

102 Nor would a "first come first served" approach to airport expansion be consistent with extant policy, or the CCC's advice and proposed policy approach. The CCC's recommendations outlined above envisage a strategic approach to all airport growth so as to ensure that aviation as a sector plays its proper part in achieving net zero in 2050. An approach which allows each airport to apply for a bit more growth and increase in carbon emissions against an "upper ceiling" budget, with each grant of permission for growth being a material consideration for the next decision, would be contrary to the policy objective of radically reducing emissions and lead to an unstructured free for all, particularly given the number and scale of known proposals for growth in the sector [UDC/3/1, p.34, Table 2].

[5] In addition to the points made above, the approach of the Inspector Panel to emerging policy in the Manston appeal is relevant. Their conclusion, that the aviation emissions there would have a material impact on the ability of Government to meet its carbon reduction targets, was based on '*the direction of emerging policy*' [CD14.59, §6.5.71]. The quashing of the SoS's decision did not relate to this point [INQ034].

103 The CCC's policy recommendations on demand management also rightly seek to prioritise the climate over (1) suggestions that carbon emissions are really an international issue, and (2) promises from the aviation industry of a better tomorrow in terms of sustainable aviation.

104 As to the first point, STAL seek to emphasise the Government's commitment to work with ICAO to set a long-term goal for aviation consistent with the Paris Agreement, and to strengthen CORSIA. But the ICAO process has little to show for it at the current time, and both Mr. Lockley and Dr. Hinnells explained the limitations of CORSIA, with regard to it being voluntary until 2027, its end date of 2035, the inadequacy of its overall goal to off-set against 2019 levels of emissions, and the very concept of offsetting, with the time delays it inevitably involves to achieve any offset, and the reducing availability of offset options. Set against these limitations, the reliance placed by STAL on the ICAO process and CORSIA is best characterised as faith-based.

105 As to the promise of a better tomorrow, the over-optimism of the aviation industry on the potential for significant take up of Sustainable Aviation Fuels (as argued in the Sustainable Aviation Roadmap) is properly set against reality by Dr. Hinnells in his Rebuttal. He was not seriously challenged on this analysis [UDC/3/2, pp.1-2], which was made by reference to the recent Ricardo and E4Tech report '*Advanced Biofuels for Aviation*' of September 2020, which was commissioned by the DfT. SAFs are a "First of a Kind" technology, there is currently no production of SAFs, and they are in their infancy as a technology. The Sustainable Aviation Roadmap estimates that £1bn of investment is required: £500m of Government investment to be matched by £500m from industry. Yet, at present, the relatively small sum of £15m has been committed by Government. As explained by Dr. Hinnells in XX, not all of the sums referred to in [INQ19] relate to SAFs but, in any event, taken together they form a very small proportion of what will be required. The vast majority of uptake and saving would be from 2040-2050 from a low base before that. Whilst a somewhat more optimistic view of SAFs than previously lies behind the CCC's 6CB and its recommendations, the CCC is still a long way from endorsing the aviation industry's level of optimism, given the very considerable uncertainties involved.

Significance of the carbon emissions arising from the proposal

106 Dr. Hinnells' judgment, that the carbon emissions arising from the proposal are significant, is supported by a number of contextual points (figures by reference to [CD7.12, p.16, Fig. 12-3]):

(1) Between 2019-2032, the increase in carbon emissions reported in the ESA arising from the proposal (comparing DC with DM) is 0.14MtCO2 annually, which represents a 6.3% increase in CO2 emissions over the DM scenario. Mr. Vergoulas accepted in XX that this outcome was not moving in the right direction, could not be dismissed as of no consequence, and was a matter of concern.

(2) By 2050, the Annual DC Central case also shows an increase in carbon emissions of 0.09MtCO2 compared with the Annual DM Central case.

(3) The above "headline" 2050 figure does not reflect what the proposal will actually yield in terms of additional CO2 over the period 2032-2050. Over that 18yr period, a cumulative total of more than 2MtCO2 will be produced by the proposal.

(4) Every tonne today adds to the cumulative impact of carbon emissions. The atmospheric lifetime of CO2 in the atmosphere is in the range of 30-95yrs [UDC/3/1, §90, and Mr. Lockley's evidence in chief].

(5) The above increases have to be considered against policy in the NPPF to radically reduce GHGs [CD14.6, §148]. Both Mr. Robinson and Mr. Vergoulas accepted that this part of the NPPF was relevant, but it is not considered in the ES, ESA, or their evidence. This undermines their judgments on significance.

(6) There is quite a variance of 65% between the pessimistic and best practice scenarios for flight carbon emissions by 2050 reported by STAL, as accepted by Mr. Vergoulas in XX [STAL/9/2, §6.1.3]. A wide range of scenarios is required because of the wide variation in trajectories of aviation emissions and wide range of scenarios for the uptake of SAFs, as explained by Mr. Vergoulas. There is uncertainty in estimating carbon emissions out to 2050 [STAL/9/2, §5.3.5].

(7) Compared to the UK planning allowance of 37.5MtCO2, the pessimistic scenario (5.3%) would be approximately a third higher than Stansted's 2016 share of aviation carbon emissions (4%) as reported by the DfT, as accepted by Mr. Vergoulas in XX (see also [UDC/3/1, §55]). That stretches the meaning of the words 'not dissimilar' which Mr. Vergoulas uses to describe the comparison.

(8) The achievement of either the central or best-case scenarios relies on the significant uptake of SAFs. Dr. Hinnells does not share the optimism of the aviation industry with

regard to the speed and scale of their uptake, as set out in his Rebuttal and supported by a recent DfT commissioned report [UDC/3/2, pp1-2, see above].

(9) If the aviation planning budget reduces from 37.5MtCO2 down to 30MtCO2 [or 25MttCO2 suggested by the Sustainable Aviation Carbon Roadmap, or 23MtCO2 suggested by the CCC], Stansted's proportion of that budget will only increase.

(10) The non-CO2 warming impacts of aviation (carbon equivalence) are well documented and, whilst there are uncertainties, should not be ignored in considering the significance of carbon emissions, applying the precautionary principle, the potential effect of non-CO2 impacts, and the CCC's recommendations in 6CB that it be further considered and monitored.

(11) As to significance criteria, the ESA records that there is no specific guidance or standard on how to determine whether carbon emissions are significant or not for EIA purposes. The IEMA guidance referred to, to which Mr. Vergoulas contributed, provides that '*GHG emissions from all projects will contribute to climate change*', and that '*any GHG emissions from a project might be considered to be significant*' [CD7.12, §12.4.19].

107 Mr. Vergoulas fairly accepted in XX that there was nothing technically or methodologically unsound in Dr. Hinnells' approach and that the difference between himself and Dr. Hinnells on the significance of the proposal was one of professional judgment. In that context, STAL's reliance on Dr. Hinnells' acceptance in XX that the proposal's carbon emissions were a small fraction of the overall carbon budget, to argue that he accepts that the impact of the proposal would not be significant, is both unfair and misguided. First, it misinterprets the evidence he gave: acceptance that the percentage concerned is arithmetically a small fraction of the overall budget, does not equate to a conclusion on significance. Secondly, the emissions expressed as a percentage of a particular carbon budget forms but one strand of many in assessing the significance of the proposal in carbon emissions terms.

108 It is questionable whether policy 'tests' from the ANPS can be taken and applied to proposals such as this. As Mr. Scanlon explained in XX, the ANPS was published at the same time as MBU, but it is a policy document which applies specifically to the 3rd runway proposal at Heathrow. Regardless of its applicability in terms of setting policy tests for this proposal, Dr. Hinnells is able to express his view by reference to its policy test [CD14.3, §5.82]], namely that the additional 8 million passengers per year in 2032 will, on current data and assumptions, almost certainly adversely impact on the UK's ability to meet its 2050 net zero target to a degree which cannot be overlooked [UDC/3/1, para. 100].

109 The full context for this judgment, set out above, underpins his view, but it can be explained briefly. The IEMA guidance recognises that climate change, to which GHG emissions will contribute, is the largest interrelated cumulative environmental effect. That recognises that that the effects of carbon emissions are cumulative. The thrust of the IEMA guidance is that even small increases could be significant. An application of aviation policy under MBU, set against extant and emerging policy, which allows each airport seeking to expand to say that it is not materially affecting the carbon budget, is a recipe for piecemeal increases in carbon emissions, which would not achieve the reductions sought by policy, and would materially affect the carbon budget when taken together.

Mitigation on Carbon Emissions

110 STAL's position on carbon on entering this inquiry can be illustrated as follows:

(1) As at 2032, 93% of the carbon emission increases are projected to be from flights at Stansted [CD7.12, §12.7.2].

(2) In practice, STAL's "carbon neutrality" applies to just 1% of its overall carbon emissions [UDC/3/1, §69].

(3) None of the specific mitigation initiatives referred to in Mr. Vergoulas' evidence address the lion's share of the emissions (i.e. flights) [STAL/9/2, §6.2.1].

(4) STAL offers no condition on carbon emissions, arguing instead that the impacts of the proposal are not significant and are for Government to deal with at a national and international level.

111 Against the full force of carbon emissions policy, its direction of travel, and emerging policy in the light of the net zero target, there is a need for the carbon emissions of this proposal to be conditioned, so as to limit the carbon emissions to those which have been predicted, as maximum limits. Such an approach would be consistent with the need for the aviation industry to share the benefits of aviation growth, which is the recognised policy approach to balancing the benefits of aviation with its environmental impacts.

112 The approach taken to Heathrow's expansion provides a precedent for this approach. As part of the consultation on Environmentally Managed Growth, the preliminary results of the assessment on Carbon and Greenhouse Gases includes '*details of measures that would be taken to reduce emissions*' [INQ20, A9, June 2019]. The proposal is that Heathrow will commit to '*a mechanism for an ongoing review and reporting of carbon emissions involving*

independent oversight to ensure the scheme is not having a material impact on the ability of the Government to meet its carbon reduction targets, and a requirement to take additional action in the event that that objective is threatened.' [A9-A10]

113 Although the Heathrow scheme is of a greater scale in terms of development and its environmental effects, there is no reason why the principle behind its approach should not apply here. Given the rapidly evolving and tightening framework of carbon emissions policy in the context of net zero, there is every necessity for such a condition to be imposed here to secure the outcomes predicted as a minimum requirement.

Whether the development would be supported by necessary infrastructure

114 Given the terms of the RFRs, namely that STAL had failed to demonstrate to UDC that the proposal would not give rise to detrimental effects from aviation noise and air quality, and that the granting of the proposal would be contrary to current and emerging policy on carbon emissions, it is hardly surprising that RFR4 contended that there was a failure to provide the necessary infrastructure or mitigation to address the detrimental effects of the proposal. This was nothing more than a logical extension of the concerns raised through the other reasons for refusal.

115 So it has transpired. As to the UU, quite separately from the subsequent amendments to highway mitigation necessitated by the funding shortfall for the improvements to Junction 8 of the M11, UDC's experts have concluded that further necessary mitigation is required on noise and air quality. On noise, a consistent application of the criteria for the Enhanced Sound Insulation Grant Scheme points to the need for Thaxted Primary School to be included. On air quality, the potentially significant effects on air quality in the Bishops Stortford AQMA are not met by a bespoke mitigation package, and the Transport section of the UU will not bring about air quality improvements, contrary to the objective of national policy (both of which UDC seeks to bring about through conditions). As to conditions, the expert evidence of each of UDC's witnesses supports the need for conditions ensuring that the environmental effects of the proposal are limited and appropriately managed in line with extant and emerging policy. It's just a matter of how this is best secured.

Planning balance and mitigation

116 As Courts regularly remind parties when challenging Inspectors' decisions, Mr. Scanlon's proof needs to be read as a whole and fairly, rather than dissected as if it were a piece of tax legislation. In undertaking the planning balance, Mr. Scanlon acknowledges the significant weight to be given to the need to support economic growth and productivity and the wide scope of benefits identified by STAL in its application, which are not disputed by UDC. As to environmental matters, the predicted improvements in noise impacts, which are positive, are balanced by the predicted air quality and carbon emissions impacts, which detract. Weighing these and other matters in the planning balance, Mr. Scanlon's conclusion, that there is overall compliance with the development plan, is expressly subject to the accuracy of the predicted environmental impacts. There is a mix of positive and negative influences comprising other material considerations, and compliance with aviation policy is mixed, such that the balancing exercise does not deliver a clear outcome. However, his judgment that the appeal proposals - based on the predicted assessments in the Environmental Statement Addendum - should be approved, is crucially dependent on securing those environmental benefits through conditions.

117 That the grant of permission is dependent on the imposition of conditions regulating the environmental matters raised by UDC, was reiterated by Mr. Scanlon when he gave oral evidence. It is entirely consistent with a number of passages in his proof: his judgment that the appeal proposals should be approved is '*dependent*' upon securing the environmental mitigation [§2.9]; the uncertainties of forecasting and the scope for different outcomes '*requires the imposition of a condition*' on any grant; his conclusion is '*based on*' the predicted impacts being accurate and on '*reaching*' an agreed position on mitigation [UDC/4/1, §§2.9, 2.11, 10.11]. Importantly, reading paras. 9.77 and 9.78 together, it is clear that his conclusion that the planning balance would favour approval is on the basis that the impacts predicted can be realised and that Condition 15 would meet that requirement. Attempts to read para. 9.77 in isolation, or to suggest that there is a staged approach in Mr. Scanlon's evidence to the effect that Condition 15 is an "added extra" were both artificial and rightly rejected by Mr. Scanlon as an unfair reading of his evidence. Moreover, it defies judicial strictures in the planning context that documents must be read both fairly and as a whole. Rejecting the evidence of the statement maker is the opposite of reading the statement fairly. Reading the statement as a whole does not reveal any ambiguity. Even if one part of Mr. Scanlon's evidence were sought to be misinterpreted to suggest something different, his oral evidence made absolutely clear that his position has consistently been that the grant of permission is

dependent on conditioning the scheme pursuant to Condition 15 (or equivalent). That evidence cannot be ignored or gainsaid.

118 There are certain key differences between Mr. Scanlon's and Mr. Andrew's evidence:

(1) Mr. Scanlon makes entirely straightforward, sensible, and reasonable points about the inherent uncertainties of forecasting generally and with regard to Stansted in particular, exacerbated by the effects of the COVID-19 pandemic [UDC/4/1, §8.5]. Mr. Hill again invited the Inquiry to adopt a blinkered reading of the first sentence of para. 8.9 of Mr. Scanlon's proof as if the remainder of the paragraph did not exist. The use of linguistic lunettes should have no role in the Inquiry process: it is wholly unfair on a witness and does no credit to Mr. Hill. His further attempts in XX to suggest that Mr. Scanlon's views here were somehow informed by an expert forecasting report were as odd as they were desperate. They reveal a lack of confidence by STAL in their own forecasts, and a need to have their evidence bolstered by that of another party. As explained by Mr. Scanlon in evidence in chief, the current uncertainties of forecasting support the need for mitigation.

(2) STAL's SDP is rightly given no weight by Mr. Scanlon [UDC/4/1, §9.65]. STAL's commitment to review it has not been fulfilled, and attempts by Mr. Andrew to blame UDC for STAL's failure to update it (to reflect evolving environmental policy) ring hollow. It is through this document that STAL should explain to all stakeholders how it proposes to manage its environmental impacts [CD15.5, p.4]. Not only is it out of date on such matters, but there is little within the document to demonstrate that 'aims' such as 'to reduce air pollution' have been achieved [p.29], and none of its provisions are enforceable. Mr. Andrew's apparent wish for it to carry some weight is misplaced [STAL/13/2, §7.11]; it provides no assurance that environmental considerations will be properly addressed by STAL, which can only be achieved by appropriate mitigation.

(3) Mr. Scanlon properly takes account of the NPPF's policies of adapting to climate change by moving to a low carbon economy and through seeking radical reductions in greenhouse gases [UDC/4/1, §§9.29, 10.5]. These are policies which are consonant with the definition of sustainable development, to meet the needs of the present without compromising the ability of future generations to meet their own needs, and with the environmental objective of achieving sustainable development [CD14.6, §§7-8]. By contrast, and as discussed further below, Mr. Andrew has simply missed these policies in his assessment.

He accepted in XX that he did not refer to paras. 7 and 148 in his proof or rebuttal, and his Appendix 3 finds that the NPPF is "not applicable" on carbon emissions [STAL/13/3, p.41]. It is on any analysis a remarkable omission from the developer's planning expert, striking a deep blow against his general reliability and judgment. Paras. 7, 8, and 148 of the NPPF provide proper policy support for the mitigation proposed by UDC on carbon emissions, and both Mr. Robinson and Mr. Vergoulas accepted in XX that they were relevant to the proposal.

(4) As explained by Mr. Scanlon in XX, the proposal is largely consistent with MBU, but the weight to be given to MBU in the planning balance is discounted because of the direction of travel in carbon policy [see also UDC/4/1, §9.51]. That approach rightly reflects how MBU has become out of date in terms of reflecting net zero and emerging carbon policy. Mr. Andrew's evidence, that MBU contains the complete answer on questions of carbon policy, which lie outside of the remit of LPA considerations, is at odds with Mr. Robinson's own oral evidence to this inquiry: namely that LPAs can consider carbon emissions when considering applications to them under MBU. The direction of travel of carbon emissions policy supports the need for a condition on this impact.

119 Each of the above points supports UDC's contention that mitigation in the form taken by Condition 15 is necessary. As accepted by Mr. Andrew, STAL accepts the need for a noise condition (though disputing the need for night-time regulation). Based on Dr. Broomfield and Dr. Hinnells' evidence, there are air quality and carbon emission impacts which are significant and, when assessed against extant and emerging policy, need to be conditioned.

120 Mr. Andrew's evidence that in determining the application, UDC laboured under a misapprehension as to a fallback position, involving the potential for STAL to develop its cargo and other movements, is wholly unwarranted. He fairly accepted in XX that the fallback of the existing permission for 35mppa was properly referred to in the papers before UDC. However, the particular fallback now espoused in his proof [STAL/13/2, §§6.12-6.26], was never put before UDC and appears for the first time in his evidence. It is not in the Planning Statement (which refers to the 35mppa fallback only) and not in any Officer Report. Mr. Scanlon's Rebuttal comprehensively explains that this was an afterthought and unrealistic [UDC/4/3]. Mr. Andrew also accepted in oral evidence that the growth in passenger numbers to 35mppa - to which STAL is committed in its Planning Statement for this application and in its Planning

Statement for the Arrivals Building - is dependent on expansion of that facility [Response to Inspector's questions].

Condition 15

121 Condition 15 has already been touched on in these closing submissions. Much time at this Inquiry has been spent on Condition 15, both in questions to witnesses and in written submissions[6]. Given that Condition 15 provides an opportunity to bridge the gap separating UDC from STAL, the importance of dealing with this condition properly and intelligently cannot be over-stated.

122 It is a matter of regret to UDC that STAL is so intractably opposed to Condition 15. Indeed, STAL has been so intractably opposed to the very concept of such a condition that it was unwilling even to discuss it for months after it was first offered. Shutting one's eyes, blocking one's ears and closing one's mind to anything that a condition has to offer is not how a reasonable developer should behave on a development such as this.

123 Following UDC having proposed the condition in December 2020 [CD26.1], UDC has prepared a 16-page position statement on it (9/2/21) [CD26.6] and, following STAL's submission on it (24/2/21) [CD26.8], a 5-page reply (2/3/21) [CD26.17a]. UDC has thus made its position and its thinking on the condition very clear.

What is Condition 15?

124 What is apparent from Mr Andrew's Rebuttal [STAL/13/4, §§3.1-3.13], from the questions asked on behalf of STAL, from the answers given by STAL's witnesses (most notably Mr Andrew) and from STAL's written submission (24/2/21) [CD26.8] is that, whether genuine or confected, there is in STAL's camp a fundamental misunderstanding about what Condition 15 actually is. Having cast it as an apparition, STAL has devoted much energy to attacking the phantom.

125 So, on pain of repeating ourselves, let us make clear – yet again – what Condition 15 is.

[6] The final version of Condition 15 is at [CD26.23]. UDC's submissions are at [CD26.6] and [CD26.17a]. The principles from case law referred to in UDC's submissions have not been challenged by STAL and are in any event hyperlinked within those documents.

126 Condition 15 is a mitigating measure enabling, within fixed ceilings, limits to be set for the three main environmental effects produced by the proposed operations. Condition 15 recognises that the full operational fruit of the planning permission will not be borne for years, possibly decades. It recognises that, for all the reasons explained above, no-one can pinpoint the date, the year or even the decade when the developer will harvest all the fruit of the permitted development. It also recognises that environmental standards, and our understanding of what is environmentally necessary, changes – sometimes quite radically, sometimes over a short space of time.

127 A familiar example of such changing environmental standards and understanding are the European emissions standards that set acceptable limits for exhaust emissions of new cars and light vehicles, which were discussed during the air quality evidence. We know these as "Euro 1", "Euro 2" etc to "Euro 6." The emissions with which these standards are concerned include nitrogen oxide (NO_x) and particulate matter. Euro 1 was promulgated in 1991, Euro 6 was promulgated 23 years later in 2014. Euro 1 and Euro 2 set no limit for NO_x emissions. Limits for NO_x emissions were introduced by Euro 3, taking effect in January 2001. By the time of Euro 6, 14 years later, the limit for new diesel cars was less than 1/6th of the limit set in 2001.

128 What do we take away from that? What we take away from that is that it would have been folly for those setting the NO_x emission standards in 2001 to compromise the ability of those setting NO_x emission standards in 2014. By 2014 our understanding of NO_x emissions had very much evolved from what it was in 2001. Those setting standards in 2014 had to have the ability to meet that enhanced level of understanding.

129 For particulate matter, it is a similar story. The limit on emissions of particulate matter from diesel cars imposed by Euro 3 was over 10 times greater than that set by Euro 6. Again, what we take away from that is that it would have been folly for those setting the particulate matter limits in Euro 3 to compromise the ability of those setting the particulate matter limits 14 years later.

130 That two of the pollutants we have just spoken to are part of Condition 15, tells us that this is not fanciful conjecture. It tells us that when we set environmental limits on operations that are being permitted decades into the future, those limits must not be set in stone. It tells us that they must – I repeat "must" – be allowed to maintain contemporaneity. It illustrates why we, the current generation, must not prevent future generations from doing what they consider necessary to mitigate what the current generation permits.

131 We mention all of this to illustrate the principle that what satisfies the needs of one generation does not necessarily satisfy the needs of the next generation. STAL would have done well in this whole planning process to recognise this principle. Not once in the course of 30 days has this Inquiry heard from STAL any acknowledgment of the principle.

132 The principle finds powerful policy expression in paragraph 7 of the NPPF [CD14.6]. STAL's planning expert, Mr Andrew, airbrushed this out of consideration. Whether in terms or otherwise, this Inquiry will not find any acknowledgment of it anywhere in over 70 pages of his various proofs of evidence [STAL/13/1, STAL/13/2, STAL/13/4]. When confronted with this glaring omission in cross-examination, Mr Andrew told the Inquiry that when he referred to the definition of "sustainable development" in paragraph 8 of the NPPF he actually meant paragraph 7 [STAL/13/2, §7.8]. It was, he said, a typographical error. No-one in STAL's extensive legal team, some boasting 30+ years' experience of planning inquiries, apparently picked up this glaring mistake. Nowhere is there any consideration by Mr Andrew of whether the conditions proposed would compromise the ability of future generations to meet their own needs when mitigating and managing the adverse effects of the proposed development [STAL/13/2, §§2.5, 7.7-7.10, 10.28, 11.9-11.11]. Lest this Inquiry be in any doubt, Mr Andrew's table in Appendix 3 to his main proof gives the lie to his excuse [STAL/13/3, p.41].

133 The truth is that STAL will not countenance any condition providing that, when in future it steps up its harvest of operational benefits from the planning permission, the LPA will be able to adjust the environmental mitigation measures to maintain their adequacy for contemporary needs.

134 This is not revisiting the principle of the development. It is fantasy to pretend that this is what Condition 15 does: [cf. CD26.8, §§14-17]. Yet, at no less than six points in STAL's written

submission (24/2/21) that is what STAL asserts Condition 15 does [CD26.8, §§16, 18, 19, 23, 32(a), 32(f)]. It is as if by repetition, STAL thinks it can transform fantasy into reality.

135 Analysis exposes the holes in STAL's position. STAL's fundamentalism [CD26.8, §§1, 18, 32(f); STAL/13/4, §3.13] does mean that there are sharp legal questions that fall to be answered in this Inquiry. There is no ducking them. It is sensible to take them one at a time.

Q.1 Is a progressively tightening condition necessarily unlawful?

136 UDC does not understand that STAL is contending that *any* progressively tightening condition is necessarily unlawful.

Q.2 Is a condition that leaves its progressive tightening to later agreement <u>necessarily</u> unlawful?

137 UDC's position is that such a condition can be lawful.

138 STAL's position is at best ambivalent, but more likely contradictory. STAL's submission on it (24/2/21) [CD26.8, §§14-20] and Mr Andrew's rebuttal [STAL/13/4, §3.7] claim that such a condition would necessarily be unlawful.

139 On the other hand, STAL's noise expert, Mr Cole, had in his discussions with UDC said that there was no reason why "a condition that progressively tightens [the noise envelope] over the years" could not be applied to this development [CD19.24, §§5.1-5.2]. He gave as a precedent a condition that had been applied to Luton Airport in 2014. That condition required the airport operator, within five years of commencement, to submit to the LPA for their approval a strategy that defined the methods that the airport operator would use to reduce to a fixed area the noise contours for daytime and for night-time. In other words, it was a condition that left to later agreement with the LPA the method that was to be used to secure the tightening of the noise contour.

140 There is nothing in law that *precludes* a condition that leaves its progressive tightening to later agreement. Whether or not the particular instance complies with the principles relating to planning conditions will depend upon the specific terms of the condition.

141 The answer to Q.2 is "no."

Q.3 By what principles is a condition that leaves its progressive tightening to later to be evaluated?

142 UDC has already set out the answer to that in its position statement on it (9/2/21) [CD26.6, §§15-31] and its reply (2/3/21) [CD26.17a, §§7-28]. It stands by those submissions. UDC reminds the Inquiry that the judgment of the House of Lords in *Newbury DC v SSE* (quoted in UDC's main submission [CD26.6, §24]) is a binding declaration of the law: Ministerial guidance is not. STAL does not quarrel with this declaration of the law [CD26.8, §7].

Q.4 Does Condition 15 have a planning purpose?

143 Condition 15 is devoted to imposing enforceable limits on the noise effects, the carbon emissions and the air quality detriments produced by the permitted operations. These are all environmental impacts.

144 As STAL itself is forced to acknowledge, it is commonplace for conditions to be imposed for the purpose of regulating environmental impacts [CD26.8, §32(a)].

145 Indisputably the answer to Q.4 is "yes."

Q.5 Does Condition 15 relate to the proposed development?

146 Condition 15 is directly tied to the permitted operations.

147 In seeking to suggest otherwise STAL variously:

(a) reverts to the fantasy that Condition 15 allows UDC to re-visit the principle of the planning permission [CD26.8, §16]; and

(b) re-defines "directly related" to mean "proportionate" [CD26.8, §32(a)], while offering no authority for this remarkable proposition.

Both of STAL's arguments are both hopeless and contrary to law.

148 The answer to Q.5 is "yes."

Q.6 Is Condition 15 "reasonable"?

149 A condition that is unnecessary will not be "reasonable." Similarly, a condition that is either imprecise or unenforceable will not be "reasonable." These are all respects that go to the reasonableness of a condition. This is acknowledged by the concluding words of the first sentence of paragraph 55 of the NPPF ("reasonable in all other respects") [CD14.6].

150 A condition that enables future generations to maintain the contemporaneity of environmental mitigation measures as the developer increases by steps the operations allowed by the planning permission is necessary so as not to contravene paragraph 7 of the NPPF [CD14.6]. Condition 15 is just such a condition. As UDC said above, no-one can know what the environmental needs of future generations will be. No-one knows today how the yardstick will be marked by future generations. Those future generations must not be hamstrung by the needs of today, depriving them of the ability to meet their own needs. If STAL, as the appeal permission would permit it, are to be allowed to increase the scale of operations by up to 8mppa over the next decades, it is necessary that at each milestone as it ramps up the numbers a fresh eye is cast upon the mitigation measures that accompany that milestone. This is not merely a "nice-to-have." The NPPF tells us that we must not compromise the ability of future generations to meet their own needs.

151 STAL have not offered any alternative way of achieving this. Their notion of "necessary" is blind to needs beyond 2021. It cannot conceive that the needs of future generations may be different [CD26.8, §32(a), (b)]. The vacuity of STAL's position forces it back into incanting its mantra that Condition 15 re-visits the principle of development [CD26.8, §37]. Hopeless in all its earlier appearances, hopeless the argument is here too.

152 Condition 15 is necessary.

153 Precision and enforceability often go hand in hand. There is nothing imprecise or unenforceable about Condition 15. Mr Andrew complained in his rebuttal proof that there were "numerous aspects of the wording [of Condition 15] that are imprecise …" [STAL/13/4, §3.12]. But, tellingly, he failed to identify a single instance. Nor is a single instance given in

STAL's 13-page submission [CD26.8]. A STAL annotated version of Condition 15, which emerged last month, is an exercise in pedantry [CD26.20]. "What does first commencement mean?" it complained. The phrase "all legislative provisions" is imprecise it complained. And so on it complained. This is not a promising basis for the submission.

154 Examination of Condition 15 reveals that it is precise. The measures in Schedules A and B are as clear as could be. And even if greater precision could be achieved, it was incumbent that STAL go back to UDC with a suggestion.

155 For the reasons set out above, Condition 15 meets all the legal requirements for a valid condition. It receives ample support from both policy and guidance. UDC commends Condition 15 to this Inquiry.

Alternative Conditions to Condition 15

156 Conditions 7 (noise contours) and 10A (air quality and carbon management strategy) seek to limit the environmental effects of the proposal through separate conditions[7]. The limit values included in each of the conditions are identical to those in Schedules A and B to Condition 15, with methodologies for the calculation of limit values in each of those conditions taken from the ES and ESA. As with Condition 15, the noise contour limits are agreed with STAL (although the need for a night-time contour is not agreed), whilst the limit values for air quality and carbon emissions all derive from STAL's ESA, seeking to tie the development to the environmental effects STAL has assessed, taking account of what policy seeks to achieve, as explained in UDC's Position Statements [CD26.11; CD26.12]. There has been no challenge by STAL to the way in which these figures have been arrived at in UDC's proposed conditions.

157 Although UDC would accept these alternative conditions - if for any reason Condition 15 did not provide an acceptable approach - limiting the environmental effects of the proposal through Conditions 7 and 10A would be considerably less effective than under Condition 15[8]. Condition 15:

- has the benefit of combining all of the relevant environmental effects into a single

[7] See General Conditions Schedule submitted on 10 March 2021 [CD26.26b].
[8] Condition 17 is offered as an alternative to Condition 10A, but applies to carbon emissions only and contains no limit values so is even less effective than Condition 10A.

process, thereby reducing the logistics associated with managing schemes under separate conditions;

- allows a more flexible approach in requiring the mitigation to be defined and re-defined as the airport reaches passenger growth milestones, whereas Condition 10A is tied to a 3yr cycle of review from the commencement of the development;
- provides a more prescriptive, certain, and transparent process for the management of environmental effects, for the benefit of all stakeholders, compared with the mechanism in Conditions 7 and 10A;
- provides for an alternate decision maker which, if utilised, would enable a quicker decision to be made than the planning appeals process applicable under Conditions 7 and 10A.

158 For the reasons set out in UDC's joint Position Statement [CD26.29], UDC does not consider that Condition 10B proposed by STAL provides an effective means of limiting the air quality effects of the development. Due to its misreading and misinterpretation of carbon policy and its direction of travel, STAL offers no condition to control its carbon emissions to this Inquiry, which reveals a wilful disregard for the responsibility on airports in the face of climate change policy.

Conclusion

159 For all of the above reasons, a condition marrying mitigation of the environmental effects of the future growth in operations to the requirements of paragraph 7 of the NPPF must be imposed. Condition 15 does that. Conditions 7 and 10A also meet that objective, albeit less effectively. STAL has offered no conditions which come close to what is required as an alternative, effectively paying lip service to the need for conditions limiting the environmental effects of its proposal, and denying the need for any condition on carbon emissions. Its struthonian attitude to the requirement that development not compromise the ability of future generations to meet their own needs should not be endorsed by this Inquiry. STAL's intransigence has been wholly unreasonable. If appropriate and necessary mitigation cannot be secured, this appeal should be refused.

PHILIP COPPEL QC

ASITHA RANATUNGA

11 March 2021

Cornerstone Barristers, 2-3 Gray's Inn Square, London

STANSTED AIRPORT 35 + PLANNING APPEAL

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

CLOSING SUBMISSIONS ON BEHALF OF THE APPELLANT

INTRODUCTION AND TAKING STOCK

1. The Submissions incorporate without repetition our Opening Submissions[1].

2. We begin by reviewing briefly the position of the main parties following the completion of the hearing of evidence over the 7 weeks during which the inquiry has been sitting and against the background of their previously stated positions.

STAL

3. STAL's case remains precisely as originally set out in the Statement of Case[2] submitted with the appeal, supported evidentially in the Proofs of our expert witnesses and summarised in our Opening Submissions, namely that the appeal proposals accord with the development plan, are directly supported by Government policy and would give rise to minimal local environmental impacts whilst strongly supporting local and regional job creation and broader economic growth - all within a framework of conditions and obligations which would secure reduced local impacts and an improved package of mitigation measures going forward.

4. STAL has called and made available for questioning by the Panel, and by others where appropriate, 13 witnesses, all of whom have supported evidentially their respective elements of STAL's case. Some have been subjected to extensive cross examination over several days by UDC and SSE. The Panel will have heard the clarity and consistency of this expert evidence and observed the degree to which STAL's written

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[1] INQ1
[2] CD24.1

proofs of evidence were fully supported by the answers given by its witnesses in XX and ReX. It is on the basis of this evidence that we will, at the close of these submissions, request that this appeal is allowed.

UDC

5. Of course, UDC's decision of 24 January, 2020 is the reason why this lengthy appeal has been necessary.

6. That decision was made 14 months after the resolution of its Planning Committee on 14 November 2018 to grant planning permission for the appeal development and constituted a complete *volte face* from the position it had previously taken. The Minute of the meeting of 24 January 2020[3] (eventually approved in September 2020, 8 months after the event) identify a number of matters which the Planning Committee considered to constitute *not merely* "material changes in circumstance" since the 2018 resolution, but matters sufficient to warrant refusal of planning permission: fleet mix variability and the WHO ENG18; PM2.5s and UFPs; "direction of travel" on CC and net zero. Faced with repeated and crisply expressed advice from all its Senior Officers, independent advice from external consultants of high repute and experience and Opinions from a raft of senior Members of the Bar (Stephen Hockman QC, Christiaan Zwart & Philip Coppel QC[4]), the UDC Planning Committee simply would not accept the advice it was being given and instead preferred to follow the urgings of SSE, recorded for all to see on its lengthy powerpoint presentation.

7. As Mr Andrew explained in his XinC: notwithstanding the seriousness of the decision:

   i. no opportunity was taken by Members to defer this momentous decision in order to seek further information from STAL;

   ii. no opportunity was taken to consider the potential to impose planning conditions which might have secured Members concerns; and

[3] CD.13.4a
[4] Ibid, page 7

iii. no opportunity was taken to consider whether the package of planning obligations agreed over the course of a year's discussion between STAL and UDC Officers and Members could be modified to meet the concerns of the Planning Committee.

8. Permission was simply refused. Mr Andrew, who sat through all 11 hours over two days, comments upon the extraordinary nature of the proceedings.

9. The UDC Statement of Case[5] submitted on 16 September, 2020, largely followed the themes contained within the RfR, but elaborated these in great detail over 30 pages to include a host of alleged deficiencies and additional requests for information and detail which had never previously been raised (or had been raised earlier and satisfied long prior to Jan 2020).

10. By December 2020, UDC's position had transformed once again into that confirmed in evidence by Mr Scanlon, presumably following mature reflection by its recently appointed new consultant team, including Dr Chris Smith, an air traffic forecasting expert.

11. Accordingly, UDC has run a very narrow case at this inquiry, which has accepted that the appeal should be allowed but has focused instead upon the form and content of conditions which should be imposed. The latest transformation of its case did not become apparent until its proofs of evidence were received and there has been no amendment to its Statement of Case. STAL has repeatedly expressed its fundamental concerns about the newly emergent Condition 15 concept (see our Opening Submissions[6] and Mr Andrew's Rebuttal[7]). However, Mr Scanlon's written proof[8] – and oral evidence[9] – were clear that his acceptance on behalf of UDC that the planning balance falls in favour of allowing the appeal is quite independently of the Council's case on Condition 15, so long as this is subject to an appropriate set of conditions which secure to a sufficient degree the impacts in the ESA. We will address below why the Panel can indeed be satisfied in this regard - and of course the Panel has a complete

[5] CD24.2
[6] INQ1
[7] STAL/13/4
[8] UDC/4/1
[9] See in particular the answer to the Inspector (Mr Boniface) on Day 24 that para.9.77 of his proof stands as written

discretion as to the scope and content of any conditions which it considers should be applied, subject to the normal tests. What is clear, however, is that UDC's planning evidence, expressed by Mr Scanlon after exhaustive consideration of the planning balance in his section 9, is that the appeal should be allowed whether or not a "Condition 15" type condition is imposed.

12. The Council's evidence has at the same time sought to assert that the concerns expressed by Committee in January 2020 were a proper basis for the reasons for refusal. Mr Scanlon accepted in XX that the assessment of environmental impact in the ESA[10] is not materially different from that set out in the ES[11]. However, he asserted that the level of information provided to UDC in relation to these concerns as at January 2020 was inadequate. We will consider below in relation to our consideration of local impacts whether this is a tenable proposition.

SSE

13. The application of Rule 6 of the Inquiries Procedure Rules has effectively given SSE equivalent status to UDC at this inquiry and it has taken full advantage of this status to occupy a great deal of inquiry time with extended XX of STAL witnesses. However, it must be borne in mind at all times that SSE is an anti-airport local pressure group, has no democratic mandate within Uttlesford or beyond, no special status within the planning regime and, in our view, has occupied a disproportionate amount of inquiry airtime when compared with all those who depend upon the airport for their livelihoods, their economic prospects, the development of their businesses, their opportunities to visit family and friends overseas or to take highly valued and eagerly awaited holidays abroad, but who could not reasonably be expected to assemble as a Rule 6 party represented by 2 QCs and to participate at this inquiry for 8 continuous weeks.

14. SSE has submitted evidence upon all matters, the recurring factor in which has been Mr Ross. We note in SSE's Closing[12], the hint of a prejudice claim in respect of the witnesses which they did not call. However, we do not accept that these parties could

[10] See CD3.18
[11] See CD7.18
[12] SSE Closing, para.1.2

not have given evidence remotely (as did many of our witnesses and all of UDCs) and we note that Dr Holman (who did not appear and whose evidence was not tested in XX) is noted[13] as giving air quality evidence in another case just a few weeks before the commencement of the inquiry. However, the evidence has revealed SSE's position to have been misconceived throughout. It is based upon the proposition that any airport development is "inherently harmful"[14], with the inference that any and all aviation development is bad. This is patently not a proposition which finds support in law or in government policy.

15. Moreover, SSE's entire case has also proceeded upon what has seemed at times to be a wilfully misconceived approach:

    i. It has asserted a requirement to demonstrate "sufficient need", which is entirely unreferenced in the MBU policy. This has been linked with preposterous and patently wrong-headed assertion that MBU policy provides no "in principle" support for the appeal proposals, even though the policy provides this support expressly and in terms;

    ii. It has insisted that DfT MBU carbon modelling provides relevant and reliable evidence that DfT does not intend Stansted to grow above 35mppa in the period to 2050, despite an earlier assault by Mr Ross himself upon the credibility of the very same forecasts and in the face of written evidence from the most senior civil servants within DfT that SSE has completely misconstrued these forecasts.

16. SSE, alone of the main parties to this inquiry, maintains root and branch opposition to this most benign of proposals and does so, in this case, on a series of patently misconceived and/or irrelevant bases. It also appears to be setting up a series of arguments which it will seek to pursue as grounds of legal challenge if it is unhappy with the outcome of this appeal process. Unfortunately, a major task for the Panel will be to deal comprehensively with SSE's various complaints, as we can be sure that, if this is not done, we will back in the High Court with yet another legal challenge - this time to the outcome of this appeal.

[13] SSE Closing para.12.20
[14] SSE/10/2, para.1.3.3

17. We note that Mr Stinchcombe & Mr Wald have already flagged up five threatened points of legal challenge at para.1.4 of their Submissions. These are all addressed elsewhere in our Submissions and we are confident that the Panel will reject SSE's assertions in respect of these 5 matters.

STRUCTURE OF STAL'S SUBMISSIONS IN SUPPORT OF THE CASE FOR ALLOWING THE APPEAL

- The Nature of the Development
- Development Plan Compliance and the Presumption in Favour
- Other considerations: National Aviation Policy
- Forecasting and the Reliability of the Assumptions underlying the ESA
- Socio-Economic Benefits
- Local Environmental Impacts: Noise & Air Quality
- Carbon & Climate Change
- Surface Access
- Planning Balance
- Condition 15
- Conclusion

THE NATURE OF THE DEVELOPMENT

18. The proposed development comprises minor airfield works to improve the efficiency of runway operation and a modest number of additional stands to support increased Passenger ATMs ("PATMs"). The potential for an increased proportion of PATMs would be reflected in the proposed combined ATM condition and an increased maximum number of passengers permitted to pass through the airport in any given year ("mppa"). The total number of ATMs would not exceed that already permitted. The difference is simply in the proportion of PATMs and the rate of growth predicted - all within the already permitted maximum number: see the full explanation in Mr Andrew's Proof[15] at paragraph 9.4. This reflects a deliberate decision by STAL not to promote an

[15] STAL/13/2

increased total number of ATMs following public consultation on the scoping of the EIA for its application in 2017[16].

19. The increase from 35 to 43mppa is achieved through a combination of factors: one is simply the larger size of passenger aircraft and increased load factors - bringing more passengers through the airport per average PATM than was anticipated in 2008 when condition MPPA1 was imposed in 2008; the other is the product of the increased proportion of PATMs and reduced number of CATMs and Other AMs. As we have seen, the increased total number of mppa is precisely as forecast in 2014 when STAL consulted upon its SDP, which was adopted in 2015[17].

20. Mr Hawkins' evidence has set this increase in its commercial context for STAL, explained the ambitions of STAL to sustain and enhance its route network, increasing connectivity both in its already well established short haul European network but also with the addition of targeted long haul services. He has explained the significance of "headroom to grow" in attracting airline operators prepared to make the investment in expanding the network of routes from Stansted – and the vital role which clarity and certainty play in securing that investment.

21. Mr Hawkins was clear that Stansted could not expand up to its present ceiling and only then seek a further segment of capacity, but that investment in new routes, especially for long haul operators, would only come if there was reliable headroom to accommodate a material level of growth. He was also clear that, immediately prior to the pandemic, a variety of new routes were being discussed.

22. Thus the only material change in off-site impact over and above what was permitted by the SoS in 2008, is the additional 8mppa. Given STN's outstanding public transport offer, at least 50% of these passengers would be expected to use rail, bus or coach. The impact of the other 50% of additional passengers, heading in a variety of different directions, and spread as they are across the year and across the hours of the day, does not unduly exacerbate local peak hour congestion on the network. In consequence, even if the previously agreed ECC improvements to J8 of M11 are delayed or abandoned

[16] SCI: see CD2.5
[17] See CD15.1: 40-45mppa

altogether, it has been possible to agree directly with HE and ECC (advised by Jacobs and AECOM respectively) a bespoke scheme of measures which would address airport related impacts on J8 - and by a comfortable margin.

23. Accordingly, it has been established that STN can deliver a meaningful increment in passenger capacity for London and the East of England, with minimal additional operational development, whilst remaining within its existing overall ATM cap, and taking advantage of its already record-breaking public transport facilities for terminal passengers. No party has seriously challenged these facts, which form the bedrock of the appeal proposal, and it should come as no surprise, therefore, that Senior Officers of UDC have so consistently recommended approval and that Mr Scanlon has now joined in the chorus.

DEVELOPMENT PLAN COMPLIANCE: SECTION 38(6) AND THE PRESUMPTION IN FAVOUR OF SUSTAINABLE DEVELOPMENT

24. STAL and UDC agree that there is compliance with the development plan. SSE does not engage with this exercise in Mr Arnott's proof and Mr Ross, unqualified as a planner, was not in a position to elaborate: XX3.

25. Mr Scanlon and Mr Andrew also agree that the presumption in favour of sustainable development is engaged via paragraph 11c of the NPPF, as the environmental protection policies of the ULP 2005 are consistent with the NPPF and not out of date. We do not believe the authorities in respect of the determination of whether or not development is "sustainable development" are in dispute, but they are referenced below for completeness[18].

[18] The presumption in favour of sustainable development is to be found only in para 11 NPPF and by working through the test in para 11: see ***Barwood Strategic Land II LLP v East Staffordshire Borough Council*** [2017] EWCA Civ 893**.** There is no "wider" presumption in favour of sustainable development arising outside para 11, including by reference to para 7 onwards. A decision-maker will only know if a proposal is sustainable or not by applying the test in para 11: see ***Cheshire East BC v Secretary of State for Communities and Local Government***

26. The first "trigger" for the application of the tilted balance under paragraph 11d is "where there are no relevant development plan policies". "That describes the situation where there is no policy in the development plan that is relevant to the decision whether the application should be granted or refused": see ***Paul Newman New Homes*** [2021] EWCA Civ 15. That is plainly not the case here, as Mr Scanlon's review of the LP policies demonstrates. The second trigger is "where the policies which are most important for determining the application are out-of-date.": "That involves an evaluation by the decision maker of which of the relevant policies in the local plan are the most important, and whether they accord with current national policy": *Paul Newman New Homes* at para 43. A full evaluation of these policies has been undertaken by Mr Scanlon. Mr Andrew agrees with his analysis that these policies comply with the NPPF and are up to date.

27. Mr Andrew additionally took the (belt and braces) view[19] that, even if paragraph 11d were engaged, a similar outcome would ensue, as limb (i) was not engaged and the many benefits of the proposed development were not significantly and demonstrably outweighed by their adverse impacts.

28. As noted above, SSE does not apply the statutory development plan, leaves this matter and its consequences for paragraph 11 of NPPF to UDC, and does not advance a case on this issue.

29. Worthy only of a footnote, the "emerging" ULP is no longer emerging. UDC agree it is withdrawn; and has no status or relevance whatsoever. NPPF guidance about the weight to be attached to emerging policies cannot apply once they have ceased to emerge. For the avoidance of doubt, the Inspectors expressed no conclusions on the airport specific policies, notwithstanding that a days' time was occupied at the EIP with these policies. It is quite impossible to draw any conclusions from this position which would allow

[2016] EWHC 571 at 26-27. Conversely, a development which satisfies the presumption under para 11 clearly cannot be rendered unsustainable by reference to paragraphs in the NPPF outside para 11.

[19] ReX'd Day 27

weight be attached to the now abandoned policies extensively trailed in Mr Arnott's Proof. This was another bad point which should not have been taken by SSE.

30. Accordingly, Appellant and LPA agree there is a presumption in favour or granting permission without delay. Such a presumption is of course rebuttable, but the balance is strongly tilted and a consideration would, it is submitted, need to be very powerful indeed in order to rebut this presumption.

DO OTHER CONSIDERATIONS "INDICATE OTHERWISE"?

31. We now proceed to consider whether, against the background of agreed compliance with the statutory development plan and the engagement of the presumption in favour of sustainable development, there are other considerations which might conceivably indicate that planning permission should be refused. We consider, in turn, national aviation policy, the socio-economic benefits of the proposals and their local environmental impact.

National Aviation Policy

32. As all parties agree, NPPF is effectively silent on aviation, and current government policy is set out clearly in the APF[20] and MBU[21].

33. APF, whilst adopting a holding position pending outcome of Airports Commission ("AC")'s work, expressly supported the concept of MBU to meet the need for increased capacity at least until a clearer national strategy - and timetable for its delivery - emerged[22]. This remains national policy.

34. Once the government had accepted the Airports Commission ("AC")'s recommendation for a new NWR at LHR, it became necessary to consider again the role of other airports in the context of the government's broader emergent Aviation Strategy. This happened

[20] CD14.1
[21] CD14.2
[22] See, for example, CD14.1, para.1.60

with the publication in July 2017 of "Beyond the Horizon: The Future of UK Aviation; A call for evidence"[23] 2017. Here the government records[24]:

"The AC noted in its final report that a new runway will not open for at least 10 years and it is vital that the UK continues to grow its domestic and international connectivity in this period, which will require the more intensive use of existing airport capacity….We are aware that a number of airports have plans to invest further, allowing them to accommodate passenger growth over the next decade using their existing runways, which may need to be accompanied by applications to increase existing caps. The government agrees with the AC's recommendation that there is a requirement for more intensive use of existing airport capacity and is minded to be supportive of all airports which wish to make best use of their existing runways including those in the South East. The exception to this is Heathrow, whose expansion is proceeding through the draft ANPS process….Airports with planning restrictions that wish to take forward plans to ….increase the utilisation of existing runways will still need to submit a planning application to the relevant authority…environmental issues, such as noise and air quality and other others that supported the existing planning restrictions will be taken into account….the government believes that this issue cannot wait until the publication of the new Aviation Strategy. Therefore, as part of the call for evidence, it would welcome views with regards to this proposed policy." (emphasis added). This critical document, setting out the government's purpose in publishing the MBU Policy, goes entirely unmentioned in SSE's Closing.

35. In parallel with this Call for Evidence, the ANPS was advancing slowly through various draft stages. By October 2017, the then Draft[25] ANPS noted at (what was then) paragraph 1.37, the above development and that "The Government's policy on this issue will continue to be considered in the context of developing its new Aviation Strategy, and in the light of the responses to the call for evidence".

36. By June 2018, the DfT had completed both its consideration of consultation responses on its proposed policy in relation to MBU and its preparatory work on the ANPS.

[23] CD14.30
[24] Para.7.19-7.21 ibid.
[25] CD14.5, as put to Mr Ross in his XX3

Accordingly, on the same day were published both the ANPS (pursuant to section 5 of the Planning Act 2008) and MBU (as an early component part of the new Aviation Strategy: see HMG Webpage on the Aviation Strategy). Even Mr Ross accepted in XX3 that MBU policy was an early and "highly important" element of the Aviation Strategy.

37. The appeal proposals fall squarely within the scope of the MBU policy statement. This is not in dispute. However, the meaning and effect of the policy appears to be disputed by SSE and the weight to be attached to it was questioned by UDC. The latter questioning was expressed to be on the basis of the Court of Appeal's judgment in the ANPS/Heathrow challenge - although Mr Scanlon retreated from this in XX, as that judgment was subsequently overturned in December 2020 by the Supreme Court[26], of course, *after* his proof had been written.

38. The policy states in terms that "the government is supportive of airports beyond Heathrow making best use of their existing runways"[27] subject to assessment of locally associated benefits or environmental impacts and proposed mitigations.

39. It is STAL's case that this allows the proposals to take advantage of "in principle support" for MBU given by national government to MBU proposals made to local planning authorities. Of course, it does not prejudge the weighing of local benefits and impacts, but it does make it unnecessary for local planning authorities to grapple with the highly complex issue of aviation need and whether, in principle, there is a national need for making best use at any given airport. As is clear, the government has consulted upon this positon - in the terms set out in CD14.30[28] - and has expressed a clear policy response.

40. It is submitted that there is simply no other sensible interpretation of CD14.2. We note that UDC does not dispute this approach. Only SSE is maintaining its completely wrong-headed suggestion that MBU merely invites airports to make applications and that, thereafter, the local planning authority is at liberty to reach whatever conclusion it might wish on "the need" for the development, rather as it might in respect of a new

[26] CD14.74
[27] CD14.2, para.1.29
[28] See above

foodstore. This is manifestly wrong, would defeat the purpose of the policy (and the very considerable effort taken by government to publish it at an early stage) and place a burden upon LPAs to grapple with issues which it has taken national governments, independent commissions of experts and the Higher Courts many years to resolve. The SSE approach to the interpretation of national MBU invites confusion, dissension and delay. It should be firmly rejected.

41. We also have the great advantage in this case that DfT and MHCLG are clearly and unambiguously aligned on the meaning and effect of MBU policy as applied to the very proposals now before the Panel. This arises as a direct result of SSE bringing claims for judicial review against both Government departments in respect of their rejection of SSE's request that the application be "deemed an NSIP" or "called in" for determination by either or both Secretaries of State. This led ultimately to the disclosure of Ministerial Submissions to both Secretaries of State, in each case signed off by Senior Officials within the DfT and MHCLG.

42. The first such advice[29] is dated June 2018 and is contemporaneous with the publication of MBU policy. In this document, at paragraph 28, the DfT records that STAL's application is "in line with Government policy on airports making best use of their existing capacity in the South East". There is no suggestion that an additional "need" test should be applied, nor that the application is deficient for not setting out to demonstrate a nationally contextualised bespoke need case.

43. The second such advice[30] is dated March 2019 and follows on from UDC's resolution of November 2018 to grant planning permission for the appeal proposals. Here the senior civil servant in the Planning Casework Unit advises the Minister, at paragraph 13, that "this proposal accords with current national aviation policies, which are supportive of airports beyond Heathrow making the best use of their existing runways". It also notes[31] that these policies "highlight the importance of aviation to the UK economy following the country's decision to leave the EU and the importance of increasing airport capacity to support the development of long-haul routes to and from

[29] CD14.71
[30] CD12.15b
[31] Paragraph 14 ibid.

the UK post exit from the UK." It notes, quite properly, that local economic and environmental impacts will be for LPAs to judge, but does not suggest that STAL should have demonstrated a "need" for the development in national terms independently of that set out in the referenced government policy.

44. It is also noteworthy that this Ministerial Submission was supported (at Annex D) by clear advice from DfT which cited the MBU Policy[32] and confirmed its status as "part of the Aviation Strategy", published "separately alongside the NPS".

45. In summary, it is simply untenable to reach any conclusion other than that "supportive", means that the government expresses in principle support for MBU proposals. Anything less, would render the publication of MBU nugatory and a worthless exercise.

46. Of course, the other central element of the MBU policy is its "carbon stress test", which examines the impact by 2050 of all UK airports pressing ahead, subject to defined criteria, with MBU. This exercise and its implications will be considered later in the context of our submissions on carbon, but this further reinforces our submissions above. Why would the government go to the very considerable trouble of modelling these carbon impacts if it was entirely neutral as to whether or not MBU applications come forward or are approved?

47. There are two further points which are made by SSE under this head, which derive from the wording of the ANPS[33]. These points are new to the SSE case, and were entirely absent from the legal onslaught mounted by its QCs upon the decision-making process of both DfT and MHCLG in 2018-2019, where no suggestion was made by SSE that the Departments had failed to apply the government's own policy and should have considered whether STAL's proposals met a "sufficient need" test.

48. Absent from the High Court challenges and SSE's Statement of Case, these newly trailed points appeared for the first time in Mr Arnott's proof and in SSE's Opening Submissions. Mr Ross, on his third appearance[34], suggested in XX that these points were the product of Mr Arnott's scrutiny of the Manston DCO process. We shall never

[32] CD14.2
[33] CD14.3
[34] Day 25

be able to confirm that with Mr Arnott, but it has not escaped our notice that SSE's Counsel were jointly instructed in the 2020 challenge to the Manston DCO and would have been alive to the argument.

49. In summary, first, SSE has contended that para.1.41 of the ANPS declares that the ANPS is "important and relevant" for other applications for development consent for an airport development not being one to which the ANPS relates. The formulation "important and relevant" derives from section 105(1)(c) of the Planning Act and signals that a given NPS represents the nationally adopted way to meet a given national infrastructure need and that this NPS should carry weight when determining a DCO application for development which seeks to meet the same need. In our submission, it is unarguable that the expression "application for development consent" refers to an application for a DCO and cannot apply to an application of planning permission. However, even if it did, the fact that the MBU as a policy statement has been published by the same Department of Government on the same day as the ANPS is surely sufficient to rebut any suggestion of conflict or even tension. Indeed, the DfT has stated expressly in CD14.71[35] that "Modelling undertaken to consider the policy of making best use of existing runways… did not affect the forecasts associated with proposed Heathrow expansion."

50. Second, SSE now contends that paragraph 1.42 of ANPS imposes a requirement upon any applicant for planning permission or development consent wishing to make more intensive use of existing runway to demonstrate "sufficient need for their proposals additional to (or different from) the need which is met by the provision of a NW Runway at Heathrow". The passage in question notes that "it may well be possible" for such need to be demonstrated; indeed this is expressed in precisely the same terms within draft paragraph 1.40 of the Draft ANPS of October 2017[36]. However, the final sentence of the comparable paragraph 1.42 in final version of ANPS has now evolved to read: "…Government policy on this issue will continue to be considered in the context of developing a new Aviation Strategy". As has already been observed, the first substantive component of the new Aviation Strategy "caught up" with the slowly

[35] Para.26
[36] CD14.5

emerging statutory ANPS and was published on the same day as the ANPS, viz. the MBU Policy[37].

51. As Mr Ross expressly agreed in XX3, MBU Policy is not referenced in ANPS. This is no doubt because it did not exist as adopted policy when ANPS was completing its final procedural stages. However, it does now exist; it set out what the government expects from applications below the DCO threshold and notes that those above that threshold will be "considered on a case by case basis by the Secretary of State"[38] There is no suggestion that "sufficient need" is a question for applications below the DCO threshold and, as we have seen above, the DfT modelling for the MBU Policy confirmed that the policy "did not affect the forecasts associated with proposed Heathrow expansion"[39].

52. Accordingly, it is submitted that the government's own MBU policy (which is formally part of the Aviation Strategy) fully addresses any question of need in relation to the appeal proposals. Moreover, the supporting modelling work for MBU confirmed the absence of any impact on the case for the NWR at LHR. This is the basis upon which Mr Andrew (rightly) considers that ANPS is not relevant to this appeal. Mr Scanlon, for UDC, takes precisely the same view.

53. Of course, as with so many matters, SSE considers that it "knows better" than the Government itself and the local planning authority in this regard, but we have been denied the opportunity to test this policy issue properly by the non-appearance of Mr Arnott and the absence of a suitably qualified planning witness to replace him.

54. We suspect that Mr Arnott's misconceived new point on sufficient need has emerged from a mis-application of the facts underlying the Report of the Manston ExA to the STN35mppa plus context.

55. The Manston ExA was faced with a full DCO application to re-open the airport and was obliged to examine in detail the question of "sufficient need" for those freight/cargo-led proposals. They noted the MBU Policy Paper[40], but observed, correctly, that "freight or

[37] CD14.2
[38] Paragraph 1.27 ibid.
[39] CD14.71, para.26
[40] CD14.59, para.5.5.20 & 5.5.21

cargo flights are not mentioned within this paper"[41] and do not return to consider it again. Manston was, of course, a DCO scale proposal and the ExA undertook a thorough UK-wide review of freight capacity, demand and forecasts, before concluding that the promoters had failed to establish sufficient need. Of course, the Secretary of State ultimately took a different view, although his reasoning has been quashed and the decision has been remitted to him for reconsideration.

Policy Summary

56. In our submission, the support in principle for MBU so clearly articulated in recently published government policy documents offers yet further reinforcement to the development plan and NPPF presumptions in favour of this development. We do not suggest that this agglomeration of presumptions is incapable of rebuttal, but it is submitted that residual impacts of real weight and substance, incapable of adequate mitigation, would need to be identified in order to overcome the positive case for the development.

57. MBU policy asks local planning authorities to take "careful account of all relevant considerations, particularly economic and environmental impacts"[42]. These submissions will go on to consider the socio-economic evidence supporting the STAL's proposals in order to examine whether there is yet a further layer of supportive considerations to weigh before turning to the local environmental impacts and associated mitigation in order to consider whether there are any considerations which might tell against the development. However, before the assessment of local impacts can be addressed, it is necessary to pause and consider the evidence which has been heard on the topic of forecasting, which necessarily underpins the assessment of these impacts – both economic and environmental.

FORECASTING AND THE RELIABILITY OF THE ASSUMPTIONS UNDERLYING THE ES & ESA

[41] Para. 5.5.21 ibid
[42] CD14.2, para.1.29

58. Mr Galpin is the only expert air traffic forecasting witness who has given evidence to the inquiry. It submitted that his professional credentials and experience at ICF, a major international provider of forecasting advice, entitles the Panel to accord very considerable weight to his evidence. He has provided carefully considered forecasts, using recognised ICAO procedures and having interrogated likely route developments at Stansted. Following the lengthy delay in determining the application and the emergence of the pandemic, these forecasts have updated by Mr Galpin for the ESA 2020 and an additional Covid low case has been developed as a sensitivity. It is submitted that this work represents a well-considered and robust approach to the likely growth of traffic at the airport over the next decade to 2032 (or to 2034 in the Covid low case). Moreover, STAL's case is strongly endorsed by two of its most important carriers: see WR2 and WR3. Stansted is home to Ryanair, one of the most dynamic and financially robust carriers operating in the UK, with the drive and vision to deliver substantial growth over the next decade; Emirates, is a key player in the long haul sector, with the financial strength and ambition to build its already impressive network of routes, supporting the critical international hub role of Dubai. We invite the Panel to reflect on this strong expression of support from the airlines who will actually be delivering much of the planned growth, (which is in stark contrast to the opposition expressed by airlines to BAA's G1 proposals in 2006-07).

59. By contrast, UDC position on forecasting is, to say the least, somewhat contradictory. On the one hand, Mr Scanlon tells us: "The Council has not challenged the Appellant's forecasting exercise and there is no suggestion that the updated forecast provided within the ESA does not represent a reasonable account of future growth in demand"[43]. At the same time, there has been excessive emphasis on the alleged unreliability of forecasts, with comparisons regularly being drawn with reading tea leaves.

60. The position of UDC is all the more curious given that the Council took advice from an independent air traffic forecaster, Dr Chris Smith, whose position in the UDC witness team was obviously sufficiently advanced for his evidence to be cross-referenced in Dr Broomfield's Proof & Appendices[44] and for a slot to be allocated for him in early versions of the programme. However, at the eleventh hour, Dr Smith was mysteriously

[43] UDC/4/1, paragraph 8.5
[44] UDC/4/3, para.132

cast adrift and no satisfactory explanation has been offered for his disappearance from the UDC witness line up. Even though UDC is participating at this inquiry as the statutory planning authority, supposedly acting in the public interest, it has refused to share Dr Smith's advice to it, hiding behind the cloak of legal professional privilege to refuse to shed any light on the outcome of this publicly funded review of the ESA forecasts. There would be no need for "wild theories" (or, indeed, any theories) if reasonable requests for disclosure had been met.

61. Mr Scanlon appeared very uncomfortable when asked questions in XX about the role of Dr Smith in the UDC witness team, conceding eventually that Dr Smith did participate in team meetings to determine the shape and content of the UDC case. It is inconceivable, in our submission, having received expert advice on the subject, that UDC would not have proffered alternative forecasts or an informed commentary upon STAL's forecasts if it considered that it had an evidential basis for so doing which supported its case.

62. Instead, the inquiry has had the Condition 15 debate foisted upon it, at least in part founded upon the UDC-generated proposition that forecasting is wholly unreliable, akin to reading the tea leaves, and that, accordingly, UDC needs to be able to review any approval of the proposal at frequent intervals in the future, when there will be far greater clarity as to the rate of growth of traffic at Stansted. It is submitted that the positon adopted by UDC is highly unsatisfactory, that Dr Smith's review should have been fully disclosed and that the attempt to airbrush him from the UDC case leaves one with real – and entirely legitimate - doubts as to the content of this advice and its likely consequences for UDC's evidential position at this inquiry. As it is, UDC has adopted "a position" on forecasting at this inquiry (namely that it is so unreliable that Condition 15 is required), but has not supported this evidentially and has actively removed from the inquiry the one expert whose evidence would have enabled the robustness of UDC's position to be tested. It was therefore with some surprise that we listened to several pages of UDC Submissions on forecasting founded upon an evidential vacuum. We ask the Panel to discount any aspect of UDC's Submissions or broader case in this regard which it considers to be unsupported by evidence.

63. SSE's position in relation to forecasting is scarcely more edifying. Its case is firmly rooted in the proposition that the Panel should adhere to the DfT 2017 Forecasts[45], as re-run for the MBU Policy Paper in 2018. This is said in SSE's opening submission and Mr Ross's evidence[46] to be the "authoritative and independent" basis for forecasting growth at Stansted.

64. What, however, SSE failed to do was to acknowledge in Mr Ross's evidence that SSE – and Mr Ross in person in sworn testimony to the High Court[47] – had only a year before lodging his "Forecasting" Proof of Evidence publicly denounced these very same forecasts now asserted to be "authoritative" as:

i. making "little sense";

ii. raising "fundamental questions about the reliability of the [DfT] model"; and

iii. containing "a staggering degree of error".

65. This omission, in circumstances where Mr Ross knew[48] that he had a duty to the Panel to set out all relevant matters in his proof of evidence, was astounding. It suggests that he was more intent on generating an arguable case for this inquiry than in ensuring that his evidence was complete, coherent and consistent with his previously expressed testimony. Whilst Mr Ross described his/SSE's behaviour as "naughty", that adjective scarcely does justice to his conduct. We note that SSE's Closing Submissions completely avoid mention of this woeful passage of evidence from Mr Ross.

66. At the same time, and in the same part of his evidence, Mr Ross has wilfully distorted the position carefully explained by the DfT in the same High Court proceedings that the airport specific (and in particular Stansted specific) forecasts were <u>not</u> intended by the DfT to be relied upon as indications of growth, but that the exercise was expressly directed to the aggregate effect of the MBU policy: see in particular the First & Second Witness Statements ("WS") of Sarah Bishop for the Secretary of State for Transport[49].

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[45] CD14.14
[46] SSE/3/2, para.9.1, for example.
[47] CD14.61, paragraphs 57-58
[48] XXd by THQC on Day 7
[49] CD17.65, paragraphs 86-90; CD17.66, para.12

67. WS2, para.12 notes, referring back to paras 87-90 of WS1, that there is "uncertainty in any forecast, especially at airport level where there are strong overlapping passenger catchments that may make forecasting demand less predictable (the overlap of Stansted Airport and Luton Airport catchments is a good example of this). However, regardless of whether or not the predicted statistical distribution of passenger demand at a given airport is fully accurate, at national level the predicted overall or total passenger demand is unchanged and will be met by other airports and produce aggregate CO2 emissions which can be identified with a greater degree of certainty. This overall demand and resulting CO2 emissions figure was shown to be compatible with carbon targets in place at the time of MBU policy formation."

68. This passage is worthy of quotation in full, as it provides clear and irrefutable evidence that the DfT 2017 Forecasts[50] (as re-run for MBU in 2018) are not intended to be reliable at an individual airport level, certainly not in the shorter term and certainly not "where high levels of competition between airports occur". As Mr Ross's own Third Witness Statement in these same proceedings observed[51] "a further example of our concern regarding the models reliability is the DfT forecast that Stansted would handle 22.3m passengers in 2018 whereas it actually handled 28.0m". Given these substantial inaccuracies in these forecasts for the early years, it is hardly surprising that their projection and extrapolation from such an inaccurately low base cannot provide a reliable picture of Stansted's growth over the next decade or so. The problem is compounded with the AC's forecasts and commentary, which are now long out of date and simply fail to paint an accurate picture of Stansted's potential for growth, as subsequently illustrated – indeed proven - in its performance the years leading up to 2020.

69. Notwithstanding their patent temporal and geographic weaknesses, as described by Ms Bishop, Mr Ross and SSE now cling on to the DfT 2017 forecasts[52], following their Damascene conversion as to their reliability and now they think they can deploy them evidentially to their advantage. However, these forecasts are not expressed[53] to be policy, but simply a basis for informing policy decisions. As Mr Galpin explained in

[50] CD14.14
[51] CD14.61, pasa.57-58
[52] CD14.14
[53] Ibid Introduction

evidence, CD14.14 was the forecasting document which the government used in reaching its decision on which of the three options of new runway capacity in the SE it wished to support (out of the two at LHR and LGW). This is the reason for the reference at para.1.2 that forecasts can be "used to inform decisions on the need for and location of new airport capacity": see the detailed assessment of the three options at Annex E and elsewhere.

70. By contrast, Mr Galpin's forecasts do rely upon accurate figures for the Stansted's traffic levels up to 2019, they do factor in specific local market data and assess the opportunity to serve Stansted's strong local catchment. These forecasts will, necessarily, be vastly more reliable than those of DfT, but particularly so for the period to 2032 (or 2034 in the Covid low case), which is the period for which they are expressed to be valid. The labels "short term" and "long term" do not have a standardised meaning in air traffic forecasting, but it is clear that DfT was forecasting strategically to 2030, 2040 and 2050. In the short term, DfT 2017 did not forecast Stansted to reach its actual 2018 throughput until 2028[54] (10 years later than in reality!). It is inevitable that they will be far less accurate than Mr Galpin's for the period for which Mr Galpin has produced his forecasts and with which this inquiry is principally concerned. If the picture changes by 2050, due for example, to the opening of a third runway at LHR, then Stansted, along with other South East airports, may conceivably lose traffic to an expanded and reinvigorated Heathrow. That, however, is not a relevant consideration for the MBU policy where building UK capacity and connectivity in the interim is the critical objective.

71. Contrary to SSE's Submissions, we do not accept that MBU Policy obliges an airport such as Stansted, seeking to make best use of its existing capacity, to anticipate or assess which other proposals for MBU *might* be approved in the future elsewhere. That is not how the planning system works. Many airports may have aspirations or ambitions (expressed with varying degree of vagueness) to expand, but until these are approved, they do not have status for planning purposes and do not need to be treated as commitments. If, in due course, these proposals are formally advanced, then their promoters will have to have regard to any consent for MBU expansion granted at

[54] See STAL/2/2

Stansted (or elsewhere). By contrast, where there is already room for some incremental growth without the grant of further consents (such as at LHR or LGW), then Mr Galpin explained that he had allowed for such growth in producing his forecasts[55].

72. Mr Ross has mounted an attack on the Mr Galpin's "base case" for the DM scenario. However, Mr Galpin fully justified this in evidence: see in particular his Rebuttal Proof[56], sections 3 and 4. It was Mr Ross's material which was found wanting when tested in XX. He was particularly asked to explain the provenance for the assumptions as to pax/PATM made in section 5 of his Forecasting Proof[57]. He could only suggest that his figures were his "judgments" and confirmed that none of these figures had been validated by a forecasting expert. In particular, he could point to no evidential basis for his assumed 0.65% annual growth rate in pax/PATM. There was mention of some spreadsheets, but these were never produced. We ask the Panel to prefer Mr Galpin's expert evidence on these matters.

73. A final point on the forecasting evidence is SSE repeated litany that previous forecasts have shown "optimism bias" and should be discounted. Whilst it is true that many earlier forecasts have not come to pass, this has usually been for perfectly understandable reasons, such as the impact of the global financial crisis. However, other than SSE point scoring, it is very difficult to see why this matters to the planning decision which the Panel is required to make. If the predicted impacts (economic and environmental) are ultimately postponed for a year or even several years, due to growth following a slower trajectory, this would have no meaningful impact on the assessment of the proposed development and cannot possibly provide a reason to refuse planning permission.

THE SOCIO-ECONOMIC BENEFITS OF THE DEVELOPMENT

74. As we noted in our Opening Submissions, Stansted is the largest passenger airport serving North and East London and the East of England Region, providing balance to the London system of airports, which is otherwise so heavily weighted towards the West and South by Heathrow & Gatwick. It is also located at a pivotal location regionally, at

[55] STAL/2/2, para.3.10
[56] STAL/2/3
[57] SSE/3/2, paras.5.3.7 & in section 5.4

the junction of the M11 and A120, half way between London and Cambridge and just north of the new A414 junction 7A on M11. This enables Stansted to make a major contribution to the region and to the growth corridors in which it sits, as explained by Ms Congdon[58]. This contribution will be all the more valuable as the UK tries to develop its connectivity and boost economic growth post Brexit and post Covid. Connectivity as an engine for growth has many dimensions, ranging from the obvious facilitation of travel by business passengers, through increased bellyhold cargo opportunities, to the provision of an air-bridge for highly valued employees in the bio-tech sectors who rely on air travel to maintain regular links with family overseas.

75. On Day 4 of the inquiry, a wide range of witnesses gave direct and eloquent testimony as to the critical connectivity role which Stansted plays for the region. These witnesses represented the regional business community (including exporters) and included the CBI, regional Chambers of Commerce, Cambridge Ahead and one of the region's largest, fastest growing and most dynamic employers, Astra Zeneca. They gave powerful qualitative evidence, subject to cross examination by Mr Ross, of the user benefits which they would derive from growth and in particular network growth at Stansted.

76. Additionally, in this context, it is important to have regard to the range of educational facilities which STAL sponsors on the airport campus and which is providing learning and training opportunities for hundreds of students annually, along with a clear route to employment thereafter. As Ms Karen Spencer explained on Day 4, these facilities now have a proven track record and are being expanded. The provision of a greater number of potential jobs on site will enable the conversion rate from education to employment to be increased. This is plainly both a social and economic benefit.

77. UDC does not contest the socio-economic benefits of expanding capacity at STN. A wide range of key regional economic stakeholders, including Essex County Council, is strongly supportive of growth at Stansted. Mr Scanlon, for UDC, reviews the evidence in his proof and concludes that these considerations should attract "significant positive weight in the balance"[59].

[58]STAL/12/2 & 4
[59] UDC/4/1, para.9.34

78. *Only* Mr Ross seeks to diminish these benefits. We do not accept that Mr Ross's previous business career with Bass (some decades ago) puts his evidence on a par with that of Ms Congdon and Ms McDowall. Mr Ross was unable to refer us to a single piece of economic advice provided to an airport sector client which is in the public domain. Whilst Mr Ross's long history of carrying forward SSE's assault upon proposals to expand Stansted's operations is not in doubt, that is not the same as undertaking a balanced and independent expert assessment of the socio-economic impacts of airport growth, as STAL's two witnesses on this topic have sought to do.

User Benefits

79. Mr Ross has tried to goad STAL into commissioning a complex piece of modelling to quantify user benefits. This can only be undertaken on a national basis and STAL simply did not - and does not - consider that such an exercise would be of value either to UDC or to the Panel, especially given the regional focus of the case advanced by STAL. Moreover, such an exercise is not required by MBU nor by any other element of national aviation policy.

80. STAL made its position clear in its Scoping Report[60]. SSE, despite a very lengthy response, running to over 20 pages[61], did not request that user benefits be monetised or otherwise subjected to quantification, as Mr Ross conceded in XX. So this yet another bad SSE point, raised late in the day and after the scope of the ES had been fully and properly determined by UDC subject to normal statutory processes – and with the participation of SSE.

81. Mr Ross did concede in XX, however, as he was obliged to, that user benefits can be evidenced directly by parties who wished to take advantage of improved connectivity, precisely as has happened at this inquiry. He did not challenge the global economic role and profile of Cambridge tech cluster (rivalled only by E & W Coast of the USA) and accepted in XX that "Cambridge is driving extraordinary levels of job and broader economic growth and is of great importance to the economy of the East of England".

[60] CD4.2, para.12.13
[61] CD4.4, p.21 onwards to p.25 & CD23.55

82. Mr Ross has certainly not undertaken any numerical assessment (declaring that this was "not my job" XX'd). At the same time, he seemed not to have engaged fully with Ms Congdon's evidence, with which he did not claim particular familiarity and did not challenge once during his 2 hours XinC, although this evidence had been in the public domain for 2 months by the time this topic was heard at the inquiry.

83. In XX, he did not challenge Ms Congdon's conclusion as to the role of connectivity in economic growth; nor Stansted's role as a key driver of growth in the region. Mr Ross was obliged to acknowledge (XX2) that not a single business has given evidence that its prospects of growth will be *hampered* by the proposed expansion of Stansted's route network. On the contrary, representatives of the business community have given extensive evidence that the converse is true and that economic growth will flow from increased connectivity. This evidence is simply ignored in SSE's Submissions.

Displacement

84. This is yet another woefully misconceived SSE argument, obliging LPAs determining MBU applications to assume that proposed additional capacity they are considering is "footloose" and to undertake a comparative exercise to examine where in the UK such capacity might, in theory, be better directed. This is another example of wrong-headed thinking by SSE: it cannot possibly have been in the contemplation of the government when it published its MBU policy and it is a task which individual LPAs are self–evidently not well equipped to undertake.

85. Although Mr Ross purported not to be pointing the finger at Luton, he plainly was; although neither Luton Airport nor Luton Borough Council object to these proposals and, indeed, Luton's forecasts assume that Stansted gains planning permission to grow to 43mppa.

86. Moreover, additional capacity can be provided at Stansted with the bare minimum of additional infrastructure. This is in contrast to other proposals such as those at Luton, which require extending the airport infrastructure across a sensitive valley and are far

more capital intensive[62]; and, as we have seen, there is no requirement at Stansted for any greater number of ATMs, merely a modest re-assignment of PATMS within the total already permitted.

Trade balance

87. This is a very well–rehearsed argument for Mr Ross and SSE, who ran a very similar point at the G1 inquiry and subsequently in the High Court[63] – all to no avail. The simple point is that Government policy does not treat outbound tourism in the simplistic way which Mr Ross suggests is appropriate[64]. There is no legal or policy basis to suggest that the government supports constraining air travel, with all the social and economic benefits which it brings (many of which are not easily capable of monetisation) by reference to the trade balance. Moreover, even if this was the case, then the issue is a complex one, with the need for very careful interrogation of the alternative ways in which such monies might be spent and the potential for these, too, to contribute negatively to the trade balance (for example by the purchase of imported goods, such as cars or furniture, or by taking a foreign holiday by other means than air travel).

Cost of carbon

88. This is considered to be neutral factor in this case, as the incremental impact in carbon terms of DC over DM is a tiny, negligible fraction. This assessment is before one takes account of the convergence between DC and DM up to 2050, as shown on Mr Andrew's Figure 1[65]. In any event, the DfT does not ask that this be assessed for MBU applications.

Job creation

89. The predicted growth will provide jobs and increased economic activity, as explained by Ms McDowall in her proof and rebuttal proof. UDC does not challenge Ms

[62] See Figure 3.1 of CD 14.46
[63] CD12.3a, para.14.237 & CD14.64, para.50
[64] See APF and WP refs
[65] STAL/13/2, page 35

McDowall's assessment of 3,000 additional direct jobs and 5,600 total (to include indirect and induced): see her Table 3.3.4[66].

90. SSE, as recently as last September in its SoC[67], asserted that the true figure should be 2,000 direct jobs. However, by the time Mr Ross's proof was issued, this figure had been slashed to 1,200. The adjustment went completely unexplained by Mr Ross in XX2, although we hazard that the explanation may be "pessimism bias". Whatever the explanation, Mr Ross went on to accept the even 1,200 jobs was a "substantial number", with the clear implication that even he could not completely gainsay the benefits of the development.

91. Mr Ross's assessment is rendered even more unreliable by his assertion that the proposed growth will generate *no* indirect or induced jobs, despite SSE requesting at the Scoping stage that STAL assess precisely these elements of job growth, presumably in the knowledge that these categories of jobs are universally assessed for proposals such of this scale and nature. The SSE response given in XX by Mr Ross, namely that SSE simply wanted these figures to be assessed so that they could ignore them, lacked credibility and suggested that SSE was, even at the earliest stage in the planning process, more interested in the forensic endeavour of manufacturing an objection than in a genuine examination of the merits of the appeal proposals.

92. Mr Ross's minutely argued examination of the range of jobs (and salaries) available at Stansted Airport was a self-defeating exercise. It revealed that Stansted generates a good range of jobs across all categories to suit a very wide variety of employee. SSE's case that UDC is a district largely populated by executives, as well as being a highly unattractive argument, is a complete red herring. Indeed, Mr Ross was obliged to admit that there is no conceivable objection to an employment hub (such as STN) providing a variety of jobs attractive to workers beyond its district boundaries so long as there is good public transport access available to take them to and fro their workplace. This is patently the case for much of NE London, Harlow and other settlements served by WAML and the parallel (and perpendicular) bus routes.

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[66] STAL/11/2, page 17
[67] Paras.8.1-8.4

93. Accordingly, it is submitted that Mr Scanlon for UDC was entirely correct to attach significant weight to the socio-economic issue. Thousands of jobs and a real boost to regional economic growth are at stake, such that the arguments for allowing the appeal become even more heavily tilted in its favour.

WHAT THEN ARE THE LOCAL ENVIRONMENTAL IMPACTS WHICH MUST BE WEIGHED IN THE BALANCE?

94. At the outset, we observe that the ES & ESA have assessed a wide range of effects in considerable detail. No Regulation 25 requests have been made by UDC in respect of the EIA provided. Mr Thomson of RPS coordinated the assembly of the ES and ESA. He submitted a Proof of Evidence to the inquiry[68] speaking to the scope and comprehensive nature of the EIA process for the appeal development. No challenge was made to his evidence and no rebuttal evidence was served by any party seeking to contradict the account he gives in his Proof. We reject any suggestion that this EIA did not comply with the 2017 Regulations.

NOISE

95. It is, in our submission, highly significant that the noise impacts of the proposed development have been the subject of so little dispute at this inquiry. If, as SSE allege, all airport development, including these proposals, is inherently harmful, then the most obviously controversial impact by far would have been expected to be noise. This has not proved to be the case.

96. The noise impacts of the development have been the subject of extensive analysis by Mr Vernon Cole, a distinguished expert in this field. He concluded in the Chapters which he contributed to the ES and ESA that there were no unacceptable impacts associated with the appeal proposals. His work was reviewed for UDC by their own officers and independently by Mr Peter Henson of Bickerdike Allen Partners, another highly experienced consultant. Their combined view was that the noise impacts were acceptable and so professional officers reported to UDC on numerous occasions.

[68] STAL/3/2

However, SSE's presentation[69] on the inapplicable WHO ENG18 and entirely speculative fleet mix issues misled the Committee into rejecting the soundly based recommendations of Officers, supported by a phalanx of well-aligned professional advice.

97. Mr Trow was newly instructed in September 2020 to advance the Council's noise reason for refusal and, after a lengthy discourse, he concluded[70] that "the Development is acceptable having regard for [sic] the effects presented within the ESA" and subject to appropriate conditions.

98. The Panel now has the benefit of a SoCG on Noise[71]. This leaves little room for doubt: "The development is acceptable and there are no noise grounds on which to refuse the current application". Mr Trow confirmed in XX his complete contentment with that proposition.

99. Mr Peachey's evidence for SSE is focussed upon methodological disputes and disagreements and completely fails to establish any basis for the refusal of permission. We have been completely unable to test this evidence, but it has been addressed and rebutted by Mr Cole at STAL/4/4, Part 2 In particular, we reject Mr Peachey's speculation as to how government noise policy should or might develop.

100. In short, there is nothing approaching a noise based reason for refusal disclosed by the evidence of any party.

Mitigation

101. What is clear from the ES and ESA is that the noise effects reported therein support the imposition of a noise contour condition which will be considerably tighter than area conditioned by the 2008 planning permission and currently in force, thereby securing a reduction in community noise impacts going forward when compared with those which the Secretaries of State authorised in 2008. This reduction would be secured as a direct consequence of the grant of planning permission for the appeal proposals.

[69] CD 13.4(c)
[70] Trow Proof, para.8.11
[71] CD25.3

102. The "51, 54 or 57" dB LAeq daytime contour dispute was never a dispute of principle. It did not reflect any unwillingness on the part of STAL to accept the adjustment to the contour level which is considered to represent the onset of community annoyance (i.e. 54 rather than 57). It simply reflected the preference of STAL for a contour which could easily be compared with historic noise contours in operation at Stansted for two decades. The contours move together, so a tighter 54dB contour will also be a tighter 57dB contour. This preference for consistency was shared with UDC Officers[72], who proposed a 57dB LAeq contour as Condition 7 to the permission. Mr Trow has now moved on from his preference for a 51 dB contour and both parties have "met halfway" at 54dB LAeq 16 hour.

103. Another notable feature of the noise assessment reported in the ESA is that the night noise analysis for the Development Case is actually more favourable than that which would obtain in the Do Minimum Case, due to the increased numbers of quieter "new gen" aircraft which would make up the fleet utilising Stansted if the development goes ahead. Mr Cole has also given evidence on the shoulder periods, in which there will be virtually no change in aviation activity.

104. Noise contours have been produced, which illustrate these effects. This has led to a rehearsal of the debate at the G1 Inquiry as to whether or not a night noise contour should be imposed. STAL has resisted this on the basis that this would result in two overlapping regimes operating to control night noise impacts. Indeed, this is precisely the basis upon which the Secretaries of State rejected such a proposal in 2008. This is an outstanding matter upon which the Panel will need to take a view; however, the positions of the parties are clear. One factor which can be dismissed is Mr Ross's assertion that the DfT is currently consulting on the de-designation of Stansted airport. This is patently not the case[73]. Moreover, if Stansted were ever to be the subject of de-designation, it is perfectly obvious that the existing regime would need to be replaced by something else. The nature of that replacement regime would inevitably be the subject of consideration at that time.

[72] See CD13.1b Schedule of Conditions attached to the Committee Report, Condition 7
[73] See CD19.37, page 23

Other noise mitigation

105. This includes a major enhancement of the noise insulation grant scheme, with wide ranging benefits for both residential properties and schools, as set out in Schedule 2 to the UU, with generous geographic and financial provision, as Mr Trow accepted. The scope of this mitigation is all agreed, with one exception to which we now turn.

Thaxted School

106. Government policy as set out in the APF[74] requires for schools to be provided with acoustic insulation when exposed to noise levels above 63 dB $L_{Aeq,16h}$. This is likely to be reduced to 60dB if the provisions in Aviation 2050[75] are adopted into policy. [Qualification for the residential SIGS scheme is set out in Schedule 2 of the UU[76]. For daytime noise, the lowest level of qualification starts at 57dB $L_{Aeq,16h}$ or N65 200.]

107. Schedule A7.A/SCH8 in ES Appendix 7.A[77] reveals that no schools are exposed to noise levels above the current government SIGS threshold of 63 dB $L_{Aeq,16h}$ for any of the assessment scenarios. Only Howe Green, is exposed to levels above the proposed reduced threshold of 60dB. In total, only three schools (Howe Green, Spellbrook and Little Hallingbury) are exposed to levels above the lowest SIGS daytime qualification threshold of 57dB.

108. Following submission of the 2018 ES, discussions with UDC and their noise advisors resulted in an agreement that STAL would also consider noise effects at schools where flyover noise levels exceed 72dB L_{Amax} in accordance with guidance in BB93[78]. The

[74] CD 14.1
[75] CD 14.27
[76] CD 26.30a
[77] CD 8.3
[78] INQ 14

subsequent assessment is discussed in Section 3.2 of the Notes to inform the UDC Planning Committee[79] Report prepared by Mr Henson of BAP in August 2018.

109. The results of the flyover analysis at schools are set out in Section 8 of Mr Cole's proof[80] and Appendix 8[81]. A total of five schools are assessed as likely to be exposed to aircraft flyover noise levels above 72dB L_{Amax}, the three listed above plus Leventhorpe and Mandeville. Thaxted was the subject of a detailed analysis[82] to verify whether it would be eligible for SIGS, but the analysis determined that it was not forecast to be exposed to noise levels in excess of:

- Government SIGS threshold: 63 dB $L_{Aeq,16h}$ (now) or 60 dB $L_{Aeq,16h}$ (future, possible);
- STAL residential SIGS
- daytime lowest threshold: 57 dB $L_{Aeq,16h}$ or N65 200;
- BB93 based flyover noise level: 72 dB L_{Amax}.

110. Mr Trow suggested in his proof that it should be considered eligible for qualification on the basis that it is forecast to be exposed to higher $L_{Aeq,16h}$ noise levels than Leventhorpe and Mandeville, and to exclude it is therefore inconsistent. However, he failed to point out that it is not the $L_{Aeq,16h}$ value that justifies qualification for those particular schools but the 72 dB L_{Amax} flyover value.

111. In Mr Trow's XinC, he also suggested that, although the N65 value at Thaxted for future development cases does not exceed the SIGS qualification value of 200, it is close enough to indicate likely qualification. A7.A/SCH8 in ES Appendix 7.A identifies values of 189 for 2027DC and 161 for 2032DC. Mr Cole pointed out in XinC and XX

[79] CD 19.38
[80] STAL 4-2
[81] STAL 4-3
[82] CD 19.25

that the value in 2019 was already 164 and if this were sufficient to be a cause of noise disturbance at Thaxted School this would have already been highlighted and may have given substance to his claim. However, there is no history of Thaxted School raising concerns about levels of noise due to aircraft flyovers and forecast noise changes associated with this development are small enough that we do not expect that situation to change.

112. This is a matter upon which the Panel will not doubt wish to reflect and reach a clear view so as to trigger the "blue pencil" clause in the UU as appropriate. We consider it highly relevant that neither Thaxted School itself, nor ECC as Education Authority has made representations during this lengthy process to suggest that sound insulation is required.

The reason for refusal in relation to noise impacts

113. The Panel will recall all too well that UDC Members reached their conclusions on noise in reliance two clearly identified matters:

i. The significance of the WHO ENG18; and

ii. The possibility that the forecast fleet mix at Stansted might change, giving rise to different impacts in the DC case.

114. First, in relation to the WHO ENG18, Mr Trow offers not one word of support for the position adopted by UDC Members. He is clear in his proof that he regards these guidelines as "idealistic"[83] and that their implementation is "not feasible without a significant step change in aircraft technology, otherwise reduction to these levels would result in significant harm to the aviation industry and economies"[84]. In XX, Mr Trow expressly accepted that the WHO Guideline levels "have no current status in government policy for the assessment of aircraft noise" and that he was "not advocating their use by UDC". This approach is identical to that adopted by Mr Cole, who discusses the WHO ENG18 at length in his main proof[85].

[83] UDC/x/y, para.4.20
[84] Ibid para.4.21
[85] STAL/4/4

115. Second, in XX, Mr Trow was categoric in his rejection of the need for a LPA to give any consideration at all to fleet mix issues. He was adamant that the issue for the LPA was simply the setting of an appropriate "noise related restriction" and that it would then be for the airport to ensure that flights were scheduled in order to achieve compliance with that restriction.

116. We looked at the Jan 2020 Report[86] at the end of Mr Trow's XX, which concluded with him accepting that he agreed with UDC Officers that WHO ENG18 were and are "not government policy and not the appropriate way to assess this application" and that there was "no requirement for an additional sensitivity test" or address any uncertainties regarding the fleet mix as "the noise contour was the appropriate safeguard, which puts the ball firmly in the Airport's court".

117. Accordingly and in our submission, the noise reason for refusal and the basis upon which it was advanced remain entirely undefended by UDC's expert noise witness. Indeed, Mr Trow readily accepts that there is no noise based reason to withhold permission. We will return to this reason for refusal again in our submissions on costs.

AIR QUALITY

118. As with noise, air quality is no longer pursued as a reason for refusing permission. Dr Broomfield accepts that the development is acceptable on AQ grounds subject to the imposition of suitable conditions[87]. This is, of course, the same conclusion as was arrived at by UDC's original air quality consultants, WYG[88], and its experienced planning officers, who advised the Committee accordingly.

119. Before turning to consider the negligible impacts of the development on air quality, it is necessary to set out the relevant policy context in a little more detail, in light of Dr Broomfield's surprising contention that national policy in the NPPF obliges STAL to demonstrate an absolute reduction in emissions as a result of the development,

[86] CD13.4b
[87] Ms Holman, on behalf of SSE, was not called to give evidence. Her evidence has been comprehensively addressed by Dr Bull in his rebuttal proof and Dr Bull has also responded to further requests for clarification by SSE. Her evidence is not therefore addressed further in these closing submissions.
[88] See CD 13.1b for WYG final comments

regardless of whether or not these emissions result in any adverse air quality impacts; and that any increase in emissions would therefore be contrary to the policy objective in paragraph 170(e) of the NPPF to help to improve local AQ "*wherever possible*".

120. This interpretation of para 170(e) is then relied upon to seek to justify the imposition of a set of air quality conditions, which would constrain emissions to the levels assessed in the do minimum case at 2027 and 2032[89].

121. The rationale for this is said by Dr Broomfield to be to "*specify a limit on emissions which would result in an improvement in the air quality impact of the airport compared to the situation if the proposed development does not go ahead*"[90]. In reality, the effect of the condition would be to prevent the airport from growing to 43mppa at all (or, indeed, from utilising the number of atms already permitted), based on its projected fleet mix.

122. Having abandoned any attempt to defend the reasons for refusal, this is now the central plank of UDC's air quality case. However, it is hard to believe that Dr Broomfield really considers this to be a sensible argument. There can be no possible justification for constraining the airport to the emissions forecast for the DM scenario, when the air quality assessment does not predict *any* adverse impacts on air quality based on the fleet mix assumptions in the ES/ESA. This would negate the purpose of undertaking an EIA in the first place. It would also defeat the primary purpose of this planning application, which is not to deliver improvements in air quality *per se* but rather to enable the airport to grow to 43mppa, in a manner that does not give rise to unacceptable air quality and other local environmental impacts.

123. Moreover, anyone reading UDC's closing submissions would be forgiven for thinking that AQ will get *worse* between now and 2032 with the development in place. It is said in terms that there will be a "*consistent picture of worsening air quality.*"[91] This is simply incorrect. The correct position, as Dr Broomfield accepted in XX, is that there will be a significant *improvement* in AQ between now and 2032 with the development

[89] CD 26.10
[90] CD 26.11
[91] UDC Closings para 47

in place. There is, therefore, nothing remotely incompatible about this development with the Government's ambitions to continue to "improve" air quality over time.

124. With these preliminary observations in mind, we turn to consider the policy context.

The policy context

UDP Policy ENV13

125. The starting point is the policy ENV13 of the up-to-date Local Plan. It is common ground that the development complies with this policy.

NPPF paras 170 and 181

126. Air quality is addressed primarily in para 181. However, para 170 contains an overarching objective for planning decisions to contribute to and enhance the local environment. This translates into a requirement (in sub-para e) to prevent new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of air pollution. The reference to "unacceptable" provides a benchmark against the relevant air quality standards[92]. The objective in para 170(e) that development should also "*help*" to "*improve*" local environmental conditions, such as air quality, is qualified by the words "*wherever possible*." This recognises, in terms, that it may not always be possible to deliver an absolute reduction in emissions or overall improvement in air quality, commensurate with delivering growth.

127. The specific paragraph dealing with AQ impacts is para 181. Para 170 and para 181 must be read together.[93] Para 181 requires planning policies and decisions to "*sustain and contribute towards*" compliance with air quality limit values and objectives, "*taking into account*" the presence of AQMAs. As Dr Bull emphasised in XX, this is focussed on ensuring that development meets those standards and does not exceed them. Consistent with the qualification in para 170, there is no absolute requirement to

[92] See UDC/4/2 "*A concentration recorded over a given time period, which is considered to be acceptable in terms of what is scientifically known about the effects of each pollutant on health and on the environment*"
[93] Dr Bull ReX

improve air quality, only to identify opportunities for mitigation or improvement (preferably at the plan-making stage). The kind of broad measures identified in para 181 – "*traffic and travel management and green infrastructure provision and enhancement*" – are typical mitigation measures. It will be virtually impossible to *quantify* the precise level of reductions in emissions arising from such measures, and there is clearly no requirement to do so.

128. Dr Broomfield's interpretation also completely ignores the *in principle* policy support for aviation growth, established by MBU. It is implicit in MBU that a proportionate increase in emissions from additional flights and surface access movements associated with delivering additional capacity will be acceptable, provided no adverse impacts arise which cannot be mitigated against.

129. The same is clearly true of the APF and the Aviation 2050 green paper. Indeed, the paragraph in Aviation 2050 relied upon by UDC, and to which Dr Bull was taken in XX, expressly confirms that "the Government *supports* continued growth in aviation over the next 30 years."[94]

130. Moreover, and as Dr Bull was at pains to point out[95], the significance of air quality impacts depends on the pollutant concentration levels experienced at sensitive receptors. The inventory of emissions, from which Dr Broomfield derives his proposed emissions limits in condition 10/ 15, is merely an "*input*" into the air quality model. It "*cannot be used to assess the impact of the emissions*"[96] because this will depend to a very large extent on the location of the source and manner of release. Dr Broomfield's interpretation is also completely at odds with the way that air quality impacts are actually measured and assessed.

131. NPPF paras 170 and 181 must therefore be read in a straightforward manner, as set out above. There is no requirement to demonstrate absolute reduction in emissions, in the absence of any evidence of adverse air quality impacts.

East Herts District Plan

[94] CD 14.27 para 3.3
[95] In XinC
[96] Bull p/e para 57

132. Policy EQ4 is also a material planning consideration. It requires applicants to "*take account of*" the East Herts AQ Guidance, which contains guidance about AQ assessment and the assessment of mitigation for schemes within (or affecting) East Herts. However, as Dr Broomfield agreed[97], this guidance ultimately leaves it to the LPA to determine the acceptability of mitigation measures.[98] Moreover, there is no objection from East Herts to this development on AQ grounds (or at all) and it was also satisfied with the AQ mitigation measures to be secured under the UU and conditions[99]. As we explain below, only Dr Broomfield still seeks to pursue the argument that there will be *any* adverse impacts on the Bishop's Stortford AQMA.

Aviation 2050 and the Clean Air Strategy

133. There is nothing in either of these documents to suggest that there is any emerging policy requirement for development to deliver an absolute improvement in AQ. As noted above, the Government instead makes clear its support for aviation growth, while acknowledging that this *can* have "significant environmental impacts", which this development clearly does not. This is squarely on all fours with the approach in MBU. A requirement for every aviation proposal to deliver an absolute improvement in AQ, even where no significant impacts are predicted to arise would plainly be incompatible with a framework which positively *promotes* aviation growth.

134. The Clean Air Strategy[100] contains an ambition "progressively" to cut exposure to particulate matter, but no new target for PM 2.5 emissions has yet been set and the timescales within which the WHO guidelines can be met remain uncertain[101]. As Dr Bull put it in XX, to try to read more into this document is to "speculate on a policy which the Government hasn't yet formulated."

135. In any event, what relevance this has to the determination of this appeal is wholly unclear. It is agreed by Dr Broomfield that the incremental PM 2.5 emissions from this development will not exceed 1% of the WHO guideline and it is no part of his case to

[97] Broomfield xx
[98] CD 16.10 para 3.1.1
[99] CD 16.15
[100] CD 16.4
[101] CD 16.19

suggest that this development will give rise to unacceptable PM 2.5 concentration levels[102]. The Panel will note the unchallenged evidence of Dr Bull that the highest annual mean concentration at any receptor as a result of this development is just 11.6ug/m3 for both 2027 and 2032[103]. This is well below the AQ standard of 25ug/m3. As Dr Bull confirmed in ReX, it is also well below the Government's "second stage" limit of 20 ug/m3, referred to at page 28 of the Clean Air Strategy. There could be no possible objection to this development on the grounds of PM 2.5 impacts, although this is precisely the basis on which UDC refused permission in Jan 2020, as we explain below.

Air quality effects

136. All relevant pollutants (nitrogen oxides, PM 10 and PM 2.5 emissions) have been assessed as part of the air quality assessment in the ES/ ESA. The impacts on air quality at all modelled human or ecological receptors as a result of this development will be negligible and comfortably below the relevant AQ standards. There will be an overall improvement in AQ at all receptors in the DC at 2032, compared to the 2019 baseline. This was accepted by Dr Broomfield in XX.

137. For the avoidance of doubt, the impacts of the revised daily traffic flows associated with the two-way trips on sensitive receptors have also been assessed. There is no predicted change in the traffic flows, and therefore no change in the assessment of AQ impacts, within the Bishop's Stortford AQMA, or at Stansted Mountfitchet and Takeley. For other locations, including along the M11, Round Coppice Road, and the A120, the degree of traffic changes would lead to negligible changes in NO2 concentrations and all sensitive receptors would experience negligible impacts in 2032.

138. Total NO2 concentrations would remain well below the air quality standard of 40μg/m^3 at all sensitive receptors, even after the revised daily traffic flows are taken into account.[104]

[102] See UDC/4/3 para 136 and 147
[103] STAL/5/2
[104] STAL/10/4

The Bishop's Stortford AQMA

139. As we have noted, *only* Dr Broomfield maintains that this development has the potential to give rise to "*significant*" impacts on the AQMA. This view is not shared by EHDC, which withdrew its original objection at the application stage[105], and which would surely have made its presence known at this Inquiry in support of UDC if it had any lingering concerns about the AQ impacts of this development. Mr Andrew was clearly right to say in XinC that substantial weight must be given to the lack of any objection from EHDC, when considering the impacts on its AQMA.

140. In XinC, Dr Broomfield belatedly conceded that he was also in no position to challenge the modelling of traffic flows through this junction by Mr Rust. The traffic flows through the AQMA associated with the development were the subject of sensitivity testing in the TAA[106] precisely in order to assess the extent of any "*causal link*" between the use of the airport and traffic through the Hockerill Junction. UDC's assertion that such a link exists flies in the face of the agreed evidence before the Inquiry.

141. This sensitivity testing confirmed that the additional daily flows as a result of the increase from 35 to 43mppa are tiny: 61 vehicles per 24 hour period, or just 1 vehicle every 24 minutes. It is ludicrous of UDC to suggest that this is "*just below*" the threshold in the IAQM guidance of [107] 100 vehicles AADT in an AQMA, above which an air quality assessment even needs to be considered in the first place. 61 vehicles is clearly *well* below this threshold. Outside an AQMA, this threshold rises to 500 AADT.

142. The reason for this, as Mr Rust explained[108], is that this is a congested junction and not therefore an attractive route for traffic. There is an attractive and quick alternative to the town centre in the form of the ring road and northern bypass, with several access points to new housing. Moreover, even these "*infinitesimal*" traffic flows are a conservative

[105] CD 16.15
[106] CD 11.24 and STAL/10/3
[107] CD 16.9, page 21, Table 6.2
[108] Rust XinC

assessment because this assumes that these are all new trips, whereas in reality many of these will already be travelling through the junction[109].

143. In light of these agreed traffic flows, Dr Broomfield's insistence that there remains the potential for a significant AQ impact on the AQMA is absurd. If there was any merit in his claim that the location of this AQMA was so unusual, or its features so distinctive, that an additional vehicle every 24 minutes might have the potential to cause a significant air quality impact[110], this would surely be a matter that EHDC would be capable of judging for itself. UDC's suggestion in closings that the "ebb and flow of traffic" and drivers avoiding the bypass "due to accidents" might somehow materially increase these impacts only serves to demonstrate just what a bad point this is.

144. In fact, and as Dr Bull explained in XX, there are many similar examples of AQMAs based around confined junctions in historic market towns and it is not unusual in this regard. But in any event, the Panel is not concerned with assessing the AQ issues in the AQMA generally. It is concerned with the AQ impacts arising from this development. In XinX, Dr Bull drew attention to Table 7 of his proof, which demonstrates that airport-related road traffic contributes just 0.4% of NOx concentrations in the AQMA. Road vehicles not connected to the development and background concentrations contribute 99% of the NOx levels in the AQMA.

145. To put this in context, Mr Andrew explained[111] that the East Herts District Plan has allocated some 4,500 new homes in Bishops Stortford. As he explained, this new housing will result in transport movements in and around the town resulting in impacts "*well beyond*" those associated with this development.

146. The performance of the model and the impacts on the AQMA were also the subject of extensive scrutiny and sensitivity testing following submission of the ES, in consultation with UDC and WYG.[112] This tested the impacts of the development if background concentration levels are held constant at 2016 levels, which Dr Broomfield

[109] Rust XinC
[110] An assertion that was fairly described as "astonishing" by Dr Bull
[111] XinC
[112] Inexplicably, Dr Broomfield failed to acknowledge any of this work when formulating UDC's statement of case, although even the most cursory glance at the November 18 OR should have drawn it to his attention.

accepts is not remotely realistic; and applying an adjustment factor of 8.5 to bring the modelled concentrations in line with measured concentrations, and confirmed that the impacts remained negligible[113].

147. As Dr Bull explained, on the basis of the agreed "infinitesimal" traffic flows through this junction, no amount of adjustment to the model would change the conclusion that the development makes a negligible contribution to NO_2 levels in the AQMA[114]. This was agreed with UDC, and with WYG, and it is the reason that EHDC – whose absence UDC skates around in its closing submissions - plays no part in this appeal.

UFPs

148. It is common ground that there is no air quality standard for UFPs and no means of assessing the impacts of UFPs, based on current scientific knowledge. If it becomes necessary or possible to regulate these impacts in the future, Dr Bull explained that it is highly likely that the Government will take steps through the regulatory regime to tackle UFPs at source, rather than trying to prevent or restrict the UFP-emitting activity through the planning system.[115]

149. Dr Broomfield's solution was, instead, to impose a condition requiring an absolute reduction in PM 2.5 emissions, on the basis that "*you would expect UFPs to behave similarly*" to PM 2.5 emissions. There is clearly no policy basis for the imposition of such a condition, for the reasons we explain above. However, on the basis that PM 2.5 emissions are the best available proxy for assessing the impacts of UFPs, and that PM 2.5 levels are assessed as negligible, there is also no reason to believe that UFP impacts will not also be negligible.

150. We note that UDC has not suggested any measures, to be secured by way of condition or by the UU, which would directly address these impacts. This is, of course, because there is no way of even assessing these impacts at the current time, let alone addressing

[113] No challenge was made by UDC to Dr Bull's evidence in his rebuttal that Dr Broomfield has himself authored assessments including similar – and higher – adjustment factors. As Dr Bull confirmed, the scale of adjustment used is by no means exceptional.

[114] Bull XinC

[115] Other examples of regulatory measures include the introduction of smokeless zones through the Clean Air Act, the removal of lead from petrol and the removal of sulphur from coal and oil combustion: Bull XinC

them. But in any event, if new air quality standards for UFPs emerge in the future, these can be addressed through the air quality management strategy proposed by STAL. UFPs are not an issue that the Panel needs to – or can – resolve now.

Impacts on ecological receptors

151. It is common ground that the development will not give rise to any unacceptable air quality impacts at any of the sensitive ecological receptors. There is no objection to the development from NE, which was closely involved at the application stage and has confirmed that it has no objection to this appeal.

152. The only outstanding issue is whether a condition should be imposed, requiring assessment against the 24-hour mean concentration at the Elsenham Woods and Hatfield Forest SSSIs.

153. As Dr Bull explains, Dr Broomfield's insistence on this assessment is directly contrary to the explicit advice contained in the IAQM guidance, that only the annual mean should be used in assessments unless "specifically required by a regulator."[116] NE has never asked for this assessment to be undertaken.

154. Mr Barker had the final say on this issue and his evidence has not been the subject of challenge. As he explained, in order for an acute impact on vegetation to occur, so as to require a 24-hour assessment, there has to be an interaction between NOx, sulphur dioxide and ozone. However, high concentrations of sulphur dioxide and ozone levels are uncommon in the UK and they do not occur here.

155. At its apex, UDC's case in its Closings[117] concludes that "each of the air quality impacts identified by UDC is capable of being mitigated through an appropriate condition and/ or mitigation package." However, the evidence demonstrates that the development will have no significant air quality impacts and so there is no requirement, in EIA terms, to provide any mitigation to offset these impacts and it is for this very good reason that the ES/ESA does not need to set out specific mitigation measures. As Dr Bull put it in XX,

[116] STAL/5/3, Appendix 4, page 16 para D.4.10
[117] Para.76

in the absence of any more than negligible air quality impacts, any measures to tackle AQ will therefore deliver "*improvements*" meeting the requirements of para 170 and 181 of the NPPF.

156. As we go on to explain, the package of measures secured by the UU[118] and conditions[119] is extensive and yet it appears to have been almost entirely ignored by Dr Broomfield.

The package of mitigation and improvement measures proposed as part of this application

157. In claiming that the UU was "*business as usual*", in terms of measures to reduce AQ impacts, Dr Broomfield conceded that he was unaware of the circa £1.7million pa additional funding generated by the sustainable transport levy ("STL"), to be put towards sustainable transport measures as a result of the development.

158. As Mr Andrew explains, the purpose of the STL is to promote the use of modes of transport other than private car and to promote the use of sustainable measures of transport including the introduction of new technologies. It is administered by the Stansted Area Transport Forum ("SATF"), which includes Officers from both UDC and East Herts (as well as NR, TFL and HE).

159. Mr Andrew provided further detail about the SATF in XinC. As he emphasised, the SATF is a long-standing partnership approach, set up in 1999. It has a track record of investing successfully in sustainable transport measures, including substantial investment in local bus networks (£1million invested to date from previous obligations), including to upgrade these to the latest vehicle technology.

160. The UU also provides for a top-up to the ring-fenced bus network development fund (of £1million), with priority to be given to funding for ULEV and low emissions vehicles once the technology becomes viable. In XX, Dr Broomfield seemed to cast doubt on the value of this mitigation, on the basis that there is a prerequisite for a business case to be made out. As with so much of his evidence, however, this criticism takes no account of

[118] CD 26.30a
[119] CD 26.26a & b

commercial and practical realities. As Mr Andrew explained, it would make no sense for the SATF to invest in services that cannot become self-sustaining, and there would be "*no positive outcome either in terms of sustainability or air quality if the service fails*".

161. Once drawn to Dr Broomfield's attention, he accepted that the UU provides "*substantial investment*" and generates "*significant*" sums towards sustainable transport measures and that these measures are "*directly relevant*" to reducing emissions, including in the AQMA[120].

162. Moreover, the *beauty* of these mechanisms is that they are not set in stone nor fixed at the time of the grant of permission and so there is clearly no justification for a "Condition 15" type mechanism in order to keep the mitigation measures "*up to date*" with technological advances[121]. The flexibility to invest in new technologies over time means that technological advances to deliver AQ improvements will indeed be shared with the local community, as a direct result of the funding generated by the development.

163. As well as the sustainable transport measures, the UU also secures ongoing monitoring of air quality at locations around the airport.

164. In addition to the package of measures under the UU, STAL has also agreed to a condition requiring an air quality management strategy to be submitted to and approved by UDC before 35mppa is reached[122]. The strategy will be subject to regular review and will therefore be an evolving document, which will take account of any new AQ standards or policies.

165. Finally, rapid electric vehicle charging points will be provided at the airport, as requested and agreed with EHDC.

166. This package of measures goes well beyond meeting the requirement to mitigate the <u>negligible</u> air quality impacts of the development. UDC's assertion that the UU simply

[120] Broomfield xx
[121] Agreed by Broomfield in xx
[122] CD 26.14

"rolls forward" measures already contained in previous s106 agreements is unfair and is clearly refuted by the table in Mr Andrew's rebuttal, which shows the true scale and value of the UU sustainable transport measures, which are all "new" and directly related to this development[123]. It is admirable in its scope and ambition, as well as in its flexibility, and it more than satisfies the high-level objective contained in paragraph 170(e) of helping to improve local air quality "*wherever possible*".

The Committee's decision in January 2020

167. UDC's case on appeal bears little resemblance to the reasons given by the Committee for refusing permission on AQ grounds. As the minutes of the Jan 2020 meeting make clear[124], the Committee focussed exclusively on PM 2.5 emissions (assessed as being negligible at all human and ecological receptors) and perceived concerns around UFPs (not capable of being quantified or assessed at all). No consideration was given to NO_2 emissions in the AQMA, which was the focus of Dr Broomfield's evidence. [125]

168. In resolving to refuse permission on this basis, the Committee also ignored the clear and correct advice of Mr Harborough, who reminded Members that "*Dispersion modelling of fine particles had been carried out and concluded that the airport expansion would have no significant effects on the concentration of such particles*."[126] [emphasis added].

169. What, then, was the basis for the Committee's decision to refuse permission? The answer is to be found in the presentation made by SSE[127], which included a slide headed "*Health Impacts*". This made generic references to health impacts from PM 2.5 emissions arising "*at levels below WHO guideline limits*" and noted a "*growing concern*" around UFPs, which - it was said - "*have been found 14 miles from an airport*."

170. There was no evidence before the Committee to indicate that the development would give rise to unacceptable PM 2.5 concentration levels at any human or ecological receptor, by reference to any relevant air quality standards or policy test, let alone that

[123] STAL 13/4 Table 1
[124] CD 13.4a
[125] Accepted by Dr Broomfield in xx
[126] CD 13.4b para 5
[127] CD 13.4a

any impact which could not have been mitigated to an acceptable level. On the contrary, the ES demonstrated that PM 2.5 concentrations would be well below the AQ standard at all receptors.[128] UFPs are, of course, not even capable of being quantified or assessed by reference to any air quality standard or at all.

171. Moreover, the *health* impacts of PM 2.5 emissions "*below WHO guideline levels*" and of UFPs, as a subset of PM 2.5 particles, were indeed assessed as part of the Health Impact Assessment in the ES, as Dr Buroni explained in XinC. This concluded that the development would have negligible health impacts associated with AQ changes.

172. As Mr Andrew confirmed, no consideration was given by the Committee to the measures to be secured under the UU at all. The extensive package of surface access measures to deliver AQ improvements, described above, was entirely ignored.

173. The decision to refuse permission on AQ grounds, contrary to the clear and correct advice of senior UDC officers, without any evidential or policy basis for doing so, and without any consideration of the scope for mitigation of any residual impacts, was plainly therefore unreasonable. We return to this reason for refusal in our submissions on costs.

PUBLIC HEALTH AND ECOLOGY

174. The development will not give rise to any adverse public health or well-being impacts, including impacts associated with air quality and noise. It will have a positive influence on health and well-being at a regional scale through generation of employment opportunities and through leisure, travel and social connections. Overall, there will be a minor beneficial public health and well-being effect as a result of the development (changed from a minor adverse effect in the ES).

175. There was no challenge to this evidence and no request was made to cross-examine Dr Buroni. His evidence must therefore be given full weight. The absence of any serious

[128] The highest level of PM 2.5 emissions was assessed as being just 13.7ug/m^3 in 2023 and 14.4ug/m^3 at 2028: see CD 13.4g

challenge to this evidence is, in itself, a clear indication of the very limited environmental impacts of this development.[129]

176. Likewise, there was no request to XX Mr Barker, and no challenge to his expert ecological evidence that the development will have no adverse impacts on any sensitive ecological receptor. But in any event, STAL has committed to continue air quality monitoring at Hatfield Forest and Elsenham Woods SSSIs with mitigation to be agreed with UDC, in the event of any damage arising to vegetation as a result of the NOx air quality standard being exceeded.

CARBON AND CLIMATE CHANGE

177. As foreshadowed, this issue occupied a great deal of time at the Inquiry, and yet the correct approach to the assessment of carbon impacts remains as set out in our Opening Submissions[130]. The start and end point for the Panel's consideration of the carbon impacts of this development is MBU, which remains in force and has not been withdrawn nor superseded by later Government policy. Its lawfulness is "*beyond argument*"[131]. As we explain below, arguments about the merits of MBU - whether dressed up in terms of its 'soundness' or the weight to be given to the policy – are not matters which are suitable for investigation at all, per ***Bushell***.

The legal and policy context

MBU

(i) Carbon impacts of MBU proposals have been pre-authorised by MBU

178. The approach to be taken to the carbon impacts of MBU proposals is crystal clear. As Mr Hawkins put it[132], MBU "*narrows the range of issues*" for LPAs to consider "*on the merits*" to local environmental impacts only. It is a cumulative impact assessment of small scale (less than 10mppa) MBU proposals, which models and therefore

[129] Dr Banatvala's evidence was addressed fully by Dr Buroni in his rebuttal evidence and we do not address it further here.
[130] INQ1
[131] CD 14.62a para 115 per Dove J
[132] Hawkins XX'd

preauthorises the carbon impacts of these developments, and therefore takes this issue away from local planning authorities.

179. This was confirmed in the High Court by Ms Bishop for the DfT, who deals in terms with the correct approach to assessing carbon impacts under MBU:

> "*there is no requirement for local authorities to assess individual airport planning applications for an increase of less than 10 mppa or 10,000 CATMs against wider national carbon emission ambitions, as impacts within these parameters and how to mitigate against them have already been considered by my team in formulating and developing the government's MBU policy"*[133].

180. Faced with the clear wording of the policy, and evidence from a DfT senior official that carbon emissions from MBU proposals are not a matter for LPAs to consider, both Mr Lockley and Dr Hinnells sought to argue that, although MBU may not "*require*" LPAs to assess the carbon impacts of an MBU proposal, it nonetheless leaves it open to them to assess and weigh these impacts in the balance, presumably at their absolute discretion.

181. This is a hopeless argument. The length and nature of the closing submissions made by UDC and SSE on this subject only serves to illustrate why these complex matters are wholly unsuited to be addressed and resolved by Local Planning Authorities determining smaller scale MBU applications. It also flies in the face of the clear wording of MBU and the evidence from the DfT itself as to how the policy should be interpreted and applied. It also flies in the face of SSE's own evidence in the same proceedings, when Mr Ross sought to argue that this application should be treated as an NSIP precisely because carbon emissions were a national issue and outside the merit of LPAs.[134] In XX, Mr Lockley suggested that Mr Ross may have "*changed his mind*" since that time. Such a *volte face* would be true to form but on this, at least, Mr Ross was entirely correct.

182. In its closings, UDC claimed that Mr Robinson had agreed that "*carbon emissions can be a matter for the LPA to take into account*." This is a complete misrepresentation of his evidence, as the Panel's notes of the evidence will show. His evidence was that the

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[133] CD 17.65 para 61

[134] CD 14.61 para 47: "*MBU… states, <u>in terms</u>, that it is not necessary for CO2 emissions to be considered by LPAs when deciding planning applications because these have been taken into account at national level*."

use of the qualification "local" would have been unnecessary, unless the draughtsman was intending to distinguish local impacts, to be taken into account by the Local Planning Authority, from national impacts i.e. carbon. While he agreed that MBU does not say explicitly that local authorities "should not" look at carbon emissions when making their decision, he maintained – throughout his evidence - his position that MBU advocates an approach which removes carbon from the matters to be considered by LPAs.

183. We are, therefore, squarely in ***Bushell*** territory. The merits of MBU and the carbon modelling underpinning it are not suitable or eligible for investigation at this Inquiry at all.

184. In this regard, we respectfully urge the Panel to be extremely wary of arguments by UDC and SSE, which are couched in terms of the "*weight*" to be given to MBU. This is an illegitimate attack on the merits of MBU, dressed up as a question of planning judgment. While the relevance of national policy to a particular development is, of course, a matter for the decision maker, it cannot be open to the Panel to determine that MBU should attract *less weight* on the basis that it is no longer said to be legally sound in the absence of any suggestion from the Government that MBU is no longer extant policy. This would amount to a legal challenge to MBU by the back door. It would also be an attack on the merits of the policy and the modelling underpinning it, contrary to ***Bushell***.

(ii) The approach to modelling carbon impacts in MBU

185. With this caveat in mind, we turn to consider the approach taken in MBU to modelling the cumulative carbon impacts of MBU proposals. This was clearly set out and explained by Ms Bishop in her second witness statement[135]:

> *"at the seven airports assumed to increase permitted use in response to demand pressure, MBU used publicly available proposals to increase permitted use caps. Elsewhere, we assumed an increase in permitted use by a third (up to a limit of 9.5 mppa, as any increase of 10 mppa or above would fall above the threshold for NSIP status and therefore be required to be decided nationally, by central government, at which point further assessment may be carried out)."*

[135] CD 17.65 para 71

186. Mr Galpin was therefore clearly right to describe MBU as a "*stress test*" of the carbon implications of the policy. As Ms Bishop put it, the approach in MBU was to see "*what could be the largest amount of carbon that could be produced across the whole of the UK airports system commensurate with our forecast of passenger demand*."

187. In light of this explicit evidence as to the approach adopted by the DfT in formulating MBU, we simply do not understand UDC's assertion[136] that MBU "*does not name or assess any single or cumulative set of airport proposals*" and so is not a "cumulative assessment" at all. It suggests a complete failure to grapple with the evidence before this Inquiry, which has spent a disproportionate amount of time examining this policy and the methodology behind it. It is precisely because MBU has already assessed the cumulative impacts of small scale MBU proposals that there is no question of an "unstructured free for all", as suggested. Expansion proposals of greater than 10mppa will, of course, be considered at a national level under the DCO regime.

188. As we go on to explain, the modelling underpinning MBU was also undertaken in the full awareness that "*other or improved*" abatement measures were likely to become available by 2050. It is, as Mr Robinson put it, a "*stress test*" to determine "*what mitigation measures would be needed to meet the planning assumption*". It is not a statement of carbon policy, which will be set out in the Aviation Strategy.

The NPPF

189. We have heard a great deal about para 148 of the NPPF from UDC but we can deal with it briefly here. As Mr Andrew confirmed, para 148 is not new and it appeared in a similar form in the 2012 NPPF, which pre-dated MBU. It establishes a high-level objective for the planning system to "*support the transition to a low carbon future in a changing climate*." It is clearly not directed at, and takes no account of, the "*complexities of aviation*"[137] such as IAS. For that, we need to look to national aviation policy, including the detailed carbon modelling which informed MBU.

[136] UDC closings para 89
[137] Robinson XX

The CCA 2008 and the approach to IAS

190. In light of the way the arguments have been put, it is necessary briefly to consider the statutory framework under the CCA 2008[138]. This establishes the respective roles and duties of the Secretary of State and the CCC. Thus, part 1 of the Act establishes duties, imposed on the Secretary of State, in relation to the setting of carbon budgets and policies for meeting carbon budgets and, ultimately, the duty to meet the 'net zero' target established under s1.

191. The Government has not delegated the Part 1 duties to another body, in clear recognition of the importance that Parliament accords to tackling climate change[139].

192. The CCC is established by Part 2 of the Act. It has an important advisory role, including (by virtue of section 35) to advise the Secretary of State on the consequences of treating emissions from international aviation and shipping ("IAS") as emissions from sources in the UK for the purposes of Part 1. However, it is not the body with ultimate responsibility for discharging the duties under Part 1 and the Government is not obliged to follow its advice. All of this was accepted by Mr Lockley in XX.

193. Despite the importance that the Government accords to tackling climate change, IAS emissions do not count as emissions from sources in the United Kingdom for the purposes of Part 1, including the net zero target, "*except as provided by regulations made by the Secretary of State*". No such regulations have been made to date.[140]

194. Unless and until any Regulations are made, IAS emissions continue to be accounted for informally, via a "headroom" or "allowance" made when setting the carbon budget. This headroom is not a legally binding target at all. It has been set, for the purposes of the fifth carbon budget, at 37.5MtCO_2. This is the most recent carbon budget to be published by the Secretary of State under Part 1 and it runs from 2028-2032.[141]

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[138] CD 17.1

[139] Accepted by Mr Lockley in XX

[140] This is a good example of the Government declining to follow the CCC's advice. As Mr Lockley put it in XX, "*the Committee has advised [under Part 2] that they should be included but, as a result of the Government not having to accept their advice, they remain excluded at this date*."

[141] In XinC Dr Hinnells appeared to suggest that the planning assumption might be 32.6MtCO2 but he agreed in XX that the current headroom is 37.5MtCO2.

195. As recently as October 2020, the Government made clear in its response to the CCC's June 2020 progress report (which recommended formal inclusion of IAS in the net zero target) that the Government is not currently minded to include IAS in the UK's carbon budgets or in the net zero target. Instead, the Government's approach remains to prioritise the international process and to negotiate in ICAO for a long-term emissions reduction goal consistent with the temperature goals of the Paris Agreement[142]. At the time of writing, inclusion of IAS in the carbon budget – and therefore in the net zero target - remains no more than a "*contingency measure in case international progress does not go far enough or fast enough"* and only to be deployed "*if there is insufficient progress at an international level."*[143]

196. Clearly, it will be for the Government to decide – taking account of advice by the CCC and in accordance with its statutory duties under the CCA - how to deal with IAS emissions and whether and when to activate contingency plans to impose limits on IAS at a national level. It is certainly not for LPAs, or Inspectors on appeal, to seek to regulate IAS emissions at a local level, and on an airport-by-airport basis, through the development control process.

Matters relied upon by UDC and SSE to "reduce the weight" given to MBU

197. A great deal of time has been spent at this Inquiry analysing the advice of the CCC. However, as the CCA makes clear, the CCC's role is to advise the Government. It is not providing advice to this Panel and it will be for the Government to decide whether to accept its advice or not. It is because this advice is directed at the Government, and it is for the Government to decide how to address in the first instance before formulating a policy response, that SSE's "prematurity" analogy does not get off the ground[144].

198. Moreover, as we go on to explain, the detailed scrutiny to which the CCC's advice has been subjected (which has only been necessary because of the undue weight which UDC and SSE seek to place on it), has given rise to a number of queries about the assumptions

[142] As Mr Coppel helpfully clarified in XX of Mr Robinson, the Government's commitment to the international process in fact reflects its obligations under sub-article 2 of the Kyoto Protocol, which commits Annex 1 member states including the UK to pursuing limitations or reductions in greenhouse gas emissions via ICAO.
[143] CD17.64, p.106
[144] SSE closings para 1.26

underpinning the CCC's advice. These will ultimately be for the Government to resolve but the fact that there remain outstanding queries about the CCC's approach, which it has not been possible to resolve on any of the extensive documentation from the CCC which is before the Inquiry, clearly underlines the dangers of treating the CCC's advice as if it was akin to Government policy.

The amendment to net zero and the CCC's September 2019 advice

199. The relationship between the net zero amendment and IAS emissions has caused a great deal of confusion, particularly on the part of Dr Hinnells, who appeared to be under the impression that the "headroom" for IAS had "vanished" altogether, following the amendment to s1 of the Act, and that there was no longer any "space" for any residual IAS emissions.[145]

200. The correct analysis is that IAS are not caught by the amendment to net zero at all. They continue to be excluded from carbon budgets set under the Act, and the Government continues to prioritise the international process to address these emissions. The planning assumption remains set at 37.5MtCO_2 for the fifth carbon budget, which will run until 2032. Moreover, and as Mr Robinson emphasised[146], in deciding how to get to net zero, the Government will need to look at emissions across the whole economy, of which aviation accounts for just 7%[147]. It will then be a matter for the Government, taking account of the advice from the CCC, to decide how to balance emissions from competing sectors, and what level of IAS emissions to allow for, in order to achieve an overall net zero outcome.

201. Nor has the amendment to s1 resulted in the headroom for aviation growth being "*squeezed*"[148]. This reveals a complete misunderstanding of the CCC's advice at that time (since updated in the 6th CB, as we explain below), that "*aviation emissions could be reduced from 36.5 MtCO2 in 2017 to around 30 MtCO2 in 2050*"[149]:

[145] Hinnells XinC
[146] XX by UDC
[147] CD 17.78 pg 6
[148] Hinnells XinC
[149] CD 17.28

i. In advising the Government on how to get to "net zero" IAS emissions, the CCC assumed a 25% growth in demand by 2050, compared to 2018 levels. This equates to 365-370mppa i.e. exactly the same level of aviation growth as was assumed in the CCC's 2009 advice when the 37.5MtCO_2 headroom was originally set[150]. This was also the advice of the CCC at the time when the Government published MBU.

ii. The only change in the CCC's advice following net zero related to the abatement measures potentially available to *bring down* the level of emissions associated with the same level of aviation activity:

(a) In 2009, the CCC assumed a "likely" fuel efficiency improvement rate of 0.8% and just 10% SAF uptake. In its "speculative" scenario, the CCC assumed 1.5% fuel efficiency improvements and SA penetration of 30% by 2050, which is much closer to its projections in its most recent advice on the 6th CB.

(b) By 2019, the CCC assumed a fuel efficiency rate of 1.4%. However, the CCC continued to assume just 10% uptake of SAF by 2050. The CCC assumed that limited use of GGR offsets would be required to get remaining IAS emissions to net-zero.

202. As we explain below, the CCC's latest advice on the 6th CB is more optimistic still, and this has enabled the CCC to conclude that the emissions associated with the CCC's recommended level of aviation activity can now be reduced to just 23MtCO2.[151]

203. All of the CCC advice, pre- and post- MBU, therefore assumes exactly the same level of aviation growth to be compatible with the Government's obligations under the CCA. We note that the CCC's advice that "*limits to further airport expansion*" should be considered as one option to constrain demand to 365mppa also first appeared in 2009[152].

[150] Agreed by Mr Lockley in XX
[151] CD 17.78 Figure A3.7.a
[152] CD 17.2

204. However, as Mr Lockley confirmed[153], the Government has given no indication that it plans to adopt the CCC's advice on capping growth to this level. Instead it published MBU, which supports growth to 444mppa as being compatible within the current planning headroom.

205. It is also far from clear how the CCC has arrived at the conclusion, in its advice since MBU was published, that aviation activity should *continue* to be constrained to 365mppa:

i. As Mr Lockley confirmed, it is ATMs not passengers, which generate CO2 emissions. However, the only reference in any of the documentation before the Inquiry to the number of ATMs associated with 365mppa is in the CCC's 2009 advice, when the CCC advised that the Government should plan for a "*maximum allowable increase in ATMs of around 55% and a maximum demand increase of around 60%"*[154] and that the "*maximum increase in ATMs compatible with the emissions target is around 3.4 million per year in 2050 compared to around 2.2 million per year in 2005*."

ii. Mr Lockley agreed, therefore, that the 365mppa figure was set up to align with 3.4m ATMs. However, the ATM assumption relating to this mppa figure appears to have vanished from the CCC's more recent advice altogether.

iii. Absent a clear understanding of and explanation for the CCC's approach, this raises questions because 365mppa today would align with anything like the same number of ATMs as in 2009. We know from evidence put by SSE before the Inquiry that, between 2009 and 2019, the average passengers/ATM increased from 105 to 135[155]. The CCC's assumption in 2009 of 365mppa from 3.4m ATMs translates into 107 pax/ATM, which is in line with average load factors at that time. By contrast, using the 2019 ratio (of 135 pax/ATM), 3.4m ATMs would align with a passenger throughput of 459mppa.

[153] Lockley XX
[154] CD 17.2 page 148
[155] CD 23.62

iv. Table 2 in MBU[156] reveals that the DfT assumed, based on its 2017 aviation forecasts for 2050, that 444mppa was aligned with just 3.043m ATMs. This equates to a ratio of 146 p/ATM at 2050. Applying the same ratio to 3.4m ATMs would generate 496mppa.

206. In his note[157], Mr Lockley confirmed that he had been unable to identify the ATM analysis underpinning the CCC's latest advice. He suggested, however, that the CCC had simply adopted the methodology in the DfT's 2017 Aviation Forecasts to convert mppa to ATMs. However, MBU is also based on the 2017 Aviation Forecasts. Applying the same alignment between ATMs and mppa as used in MBU would lead to either a much higher passenger throughput, or a much lower ATM assumption, but the explanation for this is not to be found anywhere in the documents published by the CCC, which are before this Inquiry.

207. As we explain below, the CCC's long-standing advice that demand should be constrained to 365mppa has also directly informed the CCC's "*no net expansion*" advice in the 6th CB, which has generated so much hot air at this Inquiry.

The CCC's advice on the 6th CB

208. As Mr Robinson explains, the 6th CB is unchanged in key respects, including its long-standing advice that aviation growth should be constrained to 365mppa.[158] Set against this, however, is a "*growing confidence*"[159] in the potential of mitigation measures, particularly the take up of SAF, as well as the potential for carbon removals to become available to compensate for residual emissions.

209. In its balanced pathway, the CCC now assumes 25% uptake of SAF by 2050, compared to just 10% in its September 2019 advice. It has therefore moved substantially towards

[156] CD 14.2
[157] INQ 036
[158] STAL/8/4
[159] STAL 8/4 para 7.3

the 32% SAF assumption adopted in the SA's road map[160], described by Dr Hinnells in XinC as a "*powerful piece of work.*"[161]

210. The dramatic effect of the CCC's new abatement assumptions can be seen in Figure A3.7.a of the "Aviation Summary"[162], which now shows residual emissions reduced to just 23MtCO2. However, this is also another key area of the CCC's advice, where questions remain unanswered at the end of this Inquiry:

i. The CCC assumes "*baseline*" emissions of approx. 51MtCO2. This baseline[163], we are told, is taken "*direct from DfT modelling*" and assumes "*high demand growth (64% growth in passenger numbers by 2050, from 2018 levels), low efficiency improvement (0.7%/ year), no hybrid electric aircraft and no SAF deployment.*"[164] However, 64% growth on 2018 levels gives a "baseline" of 478mppa, which is substantially higher than the 444mppa assumed in MBU, also derived from the DfT's 2017 aviation forecasts.

ii. Neither Mr Robinson nor Mr Lockley was able to explain where the CCC derived this baseline from. In his note, however, Mr Lockley suggests that it reflects the DfT's *unconstrained* demand forecast, adjusted to take account of "*later available data*" and "*the effects of COVID.*"[165]

iii. However, the 2017 DfT Aviation Forecasts make clear that the *unconstrained* forecasts are a "*modelling diagnostic tool*" which are "*highly theoretical in that they include input assumptions that could not exist.*"[166] They are not the basis for calculating actual demand at all and they are not the basis for the CO_2 emissions forecasts in the 2017 Aviation Forecasts. These use the capacity constrained forecasts[167]. The capacity constrained forecasts are also the basis for MBU[168]. If

[160] CD 17.5
[161] Although both UDC and SSE belatedly sought to discredit the SA Road map and its projections in closings, no evidence was led by either UDC or SSE in relation to this issue and nor was this the subject of XX of Robinson.
[162] CD 17.78
[163] CD 17.78, page 10
[164] Ibid
[165] INQ 036, para 13
[166] CD 14.14, para 6.3
[167] See, for example, CD 14.14, para 8.3 "As with the constrained ATM forecasts, from which these emissions forecasts are developed."
[168] CD 14.14 para 7.4 and figure 1

Mr Lockley is correct, which we do not believe to the case, this would be a major departure from the methodology used by the DfT.

iv. From this baseline of 51MtCO_2, demand measures are applied to reduce emissions to 37.5MtCO2. The CCC then assumes that SAF will reduce emissions by approximately 10MtCO2 and that efficiencies and hybrids deliver a further reduction of 4.5MtCO2. Thus, abatement measures deliver a reduction of 14.5MtCO2, even after demand measures have been implemented.[169] This leaves residual emissions of 23MtCO_2 to be offset with GHG removals.

211. As Mr Lockley accepted, these abatement measures are "*far more extensive in their scope*" than at the time MBU was undertaken. Applying a similar level of abatement from SAF and efficiencies and hybrids to the 40.8MtCO_2 in MBU would clearly dramatically reduce overall emissions, compared to the reduction of just 3.6MtCO_2 assumed at that time.

212. Mr Robinson was clear, therefore, that *even if* the DfT were to repeat the modelling exercise in MBU but applying a lower planning assumption, this would be highly unlikely to change the policy approach in MBU. As he put it, "*the Government would apply the same stress test and arrive at the same conclusion*".

213. This brings us to the CCC's advice in the 6th CB on demand management, including its "*no net capacity*" advice. As Mr Robinson explained, the scope of this advice and the work underpinning it need to be carefully considered and understood. As with the other aspects of the CCC's advice, considered above, it is by no means as clear cut as it may appear at first glance.

214. In particular, and as Mr Robinson explained, although the CCC identifies a range of demand management measures[170] that could be pursued to meet its demand profile, it has not undertaken *any* analysis to see which demand measures – or combination of measures - would be most effective. Indeed, the CCC states in terms that "*Our analysis only assumes a demand profile is achieved, and does not model the policies required to*

[169] CD 17.78, Figure A3.7.a
[170] Reducing passenger demand for flying through carbon pricing, a frequent flyer levy, fuel duty, VAT or reforms to Air Passenger Duty, and/or restricting the availability of flights through management of airport capacity

achieve these profiles."[171] Mr Lockley agreed in XX that **"***the CCC has taken the view that it is not for them to recommend a specific policy mix for demand management"*.

215. It is indeed, therefore, "*surprising*"[172] that the CCC should have opted in its policy recommendations to go straight to an immediate moratorium on new airport capacity. As Mr Robinson put it, even if the Government were persuaded of the case for demand management, it would be for the Government to explore all of the options and to decide how to achieve the right balance of demand management measures "*in the most proportionate and least damaging way*."[173] That exercise forms no part of the advice provided to it by the CCC.

216. Moreover, very recent pronouncements from the Government make it absolutely clear that it has no intention of imposing a moratorium on new airport capacity, with all the economic damage this would entail:

i. In its October 2020 response to the CCC[174], the Government responded head on to the CCC's recommendation that the Government should "*review its airport capacity strategy in light of COVID and net zero*". Having reiterated its commitment to the international process and to negotiating through ICAO, the Government stressed that *"Airport expansion is a core part of boosting our global connectivity and levelling up"*.

ii. It is equally clear from this response that the Government is developing its strategy for aviation emissions and that its focus will be on technological innovation and investment, together with market-based mechanisms, rather than constraining demand:

> *"The UK is already a global leader in decarbonising aviation. We plan to build on our existing work that is delivering clean aerospace R&D, supporting the deployment of sustainable aviation fuels, modernising our airspace, and establishing domestic and international market-based mechanisms, to reduce emissions faster and further."*

[171] CD17.78, pg 9
[172] Robinson XinC
[173] Robinson XinC
[174] CD 17.65 page 106

iii. As Mr Robinson explained, this focus on green investment reflects the Government's long held support for green aviation and the UK's historic strengths in this area. As recently as 27 January 2021, we saw further evidence of this support for green investment, with the Government's announcement of a further £84million to invest in the green aviation sector.[175]

iv. This approach is entirely consistent with the strategy set out in the very recently published National Infrastructure Strategy, published in November 2020[176]. This emphasises that "*infrastructure investment is fundamental to delivering net zero emissions by 2050*"[177]. At the same time, it confirms the Government's long held position that aviation connectivity is essential for a global Britain. It is clear from this document that the Government is fully aware of the challenge of reconciling connectivity with net zero and is developing its response to this issue. Moreover, there is no evidence that the Government has suddenly gone lukewarm on aviation, and there is nothing to suggest any waning in support for MBU as a means to deliver growth. All of this was agreed by Dr Hinnells in XX.

v. Instead, the Government intends to "*square the circle*" of connectivity and net zero[178], by focussing at a domestic level[179] on a blitz of green investment, which (as the NIS notes) will "*create jobs to support the recovery from COVID-19, and support the government's levelling up agenda by ensuring key industrial areas are at the heart of the transition to net zero*." It is a policy approach which ticks all of the boxes as the UK emerges from COVID and the Government looks for opportunities to rebuild the economy and deliver growth and jobs, whilst simultaneously moving towards a net zero future. It is also squarely on all fours with MBU's in principle support for aviation growth, subject to local environmental impacts being addressed.

[175] INQ 19
[176] CD 23.41
[177] Ibid pg 12
[178] Hinnells XX
[179] Noting, as set out above, that IAS continue to be treated as excluded from UK emissions sources: see pg 47

Non-CO2 Impacts

217. We can deal briefly with this issue. Both the recent ***Heathrow*** judgment and the CCC's advice in the 6th CB emphasise the significant uncertainties surrounding these impacts and how to account for them. Far from promoting a policy response now to address these impacts, the CCC's 6th CB advice re-iterates that *'there remain significant uncertainties in the science and mitigation options, and therefore uncertainties regarding the policy response."*[180]

218. In XX, Dr Hinnells confirmed, correctly, that it is "*clearly not a requirement*" to assess non-CO2 impacts at the present time. Mr Lockley was also unable to point to any basis or requiring an assessment of non-CO2 impacts to be undertaken.

219. Mr Vergoulas clearly explained in his evidence why it is not possible to assess non-CO2 impacts at the current time.[181] As he explained, there is not even any scientific consensus as to what multiplier to use to account for non-CO2 impacts, nor any consensus about what mitigation measures should be employed to reduce these impacts (not least because reducing non-CO_2 impacts by, for example, re-routing to avoid contrails, can result in additional fuel burn and therefore increase CO2 emissions). Moreover, the "great advantage", as he said, of these short-lived effects is that they do not remain in the atmosphere and so, by reducing ATMs, it is possible to have an immediate beneficial effect on the warming consequences of non-CO_2 emissions once the science becomes more clearly understood.

220. SSE in its closings tried to claim that Mr Vergoulas had agreed in XX that non CO2 impacts were "to be considered a significant adverse environmental impact for the purposes of EIA". However, this is plainly not what Mr Vergoulas said, as the Panel's notes will show. Mr Vergoulas did not dispute that non CO2 impacts were "important". However, he went on to explain that it was currently impossible to assess the significance of these impacts at all, based on current scientific knowledge and in the

[180] CD 17.78 pg 18
[181] STAL/9/3 and Vergoulas XX

absence of any agreed multiplier or metric. He explained that he had followed the advice of the CCC, as well as the approach adopted by the DfT and the Government.

221. Mr Vergoulas was clearly therefore correct to say that non-CO_2 impacts do not need to be addressed in the ES/ ESA. This is entirely consistent with the advice of the CCC and the approach taken by the DfT in MBU. These are highly complex questions, which will be for the Government – not LPAs considering MBU applications - to resolve in due course, and as a scientific consensus emerges.

Summary of the policy position

222. The above submissions are made without prejudice to our primary position that this extensive scrutiny of the merits of the carbon assessment underpinning MBU is not an appropriate or lawful exercise at this Inquiry. However, after a full week of evidence, it is also clear that there is no merit whatsoever in the arguments pursued by UDC and SSE that MBU has been somehow rendered "unsound" by subsequent developments, including the amendment to net zero and the CCC's recent advice. The approach to carbon impacts underpinning MBU has been shown to be entirely sound and, indeed, conservative in its assumptions. It must be given full weight, as an up-to-date statement of national aviation policy, which deals expressly with this development.

The carbon emissions associated with this development

223. Faced with legal and policy arguments that ranged far and wide, and a great deal of grandstanding about the existential threat posed by climate change (which no one – least of all STAL's witnesses - sought to dispute for one moment), there is a real risk of losing sight of the scale of impacts under consideration here.

224. The ES/ ESA contains a detailed, airport specific assessment of the carbon emissions associated with this development, unlike the DfT's model which SSE sought to rely on to suggest that the emissions had been "down played". This is a favourite SSE argument, but it has no more merit in relation to carbon emissions than it does in relation to demand forecasts. For all the reasons we have already explained, the DfT model plainly is not

intended to be used at an airport specifc level. In any event, and as Mr Vergoulas explains, this argument goes nowhere because the 2.08MtCO2 which the DfT modelled for growth to 44.8mppa is closely aligned with the 2.03MtCO2 modelled in the ES for the same baseline year.[182]

225. That is sufficient to dispense with SSE's case on the carbon emissions actually associated with this development.

226. As Mr Andrew explained, the carbon assessment was undertaken before MBU was published and so, in the absence of the clear policy direction in MBU, the ES included an assessment of the emissions from this development against the 37.5MtCO2 headroom. It concluded, correctly, that the development was unlikely to materially impact the UK's ability to meet its carbon reduction targets and that Stansted's share of the headroom would not materially change as a result of the proposed development.

227. Dr Hinnells confirmed in XinC that the carbon modelling in the ES/ ESA "*reflects a reasonable range of outcomes*" and neither he nor Mr Young seriously sought to dispute the assessment undertaken by Mr Vergoulas. Dr Hinnells agreed that the incremental emissions generated by this development compared to the DM scenario are just $\underline{0.09MtCO_2}$. This increment is not only accepted by UDC but is now positively relied upon by UDC in its closing submissions in support of the contention that the carbon emissions from this development are "significant"[183]. In the best practice scenario, which is now more closely aligned with the CCC's latest projections[184], the incremental emissions associated with this development would be just $\underline{0.07MtCO_2}$.

228. An increase of 0.09MtCO2 equates to just 0.24% of the current planning assumption of $37.5MtCO_2$ or 0.3% against 30MtCO2 or 0.39% against $23MtCO_2$. As Dr Hinnells fairly conceded, these are "*tiny fractions for a non-DCO development under the MBU proposal*." On no sensible analysis can this be said to be "significant". In this regard, the IEMA guidance prayed in aid by UDC[185] plainly does not say that any GHG emissions, even at this level, should be treated as "significant" for EIA purposes. It

[182] STAL/9/3
[183] UDC closings, para 106(2)
[184] As confirmed by Mr Vergoulas in XX
[185] Para 106(11)

advises, in the absence of any clear "standard" against which significance can be assessed, that professional judgment is required. The exercise of that judgment here leads necessarily and inevitably to the conclusion that the carbon impacts of this development are negligible.

229. To put these emissions into context, the emissions associated with the Heathrow NWR are projected to be 21MtCO2, or nearly the entire amount of the residual emissions recommended by the CCC.[186]. The scale of that project is clearly "*a world away*"[187] from the impacts the Panel is considering here. While we say para 5.82 of the ANPS does not apply at all to this development, SSE's reliance on this paragraph (said to be of "key importance")[188] therefore takes it nowhere, as the stark comparison with Heathrow makes clear. Para 5.82 says in terms that an increase in emissions alone is <u>not</u> a reason for refusing permission, and it is simply fanciful to suggest that an "increase in carbon emissions resulting from this development" of just 0.09MtCO2 is "so significant that it would have a material impact on the ability of Government to meet its carbon reduction targets".

230. Moreover, this "*tiny fraction*" assumes that the airport does not seek to utilise its permitted 274,000 ATMs, in the event that permission is refused. As Mr Andrew explained, however, in the event that permission is refused the airport will plainly seek to "*make the best use of the asset that we've got*"[189] - and certainly by 2050.

231. In short, therefore, this development delivers a material increase in airport capacity with <u>no new ATMs</u>[190], a modest amount of hardstanding and an increase of, <u>at most</u>, 0.09MtCO_2. The undisputed gravity of climate change and the challenges faced by the Government in tackling this issue - whilst simultaneously delivering on its objective to boost connectivity and deliver economic growth - only serves to emphasise that this development is a very "*easy win*", in terms of delivering additional airport capacity at

[186] CD 14.26, PEIR Vol 1, Chapter 9, Fig 14.6
[187] Hinnells XX
[188] SSE closings para 5.9
[189] STAL/13/2, para 9.6 and figure 1
[190] C/f the Luton DCO, which is seeking consent for 72,000 additional ATMs

absolutely minimal environmental cost. Or, as Mr Robinson put it, this development is ***"about the most efficient way that you could have to deliver new capacity".***

Conditions

232. As with noise and air quality, UDC no longer argues that permission should be *refused* on the grounds of carbon impacts. However, it continues to insist on the imposition of a set of conditions to micro-manage carbon emissions from every aspect of the airport, including – primarily - emissions from IAS[191]. We can deal with this briefly in light of our submissions above:

i. Just as it is no part of an LPA's remit to consider IAS emissions when determining MBU applications, so it is not for LPAs to seek to regulate IAS emissions through planning conditions. As Dr Hinnells accepted, carbon emissions from IAS are not a local impact: they are a national or even international impact. Quite apart from the fact that STAL has no control over these emissions, they are clearly unsuitable to be regulated at an airport or local level.

ii. There is no policy basis for the imposition of a condition controlling IAS emissions and Dr Hinnells is clutching at straws by suggesting this can be derived from para 148 of the NPPF. On the contrary, the emissions from this development have been 'pre-authorised' by MBU, without any requirement to demonstrate mitigation of those impacts at a local level. The imposition of this condition is plainly not therefore necessary to make the development "*acceptable in planning terms*".

iii. It is also neither necessary nor reasonable for landside/ airside activities at the airport to be micro-managed to the extraordinary degree proposed by UDC. The emissions from all landside activities at 2032 are projected to be just 0.005MtCO2. Emissions from airside activities are only fractionally higher, at 0.021MtCO2. These are tiny levels and they arise from the operations of the airport as a whole, not from the impacts of this development.

[191] Assessed in the ES as comprising 93.5% of the total emissions airport, as Mr Robinson agreed in XX by SSE

iv. As Mr Andrew explained, it is also not within STAL's gift to micro-manage all emissions from the operation of the airport. There are 180 businesses on the airport site and many of these activities, including vehicle movements, are undertaken by third parties and are outside STAL's control.

v. The same is true of surface access movements to and from the airport and "*in its vicinity*". The decarbonisation of these movements is a matter for the DfT, not STAL[192]. In XX, Dr Hinnells conceded that "*this is not the principal issue because travelling in vehicles is dealt with by clear policy elsewhere*". He also acknowledged that "*Stansted does better than most airports… in terms of public transport*."

233. As Mr Robinson explained, the airport has worked hard to reduce all carbon emissions from operations and buildings under its control. This includes airport buildings and plants and the limited number of airport vehicles controlled by it. It has achieved Level 3+ Airport Carbon Accreditation and it has committed to reducing these emissions to net zero by 2038. The airport is already doing everything to reduce emissions that it is within its power to do.

The reason for refusal

234. Our submissions, above, concerning the correct approach to this issue and the negligible impacts of this development are entirely consistent with the careful advice and clear direction given to Members by UDC's Officers in advance of the Jan 2020 committee meeting:

i. As Dr Hinnells agreed, the Nov 18 OR reviewed the ES in some detail. It faithfully recorded the conclusions in the ES, including the incremental difference of just 0.3MtCO_2 (in the ES *pessimistic* scenario). Officers advised in light of these conclusions that the development was unlikely to impact on the UK's ability to meet its climate change target.[193]

[192] Although the UU measures to reduce trips by private car will also help to reduce carbon emissions associated with these movements.
[193] CD 13.1(b), para 9.350 onwards

ii. The updated OR in Jan 2020 dealt squarely with the amendment to net zero and the CCC's subsequent advice[194]. It correctly advised, however, that these were matters for the Government to consider and address through the Aviation Strategy and that it was not for LPAs to try to predict what policy choices the Government may or should take. It advised Members that, in the meantime, MBU had not been withdrawn or qualified and remained extant Government policy.[195]

235. The advice given to Members, both as to the legal and policy approach, and the negligible impacts of the development, was clear and cogent and it was correct. Had Members followed this advice, they would inevitably have concluded that there was no valid basis for refusing permission on carbon grounds.

236. Instead, Members simply ignored the relevant policy context and decision-making framework, and the negligible impacts arising from this development. The minutes reveal that they focussed instead on UDC's "*declaration of a climate emergency*", although this is not adopted policy and it does not deal with IAS at all.[196] Instead of considering the additional emissions compared to the DM scenario, Members apparently concluded that the "*increase in passengers*" would "*increase carbon dioxide emissions by 1.0MtCO$_2$*"[197]. To compound the confusion, Members went on to compare these emissions to UDC's "*net zero target*" of 0.5MtCO2 by 2030.

237. This discussion led to the formulation of a reason for refusal which is near incomprehensible and which makes no attempt to engage with the relevant policy framework, including MBU. It has ultimately led to an Inquiry involving a full week of evidence on carbon emissions, which are not a matter for consideration by the Panel at all. The Committee's decision to refuse permission contrary to the clear advice of its Officers was plainly unreasonable. We return to these matters in more detail in our application for costs.

[194] CD 13.4(b), para 40 onwards
[195] CD 13.3(b) at para 43
[196] Hinnells XX
[197] See CD 13.4(a) and the SSE presentation slide on pg 31, which drew Members' attention to the difference between the 2016 baseline and the 2028 DC scenario and referred to an "additional" 1MtCO2.

SURFACE ACCESS

238. STN is admirably well suited to perform this role both geographically and by virtue of the road and rail links which serve it. It already operates a major Public Transport Hub, with the highest public transport mode share of any major UK airport (50%). Further growth at Stansted therefore enables these facilities to be utilised to a greater degree, supports their reinforcement and sustains their viability via a virtuous circle.

Position of the Highway Authorities

239. Agreement had been reached about the appropriate mitigation to address increased traffic flows at the time of the November 2018 and January 2020 Committees. However, this has been revisited following the statement by ECC that financial constraints would cause it to defer its intention to implement a scheme for the improvement of J8 of the M11, to which STAL was to make an agreed contribution. Further discussion with HE and ECC has now led to a new stand-alone mitigation strategy, which is the subject of a recent additional HSoCG[198] and has now been incorporated into the planning obligation, with the agreement and support of ECC. HE & ECC have, accordingly, withdrawn from the inquiry.

Position of UDC

240. UDC has been very clear that it takes no objection on surface access grounds and, although RfR No.4 is alleged to be infrastructure related, UDC has made no attempt to evidence an objection which relies upon highways and transportation issues.

241. This is particularly significant for the issue of impacts on local roads. As would be expected, UDC has taken a keen interest in impacts on local roads and settlements from an early stage in the planning process. Indeed, and by way of example, UDC sought from STAL a detailed assessment of the impacts on Parsonage Lane and Takeley, which is before the Panel as CD11.12. It is not credible to suppose that UDC Members would have omitted to include impacts on local villages if they had been sufficient to support a reason for refusal on the basis of the severity of residual impacts (as per NPPF109).

[198] CD25.6

Position of Mr Bamber

242. Mr Bamber alone (for SSE) pursues a series of complaints about the exercise which all statutory bodies have now signed off. These are pursued by SSE and Mr Bamber in terms which tend to suggest that SSE sees itself as an alternative highways authority with wholly unrealistic expectations about "consultation" and data disclosure to a third party objector (quite irrespective of GDPR requirements).

243. Mr Bamber has been extensively occupied acting for a host of opponents of development in the Uttlesford area. However, he is does not act for any statutory body at this inquiry, nor does he have any experience or expertise in assessing the surface access impacts of a major airport. We do not accept that these impacts are similar (or even akin) to other forms of development which highways consultants are called upon to assess. On the contrary, they require intimate knowledge of the internal workings of (and consequential traffic patterns at) a major passenger airport, which Mr Rust has in spades[199], but which Mr Bamber simply does not possess (however experienced he may be in other areas).

The significance of the operational characteristics of a major passenger airport

244. For example, Mr Bamber appears to be particularly exercised by the fact that the AM peak for airport related traffic does not coincide with the highways network AM peak. He insinuates that this is contrived and that the two peaks could easily coincide such that the impacts would greatly exceed those predicted. However, as Mr Rust explained, this is simply a function of the morning operation of Stansted Airport, with very few aircraft landing in slots which would disgorge passengers onto the road network at 0700-0800 and the Stansted "based" aircraft getting airborne as soon as possible to complete their daily triangulation, generating a peak in inbound traffic movements to the airport long before 0700-0800 network peak. These characteristics are effectively "hard wired" into the operation of an airport such as Stansted.

245. Mr Rust has studied the operation of the airport in great detail and is confident that his assessment is robust. His reliance upon forecast schedules is entirely appropriate; this

[199] Having worked for STAL undertaking operational studies at STN for many years

approach was supported evidentially by Mr Andrew. In essence the "shape" of the airport day is highly unlikely to change, even with increased throughput. Mr Bamber's extrapolations are simply seeking to sow seeds of confusion. A further level of reassurance is available in the form of the endorsement of the HAs. This is particularly significant as ECC and HE have direct responsibility for the operation of the M11, A120 and J8 and have many years of experience of the impact of the airport on the adjoining highway network. Indeed, they are the source of the J8 traffic counts. With respect to Mr Bamber, they are far better placed to judge these traffic patterns at Stansted than a sole practitioner traffic consultant based in Berkshire.

246. Mr Bamber has himself undertaken no traffic counts, no surveys, carried out no modelling and made no alternative assessment of flows on any given link or junction. He expressly accepted in XX that he does not claim to have demonstrated any unacceptable levels of impact, but has focused instead on attacking the inputs to the modelling work – and in one respect the outputs.

247. However, a consequence of the late change of heart by ECC in relation to its planned J8 works has been that the full extent of Mr Bamber's critique of the TAA has been shared with the HAs (and their consultants Jacobs and Aecom) before they "signed off" the modelling and agreed the HSoCG. It is very clear from the extremely detailed Appendix A to the HSoCG that the HAs tested the assumptions in the TAA carefully and only "signed off" the model runs when they were satisfied with the reasonableness and robustness of the assumptions adopted.

Methodology

248. Notwithstanding the HSoCG, Mr Bamber has maintained his catalogue of criticisms and complaints, including has assertion that the TAA methodology is "ludicrous"[200]. It is submitted that the Panel will need to decide how far it wishes to go in interrogating the TAA's inputs, in circumstances where 5 sets of highway professionals have agreed them and against the backdrop of the test at para.109 of NPPF test which demands that demonstration of "severe residual impacts" before a development should be refused planning permission on highways grounds. Mr Bamber again accepted in XX that his

[200] Proof, para.2.1.3

proof does not set out or apply the test in para.109 of NPPF and that his proof does not demonstrate "severe residual impact" on the network. A lame attempt to assert such a possibility in ReX is absolutely no substitute for proper examination of this issue in a lengthy written proof, with extensive appendices. There was no such examination in Mr Bamber's proof.[201]

Two-way trip uplift

249. Mr Bamber's XinC and XX of Mr Rust by SSE focused on two points: first the correct level of uplift to adopt for two-way trips and second, whether this had been adopted for daily flows.

250. Mr Rust has explained that the TAA adopted a two-trip proportion of 33;23;23 (for 2019; DM;DC) but that these figures were not accepted by the HAs, who agreed by way of substitution the 43;33;33 figures - which had been used in the original TA. The figure of 43% for 2019 had been assessed by Mr Rust following the collation of an entire year of data for vehicular trips to the Express Set Down Area and to the barriered carparks. The 33% for the assessment year assumed a 10% reduction in two way car trips, which Mr Rust considered reasonable and achievable over a 12 year period. The HAs considered and accepted these revised input assumptions[202].

251. Mr Bamber, by contrast, has requested CAA passenger data for 2019, which is extensively categorised by modes of travel and has sought to make assumptions about which of those might or might not be two-way trips. This exercise is heavily dependent upon judgment, as the CAA data does not investigate this variable for taxis and the like. Mr Rust and the HAs prefer to utilise the STAL year-long data set (as this is a comprehensive measure for private cars and taxis, which STAL can monitor). We ask you to prefer their judgment.

252. Mr Rust has used the 43;33;33 inputs originally set out in the TA to model peak hour flows at J8 and the HAs have accepted these model outputs: see HSoCG dated 7 Jan

[201] Mr Rust dealt fully with SSE's obsession with Employee Mode Share. This was fully accepted by the HAs: see CD25.6, Appendix A, page 4, box 4.12 et seq
[202] CD25.6, Appendix A, page 3

2021. Had anyone wished to challenge or explore these further there has been ample opportunity to do so over the past 2 months. Mr Bamber accepted in XX that Mr Rust's two-way uplift had been applied to this modelling and agreed that highways assessment is conducted for the peak hours on the basis that, if the network operates satisfactorily then, it will also operate satisfactorily off-peak. Mr Rust explained that the agreed highway works deliver an improvement in capacity and congestion at J8. As noted above, Mr Bamber puts forward no alternative assessment.

253. Mr Bamber's second point is that the two-way uplift has not been applied to the daily flows in the TAA or Chapter X of the ESA. This is correct, but has no impact on the HSoCG[203], which does not – and does not need to – address daily flows, as these are not a relevant metric for this exercise. Mr Rust and Mr Bamber were intending to agree a full position statement on these flows when Mr Bamber unfortunately became indisposed. This has been taken forward to some degree with the kind assistance of Mr MacDonald of SSE, but does not have the scope which had originally been hoped for. The additional SoCG[204] which it has been possible to agree has attached at Figure 1 Mr Rust's assessment of the additional increments on network flows between the DM and DC cases at 2032[205]. This data is presented for precisely the same links as for the TAA (compare with Figure 7.3 as updated in CD11.25). It will immediately be seen that these increments are of a very small scale on the links which comprise the strategic highway network carrying the overwhelming majority of traffic to (and dispersing traffic from) Stansted Airport, i.e. the M11 N&S and the A120 E&W. There are no measurable changes in the assessed impacts on the other links, which are relevant primarily for employee trips. These are not, of course, affected by the uplift for daily two-way movements, which is relevant for passenger trips only.

254. Daily trips on these strategic links have a potential significance for two other impacts considered in the ES and ESA, namely surface access noise and air quality. Mr Rust accordingly consulted his colleagues in these disciplines, who have confirmed the minor changes to the daily flows on the strategic highway network have no material impact on

[203] Ibid
[204] CD25.8
[205] Ibid, para.5

their assessments of surface access noise or air quality[206]. It had been hoped to take matter this forward to a conclusion with Mr Bamber, but he has not produced an alternative assessment of the impact upon the highway links in question for us to review. We invite the Panel to review these documents and revert if there are any matters upon which it seeks further advice or assistance, especially given (for unfortunate reasons with which we entirely sympathise) the difficulty in taking this matter forward in the way which was originally envisaged when both SA witnesses agreed to produce a SoCG. However, we note that the underlying concern of Mr Bamber, expressed very clearly in his oral evidence, was in relation to impacts on sensitive receptors, in particular the villages of Takeley and Stansted Mountfitchet. As Mr Rust's Figure 1 amply demonstrates, there will be no additional impact upon either settlement – nor, for good measure, upon the Hockerill AQMA.

255. Accordingly, it is submitted that, notwithstanding the very late change of position by ECC in relation to its intended works at J8, a replacement scheme has now been developed to the satisfaction of the HAs and their independent consultants which will ensure no severe residual impacts in the DC at 2032. On the contrary, the proposed works will deliver an improvement when compared against the DM case (2033 @35mppa v 2033 @43mppa with Mitigation)[207]. SSE Submissions[208]seek to compare DC with 2014, but of course they should be comparing DC with DM.

256. Additionally, STAL has submitted a robust package of surface access mitigation to reinforce its already impressive credentials as a public transport hub – for rail, coach and bus services. This very high level of public transport provision is, of course, available for use by the local community. All public transport stakeholders (including Network Rail and National Express) have expressed strong support for these proposals and confirmed in evidence that they have existing (or planned) capacity available to meet the additional passenger demand expected. No party has seriously challenged this position. Mr Rhodes evidence was fully rebutted by Mr Rust[209].

[206] STAL/10/4
[207] CD25.6, Appendix B, Table 4-2 (AM 932-713; PM 1445- 1190)
[208] Para.9.11(iv)
[209] STAL/10/3, section 3

PLANNING BALANCE

257. Having reviewed the evidence in relation to local economic and environmental impacts, it is necessary to return to the planning balance. We do so, at the risk of repetition, emphasising that this balance is already strongly tilted in favour of allowing this appeal and granting planning permission for the appeal proposals.

258. To:

i. compliance with the statutory development; and

ii. the operation of the NPPF presumption in favour of the grant of planning permission; (both of which are agreed by STAL and UDC)

must be added:

iii. the "in principle" support of recently stated national policy in MBU, formally adopted as part of the government's new Aviation Strategy; and

iv. the range of socio-economic benefits to which STAL's witnesses have spoken and which has been so clearly endorsed by third party evidence.

259. Only the local environmental impacts have the theoretical potential to outweigh this powerful case for the grant of permission. However, for the reasons we have already discussed, none of these, either individually or cumulatively, comes close to meeting this high threshold. Indeed, on the contrary, when properly analysed, it can be seen that allowing the appeal will result in some beneficial local environmental impacts, when the DC is compared with the DM, for example, in relation to noise.

260. Aviation carbon is self-evidently not a local environmental impact. We submit that MBU policy is clear as to the way in which the government intends this to be addressed by local planning authorities. However, if a carbon crusading LPA were to seek to usurp the role which we think the government has reserved to itself for an application such as STAL's, then the facts of this case could scarcely be of less assistance to such an

authority. Aviation carbon is the product of ATMs and not passengers. The ATMs upon which STAL relies have already been consented. At 2050, the extrapolated DC v DM carbon increment is miniscule. However, if the DM case is realigned post 2032 to allow the STAL to optimise the commercial potential of its 274,000 ATMs, in accordance with the evidence of Mr Andrew, then this trajectory will plainly converge with that of the DC and there will **no net carbon impact at all** at 2050 and no increase in the only element of "airport capacity" which generates aviation carbon. UDCs and SSEs cases on this topic have been completely misdirected and a great deal of evidence, submissions and time has been wasted.

261. Accordingly, we do not accept that carbon is one of the local environmental impacts which MBU policy intended to be weighed in the planning balance, but even if it is weighed in the balance, on the facts of this case, it makes a negligible impact.

262. No doubt it is for all these reasons that UDC (through Mr Scanlon) accepts that this appeal should be allowed subject to conditions. We note again that he confirmed (in answering Inspectors Questions) that paragraph 9.77 of his Proof[210] stands, uncontaminated by consideration of Condition 15, to which he does not turn until the succeeding paragraphs, which follow the next subheading in his proof. UDC's Closing Submissions on this point beggar belief. The denial that Mr Scanlon undertook a staged assessment of the balance, factoring in Condition 15 and "revisiting"[211] the planning balance with Condition 15 in place is a delusion of Mr Coppel's and is so far as removed from the plain words of Mr Scanlon's proof (confirmed orally to the Inspector) as to engender real doubts as to how Mr Coppel has the nerve to advance it in UDC's Closing.

263. SSE has not undertaken a valid planning balance exercise[212], (which is the province of the planning witness not the advocate).

CONDITION 15

[210] UDC/4/1
[211] Ibid, para.9.80.
[212] See Arnott, SSE/11/1

264. We set out our full response to condition 15 in our submissions of 24 February 2021[213]. UDC's reply to these submissions[214] is extremely brief and is largely bald assertion as to the alleged lawfulness of the condition. It is telling that not a single authority is referred to by UDC to rebut any of the legal principles cited in our submissions.

265. We can therefore deal briefly with condition 15 in these closing submissions.

266. In light of the Court of Appeal's judgment in ***HS2***, UDC accepts – as it must do – that a condition which seeks to revisit the grant of permission at a later stage would be unreasonable and unlawful. Instead, UDC seeks to distinguish ***HS2***, on the basis – it is said – that condition 15 does not "*take away from the airport operator what is permitted by the grant of planning permission*" but instead simply "*defines the mitigation measures needed to regulate the environmental effects of the proposed development*."

267. However, condition 15[215] plainly does not simply "*define*" the mitigation measures needed to regulate the development, which must in any event be done at the time of granting permission. Its effect is to require the authority to revisit *later* whether the airport should be permitted to grow beyond 35mppa, based on the legislative and policy framework in force at that time. This is not a "fantasy", as suggested in UDC's Closing Submissions. It is the effect of the operation of the condition. Thus:

i. Clause (4) of condition 15 provides that "*An airport operator must not at any time operate the airport where for that year the ppa at the Airport exceeds or will exceed the maximum ppa*." The "*maximum ppa*" is defined as "*the higher of (a) 35 million ppa; and (b) the number of ppa <u>allowed under the Environmental Modalities Scheme having effect</u>*".

ii. As Mr Andrew noted[216], in determining whether to grant such approval, clause 10 hands back "*substantial discretion*" to the LPA at each stage to make "*such modifications*" and "*impose such conditions, limitations and restrictions as it considers expedient*". These include the discretion to limit the increase in the

[213] CD 26.8
[214] CD 26.17a
[215] CD 26.23
[216] Andrew re-x

maximum ppa to 1 million or more and to limit the period for which the scheme is effective to 2 years or more.

268. The requirement to obtain approval for an "*Environmental Modalities Scheme*" is, therefore, a requirement to obtain permission for the additional ppa by another name, as the definition of "*maximum ppa*" (i.e. "*the number of ppa allowed under the [scheme]*") makes clear. Increasing capacity would be contingent on securing UDC's approval first, after permission has been notionally granted. Unless this approval is granted, STAL would be liable to enforcement action and could be required to cease operating the airport altogether. It is impossible to see how this is reconcilable with the *in principle* grant of planning permission now.

269. In XX of Mr Andrew, it was suggested that condition 15 simply "*enables the conditions [attached to the grant of permission] to be recalibrated*". However, there is absolutely no conceptual or practical difference between "*recalibrating*" the application of this condition and "*recalibrating*" the question of whether the additional 8mppa should be allowed. The effect of Condition 15 is that STAL is prohibited from growing to the 43mppa notionally permitted, without first obtaining the approval of UDC.

270. Indeed, Condition 15 arguably goes even further than just revisiting the principle of the grant of permission for 43mppa. Its purported effect is also to revisit the principle of the consents *previously* granted in 2003 and 2008, by imposing new and unwarranted thresholds on noise, air quality and carbon emissions up to 35mppa, and by preventing the operation of the airport at all after 2027 unless UDC "signs off" on each increment of additional capacity, applying whatever policies may be in force at that time. There is no comparison between Condition 15 and the "Luton 10" condition, where the "tightening"[217] is fixed and pre-determined at the date of the original consent and no further application to the LPA is required.

271. As Mr Andrew correctly put it, "*this is not the way the planning system works and it isn't how it should work*". Instead "*the planning system needs to take decisions based on the evidence and policies available at the time of the decision*". These are wholly uncontroversial propositions.

[217] UDC closings para 139

272. The other basis on which condition 15 is said to be distinguishable from the condition in ***HS2*** is because it is not a "*Grampian condition*."[218] Instead, UDC blithely says that if permission is granted "*the airport operator can grow its operations up to 35mppa without doing more than what is required by Schedule A*". However, STAL already has permission to grow to 35mppa and there is no earthly reason why it should therefore be required to comply with the restrictions imposed under Schedule A, which were not deemed necessary by the Secretaries of State in granting permission in 2008.

273. Condition 15 plainly therefore undermines the "*fundamental objective of providing, through planning decisions made under the statutory regime, certainty and finality for those affected by them*" (per the Court of Appeal in ***Connors*** at §90). Quite how Condition 15 is said to provide STAL with this certainty[219] is a mystery: if Condition 15 was imposed, STAL would have no idea whether it would ever be able to grow to 43mppa at all. It would not even know against what "*contemporaneous policies*" the "*evaluation of a modalities scheme*" would be assessed by UDC.

274. In response to questions from the Inspector (Mr Boniface), Mr Scanlon suggested that a Condition 15 type mechanism was necessary in order to provide "*security that Stansted by getting consent now won't be ahead of the game on other airports*". But this is also not how the planning system works, as Mr Scanlon well knows. This scheme is before the Panel now and it has to be determined on the basis of the policy framework and evidence before the Panel now. In the unlikely event that the policy framework changes dramatically between the date of the decision on this appeal and the point when STAL reaches 43mppa, Stansted's permitted 43mppa will simply become part of the baseline against which other airport expansion proposals will need to be considered.

275. Nor, for all the reasons set out in our submissions (which UDC's very thin reply does not begin to address), does the "*alternative dispute mechanism*" proposed by Schedule C provide a lawful mechanism for remedying this uncertainty. The proposition that planning legislation provides "*a complete statutory code*" for the determination of planning applications is not, as UDC suggests, an "*over-simplification*": this formulation is lifted directly from the Court of Appeal in ***Connors***, referring back to the

[218] UDC reply §16
[219] CD 26.17a para 20

decision of the House of Lords in ***Pioneer Aggregates***. Schedule C flies in the face of this well-established principle and it is unsurprising that UDC has been unable to identify any authority or precedent for importing a binding private law dispute mechanism into the statutory procedure for the discharge of planning conditions.

276. As to para 24 of UDC's reply, it is extremely difficult to see how the "*alternate decision maker*" in Schedule C can be said to be the "*alter ego of UDC*"[220], given that its decision is final and binding on UDC even if UDC disagrees with it. This would amount to a clear surrender of the Council's discretion, contrary to the principles cited at para 28 of our submissions. UDC's insistence that condition 15 "*does not contain a delegation of power*" therefore makes little sense. The role of the "*alternate decision maker*" is also a world away from that performed by "*outside consultants*" engaged to advise UDC on the proper exercise of its functions, whose advice UDC is free to accept or reject (as it did here).

277. None of this should require spelling out in these closing submissions. There is a sense that UDC and its experts have fallen down a rabbit hole and into an alternative planning universe in their fixation on Condition 15 as the answer to this appeal. There is a very good reason why UDC has been unable to identify any precedent for this condition, and why Mr Scanlon was obliged to concede in response to questions from Mr Boniface that condition 15 is, indeed, "*novel*".

278. Unfortunately, a great deal of time has also been wasted at this Inquiry, dealing with this condition in evidence and submissions. UDC's continued defence of this appeal on the "*primary*" basis[221] of a manifestly unlawful and non-policy compliant condition is plainly unreasonable behaviour, for reasons we expand upon in our submissions on costs.

CONCLUSION

279. We conclude by submitting, with perhaps unusual vigour, that the case for allowing this appeal is an exceptionally powerful one; so much so, of course, that the LPA's

[220] Ibid para 25
[221] Scanlon response to Inspector's questions

planning witness has expressed agreement with the conclusion that this would be the correct outcome.

280. UDC's Planning Committee, having filibustered for 14 months following its resolution to grant planning permission, ultimately allowed itself to fall completely under the spell of SSE in January 2020 and refused planning permission for the appeal development for a series of completely unsustainable reasons. It is notable that not one Member of that Committee has been called to explain the rationale for this refusal. SSE has run a series of additional arguments, in an effort to bolster the Council's refusal, but none of these has come to anything.

281. We hope that the analysis set out in these Submissions (based upon the evidence which this Inquiry has heard) has now established irrefutably what the correct outcome should have been in January 2020 and what the correct outcome should be today.

282. We respectfully request on behalf of STAL that this appeal be allowed.

THOMAS HILL QC

PHILIPPA JACKSON

12 March 2021

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STANSTED AIRPORT 35 + PLANNING APPEAL

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

APPELLANT'S SUBMISSIONS ON COSTS

Introduction

1. This is an application for a full award of costs made by STAL against UDC. The application is for a substantive award of costs and is made on the basis that UDC has behaved unreasonably in defending the appeal, and that this unreasonable behaviour has directly caused STAL to incur the wasted costs of bringing this appeal.

2. This application should be read in conjunction with our opening and closing submissions, as well as our legal submissions concerning UDC's 'condition 15', which we do not repeat here.

3. Notwithstanding the obfuscation surrounding 'condition 15', UDC's position at the close of the evidence is clear. It has abandoned any attempt to defend the four reasons for refusal promulgated by its Committee, and, at the conclusion of the evidence, it is clear that its expert witnesses all now accept that the development is acceptable in principle subject to the imposition of suitable conditions and planning obligations. It has therefore come full circle to the position endorsed by its highly experienced planning officers in their comprehensive officer report ("OR") dated November 2018[1] and accepted by the previous Committee in resolving to grant permission.

4. It can come as absolutely no surprise, therefore, that STAL now makes this application for costs against UDC. Indeed, as we explain below, and as Mr Scanlon accepted in XX, UDC Members were expressly warned of the very real risk of a "substantial" award of costs against it when the new Residents for Uttlesford administration embarked upon the course

[1] CD 13.1b

of action, which led to the reversal of the original resolution to grant permission, contrary to all the professional advice provided to it, and which has now led directly to this appeal[2].

5. Despite UDC's protestations that it has somehow been caught off guard by this application for costs, which has been made entirely in accordance with the very familiar procedure in the PPG[3], there can be no doubt that UDC fully anticipated that a costs application would be forthcoming and, indeed, that its witnesses were instructed to focus their energies on defending such an application, by seeking to uphold the "reasonableness" of UDC's original decision. It is for this reason that references to the alleged "reasonableness" of the Committee's decision are peppered throughout the proofs of evidence submitted by UDC's witnesses[4]. As the Inspector (Mr Boniface) noted in response to Mr Coppel's protestations that he would need to recall witnesses to deal with this application (which was clearly flagged in our Opening Submissions), much of the Council's evidence at the Inquiry has also been directed at resisting costs.

6. This also explains why all four of UDC's witnesses now seek to rely upon the publication of the ESA, as somehow justifying their position at this appeal that the impacts of the development are acceptable, subject to the imposition of conditions.

7. We consider the issue of the ES vs the ESA in more detail below but, as we go on to explain, it is not remotely credible to suggest that there is anything in the ESA which might justify this dramatic *volte face* by UDC in respect of each of the reasons for refusal, in the absence of any material change in the assessment of the significance of the environmental impacts resulting from the updated forecasts.

8. Before setting out the grounds for this application for costs, it is necessary to revisit the sorry tale of UDC's handling of this planning application in light of the evidence as tested at the Inquiry. It is this chain of events which resulted in the decision to refuse permission, contrary to the original resolution to grant, and which has left STAL with no choice but to incur the very substantial costs of bringing this appeal.

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[2] CD 13.2b

[3] See Paragraph: 035 Reference ID: 16-035-20161210:
"In the case of hearings and inquiries: all costs applications must be formally made to the Inspector before the hearing or inquiry is closed."

[4] See, for example, Broomfield p/e para 113, Hinnells p/e para 29, Scanlon para 2.2

Background to this application for costs

9. As Mr Andrew explains, the handling of the application was "*one of the most extraordinary determination processes*" that he has witnessed during his professional planning career[5]. The chronology of events culminating in the refusal of permission in January 2020 was fully explored in XX with Mr Scanlon. It is documented in the various reports and minutes in evidence before the Inquiry. No Member of the Planning Committee or the Council was called by UDC to give evidence about this meeting, which ran over two days and lasted for 11 hours.

10. Mr Andrew was, however, present throughout this meeting and he gave evidence to the Inquiry about the procedure adopted and the matters that were, and were not, considered by Members. We return to his evidence below.

11. The starting point is the careful and considered assessment by UDC's planning officers of the application, in their comprehensive OR running to more than 120 pages, of November 2018. This followed many months of discussions and negotiations between STAL and UDC Officers and their advisers and relevant consultees, including extensive consultation and further discussions following the submission of the ES in February 2018.[6]

12. Having undertaken a thorough assessment of the planning balance, Officers advised that the development accords with the development plan, complies with the principle in favour of sustainable development and the policies in the NPPF, complies with national aviation policy in the Aviation Framework and MBU (to which Officers, correctly, gave substantial weight)[7], and that there were no other material considerations which would outweigh this policy compliance.[8]

13. It was on the basis of this advice (informed by the expert advice of the Council's appointed consultants), that Members originally resolved to grant permission, subject to completion of a s106 agreement in accordance with the detailed Heads of Terms endorsed by the Committee.

[5] STAL/13/3 Andrew p/e para 25
[6] See e.g. CD 11.2a
[7] CD 13.4b para 10.9
[8] CD 13.4b paras 10.106- 10.111

14. It is well-established that Members are presumed to have adopted the reasoning set out in the Officer Report[9], where they follow the recommendation made by Officers in reaching a decision on a planning application. The original resolution to grant was, therefore, taken by UDC's Committee on the basis of a proper consideration of the planning balance, including the application of the statutory test under section 70(2) Town and Country Planning Act 1990 and the presumption in favour of sustainable development in paragraph 11c of the NPPF. There has been no suggestion at this Inquiry by UDC that the November 18 OR was in any way flawed or that the Committee fell into any error in resolving to grant permission in accordance with the advice it contained.

15. In the months that followed, which Mr Scanlon sought to glide over in his otherwise full and lengthy proof of evidence[10], STAL, UDC and ECC Officers proceeded in good faith to negotiate the s106 agreement, in the belief that this would result in the decision notice being issued.

16. During the period from April 2019 to January 2020, Members were given clear and consistent advice in a series of Officer Reports (informed by legal advice received from no fewer than three experienced Counsel and leading Counsel) that there was no lawful basis for revisiting the decision taken in accordance with the advice in the November 18 OR and that there were no new material planning considerations that might justify such a decision. Consequently, Members were repeatedly urged to proceed to grant planning permission for this development without further delay[11].

17. Officers also arranged a series of workshop sessions to take Members through the content of the draft obligations and to discuss the issues that were being aired by Members (clearly led on by SSE) as potentially constituting "new" material planning considerations[12]. This process could not have been more thorough and inclusive, as Mr Scanlon conceded in XX.

18. In the OR produced in advance of the second EGM in June 2019[13], Officers also made it abundantly clear to Members that serious cost consequences were likely to follow in the event that they persisted with their plan to reverse the resolution lawfully made by the

[9] See, for example, *Dover DC v Campaign to Protect Rural England (Kent)* [2017] UKSC 7
[10] UDC/4/1, Scanlon p/e para 5.9
[11] CD 13.2(b), CD 13.3(b), CD 13.4(b)
[12] See e.g. CD 13.4(b) para 11
[13] CD 13.3(b)

original Committee, contrary to the consistent advice of Counsel and Leading Counsel[14] instructed by UDC that there was no lawful basis for so doing.

19. Thus, having set out the relevant guidance and the approach to awarding costs in planning appeals in full, and having warned Members that "*It is obvious that the costs incurred by the applicant in relation to an appeal are likely to be very substantial indeed"*, the Council's s151 Officer advised Members that:

> "18. In light of the legal advice received, it is… the strong advice of the s151Officer that the Council releases the officers from the instruction to withhold the decision notice and removes any impediment to discharge by officers of Recommendation (2) of the Planning Committee."[15]

20. There can be no doubt, therefore, that UDC Members were fully alive to the very real risk of costs if they continued to withhold the decision notice without valid reason. Regrettably, however, UDC chose to ignore this advice and the costs warnings very properly made by its experienced officers, and instead resolved not to issue the decision notice but instead to send the decision back to the newly constituted Planning Committee.

21. It was shortly after this meeting, on 30 July 2019, that Councillor Hargreaves reassured Members that the Council's strategic initiative fund, its transformation reserve and its future development project fund could all be made available to cover the costs associated with this appeal:

> "Councillor Hargreaves, in his role as Cabinet Member for the Budget and Finance, listed the financial reserves available to Council; the Strategic Initiative Fund - £1.6 million, the Transformation Reserve - £1.1 million and the Future Development Project fund - £200,000. He said this £3 million could be used to prevent climate change and if necessary to fight the Stansted Airport application if it was taken to appeal."[16]

22. These are not the words of a rogue Councillor. This suggestion was made by UDC's new Member with responsibility for making budgetary and financial decisions. Quite apart from the fact that this is clearly an improper use of these ringfenced funds, Councillor Hargreaves' suggestion speaks volumes about the new administration's attitude towards

[14] Christian Zwaart, Stephen Hockmann QC and Philip Coppel QC
[15] CD 13.3b, para 18
[16] CD 17.34

the determination of this application. It explains why STAL was left with no choice but to incur the costs of bringing this appeal.

23. At the Committee meeting in January 2020, Members had before them a further Officer Report[17], which reiterated that:

    i. There were no grounds for deeming the S106 Agreement to be inadequate.

    ii. There were no new material considerations that would justify a different decision to that resolved by the Planning Committee on 14 November 2018. This advice followed extensive analysis of all the matters raised by SSE, in particular, which were said to amount to new material considerations.

    iii. The development plan framework position had not changed materially since 2018.

    iv. The decision notice should be issued granting planning permission for the development as proposed in the application subject to the revised planning conditions recommended to the Committee on 14 November 2018, as soon as the amended planning obligations had been signed by all parties.

24. Against this backdrop of clear and correct advice from UDC's officers that there were no legitimate planning reasons to revisit the original resolution to grant permission, and clear warnings about the very substantial costs risk of doing so, it has been necessary to devote some considerable time in evidence to exploring the basis for the Committee's decision to refuse permission, as set out in the minutes of the Committee meeting, which were only finally agreed by the Council nine months later, in September 2020. As we have noted, no Member of the Planning Committee was called to give evidence to explain how it had arrived at this decision, which was so starkly at odds with all the professional planning and legal advice provided to it.

25. Nonetheless, the minutes are highly revealing, both as to the approach adopted by the Committee and the matters relied upon in reversing the original resolution, and as to the influence exerted by SSE over the decision ultimately reached to refuse permission. They

[17] CD 13.4b

demonstrate that none of the reasons for refusal were based on any proper application of the relevant statutory and policy framework, nor on any sound evidential basis.

26. As Mr Andrew explained in XinC, there was also no discussion by Members at the meeting about the adequacy of the s106, which had been negotiated over so many months. He fairly described it as "*staggering*" that the Committee could have resolved to refuse permission outright, without any substantive debate of the extensive mitigation package in the s106 agreement, and without considering at all whether this mitigation package might address the Committee's concerns.

27. The minutes also reveal that there was no evaluation of the benefits of the scheme against the perceived harms, nor any evaluation against national aviation policy including MBU. Instead, and as explained by Mr Andrew in XinC, having resolved not to issue the decision notice due to alleged "*changes*" between November 2018 and January 2020, in respect of noise, carbon and the impact of particulates on health and well-being, the Committee moved immediately to resolve to refuse permission on this basis, without undertaking any reweighing of the planning balance and, as we have already noted, without any consideration being given to the mitigation package or proposed set of planning conditions.

28. As Mr Andrew also said in XinC, if the Committee was genuinely still uncertain about any aspect of the development or the ES, despite the clear advice received from Officers and the series of workshops and meetings described above, there was nothing to prevent it from requesting such further information as it required at the January 2020 meeting. This could have been done formally through Regulation 25 of the EIA Regulations or as an informal request for clarification to STAL. No such requests were made.

29. Equally, if Members felt that some other formulation of the conditions was necessary, it was entirely within their power either to seek a deferral of the decision to enable this to be considered or, indeed, to grant permission subject to a different set of conditions. Instead, Members elected to refuse permission outright, for reasons which have proved to be wholly misconceived and which UDC no longer seeks to defend at this appeal. It is impossible to escape the conclusion that the Committee was set on refusing permission for this development, come what may and without any regard for the very substantial local and regional benefits this development will bring.

30. Against this background, we turn to consider the grounds for this application for costs by reference to the guidance in the PPG and the examples of unreasonable behaviour identified therein.

(1) Preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations

31. As Mr Scanlon accepted in XX, the Committee's decision in January 2020 was taken contrary to the "*proper*" and "*professional*" advice of UDC's planning officers that the development was in accordance with the development plan, national policy and all other material considerations, and that permission should be granted. It was also taken contrary to the advice from the very extensive list of consultees set out in the original OR[18], as well as experienced independent consultants on air quality and noise (White Young Green and Bickerdike Allen Partners), that there were no matters of concern which had not been satisfactorily addressed or could not be mitigated against.

32. As the sequence of ORs discussed above reveal, Members also received clear and consistent legal and planning advice that the matters relied upon in promulgating the reasons for refusal were not legally capable of constituting new material planning considerations, sufficient to justify the decision to revisit the original resolution to grant.

33. This is clearly not, therefore, an example of Members legitimately forming a different judgment to Officers as to the weight to be given to competing considerations in the planning balance. Indeed, as we explain above, there was no attempt to undertake the planning balance at all although, as Mr Scanlon agreed in XX, the evaluation of the range of impacts associated with a development of this scale and the overall balancing of these impacts is an <u>essential</u> stage in reaching a properly considered view as to whether or not permission should be granted.

[18] Essex County Council, Hertfordshire County Council, East Herts District Council, Place Services, Network Rail, Highways England, Natural England, UDC's Environmental Health Officer, Senior health Improvement Officer, Communities Manager, the Environment Agency, Thames Water

34. Had the Committee approached this decision in the proper way, it would have been bound to conclude, in accordance with the consistent advice of UDC's experienced planning officers, that the decision notice should be issued without delay.

35. The advice of UDC's officers that the development complies with the development plan and with the presumption in favour of sustainable development, and that the planning balance favours approval of the scheme, subject to conditions and a s106 obligation, has also now been endorsed by both of the expert planning witnesses on appeal, including UDC's own planning witness, Mr Scanlon.

36. Indeed, having explained his view that the development complies with an up-to-date statutory development plan and that it also benefits from the presumption in favour of sustainable development, Mr Scanlon went so far as to say in XX that "*when you undertake the exercise [set out in paragraph 11 of the NPPF] the **only conclusion you can reach** is that [the development] benefits from this presumption*."

37. We address Mr Scanlon's evidence in more detail in our closing submissions, and in particular his confirmation in response to questions from the Inspector (Mr Boniface) that he does not resile from the conclusion set out at para 9.77 of his proof of evidence, that the planning balance favours the grant of permission and that the appeal should be allowed, based on the environmental impacts as assessed in the ESA.

38. It is unsurprising and inevitable, but no less extraordinary for this reason, that UDC should now have decided that its Officers were right after all, three years after this planning application was originally submitted. The Committee's wilful disregard of all the advice provided to it, which has now been endorsed by UDC's own expert planning witness at this appeal, is precisely the kind of unreasonable conduct which the costs regime is intended to protect against, as the PPG makes clear.[19] A Local Planning Authority which chooses to behave as UDC has done here must know that costs consequences will result from its actions.

[19] PPG para 28:
"*The aim of the costs regime is to:…*
encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, not to add to development costs through avoidable delay."

39. As we note above, UDC - advised by its planning officers and legal advisers – is clearly under no illusion as to the costs consequences of refusing permission and continuing to defend an appeal, in circumstances where the decision was taken contrary to clear and thorough officer advice, as well as the advice of all statutory consultees and the independent consultants appointed at that time, and where its own expert planning witness now accepts on appeal that permission should be granted.

40. It is for this reason that each of UDC's witnesses now seeks to argue that the assessment of noise, air quality and carbon impacts has somehow changed as a result of the ESA and/ or that the original ES was somehow so inadequate that it was reasonable of the Committee to refuse permission on the basis of the information contained therein.

41. The ESA was, of course, only required in the first place due to the passage of time that had elapsed since the original ES was submitted. This is entirely due to the delays caused by the course of conduct embarked upon by UDC, as set out above. Moreover, the ESA does no more than to update the original conclusions in the ES, taking account of the revised forecasting years. There is no change to the overall significance of the effects identified in the ESA, when compared to the equivalent conclusions in the ES. This was accepted by Mr Scanlon in XX.

42. In the absence of any material change in the conclusions in the ESA concerning noise, air quality and carbon impacts, it is simply not credible to suggest that the ESA provides the rationale for UDC's change of stance at the appeal stage. The ES vs ESA debate is clearly a red herring, intended to distract from and to justify UDC's *volte face* at this appeal.

43. None of the evidence before the Inquiry has pointed to any shortcoming in the assessment undertaken in the ES, nor any failure to identify or consider any likely significant environmental effect, contrary to the evidence of Mr Thompson who has explained the comprehensive assessment undertaken in the ES and ESA in his proof and rebuttal and in oral evidence. If the ES was deficient in any material respect, or lacking any relevant information, this would surely have been flagged up by UDC's Officers or by one of the

many consultees during the extensive consultation process and engagement with STAL and its consultant team that followed the submission of the ES in February 2018.[20]

44. Moreover, even if there was some minor omission in the ES, which only the Committee had identified, this still plainly would not have justified the decision to refuse permission in January 2020. Instead, the Committee should have sought further clarification from STAL, to see whether its outstanding concerns could be resolved through the provision of further information, so as to enable it to grant permission for this policy compliant and sustainable development.

45. The Committee's decision to refuse permission outright was particularly egregious, when one considers that it was taken in the face of an original resolution to grant permission and following extensive discussions and negotiations over a prolonged period between UDC and STAL, to ensure that all outstanding issues had been addressed.

46. The refusal of permission for development, which all planning professionals agree should be permitted having regard to its accordance with the development plan, national policy and any other material considerations - and which has the explicit support of a recently published and up to date statement of national aviation policy in MBU - is quintessentially unreasonable behaviour, which has led directly to STAL incurring the costs of this appeal.

(2) Formulating imprecise and vague reasons for refusal/ failing to produce evidence to substantiate each reason for refusal on appeal and making vague generalised or inaccurate assertions about the proposal's impact, unsupported by any objective analysis

47. The minutes of the January 2020 meeting reveal just how far adrift the Committee came from the proper discharge of its development management responsibilities and the proper approach to the determination of planning applications, based on the evidence before it and by reference to the development plan and other material planning considerations. The substance of each of the four reasons for refusal is addressed more fully in our closing

[20] See CD 11.2a and the annexes at CD 11.2b-j and generally CD 11.2-11.14

submissions. As we explain below, however, none of these reasons for refusal withstands scrutiny, when tested against the costs guidance in the PPG.

Reason for Refusal 1: Noise

48. It is clear from the Members' discussion, as recorded in the minutes of the January 2020 meeting, that the two issues which motivated their decision to refuse permission on noise grounds were: (i) the WHO ENG2018 guidelines; and (ii) concerns around the fleet mix assumptions in the ES, in light of the grounding of the Boeing 738 MAX.

49. Both of these issues were comprehensively addressed by Officers in the OR and reaffirmed by UDC's Directors in their advice to the Committee on the day[21]. They reminded Members that WHO ENG were not a new material planning consideration at all, as they were published before the November 2018 meeting and considered at that time. They emphasised that these guidelines were still not Government policy and that the response to these guidelines was a matter for the Government to address, through the forthcoming Aviation Strategy[22]. Mr Trow in XX confirmed that this advice was correct.

50. In relation to fleet mix, Officers again advised Members that there was no evidence - beyond mere speculation - that the fleet mix assumptions would prove to be incorrect. They also emphasised that the fleet mix assumptions in the ES were conservative, in that they were based on a slower rate of take up than was viewed as likely, and that they included sensitivity testing to allow for fewer aircraft reaching the standards of the 737 MAX series.

51. Ultimately, however, and crucially, Officers advised that concerns about uncertainties surrounding the fleet mix were addressed by the noise contour itself, which already takes account of variation in the fleet mix:

> "… there is a further safeguard in the noise contour condition. Not only would it potentially limit the number of aircraft movements, if the fleet is not modernised as anticipated, to stay within the noise cap, but it would also address the carbon reduction point, because older noisier aircraft are also less fuel efficient."[23]

[21] CD 13.4b
[22] CD 13.4b page 12, para 39
[23] CD 13.4b, page 15, para 49

52. In XX, Mr Trow agreed with all of this advice. He confirmed that the principle of a noise condition is an appropriate way "*of dealing with any uncertainty surrounding fleet mix assumptions*" and that it provides '*an appropriate safeguard*." Indeed, he went so far as to confirm that he was not challenging the fleet mix in the ES or the ESA because, in his words:

> "if a condition is set appropriately at an appropriate value the fleet mix the applicant has assumed would need to materialise in line with the condition. The effects are acceptable irrespective of how you get there provided you limit the impacts."[24]

53. This is undoubtedly correct. However, the minutes of the meeting reveal that Members ignored the advice of Officers, now endorsed by Mr Trow, and instead promulgated a noise reason for refusal on the basis of misconceived concerns about the reliability of the fleet mix assumption and the alleged failure to assess the noise impacts of the scheme against WHO ENG18.

54. This reason for refusal was not therefore supported by any objective analysis and there was no proper assessment of the noise impacts of the development taking account of the noise contour condition, although this condition is clearly a critical component of this assessment.

55. Mr Trow also quite properly confirmed in XX that it was no part of his evidence that the acceptability of these proposals should be judged against the WHO ENG18 45 dB L_{den} or 40 dB L_{night} levels. On the contrary, he is of the view (shared by Mr Cole) that "*reducing aircraft noise down below the levels recommended by WHO ENG18 is not feasible without a significant step change in aircraft technology, otherwise reduction to these levels would result in significant harm to the aviation industry and economies*."[25]

56. This reason for refusal was therefore clearly not formulated by reference to the applicable policy framework, which <u>still</u> does not include WHO ENG18. There was no legitimate planning basis for Members' reliance on these guidelines, as confirmed by the evidence of Mr Trow and Mr Cole.

[24] Trow XX
[25] UDC/2/1,Trow p/e, para 4.21

57. The statement of common ground agreed by Mr Trow[26] confirms that "*subject to mitigation and appropriate conditions the development is acceptable and there are no noise grounds on which to refuse the current application*." The Council therefore no longer puts forward any positive case that permission should be refused on noise grounds. Nor does Mr Trow suggest that the noise impacts of this development are not capable of being addressed by the imposition of a noise contour condition. There was manifestly no proper or reasonable basis for the decision to refuse permission on noise grounds.

Reason for Refusal 2: Air Quality

58. As the minutes reveal, the resolution passed by the Committee was that due to "*changes since 14 November 2018*" in relation to "*air quality, specifically PM 2.5 and ultrafine particles, resulting from the development as fully implemented*", the decision notice granting permission should not be issued. This reflects the discussion at the meeting, which centred around PM 2.5 and UFP impacts from aircraft. This was the basis on which the Committee resolved to refuse permission for this development.

59. As we explain in our closing submissions, this reason for refusal was lifted from the presentation made by SSE to the Committee, which included a slide headed "*Health Impacts*" and which made generic references to health impacts from PM 2.5 emissions "*at levels below WHO guideline limits*" and a "*growing concern*" around UFPs, which - it was said - "*have been found 14 miles from an airport*." This slide concluded that "*Safeguarding the health of the community must be a material consideration*." In XX Dr Broomfield was unable to point to any other "*evidence*" which might have led the Committee to refuse permission on this basis.

60. Dr Broomfield also confirmed in XX, however, that he had not been instructed to give evidence on health impacts associated with air quality emissions, and that no other witness from UDC was giving evidence on these impacts.

61. Dr Buroni, by contrast, *did* give evidence on behalf of STAL on health impacts, including health impacts associated with PM 2.5 emissions and UFPs. He confirmed that a full

[26] CD 25.3

Health Impact Assessment ("HIA") had been undertaken and submitted in the ES and that the health impacts of fine particulate matter were fully assessed as part of the HIA. As he explained in his written and oral evidence, the methodology in the HIA considers the absolute change in air pollution and the associated health impacts are not therefore assessed by reference to any particular guideline value.

62. The HIA included in the ES therefore contained a full assessment of the health impacts of fine particulate matter below the WHO guideline level and concluded that the impacts on health would be negligible.[27]

63. Dr Buroni also confirmed that, for health assessment purposes, UFPs are treated as a subset of PM 2.5 and PM 10 emissions, and that consideration of UFPs was therefore also embedded in the HIA. As the ES and the ESA demonstrate, and as Dr Buroni confirmed in his evidence, the health impacts associated with AQ impacts arising from this development are negligible.

64. This evidence was not considered at all by the Committee in formulating this reason for refusal, based on vague assertions about the health impacts of PM 2.5 and UFP emissions from airports generally rather than *any* identified impacts arising as result of this development, contrary to the clear guidance in the PPG. Nor has any health evidence been produced by UDC to substantiate this reason for refusal on appeal.

65. There was also clearly no evidential basis for the Committee's decision that the development would give rise to unacceptable levels of fine particulate matter, nor ultrafine particulate matter, nor any other pollutant for that matter. On the contrary, the minutes record that Members were reminded by UDC's Director, Mr Harborough, that "*Dispersion modelling of fine particles had been carried out and concluded that the airport expansion would have no significant effects on the concentration of such particles*."[28]

66. That advice was undoubtedly correct and was confirmed by Dr Broomfield in XX, who agreed that it was no part of his case that the development would give rise to unacceptable impacts in terms of PM 2.5 or PM 10 emissions. It was also common ground between Dr Broomfield and Dr Bull that there is no way of assessing UFPs, and that no scientific

[27] STAL/6/2, Buroni p/e, para 3.42 and 3.46 and in XinC
[28] CD 13.4b para 5

consensus currently exists as to the level below which any adverse health impacts on human or ecological receptors may arise.

67. As with noise, this reason for refusal has been abandoned at the appeal stage and Dr Broomfield now accepts that the development is acceptable on air quality grounds, subject to the imposition of suitable conditions. As with noise, there was quite plainly no proper or reasonable basis for this reason for refusal either, on the undisputed evidence before the Committee.

Reason for Refusal 3: Carbon

68. The problems with this reason for refusal are myriad and were explored with Dr Hinnells in XX. We do not repeat our closing submissions here but, in summary, and in relation to the reason for refusal specifically:

i. There was no evidence before the Committee that the "*additional emissions from increased international flights*" would be "*incompatible with the Committee on Climate Change's recommendation that emissions from all UK departing flights should be at or below 2005 levels in 2050*". The reference to "*emissions… at or below 2005 levels*" is a reference to the planning assumption of 37.5MtCO2. The emissions associated with this development have been modelled by the Government in formulating its MBU policy. And yet, MBU explicitly confirms the Government's view that these emissions - and the emissions from all airports making best use of existing runway capacity - are "*compatible"* with this planning assumption.

ii. As we explain in our closing submissions, IAS emissions are not caught by the amendment to net zero and the planning assumption at the time of the decision was and remains 37.5MtCO_2. It is therefore wholly unclear why the Committee considered that the "*backdrop*" of the amendment to net zero was a new material planning consideration affecting the determination of this application at all.

iii. Moreover, it is agreed (and indeed positively asserted by UDC in its closings[29]) that the "*additional emissions*" from this development are just 0.09Mt$C0_2$. These are, as

[29] UDC Closings para 106(2)

Dr Hinnells agreed, a "*tiny fraction*" of the headroom available for IAS. This would be true whether IAS were included in the net zero target or not. There was simply no evidential basis for the Committee's decision that the emissions associated with this development were somehow incompatible with the headroom available for IAS, against the "*backdrop*" of net zero or otherwise.

iv. "*General accepted perceptions and understandings of the importance of climate change and the time within which it must be addressed*" are clearly not a material planning consideration[30]. Nor is this a reasonable or objective basis for making planning decisions. Quite apart from being wholly imprecise and unclear, the language adopted by the Committee in formulating this reason for refusal reveals a complete failure to grapple with the policy framework for considering the carbon impacts of this development. This is despite the clear and correct advice from Officers that: MBU had not been withdrawn or caveated and remained extant Government policy; there were no policy limits for individual airports to constrain maximum permitted emissions from aircraft movements; that it would be for the Government to consider the CCC's net zero advice and to address this through the Aviation Strategy and that it was not for Local Planning Authorities to embark on "*predictive judgements as to the timing and likely effectiveness of government decisions on achieving the statutory net zero carbon emissions target*."[31]

v. In XX Dr Hinnells abandoned any attempt to defend the Committee's assertion that it would be "*inappropriate to approve the application at a time whereby [sic] Government has been unable to resolve its policy on international aviation climate emissions*". As we explain in our closing submissions, far from being "*unable*" to resolve its policy on IAS, the Government has been clear and consistent that IAS continue to be excluded from the net zero target and that the Government remains committed to addressing IAS through a sectoral, international approach in the first instance. Moreover, the Government's policy on non DCO MBU proposals such as this one is set out in MBU, which *is* extant policy and which confirms that the carbon impacts of this development are acceptable.

[30] See, for example, *Stringer v Minister of Housing and Local Government [1971] 1 All E.R. 65*, at 77
[31] CD 13.3(b) at para 43

69. As we explain in our closings, the minutes of the meeting reveal that Members were in fact preoccupied with the declaration of a local "*climate emergency*" by UDC and other local authorities, which was identified as being a new "*material consideration*". They also appear to have been under the entirely erroneous impression[32] that aviation's 6% contribution to total UK emissions was a "*new*" development since November 2018[33].

70. This discussion then led to the formulation of a reason for refusal which is hopelessly vague and imprecise and is not based on any objective analysis of the impacts of the development nor the policy and decision-making framework, contrary to the clear advice of Officers as to how the carbon impacts of this development should be addressed. As with the other two reasons for refusal, there was plainly no proper or reasonable basis for the decision to refuse permission on the grounds of carbon impacts.

Reason for Refusal 4: Infrastructure

71. There was no debate of this reason for refusal at the meeting and it is not referred to in the resolution to refuse permission. Its provenance remains a mystery.

72. The infrastructure issue that *has* arisen on appeal, and which is considered by Mr Scanlon in his proof of evidence in relation to this reason for refusal[34], concerns the improvement works to Junction 8 of the M11. However, as Mr Scanlon confirmed in XX, the ECC funding issue relating to these works – now no longer an issue for the purposes of this appeal - only arose for the first time after this reason for refusal was promulgated. This cannot therefore explain reason for refusal 4.

73. In closings, UDC now suggests that this reason for refusal is just a "logical extension" of reason for refusals 1-3. If this is correct, however, the Committee's failure to give any consideration to the s106 agreement at the January 2020 meeting beggars belief. Members cannot possibly have formed any proper or informed view of the adequacy of the infrastructure or mitigation package in support of the application, without first turning their minds to the contents of this agreement, which had been so carefully negotiated between STAL, ECC and UDC's Officers over a period of 15 months. By "logical extension",

[32] As agreed by Dr Hinnells in XX
[33] 13.4(a) page 8
[34] UDC/4/1, paras 7.29-7.31

Members also plainly cannot have properly assessed the environmental impacts of this development, without giving *any* consideration to the mitigation and other measures proposed as part of the application.

74. On any analysis, this reason for refusal is therefore wholly unclear and imprecise, has not been substantiated on appeal, and is clearly not a proper or reasonable basis for refusing permission, whether by reference to reasons for refusal 1-3 or otherwise.

(3) Refusing planning permission on a planning ground capable of being dealt with by conditions

75. All four of the witnesses called by the Council conceded that the development was acceptable, subject to the imposition of conditions.[35] UDC has, therefore, produced no witness to support its decision to refuse planning permission for this development.

76. Of the four expert witnesses called by the Council, only Dr Hinnells and Mr Scanlon sought to press condition 15 on the Panel with any real enthusiasm. Dr Broomfield and Mr Trow were clearly not wedded to this approach. For the reasons set out under (4) below, they were right to distance themselves from this manifestly unlawful condition.

77. Moreover, as Mr Cole and Mr Andrew both emphasised in evidence, the imposition of planning conditions is not a matter that requires the agreement of the applicant. It is within the gift of the Council, provided that any conditions meet the relevant legal and policy tests. Given that UDC's witnesses all now accept that any outstanding issues are (and were) capable of being addressed by conditions, it was clearly unreasonable of the Committee to refuse permission outright without at the very least considering whether its concerns could be resolved by the imposition of a revised condition or set of conditions, or whether the decision should be deferred to enable this option to be explored further by Officers.

78. In fact, and as we explain above and as Officers explained at the time, the noise contour condition already provided a complete answer to Members' concerns about the fleet mix projections, which clearly influenced the noise, AQ and carbon reasons for refusal. But if,

[35] Trow and Broomfield xx

for example, Members also wanted a 54dB contour instead of a 57dB contour, or if Members wanted to see an air quality management strategy, there was absolutely no reason why these conditions could not have been imposed by it then, rather than forcing STAL to come to appeal only to raise these issues for the first time now. These were not *even* conditions that STAL would have objected to, had they ever been proposed or requested by UDC.

79. As with the other grounds relied upon, this behaviour falls squarely within the definition of "unreasonable" behaviour, as expressly envisaged by the PPG, and it has led directly to STAL incurring the costs of this appeal.

(4) Seeking to impose a planning condition – condition 15 - which does not accord with the law and is not necessary, relevant to planning and to the development to be permitted, or enforceable, precise and reasonable in all other respects, and thus does not comply with the guidance in the National Planning Policy Framework on planning conditions and obligations

80. Having abandoned any attempt to defend the reasons for refusal on their merits, UDC now seeks to hang its hat on a planning condition – condition 15 – for which it can identify no precedent, and which was acknowledged by Mr Scanlon to be "*novel*". However, the main and insuperable difficulty with condition 15 is not its "*novelty*" but that it is plainly unlawful and does not come close to meeting the policy tests in para 55 of the NPPF, for all the reasons set out in our legal submissions and in our closing submissions, which we reply upon but do not repeat here.

81. The guidance in the PPG makes it absolutely clear that a Local Planning Authority will be liable for a costs order against it, if it seeks to rely on a condition which cannot be shown to be lawful or to meet the well-known para 55 tests. UDC would therefore have been well advised to heed the clear indication given by the Panel at the outset of the Inquiry about its serious reservations concerning this condition.

82. Condition 15 would not have been reasonable had it been dreamed up at the time of the original decision, and it is not a reasonable basis for UDC's defence of this appeal now, in circumstances where all its witnesses accept that the development is acceptable in

principle. As UDC itself observes in closings[36], much time has however been spent on Condition 15, both in questions to witnesses and in written submissions. This has materially added to the length of this Inquiry, which should never have been necessary in the first place, and to the costs incurred by STAL in responding to the case as now put by UDC.

(5) Acting contrary to, or not following, well-established case law

83. As we explain in our legal and closing submissions, UDC's reliance on condition 15 is contrary to extremely well-established legal principles and case law, governing the imposition of planning conditions and the statutory decision-making framework under the Town and Country Planning Act 1990.

84. In addition, UDC has pursued a case at this Inquiry that MBU allows Local Planning Authorities to revisit the carbon impacts of MBU proposals for themselves[37], contrary to the clear direction in MBU that it is local environmental and other impacts (i.e. not carbon emissions from IAS), which should be weighed in the balance with the in principle support provided by MBU.

85. As we explain in our closing submissions, this flies in the face of the extremely well-established and long-standing principle, established forty years ago by the House of Lords in the ***Bushell*** case, that the merits of Government policy are not a matter which can be subject to investigation when determining individual planning applications.

86. This flagrant disregard for the ***Bushell*** principle goes directly to the unreasonableness of reason for refusal 3 and UDC's carbon case at this Inquiry which has occupied such a disproportionate amount of time in evidence and submissions. But it also clearly goes to the unreasonableness of UDC's case as a whole, given the obvious importance of MBU and the weight that must be accorded to its support for this development in the overall planning balance.

[36] UDC Closings para 121
[37] As put to Mr Robinson in XX. See also e.g. UDC/4/1 Scanlon p/e para 9.52

Conclusion

87. For all the above reasons, we respectfully invite the Panel to make a full award of STAL's costs of this appeal against UDC. Alternatively, we invite the Panel to make a partial award of costs, in respect of any of the grounds set out above.

THOMAS HILL QC

PHILIPPA JACKSON

39 Essex Chambers

London WC2A 1DD

12 March 2021

APP/C1570/W/20/3256619 (UTT/18/0460/FUL)

AIRFIELD WORKS COMPRISING TWO NEW TAXIWAY LINKS TO THE EXISTING RUNWAY (A RAPID ACCESS TAXIWAY AND A RAPID EXIT TAXIWAY), SIX ADDITIONAL REMOTE AIRCRAFT STANDS (ADJACENT YANKEE TAXIWAY); AND THREE ADDITIONAL AIRCRAFT STANDS (EXTENSION OF THE ECHO APRON) TO ENABLE COMBINED AIRFIELD OPERATIONS OF 274 000 AIRCRAFT MOVEMENTS (OF WHICH NO MORE THAN 16 000 MOVEMENTS WOULD BE CARGO AIR TRANSPORT MOVEMENTS (CATM)) AND A THROUGHPUT OF 43 MILLION TERMINAL PASSENGERS, IN A 12 MONTH CALENDAR PERIOD AT STANSTED AIRPORT

SUBMISSIONS ON BEHALF OF UTTLESFORD DISTRICT COUNCIL

IN RESPONSE TO A COSTS APPLICATION MADE BY

STANSTED AIRPORT LIMITED ON 12 MARCH 2021

[Page number references are to the printed page unless otherwise stated; [CD10.1] = Core Document 10.1; **[34]** = page 34 of the Costs Bundle accompanying these submissions]

Introduction

1 Over the course of 30 sitting days, from 12 January 2021 to 12 March 2021, three Inspectors ("the Panel"[1]) heard an appeal[2], brought by Stansted Airport Limited ("STAL") against a decision of the local planning authority, Uttlesford District Council ("UDC") ("the Appeal").

2 From inception of the Appeal on 24 July 2020, STAL had maintained that:

> '*...there was no reasonable or sound basis for UDC to reverse its original resolution to grant planning permission and ultimately, after a lapse of 14 months, to refuse permission. These actions, and its formulation of unclear, imprecise reasons for refusal have led to an avoidable appeal, creating delay and uncertainty, and wasted expenditure for the Appellant*' (Statement of Case §4.3)

[1] In what follows, it is assumed that where an individual Inspector commented or gave direction to the parties, that comment / direction is to be attributed to the Panel.

[2] By inquiry, pursuant to s.78 of the Town and Country Planning Act 1990

3 Thereafter STAL menaced UDC with the threat of costs but persistently refused to make the application, still less articulate what it would rely on to support it. Indeed, STAL even refused to confirm that one would be made.

4 Then, on the afternoon of the last day of the inquiry, as a coda to the whole proceedings, Queen's Counsel for STAL[3] made a costs application, conjuring a 22-page written submission setting out, for the first time, the application, its grounds, and what it was relying on to support it.

5 This is not how costs applications in planning inquiries are to be made.

6 It is an affront to the orderly conduct of inquiries. It is an affront to the fairness of the process. This Inquiry should not condone such behaviour. It is unforgiveable. If rejecting this inexcusably late application really leaves STAL deprived of costs, its remedy lies elsewhere.

7 These submissions and accompanying documents[4] constitute UDC's response to the costs application, submitted pursuant to directions issued by the Panel on 12 March 2021. They are divided into the following sections:

(1) Timing of the application
(2) Procedural history relating to the costs application
(3) Resulting unfairness and prejudice to UDC in responding to the costs application
    (i) Ensuring fairness to the recipient of a costs application
    (ii) Ensuring that matters relating to any costs application are properly ventilated and considered
    (iii) Avoiding delays by additional time having to be set aside to deal with a late costs application
(4) Relevant legal background
    (i) General legal principles applicable to costs applications
    (ii) Discussions at Planning Committees, Minutes, and Reasons for Refusal

[3] Mr. Thomas Hill QC
[4] A Costs Bundle and Authorities Bundle accompany these submissions.

(iii) Immateriality of advice on costs consequences to question of reasonableness

(iv) Proper scope of legal advice on material considerations

(5) Response to Grounds 1 – 3

(i) UDC's detailed consideration of the application

(ii) Reasonableness of the decision in January 2020

(iii) Substantiation of UDC's decision at the time it was taken through expert evidence on appeal

(iv) UDC's position after publication of the ESA on 16 October 2020

(v) Residual points under Grounds 1 – 3

(6) Response to Ground 4

(7) Response to Ground 5

(8) Conclusion

8 The timing of the application, and the way it has been allowed to be made, has caused prejudice to UDC in its ability fully and fairly to respond to it. Quite apart from that fatal flaw, the application is devoid of any merit and should be refused.

(1) Timing of the application

9 STAL waited until the very last minute to make its costs application, to reveal its grounds, and to reveal what it relied upon to support it.

10 STAL's 12 March application was not based on procedural matters or the conduct of UDC at this inquiry. Not at all. Rather, the costs application is founded upon and revolves around antecedent matters. What it is based on was just as manifest in July 2020 as it was in March 2021. The application is expressed to be based upon, first and foremost, the conduct of UDC in handling the application, involving factual matters which took place over 15 months ago (between November 2018 and January 2020), and which have been known to STAL since it lodged its appeal in July 2020.

11 The making of a costs application on the last day of an 8-week inquiry, based on historic factual matters known to the applicant for many months, is a repudiation of the guidance on costs

contained in the PPG. The PPG spells out the procedure that is to be followed for making such applications (ID: 16-035, emphasis added):

'*Applications for costs should be made as soon as possible, and no later than the deadlines below:*

- *In the case of appeals determined via the Householder Appeals Service, Commercial Appeals Service, appeals against the refusal of advertisement consent and appeals against tree preservation orders…*
- *In the case of appeals determined via written representations …*
- *In the case of hearings and inquiries:*
    - *All costs applications must be formally made to the Inspector before the hearing or inquiry is closed, but as a matter of good practice, and where circumstances allow, costs applications should be made in writing before the hearing or inquiry. Any such application must be brought to the Inspector's attention at the hearing or inquiry, and can be added to or amended as necessary in oral submissions.*
    - *If the application relates to behaviour at a hearing or inquiry, the applicant should tell the Inspector before the hearing is adjourned to the site, or before the inquiry is closed, that they are going to make a costs application. The Inspector will then hear the application, the response by the other party, and the applicant will have the final word. The decision on the award of costs will be made after the hearing or inquiry.*

- *For all procedures, no later than 4 weeks after receiving notification from the Planning Inspectorate of the withdrawal of the appeal or enforcement notice …*

Anyone making a late application for an award of costs outside of these timings will need to show good reason for having made the application late, if it is to be accepted by the Secretary of State for consideration.'

12 The phrase '*as soon as possible*' is more stringent than '*as soon as reasonable*' or even '*as soon as practicable*'. It demands a higher degree of expedition: its yardstick is what is possible rather than what is reasonable or what is practicable. It is impermissible to dilute the meaning of the phrase by an application of the PPG that does not inquire as to when it would have been possible to make the application or, having ascertained that date, to brush over or make light of the time that elapses thereafter. And if the guidance in the PPG is not to be followed, that needs to be recognised and justification for the deviation articulated. To do otherwise is an error of law.

13 The relevant terms of the PPG are not new. They have been in place for years. The guidance is not to be ignored, least of all by those boasting three decades' experience of planning inquiries.

14 Rather, STAL's 12 March application was an expression — the first expression — of the particulars that lay behind the generalised criticism that STAL had made in its Statement of Case way back in July last year. These had all been known to STAL in July last year. But in defiance of the PPG, STAL elected — presumably on professional advice — to hold back on these so as to keep known to just itself how it would frame the application. This, of course, secured an advantage to it in the preparation of proofs, in the presentation of its witnesses and in the cross-examination of UDC's witnesses. STAL subordinated obedience to the requirements of the PPG to its own tactical interests.

15 This disobedience to the Guidance strikes at its rationale. The rationale for the Guidance is to ensure that costs applications are front loaded and are made when the basis for them arises, with a view to achieving three aims:

(1) Ensuring fairness to the recipient of a costs application in knowing at an early stage whether a costs application is to be made or is anticipated and on what basis;
(2) Ensuring that matters related to any costs application are properly ventilated and considered through relevant evidence heard and tested at the inquiry;
(3) Avoiding delays by additional time having to be set aside to deal with an application made at a late stage, which could otherwise have been dealt with during the scheduled inquiry.

16 As explained below (§63ff.), STAL's costs application confounds each of these aims. It amounts to an ambush of UDC and results in serious and substantial unfairness to UDC in responding to it.

(2) Procedural history relating to the costs application

17 By decision notice dated 29 January 2020, UDC refused planning permission for airfield works and additional aircraft stands at Stansted Airport so as to enable an additional 8 million passengers per year, resulting in a total throughput of 43 million passengers per year. The refusal was on the basis of four stated reasons for refusal (RFRs) contained in the Decision Notice at [CD12.10] (in summary):

(1) A failure to demonstrate that the proposal would not result in detrimental effects from aircraft noise.
(2) A failure to demonstrate that the proposal would not result in detrimental effects on air quality.
(3) The incompatibility of the additional emissions resulting from the proposal with climate change policy and targets.
(4) A failure to provide the necessary infrastructure to support the proposal or necessary mitigation to address the detrimental impact resulting from it.

18 On 4 February 2020, at one of a number of regular meetings between UDC Officers and STAL to discuss operational matters at Stansted Airport, officers were informed that STAL was considering a range of options as to how it might respond to the refusal of their application in January 2020, including a resubmission of the application, an NSIP, or an appeal **[3]**. On 3 March 2020, officers were informed that if an appeal were to be lodged, STAL would seek to update its Environmental Statement for the appeal. After that appeal was lodged in July 2020, upon enquiring as to the scope of that update, officers were told only that the base date would be updated together with revised air traffic forecasts **[4]**.

19 On 24 July 2020, almost 6 months after UDC's decision of 29 January 2020, STAL issued its appeal. Its Statement of Case referred, variously, to unreasonableness relating to [CD24.1, §§4.3, 4.15, 4.20, 4.31, 4.35]:
(1) UDC's decision to reverse its original resolution to grant permission in November 2018;
(2) The noise RFR given the negligible noise impacts and condition offered;
(3) A lack of technical evidence supporting the air quality RFR; and
(4) A lack of clarity and precision in the carbon and infrastructure RFRs.

20 It is not uncommon for an appellant to refer in an appeal to what it considers to be unreasonable behaviour, and to threaten to make a costs application, without ever making an application for costs. That is precisely why the PPG requires parties to be open and transparent about whether a costs application is likely to be made and to do so, as soon as the basis for such an application is known. Despite the references above to unreasonableness, no application for costs was threatened in STAL's Statement of Case, and no application was made.

21 By letter dated 12 August 2020, PINS issued its standardised start letter, directing UDC to submit its Statement of Case by 16 September 2020 **[5-9]**. On 20 August 2020, within one week of receipt of the start letter, UDC sought a 4 week extension to that deadline from PINS, explaining that the decision was an overturn of officer recommendation, meaning that external expert consultants would need to be instructed and briefed for the Appeal, that delays had been caused by the summer period and COVID-19 restrictions, that there was a wide range of potential issues (with STAL proposing to call 11 witnesses), that this was reflected in the estimated length of inquiry (40 days), and that there was no prejudice to STAL by such an extension **[10-12]**. By letter of the same date, STAL objected to any extension, without raising any prejudice **[13-14]**. The request for an extension was refused by email on 25 August 2020, with the Inspector stating that it is '*important that all parties are aware of the issues involved as soon as possible if the inquiry is to proceed efficiently*', and that UDC '*should be able to provide details of its reasons why it refused planning permission and the case it will make without delay*' **[15-16]**. The use of the phrase '*as soon as possible*' is to be noted – it is the same phrase as appears in the relevant paragraph of the PPG.

22 By late August, UDC had instructed its expert witness team. Just over 2 weeks later, on 16 September 2020, UDC duly submitted its Statement of Case which was directed to its RFRs. It concluded that [CD24.2, §§5.2-5.4] (in summary):

(1) Given both the nature of the proposal and the sensitivity of the site, the application was rightly subject to detailed evaluation by UDC.
(2) The proposal was recognised to be a very important development, and UDC had a heavy and enduring responsibility to its constituents in considering it.
(3) The consideration of the application through a sequence of meetings between November 2018 and January 2020 showed that UDC needed to be convinced about the nature and scale of effects that would result from the implementation of the planning permission, and importantly, the ability for those effects to be adequately mitigated.
(4) As an outcome of that process, UDC concluded that the information provided as at January 2020 fell short of that required to properly assess the environmental impacts associated with the application. Without that information, it was not possible to conclude on the nature of the impacts arising and, as a consequence, the adequacy of the proposed mitigation, leading to refusal of the application.

(5) UDC proposed to call expert witnesses to demonstrate the assessments which should be undertaken in relation to aircraft noise, air quality, and carbon emissions, which may require additional mitigation and alternative controls. If necessary measures were not feasible or enforceable, the appeal should be dismissed.

23 UDC's Statement of Case addressed the valid reasons why its consideration of the application had been lengthy and detailed, reflecting the scale and importance of the proposal, the environmental effects of which would be experienced for generations. UDC's Statement of Case also clearly signalled the prospect that adequate mitigation for the proposal was a key concern. Despite this, STAL did not approach UDC at any point after UDC's Statement of Case was submitted (or indeed at any point after its decision in January 2020) to discuss whether alternative or strengthened mitigation in the form of conditions could be agreed, and it was not until late in the inquiry that any meaningful discussion on mitigation was raised by STAL at all[5].

24 On 17 September 2020, in the normal way, PINS' Agenda for the forthcoming Case Management Conference included '*Costs*' as an item, putting the parties on notice that costs would be discussed (Agenda Item 12).

25 On 24 September 2020, at the Case Management Conference (CMC), Inspector Boniface observed that there was no costs application before the Panel, and said that, as such, he assumed there was no application to be made. The parties were asked directly whether any costs application was contemplated.

26 STAL – represented by Queen's Counsel - remained silent.

27 That silence in the face of the Inspector's observation and question signified that, despite having complained about UDC's refusal in its Statement of Case, STAL was making no costs application. It would have been obvious to STAL that that was what it was signifying to UDC and the Rule 6 party, Stop Stansted Expansion ('SSE'). The position was recorded in the Panel's

[5] Whilst comments on the general Conditions proposed by UDC were made by STAL, and updates to the s.106 were discussed, STAL did not approach or engage with UDC on Condition 15 – which was proposed by UDC on 4 December 2020 – until after 5 February 2021, once the aircraft noise, air quality, and carbon emissions sessions at the inquiry had completed. STAL proposed its Condition 10B (seeking to deal with Air Quality, but not Carbon Emissions) on 1 March 2021.

CMC note of 2 October 2020 at para. 34, together with a reference to the PPG as to the timing of any application for costs **[22]**:

> '*No application for costs is currently anticipated by any party. If an application is to be made, the Planning Practice Guidance makes it clear that they should be made in writing to the Inspector before the Inquiry or as soon as reasonably possible…*'

28 STAL did not write to suggest that this did not faithfully record STAL's position.

29 At the CMC, having previously indicated that its Environmental Addendum Statement would be published in late September[6], STAL sought, and was granted, additional time for the submission of its Environmental Statement Addendum (to 16 October 2020), in part in order to respond to points made in UDC's Statement of Case. This was recorded in the Panel's CMC note of 2 October 2020 (**[21]** §26). At the same time at the CMC, the parties were also directed to submit proofs of evidence by 8 December 2020 (1 week earlier than the usual 4 weeks before commencement of an inquiry) on the basis of the proximity of the Inquiry to the Xmas break (§28).

30 On 16 October 2020, STAL submitted its ESA. This was a substantial document, comprising 18 Chapters of main text (over 400 pages), plus numerous Appendices and a Non-Technical Summary in a total of 4 volumes [CD7.1-7.18, 8.1-8.9, 9.1-9.4, 10.1]. The base date for assessment was moved forward by 3 years (from 2016 – 2019) and it included a new set of air traffic forecasts which sought (inter alia) to account for the effects of the COVID-19 pandemic. Within the ESA, STAL took the opportunity to respond to matters raised in UDC's Statement of Case [CD10.1, p.2, last para.]. None of the responses set out in Appendix 2A asserted that UDC had behaved unreasonably [CD8.2]. Consistently with its stance at the CMC, STAL did not make a costs application at or about the time of it submitting the ESA. The added significance here is that by now STAL knew full well what UDC's case was and STAL had had a full month to analyse and absorb it.

31 On 3 December 2020, Mr. Coppel QC (representing UDC) telephoned Mr. Hill QC (representing STAL)[7] with a view to discussing draft "Condition 15". Condition 15 was a Condition formulated

[6] As recorded in its letter for the CMC dated 23 September 2020 **[25-26]**.
[7] Hereafter Mr. Coppel QC and Mr. Hill QC respectively.

by UDC's appointed expert team following its consideration of the ESA and the environmental effects predicted. It comprised a single mechanism to address and mitigate all of the environmental effects referred to in UDC's Decision Notice of January 2020 in the light of the environmental effects presented in the ESA, which had been published on 16 October 2020.

32 A meeting was arranged between Counsel for the day after, on 4 December 2020. On the morning of 4 December 2020, on a without prejudice and confidential basis, Mr. Coppel QC sent an email to Mr. Hill QC enclosing a draft of Condition 15 (with some parts of the Schedules to be filled) **[27-28]**. The email stated that at the meeting Mr. Coppel QC would explain how the Condition worked, the thinking behind the paragraphs, and answer any questions of understanding which Mr. Hill QC might have, so that Mr. Hill QC could take instructions from STAL and respond. The email stated that the draft, or something substantially the same, might serve to bridge the gap between UDC and STAL, or certainly narrow the gap sufficiently that whatever remained could be overcome. The meeting between Counsel took place at 4.30pm that day. No response to Condition 15 was made by STAL following that meeting. No application for costs was made by STAL after that meeting.

33 On 8 December 2020, pursuant to the directions issued at the CMC, proofs of evidence were exchanged. Each of UDC's proofs on aircraft noise, air quality, and carbon emissions, reviewed the application and the evidence before UDC when it took its decision in January 2020. Each proof expressly concluded that, in the view of the particular expert witness, UDC's decision was both reasonable and understandable[8]. UDC's planning proof came to the same conclusion, based on the expert opinions of UDC's other witnesses[9]. Some of STAL's evidence sought to analyse the strength of UDC's objection prior to the publication of its ESA on 16 October 2020. STAL's planning witness, Mr. Andrew, included a section in his proof on UDC's handling of the application [STAL/13/2, section 8].

34 Once again, no costs application was submitted by STAL.

35 On 22 December 2020, pursuant to the directions issued at the CMC (**[22]** §30), final timings for witness handling were sent to PINS by all parties. UDC's time estimates were duly based

[8] See Mr. Trow on aircraft noise at UDC/1/2, §§6.2, 8.8, and UDC/1/4, responding to paras. 3.1, 6.8.2, 8.1.1; Dr. Broomfield on air quality at UDC/2/2, §§113, 55-57, and UDC/2/4, p.9; Dr. Hinnells on carbon emissions at UDC/3/1, §§29, 99.
[9] See Mr. Scanlon on planning at UDC4/1, §2.3.

on the issues of difference arising out of the evidence submitted. Given that there was no costs application, UDC could not identify the matters upon which such an application would be based, still less work out which witnesses could speak to those matters or calculate the time needed for questioning them about those matters.

36 On 5 January 2021, rebuttal evidence was exchanged. None of STAL's rebuttal evidence sought to argue with UDC's expert evidence that UDC's decision was a reasonable one at the time it was taken[10]. As to UDC's position following the publication of the ESA and exchange of proofs of evidence, two points were raised (as relevant):

(1) STAL's Carbon-Technical witness, Mr. Vergoulas, asserted that it was unreasonable for UDC's carbon emissions witness, Dr. Hinnells, to make requests for further clarification of the ESA carbon projections in his proof [STAL/9/3, §31]. Following exchange of proofs, this point had been further discussed and addressed in the Statement of Common Ground on Carbon [CD25.5, 18 December 2020]. It also does not form part of STAL's costs application.

(2) STAL's planning witness, Mr. Andrew, included a section on Condition 15 in his rebuttal [STAL13/4]. Despite the meeting held between Counsel on 4 December 2020 during which Condition 15 was presented and explained, this was the first response received by STAL. The rebuttal proof asserted that it would be unreasonable for STAL to agree to a proposition that would effectively allow growth only in annual increments [§3.5]. This assertion disclosed a misunderstanding as to the meaning and effect of Condition 15 (UDC's Closing, §§124-135). No application for costs was made by STAL.

37 On 12 January 2021, the inquiry opened as scheduled. In making his opening remarks, Inspector Boniface once again drew all parties' attention to the PPG on the award of costs at inquiries. He stated that he was not inviting any such applications, but that if there were to be any, then they should be made '*at the earliest possible opportunity*', and certainly before the inquiry closes. When asked if any party had an intention to seek costs, Mr. Hill QC stated that it was a matter touched upon '*albeit very briefly*' in STAL's Opening. In response, Inspector Boniface stated that if there was an intention to seek costs, STAL should make everybody aware of it as soon as possible, so that there would be '*no surprises*' and everybody had an opportunity to address those matters. Mr. Hill QC stated that he completely understood that

[10] Mr. Cole's Rebuttal simply reiterated statements made in his proof that the noise RFR was unreasonable.

and that he also assumed that the Panel would want any application to be made in writing with an opportunity for the party to respond and then a final right of reply. Inspector Boniface agreed, but indicated that the Panel may hear those applications orally as well, but it would certainly be useful to have them in writing.

38 For the first time in its Opening submissions, STAL revealed that it was contemplating a costs application. In a single sentence, STAL said that it was giving a '*warning*' both to UDC and SSE that once the evidence was complete it would seek compensation for any wasted costs it was obliged to bear in prosecuting the appeal. STAL's Opening went on to comment that that was '*for another day*' [INQ1, §105-106]. No basis for any contemplated application, let alone a reasoned basis, was set out. No reference was made to the PPG or to paragraphs against which a costs application was contemplated.

39 Both UDC and SSE objected to the mere warning of a costs application at this stage, and the unfairness of the approach taken and suggested. In particular, UDC:

(1) referred the Panel to the PPG guidance (ID: 16-035);
(2) noted that when asked at the CMC in September 2020, the prospect of a costs application had not been raised by STAL (as recorded by the Panel);
(3) noted the lack of any application and any particulars as to its basis;
(4) stated that any costs application would affect the way in which evidence was given, namely the way in which UDC's witnesses would give their evidence, and the way in which STAL's witnesses might need to be cross-examined;
(5) stated that UDC's time estimates had been provided on the basis of no costs application and the inquiry schedule set accordingly, and that a costs application would affect those time limits.

40 "Warnings" form no part of the PPG in dealing with costs. What the PPG demands from a party seeking its costs is an '*application*' for costs – not a "warning" of one – and for it to be made '*as soon as possible*' – not "at the last moment possible". If Mr. Hill QC actually thought that uttering a "warning" was enough to wriggle out of what the PPG demands, he was wrong.

41 In response, Inspector Boniface reiterated – not for the first time - that any costs application should be made as soon as possible. He suggested that Mr. Hill QC share any details as to the

basis of its costs application with UDC outside of the inquiry. He requested that a formal application be made as soon as possible. He noted that a feature of the evidence before the inquiry and Opening submissions had been the process followed by UDC and whether the decision was justified. Whilst he was happy for that to be aired, those were matters for any costs application, and the Panel did not want to keep hearing about those matters in evidence. Rather, the inquiry should focus on the evidence before it now. The parties were asked to frame their evidence and arguments on that basis.

42 Pausing there, if it had not been obvious to STAL before, the Inspector's reiteration should have made it so. Absent a costs application founded upon or directed to the process that UDC had followed and the reasonableness of the decision, these were not matters in issue before the inquiry and so time with witnesses was not to be wasted on them.

43 Following that exchange, at no stage did Mr. Hill QC or STAL approach UDC either formally or informally to confirm that it would be seeking costs or to provide the basis of any application.

44 Having noted Inspector Boniface's comments, and the lack of any costs application against it, UDC did not spend inquiry time going over the history of the application which had been covered in its written evidence. To have sought to do so without a clear articulation by STAL as to exactly what facet of UDC's decision-making process was relied upon would have been impossible – or at least impossible without devoting days to chasing down every possible avenue of complaint: it had been a very involved decision-making process.

45 As part of examination in chief, each of UDC's expert witnesses on aircraft noise, air quality, and carbon emissions simply read out and confirmed the opinions contained in their written evidence that, at the time the decision was taken, UDC's decision was a reasonable one. Importantly, none of UDC's witnesses were challenged in cross-examination on these opinions, which had been stated in writing and confirmed orally. Rather, STAL spent a limited amount of time in cross-examination asking UDC's witnesses to confirm facts around the history of the application, without ever putting its case on unreasonableness, fairly and squarely, to any UDC witness.

46 In week 6 of the inquiry, on Wednesday 24 February 2021, and in advance of the sessions involving planning evidence, Inspector Jones requested an update from STAL as to its position

on any costs application, '*particularly bearing in mind what ha[d] been said previously*'. This presumably referred to the need for a costs application to be made as soon as possible.

47 On the same day, Mr. Hill QC responded that, having given an early indication that it was considering a costs application, final instructions on whether a costs application would be made could only be received after all of the evidence had been heard against the background of the case. As soon as the evidence had been completed, STAL would give an indication as to what would be forthcoming.

48 Mr. Coppel QC again responded and reiterated that no application had been made (whether against UDC or SSE). A marker was put down that, to the extent that any application related to matters which took place before the start of the inquiry, UDC may be seeking to recall witnesses, and that all questioning of UDC's witnesses and cross-examination of STAL's witnesses had been predicated on there being no costs application, which had accelerated matters at the inquiry. Mr. Hill QC responded that he did not want UDC to anticipate STAL's application before it was made, and then gave evidence to the inquiry that he himself had never made an application for costs in advance of the close of an inquiry, and that the guidance was clear that there was no imperative on any party to make an application prior to that time. If the application could have been made earlier and matters drawn to the attention of the parties earlier, then – he carried on - there may be something to say about that, but STAL's focus was how the case unfolded in the round once tested in cross examination. Inspector Jones noted that there was no application before the inquiry and if one were to be made, all parties affected would be given a '*full opportunity*' to respond. Inspector Jones confirmed from Mr. Hill QC that STAL's position was that there was a possibility of a costs application, but that Mr. Hill QC had no instructions on it at the moment.

49 Again pausing here, client instructions do not provide an escape route from the requirements of the PPG or from elementary principles of fairness. It is the duty of counsel to advise the client of the requirements and of the consequences of non-adherence. Mr. Hill QC's statement that only after the evidence had been completed would STAL give an indication as to whether it would be making a costs application was a further repudiation of the requirements of the PPG to make such applications '*as soon as possible*' and a deliberate ignoring of the repeated reminders given by the Panel.

50 Pursuant to that exchange and given the lack of any costs application to address in evidence, UDC did not spend time in examination in chief of its planning witness, Mr. Scanlon, covering the history of the application, which was a matter addressed in the written evidence. Based on the expert evidence of UDC's other witnesses, whose views had not been challenged by STAL on this point, Mr. Scanlon recorded that there was a failure to demonstrate that there would not be a detrimental effect on environmental conditions, and the refusal to grant permission was appropriate [UDC/4/1, §2.3]. As to the history of the application, in cross-examination, STAL's questions were limited to factual matters as to what officers had concluded previously and how the application had proceeded, the weight which officers gave to certain material considerations, what the minutes of meetings did or did not say, and the conclusions of the ES and ESA. At no point did STAL seek to challenge the view recorded by Mr. Scanlon that the decision was a reasonable one at the time it was taken.

51 At the end of week 7, on 5 March 2021, after all the evidence had been heard and after the Planning Conditions and Obligations session, Mr. Hill QC revealed that STAL would be making a single costs application against UDC (not SSE) for the full costs of the inquiry. Disregarding what he had told the inquiry on 24 February (i.e. that the application would be made after all the evidence had been heard), Mr. Hill QC did not then make the application and gave no grounds, particulars, or other indication of what it would contain.

52 Inspector Boniface then asked if STAL had prepared its costs application in writing. Mr. Hill QC responded that STAL were doing that, but that it was – now - in large part parasitic on STAL's closing submissions which were still being completed, and that it was STAL's intention to make its application after closing submissions and that the costs application would be available in writing thereafter. Mr. Hill QC's '*instinct*' was to allow UDC a 7 day period thereafter to respond in writing, then to allow STAL a further 7 day period for a final right of reply. Mr. Hill QC did not even pretend that it would not have been possible for STAL to have made the application sooner.

53 UDC reserved its position in relation to making a cross-application for costs. Mr. Coppel QC stated that the position was wholly unsatisfactory and wholly unfair on UDC. UDC needed to see exactly what was in the costs application in order to be able to respond to it. He stated that on seeing it and having the opportunity to respond, UDC may make a cross-application,

and quite possibly, there may be a need to recall witnesses to cover matters which would have been in issue had STAL indicated the basis for its costs application at an earlier stage.

54 Inspector Boniface enquired why the contents of STAL's application for costs would have a bearing on UDC's evidence. Mr. Coppel QC reiterated that UDC needed to know the basis for the costs application. If there were matters which were known to STAL before the start of the inquiry, but STAL had chosen not to disclose their basis for costs, that would have changed the way in which UDC had questioned UDC and STAL's witnesses. By not disclosing the basis for the costs application, STAL had been given an unfair advantage over UDC in presenting its case. Inspector Boniface asked whether UDC was in a position to agree to the costs application being dealt with in writing. Mr. Coppel QC confirmed as UDC had not yet seen the application UDC was not in a position to agree that, but that oral submissions were very likely to be needed. Inspector Boniface commented that he would be a little surprised if that were the case since – in the Inspector's view - much of UDC's evidence seemed to go to the point of costs.

55 On 11 March 2021, both SSE and UDC delivered their closing submissions. On the morning of 12 March 2021, STAL delivered its closing submissions. At the end of those submissions, Mr. Hill QC said that STAL would circulate its costs application over the lunch adjournment to allow the Panel an opportunity to consider whether it was content to follow the approach of dealing with costs by an exchange of written submissions. Inspector Boniface agreed with that approach, noting that that would give an opportunity for both the Panel and UDC to look over the application over lunchtime. He indicated that the Panel was minded to, or hopeful, that the costs application could be dealt with in writing, but they would see what the application said. Mr. Hill QC indicated that STAL would do that as soon as the inquiry was adjourned. The application was received 10 minutes later at 1310hrs. It consisted of 22 pages of submissions, based on 5 stated grounds, referable to the PPG. It is focussed on UDC's handling of the application between November 2018 and January 2020 – all well known to STAL by July 2020.

56 Fifty minutes later, at 1400hrs, the luncheon adjournment having concluded and the inquiry resumed, Inspector Boniface asked whether UDC was able to agree that the application could be dealt with in writing. Based on a first look at the application, Mr. Coppel QC objected to the timing of the application, reiterating points it had warned of previously, and in particular noting that the application was based on matters known to STAL before the inquiry

commenced, and that there was no legitimate reason for the application being made right at the last minute. Had the application been made at an early stage, in compliance with the PPG, those matters raised could then be covered in evidence and tested in cross-examination. Mr. Coppel QC stated that it was a totally unsatisfactory way for an application to be made. STAL had gained an unfair advantage by not disclosing the basis for its costs application in advance of the inquiry, which UDC had not had a chance to address in its evidence or to explore with STAL's witnesses. Mr. Coppel QC sought time to consider and take instructions on the application and to decide how to respond, whether with submissions, further documents, and / or the calling of further evidence. Directions were sought to allow UDC to suggest an appropriate way forward with a view to further case management by the Panel thereafter. The possibility of a cross-application for costs was raised based on the lateness of the application and consequential costs. Given the sums of money potentially involved, a proper time to respond was needed.

57 Inspector Boniface stated that the application and the matters raised should not have come as a surprise to UDC given the indication that a costs application would be made. In Inspector Boniface's view, there was nothing which explained why it would be necessary to recall witnesses. The Panel was minded to deal with the matter in writing. Mr. Coppel QC made clear that it needed a proper opportunity to take instructions on how the application could best be dealt with, without compromising fairness. The Panel then adjourned for 10 minutes to consider the way forward.

58 Having resumed, the Panel rejected UDC's suggested way forward. It ruled that, having heard the submissions of the parties, the Panel would deal with costs in writing. The reasons given for that decision were as follows: '*There has been a clear application, and provided the Council has sufficient time to consider it and make a response, there is no reason why that should be unfair or that it shouldn't adequately deal with the matter.*' No reference was made to the guidance in the PPG, still less was any attempt made to reconcile the timing with the requirement in the PPG that costs applications be made '*as soon as possible*'.

59 UDC was granted 28 days to respond to the application in writing (9 April 2021), with STAL having a further 14 days for a final written reply (23 April 2021). No opportunity to respond to STAL's reply was granted to UDC on the basis that any reply from STAL would not raise new matters.

(3) Resulting unfairness and prejudice to UDC in responding to the costs application

60 The costs application is for a full award of costs against UDC for the whole of the appeal. It is based on 5 separate grounds (in summary):

(1) Preventing development which should clearly be permitted

(2) Imprecise, vague and / or unsubstantiated reasons for refusal

(3) Refusing planning permission on grounds which were capable of being conditioned

(4) Seeking to impose Condition 15 which is unlawful and does not meet the policy tests for a condition

(5) Unlawfully revisiting the merits of Government policy

61 The primary focus of the costs application relates to historic matters leading to UDC's decision of January 2020. That is the basis for Grounds (1) to (3). Insofar as the submissions relating to those Grounds refer to evidence given at the inquiry, they seek to record purported concessions by UDC witnesses as to those historic events. Ground (4) relates to Condition 15, which STAL has known about since 4 December 2020 when it was shared with Counsel as a basis for discussion, and which STAL sought to address in its rebuttal evidence of Mr. Andrew submitted on 5 January 2021. Ground (5) applies both to the RFR on Carbon Emissions of January 2020 and the alleged pursuit of an unlawful approach to Government policy at appeal which, if true, would have been known to STAL from exchange of proofs on 8 December 2020 at the latest.

62 There is no legitimate reason why the costs application, focussed as it is on matters leading to UDC's decision of January 2020, could not have been made with the Appeal in July 2020, or soon after 16 September 2020, when UDC's Statement of Case was submitted. Grounds (4) and part of Ground (5) could have been raised well before the start of the inquiry on 12 January 2021. To the extent that STAL has relied on matters that post-date July 2020, they are introduced by STAL to deflect attention from the central plank of the costs application – that the January 2020 refusal was an unreasonable decision – and betray STAL's recognition that it needs to disguise it deliberate decision not to disclose the application it had intended to make from inception of its appeal.

(i) Ensuring fairness to the recipient of a costs application

63 It is a fundamental principle of fairness that a party to legal proceedings should know the case which it has to meet. In relation to costs applications in planning appeals, that is the reason why the PPG advises that costs applications should be made as soon as possible. That part of the advice was recorded in writing in the Panel's CMC note of 2 October, repeated to STAL by Inspector Boniface on the opening day of the inquiry 12 January 2020, and plainly motivated the raising of the issue by Inspector Jones on 24 February 2021. It is clearly envisaged within the PPG that a costs application can be made, identifying its basis, but then can be supplemented or added to if the manner of presentation at the inquiry itself gives grounds for doing so. The point is that it should be made early so that the party receiving it knows the case that it has to meet and the basis for it. Such an approach is consistent with ensuring fairness between the parties in dealing with such applications. It is a central tenet of all adversarial proceedings, whether called "inquiries" or "court proceedings" or "arbitrations".

64 Not only has STAL failed to follow the advice in the PPG, but it has acted in flagrant disregard of it and its rationale. It has done so in order to gain an unfair advantage over UDC. There is no lawful basis for disregarding the PPG as to the timing of costs applications. There is no lawful basis for allowing tactical favours to one party against another.

65 When asked directly by Inspector Boniface on 24 September 2020 whether any costs application was anticipated, STAL should have stated that a costs application was anticipated relating to UDC's refusal of the application. By remaining silent, STAL gave the false impression that matters raised in its Statement of Case were not matters which would form the subject of a costs application against UDC. When on 12 January 2021 Inspector Boniface again requested that any costs application be made as soon as possible and suggested that Mr. Hill QC share the basis of any potential costs application with UDC, STAL's failure to make any application, and Mr. Hill QC's failure to contact UDC to explain its basis, repeated the false impression that no costs application was contemplated against UDC, in circumstances where both UDC and SSE had been warned of the potential for a costs application in a single sentence in STAL's Opening.

66 Instead, STAL has operated under the radar in relation to its potential costs application, leading its own evidence and asking some questions of UDC's witnesses by stealth, without

disclosing the detailed basis and grounds for its anticipated costs application, which would have allowed UDC to challenge the evidence and to make a proper and full response.

(ii) Ensuring that matters relating to any costs application are properly ventilated and considered

67 Given that no costs application was made with the appeal in July 2020, no costs application was disclosed as being anticipated when STAL was asked in September 2020, no costs application was made when the ESA was published in October 2020, nor when proofs were exchanged in December 2020 (or thereafter), UDC provided its final time estimates for examination in chief of its witnesses and cross examination of STAL's witnesses on 22 December 2020 without including time to deal with costs matters. The inquiry schedule was set accordingly.

68 In reliance, first, on Inspector Boniface's clear indication on the opening day of the inquiry that, whilst historic matters relating to the justification for UDC's decision had been and could be aired, the Panel did not want to go over historic matters but wanted to focus on the evidence as it was now, and in reliance, secondly, on there being no costs application, UDC's witnesses dealt briefly with UDC's decision by reading out relevant parts of their written evidence, and then focussed on the environmental effects as reported in the ESA. STAL's witnesses were not, and could not, be cross-examined on as yet unknown and unparticularised costs matters.

69 Had a costs application been made at an early stage, in any event before the inquiry, and in a timely fashion, identifying what was relied upon for that application, UDC would have been in a position:

(1) to work out what lines needed to be pursued and calculate the additional time in examination in chief required of its own witnesses to deal with costs matters;
(2) to work out what sections of proofs needed to be tested by cross-examination of STAL's witnesses in relation to costs matters and to calculate the time needed for that; and
(3) to take instructions and submitted further documents and / or called further evidence as to historic matters relating to costs.

70 The importance of these cannot be over-stated. They are not empty assertions. Fundamentally, UDC has not been afforded the opportunity to cross-examine STAL's witnesses as to the reasonableness of UDC's decision in January 2020, based on the matters raised in STAL's costs application, rather than focussing for the inquiry on the planning merits of the position after the ESA was published, as directed by the Panel. Three specific examples – and there are others - illustrate the above points.

71 First, under Ground 1, the costs application makes the following point to support the claim that the application should clearly have been permitted (§43):

> '*None of the evidence before the inquiry has pointed to any shortcoming in the assessment undertaken in the ES, nor any failure to identify or consider any likely significant environmental effect, contrary to the evidence of Mr. Thompson who has explained the comprehensive assessment undertaken in the ES and ESA in his proof and rebuttal and in oral evidence.*'

72 The point completely ignores UDC's written evidence:

(1) On aircraft noise, Mr. Trow's expert view was that further assessment work should have been undertaken to further articulate and communicate the effects of the development within the ES [UDC/1/2, §8.8; see also §§5.13 and 6.2]. These shortcomings were clearly set out in Mr. Trow's rebuttal in response to the alleged comprehensiveness of the ES, and Mr. Cole's consideration of the WHO ENG2018 and noise effects on schools in his proof [UDC/1/4, responses to §§3.1, 6.8.2, and 8.1.1].
(2) On air quality, Dr. Broomfield's expert view was that there were shortcomings in the air quality assessment in the ES and further information should have been required on certain matters (e.g. levels of nitrogen dioxide in the Bishop's Stortford AQMA) [UDC/2/2, §§57 and 61; UDC/2/4, p.9].
(3) On carbon emissions, Dr. Hinnells's expert view was that the evaluation of the carbon emissions was flawed at the point of decision because it failed to acknowledge, grapple with or address evolving carbon emissions policy [UDC3/1, §§99, 24-29].

73 These expert views were made within the scope of the respective RFRs and formed part of those experts' judgments that the RFRs were reasonable, based on a review of the evidence before UDC when the decision was taken in January 2020.

74 Had the costs application and its basis been revealed to UDC before the start of the inquiry, UDC would have asked its witnesses to expand upon these views relating to the ES, and would have addressed the extent of their concerns, with specific reference to the EIA Regulations and / or one of the core principles of extant aviation policy, namely transparency, the need to have clear and transparent information, and the need for those affected by aviation to have a clearer understanding of the facts ([CD14.1], p.8, §3, referred to in UDC's Opening at [INQ2], §63).

75 Moreover, had STAL not kept mum about its costs application and its basis and, instead, followed PPG requirements by making its costs application before the start of the inquiry, UDC would have cross-examined STAL's expert witnesses on the adequacy of the ES (Mr. Cole, Dr. Bull, Mr. Robinson, and Mr. Vergoulas), and would have elected to cross-examine Mr. Thompson on EIA matters, with a view to putting its case as to the reasonableness of the concerns raised by its expert witnesses.

76 The opportunity to expand on these points in oral evidence and to test STAL's evidence on them, would have allowed the issue to have been properly ventilated, ensuring fairness between the parties. Instead, the inquiry has heard no oral evidence from UDC on the above points and has a partial picture of the evidence, which prejudices UDC.

77 Secondly, STAL notes more than once in its costs application that no-one was called by UDC to expand upon how UDC arrived at its decision (§§9, 24). No wonder. Had STAL not kept under wraps that it would be making a full costs application against UDC on the basis of the considerations before the Planning Committee between November 2018 and January 2020, that too is a matter which UDC would have addressed both in written and oral evidence. It would have been addressed by Mr. Scanlon taking more detailed instructions and presenting more detailed evidence in his proof and orally on the assessment of the application by UDC, so as to expand upon his view, that UDC's decision was a reasonable one at the time it was taken.

78 Further, had the costs application and its basis been revealed to UDC when it could and should have been made (i.e. in July 2020 or shortly thereafter), UDC would have cross-examined Mr. Andrew on the application history in more detail, with a view to putting its case as to the reasonableness of the decision at the time it was taken.

79 Instead, STAL revels in the advantage it has secured for itself, boasting in its costs application that it has '*fully explored*' these matters in cross-examination of Mr. Scanlon (§9) and criticising Mr. Scanlon for his alleged attempt to '*glide over*' a period of months in summarising the consideration of the application by UDC (§15). STAL "fully explored"[11] those matters in full knowledge of the application it had stowed away, but knew it was going to make. Mr. Scanlon cannot be criticised for summarising parts of the history of the application, when there was no costs application signalling that as an issue to be dealt with. The inquiry has not heard full evidence from UDC on these matters, and has a partial picture of the evidence, which prejudices UDC.

80 Thirdly, STAL asserts in its costs application that the delays in the consideration of the planning application were solely down to UDC (§41), repeating a point made in its closing that UDC's Planning Committee '*filibustered for 14 months*' following the resolution to grant (§280).

81 The point ignores relevant facts from the history of the application, which would have been explored and tested in evidence, as to the causes of any delay. SSE made requests of the SoS to call in the decision on the application in February and November 2018 (referred to in the list of Appendices to [CD12.15b]). As a result of those requests, on 7 November 2018, the SoS issued a direction to UDC not to issue any decision before the SoS had concluded whether to call in the application for determination **[29]**. The resolution to grant permission subject to a s.106 Agreement was passed after that on 14 November 2018. It was not then until 20 March 2019 that the SoS decided not to call in the decision [CD12.15a]. Thereafter, the s.106 Agreement was not signed by STAL until 12 April 2019 [CD15.1, p.9]. Thus, for a period of approximately 5 months after the 14 November 2018 resolution, any delays in completing consideration of the application were not due to UDC. The reasons why STAL agreed to extend the Planning Performance Agreement rather than appeal for non-determination, would also have been explored and tested (see below).

82 Further, STAL's assertion that the delays in considering the planning application were caused by UDC, amounted to filibustering, and were unreasonable, are at odds with their own statements at the time. The clear implication of STAL's costs application is that the new

[11] As explained above and below **(§§46, 50, 86, 104, 149, 155(1), 176)**, STAL did not properly or fairly put its case to UDC's witnesses.

administration at UDC were set on refusing the application, leading to the delays (§22). STAL claims that it proceeded in good faith to negotiate the s.106 Agreement in the belief that the decision notice would then be issued (§15), implying that it was bad faith that motivated members thereafter.

83 Yet, in addressing UDC's Planning Committee at the January 2020 meeting, STAL's CEO expressly stated that STAL '*recognised the challenges facing a new administration*' and that STAL had tried to be accommodating and respectful of UDC's wish to thoroughly examine the issues. He also thanked both UDC members and officers for the time and effort they had devoted to carefully and professionally considering the application, '*particularly over the past few months*' [CD13.4a, pp.49-50].

84 Nowhere in STAL's costs application or evidence has STAL acknowledged the delays caused by the SoS call-in, the reasonable time taken before the signing of the s.106 Agreement, or the comments of its own CEO in January 2020 in addressing UDC's Planning Committee.

85 Passing reference was made to the SoS call-in by Mr. Scanlon in cross-examination. Reference was made to the first part of the CEO's speech in cross-examination of Mr. Andrew. Given its importance to the costs application as now revealed, this was a wholly unsatisfactory way for this point to be dealt with in evidence. Had the costs application and its basis been revealed to UDC when it should have been (July 2020 or shortly thereafter), it would have explored these issues in far greater detail in Mr. Scanlon's evidence and in cross-examination of Mr. Andrew, particularly with a view to understanding the disjunct between the accusation now made of filibustering and STAL's recognition of the reasons for the delays through its CEO in January 2020.

86 Fourthly, the costs application refers to part of the July 2019 Minutes in order to make an allegation that the reallocation of financial reserves would be '*an improper use of these ringfenced funds*' (§22). That is a serious allegation of financial mismanagement aimed at a public body, in documentation submitted to a major public inquiry. Apart from noting this part of the Minutes with Mr. Scanlon in cross-examination, Mr. Hill QC did not actually put this allegation to Mr. Scanlon[12]. This is inexcusable, not least on professional grounds. The other suggestion made is that members approached the application with a closed mind, which again

[12] It is responded to in the witness statement of Adrian Webb **[1-2]**.

is a serious allegation which has not been put in oral evidence. Indeed, neither serious allegation is made in terms in the evidence produced by STAL.

87 Had UDC been made aware – as it should have been – that this was part of the costs application, UDC would have taken the opportunity to deal with it through its own witnesses, and through cross-examination of Mr. Andrew. This is the very sort of procedural injustice that the requirement of the PPG that costs applications be made '*as soon as possible*' is designed to forestall. It is not open for these to be brushed aside. Any departure can only be mandated by externalities.

88 As a result of STAL's decision to wait until the very last minute to reveal its costs application, its detailed basis and grounds, none of the above matters have been properly ventilated at this inquiry. This is significantly prejudicial to UDC's ability to respond to the application.

(iii) Avoiding delays by additional time having to be set aside to deal with a late costs application

89 UDC made its position clear that it would need proper time to take instructions and potentially call and / or recall witnesses to deal with matters contained in a late costs application, particularly where it related to historic matters which could have formed the subject of an application at an early stage. It made these points on the opening of the inquiry on 12 January 2021, in week 6 on 24 February 2021, in week 7 on 5 March 2021, and in response to the application on 12 March 2021, having been given 50 minutes to digest and take instructions on the 22 page application. UDC's proposal, that it be given adequate time to consider and take instructions on the application and respond with a way forward, would have led to delays, which were wholly avoidable had the costs application been made in a timely fashion. Importantly, they were delays which would have allowed for the costs application to be dealt with fairly between the parties – particularly by the party against whom the application is made - by the re-calling of witnesses who would have been tested on costs related matters. In the event, its proposal has been rejected by the Panel for the reasons set out by Inspector Boniface on 12 March 2021.

90 It is no answer to the above points to suggest that UDC has addressed its evidence to the reasonableness of its decision, or to suggest that these matters can be dealt with in writing.

91 As to the first point, surmising that UDC had addressed its evidence to the reasonableness of the decision, UDC's newly appointed expert team did, in the usual way when dealing with a decision overturning officer recommendation, turn their minds to the application papers and the decision in January 2020, giving their overall view as to its reasonableness. However, that is in no way a substitute for knowing the full basis of a costs application which is to be made, so that the specific matters within the process relied upon to show unreasonableness can be focussed upon and properly covered in written evidence and expanded upon in the oral evidence of those witnesses. Requiring parties to respond to allegations of unreasonableness in a Statement of Case or in proofs of evidence, which are not supported by a properly particularised costs application, results in an exercise of shadow boxing. Moreover, here, STAL gave the false impression that the allegations in the Statement of Case were not anticipated to be the subject of a costs application at the CMC in September 2020. See also Mr. Vergoulas' suggestion that the timing of Mr. Hinnells' request for clarification of carbon projections in the ESA was unreasonable, which does not form part of the costs application here (§36(1) above).

92 As to the second point, dealing with the costs application in writing has denied UDC the opportunity to cross-examine STAL's witnesses on points arising from their costs application, with a view to demonstrating the reasonableness of its position, an opportunity which STAL alone has been afforded (and has not properly undertaken).

93 It is no excuse for Mr. Hill QC to say that he had no instructions to make a costs application until all of the evidence has been completed and, even then, at the very last minute: Queen's Counsel cannot shield himself behind any inadequacies of a client. That is completely inadequate as a response to why the application here, and its basis, could not have been provided at an early stage and in any event before the inquiry commenced, allowing for it to be addressed properly in evidence, and for it to be supplemented where necessary. Allowing Mr. Hill QC's approach is a repudiation of what is required by the PPG. This is not an application arising from conduct at or during the inquiry, for which there might be some justification for late notification of a costs application. Allowing costs applications to await "final instructions" without any disclosure as to their basis or allowing a proper ventilation of the issues before that, would give carte blanche to any developer to ride roughshod over the PPG. In every such case, it would be tactically advantageous to them to wait until the last

minute to reveal their costs application and its basis. It makes a nonsense of the PPG and its rationale, and leads to clear unfairness, as has occurred here.

94 STAL has highlighted the very substantial costs of bringing its appeal (§8), resulting from its decision to call 11 witnesses over the course of 30 sitting days[13]. On any view, a full costs award for the costs of the whole of the appeal would be substantial. Procedural rigour in the application of the PPG on costs is all the more important in those circumstances. The scale of the likely costs award further supports the need for the Panel to ensure fairness to UDC in its response to the points made. It is respectfully submitted that that has not been achieved by the way in which STAL has been allowed to make its costs application, and the Panel's ruling that it should be dealt with in writing. The facts and circumstances surrounding this appeal provide a very good example of why costs applications should be made at an early stage.

95 UDC's response to the costs application which follows should be considered expressly subject to the points made above as to the unfair advantage which STAL has gained by the timing of its application, and the prejudice caused to UDC in responding to the application.

(4) Relevant legal background

(i) General legal principles applicable to costs applications

96 Section 250(5) of the Local Government Act 1972 provides a statutory discretion to the SoS to make orders as to costs. Guidance as to the way in which that discretion may be exercised is set out in the PPG (ID: 16-027 – 16-050).

97 Unlike in civil litigation, costs in planning appeals do not follow the event. In planning appeals, the parties '*normally meet their own expenses*' (ID 16-028). That is because planning decisions engage the public interest, affecting local residents and other stakeholders beyond the individual interests of the applicant for permission and the local planning authority as decision maker. The decision in this appeal fully reflects those concerns, given its scale, permanence, and effects, as demonstrated by the full engagement of SSE and other interested parties at both the application stage and on appeal. The fact that a public planning inquiry took place to

[13] Five witnesses were needed to respond to UDC's case at appeal, Mr. Cole (aircraft noise), Dr. Bull (air quality), Mr. Robinson and Mr Vergoulas (carbon emissions), and Mr. Andrew (planning).

hear from all interested parties and determine all of the issues raised does not, of itself, warrant any award of costs.

98 Against that background, the discretion to award costs is only engaged if two pre-conditions are both met (see ID: 16-030):

(1) UDC has behaved unreasonably in its decision to refuse permission as articulated in its RFRs; and
(2) That unreasonable behaviour has directly caused STAL to incur unnecessary or wasted expense in the appeal process.

99 As is clear from the PPG and s.250(5) of the 1972 Act, even if the two pre-conditions are met, there remains a discretion as to whether costs should be awarded (ID: 16-030 – 16-031).

100 As to the pre-conditions, the word '*unreasonable*' in the PPG is to be used in its ordinary meaning. Whether a party has acted unreasonably is to be judged having regard to the picture as a whole (*Manchester CC v SOSE* [1988] JPL 774, per Kennedy J at pp.775, 777).

101 The proper approach to the application of the guidance on costs, in the exercise of a discretion to make an order for the costs of a planning appeal, has been addressed by the courts (*R v SOSE, ex parte North Norfolk DC* [1994] 2 PLR 78, per Auld J at pp.83H, 84A, as relevant, emphasis added):

(1) '*Clearly, the evidence upon which the authority relies to support a ground for refusal of permission must have some substance in the sense of providing some respectable basis for their stance upon a particular issue. But it need not be of such substance as to persuade the inspector to find in the authority's favour on the issue. Otherwise every evidential failure to persuade an inspector on an issue would expose the loser to a finding of unreasonableness on an application for costs in relation to that issue.*'
(2) '*In addition, the test is one of unreasonableness, not just of whether an authority has produced evidence to substantiate their case on a particular issue.*'

102 It is clear from the *Manchester* and *North Norfolk* cases that when considering whether there is some substance to a RFR, the decision maker must look at the picture as a whole, considering all of the evidence given at the appeal.

103 Further or alternatively, where a decision has been taken to overturn an officer recommendation to grant permission, it is wholly unsurprising for RFRs not to be "substantiated" at the time of the decision, since there is no requirement or expectation for an Officer Report to set out and evidence the basis for a decision contrary to its recommendation. In those circumstances, such evidence must necessarily be considered on appeal as is acknowledged in the PPG[14]. Unreasonableness should therefore be considered in the round, having regard to all of the evidence submitted by UDC to defend its RFRs on appeal.

104 Against that background, the submission of expert evidence, which assesses the evidence before the local planning authority when the decision was taken, and gives the view that the decision was a reasonable one in the circumstances, is the clearest demonstration of there being some respectable basis for the local planning authority's stance on appeal. That is precisely what UDC has done through its expert witnesses in this appeal, each of whom has given their view that, on their area of expertise, UDC's decision was a reasonable one at the time it was taken. There has been no suggestion by STAL that these were not appropriately qualified and experienced witnesses in their area. Importantly, the expert views of each of UDC's witnesses on the reasonableness of the UDC's decision at the time it was taken has not been challenged, fairly and squarely, as it should have been.

105 As to causation, RFRs (1) – (3) each stand independently of one another (RFR4 is related to and dependent on the other RFRs). Each RFR was reasonable when considered against the evidence as a whole. However, even if only one RFR were considered to be reasonable, that would have been sufficient to cause an appeal. On appeal, it is plain that SSE (and indeed other 3rd parties without Rule 6 status) would have caused a number of other issues to be considered. STAL would have responded to those issues with expert evidence, as it has done on each of UDC's issues, plus each of those raised by SSE. As a result, if just one of the RFRs is considered to be reasonable, there had to be an appeal which would have addressed all of the issues which have in fact been covered. It follows that if only one of UDC's RFRs is considered to be reasonable, no costs award should made.

(ii) Discussions at Planning Committees, Minutes, and Reasons for Refusal

[14] '*[F]ailure to produce evidence to substantiate each reason for refusal <u>on appeal</u>*' is cited as an example of unreasonable behaviour (ID: 16-049, emphasis added).

106 STAL has spent time at this inquiry seeking to pick over what may or may not have been openly discussed or expressed to be reasons for the decision, by reference to recollections of the discussions, the Minutes of the January 2020 meeting, and Minutes of previous meetings. STAL has also spent inquiry time picking over what may or may not have been before UDC's Planning Committee when it made its decision in January 2020 by reference to the Officer Reports and supporting documentation.

107 Such matters are of very limited relevance to this costs application because: (1) the RFRs are those contained in the Decision Notice; and (2) the need for unreasonableness to be considered against all of the evidence heard at the appeal, including that of UDC's expert witnesses, for the reasons set out above.

108 Further or alternatively, the Courts have provided relevant guidance on how the discussions of Councillors at a Planning Committee meeting should be approached, albeit in the context of challenges to the grant of planning permission.

109 First, the Courts have made a clear distinction between, on the one hand, the decision notice containing the RFRs, and on the other hand, the resolution of the committee recorded in the Minutes. The decision notice constitutes the decision and the reasons on which the decision was made. It is the decision notice and its reasons which give rise to the appeal, not the Minutes. The drawing up of Minutes is directed to a different statutory obligation under the Local Government Act 1972 to provide a record of the proceedings after a committee meeting (s.100C and Sched. 12), not to give reasons for the committee's decision pursuant to the Town and Country Planning Act 1990 and Article 35 of the Town and Country Planning (Development Management Procedure) Order 2015 (*R (Hawksworth Securities Plc) v Peterborough CC et al.* [2016] EWHC 1970 (Admin) per Lang J at §§73-74).

110 Here, the reasons contained within the Decision Notice at [CD12.10] constitute UDC's RFRs, a point which seems to be lost on STAL, given its repeated focus on the Minutes of meetings. Fundamentally, through those RFRs, UDC articulated that STAL had failed to demonstrate that the aircraft noise and air quality effects would not be detrimental, and that UDC's view was that the carbon emissions were incompatible with climate change policy and targets.

111 Secondly, when considering discussions at a planning committee, it is necessary to bear in mind that the committee are taking a collective decision on a planning application. The general tenor of the discussion must be considered rather than individual views expressed by committee members, let alone the precise terminology used (*R v Exeter CC ex parte Thomas & Co. Ltd.* (1989) 58 P&CR 397, per Simon Brown J at p.408[15]). There are real difficulties in establishing the reasoning process of a corporate body which acts by resolution. What an individual says during the debate may or may not be how he acts when he casts his vote after the debate. Many of those present may make no verbal contribution (*R (Tesco Stores Ltd.) v Forest of Dean DC* [2014] EWHC 3348 (Admin), per Patterson J at §73, points which remain unaffected following the appeal [2015] EWCA Civ 800).

112 Here, the general tenor of the Minutes of the January 2020 meeting (and in fact those which went before), was that STAL had failed to convince members as to the extent of environmental impacts relating to aircraft noise, air quality, and carbon emissions arising from their proposals and whether they could be adequately addressed. UDC's experts have each confirmed that that stance was a reasonable one at the time the decision was taken.

113 The Courts' guidance, that extreme caution should be applied with regard to individual comments by members during the debate of a planning application, applies with particular force to Councillor Hargreaves' comment as to the availability of financial reserves to defend any decision, which STAL wrongly seeks to rely upon (§21). Such comments are wholly irrelevant to the merits of this costs application. STAL's focus on this comment is designed to divert attention from the proper planning concerns which lay behind the decision, which have been supported by expert evidence on appeal.

114 As to reasons generally, at para. 14 of its costs application, STAL refers to the leading case of *Dover DC v CPRE (Kent)* [2018] Env LR 17, without acknowledging its particular application here. The Court noted that it has long been the case that local planning authorities must give reasons for refusing permission, which appears to have been a corollary of the fact that in those cases there is a statutory right of appeal (per Lord Carnwath at §27, referencing the 2015 Order). The Court went on to comment that if a recommendation to grant is accepted

[15] Referring with approval to Pickford LJ's comment in *R v London County Council* [1915] 2 KB 466 at p.490, that '*there are probably few [Council] debates in which someone does not suggest a ground for decision something which is not a proper ground and to say that because somebody in debate has put forward an improper ground the decision ought to be set aside as being founded on that particular ground is wrong*'.

by members, no further reasons may be needed. '*Even if it is not accepted, it may normally be enough for the committee's statement of reasons to be limited to the points of difference.*' (§42).

115 STAL has spent inquiry time seeking to make the case that UDC was required formally and expressly to revisit and undertake the planning balance in its consideration of the planning application in January 2020. However, that ignores the way in which the RFRs were framed, making clear that the Committee had not been convinced by the evidence put before them on the issues of aircraft noise, air quality, and carbon emissions. That is the context in which the planning balance was addressed. In any event, even if there was a requirement to address the planning balance, there is nothing requiring that to be formally expressed within the duty to give full reasons. There is nothing in statute, case law, or guidance which requires a local planning authority to set out in a decision notice how the planning balance has been undertaken.

116 What the Supreme Court recognised in the *Dover* case is that the requirement to give reasons for a refusal should be considered within the context of the statutory appeal which is available for any such refusal. That reflects the fact that the terms of a refusal, contained in a Decision Notice, will be expanded upon in the planning authority's Statement of Case and then in its evidence on the appeal, as has occurred here. In this case, that process has substantiated the RFRs articulated in UDC's decision notice.

(iii) Immateriality of advice on costs consequences to question of reasonableness

117 STAL devotes significant passages of its costs application to the fact that UDC's members were made aware of the financial implications of any decision to reverse the resolution of the Committee in November 2018 (§§18 – 24, 38 - 39). These matters are completely irrelevant to the merits of whether UDC's decision was a reasonable one. It is well known that, although local planning authorities can properly be made aware of the financial implications of their decisions, the costs consequences of any decision should not influence the exercise of planning judgment on an application, as they are not a material planning consideration (*R (East Bergholt PC) v Babergh DC* [2019] EWCA Civ 2200, per Lindblom LJ at §82).

118 It does not follow that because a Planning Committee is given proper advice as to the potential financial implications of a decision, the taking of that decision is unreasonable, whether at

that time or when considered on appeal. By focussing on the advice given – quite properly - to the Planning Committee on costs consequences, STAL seeks to colour the Panel's judgment on the reasonableness of UDC's decision and to draw attention away from the proper planning concerns which lay behind that decision. Having been made aware of the financial implications of their decision, the Planning Committee held firm in their planning judgment that their concerns as to the environmental effects had not been properly addressed, a point made good on appeal through UDC's expert witnesses.

(iv) Proper scope of legal advice on material considerations

119 The costs application suggests that any decision to reverse the November 2018 resolution was contrary to the consistent advice of Counsel and Leading Counsel that there was no lawful basis for so doing, referring to legal advice received by UDC (§§16, 18). The point is both wrong on the facts and misconceived as a matter of law.

120 Legal advice was received by UDC, which was properly referred to in the Report to the Planning Committee of January 2020 [CD13.4b, §§6-11]. As stated in that Report, that advice was shared with members on a legally privileged and confidential basis.

121 Quite separately, the January 2020 Report properly set out the approach for the Planning Committee, including whether there were any new material considerations that would justify a different decision to that resolved in November 2018 [CD13.4b, §§10, 52-53].

122 The approach set out for the Planning Committee properly reflected the scope of what were legal matters, and what were matters for the Planning Committee: whether or not a particular consideration is a material consideration is a matter of law on which legal views can be taken. However, subject to irrationality, it is a matter within the exclusive province of a decision maker to decide the weight which should be accorded to a material consideration (*Tesco Stores v SOSE* [1995] 1 WLR 759, per Lord Hoffmann at p.780F, see also Lord Keith at p.764G):

'*The law has always made a clear distinction between the question of whether something is a material consideration and the weight which it should be given. The former is a question of law and the latter is a question of planning judgment, which is entirely a matter for the planning authority. Provided that the planning authority has regard to all material considerations, it is at liberty (provided that it does not lapse into Wednesbury irrationality) to give them whatever weight the planning authority thinks fit or no weight at all. The fact that*

the law regards something as a material consideration therefore involves no view about the part, if any, which it should play in the decision-making process.'

123 The Courts have also addressed what a material consideration is in the planning context (*R (Kides) v South Cambridgeshire DC* (2003) 1 P&CR 19, per Jonathan Parker LJ at §121, emphasis added):

'*In my judgment a consideration is "material", in this context, if it is relevant to the question whether the application should be granted or refused; that is to say if it is a factor which, when placed in the decisionmaker's scales, would tip the balance to some extent, one way or the other. In other words, it must be a factor which has some weight in the decision-making process, although plainly it may not be determinative. The test must, of course, be an objective one in the sense that the choice of material considerations must be a rational one, and the considerations chosen must be rationally related to land use issues.*'

124 To suggest, as STAL does, that any decision to reverse the November 2018 resolution was contrary to legal advice and had '*no lawful basis*' (§18), is both misleading, given the proper way in which the legal advice was referred to in the Officer Report, and misconceived as a matter of law. STAL's suggestion that the decision was contrary to legal advice is yet another attempt to colour the Panel's judgment on the reasonableness of UDC's decision.

(5) Response to Grounds 1, 2, and 3: Preventing or delaying development which should clearly be permitted; imprecise and vague RFRs / failing to substantiate RFRs; refusing planning permission capable of being dealt with by condition

125 Grounds 1 - 3 can be taken together. They are devoid of any merit when the proper context for UDC's decision is considered.

(i) UDC's detailed consideration of the application

126 The following relevant parts of the timeline up to the meeting in January 2020 can be noted.

127 On 19 February 2018, SSE made a request to the SoS that the application be called in for determination (See Appendices to [CD12.15b]). As a result of that request, on 7 November 2018, the SoS requested that UDC not issue any Decision Notice until the request for call in had been fully addressed **[29]**.

128 On 14 November 2018, UDC's Planning Committee resolved to follow the recommendation in its Officer Report and to give conditional approval to the application, subject to a s.106 Agreement being agreed and signed. The resolution was passed by casting vote, reflecting the hugely contentious nature of this major application and its importance to the constituents which the members represented.

129 Over 4 months later, on 20 March 2019, the SoS decided not to call in the application [CD12.15a].

130 On 12 April 2019, and 5 months after the November 2018 resolution, the s.106 Agreement was signed by STAL and sent to UDC for signature [CD25.1, p.9].

131 Local elections held in May 2019 resulted in the election of a completely new administration for the Council. Whilst certain members from the November 2018 committee remained, the elections resulted in a significant change to the make-up of the Planning Committee to reflect the new political balance. Both before and after those elections, motions were considered to instruct officers not to issue the Decision Notice. These motions were based on members wanting to review the adequacy of the s.106 Agreement which had been negotiated (25 April 2019), and subsequently also to consider whether there were any new material considerations and / or changes in circumstances since the November 2018 resolution to which weight might now be given in striking the planning balance.

132 An informal meeting was held on 30 April, and at an Extraordinary Council Meeting on 28 June 2019, officers were instructed not to issue the Decision Notice pending consideration of the adequacy of the s.106 Agreement and any new material considerations and / or changes in circumstances. Legal advice was obtained and considered both before and after those meetings, and workshop sessions arranged for members to consider the s.106 Agreement and issues that might be raised as material considerations [CD13.4b, §§4-12].

133 By reference to the above timeline, it cannot sensibly be claimed that UDC are in any way culpable for the 5 month period between the resolution of November 2018 and the signing of the s.106 Agreement by STAL on 12 April 2019. UDC were under a direction not to issue the

Decision Notice until the application had been considered by the SoS. After that, the s.106 Agreement was negotiated by officers.

134 As to the period after 12 April 2019:

(1) There is nothing unreasonable in a Planning Committee wanting to review the adequacy of a s.106 Agreement and to seek legal advice as to its legal adequacy to assist in that process.

(2) There is nothing unreasonable in a Planning Committee wanting to consider whether any new material considerations have arisen since its resolution which might affect the planning balance.

(3) Local elections and changes in the political make-up of local authorities are a fact of life. It was entirely sensible for new members to the Planning Committee to be brought up to speed on an application which was highly contentious and remained under consideration.

(4) Given the history of airport expansion at Stansted, together with the scale of this application, its importance to local residents - with a new residents-based administration - and with environmental effects lasting for generations, it was not unreasonable that members of UDC's Planning Committee would wish to subject the application to detailed scrutiny.

135 Significantly, the detailed scrutiny given by UDC's members to the application, and the reasonableness of that approach was something which STAL itself accepted and emphasised when addressing the Planning Committee in January 2020. In his address to the Committee on 24 January 2020, Ken O'Toole, CEO of STAL stated as follows ([CD13.4a], pp.49-50, as relevant, emphasis added):

'*I want to start by thanking the UDC members and officers for the time and effort they have devoted to carefully and professionally considering our application, particularly over the last few months.*

…

Our planning application was submitted in February 2018. We have been patient; recognised the challenges facing a new administration; and have tried to be accommodating and respectful of your wish to thoroughly examine the issues.'

136 Mr. Andrew accepted in cross-examination that there was nothing to suggest that the sentiments contained in Mr. O'Toole's speech were not genuine.

137 The statements above provide the complete answer to the claim by STAL that UDC's consideration of the application amounted to filibustering, or that UDC unreasonably delayed the determination of the application ([INQ1] §90, STAL's Closing §280, costs application §41).

138 In any event, the application was subject to a Planning Performance Agreement signed on 21 February 2018 **[33-36]** including an agreed timetable with a view to resolution of the application by 18 July 2018 **[35]**, a date which was clearly not achieved given STAL submitted 808 pages of consultation response and clarifications by letter dated 5 July 2018 [CD11.2]. The first page of the PPA expressly recorded that nothing in the agreement restricted or inhibited STAL from exercising its right of appeal under s.78 of the TCPA 1990 **[33]**. If at any stage after 18 July 2018, STAL had genuinely considered that UDC were unreasonably delaying consideration of the application, STAL could have refused to extend the period for consideration and appealed for non-determination. Instead, STAL agreed to extensions to the determination period up to 30 September 2019 **[37]**, and then from 20 December 2019 until 29 January 2020 **[40-43]** (the period between 1 October 2019 and 19 December 2020 provided a 10 week window when there was no extension sought by UDC, which STAL could have used to appeal for non-determination, if it so wished).

139 The reality is that, whilst STAL was in receipt of a favourable recommendation and resolution, they were content to support UDC in its detailed further consideration of the application following the May elections and change in administration. However, when that democratic process resulted in a unanimous resolution[16] and decision to refuse permission for the reasons set out in the Decision Notice, as part of this costs application, STAL now seeks to criticise the very process it was content to support. STAL's position is utterly disingenuous.

(ii) Reasonableness of the decision in January 2020

140 The RFRs contained within the Decision Notice provide the basis for UDC's decision and its scope. The reasons for the decision are not to be gleaned from Minutes or Officer Reports. The Courts have urged extreme caution in seeking to pick over details from Minutes to elicit reasons, given that planning committees take collective decisions on planning applications (*Hawksworth Securities*, *Thomas*, *Forest of Dean*).

[16] With 2 abstentions

141 The RFRs in the Decision Notice are summarised above and are at [CD12.10]. In essence, they articulated the Planning Committee's concern that STAL had failed to demonstrate that the aircraft noise and air quality effects would not be detrimental, and the Planning Committee's view that the carbon emissions were incompatible with climate change policy and targets. More broadly, they reflected the Planning Committee's concern as to the extent of the environmental impacts relating to aircraft noise, air quality, and carbon emissions arising from the proposal and whether they could be adequately addressed.

142 Insofar as reference can be made to the Officer Report, and the discussions reflected in the Minutes of the January 2020 meeting, bearing in mind the extreme caution which the Courts have urged in seeking to draw out reasons for a decision from Officer Reports and Minutes, it can be noted that a number of valid concerns were before the Planning Committee and / or discussed ([CD13.4g], §§1-4; [CD13.4a], pp.8-11), including:

(1) The extent to which the environmental impacts assessed were reliant on fleet mix assumptions which included new generation aircraft such as the Boeing 737MAX, an aircraft which had been grounded since March 2019. This had the potential to affect aircraft noise and carbon emissions in particular.
(2) The extent to which the WHO ENG 2018 had been considered and explained by STAL. This was relevant to the tightening of standards for aircraft noise, in circumstances where the additional passenger throughout above current capacity would not occur for some years (based on the 2018 ES).
(3) The extent to which the effects of fine particulate matter (PM2.5) had been considered and taken into account. As with aircraft noise, this was relevant to tightening policy on air quality referable to the life of the scheme as referred to in (2).
(4) The application of carbon policy, that airport applications for capacity growth must demonstrate that their emissions will not impact on the government's ability to meet carbon reduction targets, when considered against the advice of the Committee for Climate Change on emissions from aviation and shipping, and the recent amendment to the Climate Change Act to reflect net zero.

143 Each of the above concerns were material planning considerations in the sense of being factors which carried some weight in the decision-making process (*Kides*). There was no

suggestion to the contrary in the Officer Reports[17]. The weight to be given to those material considerations in considering the application was therefore a matter for the Planning Committee, subject to *Wednesbury* irrationality (*Tesco Stores*).

144 In addition, what has to be borne in mind when assessing the reasonableness of UDC's decision in January 2020 is that it was a decision taken by Councillors sitting on a Planning Committee. Whilst they had received assistance from officers and others in determining the application, they were ultimately exercising a planning judgment on the application. Considered against that proper context, it was entirely reasonable for the Planning Committee to consider that:

(1) Their concerns as to fleet mix would affect the extent of the environmental impacts assessed.
(2) The evidence before them did not demonstrate that the aircraft noise and air quality impacts had been adequately addressed, whether in light of the concerns as to fleet mix or when considering the tightening policy in these areas against the longer term impacts of the proposal.
(3) The carbon emissions arising from the proposal would be incompatible with climate targets and net zero.

145 The above considerations (and others discussed at the January 2020 meeting) amply provide '*some respectable basis*' for the RFRs (*North Norfolk*). The fact that STAL or even the Panel may not agree with the robustness of the points which lay behind the RFRs at that stage, does not make the RFRs themselves or the decision to refuse unreasonable.

146 Given their concerns about fleet mix assumptions based on new generation aircraft – one type of which, in January 2020, had been grounded for many months - it was reasonable for the Planning Committee to consider that the roll forward of the existing noise contour condition would not adequately limit the effects arising from the airport, the noise profile of flights in the short term, nor secure the forecast improvements expected from new generation aircraft in the longer term.

[17] See [CD13.4g] and particularly the Additional Supplementary Pack for the April 2019 meeting in which a correction was made to the April 2019 report, to confirm that the WHO ENG2018 did carry weight (albeit in officers' view negligible) ([CD13.2c], p.3).

147 It was also reasonable for the Planning Committee not to have to address the planning balance expressly in its deliberations or reasons. It is nonsensical to suggest that the planning balance was not something very much in the minds of the Planning Committee in considering the application, both through the detailed scrutiny which had been given to the application over many months, and at the January 2020 meeting, when:

(1) The Officer Report for the January 2020 meeting addressed new material considerations in the context of the overall conclusions of the November 2018 Report, and directed members to whether there were any new material considerations or other changes in circumstances to justify a different conclusion ([CD13.4b], §§32-33).
(2) At the start of the second day of the January 2020 meeting, the Chair read out the resolution of the June 2019 meeting, to the effect that consideration would be given to any new material considerations to which weight may now be given in striking the planning balance.
(3) The Members Discussion also commenced by considering whether there were relevant changes in circumstances which should be sufficient to tip the tilted balance ([CD13.4a], pp.6, 8).

148 There was no requirement mechanistically and expressly to revisit the planning balance in deliberations or the decision, when the proper context for the decision had been established in the Officer Report and was well understood by the Planning Committee through their comments. Nor is there anything in statute, case law, or guidance which requires a Planning Committee to set out in a decision notice how the planning balance has been undertaken. It is enough for the RFRs to be '*limited to the points of difference*' (*Dover*), which members can be taken to have considered against the planning balance, leading to refusal.

149 Here, as in other areas, STAL has not put its case properly or fairly to the relevant witness. Mr. Scanlon unsurprisingly accepted in cross examination that as a planning expert, it is essential to any planning assessment to undertake the planning balance (costs application, §33). But that does not amount to a concession as to what a Planning Committee must expressly do when arriving at its decision on this application, where it has made clear statements which show that the planning balance is the context in which that decision is taken.

(iii) Substantiation of UDC's decision at the time it was taken through expert evidence on appeal

150 Even if, contrary to the above, it was considered that the RFRs had no proper basis at the time of the decision:

(1) It is in the nature of an overturn decision that the RFRs may not be well evidenced at the time the decision is taken, given the decision will be contrary to the position set out in the Officer Report;
(2) Unreasonableness should be considered in the round, having regard to all of the evidence submitted by UDC to defend the RFRs on appeal (*Manchester*);
(3) Both (1) and (2) are reflected in the PPG, which references the failure to produce evidence to substantiate RFRs '*on appeal*' as an example of unreasonable behaviour (ID: 16-049).

151 By reference to the PPG, UDC plainly has produced evidence to substantiate its RFRs on appeal. Each of UDC's expert witnesses reviewed the application and supporting information and gave their professional view that at the time the decision was taken, the RFRs were both reasonable and understandable.

(1) On aircraft noise, Mr. Trow's expert view was that the decision was understandable, and further assessment work should have been undertaken to further articulate and communicate the effects of the ES [UDC/1/2, §8.8; see also §§5.13 and 6.2], and that a set of noise limits aligning with the demands of policy was necessary rather than a continuation of the historic form of restrictions. These shortcomings were clearly set out in Mr. Trow's rebuttal in response to the alleged comprehensiveness of the ES by Mr. Cole, and Mr. Cole's consideration of the WHO ENG2018 and noise effects on schools in his proof [UDC/1/4, responses to §§3.1, 6.8.2, and 8.1.1].
(2) On air quality, Dr. Broomfield's expert view was that the decision was reasonable [UDC/2/2, §113]. There were shortcomings in the air quality assessment in the ES and further information should have been required on certain matters (e.g. levels of nitrogen dioxide in the Bishop's Stortford AQMA) [UDC/2/2, §§57 and 61; UDC/2/4, p.9].
(3) On carbon emissions, Dr. Hinnells's expert view was that the evaluation of the carbon emissions was flawed at the point of decision because it failed to acknowledge, grapple with or address evolving carbon emissions policy, and the RFR was reasonable [UDC/3/1, §§99, 24-29].

152 The shortcomings identified by UDC's experts were all clearly made in the context of the EIA Regulations whether explicitly (e.g. Dr. Broomfield [UDC/2/2, §61]), or implicitly (e.g. Dr. Hinnells' references to '*flaws*' at the point of decision). Importantly, the shortcomings were also identified applying the core principles of extant aviation policy in the APF ([CD14.1], §3, emphasis added, referred to in UDC's Opening at [INQ2], §63):

'*The Aviation Policy Framework .. is underpinned by two core principles:*

- *Collaboration: By working together with industry, regulators, experts, local communities and others at all levels, we believe we will be better able to identify workable solutions to the challenges and share the benefits of aviation in a fairer way than in the past.*

- *Transparency: To facilitate improved collaboration, it is crucial to have clear and independent information and processes in place. Those involved in and affected by aviation need to have a clearer understanding of the facts and the confidence that proportionate action will be taken at the international, national or local level.*'

153 As to the principle of providing transparency for those involved in and affected by aviation, it is notable that STAL did not seek to update its ES after the consultation response and clarifications documentation dated 5 July 2018 [CD11.2]. STAL has sought to hide behind the lack of specific requests from UDC's officers for further environmental information but, quite separately under national aviation policy, the responsibility to provide a clearer understanding of the environmental effects for those affected by aviation falls equally on the airport seeking to expand, especially where policy is evolving. UDC's Statement of Case detailed relevant changes to policy, guidance, and legislation on aircraft noise, air quality, and carbon emissions, all published after the submission of the application in February 2018 [CD24.2, Table 2.2]. Most of these changes occurred in the period after July 2018 and before the determination in January 2020. For example:

(1) The publication of the WHO ENG 2018 in October 2018 and their application was a matter which UDC's Scoping Opinion specifically asked to be addressed [CD12.9, App. A, §27]. Mr. Trow's position was that, although the Guidelines are not without criticism, they should have been formally and properly addressed by STAL before determination of the application, to show that the full effects of the development had been clearly explained and considered [UDC/1/4, §6.8.2][18].

[18] As Mr. Trow openly acknowledged in this same part of his written evidence, the WHO ENG 2018 did not provide a more appropriate basis for conducting noise assessments, but made clear that they should have been used to inform the assessment of aircraft noise on health.

(2) The publication of the national Clean Air Strategy in January 2019 set out how the Government proposed to tackle all sources of air pollution moving forward, containing a clear commitment and direction of travel towards tightening the air quality objective for PM2.5. Dr. Broomfield's position was that a large scale and long term project such as the proposal should take that commitment at a national level into account [UDC/2/2, §32].

(3) The Committee for Climate Change's letter of February 2019 [CD17.44], its Net Zero Report of May 2019 [CD17.26], and its letter of September 2019 [CD17.46], together with the amendment in June 2019 to the Climate Change Act 2008 to reflect net zero, were material considerations which Dr. Hinnells considered should have been addressed by STAL [UDC 3/1, §29[19]].

154 The fact that the above matters were not properly addressed by STAL during the consideration of the application, supports the reasonableness of UDC's decision at the time it was taken. The direction of travel in policy in each of these areas has informed UDC's position even after the ESA was published in October 2020.

155 As to oral evidence at the inquiry on UDC's decision:

(1) None of UDC's witnesses were challenged in cross-examination on their opinions as to the reasonableness of UDC's decision, which had been stated in writing and confirmed orally. Rather, STAL spent a limited amount of time in cross-examination asking UDC's witnesses to confirm facts around the history of the application, without ever putting its case on unreasonableness, fairly and squarely, to any UDC witness. It was not sufficient to dance around the edges of these issues, if they were to become the subject of a costs application.

(2) In any event, with respect to air quality matters, Dr. Broomfield confirmed in Re-examination that, notwithstanding the limited ambit of the questions put to him in cross-examination, as to the way in which air quality was addressed by the Planning Committee, none of those points altered his view that UDC's decision was a reasonable one.

(3) On carbon emissions, the foundation of STAL's case was and is that carbon emissions are a matter for international and national governments, not for local planning authorities in local planning decisions. Yet STAL's carbon policy witness, Mr. Robinson, accepted in cross examination that carbon emissions can be a matter to be taken into account in local

[19] This was in a section of Dr. Hinnells' proof entitled '*Evolution of policy after the application was submitted but before final determination, which was not addressed by STAL.*'

planning decision making (UDC's Closing, §84)[20]. UDC's RFR on carbon emissions is readily substantiated (by reference to the January 2020 decision and since publication of the ESA) when this concession is taken together with the following pieces of evidence (UDC's Closing, §§106-108):

- Dr. Hinnells' judgment, that the carbon emissions arising from the proposal would be significant, and almost certainly adversely impact on the UK's ability to meet its 2050 net zero target to a degree which cannot be overlooked.
- The acceptance by Mr. Vergoulas, STAL's carbon technical witness, in cross examination that there was nothing technically or methodologically unsound in Dr. Hinnell's approach, and that the difference between himself and Dr. Hinnells was one of professional judgment.

(iv) UDC's position after publication of the ESA on 16 October 2020

156 It was STAL's decision to "update" its ES after UDC's decision in January 2020, and to publish the ESA on 16 October 2020.

157 The ESA effectively constituted a new ES in all but name. It was on any view a substantial document, comprising 18 Chapters of main text (over 400 pages), plus numerous Appendices and a Non-Technical Summary in a total of 4 volumes [CD7.1-7.18, 8.1-8.9, 9.1-9.4, 10.1]. More pertinently, there were significant changes to the content:

(1) The ESA was based on a wholly new set of aviation forecasts, with a baseline moved forward by 3 years (2016-2019). Those forecasts incorporated delays to the Boeing 737 Max program into fleet mix assumptions [STAL/2/2, §4.12], and sought to account for the unprecedented effects of the COVID-19 pandemic, which were still evolving at the time [STAL/2/2, §4.3].

(2) The result of those forecasts was to push back the forecasts in the 2018 ES by a further 4 years, with current capacity expected to be reached in 2027 (originally 2023), and the proposed 43mppa expected to be reached 12 years after publication of the ESA, in 2032 (originally 2028).

[20] The interpretation and application of MBU policy as allowing consideration of carbon emissions in local decisions places it within the third category of consideration material to a decision (*R (Friends of the Earth Ltd. et al.) v Heathrow Airport Ltd.* [2020] UKSC 52, at para. 116, per Lord Hodge and Lord Sales [CD14.74], as referred to by Dr. Hinnells in cross-examination.

158 At the same time, given its publication a month after UDC's Statement of Case, STAL took the opportunity within the ESA to respond to matters raised in UDC's Statement of Case [CD10.1, p.2, last para.].

159 The environmental effects estimated to result from the forecasts, and the assessments undertaken in the ESA, were considered in detail in UDC's written and oral evidence and shall not be repeated here. However, it can be noted that:

(1) the noise exposure forecasts in the ESA presented more favourable outcomes than in the ES on key metrics, principally at night whereby the effects of the development have changed from being adverse to beneficial [UDC/1/2, §§6.15, 6.25];
(2) the NOx emissions presented across the 2019-2032 period in the ESA were notably different from those across the 2016 – 2028 period in the ES, due to reductions from road traffic over the longer period in the ESA, and changes to fleet mix assumptions ([CD3.10], Fig. 10.6, §§10.116-7 vs [CD7.10], Fig. 10.2, §§10.7.5-10.7.8]). The NOx emissions for the DC year reduced from 88t/yr in the ES to 48t/yr in the ESA.
(3) the 4 year push back in the forecasts also resulted in a lower amount of carbon emissions estimated for the DC year in the ESA (2032) when compared to the ES (2028) ([CD3.12], Fig.12.6 vs [CD7.12], Fig. 12-3).

160 At the same time, each of UDC's expert witnesses have explained how, given the clear direction of both extant and emerging policy applicable to airport expansion, and the relatively long (6yr) period before the additional passenger numbers are expected to be needed, and the proposed capacity is to be reached (11yrs), there is a need for the environmental impacts of the proposal to be controlled and mitigated in both the short and longer term through a dynamic phased release condition.

161 Finally, having regard to extant and emerging air quality and carbon emissions policy, Dr. Broomfield and Dr. Hinnells have explained that the emissions of key pollutants and carbon emissions are indeed significant (UDC's Closing §§67, 75, 78, 106-109).

162 Against that background, it is a gross oversimplification by STAL to suggest that, because the headline outcomes presented in STAL's ESA are not significantly different from those in the

ES, UDC's decision and UDC's position on appeal is unreasonable (costs application §41). That belies the significant differences in content (including amendments to assessment methodology and scope)[21], the changed aviation forecast periods, and resulting changed environmental forecasts presented, all of which falls to be assessed against extant and emerging policy, policy which STAL has failed properly to address in material respects in arriving at its ESA conclusions.

163 In those circumstances, it is a complete mischaracterisation of UDC's case to suggest that it has '*abandoned*' any attempt to defend its RFRs on appeal, or that UDC's position represents a '*volte face*', as suggested in the costs application (§§3, 7). Having received the ESA, UDC's expert team has evaluated the changed picture it presents, and considered that against:

(1) the inherent uncertainties of aviation forecasting exacerbated at an airport specific level and compounded by the effects of the COVID-19 pandemic;
(2) the significantly longer periods now involved before the existing and proposed capacities are forecast to be reached; and
(3) the direction of travel in applicable extant and emerging policy on noise, air quality, and carbon emissions.

164 It is those factors which have led UDC to formulate a '*workable solution*' (APF, [CD14.1], §3) to the challenges faced by this appeal and the issues which UDC has addressed in its evidence, in the form of Condition 15. It is by that mechanism that UDC has sought to bridge the gap between STAL's and UDC's position, which it sought to do as early as 4 December 2020, having received the ESA just over 6 weeks previously, on 16 October 2020.

165 UDC has been perfectly clear in its evidence and submissions that, unless appropriate and necessary mitigation or limits cannot be secured, the appeal should be refused (UDC's Opening §64, UDC's Closing §159). Mr. Scanlon's planning evidence on behalf of UDC is that the grant of permission is dependent on securing the environmental mitigation through

[21] For example, on air quality, the ESA does include new material on issues which were not addressed in the ES, including an assessment of concentrations in zones around the M11 and A120 as required in UDC policy ENV13, a sensitivity test on aircraft departure thrust settings, and update to emissions data for LEAP engines, a sensitivity test on airport vehicle speeds, an assessment against WHO air quality guidelines for PM2.5, discussion of ammonia emissions from aircraft and road traffic, further information on Thorley Flood Plain and Little Hallingbury Marshes SSSIs, and further information on the potential impacts ay Elsenham Woods SSSI [UDC/2/3, §§ 123-139].

Condition 15 or equivalent conditions (UDC's Closing §§116-117). STAL persists in misreading his evidence in its costs application (§37), and falls into the trap of failing to read his evidence as a whole, supplemented (if it were necessary) by his oral evidence (UDC's Closing, §§116-117).

166 Nor is it remotely credible for STAL to suggest that UDC could have sought further information or imposed conditions to resolve their concerns in January 2020 (costs application, §29). That conflates the issues which lay behind the RFRs, and the position now, following publication of the ESA and assessment of its effects in the light of the factors set out above (§§157-164 above). At the time of the January 2020 decision, the ES had not been updated to reflect a series of material considerations. There were issues which had not been properly addressed (§151 above). Further, it was not unreasonable for the Planning Committee to conclude that, following the detailed scrutiny which the application had been given over several months, their matters of concern could not at that time be addressed by conditions, and therefore to conclude that the application should be refused. From February 2020, STAL was stating to UDC's officers that it was considering a range of responses to UDC's refusal of the application, including a resubmission of the application or an application for an NSIP **[3-4]**. From March 2020, STAL was referring to a revised ES if an appeal were to be made **[4]**, which it then did not publish until October 2020. It was reasonable for UDC to await publication of the ESA to consider its position, given the need for an updating of the environmental effects.

167 In any event, even if, contrary to the above, it was considered that UDC should have sought to formulate conditions to meet its concerns, STAL would not have accepted them. Following the scrutiny of an inquiry appeal process, it is perfectly plain that STAL is implacably opposed to any form of phased release condition, whether in the form of Condition 15[22] or otherwise. Moreover, UDC's alternative Conditions (7, 10A) are not accepted by STAL. The air quality condition (10B) which STAL did not offer until 2 March 2021[23], does not provide an effective means of limiting the air quality effects of the development, as explained in UDC's Position Statement [CD26.29]. Finally, STAL offers no condition at all to control its carbon emissions to this inquiry (UDC's Closing, §§156-158).

[22] On Condition 15, STAL asserts as much at §82 of its costs application.
[23] Just 3 days before the second and final Planning Conditions and Obligation session, and fully 3 months after UDC had provided its draft Condition 15 to STAL.

168 The fact that UDC had the power to impose the conditions it saw fit provides no answer on this point (costs application, §77). Given its stance on the conditions discussed at this inquiry, if UDC had imposed conditions adequate to achieve the mitigation required for this application back in January 2020, STAL would inevitably have appealed against those conditions, resulting in an appeal process such as that which has taken place (s.78(1)(a) TCPA 1990).

169 Taken as a whole, it cannot sensibly be contended that UDC has failed to produce evidence substantiating its RFRs on appeal. Evidence has been produced by appropriately qualified, experienced experts which has defended the RFRs and advocated a workable solution for this appeal following publication of the ESA.

(v) Residual points under Grounds 1 - 3

170 The submissions above respond to the substance of Grounds 1 - 3 and provide a complete response to those Grounds. However, for the sake of completeness, certain residual points can briefly be dealt with.

171 As to RFR1 on noise (costs application, §§48-57):

- It is a misreading of UDC's case to suggest that it no longer puts forward a case that permission should be refused on noise grounds. If appropriate and necessary mitigation and limits in the form of Condition 15 or alternatively Condition 7 (in the form sought by UDC) cannot be secured, permission should be refused on noise grounds[24].
- Mr. Trow's evidence was that the RFR on noise, based on the ES, was understandable and he neither departed from, nor was challenged on this expert view.
- It was a shortcoming of the ES that it did not properly explain and communicate the effects of the WHO ENG 2018, even if the ultimate acceptability of the proposal was not to be assessed against them. The fact that they were not properly explained, combined with the uncertainty around the fleet mix assumptions, supported the reasonableness of the decision. This matter was then addressed by STAL within the ESA and Mr. Cole's written evidence.

[24] The SCG on aircraft noise, agreed by Mr. Cole, confirms as much. The development is acceptable, '*subject to mitigation and appropriate conditions*' ([CD25.3], emphasis added).

- Quite separately from the WHO ENG 2018, Mr. Trow's evidence points to additional assessment work which in his professional view should have been undertaken as part of the ESA to fully articulate and communicate the effects of the development having regard to policy, particularly as part of the night-time and schools assessments, as carried out at other UK airports.
- The principle of the noise contour would have provided a safeguard, but as at January 2020 the daytime contour was not set at a policy compliant level, and no night-time contour was included. As such, at January 2020, the control on daytime noise was not set at a value aligned to the effects of aircraft noise in evidence or in policy.
- As recently as 5 January 2021 in his rebuttal, Mr. Cole remained wedded to the 57dB metric for the daytime contour (UDC's Closing §22). There is no evidence that STAL ever offered or stated it would be content with the 54dB contour (UDC's Closing §23). It is the scrutiny of the inquiry process which has resulted in that change in position.
- STAL maintains it opposition to a night time noise contour. It also objects to the inclusion of Thaxted Primary School in the enhanced insulation scheme. Both are necessary parts of the noise mitigation which UDC seeks.

172 As to RFR2 on air quality (costs application, §§58-67):

- As with RFR1, the acceptability of the proposal in air quality terms is only ensured by the imposition of Condition 15 or alternatively Condition 10A. If appropriate and necessary mitigation in the form of Condition 15 or alternatively Condition 10A cannot be secured, permission should be refused on air quality grounds.
- Dr. Broomfield's evidence was that the RFR on air quality was reasonable and he neither departed from, nor was challenged on this expert view.
- Reading the Minutes fairly, and with the caution required, the RFR was animated by concerns as to air quality impacts over the life of the scheme. The fact that the discussions covered health impacts is reasonable, unsurprising, and does not detract from the cause of the concern which has been addressed by expert evidence. The RFR is not limited to health impacts.
- Dr. Broomfield's evidence on appeal substantiates that RFR. When considering the responsibility on airports to improve air quality as expressed in national policy, and the tightening standards on PM2.5 in particular, the emissions of key pollutants caused by the proposal need to be controlled and mitigated.

- Dr. Broomfield's evidence on appeal is that there is a potentially significant impact from NOx emissions related to the Bishop's Stortford AQMA.
- Whilst it was agreed that there is no recognised way of assessing UFPs, that does not mean they should not be addressed, given the increasing focus on UFPs in advice to central government and emerging aviation policy (UDC's Closing §§71-75). Dr. Broomfield's evidence is that Condition 15 (or Condition 10A) allows for UFPs to be mitigated through control of PM2.5. In the absence of any consideration of UFPs in the ES and supporting documentation, it was both reasonable and necessary for this issue to form part of the refusal and appeal, so that appropriate controls could be considered and imposed to protect public health and the local environment.
- The alleged vagueness of RFRs is to be assessed in the round. There is nothing vague about this RFR as expanded upon the UDC's Statement of Case and addressed by Dr. Broomfield in his evidence.

173 As to RFR3 on carbon emissions (costs application §§68-70):

- The costs application seeks to summarise points from STAL's Closing. UDC's Closing on carbon emissions provides the complete response to those points (UDC's Closing §§79-113[25]). If appropriate and necessary mitigation in the form of Condition 15 or alternatively Condition 10A cannot be secured, permission should be refused on carbon grounds.
- The test for this costs application is whether UDC's position on carbon emissions is unreasonable. It plainly is not.
- Mr. Robinson's acceptance in cross-examination that carbon emissions are a matter which can be taken into account in local decision making is not only at odds with STAL's case, but fundamentally supports the reasonableness of UDC taking carbon emissions into account under RFR3. That also brought his evidence on this point into line with Dr. Hinnells' evidence in cross examination, that carbon emissions could be considered in local decision making[26].
- Dr. Hinnells has provided expert evidence on appeal that UDC's RFR was reasonable and that the carbon emissions arising from the proposal will be significant.

[25] In particular, noting the full reasoning behind Dr. Hinnells' view that the carbon emissions arising from the proposal would be significant §§106-107, which STAL continue to misinterpret in their costs application at §68(iii).

[26] They fall within the third category of material consideration referred to in the *Heathrow* case (*R (Friends of the Earth Ltd. et al. v Heathrow Airport Ltd.* [2020] UKSC 52, per Lord Hodge and Lord Sales, at §116, [CD14.74].

- Mr. Vergoulas' acceptance in cross examination that there was nothing technically or methodologically unsound in Dr. Hinnell's approach, and that the difference between himself and Dr. Hinnells was one of professional judgment, further underlines the reasonableness of UDC's position at appeal.
- The alleged vagueness / inaccuracy of parts of a RFR are to be assessed in the round. Dr. Hinnells' evidence was not cast in terms of generally accepted perceptions and understandings of climate change, nor did he argue that it would be inappropriate to approve the application at this time (both as referred to in the RFR). There was nothing vague or inaccurate about his evidence, which was foreshadowed in UDC's Statement of Case.
- The amendment to the Climate Change Act 2008 in June 2019 to reflect net zero, combined with recent statements of the Committee for Climate Change provided a proper basis for this RFR. It is disingenuous of STAL to claim that they have not understood its basis. There has been a clear focus to the evidence on carbon emissions given at this inquiry over the course of 1 week. Further or alternatively, NPPF paras. 7, 8, and 148 provided a proper and reasonable policy basis for the RFR, as referred to in Dr. Hinnells' proof on appeal [UDC/3/1, §101].

174 As to RFR4 on necessary infrastructure or mitigation (costs application §§71-74):

- It is not uncommon for a decision notice to include a RFR which articulates that there has been a failure to provide adequate and necessary mitigation arising from the issues raised in the other RFRs. There is nothing inherently unreasonable in a local planning authority taking that approach, particularly when considering a major application such as this.
- The RFR refers to a failure to provide necessary infrastructure and necessary mitigation, a point which STAL appears to miss.
- Arising from its evaluation of the ESA on appeal, UDC has sought necessary mitigation in the form of conditions. It has also sought further mitigation within the s.106 Agreement in relation to the enhanced sound insulation scheme.
- UDC has also scrutinised and highlighted the limitations of the air quality mitigation within the s.106 Agreement (UDC's Closing §§61-63). Ultimately, UDC's approach through Condition 15 is the means by which it seeks to address those limitations.
- The RFR was not vague or inaccurate in recognising that the concerns raised through RFR1-3 needed to be considered through mitigation.

175 As explained above (§105), whilst each RFR both was and is reasonable when considered against the evidence as a whole, even if only one RFR were considered to be reasonable, that would have been sufficient to cause an appeal, with the result that all of the other issues considered on this appeal would have had to be considered with expert evidence. It follows that if only one of UDC's RFRs is considered to be reasonable, no costs award should made.

176 The costs application makes a wholly unfounded assertion that only certain of UDC's witnesses supported Condition 15 '*with any real enthusiasm*' (costs application, §76). There is simply no basis for this assertion, and it certainly was not something put to those, or any of UDC's witnesses in cross-examination.

(6) Response to Ground 4: unreasonableness of Condition 15 as unlawful and / or contrary to the policy tests

177 The PPG provides the following as an example of unreasonable behaviour (ID: 16-049):

- '*imposing a condition that is not necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects, and thus does not comply with the guidance in the National Planning Policy Framework on planning conditions and obligations.*'

178 The example cited is clearly directed at the imposition of a condition by a local planning authority, not one proposed at an appeal. That is because the seeking of conditions on appeal can be fully considered through the appeal process in the normal way.

179 The reasonableness of UDC's approach on Condition 15 is borne out by UDC's disclosure of it to STAL on 4 December – over 5 weeks before the inquiry was due to commence - and its offer to explain and discuss further any points of concern **[27]**.

180 The unreasonableness of STAL's approach on Condition 15 is its complete failure to engage with UDC on its substance or detail, until after the evidence sessions to which it related had been completed. None of STAL's witnesses provided credible answers in cross-examination as to why they had not sought to discuss Condition 15 with UDC's experts[27]. Resistance to, or

[27] Dr. Bull specifically accepted in cross-examination that, with hindsight, it would have been better to have engaged with Dr. Broomfield on Condition 15.

lack of co-operation with another party in discussing an appeal is also cited as an example of unreasonable behaviour in the PPG (ID: 16-052).

181 The legality and policy compliance of Condition 15 has been well traversed in the evidence and written submissions provided by UDC, and will not be repeated here (UDC's Closing §§121-155). At its heart, it is a scheme based, phased release condition, which does not revisit the principle of permission. The concepts which lie behind the condition are not alien to planning.

182 The question for the costs application does not turn on whether the Panel agrees that Condition 15 should be imposed[28]. It turns on whether UDC's approach in proposing it is reasonable. When asked about it in cross-examination, none of STAL's witnesses could articulate clear reasons why Condition 15 was objectionable in principle. In reality, the key focus of Mr. Andrew's concerns were to do with the practicalities of compliance and legal points (which have been dealt with in legal submissions). None of this demonstrates that the Condition is an unreasonable one for UDC to seek as a means of providing a workable solution to the challenges in this appeal.

(7) Response to Ground 5: acting contrary to, or not following, well-established case law

183 As with the other Grounds, this one is devoid of any substance or merit. Both the legal principles applicable to conditions, and the terms of the alternate decision making procedure and their consistency with the statutory appeals mechanism within the TCPA 1990, have been comprehensively addressed in UDC's submissions under Condition 15 ([CD26.6]; [CD26.17a]). Condition 15 is consistent with the authorities and law on conditions.

[28] Yet again, STAL' propensity to mischaracterise what was said at the inquiry is revealed under this Ground (§81). On the opening day of the inquiry, Inspector Boniface mentioned Condition 15, stating that the Panel had '*some reservations*' about its approach, which he was flagging at the outset, so that UDC could set out and justify how it would meet the test for conditions, and also so that UDC could address the situation where that condition was not found to be appropriate. It is wrong to characterise those comments as noting '*serious reservations*' with the Condition.

184 The principle from *Bushell*, on which STAL seeks to rely, is that the merits of Government policy are not a matter which can be subject to investigation when determining individual planning applications.

185 Two points should be noted in relation to the *Bushell* case:

186 First, as a matter of law, the "principle" sought to be relied upon by STAL was actually a comment (obiter dicta) made by Lord Diplock on a point which was conceded by the respondent to that appeal (p.98B-C). The appeal actually concerned a challenge to the decision of the Inspector to disallow cross-examination of the relevant department's witnesses at the public inquiry into 2 draft schemes for the construction of motorways. The "principle" only has binding legal force to that more limited extent.

187 Secondly, the statement of the minister's reasons for proposing the draft scheme stated, in terms, that the government's policy to build the new motorways '*will not be open to debate at the forthcoming inquiries*' (p.98A). The policy and supporting statement on which the House commented in *Bushell* was not analogous to the policy in MBU and how it has been explained by the DfT here:

(1) MBU gives qualified support for all airports wishing to make best use of their runways, subject to environmental issues being addressed, a point which UDC has always accepted ([UCD/4/1], §9.47). But it is not an airport specific policy in the way that the policy to build specific motorways was in *Bushell*.
(2) On carbon emissions, Sarah Bishop's evidence to the High Court in relation to MBU states that there is '*no requirement*' for local authorities to assess proposals under MBU against wider national carbon emission ambitions ([CD17.65], §61). That is a qualified statement which does not say such matters are not open for debate, as was stated in terms in the department's statement considered in *Bushell*.

188 For the above reasons, it is questionable whether there is any principle from *Bushell* which falls to be applied here.

189 In any event, UDC's position, that the weight to be given to MBU in the planning balance is discounted because of the direction of travel in carbon policy (UDC's Closing §118(4)), and

that carbon emissions can be taken into account in local decision making, does not fall foul of any such principle. It is a function of the proper interpretation of the policy in MBU and its application to this proposal[29].

190 Moreover, the fact that Mr. Robinson conceded in cross examination that carbon emissions are a matter which a local planning authority can take into account under MBU (UDC's Closing §84) cannot be saved by STAL's attempts refer to *Bushell* here.

(8) Conclusion

191 For all of the above reasons, the Panel is respectfully invited to dismiss the application for costs (whether for a full or partial award). STAL's costs application is devoid of any substance or merit, and there is nothing to justify a departure from the normal rule for appeals, that each party bears their own costs.

PHILIP COPPEL QC + ASITHA RANATUNGA

9 April 2021

Cornerstone Barristers, 2-3 Gray's Inn Square, London

[29] See UDC's Closing at §§84-93, including reference to the *Drax Power* decision at Footnote 4. Also reference by Dr. Hinnells in cross-examination to carbon emissions coming within the third category of material consideration in decision making by reference to the Heathrow case (*R (Client Earth Ltd. et al. v Heathrow Airport Ltd.* [2020] UKSC 52, per Lord Hodge and Lord Sales, at §116 [CD14.74]).

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Press release

UK enshrines new target in law to slash emissions by 78% by 2035

- English
- Русский (https://www.gov.uk/government/news/uk-enshrines-new-target-in-law-to-slash-emissions-by-78-by-2035.ru)

The UK's sixth Carbon Budget will incorporate the UK's share of international aviation and shipping emissions for the first time, to bring the UK more than three-quarters of the way to net zero by 2050.

From:

Department for Business, Energy & Industrial Strategy (https://www.gov.uk/government/organisations/department-for-business-energy-and-industrial-strategy), Prime Minister's Office, 10 Downing Street (https://www.gov.uk/government/organisations/prime-ministers-office-10-downing-street), The Rt Hon Kwasi Kwarteng MP (https://www.gov.uk/government/people/kwasi-kwarteng), The Rt Hon Alok Sharma MP (https://www.gov.uk/government/people/alok-sharma), and The Rt Hon Boris Johnson MP (https://www.gov.uk/government/people/boris-johnson)

Published

20 April 2021

- UK government to set in law world's most ambitious climate change target, cutting emissions by 78% by 2035 compared to 1990 levels
- for the first time, UK's sixth Carbon Budget will incorporate the UK's share of international aviation and shipping emissions
- this would bring the UK more than three-quarters of the way to net zero by 2050

The UK government will set the world's most ambitious climate change target into law to reduce emissions by 78% by 2035 compared to 1990 levels, it was announced today (Tuesday 20 April).

In line with the recommendation from the independent Climate Change Committee, this sixth Carbon Budget limits the volume of greenhouse gases emitted over a 5-year period from 2033 to 2037, taking the UK more than three-quarters of the way to reaching net zero by 2050. The Carbon Budget will ensure Britain remains on track to end its contribution to climate change while remaining consistent with the Paris Agreement temperature goal to limit global warming to well below 2°C and pursue efforts towards 1.5°C.

For the first time, this Carbon Budget will incorporate the UK's share of international aviation and shipping emissions – an important part of the government's decarbonisation efforts that will allow for these emissions to be accounted for consistently.

This comes ahead of Prime Minister Boris Johnson addressing the opening session of the US Leaders' Summit on Climate, hosted by President Biden on Earth Day (22 April). The Prime Minister will urge countries to raise ambition on tackling climate change and join the UK in setting stretching targets for reducing emissions by 2030 to align with net zero.

The government is already working towards its commitment to reduce emissions in 2030 by at least 68% compared to 1990 levels through the UK's latest Nationally Determined Contribution - the highest reduction target made by a major economy to date. Today's world-leading announcement builds on this goal to achieve a 78% reduction by 2035.

The new target will become enshrined in law by the end of June 2021, with legislation setting out the UK government's commitments laid in Parliament tomorrow (Wednesday 21 April).

Prime Minister Boris Johnson said:

> We want to continue to raise the bar on tackling climate change, and that's why we're setting the most ambitious target to cut emissions in the world.
>
> The UK will be home to pioneering businesses, new technologies and green innovation as we make progress to net zero emissions, laying the foundations for decades of economic growth in a way that creates thousands of jobs.
>
> We want to see world leaders follow our lead and match our ambition in the run up to the crucial climate summit COP26, as we will only build back greener and protect our planet if we come together to take action.

Business and Energy Secretary Kwasi Kwarteng said:

> The UK is leading the world in tackling climate change and today's announcement means our low carbon future is now in sight. The targets we've set ourselves in the sixth Carbon Budget will see us go further and faster than any other major economy to achieve a completely carbon neutral future.
>
> This latest target shows the world that the UK is serious about protecting the health of our planet, while also seizing the new economic opportunities it will bring and capitalising on green technologies – yet another step as we build back greener from the pandemic and we lead the world towards a cleaner, more prosperous future for this generation and those to come.

The UK over-achieved against its first and second Carbon Budgets and is on track to outperform the third Carbon Budget which ends in 2022. This is due to significant cuts in greenhouse gases across the economy and industry, with the UK bringing emissions down 44% overall between 1990 and 2019, and two-thirds in the power sector.

Moreover, the UK continues to break records in renewable electricity generation, which has more than quadrupled since 2010 while low carbon electricity overall now gives us over 50% of our total generation.

Prior to enshrining its net zero commitment in law, the UK had a target of reducing emissions by 80% by 2050 – through today's sixth Carbon Budget announcement, the government is aiming to achieve almost the same level 15 years earlier.

Through its presidency of the crucial UN climate summit, COP26, which will take place in Glasgow later this year, the UK is urging countries and companies around the world to join the UK in delivering net zero globally by the middle of the century and set ambitious targets for cutting emissions by 2030.

COP26 President-Designate Alok Sharma, said:

> This hugely positive step forward for the UK sets a gold standard for ambitious Paris-aligned action that I urge others to keep pace with ahead of COP26 in Glasgow later this year. We must collectively keep 1.5 degrees of warming in reach and the next decade is the most critical period for us to change the perilous course we are currently on.
>
> Long term targets must be backed up with credible delivery plans and setting this net zero focused sixth Carbon Budget builds on the world leading legal framework in our Climate Change Act. If we are to tackle the climate crisis and safeguard lives, livelihoods and nature for future generations, others must follow the UK's example.

The government has already laid the groundwork to end the UK's contribution to climate change by 2050, starting with ambitious strategies that support polluting industries to decarbonise while growing the economy and creating new, long-term green jobs.

This includes the publication of the Industrial Decarbonisation Strategy (https://www.gov.uk/government/publications/industrial-decarbonisation-strategy), an ambitious blueprint for the world's first low carbon industrial sector, slashing emissions by two-thirds in just 15 years, as well as over £1 billion government funding to cut emissions from industry, schools and hospitals.

Further, the UK is the first G7 country to agree a landmark North Sea Transition Deal (https://www.gov.uk/government/publications/north-sea-transition-deal) to support the oil and gas industry's transition to clean, green energy while supporting 40,000 jobs. Through the deal, the sector has committed to cut emissions by 50% by 2030, while the government, sector and trade unions will work together over the next decade and beyond to deliver the skills, innovation and new infrastructure required to decarbonise North Sea production.

Everyone needs to play a role in tackling climate change and bringing businesses and the public along is vital to reach the UK's climate change goals. Ahead of COP26, the government launched the campaign, Together For Our Planet (https://together-for-our-planet.ukcop26.org/), calling on businesses, civil society groups, schools and the British public to take action on climate change. This UK-wide initiative contributed to last month's milestone (https://www.gov.uk/government/news/third-of-uks-biggest-companies-commit-to-net-zero) achievement of securing pledges from a third of the UK's largest businesses to eliminate their contribution to climate change by 2050.

Each of these leading measures to tackle climate change, alongside the Prime Minister's 10 Point Plan for a green industrial revolution (https://www.gov.uk/government/publications/the-ten-point-plan-for-a-green-industrial-revolution/title) and the government's Energy White Paper (https://www.gov.uk/government/publications/energy-white-paper-powering-our-net-zero-future), will help the UK's trajectory towards meeting the new sixth Carbon Budget.

The government will look to meet this reduction target through investing and capitalising on new green technologies and innovation, whilst maintaining people's freedom of choice, including on their diet. That is why the government's sixth Carbon Budget of 78% is based on its own analysis and does not follow each of the Climate Change Committee's specific policy recommendations.

The UK is bringing forward bold blueprints setting out its own vision for transitioning to a net zero economy and how the government can support the public in transitioning to low carbon technologies, including publishing the Heating and Building Strategy and Transport Decarbonisation Plan later this Spring.

The cross-government Net Zero Strategy will also be published ahead of COP26, with Business Secretary Kwasi Kwarteng currently commissioning work across Whitehall to help inform the ambitious plans across key sectors of the economy.

Moreover, government analysis finds that costs of action on climate change are outweighed by the significant benefits – reducing polluting emissions, as well as bringing fuel savings, improvements to air quality and enhancing biodiversity. The government expects the costs of meeting net zero to continue to fall as green technology advances, industries decarbonise and private sector investment grows.

Reaching net zero will also be essential to sustainable long-term growth and therefore the health of public finances, as well as open up new opportunities for the UK economy, jobs and trade – and the government's ambitious proposals are essential to seizing these opportunities.

HM Treasury will publish its Net Zero Review in the coming months setting out how government plans to maximise economic growth opportunities from the net zero transition while ensuring contributions are fair between consumers, businesses and the British taxpayer.

Chairman of the Committee on Climate Change Lord Deben said:

> The UK's sixth Carbon Budget is the product of the most comprehensive examination ever undertaken of the path to a fully decarbonised economy. I am delighted that the government has accepted my Committee's recommendations in full.

CBI Chief Economist Rain Newton-Smith said:

> Setting the sixth Carbon Budget in line with the Climate Change Committee recommendations puts the UK on a credible path to achieve its net zero emissions target.
>
> As COP26 hosts, the UK government is leading by example by setting this stretching target. Business stands ready to deliver with the latest low-carbon technologies and innovations that are driving emissions down every year. By tackling this together, we can reap the benefits of transition to a low-carbon economy.
>
> The target emphasises the importance of the 2020s as a decade of delivery on our climate ambitions, and urgent action is needed now to make this a reality.

Executive Director of Green Alliance Shaun Spiers said:

> By accepting the Climate Change Committee's recommendations for the sixth Carbon Budget, the government has sent out a resounding message, domestically and internationally, that the UK is taking its net zero emissions target seriously. The inclusion of international aviation and shipping is particularly important, showing climate leadership in the year we are hosting the Glasgow climate summit. What we need now is to ensure there is no gap between ambition and policy, so the UK has the right tools in its armoury to meet these targets.

Executive Director of the Aldersgate Group Nick Molho said:

> The government should be commended for adopting the ambitious and evidence-based recommendations from the Climate Change Committee for the sixth Carbon Budget. The emission cuts set out in the Budget represent essential next steps the UK needs to take to ensure a credible, cost-effective, and timely pathway to net zero emissions by 2050. The inclusion of the UK's share of international aviation and shipping emissions is a particularly welcome addition and will help to accelerate the development of sector-specific decarbonisation plans.
>
> Focus must now turn to strengthening the UK's policy framework to meet this new target, by putting in place a detailed and cross-departmental net zero strategy that will drive private investment in low carbon goods and services, supply chains, jobs and skills.

The UK is the first country to enter legally binding long-term carbon budgets into legislation, first introduced as part of the 2008 Climate Change Act. Since then, 5 carbon budgets have been put into law putting the UK on track to meet our ambitious goal to eliminate our contribution to climate change by 2050 and achieve net zero emissions.

Notes to editors

- The sixth Carbon Budget will commit us in law to the fastest fall in greenhouse gas emissions of any major economy between 1990 and 2035, making it one of the most ambitious climate targets in the world
- on 9 December, the Climate Change Committee (CCC) published its advice on the level at which to set Carbon Budget 6 (CB6), covering 2033 to 2037. The CCC recommended that CB6 should be set at 965 MtCO2e, reducing emissions 78% from 1990 to 2035 (including international aviation and shipping emissions)
- the government is laying legislation on 21 April to set the budget at the level recommended by the CCC. This is a highly ambitious target for the mid-2030s – close to the UK's previous 2050 target (an 80% reduction on 1990) just 2 years ago and consistent with the Paris Agreement temperature goal to limit global warming to well below 2°C and pursue efforts towards 1.5°C
- setting CB6 is about the government's ambition to cut emissions, rather than announcing specific policies that will deliver that reduction in emissions. We will bring forward policies to meet carbon budgets, and the Net Zero Strategy, to be published before COP26, will set out our vision for transitioning to a net zero economy
- CB6 includes emissions from International Aviation and Shipping (IAS) for the first time. Previous carbon budgets have formally excluded these emissions, instead leaving 'headroom' for them. However, IAS emissions were included in the CCC's advice, and are included in our 2050 net zero target, which was set on a whole economy basis
- the CCC also recommended in December 2020 that the UK government set a Nationally Determined Contribution (NDC) of at least 68% (excluding International Aviation and Shipping emissions) by 2030. The government accepted this advice and communicated its NDC (https://www.gov.uk/government/news/uk-sets-ambitious-new-climate-target-ahead-of-un-summit) to the UNFCCC on 12 December. Carbon Budget 6 continues the ambitious trajectory recommended by the CCC through the 2030s

- following the CCC's recommended budget level does not mean we are following their specific policy recommendations. Our published analysis is based on the government's own assumptions and does not, for example, assume the CCC's change in people's diet. Ahead of COP26, we will be setting out our own vision for net zero, and ambitious plans across key sectors of the economy to meet carbon budgets

Published 20 April 2021

Related content

- North Sea Transition Deal (https://www.gov.uk/government/publications/north-sea-transition-deal)
- Government responses to the Committee on Climate Change (CCC) annual progress reports (https://www.gov.uk/government/collections/government-responses-to-the-committee-on-climate-change-ccc-annual-progress-reports)
- Carbon Budgets (https://www.gov.uk/guidance/carbon-budgets)
- Achieving net zero carbon emissions through a whole systems approach (https://www.gov.uk/government/publications/achieving-net-zero-carbon-emissions-through-a-whole-systems-approach)
- Increasing ambition towards a climate-resilient, zero-carbon economy (https://www.gov.uk/government/speeches/increasing-ambition-towards-a-climate-resilient-zero-carbon-economy)

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The Planning Inspectorate
Yr Arolygiaeth Gynllunio

The Planning Act 2008

Manston Airport

Examining Authority's Report of Findings and Conclusions

and

Recommendation to the Secretary of State for Transport

Examining Authority

Kelvin MacDonald BSc(Hons) FAcSS FRTPI CIHCM FRSA – Lead Member

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18 October 2019

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OVERVIEW

File Ref: TR020002

The application, dated 17 July 2018, was made under section 37 of the Planning Act 2008 and was received in full by the Planning Inspectorate on the same date.

The Applicant is RiverOak Strategic Partners Limited.

The application was accepted for examination on 14 August 2018.

The examination of the application began on 9 January 2019 and was completed on 9 July 2019.

The Applicant proposes to reopen and develop Manston Airport into a dedicated air freight facility able to handle at least 10,000 air cargo movements per year whilst also offering passenger, executive travel, and aircraft engineering services.

The proposals include both the use of the existing airport infrastructure and the introduction of new facilities. In summary, the Proposed Development includes:

- The upgrade of Runway 10/28 and re-alignment of the parallel taxiway to provide European Aviation Safety Agency compliant clearances for runway operations;
- construction of 19 European Aviation Safety Agency compliant Code E stands for air freight aircraft with markings capable of handling Code D and F aircraft in different configurations;
- installation of new high mast lighting for aprons and stands;
- construction of 65,500m² of cargo facilities;
- construction of a new air traffic control tower;
- construction of a new airport fuel farm;
- construction of a new airport rescue and firefighting service station;
- development of the Northern Grass Area for airport-related businesses;
- highway improvement works;
- extension of passenger service facilities including an apron extension to accommodate an additional aircraft stand and increasing the current terminal size;
- an aircraft maintenance, repair and overhaul facility and end-of-life recycling facilities;
- a flight training school;
- a fixed base operation for executive travel; and
- business facilities for aviation-related organisations.

Summary of recommendation:

The Examining Authority recommends that the Secretary of State should not grant development consent. If however the Secretary of State decides to give consent, then the Examining Authority recommends that the Order should be in the form attached at Appendix D to this report, subject to the Secretary of State's consideration of the recommended actions listed in Annex E.

REPORT TABLE OF CONTENTS

1. INTRODUCTION 1
1.1. INTRODUCTION TO THE APPLICATION AND THE EXAMINATION 1
1.2. APPOINTMENT OF THE EXAMINING AUTHORITY 2
1.3. THE PERSONS INVOLVED IN THE EXAMINATION 3
1.4. THE EXAMINATION AND PROCEDURAL DECISIONS 3
1.5. ENVIRONMENTAL IMPACT ASSESSMENT 13
1.6. HABITATS REGULATIONS ASSESSMENT 14
1.7. UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS 15
1.8. OTHER CONSENTS 16
1.9. STRUCTURE OF THIS REPORT 17
2. THE PROPOSED DEVELOPMENT AND THE SITE 18
2.1. THE APPLICATION AS MADE 18
2.2. SITE HISTORY 18
2.3. THE EXISTING SITE AND SURROUNDINGS 18
2.4. THE APPLICATION AS EXAMINED 20
2.5. RELEVANT PLANNING HISTORY 20
3. LEGAL AND POLICY CONTEXT 24
3.1. THE PLANNING ACT 2008 24
3.2. NATIONAL POLICY STATEMENTS 24
3.3. EUROPEAN LAW 25
3.4. LEAVING THE EUROPEAN UNION 28
3.5. UK LAW 28
3.6. MADE DEVELOPMENT CONSENT ORDERS 36
3.7. TRANSBOUNDARY EFFECTS 37
3.8. OTHER RELEVANT POLICY STATEMENTS 38
3.9. THE NATIONAL PLANNING POLICY FRAMEWORK AND PLANNING PRACTICE GUIDANCE 38
3.10. THE DEVELOPMENT PLAN 39
3.11. THE SECRETARY OF STATE'S POWERS TO MAKE A DCO 40
4. THE PLANNING ISSUES 42
4.1. MAIN ISSUES IN THE EXAMINATION 42
4.2. OTHER ISSUES ARISING IN WRITTEN SUBMISSIONS 45
4.3. ISSUES ARISING IN LOCAL IMPACT REPORTS 46
4.4. CONFORMITY WITH NATIONAL POLICY STATEMENTS 49
4.5. CONFORMITY WITH THE DEVELOPMENT PLAN 50
4.6. APPLICATION OF OTHER POLICIES 51
4.7. ENVIRONMENTAL IMPACT ASSESSMENT 51
4.8. HABITATS REGULATIONS ASSESMENT 52
5. NEED 54
5.2. ISSUES 54

5.3. SECTION STRUCTURE 58
5.4. FINDINGS 58
5.5. POLICY 61
5.6. ISSUES IN THE EXAMINATION 67
5.7. CONCLUSIONS 98
6. FINDINGS AND CONCLUSIONS IN RELATION TO THE PLANNING ISSUES 104
6.1. INTRODUCTION 104
6.2. AIR QUALITY 104
6.3. ARCHAEOLOGY AND THE HISTORIC ENVIRONMENT 131
6.4. BIODIVERSITY 174
6.5. CLIMATE CHANGE 200
6.6. GROUND CONDITIONS 212
6.7. LANDSCAPE, DESIGN AND VISUAL IMPACT 227
6.8. NOISE 267
6.9. OPERATIONS 353
6.10. SOCIO-ECOMONICS 378
6.11. TRAFFIC AND TRANSPORT 410
6.12. WATER RESOURCES 515
7. FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT 532
7.1. INTRODUCTION 532
7.2. POLICY CONTEXT 532
7.3. PROJECT LOCATION 533
7.4. HRA IMPLICATIONS OF THE PROJECT 533
7.5. ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS 534
7.6. CONSERVATION OBJECTIVES 537
7.7. FINDINGS IN RELATION TO ADVERSE EFFECTS ON THE INTEGRITY 537
7.8. CONSIDERATION OF ALTERNATIVES, IMPERATIVE REASONS OF OVERRIDING PUBLIC INTEREST (IROPI) AND COMPENSATORY MEASURES 549
7.9. HRA CONCLUSIONS 550
8. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT 553
8.1. INTRODUCTION 553
8.2. FINDINGS AND CONCLUSIONS 553
8.3. THE CASE FOR DEVELOPMENT CONSENT 585
9. COMPULSORY ACQUISITION AND RELATED MATTERS 586
9.1. INTRODUCTION 586
9.2. THE REQUEST FOR CA AND TP POWERS 586
9.3. THE PURPOSES FOR WHICH LAND IS REQUIRED 587
9.4. LEGISLATIVE REQUIREMENTS 587
9.5. EXAMINATION OF THE CA AND TP CASE 587
9.6. STONE HILL PARK LTD AND KENT FACILITIES LTD 588
9.7. COMPELLING CASE IN THE PUBLIC INTEREST 592

9.8. FUNDING 596
9.9. OTHER STATUTORY TESTS 620
9.10. NON-STATUTORY CRITERIA 621
9.11. HUMAN RIGHTS AND THE PUBLIC SECTOR EQUALITIES DUTY 629
9.12. PART 5 OF THE DRAFT DCO AND ARTICLE 40 633
9.13. SUBMISSIONS FROM AFFECTED PERSONS 642
9.14. ISSUES RELATED TO OTHER SPECIFIC REASONS AND PURPOSES FOR THE CA REQUEST 650
9.15. FREEHOLD LAND 655
9.16. CROWN LAND 658
9.17. SPECIAL CATEGORY LAND 665
9.18. STATUTORY UNDERTAKERS 666
9.19. CONCLUSIONS 674
10. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS 678
10.1. INTRODUCTION 678
10.2. THE DCO AS APPLIED FOR 678
10.3. CHANGES DURING EXAMINATION 678
10.4. CROSS-CUTTING ISSUES 680
10.5. PROPOSED AMENDMENTS TO ARTICLES 708
10.6. PROPOSED AMENDMENTS TO SCHEDULE 1 735
10.7. PROPOSED AMENDMENTS TO SCHEDULE 2 735
10.8. PROPOSED NEW ARTICLE AND REQUIREMENTS 758
10.9. PROPOSED AMENDMENTS TO OTHER SCHEDULES 781
10.10. PROPOSED MINOR AMENDMENTS TO PROVISIONS 781
11. SUMMARY OF FINDINGS AND CONCLUSIONS 787
11.1. INTRODUCTION 787
11.2. CONSIDERATION OF FINDINGS AND CONCLUSIONS 787
11.3. RECOMMENDATION 789

APPENDIX A: THE EXAMINATION II
APPENDIX B: EXAMINATION LIBRARY IX
APPENDIX C: LIST OF ABBREVIATIONS X
APPENDIX D: THE RECOMMENDED DRAFT DCO XXI
APPENDIX E: RECOMMENDED ACTIONS (SoS) XXII

5.5.20. Various policy papers were published in June 2018, including reports on GA[38], consumer information[39], UK airport connectivity alongside wider economic and airline competition impacts[40], sustainable growth and airspace[41], sustainable growth and carbon[42], sustainable growth and aircraft noise[43], business passengers[44], and making the best use of existing runways at airports beyond Heathrow[45].

5.5.21. The latter policy paper states that the Government is supportive of airports beyond Heathrow making best use of their existing runways. However, the paper recognises that the development of airports can have negative as well as positive local impacts, including on noise levels. Freight or cargo flights are not mentioned within this paper, although passenger flights and air traffic movements (ATMs) are (paragraph 1.26).

5.5.22. At the time that the Examination of this application closed, the Government had not published its response to the Aviation 2050 Green Paper consultation.

National Planning Policy Framework

5.5.23. The NPPF states that planning policies [development plans] should provide for any large-scale transport infrastructure facilities that need to be located in the area (including airports) and recognise the importance of maintaining a national network of GA airfields (paragraph 104). The Framework notes that the purpose of the planning system is to contribute to the achievement of sustainable development, with at a very high level the objective of sustainable development summarised as meeting the needs of the present without compromising the ability of future generations to meet their own needs.

Policy discussion

5.5.24. Various discussions took place during the Examination over the extent to which the AC and the ANPS took account of freight, with the Applicant stating that it was only at stage 2 of the AC's work which "*focused on a*

[38] Available at: https://www.gov.uk/government/publications/aviation-2050-the-future-of-uk-aviation-consultation-general-aviation-reports
[39] Available at: https://www.gov.uk/government/publications/aviation-2050-the-future-of-uk-aviation-consultation-consumers-reports
[40] Available at: https://www.gov.uk/government/publications/aviation-2050-the-future-of-uk-aviation-consultation-competitive-markets-reports
[41] Available at: https://www.gov.uk/government/publications/aviation-2050-the-future-of-uk-aviation-consultation-sustainable-growth-airspace-reports
[42] Available at: https://www.gov.uk/government/publications/aviation-2050-the-future-of-uk-aviation-consultation-sustainable-growth-carbon-reports
[43] Available at: https://www.gov.uk/government/publications/aviation-2050-the-future-of-uk-aviation-consultation-sustainable-growth-noise-reports
[44] Available at: https://www.gov.uk/government/publications/aviation-2050-the-future-of-uk-aviation-consultation-global-and-connected-britain-report
[45] Available at: https://www.gov.uk/government/publications/aviation-strategy-making-best-use-of-existing-runways

detailed appraisal of 3-4 short listed option for new runways" that air freight became a material consideration for the AC and that:

"*the Government did not have a modelling tool capable of forecasting the scale and distribution of future growth in air freight, under the strategic options it was examining for South East Airport Capacity*" [REP3-195, ND.1.1].

5.5.25. The Applicant acknowledged however that there is:

"*significant evidence from the Commission's final report and supporting Business Case annexes published in June 2015 that air freight capability was an important differentiator between the Heathrow and Gatwick runway options. The ability of the preferred Heathrow option to substantially increase air freight capacity within the South East airport system was also mentioned as a material consideration in the Government's support for that scheme as reflected subsequently in the NPS*" [REP3-195, ND.1.1]

5.5.26. It is clear, as stated above, that that the ANPS does not have effect in relation to an application for development consent for an airport development not comprised in an application relating to the Northwest Runway at Heathrow but that the contents of the ANPS will be both important and relevant consideration in the determination of the Proposed Development, particularly as it is located in the South East of England.

5.5.27. The ExA considers that it is clear that freight was considered within the ANPS, with in particular noting comments relating to the proposed expansion at Heathrow Airport delivering the biggest boost in long haul flights, and the greatest benefit therefore to air freight, further facilitated by the existing and proposed airport development of freight facilities as part of the scheme.

5.5.28. Aside from this, the ExA note and recognise that a common theme running through Government aviation policy from the APF in 2013, through the work of the AC, the ANPS and through to the latest consultation documents is the Government's view that airports should make the best use of their existing capacity and runways, subject to environmental issues being addressed.

5.6. ISSUES IN THE EXAMINATION

Capacity

5.6.1. The ANPS states that London Heathrow is operating at capacity today, Gatwick is operating at capacity at peak times and that the whole London airports system is forecast to be full by the mid-2030s, and notes that, with very limited capability for London's major airports, London is beginning to find that new routes to important long haul destinations are being set up elsewhere in Europe, having an adverse impact on the UK economy and affecting the country's global competitiveness (paragraph 1.2).

6.5.60. The Applicant also noted that the CCA08 still excludes international aviation from the 'net zero' requirement. International flights will form the vast majority of ATMs operating at Manston Airport [REP9-006].

6.5.61. The Applicant in its Overall Summary of Case [REP11-014] concluded that there have been no significant residual concerns expressed by statutory bodies in the area of climate change.

6.5.62. The ExA concludes that the Applicant has considered adequately the 'Net Zero' requirement in its assessment. The ExA has examined Net Zero, and is satisfied that it has taken into consideration the subsequent amendment to CCA08 dated 26 June 2019.

ExA's conclusions

6.5.63. The ExA has had regard to the LIR produced by TDC [REP3-010] in reaching its conclusions on climate change and adaptation.

6.5.64. The ExA is satisfied that the mitigation measures secured in the DCO will address IP concerns regarding climate change effects via the following Requirements:

- R4 – Detailed design;
- R6 - oCEMP (incorporating CMAP);
- R7 – OEMP (and REAC incorporating CCAS);
- R8 – Ecological mitigation;
- R10 - Landscape; and
- R13 – Surface and foul water drainage.

6.5.65. The ExA notes that emissions of GHG from international aviation do not currently count as emissions from sources in the UK for the purposes of carbon targets and budgeting, except as provided by Regulations made by the Secretary of State. However, the CoCC is advising that the planning assumption for international aviation should be to achieve net-zero emissions by 2050. In their emerging advice to the UK Government[77], they advise that this should be reflected in the UKs forthcoming Aviation Strategy. It means reducing actual emissions in the aviation sector. CoCC advises that the Government should assess its airport capacity strategy in this context. Specifically for the Proposed Development, it will need to be demonstrated to make economic sense ie establish a need case, in a net-zero world and the transition towards it. Chapter 5 of this report on need concludes that the Applicant has failed to demonstrate sufficient need for the Proposed Development, additional to (or different from) the need which is met by the provision of existing airports.

[77] Available at: https://www.theccc.org.uk/wp-content/uploads/2019/09/Letter-from-Lord-Deben-to-Grant-Shapps-IAS.pdf

6.5.66. The ExA concludes that the Applicant's assessment of climate change and GHG emissions calculations in the light of the revised TA is adequate.

6.5.67. The ExA concludes that the Applicant has adequately addressed UKCP calculations and has provided a CCAS secured via Requirements 4 and 7 in the dDCO.

6.5.68. The ExA concludes that the Applicant has considered adequately the 'Net Zero' requirement in its assessment. The ExA has examined Net Zero, and is satisfied that it has taken into consideration the subsequent amendment to CCA08 dated 26 June 2019.

6.5.69. The CEMP and REAC includes measures to identify and control any climate change affects that may emerge before construction starts or during the construction period.

6.5.70. Given the evidence presented, the ExA considers that climate change issues have been adequately assessed, and that the requirements of the ANPS, NPPF and 2017 EIA Regulations are met. The ExA's overall conclusion is that the construction and operation of the Proposed Development would avoid significant climate change effects in accordance with the ANPS and NPPF. Mitigation measures would be an integral part of the Proposed Developments adaptation to climate change and would be appropriately secured through the DCO and related documentation certified under Article 41.

6.5.71. However, the ExA concludes that given the direction of emerging policy that the Proposed Development's contribution of 730.1 $KtCO_2$ per annum ie 1.9% of the total UK aviation carbon target of 37.5 Mt CO_2 for 2050, from aviation emissions will have a material impact on the ability of Government to meet its carbon reduction targets, including carbon budgets. The ExA concludes that this weighs against the granting of development consent.

6.6. GROUND CONDITIONS

Introduction

6.6.1. This section of the Recommendation Report considers the impact on ground conditions from construction and operation activities arising from the Proposed Development. It also considers public health effects relating to ground conditions.

Geological baseline

6.6.2. ES Chapter 10.4.1 [APP-033] states that (using British Geological Survey (BGS) mapping) the site is predominantly underlain by the Newhaven Chalk Member (Upper Chalk Formation) of Cretaceous age, overlain locally by Quaternary Head Deposits. It goes on to explain that the Thanet Formation lies to the north of the Proposed Development site overlying the chalk deposits [APP-053, Appendix 10.1, Appendix A]. The Applicant states that made ground is anticipated across the site area

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Department for Transport

BDB Pitmans LLP
50 Broadway
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9 July 2020

Dear Sirs,

PLANNING ACT 2008
APPLICATION FOR THE PROPOSED MANSTON AIRPORT DEVELOPMENT CONSENT ORDER

1. I am directed by the Secretary of State for Transport ("the Secretary of State") to say that consideration has been given to:

- the report dated 18 October 2019 of the Examining Authority, a Panel of four examining inspectors consisting of Kelvin MacDonald, Martin Broderick, Jonathan Hockley and Jonathan Manning ("the ExA"), who conducted an examination into the application made by your clients, RiverOak Strategic Partners Limited ("the Applicant") for the Manston Airport Development Consent Order ("the DCO") under section 37 of the Planning Act 2008 as amended ("the 2008 Act") ("the Application");
- representations received in response to the Secretary of State's further consultation letter of 17 January 2020; and
- other late representations received by the Secretary of State following the close of the examination.

2. The Application was accepted for examination on 14 August 2018 and it was completed on 9 July 2019. The examination was conducted on the basis of written and oral submissions submitted to the ExA and by eight issue-specific hearings, two compulsory acquisition hearings and four open floor hearings held in Margate and Sandwich in Kent. The ExA also conducted one unaccompanied site inspection on 8 January 2019 and one accompanied site inspection on 19 March 2019.

3. The existing Manston Airport site is located west of the village of Manston and north east of the village of Minster in Kent. Margate lies approximately 5km to the north of the 296 hectares (732 acres) site, with Ramsgate approximately 4km to the east and Sandwich Bay approximately 4 to 5km to the south east.

4. The DCO as applied for under the 2008 Act would grant development consent for the reopening and development of Manston Airport into a dedicated air freight facility able to handle at least 10,000 air cargo movements per year whilst also offering passenger,

executive travel, and aircraft engineering services. The proposals include the use of some of the remaining decommissioned airport infrastructure and the introduction of new facilities including: the upgrade of Runway 10/28 and re-alignment of the parallel taxiway to provide European Aviation Safety Agency compliant clearances for runway operations; construction of 19 European Aviation Safety Agency compliant Code E stands for air freight aircraft with markings capable of handling Code D and F aircraft in different configurations; installation of new high mast lighting for aprons and stands; construction of 65,500m² of cargo facilities; construction of a new air traffic control tower; construction of a new airport fuel farm; construction of a new airport rescue and firefighting service station; development of the Northern Grass Area for airport-related businesses; highway improvement works; extension of passenger service facilities including an apron extension to accommodate an additional aircraft stand and increasing the current terminal size; an aircraft maintenance, repair and overhaul facility and end-of-life recycling facilities; a flight training school; a fixed base operation for executive travel; and business facilities for aviation-related organisations ("the Development").

5. Published alongside this letter on the Planning Inspectorate's website is a copy of the ExA's Report of Findings, Conclusions and Recommendations to the Secretary of State ("the ExA's Report") as amended by the Errata Sheet (Ref TR0200020). The ExA's findings and conclusions are set out in sections 4 to 10, and the ExA's summary conclusions and recommendation are set out in section 11.

Summary of the ExA's Recommendation

6. The main issues considered during the examination on which the ExA reached conclusions on the case for development consent were:

a) need for the Development;
b) air quality;
c) archaeology and the historic environment;
d) biodiversity;
e) climate change;
f) ground conditions;
g) landscape, design and visual impact
h) noise and vibration;
i) operational matters;
j) socio-economics;
k) traffic and transport;
l) habitats regulations assessment; and
m) compulsory acquisition.

7. The ExA recommended that the Secretary of State should not grant development consent.

Summary of the Secretary of State's Decision

8. The Secretary of State has carefully considered the ExA's Report and has decided, under section 114(1)(a) of the 2008 Act, to make, with modifications, a DCO granting development consent for the proposals in the Application. This letter is the statement of reasons for the Secretary of State's decision for the purposes of section 116(1)(a) of the

2008 Act and regulation 23(2)(d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 ("the 2009 Regulations") - which apply to the Application by operation of regulation 37(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017[1].

9. Please note that, although this letter refers to the decision of "the Secretary of State", the Rt Hon Grant Shapps has not personally been involved in this decision because of a conflict of interest, following previous statements of support made prior to his appointment as the Secretary of State for Transport. The decision has in practice been allocated to and taken by the Minister of State for Transport, Andrew Stephenson, but by law has to be issued in the name of the Secretary of State.

Secretary of State's consideration of the Application

10. The Secretary of State has considered the ExA's Report, the responses to the further consultation and the other late representations received after the close of the ExA's examination, and all other material considerations. The Secretary of State's consideration of the ExA Report and the further representations is set out in the following paragraphs. Where not stated, the Secretary of State can be taken to agree with the ExA's findings, conclusions and recommendations as set out in the ExA's Report and the reasons given for the Secretary of State's decision are those given by the ExA in support of the conclusions and recommendations. All "ER" references are to the specified paragraph in the ExA's Report. Paragraph numbers in the ExA's Report are quoted in the form "ER x.xx.xx" as appropriate.

11. The Development site lies within the local government area of Thanet District Council within the administrative county of Kent. The Secretary of State has had regard to the Local Impact Reports ("LIRs") submitted by Kent County Council ("KCC") [ER 4.3.14 – 4.3.21] and Thanet District Council ("TDC") [ER 4.3.22 – 4.3.23], who are the relevant local authorities for the area of the Development, and the Development Plan and the emerging Development Plan for the area of the Development [ER 3.10 and 4.5]. He has also had regard to the LIRs submitted by Canterbury City Council ("CCC") [ER 4.3.2 – 4.3.9] and Dover District Council ("DDC") [ER 4.3.10 – 4.3.13] and to all other matters which are considered to be important and relevant to the Secretary of State's decision as required by section 104 of the 2008 Act. In making the decision, the Secretary of State has complied with all applicable legal duties and has not taken account of any matters which are not relevant to the decision.

12. The Secretary of State notes 2052 relevant representations ("RR") were received in the RR period and all those who submitted RRs were provided an opportunity to become involved in the ExA's examination as Interested Parties [ER 1.4.26]. There were also 23 submissions which were purported to be RRs but could not be treated as such because they were either late or not in the prescribed form or both that were accepted as Additional Submissions to the examination. Apart from Canterbury City Council, which as a Local Authority is an Interested Party, the parties who made the representations were treated as Other Persons for the purposes of the Examination [ER 1.4.27]. In all, the ExA accepted 585 representations as Additional Submissions, which were considered by the ExA to be

[1] The Applicant submitted a scoping report before the 2017 EIA Regulations came into force and so the 2009 EIA Regulations continue to apply to the Application in accordance with transitional arrangements. Further to advice issued by the Planning Inspectorate on behalf of the Secretary of State in a scoping opinion dated 10 August 2016, the Applicant took account of the 2017 EIA Regulations in relation to the production and content of its Environmental Statement. However, it did not request a new scoping opinion [ER 1.5.2 and 1.5.6].

potentially important and relevant to the examination [ER 1.4.28]. The Applicant, Interested Parties and Other Persons were provided with opportunities to make Written Representations, comment on Written Representations from the Applicant and other Interested Parties, summarise their oral submissions made during the examination in writing, and comment on documents issued for consultation by the ExA. All Written Representations and other examination Documents were also taken into account by the ExA [ER 1.4.29 – 1.4.30]. The Secretary of State has considered the findings, conclusions and recommendations of the ExA as set out in the ExA's Report in reaching his own conclusion on the Application. The reasons for the Secretary of State's decision are set out in the following paragraphs.

Secretary of State's consideration of the ExA's findings and conclusions in relation to the planning issues

Need for the Development

13. The ExA notes that 'Airport National Policy Statement: new runway capacity and infrastructure at airports in the South East of England' ("ANPS"), which was designated on 26 June 2018, did not have effect in relation to the Application. The examination was therefore conducted under section 105 of the 2008 Act, which applies to decisions in cases where no National Policy Statement has effect [ER 3.1.2].

14. In deciding the Application, section 105(2) requires the Secretary of State to have regard to: (a) any local impact report (within the meaning given by section 60(3)) submitted to the Secretary of State before the deadline specified in a notice under section 60(2); (b) any matters prescribed in relation to development of the description to which the Application relates; and (c) any other matters which the Secretary of State thinks are both important and relevant to the Secretary of State's decision.

15. The Court of Appeal ruled on 27 February 2020 (i.e. after the close of the examination) that when designating the ANPS, which was backed by Parliament, the previous Government did not take account of the Paris Agreement, non-CO_2 emissions and emissions post 2050. As part of its judgment, the Court also declared that the ANPS is of no legal effect unless and until the government carries out a review under the Planning Act 2008. Government had taken the decision not to appeal this judgment and accordingly the Secretary of State has afforded the ANPS no weight in his decision.

16. The Secretary of State notes that the Applicant's Statement of Reasons considers that there is an urgent need for dedicated air cargo capacity in the South East of England for the following reasons:

- that *"there is significant unmet need for local air cargo capacity which is currently either not being met at all or being met by trucking cargo through the Channel Tunnel to and from airports on mainland Europe";*
- that *"the existing airports in the region are primarily passenger airports with few cargo-only flights, which are often first to be displaced when there is disruption or delay"; and*
- that *"the main airport to carry cargo is Heathrow, which carries around 95%* [of the cargo it carries] *in the holds of passenger aircraft, restricting it to the destinations and timetables served by passenger flights*." [ER 5.2.1]

17. The Secretary of State notes that none of the Local Impact Reports provided by KCC, TDC, DDC or CCC make any specific comments on the need for the Development [ER 5.2.8-ER 5.2.14]. Whilst TDC's Local Impact Report states the adopted Thanet Local Plan 2006 allocates the use of Manston Airport for aviation use [ER 8.2.12], its emerging Local Plan takes a neutral stance and the Application site is not allocated for aviation or any other use so as not to prejudice the Application [ER 8.2.14]. Given the above, the ExA concludes that the principle of the Development is supported by the adopted development plan and does not conflict with the emerging Local Plan. However, the ExA notes for the Development to be compliant with the Development Plan as a whole, it must be acceptable in other regards as set out in Policy EC2 of the Local Plan [ER 8.2.15].

18. The Secretary of State also notes that written representations relating to need for the Development were also received from: York Aviation employed by Stone Hill Park Ltd ("SHP"), the majority landowners of the site during the examination, but who completed the sale of its freehold interests in land at Manston Airport to RiverOak MSE Ltd, a subsidiary of the Applicant, on the final day of the examination [ER 9.6.10]); a local interest group, 'No Night Flights'; and from other Interested Parties. Some Interested Parties also stated their support for the re-opening of the airport for General Aviation, including flight training, noting that some General Aviation companies had moved to other airports since its closure. The ExA notes that such comments also showed a desire to move back to Manston should the airport re-open [ER 5.2.15-ER 5.2.17].

19. Overall, the ExA considers that the levels of freight that the Development can be expected to handle are modest and could be catered for at existing airports (Heathrow, Stansted and EMA, and others if demand existed). The ExA considers that the Development appears to offer no obvious advantages to outweigh the strong competition that such airports offer. The ExA has therefore concluded that the Applicant has failed to demonstrate sufficient need for the Development, additional to (or different from) the need which is met by the provision of existing airports [ER 5.7.28].

20. Whilst noting the ExA's consideration of need [ER 5] and conclusion that the Applicant's failure to demonstrate sufficient need weighs substantially against the case for development consent being given [ER 8.2.25 - 8.2.26], the Secretary of State disagrees and concludes that there is a clear case of need for the Development which existing airports (Heathrow, Stansted, EMA and others able to handle freight) would not bring about to the same extent or at all. The Secretary of State concludes that significant economic and socio-economic benefits would flow from the Development to Thanet and East Kent as well as more widely including employment creation, education and training, leisure and tourism, benefits to general aviation[2] and regeneration benefits. In addition, as a result of the Development, the potential exists for Manston Airport to develop and grow into a transport asset for the UK which would provide a number of significant benefits locally, regionally and nationally, complementary and in addition to those able to be provided by existing airports. These include increased capacity available in North Kent for import and export of freight by air to, from and within the UK including support for high value and time-critical transport of goods, increased connectivity to the North Kent area, benefits which flow from its location in terms of its accessibility, enhanced access to markets and to end users, the facilitating of

[2] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/417334/General_Aviation_Strategy.pdf

inward investment, support for the advanced manufacturing sector in which the UK is looking to build competitive strength, and the provision of a passenger and executive airport in North Kent. The Secretary of State gives substantial weight to the above public benefits both individually and cumulatively.

21. In addition, it is to be concluded that the Development would support the government's policy objective to make the UK one of the best-connected countries in the world and for the aviation sector to make a significant contribution to economic growth of the UK[3]. It is the Government's aviation policy that airports should make the best use of their existing capacity and runways, subject to environmental issues being addressed[4]. Substantial weight is given by the Secretary of State to the conclusion that the Development would be in accordance with such policies and that granting development consent for the Development would serve to implement such policy. Although the Secretary of State considers the Development would also be consistent with the aims of emerging aviation policy[5], he considers that as such, it should be afforded limited weight.

Archaeology and the Historic Environment

22. The ExA's consideration of archaeology and the historic environment is set out in Chapter 6.3 and its conclusion is that that the impact on heritage assets of the Development weigh moderately against the case for development consent being given [ER 8.2.103]. The Secretary of State notes that the ExA has concluded the public benefits outweigh the harm caused by the Development, to which it has ascribed considerable weight [ER 8.2.99]. However, given the ExA's conclusions on sufficient need and noting heritage assets are irreplaceable, it does not consider clear and convincing justification for that harm has not been demonstrated by the Development [ER 8.2.102].

23. The Secretary of State agrees with the ExA that the public benefits outweigh the harm to heritage assets. He accepts that less than substantial harm would be caused to designated heritage assets, that great weight should be given to the assets' conservation, and given that heritage assets are irreplaceable, any harm or loss should require clear and convincing justification. However, in considering the balance to be applied in accordance with government policy in paragraph 196 of the National Planning Policy Framework ("NPPF"), the Secretary of State concludes that there is clear and convincing justification for the Development and that substantial weight should be given to the need and public benefits that would result from the Development and that these would clearly outweigh the heritage harm.

3 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/153776/aviation-policy-framework.pdf

4 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/714069/making-best-use-of-existing-runways.pdf

5 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/698247/next-steps-towards-an-aviation-strategy.pdf

Climate Change

24. The Secretary of State notes the ExA considers that, given the evidence presented, climate change issues have been adequately assessed, and that the requirements of the NPPF and 2017 EIA Regulations (and the ANPS) are met [ER 6.5.70]. The ExA's overall conclusion is that the construction and operation of the Development would avoid significant climate effects in accordance with the NPPF (and ANPS). The ExA is satisfied that the mitigation measures secured in the draft DCO by Requirements 4, 6, 7, 8, 10 and 13 (covering: Detailed design; outline Construction Environmental Management Plan; Operational Environmental Management Plan; Ecological mitigation; Landscape; and Surface and foul water drainage) will address the concerns of Interested Parties regarding climate change [ER 6.5.64]. On balance, the ExA concludes there are no matters relating to specific impacts of the Development on climate change which weigh against granting development consent [ER 8.2.73].

25. More widely, the ExA notes that under section 30 of the Climate Change Act 2008 ("CCA08") greenhouse gas emissions from international aviation do not currently count as emissions from sources in the UK for the purposes of carbon targets and budgeting, except as provided by Regulations made by the Secretary of State [ER 6.5.21 and 6.5.44]. However, on 1 May 2019 the UK Government declared a climate emergency and 'Net Zero- The UK's contribution to stop global warming' was published the following day. This publication included the Committee on Climate Change's ("CoCC") recommendation of a new emissions target for the UK of net-zero greenhouse gases by 2050 [ER 6.5.23]. The CCA08 was amended on 26 June 2019 through the Climate Change Act 2008 (2050 Target Amendment) Order 2019 to establish the net-zero greenhouse gas target in law [ER 6.5.25]. The ExA notes that the CoCC is accordingly advising that the planning assumptions for international aviation should be to achieve net-zero emissions by 2050 [ER 6.5.44] and its emerging advice to the UK Government is that this should be reflected in the UK's emerging Aviation Strategy, which means reducing actual emissions in the international aviation sector. The CoCC advises that the UK Government should assess its airport capacity strategy in this context. The ExA notes specifically for the Development, it will need to be demonstrated to make economic sense (i.e. to establish a need case, in a net-zero world and the transition towards it) [ER 6.5.45]. The ExA concludes that the Development's Carbon Dioxide contribution of 730.1KtCO2 per annum, which according to the Applicant forms 1.9% of the total UK aviation carbon target of 37.5 Mt CO2 for 2050, will have a material impact on the ability of Government to meet its carbon reduction targets, including carbon budgets. The ExA concludes that this weighs moderately against the case for development consent being given [ER 8.2.75].

26. For the reasons set out above in paragraphs 20 and 21, the Secretary of State considers there is a clear need and public benefit case for the Development and notes that the ExA's conclusions above appear to be based in part on emerging policy on climate change. However, as the Government is still considering the consequences of the ANPS judgment, and ahead of the publication of the Government's Transport Decarbonisation Plan[6] and new Aviation Strategy to be published later this year, the Secretary of State is satisfied that it would not be appropriate to consider further at this stage. He is content therefore to accept the ExA's view that this is a matter that should be afforded moderate weight against the Development in the planning balance.

[6] https://www.gov.uk/government/publications/creating-the-transport-decarbonisation-plan

Noise and Vibration

27. The Secretary of State notes that a significant proportion of the relevant representations received raised aviation noise as a concern, with the primary focus of the examination being on operational noise effects [ER 6.8.5]. The Secretary of State notes the ExA's consideration of noise and vibration from construction and operational activities [ER 6.8] and conclusion that the impacts of noise and vibration weigh moderately against the case for development consent being given [ER 8.2.150]. The Secretary of State agrees with the ExA's conclusion, but having regard to the proposed restrictions he intends to impose, this is only marginally overall. He concludes that only limited weight is therefore to be given to such adverse effects.

28. The Secretary of State agrees with the conclusions of the ExA in its Report at paragraphs ER 8.2.121-8.2.123, ER 8.2.127-8.2.135, ER 8.2.137, ER 8.2.139-8.2.141 and ER 8.2.144-8.2.146.

29. The Secretary of State notes that the ExA's overall assessment of Noise Policy Statement England 2010 ("NPSE") requirements is that only with the inclusion of its recommended Requirements is it able to conclude that on balance the Development meets the first aim to avoid significant impacts on health and quality of life for residential and school receptors. However, given the uncertainty regarding the efficacy of mitigation for up to 40 caravan owners/occupiers all significant effects are not avoided. Although the Applicant will consider their relocation, the ExA considers relocation has likely significant effects on health and quality of life and therefore fails to satisfy the first aim. The ExA concludes on balance that the Development can be said to meet the second aim. As the third aim is to be achieve "where possible", the ExA agrees that the Applicant has demonstrated that it has addressed the third aim and notes the annual financial contributions for monitoring and for school insulation and ventilation mitigation [ER 8.2.147 – 8.2.148].

30. Following the ExA's amendments to the draft DCO relating to noise and appropriate mitigation and given the evidence presented, the ExA considers the Development generally accords with the relevant national and local policies and guidance in respect of noise [ER 6.8.489 - 6.8.493 and ER 8.2.145 - 8.2.149]. The Secretary of State agrees and, in respect of relocation of caravan owners, he accepts that relocation can have significant effects on health and quality of life [ER 8.2.147] but notes that any such relation is contingent and that the consequences of any such relocation are currently unknown. He disagrees that the need for the Development is as stated by the ExA [ER 8.2.142] and has reached his own conclusions on the need for the Development in paragraphs 20 and 21 above.

31. The Secretary of State has considered the implications of noise impacts with respect to Human Rights and has concluded there are no additional restrictions which are required to be imposed to safeguard the Human Rights of persons adversely affected by the Development and that the proposed interference is justified in the public interest and proportionate [ER 8.2.141 - 8.2.143].

32. The Secretary of State agrees with the ExA's conclusion that the financial contribution for insulation and ventilation for schools in the Unilateral Undertaking ("UU") in favour of Kent County Council together with Requirement 21 covering Airport Operations would adequately mitigate the impacts of noise and vibration effects of the Development on schools. He is also satisfied that a financial contribution for Noise Monitoring Stations and independent noise monitoring assessment of their data in the UU in favour of Thanet District

Council will ensure that the provisions of the Noise Mitigation Plan and DCO are complied with [ER 8.2.148].

33. The restrictions to be imposed by the Secretary of State in Requirements 9, 21 and 23 of the DCO covering operational noise mitigation, airport operation and monitoring include:

i. a ban on night flights – restricting scheduled flights between 23:00 and 06:00 (Requirement 21) and a restriction on noisier aircraft between 06:00 to 07:00 (Requirement 9) [ER 8.2.124];
ii. noise Quota Counts ("QCs") to control noise impacts (Requirement 9) – setting a QC for aircraft in the 06:00 to 07:00 period and restricting noisier aircraft with QC 4, 8 or 16 to mitigate noise in the late part of the night-time quota period [ER 8.2.125];
iii. contour to limit annual noise emissions – the contour area and relevant noise contours are secured in the DCO (Requirement 9) and the contour area cap is considered a reasonable approach to mitigate and minimise the population exposed to aircraft noise above the day and night-time Lowest Observed Adverse Effect Level ("LOAEL" – the level above which adverse effects on health and quality of life can be detected) [ER 8.2.126];
iv. residential properties –with habitable rooms within the 60dB LAeq (16 hour) day time contour will be eligible for noise insulation and ventilation detailed in the noise mitigation plan (Requirement 9) [ER 6.8.247];
v. schools – the restrictions on passenger air transport departures is, with the funding commitments for insulation and ventilation in the UU in favour of Kent County Council, considered adequate to avoid significant adverse noise effects [ER 8.2.136];
vi. caps on the annual air traffic movements for cargo, passenger and general aviation (Requirement 21) to the worst-case assessment in the Environmental Statement [ER 8.2.123];
vii. the establishment of a robust monitoring, auditing and reporting scheme (Requirement 23), not just for noise, but covering monitoring in all aspects of potential effects [ER 8.2.137].

34. Although subject of separate regulatory procedure on which the Secretary of State therefore expresses no conclusion, it is also noted that in considering its relevance to noise controls, the ExA has accorded no weight to the separate Manston Airspace Change Process ("ACP") application to the CAA, concerned with the detailed design of airspace and specific flight paths, in making its conclusion and recommendation. It is noted that should the flight paths assessed as part of the ACP application differ to the extent that likely significant effects not assessed as part of the Applicant's Environmental Statement are identified, the ExA considers that this could potentially constitute a material change which would require an application to be submitted to the Secretary of State under the 2008 Act. Given that the Applicant and CAA also have a Statement of Common Ground in place, the ExA is satisfied that the potential for new or previously unassessed impacts to arise is limited [ER 6.8.298, 6.8.474 and 8.2.127].

35. In conclusion, the Secretary of State considers that the public benefits significantly outweigh the harm caused by the Development due to noise and vibration impacts, taking

into account the restrictions to be imposed by him, and also acknowledging that the airport has operated lawfully without restrictions in the past.

Operational Issues

36. The Secretary of State notes the ExA's consideration of operational matters in Chapter 6.9 of its report. The Secretary of State agrees with the ExA in respect of their conclusions on operational matters [ER 8.2.151 – 8.2.176], except where stated below. In light of these matters/areas where he disagrees, the Secretary of State also does not consider that operational matters weigh moderately against the grant of development consent being given for the Development.

37. The Secretary of State disagrees with the ExA in relation to its conclusions concerning the Northern Grass Area ("NGA") [ER 8.2.159 – 8.2.161]. He concludes that the whole of the NGA is essential for the whole of this area to be included within the DCO area so that the airport is able to provide adequate land for airport-related development.

38. As indicated above in paragraph 34, the Secretary of State expresses no conclusion in relation to Airspace Change Process [ER 8.2.163] or also the Aerodrome Certificate [ER 8.2.162], as these are both the subject of separate regulatory procedures.

39. The Secretary of State notes the conclusions of the ExA concerning possible future Public Safety Zones ("PSZs"). These are the subject of separate procedures and are contingent on a number of factors including future growth, future fleet mix and crash data, calculations of risk, and policy in force at the time. He does accept that on the basis of submitted forecasts and current policy, PSZs would be likely to be imposed around the 4th or 5th year of operation. However, the socio-economic impacts of the PSZs are difficult to determine as they are dependent on future decision making by land owners, developers and the Local Planning Authority. Due to the uncertainty surrounding a number of factors, the Secretary of State places limited weight on the comment of the ExA that the negative effects of the PSZ weigh against the Development [ER 8.2.164 – 8.2.168].

40. The Secretary of State notes the discussion during the examination regarding the High Resolution Direction Finder ("HRDF"- a navigational aid to aircraft operating in the area and critical to maintaining the UK emergency response capabilities for the management of air safety incidents). The Ministry of Defence ("MOD") has maintained its objection to the Development as it considers that it would have a significant and detrimental impact on the capability of safeguarded technical equipment located within the boundaries of the Development [ER 6.9.130]. The Secretary of State notes that in response to his consultation letter of 17 January 2020 the MOD maintains an objection to the relocation of the HRDF and no resolution on this matter appears to be imminent. The Secretary of State has given careful consideration to this issue. He notes the proposals from the MOD in their letter dated 31 January 2020 and agrees to MOD's proposed amendment to requirement 24(1) but disagrees with the amendments proposed for 24(3). Notwithstanding this requirement, the Secretary of State also accepts that there is no guarantee that the HRDF can be moved at this time, but would encourage the Applicant and the MOD to engage in constructive dialogue to seek a workable solution to resolve this issue. The Secretary of State's consideration of the compulsory acquisition of the HRDF land is set out below.

Socio-Economic (Employment, Tourism, and Education, Training and Skills)

41. The Secretary of State notes the ExA's consideration of this matter [ER 6.10] and its conclusion that the socio-economic benefits of the Development have been overstated, and that the Development would have an adverse effect on tourism in Ramsgate. The ExA considers that the Applicant's education, training and skills commitments would benefit Thanet and East Kent. When taken together the ExA considers that the Development would still generate a socio-economic benefit to Thanet and East Kent, but such benefits are substantially lower than that forecast by the Applicant. Such benefits are also dependent on the need for the Development; without the need and the forecasts based on this need, socio-economic benefits (aside from the education, training and skills commitments) would reduce further [ER 8.2.188].

42. The Secretary of State's conclusions on the need for the Development are set out above in paragraphs 20 and 21 and, whilst noting the ExA's view that the jobs created would not be to the same extent as forecast by the Applicant [ER 8.2.183], he concludes that significant economic and socio-economic benefits would flow from the Development to Thanet and East Kent as well as more widely including employment creation, benefits to general aviation and regeneration benefits. In reaching that view, the Secretary of State notes the ExA's view that the Development may adversely affect the tourism industry in Ramsgate. Whilst he is sympathetic to any residents and business holders that may be affected, he also notes the ExA's overall view that it would increase the attraction of tourists to other parts of Thanet and the wider East Kent area [ER 8.2.184 – 8.2.186].

43. The Secretary of State also notes the ExA's view that that the education, training and skills financial contribution (a total undertaking of £1.25m) secured in the Applicant's UU made in favour of Thanet District Council has the potential to have a significant positive benefit on Thanet and the wider East Kent area and would ensure that the required education, employment and skills plan is properly enacted and implemented. However, he also concurs with the ExA that a missed opportunity arises from the fact that the initial payment is not required until prior to air transport movements occurring at the airport. Whilst not altering the Secretary of State's conclusions on this matter, he would encourage the Applicant to consider revisiting it to ensure that provisions for local employment and training during construction are not missed [ER 8.2.187].

44. Overall, the Secretary of State considers that substantial weight should be given to the socio-economic benefits that would result from the Development and that these would outweigh the harm that may be caused to the tourist industry in Ramsgate.

Traffic and Transport

45. The Secretary of State has considered carefully the traffic and transport evidence put before the ExA and had regard to the comments and conclusions of the ExA [ER 6.11 and ER 8.2.192 – ER 8.2.218].

46. The Secretary of State notes the ExA's view that although the assessment of impact in the Transport Assessments and additional work undertaken by the Applicant has been robust, there is a need to place restrictions on passenger flight departures and arrivals around the AM and PM peak periods to ensure that there is no impact above what has been assessed by the Applicant in the Environmental Statement. The Secretary of State is

content that the ExA's additional requirement (Requirement 21) should be included in the DCO, noting that cargo flights would still be able to operate during the restricted passenger flight periods [ER 8.2.192].

47. The Secretary of State welcomes the measures proposed by the Development in relation to accessibility for persons with additional needs. He notes that the ExA was unable to reach a firm conclusion as to whether the Development appropriately seeks to promote sustainable modes of transport and recommended clarification is sought from the relevant parties before coming to a view on this matter [ER 8.2.212]. The ExA also considered that the recommended draft DCO should contain a specific Requirement on this matter. As the Applicant had not considered the ExA's suggested wording, the Secretary of State accordingly consulted on its recommended revised requirement 7, which sets out that the Applicant must agree a Bus Service Enhancement Scheme. This also includes the enhancement of existing services and the provision of shuttle bus services. The Applicant has agreed the revised requirement 7 and the Secretary of State is satisfied that there would be suitable provision of bus services and has concluded that on the evidence submitted the Development would appropriately promote sustainable modes of transport [ER 6.11.433 – 6.11.435, ER 8.2.193 – 8.2.197 and ER 8.2.207-8.2.212].

48. The Secretary of State agrees with the ExA that the Development will not have any material adverse impacts on the Strategic Road Network and no mitigation is required in this regard. He notes that Highways England withdrew its objection and Kent County Council did not raise any outstanding objections on this point. In addition, he agrees with the ExA that the Development complies with the National Policy Statement for National Networks ("NPSNN") [ER 8.2.198].

49. The Secretary of State notes the conclusions of the ExA in relation to the impact of the Development on the local road system and on the off-site junctions in particular, and also notes the findings of the ExA in relation to the mitigation schemes proposed in relation to those junctions (and those where no mitigation is proposed). The Secretary of State sees no reason to disagree with the ExA's findings and has taken these into account as part of the planning balance. The Secretary of State also notes the ExA's conclusions in respect of the proposed UU to KCC and agrees it as being an appropriate mechanism to secure junction improvement works. The Secretary of State notes the concerns of KCC and the findings of the ExA in relation to the amounts and timings of the financial contributions for junction improvements and to the UU not fulfilling the requirements of Regulation 122 of the Community Infrastructure Levy ("CIL") Regulations 2010 and that it should be disregarded in reaching a conclusion on this matter However, the Secretary of State notes that the Applicant asserts that the cost estimates prepared for each junction improvement have been based upon a combination of engineering experience, recognised industry publications and recently returned tenders for schemes of a comparable scale and complexity. Furthermore, he also notes that the ExA acknowledges that the junction improvement schemes are not yet fully detailed and have been developed to a concept preliminary design standard and that a 44% optimism bias allowance has been made to the costs [ER 6.11.294 – 6.11.302]. On balance, the Secretary of State is satisfied that the UU would comply with the requirements of the CIL Regulations 2010 and therefore should be taken into account and disagrees with the ExA that it should be disregarded as part of concluding on this matter. The Secretary of State accepts that there is the potential for short term congestion and delays on the local road system caused by the Development to occur before appropriate mitigation is delivered; however, he considers that the residual cumulative impact on the road network would not be severe and gives limited weight to these effects [ER 8.2.199 –

8.2.204]. On a related matter, it is also noted that if not all of the mitigation for junction improvements is considered necessary the UU provides for the contributions to be put towards other highways improvements which KCC deem necessary to mitigate the effects of the Development project. KCC consider this would be compliant with Regulation 122 of the CIL Regulations 2010 and the ExA accepts this view [ER 6.11.308 - 6.11.309].

50. It is noted that the Applicant's approach to contributing to the delivery of the Manston-Haine link road is considered by the ExA to be reasonable and pragmatic and that this is a matter of neutral weight [ER 8.2.205]. Given the importance of delivery of the link road locally, and the ExA's conclusion that the provisions set out in the UU in favour of KCC will help to deliver the link road [ER 6.11.392], the Secretary of State disagrees with the ExA that this should be a matter of neutral weight. However, he also accepts that the delivery of the link road is not certain and therefore considers it should be given only limited weight in favour of the Development in the planning balance [ER 6.11.369 - 6.11.392].

51. The Secretary of State is satisfied that there would be no unacceptable impacts from construction traffic, which would be controlled by measures in the Construction Traffic Management Plan and secured through a requirement in the DCO [ER 8.2.206].

52. Through the UU with TDC the Applicant has provided for a financial contribution to be paid for the cost of providing of a Controlled Parking Zone ("CPZ") if the monitoring of the Framework Travel Plan identifies a need for such measures [ER 6.11.449]. This contribution is based on a cost per metre. TDC accepts the cost per metre but not the total number of metres. The Secretary of State notes that the ExA were unable to examine the proposals by the Applicant for the CPZ and therefore as the ExA could not conclude that the CPZ and the associated financial contribution (of £231,400) is appropriate, the ExA found that this issue weighs against the Development. The Secretary of State also notes that TDC has questioned the extent to which a CPZ contribution is necessary. The Secretary of State considers that, as the contribution is to be based on need following travel plan monitoring and in the absence of an alternative suggested contribution amount, it is necessary and in other respects meets the CIL Regulation requirements. [ER 6.11.448 – 6.11.453 and ER 8.2.209].

53. The ExA acknowledges that the effects of Brexit are still uncertain, but based on the evidence presented to the examination, it is content as far as it can be that Operation Stack/Brock and the provisions of The Town and Country Planning (Manston Airport) Special Development Order 2019 will not have a detrimental impact on the Development [ER 8.2.213]. The Secretary of State agrees.

54. The Secretary of State notes that the ExA concludes and recommends that the proposed closure of a short stretch of Public Rights of Way ("PRoW") (TR9) and re-routing of another stretch (T8) are both necessary and proportionate [ER 8.2.214]. The ExA considers that the mitigation proposed in the form of the upgrading of stretches of TR8 and TR10 is potentially beneficial, although the scale and level of benefit of these improvements means that they are not a determining factor in the ExA's overall conclusion on PRoW [ER 6.11.523]. However, the ExA recommended that the Secretary of State seek clarification from the Applicant and KCC on contradictory financial contribution figures in the draft and final UU for upgrading PRoW [ER 6.11.472]. KCC has confirmed in its further consultation response that the final UU reflects KCC's PRoW response to the Fourth Written Questions during the examination (referenced TR 4.54) and is therefore in accordance with KCC's

PRoW requirements. In light of this, the Secretary of State considers that this issue is of neutral weight.

Findings and Conclusions in Relation to Habitats Regulations Assessment ("HRA")

55. The Secretary of State for Transport is the competent authority for the purposes of the Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations") which transpose the Habitats Directive (92/43/EEC) into UK law for transport applications submitted under the 2008 Act. The Habitats Regulations require the Secretary of State to consider whether the Development would be likely, either alone or in combination with other plans and projects, to have a significant effect on a European site(s), as defined in the Habitats Regulations[7].

56. Where likely significant effects on a European site(s) cannot be ruled out the Secretary of State must undertake an appropriate assessment ("AA") under regulation 63(1) of the Habitats Regulations to address potential adverse effects on site integrity. Such an assessment must be made before any decision is made on undertaking the plan or project or any decision giving consent, permission or other authorisation to that plan or Project. In light of any such assessment, the Secretary of State may grant development consent only if it has been ascertained that the project will not, either on its own or in-combination with other plans and projects, adversely affect the integrity of a European site(s), unless there are no feasible alternatives or imperative reasons of overriding public interest apply.

57. The Secretary of State notes that the Development has been identified by the Applicant as having the potential to give rise to likely significant effects ("LSE") on a number of designated European sites [ER 7.5.4]. Hence the Applicant prepared a Report to Inform the Appropriate Assessment ("RIAA") within which they concluded that LSE could not be ruled out for a number of European sites.

58. The ExA lacked comfort that the air quality assessment underpinning the HRA was sufficient to support a conclusion of no adverse effect on integrity for the following sites:

- Swale Special Protection Area ("SPA");
- Swale Ramsar site;
- Sandwich Bay Special Area of Conservation ("SAC"); and
- Thanet Coast and Sandwich Bay Ramsar site.

59. The Secretary of State also notes that the ExA was not presented with information to inform conclusions regarding alternative solutions or imperative reasons of overriding public interest either as part of the Application or during the examination [ER 7.9.13]. The Secretary of State subsequently consulted on this matter on 17 January 2020 and the Applicant's response of 31 January 2020 included an updated air quality assessment.

60. Having given consideration to the assessment material submitted during and since the examination, the Secretary of State considers that likely significant effects in relation to construction and/or operations could not be ruled out. The Secretary of State therefore considered an AA should be undertaken to discharge his obligations under the Habitats Regulations. The AA is published alongside this letter.

[7] https://www.legislation.gov.uk/uksi/2017/1012/regulation/8/made

61. In the Secretary of State's view, the material provided during and since the examination contained sufficient information to inform consideration under regulation 63 of the Habitats Regulations as to the likely impact on the European Sites. The AA has considered the conclusions and recommendation of the ExA and in light of the updated air quality assessment provided by the Applicant. The AA has also taken account of the advice of the Statutory Nature Conservation Body, which in this case is Natural England, and the views of other interested parties as submitted during and since the examination.

62. The Secretary of State, having carried out the AA, is content that the construction and operation of the Development, as proposed, with all the avoidance and mitigation measures secured in the DCO, will have no adverse effect, either alone or in-combination with other plans or projects, on any European site.

Overall Conclusions on the Case for Development Consent

63. For the reasons above, the Secretary of State disagrees with the ExA's recommendation to refuse development consent. As set out above in paragraphs 20 and 21, the Secretary of State considers there is a clear case of need for the Development and this should be given substantial weight. He considers the Development would support the government's policy objective to make the UK one of the best-connected countries in the world and for the aviation sector to make a significant contribution to economic growth of the UK and comply with the Government's aviation policy that airports should make the best use of their existing capacity and runways, subject to environmental issues being addressed. Substantial weight is given by the Secretary of State to the conclusion that the Development would be in accordance with such policies and that granting development consent for the Development would serve to implement such policy. The Secretary of State also considers that there are significant economic and socio-economic benefits which would flow from the Development, which should also be given substantial weight.

64. The Secretary of State accepts that there is the potential for short term congestion and delays on the local road system caused by the Development to occur before appropriate mitigation is delivered; however, he considers that the residual cumulative impacts would not be severe and gives limited weight to these effects. He concludes that the need and public benefits that would result from the Development clearly outweigh the heritage harm and the harm that may be caused to the tourist industry in Ramsgate. The Secretary of State also concludes that with the restrictions imposed by him in the DCO and also through the UUs only limited weight should be given to noise and vibration adverse effects.

65. For the reasons set out in paragraphs 24-26 above, the Secretary of State is content that climate change is a matter that should be afforded moderate weight against the Development in the planning balance. He does not agree with the ExA that operational matters weigh moderately against the grant of development consent being given for the Development.

66. The Secretary of State is content that the impacts of the Development in terms of air quality [ER 8.2.28 – 8.2.43]; biodiversity [ER 8.2.44 – 8.2.62]; ground conditions [ER 8.2.76 – 8.2.82]; landscape, design and visual impact [ER 8.2.104 – 8.2.120]; and water resources [ER 8.2.219 – 8.2.227] are of neutral weight in the decision as to whether to make the DCO.

67. When all the above factors are weighed against each other either individually or in-combination, the Secretary of State is satisfied that the benefits outweigh any adverse impacts of the Development.

Compulsory Acquisition and Related Matters

68. The Secretary of State notes that the Applicant is seeking compulsory acquisition powers in order to acquire land and rights considered necessary to construct and operate the Development, and that in examining the request for compulsory acquisition the ExA has had full regard to all the legislative and regulatory requirements relating to the request [ER 9.4.2]. The ExA's consideration of compulsory acquisition and related matters is set out in Chapter 9 with its conclusions at Chapter 9.19 of its report.

Compelling Case in the Public Interest

69. The Secretary of State notes that the ExA concluded that, as the overall need for the proposed Development has not been sufficiently established, there was not a compelling case in the public interest for the land and rights over land to be acquired compulsorily [ER 9.7.16 – ER 9.7.17]. The Secretary of State disagrees, given his conclusion regarding the clear need for the Development above in paragraphs 20 and 21 and for the reasons below. The Secretary of State also notes that the Applicant has acquired the freehold for the majority of the proposed operational airport [ER 9.6.19].

Funding

70. The Secretary of State notes the discussion at examination regarding how the authorisation of compulsory acquisition powers is to be funded [ER 9.8]. The Secretary of State notes the ExA's view that there is insufficient evidence that the Applicant itself holds adequate funds to indicate how a DCO that contains the authorisation of compulsory acquisition is proposed to be funded [ER9.8.69], but that the Joint Venture Agreement and Deed of Variation provide a degree of reassurance that a mechanism exists to provide the Applicant and associated companies funding up to £15m [ER 9.8.76]. Taking into account the document *'Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land*'[8] published by the Ministry for Housing, Communities and Local Government in September 2013 and the evidence provided, the ExA concluded that there is an indication of how any potential shortcomings are intended to be met [ER 9.8.102] and the Secretary of State sees no reason to disagree.

71. The Secretary of State notes also the ExA's consideration of the availability of funds from other funders in respect of capital costs [ER 9.8.78 – 9.8.102]. He notes that the Applicant had been engaged with potential funders for two years and accepts its view that no project will have secured full funding to cover project costs until there is certainty as to the decision on whether to grant the DCO [ER 9.8.96]. The Secretary of State also notes the ExA's view that the letters from potential funders and range of other information provided during the examination, do provide an indication of the degree to which other bodies have agreed to make financial contributions or to underwrite the Development, and on what basis such contributions or underwriting is to be made [ER 9.8.100]. Taking into account the 2013 Guidance and evidence provided, the Secretary of State sees no reason to disagree with

8 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/236454/Planning_Act_2008_-_Guidance_related_to_procedures_for_the_compulsory_acquisition_of_land.pdf

the ExA's conclusion that these provide an indication of how any potential shortfalls in funding are intended to be met [ER 9.8.102]. He also agrees with the ExA's other conclusions relating to funding [ER 9.19.5].

Alternatives

72. The Secretary of State notes that the ExA concluded that the Applicant is able to demonstrate that all reasonable alternatives to compulsory acquisition have been explored [ER 9.10.31 and ER 19.19.6].

The use of the land which it is proposed to acquire

73. The Secretary of State sees no reason to disagree with the ExA's view that article 19 of the DCO will serve to secure that only land that is required may be acquired compulsorily [ER 9.10.39 and ER 9.19.7].

Risks and Impediments

74. The Secretary of State notes the ExA's conclusion that any potential risks or impediments to implementation of the Development have been properly managed [ER 9.10.54 and ER 9.19.8].

Human Rights and the Public Sector Equalities Duty

75. On the provisions of the Human Rights Act 1998, the Secretary of State disagrees with the ExA in that he is satisfied that the purposes for which the DCO authorises the compulsory acquisition of land are legitimate and are sufficient to justify interfering with the human rights of those with an interest in the land affected. The Secretary of State agrees with the ExA that article 19 of the DCO provides sufficient assurance that those affected by the request for compulsory acquisition will receive compensation. He also agrees with the ExA that in relation to the specific cases of two employers within the proposed DCO lands, Polar Helicopters and Aman Engineering, and also in respect of Helix AV (its objection is considered further below in paragraphs 78 and 79) the interference is for a legitimate purpose, that the land is needed for the Development and proportionate and that the Applicant has proposed relocation proposals that the lease holders are content with [ER 9.11.15, ER 9.11.18, ER 9.11.25 and ER 9.19.9].

76. In respect of the Public Sector Equalities Duty established through section 149 of the Equality Act 2010, the Secretary of State notes that the ExA in coming to its conclusions throughout its report, has had close regard to its duties under this legislation in both the managing of the examination [ER 3.5.25] and in respect of those persons that share a relevant protected characteristic [ER 3.5.20] and who may be impacted by aspects of the Development, particularly in relation to issues of transport and noise [ER 3.5.26]. However, it is also noted that the ExA is not aware of any specific representations from affected persons drawing its attention to persons sharing a particular protected characteristic [ER 9.19.11].

<u>Consideration of individual compulsory acquisition requests</u>

77. The Secretary of State notes that a number of submissions were made by affected parties and the consideration of these submissions are set out at sections 9.11 and 9.13 of the ExA's report.

Helix AV

78. The Secretary of State notes the ExA's conclusion that the request for compulsory acquisition in respect of Helix AV's category one lessee/occupier interest in plot 15 should not be granted as the Applicant should have taken more deliberative efforts to secure the acquisition of rights by agreement in line with the 2013 guidance [ER 9.11.32]. The Secretary of State notes that Helix AV's interest was obtained in March 2019, approximately two months into the examination. The ExA wrote to them on 1 July 2019 asking them to confirm whether they wished to be considered as an interested party (PD-021). In a short email submission dated 3 July 2019 (AS-586) Helix AV confirmed that they did wish to be considered as an interested party. They informed the ExA that they had a 5 years lease of a heliport premises and intended that it would be their "permanent home". However, the Secretary of State notes they did not say any more than this and specifically, did not object to the Development or to compulsory acquisition. They also did not make any complaint about a lack of engagement from the Applicant.

79. It is noted that the Applicant's final Compulsory Acquisition Status Report (published 18 July 2019) states that there was also a phone call between the parties in late June 2019 to confirm Helix's interest and a letter was then sent to Helix on 2 July 2019, although no information is given about what the letter said. Whilst there had not been extensive engagement between the Applicant and Helix at the end of the examination, what is clear is that the proposals for compulsory acquisition in respect of plot 15 were already in place at the time the interest was created and Helix AV would no doubt have been aware of the DCO application and the Applicant's plans. They had ample time to engage with the examination if they had concerns about the Applicant's proposals, but did not do so. As such, the Secretary of State considers that there are sound reasons to disagree with the ExA's reasoning and is content compulsory acquisition powers in respect of Helix AV's interests in plot 15 should be granted.

Kent County Council

80. The Secretary of State notes that KCC has Category 1 interest as owner or reputed owner in plots 119, 129, 151, 153, 157, 010, 012, 013, 014, 015b, 016, 016a, 016c, 018, 019, 019a, 019c, 021, 022, 024, 042, 043a, 044, 045, 045a, 045b, 047a, 050a, 050d, 050e, 053, 053b, 054a, 056a, 070a, 072a, 073, 078, 094, 095, 097, 107, 111, 112, 113, 114a, 120, 124, 127, 128, 130, 131, 155, 156, 158, 159, 167, 177a, 184, 185a, 185b, 185c, 185d, 188a [ER 9.13.40]. KCC also has Category 2 and 3 interest in plots 008, 183, 143, 144, 154, 185e, 187, 188 [ER 9.13.41].

81. The ExA's conclusion that the request for compulsory acquisition related to KCC interests in plots 008, 119, 129, 151, 153, 157, 183, 010, 012, 013, 014, 015b, 016, 016a, 016c, 018, 019, 019a, 019c, 021, 022, 024, 042, 043a, 044, 045, 045a, 045b, 047a, 050a, 050d, 050e, 053, 053b, 054a, 056a, 070a, 072a, 073, 078, 094, 095, 097, 107, 111, 112, 113, 114a, 120, 124, 127, 128, 130, 131, 143, 144, 154, 155, 156, 158, 159, 167, 177a, 184, 185a, 185b, 185c, 185d, 185e, 187, 188, and 188a should not be granted [ER 9.13.52] on the basis that the ExA has not been able to establish if the proposed interference with the rights of those with an interest in the land is proportionate [ER 9.13.49].

82. The Secretary of State notes that in recommending refusal of all the plots in which KCC has an interest, the ExA's consideration focuses only on the arguments between the Applicant and KCC in the examination over the pipeline plots [ER 9.13.40 – 9.13.52]. Given that the conditions for compulsory acquisition set out above are considered by the Secretary

of State to have been met, he is satisfied that there are sound reasons to disagree with the ExA and grant compulsory acquisition powers over the non-pipeline plots for which KCC have an interest.

83. In respect of pipeline plots in which KCC has an interest, the Secretary of State notes that KCC objects to the compulsory acquisition of these plots on the basis that they might be required for ongoing highway maintenance. In coming to its view, the ExA has had regard to KCC's statement that a failure to reach agreement in respect of KCC freehold or highways land should not result in a grant of compulsory acquisition powers under the DCO, as there appears to be an alternative means of bringing about the delivery and maintenance of the pipeline in question. KCC's view is that the Applicant's aims could be achieved by obtaining a licence under section 50 licence under the New Roads and Street Works Act 1991 ("a section 50 licence"). However, the Applicant has expressed doubts about the viability of seeking a section 50 licence in a situation where a body that is not in itself a Statutory Undertaker does not own the pipeline in question.

84. The Secretary of State considers that KCC's analysis of section 50 of the New Roads and Street Works Act 1991 does not address the Applicant's point that the pipeline is an existing pipeline that is in unknown ownership. He considers this is therefore a different situation to one where the Applicant is seeking to retain and maintain a pipeline that it already owns, or to place and maintain a new pipeline in the street. Because it is in unknown ownership, the Secretary of State considers the Applicant could not just appropriate the pipeline under the terms of a section 50 licence, because that would not resolve the issue of the pipeline's ownership.

85. The Secretary of State also notes that KCC was unable to confirm to the ExA whether all of the plots in question are within the highway and therefore within a 'street' for the purposes of section 50 of the New Roads and Street Works Act 1991 [ER 9.13.42]. It was also unable to confirm whether the land is required for ongoing highway maintenance. The Secretary of State considers that information could have been provided to the ExA by KCC to demonstrate the validity of its argument that the Applicant could rely on a section 50 licence.

86. In the circumstances, the Secretary of State considers that there are sound reasons to disagree with the ExA's reasoning and grant CA powers on the basis that it would not be legally sufficient for the Applicant to rely solely on section 50 of the New Roads and Street Works Act 1991. Furthermore, he is of the view that the acquisition of the subsoil only would not affect any surface interests held by KCC as the local highway authority.

Thanet District Council

87. The Secretary of State notes the ExA's conclusion that the request for compulsory acquisition in relation to TDC's interest in plots 113, 119, 120, 184, 185, 185a, 185b, 185c, 185d, 185e, 185f, 186, 187, 188, and 188a should not be granted on the basis that, in line with the 2013 MHCLG guidance, the Applicant could have continued negotiations throughout the examination period [ER 9.13.62 - ER 9.13.63]. However, it is noted that TDC has not objected to the compulsory acquisition of its land or interests and this does not appear to have been an issue that was before the examination. TDC confirmed in its Local Impact Report that it has had regard to the Land Plans and Book of Reference [ER 9.13.56] and also played an active role in the examination and has closely reviewed and scrutinised the draft DCO in particular, as evidenced by its numerous detailed representations throughout the examination period. The Applicant's final Compulsory Acquisition Status

Report also states that discussions and negotiations between the Applicant and TDC took place between February 2018 and April 2019.

88. The Secretary of State notes that the ExA places full reliance on paragraph 25 of the 2013 Guidance in recommending refusal of compulsory acquisition powers. However, it has only quoted part of paragraph 25 in support of its recommendation. The part omitted by the ExA states: "*Where proposals would entail the compulsory acquisition of many separate plots of land…it may not always be practicable to acquire by agreement each plot of land. Where this is the case it is reasonable to include provision authorising compulsory acquisition covering all the land required at the outset.*" There is nothing in paragraph 25 that says that the Applicant must demonstrate that negotiations to acquire by agreement have continued through the full examination period and indeed the Secretary of State considers this is unlikely to be the case where compulsory acquisition is not disputed.

89. Taking all of the above into account, particularly the evidence of the Applicant's attempts to acquire by agreement in the Compulsory Acquisition Status Report, the Secretary of State considers that there are sound reasons to disagree with the ExA's reasoning and compulsory acquisition powers should be granted on the basis that there is no objection to compulsory acquisition from TDC, the 2013 Guidance has been satisfied and there appears to be no reason why compulsory acquisition should be refused.

Edward Martin Spanton

90. The Secretary of State notes the ExA's conclusion that the request for compulsory acquisition in relation to plots 016, 017, 019, 019a, 020, 020a, 022, 023, 079, 080, 081, 082, 096, 016c, 021, 024, and 025 should not be granted on the basis that, in line with the 2013 guidance, the Applicant could have sought to acquire these interests by agreement [ER 9.15.29 - ER 9.15.30].

91. The Secretary of State considers that the Applicant's final Compulsory Acquisition Status Report clearly demonstrates that the Applicant made repeated attempts to engage with Mr Spanton between February 2018 and June 2019 and that the Applicant intends to continue to contact Mr Spanton to seek to advance voluntary negotiations. The Secretary of State does not agree with the ExA's recommendation of refusal of compulsory acquisition powers solely on the basis that a party has only chosen to engage in the final stages of the examination, and particularly when they have not raised any objection to compulsory acquisition. For the same reasons as given for TDC above in paragraph 87 - 89 (in so far as they apply to Mr Spanton), the Secretary of State therefore considers there are sound reasons to disagree with the ExA's reasoning and compulsory acquisition powers should be granted on the basis that there is no objection to compulsory acquisition from Mr Spanton, the 2013 Guidance has been satisfied and there appears to be no reason why compulsory acquisition should be refused.

<u>Crown land</u>

92. The Secretary of State notes that the DCO limits include a number of plots which are Crown land. By virtue of section 135 of the 2008 Act compulsory acquisition powers cannot be granted without the consent of the appropriate Crown authority ("section 135 consent").

93. The appropriate Crown Authority is the government department having the management of the land. In this instance, the ExA indicated that section 135 consent for

Crown land plots had not been given by the following Crown Authorities at the close of the examination: the Government Legal Department; the Met Office and the Secretary of State for the Ministry of Housing, Communities and Local Government ("MHCLG"); the Secretary of State for Transport; and the Secretary of State for Defence. Accordingly, in the absence of section 135 consent, the ExA has recommended that the request for compulsory acquisition in respect of the former should be refused and that any provisions relating to these Crown Authorities should not be included in the DCO should it be made [ER 9.19.14]

94. The Secretary of State accordingly sought to gain the section 135 consent from all the above Crown Authorities (except the Secretary of State for Transport), as part of his consultation of 20 January 2020. However, with the exception of the Ministry of Defence ("MOD"), no responses from other Crown Authorities were received.

The Government Legal Department ("GLD")

95. In his letter of 17 January 2020, the Secretary of State sought consent from the GLD regarding plots 019c and 050b in respect of bona vacantia land. No reply was received. The Secretary of State considers the request for compulsory acquisition powers in respect of GLD is refused. The DCO has been amended accordingly and the Secretary of State considers the Applicant will need to secure the necessary Crown interests by negotiation after the grant of the DCO.

The Met Office and the Secretary of State for the Ministry of Housing, Communities and Local Government ("MHCLG")

96. The Secretary of State notes that the Met Office and the Secretary of State for MHCLG have rights in respect of plot 027 and their consent had not been secured by the end of the examination [ER 9.16.37, ER 9.16.43]. It is noted that the Secretary of State for Defence also has an interest in this plot. On the basis that section 135 consent has not been received, the Secretary of State considers that the request for compulsory acquisition powers in respect of the Met Office and the Secretary of State for MHCLG is refused. The DCO has been amended accordingly and the Secretary of State considers the Applicant will need to secure the necessary Crown interests from the Met Office and the Secretary of State for MHCLG by negotiation after the grant of the DCO.

The Secretary of State for Transport

97. The Secretary of State for Transport has Category 1 interests as an owner or reputed owner of plots 015, 015a, 026a, 027, 037, 039, 041a, 043, 043a, 046, 050a, 054, 054a, 055, 058, 068 and 069. It is noted that there are also MOD interests in a number of these plots. It is noted that the ExA makes an erroneous reference in its recommendation in respect of the refusal of Plots 019c and 050b and that any provisions relating to the Secretary of State for Transport should not be included in any final DCO [ER 9.16.55].

98. On the basis that section 135 consent has not been received from the Department for Transport's Estates Team, the Secretary of State considers that the request for compulsory acquisition powers in respect of the Crown land plot interests above should be refused. The DCO has been amended accordingly and the Secretary of State considers the Applicant will need to secure the necessary Crown interests by negotiation after the grant of the DCO.

The Secretary of State for Defence

99. The Secretary of State notes that the Secretary of State for Defence has Category 1 right as owner or reputed owner in plots 018, 018a, 018b, 025, 026, 038, 041, 042, 042a, 044, 045, 045a, 045b and Category 2 and 3 interests in respect of plots 014, 015, 015a, 016a, 017, 019b, 020, 020a, 023, 024, 026a, 027, 028, 036, 037, 039, 040, 040a, 041a, 043, 043a, 046, 047, 047a, 048, 048a, 048b, 049, 049a, 049b, 050, 050a, 050b, 050c, 050d, 050e, 051b, 053a, 053b, 054, 055, 058, 068, 069, 070, 070a, 102, 103, 114 and 114a [ER 9.16.6].

100. In the absence of section 135 consent, the ExA has recommended that the request for compulsory acquisition in respect of the Secretary of State for Defence's interests in plots 018, 018a, 018b, 025, 026, 038, 042, 042a, 044, 045, 045a, 045b, 014, 015, 015a, 016a, 017, 019b, 020, 020a, 023, 024, 026a, 027, 028, 036, 037, 039, 040, 040a, 041a, 043, 043a, 046, 047, 047a, 048, 048a, 048b, 049, 049a, 049b, 050, 050a, 050b, 050c, 050d, 050e, 051b, 053a, 053b, 054, 055, 058, 068, 069, 070, 070a, 102, 103, 114 and 114a be refused and that any provisions relating to Secretary of State for Defence should not be included in any final DCO [ER 9.16.16].

101. In its response dated 31 January 2020 to the Secretary of State's consultation, the MOD confirmed that section 135 consent has been granted in respect to plots 014, 018, 018a, 018b, 024, 025, 042, 042a, 044, 045, 045a, 050a, 054, 102, 103, 114, and 114a. The request for compulsory acquisition powers in respect of these Crown land plot interests is therefore granted. However, the MOD has also confirmed that consent has been refused with regards to plots 016a, 017, 019b, 020, 020a, 023, 026, 038, 040, 040a, 041, and 045b. In the absence of section 135 consent, the request for compulsory acquisition powers over these plots is refused. The DCO has been amended accordingly and the Secretary of State considers the Applicant will need to secure the necessary Crown interests from the Secretary of State for Defence by negotiation after the grant of the DCO.

102. In respect of plot 041, which relates to the location of the High Resolution Direction Finder ("HRDF"), the ExA has recommended that the request for compulsory acquisition in respect of the Secretary of State for Defence should be refused and that any provisions relating to the Secretary of State for Defence should not be included in the DCO [ER 9.16.29]. The Secretary of State has given careful consideration to this issue. He notes that the Secretary of State for Defence owns this plot and section 135 consent has been refused by the MOD. However, he does not accept that the HRDF would necessarily be a significant risk to the Development as stated by the ExA and considers that the Applicant and the MoD as landowner and operator of the HRDF and its site should continue discussions to seek a workable solution to resolve outstanding matters. The Secretary of State also considers Requirement 24 in the DCO should also ensure that the operation of the existing HRDF cannot be interfered with by the construction of the authorised development until such time as an alternative solution is agreed by the MOD and the existing safeguarding direction is withdrawn.

103. The Secretary of State notes that there are a number of other plots where the MOD has refused consent. However, the Applicant has indicated in its representation of 19 March 2020 that it now owns the freehold in respect of plots 015, 027, 028, 036, 037, 039, 043, 046, 047, 049, 050, 055, 058, 068, 069 and 070, and no longer needs compulsory acquisition powers. In the absence of section 135 consent for the plots, the Secretary of State considers the compulsory acquisition powers in respect of the plots should be refused and that any

provisions relating to Secretary of State for Defence for the plots should not be included in the DCO.

104 The MOD has also refused consent for the compulsory acquisition of plots 048 and 048b, but the Applicant withdrew these from the scope of compulsory acquisition powers during the examination and these plots are therefore not included within the DCO.

105. In considering the above, the Secretary of State notes that the ExA has not raised any concerns relating to the overall deliverability of the Development in the absence of Crown consent for the acquisition of the respective land plots. He is satisfied that the Applicant also has the option of voluntary acquisition.

Statutory Undertakers

BT Group plc

106. The Secretary of State notes that BT Group plc has an interest in a number of land plots. In the absence of confirmation from BT Group plc that the rights can be purchased without serious detriment to its statutory undertaker, the ExA has recommended that the request for compulsory acquisition of rights over land held by BT Group plc in respect of plots 015, 015a, 015b, 016, 016a, 017, 019, 019a, 019b, 020, 020a, 021, 022, 023, 024, 025, 026, 028, 036,037, 038, 039, 041, 045, 048, 048b, 049, 049a, 050, 050a, 050c, 050e, 051b, 053a, 053b, 055, 056, 056a, 059, 068 and 069 should be not be granted.

107. The Secretary of State notes that BT Group plc made no representations during the examination and although the ExA directed questions to the statutory undertaker it did not respond to these [ER 9.18.7]. The Secretary of State also sought confirmation from BT Group plc of agreement to the compulsory acquisition of their interests in these plots and that such agreement would not result in a serious detriment to its statutory undertaking as part of his 17 January 2020 consultation. No response was received.

108. In considering this matter, the Secretary of State notes the ExA has taken the position that if the statutory undertaker has said that there is serious detriment that is accepted or, in the absence of a statement from the statutory undertaker that it agrees that the rights can be purchased without serious detriment to carrying on the undertaking, compulsory acquisition should not be granted. The Secretary of State disagrees with this approach. In accordance with section 127 of the Planning Act 2008, it is for the Secretary of State to consider the submissions of each party and to examine the specific reasons put forward so he is able to satisfy himself that the land/rights can be taken without serious detriment. If the Secretary of State does not consider the detriment to be serious, he is able to include a provision authorising the statutory undertaker's land or rights over its land be compulsory acquired.

109. In the absence of any representation or statement with reasons being put forward by BT Group plc, the Secretary of State considers he is unable to conclude that the compulsory acquisition of rights over land held by the statutory undertaker would be seriously detrimental to its undertaking. In reaching that view, the Secretary of State also considers it is not for him or the ExA to secure permission from the statutory undertaker to include compulsory acquisition powers in the DCO. It is only to consider whether if in doing so serious detriment will result. For these reasons, the Secretary of State is therefore satisfied that the rights sought by the Applicant can be purchased without any serious detriment to the carrying on of the undertaking and the request for compulsory acquisition of rights over land held by BT

Group plc should be granted. Nevertheless, provisions for the protection of operators of electronic communication code networks are also included in the DCO.

Southern Gas Networks ("SGN")
110. SGN has Category 1 or 2 interests in plots 014,167, 015, 016, 016c, 017, 019, 019a, 019b, 020a, 022, 023, 026, 028, 036, 037, 038, 039, 043, 043a, 044, 045, 045b, 048, 048b, 050, 050d, 050e, 053b, 061, 062, 063, 078, 081, 082, 094, 095, 096, 097, 107, 111, 112, 113, 115, 116, 117, 118, 119, 124, 127, 128, 129, 151, 153, 156, and 167 [ER 9.18.38]. The Secretary of State notes that SGN formally withdrew its compulsory acquisition objections on 12 July 2020 after the close of the examination. The Secretary of State therefore considers that the request for compulsory acquisition of rights over land held by SGN should be granted.

South Eastern Power Networks ("SEPN")
111. The Secretary of State notes that SEPN is shown in the final Compulsory Acquisition Status Report [AS-585] as having a Category 1 and / or 2 interest in plots 018a, 018b, 018c, 040, 042, 050d, 050e, 051b, 051c, 053b, 055 and 068. However, the ExA notes that the final Book of Reference [AS-581] shows SEPN as having a Category 1 interest in respect of apparatus additionally in plots 015, 015a, 018, 026, 028, 036, 038, 042a, 043a, 050, 050a, 053, 054, 059, 078, 080, 095, 097, 107, 108, 109, 110, 111, 124, 128, 129, 152, 160, 162, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 181, 182, 183 and 185 and a Category 2 interest in 040b [ER 9.18.30 - ER 9.18.31]. The ExA concluded that in the absence of agreement from SEPN agreeing that the rights can be purchased without any serious detriment to the carrying on of the undertaking, the request for compulsory acquisition of rights over land held by SEPN should be refused [ER 9.18.36].

112. The Secretary of State subsequently sought clarification on the above in his consultation letter dated 17 January 2020, but no response was received from SEPN. In accordance with section 127 of the Planning Act 2008, it is for the Secretary of State to consider the submissions of each party and to examine the specific reasons put forward so he is able to satisfy himself that the land/rights can be taken without serious detriment. If the Secretary of State does not consider the detriment to be serious, he is able to include a provision authorising the statutory undertaker's land or rights over its land be compulsory acquired.

113. In the absence of any representation or statement with reasons being put forward by SEPN, the Secretary of State considers he is unable to conclude that the compulsory acquisition of rights over land held by the statutory undertaker would be seriously detrimental to its undertaking. In reaching that view, the Secretary of State also considers it is not for him or the ExA to secure permission from the statutory undertaker to include compulsory acquisition powers in the DCO. It is only to consider whether if in doing so serious detriment will result. For these reasons, the Secretary of State is therefore satisfied that the rights sought by the Applicant can be purchased without any serious detriment to the carrying on of the undertaking and the request for compulsory acquisition of rights over land held by SEPN should be granted. The Secretary of State is aware that the Applicant has indicated that agreement had been reached between the parties on 31 January 2020; however, that agreement is a matter between the parties and does not affect the Secretary of State's conclusions on the question of serious detriment.

Network Rail Infrastructure

114. Network Rail has Category 1 and 2 interests in plots 123, 113, 115, 116, 117, 118 and 119 [ER 9.18.18], which all relate to a section of the pipeline running from Manston Airport and under Network Rail's existing infrastructure to an outfall at Pegwell Bay.

115. The Secretary of State understands that the Applicant has not been able to identify the legal or beneficial owner of the existing pipeline and seeks powers of compulsory acquisition through the DCO in order to regularise the ownership of the pipeline, which is necessary for the operation of the Development. Both parties agreed that the authorised works of the Development will not affect the undertaking carried on by Network Rail but that the parties were in discussion regarding the proposed powers which, if made, would authorise access and maintenance rights to land beneath the operational railway. Network Rail consider that, in the absence of proper Protective Provisions, the compulsory acquisition powers sought would create a serious detriment to their undertaking [ER 9.18.21 – 9.18.23].

116. The ExA has concluded that if it had come to an alternate overall view that there was a sufficient need for the development, it would have recommended that it is satisfied that the use of the corridor of a pipeline leading to an outfall is for a legitimate purpose, and that it is necessary and proportionate [ER 9.13.24]. The ExA, taking into account of the statutory test in relation to the grant of a request for compulsory acquisition, has also concluded in its report that there is a compelling case in the public interest for compulsory acquisition in relation to a pipeline corridor [ER 9.18.27] and that "*if it had come to an alternate overall view that there was a sufficient need for the development, it would have recommended that, in respect of Network Rail Infrastructure, the rights can be purchased without any serious detriment to the carrying on of the undertaking subject to Network Rail Infrastructure informing the SoS that it is content with the Protective Provisions as included in the dDCO"* [ER 9.18.28].

117. The Secretary of State notes that the draft DCO includes provisions which would, if granted, authorise the Applicant to acquire permanent subsoil in land underneath operational railway and permanent acquisition of Network Rail's rights in land in close proximity to the railway. Network Rail's position is that the necessary subsoil rights should be acquired through an agreed easement rather than compulsory acquisition to ensure that Network Rail can comply with its statutory duty to maintain the operation of the railway. Network Rail has requested that the Applicant enter into an asset protection agreement including a deed of easement to provide rights to access the subsoil under the railway and negotiations stalled because the Applicant required an indemnity for the benefit of the Applicant, which Network Rail wouldn't agree to. He notes that the parties were not able to come to an agreement and neither agreed nor draft Protective Provisions were submitted to the ExA before the close of the examination [ER 9.18.22].

118. Following consideration of the ExA's recommended actions at Appendix E to its report, the Secretary of State sought views from the Applicant and Network Rail on the ExA's draft Protective Provisions in his letter dated 17 January 2020. In its response, the Secretary of State notes the principle of the ExA's draft Protective Provisions is welcomed by Network Rail but the draft DCO is still not considered to offer the protection it requires. Network Rail indicated that "*the draft Protective Provisions at Annex C of the letter do not go far enough to adequately protect Network Rail's infrastructure and would not enable Network Rail to ensure compliance with its statutory duty to maintain the safe, efficient and economic operation of the railway. Accordingly, Network Rail required the full set of well precedented*

Protective Provisions enclosed with this letter to be incorporated in the Order [DCO]*, if made."* [9]

119. In considering this matter, the Secretary of State is not convinced that acquiring the outfall pipeline will result in serious detriment to Network Rail carrying on its undertaking. In relation to the asset protection agreement, the Secretary of State notes that the ExA's draft DCO did not contain this provision and considers its inclusion would be unusual in a DCO (as Network Rail has indicated there has only been one other DCO granted which contains a similar requirement). Given the various other protections in the DCO, the Secretary of State is also not convinced that this additional is protection is necessary. He concludes therefore that the rights can be acquired without any serious detriment to the carrying out of Network Rail's undertaking and is content with the Protective Provisions recommended by the ExA to be included in the DCO.

Draft Development Consent Order and Related Matters

120. The Secretary of State has considered the ExA's examination of the DCO in section 10 of the ExA's Report. Having concluded above that development consent should be granted, he is satisfied that the form of the Order recommended by the ExA at Appendix D of the ExA's Report is appropriate, subject to the modifications referred to below. The Secretary of State is satisfied that none of these changes, constitute a material change.

121. The modifications which the Secretary of State has decided to make to the DCO are as follows:

- in article 2(1), the definition of "commence" has been slightly modified including the removal of "commences" which is not used in the Order;
- in article 2(1), the definition of "compulsory acquisition notice" has been removed as it is not a term used in the Order;
- in article 2(1), the term "Manston Airport s.106 agreement" is only used in article 35 (abrogation of agreement), so this term has been spelt out in full in that article;
- in article 2(1), the term "the tribunal" is only used in article 43 (arbitration) and so the term is spelt out in full in that article;
- in article 6(4) (limits of deviation), the text has been reworked to that agreed with Historic England and as set out in the Applicant's response to consultation dated 31 January 2020;
- in article 11(2) (construction and maintenance of new, altered or diverted streets), the reference to "local street authority" is not a defined term whereas "street authority" is a defined term and so "local" has been omitted;
- in article 13(3) (permanent stopping up of public rights of way), the text suggested by the ExA has been slightly reworked;
- in article 19 (compulsory acquisition of land), the reference to "restrictive covenants" has been removed in accordance with the conclusions made by the ExA in relation to article 22 (compulsory acquisition of rights and restrictive covenants) that the power to impose restrictive covenants should not be included in the Order. Corresponding changes have been made in relation to article 23 (subsoil or new

[9] https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR020002/TR020002-005249-Network%20Rail's%20response-%20Manston.pdf

rights only to be acquired in certain land); article 24 (private rights over land); article 31 (statutory undertakers) and to the inserted Schedule 2A in Schedule 6;
- in article 29(9) (temporary use of land for carrying out the authorised development), the provision has been amended to remove the acquisition of new rights in relation to land under article 22. The Secretary of State is concerned about the creation of new unidentified rights and is unclear whether affected land owners have been appropriately consulted as there is no cross over of land referred to in Schedule 5 and Schedule 8;
- in article 43 (arbitration), the reference to the "Secretary of State" has been replaced by "President of the Institution of Civil Engineers", which is the usual position;
- in requirement 9 (noise mitigation) of Schedule 2, the obligation to implement the noise mitigation plan had not been set out. That obligation has now been placed on the Applicant; and
- in requirement 24(1) (High Resolution Direction Finder), the MOD amendment has been inserted.

Late Representations (outside formal consultation)

122. In addition to the responses received in response to the Secretary of State's further consultation, numerous other representations have been received from Interested Parties since the examination closed which have been carefully considered and taken into account in his decision. The representations either support or oppose the Development and cover a range of issues, including need for the Development, air emissions and climate change, heritage impacts, socio-economic benefits, funding, noise and health impacts. Where considered appropriate, these were also included in the Secretary of State's further consultation of 17 January 2020. Whilst other subsequent late representations refer to further developments since the close of the examination, it is the Secretary of State's view that they do not give rise to an alternative conclusion or raise evidence that is material to his decision on the Development. As such, he is satisfied that there is not any new evidence or matter of fact that needs to be referred again to Interested Parties under Rule 19(3) of the Infrastructure Planning (Examination Procedure) Rules 2010 before proceeding to a decision on the Application.

Other Matters

Natural Environment and Rural Communities Act 2006

123. The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, must have regard to the purpose of conserving biodiversity and, in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when granting development consent.

124. The Secretary of State is of the view that the ExA's report, together with the environmental impact analysis, considers biodiversity sufficiently to inform him in this respect. In reaching the decision to give consent to the Development, the Secretary of State has had due regard to conserving biodiversity.

Secretary of State's overall conclusions and decision

125. For all the reasons given in this letter, the Secretary of State is satisfied that there is a clear justification for authorising the Development. He has therefore decided to today make the Manston Airport Development Consent Order, subject to the changes referred to above. The Secretary of State is satisfied that none of these changes constitute a material change. He is therefore satisfied that it is within the powers of section 114 of the 2008 Act for him to make the DCO as now proposed. This decision has been taken having regard to the UUs completed by the Applicant for the benefit of TDC and KCC dated 17 June 2020[10].

Challenge to decision

126. The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at the Annex to this letter.

Publicity for decision

127. The Secretary of State's decision on the Application is being publicised as required by section 116 of the 2008 Act and regulation 23 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.

Yours faithfully,

Natasha Kopala
Head of Transport and Works Act Orders Unit

[10] The UUs for the benefit of TDC and KCC were resubmitted by the Applicant to correct an administrative error in that the UUs dated 31 January 2020 had been signed but not dated and also to correct an error agreed with TDC in respect of the "CPZ Contribution by removal of paragraph 2.2 in the Fifth Schedule of the UU in favour of TDC. They are the same documents in all other respects.

ANNEX

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, a DCO granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such a DCO, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the High Court during the period of 6 weeks beginning with the day after the day on which the statement of reasons (decision letter) is published. Please also copy any claim that is made to the High Court to the address at the top of this letter.

The decision documents are being published on the Planning Inspectorate website at the following address:
https://infrastructure.planninginspectorate.gov.uk/projects/south-east/manston-airport/

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the DCO referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (020 7947 6655).

Aviation Policy Framework

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Contents

Foreword **5**

Executive summary **8**

A balanced approach to securing the benefits of aviation 8

The benefits of aviation 9

Managing aviation's environmental impacts 10

Role of the Airports Commission 12

Other aviation objectives 13

Developing the Aviation Policy Framework 15

1. Supporting growth and the benefits of aviation **16**

Aviation's contribution to the UK economy 16

Supporting airports across the UK 20

Connectivity 25

Aviation demand forecasts 29

Strategy for a vibrant aviation sector: the short term 30

Strategy for a vibrant aviation sector: the medium and long term 37

Conclusions 39

2. Climate change impacts **40**

Context 40

Our climate change strategy for aviation 41

3. Noise and other local environmental impacts **55**

Context 55

Role of government 56

Measures to reduce and mitigate noise – the role of industry 60

Air quality and other local environmental impacts 64

4. Working together **67**

The importance of local collaboration 67

Better arrangements for working together 68

5. Planning **73**

Overview 73

The status of the Aviation Policy Framework 73

Planning policies 74

Safeguarding 74

Surface access 75

Public safety zones 75

Enterprise zones 75

Reserved matters 77

Devolved matters 77

Next steps 77

Annex A: Noise controls **79**

Annex B: Guidance on master plans, airport transport forums and airport surface access strategies **80**

Master plans 80

Airport transport forums 81

Airport surface access strategies 82

Annex C: Glossary **84**

Foreword

A decade has passed since the publication of the previous Government's policy on aviation in the Air Transport White Paper. Much has changed in that time. Passengers are benefiting from greater competition, with our busiest airports now in separate ownership and the aviation industry investing in upgraded airport facilities. The recession has knocked economic growth prospects and resulted in new trends, such as airlines increasingly consolidating their long-haul routes to a small number of dominant continental hubs. Other new 'global hubs' in the Gulf such as Dubai now offer good connections to larger airports around the UK. The EU Emissions Trading system and introduction of UK carbon budgets has changed the policy context on climate change.

But some of the challenges we faced in 2003 remain. For example, the need to balance the benefits aviation brings against its local impacts, such as noise. Both sides of the debate feel strongly about this.

On the question of airport capacity, the Government has now established the independent Airports Commission, led by Sir Howard Davies. The Commission is examining the nature, scale and timing of any requirement for additional capacity to maintain the UK's global hub status. The Aviation Policy Framework is an important piece in the jigsaw, setting out the principles which the Commission will take into account in working up its recommendations as it reports later this year and in 2015.

History shows that we need an agreed policy everyone can stick to before we try to act. Our aim is to achieve this through the Aviation Policy Framework and the work of the independent Airports Commission. While the Commission is considering the need for and location of any new airport to relieve the South East, I set out here a policy framework to support and challenge our airports right across the UK. Since taking up my post, I have emphasised the importance of all our national airports. They are more than regional or secondary centres.

The role of Government has also changed in the past decade. The 2003 Air Transport White Paper set out in detail which specific developments would be supported at particular airports across the UK. The Aviation Policy Framework does not seek to do this. It sets out the Government's objectives and principles to guide plans and decisions at the local and regional level, to the extent that it is relevant to that area.

The Government believes that aviation needs to grow, delivering the benefits essential to our economic wellbeing, whilst respecting the environment and protecting quality of life. The way ahead will be challenging as we work together to strike the right balance. But it is critical that we do so in order to safeguard our long-term economic prosperity.

The Rt Hon Patrick McLoughlin MP
Secretary of State for Transport

Aviation key facts

Aviation's contribution to the economy

- The aviation sector contributes around £18 billion per annum of economic output to the UK economy
- It employs around 220,000 workers directly and supports many more.

We are well connected now

- The UK has the third largest aviation network in the world, after the USA and China
- The number of passengers using non-London airports has increased by over a third since 2000
- London is currently extremely well connected and delivers the connections UK PLC requires with at least weekly connections to over 360 destinations. In comparison, Paris serves around 300 destinations and Frankfurt around 250
- The UK maintains its position as an attractive place to invest through London's position as a global city:
  - 75% of Fortune 500 companies have offices in London
  - In 2012, Aon, the world's largest insurance broker, announced it would move its head office from Chicago to London and Harvey Nash announced its decision to retain London as its global headquarters after considering Zurich and New York.

The future capacity challenge

- Our major airports face a medium- and longer-term capacity and connectivity challenge which the Government must tackle:
  - Heathrow is operating to its capacity today
  - Gatwick is forecast to be full in the 2020s and Stansted, which today has considerable spare capacity, is forecast to be full by the early 2030s.
- The Airports Commission will publish its interim report by the end of 2013 and its final report by summer 2015.

Tackling climate change

- The 'gross' emissions from aviation are forecast to increase between now and 2050 at both the UK and global levels
- However, under the EU Emissions Trading System (EU ETS), the 'net' emissions from flights covered by the EU ETS cannot increase above the level of the emissions cap
- Between 2013 and 2020, the annual emissions cap applied to the aviation sector within the EU ETS will be 95% of the average annual emissions between 2004 and 2006.

Aircraft noise

- The UK was instrumental in the agreeing a decision by the Committee on Aviation Environmental Protection (CAEP) within ICAO which requires new types of large civil aircraft, from 2017, to be at least 7dB quieter on average in total, across the three test points, than the current standard. Standards for smaller aircraft will be similarly reduced in 2020.

Executive summary

A balanced approach to securing the benefits of aviation

1. In July 2012, the Government consulted on its strategy for aviation: the draft Aviation Policy Framework. This proposed a high-level strategy setting out our overall objectives for aviation and the policies we will use to achieve those objectives. This final Aviation Policy Framework will fully replace the 2003 Air Transport White Paper as Government's policy on aviation, alongside any decisions Government makes following the recommendations of the independent Airports Commission.

2. The Airports Commission was established in September 2012 with the remit of recommending how the UK can maintain its status as a global aviation hub and maintain our excellent international connectivity for generations to come, as well as making best use of our existing capacity in the shorter term. By defining Government's objectives and policies on the impacts of aviation, the Aviation Policy Framework sets out the parameters within which the Airports Commission will work.

3. The Aviation Policy Framework has been informed by the 600-plus responses we received to our 2011 scoping document and the nearly 500 responses received to the 2012 consultation on the draft Aviation Policy Framework. It is underpinned by two core principles:

   - Collaboration: By working together with industry, regulators, experts, local communities and others at all levels, we believe we will be better able to identify workable solutions to the challenges and share the benefits of aviation in a fairer way than in the past.
   - Transparency: To facilitate improved collaboration, it is crucial to have clear and independent information and processes in place. Those involved in and affected by aviation need to have a clearer understanding of the facts and the confidence that proportionate action will be taken at the international, national or local level.

4. The main elements of our Aviation Policy Framework are summarised below and covered in more detail in the individual chapters.

The benefits of aviation

5. The Government's primary objective is to achieve long-term economic growth. The aviation sector is a major contributor to the economy and we support its growth within a framework which maintains a balance between the benefits of aviation and its costs, particularly its contribution to climate change and noise. It is equally important that the aviation industry has confidence that the framework is sufficiently stable to underpin long-term planning and investment in aircraft and infrastructure.

6. Chapter 1 of this document summarises aviation's benefits, particularly in helping to deliver connectivity. The UK is an outward-looking nation: an island economy that for centuries has owed its prosperity to the transport and trade routes linking it with the rest of the world. With the increasing globalisation of our economy and society, the future of the UK will continue to be shaped by the effectiveness of its international transport networks.

7. Aviation benefits the UK economy through its direct contribution to gross domestic product (GDP) and employment, and by facilitating trade and investment, manufacturing supply chains, skills development and tourism. The whole UK aviation sector's turnover in 2011 was around £53 billion and it generated around £18 billion of economic output.[1] The sector employs around 220,000 workers directly and supports many more indirectly. The UK has the second largest aircraft manufacturing industry in the world after the USA and will benefit economically from growth in employment and exports from future aviation growth. Aviation also brings many wider benefits to society and individuals, including travel for leisure and visiting family and friends.

8. Aviation in the UK is largely privatised and operates in a competitive international market. The Government supports competition as an effective way to meet the interests of air passengers and other users. We also welcome the continued significant levels of private sector investment in airport infrastructure across the country and the establishment of new routes to developed and emerging markets. For example, Vietnam Airlines' launch of their service to Hanoi and Ho Chi Minh City from Gatwick in December 2011 represented a new connection for London and a China Southern service between Heathrow and Guangzhou began in June 2012; the first-ever connection between these two airports. These are very important developments which clearly show that there is potential for UK airports to attract new routes.

9. **One of our main objectives is to ensure that the UK's air links continue to make it one of the best connected countries in the world. This includes increasing our links to emerging markets so**

1 Turnover, economic output (GVA) and employment figures are from Annual Business Survey, ONS, 2011 (provisional), Section H: Transport and Storage, adding SIC 51 (air transport), SIC 52.23 (service activities incidental to air transportation), SIC 30.3 (Manufacture of air and spacecraft and related machinery) and SIC 33.16 (Repair and maintenance of aircraft and spacecraft).

that the UK can compete successfully for economic growth opportunities. To achieve this objective, we believe that it is essential both to maintain the UK's aviation hub capability and develop links from airports which provide point-to-point services (i.e. carrying few or no transfer passengers). This should be done in a balanced way, consistent with the high-level policies set out in this document and acknowledging Government's commitment to economic growth.

10. In the short to medium term, a key priority is to work with the aviation industry and other stakeholders to make better use of existing runway capacity at all UK airports. We are pursuing a suite of measures to improve performance, resilience and the passenger experience; encourage new routes and services; support airports in Northern Ireland, Scotland, Wales and across England; and ensure that airports are better integrated into our wider transport network.

11. In the medium and long term beyond 2020 we recognise that there will be a capacity challenge at all of the biggest airports in the South East of England. There is broad consensus on the importance of maintaining the UK's excellent connectivity over the long term, but currently no consensus on how best to do this. A robust and generally agreed evidence base is needed before a decision can be made on the scale and timing of any requirement for additional capacity to maintain the UK's position as Europe's most important aviation hub. This is why Government established the Airports Commission in 2012.

Managing aviation's environmental impacts

12. Aviation's environmental impacts are both global (climate change) and local (primarily noise, as well as air pollution and surface access traffic congestion). Chapter 2 covers aviation's climate change impacts. **Our objective is to ensure that the aviation sector makes a significant and cost-effective contribution towards reducing global emissions.**

13. Aviation is an international sector, and global action to address a global challenge is therefore essential if we are to achieve progress on reducing its climate change impacts while *minimising the risk of putting UK businesses at a competitive disadvantage*. National governments have a particularly important role in pushing for effective international action. We are committed to making progress through the International Civil Aviation Organization (ICAO), the agency of the United Nations which regulates international civil aviation, on a global emissions deal and more stringent technology standards. We also continue to work with our European Union (EU) partners to ensure the success of the inclusion of aviation in the EU Emissions Trading System (ETS).

14. In the absence of an ambitious global agreement to tackle aviation emissions, our strategy is to continue to strongly support action at a

European level. The inclusion of aviation in the EU ETS is a key component of this, and we remain committed to ensuring that the EU ETS is a success.

15. At the national level, the Government and industry are taking a number of actions to support the effective working of the EU ETS and help reduce international emissions, including airspace management and encouraging advances in lower carbon technology.

16. Chapter 3 covers noise and other local environmental impacts. The Government recognises that noise is the primary concern of local communities near airports and we take its impact seriously.

17. **Our overall objective on noise is to limit and where possible reduce the number of people in the UK significantly affected by aircraft noise.** The document makes clear that the acceptability of growth in aviation depends to a large extent on the industry continuing to tackle its noise impact and confirms that the Government expects the industry at all levels to continue to address noise. We recognise that the manufacturing industry across Europe has committed to ambitious long-term goals to reduce aviation emissions to one-quarter of 2000 levels by 2050 and to halve perceived aviation noise. To achieve this, we want to incentivise noise reduction and mitigation, and we also want to encourage better engagement between airports and local communities and greater transparency to facilitate an informed debate.

18. The Government's intention is that the Aviation Policy Framework should support sustainable development and be delivered in a way which is consistent with its principles.[2] Government's vision for sustainable development was published in February 2011.[3] This means making the necessary decisions now to realise our vision of stimulating economic growth and tackling the deficit, maximising wellbeing and protecting our environment, without negatively impacting on the ability of future generations to do the same.

19. For aviation's other local environmental impacts, such as air pollution, our overall objective is to ensure appropriate health protection by focusing on meeting relevant legal obligations.

20. Those who live closest to airports bear a particular burden of the costs, but also benefits, such as employment and convenient access to air travel. We therefore want to strengthen the arrangements for involving communities near airports in decisions which affect them. Chapter 4 focuses on the theme of working in partnership, particularly at a local level. It covers airport consultative committees (ACCs), airport master plans and airport transport forums (ATFs). **Our objective is to encourage the aviation industry and local stakeholders to strengthen and streamline the way in which they work together.**

2 http://www.defra.gov.uk/publications/2011/03/25/securing-the-future-pb10589/
3 http://sd.defra.gov.uk/documents/mainstreaming-sustainable-development.pdf

Role of the Airports Commission

21. History demonstrates that it will be easier to deliver a lasting aviation solution that is right for the UK with a generally agreed evidence base and a degree of political consensus. This is why we have asked Sir Howard Davies to lead a rigorous, independent review of all the options. The Airports Commission will examine the scale and timing of any requirements for additional capacity to maintain the UK's position as Europe's most important aviation hub and identify and evaluate how any need for additional capacity should be met in the short, medium and long term.

22. The Commission will provide an interim report to the Government by the end of 2013 setting out its assessment of the evidence on the nature, scale and timing of steps needed to maintain the UK's global hub status and its recommendations for immediate actions to improve the use of existing runway capacity in the next five years – consistent with credible long-term options. Its assessments of potential immediate actions should take into account their economic, social and environmental costs and benefits, and their operational deliverability. It should also be informed by an initial high-level assessment of the credible long-term options which merit further detailed development.

23. The Commission will then publish by the summer of 2015 a final report, containing:

- its assessment of the options for meeting the UK's international connectivity needs, including their economic, social and environmental impact;
- its recommendation(s) for the optimum approach to meeting any need;
- its recommendation(s) for ensuring that any need is met as expeditiously as practicable within the required timescale; and
- materials to support the Government in preparing a National Policy Statement to accelerate the resolution of any future planning application(s).

24. The challenge of maintaining the UK's international connectivity for future generations is a complex and contentious one, but solving it will be crucial to securing our long-term economic growth. On 1 February 2013, the Airports Commission published its first documents, which have begun the Commission's dialogue with interested organisations and the public: a guidance document inviting people to notify an intention to develop proposals and a discussion paper on demand forecasting. We encourage a wide spectrum of people to engage with this important and independent work.

Other aviation objectives

25. This Aviation Policy Framework focuses on the benefits of aviation and its environmental impacts, as responses to the scoping document and draft Aviation Policy Framework consultation confirmed that these were the priority areas that needed to be addressed. There are other important high-level policy objectives. Although they are not the subject of this Framework, they support and are consistent with it and are being taken forward separately. These objectives are summarised below.

Protecting passengers' rights

26. The Government is committed to improving the passenger experience, and the Aviation Policy Framework refers to actions we are taking to do this, for example through investing in surface access to airports and improving the border experience. When there is disruption at airports, it is important that passengers' rights are protected. Airlines have obligations under European law to ensure passenger welfare, and the CAA is working to achieve routine compliance with passenger rights. Good communication with passengers is also important at times of disruption.

Competition and regulation policy

27. We believe that the role of the Government should be largely confined to facilitating a competitive aviation market within a proportionate international and domestic regulatory framework to ensure a level playing field and the maintenance of high standards of safety and security. We will continue to work with the EU and ICAO on regulatory proposals to promote and protect UK interests.

28. Reducing the number of rules and regulations in our national life is central to the Coalition Government's vision for Britain, removing barriers to economic growth and increasing individual freedoms. The Government is committed to seeking alternatives to simply creating new regulations, as these often end up creating burdens and costs which affect businesses. Regulation should therefore no longer be the default response to addressing problems which arise. Our policies will be consistent with this approach.

29. The Civil Aviation Act 2012 modernises the economic regulatory regime for airports overseen by the Civil Aviation Authority (CAA). Present and future passengers and owners of cargo will be placed at the heart of the regulatory regime, with the CAA's current four equal duties being replaced with a single primary duty to further the interests of users of air transport services. Furthermore, the inflexible system of fixed five-year price controls will be replaced with a licensing system, facilitating targeted and proportionate regulation. The Act also gives the CAA duties to publish or require others to publish information about airline and airport performance as well as the environmental effects of aviation. In addition, the Act confers certain aviation security functions on the CAA, and allows reform of the Air

Travel Organisers' Licensing (ATOL) scheme to provide greater clarity for consumers and a more consistent regulatory framework for businesses.

Airspace

30. The Government remains a strong supporter of the Single European Sky (SES) initiative, which has the potential to deliver real benefits by minimising air traffic delays, reducing aircraft fuel consumption and lowering the amount of emissions produced by the aviation sector. We also support the implementation of the CAA's Future Airspace Strategy (FAS),[4] which sets out the long-term vision on how we should change our airspace within the overall aim of modernising the UK's airspace system in the context of the SES objectives. The implementation of the FAS can also play a significant role in delivering our economic and environmental objectives in relation to aviation. For example, by improving the overall efficiency of our airspace we can also at the same time provide significant opportunities to minimise aircraft emissions and air traffic delays.

Safety

31. Air transport is one of the safest forms of travel and the UK is a world leader in aviation safety. Maintaining and improving that record, while ensuring that regulation is proportionate and cost-effective, remains of primary importance to the UK. Since 2003, rules and standards for aviation safety in Europe have increasingly been set by the European Aviation Safety Agency (EASA). The UK will continue to work closely with EASA to ensure that a high and uniform level of civil aviation safety is maintained across Europe. In 2009, the UK was one of the first countries to publish a State Safety Programme, in line with new ICAO standards. The CAA published its own Safety Plan[5] in 2011 outlining the additional action it will be taking to improve UK aviation safety performance.

Security

32. The threat to UK aviation remains high. To keep pace with the rapidly changing nature of the threat, the Government is seeking to move to an outcome-focused, risk-based regime for aviation security regulation in the future. To facilitate this the Government is working with industry to develop and roll out the implementation of Security Management Systems (SeMS), modelled on the safety management systems (SMS) approach already in widespread use by the aviation industry and its safety regulators. We believe this will provide even better aviation security by enabling more responsive and flexible approaches to new and emerging threats. In the future, it should also provide the industry with greater scope for innovation and efficiency in delivering security processes, potentially enabling security outcomes to be delivered in more passenger-friendly way.

4 *Future Airspace Strategy,* CAA, June 2011, http://www.caa.co.uk/docs/2065/20110630FAS.pdf

5 *Safety Plan 2011-2013*, CAA, 2011, http://www.caa.co.uk/docs/978/CAA_Safety_Plan_2011.pdf

Developing the Aviation Policy Framework

33. In preparing the Aviation Policy Framework, the Government sought views on a scoping document published in 2011 and consulted on a draft of this document in July 2012. The results of this consultative process have informed the policy set out here, and a summary of responses to the draft Aviation Policy Framework consultation is published alongside this document. We have also published some associated commentary in relation to particular areas where there was contention or a modification of our approach in the light of responses. Readers of both the consultative and final documents will see that many sections of the Framework are similar or the same. We are grateful to everyone who has taken the time to engage with the development of the Aviation Policy Framework.

1. Supporting growth and the benefits of aviation

Aviation's contribution to the UK economy

1.1 The UK has always been an outward-looking nation – an island economy that for centuries has owed its prosperity to the transport and trade routes linking it with the rest of the world. With the increasing globalisation of our economy and society, the future of the UK will undoubtedly continue to be shaped by the effectiveness of its international transport networks.

1.2 We believe that aviation infrastructure plays an important role in contributing to economic growth through the connectivity it helps deliver. For example, it provides better access to markets, enhances communications and business interactions, facilitates trade and investment and improves business efficiency through time savings, reduced costs and improved reliability for business travellers and air freight operations.

1.3 There is broad agreement that aviation benefits the UK economy, both at a national and a regional level. While views differ on the exact value of this benefit, depending on the assumptions and definitions used, responses to both the scoping document and the consultation demonstrated that the economic benefits are significant, particularly those benefits resulting from the connectivity provided by aviation. In addition we believe there to be social and cultural benefits from aviation. This chapter summarises the main benefits of aviation.

Gross domestic product and jobs

1.4 The air transport sector's turnover is around £28 billion, and the sector directly generates around £10 billion of economic output. It provides about 120,000 jobs in the UK and supports many more indirectly.[6] These figures do not include the aerospace sector, which is covered below.

1.5 The economic importance of the aviation sector extends beyond its direct contribution to UK Gross Domestic Product (GDP) and employment, as an enabler of activity in many other sectors of the economy. These include

6 Turnover, economic output (GVA) and employment figures are from *Annual Business Survey,* ONS, 2011 (provisional), Section H: Transport and Storage, adding SIC 51 (air transport) and SIC 52.23 (service activities incidental to air transportation).

business services and also financial services where the UK enjoys a significant comparative advantage. The financial services industry requires on average six times as much air travel as some other sectors.

Imports and exports

1.6 Although air freight carries a small proportion of UK trade by weight, it is particularly important for supporting export-led growth in sectors where the goods are of high value or time critical. Air freight is a key element of the supply chain in the advanced manufacturing sector in which the UK is looking to build competitive strength. Goods worth £116 billion are shipped by air between the UK and non-EU countries, representing 35% of the UK's extra-EU trade by value.[7] [8]

1.7 The express air freight sector alone contributed £2.3 billion to UK GDP in 2010, and facilitates £11 billion of UK exports a year. Over 38,000 people are directly employed in the express industry, which supports more than 43,000 jobs in other sectors of the economy.[9]

1.8 A successful and diverse economy will drive a need for quicker air freight. Key components to keep factories working are often brought in from specialist companies in North America and the Far East. To keep production lines rolling this often has to be done at short notice. Access to such services is crucial to keeping UK manufacturing competitive in the global marketplace.

Manufacturing, skills and technology

1.9 The UK has the second largest aerospace manufacturing industry in the world and the largest in Europe. The growth prospects for the UK industry are sizeable based on global traffic growth predictions (£352 billion revenue up to 2030).

1.10 The UK aerospace industry is a key part of our advanced manufacturing sector, contributing towards rebalancing the economy to become less dependent on financial services. The UK has the second biggest aerospace industry in the world in terms of turnover, and is one of only a few countries involved in the design, development, manufacture and maintenance of the full range of aircraft products. The sector has an annual turnover of around £24 billion[10] of which 70% is exported.[11] It directly employs around 100,000 highly skilled workers and supports many more jobs indirectly.[12]

1.11 New and emerging technologies, such as unmanned aerial vehicles (UAVs), offer significant opportunities in the civil aviation field, for example in oil, gas

7 *CHIEF Non-EU data*, HMRC, 2011 (provisional data), https://www.uktradeinfo.com
8 *Trade statistics,* HMRC, 2011, https://www.uktradeinfo.com/Statistics/Pages/Statistics.aspx
9 Oxford Economics (2011) – The Economic Impact of Express Carriers in Europe – Country Report: United Kingdom
10 *UK Aerospace Industry Survey,* Aerospace, Defence, Security Trade Association (ADS), 2010 http://www.adsgroup.org.uk/pages/07003420.asp
11 *Ibid.*
12 Direct employment figure comes from ADS survey (http://www.adsgroup.org.uk/pages/07003420.asp.

and mineral exploration, air freight, search and rescue, data gathering and scientific research, as well as opportunities for technology transfer to the wider aviation sector.

Value of business and general aviation

1.12 The business and general aviation (GA) is important to the UK. Its contribution to the economy has been estimated at £1.4 billion per annum.[13] The sector delivers vital services, including search and rescue, mail delivery, life-saving (organ) transport, law enforcement, aerial survey and environmental protection flights, as well as underpinning the training of future pilots, ground-based aircraft engineers and technicians. The sector also covers a wide range of activities, from corporate business jets and commercial helicopter operations through to recreational flying in small private aircraft, including gliders. A Civil Aviation Authority (CAA)-initiated and chaired strategic review of the sector has acknowledged its growing economic importance, particularly for the British and European manufacturing industry

Greater productivity and growth

1.13 The UK's aviation sector enables productivity and growth in the following ways:

- enhanced access to markets and new business opportunities through improved connectivity;
- lower transport costs and quicker deliveries. For example, transporting freight by air allows smaller inventory holdings, and the rapid transport of perishable goods leads to increased specialisation of production which results in greater efficacies. The Organisation for Economic Co-operation and Development (OECD) notes that 40% of international freight trade by value is accounted for by airlines;[14] and
- facilitating inward investment and the movement of goods, people and ideas both within the UK and to and from the rest of the world thus enhancing trade and the diffusion of knowledge and innovation.

1.14 Some of the main benefits to consumers and businesses from greater investment and effective use of airport infrastructure include:

- reductions in delays and disruption[15] as a result of airport congestion, which affect airlines, passengers and the wider community;[16]

13 *Strategic Review of General Aviation,* CAA, 2006. Estimated at approximately £1.4 billion in 2005

14 According to Steer, Davies, Gleave (2010) in 2008, goods worth £95 billion were shipped by air freight between the UK and non-EU countries, representing 35% of the UK's extra-EU trade. Heathrow is the dominant gateway, with 63% of UK air freight volumes and, for non-EU trade, 63% of UK air freight value, the vast majority of which is carried in the belly hold of passenger aircraft. Heathrow is also the largest UK port by value for non-EU trade, with 24% of the total, similar to the combined total for the country's two principal container ports, Felixstowe and Southampton.

15 There would also be resilience benefits as there would be more spare capacity to help recover from any problems (e.g. snow) thus leading to fewer cancelled flights.

16 *Economic Survey of the United Kingdom*, OECD, 2009, http://www.oecd.org/document/18/0,3343,en_2649_33733_43092599_1_1_1_1,00.html

- increased frequency and range of flights to faster-growing economies.

Tourism

1.15 Air travel is essential to the *Government Tourism Policy,*[17] which aims to attract four million extra visitors to England alone over the next four years. China and other emerging economies will be a major source. Similarly ambitious targets have been set by other parts of the UK to increase their number of visitors. Good connectivity from the UK to emerging economies is likely to increase the scope for growth in inbound tourism from these countries in future. Overseas residents made 31 million visits to the UK in 2011, with nearly three-quarters of these visitors arriving by air. Earnings from overseas visits were £18 billion, 84% of which was spent by people who arrived by air.[18]

1.16 Consultation responses were divided on the economic impacts of outbound tourism. Some respondents considered that there was a 'tourism deficit', as more UK residents travelled abroad than overseas residents travelled to the UK. Other respondents highlighted that outbound tourism supports UK-based jobs in the travel and airline industry and boosts high street consumer demand before trips are made. The latter has been valued at around £27 billion per year.[19] Responses confirmed that the 'tourism deficit' question is a complex one and that the evidence available to us does not show that a decrease in the number of UK residents flying abroad for their holidays would have an overall benefit for the UK economy. UK residents made 57 million visits abroad in 2011 and spent £32 billion, 84% of which was spent by residents who travelled abroad by air.[20] The Government believes that the chance to fly abroad also offers quality of life benefits including educational and skills development. Overall the Government believes continuing to make UK tourism more attractive is a better approach both for residents and attracting new visitors.

Travel, culture and family

1.17 In addition to its economic contribution, aviation provides wider social benefits, enabling UK citizens to experience different cultures or enjoy a well-earned holiday. In an increasingly globalised society visiting friends and relatives is an increasingly important reason for flying; for example in 2011 it was the most common purpose of travel at Heathrow (36% of trips), Stansted (45%) and Luton (43%).[21] Visiting friends and relatives also forms a significant proportion of business for airports outside London and the South East, which in some cases helps maintains the viability of their air links.

17 *Government Tourism Policy*, DCMS, March 2011, http://www.culture.gov.uk/images/publications/Government2_Tourism_Policy_2011.pdf
18 http://www.ons.gov.uk/ons/rel/ott/travel-trends/2011/rpt-travel-trends-2011.html
19 *The UK Tourism Satellite Account*, ONS, 2008, http://www.ons.gov.uk/ons/rel/tourism/tourism-satellite-account/2008---the-economic-importance-of-tourism/uk-tsa-2008.pdf
20 http://www.ons.gov.uk/ons/rel/ott/travel-trends/2011/rpt-travel-trends-2011.html
21 *CAA Passenger Survey 2011,* http://www.caa.co.uk/default.aspx?catid=80&pagetype=90

1.18 The UK's extensive historical links with many parts of the world and our resulting multi-cultural society will continue to drive a high demand for visiting friends and relatives air travel. For example, the consultation has highlighted the efforts of British Asian communities to secure and encourage further services from airports such as Birmingham, Manchester and Leeds-Bradford to various airports in India and Pakistan.

1.19 During the consultation the Government heard evidence about the wider cultural and societal benefits of travel. While this is hard to quantify numerically the Government found the case persuasive. The continued popularity of overseas travel highlights a resilient appetite for travel among the British people.

Supporting airports across the UK

The growth and importance of airports outside London

1.20 One of the Government's aims in helping the economy to grow is to encourage investment and exports as a route to a more balanced economy. Airports are in some ways cities in themselves, creating local jobs and fuelling opportunities for economic rebalancing in their wider region or area. New or more frequent international connections attract business activity, boosting the economy of the region and providing new opportunities and better access to new markets for existing businesses.

1.21 The Government recognises the very important role airports across the UK play in providing domestic and international connections and the vital contribution they can make to the growth of regional economies. For more remote parts of the UK, aviation is not a luxury, but provides vital connectivity. Nineteen million passengers took domestic flights in 2011.[22]

1.22 Many airports act as focal points for business development and employment by providing rapid delivery of products by air and convenient access to international markets. For example, Birmingham Airport employs only 500 people directly, but 150 companies on the airport site employ a total of 7,000 people.[23] East Midlands Airport acts as a hub for freight, with three of the four global express air freight providers and Royal Mail maintaining major operations from the site.

1.23 Airports in Northern Ireland, Scotland, Wales and outside the South East of England also have an important role in helping to accommodate wider forecast growth in demand for aviation in the UK, which could help take some pressure off London's main airports. The availability of direct air services locally from these airports can reduce the need for air passengers and freight to travel long distances to reach larger UK airports.

22 *CAA airport statistics*, 2011, http://www.caa.co.uk/docs/80/airport_data/2011Annual/Table_10_2_Domestic_Terminal_Pax_Traffic_2011.pdf

23 More information is available on Birmingham Airport's website at: http://www.birminghamairport.co.uk/meta/careers/vacancies.aspx

Airports outside the South East

Airports outside the South East are vital to their local and the national economy, and many are growing and creating jobs. For example:

Aberdeen Airport supports some 3,870 jobs and contributes around £126 million every year for the Scottish and UK economy. Based on current levels of employment and the predicted passenger growth forecasts, an additional 1,110 jobs are expected to be created, generating an additional £42 million Gross Value Added (GVA) for the Scottish and UK economy per annum. Businesses in the area rely heavily on the global connections provided by Aberdeen Airport – 56% of its passengers are business travellers, the highest rate of any Scottish airport.

Birmingham Airport is the UK's seventh busiest, with some 40 airlines operating scheduled services to over 140 destinations, including in the US, Caribbean and Middle East. The airport's central location and excellent surface links, combined with its ongoing programme to develop more long-haul services, will help boost the West Midlands economy and help ease capacity constraints as well as congestion at South East airports.

Bristol Airport currently handles approximately 6 million passengers per year and is the fifth largest outside London. Over 100 destinations across 30 countries are served by direct flights, including 13 European capital cities.

Approximately 2,700 staff, employed by over 50 organisations, work at the airport site. The airport plays a vital role in the economic success of the South West region, with its ongoing development projected to create additional income of between £1.9 and £2.0 billion.

Leeds Bradford International Airport is a vital contributor to the economy of the Yorkshire and Humber region, and in particular the Leeds City region. Currently the airport supports up to 2,800 direct jobs and generates GVA of £102.6 million in direct value. In addition, it acts as a catalyst to a further 320 jobs and £10.8 million of GVA. The services of the airport and international connectivity will continue to contribute towards improved export activity, performance and business competitiveness. Based on forecast passenger growth at the airport, it is estimated that this will grow to around 8,000 jobs and £290 million GVA by 2030

Manchester International Airport is the UK's fourth busiest airport, and busiest outside the South East, handling 19 million passengers in 2011 in its three terminals. Over 60 airlines currently offer direct flights to over 200 destinations. The airport's dedicated World Freight Centre handles around 150,000 tonnes of air freight per year, expected to increase to 250,000 tonnes per year by 2015. Around 19,000 people are directly employed at the airport. The airport owner's, Manchester Airport Group's, airports and property business contributes more than £3 billion to the UK economy and supports

over 86,000 jobs. The airport is the site of the £650 million Airport City project at Manchester Airport – a mixed-used development that forms the central core of the newly designated Manchester Airport Enterprise Zone and will deliver 5 million square feet of new business accommodation over the next 10–15 years.

1.24 The Government wants to see the best use of existing airport capacity. We support the growth of airports in Northern Ireland, Scotland, Wales and airports outside the South East of England. 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 proposals for expansion at these airports should be judged on their individual merits, taking careful account of all relevant considerations, particularly economic and environmental impacts.

Responses by airports

Airports are already responding to local demands. For example:

- Birmingham Airport has recently completed a terminal development project that will enable the airport to cater for 18 million passengers (compared with the approximately 9 million handled to date per year) and is taking forward plans for a runway extension. This will allow the airport to handle larger aircraft flying to more long-haul destinations from 2014, which will maximise regional opportunities and help meet additional UK demand.
- Southend Airport has completed a programme of investment that has transformed the airport. A new terminal has been constructed, a runway extension that allows the operation of newer-generation, high-efficiency, medium-capacity aircraft has been completed, and an airport railway station that offers direct rail links to London opened in September 2011. As a result, Southend Airport expected to handle one million passengers in 2012 and create 500 new jobs.
- Leeds-Bradford Airport recently completed a £11 million development of its passenger terminal. This has created a 65% increase in airside space over two floors in the terminal.
- In addition, ongoing investment programmes at other airports such as Bristol, Manchester, Newcastle, Glasgow, Edinburgh, Belfast City and Belfast International are delivering additional improvements to airport capacity, airport facilities and the passenger experience.

Air connectivity to London

1.25 A number of respondents to the consultation – particularly from Scotland, Northern Ireland and some English regions – stressed strongly that continued connectivity to London airports is essential to their regional economies and to national cohesion. This was highlighted by the 2012 sale of bmi and its associated domestic services.

1.26 We fully recognise the importance of air services to these areas, and will be inclined to support applications by devolved and regional bodies to establish Public Service Obligations (PSOs) that comply with the specific PSO conditions within EU law,[24] where necessary to protect services between other UK airports and London.

1.27 The Devolved Administration, or Local Enterprise Partnership (LEP) or local authority in England, will continue to be responsible for developing the business, financial and legal cases required by the EU regulation on PSOs, and for demonstrating the importance of particular air services to the economic development of areas of the UK. The Department for Transport would need to be reimbursed for any funds provided for subsidies, should these be required.

1.28 Establishing a PSO would enable airport slots used for that service to be ring-fenced so that an airline could not use them for a different route. Importantly, however, the current EU slot allocation regime stipulates that PSOs should be justified by economic need, which is more likely to be based around linking cities and regions, rather than specific airports. This means that, when judging whether a UK region has adequate air services to London, it would be necessary to take into account the level and nature of services to all five of London's main airports.

1.29 We acknowledge concerns expressed by some respondents that increasing capacity constraints at Heathrow have diminished access for domestic air services. Air links between some UK airports and Heathrow have ceased. However, many still have air links to other London airports, as well as links to intercontinental aviation networks through services to mainland European and other international hubs. There is no longer a direct air service between Heathrow and Inverness Airport, but Inverness has direct connections to Gatwick and Luton and has gained connections to Amsterdam Schiphol.

Route Development Funds

1.30 Route Development Funds (RDFs) – a form of EU state aid – have previously supported the establishment of some new air services from airports in the UK. These included services supported by the Welsh Assembly Government from 2005 and the former North East Regional Development Agency from 2006. However, changes to the EU Aviation State Aid Guidelines,[25] which came into force in autumn 2005, have significantly reduced the scope for RDF support.

1.31 The 2005 guidelines impose significant restrictions on the levels of financial support and types of service that could be supported through RDFs. Essentially, they limit state aid to intra-EU services serving smaller airports

24 European Parliament regulation of 24 September 2008 on common rules for the operation of air services in the Community *(1008/2008)*, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:293:0003:0020:EN:PDF

25 Communication from the Commission: Community Guidelines on Financing of Airports and Start-Up Aid to Airlines Departing from Regional Airports (2005/C 312/01). The guidelines were published in the Official Journal of the European Unions on 9 December 2005.

and regions with low passenger demand, and mean that long-haul routes and services from larger airports outside the South East can no longer be supported.

1.32 We recognise that the provision of start-up aid for new air services from airports outside the South East helps significantly towards improving connectivity and economic growth. The UK has highlighted to the European Commission concerns that the current guidance on start-up aid does not provide sufficient scope to support the establishment of routes from outer regions of the EU, including routes from within Northern Ireland, Scotland and Wales. We will continue to press for more flexibility in the application of start-up aid that will help with the establishment of new services at airports outside the South East, where such aid would not distort competition

Extending regional liberalisation policy

1.33 For many years, the Government has sought to open up access to the airports outside the South East to improve opportunities for connectivity and to help reduce demand on South East airports. In the late 1990s the Government adopted an explicit open access policy, whereby other countries were offered, on a reciprocal basis, unrestricted access to airports in Northern Ireland, Scotland, Wales and regional airports in England, and in exchange UK airlines would have unrestricted access from these airports to those of the other country.

1.34 There is no evidence to suggest that the UK's current bilateral air service arrangements are presenting a significant constraint on either existing or potential services to UK airports outside the South East. Furthermore, many airports find themselves reliant on UK airlines to provide key access to important domestic and international destinations. Nevertheless, the Government believes that it would send a strong positive signal and increase competition to provide connectivity and further incentivise the launch of such services if the UK went a stage further and adopted a unilateral regional open access policy on a case-by-case basis. We are proposing, therefore, to offer bilateral partners open access to airports outside the South East in order to facilitate inward investment in new routes and extra choice for business and passengers without necessarily having to secure reciprocal access for UK airlines to the airports of the other country.

1.35 The granting of such rights would be subject to a case-by-case consideration within the context of the current position in the UK's bilateral aviation relationship with the country concerned (for example, we might not grant such rights if there were concerns that there was not a level competitive playing field in the market, such as if it were argued that the airline in question was in receipt of state aid that was distorting competition).

Connectivity

1.36 As explained earlier, aviation significantly benefits the UK because it provides us with excellent access to the rest of the world and brings us closer together within the UK. With the increasing globalisation of our economy and society, the future of the UK will undoubtedly continue to be shaped by the effectiveness of its international transport networks.

1.37 In summary, aviation connectivity is a combination of destinations served and frequency of flights: the broader the range of destinations served and the higher the frequency of flights to and from those destinations, the better connected an airport, city or country is. The value of connectivity is affected by other characteristics, such as the relative importance of the destinations served, the cost of accessing them, which is the end-to-end journey time and cost including the price of air travel, and the reliability of the services.

1.38 Hub airports play an important role in providing international connectivity, especially to long-haul destinations including emerging economies. Although there is no single agreed definition of a hub airport, a key characteristic of hub airports across the world is that they are able to serve more destinations and have higher frequencies than other airports. This is because a hub airport supplements local demand[26] with transfer[27] passengers, providing traffic volumes which support higher frequencies of services on more popular routes, and enabling services on more marginal routes that would not otherwise have proved viable with fewer passengers.

1.39 Excellent connectivity helps sustain clusters of specialised high-value industries in the UK such as the financial, legal, IT consultancy and business management sectors which are knowledge intensive and increasingly global in operations.[28] People in these industries travel widely in the course of their business and account for nearly a quarter of all aviation business travel.[29] However, businesses across a much wider range of industries – including chemical, oil, manufacturing and engineering, construction, retail, education, health, media, leisure, catering and transportation – use aviation to travel to service clients, to manage satellite operations and local offices, to source or sell business or manufacturing inputs and outputs and for overseas or multi-national companies based in the UK to reach global headquarters and other business partners.

26 Local demand refers to all passengers terminating their air journey at an airport, i.e. not connecting passengers.

27 Transfer passengers are passengers who connect directly between an inbound and an outbound flight, usually within 24 hours.

28 *Aviation Services and the City – 2011 update*, City of London Corporation, January 2011 http://217.154.230.218/NR/rdonlyres/63094787-5540-47BA-B2BC-2278674218D7/0/BC_RS_Aviation2011update.pdf

29 They accounted for 23% of all business passengers that listed a type of business in the 2010 CAA passenger survey.

The UK's connectivity today

1.40 The UK is currently one of the best connected countries in the world. We are directly connected to over 360 international destinations. Only China's and the USA's aviation networks are more extensive than the UK's, and Germany and France are in fifth and eighth place respectively (based on available airline seat kilometres[30]).[31]

1.41 The demand for aviation in the UK is concentrated in the South East, a densely populated region whose economy comprises multiplehigh-value sectors including finance, professional services, technology, media and fashion. This drives consistently high demand for aviation in the region, so that the five main South Eastern airports (Heathrow, Gatwick, Stansted, Luton and London City) account for nearly two-thirds of passengers at UK airports and nearly half of all air transport movements.

1.42 London is an exceptionally well served capital city: its five airports together serve more routes than any other European city.[32] Heathrow and Gatwick dominate the UK's long-haul market, accounting for 87% of direct passenger flights from the UK to North America, 99% to Brazil, Russia, India and China (BRIC) countries and 78% to the rest of the world (outside Europe).[33]

1.43 Heathrow Airport, as the UK's only international hub airport, has a unique role in supporting the UK's and London's connectivity. In 2011, Heathrow handled nearly a quarter of all air transport movements at UK airports, approximately a third of all terminal passengers and two-thirds of all air freight, which is mainly transported in passenger aircraft. Its service patterns tend to reflect trade patterns as well as passenger demand – see Figure 1.1.

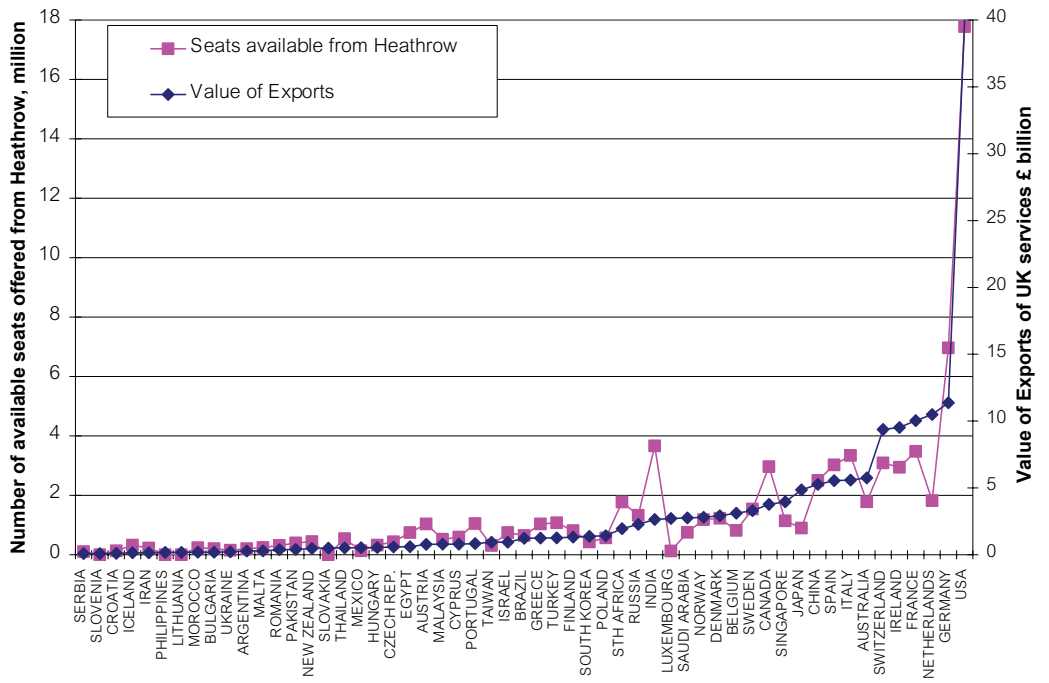
30 DfT analysis of CAA statistics. Based on international destinations with at least 52 direct passenger flight departures (i.e. at least a direct weekly service) from at least one UK airport in 2011.

31 *Global Competiveness Report*, World Economic Forum, 2011-12, http://reports.weforum.org/global-competitiveness-2011-2012. Based on available seat kilometres, which is the number of available seats multiplied by the number of kilometres flown.

32 *Aviation Policy for the Consumer* (page 18, Figure 6: CAA analysis of OAG data), CAA, 2011, http://www.caa.co.uk/docs/589/CAA_InsightNote1_Aviation_Policy_For_The_Consumer.pdf

33 DfT analysis of CAA statistics, 2011

Figure 1.1: Value of UK services exported to foreign countries and the number of seats available from Heathrow, 2011



1.44 Airports in Northern Ireland, Scotland and Wales and English airports outside London also play a very important role in UK connectivity. As well as operating a range of domestic routes, many of which are important for business travellers, they serve an increasing number of routes to mainland Europe. In 2011, nearly 150 destinations in mainland Europe were served by at least one airport outside the South East. Although the long-haul market still accounts for only a small proportion of traffic at airports in Northern Ireland, Scotland, Wales and regional airports in England (3% of passenger flights in 2011), many now serve a number of long-haul routes. Over 35 destinations outside Europe have a regular service from at least one airport outside the South East;[34] these are mostly traditional holiday destinations in countries such as Egypt, North America, Morocco and Tunisia but a number of airports outside the South East also offer flights to major world cities such as New York, Dubai, Islamabad and Toronto. Most of these airports also enjoy connectivity to another EU hub airport.

1.45 In 2011, UK airports facilitated air travel for around 50 million business passengers[35] and provided direct access to over 360 international destinations. In addition to passengers, goods worth £115 billion were

34 DfT analysis of CAA statistics, 2011

35 Throughout this document numbers of passengers refers to the Civil Aviation Authority (CAA) definition of a ''terminal passenger' – a person joining or leaving an aircraft including passengers transferring between two flights. A transfer passenger is counted twice at an airport: once when leaving the first aircraft and then again when joining the connecting service.

shipped by air freight between the UK and non-EU countries.[36] Although air freight carries a small proportion of UK trade by weight, it accounted for 35% of the UK's extra-EU trade in 2011 by value.[37] It is particularly important for supporting export-led growth in sectors where the goods are of high value or time critical. Air freight is a key element of the supply chain in the advanced manufacturing sector in which the UK is looking to build competitive strength.

Connectivity in the future

1.46 The UK's continued economic success depends on being able to connect with the countries and locations that are of most benefit to our economy. This is important in relation both to destinations that fall into that category today and those locations that will become crucial to our country's economic success in the future. While it remains vital for the UK to maintain its connectivity with established markets such as the USA and in Europe, it is also important that we take advantage of the growing opportunities presented in the emerging economies of the world to remain competitive in the global economy.

1.47 There has been some increase in direct services from the UK to leading emerging economies over the last decade: the total number of flights to BRIC countries more than doubled over this period.[38] In 2011 Heathrow served 11 destinations in Brazil, Russia, India and China with at least a daily service, which compares favourably with all the major EU hubs. It also had more flights in total to BRICs than the other four main European hubs (Charles de Gaulle, Frankfurt, Madrid and Schiphol), with particularly strong connections to India and Hong Kong.

1.48 In the future the number of destinations served from Heathrow may continue to fall. The recent trend at Heathrow has been for profitable routes to be operated at higher frequencies, to meet the demands of business travellers; however, as Heathrow is constrained, airlines have had to reduce the total number of destinations they serve. Heathrow went from 175 destinations in 2006 to 157 destinations in 2010.[39] We will be monitoring this trend with a view to understanding what may happen at other airports as capacity becomes ever more constrained, and what the impact on connectivity will be.

1.49 There remains considerable scope for airports other than Heathrow to develop long-haul services to a broader range of destinations to support the UK's international connectivity, primarily through growing point-to-point services or connections to overseas hubs.

36 CHIEF Non-EU data, HMRC, 2011 provisional https://www.uktradeinfo.com/index.cfm?&hasFlashPlayer=true

37 Ibid.

38 DfT analysis of CAA statistics, 2011

39 From 165 destinations in 2002 and a high point of 175 destinations in 2006 to 157 destinations in 2010 (CAA statistics) destinations served at least weekly (at least 52 passenger flights during the year).

Aviation demand forecasts

1.50 In January 2013 the Department published revised aviation forecasts to inform a range of long-term strategic aviation policy issues including the development of this Aviation Policy Framework and the work of the Airports Commission.

1.51 These forecasts adopt the latest projections for the key drivers of aviation demand including economic growth from the Office of Budget Responsibility (OBR) and oil prices from the Department for Energy and Climate Change (DECC).

1.52 The central forecasts of passenger numbers in 2030 have been reduced by around 7% from levels forecast in August 2011. Primarily this reflects revisions from the OBR's forecasts for the UK economy and changed projections of oil prices from DECC.

1.53 Demand for air travel is forecast to increase at a slower rate than we have seen over the last 40 years, reflecting the anticipation of market maturity across different passenger markets and a projected end to the long-term decline in average fares seen in the last two decades. So whereas in the past we saw annual growth of 5% in the future it is likely to be between 1% and 3% over the next 15 years.

1.54 In the most likely scenarios the major South East airports are forecast to be full by 2030. However, other scenarios have this occurring as soon as 2025 or as late as 2040, depending primarily on the rate of economic growth and the price of oil.

1.55 According to the most likely scenarios a number of non-London airports, including Birmingham, Bristol, East Midlands and Manchester Airport, are also assessed as reaching capacity over a similar time scale.

1.56 Heathrow had effectively reached its maximum capacity in 2011 and it is forecast to remain at full capacity across all the demand cases considered.[40]

Conclusion

1.57 One of our main aviation objectives is **to ensure that the UK's air links continue to make it one of the best connected countries in the world. This includes increasing our links to emerging markets so that the UK can compete successfully for economic growth opportunities**. To achieve this objective, we recognise the importance of both maintaining the UK's aviation hub capability and developing links from airports which provide point-to-point services (i.e. carrying very few or no transfer passengers). This must be done in a way consistent with the high-level policies set out in this document.

40 The full forecasts can be found at: https://www.gov.uk/government/publications/uk-aviation-forecasts-2013

1.58 This Policy Framework seeks to achieve this objective, with a clear strategy for the immediate future, which is set out below. However the Government is committed to achieving this objective into the long term. Any decision the Government makes on airport capacity will be highly contentious. It is for this reason that we find ourselves again confronting issues that have been under discussion since the early 1990s. The Government is determined that our successors 20 years hence will not still find themselves in this position.

1.59 The Government set up the Airports Commission in recognition of the need to establish a solid independent evidence base for a long-term strategy. We have asked Sir Howard Davies to present an interim report by the end of 2013 on immediate actions to improve the use of runway capacity. But securing the UK's economic competitiveness, including by supporting London's status as a centre of global trade, requires a longer-term approach

Strategy for a vibrant aviation sector: the short term

1.60 In the short term, to around 2020, a key priority for Government is to continue to work with the aviation industry and other stakeholders to make better use of existing runways at all UK airports. Taking into account responses to the scoping document, our strategy is based on a suite of measures focused on:

- making best use of existing capacity to improve performance, resilience and the passenger experience;
- encouraging new routes and services;
- supporting airports outside the South East to grow and develop new routes; and
- better integrating airports into the wider transport network.

Improving performance, resilience and the passenger experience

Trial of operational freedoms

1.61 In 2011 the South East Airports Taskforce (SEAT) identified ways to make the most of existing airport infrastructure and improve conditions for all users at the three main London airports.[41] The key recommendations were on improving punctuality, resilience, and delay. In February, the airport operator completed a phased, 12-month trial of operational freedoms at Heathrow involving the more flexible use of its runways and departure routes. The purpose of the trial was to explore whether such measures could help to maintain the schedule, mitigate disruption and deliver a net environmental benefit through reduced stacking and by cutting the number of unscheduled flights during the night period. The trial was overseen by the

41 *South East Airports Taskforce Report*, DfT, 2011, http://www.dft.gov.uk/publications/south-east-airports-taskforce/

CAA and further information, including data from the trial, can be found on Heathrow Airport Limited's website.[42]

1.62 The Government will consult on the results of the trial later in the year before any decision is taken on whether to make these changes permanent.

Ending the Cranford agreement

1.63 To further improve operations and resilience at Heathrow we confirmed the ending of the Cranford agreement.[43] This is an informal but long-standing agreement not to use the northern runway for departures when the wind was in from the east (roughly 30% of the time).This decision needs to be implemented by Heathrow Airport Ltd and a planning application will shortly be submitted for the necessary changes to airport infrastructure. Following implementation, noise will be distributed more fairly around the airport, extending the benefits of runway alternation to communities under the flight paths during periods of easterly winds, and delivering operational benefits by letting the airport operate consistently whether there are easterly or westerly winds.

Airport performance charters and capacity utilisation guidelines

1.64 The CAA investigated the SEAT's recommendations on airport-specific performance charters and capacity utilisation guidelines through a CAA-chaired industry working group called the Airport Performance Facilitation Group (APFG). The purpose of the charters is to help motivate an airport's stakeholders to take decisions based on the interests of the whole airport system by setting out the level of service that airlines and their passengers should expect to receive.

1.65 In addition, airports were directed to look at the feasibility of developing guidelines that might optimise the utilisation of runway resource at each airport. For example, in 2012 the Heathrow airport community agreed to a winter schedule with some lower hourly capacity limits in order to improve reliability. Over time this will reduce the peak hourly pressure on the airport and thus strengthen resilience.

1.66 The work of the APFG concluded at the end of 2012, with further progress in these areas expected through the CAA's new powers to place the passenger at the heart of airport regulation under the Civil Aviation Act and their interaction with the Airports Commission.

1.67 In terms of making the best use of capacity at our busiest airports, particularly Heathrow, the Government supports in principle any reasonable, non-discriminatory steps that airport operators may wish to take to limit access to smaller aircraft, where appropriate. Such measures could help our busiest airports to maximise passenger throughput.

42 *Operational Freedoms Trial*, BAA, 2012, http://www.heathrowairport.com/noise/noise-in-your-area/operational-freedoms-trial

43 *Theresa Villiers written ministerial statement*, 7 Sept 2010, http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm100907/wmstext/100907m0001.htm

US pre-clearance

1.68 Outside of the EU, the US remains the single most popular market for air services from the UK, with some 17 million terminal passengers at a number of UK airports flying to and from the US.[44] The US authorities provide immigration, customs and agricultural pre-clearance facilities at 15 airports outside the US,[45] including at Dublin and Shannon Airports in Ireland. These facilities, operated by US Customs and Border Protection (CBP), allow passengers travelling to the US to clear US arrival checks before departure, allowing for easier and quicker connections and arrivals in the US.

1.69 The Government believes that introducing US pre-clearance at the UK airports could offer significant passenger benefits and improve the overall end-to-end journey experience for passengers flying from the UK to the US, whilst at the same time maintaining passenger security and a secure border, which are shared US and UK priorities. The decision on whether to operate such facilities at airports overseas ultimately rests with the US authorities.

1.70 Accordingly, the Government will consider, with the US authorities and interested stakeholders in the UK, the feasibility of such facilities being made available in the UK, including the practical and legal issues that would need to be addressed.

Border controls

1.71 The Government also remains committed to working with the US authorities to take forward access for UK nationals to Global Entry,[46] the US's kiosk-based international registered traveller system that allows its participants to take advantage of expedited immigration clearance on arrival in the US. The UK's own registered traveller scheme – which will supersede the existing iris recognition immigration system (IRIS)[47] – is due to be rolled out from Spring 2013, and we are making good progress with the aviation industry to improve the provision of fast-track clearance at airports through a new premium service offering, as well as in improving both the coverage and availability of e-gates for clearing UK and European Economic Area (EEA) passengers who hold a biometric passport and are over the age of 18.

1.72 Building on the work done by SEAT, we are committed to working to improve efficiency at the border, to minimise queues, increase automation and to improve the passenger experience so that we achieve the best possible experience for people visiting or returning to the UK, whilst at the same time maintaining our border security. All of this demonstrates that the UK is open for business, and nothing underpins that more than maintaining safe and secure borders. Stringent checks at our borders are imperative if

44 CAA airport statistics 2011 and DfT analysis of CAA airport statistics 2011

45 The list of airports is available at: http://www.cbp.gov/xp/cgov/toolbox/contacts/preclear_locations.xml

46 http://www.cbp.gov/xp/cgov/travel/trusted_traveler/

47 http://www.ukba.homeoffice.gov.uk/customs-travel/Enteringtheuk/usingiris/

we are to prevent illegal immigration, turn away criminals and maintain Britain's secure borders.

1.73 Whilst the safety and security of the public is our priority, we accept that we have a responsibility to process genuine, low-risk passengers without delay. We fully recognise the importance of a positive first experience at the border and that long queues to enter our country make a bad first impression. The UK border experience during the London 2012 Olympic and Paralympic Games was first class and we aim to maintain a high standard for the future. This is why the Government has already started the recruitment of around 600 extra Border Force staff, of which 425 are for Heathrow airport, to provide additional flexibility to secure the border while dealing with increased passenger numbers.

Supporting passengers during disruption at airports

1.74 The above measures aim to reduce disruption for passengers. However, when disruption does occur or when it is very likely to occur, good planning within the airport community and good communication with passengers can minimise a poor passenger experience. In addition, airlines have obligations under European law to ensure passenger welfare, and the CAA is working to achieve routine compliance with passenger rights.

Encouraging new routes and services

Liberalisation of air services

1.75 The opening up of air services to genuine competition has driven down the cost of air transport and greatly improved the range and quality of services. We will continue to seek to liberalise the bilateral air services agreements that govern flights beyond the EU to enable airlines to provide services freely on the basis of commercial considerations. For example, we have recently modernised our agreements with key emerging markets, including China, Vietnam and Indonesia. We are also seeking to modernise our agreements with a range of other countries, including Russia and Egypt, to meet increasing demand.

1.76 Building on the success of the Olympics and the GREAT brand marketing we are working hard to set out the UK's international air services policy and what we are doing to support new international routes and services, airports in Northern Ireland, Scotland and Wales and regional airports in England. These new services will benefit businesses and passengers alike, supporting jobs and growth.

1.77 We will also continue to work closely with the European Commission and other Member States in seeking to develop liberalised EU-level air transport agreements with other countries and to seek the relaxation of restrictions on cross-border investment in order to allow UK airlines greater access to foreign capital and to allow them greater freedom to invest in foreign airlines.

Extending fifth freedoms to Gatwick, Stansted and Luton

1.78 Fifth freedoms are the rights granted to allow an airline of one country to land in a different country, pick up passengers and carry them on to a third country. The UK has long had a general presumption in favour of liberalising fifth freedoms from airports outside the South East.

1.79 To improve connectivity at an international level and to help make better use of existing infrastructure at London's congested airports, we announced in 2011 that we would consult on extending the UK's existing regional fifth freedoms policy to Gatwick, Stansted and Luton.[48] The granting of fifth freedoms would allow a foreign airline to carry passengers between these three London airports and another country as part of a service that begins or ends in the airline's home country. For example, a Singaporean airline would be able to operate a service from Changi Airport in Singapore to Gatwick Airport and then on to JFK Airport in the US, picking up passengers at Gatwick Airport and carrying them to New York.

1.80 The CAA found that in the case of airports outside the South East such a policy would deliver net benefits to UK interests. The Government believes that extending the policy to include Gatwick, Stansted and Luton would also benefit the UK, supporting London's and the UK's aviation connectivity and attracting new services and additional stop-over flights to these airports.

1.81 This policy would be subject to the same conditions that apply to the UK's existing regional fifth freedoms policy,[49] namely that the grant of such rights would be subject to a case-by-case consideration within the context of the current position in the UK's bilateral aviation relationship with the country concerned (for example, we might not grant such rights if there were concerns that there was not a level competitive playing field in the market, such as if it were argued that the airline in question was in receipt of state aid that was distorting competition, or if the grant of such rights was felt likely to significantly diminish the possibility of securing a wider liberalisation that would deliver additional consumer benefits or if it was felt likely to result in significant and sustained disbenefits to consumers by restricting choice and value on a specific route).

Airport slots

1.82 We consider it important that an effective slot allocation regime continues to operate at the UK's airports. We continue to support the core principle of the European Union's Airport Slot Regulation, which is that airlines should have fair and equal access to airports across the EU through independent and transparent slot allocation procedures.

48 *National Infrastructure Plan,* HM Treasury-Infrastructure UK, November 2011, http://cdn.hm-treasury.gov.uk/national_infrastructure_plan291111.pdf

49 *Relaxation of restrictions on international services from UK regional airports,* DfT, June 2011, http://www.dft.gov.uk/publications/relaxation-of-restrictions-on-international-services-from-uk-regional-airports

1.83 We also support the central objective of proposed revisions to the existing Slot Regulation set out within the European Commission's *Better Airports Package.*[50] This aims to promote the most effective use of airport slots and build on the existing transparent, commercial market-based approach to encourage more efficient use of limited capacity, reduce delays, and thereby improve the experience for passengers at congested airports.

1.84 We are committed to engaging constructively at European-level discussions with the aim of supporting proposals that have been demonstrated to improve slot utilisation. Discussions remain ongoing. We continue to work closely with the European Commission to assess carefully any proposals and their potential impacts on the UK aviation industry's commercial interests.

1.85 To ensure the most economically beneficial use of slots at our congested airports, we are working within the EU legislative framework to optimise the commercial market for the trading of airport slots by airlines in the UK (known as secondary trading).

Maintaining a viable network of business and general aviation

1.86 Across the UK there is a network of aerodromes of varying sizes, from airports in Northern Ireland, Scotland, Wales and regional airports in England to small business and general aviation (GA) airfields into which GA aircraft can readily gain access. While almost all of these are privately owned and operated, maintaining access to such a national network is vital to the continuing success of the sector.

1.87 Business and general aviation connects many UK and international destinations that do not have, and are unlikely to develop, scheduled air services or other direct transport links. GA aerodromes can also complement commercial air transport and provide increased connectivity at important hubs such as London. These links are particularly important for local businesses. Ninety-six per cent of city pairs served by business aviation have no scheduled connection.[51]

1.88 Given the importance of this GA network, while recognising that in congested airports this may not be appropriate, we encourage airport operators to ensure that GA aircraft are able to continue to enjoy equitable access to their airports and in doing so take account of the needs of all users, alongside other relevant considerations.

1.89 We will also carefully consider any EU legislative proposals affecting the GA sector that may emerge in the future and will seek to ensure that they are based on the principles of proportionality and subsidiarity and appropriate for the type of aircraft to which they apply. In addition, we support the

50 The European Commission's *Better Airports Package* was launched in December 2011, http://ec.europa.eu/transport/air/airports/airports_en.htm

51 *The Role of Business Aviation in the European Economy*, Oxford Economics, October 2012

CAA's review of the regulatory approach to recreational aviation,[52] which is also aimed at ensuring that UK safety regulation is proportionate.

1.90 The planning system also has a bearing on the operation of small and medium-sized aerodromes. The *National Planning Policy Framework* (NPPF)[53] is intended to simplify the Government's overarching planning policy, but the underlying planning principles in respect of airfields remain unaltered. The NPPF states "when planning for ports, airports and airfields that are not subject to a separate national policy statement, plans should take account of their growth and role in serving business, leisure, training and emergency service need. Plans should take account of this framework as well as the principles set out in the relevant national policy statements and the Government Framework for UK Aviation".

1.91 Where a planning application is made that is likely to have an impact on an existing aerodrome's operations, the economic benefit of the aerodrome and its value to the overall aerodrome network as well the economic benefits of the development will be considered as part of the application process. However, these benefits will be balanced against all other considerations. This is also something which could be considered by airport consultative committees (ACCs) where appropriate (see Chapter 4).

Integrating airports in the wider transport network (short term)

Rail access to airports

1.92 Significant investments are already being made or committed, for example Gatwick Airport's station and improving Thameslink services to Gatwick and Luton. A new fleet of electric trains has been introduced on the Stansted Express. Access to Manchester Airport is being improved through the measures set out in Chapter 5, as well as through delivery of electrification programmes in the North of England and the elements of the Northern Hub[54] which have already been announced.

1.93 Rail offers opportunities for efficient and environmentally-friendly connections to airports, particularly for larger airports where passenger numbers are sufficient to justify fast and frequent services. We will continue our work with airport operators, the rail industry, local authorities and Local Enterprise Partnerships (LEPs) to improve rail access to our airports in the coming years.

1.94 For example, we are providing funding for a new rail line between the Great Western Main Line and Heathrow which could provide significantly improved connections from the Thames Valley, the West of England and Wales to the airport and journey time savings of up to 30 minutes.

52 *Strategic Review of General Aviation in the UK,* CAA, July 2006, http://www.caa.co.uk/docs/33/StrategicReviewGA.pdf

53 *National Planning Policy Framework,* Department of Communities and Local Government, March 2012, http://www.communities.gov.uk/documents/planningandbuilding/pdf/2116950.pdf

54 More information on the Northern hub is available here: http://www.northernhub.co.uk/

1.95 The Department for Transport is working with the rail industry, operators of some of our biggest airports and other key stakeholders to identify further opportunities to improve rail surface access and agree how these might be delivered.

Improving surface access to airports

1.96 High quality, efficient and reliable road and rail access to airports contributes greatly to the experience of passengers, freight operators and people working at the airport. Greater use of low carbon modes to access airports also has the potential to reduce CO_2 emissions, as well as leading to less congestion and improved air quality.

1.97 We are committed to working with airport operators, transport operators, local authorities and LEPs to improve surface access to airports across the country, whilst taking into account the associated environmental impacts. We are already contributing funding to make this happen. For example, through the Regional Growth Fund (RGF), the Government has awarded:

- £19.5 million to Luton Borough Council for junction enhancements which will improve access from the M1 to Luton Airport;
- £18 million to Doncaster Borough Council for the '*Gateway to the Sheffield City Region'.* This is an infrastructure project to improve access to the Sheffield area. The RGF grant will be used towards the construction of a link road between Doncaster and Robin Hood Airport.

1.98 On the strategic road network, we have committed investment for major enhancement projects that will improve airport access, such as the £150 million scheme to widen the A453 near Nottingham where construction started in January 2013. This improvement will widen the route between the M1 and East Midlands Airport, facilitating access for both passengers and air freight operators. We have also announced development of future major proposals to increase capacity on the M4 between junctions 3 and 12, which will improve journeys towards Heathrow Airport.

Strategy for a vibrant aviation sector: the medium and long term

Integrating airports in the wider transport network (medium and long term)

1.99 Through its Long Term Planning Process, Network Rail, in conjunction with airport and train operators, local authorities and LEPs is considering options for enhancing rail services to major airports. Route-based studies will assess the case for taking forward options relating to individual airports alongside the future needs of rail passengers and freight customers as a whole. Where a good case for train service improvements to airports is identified, the DfT will consider them for potential delivery through its High

Level Output Specification for the railway and through its franchising activities.

Developing a national high rail network

1.100 The Government will ensure that its national strategies for aviation and high-speed rail are aligned, providing a better travel offer to the UK travelling public

1.101 International experience shows that rail can be an attractive and convenient form of travel for inter-urban journeys, enabling people to travel directly from city centre to city centre. An important part of our approach is to enable more people to take the train, instead of air transport, for domestic and short-haul European journeys, both in order to achieve environmental benefits and to release capacity at airports. However, we recognise that there will always be a need for domestic aviation; for example, for connections to Northern Ireland and the Scottish islands and other parts of the UK not served by rail, for cross-country routes, and for express freight onward journeys.

1.102 The full 'Y' network will enable fully high-speed services to Manchester, the East Midlands, South Yorkshire and Leeds, and the operation of 'classic compatible' trains on the network will further reduce journey times to Scotland and the North West, as well as enabling high-speed services to reach new destinations in Yorkshire and the North East via the East Coast Main Line. These links will bring Glasgow and Edinburgh within 3 hours and 40 minutes of central London by rail, a journey time comparable with aviation, and reduce the rail journey time from London to Newcastle to just over 2 hours. We estimate that, with the Y network in place, as many as 5.4 million trips a year could be made by rail which might otherwise have been made by air.

1.103 From 2026, when Phase One opens, rail passengers into Heathrow would start to benefit from significantly faster journey times. This would mark a major improvement in rail access to Heathrow compared with today. Passengers from the Midlands and North would be able to access the Heathrow Express service from Old Oak Common station, which would provide an 11-minute connection into the airport. Rail journeys from the Midlands and the North would be as much as 50% quicker, involving fewer changes, and it would no longer be necessary to travel via central London.

1.104 The Government also supports a direct high-speed connection to Heathrow, as there is a case for providing significant rail capacity to the country's major hub airport. Following a public consultation in 2011, the Government concluded that it was important that High Speed 2 (HS2) should serve Heathrow directly; that the optimal approach would be via a spur off the main HS2 line and that this should be built as part of Phase Two of the HS2 network, opening in 2032/33.

1.105 The Government continues to support the principle of integrating HS2 with our country's airports. We consider, however, that further work on a link to Heathrow should now await the consideration of the conclusions and recommendations of the Airports Commission. We will therefore pause work on the Heathrow spur until the Commission's recommendations have been considered.

1.106 In view of this pause in work, the proposals for the Heathrow spur and station are not planned to be part of the Phase Two consultation. However, there would still be the opportunity to consult separately at a later point and include the Heathrow spur in legislation for Phase Two without any impact on the delivery time if that fits with the recommendations of the Commission.

1.107 To avoid severe disruption to the Phase One line after it has opened, however, the Government would consider carrying out the preparatory construction work needed to preserve the option of our preference for serving Heathrow in the future. Including this work now could save significant disruption and cost at a later point.

1.108 The Government following the next General Election will decide on the best way to serve Heathrow by HS2.

Conclusions

1.109 We have set out above a strategy based on practical measures which we believe will improve the use of existing runways across the UK and ease pressure on our hub airport in the short term and into the medium and long term with the development of HS2. However, beyond 2020, we recognise that even with HS2 in place, using current operating techniques, there will be a capacity challenge at the biggest airports in the South East of England. The five London airports were at 78% capacity in 2010 and they are forecast to be 91% full in 2020 and totally full by around 2030. Heathrow is in practice already operating at maximum air transport movement (ATM) capacity.

1.110 Our long-term objective remains **to ensure that the UK's air links continue to make it one of the best connected countries in the world. This includes increasing our links to emerging markets so that the UK can compete successfully for economic growth opportunities**.

1.111 We isrecognise that this raises difficult issues and the need for serious answers to tough questions. For this reason, as previously mentioned, we have established the independent Airports Commission to investigate how to achieve the Government's long-term objectives.

2. Climate change impacts

Context

2.1 Globally, the aviation sector is responsible for about 1 to 2% of greenhouse gas emissions.[55] In the UK, domestic and international aviation[56] emissions account for about 6% of total greenhouse gas emissions or 22% of the transport sector's greenhouse gas emissions. This compares to 40% of the transport sector's greenhouse gas emissions that are emitted by cars, 14% by heavy goods vehicles and 8% by domestic and international shipping.[57] Aviation is, however, likely to make up an increasing proportion of the UK's total greenhouse gas emissions, while other sectors decarbonise more quickly over time.

2.2 Aviation's most significant contribution to climate change in the longer term is through emissions of carbon dioxide (CO_2), which make up about 99% of the sector's Kyoto basket of greenhouse gas emissions,[58] and this has therefore been the focus of government action. But we recognise that the complexities of atmospheric chemistry mean that the total climate change impacts of aviation are greater than those from its CO_2 emissions alone. Non-CO_2 emissions from aviation can have both cooling and warming effects on the climate, with a likely overall warming impact on the atmosphere. Nitrogen oxides (NO_x), sulphur oxides (SO_x) and water vapour all contribute to the overall effect, with NO_x emissions resulting in the production of ozone, a greenhouse gas and air pollutant with harmful health and ecosystem effects. However, despite advances over the past decade, considerable scientific uncertainty remains about the scale of the effect on climate change of non-CO_2 emissions. As a consequence there is no consensus on whether and how to mitigate them.

55 Reducing Transport Greenhouse Gas Emissions: Trends & Data, International Transport Forum, 2010, http://www.internationaltransportforum.org/Pub/pdf/10GHGTrends.pdf Greenhouse Gas Emissions from Aviation and Marine Transportation: Mitigation Potential and Policies, Prepared for the Pew Center on Global Climate Change by David McCollum, Gregory Gould and David Greene, 2009, http://www.c2es.org/docUploads/aviation-and-marine-report-2009.pdf

56 There is currently no internationally agreed way of allocating international emissions to individual countries. The percentage shares are based on the percentage of bunker fuel sales to the aviation sector from the UK.

57 Domestic and international aviation emissions on the basis of bunker fuel sales in the UK to the aviation sector. *UK Greenhouse Gas Emissions*, Department of Energy and Climate Change, 2011, available through https://www.gov.uk/government/publications/final-uk-emissions-estimates

58 Ibid.

2.3 Our focus will remain on actions to target CO_2 emissions, which may also help to reduce some of the non-CO_2 emissions. We will continue to support efforts to improve the understanding of the non-CO_2 impacts of aviation. The UK is participating in and helping to fund a number of projects investigating non-CO_2 impacts such as the effects of contrails and NO_x on atmospheric warming. As scientific understanding improves and evidence of the effects of non-CO_2 emissions becomes clearer, we will adapt our approach as necessary to ensure our strategy addresses aviation's total climate change impacts effectively.

Our climate change strategy for aviation

2.4 **The Government's objective is to ensure that the aviation sector makes a significant and cost-effective contribution towards reducing global emissions.**

2.5 Our emphasis is on action at a global level as the best means of securing our objective, with action within Europe the next best option and a potential step towards wider international agreement. We will also take unilateral action at a national level where that is appropriate and justified in terms of the balance between benefits and costs. This is, however, more difficult to achieve for international flights due to the risks of market distortions.

Policy measures: action at a global level

2.6 Flights departing from UK airports to international destinations account for about 95% of UK aviation emissions,[59] so measures to tackle CO_2 emissions would benefit from an international approach determined through bilateral or multilateral agreements. Greenhouse gases emitted anywhere in the world contribute to a global problem, which is why we believe we require a globally agreed solution.

2.7 The UK has played a leading role in securing progress internationally, both within the International Civil Aviation Organization (ICAO) and within the EU. The global nature of the climate change challenge and the international character of the aviation industry make a strong case for a global deal on emissions that is comprehensive, non-discriminatory and ensures that CO_2 emissions are not simply displaced elsewhere. The greatest contribution that any single state can make to reducing aviation emissions is to actively support steps towards such a global deal. The UK will therefore continue to push for an international agreement to ensure that action is taken at the right level and do everything we can to bring others along with us.

2.8 Action at a global level is the preferred and most effective means by which to reduce emissions. Taking action only at a national or regional level has the potential to create the risk of carbon leakage with passengers travelling via other countries and increasing emissions elsewhere. In other words, if

59 Measured on a bunker fuel sales basis. *Transport Statistics Great Britain,* DfT, 2011, http://www.dft.gov.uk/statistics/releases/transport-statistics-great-britain-2011.

action at the national or regional level increases the price of air fares only on certain routes, it is possible that some passengers could choose to travel on alternative routes which are outside the scope of such action.

The international aviation industry

2.9 The international aviation industry has also made progress in developing an agreed strategy to reduce its emissions. Airlines, represented by the International Air Transport Association (IATA), have set targets for a 1.5% average annual improvement in fuel efficiency to 2020, to deliver carbon-neutral growth through a cap on 'net' emissions (taking account of emissions trading) from 2020 onwards and to cut net emissions in half by 2050 compared with 2005 levels.[60]

The International Civil Aviation Organization (ICAO)

2.10 The Government will continue to support action through ICAO towards a global agreement to address the climate change emissions from aviation. While we would have preferred to see more rapid progress, steps are being made in the right direction.

2.11 The Government recognises the significant potential for global action in this area, and fully supports the work being undertaken by ICAO this year to work towards developing a global market-based measure to tackle CO_2 emissions from international aviation and a framework for market-based measures.

2.12 The Government recognises the significant potential for global action in this area, and fully supports the work being undertaken by ICAO this year to provide guidance on the development of a framework for market-based measures and the evaluation of the feasibility of options for a global market-based measure to tackle greenhouse gas emissions from international aviation and on the other key areas in the field of international aviation and climate change. This includes sustainable alternative fuels for aviation, global aspirational goals, States' action plans, and assistance to States.

2.13 In addition to assessing the feasibility of market-based measures, ICAO has also committed, through its Committee on Aviation Environmental Protection (CAEP), to agreeing an international CO_2 standard for aircraft by 2016 which aims to reward and encourage improvements in technology to reduce emissions.

2.14 ICAO has also agreed a global aspirational goal of carbon neutral growth from 2020, and through the use of technology, operations, alternative fuels and economic instruments, has agreed a goal of annual fuel efficiency improvements of 2% per year globally out to 2050 – slightly higher than the industry goal.[61] We fully support these developments and will continue to press for more progress to be made.

60 IATA, A global approach to reducing aviation emissions, available at http://www.iata.org/whatwedo/environment/Documents/global-approach-reducing-missions.pdf

61 See, for example, http://www.icao.int/Newsroom/Pages/icao-environmental-meeting-commits-to-a-co2-standard.aspx

'Gross' versus 'net' emissions

The level of 'gross' emissions from a particular sector is the actual quantity of emissions emitted by the sector. The 'net' emissions for the sector take account of the emissions allowances or international project credits that it has traded with other sectors. For example, a sector in the EU Emissions Trading System may be given a cap of 80 million tonnes of CO_2 ($MtCO_2$) and allocated allowances to this level. If the sector actually emits 100 MtCO2, it will need to purchase an additional 20 $MtCO_2$ of allowances or credits (representing emissions savings) from other sectors in order for the overall cap to be met. This sector would be said to have gross emissions of 100 $MtCO_2$ and net emissions of 80 $MtCO_2$ (100 $MtCO_2$ gross emissions minus 20 $MtCO_2$ of purchased allowances or credits).

Policy measures: action at a European level

2.15 In the absence of an ambitious legally binding global agreement to tackle aviation emissions, our strategy is to continue to strongly support action at a European level. The EU has agreed a comprehensive strategy to tackle climate change emissions based upon four pillars: reduction of emissions at source; research and development; modernisation of air traffic management and market-based measures. Two of the key components of the strategy are including aviation in the EU Emissions Trading System (EU ETS) from 2012 and improving EU airspace design through the Single European Sky programme.

EU Emissions Trading System (EU ETS)

2.16 UK[62] and international[63] aviation gross emissions are forecast to increase out to 2050 without additional action. However, as part of the EU ETS, flights covered by the scheme are subject to an emissions cap (limit) in 2012 of 97% of average annual emissions between 2004 and 2006. In 2013 this cap was reduced to 95%. This means that net emissions from flights arriving into and departing from European Economic Area (EEA) airports cannot increase above the level of the cap.

2.17 To stay within the EU ETS cap, airlines can either reduce their own emissions over time, or purchase allowances or credits from other sectors where options for reducing CO_2 are easier and cheaper to deliver. As noted in responses to the scoping document, airlines already have a considerable cost incentive to reduce fuel consumption, which directly reduces emissions. By effectively putting a price on CO_2 emissions the EU ETS provides an additional financial incentive to invest in low carbon technologies and more efficient operational practices.

2.18 The Government believes that the EU ETS is a cost-effective means of achieving a specified level of emissions. The overall cap places a limit on the

62 DfT, UK Aviation Forecasts 2013, available at https://www.gov.uk/government/publications/uk-aviation-forecasts-2013.

63 See, for example, http://legacy.icao.int/icao/en/env2010/Pubs/EnvReport2010/ICAO_EnvReport10-Outlook_en.pdf

total CO_2 emissions from all of the sectors that are members of the scheme. The ability of sectors with the lowest abatement costs to sell their surplus allowances to those whose abatement costs are higher ensures that emission reductions within the EU ETS are made wherever it is cheapest to do so.

2.19 Reducing emissions from within the aviation sector is anticipated to be more difficult and more costly than in other industries.[64] Therefore, to achieve a given level of emissions savings, it is expected that aircraft operators would purchase allowances or credits from other sectors, at least in the short to medium term.

2.20 The EU ETS has a number of flexibilities that enable changes to be agreed which can increase the environmental ambition. For example, over time the emissions cap could be reduced to ensure consistency with agreed national and international targets. Currently the EU ETS is designed to deliver its share of emissions savings under the EU goal of reducing greenhouse gas emissions by 20% by 2020, which includes international aviation emissions, and under current legislation will continue to reduce emissions at a rate of 1.74% a year. The UK's Impact Assessment in 2010 estimated that aviation's inclusion in the EU ETS will reduce net CO_2 emissions from flights arriving at and departing from EU airports by about 480 million tonnes of CO_2 ($MtCO_2$) between 2012 and 2020, and by around 80 $MtCO_2$ in 2020.[65] Beyond 2020, the EU ETS could be used to deliver longer-term targets consistent with the internationally agreed goal to limit the rise in average global temperature to below 2 degrees Celsius. The aviation emissions cap could therefore be adjusted accordingly to deliver a fair contribution from the sector to such targets.

2.21 In response to some promising signs of progress towards a global deal at the UN International Civil Aviation Organization (ICAO), the European Commission proposed to 'stop the clock' on the implementation of the international aspects of the Aviation ETS in November 2012. If this proposal is agreed by the EU Member States and the European Parliament it would defer the obligation on aircraft operators to surrender emissions allowances for their flights between EU destinations and non-EU destinations for one year. Obligations on aircraft operators which fly within the EU will remain. The European Commission has said that if sufficient progress is made at this year's ICAO General Assembly, it will propose appropriate further legislation action. We are committed to working within ICAO to make progress on a global agreement at this year's ICAO General Assembly.

2.22 The UK welcomes the Commission's initiative to 'stop the clock' in return for progress on a global agreement in ICAO. We will continue to engage

64 A Marginal Abatement Cost Curve Model for the UK Aviation Sector, EMRC and AEA, 2011, http://assets.dft.gov.uk/publications/response-ccc-report/mac-report.pdf (for example)

65 *UK Impact Assessment for the Second Stage Transposition of EU Legislation to include Aviation in the European Union Emissions Trading System (EU ETS),* DECC, 2010, http://www.legislation.gov.uk/uksi/2010/1996/pdfs/uksiem_20101996_en.pdf

constructively with the Commission on this proposal. We remain committed to ensuring that the EU ETS is a success.

Implementing the Single European Sky (SES programme)

2.23 A safe and efficient airspace both in the UK and overseas is (along with other changes) an essential ingredient in allowing aviation to grow and in ensuring that its environmental effects are mitigated as much as practicable. The SES initiative aims to enhance design, management and regulation of airspace across the EU by moving from airspace divided by national boundaries to the use of 'functional airspace blocks' (FABs), the boundaries of which are designed to maximise the efficiency of airspace.

2.24 The Government remains a strong supporter of the SES initiative, which is already delivering and expected to deliver further significant benefits not only in terms of punctuality and resilience but also in reduced CO_2 emissions and mitigation of local environmental impacts. The UK will maintain its strong support for the successful implementation of the SES across the EU.

2.25 Within the UK, our commitment to SES has been demonstrated by the establishment of the first FAB in the EU, with Ireland in 2008. This is delivering real benefits including CO_2 reduction through greater flight and fuel efficiency. It is estimated that the UK–Ireland FAB has provided approximately £37.5 million of savings from 2008 to 2011, including around 48,000 tonnes of fuel (around 152,000 tonnes of CO_2).[66] In 2011 alone, the total savings were estimated to be £21.1 million, including 24,000 tonnes of fuel valued at the equivalent of £15.3 million. Based on the current work programme, it is estimated that by 2020 annual savings could reach £31.2 million,[67] including 35,000 tonnes of fuel and 111,000 tonnes of CO_2.

2.26 The UK–Ireland FAB is working actively to enhance its links with air navigation service providers in other European countries with a view to further improving efficiency in the future, potentially leading to a FAB covering a wider area. The UK is also working closely with the adjoining FAB Europe Central (FABEC) States and will continue to do so over the coming years.[68]

The CAA's Future Airspace Strategy (FAS)

2.27 The Government is also a keen supporter of the Civil Aviation Authority's (CAA's) Future Airspace Strategy (FAS),[69] which is considering strategic airspace issues for the UK over the medium and long term with the overall aim of modernising the UK's airspace system in the context of SES objectives. The implementation of the FAS can also play a significant role in delivering our economic and environmental objectives in relation to aviation,

66 *UK-Ireland FAB annual report 2011*, NATS, 31 May 2012, http://www.nats.co.uk/wp-content/uploads/2012/07/UK-Ireland-FAB-Report-2011.pdf

67 All £ figures in this paragraph were converted from Euros at a rate of 1:1.16 (Correct at 26/02/13, www.xe.com)

68 The FABEC States are France, Germany, Belgium, Luxembourg, the Netherlands and Switzerland.

69 Future Airspace Strategy, CAA, June 2011, http://www.caa.co.uk/docs/2065/20110630FAS.pdf

for example by improving our use of existing capacity by enhancing queue management techniques at busy airports. This provides opportunities to improve fuel efficiency by reducing the amount of airborne holding. The total benefits of FAS are estimated to be in the range of £1.88–£2.45 billion (net present value, 2011 prices) from 2013 to 2030.[70]

2.28 The CAA is leading the overall FAS project but the onus is on the aviation industry to implement it. In December 2012, the Future Airspace Strategy Industry Implementation Group presented its plan to implement the strategy. The Government urges the industry to do what it can to push the plan forward as soon as possible. However, any proposed changes to airspace routes or operating procedures need to be consulted on, and approved by the CAA, and the well-established process for doing this will continue.

Policy measures: action at a national level

2.29 While the main focus of our strategy is to tackle international aviation emissions at an international level, there are a number of actions we are considering or already taking at a national level to support the effective working of the EU ETS and help reduce international emissions. For example, our intention is to update the guidance the Secretary of State for Transport gives to the CAA on its environmental objectives relating to the exercise of its air navigation functions by the end of 2013.

The Climate Change Act 2008

2.30 The Climate Change Act 2008[71] commits the UK to reducing its net greenhouse gas emissions by at least 80% below the baseline[72] by 2050 ('the target'), and requires the Government to set five-yearly carbon budgets, establishing a path towards meeting that target. Emissions from international aviation (and international shipping) currently do not form part of the target, as defined by the Act. The Act required the Government to set out the circumstances and extent to which emissions from international aviation (and international shipping) would be included in carbon budgets before the end of 2012, or explain to Parliament why it has not done so.

2.31 In December 2012, the Government laid a report before Parliament[73] deferring a decision on whether to include international aviation and shipping emissions in carbon budgets until June 2016, in advance of the setting of the 5th Carbon Budget. This approach will allow international negotiations relating to the aviation EU ETS to be resolved before this decision is taken.

70 Future Airspace Strategy Deployment Plan, iteration 3, version 1.2, December 2012 http://www.caa.co.uk/docs/2408/FAS%20Deployment%20Plan.pdf

71 *Climate Change Act 2008,* http://www.legislation.gov.uk/ukpga/2008/27/contents

72 The baseline is 1990 levels for carbon dioxide, nitrous oxide and methane, and 1995 levels for hydrofluorocarbons, perfluorocarbons and sulphur hexafluoride

73 'International aviation and shipping emissions and the UK's carbon budgets and 2050 target', www.gov.uk/government/publications/uk-carbon-budgets-and-the-2050-target-international-aviation-and-shipping-emissions

2.32 Existing carbon budgets out to 2027 have already been set to leave headroom for international aviation and shipping emissions, putting the UK on a trajectory which would be consistent with a 2050 target that includes a share of international aviation and international shipping emissions and aligns with the UK's share of the international goal of limiting global temperature rises to below 2 degrees Celsius. The Government does not intend to alter the way in which international aviation and international shipping emissions have been taken into account in carbon budgets 1 to 4.

2050 aviation CO_2 target

2.33 In the context of the previous administration's decision to support a third runway at Heathrow, the last Government announced a target to reduce emissions from UK aviation to below 2005 levels by 2050 (the 2050 aviation CO_2 target). It asked the Committee on Climate Change (CCC) to provide advice on options for reducing CO_2 emissions from UK aviation to achieve this. The CCC published its report in December 2009.[74] This Government subsequently commissioned further analytical work to assess the potential for reducing CO_2 emissions from different policy measures and the relative costs of doing so, the results of which were published in August 2011[75] as part of our response to the CCC report.[76]

2.34 Responses to the Aviation Policy Framework Consultation demonstrated both significant support for and significant opposition to the adoption of a sector-specific national aviation target. Those in favour argued that the Government should use all the mechanisms available and a national target would signal a strong commitment to tackling climate change.

2.35 Those against were concerned that a unilateral target would put the UK aviation industry at a competitive disadvantage in the international market, and damage the UK's connectivity, without reducing overall emissions. This is because any reduction in emissions from aviation would reduce the aviation sector's demand for EU ETS allowances. Potential reductions from other sectors would be replaced with emission reductions from the aviation sector. As the abatement of emissions is generally more expensive in aviation than in other EU ETS sectors, delivering the national aviation target would therefore result in a higher cost to achieve the same level of emission reductions as the EU ETS by itself. Therefore, before making a decision on whether the UK should retain a national emissions target for aviation, the Government believes that it is important to have greater certainty over the future scope of the EU ETS and await the outcome of the ICAO negotiations towards a global deal on aviation emissions.

74 *Meeting the UK aviation target – options for reducing emissions to 2050*, Committee on Climate Change, December 2009, http://www.theccc.org.uk/reports/aviation-report

75 A Marginal Abatement Cost Curve Model for the UK Aviation Sector, EMRC and AEA , 2011, http://assets.dft.gov.uk/publications/response-ccc-report/mac-report.pdf

76 *Government response to the Committee on Climate Change report on reducing CO_2 emissions from UK aviation to 2050*, DfT, August 2011, http://www.dft.gov.uk/publications/reducing-co2-emissions

UK aviation industry

2.36 Sustainable Aviation, a UK industry coalition of airlines, airports, aerospace manufacturers and air navigation service providers, has set out a roadmap[77] describing how, in a similar way to the IATA target, net CO_2 emissions from UK aviation can be halved by 2050, through technological improvements and carbon trading, against a 2005 baseline. The Government welcomes these developments as a clear indication that the aviation industry is taking the problem seriously. We urge the industry to strive towards achieving these objectives and, over time, to raise its level of ambition.

2.37 The aerospace manufacturing industry recognises that the predicted level of future growth sharpens the emphasis on environmental concerns. Manufacturers have been responsible for most of the reductions in CO_2, NOx and noise over the past 20 years[78] and they are committed to maintaining this rate of reduction. The sector consistently spends between £100 million and £150 million a year[79] on long-term research and technology for civil aircraft, much of which is targeted at environmental improvement. The total civil research and development expenditure is £970 million, which, when combined with civil sales of £11.78 billion corresponds to 8.2% of sales for R&D. This is a high percentage for any UK sector, and indicates that the industry acknowledges and is working to address the problem.

2.38 The future commitment of the UK and the industry across Europe was set out in the original ACARE (Advisory Council for Aeronautics Research in Europe) Strategic Research Agenda from 2002, which set challenging goals for environmental improvement (50% CO_2 reduction, 80% NOx reduction, and halving perceived noise). These goals were for technology readiness in 2020 based on equipment in service in 2000. Evaluations indicate that about two-thirds of these improvements have been or will be achieved through existing programmes by 2020. These targets have recently been superseded by the Flightpath 2050 Report, which set the industry more challenging goals for 2050, and a new Strategic Research and Innovation Agenda for aviation, produced by a new ACARE (now the Advisory Council for Aviation Research and Innovation in Europe) has just been published.

Taxation

2.39 A number of respondents made reference to environmental taxation measures which could incentivise further emission reductions, such as taxing aviation fuel.

2.40 The UK's international obligations in this area include Air Service Agreements with over 150 different countries and the 1944 Chicago Convention. These rules prohibit the taxation of international aviation fuel.

77 *CO_2 Roadmap*, Sustainable Aviation, February 2012, http://www.sustainableaviation.co.uk/wp-content/uploads/SA-CO2-Road-Map-full-report-280212.pdf

78 http://www.theccc.org.uk/publication/meeting-the-uk-aviation-target-options-for-reducing-emissions-to-2050/

79 UK Aerospace Survey 2012, an ADS publication, available at http://www.adsgroup.org.uk/pages/35926020.asp

2.41 The EU VAT Directive also applies a mandatory exemption to international passenger transport, which means that it is not possible to charge VAT on international flights. Furthermore, all domestic passenger transport in the UK is currently charged at a zero rate of VAT. For reasons of fair competition, there are legal barriers to charging VAT on domestic air travel and not other forms of domestic transport.

2.42 Recognising that aviation was otherwise under-taxed, in 1994 the UK Government introduced the air passenger duty (APD), which is fundamentally a revenue-raising tax that meets all our international obligations. Since January 2012, aviation has also been included in the EU Emissions Trading System (EU ETS), as a cost-effective solution to tackling aviation's growing emissions, whilst at the same time enabling long-term sustainable growth in the aviation industry. The Chancellor keeps all taxes under review.

Alternatives to air travel

2.43 Alternatives to travel (ATT), such as the use of teleconferencing, videoconferencing or remote working, could help to reduce the demand for air travel and hence emissions from aviation. While there is some evidence suggesting that meetings based on videoconferencing may be additional, rather than substituting for meetings which require air travel, the success of the World Wildlife Fund's (WWF's) '1-in-5' initiative[80] demonstrates what can be achieved when companies adopt ambitious targets to reduce their air travel. To facilitate this behavioural change, the Government is committed to universal coverage for broadband, investing £530 million to stimulate commercial investment and bring high-speed broadband to rural communities[81] and businesses and £150 million to create 22 'super-connected' cities across the UK, with 80–100 megabits per second broadband and city-wide ultra-fast-speed mobile connectivity. The Department for Transport is also in the process of quantifying the true impacts of ATT on carbon reduction, travel demand management and economic growth.

2.44 The Government is not seeking to dispute the benefits provided by travel between the UK's major towns and cities. We fully accept the economic benefits provided by such journeys. We also accept that there are limits on the impact that improved technologies are likely to have on the demand for travel, not least because a successful video conference may prompt further face-to-face meetings which require travel. Nevertheless, these technologies may offer an appropriate alternative to some types of journey, and they are therefore well worth exploring as part of our strategy for addressing the environmental impact of aviation.

80 *Join the One in Five Challenge,* WWF http://www.wwf.org.uk/how_you_can_help/get_your_business_involved/one_in_five_challenge/

81 'Stimulating private sector investment to achieve a transformation in broadband in the UK by 2015', Department for Culture, Media and Sport, available at https://www.gov.uk/government/policies/transforming-uk-broadband/supporting-pages/rural-broadband-programme

Developing new technology

2.45 The UK has a strong track record in aviation research, design and manufacturing and is well placed to influence and exploit emerging global markets in low carbon technologies as a whole new generation of aircraft is developed.

2.46 Generally fuel represents around 30% of an airline's operating costs.[82] Pressure from airlines to reduce these costs is driving competition between manufacturers to develop more fuel efficient – and hence more carbon efficient – aircraft, which is good for business, good for consumers and good for the environment.

2.47 Since the 1960s, technological and operational advances have reduced fuel burn, and therefore CO_2 emissions, by 70% per passenger kilometre.[83] In the last ten years, although air traffic has increased by 45%, the demand for jet fuel has increased by only 3%.[84]

2.48 The UK aerospace industry is working on a number of research and technology programmes, including some with support from the UK Government and others with European funding support. These programmes generally involve collaboration between manufacturers and their supply chains. The Government will continue to support and encourage such technological developments through industry-led projects including those listed below:

Research and technology programmes

Key collaborative programmes involving Government support include:

- Airbus-led programmes on Integrated Wing, Next Generation Composite Wing, and Electric Landing Gear, with private and public investment totalling around £140 million;
- Rolls-Royce-led programmes on Environmentally Friendly Engine, Environmental Lightweight Fan and Strategic Investment in Low Carbon Engine Technologies, with investment totalling around £220 million;
- a Goodrich-led programme on Advanced More Electric Systems, with investment totalling around £4 million; and
- an AgustaWestland helicopters-led programme on Rotor Embedded Actuator Control technology, with investments totalling around £9 million.

2.49 The Government also provides tax relief for certain research and development activities. Aerospace manufacturers are collaborating in complementary European programmes through the EC Framework 7

82 *Fact Sheet, IATA,* December 2011, http://www.iata.org/pressroom/facts_figures/fact_sheets/Pages/fuel.aspx
83 *Fact sheet*, IATA, December 2011, http://www.iata.org/pressroom/facts_figures/fact_sheets/pages/environment.aspx
84 *Delivering the Future – Global Market Forecast 2011-2030*, Airbus, http://www.airbus.com/company/market/forecast/passenger-aircraft-market-forecast/

Programme and the Clean Sky Joint Technology Initiative, which are providing further access to funding.

2.50 The Department for Business, Innovation and Skills (BIS), in partnership with business, academia and other stakeholders, is working through the Aerospace Growth Partnership (AGP) to identify and develop collaborative research projects, for the technologies that will best position the UK aerospace industry to secure sector growth, including increased levels of high-value work on future aircraft programmes. This research is consistent with technology roadmaps developed through an earlier National Aerospace Technology plan.

Biofuels

2.51 Sustainable biofuels have a role to play in reducing CO_2 emissions from transport, particularly in sectors such as aviation where there are limited alternatives to fossil fuel. It is essential that biofuels lead to a worthwhile reduction in full life-cycle CO_2 emissions, taking into account indirect land use change (ILUC), where production of biofuel from crops grown on existing agricultural land results in the displacement of production on to previously uncultivated land. The aviation sector will be competing with other sectors for limited sources of such sustainable biomass.

2.52 The inclusion of aviation within the EU ETS already provides an incentive to develop sustainable biofuels as an alternative to kerosene, as biofuel-powered flights are given a zero carbon rating under the ETS. The Government needs to provide the right framework to ensure that only sustainable biofuels are used. In 2012 the Government published a co-ordinated, evidence-based bioenergy strategy[85] which looks at the best use of available biomass resources for a long-term transition in technology. The European Commission has now come forward with a proposal designed to address ILUC and negotiations are under way. Given legitimate concerns about the sustainability of some biofuels in relation to ILUC, we have not set increased targets.[86] Once we have a better understanding of these issues we will be in a better position to decide where Government intervention may be justified and the extent to which biofuels offer a way forward.

85 *UK Bioenergy Strategy*, Department of Energy and Climate Change, 2012, https://www.gov.uk/government/publications/uk-bioenergy-strategy

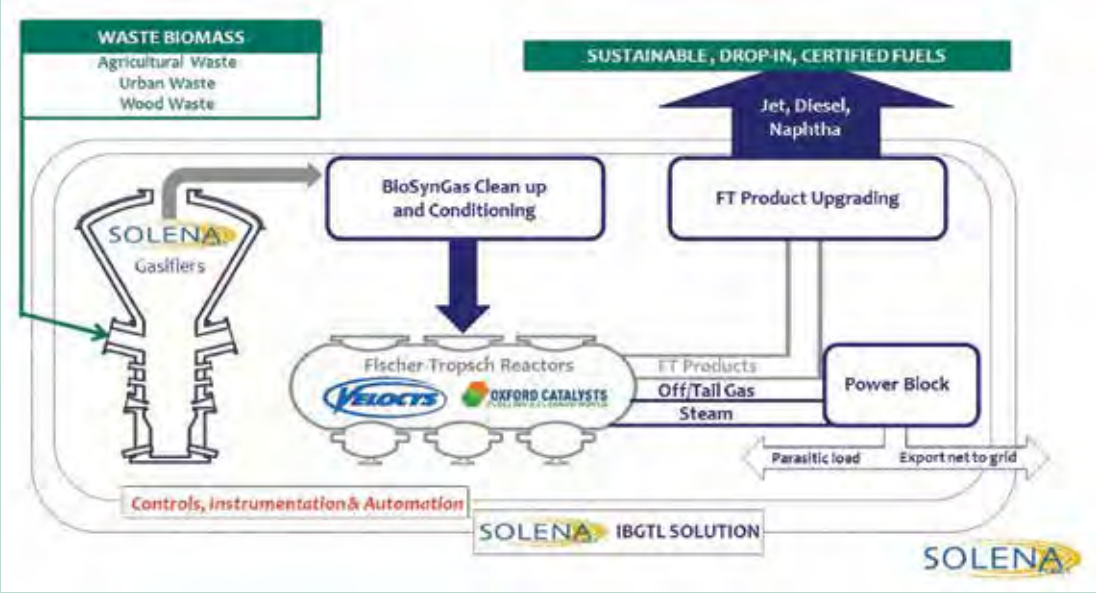
86 The UK considers the introduction of 'ILUC factors' applied to feedstock groups, in both the Renewable Energy Directive and the Fuel Quality Directive, to be the most appropriate response to the risk posed by ILUC. This should be accompanied by exemptions for biofuels that can demonstrate that they were produced in a way to have 'low ILUC risk'. 'ILUC factors' is the commonly used name for the approach whereby an estimate of ILUC emissions from biofuel use is included in the calculation of greenhouse gas savings.

Case Study: British Airways–Solena Greensky Low Carbon Fuels Project

British Airways is working with the US-based clean-tech company Solena Fuels to develop Europe's first waste-to-biojet fuel plant, the 'Greensky' project. This first-of-a-kind facility, currently at the planning stage, will be constructed east of London.

The project will use high-temperature gasification to convert 500,000 tonnes of low-value residual waste (i.e. material that is presently going to landfill) into a renewable biosynthetic gas (or 'BioSynGas'). The BioSynGas will then be cleaned and passed through a Fischer-Tropsch unit to produce a biocrude fuel to be upgraded into low carbon fuels yielding 50,000 tonnes each of biojet and biodiesel and 20,000 tonnes of bionaphtha. The process will produce the electricity required to power the plant, leaving approximately 11 MW net of green renewable power to be exported to the grid.

Independent greenhouse gas life cycle analysis has confirmed that the process will meet the sustainability standards required by the EU Renewable Energy Directive and the Roundtable on Sustainable Biofuels. The sustainability benefits of this fuel are wide ranging as using waste avoids the indirect land use change impacts associated with many crop-based biofuels. In addition, the fuels produced are very clean burning and provide air quality benefits as they emit very low levels of particulates. The renewable naphtha can be used to make renewable plastics or blended into transport fuels and the process also produces a solid aggregate material that can be used in construction.



Better information

2.53 Providing consumers with better information to inform their choices can have a powerful effect on corporate behaviour. Many organisations now produce corporate responsibility reports which include the action they are taking to reduce their emissions. Research by Pricewaterhouse Coopers,[87] which looked at reports produced by 46 airlines worldwide, and found some encouraging trends. However, disappointingly, the report also noted that around a third of the airlines studied produced no corporate responsibility reports and that the quality of reporting from those that did was variable.

2.54 The Government strongly supports greater transparency. The Civil Aviation Act, which received Royal Assent on 19 December 2012, contains new information functions for the CAA. These provide scope to increase and improve the quality of information available to the public, including on the environmental effects of civil aviation in the UK and measures taken to limit them, so that environmental performance in relation to CO_2 emissions can become a factor informing consumer decisions. The new information functions for the CAA are discussed further at paragraph 4.9.

Adapting to future climate change

2.55 The Climate Change Act (2008) commits the UK to build resilience to the expected impacts of climate change. It requires the Government to undertake a national Climate Change Risk Assessment (CCRA) every five years and gives Government powers to direct statutory organisations to report on climate change assessments and adaptation actions.[88] In 2013 the Government will publish the first five-year statutory National Adaptation Programme (NAP) setting actions to address climate change challenges.

2.56 Aviation faces many challenges from our changing climate. In 2012 the CAA, NATS and ten airports published climate change adaptation reports under the Climate Change Act Reporting Power. This will be repeated every five years, enabling aviation reporting organisations to produce progress reports.

2.57 These reports highlight climate variables that pose risks to the industry, including increases in extreme weather affecting operations; increases in temperature leading to runway damage; increased rainfall posing flood risk and changes in wind patterns affecting air traffic movements.

2.58 Evidence from these reports and the first CCRA (2012) shows the aviation industry is already taking action to address challenges by, for example, embedding the consideration of climate change in business planning and risk management. Further research is needed to investigate climate

87 *'Building trust in the air: Is airline corporate sustainability reporting taking off?',* PWC, November 2011, http://www.pwc.com/en_GX/gx/sustainability/assets/pwc-airlines-cr.pdf

88 http://www.defra.gov.uk/environment/climate/sectors/reporting-authorities/reporting-authorities-reports/

scenarios, probability of risks, timescales, adaptation options, investments and stakeholder interdependencies.

2.59 The aviation industry will use the NAP to work with Government and other stakeholders in addressing climate risks. The programme will establish a framework in which interdependencies with other sectors can be addressed building cross-cutting resilience.

2.60 The Government strongly supports the need to better understand and manage the risks associated with climate change. It is essential for the successful long-term resilience of the UK's aviation industry and its contribution to supporting economic growth and competitiveness.

3. Noise and other local environmental impacts

Context

3.1 Whilst the aviation industry brings significant benefits to the UK economy, there are costs associated with its local environmental impacts which are borne by those living around airports, some of whom may not use the airport or directly benefit from its operations. This chapter considers noise, air quality and other local environmental impacts.

Noise

3.2 The Government recognises that noise is the primary concern of local communities near airports. The extent to which noise is a source of tension between airports and local communities will vary depending on factors such as the location of an airport in relation to centres of population and the quality of its relations and communications with its local communities. We are aware that many airports already make considerable efforts to engage their local communities and that the relationship is well managed.

3.3 We want to strike a fair balance between the negative impacts of noise (on health, amenity (quality of life) and productivity) and the positive economic impacts of flights. As a general principle, the Government therefore expects that future growth in aviation should ensure that benefits are shared between the aviation industry and local communities. This means that the industry must continue to reduce and mitigate noise as airport capacity grows. As noise levels fall with technology improvements the aviation industry should be expected to share the benefits from these improvements.

3.4 Since England has one of the highest population densities in the EU, it is inevitable that aircraft noise will be a particular issue here compared with other countries. The Government therefore expects the UK aviation industry at all levels (manufacturers, airlines, airports and air traffic service providers) to lead the way in best practice and to drive forward international standards. The Government will also support this effort.

3.5 The Government recognises the good progress already made. We welcome the Noise Roadmap being developed by Sustainable Aviation, which will set

out the UK aviation industry's blueprint for managing noise from aviation sources to 2050. Aircraft technology and manufacturing is a UK success story and is driving improvements in the noise performance of new aircraft. The Airbus A380, partially designed and built in the UK, has recently won an award from the Noise Abatement Society for its innovations in quiet technology. The UK was instrumental in securing a recent agreement on a tougher international noise standard in the ICAO Committee on Aviation Environmental Protection (CAEP). This requires new types of large civil aircraft, from 2017, to be at least 7dB quieter in total, across the three test points, than the current standard[89]. Standards for smaller aircraft will be similarly reduced in 2020.

3.6 Our policy on aviation noise will be consistent with agreed international approaches and we will comply with relevant European laws.[90]

3.7 The Government fully recognises the ICAO Assembly 'balanced approach' principle to aircraft noise management.[91] The 'balanced approach' consists of identifying the noise problem at an airport and then assessing the cost-effectiveness of the various measures available to reduce noise through the exploration of four principal elements, which are:

- reduction at source (quieter aircraft);
- land-use planning and management;
- noise abatement operational procedures (optimising how aircraft are flown and the routes they follow to limit the noise impacts); and
- operating restrictions (preventing certain (noisier) types of aircraft from flying either at all or at certain times).

3.8 The International Civil Aviation Organization (ICAO) encourages states not to apply operating restrictions as a first resort but only after consideration of the benefits to be gained from other elements of the balanced approach.

Role of government

The regulated airports

3.9 As well as setting the overall national policy framework for aviation noise, the Government has powers under the Civil Aviation Act 1982 to set noise controls at specific airports which it designates for noise management purposes. When using these powers, our approach will be consistent with

89 Based on Effective Perceived Noise Decibels, a specialist noise unit used for aircraft noise certification.

90 Currently these include Directive 2002/30 on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Community airports; Directive 1999/28 amending the Annex to Council Directive 92/14/EEC on the limitation of the operation of aeroplanes covered by Part II, Chapter 2, Volume 1 of Annex 16 to the Convention on International Civil Aviation, second edition (1988); and Directive 2002/49 relating to the assessment and management of environmental noise (the Environmental Noise Directive).

91 Given effect in EU law through Directive 2002/30.

the Government's overall approach to regulation as described in the Executive summary.

3.10 For many years, Heathrow, Gatwick and Stansted Airports have been designated for these purposes, and we will continue to maintain their status. These airports remain strategically important to the UK economy and we therefore consider that it is appropriate for the Government to take decisions on the right balance between noise controls and economic benefits, reconciling the local and national strategic interests. The future of these airports is also under consideration as part of the work of the Airports Commission and it would not be appropriate to change their regulatory status at this time.

3.11 Other airports not currently designated for noise management purposes have powers to set noise controls (see Annex A) and the Government would like appropriate controls to be agreed locally. For example, local authorities will want to consider whether to set such controls as a planning condition on new airport development. Noise controls at the designated airports will provide examples for other airports to consider as appropriate. Airports should ensure that the effectiveness of their measures to tackle noise is reviewed on a regular basis. For airports required to produce Noise Action Plans under EU legislation,[92] this should be done at least as often as the five-yearly review of these plans. Noise Action Plans and any other noise measures agreed locally should be proportionate to actual noise impacts.

Policy objective

3.12 The Government's overall policy on aviation noise is **to limit and, where possible, reduce the number of people in the UK significantly affected by aircraft noise**, as part of a policy of sharing benefits of noise reduction with industry.

3.13 This is consistent with the Government's Noise Policy, as set out in the Noise Policy Statement for England (NPSE)[93] which aims to avoid significant adverse impacts on health and quality of life.

3.14 Although there is some evidence that people's sensitivity to aircraft noise appears to have increased in recent years, there are still large uncertainties around the precise change in relationship between annoyance and the exposure to aircraft noise. There is evidence that there are people who consider themselves annoyed by aircraft noise who live some distance from an airport in locations where aircraft are at relatively high altitudes. Conversely, some people living closer to an airport seem to be tolerant of such noise.

3.15 To provide historic continuity, the Government will continue to ensure that noise exposure maps are produced for the noise-designated airports on an

92 The Environmental Noise Directive 2002/49.

93 Noise Policy Statement for England, Defra, March 2010. Comparable principles apply for other parts of the UK.

annual basis providing results down to a level of 57dB LAeq 16 hour.[94] To improve monitoring of the specific impact of night noise, we will also ensure that separate night noise contours for the eight-hour night period (11pm–7am) are produced for the designated airports.

3.16 This does not preclude airports from producing results to a lower level or using other indicators to describe the noise impact of their operations, as appropriate (see paragraph 3.19 below). Some airports already map noise exposure to lower levels every five years under European legislation and we encourage those that routinely produce such contours on a voluntary basis to continue to do so, as a means of facilitating improved monitoring, transparency and communication of the impact of aircraft noise. Other airports which have significant night operations may also wish to produce separate night noise contours on a regular basis.

3.17 We will continue to treat the 57dB LAeq 16 hour contour as the average level of daytime aircraft noise marking the approximate onset of significant community annoyance. However, this does not mean that all people within this contour will experience significant adverse effects from aircraft noise. Nor does it mean that no-one outside of this contour will consider themselves annoyed by aircraft noise.

3.18 The Airports Commission has also recognised that there is no firm consensus on the way to measure the noise impacts of aviation and has stated that this is an issue on which it will carry out further detailed work and public engagement.[95] We will keep our policy under review in the light of any new emerging evidence.

3.19 Average noise exposure contours are a well established measure of annoyance and are important to show historic trends in total noise around airports. However, the Government recognises that people do not experience noise in an averaged manner and that the value of the LAeq indicator does not necessarily reflect all aspects of the perception of aircraft noise. For this reason we recommend that average noise contours should not be the only measure used when airports seek to explain how locations under flight paths are affected by aircraft noise. Instead the Government encourages airport operators to use alternative measures which better reflect how aircraft noise is experienced in different localities,[96] developing these measures in consultation with their consultative committee and local communities. The objective should be to ensure a better understanding of noise impacts and to inform the development of targeted noise mitigation measures.

94 The A-weighted average sound level over the 16 hour period of 0700-2300. This is based on an average summer day when producing noise contour maps at the designated airports.

95 Guidance Document 01: Submitting evidence and proposals to the Airports Commission, February 2013.

96 Examples include frequency and pattern of movements and highest noise levels which can be expected.

Land-use planning and management

3.20 Chapter 5 explains the status of the Aviation Policy Framework and its interaction with existing planning guidance and policies. Land-use planning and management is one of the elements of the ICAO balanced approach which should be explored when tackling noise problems at an airport. In line with the Government's noise policy, the Government's National Planning Policy Framework (NPPF) says that planning policies and decisions should aim to avoid a situation where noise gives rise to significant adverse impacts on health and quality of life as a result of new development, and to mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions.

3.21 The NPPF expects local planning policies and decisions to ensure that new development is appropriate for its location and the effects of pollution – including noise – on health, the natural environment or general amenity are taken into account. This does not rule out noise-sensitive development in locations that experience aircraft noise. In the same way that some people consider themselves annoyed by aircraft noise even though they live some distance from an airport in locations where aircraft are at relatively high altitudes, other people living closer to an airport seem to be tolerant of aircraft noise and may choose to live closer to the airport to be near to employment or to benefit from the travel opportunities.

3.22 There can also be other good economic or social reasons for noise-sensitive developments to be located in such areas. However, reflecting Government noise policy, the NPPF is quite clear that the planning system should prevent new development being put at unacceptable risk from, or being adversely affected by, unacceptable levels of noise pollution. Local planning authorities therefore have a responsibility to ensure that the land use element of the balanced approach is implemented in the context of their local plan policies, including any on noise. People considering moving to an area which may be affected by existing aircraft noise also have a responsibility to inform themselves of the likely impacts before moving to the area, and airport operators should ensure that all necessary information to inform such decisions is easily accessible.

3.23 Results from the 2011 Census show a general increase in population density. Consequently, within some noise contours around airports, the number of people has increased regardless of any change in noise. The Government will therefore take into account the trends in populations within the contours when monitoring the effectiveness of its overall policy on aviation noise.

Measures to reduce and mitigate noise – the role of industry

3.24 The acceptability of any growth in aviation depends to a large extent on the industry tackling its noise impact. The Government accepts, however, that it is neither reasonable nor realistic for such actions to impose unlimited costs on industry. Instead, efforts should be proportionate to the extent of the noise problem and numbers of people affected.

3.25 As a general principle, the Government expects that at the local level, individual airports working with the appropriate air traffic service providers should give particular weight to the management and mitigation of noise, as opposed to other environmental impacts, in the immediate vicinity of airports, where this does not conflict with the Government's obligations to meet mandatory EU air quality targets. Any negative impacts that this might have on CO_2 emissions should be tackled as part of the UK's overall strategy to reduce aviation emissions, such as the EU Emissions Trading System (ETS). Further guidance on this principle will be published when the Department for Transport updates its guidance to the Civil Aviation Authority (CAA) on environmental objectives relating to the exercise of its air navigation functions (see Chapter 5).

3.26 The Government wishes airports to consider using the powers available to them (see Annex A) to set suitable noise controls such as departure noise limits, minimum height requirements, noise-preferential routes and adherence to continuous descent approach, and where appropriate to enforce these with dissuasive and proportionate penalties. Both the controls and the levels of penalties should be reviewed regularly (at least as often as the Noise Action Plan where applicable) in consultation with local communities and consultative committees, to ensure they remain effective. For the noise-designated airports, the Department's Aircraft Noise Management Advisory Committee will review the departure and arrivals noise abatement procedures, including noise limits and use of penalties, to ensure that these remain appropriately balanced and effective.

3.27 As part of the range of options available for reducing noise, airports should consider using differential landing charges to incentivise quieter aircraft. The Government has asked the CAA to investigate the use of these charges and the CAA will be publishing its findings later this year.

3.28 The Government expects airports to make particular efforts to mitigate noise where changes are planned which will adversely impact the noise environment. This would be particularly relevant in the case of proposals for new airport capacity, changes to operational procedures or where an increase in movements is expected which will have a noticeable impact on local communities. In these cases, it would be appropriate to consider new and innovative approaches such as noise envelopes or provision of respite for communities already affected.

Noise envelopes

3.29 The Government wishes to pursue the concept of noise envelopes as a means of giving certainty to local communities about the levels of noise which can be expected in the future and to give developers certainty on how they can use their airports. Following any such recommendations made by the Airports Commission, in the case of any new national hub airport capacity or any other airport development which is a nationally significant infrastructure project, the Government is likely to develop a National Policy Statement (NPS) to set out the national need for such a project. The Government would determine principles for the noise envelope in the NPS having regard to the following:

- The Government's overall noise policy.
- Within the limits set by the envelope, the benefits of future technological improvements should be shared between the airport and its local communities to achieve a balance between growth and noise reduction.
- The objective of incentivising airlines to introduce the quietest suitable aircraft as quickly as is reasonably practicable.

3.30 At other airports, local communities are encouraged to work with airports to develop acceptable solutions which are proportionate to the scale of the noise problem and be involved in discussions about the acceptable limits of noise. The Government believes that the process of designing and consulting on a noise envelope could be a suitable mechanism to achieve this. The CAA will produce further guidance on the use and types of noise envelopes which may be used in the context of any proposals for new airport capacity and the work of the Airports Commission.

Airspace

3.31 The routes used by aircraft and the height at which they fly are two significant factors that affect the noise experienced by people on the ground. Consistent with its overall policy to limit and where possible reduce the number of people adversely affected by aircraft noise, the Government believes that, in most circumstances, it is desirable to concentrate aircraft along the fewest possible number of specified routes in the vicinity of airports and that these routes should avoid densely populated areas as far as possible. This is consistent with the long-standing concept of noise-preferential routes which departing aircraft are required to follow at many airports, including the noise-designated airports. Within the countryside, in common with other relevant authorities, the CAA has legal duties to have regard to the purposes of National Parks and Areas of Outstanding Natural Beauty and must therefore take these into account when assessing airspace changes.

3.32 However, in certain circumstances, such as where there is intensive use of certain routes, and following engagement with local communities, it may be

appropriate to explore options for respite which share noise between communities on an equitable basis, provided this does not lead to significant numbers of people newly affected by noise. Whether concentration or respite is the preferred option, those responsible for planning how airspace is used should ensure that predictability is afforded to local communities, to the extent that this is within their control. Further guidance on these airspace matters will be provided when the Department for Transport updates its guidance to the CAA on environmental objectives relating to the exercise of its air navigation functions (see Chapter 5).

Information and communication

3.33 At all airports, the key principle should be that airports act as good neighbours so that local communities have confidence that airport operators take their noise impacts seriously. This requires airports to be open and transparent in their communications. The Government expects airports to help local communities understand these noise impacts and performance against relevant targets or commitments through monitoring, provision of information and communication designed around the specific noise impacts and the needs of the community. We expect airports to select appropriate tools such as noise monitors (fixed and mobile), online information showing aircraft flight paths, heights and noise, track-keeping, performance reports and metrics which describe noise in ways which communities can easily understand. We encourage the CAA to consider how it can use its information functions (see paragraph 4.25) to share good practice in how airports monitor, report and communicate their noise impacts.

Night noise

3.34 The Government recognises that the costs on local communities are higher from aircraft noise during the night, particularly the health costs associated with sleep disturbance. Noise from aircraft at night is therefore widely regarded as the least acceptable aspect of aircraft operations. However, we also recognise the importance to the UK economy of certain types of flights, such as express freight services, which may only be viable if they operate at night. As part of our current consultation on night flying restrictions at the noise-designated airports, we are seeking evidence on the costs and benefits of night flights.

3.35 In recognising these higher costs upon local communities, we expect the aviation industry to make extra efforts to reduce and mitigate noise from night flights through use of best-in-class aircraft, best practice operating procedures, seeking ways to provide respite wherever possible and minimising the demand for night flights where alternatives are available. We commend voluntary approaches such as the curfew at Heathrow which ensures that early morning arrivals do not land before 4.30am.

Noise insulation and compensation

3.36 The Government continues to expect airport operators to offer households exposed to levels of noise of 69 dB LAeq,16h or more, assistance with the costs of moving.

3.37 The Government also expects airport operators to offer acoustic insulation to noise-sensitive buildings, such as schools and hospitals, exposed to levels of noise of 63 dB LAeq,16h or more. Where acoustic insulation cannot provide an appropriate or cost-effective solution, alternative mitigation measures should be offered.

3.38 If no such schemes already exist, airport operators should consider financial assistance towards acoustic insulation for households. Where compensation schemes have been in place for many years and there are few properties still eligible for compensation, airport operators should review their schemes to ensure they remain reasonable and proportionate.

3.39 Where airport operators are considering developments which result in an increase in noise, they should review their compensation schemes to ensure that they offer appropriate compensation to those potentially affected. As a minimum, the Government would expect airport operators to offer financial assistance towards acoustic insulation to residential properties which experience an increase in noise of 3dB or more which leaves them exposed to levels of noise of 63 dB LAeq,16h or more.

3.40 Any potential proposals for new nationally significant airport development projects following any Government decision on future recommendation(s) from the Airports Commission would need to consider tailored compensation schemes where appropriate, which would be subject to separate consultation.

3.41 Airports may wish to use alternative criteria or have additional schemes based on night noise where night flights are an issue. Airport consultative committees should be involved in reviewing schemes and invited to give views on the criteria to be used.

General aviation and helicopters

3.42 The Government recognises that aviation noise is not confined to large commercial airports and that annoyance can also be caused by smaller aerodromes used for business and general aviation (GA) purposes, especially at times of intensive activity. However, it would not be appropriate for the Government to intervene by exercising powers under section 78 of the Civil Aviation Act 1982 to set noise controls at small aerodromes. Industry has developed codes of practice and the CAA has produced guidance. We would encourage the GA sector and the CAA to review their respective best practice and guidance to reflect the policy adopted in this Policy Framework. We would also encourage the sector to monitor compliance with its codes of practice.

3.43 Government has the power to specify an aerodrome under section 5 of the Civil Aviation Act 1982. The effect of specification of a particular aerodrome is to place a duty on the CAA in exercising its aerodrome licensing functions to have regard to the need to minimise as far as reasonably practicable any adverse effects on the environment and any disturbance to the public from (among other things) noise attributable to the use of aircraft at the aerodrome. The Government is against the use of regulatory solutions where alternatives exist and would not expect to exercise this power until all other avenues can reasonably be said to have been exhausted.

3.44 The Government encourages aerodromes to engage with local communities effectively as a matter of good practice. Moreover, the Government would expect local communities to be involved in all such engagement, and would want to see evidence of this happening before exercising its powers under section 5. An assessment of the extent and nature of noise disturbance and a consultation on any proposed measures to address aircraft noise would provide the basis for informed decision-making by the Government and the CAA.

3.45 Noise from helicopters is perceived as a problem in certain areas, such as routes used intensively by helicopters. The Government commends the British Helicopter Association's Code of Conduct for Pilots[97], which is designed to avoid unnecessary noise intrusion, and urges helicopter operators to promote this as widely as possible. Helicopters must meet internationally agreed noise standards prior to the issue of a Certificate of Airworthiness. Helicopters are also subject to Rules of the Air Regulations, which require minimum heights to be maintained. Whilst this is for safety reasons, these Regulations also offer some noise benefits. In recognition of ongoing concerns about disturbance from helicopter traffic in London, we will continue to monitor the impact of helicopter movements in the London area through the data collected by the CAA. We will also seek to ensure, when updating the guidance on environmental objectives, that the CAA considers opportunities to mitigate helicopter noise when dealing with any relevant airspace change proposals.

Air quality and other local environmental impacts

3.46 Whilst noise is the most obvious local environmental impact of airport operations, airports have a significant impact on other aspects of the local environment, some of which, including air quality, may not be visible.

3.47 Emissions from transport, including at airports, contribute to air pollution. EU legislation sets legally binding air quality limits for the protection of human health. The Government is committed to achieving full compliance with European air quality standards.

97 Appendix B of "The Civil Helicopter in the Community," British Helicopter Association: www.britishhelicopterassociation.org/?q=about-the-bha/guidelines

3.48 Our policy on air quality is to seek improved international standards to reduce emissions from aircraft and vehicles and to work with airports and local authorities as appropriate to improve air quality, including encouraging HGV, bus and taxi operators to replace or retrofit with pollution-reducing technology older, more polluting vehicles. There will be additional air quality (and noise pollution) benefits as the UK progresses to a low carbon economy with the likely increase in the proportion of electric vehicles and plug-in hybrid vehicles.

3.49 Around airports, sources of air pollution include aircraft engines, airport-related traffic on local roads and surface vehicles at the airport. The most important pollutants are oxides of nitrogen (NOx) and particulate matter (PM).

3.50 The Government assesses the UK's compliance with the EU air quality limits and target values. Air quality monitoring is also carried out by local authorities to support their local air quality management objectives. PM limits are largely met, but challenges remain with nitrogen dioxide, while pressures from increasing population, demands on transport and land use mean that considerable efforts to improve air quality to protect health and the environment continue to be needed. Air quality in local air quality management areas or where limit values are exceeded is particularly sensitive to new developments or transport pressures, and cumulative impacts from different individual sites can exacerbate this.

3.51 Studies have shown that NOx emissions from aviation-related operations reduce rapidly beyond the immediate area around the runway. Road traffic remains the main problem with regard to NOx in the UK. Airports are large generators of surface transport journeys and as such share a responsibility to minimise the air quality impact of these operations. The Government expects them to take this responsibility seriously and to work with the Government, its agencies and local authorities to improve air quality.

3.52 Whilst our policy is to give particular weight to the management and mitigation of noise in the immediate vicinity of airports, there may be instances where prioritising noise creates unacceptable costs in terms of local air pollution. For example, displacing the runway landing threshold to give noise benefits could lead to significant additional taxiing and emissions. For this reason, the impacts of any proposals which change noise or emissions levels should be carefully assessed to allow these costs and benefits to be weighed up.

3.53 As large sites which consume resources and emit waste, airports also have an impact on other aspects of the local environment such as water, waste management and habitat, through for example, de-icing of aircraft and runways, fuel handling and storage or the production of on-site heat or power. In England and Wales, where these activities produce waste, lead to discharges to local watercourses or groundwater, or are carried out using activities specified in the Environmental Permitting Regulations 2010, airports may require a permit from the Environment Agency or local

authority. The permits contain conditions to protect the environment and human health, implement appropriate EU Directives and, where necessary, require the site operator to carry out monitoring.

3.54 Before taking decisions on any future new airport capacity, the Government will want to have a thorough understanding of the local environmental impacts of any proposals. As set out in its terms of reference, the Airports Commission's interim report will be informed by an initial high-level assessment of the credible long-term options which merit further detailed development. This will take into account local environmental factors, which are one of the broad categories which the Commission has identified in its recently published guidance document which scheme promoters should consider.[98] The Commission's final report will include an environmental assessment for each option, as well as consideration of their operational, commercial and technical viability.

3.55 It is likely that any proposals for any new hub airport or nationally significant infrastructure would be taken forward through an Airports National Policy Statement (NPS). This would take a similar approach to existing NPSs and be consistent with the Government's stated policies on sustainability and environmental protection. Loss of protected habitats, protected species, protected landscape and built heritage, and significant impacts on water resources and ecosystems would only be advocated if there were no feasible alternatives and the benefits of proposals clearly outweighed those impacts. Any unavoidable impacts would be mitigated or compensated for. Our policy will be to ensure there is full consideration of the environmental impacts of the most credible options for maintaining our international connectivity.

98 Guidance Document published 1 February 2012, at https://www.gov.uk/government/publications/submitting-evidence-and-proposals-to-the-airports-commission

4. Working together

The importance of local collaboration

4.1 Collaboration and transparency are important at every level: international, national and local. The focus of this chapter is on applying these principles more effectively at the local level, because we recognise that what happens around airports really matters to the communities who live and work there, and a national aviation policy can only be successful if it provides a sensible approach to addressing the concerns of communities.

4.2 There is currently a range of mechanisms for airports to engage with key stakeholders in the local area and beyond, including airport consultative committees (ACCs), airport master plans, airport transport forums (ATFs) and airport surface access strategies (ASASs). Responses to the consultation confirmed that there were many examples of good practice across the country where local stakeholders are working well together. Overall, existing mechanisms were seen as useful, but local community groups in particular felt there was room for improvement.

4.3 **Government's objective is to encourage the aviation industry and local stakeholders to strengthen and streamline the way in which they work together.** Local stakeholders have the experience and expertise to identify solutions tailored to their specific circumstances. We therefore want to encourage good practice rather than propose a 'one size fits all' model for local engagement.

4.4 However, there is scope to enhance the existing tools for local engagement with the aim of improving the quality of information produced, increasing the breadth of representation, avoiding duplication of activity and reducing the consultation burden on all concerned.

4.5 Airports, in partnership with local communities, should:

- take the opportunity to review the membership and terms of reference of their committees to ensure that local interests are fully represented and that there is no duplication of activity of committees;

- review their consultative timetables, for example for master plans and Noise Action Plans, with a view to aligning these where possible and reducing the consultative burden on all concerned;
- review the extent and detail of information that is published and set out clearly the methodology used. Airports should provide transparency and ensure that sufficient relevant information and opportunities for consultation reach a wide audience; and
- combine their ASASs into their published master plans to ensure a joined-up approach and make it easier for people to access information about the 'airport's plans.

Better arrangements for working together

Airport consultative committees (ACCs)

4.6 The Government expects all airports and aerodromes to communicate openly and effectively with their local communities about the impact of their operations. This aligns with policy set out in the National Planning Policy Framework that local authorities should work with neighbouring authorities to develop strategies for the provision of viable infrastructure necessary to support sustainable development, including transport investment necessary to support strategies for the growth of airports.

4.7 There are 51 airports and aerodromes in England, Wales and Scotland that have been designated[99] under section 35 of the Civil Aviation Act 1982 to provide adequate facilities for consultation with respect to any matter concerning the management or administration of the airport which affects the interests of users of the airport, local authorities and any other organisation representing the interests of persons concerned with the locality in which the airport is situated. However, the Government would not expect the absence of statutory designation to be a barrier to such consultation, as it should be a matter of good practice at airports of any size.

4.8 In practice ACCs carry out this role at the 51 designated airports and aerodromes. The work of ACCs should recognise the wider role of the airport as an important local employer and influential driver in the local economy, as well as considering the local environmental impacts of an airport, including noise. Their membership should reflect this balance of interests.[100] For example, ACCs may wish to work more closely with Local Enterprise Partnerships (LEPs) to support the needs of businesses and enterprise in their areas.

99 SI 1996 No.1392 as amended by SI 2002 No. 2421

100 Membership of ACCs varies, but in line with the legislation will always include representatives from local authorities, local amenity groups (which may include residents' groups) and users of the airport (both airlines and passengers).

4.9 The Government would like to see ACCs play a more effective role, within their current statutory remit. In order to support ACCs in their work and to share best practice, we will review and update our 2003 guidance to ACCs. In doing so, we will retain the principle that this non-statutory guidance should remain flexible, proportionate and non-prescriptive and will want to ensure that we do not upset existing good governance and working arrangements. The review of guidance will also consider how the CAA might complement and support the work of ACCs through the use of its new functions in relation to publishing information about air transport services and about environmental matters (see paragraph 4.25).

4.10 Noise is the issue over which relations between airports and local communities have tended to break down. For this reason, the Government wants to see noise management marked by greater transparency, trust and local accountability of airports to local communities affected. Establishing good relations depends on local people feeling that engagement processes are effective, that noise impact data are credible and accessible and that the airport is honest about its local impacts and is willing to challenge its own performance. When updating the guidance, we will therefore look in particular at the scope for ACCs to play a stronger role in the noise management process, for example by monitoring implementation of airports' commitments made under statutory Noise Action Plans and being ready to challenge their performance.

Airport master plans

4.11 Currently over 30 airports across the UK have adopted master plans. They do not have a statutory basis, but the primary objective of master plans is to provide a clear statement of intent on the part of an airport operator to enable future development of the airport to be given due consideration in local planning processes. They also provide transparency and aid long-term planning for other businesses.

4.12 Government recommends that airports continue to produce master plans. We recommend that they are updated at least once every five years, and that the five-year periods should coincide where possible and appropriate with the periods covered by Noise Action Plans and airport surface access strategies, referred to below, to streamline the planning and engagement processes.

4.13 Government also recommends that airport operators consult on proposed changes to master plans, and engage more widely with local communities prior to publication, for example liaising more closely with local authorities and also through drop-in sessions and public meetings. Airport operators should notify the DfT or Devolved Administration when plans are revised, and highlight any material changes. Airport operators are also encouraged to advertise the publication of any revisions to their plans widely in their local area.

4.14 Research carried out by the DfT on the effectiveness of master plans has indicated that drafting for all audiences produces a tension between communicating future plans and providing a technical reference source. We therefore recommend that, where possible, the body of the document should be accessible to a lay person, and the technical detail clearly annexed.

4.15 Responses to the consultation showed the importance that stakeholders place on guidance, so a list of the content that the Government would recommend that airport operators include in the master plan is included at Annex B – though airports will wish to adopt their plans to suit local circumstances.

Airport transport forums

4.16 All airports in England and Wales with more than 1,000 passenger air transport movements a year are currently advised to set up air transport forums (ATFs). This concept was introduced in the previous administration's white paper *A New Deal for Transport: Better for Everyone*[101] and reiterated in the 2003 Air Transport White Paper.

4.17 The primary role of the forums is to serve local communities through:

- identifying short- and long-term targets for increasing the proportion of journeys made to airports by public transport;
- devising a strategy for meeting these targets; and
- overseeing implementation of the strategy.

4.18 The Government recognises the value of a continued partnership approach on surface access between airport operators, LEPs, local authorities, businesses, transport stakeholders and local communities. Airports may wish to retain the functions of ATFs, but should take the opportunity to review their membership and any opportunities for streamlining the work of ATFs with ACCs (notwithstanding the statutory obligations of ACCs) to ensure that forums are fully able to represent the needs of passengers, local employees and residents and freight.

4.19 General guidance is incorporated at Annex B.

Airport surface access strategies

4.20 Government attaches a high priority to effective public involvement in local transport policy. Local people, town and parish councils which have qualifying airports within their boundaries, business representatives, health and education providers, environmental and community groups should be involved in the development of airport surface access strategies. We

101 *A New Deal for Transport: Better for Everyone*, DfT, 1997, http://webarchive.nationalarchives.gov.uk/+/http:/www.dft.gov.uk/about/strategy/whitepapers/previous/anewdealfortransportbetterfo5695

recommend that ATFs produce airport surface access strategies (ASASs) to set out:

- targets for increasing the proportion of journeys made to the airport by public transport for both airport workers and passengers;
- the strategy to achieve those targets; and
- a system whereby the forum can oversee implementation of the strategy.

4.21 Timetables for updating ASASs were originally aligned with those for Local Transport Plans (LTPs). Although Local Transport Authorities do not now have to prepare a new LTP every five years, the statutory requirement to have and review an LTP remains and ASASs should take account of LTPs.

4.22 The Government recommends that airports continue to produce ASASs to set out targets for reducing the carbon and air quality impacts of surface access to airports, and to measure performance against these targets in a clear and transparent way. Airports may wish to consider whether there is any chance to reduce duplication of the functions and outputs of advisory groups.

4.23 The Government will work with the Airport Operators Association (AOA) and individual airports to continue to play an oversight role in surface access developments through carrying out the recommendations of the Low Carbon Transport to Airports project.[102] The South East Airport Taskforce (SEAT) recognised the value of the priorities for action agreed through the project:

- the DfT and AOA to continue to hold best practice forums on surface access;
- to provide better information to passengers; and
- to work with the National Business Travel Network to advise business travellers on low carbon travel options.

4.24 General guidance has been included at Annex B.

Improving information

4.25 Chapter 3 discusses how airports can improve their communications and provision of information to local communities about their local environmental impacts. The Civil Aviation Act 2012 gives the CAA a role in promoting better public information about the environmental effects of civil aviation in the UK, their impact on health and safety, and measures taken to mitigate adverse impacts. The CAA has also been given powers to produce guidance and advice for the industry with a view to reducing, controlling or mitigating the adverse effects of civil aviation in the UK. The new powers will be supported by a provision which enables the CAA to conduct or commission research in support of these functions.

102 *Low Carbon Transport to Airports Project Report,* DfT, July 2011, http://www.dft.gov.uk/publications/lcta-project-report

4.26 The Act also requires the CAA to consult on and publish a statement of policy on its exercise of these new functions, which will give the industry, interest groups and communities the opportunity to influence the use that the CAA makes of them. The CAA will shortly consult on its statement of policy. We expect that the CAA, in considering its new information functions, will have regard to how it can play an active role in ensuring airports publish environmental and wider performance-related information which is accessible (including to people living in the vicinity of the airport) and in a format which is useful to passengers when they make their choices.

5. Planning

Overview

5.1 This chapter explains the status of the Aviation Policy Framework and its interaction with existing planning guidance and policies and any decisions following the recommendations of the Airports Commission.

The status of the Aviation Policy Framework

5.2 The Aviation Policy Framework will apply to the whole UK and has been developed with input from the Devolved Administrations in Northern Ireland, Scotland and Wales. Aviation policy is largely a reserved matter, while planning and surface access policies are devolved. Some aspects of aviation noise policy are devolved but others are reserved. In so far as this Framework deals with matters which have been devolved it does so with the agreement of the administration in Belfast, Edinburgh and Cardiff as appropriate. Further details are set out in the separate section at the end of this chapter (see paragraph 5.25).

5.3 The Aviation Policy Framework, in conjunction with relevant policies and any decisions which Government may take in response to recommendations made by the Airports Commission, will fully replace the 2003 Air Transport White Paper and its associated guidance documents. Those documents are:

- *Guidance on the Preparation of Airport Master Plans* (DfT, July 2004)
- *Airport Transport Forums – Good Practice Guide* (DETR, April 2000)
- *Guidance on Airport Transport Forums and Airport Surface Access Strategies* (DETR, July 1999).

5.4 We will keep our policies under review and refresh them as needed; for example if there are major changes in the evidence supporting our policy objectives or in external circumstances. Any major changes will be subject to public consultation.

5.5 Should the Government decide to support any new nationally significant airport infrastructure following the conclusions of the Airports Commission's

work, it is likely that the next step would be to draft and consult on a National Policy Statement for Airports. The Government has asked the Airports Commission to produce materials to support the Government in preparing a National Policy Statement to accelerate the resolution of any future planning application(s).

Planning policies

5.6 In preparing their local plans, local authorities are required to have regard to policies and advice issued by the Secretary of State. This includes the Aviation Policy Framework, to the extent it is relevant to a particular local authority area, along with other relevant planning policy and guidance. The Aviation Policy Framework may also be a material consideration in planning decisions depending on the circumstances of a particular application.

5.7 Paragraphs 3.19–3.22 in Chapter 3 explain how land-use planning and management is one of the elements of the ICAO balanced approach which should be explored when tackling noise problems at an airport.

Safeguarding

5.8 The National Planning Policy Framework (NPPF) makes clear that local planning authorities should 'identify and protect, where there is robust evidence, sites and routes which could be critical in developing infrastructure to widen choice'. This could apply to airport infrastructure.

5.9 Land outside existing airports that may be required for airport development in the future needs to be protected against incompatible development until the Government has established any relevant policies and proposals in response to the findings of the Airports Commission, which is due to report in summer 2015.

5.10 Airport operators to whom DfT Circular 01/2003 apply should maintain safeguarding maps to reflect potential proposals for future development of airports and ensure they are certified by the CAA.[103] This will ensure that the airport operator is consulted by the local planning authority over any planning applications which might conflict with safe operations at the airport, or nearby. The safeguarding map identifies areas by reference to the land height around the airport and its operational requirements, and describes the circumstances in which the local planning authority is required to consult the airport operator. The direction makes reference to the power of the Secretary of State to intervene where a local authority is minded to grant permission against the advice of the CAA.

103 Safeguarding aerodromes, technical sites and military explosive storage areas: The Town and County Planning (Safeguarding aerodromes, technical sites and military explosive storage areas) Direction 2002

Surface access

5.11 All proposals for airport development must be accompanied by clear surface access proposals which demonstrate how the airport will ensure easy and reliable access for passengers, increase the use of public transport by passengers to access the airport, and minimise congestion and other local impacts.

5.12 The general position for existing airports is that developers should pay the costs of upgrading or enhancing road, rail or other transport networks or services where there is a need to cope with additional passengers travelling to and from expanded or growing airports. Where the scheme has a wider range of beneficiaries, the Government will consider, along with other relevant stakeholders, the need for additional public funding on a case-by-case basis.

5.13 The Airports Commission has indicated that it will consider surface access needs as part of its work to assess options for maintaining the UK's international connectivity, in the context of existing and potentially new airports.

Public safety zones

5.14 Safety is a fundamental requirement for aviation, including at the local level. For people living and working near airports, safety is best assured by ensuring the safe operation of aircraft in flight. However, in areas where accidents are most likely to occur we seek to control the number of people at risk through the public safety zone (PSZ) system. PSZs are areas of land at the ends of runways at the busiest airports, within which development is restricted.

5.15 Our basic policy objective remains not to increase the number of people living, working or congregating in PSZs and, over time, to see the number reduced. Where necessary, we expect airport operators to offer to buy property which lies wholly or partly within those parts of the zones where the risk is greatest. We will continue to protect those living near airports by maintaining and, where justified, extending the PSZ system.

5.16 All of the above is contained in DfT Circular 01/2010, Control of Development in Airport Public Safety Zones.

Enterprise zones

5.17 The Government announced in Budget 2011 the creation of a number of enterprise zones in Local Enterprise Partnership (LEP) areas across England. Enterprise zones are geographically defined areas based around the core principle of reducing barriers for businesses to grow, with the intention of generating new businesses and jobs, through a combination of fiscal incentives and simplified planning controls. In England, 24 such zones

have been established with the aim of driving local and national growth and contributing to the rebalancing of the economy.

5.18 As part of this initiative, an enterprise zone has been established around Manchester Airport. The proposed 'Airport City' is a £659 million, 150-acre development which will transform the airport into an international business destination and create up to 20,000 new jobs over the next 15 years. Manchester Airport is a key component of the Greater Manchester Strategy[104] and contributes £3.5 billion to the UK economy, providing direct employment to 26,000 people and supporting a further 50,000 jobs.[105]

5.19 To support further improvements to Greater Manchester's international connectivity and trade, a new Metrolink tramline is currently under construction that will connect the airport to the tram network which covers the city region. In addition, the Government announced in November 2012 that it would contribute £165 million to the A6 to Manchester Airport Link Road, which will connect the M56 and A6, improving access to the airport and enterprise zone.

5.20 An enterprise zone has also been established around Newquay airport, and the enterprise zone in Cardiff has been expanded to incorporate the airport. To recognise the importance of the airport to the wider Welsh economy, the First Minister of Wales formed the Cardiff Airport Task Force. The Task Force is a collaboration between the airport's owners, the Welsh Government and the wider public sector and business community. It will identify and recommend improvements and investments needed for Wales to boost air connectivity, improve the passenger experience and maximise its economic impact, commercially and for Wales. This is only one of many examples of good practice in this regard.

5.21 Early indications suggest that enterprise zones are proving successful in attracting interest from businesses and overseas investors, which should help to bolster growth at those airports. The Government, through UK Trade and Investment, is including enterprise zones in its strategic promotion of UK business and investment opportunities to potential overseas investors.

5.22 At other airports outside the South East, scope exists for LEPs to develop local strategies to maximise the catalytic effects of airports to attract business and support growth. LEPs, in partnership with local authorities, have a range of tools at their disposal to help support businesses in the vicinity of airports. There could also be scope for LEPs to take a more active role in feeding into airports' plans for surface access, to ensure that there is adequate public transport access for employees. The Government encourages airport operators to engage actively with their LEPs to ensure that they are fully integrated into their LEPs' overall economic strategy for the area, and to maximise the benefits to local economies.

104 *Greater Manchester Strategy*, 2011, http://neweconomymanchester.com/stories/842-greater_manchester_strategy
105 *Sustainability Report*, Manchester Airport Group, 2009/10, http://www.magworld.co.uk/sr2009/business/strategy.html

Reserved matters

5.23 The global nature of air transport requires the industry to operate in a complex network of international agreements, and in the UK's case, European legislation. Aviation policy and regulation in the UK is largely a reserved matter, which rests with the DfT and the Civil Aviation Authority (CAA). Reserved matters include safety regulation; economic regulation; aviation security; competition issues; and international aspects of aviation policy.

5.24 DfT has overall policy responsibility for UK aviation, and the CAA has UK-wide responsibilities for safety regulation, economic regulation, consumer protection and air traffic management. In addition, the Office of Fair Trading and the Secretary of State for Business, Innovation and Skills have a role under the Competition Act in relation to aviation competition issues.

Devolved matters

5.25 The role of the Devolved Administrations in relation to aviation is principally relevant to certain matters pertaining to land-use planning and airport surface access issues. Specifically:

a. The National Assembly for Wales has devolved powers relating to airports in terms of land-use planning and airport surface access issues.

b. The Scotland Act 1998 devolved responsibility for a number of areas of policy relevant to airports to the Scottish Executive. These include land-use planning; surface access policy; and responsibility for and funding of aerodromes in public ownership.

c. The Northern Ireland Act 1998 devolved responsibility for a number of areas of policy relevant to airports to the Northern Ireland Executive and Assembly. These include regional land-use planning; surface access policy and funding; and environmental policy. The Northern Ireland Executive also has responsibility for airport economic regulation; has powers over land in relation to aviation safety; the ability to grant aid for airport infrastructure; and may exercise certain controls relating to the management of airports.

Next steps

5.26 The Aviation Policy Framework sets out Government's high-level objectives and policy on aviation. As a framework, it brings together many related and discrete policies and work streams, some of which are in train. The next steps are:

a. In the summer of 2013 we will begin revising guidance to the CAA on its environmental objectives in respect of its air navigation functions, with the intention of issuing the guidance before the end of 2013.2013.

b. We will work with the CAA during 2013 to further develop the concept of noise envelopes, with the aim of producing guidance which can be used in the context of any proposals for new airport capacity and the work of the Airports Commission.

c. We will review guidance to Airport Consultative Committees later in 2013. This will update the existing 2003 guidance in the light of this new Policy Framework with the aim of supporting Committees in their work and sharing best practice.

d. Separately, the independent Airports Commission's important work of examining how best the UK can meet its international connectivity needs is well under way. The Commission will:

    i. Continue its public dialogue with further discussion papers on key issues, such as the economic value of a hub, to take into account as its work progresses.

    ii. By July 2013, have received outline proposals for any additional airport capacity in the long term (although the DfT would stress that it does not yet have a view on the case for additional capacity).

    iii. By the end of 2013, publish its interim report to Government and the opposition parties, setting out recommendations for immediate actions to improve the use of existing runway capacity in the short term. This should be consistent with credible long-term options which the Commission will be seeking to identify.

    iv. Publish its final report by Summer 2015.

Annex A: Noise controls

Table 1: Summary of noise control measures		
Control measure	**Set by**	**Enforcement/monitoring**
Aircraft noise certification limits	ICAO and the EU (UK Government contributes)	EASA/ the CAA.
Airspace use	Changes generally proposed by NATS/airports.	The CAA is responsible for the airspace change process, having regard to the Transport Act 2000, Air Navigation Directions and DfT guidance on environmental objectives.[106]
Noise Operational Controls – e.g.: • Noise-preferential routes • Night noise restrictions • Departure noise limits • Minimum height requirements after take-off • Continuous descent approach • Ground engine testing noise limits	Government (Heathrow, Gatwick and Stansted) Local authorities through local planning agreement Other airports have powers to make noise control schemes under the Civil Aviation Act 1982 as amended by Civil Aviation Act 2006.	Airports monitor compliance with controls by means of track-keeping and noise monitors Heathrow, Gatwick and Stansted compliance data reported to the DfT Reports to local authorities, local residents through Airport Consultative Committees (ACCs) and via Noise Action Plan reporting process.
Penalty schemes in relation to aircraft taking off or landing at the airport not complying with noise controls.	Airports The Government can require designated airports to have penalty schemes.	Airports Reports to local authorities, local residents through ACCs and via Noise Action Plan reporting process.
Fixing landing charges in relation to noise emissions	Airports The Government can direct designated and other airports to fix landing charges in relation to noise emissions.	Airports
Noise insulation grant schemes	Airports The Government can require grant schemes at designated airports.	Airports Reports to local authorities, local residents through ACCs and via Noise Action Plan reporting process.

106 Guidance to the CAA on Environmental Objectives Relating to the Exercise of its Air Navigation Functions

Annex B: Guidance on master plans, airport transport forums and airport surface access strategies

This Annex replaces existing guidance on the content of airport master plans, ATFs and ASASs.

Master plans

Suggested content

B.1 The Government recommends that the more ground covered in a master plan and the more extensive the consultation which has informed its preparation, the greater its value in informing future land use, transport and economic planning processes, and in supporting prospective planning applications. We would anticipate that, in the case of most airports, master plans will address the following 'core' areas:

- forecasts;
- infrastructure proposals;
- safeguarding and land/property take (please see paragraph B.5);
- impact on people and the natural environment; and
- proposals to minimise and mitigate impacts.

Forecasts

B.2 It would be helpful for airport operators to provide an introduction to the forecasts on which the master plan is based in the form of an up-to-date breakdown of current traffic (daytime and night-time, passenger, cargo and air transport movements). An explanation of this data in relation to historic trends and expected market developments would provide important context.

Infrastructure proposals

B.3 To help recipients of the master plan it would be helpful for airports to include information on existing airside and terminal infrastructure. It may also be helpful if airports were to include a statement of their adopted planning standards. These would include issues such as gate utilisation

and queue lengths for normal throughput, average and maximum delay criteria for landings and take-offs and how these would impact on their proposals.

B.4 The plans are not expected to take the form of detailed engineering or architectural drawings, such as those that might accompany a planning application, but to be of value they ought to contain sufficient information, including drawings where appropriate, so that they may be clearly understood by the lay person as well as professionals. In addition to airside and terminal development and surface access infrastructure, plans for the next ten years might usefully include landside development (e.g. car parking, servicing and support areas, environmental features, landscaping and other mitigation measures), clearly identifying what is new and what already exists. They should also show airport boundaries and highlight any additional properties or land that may need to be taken. Maps showing safety surfaces and PSZs can be provided separately (see below).

Safeguarding and land/property take

B.5 Perhaps one of the most important issues master plans should seek to address is what the long-term land requirements are for future airport development and whether this requires changes to airport boundaries. Where it does, the additional land and property involved, including those associated with PSZs and safety surfaces, should be clearly identified to minimise long-term uncertainty and non-statutory blight.

Mitigation

B.6 Proposals for mitigation measures across the major impact areas identified will be an important component of master plans; for example emission controls, noise abatement measures, sound insulation, surface access schemes and traffic management and measures to address landscape and biodiversity impacts.

B.7 It will be appropriate for master plans to address any proposals for compensation measures that may be required where the scale of impacts is such that they cannot adequately be mitigated. Such measures might include appropriate voluntary purchase schemes and assistance with relocation costs where the extent of property and land-take is clear.

Airport transport forums

Suggested content

B.8 The Government suggests that ATFs are made up of the following groups:

- Airport operator (who should lead the forum);
- Local Highway Authority and Integrated Transport Authority;
- Local Enterprise Partnership;

- Local transport providers (e.g. bus, rail, coach, car hire);
- Local authorities;
- Passenger representatives;
- Freight industry representatives;
- Local businesses;
- Representative from the Airport Consultative Committee;
- Representatives of airport users;
- Representatives of airport employees; and
- Bodies representing interests of walkers, cyclists and disabled people in the area.

B.9 However, the Government recognises that local circumstances will have a bearing on the make-up of the group. This list should not therefore be taken to be prescriptive or exhaustive.

B.10 The Government suggests that ATFs should meet at least twice per year, and engage proactively in dialogue with group members throughout the year.

B.11 In order to ensure the forum is effective, we recommend that airport operators should limit the membership to a manageable number. However they should engage frequently in wider consultation with interested parties including members of the local community e.g. through workshops.

B.12 Costs relating to ATFs should be borne by the airport operator.

Airport surface access strategies

Suggested content

B.13 The Government suggests that ASASs should include:

- analysis of existing surface access arrangements;
- targets for increasing the proportion of journeys made to the airport by public transport by passengers and employees; cycling and walking. There should be short- and long-term targets;
- consideration of whether freight road traffic can be reduced;
- consideration of how low carbon alternatives could be employed;
- short-term actions and longer-term proposals and policy measures to deliver on targets such as:
- proposed infrastructure developments e.g. light rail;
- car/taxi sharing schemes;

- improved information provision on public transport, cycling and walking options;
- car park management; and
- through-ticketing schemes;
- indication of the cost of any proposals;
- performance indicators for delivering on targets;
- monitoring and assessment strategies (internal and external); and
- green transport incentive schemes for employees.

B.14 The Government recognises that different targets and proposals for meeting targets will be appropriate for different areas. This list is therefore not prescriptive or exhaustive.

Annex C: Glossary

ACC	Airport Consultative Committees
AGP	Aerospace Growth Partnership
ANMAC	Aircraft Noise Management Advisory Committee
APFG	Airport Performance Facilitation Group
AOA	Airport Operators Association
ASC	Adaption Sub-Committee
ASASs	Airport Surface Access Strategies
ATF	Airport Transport Forums
ATOL	Air Travel Organisers Licensing
ATT	Alternatives to travel
BIS	Department for Business, Innovation and Skills
BRIC	Brazil, Russia, India and China
CAA	Civil Aviation Authority
CAEP	Committee on Aviation Environmental Protection
CBP	Customs and Border Protection
CCC	Committee on Climate Change
CCRA	Climate change risk assessment
CDA	continuous descent approach
CO_2	carbon dioxide
DECC	Department of Energy and Climate Change
DfT	Department for Transport
DOH	Department for Health
EASA	European Aviation Safety Agency
EU	European Union
ETS	Emissions Trading System

FAB	functional airspace blocks
FABEC	FAB Europe Central
FAS	Future Airspace Strategy
GA	general and business aviation
GDP	gross domestic product
GHG	greenhouse gas
GVA	gross value added
HAL	Heathrow Airport Limited
HS2	High Speed 2
IATA	International Air Transport Association
ICAO	International Civil Aviation Organization
ILUC	indirect land use change
IRIS	iris recognition immigration system
LEP	Local Enterprise Partnership
LTP	Local Transport Plans
Mt CO_2	million tonnes of CO_2
NAP	National Adaption Programme
NATS	(formerly National Air Traffic Services)
NOx	nitrogen oxides
NPPF	National Planning Policy Statement
NPRs	noise-preferential routes
NPS	National Policy Statement
OBR	Office for Budget Responsibility
OECD	Organisation for Economic Co-operation and Development
PM	particulate matter
PSOs	Public Service Obligations
PSZ	public safety zones
PwC	Pricewaterhouse Coopers
RDFs	Route Development Funds
SEAT	South East Airports Taskforce
SES	Single European Sky
SOx	sulphur oxides
UAVs	unmanned aerial vehicles
WWF	World Wildlife Fund

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Department for Transport

Airports National Policy Statement: new runway capacity and infrastructure at airports in the South East of England

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Moving Britain Ahead

June 2018

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Contents

Contents 3

1. Introduction 5

Background 5

Purpose and scope of the Airports NPS 7

Duration 8

Territorial extent 8

European Union 9

Appraisal of Sustainability 9

Habitats Regulations Assessment 10

Equality Assessment 10

Health Impact Analysis 11

Relationship between the Airports NPS and the Aviation Policy Framework 11

Development covered by the Airports NPS 12

2. The need for additional airport capacity 13

The importance of aviation to the UK economy 13

The need for new airport capacity 14

The Airports Commission 16

Alternatives to additional runway capacity 16

The Airports Commission's shortlisting process 17

The Airports Commission's conclusions 17

The Government's work 18

3. The Government's preferred scheme: Heathrow Northwest Runway 19

Overview 19

Heathrow Northwest Runway and Gatwick Second Runway 21

Heathrow Northwest Runway and Heathrow Extended Northern Runway 29

Carbon emissions 30

Strategic environmental assessment 31

Conclusion 32

4. Assessment principles 34

General principles of assessment 34

Scheme variation 35
Environmental Impact Assessment 36
Habitats Regulations Assessment 37
Equalities 38
Assessing alternatives 39
Criteria for ‘good design’ for airports infrastructure 39
Costs 40
Climate change adaptation 41
Pollution control and other environmental protection regimes 42
Common law nuisance and statutory nuisance 44
Security and safety considerations 44
Health 45
Accessibility 46
5. Assessment of impacts 47
Introduction 47
Surface access 47
Air quality 50
Noise 54
Carbon emissions 58
Biodiversity and ecological conservation 61
Land use including open space, green infrastructure and Green Belt 64
Home Office assets 68
Resource and waste management 68
Flood risk 70
Water quality and resources 74
Historic environment 77
Landscape and visual impacts 81
Land instability 83
Dust, odour, artificial light, smoke and steam 83
Community compensation 85
Community engagement 87
Skills 87
Ruling out a fourth runway 89
Annex A: Heathrow Northwest Runway scheme boundary map 90
Annex B: Illustrative Heathrow Northwest Runway scheme masterplan 91

1. Introduction

Background

1.1 The UK aviation sector plays an important role in the modern economy, contributing around £20 billion per year[1] and directly supporting approximately 230,000 jobs.[2] The positive impacts of the aviation sector extend beyond its direct contribution to the economy by also enabling activity in other important sectors like business services, financial services, and the creative industries. The UK has the third largest aviation network in the world, and London's airports serve more routes than the airports of any other European city.

1.2 However, London and the South East are now facing longer term capacity problems. Heathrow Airport is operating at capacity today, Gatwick Airport is operating at capacity at peak times, and the whole London airports system is forecast to be full by the mid-2030s.[3] There is still spare capacity elsewhere in the South East for point to point and especially low cost flights. However, with very limited capability at London's major airports, London is beginning to find that new routes to important long haul destinations are being set up elsewhere in Europe. This is having an adverse impact on the UK economy, and affecting the country's global competitiveness.[4]

1.3 In September 2012, the Coalition Government established the independent Airports Commission to examine the scale and timing of any requirement for additional capacity to maintain the UK's position as Europe's most important aviation hub, and identify and evaluate how any need for additional capacity should be met in the short, medium and long term.[5]

1.4 In its Interim Report in December 2013, the independent Airports Commission concluded that there was a need for one additional runway to be in operation in the South East of England by 2030.[6] It also confirmed three shortlisted capacity schemes for further analysis: a Second Runway at Gatwick Airport (proposed by Gatwick Airport Ltd.), a Northwest Runway at Heathrow Airport (proposed by Heathrow Airport Ltd.), and an Extended Northern Runway at Heathrow Airport (proposed by Heathrow Hub Ltd.). The Airports Commission then consulted further on the three shortlisted schemes, plus proposals for a new airport in the inner Thames Estuary. In September 2014, the Airports Commission concluded not to consider further an inner Thames Estuary scheme.[7]

1.5 In its Final Report in July 2015, the Airports Commission unanimously concluded that the proposal for a Northwest Runway at Heathrow Airport, combined with a significant

[1] ONS, Input-Output Supply and Use tables, 2014
[2] ONS, Business Register and Employment Survey, 2014
[3] *https://www.gov.uk/government/publications/airport-expansion-updated-cost-and-benefits-appraisal Updated Appraisal Report,* p11
[4] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/440316/airports-commission-final-report.pdf *Airports Commission: Final Report*, p3
[5] https://www.gov.uk/government/organisations/airports-commission
[6] https://www.gov.uk/government/publications/airports-commission-interim-report
[7] https://www.gov.uk/government/publications/inner-thames-estuary-airport-summary-and-decision

package of measures to address its environmental and community impacts, presented the strongest case and offered the greatest strategic and economic benefits.

1.6 The Airports Commission's remit also required it to look at how to make best use of existing airport infrastructure, before new capacity becomes operational.[8] The Commission noted in its final report that a new runway will not open for at least 10 years. It therefore considered it imperative that the UK continues to grow its domestic and international connectivity in this period, which it considered would require the more intensive use of existing airports other than Heathrow and Gatwick.[9]

1.7 On 14 December 2015, the Government accepted the Airports Commission's recommendation for increased capacity in the South East of England, and its shortlisted scheme options. The Government also confirmed that it would begin work on the building blocks of an Airports National Policy Statement ('Airports NPS'), and this is what happened.[10]

1.8 The Government believes that an NPS is the most appropriate method to put in place the planning framework for a new runway in the South East of England.[11] All three shortlisted airport schemes would have been classed as nationally significant infrastructure projects under the Planning Act 2008, and the Government's view is that an Airports NPS, and a development consent application made under the Planning Act 2008, is the most appropriate route to deliver the Government's preferred scheme.

1.9 In its announcement on 14 December 2015, the Government made clear that it would be important to undertake further work regarding the final location of the preferred scheme. This included additional work on air quality, noise, carbon, and mitigating impacts on affected local communities.

1.10 On 25 October 2016 the Government announced that a Northwest Runway at Heathrow Airport, combined with a significant package of supporting measures, was its preferred scheme to deliver additional airport capacity in the South East of England. It also confirmed that this would be included in a draft Airports NPS, to be the subject of consultation according to the procedures laid down in the Planning Act 2008.[12]

1.11 The draft Airports NPS and supporting Appraisal of Sustainability were published on 2 February 2017 and a 16 week public consultation was launched. On publishing the draft Airports NPS, the Government made a commitment to continue updating its evidence base on airport capacity, including revised passenger demand forecasts and the impact of the publication of the final Air Quality Plan (the UK plan for tackling roadside nitrogen dioxide concentrations). On 24 October 2017, the Government published and conducted an 8 week public consultation on a revised draft Airports NPS and other documents which were published alongside it. The revisions were made on the basis of changes to the evidence base and as a result of initial consideration of the responses to the February consultation and other broader government policy changes. Having considered the responses to both the February and October consultations, and the report published by the Transport Committee on 23 March 2018, the Government has made some further changes, principally to provide greater clarity and reflect updates to wider Government policies.

[8] *Airports Commission: Interim Report*, paragraph 5.2
[9] *Airports Commission: Final Report*, paragraph 16.40
[10] https://www.gov.uk/government/speeches/aviation-capacity
[11] Throughout this document, unless specified otherwise, the term "NPS" refers to the Airports NPS. Other NPSs, for example the National Networks NPS, are referred to in full as required
[12] https://www.gov.uk/government/speeches/airport-capacity

Purpose and scope of the Airports NPS

1.12 The Airports NPS provides the primary basis for decision making on development consent applications for a Northwest Runway at Heathrow Airport, and will be an important and relevant consideration in respect of applications for new runway capacity and other airport infrastructure in London and the South East of England. Other NPSs may also be relevant to decisions on airport capacity in this geographical area.

1.13 The Airports NPS sets out:

- The Government's policy on the need for new airport capacity in the South East of England;
- The Government's preferred location and scheme to deliver new capacity; and
- Particular considerations relevant to a development consent application to which the Airports NPS relates.

1.14 It sets out planning policy in relation to applications for any airport nationally significant infrastructure project in the South East of England, and its policies will be important and relevant for the examination by the Examining Authority, and decisions by the Secretary of State, in relation to such applications.

1.15 In particular, the Secretary of State will use the Airports NPS as the primary basis for making decisions on any development consent application for a new Northwest Runway at Heathrow Airport, which is the Government's preferred scheme. The policies in the Airports NPS will have effect in relation to the Government's preferred scheme, having a runway length of at least 3,500m and enabling at least 260,000 additional air transport movements per annum.[13] It will also have effect in relation to terminal infrastructure associated with the Heathrow Northwest Runway scheme and the reconfiguration of terminal facilities in the area between the two existing runways at Heathrow Airport. For the avoidance of doubt, the Airports NPS does not identify any statutory undertaker as the appropriate person or appropriate persons to carry out the preferred scheme.

1.16 It is possible that an applicant for development consent in respect of the preferred scheme will promote more than one application for development consent, dealing with different components individually. To the extent that this is the case, the Secretary of State will apply the Airports NPS to such applications to the extent that he or she determines to be appropriate in the circumstances.

1.17 For a scheme to be compliant with the Airports NPS, the Secretary of State would expect to see these elements comprised in its design, and their implementation and delivery secured, particularly with regard to runway length and increased capacity of air transport movements. Other NPSs may also be relevant to decisions on nationally significant infrastructure projects at airports but, if there is conflict between the Airports NPS and other NPSs, the conflict should be resolved in favour of the NPS that has been most recently designated.

1.18 Under section 104 of the Planning Act 2008, the Secretary of State must decide any application in accordance with any relevant NPS unless he or she is satisfied that to do so would:

[13] The Airports NPS stipulates the length of the new runway to ensure that the new infrastructure can accommodate the largest commercial aircraft, as they operate many of the long haul flights that support the UK's position as a major aviation hub

- Lead to the UK being in breach of its international obligations;
- Be unlawful;
- Lead to the Secretary of State being in breach of any duty imposed by or under any legislation;
- Result in adverse impacts of the development outweighing its benefits; or
- Be contrary to legislation about how the decisions are to be taken.[14]

1.19 The Airports NPS refers in some places to other relevant documents. These other documents may be replaced, updated or amended over the lifetime of the Airports NPS, and so successor documents should be referred to when this is the case.

1.20 Unlike the regime for the granting of planning permission under the Town and Country Planning Act 1990, there is no provision in the Planning Act 2008 for the making of an 'outline' application for development consent, followed by 'reserved matters' approval. This does not mean, however, that development cannot be phased, so that particular parts are brought forward at different times, or that the details of a proposal cannot be reserved for determination later. Guidance by the Ministry of Housing, Communities and Local Government recognises that development projects advanced through the development consent order process may be phased, but emphasises that every phase of the project contained in a development consent application must be considered in the application for the order and the order itself.[15]

Duration

1.21 The Airports NPS covers development that is anticipated to be required by 2030 as well as other development required to support it. It will remain in place until it is withdrawn, amended or replaced. It will be reviewed, in accordance with the Planning Act 2008, when the Secretary of State considers it appropriate to do so. When considering whether to review the Airports NPS, the Secretary of State will look at whether there has been a significant change in any circumstances on which the policy was based and whether such change was anticipated when the Airports NPS was designated.

Territorial extent

1.22 The Airports NPS covers England only. Some aspects of aviation noise policy are devolved but others are reserved.[16]

1.23 Aviation policy is largely a reserved matter, though planning policy is not. Specifically:

- The National Assembly for Wales has devolved powers relating to airports in terms of land use planning and surface access policy;
- The Scottish Parliament has competence for planning in Scotland, and some powers in relation to aerodromes are also devolved to the Scottish Parliament; and
- The Northern Ireland Executive and Assembly have devolved powers relating to airports in terms of regional land use planning, surface access policy and funding,

[14] Planning Act 2008, section 104 – decisions in cases where an NPS has effect
[15] https://www.gov.uk/government/publications/guidance-on-the-pre-application-process-for-major-infrastructure-projects
[16] For the avoidance of doubt, references to matters which are "reserved" in this section refer to those matters of legislative responsibility reserved to the Westminster Parliament under the UK's devolution arrangements

and environmental policy. The Northern Ireland Executive also has responsibility for airport economic regulation, has powers over land in relation to aviation safety, has the ability to grant aid for airports infrastructure, and may exercise certain controls relating to the management of airports.

European Union

1.24 On 29 March 2017 the Government formally notified the European Council of its intention to withdraw from the European Union, as provided for under Article 50 of the Treaty on European Union. Until the UK has left the EU, it remains a full Member of the European Union and all the rights and obligations of EU membership remain in force. Therefore, for the time being, European Union legislation applies to the development of this policy and to decision making in relation to the preferred scheme.

1.25 The UK and EU negotiating teams reached agreement in March 2018 on the terms of a transition or implementation period that will start on 30 March 2019, when the UK formally ceases to be a member of the EU, and last until 31 December 2020. The agreed text states that "Union law shall be applicable to and in the United Kingdom during the transition period". The limited exceptions to this are set out in the published text.

1.26 The Government has also introduced legislation to ensure that the UK exits the EU with maximum certainty and continuity. The EU Withdrawal Bill ends the supremacy of European Union (EU) law in UK law and converts EU law as it stands at the moment of exit into domestic law. The same rules and laws will apply on the day after exit as on the day before. It will then be for democratically elected representatives in the UK to decide on any changes to that law, after full scrutiny and proper debate.

Appraisal of Sustainability

1.27 An Appraisal of Sustainability is required by the Planning Act 2008 in relation to any NPS. An Appraisal of Sustainability, which describes the analysis of reasonable alternatives to the preferred scheme, has been carried out to inform the Airports NPS. The Appraisal of Sustainability informs the development of the Airports NPS by assessing the potential economic, social and environmental impacts of options to increase airport capacity.

1.28 The Appraisal of Sustainability also incorporates a strategic environmental assessment (pursuant to Directive 2001/42/EC as transposed by SI 2004/1633).[17] The Appraisal of Sustainability was published alongside the Airports NPS.

1.29 The overall conclusions of the Appraisal of Sustainability show that (provided any scheme remains within the parameters and boundaries in this policy), whilst there will be inevitable harm caused by a new Northwest Runway at Heathrow Airport in relation to some topics, the need for such a scheme, the obligation to mitigate such harm as far as possible, and the benefits that such a scheme will deliver, outweigh such harm. However, this is subject to the assessment of the effects of the preferred scheme, identification of suitable mitigation, and measures to secure and deliver the relevant mitigation.

[17] Directive 2001/42/EC of the European Parliament and of the Council on the assessment of the effects of certain plans and programmes on the environment

1.30 The preferred scheme has been subject to further refinement by Heathrow Airport since the conclusion of the work of the Airports Commission. These refinements were not captured within the Airports Commission's appraisals and are not expected to significantly alter the key appraisal findings. The Government expects any applicant to carry out a further and more detailed study, and to secure appropriate mitigation measures, ahead of seeking development consent.

Habitats Regulations Assessment

1.31 The Airports NPS has also been assessed under the Habitats and Wild Birds Directive and Regulations.[18] A Habitats Regulations Assessment has been undertaken at a strategic level, and was published alongside the Airports NPS.

1.32 The strategic level Habitats Regulations Assessment, conducted in accordance with the Conservation of Habitats and Species Regulations 2010,[19] concluded that the potential for the preferred scheme to have adverse effects on the integrity of European sites for the purposes of Article 6(3) of the Habitats Directive could not be ruled out. This is because more detailed project design information and detailed proposals for mitigation are not presently available and inherent uncertainties exist at this stage. The Airports NPS has thus been considered in accordance with Article 6(4) of the Habitats Directive. Consideration has been given to alternative solutions to the preferred scheme, and the conclusion has been reached that there are no alternatives that would deliver the objectives of the Airports NPS in relation to increasing airport capacity in the South East and maintaining the UK's hub status. In line with Article 6(4) of the Directive, the Government considers that meeting the overall needs case for increased capacity and maintaining the UK's hub status, as set out in chapter two, amount to imperative reasons of overriding public interest supporting its rationale for the designation of the Airports NPS. At detailed design stage, and in so far as it may be necessary, the matters set out in the Airports NPS will be relevant to determining whether there are alternative solutions and imperative reasons of overriding public interest, provided that the design remains consistent with the objectives of the Airports NPS.

1.33 Any development brought forward through an Airports NPS that was likely to have a significant effect on a European site, either alone or in combination with other plans or projects, would be subject to a project-level Habitats Regulations Assessment at the detailed design stage. If it could not be concluded that there would be no adverse effects on site integrity, the project would not receive development consent on this basis, unless (a) there were no alternative solutions, (b) there were imperative reasons of overriding public interest in support, and (c) the necessary compensatory measures to protect the site were secured.

Equality Assessment

1.34 The Airports NPS has been informed by an Equality Assessment, which was published alongside the Airports NPS.

1.35 Under the Equality Act 2010, public bodies have a statutory duty to ensure race, disability and equality are considered in the exercise of their functions. The Equality

[18] Council Directive 92/43/EEC on the conservation of natural habitats and of wild flora and fauna; and Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds

[19] http://www.legislation.gov.uk/uksi/2010/490/contents/made Since the revised draft Airports National Policy Statement was published, the Conservation of Habitats and Species Regulations 2017 have come into force

Assessment considered the potential equalities implications of airport expansion, including the effect on persons or groups of persons who share certain characteristics protected by the Equality Act 2010. The Equality Assessment concludes that all of the shortlisted schemes will have effects on these groups, but that such effects can be managed and can ultimately be within appropriate limits. The Airports NPS requires that final impacts on affected groups should be the subject of a detailed review, carefully designed through engagement with the local community, and approved by the Secretary of State. It should be possible to fully or partially mitigate negative equalities impacts through good design, operations and mitigation plans.

Health Impact Analysis

1.36 The Airports NPS has been subject to a Health Impact Analysis, which was published alongside the Airports NPS.

1.37 The Health Impact Analysis identified impacts which would affect the population's health, including noise, air quality and socio-economic impacts. In order to be compliant with the Airports NPS, a further project level Health Impact Assessment is required. The application should include and propose health mitigation, which seeks to maximise the health benefits of the scheme and mitigate any negative health impacts.

Relationship between the Airports NPS and the Aviation Policy Framework

1.38 The Airports NPS sets out Government policy on expanding airport capacity in the South East of England, in particular by developing a Northwest Runway at Heathrow Airport. Any application for a new Northwest Runway development at Heathrow will be considered under the Airports NPS. Other Government policy on airport capacity has been set out in the Aviation Policy Framework, published in 2013.[20] The Airports NPS does not affect Government policy on wider aviation issues, for which the 2013 Aviation Policy Framework and any subsequent policy statements still apply.[21]

1.39 On 21 July 2017, the Government issued a call for evidence on a new Aviation Strategy.[22] Having analysed the responses, the Government has confirmed that it is supportive of airports beyond Heathrow making best use of their existing runways. However, we recognise that the development of airports can have positive and negative impacts, including on noise levels. We consider that any proposals should be judged on their individual merits by the relevant planning authority, taking careful account of all relevant considerations, particularly economic and environmental impacts.

[20] https://www.gov.uk/government/publications/aviation-policy-framework
[21] This includes changes to the UK airspace policy published in the Government's response to the consultation, *UK Airspace policy: a framework for balanced decisions on the design and use of airspace*
[22] *Beyond the Horizon: The Future of Aviation* https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/636625/aviation-strategy-call-for-evidence.pdf - see paragraphs 7.19 to 7.21

Development covered by the Airports NPS

1.40 The Airports NPS has effect in relation to the delivery of additional airport capacity through the provision of a Northwest Runway at Heathrow Airport. It also applies to proposals for new terminal capacity located between the new Northwest Runway and the existing Northern Runway at Heathrow Airport, as well as the reconfiguration of terminal facilities in the area between the two existing runways at Heathrow Airport. Each of these elements is also capable of constituting a nationally significant infrastructure project.

1.41 The Airports NPS does not have effect in relation to an application for development consent for an airport development not comprised in an application relating to the Heathrow Northwest Runway, and proposals for new terminal capacity located between the Northwest Runway at Heathrow Airport and the existing Northern Runway and reconfiguration of terminal facilities between the two existing runways at Heathrow Airport. Nevertheless, the Secretary of State considers that the contents of the Airports NPS will be both important and relevant considerations in the determination of such an application, particularly where it relates to London or the South East of England. Among the considerations that will be important and relevant are the findings in the Airports NPS as to the need for new airport capacity and that the preferred scheme is the most appropriate means of meeting that need.

1.42 As indicated in paragraph 1.39 above, airports wishing to make more intensive use of existing runways will still need to submit an application for planning permission or development consent to the relevant authority, which should be judged on the application's individual merits. However, in light of the findings of the Airports Commission on the need for more intensive use of existing infrastructure as described at paragraph 1.6 above, the Government accepts that it may well be possible for existing airports to demonstrate sufficient need for their proposals, additional to (or different from) the need which is met by the provision of a Northwest Runway at Heathrow. As indicated in paragraph 1.39 above, the Government's policy on this issue will continue to be considered in the context of developing a new Aviation Strategy.

2. The need for additional airport capacity

The importance of aviation to the UK economy

2.1 International connectivity, underpinned by strong airports and airlines, is important to the success of the UK economy. It is essential to allow domestic and foreign companies to access existing and new markets, and to help deliver trade and investment, linking us to valuable international markets and ensuring that the UK is open for business. It facilitates trade in goods and services, enables the movement of workers and tourists, and drives business innovation and investment, being particularly important for many of the fastest growing sectors of the economy.

2.2 International connectivity attracts businesses to cluster round airports, and helps to improve the productivity of the wider UK economy. Large and small UK businesses rely on air travel, while our airports are the primary gateway for vital time-sensitive freight services. Air travel also allows us ever greater freedom to travel and visit family and friends across the globe, and brings millions of people to the UK to do business or enjoy the best the country has to offer.

2.3 The UK benefits from a strong and substantially privatised airport sector, with a regulatory system that supports growth while ensuring the interests of passengers are at its heart. The Government believes that this is the right approach for the airport sector, but that Government has an important role to play in strategic decisions like planning future airport capacity.

2.4 The UK has the third largest aviation network in the world after the USA and China,[23] and London's airports serve more routes than any other European city.[24] The UK's airports handled over 268 million passengers in 2016, a 6.7% increase from the previous year.[25] The sector benefits the UK economy through its direct contribution to GDP and employment, and by facilitating trade and investment, manufacturing supply chains, skills development, and tourism.

2.5 In 2014 the UK aviation sector generated around £20 billion[26] of economic output, and directly employed around 230,000 workers,[27] supporting many more jobs indirectly. The UK has the second largest aircraft manufacturing industry in the world after the USA, and will benefit economically from growth in employment and exports from future aviation growth.[28] Air Passenger Duty remains an important contributor to Government revenue, raising over £3 billion in2015/16.[29] Heathrow Airport directly supports around 75,000 jobs on site.[30]

[23] *The Global Competitiveness Report 2014-2015*, World Economic Forum, 2015, based on available airline seat kilometres
[24] *Airports Commission: Final Report*, p55
[25] https://www.caa.co.uk/Data-and-analysis/UK-aviation-market/Airports/Datasets/UK-Airport-data/Airport-data-2016/
[26] ONS, Input-Output Supply and Use tables, 2014
[27] ONS, Business Register and Employment Survey, 2014
[28] UK Aerospace Industry Survey, Aerospace, Defence, Security Trade Association, 2010
[29] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/691309/Feb18_Receipts_NS_Bulletin_Final.pdf
[30] https://www.heathrowexpansion.com/local-community/local-benefits/

2.6 Businesses from across the UK utilise our aviation network to access markets worldwide. The UK's strong services sector, which provides significant export earnings for the country, is particularly reliant on aviation. The sector includes, among others, financial services, insurance, creative industries, education, and health – all of which rely on face-to-face engagement with customers for success.

2.7 Air freight is also important to the UK economy. Although only a small proportion of UK trade by weight is carried by air, it is particularly important for supporting export-led growth in sectors where goods are of high value or time critical. Heathrow Airport is the UK's biggest freight port by value.[31] Over £178 billion of air freight was sent between UK and non-European Union countries in 2016, representing over 45% of the UK's extra-European Union trade by value.[32] This is especially important in the advanced manufacturing sector, where air freight is a key element of the time-critical supply chain. By 2030, advanced manufacturing industries such as pharmaceuticals or chemicals, whose components and products are predominantly moved by air, are expected to be among the top five UK export markets by their share of value.[33] In the future, UK manufacturing competitiveness and a successful and diverse UK economy will drive the need for quicker air freight.

2.8 Aviation also brings many wider benefits to society and individuals, including travel for leisure and visiting family and friends. This drives further economic activity. In 2013, for example, the direct gross value added of the tourism sector, one of the important beneficiaries of a strong UK aviation sector, was £59 billion.[34] Likewise, 2015 saw the value of inbound tourism rise to over £22 billion,[35] with the wider UK tourism industry forecast to grow significantly over the coming decades.

2.9 The importance of aviation to the UK economy, and in particular the UK's hub status, has only increased following the country's decision to leave the European Union. As the UK develops its new trading relationships with the rest of the world, it will be essential that increased airport capacity is delivered, in particular to support development of long haul routes to and from the UK, especially to emerging and developing economies.

The need for new airport capacity

2.10 However, challenges exist in the UK's aviation sector, stemming in particular from capacity constraints. These constraints are affecting our ability to travel conveniently and to a broader range of destinations than in the past. They create negative impacts on the UK through increased risk of flight delays and unreliability, restricted scope for competition and lower fares, declining domestic connectivity, erosion of the UK's hub status[36] relative to foreign competitors, and constraining the scope of the aviation sector to deliver wider economic benefits.

2.11 The UK now faces a significant capacity challenge. Heathrow Airport is currently the busiest two-runway airport in the world, while Gatwick Airport is the busiest single runway airport in the world. London's airports are filling up fast, and will all be full by the mid-2030s if we do not take action now.[37]

[31] https://www.uktradeinfo.com/Statistics/BuildYourOwnTables/Pages/Home.aspx
[32] https://www.uktradeinfo.com/Statistics/Pages/Statistics.aspx
[33] HSBC Trade Forecast Tool, Accessed 2015
[34] Estimates of the Economic Importance of Tourism 2008-2013, Office for National Statistics, December 2014
[35] https://www.visitbritain.org/2015-snapshot. This figure represents tourism by all modes of transport. The equivalent figure for inbound tourists by air is £19 billion in 2015
[36] Defined as the frequency of flights and the density of a route network
[37] *Updated Appraisal Report*, p11

2.12 Aviation demand is likely to increase significantly between now and 2050.[38] All major airports in the South East of England[39] are expected to be full by the mid-2030s, with four out of five full by the mid-2020s. By 2050 demand at these airports is expected to outstrip capacity by at least 34%, even on the department's low demand forecast.[40] There is relatively little scope to redistribute demand away from the region to less heavily utilised capacity elsewhere in the country.[41]

2.13 The UK's hub status, stemming from the convenience and variety of its direct connections across the world, is already being challenged by restricted connectivity.[42] Hub airports at Paris, Frankfurt and Amsterdam have spare capacity and are able to attract new flights to growth markets in China and South America.[43] These competitors have benefited from the capacity constraints at Heathrow Airport, and have seen faster growth over the past few years. The UK's airports also face growing competition from hubs in the Middle East like Dubai, Abu Dhabi, Doha and Istanbul. Heathrow Airport was overtaken by Dubai in 2015 as the world's busiest international passenger airport.[44]

2.14 The consequences of not increasing airport capacity in the South East of England – the 'do nothing' or 'do minimum scenarios' – are detrimental to the UK economy and the UK's hub status. International connectivity will be restricted as capacity restrictions mean airlines prioritise their routes, seeking to maximise their profits. Capacity constraints therefore lead to trade-offs in destinations, and while there is scope to respond to changing demand patterns, this necessarily comes at the expense of other connections. Domestic connectivity into the largest London airports will also decline as competition for slots encourages airlines to prioritise more profitable routes.

2.15 Operating existing capacity at its limits means there will be little resilience to unforeseen disruptions, leading to delays. Fares are likely to rise as demand outstrips supply, and the lack of available slots makes it more difficult for new competitors to enter the market.

2.16 The Government believes that not increasing capacity will impose costs on passengers and on the wider economy. The Airports Commission estimated that direct negative impacts to passengers, such as fare increases and delays, would range from £21 billion to £23 billion over 60 years.[45] Without expansion, capacity constraints would impose increasing costs on the rest of the economy over time, lowering economic output by making aviation more expensive and less convenient to use, with knock-on effects in lost trade, tourism and foreign direct investment.

2.17 It is very challenging to put a precise figure on these impacts, but using alternative approaches the Airports Commission estimated these costs to be between £30 billion and £45 billion over 60 years.[46] The Airports Commission urged caution interpreting these figures, which overlap with the direct passenger costs reported above and so are not wholly additional. But they do illustrate that not increasing airport capacity carries real economic costs to the whole economy beyond aviation passengers. Having reviewed this further, the Government accepts this analysis and considers that

[38] *Updated Appraisal Report*, p8
[39] Defined as Gatwick, Heathrow, London City, Luton and Stansted
[40] *Updated Appraisal Report*, p11
[41] *Airports Commission: Interim Report*, pp117-126
[42] For more analysis on the UK's hub status, see *Airports Commission: Interim Report*, pp90-92
[43] *Airports Commission: Final Report*, p249
[44] http://www.aci.aero/News/Releases/Most-Recent/2016/09/09/Airports-Council-International-releases-2015-World-Airport-Traffic-Report-The-busiest-become-busier-the-year-of-the-international-hub-airport
[45] *Airports Commission: Final Report*, p81; present value over 60 years
[46] *Airports Commission: Final Report*, p81

recent demand growth in the South East suggests an even greater possible cost if expansion is not undertaken.[47]

2.18 The Government also acknowledges the local and national environmental impacts of airports and aviation, for example noise and emissions, and believes that capacity expansion should take place in a way that satisfactorily mitigates these impacts wherever possible. Expansion must be deliverable within national targets on greenhouse gas emissions and in accordance with legal obligations on air quality.

The Airports Commission

2.19 To address these issues, in September 2012, the Coalition Government established the independent Airports Commission, led by Sir Howard Davies. The Airports Commission had two objectives:

- To produce an Interim Report, setting out the nature, scale and timing of steps needed to maintain the UK's global hub status alongside recommendations for making better use of the UK's existing runway capacity over the next five years; and
- To produce a Final Report, setting out recommendations on how to meet any need for additional airport capacity in the longer term.[48]

2.20 The Airports Commission was asked to take appropriate account of the national, regional and local implications of any expansion. As well as seven discussion papers and an appraisal framework, the Airports Commission delivered its recommendations to Government in its Interim Report in December 2013 and its Final Report in July 2015. It also published a summary and decision paper in September 2014 on whether to add an inner Thames Estuary airport proposal to a shortlist for further appraisal.[49]

Alternatives to additional runway capacity

2.21 The Airports Commission explored potential alternatives to additional runway capacity, which included:

- Doing nothing;
- A 'do minimum' set of alternatives with very limited provision for additional capacity;
- Redistribution methods, for example changing the rate of Air Passenger Duty, changing slot allocation regimes, traffic distribution rules, and prohibiting certain types of flights;
- Investment in high speed rail and improved surface access options; and
- New technologies.[50]

2.22 The Airports Commission found that none of these options delivered a sufficient increase in capacity, and that many required investment far in excess of the cost of runway expansion. However, the Airports Commission did note that the need to make best use of existing infrastructure would remain.[51]

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[47] *Updated Appraisal Report*, p11
[48] https://www.gov.uk/government/organisations/airports-commission/about/terms-of-reference
[49] https://www.gov.uk/government/publications/inner-thames-estuary-airport-summary-and-decision
[50] *Airports Commission: Final Report*, p84
[51] *Airports Commission: Final Report*, paragraph 16.1 and 16.40

The Airports Commission's shortlisting process

2.23 The Airports Commission consulted widely on its appraisal framework, which contained its criteria for sifting proposed schemes,[52] and the Government is satisfied that the appraisal framework was appropriate. The Airports Commission received 52 proposals, with three options developed by the Airports Commission itself. The Airports Commission took advice from a number of relevant stakeholders, including NATS Holdings, the Civil Aviation Authority, Network Rail, and the Highways Agency (as it then was). The Government believes that the Airports Commission has analysed all the options put forward to the appropriate degree of detail, and discounted non-shortlisted schemes fairly and objectively according to the sift criteria. The Government does not consider that any of the non-shortlisted schemes represents a reasonable alternative to its preferred scheme.

2.24 The three shortlisted schemes were:

- Gatwick Second Runway scheme;
- Heathrow Northwest Runway scheme (which the Airports Commission recommended and is the Government's preferred scheme); and
- Heathrow Extended Northern Runway scheme.

2.25 The Government has made clear in its announcement of 14 December 2015 that it agrees with the Airports Commission's three shortlisted schemes for expansion, and has taken forward its further work on this basis. As set out at paragraph 1.40 of this document, the Airports NPS will only have effect in relation to a scheme located at Heathrow Airport for the provision of a Northwest Runway, and not the other shortlisted schemes.

The Airports Commission's conclusions

2.26 In its Interim Report in December 2013,[53] the Airports Commission concluded that there was a need for one additional runway to be in operation in the South East of England by 2030. It also set in train a period of further consultation on three shortlisted schemes (Gatwick Second Runway scheme, Heathrow Northwest Runway scheme, and Heathrow Extended Northern Runway scheme), as well as the option of a new airport in the inner Thames Estuary. In September 2014, the Airports Commission concluded that a new airport in the inner Thames Estuary did not perform sufficiently well to warrant consideration alongside the three schemes that it decided to shortlist.

2.27 In its Final Report in July 2015, the Airports Commission concluded that the proposed Northwest Runway at Heathrow Airport presented the strongest case for expansion and would offer the greatest strategic and economic benefits to the UK. A copy of the illustrative Heathrow Northwest Runway scheme masterplan is included at Annex B. The Airports Commission also made clear that expansion would have to involve a significant package of supporting measures to address the environmental and community impacts of the new runway.

2.28 The Commission's remit also required it to look at how to make best use of existing airport infrastructure, before new capacity becomes operational.[54] The Commission noted in its final report that a new runway will not open for at least 10 years. It

[52] https://www.gov.uk/government/publications/sift-criteria-for-long-term-capacity-options-at-uk-airports
[53] *Airports Commission: Interim Report*, p11
[54] *Airports Commission: Interim Report*, paragraph 5.2

therefore considered it imperative that the UK continues to grow its domestic and international connectivity in this period, which it considered would require more intensive use of existing airports other than Heathrow and Gatwick.[55]

The Government's work

2.29 The Government has reviewed the Airports Commission's work and the representations Government has received on the issue of airport capacity, and is confident that the Airports Commission's arguments and reasoning are clear and thorough.

2.30 The Airports Commission undertook an extensive appraisal over two and a half years, consulting widely and analysing all the evidence before making its final recommendations. Since then, the Government has reviewed the Airports Commission's work and concluded that its evidence base on the case for expansion and its use of this evidence are both sound.[56] This has given the Government the assurance required to use the evidence to inform its further work, which is set out in more detail later. The Government has therefore considered the Airports Commission data in great depth and also carried out its own further work, all of which informs the Airports NPS.

2.31 In coming to these decisions, the Government has fully considered the Airports Commission's Interim and Final Reports, as well as the inner Thames Estuary summary and decision paper. The Government also received a range of information from a variety of stakeholders in response to those reports, which was taken into account by the Government in reaching its preference.

2.32 Having reviewed the work of the Airports Commission and considered the evidence put forward on the issue of airport capacity, the Government believes that there is clear and strong evidence that there is a need to increase capacity in the South East of England by 2030 by constructing one new runway. The Government also agrees with the Airports Commission that this can be delivered within the UK's obligations under the Climate Change Act 2008.[57] The Government considers that following the country's decision to leave the European Union the country will increasingly look beyond Europe to the rest of the world, and so the importance of maintaining the UK's hub status, and in that context long haul connectivity in particular, has only increased.

2.33 The next chapter of the Airports NPS sets out how the Government has identified the most effective and appropriate way to address the overall need for increased airport capacity, and maintain the UK's hub status, while meeting air quality and carbon obligations and identifies that the Northwest Runway at Heathrow is the Government's preferred scheme.

[55] *Airports Commission: Final Report*, paragraph 16.40
[56] https://www.gov.uk/government/publications/airport-expansion-further-review-and-sensitivities-report
[57] https://www.gov.uk/government/publications/airport-expansion-dft-review-of-the-airports-commissions-final-report *Review of the Airports Commission Final Report*, p19

3. The Government's preferred scheme: Heathrow Northwest Runway

Overview

3.1 While the previous chapter of the Airports NPS sets out the Government's underlying policy and evidence on the need to expand airport capacity in the South East of England, this chapter sets out why the Government has stated its preference for the Heathrow Northwest Runway scheme.

3.2 As set out in the previous chapter, the Airports Commission undertook a detailed shortlisting process, which resulted in three shortlisted schemes being considered by the Government for additional airport capacity:

- Gatwick Second Runway scheme;
- Heathrow Northwest Runway scheme (which the Airports Commission recommended and is the Government's preferred scheme);
- Heathrow Extended Northern Runway scheme.

3.3 The Government accepted the Airports Commission's three shortlisted schemes on 14 December 2015, agreeing with the Airports Commission's conclusion that one new runway in the South East of England by 2030 would be required to meet the need for additional capacity.

3.4 Following the publication of the Airports Commission's Final Report, the Government undertook further work on:

- Air quality;
- Noise;
- Carbon emissions; and
- Impacts on local communities.

3.5 The Government has carried out additional sensitivities, which show the worst case scenarios on noise, carbon and the economy, within the Appraisal of Sustainability.

3.6 The work on air quality, which demonstrated that expansion (with mitigation) is capable of taking place within legal limits, is outlined in the Government's air quality re-analysis[58] and the Appraisal of Sustainability. Both documents contain a worst case scenario.

3.7 The Government agrees with the Airports Commission's assessment that a new runway is deliverable within the UK's climate change obligations.[59]

[58] https://www.gov.uk/government/publications/airport-expansion-further-updated-air-quality-re-analysis
[59] https://www.gov.uk/government/publications/airport-expansion-dft-review-of-the-airports-commissions-final-report *Review of the Airports Commission Final Report*, p19

3.8 Following engagement with all three shortlisted scheme promoters, the Government has recommended a package of community supporting measures.

3.9 The Government also carried out additional work in relation to surface access, and further economic analysis. This work has allowed the Government to consider carefully the effectiveness of each of the three schemes to meet the need for additional capacity.

3.10 The detailed results of this work can be found in a number of reports published by the Government on 25 October 2016:

- A formal review by the Department for Transport of the Airports Commission's Final Report;[60]
- An air quality re-analysis to test the Airports Commission's work against the Government's air quality plan;[61]
- A further review of the Airports Commission's analytical approach, providing greater assurance in those areas where needed;[62]
- A comparison of the originally shortlisted schemes' compensation packages against other expansion projects around the world;[63]
- An assurance report by Highways England on the schemes' road surface access proposals;[64] and
- A non-binding statement of principles between Heathrow Airport and the Secretary of State for Transport on the Heathrow Northwest Runway scheme.[65]

3.11 On 25 October 2016, the Government announced that its preferred scheme to meet the need for new airport capacity in the South East of England was a Northwest Runway at Heathrow Airport.[66] It also confirmed that this would be included in a draft Airports NPS, which would be subject to consultation in accordance with the procedures laid down in the Planning Act 2008.

3.12 The draft Airports NPS and supporting Appraisal of Sustainability were published on 2 February 2017 and a 16 week public consultation was launched. On publishing the draft Airports NPS, the Government made a commitment to continue updating its evidence base on airport capacity, including revised passenger demand forecasts and the impact of the publication of the final Air Quality Plan (the UK plan for tackling roadside nitrogen dioxide concentrations). On 24 October 2017, the Government published and conducted an 8 week public consultation on a revised draft Airports NPS and other documents which were published alongside it. The revisions were made on the basis of changes to the evidence base and as a result of initial consideration of the responses to the February consultation and other broader government policy changes. Having considered the responses to both the February and October consultations, and the report published by the Transport Committee on 23 March 2018, the Government has made some further changes, principally to provide greater clarity and reflect updates to wider Government policies. The Government believes that the Heathrow Northwest Runway scheme, of all the three shortlisted schemes, is the most effective and most appropriate way of meeting the

[60] https://www.gov.uk/government/publications/airport-expansion-dft-review-of-the-airports-commissions-final-report
[61] https://www.gov.uk/government/publications/airport-expansion-further-analysis-of-air-quality-data
[62] https://www.gov.uk/government/publications/airport-expansion-further-review-and-sensitivities-report
[63] https://www.gov.uk/government/publications/airport-expansion-global-comparison-of-airport-mitigation-measures
[64] https://www.gov.uk/government/publications/airport-expansion-highways-england-assurance-report
[65] https://www.gov.uk/government/publications/heathrow-airport-limited-statement-of-principles
[66] https://www.gov.uk/government/speeches/airport-capacity

needs case set out in chapter 2. As such, the Government has also concluded that the other shortlisted schemes do not represent true alternatives to the preferred scheme.

3.13 The remainder of this chapter is broken down into two distinct sections. The first section focuses on why the Government prefers the Heathrow Northwest Runway Scheme to the Gatwick Second Runway scheme in terms of delivering additional airport capacity by 2030. The second section focuses on why the Government prefers the Heathrow Northwest Runway scheme to the Heathrow Extended Northern Runway scheme.

3.14 Increasing airport capacity in the South East of England and maintaining the UK's hub status can be expected to result in both positive and negative impacts, as would be the case for any major infrastructure project. Important positive impacts are expected to include better international connectivity and providing benefits to passengers and the UK economy as a whole (for example for the freight industry). The negative impacts are expected to include environmental impacts, for example on air quality and affected local communities.

3.15 In its considerations on a preferred scheme, the Government has fully taken into account the work of the Airports Commission, information provided by a variety of stakeholders, and the results of the Government's further work outlined in paragraphs 3.4-3.10 above. As set out below, the Government has considered the positive and negative effects from each of the three shortlisted schemes, and reached its conclusion by weighing these expected effects, along with considering how positive effects can be enhanced and negative effects mitigated.

Heathrow Northwest Runway and Gatwick Second Runway

3.16 In identifying the preferred scheme, a wide range of factors has been taken into account, including:

- International connectivity and strategic benefits;
- Passenger and wider economic benefits;
- Domestic connectivity and regional impacts;
- Surface access links;
- Views of airlines, regional airports and the business community;
- Financeability;
- Deliverability; and
- Local environmental impacts.

3.17 While the Government acknowledges the differences between the three shortlisted schemes, carbon impacts (unlike the factors above) have not been considered as a differentiating factor between schemes due to the Airports Commission's overarching assessment that all three are deliverable within the UK's climate change obligations.

International connectivity and strategic benefits, including freight

3.18 Heathrow Airport is best placed to address this need by providing the biggest boost to the UK's international connectivity. Heathrow Airport is one of the world's major hub airports, serving around 180 destinations worldwide with at least a weekly service,

including a diverse network of onward flights across the UK and Europe.[67] Building on this base, expansion at Heathrow Airport will mean it will continue to attract a growing number of transfer passengers, providing the added demand to make more routes viable. In particular, this is expected to lead to more long haul flights and connections to fast-growing economies, helping to secure the UK's status as a global aviation hub, and enabling it to play a crucial role in the global economy.

3.19 By contrast, expansion at Gatwick Airport would not enhance, and would consequently threaten, the UK's global aviation hub status. Gatwick Airport would largely remain a point to point airport, attracting very few transfer passengers. Heathrow Airport would continue to be constrained, outcompeted by competitor hubs which lure away transfer passengers, further weakening the range and frequency of viable routes. At the UK level, there would be significantly fewer long haul flights in comparison to the preferred scheme, with long haul destinations served less frequently. Expansion at Heathrow Airport is the better option to ensure the number of services on existing routes increases and allows airlines to offer more frequent new routes to vital emerging markets.

3.20 This was demonstrated by the forecasts produced by the Airports Commission, and continues to be found in the department's 2017 forecasts.[68] Compared to no expansion, the Government estimate that a Northwest Runway at Heathrow Airport by 2040 would result in 113,000 additional flights a year across the UK as a whole (including 43,000 long haul), and 28 million additional passengers a year. By way of comparison, the Heathrow Extended Northern Runway would add 85,000 more flights and 22 million additional passengers.[69] [70]

3.21 Compared to no expansion, the Second Runway scheme at Gatwick would add 15,000 flights and 10 million passengers by 2040, across the UK as a whole, increasing to 77,000 and 23 million respectively in 2050. The Government project that 8,000 of these additional flights would be long haul in 2040, rising to 17,000 in 2050.[71] Gatwick Airport has recently been successful in securing a number of long haul routes to the USA and Canada from low cost carriers, a new market segment.

3.22 As set out above, the ease with which businesses can move staff around the globe is an important facilitator of trade and for businesses locating and remaining in the UK. The broader range and greater frequency of long haul flights at Heathrow Airport best meets this need. It would deliver benefits for UK passengers (both business and leisure) by allowing them to travel to more destinations flexibly. These benefits include the additional frequency of flights, for example connecting the UK to long haul destinations daily instead of weekly, or several times a day instead of daily. Businesses from across the UK currently take advantage of Heathrow Airport's international connections, and will continue to benefit from these following expansion. In particular, the additional capacity delivered at Heathrow Airport will support growth

[67] CAA, 2016

[68] An important uncertainty to the central estimates concerns the forecasts of future aviation demand and allocation across UK airports. The Airports Commission reflected this uncertainty using five demand scenarios, as well as two carbon policy regimes. The Department for Transport has further considered uncertainty through the use of low, central and high demand scenarios. Further uncertainty arises from the choice of individual modelling assumptions. More information on the Airports Commission's scenarios and sensitivity analysis, can be found in the *Further Review and Sensitivities Report*. More information on the department's 2017 scenarios and sensitivity analysis can be found in the Updated Appraisal Report

[69] *Updated Appraisal Report,* p14 and 17.This number includes all point to point and transfer passengers at UK airports, and refers to terminal passengers who are counted each time they land or take off at a UK airport. Further disaggregation is provided in the Updated Appraisal Report

[70] Due to the expected use of larger planes with higher load factors, the department's 2017 forecasts find smaller increases in ATMs are needed to deliver similar increases in passenger numbers. This is particularly evident for Gatwick, where load factors have increased notably over the past few years. Further information is provided in the Updated Appraisal Report

[71] *Updated Appraisal Report,* p 14 and 17

in important sectors of the UK economy, including tourism, financial services, and the creative industries.

3.23 The aviation sector can also boost the wider economy by providing more opportunities for trade through air freight. The time-sensitive air freight industry, and those industries that use air freight, benefit from greater quantity and frequency of services, especially long haul. By providing more space for cargo, lowering costs, and by the greater frequency of services, this should in turn provide a boost to trade and GDP benefits.[72]

3.24 As set out above, expansion at Heathrow Airport delivers the biggest boost in long haul flights, and the greatest benefit therefore to air freight. This is further facilitated by the existing and proposed airport development of freight facilities as part of the Northwest Runway scheme. Heathrow Airport currently has a substantial freight handling operation, around 20 times larger by tonnage[73] than that at Gatwick Airport, and accounting for 34% of the UK's non-European Union trade by value – around 170 times more than Gatwick Airport.[74] Expansion at Heathrow Airport will further strengthen the connections of firms from across the UK to international markets.

Passenger and wider economic benefits

3.25 Without expansion, passengers and other users of airports are likely to suffer from higher fares and more delays. High demand for air travel at airports with limited or no scope for increased capacity could weaken competition, allowing airlines to charge higher fares. As airports fill up and operate at full capacity, there is little resilience to deal with any disruption, leading to delays.

3.26 Expansion via the Heathrow Northwest Runway scheme is best placed to address this need. Heathrow Airport is currently the busiest two runway airport in the world, already operating at full capacity, with substantial pent up demand from passengers and airlines. Expansion at Heathrow Airport would increase the availability of services, and increase competition between airlines. This would lower fares that passengers can expect to face relative to no expansion, leading to significant benefits to business and leisure passengers and the wider economy. Crucially, the extent of the pent up demand at Heathrow Airport means that these benefits will be experienced more rapidly once the new capacity is operational, with both Heathrow schemes providing more passenger benefits by 2050 than the Gatwick Second Runway scheme, and with total benefits (not including wider trade benefits) of up to £74 billion over 60 years for the Northwest Runway scheme.[75] [76] These benefits are expected to be realised by passengers across the UK as they make use of the additional services provided by the expanded airport. Cumulative benefits delivered by a Northwest Runway scheme remain highest throughout most of the appraisal period, until the mid-2070s, although total benefits are slightly lower than would be delivered by Gatwick expansion over the full 60 year assessment.[77]

3.27 The Government also recognises the role airports can play in supporting wider economic growth in the local community. Expansion at Heathrow Airport is expected to result in larger benefits to the wider economy than expansion at Gatwick Airport. These additional benefits come from workers moving to more productive jobs around the expanded airport as well as the productivity benefits from firms who will enjoy lower aviation transport costs. Heathrow Airport already has a more developed cluster

[72] *Updated Appraisal Report*, p16
[73] https://www.caa.co.uk/Data-and-analysis/UK-aviation-market/Airports/Datasets/UK-airport-data/Airport-data-2016/
[74] HMRC, 2016, https://www.uktradeinfo.com/Statistics/BuildYourOwnTables/Pages/Home.aspx
[75] For clarity of presentation, only the central demand scenario estimate is presented here. This value is the same for the department's carbon-traded and carbon-capped scenarios – see the Updated Appraisal Report for further details
[76] This includes passenger benefits to UK residents, non-UK residents and international-to-international interliners
[77] *Updated Appraisal Report*, p45

of businesses in its surrounding area, which should enable an even larger economic boost from expansion in the local economy.[78]

3.28 Expansion via the Heathrow Northwest Runway scheme should deliver additional jobs at the airport, through its supply chain and in the local community. The Heathrow Northwest Runway scheme is expected to generate up to 114,000 additional jobs in the local area by 2030,[79] with Heathrow Airport also pledging to provide 5,000 additional apprenticeships by this time. The number of local jobs created at an expanded Heathrow Airport is predicted to be much greater than at Gatwick Airport (up to 21,000 by 2030 and 60,000 by 2050),[80] and the jobs would also be created more quickly. The numbers are higher at Heathrow Airport because the additional capacity is forecast to be used more quickly following expansion and, importantly, because the types of services offered at an expanded Heathrow Airport are likely to be more complex, particularly with the greater number of full service airlines operating there.

3.29 Expansion brings a wide set of non-monetised benefits such as local job creation, trade, and freight benefits, which indicate a stronger case for a Heathrow scheme than for the Gatwick Second Runway scheme.[81]

Domestic connectivity

3.30 The Government recognises the importance that the nations and regions of the UK attach to domestic connectivity, particularly connections into Heathrow Airport. Airports across the UK provide a vital contribution to the economic wellbeing of the whole of the UK. Without expansion, there is a risk that, as airlines react to limited capacity, they could prioritise routes away from domestic connections. The Government therefore sees expansion at Heathrow Airport as an opportunity to not only protect and strengthen the frequency of existing domestic routes, but to secure new domestic routes to the benefit of passengers and businesses across the UK.

3.31 Passengers from across the UK are likely to benefit from the improved international connectivity provided by expansion. In 2040, 5.9 million additional passengers from outside of London and the South East are forecast to make one way international journeys[82] from Heathrow Airport. Under a Gatwick Second Runway scheme, 3.8 million additional passengers from outside London and the South East would be forecast to make one way international journeys from Gatwick Airport in 2040. By way of comparison, under a Heathrow Extended Northern Runway scheme, 4.6 million additional passengers from outside London and the South East would be forecast to make one way international journeys from Heathrow Airport in 2040. While expansion will also see some displacement of passengers from regional airports to the London system, overall regional airports are expected to continue displaying strong growth in passenger numbers by 2050.[83]

3.32 An expanded Heathrow Airport should therefore mean that more passengers from across the UK are likely to benefit from lower fares and access to important international markets from the airport.

3.33 The Government expects to see expansion at Heathrow Airport driving an increase in the number of UK airports with connections specifically into the airport. Heathrow

[78] *Updated Appraisal Report*, p27
[79] *Updated Appraisal Report*, p29
[80] *Ibid*.
[81] *Updated Appraisal Report*, p42
[82] Defined as any passenger who travels to (or from) an international destination from a region outside of London and the South East, and uses the expanded airport as part of this journey. A one-way journey is counted as either an outbound or an inbound journey. Return passengers are therefore counted twice.
[83] *Updated Appraisal Report*, p20

Airport and Gatwick Airport set out plans on domestic connectivity which they say they could deliver by 2030:

- at least 14 domestic routes for Heathrow Airport, compared to the eight routes currently in operation; and
- at least 12 domestic routes for Gatwick Airport, compared to the six currently offered.[84]

The following table provides examples of potential domestic routes:[85]

Heathrow Airport under expansion in 2030[86]	Gatwick Airport under expansion in 2030
8 domestic routes operating today (Aberdeen, Belfast City, Edinburgh, Glasgow, Inverness, Leeds Bradford, Manchester, Newcastle) **plus** Belfast International, Durham Tees Valley, Humberside, Liverpool, Newquay, Prestwick **Total: 14**	**6 domestic routes operating today** (Aberdeen, Belfast International, Edinburgh, Glasgow, Inverness, Newquay) **plus** Belfast City, Derry-Londonderry, Dundee, Leeds Bradford, Manchester, Newcastle **Total: 12**

Government expectation on domestic connectivity

3.34 The Government recognises that air routes are in the first instance a commercial decision for airlines and are not in the gift of an airport operator. But the Government is determined that new routes will be secured, and will hold Heathrow Airport to account on this. The Government requires Heathrow Airport to demonstrate it has worked constructively with its airline customers to protect and strengthen existing domestic routes, and to develop new domestic connections, including to regions currently unserved.

Surface access links

3.35 To realise the benefits of expansion, passengers and users must have good access to the airport. On this basis Heathrow Airport has the advantage, because of its more accessible location and more varied surface access links.

3.36 Heathrow Airport already has good surface transport links to the rest of the UK. It enjoys road links via the M25, M4, M40 and M3, and rail links via the London Underground Piccadilly Line, Heathrow Connect, and Heathrow Express. In the future, it will connect to Crossrail, and link to HS2 at Old Oak Common. Plans are being developed for improved rail access: the proposed Western Rail Access could link the airport to the Great Western Main Line, and Southern Rail Access could join routes to the South Western Railway network and London Waterloo Station. This varied choice of road and rail connections makes Heathrow Airport accessible to both passengers

[84] The DfT 2017 aviation forecasts do not take account of the ability of airport levers to strengthen specific routes. Domestic routes proposed by promoters are therefore not included in the updated forecasts
[85] Table excludes UK Crown Dependencies
[86] Taken from promoter plans for domestic connections at Heathrow Airport and Gatwick Airport, compared to existing domestic connections at both airports. The Government would expect Heathrow Airport's plan to be broadly equivalent for the Extended Northern Runway proposal if it was taken forward

and freight operators in much of the UK, and provides significant resilience to any disruption.

3.37 Access to Gatwick relies on the M23 and the Brighton Main Line, which means it serves London well but makes it less convenient for onward travel to the rest of the UK. It is also less resilient than Heathrow Airport. Heathrow Airport has advantages over Gatwick Airport with its greater integration into the national transport network, benefitting both passengers and freight operators. It also currently has significantly larger freight operations than Gatwick Airport, around 20 times larger in terms of total tonnage[87] and around 170 times larger in terms of value.[88]

3.38 The airport scheme promoters have pledged to meet the cost of surface access schemes required to enable a runway to open. For Gatwick Airport, this covers the full cost of the works (including the M23 and A23) needed to support expansion. The two Heathrow schemes would pay for the full cost of M25, A4 and A3044 works, as well as other local road works. They would make a contribution towards the cost of the proposed Western Rail Access and Southern Rail Access schemes. Improvements which are already underway, such as Thameslink and Crossrail, will be completed, and the Government has not assumed any change to these schemes' existing funding.

3.39 The majority of the surface access costs where a split of beneficiaries is expected (for example, where multiple businesses and the public at large benefit from a new road junction or rail scheme) are likely to be borne by Government, where the schemes provide greater benefits for non-airport users. The airport contribution would be subject to a negotiation, and review by regulators.

3.40 Because of the early stages of development, there is some variability of surface access costs, which are subject to more detailed development and, for example, choices over precise routes. The additional public expenditure effects of the options would likely be as follows:

- For both Heathrow proposals, there is no Government road spend directly linked to expansion; the promoter would pay for changes to the M25, A4 and A3044 and any local roads. The Western and Southern Rail schemes are at different levels of development and the cost estimates will change as these schemes are developed. The Government would expect the costs of the schemes to be partly offset by airport contributions, which would be negotiated when the schemes reach an appropriate level of development.
- For the Gatwick proposal, there would be no additional public expenditure solely because of expansion, as all road enhancement costs for airport expansion would be met by the scheme promoter. The Government has assumed that any improvements to the Brighton Main Line that may be required would take place regardless of expansion and would be publicly funded.

Views and support of airlines, regional airports and the business community

3.41 The benefits of expansion will be delivered only if airlines and the industry choose to use the new capacity, and pay for it via airport charges. There is much greater airline support for expansion via the Heathrow Northwest Runway scheme than the other two schemes, subject to various concerns being met, for example on costs.

3.42 The majority of regional airports who have stated a public preference support expanding Heathrow Airport, on the basis of its current status as the UK's hub (though

[87] https://www.caa.co.uk/Data-and-analysis/UK-aviation-market/Airports/Datasets/UK-airport-data/Airport-data-2016/
[88] https://www.uktradeinfo.com/Statistics/BuildYourOwnTables/Pages/Home.aspx

Birmingham Airport has supported expansion at Gatwick Airport). This support is driven by airports' considerations on connectivity and other commercial issues.

3.43 Expansion is critical for business confidence in the UK. The Heathrow Northwest Runway scheme has strong support from the wider business community across the whole of the UK, including from the Confederation of British Industry,[89] the British Chambers of Commerce,[90] the Federation of Small Businesses,[91] the manufacturers' organisation EEF,[92] and regional business groups across the UK. 61% of the directors asked by the Institute of Directors stated that their preference was for expansion at Heathrow Airport, compared to 39% who favoured expansion at Gatwick Airport.[93]

Financeability

3.44 While the Gatwick Second Runway scheme would be significantly cheaper than the two schemes at Heathrow, with the Heathrow Northwest Runway the most expensive of the three shortlisted schemes, all three are private sector schemes which the Government believes could be financeable without Government support.[94]

3.45 The level of debt and equity required for the Gatwick Second Runway scheme would be significantly lower than for the Heathrow schemes, but the Airports Commission noted that the Gatwick Second Runway scheme would have comparatively higher demand risk, which is harder for Government to mitigate compared to the Heathrow schemes.[95] Both Heathrow schemes build on a strong track record of proven demand that has proven resistant to economic downturns. Independent financial advisers have undertaken further work for the Government, and agree that all three schemes are financeable without Government support.

Deliverability and safety

3.46 The three shortlisted schemes involve different levels of delivery risk. Gatwick Airport said its Second Runway scheme is capable of being delivered by 2025, while Heathrow Airport said its Northwest Runway scheme is capable of being delivered by 2026. The Gatwick Second Runway scheme would be much simpler to build. The process for delivering powers for the Heathrow schemes will be more complex because the schemes themselves are more complex. The delivery dates for both Heathrow schemes are therefore likely to be more risky than that for the scheme at Gatwick.

3.47 The Airports Commission worked with the Civil Aviation Authority and NATS Holdings to review the operational and airspace implications of all three shortlisted schemes, including conducting fast-time simulation modelling of the proposed airspace routes. This work concluded that, while safely managing the expected increase in air traffic for any scheme will be challenging, it should nevertheless be achievable given modernisation of airspace in the South East of England and taking advantage of new technologies – changes which will be necessary with or without expansion.

3.48 The Airports Commission also asked the Health and Safety Laboratory (HSL) to review the scale of increase in crash risk associated with each of the schemes. This review considered two risks: the background risk, which accounts for aircraft cruising in UK airspace, and an airfield crash rate, relating to aircraft taking off and landing at a

[89] http://mediacentre.heathrow.com/pressrelease/details/81/Expansion-News-23/4789
[90] http://www.britishchambers.org.uk/press-office/press-releases/bcc-while-britain-dithers-on-aviation,-others-do.html
[91] https://www.fsb.org.uk/media-centre/press-releases/heathrow-s-third-runway-sends-clear-signal-britain-is-open-for-business
[92] https://www.eef.org.uk/about-eef/media-news-and-insights/media-releases/2016/oct/eef-comment-on-heathrow-expansion
[93] https://www.iod.com/news-campaigns/news/articles/Business-leaders-welcome-Airports-Commission-recommendations
[94] The Airports Commission estimated capital costs at £9 billion for the Gatwick Second Runway scheme, £14.4 billion for the Heathrow Extended Northern Runway Scheme, and £17.6 billion for the Heathrow Northwest Runway scheme, not including surface access costs
[95] *Airports Commission: Final Report*, p270

specific airfield.[96] This review concluded that "the changes to the background crash risk are minimal regardless of whether or not expansion takes place at the airports."[97] In addition the increase in airfield crash risks for both airports was proportionate to the additional number of flights anticipated, meaning that the "scenario for Heathrow with the highest crash rates represents an increase of 60% in the crash rate compared to 2013. At Gatwick Airport, the crash rate is more than doubled in the scenario with the highest rates."[98] As noted by HSL, "there is a high level of uncertainty in the calculated crash rates" due to the limited number of previous incidents to assess. Of the over 36 million aircraft movements examined by HSL that are of relevance to either Heathrow or Gatwick's airfield crash risk, only three resulted in accidents.[99] The Civil Aviation Authority conducted a preliminary safety assessment of the schemes and concluded that the schemes were feasible in principle from a safety perspective.[100]

Local environmental, health and community impacts

3.49 Decisions on airport capacity must rightly balance local, environmental and social considerations against the national and local benefits stemming from expansion. As set out above, in terms of economic and strategic benefits, expansion via the Heathrow Northwest Runway scheme best meets the need for additional capacity in the South East of England. However, set against these positive impacts, airport expansion can also have negative impacts. For example, all three schemes will have significant impacts on the environment and local communities.

3.50 The Appraisal of Sustainability presents an assessment of the likely environmental, social and economic impacts of all three schemes. The Health Impact Analysis also presents an assessment of the health impacts. The following discussion of assessments of the three schemes considers the impacts of expansion without the benefits of the mitigation package put forward by scheme promoters or required by the Government under this NPS. The *Updated Appraisal Report* monetises, where possible, the air quality, noise and carbon impacts affecting people from each of the three schemes. These monetised values are small relative to the size of the monetised economic benefits of each scheme over the 60-year appraisal period. The Appraisal of Sustainability shows that, while all three schemes are expected to lead to a reduction in air quality and increased noise (without consideration of potential mitigations of the three schemes), the Gatwick Second Runway scheme would have a lower level of adverse effects relating to noise and air quality than either scheme at Heathrow. All three schemes will have an impact on the natural environment, including biodiversity, water and landscape. Negative effects upon quality of life, health and amenity were assessed, when unmitigated, to be of a greater magnitude for the two Heathrow expansion schemes and of a lower magnitude for the Gatwick Second Runway scheme. This is primarily because Gatwick Airport is in a more rural location, with fewer people impacted by the airport. The Appraisal of Sustainability also outlines measures to mitigate these local impacts to ensure that legal obligations will be met.

[96] *Operational Efficiency: Ground Risk Analysis*, Health and Safety Laboratory, p3 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/437269/operational-efficiency-ground-risk-analysis.pdf
[97] *Operational Efficiency: Ground Risk Analysis*, Health and Safety Laboratory, pvi https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/437269/operational-efficiency-ground-risk-analysis.pdf
[98] *Operational Efficiency: Ground Risk Analysis*, Health and Safety Laboratory, p15 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/437269/operational-efficiency-ground-risk-analysis.pdf
[99] *Operational Efficiency: Ground Risk Analysis,* Health and Safety Laboratory, p9 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/437269/operational-efficiency-ground-risk-analysis.pdf
[100] *Airports Commission: Final report*, p243

As set out below, the Government believes this demonstrates how the commitment to ensure that local impacts of expansion will be mitigated satisfactorily can be met.

3.51 Heathrow Airport has committed to ensuring its landside airport-related traffic is no greater than today. The airport will be expected to achieve a public transport mode share of at least 50% by 2030, and at least 55% by 2040, for passengers.

3.52 The Government agrees with the evidence set out by the Airports Commission that expansion at Heathrow Airport is consistent with the UK's climate change obligations.[101]

3.53 The Appraisal of Sustainability identifies that, in addition to changes due to local noise and air quality impacts, communities may be affected by airport expansion through loss of, and/or additional demand for housing, community facilities or services, including recreational facilities. In addition, there will be effects on parks, open spaces and the historic environment, which will affect the quality of life of local communities which benefit from access to these facilities and features. These effects will be of a higher magnitude for the two Heathrow expansion schemes and a lower magnitude for Gatwick Second Runway. Overall, each of the three schemes is expected to have negative impacts on local communities, with more severe impacts expected from the Heathrow schemes. Impacts of all three schemes will not be felt equally across social groups. Equality impacts are set out in chapter four.

3.54 The Heathrow Northwest Runway scheme will be accompanied by a package of measures to mitigate the impact of airport expansion on the environment and affected communities.[102] The Government agrees with the Airports Commission's conclusion that "to make expansion possible…a comprehensive package of accompanying measures [should be recommended to] make the airport's expansion more acceptable to its local community, and to Londoners generally".[103] This is expected to include a highly valued scheduled night flight ban of six and a half hours between 11pm and 7am (with the exact start and finish times to be determined following consultation), and the offer of a predictable, though reduced, period of respite for local communities.

3.55 To mitigate environmental and social impacts, Heathrow Airport and Gatwick Airport both announced compensation packages (covering residential property acquisition, noise insulation, and other community measures like funding for schools), of more than £1 billion at Heathrow Airport and more than £200 million at Gatwick Airport (over 15-20 years from 2020). Heathrow Airport's package reflects the much greater number of people affected in the local area.

Heathrow Northwest Runway and Heathrow Extended Northern Runway

3.56 The Heathrow Extended Northern runway scheme has two advantages over the Heathrow Northwest Runway scheme: lower capital costs (£14.4 billion for the Extended Northern Runway scheme compared to £17.6 billion for the Northwest Runway scheme), and significantly fewer houses being demolished (242 rather than 783), as well as avoiding impacts on a number of commercial properties.

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[101] https://www.gov.uk/government/publications/airport-expansion-dft-review-of-the-airports-commissions-final-report *Review of the Airports Commission Final Report*, p19

[102] By way of comparison, the Government engaged Ernst & Young to prepare a report on the approaches taken by other international airports in addressing the local impacts of the airport - https://www.gov.uk/government/publications/airport-expansion-global-comparison-of-airport-mitigation-measures

[103] *Airports Commission: Final Report*, p4

3.57 However, the Government made a preference for the Heathrow Northwest Runway based on a number of factors:

- Resilience;
- Respite from noise for local communities; and
- Deliverability.

3.58 The Heathrow Northwest Runway scheme would provide respite by altering the pattern of arrivals and departures across the runways over the course of the day to give communities breaks from noise. However, respite would decrease from one half to one third of the day. The Heathrow Extended Northern Runway scheme has much less potential for respite. It would use both runways for arrivals and departures for most of the day, although it may be able to 'switch off' one runway for a short time during non-peak periods with a corresponding reduction in capacity.[104]

3.59 The Heathrow Northwest Runway scheme should provide greater resilience than the Heathrow Extended Northern Runway scheme because of the way the three separate runways could operate more flexibly when needed to reduce delays, and the less congested airfield. It delivers greater capacity (estimated on a like for like basis by the Airports Commission at 740,000 flights departing and arriving per annum compared to the Extended Northern Runway scheme at 700,000),[105] accordingly higher economic benefits, and a broader route network. It also provides greater space for commercial development, which could be used to enhance onsite freight capacity.

3.60 The Airports Commission assessed the Heathrow Extended Northern Runway scheme to be deliverable.[106] However, the Extended Northern Runway scheme has no direct global precedent. As such, there is greater uncertainty as to what measures may be required to ensure that the airport can operate safely, and what the impact of those measures may be, including the restriction on runway capacity.

Carbon emissions

3.61 Although not a differentiating factor between the three shortlisted schemes, the Government has considered the issue of carbon emissions, given the Government's commitment to tackle climate change, and its legal obligations under the Climate Change Act 2008.

3.62 The Airports Commission identified carbon impacts from expansion in four areas: a net increase in air travel; airside ground movements and airport operations; changes in travel patterns as a result of the scheme's surface access arrangements; and construction of new infrastructure. Emissions from air travel, specifically international flights, are by far the largest of these impacts.[107]

3.63 To address uncertainties over the future policy treatment of international aviation emissions,[108] the Airports Commission used two carbon policy scenarios in its analysis.

3.64 The first was a 'carbon capped' scenario, in which emissions from the UK aviation sector are limited to the Committee on Climate Change's planning assumption for the

[104] *Airports Commission: Final Report*, pp180-184
[105] *Airports Commission: Final Report*, p29
[106] *Airports Commission: Final Report*, p236
[107] Intra-UK flights account for approximately 6% of the total emissions from all flights departing UK airports. These emissions are included in the UK's carbon budgets
[108] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/186683/aviation-and-climate-change-paper.pdf *Airports Commission: discussion paper 03: aviation and climate change*, pp12-16

sector of 37.5 million tonnes of carbon dioxide in 2050. The second was a 'carbon traded' scenario, in which emissions are traded as part of a global carbon market, allowing reductions to be made where they are most efficient across the global economy.

3.65 The Airports Commission then assessed whether the needs case could be met under each of these scenarios, that is whether expansion would still deliver the necessary improvements and provide benefits to passengers and the wider economy. The Government has updated this analysis to take account of the latest passenger demand forecasts.

3.66 This further analysis reinforces the conclusion that any one of the three shortlisted schemes could be delivered within the UK's climate change obligations, as well as showing that a mix of policy measures and technologies could be employed to meet the Committee of Climate Change's planning assumption.[109]

3.67 Of the three shortlisted schemes, the Heathrow Northwest Runway scheme produces the highest carbon emissions in absolute terms. However, this is in part due to the greater additional connectivity provided by the scheme, and, in relation to the increase in emissions caused by expansion under any of the schemes, the differences between the schemes are small. Both of the carbon policy scenarios incorporated measures to ensure that the increased emissions from any of the shortlisted schemes were not additional overall either at the global level (in the carbon traded case) or at the UK level (in the carbon capped case).

3.68 The further analysis also shows that, in both carbon policy scenarios, the Heathrow Northwest Runway scheme would deliver significant benefits to passengers and the wider economy (such as lower fares, improved frequency and higher productivity), and would do so more quickly than the Gatwick Second Runway scheme. Both Heathrow schemes provide more passenger benefits by 2050 than the Gatwick Second Runway scheme.

3.69 The Government has considered this further analysis, and concludes both that expansion via a Northwest Runway at Heathrow Airport (as its preferred scheme) can be delivered within the UK's carbon obligations, and that the scheme is the right choice on economic and strategic grounds regardless of the future regime to deal with emissions from international aviation.[110]

Strategic environmental assessment

3.70 Strategic environmental assessments are required by the law. A strategic environmental assessment is set out in full in the Appraisal of Sustainability.[111] It demonstrates that airport expansion will attract additional air traffic, which impacts upon quality of life and wellbeing, in particular through noise, air quality, housing, community facilities, and access to nature and cultural heritage. Negative impacts upon quality of life were of a greater scale within the two Heathrow schemes and of lower magnitude for the Gatwick Second Runway scheme. However, when assessing against the objective of maximising economic benefits and improving competitiveness and employment, the Heathrow Northwest Runway scheme generates the most benefits, as well as producing the highest direct benefits to passengers.

[109] *Updated Appraisal Report,* p36
[110] *Updated Appraisal Report*, p35 and p42
[111] https://www.gov.uk/government/publications/appraisal-of-sustainability-for-the-revised-draft-airports-national-policy-statement

Conclusion

3.71 This section summarises the factors the Government considered when evaluating each of the three schemes shortlisted by the Airports Commission against the needs case presented in chapter 2. As part of this, the Government identified where schemes could have negative impacts, for example on the local environment. It considered the predicted beneficial effects of the three schemes, particularly in relation to the needs case and economic considerations. It also assessed how the schemes could conform to wider Government strategic objectives and meet legal obligations, for example on air quality. Bringing these considerations together, the Government's decision on a preferred scheme balances this range of factors, enabling it to determine which scheme, overall, is the most effective and appropriate means of meeting the needs case and maintaining the UK's hub status in particular.

3.72 The Appraisal of Sustainability provides an assessment of the schemes against a number of the factors considered in this chapter. It concludes that the Heathrow Northwest Runway scheme is best placed to maximise the monetised economic benefits that the provision of additional airport capacity could deliver in the short term, although this scheme is likely to do so with the greatest negative impact on local communities. However, the Appraisal of Sustainability also identifies measures which can help to mitigate these impacts, for example by reducing noise, ensuring that the development is in accordance with legal obligations on air quality, showing how future carbon targets could be met, and assessing future demand scenarios.

3.73 Building on this assessment, the Government has identified a number of attributes in the manner of strategic effects, which it believes only the preferred scheme is likely to deliver to meet the overall needs case for increased capacity in the South East of England and to maintain the UK's hub status. The Government has afforded particular weight to these:

- Expansion via the Heathrow Northwest Runway scheme would provide the biggest boost to connectivity, particularly in terms of long haul flights. This is important to a range of high value sectors across the economy in the UK which depend on air travel, as well as for air freight. It will enable more passengers to fly where they need to, when they need to.
- Expansion via the Heathrow Northwest Runway scheme would provide benefits to passengers and to the wider economy sooner than the other schemes. This is regardless of the technical challenges to its delivery. It would also provide the greatest boost to local jobs.
- Heathrow Airport is better connected to the rest of the UK by road and rail. Heathrow Airport already has good road links via the M25, M4, M40 and M3, and rail links via the London Underground Piccadilly Line, Heathrow Connect and Heathrow Express. In the future, it will be connected to Crossrail, and linked to HS2 at Old Oak Common. The number of such links provides resilience.
- The Heathrow Northwest Runway scheme delivers the greatest support for freight. The plans for the scheme include a doubling of freight capacity at the airport. Heathrow Airport already handles more freight by value than all other UK airports combined, and twice as much as the UK's two largest container ports.

3.74 The needs case has shown the importance of developing more capacity more quickly, and in a form which passengers and businesses want to use. The Heathrow Northwest Runway scheme is best placed to deliver this capacity, delivering the greatest benefits soonest as well as providing the biggest boost to the UK's international connectivity,

doing so in the 2020s at a point when without the scheme 4 out of 5 London airports would be full, with all the problems to passengers this could entail. Taken together, benefits to passengers and the wider economy are substantial, even having regard to the proportionally greater environmental disbenefits estimated for the Heathrow Northwest Runway. Even though the preferred scheme's environmental disbenefits are larger than those of the Gatwick Second Runway scheme, when all benefits and disbenefits are considered together,[112] overall the Heathrow Northwest Runway scheme is considered to deliver the greatest net benefits to the UK.

3.75 A number of mitigation measures will need to be applied to reduce the impacts of the Heathrow Northwest Runway scheme felt by the local community and the environment. Airport expansion is also expected to be accompanied by an extensive and appropriate compensation package for affected parties. With these safeguards in place, the Government considers that the Heathrow Northwest Runway scheme delivers the greatest strategic and economic benefits, and is therefore the most effective and appropriate way of meeting the needs case.

[112] *Updated Appraisal Report*, p44

4. Assessment principles

General principles of assessment

4.1 The statutory framework for deciding applications for development consent is contained in the Planning Act 2008. This chapter of the Airports NPS sets out general policies in accordance with which applications relating to a Northwest Runway at Heathrow Airport are to be decided. This chapter is specific to assessments necessary for the Heathrow Northwest Runway scheme, but is not exhaustive as to the assessments that may be applicable to that scheme.

4.2 The Airports NPS covering the Heathrow Northwest Runway scheme establishes the needs case for that proposed development, provided it adheres to the detailed policies and protections set out in the Airports NPS, and the legal constraints contained within the Planning Act 2008. The statutory framework for deciding nationally significant infrastructure project applications where there is a relevant designated NPS is set out in section 104 of the Planning Act 2008.[113]

4.3 The Airports NPS applies to schemes at Heathrow Airport (in the area shown, for this purpose, illustratively, within the scheme boundary map at Annex A) that include a runway of at least 3,500m in length and that are capable of delivering additional capacity of at least 260,000 air transport movements per annum, and associated infrastructure and surface access facilities. In particular, it also applies to the reconfiguration of and provision of new terminal capacity to be located between the two existing runways at Heathrow Airport. The Secretary of State's policy in relation to other airport infrastructure in the South East of England is set out at paragraph 1.41 above.

4.4 In considering any proposed development, and in particular when weighing its adverse impacts against its benefits, the Examining Authority and the Secretary of State will take into account:

- Its potential benefits, including the facilitation of economic development (including job creation) and environmental improvement, and any long term or wider benefits; and
- Its potential adverse impacts (including any longer term and cumulative adverse impacts) as well as any measures to avoid, reduce or compensate for any adverse impacts.

4.5 In this context, environmental, safety, social and economic benefits and adverse impacts should be considered at national, regional and local levels. These may be identified in the Airports NPS, or elsewhere. The Secretary of State will also have regard to the manner in which such benefits are secured, and the level of confidence in their delivery.

[113] Planning Act 2008, section 104 – decisions in cases where an NPS has effect

4.6 The National Networks NPS sets out the Government's policies to deliver development of nationally significant infrastructure projects on the national road and rail networks and strategic rail freight interchanges. It provides planning guidance for promoters of nationally significant infrastructure projects on the road and rail networks, and the basis for the examination by the Examining Authority and decisions by the Secretary of State.

4.7 Where the applicant's proposals in relation to surface access meet the thresholds to qualify as nationally significant infrastructure projects under the Planning Act 2008, or is associated development under section 115 of the Planning Act 2008, the Secretary of State will consider those aspects by reference to both the National Networks NPS and the Airports NPS, as appropriate. To the extent that discrete aspects of the surface access proposals do not qualify as nationally significant and cannot be included in a development consent application as associated development (for example), the applicant will be expected to pursue or secure necessary consent(s) through the most appropriate alternative consenting regime. This might include, for example, the Town and Country Planning Act 1990, the Highways Act 1980, or the Transport and Works Act 1992, promoted by a third party if need be.

4.8 The Secretary of State will consider any relevant nationally significant road and rail elements of the applicant's proposals in accordance with the National Networks NPS and with the Airports NPS. If there is conflict between the Airports NPS and other NPSs, the conflict should be resolved in favour of the NPS that has been most recently designated. The Airports NPS and the National Networks NPS may also be a material consideration in decision making on applications for road and rail schemes associated with or related to the preferred scheme that fall under the Town and Country Planning Act 1990, the Transport and Works Act 1992, or other legislation relating to planning. Whether, and to what extent, the Airports NPS and the National Networks NPS are a material consideration will be judged on a case by case basis by the relevant decision makers.

4.9 The Examining Authority should only recommend, and the Secretary of State will only impose, requirements in relation to a development consent, that are necessary, relevant to planning, relevant to the development to be consented, enforceable, precise, and reasonable in all other respects.[114] The need for requirements in respect of the phasing of the scheme is likely to be an important consideration, so that effects of construction and operational phases are properly mitigated, as well as any changes in the operations of the airport that may occur in line with the phasing of physical works and commencement of operations. Guidance on the use of planning conditions or any successor to it should be taken into account where requirements are proposed.

4.10 Obligations under section 106 of the Town and Country Planning Act 1990 should only be sought where they are necessary to make the development acceptable in planning terms, (including where necessary to ensure compliance with the Airports NPS), directly related to the proposed development, and fairly and reasonably related in scale and kind to the development.[115]

Scheme variation

4.11 While the Government has decided that a Northwest Runway at Heathrow Airport is its preferred scheme to deliver additional airport capacity (an illustrative masterplan is at

[114] National Planning Policy Framework, March 2012, paragraph 206, or any successor document
[115] Town and Country Planning Act 1990, section 106; Regulation 122(2) Community Infrastructure Levy Regulations 2010; National Planning Policy Framework, March 2012, paragraph 204

Annex B of the Airports NPS), this does not limit variations resulting in the final scheme for which development consent is sought. To benefit from the full support of policy within the Airports NPS, any application(s) will have to fall within the boundaries and parameters set out in the Airports NPS. However, the form of a development for which an application is made is a matter for the applicant. The Airports NPS does not prejudice the viability or merits of any particular application, detailed scheme or applicant. It governs the location, limits and nature of such schemes. It will be for an Examining Authority, and ultimately the Secretary of State, to determine whether any future application is compliant with the Airports NPS, meets the need for additional capacity, and is of benefit to the UK, whilst minimising any harm caused.

Environmental Impact Assessment

4.12 All proposals for projects that are subject to the European Union's Environmental Impact Assessment Directive,[116] and are likely to have significant effects on the environment, must be accompanied by an environmental statement, describing the aspects of the environment likely to be significantly affected by the project.[117] The Directive specifically requires an Environmental Impact Assessment to identify, describe and assess effects on human beings, fauna and flora, soil, water, air, climate, the landscape, material assets and cultural heritage, and the interaction between them. Schedule 4 to the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017[118] sets out the information that should be included in the environmental statement. This includes a description of the likely significant effects of the proposed project on the environment, covering the direct effects and any indirect, secondary, cumulative, short-, medium- and long-term, permanent and temporary, positive and negative effects of the project, and also the measures envisaged for avoiding or mitigating significant adverse effects.

4.13 When examining a proposal to which the Airports NPS applies, the Examining Authority should ensure that likely significant effects at all stages of the project have been adequately assessed. The effects of any changes in operations, including the number of air traffic movements, during the construction and operational phases must be properly assessed and appropriate mitigation secured for any significant effects. Any requests for environmental information not included in the original environmental statement should be proportionate and focus only on likely significant effects. In the Airports NPS, the terms 'effects', 'impacts' or 'benefits' should accordingly be understood to mean likely significant effects, impacts or benefits.

4.14 When considering significant cumulative effects, any environmental statement should provide information on how the effects of an applicant's proposal would combine and interact with the effects of other development (including projects for which consent has been granted, as well as those already in existence if they are not part of the baseline).[119]

4.15 The Examining Authority should consider how significant cumulative effects, and the interrelationship between effects, might as a whole affect the environment, even

[116] Directive 2014/52/EU of the European Parliament and of the Council amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment. The amendments to Directive 2011/92/EU made by Directive 2014/52/EU have been transposed into domestic legislation. The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 have, subject to transitional arrangements, with amendments, consolidated the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 and various amending regulations

[117] http://www.legislation.gov.uk/uksi/2017/572/contents/made

[118] Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (S.I. 2017/572)

[119] The applicant should refer to the Planning Inspectorate's advice on assessing cumulative effects https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2015/12/Advice-note-17V4.pdf

though they may be acceptable when considered on an individual basis or with mitigation measures in place.

4.16 In some instances it may not be possible at the time of the application for development consent for all aspects of the proposal to have been settled in precise detail. Where this is the case, the applicant should explain in its application which elements of the proposal have yet to be finalised, and the reasons why this is the case.

4.17 Effort should be made to refine the detail of the proposed development. However, where details are still to be finalised, such as in respect of the phasing of the development and operational changes at the airport, the applicant is advised to set out in the environmental statement the relevant design parameters used for the assessment. The environmental statement should explain, with reference to the parameters, what the maximum extent of the proposed development may be (for example in terms of site area) or the extent of change in respect of operational impacts, and assess the potential adverse effects which the project could have, to ensure that the impacts of the project as it may be constructed have been properly assessed.

4.18 Should the Secretary of State decide to grant development consent for an application where details are still to be finalised, this will need to be reflected in appropriate development consent requirements in the development consent order. It may be the case that development consent is granted for a proposal and, at a later stage, the applicant wishes (for technical or commercial reasons) to construct it in such a way that it is outside the terms of what has been consented, for example because its extent will be greater than has been provided for in terms of the consent. In this situation, it will be necessary for the applicant to apply for a change to be made to the development consent provided under the Planning Act 2008.

Habitats Regulations Assessment

4.19 Prior to granting development consent, the Secretary of State as competent authority must comply with the duties under the Conservation of Habitats and Species Regulations 2017. Under these regulations, if the competent authority considers that the proposed development is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and is not connected with or necessary to the management of that site, it must make an Appropriate Assessment of the implications for the site in view of the site's conservation objectives.[120] [121] The applicant should also refer to the Airports NPS sections on biodiversity, land use, and air quality. The competent authority must consult Natural England to ensure that impacts on European sites are adequately considered.

4.20 The applicant is required to provide sufficient information with their applications for development consent to enable the Secretary of State to carry out an Appropriate Assessment if required. This information should include details of any measures that are proposed to minimise or avoid any likely significant effects on a European site. The information provided may also assist the Secretary of State in concluding that an Appropriate Assessment is not required because significant effects on European sites

[120] This includes candidate Special Areas of Conservation, Sites of Community Importance, Special Areas of Conservation and Special Protection Areas, and is defined in Regulation 8 of the Conservation of Habitats and Species Regulations 2017

[121] Directive 2011/92/EU was amended in 2014 by Directive 2014/52/EU. As amended, Article 2(3) of the Directive provides that, where an obligation to assess environmental effects arises simultaneously from the EIA Directive and the Habitats Directive (Directive 92/43/EU) and/or the Wild Birds Directive (Directive 2009/147/EC), Member States "shall, where appropriate, ensure that coordinated and/or joint procedures" are provided for

are sufficiently unlikely that they can be excluded. If it is concluded there is likely to be a significant effect, or such effects cannot be ruled out (alone or in combination), an Appropriate Assessment is required.

4.21 If an Appropriate Assessment for a proposed airport development concludes that it is not possible to rule out an adverse effect on the integrity of a European site, the Habitats Directive permits a derogation, subject to the proposal meeting three tests. These tests are (a) that there are no less damaging alternative solutions, (b) that there are imperative reasons of overriding public interest for the proposal going ahead, and (c) that adequate and timely compensation measures will be put in place to ensure the overall coherence of the network of protected sites is maintained. At detailed design stage, and in so far as it may be necessary, the matters set out in the Airports NPS will be relevant to determining whether there are alternative solutions and imperative reasons of overriding public interest, provided that the design remains consistent with the objectives of the Airports NPS.

4.22 Where a development may negatively affect any priority natural habitat type or priority species,[122] any imperative reasons of overriding public interest case would need to be established solely on one or more of the grounds relating to human health, public safety or beneficial consequences of primary importance to the environment. The competent authority may only rely on other (i.e. social or economic) imperative reasons of overriding public interest if it has first obtained an opinion from the European Commission.

Equalities

4.23 The Airports Commission's stated objective on equalities was "to reduce or avoid disproportionate impacts on any social group".[123] At consultation stage, the Airports Commission carried out a high level Equality Impact Assessment.

4.24 The Appraisal of Sustainability to the Airports NPS sets out an assessment of equalities impacts, informed by the work of the Airports Commission. The Airports Commission was clear that its assessment was based upon current scheme design, and that a more detailed Equality Impact Assessment would likely be necessary as design, supporting measures and operational plans were developed.

4.25 The Airports Commission's assessment identified different types of equalities impacts for each of its shortlisted schemes, but no substantial difference in the overall extent of equalities impacts. The Airports Commission's assessment, and the assessment carried out for the Appraisal of Sustainability that informs the Airports NPS, both concluded that negative equalities impacts could be well mitigated through good design and operation, and supporting measures and plans.

4.26 The Department for Transport has reviewed the Airports Commission's work, informed by the Equality Assessment carried out as part of the Appraisal of Sustainability. The Government is satisfied that the scope of the Airports Commission's work was appropriate at this stage of scheme development, that the Airports Commission's approach was consistent with the Equality Act 2010, and that its conclusion is consistent with the evidence produced.

4.27 For any application to be considered compliant with the Airports NPS, it must be accompanied by a project level Equality Impact Assessment examining the potential impact of that project on groups of people with protected characteristics. In order to

[122] As listed in Annex I and II of the Habitats Directive
[123] *Airports Commission: Appraisal Framework*, p98

benefit from the support of the Airports NPS, the results of that project level Equality Impact Assessment must be within the legal limits and parameters of acceptability outlined in the Appraisal of Sustainability that informs the Airports NPS.

Assessing alternatives

4.28 The applicant should comply with all legal obligations and policy set out in the Airports NPS on the assessment of alternatives. In particular:

- The Environmental Impact Assessment Directive requires projects with significant environmental effects to include a description of the reasonable alternatives studied by the applicant which are relevant to the proposed development and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the significant effects of the project on the environmental effects;
- There may also be other specific legal obligations requiring the consideration of alternatives, for example, under the Habitats and Water Framework Directives; and
- There may be policies in the Airports NPS requiring consideration of alternatives, for example the flood risk sequential test.

Criteria for 'good design' for airports infrastructure

4.29 The applicant should include design as an integral consideration from the outset of a proposal.

4.30 Visual appearance should be an important factor in considering the scheme design, as well as functionality, fitness for purpose, sustainability and cost. Applying 'good design' to airports projects should therefore produce sustainable infrastructure sensitive to place, efficient in the use of natural resources and energy used in their construction, and matched by an appearance that demonstrates good aesthetics as far as possible.

4.31 A good design should meet the principal objectives of the scheme by eliminating or substantially mitigating the adverse impacts of the development, for example by improving operational conditions. It should also mitigate any existing adverse impacts wherever possible, for example in relation to safety or the environment. A good design will also be one that sustains the improvements to operational efficiency for as many years as is practicable, taking into account capital cost, economics and environmental impacts.

4.32 Scheme design will be an important and relevant consideration in decision making. The Secretary of State will need to be satisfied that projects are sustainable and as aesthetically sensitive, durable, adaptable and resilient as they can reasonably be, having regard to regulatory and other constraints and including accounting for natural hazards such as flooding. The Secretary of State will also need to be satisfied that extant security, customs and immigration measures are maintained or reprovided.

4.33 The scheme should take into account, as far as possible, both functionality, including fitness for purpose and sustainability, and aesthetics, including the scheme's contribution to the quality of the area in which it would be located. The applicant will want to consider the role of technology in delivering new airports projects. Professional, independent advice on the design aspects of a proposal should be undertaken to ensure good design principles are embedded into infrastructure proposals.

4.34 There may be opportunities for the applicant to demonstrate good design in terms of siting and design measures relative to existing landscape and historical character and function, landscape permeability, landform, and vegetation.

4.35 The applicant should be able to demonstrate in its application how the design process was conducted and how the proposed design evolved. Where a number of different designs were considered, the applicant should set out the reasons why the favoured choice has been selected. The Examining Authority and Secretary of State will take into account the ultimate purpose of the infrastructure and bear in mind the operational, safety and security standards which the design has to satisfy.

Costs

4.36 The relationship between cost and affordability for a scheme is governed by the regulated funding of the airport and funding from other sources, and the need to comply with the Government's guidance on compulsory acquisition of land under the Planning Act 2008.[124] This guidance is relevant to any scheme that will require the compulsory acquisition of land, which is expected in relation to any scheme to which this NPS applies which would include any application for development consent for a Northwest Runway at Heathrow Airport. That guidance sets out what a promoter must demonstrate if it is to be granted powers of compulsory acquisition - including in relation to impediments to a scheme and financial resources.

4.37 Heathrow Airport is subject to economic regulation by the Civil Aviation Authority (CAA) under the Civil Aviation Act 2012. As part of the CAA's discharge of its duty under the Civil Aviation Act 2012 to further the interests of users of air transport services (passengers and cargo owners), the CAA has granted an economic licence to the operator of Heathrow Airport to levy airport charges. This licence sets a maximum yield per passenger that can be recovered by the operator of Heathrow Airport through airport charges (the "maximum yield"). This maximum yield is set by the CAA having conducted a process that scrutinises, among other things, the business plan submitted by the licence holder and developed through constructive engagement with the airlines, as well as other submissions from airlines and stakeholders. This process of scrutiny of costs will include benchmarking exercises from industry professionals and assessments by an Independent Fund Surveyor as well as by the CAA. Expansion will also be subject to specific gateway reviews by airlines and stakeholders. The final business plan will include details of the future capital expenditure that the licensee proposes to incur.

4.38 For the development of new capacity at Heathrow, the CAA will set the maximum yield having regard to the matters required by the Civil Aviation Act 2012. The CAA will consider, among other things:

- the need to secure that the licence holder is able to finance its provision of airport operation services; and
- the economy and efficiency of the proposals set out in any business plan (including such capital expenditure proposals as are contained in it),

as part of its process of setting the maximum yield per passenger in the period covered by the price control.

[124] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236454/Planning_Act_2008_-_Guidance_related_to_procedures_for_the_compulsory_acquisition_of_land.pdf

4.39 The applicant should demonstrate in its application for development consent that its scheme is cost-efficient and sustainable, and seeks to minimise costs to airlines, passengers and freight owners over its lifetime.

4.40 Detailed scrutiny of any business plan put forward by the licence holder will fall under the CAA's regulatory process under the Civil Aviation Act 2012, and the detailed matters considered under that process are not expected to be scrutinised in the same way during the examination and determination of an application for development consent. The CAA is a statutory consultee for all proposed applications relating to airports or which are likely to affect an airport or its current or future operation. The applicant is expected to provide the CAA with the information it needs to enable it to assist the Examining Authority in considering whether any impediments to the applicant's development proposals, insofar as they relate to the CAA's economic regulatory and other functions, are capable of being properly managed.

Climate change adaptation

4.41 The Planning Act 2008 requires the Secretary of State to have regard to the desirability of mitigating, and adapting to, climate change in designating an NPS.[125]

4.42 This section sets out how the Airports NPS puts Government policy on climate change adaptation into practice, and in particular how the applicant and the Secretary of State will take into account the effects of climate change when developing and considering airports infrastructure applications. Climate change mitigation is essential to minimise the most dangerous impacts of climate change, as previous global greenhouse gas emissions will already mean some degree of continued climate change for at least the next 30 years. Climate change is likely to mean that the UK will experience on average hotter, drier summers and warmer, wetter winters. There is potentially an increased risk of flooding, drought, heatwaves, intense rainfall events and other extreme events such as storms and wildfires, as well as rising sea levels.

4.43 Adaptation is therefore necessary to deal with the potential impacts of these changes that are already happening. New development should be planned to avoid increased vulnerability to the range of impacts arising from climate change. When new development is brought forward in areas which are vulnerable, care should be taken to ensure that risks can be managed through suitable adaptation measures, including through the provision of green infrastructure.

4.44 The Government has published a set of UK Climate Projections, and every five years prepares a statutory UK Climate Change Risk Assessment and National Adaptation Programme.[126] In addition, the Climate Change Act 2008 adaptation reporting power has been used by Government to invite reporting authorities (a defined list of public bodies and statutory undertakers, including airports) to consider the impact on them of current and predicted climate change, and to report on progress implementing adaptation actions.[127] Successive strategies for adaptation reporting will be laid alongside five yearly updates to the National Adaptation Programme.

4.45 New airports infrastructure will typically be a long-term investment which will need to remain operational over many decades, in the face of a changing climate. Consequently, the applicant must consider the impacts of climate change when planning design, build and operation. Any accompanying environmental statement

[125] Planning Act 2008, section 10(3)(a)
[126] Climate Change Act 2008, section 58
[127] Climate Change Act 2008, section 62

should set out how the proposal will take account of the projected impacts of climate change.

4.46 Detailed consideration must be given to the range of potential impacts of climate change using the latest UK Climate Projections available at the time, and to ensuring any environmental statement that is prepared identifies appropriate mitigation or adaptation measures. This should cover the estimated lifetime of the new infrastructure. Should a new set of UK Climate Projections become available after the preparation of any environmental statement, the Examining Authority should consider whether it needs to request additional information from the applicant.

4.47 Where transport infrastructure has safety-critical elements, and the design life of the asset is 60 years or greater, the applicant should apply the latest available UK Climate Projections, considering at least a scenario that reflects a high level of greenhouse gas emissions at the 10%, 50% and 90% probability levels, to assess the impacts of climate change over the lifetime of the development.

4.48 The applicant should demonstrate that there are no critical features of infrastructure design which may be seriously affected by more radical changes to the climate beyond those projected in the latest set of UK Climate Projections. Any potential critical features should be assessed, taking account of the latest credible scientific evidence on, for example, sea level rise, and on the basis that necessary action can be taken to ensure the operation of the infrastructure over its estimated lifetime through potential further mitigation or adaptation.

4.49 Any adaptation measures should be based on the latest set of UK Climate Projections,[128] the most recent UK Climate Change Risk Assessment,[129] consultation with statutory consultation bodies, and any other appropriate climate projection data. Any adaptation measures must themselves also be assessed as part of any Environmental Impact Assessment and included in the environmental statement, which should set out how and where such measures are proposed to be secured.

4.50 If any proposed adaptation measures themselves give rise to consequential impacts, the Secretary of State will consider the impact in relation to the application as a whole and the assessment principles set out in the Airports NPS.

4.51 Adaptation measures can be required to be implemented at the time of construction where necessary and appropriate to do so.

4.52 Where adaptation measures are necessary to deal with the impact of climate change, and that measure would have an adverse effect on other aspects of the project or the surrounding environment, the Secretary of State may consider requiring the applicant to ensure that the adaptation measure could be implemented should the need arise, rather than at the outset of the development.

Pollution control and other environmental protection regimes

4.53 Issues relating to discharges or emissions from a proposed project which affect air quality, water quality, land quality or the marine environment, or which include noise, may be subject to separate regulation under the pollution control framework or other consenting and licensing regimes. Relevant permissions will need to be obtained for any activities within the development that are regulated under those regimes before the activities can be operated.

[128] http://ukclimateprojections.metoffice.gov.uk/
[129] https://www.gov.uk/government/publications/uk-climate-change-risk-assessment-government-report

4.54 In deciding an application, the Secretary of State should focus on whether the development is an acceptable use of the land, and on the impacts of that use, rather than the control of processes, emissions or discharges themselves. The Secretary of State should assess the potential impacts of processes, emissions or discharges to inform decision making, but should work on the assumption that, in terms of the control and enforcement, the relevant pollution control regime will be properly applied and enforced. Decisions under the Planning Act 2008 should complement but not duplicate those taken under the relevant pollution control regime.

4.55 These considerations apply in an analogous way to other environmental regulatory regimes, including those on land drainage, flood defence, and biodiversity.

4.56 When an applicant applies for an environmental permit, the relevant regulator (in this case the Environment Agency) requires that processes are in place that are sufficient for the grant of the permit and to ensure compliance with conditions attached to any permit. In examining the impacts of the project, the Examining Authority may wish to seek the views of the regulator on the scope of the permit or consent and any management plans (such as any produced for noise) that would be included in an environmental permit application.

4.57 The applicant should begin pre-application discussions with the Environment Agency as early as possible. It is expected, however, that an applicant will have first considered what the Environment Agency is likely to require as a starting point for discussion. Some consents require a significant amount of preparation: as an example, the Environment Agency strongly recommends the applicant should start work towards submitting the permit application at least six months prior to the submission of a development consent order application, where it wishes to parallel track the applications. This will help ensure that applications take account of all relevant environmental considerations and that the relevant regulators are able to provide timely advice and assurance to the Examining Authority and the Secretary of State.

4.58 The Secretary of State will be satisfied that development consent can be granted taking full account of environmental impacts. This will require close cooperation with the Environment Agency, the local planning authority and pollution control authority, and other relevant bodies, such as Natural England, Drainage Boards, and water and sewerage undertakers, to ensure that, in the case of potentially polluting developments:

- The relevant pollution control authority is satisfied that potential releases can be adequately regulated under the pollution control framework; and
- The effects of existing sources of pollution in and around the project are not such that the cumulative effects of pollution when the proposed development is added would make that development unacceptable, particularly in relation to statutory environmental quality limits.

4.59 The Secretary of State should not refuse consent on the basis of regulated impacts unless there is good reason to believe that any relevant necessary operational pollution control permits or licences or other consents will not subsequently be granted.

Common law nuisance and statutory nuisance

4.60 Section 158 of the Planning Act 2008 provides a defence of statutory authority in civil or criminal proceedings for nuisance. Such a defence is also available in respect of anything else authorised by an order granting development consent. The defence does not extinguish the local authority's duties under Part III of the Environmental Protection Act 1990 to inspect its area and take reasonable steps to investigate complaints of statutory nuisance and to serve an abatement notice where satisfied of its existence, likely occurrence or recurrence.

4.61 During the examination of an application for development consent for infrastructure covered under the Airports NPS, possible sources of nuisance under section 79(1) of the Environmental Protection Act 1990 and under sections 76 and 77 of the Civil Aviation Act 1982 should be considered by the Examining Authority. The Examining Authority should also consider how those sources of nuisance might be mitigated or limited so they can recommend appropriate requirements that the Secretary of State might include in any subsequent order granting development consent.

4.62 The defence of statutory authority is subject to any contrary provision made by the Secretary of State in any particular case by an order granting development consent.[130]

Security and safety considerations

4.63 National security considerations apply across all national infrastructure sectors. The Department for Transport acts as the sector sponsor department for the aviation sector, and in this capacity has lead responsibility for security matters and for directing the security approach to be taken, working with the Civil Aviation Authority. The Department for Transport works closely with Government agencies, including the Centre for the Protection of National Infrastructure, to reduce the vulnerability of the aviation sector to terrorism and other national security threats.

4.64 Government policy is to ensure that, where possible, proportionate protective security measures are designed into new infrastructure projects at an early stage in the project development. The nature of the aviation sector as a target for terrorism means that security considerations will likely apply in the case of the infrastructure project for which development consent may be sought under the Airports NPS.

4.65 Where national security implications have been identified, the applicant should consult with relevant security experts from the Centre for the Protection of National Infrastructure and the Department for Transport to ensure that physical, procedural and personnel security measures have been adequately considered in the design process, and that adequate consideration has been given to the management of security risks. If the Department for Transport, taking advice from the Civil Aviation Authority, Centre for the Protection of National Infrastructure and others it considers appropriate, forms the opinion that it is satisfied that current and potential future security needs are adequately addressed in the project and that relevant guidance on these matters has been appropriately taken into account in the application, it will provide confirmation of this to the Secretary of State, and the Examining Authority should not need to give any further consideration to the details of the security measures during the examination.

[130] Planning Act 2008, section 158(3)

4.66 The applicant should only include such security-related information in the application as is necessary to enable the Examining Authority to examine the development consent issues and make a properly informed recommendation on the application.

4.67 In exceptional cases where examination of an application would involve public disclosure of information about defence or national security which would not be in the national interest, the Secretary of State can intervene and may appoint an examiner to consider evidence in closed session.

4.68 Air transport is one of the safest forms of travel, and the UK is a world leader in aviation safety. Maintaining and improving that record, while ensuring that regulation is proportionate and cost-effective, remains of primary importance to the UK. Since 2003, rules and standards for aviation safety in Europe have increasingly been set by the European Aviation Safety Agency. The UK will continue to work closely with the European Aviation Safety Agency to ensure that a high and uniform level of civil aviation safety is maintained across Europe. The preferred scheme at Heathrow must comply with the UK's civil aviation safety regime, regulated by the Civil Aviation Authority.

4.69 There remains a considerable threat to aviation security from terrorism. The UK meets this threat with a multi-layered aviation security regime built on intelligence, effective risk management and robust, proportionate measures, brought together under the National Aviation Security Programme. The regulations governing aviation security in the UK have their basis in UK and European law, and are enforced by the Civil Aviation Authority on behalf of the Secretary of State. The design and operation of the Heathrow Northwest Runway scheme, to which the Airports NPS relates, must comply with aviation security regulations and guidance in the same way as existing airports. There may also be other security considerations linked to any application for development consent under the Airports NPS.

Health

4.70 The construction and use of airports infrastructure has the potential to affect people's health, wellbeing and quality of life. Infrastructure can have direct impacts on health because of traffic, noise, vibration, air quality and emissions, light pollution, community severance, dust, odour, polluting water, hazardous waste and pests.

4.71 New or enhanced airports infrastructure may also have indirect health impacts, for example if they affect access to key public services, local transport, opportunities for cycling and walking, or the use of open space for recreation and physical activity. It should also be noted, however, that the increased employment stemming from airport expansion may have indirect positive health impacts.

4.72 As described elsewhere in the Airports NPS, where the proposed project has likely significant environmental impacts that would have an effect on human beings, any environmental statement should identify and set out the assessment of any likely significant health impacts.

4.73 The applicant should identify measures to avoid, reduce or compensate for adverse health impacts as appropriate. These impacts may affect people simultaneously, so the applicant, the Examining Authority and the Secretary of State (in determining an application for development consent) should consider the cumulative impact on health.

Accessibility

4.74 The Government is committed to creating a more accessible and inclusive transport network that provides a range of opportunities and choices for all people to connect with jobs, services and leisure opportunities. This commitment extends to all the users of new airports infrastructure, and to the associated surface access facilities.

4.75 In 2008, the Department for Transport published *Access to Air Travel for Disabled Persons and Persons with Reduced Mobility – Code of Practice*,[131] which sets out the legal framework and gives advice and information. Since then, the Equality Act 2010 has updated and extended the legal framework for accessibility.[132]

4.76 In accordance with legal and best practice in relation to accessibility:

- The Government requires the applicant to include clear details of how plans will improve access on and around the airport by designing and delivering schemes (both new construction and upgrade or refurbishment) that address the accessibility needs of all those who use, or are affected by, surface access infrastructure, including those with physical and/or mental impairments as well as older users. Every opportunity to deliver improvements in accessibility on and to the existing national road network should also be taken;
- The Government will continue to work to ensure that all bus and train fleets comply with legal access standards by 2020, and to improve rail station access for those with impairments in accordance with legislation and best practice; and
- The car will continue to play an important role, providing disabled people with independence where other forms of transport are not accessible or available. Easy access and car parking provision at the airports is essential to this goal and must meet standards set down in guidance (such as the Department for Transport's *Inclusive Mobility*).[133]

[131] http://webarchive.nationalarchives.gov.uk/+/http:/www.dft.gov.uk/transportforyou/access/aviationshipping/accesstoairtravelfordisabled.pdf
[132] http://www.legislation.gov.uk/ukpga/2010/15/contents
[133] https://www.gov.uk/government/publications/inclusive-mobility

5. Assessment of impacts

Introduction

5.1 This chapter focuses on the potential impacts of the Heathrow Northwest Runway scheme, the assessments that any applicant will need to carry out, and the specific planning requirements that they will need to meet, in order to gain development consent.

5.2 In its Final Report, the Airports Commission recommended that "to make expansion possible…a comprehensive package of accompanying measures [should be recommended to] make the airport's expansion more acceptable to its local community, and to Londoners generally".[134]

5.3 When the Government stated in December 2015 that it agreed with the Airports Commission that one additional runway was required in the South East of England by 2030, it also emphasised the importance of securing the best possible deal for communities affected by the preferred scheme to increase airport capacity. The Government undertook further work, including through engagement with all three shortlisted scheme promoters, during 2016 to develop a package of location-specific measures to mitigate the impacts of increased capacity, and to enhance beneficial effects.

5.4 The Government announced on 25 October 2016 that its preferred scheme to deliver additional airport capacity in the South East of England was a Northwest Runway at Heathrow Airport. Alongside this, it set out a number of supporting measures that any application for development consent will be required to demonstrate and secure in order to mitigate the impacts of expansion on the environment and affected communities.

Surface access

Introduction

5.5 The Government's objective for surface access is to ensure that access to the airport by road, rail and public transport is high quality, efficient and reliable for passengers, freight operators and airport workers who use transport on a daily basis. The Government also wishes to see the number of journeys made to airports by sustainable modes of transport maximised as much as possible. This should be delivered in a way that minimises congestion and environmental impacts, for example on air quality.

5.6 A Northwest Runway at Heathrow Airport will have a range of impacts on local and national transport networks serving the airport, during both the construction and operational phases. Passengers, freight operators and airport workers share the

[134] *Airports Commission: Final Report*, p4

routes to and from the airport with other road and rail users, including commuters, leisure travellers and business users. Without effective mitigation, expansion is likely to increase congestion on existing routes and have environmental impacts such as increased noise and emissions.

5.7 The Airports Commission identified three major rail improvements which would support a new Northwest Runway at Heathrow Airport. These were Crossrail, a Western Rail Link to Heathrow and Southern Rail Access to the airport. Notwithstanding the requirements for the applicant's assessment set out below, Government has supported, or is supporting, all three of these schemes subject to a satisfactory business case and the agreement of acceptable terms with the Heathrow aviation industry. Crossrail is in construction and full services are anticipated to commence in 2019. The Western Rail Link to Heathrow was one of the schemes named as being in the 'develop' phase in the Rail Network Enhancements Pipeline, published in March 2018 and, subject to obtaining planning consent, it is expected to commence operations before 2030. Any Southern Rail Access to Heathrow is at an earlier stage of development and, subject to an acceptable business case and obtaining planning consent, should commence operations as soon as reasonably practicable after a new runway has opened.

5.8 It is important that improvements are made to Heathrow Airport's transport links to be able to support the increased numbers of people and freight traffic which will need to access the expanded airport, should development consent be granted.

Applicant's assessment

5.9 The applicant must prepare an airport surface access strategy in conjunction with its Airport Transport Forum, in accordance with the guidance contained in the Aviation Policy Framework.[135] The airport surface access strategy must reflect the needs of the scheme contained in the application for development consent, including any phasing over its development, implementation and operational stages, reflecting the changing number of passengers, freight operators and airport workers attributable to the number of air traffic movements. The strategy should reference the role of surface transport in relation to air quality and carbon. The airport surface access strategy must contain specific targets for maximising the proportion of journeys made to the airport by public transport, cycling or walking. The strategy should also contain actions, policies and defined performance indicators for delivering against targets, and should include a mechanism whereby the Airport Transport Forum can oversee implementation of the strategy and monitor progress against targets alongside the implementation and operation of the preferred scheme.

5.10 The applicant should assess the implications of airport expansion on surface access network capacity using the WebTAG methodology stipulated in the Department for Transport guidance,[136] or any successor to such methodology. The applicant should consult Highways England, Network Rail and highway and transport authorities, as appropriate, on the assessment and proposed mitigation measures. The assessment should distinguish between the construction and operational project stages for the development comprised in the application.

5.11 The applicant should also consult with Highways England, Network Rail and relevant highway and transport authorities, and transport operators, to understand the target completion dates of any third party or external schemes included in existing rail, road or other transport investment plans. It will need to assess the effects of the preferred

[135] https://www.gov.uk/government/publications/aviation-policy-framework, paragraphs 4.20-4.21
[136] https://www.gov.uk/guidance/transport-analysis-guidance-webtag

scheme as influenced by such schemes and plans. Such consultation and assessment, both of third party schemes on which the preferred scheme depends, and others which interact with it, all of which may be subject to their own planning, funding and approval processes, must be understood in terms of implications of the timings for the applicant's own surface access proposals.

5.12 The applicant will need to demonstrate that Highways England, Network Rail and any relevant highway and transport authorities and transport providers have been consulted, and are content with the deliverability of any new transport schemes or other changes required to existing links to allow expansion within the timescales required for the preferred scheme as a whole, the requirements of the Airports NPS and other statutory requirements. This includes changes to the M25 to allow a new runway to cross the motorway, local road changes, and improvements including the diversion of the A4 and A3044, changes to the Colnbrook Freight branch railway and on-airport station works and safeguarding. On the strategic road network, it will be important to ensure that any changes to the M25 which the applicant proposes will be implemented consistently with the Secretary of State's statutory directions and guidance set out in Highways England's licence. This includes ensuring that sufficient provision is made to accommodate flexibility and future-proofing in planning the long-term development, improvement and operation of Highways England's network.

5.13 For schemes and related surface access proposals or other works impacting on the strategic road network, the applicant should have regard to DfT Circular 02/2013, *The Strategic Road Network and the delivery of sustainable development*[137] (or prevailing policy), and the National Networks NPS. This sets out the way in which the highway authority for the strategic road network will engage with communities and the development industry to deliver sustainable development and economic growth, whilst safeguarding the primary function and purpose of the network.

5.14 The surface access systems and proposed airport infrastructure may have the potential to result in severance in some locations. Where appropriate, the applicant should seek to deliver improvements or mitigation measures that reduce community severance and improve accessibility.

Mitigation

5.15 In its application, the applicant should set out the mitigation measures that it considers are required to minimise and mitigate the effect of expansion on existing surface access arrangements.

5.16 The applicant should demonstrate in its assessment that the proposed surface access strategy will support the additional transport demands generated by airport expansion. This should be appropriately secured.

5.17 Any application for development consent and accompanying airport surface access strategy must include details of how the applicant will increase the proportion of journeys made to the airport by public transport, cycling and walking to achieve a public transport mode share of at least 50% by 2030, and at least 55% by 2040 for passengers. The applicant should also include details of how, from a 2013 baseline level, it will achieve a 25% reduction of all staff car trips by 2030, and a reduction of 50% by 2040.[138]

5.18 The applicant should commit to annual public reporting on performance against these specific targets. The airport surface access strategy should consider measures and

[137] https://www.gov.uk/government/publications/strategic-road-network-and-the-delivery-of-sustainable-development
[138] These mode share targets are derived from *Heathrow Airport Ltd. Statement of Principles*, part 5, paragraph 1.6 https://www.gov.uk/government/publications/heathrow-airport-limited-statement-of-principles

incentives which could help to manage demand by car users travelling to and from the airport, as well as physical infrastructure interventions, having at all times due regard to the effect of its strategy on the surrounding area and transport networks. The strategy should also include an assessment of the feasibility of the measures proposed as well as the benefits and disbenefits related to those measures, including any implications for Highways England, Network Rail and affected relevant highway authorities and transport providers. These measures could be used to help achieve mode share targets and should be considered in conjunction with measures to mitigate air quality impacts as described in the Airports NPS.

5.19 The Government expects the applicant to secure the upgrading or enhancing of road, rail or other transport networks or services which are physically needed to be completed to enable the Northwest Runway to operate. This includes works to the M25, local road changes and improvements including the diversion of the A4 and A3044, and on-airport station works and safeguarding, as set out in more detail in paragraph 5.12.

5.20 Where a surface transport scheme is not solely required to deliver airport capacity and has a wider range of beneficiaries, the Government, along with relevant stakeholders, will consider the need for a public funding contribution alongside an appropriate contribution from the airport on a case by case basis. The Government recognises that there may be some works which may not be required at the time the additional runway opens, but will be needed as the additional capacity becomes fully utilised. The same principle applies that, where a transport scheme is not solely required to deliver airport capacity, the Government, along with relevant stakeholders, will consider the need for a public funding contribution alongside an appropriate contribution from the airport on a case by case basis.

Decision making

5.21 The applicant's proposals will give rise to impacts on the existing and surrounding transport infrastructure. The Secretary of State will consider whether the applicant has taken all reasonable steps to mitigate these impacts during both the development and construction phase and the operational phase. Where the proposed mitigation measures are insufficient to effectively offset or reduce the impact on the transport network, arising from expansion, of additional passengers, freight operators and airport workers, the Secretary of State will impose requirements on the applicant to accept requirements and / or obligations to fund infrastructure or implement other measures to mitigate the adverse impacts, including air quality.

5.22 Provided the applicant is willing to commit to transport planning obligations to satisfactorily mitigate transport impacts identified in the transport assessment (including environment and social impacts), with costs being considered in accordance with the Department for Transport's policy on the funding of surface access schemes, development consent should not be withheld on surface access grounds.

Air quality

Introduction

5.23 Increases in emissions of pollutants during the construction or operational phases of the scheme could result in the worsening of local air quality. Increased emissions can contribute to adverse impacts on human health and on the natural environment.

5.24 The European Union has established common, health-based and ecosystem based ambient concentration limit values for the main pollutants in the Ambient Air Quality Directive (2008/50/EC) ('the Air Quality Directive'),[139] which member states are required to meet by specified dates.

5.25 Where compliance by those dates has not been achieved, the member state is required to put in place an action plan showing how the period of exceedance in each non-compliant area will be kept as short as possible. In December 2015, the UK submitted its national air quality plan for nitrogen dioxide, including a zonal plan for Greater London and the South East, for the approval of the European Commission.

5.26 In November 2016 the High Court ordered the Government to produce a modified air quality plan that delivers compliance in the shortest possible time. The Government published a final, modified air quality plan on 26 July 2017. The European Commission were notified of this plan on 31 July 2017.[140]

5.27 Other relevant legislation includes the fourth daughter Air Quality Directive (2004/107/EC), which sets targets for levels in outdoor air of certain toxic heavy metals and polycyclic aromatic hydrocarbons, and the National Emission Ceilings Directive (2016/2284/EU),[141] which sets national emission limits for a range of atmospheric pollutants.

5.28 Air quality impacts are generated by all types of infrastructure development to varying degrees, and the geographical extent and distribution can cover a large area. At Heathrow Airport in 2015, aircraft movements were modelled to have contributed 17% on average to local NOx concentrations at nearby roadside locations. Road transport, by comparison, accounted for 64% of NOx concentrations in the same areas. Off-road transport and mobile machinery (a category which would include airside vehicles) contributed 5%[142].

5.29 The Airports Commission identified (and in some cases quantified the impact of) a number of measures that would help mitigate any negative impacts on air quality.[143] In addition, for the Heathrow Northwest Runway scheme, the Airports Commission recommended the following supporting measures:

- That Heathrow Airport should be held to performance targets to increase the percentage of employees and passengers accessing the airport by public transport; and
- That the introduction of a congestion or access charge for road vehicles should be considered.

5.30 The Airports Commission undertook extensive analysis on air quality and concluded that expansion could take place within legal obligations (including in a high demand growth scenario). The Department for Transport conducted a study of the implications of the Government's 2015 national air quality plan on the conclusions of the Airports Commission's air quality assessment.[144]

5.31 Since this work was completed in June 2016, updated international evidence on vehicle emission forecasts was published at the end of September 2016. The Department for Transport has conducted further analysis to assess the impact that this updated evidence base would have on estimated compliance with EU limit values of

[139] The Ambient Air Quality Directive (2008/50/EC) was brought into law in England through the Air Quality Standards Regulations 2010
[140] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/633270/air-quality-plan-detail.pdf
[141] This Directive succeeds an earlier National Emissions Ceilings Directive (2001/81/EC) and contains transitional provisions
[142] Based on 2015 data from the Pollution Climate Mapping Model for roads affected by Heathrow emissions
[143] https://www.gov.uk/government/consultations/airports-commission-air-quality-assessment
[144] https://www.gov.uk/government/publications/airport-expansion-further-analysis-of-air-quality-data

expansion options at Heathrow Airport and Gatwick Airport. This analysis has been updated to take account of the revised aviation demand forecasts and the Government's final air quality plan. The result of this analysis helped inform the Government's view that, with a suitable package of policy and mitigation measures, including the Government's modified air quality plan, the Heathrow Northwest Runway scheme would be capable of being delivered without impacting the UK's compliance with air quality limit values.

Applicant's assessment

5.32 The applicant should undertake an assessment of the project, to be included as part of the environmental statement, demonstrating to the Secretary of State that the construction and operation of the Northwest Runway will not affect the UK's ability to comply with legal obligations. Failure to demonstrate this will result in refusal of development consent.

5.33 The environmental statement should assess:

- Existing air quality levels for all relevant pollutants referred to in the Air Quality Standards Regulations 2010 and the National Emission Ceilings Regulations 2002 (as amended) or referred to in any successor regulations;
- Forecasts of levels for all relevant air quality pollutants at the time of opening, (a) assuming that the scheme is not built (the 'future baseline'), and (b) taking account of the impact of the scheme, including when at full capacity; and
- Any likely significant air quality effects of the scheme, their mitigation and any residual likely significant effects, distinguishing between those applicable to the construction and operation of the scheme including any interaction between construction and operational changes and taking account of the impact that the scheme is likely to cause on air quality arising from road and other surface access traffic.

5.34 Defra publishes future national projections of air quality based on evidence of future emissions. Projections may be updated as the evidence base changes. The applicant's assessment should, in so far as practicable, be based on the latest available projections.

Mitigation

5.35 The Secretary of State will need to be satisfied that the mitigation measures put forward by the applicant are acceptable, including at the construction stage. A management / project plan may help record and secure mitigation measures.

5.36 Mitigation measures may affect the project design, layout, construction and operation, and / or may comprise measures to improve air quality in pollution hotspots beyond the immediate locality of the scheme.

5.37 While the precise package of mitigations should be subject to consultation with local communities and relevant stakeholders to ensure the most effective measures are taken forward, an extensive range of mitigation measures is likely to be required.

5.38 In addition, Heathrow Airport should continue to strive to meet its public pledge to have landside airport-related traffic no greater than today. To achieve this, it should set out and regularly review its plans to meet the mode share targets set at paragraph 5.17 above. Heathrow Airport should also develop and keep under review plans to improve the impact of road freight serving the airport.

5.39 Other mitigation measures which may be put forward by the applicant could include, but are not limited to:

- Landing charges structured to reward airlines for operating cleaner flights (for example NOx emissions charging);
- Zero- or low-emission hybrid or electric vehicle use (ultra-low emission vehicles), charging and fuel facilities;
- Reduced or single engine taxiing (improved taxiing efficiency);
- Reducing emissions from aircraft at the gate (for example installation of fixed electrical ground power and preconditioned air to aircraft stands to reduce the use of auxiliary power unit);
- Modernised heating supplies in airport buildings;
- Changes to the layout of surface access arrangements;
- Traffic restrictions and / or traffic relocation around sensitive areas;
- An emissions-based access charge; and
- Physical means, including barriers to trap or better disperse emissions and speed control on roads.

5.40 Mitigation measures at the construction stage should also be provided and draw on best practice from other major construction schemes, including during the procurement of contractors. Specific measures could include but are not limited to:

- Development of a construction traffic management plan (which may include the possible use of rail and consolidation sites or waterways);
- The use of low emission construction plant / fleet, fitting of diesel particulate filters, and use of cleaner engines;
- The use of freight consolidation sites;
- Active workforce management / a worker transport scheme;
- Construction site connection to grid electricity to avoid use of mobile generation; and
- Selection of construction material to minimise distance of transport and increase recycling percentages of the material where appropriate.

5.41 The implementation of mitigation measures may require working with partners to support their delivery.

Decision making

5.42 The Secretary of State will consider air quality impacts over the wider area likely to be affected, as well as in the vicinity of the scheme. In order to grant development consent, the Secretary of State will need to be satisfied that, with mitigation, the scheme would be compliant with legal obligations that provide for the protection of human health and the environment.

5.43 Air quality considerations are likely to be particularly relevant where the proposed scheme:

- is within or adjacent to Air Quality Management Areas,[145] roads identified as being above limit values, or nature conservation sites (including Natura 2000 sites and Sites of Special Scientific Interest);
- would have effects sufficient to bring about the need for new Air Quality Management Areas or change the size of an existing Air Quality Management Area, or bring about changes to exceedances of the limit values, or have the potential to have an impact on nature conservation sites; and
- after taking into account mitigation, would lead to a significant air quality impact in relation to Environmental Impact Assessment and / or to a deterioration in air quality in a zone or agglomeration.

Noise

Introduction

5.44 The impact of noise from airport expansion is a key concern for communities affected, and the Government takes this issue very seriously. High exposure to noise is an annoyance, can disturb sleep, and can also affect people's health. Aircraft operations are by far the largest source of noise emissions from an airport, although noise will also be generated from ground operations and surface transport, and during the construction phase of a scheme.

5.45 Aircraft noise is not only determined by the number of aircraft overhead, but also by engine technologies and airframe design, the paths the aircraft take when approaching and departing from the airport, and the way in which the aircraft are flown.

5.46 Over recent decades, there have been reductions in aviation noise due to technological and operational improvements, and this trend is expected to continue.[146] New technology is already making aircraft quieter. Newer generation aircraft coming into service have a noise footprint typically 50% smaller on departure than the ones they are replacing, and at least 30% smaller on arrival. In addition, further opportunities for noise reductions are expected in the next decade as part of the UK airspace modernisation programme. One of the key benefits of this programme is expected to be "reduced noise from aircraft overflying communities, with less 'holding' at lower altitudes".[147] However, evidence has shown that people's sensitivity to noise has increased in recent years, and there has been growing evidence that exposure to high levels of aircraft noise can adversely affect people's health.[148] Expansion will lead to a rise in the number of flights in the local area compared to a no expansion scenario.

5.47 The Government wants to strike a fair balance between the negative impacts of noise (on health, amenity, quality of life and productivity) and the positive impacts of flights. There is no European or national legislation which sets legally binding limits on aviation noise emissions. Major airports are, however, under a legal obligation[149] to

[145] https://uk-air.defra.gov.uk/aqma/
[146] *The Sustainable Aviation Noise Roadmap, A Blueprint for Managing Noise from Aviation Sources to 2050*: http://www.sustainableaviation.co.uk/road-maps/
[147] UK Airspace Policy: A framework for balanced decisions on the design and use of airspace, p21, para 3.9, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/588186/uk-airspace-policy-a-framework-for-balanced-decisions-on-the-design-and-use-of-airspace-web-version.pdf
[148] *CAP 1164, Aircraft noise, sleep disturbance and health effects 2014*: http://publicapps.caa.co.uk/modalapplication.aspx?appid=11&mode=detail&id=6275
CAP 1506, Survey of noise attitudes 2014: Aircraft http://www.gov.uk/government/publications/survey-of-attitudes-to-aviation-noise
[149] The EU Environmental Noise Directive 2002/49 which is implemented in England by the Environmental Noise (England) Regulations 2006 (S.I. 2006/2238 as amended)

develop strategic noise maps and produce Noise Action Plans based on those maps, on a five yearly basis. They are also required to review and, if necessary, revise action plans when a major development occurs affecting the existing noise situation. In addition, the Government already expects the noise-designated airports (Heathrow, Gatwick and Stansted) to produce noise exposure maps on an annual basis.

5.48 The International Civil Aviation Organisation introduced the concept of a 'Balanced Approach' to noise management (resolution A33/7). This is given legal effect in the UK through EU Regulation 598/2014.[150]

5.49 The Airports Commission undertook a thorough assessment of the noise impacts of the proposed development. The Airports Commission used a "noise scorecard" to assess the noise impacts of the scheme in 2030, 2040 and 2050.[151] The noise scorecard included both conventional metrics, which assess noise levels over a period of time (daytime, night time and 24-hour), and more innovative metrics that assess the number of times a location is overflown by aircraft whose noise impacts exceed a specified level.

5.50 The Airports Commission's assessment was based on 'indicative' flight path designs, which the Government considers to be a reasonable approach at this stage in the process. Precise flight path designs can only be defined at a later stage after detailed airspace design work has taken place. This work will need to consider the various options available to ensure a safe and efficient airspace which also mitigates the level of noise disturbance. Once the design work has been completed, the airspace proposal will be subject to extensive consultation as part of the separate airspace decision making process established by the Civil Aviation Authority.

5.51 The Airports Commission concluded that "expansion at Heathrow must be taken forward with a firm guarantee that the airport and its airlines will be held to the very highest standards of noise performance". In addition, the Airports Commission stated that "the airport should not be allowed to expand without appropriate conditions being put in place in respect of its noise impacts".[152]

Applicant's assessment

5.52 Pursuant to the terms of the Environmental Impact Assessment Regulations,[153] the applicant should undertake a noise assessment for any period of change in air traffic movements prior to opening, for the time of opening, and at the time the airport is forecast to reach full capacity, and (if applicable, being different to either of the other assessment periods) at a point when the airport's noise impact is forecast to be highest. This should form part of the environmental statement. The noise assessment should include the following:

- A description of the noise sources;
- An assessment of the likely significant effect of predicted changes in the noise environment on any noise sensitive premises (including schools and hospitals) and noise sensitive areas (including National Parks and Areas of Outstanding Natural Beauty);
- The characteristics of the existing noise environment, including noise from aircraft, using noise exposure maps, and from surface transport and ground operations

[150] Regulation (EU) No 598/2014 of the European Parliament and of the Council on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Union airports within a Balanced Approach and repealing Directive 2002/30/EC
[151] *Airports Commission: Final Report*, p170-171
[152] *Airports Commission: Final Report*, p276
[153] Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (S.I. 2017/572)

associated with the project, the latter during both the construction and operational phases of the project;

- A prediction on how the noise environment will change with the proposed project; and
- Measures to be employed in mitigating the effects of noise.

These should take into account construction and operational noise (including from surface access arrangements) and aircraft noise. The applicant's assessment of aircraft noise should be undertaken in accordance with the developing indicative airspace design. This may involve the use of appropriate design parameters and scenarios based on indicative flightpaths.

5.53 Operational noise, with respect to human receptors, should be assessed using the principles of the relevant British Standards and other guidance. For the prediction, assessment and management of construction noise, reference should be made to any British Standards and other guidance which give examples of mitigation strategies. In assessing the likely significant impacts of aircraft noise, the applicant should have regard to the noise assessment principles, including noise metrics, set out in the national policy on airspace.

Mitigation

5.54 Noise management at airports where a noise problem has been identified is subject to the concept of a 'Balanced Approach', referred to above. EU Regulation 598/2014, which adopts the Balanced Approach,[154] also lays down a procedure for the adoption of noise-related operating restrictions, in particular a requirement for prior consultation.

5.55 The Government recognises that aircraft noise is a significant concern to communities affected and that, as a result of additional runway capacity, noise- related action will need to be taken. Such action should strike a fair balance between the negative impacts of noise and positive impacts of flights.

5.56 The Government also recognises that predictable periods of relief from aircraft noise (known as respite) are important for communities affected, and that noise at night is widely regarded as the least acceptable aspect of aviation noise for those communities, with the costs on communities of aircraft noise during the night (particularly the health costs associated with sleep disturbance) being higher.

5.57 While the package and detail of noise mitigation measures should be subject to consultation with local communities and other stakeholders to ensure the most appropriate and effective measures are taken forward, in the context of Government policy on sustainable development, the Government expects the applicant to make particular efforts to avoid significant adverse noise impacts and mitigate other adverse noise impacts as a result of the Northwest Runway scheme and Heathrow Airport as a whole.

5.58 The Secretary of State will consider whether the mitigation measures put forward by the applicant following consultation are acceptable. The noise mitigation measures should ensure the impact of aircraft noise is limited and, where possible, reduced compared to the 2013 baseline assessed by the Airports Commission.[155]

[154] For the purposes of EU Regulation 598/2014, an airport means an airport which has more than 50,000 civil aircraft movements per calendar year (a movement being a take-off or landing), on the basis of the average number of movements in the last three calendar years before the noise assessment

[155] With reference to the 2013 baseline for the 54 decibel LAeq, 16h noise contour assessed by the Airports Commission. LAeq,16h indicates the annual average noise levels for the 16-hour period between 0700 – 2300

5.59 The applicant should specifically seek to deliver the mitigation measures set out in paragraphs 5.60-5.62 below.

5.60 The applicant should put forward plans for a noise envelope. Such an envelope should be tailored to local priorities and include clear noise performance targets. As such, the design of the envelope should be defined in consultation with local communities and relevant stakeholders, and take account of any independent guidance such as from the Independent Commission on Civil Aviation Noise. The benefits of future technological improvements should be shared between the applicant and its local communities, hence helping to achieve a balance between growth and noise reduction. Suitable review periods should be set in consultation with the parties mentioned above to ensure the noise envelope's framework remains relevant.

5.61 The applicant should put forward plans for a runway alternation scheme that provides communities affected with predictable periods of respite (though the Government acknowledges that the duration of periods of respite that currently apply will be reduced). Predictability should be afforded to the extent that this is within the airport operator's control.[156] The details of any such scheme, including timings, duration and scheduling, should be defined in consultation with local communities and relevant stakeholders, and take account of any independent guidance such as from the Independent Commission on Civil Aviation Noise.

5.62 The Government also expects a ban on scheduled night flights for a period of six and a half hours, between the hours of 11pm and 7am, to be implemented.[157] The rules around its operation, including the exact timings of such a ban, should be defined in consultation with local communities and relevant stakeholders, in line with EU Regulation 598/2014. In addition, outside the hours of a ban, the Government expects the applicant to make particular efforts to incentivise the use of the quietest aircraft at night.

5.63 It is recognised that Heathrow Airport already supports a number of initiatives to mitigate aircraft noise, such as developing quieter operating procedures (like steeper descent approaches) and keeping landing gear up as long as possible. The applicant is expected to continue to do so, and to explore all opportunities to mitigate operational noise in line with best practice. The implementation of such measures may require working with partners to support their delivery.

5.64 Noise mitigation measures at the construction stage should also be provided. These should draw on best practice from other major construction schemes, with due regard given to any relevant British Standards and other guidance, and should be taken into account during the procurement of contractors.

5.65 Other measures to mitigate noise during the construction and operation of the development may include one or more of the following:

- Reducing noise at point of generation and containment of noise generated;
- Where possible, optimising the distance between source and noise-sensitive receptors, and incorporating good design to minimise noise transmission through screening by natural barriers or other buildings; and
- Restricting activities allowed on the site.

5.66 The Secretary of State will expect the applicant to put forward proposals as to how these measures may be secured and enforced, including the bodies who may enforce

[156] Examples of circumstances outside of an airport operator's control might be severe weather disruption and similar events
[157] 11pm to 7am is the standard night period used in noise measurement, and is used in World Health Organisation guidelines and the Environmental Noise Directive

the measures. These bodies might include the Secretary of State, local authorities (including those over a wider area), and / or the Civil Aviation Authority.

Decision making

5.67 The proposed development must be undertaken in accordance with statutory obligations for noise.[158] Due regard must have been given to national policy on aviation noise, and the relevant sections of the Noise Policy Statement for England,[159] the National Planning Policy Framework,[160] and the Government's associated planning guidance on noise.[161] However, the Airports NPS must be used as the primary policy on noise when considering the Heathrow Northwest Runway scheme, and has primacy over other wider noise policy sources.

5.68 Development consent should not be granted unless the Secretary of State is satisfied that the proposals will meet the following aims for the effective management and control of noise, within the context of Government policy on sustainable development:

- Avoid significant adverse impacts on health and quality of life from noise;
- Mitigate and minimise adverse impacts on health and quality of life from noise; and
- Where possible, contribute to improvements to health and quality of life.

Carbon emissions

Introduction

5.69 The Planning Act 2008 requires that a national policy statement must give reasons for the policy set out in the statement and an explanation of how the policy set out in the statement takes account of Government policy relating to the mitigation of, and adaptation to, climate change.[162] The Government has a number of international and domestic obligations to limit carbon emissions. Emissions from both the construction and operational phases of the project will be relevant to meeting these obligations.

5.70 The Government's key objective on aviation emissions, as outlined in the Aviation Policy Framework, is to ensure that the aviation sector makes a significant and cost-effective contribution towards reducing global emissions.[163] This must be achieved while minimising the risk of putting UK businesses at a competitive international disadvantage. The development of the Heathrow Northwest Runway scheme being considered under the Airports NPS does not override this objective.

5.71 The UK's obligations on greenhouse gas emissions are set under the 2008 Climate Change Act. Under this framework, the UK has a 2050 target to reduce its greenhouse gas emissions by at least 80% on 1990 levels, and has a series of five year carbon budgets on the way to 2050.

Coverage of aviation emissions under the UK's Climate Change Act

5.72 Whilst UK domestic aviation emissions are included in the 2050 target, international aviation emissions are not currently formally included within the UK's 'net carbon account' for greenhouse gas emissions and are therefore not included in the 2050 target as defined by the Climate Change Act, nor within the first five carbon budgets. The Climate Change Act says that the Government must "take into account" the

[158] EU Regulation 598/2014; The Environmental Noise (England) Regulations 2006
[159] Noise policy statement for England, March 2010, https://www.gov.uk/government/publications/noise-policy-statement-for-england
[160] National Planning Policy Framework, March 2012, paragraph 123, or any successor document
[161] https://www.gov.uk/guidance/noise--2
[162] Planning Act 2008, section 5(8)
[163] *Aviation Policy Framework*, paragraph 12

"estimated amount of reportable emissions from international aviation for the budgetary period or periods in question" when setting carbon budgets. The Committee on Climate Change has interpreted the requirement to take these emissions into account as requiring the UK to aim to meet a 2050 target which includes these emissions, and has made its recommendations for the levels of the existing carbon budgets on this basis.

5.73 The Government has accepted the Committee on Climate Change's recommendations on the first five carbon budgets. The fifth carbon budget, for the period 2028-2032, was set in July 2016 in line with the Committee on Climate Change's advice. In effect, this means that carbon budgets for other sectors of the UK economy have been set at a level which the Committee on Climate Change considers is consistent with meeting the overall 2050 target when international aviation emissions are included.

Impacts

5.74 The carbon impact of the proposed development falls into four areas: increased emissions from air transport movements (both international and domestic) as a result of increased demand, emissions from airport buildings and ground operations, emissions from surface transport accessing the expanded airport, and emissions caused by construction. The first is by far the largest of these impacts.

5.75 The Airports Commission used two sets of carbon scenarios: one in which a cap is imposed on UK aviation emissions in line with the Committee on Climate Change's planning assumption of 37.5 million tonnes of CO_2 in 2050; and another in which an international trading mechanism allows carbon emissions from aviation to be offset by paying for emissions reductions in other sectors of the global economy. The analysis also assumed certain carbon-limiting developments largely outside the applicant's control. These include growth in numbers of more fuel-efficient aircraft, increasing use of biofuels, and other airline operational measures.

Applicant's assessment

5.76 Pursuant to the terms of the Environmental Impact Assessment Regulations,[164] the applicant should undertake an assessment of the project as part of the environmental statement, to include an assessment of any likely significant climate factors. The applicant should provide evidence of the carbon impact of the project (including embodied carbon), both from construction and operation, such that it can be assessed against the Government's carbon obligations, including but not limited to carbon budgets. The applicant should quantify the greenhouse gas impacts before and after mitigation to show the impacts of the proposed mitigation. This will require emissions to be split into traded sector and non-traded sector emissions, and for a distinction to be made between international and domestic aviation emissions.

5.77 As far as possible, the applicant's assessment should also seek to quantify impacts including:

- Emissions from surface access due to airport and construction staff;
- Emissions from surface access due to freight and retail operations and construction site traffic.
- Emissions from surface access due to airport passengers / visitors; and
- Emissions from airport operations including energy and fuel use.

[164] Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (S.I. 2017/572). Regulation 5(2)(c) refers to the significant effects of the proposed development on, among other factors, climate.

This should be undertaken in both a 'do minimum' and also in the 'do something' scenario for the opening, peak operation, and worst case scenarios.

Mitigation

5.78 The Secretary of State will need to be satisfied that the mitigation measures put forward by the applicant are acceptable, including at the construction stage. A management / project plan may help clarify and secure mitigation at this stage. The applicant is expected to take measures to limit the carbon impact of the project, which may include, but are not limited to:

- Zero or low-emission hybrid or electric vehicle use (ultra-low emission vehicles), charging and fuel facilities;
- Reduced engine taxiing (improved taxiing efficiency);
- Reducing emissions from aircraft at the gate;
- Reduced emissions from airport buildings (for example from lower carbon heating);
- Changes to the layout of surface access arrangements; and
- Encouraging increased use of public transport by staff and passengers.

5.79 Aircraft are expected to become cleaner as technology and standards improve and fleets evolve. It is recognised that the applicant already supports a number of initiatives to reduce the carbon emissions from flights, such as reduced-engine taxiing and ground-towing, and airspace and navigational reform.

5.80 Mitigation measures at the construction stage should also be provided and draw on best practice from other major construction schemes, including during the procurement of contractors. Specific measures could include but are not limited to:

- Development of a construction traffic management plan (which may include the possible use of rail and consolidation sites);
- Transport of materials to site by alternative modes to road (for example by rail or water);
- Increased efficiency in use of construction plant;
- Use of energy efficient site accommodation;
- Reduction of waste, and the transport of waste;
- Construction site connection to grid electricity to avoid use of mobile generation;
- Selection of construction material to utilise low carbon options; and
- Selection of construction material to minimise distance of transport.

5.81 The implementation of mitigation measures may require working with partners to support their delivery.

Decision making

5.82 Any increase in carbon emissions alone is not a reason to refuse development consent, unless the increase in carbon emissions resulting from the project is so significant that it would have a material impact on the ability of Government to meet its carbon reduction targets, including carbon budgets.

5.83 Evidence of appropriate mitigation measures (incorporating engineering plans on configuration and layout, and use of materials) in both design and construction should be presented as part of any application for development consent. The Secretary of

State will consider the effectiveness of such mitigation measures in order to ensure that, in relation to design and construction, the carbon footprint is not unnecessarily high. The Secretary of State's view of the adequacy of the mitigation measures relating to design, construction and operational phases will be a material factor in the decision making process.

Biodiversity and ecological conservation

Introduction

5.84 Biodiversity is the variety of plant and animal life in the world or in a particular habitat, and encompasses all species of plants and animals and the complex ecosystems of which they are a part. Government policy for the natural environment, including on biodiversity, is set out in the *Natural Environment White Paper*.[165] The biodiversity section in the *Natural Environment White Paper* sets out a vision of moving progressively from new biodiversity loss to net gain, by supporting healthy, well-functioning ecosystems and establishing more coherent ecological networks that are more resilient to current and future pressures. It is also a requirement of the Water Framework Directive to protect and enhance biodiversity associated with the water environment. Geological conservation relates to the sites that are designated for their geology and / or geomorphological importance.[166]

5.85 The Government's biodiversity strategy is set out in *Biodiversity 2020: A Strategy for England's wildlife and ecosystem services*.[167] Its aim is to halt overall biodiversity loss, support healthy, well-functioning ecosystems, and establish coherent ecological networks, with more and better places for nature for the benefit of wildlife and people. The contribution that the planning system should make to enhancing the local and natural environment, including establishing coherent ecological networks, is set out in the National Planning Policy Framework, to which the applicant should also refer.[168]

5.86 The National Planning Policy Framework states that pursuing sustainable development involves seeking positive improvements in the quality of the built, natural and historic environment, as well as in people's quality of life. This includes moving from a net loss of biodiversity to achieving net gains for nature.[169]

5.87 The wide range of legislative provisions at the international and national level that can impact on planning decisions affecting biodiversity and ecological conservation is set out in the Planning Practice Guidance on biodiversity and ecosystems.[170] This includes a description of the potential impacts on internationally, nationally and locally protected sites which may arise through development, and should therefore be considered through further assessment.

5.88 Airport development may require the netting of open watercourses to manage the risk of bird strike, which may have a detrimental impact on water environment and biodiversity.

Applicant's assessment

5.89 The applicant should ensure that the environmental statement submitted with its application for development consent clearly sets out any likely significant effects on

[165] https://www.gov.uk/government/publications/the-natural-choice-securing-the-value-of-nature
[166] A list of designated sites is included in the Geological Conservation Review held by the Joint Nature Conservation Committee
[167] https://www.gov.uk/government/publications/biodiversity-2020-a-strategy-for-england-s-wildlife-and-ecosystem-services
[168] National Planning Policy Framework, March 2012, paragraph 109, or any successor document
[169] National Planning Policy Framework, March 2012, paragraph 9, or any successor document
[170] http://planningguidance.communities.gov.uk/blog/guidance/natural-environment/biodiversity-ecosystems-and-green-infrastructure/

internationally, nationally and locally designated sites of ecological or geological importance, protected species, and habitats and other species identified as being of principal importance for the conservation of biodiversity.

5.90 The Environmental Impact Assessment should reflect the principles of *Biodiversity 2020* and identify how the effects on the natural environment will be influenced by climate change, and how ecological networks and their physical and biological process will be maintained.

5.91 The applicant should show how the project has taken advantage of and maximised opportunities to conserve biodiversity and geological conservation interests.

Mitigation

5.92 The Secretary of State will consider what requirements should be attached to any consent and / or in any planning obligations entered into in order to ensure that mitigation measures are delivered and monitored for their effectiveness.

5.93 The Secretary of State will take account of any mitigation measures agreed between the applicant and Natural England, and whether Natural England has granted or refused, or intends to grant or refuse, any relevant licences, including protected species mitigation licences.

5.94 The applicant's proposal should address the mitigation hierarchy (which supports efforts to conserve and enhance biodiversity), which is set out in the National Planning Policy Framework.[171]

5.95 Compensation ratios relating to the effects of the preferred scheme should be considered in more detail during the design. The application of 2:1 compensation ratio is considered to represent the minimum requirement. However, there are other mechanisms for establishing compensation ratios, such as Defra's biodiversity offsetting metric. Equally, it is important to note that habitat ratios form only one part of potential compensation which should be considered, and the location and quality of any compensation land is of key importance. In this regard, habitat creation, where required, should be focused on areas where the most ecological and ecosystems services benefits can be realised.

Decision making

5.96 As a general principle, and subject to the specific policies set out below and the Infrastructure Planning (Decisions) Regulations 2010,[172] development should avoid significant harm to biodiversity and geological conservation interests, including through mitigation and consideration of reasonable alternatives. The applicant may also wish to make use of biodiversity offsetting in devising compensation proposals to counteract any impacts on biodiversity which cannot be avoided or mitigated.[173] Where significant harm cannot be avoided or mitigated, as a last resort appropriate compensation measures should be sought. The development consent order, or any associated planning obligations, will need to make provision for the long term management of such measures.

5.97 In taking decisions, the Secretary of State will ensure that appropriate weight is attached to designated sites of international, national and local importance, protected

[171] National Planning Policy Framework, March 2012, paragraph 118, or any successor document
[172] http://www.legislation.gov.uk/uksi/2010/305/regulation/7/made
[173] https://www.gov.uk/government/collections/biodiversity-offsetting Biodiversity offsets are measurable conservation outcomes resulting from actions designed to compensate for residual adverse biodiversity impacts arising from a development after mitigating measures have been taken. The goal of biodiversity offsets is to achieve no net loss and, preferably, a net gain of biodiversity

species, habitats and other species of principal importance for the conservation of biodiversity, and to biodiversity and geological interests within the wider environment.

International sites

5.98 The most important sites for biodiversity are those identified through international conventions and European Directives. The Habitats Regulations provide statutory protection for European sites and require an assessment of impacts upon such sites.[174] The Government considers that the following wildlife sites should have the same protection as European sites:

- Potential Special Protection Areas and possible Special Areas of Conservation;
- Listed or proposed Ramsar sites;[175] and
- Sites identified or required as compensatory measures for adverse effects on European sites, potential Special Protection Areas, possible Special Areas of Conservation, and listed or proposed Ramsar sites.

5.99 At this stage, it is not possible to rule out adverse effects of the Heathrow Northwest Runway scheme, given that more detailed project design information, and detailed proposals for mitigation, are not presently available. However, the applicant will need to demonstrate that Article 6(3) or 6(4) of the Habitats Directive are complied with in order to satisfy the competent authority that development consent can be granted on that basis.

Sites of Special Scientific Interest

5.100 Many Sites of Special Scientific Interest are also designated as sites of international importance and will be protected accordingly. Those that are not, or those features of Sites of Special Scientific Interest that are not covered by an international designation, will be given a high degree of protection. All National Nature Reserves are notified as Sites of Special Scientific Interest.

5.101 Where a proposed development on land within or outside a Site of Special Scientific Interest is likely to have an adverse effect on the site (either individually or in combination with other developments), development consent should not normally be granted. Where an adverse effect on the site's notified special interest features is likely, an exception should be made only where the benefits of the development at this site clearly outweigh both the impacts that it is likely to have on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest. The Secretary of State will ensure that the applicant's proposals to mitigate the harmful aspects of the development and, where possible, to ensure the conservation and enhancement of the site's biodiversity or geological interest, are acceptable. Where necessary, requirements and / or planning obligations should be used to ensure these proposals are delivered.

Regional and local sites

5.102 Sites of regional and local biodiversity interest (which include Local Nature Reserves, Local Wildlife Sites and Nature Improvement Areas) have a fundamental role to play in meeting overall national biodiversity targets, contributing to the quality of life and the wellbeing of the community, and supporting research and education. The Secretary of State will give due consideration to such regional or local designations. However,

[174] This includes candidate Special Areas of Conservation, Sites of Community Importance, Special Areas of Conservation and Special Protection Areas, and is defined in Regulation 8 of the Conservation of Habitats and Species Regulations 2010

[175] Potential Special Protection Areas, possible Special Areas of Conservation and proposed Ramsar sites are sites on which Government has initiated public consultation on the scientific case for designation as a Special Protection Area, candidate Special Area of Conservation or Ramsar site

given the need for new infrastructure, these designations should not be used in themselves to refuse development consent, although adequate compensation should always be considered, and ecological corridors and their physical processes should be maintained as a priority to mitigate widespread impacts.

Irreplaceable habitats including ancient woodland and veteran trees

5.103 Ancient woodland is a valuable biodiversity resource both for its diversity of species and for its longevity as woodland. Once lost, it cannot be recreated. The Secretary of State should not grant development consent for any development that would result in the loss or deterioration of irreplaceable habitats including ancient woodland and the loss of aged or veteran trees found outside ancient woodland, unless the national need for and benefits of the development, in that location, clearly outweigh the loss. Aged or veteran trees found outside ancient woodland are also particularly valuable for biodiversity and their loss should be avoided.[176] Where such trees would be affected by development proposals, the applicant should set out proposals for their conservation or, where their loss is unavoidable, the reasons for this.

Biodiversity within and around developments

5.104 The proposed development comprised in the preferred scheme should provide many opportunities for building in beneficial biodiversity as part of good design. When considering proposals, the Secretary of State will consider whether the applicant has maximised such opportunities in and around developments, and particularly to establishing and enhancing green infrastructure. The Secretary of State may use requirements or planning obligations where appropriate in order to ensure that such beneficial features are delivered.

Protection of other habitats and species

5.105 In addition to the habitats and species that are subject to statutory protection or international, regional or local designation, other habitats and species have been identified as being of principal importance for the conservation of biodiversity in England and Wales and therefore requiring conservation action. The Secretary of State will ensure that the applicant has taken measures to ensure that these other habitats and species are protected from the adverse effects of development. Where appropriate, requirements or planning obligations may be used in order to deliver this protection. The Secretary of State will refuse consent where harm to these other habitats, or species and their habitats, would result, unless the benefits of the development (including need) clearly outweigh that harm. In such cases, compensation will generally be expected to be included in the design proposals.

Land use including open space, green infrastructure and Green Belt

Introduction

5.106 Access to high quality open spaces and the countryside[177] and opportunities for sport and recreation can be a means of providing necessary mitigation and / or compensation requirements. Green infrastructure can enable developments to provide positive environmental and economic benefits.

[176] This does not prevent the loss of such trees where the decision maker is satisfied that their loss is unavoidable

[177] All open space of public value, including not just land but also areas of water (such as rivers, canals, lakes and reservoirs) which offer important opportunities for sport and recreation and can act as a visual amenity

5.107 Green Belts, defined in a development plan,[178] are situated around certain cities and built up areas, including London. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The essential characteristics of Green Belts are their openness and their permanence. Further information on the purposes and protection of Green Belt is set out in the National Planning Policy Framework.[179]

5.108 Best and most versatile agricultural land is land which is most flexible, productive and efficient in response to inputs and which can best deliver future crops for food and non-food uses such as biomass, fibres and pharmaceuticals. The National Planning Policy Framework sets out how local planning authorities should take into account the economic and other benefits of best and most versatile agricultural land.[180] Planning practice guidance for the natural environment provides additional guidance on best and most versatile agricultural land and soil issues.

5.109 Development of land will affect soil resources, including physical loss of and damage to soil resources, through land contamination and structural damage. Indirect impacts may also arise from changes in the local water regime, organic matter content, soil biodiversity and soil process.

5.110 Construction and operation of airport facilities is a potential source of contaminative substances (for example, through de-icing or leaks and spills of fuel). Where pre-existing land contamination is being considered through development, the objective is to ensure that the site is suitable for its intended use. Risks would require consideration in accordance with the contaminated land statutory guidance as a minimum.[181]

Applicant's assessment

5.111 The applicant should identify existing and proposed land uses[182] near the project, including any effects of replacing an existing development or use of the site with the proposed project or preventing a development or use on a neighbouring site from continuing. The applicant should also assess any effects of precluding a new development or use proposed in the development plan. The assessment should be proportionate to the scale of the preferred scheme and its likely impacts on such receptors.

5.112 Existing open space, sports and recreational buildings and land should not be developed unless the land is no longer needed or the loss would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location. If the applicant is considering proposals which would involve developing such land, it should have regard to any local authority's assessment of need for such types of land and buildings.

5.113 During any pre-application discussions with the applicant, the local planning authority should identify any concerns it has about the impacts of the application on land use, having regard to the development plan and relevant applications and including, where relevant, whether it agrees with any independent assessment that the land is no longer needed. These are also matters that local authorities may wish to include in their Local Impact Report which can be submitted after an application for development consent has been accepted.

[178] Or else so designated under the Green Belt (London and Home Counties) Act 1938
[179] National Planning Policy Framework, March 2012, paragraphs 79-92, or any successor document
[180] National Planning Policy Framework, March 2012, paragraph 112, or any successor document
[181] https://www.gov.uk/government/publications/contaminated-land-statutory-guidance
[182] For example, where a planning application has been submitted

5.114 The general policies controlling development in the countryside apply with equal force in Green Belts but there is, in addition, a general presumption against inappropriate development within them. Such development should not be approved except in very special circumstances which are already the subject of Government guidance.[183] The applicant should therefore determine whether the proposal, or any part of it, is within an established Green Belt and, if so, whether its proposal may be considered inappropriate development within the meaning of Green Belt policy. Metropolitan Open Land and land designated a Local Green Space in a local or neighbourhood plan are subject to the same policies of protection as Green Belt, and inappropriate development should not be approved except in very special circumstances.

5.115 The applicant should take into account the economic and other benefits of best and most versatile agricultural land. Where significant development of agricultural land is demonstrated to be necessary, the applicant should seek to use areas of poorer quality land in preference to that of a higher quality. The applicant should also identify any effects, and seek to minimise impacts, on soil quality, taking into account any mitigation measures proposed.

5.116 For developments where land may be affected by contamination, or existing mitigation is in place in respect of historic contamination, the applicant should have regard to the statutory regime contained in Part IIA of the Environmental Protection Act 1990 and relevant Government guidance relating to or dealing with contaminated land.[184]

5.117 The applicant should safeguard any mineral resources on the proposed site for the preferred scheme as far as possible.

Mitigation

5.118 The applicant can minimise the direct effects of a project on the existing use of the proposed site, or proposed uses near the site, by the application of good design principles, including the layout of the project and the protection of soils during construction.[185]

5.119 Where green infrastructure is affected, the applicant should aim to ensure the functionality and connectivity of the green infrastructure network is maintained and any necessary works are undertaken, where possible, to mitigate any adverse impact and, where appropriate, to improve that network and other areas of open space, including appropriate access to National Trails and other public rights of way.

5.120 The Secretary of State must also consider whether mitigation of any adverse effects on green infrastructure or open space is adequately provided for by means of requirements, planning obligations, or any other means, for example to provide exchange land and provide for appropriate management and maintenance agreements. Any exchange land should be at least as good in terms of size, usefulness, attractiveness, quality and accessibility. Alternatively, where sections 131 and 132 of the Planning Act 2008 apply,[186] any replacement land provided under those sections will need to conform to the requirements of those sections.

5.121 Where the preferred scheme has an impact on a mineral safeguarding area, the Secretary of State must ensure that the applicant has put forward appropriate mitigation measures to safeguard mineral resources.

[183] https://www.gov.uk/guidance/housing-and-economic-land-availability-assessment#paragraph_044
[184] https://www.gov.uk/government/collections/land-contamination-technical-guidance
[185] https://www.gov.uk/government/publications/code-of-practice-for-the-sustainable-use-of-soils-on-construction-sites
[186] http://www.legislation.gov.uk/ukpga/2008/29/section/131 and http://www.legislation.gov.uk/ukpga/2008/29/section/132

5.122 Where a project has a sterilising effect on land use, there may be scope for this to be mitigated through, for example, using the land for nature conservation or wildlife corridors.

5.123 Public rights of way, National Trails and other rights of access to land are important recreational facilities for walkers, cyclists and equestrians. The applicant is expected to take appropriate mitigation measures to address adverse effects on National Trails, other public rights of way and open access land and, where appropriate, to consider what opportunities there may be to improve access. In considering revisions to an existing right of way, consideration needs to be given to the use, character, attractiveness and convenience of the right of way. The Secretary of State should consider whether the mitigation measures put forward by an applicant are acceptable and whether requirements or other provisions in respect of these measures might be attached to any grant of development consent.

Decision making

5.124 The Secretary of State should not grant consent for development on existing open space, sports and recreational buildings and land, including playing fields, unless an assessment has been undertaken either by the local authority or independently, which has shown the open space or the buildings and land to be no longer needed, or the Secretary of State determines that the benefits of the project (including need) outweigh the potential loss of such facilities, taking into account any positive proposals made by the applicant to provide new, improved or compensatory land or facilities.

5.125 Where networks of green infrastructure have been identified in development plans, they should normally be protected from development and, where, possible, strengthened by or integrated within it. The Secretary of State will also have regard to the effect of the development upon and resulting from existing land contamination, as well as the mitigation proposed.

5.126 The Secretary of State will take into account the economic and other benefits of the best and most versatile agricultural land, and ensure the applicant has put forward appropriate mitigation measures to minimise impacts on soils or soil resources.

5.127 When located in the Green Belt, projects may comprise inappropriate development. Inappropriate development is by definition harmful to the Green Belt and there is a presumption against it except in very special circumstances. The Secretary of State will need to assess whether there are very special circumstances to justify inappropriate development. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. In view of the presumption against inappropriate development, the Secretary of State will attach substantial weight to the harm to the Green Belt, when considering any application for such development. In exchange for, or so as to ensure the reprovision of, lost Green Belt land,[187] the Secretary of State may require the provision of other land by the applicant, to be declared as Green Belt under the Green Belt (London and the Home Counties) Act 1938. The provision of such land should be in accordance with the National Planning Policy Framework or any successor document, and take into account relevant development plan policies.

[187] The term “Green Belt land” refers to land designated as Green Belt land under a local development plan and/or land declared as Green Belt under the 1938 Act.

Home Office assets

Introduction

5.128 There are two Immigration Removal Centres (IRCs) to the north-west of Heathrow Airport, run as one facility, within the land shown inside the red line on the scheme boundary map (at Annex A). Detention at immigration removal centres plays a vital role as part of the infrastructure which allows the Government to maintain effective immigration control and secure the UK's borders. The IRCs are Harmondsworth IRC and the Colnbrook IRC.

5.129 Continuous service provision of the IRCs at Heathrow is necessary. This consideration extends to the need to provide appropriate road access to the IRCs.

Assessment

5.130 The applicant should show how it has considered the impacts of the project upon the existing IRCs. This should include the process in identifying alternative means of addressing the impact of the project on the IRCs, including the means by which they will be reprovided.

5.131 The applicant should discuss the provision to be made in substitution for the existing IRCs with the Home Office and any local authority whose area is likely to be affected by a replacement facility.

5.132 The applicant's assessment should also set out how a replacement IRC would function in relation to neighbouring land uses, as well as how it can best be accommodated without adversely affecting such uses. These are also matters which local authorities may wish to address in their local impact report, which can be submitted after an application for development consent has been submitted.

Decision making

5.133 The Secretary of State considers that replacement facilities in substitution for the affected IRCs should be provided prior to any works which may significantly interfere with the service and facilities provided by the existing IRCs. The Secretary of State will consider whether the applicant has taken all reasonable steps to mitigate impacts of the project on the existing IRCs. Where necessary, the Secretary of State will impose requirements or obligations upon the applicant to deliver suitable replacement facilities.

5.134 Provided that the applicant is willing to commit to appropriate provision of such facilities on a continuous service basis and with constant road access, and to mitigate the effect of the project on the existing and replacement IRCs, development consent should not be withheld on the grounds of its effects on the existing IRCs.

Resource and waste management

Introduction

5.135 Government policy on hazardous and non-hazardous waste is intended to protect human health and the environment by producing less waste and by using it as a resource wherever possible. Where this is not possible, waste management regulation ensures that waste is disposed of in a way that is least damaging to the environment and to human health.

5.136 Sustainable waste management is implemented through the waste hierarchy:

- Waste prevention;
- Preparing for reuse;
- Recycling;
- Other recovery, including energy recovery; and
- Disposal.

5.137 The targets for preparation for re-use and recycling of municipal waste (50%), and for construction and demolition waste (70%) set out by the Waste Framework Directive (2008/98/EC)[188] should be considered 'minimum acceptable practice' for the construction and operation of any new airport infrastructure. Exceeding these targets if possible by aiming for exemplar performance in resource efficiency and waste management is recommended, to align with the principles of the EU Action Plan for the Circular Economy.[189]

5.138 Large airport infrastructure projects may generate hazardous and non-hazardous waste during construction and operation. The Environment Agency's environmental permitting regime incorporates operational waste management controls for certain activities. When the applicant applies to the Environment Agency for an environmental permit, the Environment Agency will require the application to demonstrate that processes are in place to meet all relevant conditions.

5.139 In addition, the Heathrow Northwest Runway scheme would involve the removal of the Lakeside energy from waste plant.

5.140 Waste generated and sent to landfill during construction and operation will be an ongoing management issue, and will continue to have adverse effects on the environment into and beyond the operational phase. The principal adverse effects of sending waste to landfill include:

- Permanent loss of materials from potential use higher up the waste management hierarchy;
- Reduction of local and regional landfill capacity;
- Visual, noise, health and other nuisance impacts on local communities;
- Environmental degradation and pollution;
- Greenhouse gas emissions; and
- Environmental implications of transporting waste to landfill sites.

Applicant's assessment

5.141 The applicant should set out the arrangements that are proposed for managing any waste produced in the application for development consent. The arrangements described should include information on the proposed waste recovery and disposal system for all waste generated by the development. The applicant should seek to minimise the volume of waste sent for disposal unless it can be demonstrated that the alternative is the best overall environmental, social and economic outcome when considered over the whole lifetime of the project.

5.142 The effects of removing the Lakeside energy from waste plant upon capacity for treatment of waste will require assessment.

[188] http://ec.europa.eu/environment/waste/framework/
[189] http://ec.europa.eu/environment/circular-economy/index_en.htm

Mitigation

5.143 The applicant should set out a comprehensive suite of mitigations to eliminate or significantly reduce the risk of adverse impacts associated with resource and waste management.

5.144 The Government recognises the role of the Lakeside Energy from Waste plant in local waste management plans. The applicant should make reasonable endeavours to ensure that sufficient provision is made to address the reduction in waste treatment capacity caused by the loss of the Lakeside Energy from Waste plant.

Decision making

5.145 The Secretary of State will consider the extent to which the applicant has proposed an effective process that will be followed to ensure effective management of hazardous and non-hazardous waste arising from all stages of the lifetime of the development. The Secretary of State should be satisfied that the process set out provides assurance that:

- Waste produced will be properly managed, both onsite and offsite;
- The waste from the proposed development can be dealt with appropriately by the waste infrastructure which is, or is likely to be, available. Such waste arising should not have an adverse effect on the capacity of existing waste management facilities to deal with other waste arising in the area; and
- Adequate steps have been taken to ensure that all waste arising from the site is subject to the principles of the waste hierarchy[190] and are dealt with at the highest possible level within the hierarchy.

5.146 Where necessary, the Secretary of State will require the applicant to develop a resource management plan to ensure that appropriate measures for sustainable resource and waste management are secured.

Flood risk

Introduction

5.147 Climate change over future decades is likely to result in milder, wetter winters and hotter, drier summers in the UK, while sea levels will continue to rise. Within the lifetime of the proposed development, these factors will lead to increased flood risk in areas susceptible to flooding, and to an increased risk of flooding in some areas not currently thought of as being at risk. In addition to increasing flood risk, longer term climate change will result in changes to weather-related disruption, most often caused by wind, rain, snow and ice. The applicant, the Examining Authority and the Secretary of State in taking decisions should take account of the policy on climate change adaptation as set out in the National Planning Policy Framework[191] and other supporting guidance.[192]

5.148 The National Planning Policy Framework sets out that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk.[193] But where development is necessary, it should be made safe without

[190] Article 4 of the revised EU Waste Framework Directive (Directive 2008/98/EC) sets out the 'waste hierarchy' with five steps for dealing with waste, ranked according to environmental impact
[191] National Planning Policy Framework, March 2012, paragraph 99, or any successor document
[192] https://www.gov.uk/guidance/flood-risk-assessments-climate-change-allowances and https://www.gov.uk/government/publications/adapting-to-climate-change-for-risk-management-authorities
[193] National Planning Policy Framework, March 2012, paragraphs 100-104, or any successor document

increasing flood risk elsewhere. Supporting guidance[194] explains that essential transport infrastructure (including mass evacuation routes) which has to cross the area at risk is permissible in areas of high flood risk, subject to the Exception Test. In addition, as set out in the National Planning Policy Framework, new development should be planned to avoid increased vulnerability to the range of impacts arising from climate change.[195]

5.149 Loss of flood plain storage may increase the overall flood risk for the catchment. The extent of any impact will depend on the ability of the development to manage storage of water on or off-site.

5.150 There is the potential for airport expansion to result in increased risk from climate change effects, particularly to increased surface water runoff rate and pressure on potable water supply. There may also be effects on groundwater.

5.151 Where the Airports NPS mentions the UK Climate Change Risk Assessment, the reader should refer to the most recent version of the document.

Applicant's assessment

5.152 Applications for projects in the following locations should be accompanied by a flood risk assessment:

- Flood Zones 2 and 3 (medium and high probability of river and sea flooding);
- Flood Zone 1 (low probability of river and sea flooding) for projects of 1 hectare or greater, or projects which may be subject to other sources of flooding (local watercourses, surface water, groundwater or reservoirs), or where the Environment Agency has notified the local planning authority that there are critical drainage problems.

5.153 The applicant should identify and assess the risks of all forms of flooding to and from the preferred scheme, and demonstrate how these flood risks will be managed, taking climate change into account.[196]

5.154 In preparing a flood risk assessment the applicant should:

- Consider the risk of all forms of flooding arising from the development comprised in the preferred scheme, in addition to the risk of flooding to the project, and demonstrate how these risks will be managed and, where relevant, mitigated, so that the development remains safe throughout its lifetime;[197]
- Take into account the impacts of climate change, clearly stating the development lifetime over which the assessment has been made;
- Consider the need for safe access and exit arrangements;
- Include the assessment of residual risk after risk reduction measures have been taken into account, and demonstrate that this is acceptable for the development;
- Consider if there is a need to remain operational during a worst case flood event over the preferred scheme's lifetime; and
- Provide evidence for the Secretary of State to apply the Sequential Test and Exception Test,[198] as appropriate.

[194] http://planningguidance.communities.gov.uk/blog/guidance/flood-risk-and-coastal-change/
[195] National Planning Policy Framework, March 2012, paragraph 99, or any successor document
[196] https://www.gov.uk/guidance/flood-risk-assessment-for-planning-applications
[197] Updated flood maps are available on the Environment Agency's website
[198] National Planning Policy Framework, March 2012, paragraphs 100-104, or any successor document

5.155 Where the preferred scheme may be affected by, or may add to, flood risk, the applicant is advised to seek early pre-application discussions with the Environment Agency, and, where relevant, other flood risk management bodies such as lead local flood authorities, Internal Drainage Boards, sewerage undertakers, highways authorities and reservoir owners and operators. These discussions can be used to identify the likelihood and possible extent and nature of the flood risk, help scope the flood risk assessment, and identify the information that may be required by the Secretary of State to reach a decision on the application. If the Environment Agency has concerns about proposals on flood risk grounds, the applicant is encouraged to discuss these concerns at a sufficiently early stage with the Environment Agency and explore ways in which the proposal might be amended, or additional information provided, which would satisfy the Environment Agency's concerns, before the application for development consent is submitted.

5.156 For local flood risk (surface water, groundwater and ordinary watercourse flooding), local flood risk management strategies and surface water management plans provide useful sources of information for consideration in a flood risk assessment. Surface water flood issues need to be understood to allow them to be taken into account, for example by clearly identifying and managing flow routes.

5.157 When assessing the potential impacts of climate change on airports which can be wider than flooding impacts, such as implications from heat and water availability and the potential adaptation strategies for them, the applicant should take into account the latest UK Climate Change Risk Assessment, the latest set of UK Climate Projections, and other relevant sources of climate change evidence.

Mitigation

5.158 The applicant should ensure that the preferred scheme design takes into account flood risk, and should put forward measures to mitigate the impact of flooding.

5.159 Mitigation measures will need to be developed as part of the applicant's application for development consent to ensure that it is safe from flooding, and will not increase flood risk elsewhere for the proposed development's lifetime, taking into account climate change.

5.160 To satisfactorily manage flood risk and the impact of the natural water cycle on people, property and ecosystems, good design and infrastructure may need to be secured using requirements or planning obligations. This may include the use of sustainable drainage systems but could also include vegetation to help to slow runoff, hold back peak flows, and make landscapes more able to absorb the impact of severe weather events.

5.161 In the Airports NPS, the term sustainable drainage systems is used and taken to cover the whole range of sustainable approaches to surface water drainage management including:

- Source control measures including rainwater recycling and drainage;
- Infiltration devices to allow water to soak into the ground, that can include individual soakaways and communal facilities;
- Filter strips and swales, which are vegetated features that hold and drain water downhill mimicking natural drainage patterns;
- Filter drains and porous pavements to allow rainwater and runoff to infiltrate into permeable material below ground and provide storage if needed;

- Basins and ponds to hold excess water after rain and allow controlled discharge that avoids flooding; and
- Flood routes to carry and direct excess water through developments to minimise the impact of severe rainfall flooding.

5.162 Site layout and surface water drainage systems should be able to cope with events that exceed the design capacity of the system, so that excess water can be safely stored on or conveyed from the site without adverse impacts.

5.163 The surface water drainage arrangements for any project should be such that the volumes and peak flow rates of surface water leaving the site are no greater than the rates prior to the proposed project, taking into account climate change, unless specific off-site arrangements are made and result in the same net effect.

5.164 It may be necessary to provide surface water storage and infiltration to limit and reduce both the peak rate of discharge from the site and the total volume discharged from the main application site. There may be circumstances where it is appropriate for infiltration attenuation storage to be provided outside the project site, if necessary through the use of a planning obligation or a development consent order requirement.

5.165 The sequential approach should be applied to the layout and design of the project. Vulnerable uses should be located on parts of the site at lower probability and residual risk of flooding. The applicant should seek opportunities where appropriate to use open space for multiple purposes such as amenity, wildlife habitat, and flood storage uses. Opportunities can be taken to lower flood risk by improving flow routes, flood storage capacity and using sustainable drainage systems.

Decision making

5.166 Where flood risk is a factor in determining an application for development consent, the Secretary of State will need to be satisfied that, where relevant:

- The application is supported by an appropriate flood risk assessment; and
- The Sequential Test[199] has been applied as part of site selection and, if required, the Exception Test.[200]

5.167 When determining an application, the Secretary of State will need to be satisfied that flood risk will not be increased elsewhere, and will only consider development appropriate in areas at risk of flooding where, informed by a flood risk assessment, following the Sequential Test and, if required, the Exception Test, it can be demonstrated that:

- Within the site, the most vulnerable development is located in areas of lowest flood risk unless there are overriding reasons to prefer a different location; and
- Over its lifetime, development is appropriately flood resilient and resistant, including safe access and escape routes where required, and that any residual risk can be safely managed, including by emergency planning, and that priority is given to the use of sustainable drainage systems.

5.168 The applicant should take into account the potential impacts of climate change using the latest UK Climate Change Risk Assessment, the latest set of UK Climate Projections, and other relevant sources of climate change evidence. The applicant should also ensure any environment statement that is prepared identifies appropriate mitigation or adaptation measures. This should cover the estimated lifetime of the new

[199] National Planning Policy Framework, March 2012, paragraph 101, or any successor document
[200] National Planning Policy Framework, March 2012, paragraph 102, or any successor document

infrastructure. Should a new set of UK Climate Projections become available after the preparation of an environmental statement, the Examining Authority or the Secretary of State will consider whether they need to request additional information from the applicant as part of the development consent application.

5.169 When determining an application, the Secretary of State will need to be satisfied that the potential effects of climate change on the development have been considered as part of the design.

5.170 For construction work which has drainage implications, approval for the preferred scheme's overall approach to drainage systems will form part of any development consent issued by the Secretary of State.[201] The Secretary of State will therefore need to be satisfied that the proposed drainage system complies with any technical standards issued by the Government[202] or to any National Standards[203] issued under Schedule 3 to the Flood and Water Management Act 2010.[204] In addition, the development consent order, or any associated planning obligations, will need to make provision for the adoption and maintenance of any sustainable drainage systems, including any necessary access rights to property. The Secretary of State will need to be satisfied that the most appropriate body would be given the responsibility for maintaining any sustainable drainage systems, taking into account the nature and security of the infrastructure on the proposed site. The responsible body could include, for example, the applicant, the landowner, the relevant local authority, or another body such as the Internal Drainage Board.

5.171 If the Environment Agency continues to have concerns, and therefore objects to the grant of development consent on the grounds of flood risk, the Secretary of State can grant consent, but would need to be satisfied that all reasonable steps have been taken by the applicant and the Environment Agency to attempt to resolve the concerns. Similarly, if the lead local flood authority objects to the development consent on the grounds of surface or other local sources of flooding, the Secretary of State can grant consent, but would need to be satisfied that all reasonable steps have been taken by the applicant and the lead local flood authority to attempt to resolve the concerns.

Water quality and resources

Introduction

5.172 Airport infrastructure projects can have adverse effects on the water environment, including groundwater, inland surface water and transitional waters.[205] During construction and operation, it can lead to increased demand for water, involve discharges to water, and cause adverse ecological effects resulting from physical modifications to the water environment. There may also be an increased risk of spills and leaks of pollutants to the water environment. These effects could lead to adverse impacts on health or on protected and other species and habitats, and could, in

[201] Drainage implications as defined in Paragraph 7(2) of Schedule 3 to the Flood and Water Management Act 2010 http://www.legislation.gov.uk/ukpga/2010/29/schedule/3/crossheading/requirement-for-approval
[202] https://www.gov.uk/government/publications/sustainable-drainage-systems-non-statutory-technical-standards
[203] The National Standards set out requirements for the design, construction, operation and maintenance of sustainable drainage systems, and may include guidance to which the Secretary of State will have regard
[204] http://www.legislation.gov.uk/ukpga/2010/29/contents
[205] As defined in the Water Framework Directive (2000/60/EC), transitional waters are bodies of surface water in the vicinity of river mouths which are partly saline in character as a result of their proximity to coastal waters by which are substantially influenced by freshwater flows

particular, result in surface waters, groundwaters or protected areas[206] failing to meet environmental objectives established under the Water Framework Directive.[207]

5.173 The Government's planning policies make clear that the planning system should contribute to and enhance the natural and local environment by, among other things, preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, water pollution. The Government has issued guidance on water supply, wastewater and water quality considerations in the planning system.[208] Where applicable, an application for development consent has to contain a plan with accompanying information identifying water bodies in a river basin management plan.[209]

5.174 Development may result in an increased potential for impacts on the water environment, especially the quality of the surface and groundwater through the discharge of waters contaminated with de-icer along with hydrocarbons and other pollutants.

Applicant's assessment

5.175 The applicant should make sufficiently early contact with the relevant regulators, including the Environment Agency, for abstraction licensing and environmental permitting, and with the water supply company likely to supply the water. Where the proposed development is subject to an Environmental Impact Assessment and the development is likely to have significant adverse effects on the water environment, the applicant should ascertain the existing status of, and carry out an assessment of, the impacts of the proposed project on water quality, water resources and physical characteristics as part of the environmental statement.

5.176 Any environmental statement should describe:

- The existing quality of water affected by the proposed project;
- Existing water resources affected by the proposed project and the impacts of the proposed project on water resources;
- Existing physical characteristics of the water environment (including quantity and dynamics of flow) affected by the proposed project, and any impact of physical modifications to these characteristics;
- Any impacts of the proposed project on water bodies or protected areas under the Water Framework Directive and source protection zones around potable groundwater abstractions; and
- Any cumulative effects.

5.177 The applicant should assess the effects on the surrounding water and wastewater treatment network in cooperation with the relevant water and sewerage undertaker(s). It should also address any future water infrastructure needed for the preferred scheme, including for supplies and sewerage treatment, and the effects on the surrounding water and wastewater treatment network. This assessment would be based on the additional wastewater flows which would need to be treated at sewage treatment works and should be developed through liaison with the relevant water and sewerage undertaker(s).

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[206] Protected areas are areas which have been designated as requiring special protection under specific community legislation for the protection of their surface water and groundwater or for the conservation of habitats and species directly depending on water
[207] Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy
[208] http://planningguidance.communities.gov.uk/blog/guidance/water-supply-wastewater-and-water-quality/
[209] http://www.legislation.gov.uk/uksi/2009/2264/made

Mitigation

5.178 The impact on local water resources can be minimised through planning and design for the efficient use of water, including water recycling.

5.179 The Secretary of State will need to consider whether the mitigation measures put forward by the applicant which are needed for operation and construction (and which may be over and above any which may form part of the development consent application) are acceptable.

5.180 The project should adhere to any national standards for sustainable drainage systems, which introduce a hierarchical approach to drainage design that promotes the most sustainable approach but recognises the feasibility and use of conventional drainage systems as part of a sustainable solution for any given site given its constraints.

5.181 The risk of impacts on the water environment can be reduced through careful design to adhere to good pollution practice.

Decision making

5.182 Activities that discharge to the water environment are subject to pollution control, and the considerations set out at paragraphs 4.53-4.59 above covering the interface between planning and environmental permitting therefore apply. These considerations will also apply in an analogous way to the abstraction licensing regime regulating activities that take water from the environment, and to the control regimes relating to works to, and structures in, on, or under, a controlled water.

5.183 The Secretary of State will generally need to give more weight to impacts on the water environment where a project would have adverse effects on the achievement of the environmental objectives established under the Water Framework Directive.

5.184 The Secretary of State will need to be satisfied that a proposal has had regard to the Thames river basin management plan and the Water Framework Directive and its daughter Directives on priority substances and groundwater. In terms of Water Framework Directive compliance, the overall aim of development should be to prevent deterioration in status of water bodies, to support the achievement of the objectives in the Thames river basin management plan and not to jeopardise the future achievement of good status for any affected water bodies. If the development is considered likely to cause deterioration of water body status or to prevent the achievement of good groundwater status or of good ecological status or potential, compliance with Article 4.7 of the Water Framework Directive must be demonstrated. Any use of Article 4.7 must be reported in the Thames river basin management plan.

5.185 The Secretary of State will need to consider the interactions of the preferred scheme with other plans, such as statutory water resources management plans.

5.186 The Secretary of State will need to consider proposals put forward by the applicant to mitigate adverse effects on the water environment, taking into account the likely impact of climate change on water availability, and whether appropriate requirements should be attached to any development consent and / or planning obligations. If the Environment Agency continues to have concerns, and objects to the grant of development consent on the grounds of impacts on water quality / resources, the Secretary of State can grant consent, but will need to be satisfied that all reasonable steps have been taken by the applicant and the Environment Agency to try to resolve the concerns.

Historic environment

Introduction

5.187 The construction and operation of airports and associated infrastructure has the potential to result in adverse impacts on the historic environment above and below ground. This could be as a result of the scale, form and function of the development, and the wider impacts it can create in terms of associated infrastructure to connect the airport to existing transport networks, changes in aircraft movement on the ground and in the surrounding airspace, additional noise and light levels, and the need for security and space to ensure the airport's operation.

5.188 The historic environment includes all aspects of the environment resulting from the interaction between people and places through time, including all surviving physical remains of past human activity, whether visible, buried or submerged, and landscaped and planted or managed flora.

5.189 Those elements of the historic environment that hold value to this and future generations because of their historic, archaeological, architectural or artistic interest are called 'heritage assets'. Heritage assets may be buildings, monuments, sites, places, areas or landscapes, or any combination of these. The sum of the heritage interests that a heritage asset holds is referred to as its significance. Significance derives not only from a heritage asset's physical presence, but also from its setting.[210]

5.190 Some heritage assets have a level of significance that justifies official designation. Categories of designated heritage assets are:

- World Heritage Sites;
- Scheduled Monuments;
- Listed Buildings;
- Protected Wreck Sites;
- Protected Military Remains;
- Registered Parks and Gardens;
- Registered Battlefields; and
- Conservation Areas.[211]

5.191 Non-designated heritage assets of archaeological interest that are demonstrably equivalent to Scheduled Monuments should be considered subject to the policies for designated heritage assets.[212] The absence of designation for such heritage assets does not indicate lower significance.

5.192 The Secretary of State will also consider the impacts on other non-designated heritage assets on the basis of clear evidence that the assets have a significance that merits consideration in that decision, even though those assets are of lesser value than designated heritage assets. The non-designated heritage assets would be identified

[210] Setting of a heritage asset is the surroundings in which it is experienced. Its extent is not fixed, and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance, or may be neutral

[211] The issuing of licences to undertake works on protected wreck sites in English waters is the responsibility of the Secretary of State for Culture, Media and Sport and does not form part of development consent orders. The issuing of licences for protected military remains is the responsibility of the Secretary of State for Defence

[212] There will be archaeological interest in a heritage asset if it holds, or may potentially hold, evidence of past human activity worthy of expert investigation at some point. Heritage assets with archaeological interest are the primary source of evidence about the substance and evolution of places, and the people and cultures that made them

either through the development plan process by local authorities, including through 'local listing', or through the nationally significant infrastructure project examination and decision making process.

Applicant's assessment

5.193 As part of the environmental statement, the applicant should provide a description of the significance of the heritage assets affected by the proposed development, and the contribution of their setting to that significance. The level of detail should be proportionate to the asset's importance, and no more than is sufficient to understand the potential impact of the proposal on the significance of the asset. Consideration will also need to be given to the possible impacts, including cumulative, on the wider historic environment. At a minimum, the relevant Historic Environment Record[213] should be consulted and the heritage assets assessed using appropriate expertise. Where a site on which development is proposed includes or has the potential to include heritage assets with archaeological interest, the applicant should include an appropriate desk-based assessment and, where necessary, a field evaluation. The applicant should ensure that the extent of the impact of the proposed development on the significance of any heritage asset affected can be adequately understood from the application and supporting documents.

5.194 Detailed studies will be required on those heritage assets affected by noise, light and indirect impacts based on the guidance provided in *The Setting of Heritage Assets*[214] and the *Aviation Noise Metric*.[215] Where proposed development will affect the setting of a heritage asset, accurate representative visualisations may be necessary to assess the impact.

5.195 The applicant is encouraged, where opportunities exist, to prepare proposals which can make a positive contribution to the historic environment, and to consider how their scheme takes account of the significance of heritage assets affected. This can include, where possible:

- Enhancing, through a range of measures such as sensitive design, the significance of heritage assets or setting affected;
- Considering measures that address those heritage assets that are at risk, or which may become at risk, as a result of the scheme; and
- Considering how visual or noise impacts can affect heritage assets, and whether there may be opportunities to enhance access to or interpretation, understanding and appreciation of the heritage assets affected by the scheme.

Careful consideration in preparing the scheme will be required on whether the impacts on the historic environment will be direct or indirect, temporary or permanent.

Decision making

5.196 In determining applications, the Secretary of State will seek to identify and assess the particular significance of any heritage asset that may be affected by the proposed development (including by development affecting the setting of a heritage asset), taking account of the available evidence and any necessary expertise from:

[213] Historic Environment Records are information services maintained and updated by (or on behalf of) local authorities and National Park Authorities with a view to providing access to comprehensive and dynamic resources relating to the historic environment of an area for public benefit and use. Details of Historic Environment Records in England are available from the Heritage Gateway website. Historic England should also be consulted where relevant

[214] https://www.historicengland.org.uk/images-books/publications/gpa3-setting-of-heritage-assets/

[215] https://www.historicengland.org.uk/images-books/publications/aviation-noise-metric/

- Relevant information provided with the application and, where applicable, relevant information submitted during examination of the application;
- Any designation records included on the National Heritage List for England;
- Historic landscape character records;
- The relevant Historic Environment Record(s) and similar sources of information;
- Representations made by interested parties during the examination; and
- Expert advice, where appropriate and when the need to understand the significance of the heritage asset demands it.

5.197 The Secretary of State must also comply with the regime relating to Listed Buildings, Conservation Areas and Scheduled Monuments set out in The Infrastructure Planning (Decisions) Regulations 2010.[216]

5.198 In considering the impact of a proposed development on any heritage assets, the Secretary of State will take into account the particular nature of the significance of the heritage asset and the value that they hold for this and future generations. This understanding should be used to avoid or minimise conflict between their conservation and any aspect of the proposal.

5.199 The Secretary of State will take into account: the desirability of sustaining and, where appropriate, enhancing the significance of heritage assets; the contribution of their settings; and the positive contribution their conservation can make to supporting sustainable communities – including to their quality of life, their economic vitality, and to the public's enjoyment of these assets. The Secretary of State will also take into account the desirability of new development making a positive contribution to the character and local distinctiveness of the historic environment. The consideration of design should include scale, height, massing, alignment, materials, use and landscaping (for example screen planting).

5.200 When considering the impact of a proposed development on the significance of a designated heritage asset, the Secretary of State will give great weight to the asset's conservation. The more important the asset, the greater the weight should be. The Secretary of State will take into account the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation, the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality, and the desirability of new development making a positive contribution to local character and distinctiveness.

5.201 Once lost, heritage assets cannot be replaced, and their loss has a cultural, environmental, economic and social impact. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. Given that heritage assets are irreplaceable, any harm or loss should require clear and convincing justification.

5.202 Substantial harm to or loss of a Grade II Listed Building or a Grade II Registered Park or Garden should be exceptional. Substantial harm to or loss of designated sites of the highest significance, including World Heritage Sites, Scheduled Monuments, Grade I and II* Listed Buildings, Protected Wreck Sites, Registered Battlefields, and Grade I and II* Registered Parks and Gardens should be wholly exceptional.

5.203 Any harmful impact on the significance of a designated heritage asset should be weighed against the public benefit of development, recognising that the greater the

[216] http://www.legislation.gov.uk/uksi/2010/305/regulation/3/made

harm to the significance of the heritage asset, the greater the justification that will be needed for any loss.

5.204 Where the proposed development will lead to substantial harm to or the total loss of significance of a designated heritage asset, the Secretary of State will refuse consent unless it can be demonstrated that the substantial harm or loss of significance is necessary in order to deliver substantial public benefits that outweigh that loss or harm, or alternatively that all of the following apply:

- The nature of the heritage asset prevents all reasonable uses of the site;
- No viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation;
- Conservation by grant funding or some form of charitable or public ownership is demonstrably not possible; and
- The harm or loss is outweighed by the benefit of bringing the site back into use.

5.205 Where the proposed development will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.

5.206 Not all elements of a World Heritage Site or conservation area will necessarily contribute to its significance. The Secretary of State will treat the loss of a building (or other element) that makes a positive contribution to the significance of a World Heritage Site or conservation area's significance either as substantial harm or less than substantial harm, as appropriate, taking into account the relative significance of the elements affected and their contribution to the significance of the World Heritage Site or conservation area as a whole.

5.207 Where the loss of significance of any heritage asset is justified on the merits of the new development, the Secretary of State will consider imposing a requirement on the consent, or require the applicant to enter into an obligation, that will prevent the loss occurring until it is reasonably certain that the relevant part of the development is to proceed.

5.208 The applicant should look for opportunities for new development within Conservation Areas and World Heritage Sites, and within the setting of heritage assets, to enhance and better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to or better reveal the significance of the asset should be treated favourably.[217]

Recording

5.209 A documentary record of our past is not as valuable as retaining the heritage asset, and therefore the ability to record evidence of the asset should not be a factor in deciding whether consent should be given.

5.210 Where the loss of the whole or part of a heritage asset's significance is justified, the Secretary of State will require the applicant to record and advance understanding of the significance of the heritage asset before it is lost (wholly or in part). The extent of the requirement should be proportionate to the nature and level of the asset's significance. The applicant should be required to publish this evidence and to deposit copies of the reports with the relevant Historic Environmental Record. They should

[217] Further good practice advice on decision making in the historic environment can be found at: https://www.historicengland.org.uk/images-books/publications/gpa2-managing-significance-in-decision-taking/

also be required to deposit the archive generated in a local museum or other public repository willing to receive it.

5.211 Where appropriate, the Secretary of State will impose requirements to the development consent order to ensure that the work is undertaken in a timely manner, in accordance with a written scheme of investigation that complies with the policy in the Airports NPS and has been agreed in writing with the relevant local authority, and that the completion of the exercise is properly secured.

5.212 Where there is a high probability that a development site may include as yet undiscovered heritage assets with archaeological interest, the Secretary of State will consider requirements to ensure appropriate procedures are in place for the identification and treatment of such assets discovered during construction.

Landscape and visual impacts

Introduction

5.213 For airport development, landscape and visual effects also include tranquillity effects, which would affect people's enjoyment of the natural environment and recreational facilities. In this context, references to landscape should be taken as covering local landscape, waterscape and townscape character and quality, where appropriate.

Applicant's assessment

5.214 Where the development is subject to an Environmental Impact Assessment, the applicant should undertake an assessment of any likely significant landscape and visual impacts and describe them in the environmental statement. The landscape and visual assessment should reference any landscape character assessment and associated studies as a means of assessing landscape impacts relevant to the preferred scheme. In addition, the applicant's assessment should take account of any relevant policies based on these assessments in local development documents.

5.215 The applicant's assessment should include any significant effects during construction of the preferred scheme and / or the significant effects of the completed development and its operation on landscape components and landscape character, including historic characterisation. This should include assessment of any landscape and visual impacts as a result of the development, for example surface access proposals or aviation activity.

5.216 The assessment should include the visibility and conspicuousness of the preferred scheme during construction and the presence and operation of the preferred scheme and potential impacts on views and visual amenity. This should include any noise and light pollution effects, including on local amenity, tranquillity and nature conservation.

Mitigation

5.217 Adverse landscape and visual effects may be minimised through appropriate design (including choice of materials), and landscaping schemes. Materials and designs for the Heathrow Northwest Runway scheme should be given careful consideration.

Decision making

Landscape impact

5.218 Landscape effects depend on the nature of the existing landscape likely to be changed and nature of the effect likely to occur. Both these factors need to be considered in judging the impact of the preferred scheme on the landscape. The preferred scheme

needs to be designed carefully, taking account of the potential impact on the landscape. Having regard to siting, operational and other relevant constraints, the development should aim to avoid or minimise harm to the landscape, providing reasonable mitigation where possible and appropriate.

Development proposed within nationally designated areas

5.219 Great weight should be given to conserving landscape and scenic beauty in nationally designated areas. National Parks, the Broads and Areas of Outstanding Natural Beauty have the highest status of protection in relation to landscape and scenic beauty. Each of these designated areas has specific statutory purposes which help ensure their continued protection and which the Secretary of State has a statutory duty to have regard to in decisions.

5.220 The Secretary of State should refuse development consent in these areas except in exceptional circumstances and where it can be demonstrated that it is in the public interest. Consideration of such applications should include an assessment of:

- The need for the development, including in terms of any national considerations, and the impact of consenting, or not consenting it, upon the local economy;
- The cost of, and scope for, developing elsewhere, outside the designated area, or meeting the need for it in some other way; and
- Any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.

5.221 Where consent is given in these areas, the Secretary of State should be satisfied that the applicant has ensured that the preferred scheme will be carried out to high environmental standards and, where possible, includes measures to enhance other aspects of the environment. Where necessary, the Secretary of State should consider the imposition of appropriate requirements to ensure these standards are delivered.

Developments outside nationally designated areas which might affect them

5.222 The duty to have regard to the purposes of nationally designated areas also applies when considering applications for projects outside the boundaries of these areas which may have impacts within them. The development should aim to avoid compromising the purposes of designation, and such projects should be designed sensitively given the various siting, operational, and other relevant constraints.

Developments in other areas

5.223 Outside nationally designated areas, there are local landscapes and townscapes that are highly valued locally and may be protected by local designation. Where a local development document in England has policies based on landscape character assessment, these should be given particular consideration. However, local landscape designations should not be used in themselves as reasons to refuse consent, as this may unduly restrict acceptable development.

5.224 In taking decisions, the Secretary of State will consider whether the preferred scheme has been designed carefully, taking account of environmental effects on the landscape and siting, operational and other relevant constraints, to avoid adverse effects on landscape or to minimise harm to the landscape, including by reasonable mitigation.

Visual impact

5.225 The Secretary of State will judge whether the visual effects on sensitive receptors, such as local residents, and other receptors, such as visitors to the local area, outweigh the benefits of the development.

Land instability

Introduction

5.226 The effects of land instability may result in landslides, subsidence or ground heave. Failing to deal with this issue could cause harm to human health, local property and associated infrastructure, and the wider environment. They occur in different circumstances for different reasons and vary in their predictability and in their effect on development.

Applicant's assessment

5.227 Where necessary, land stability should be considered in respect of new development, as set out in the National Planning Policy Framework and supporting planning guidance.[218] Specifically, proposals should be appropriate for the location, including preventing unacceptable risks from land instability. If land stability could be an issue, the applicant should seek appropriate technical and environmental expert advice to assess the likely consequences of proposed developments on sites where subsidence, landslides and ground compression is known or suspected. Applicants should liaise with the Coal Authority if necessary.

5.228 A preliminary assessment of ground instability should be carried out at the earliest possible stage before a detailed application for development consent is prepared. The applicant should ensure that any necessary investigations are undertaken to confirm that their sites are and will remain stable, or can be made so as part of the development. The site needs to be assessed in the context of surrounding areas where subsidence, landslides and land compression could threaten the development during its anticipated life or damage neighbouring land or property. This could be in the form of a land stability or slope stability risk assessment report.

Mitigation

5.229 The applicant has a range of mechanisms available to mitigate and minimise risks of land instability. These include:

- Establishing the principle and layout of new development, for example avoiding mine entries and other hazards;
- Ensuring proper design of structures to cope with any movement expected and other hazards such as mine and / or ground gases; or
- Requiring ground improvement techniques, usually involving the removal of poor material and its replacement with suitable inert and stable material. For development on land previously affected by mining activity, this may mean prior extraction of any remaining mineral resource.

Dust, odour, artificial light, smoke and steam

5.230 The construction and operation of airports infrastructure has the potential to create a range of emissions such as dust, odour, artificial light, smoke and steam. All have the potential to have a detrimental impact on amenity or cause a common law nuisance or statutory nuisance under Part III, Environmental Protection Act 1990.[219] These may also be covered by pollution control or other environmental consenting regimes.

[218] https://www.gov.uk/guidance/land-stability
[219] http://www.legislation.gov.uk/ukpga/1990/43/part/III

5.231 Because of the potential effects of these emissions and in view of the availability of the defence of statutory authority against nuisance claims described previously, it is important that the potential for these impacts is considered by the applicant in its application, by the Examining Authority in examining applications, and by the Secretary of State in taking decisions on development consent.

5.232 For nationally significant infrastructure projects of the type covered by the Airports NPS, some impact on amenity for local communities is likely to be unavoidable. Impacts should be kept to a minimum and should be at a level that is acceptable.

Applicant's assessment

5.233 Where the development is subject to an Environmental Impact Assessment, the applicant should assess any likely significant effects on amenity from emissions of dust, odour, artificial light, smoke and steam, and describe these in the environmental statement.

5.234 In particular, the assessment provided by the applicant should describe:

- The type and quantity of emissions;
- Aspects of the development which may give rise to emissions during construction, operation and decommissioning;
- Premises or locations that may be affected by the emissions;
- Effects of the emission on identified premises or locations; and
- Measures to be employed in preventing or mitigating the emissions.

5.235 The applicant is advised to consult the relevant local planning authority and, where appropriate, the Environment Agency, about the scope and methodology of the assessment.

Mitigation

5.236 The Secretary of State should ensure the applicant has provided sufficient information to show that any necessary mitigation will be put into place. In particular, the Secretary of State should consider whether to require the applicant to abide by a scheme of management and mitigation concerning emissions of dust, odour, artificial light, smoke and steam from the development to reduce any loss to amenity which might arise during the construction and operation of the development. A construction management plan may help clarify and secure mitigation.

Decision making

5.237 The Secretary of State should be satisfied that all reasonable steps have been taken, and will be taken, to minimise any detrimental impact on amenity from emissions of dust, odour, artificial light, smoke and steam. This includes the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.

5.238 If development consent is granted for a project, the Secretary of State should consider whether there is a justification for all of the authorised project (including any associated development) being covered by a defence of statutory authority against nuisance claims. If the Secretary of State cannot conclude that this is justified, then the defence should be disapplied, in whole or in part, through a provision in the development consent order.

Community compensation

Introduction

5.239 The Secretary of State recognises that, in addition to providing economic growth and employment opportunities, airport expansion will also have negative impacts upon local communities. This will include impacts through land take requiring the compulsory acquisition of houses that fall within the new boundary of the airport, exposure to air quality impacts, and aircraft noise, that is both an annoyance and can have an adverse impact on health and cognitive development.

5.240 The Secretary of State expects the applicant to provide an appropriate community compensation package, relevant to planning. This will include financial compensation to residents who will see their homes compulsorily acquired, as well as ongoing financial compensation to the local community. In addition to controlling and reducing aircraft noise impacts, the applicant will be required to commit appropriate resources to mitigate the impacts of aircraft through noise insulation programmes for both private homes and public buildings such as schools.

5.241 A number of statutory protections are provided in these areas, and the applicant must fulfil its statutory duties in a timely and efficient manner.

5.242 Under planning law, residential and agricultural owners in the area within the red line on the map shown in Annex A will be able to make a claim for statutory blight upon the designation of the Airports NPS.

5.243 In addition, compensation can be sought in respect of loss of value of a property arising from the development during construction (under the Compulsory Purchase Act 1965)[220] and for loss of value arising from the operation of an expanded airport (under Part 1 of the Land Compensation Act 1973)[221] after one year of operation.

5.244 People are entitled to know what steps will be taken to help protect them against aircraft noise and, where appropriate, to help them to move house.

5.245 In addition to statutory requirements, Heathrow Airport has publicly committed to a community compensation package comprising a number of more generous offers:

- To pay 125% of market value, plus taxes and reasonable moving costs, for all owner occupied homes within the compulsory acquisition zone;[222]
- To pay 125% of market value, plus taxes and reasonable moving costs, for all owner occupied homes within an additional voluntary purchase / acquisition zone incorporating the area known as the Heathrow Villages;[223]
- Following a third party assessment, to provide full acoustic insulation for residential property within the full single mode easterly and westerly 60dB LAeq (16hr)[224] noise contour of an expanded airport;
- Following a third party assessment, to provide a contribution of up to £3,000 for acoustic insulation for residential properties within the full single mode easterly and

[220] http://www.legislation.gov.uk/ukpga/1965/56/contents
[221] http://www.legislation.gov.uk/ukpga/1973/26/contents
[222] http://your.heathrow.com/newpropertycompensation/
[223] http://your.heathrow.com/newpropertycompensation/
[224] Leq is the measure used to describe the average sound level experienced over a period of time (usually sixteen hours for day and eight hours for night) resulting in a single decibel value. Leq is expressed as LAeq when it refers to the A-weighted scale

westerly 57dB LAeq (16hr) or the full 55dB Lden[225] noise contours of an expanded airport, whichever is the bigger; and

- To deliver a programme of noise insulation and ventilation for schools and community buildings within the 60dB LAeq (16hr) contour.[226]

5.246 In addition to the statutory requirements and the public commitments made by Heathrow Airport, the Government also supports the Airports Commission's recommendation for an additional component of ongoing community compensation proportionate to environmental impacts.

5.247 The Airports Commission suggested this should take the form of a national noise levy paid for by passengers. The Government does not consider a national levy appropriate, but supports the development of a community compensation fund at an expanded Heathrow Airport. The Government expects that the size of the community compensation fund will be proportionate to the environmental harm caused by expansion of the airport. The Government notes that, in its consideration of a noise levy, the Airports Commission considered that a sum of £50 million per annum could be an appropriate amount at an expanded Heathrow Airport, and that, over a 15 year period, a community compensation fund could therefore distribute £750 million to local communities.

5.248 Expansion at Heathrow Airport is likely to increase the amount of locally collected business rates in the area. The Government will consider how authorities can benefit from this through a business rate retention scheme and the opportunities for authorities to work together to share the benefits. Heathrow Airport is currently the highest single site business rates payer in the UK.[227]

Applicant's assessment

5.249 The Government expects to see arrangements being made for the community compensation schemes which Heathrow Airport has publicly stated would be provided, and for a community compensation fund.

5.250 The applicant should seek to minimise impacts on local people, to consult on the details of its works, and to put them in place quickly. The Government also looks to the applicant to consult on the detail of a community compensation fund.

Decision making

5.251 The Secretary of State will consider whether and to what extent the applicant has sought to minimise impacts on local people, has consulted on the details of its works, and has put mitigations in place, at least to the level committed to in Heathrow Airport's public commitments. This includes whether the applicant has set out appropriate eligibility criteria, how delivery will be ensured, and whether the applicant has made reasonable efforts to put the works in place quickly.

5.252 The Secretary of State will also consider whether the applicant has consulted on the details of a community compensation fund, including source of revenue, size and duration of fund, eligibility, and how delivery will be ensured.

5.253 The Secretary of State will expect the applicant to demonstrate how these provisions are secured, and how they will be operated. The applicant will also need to show how these measures will be administered to ensure that they are relevant to planning when in operation. The mechanisms for enforcing these provisions should also be

[225] Lden is the 24 hour LAeq calculated for an annual period, but with a five decibel weighting for evening and a ten decibel weighting for night to reflect people's greater sensitivity to noise within these periods
[226] http://your.heathrow.com/newpropertycompensation/
[227] http://www.cvsuk.com/news-resources/news/draft-list-release

demonstrated, along with the appropriateness of any identified enforcing body, which may include the Secretary of State.

Community engagement

Introduction

5.254 The Government recognises that the planning, construction, and subsequent operation of a Northwest Runway will bring both significant impacts and opportunities to communities living around Heathrow Airport. Communities will wish to participate fully in the development and delivery of expansion, and the Government expects them to be able to do so.

5.255 There will be many opportunities for communities to engage as expansion is taken forward. The Government is required to consult on and publicise the Airports NPS, and the applicant is subject to pre-application consultation duties. Additional consultations on issues such as airspace change, overseen by the Civil Aviation Authority, will take place outside of the planning process. Ongoing engagement will also be required as the applicant takes forward its compensation package.

5.256 The Government wishes to maximise local stakeholder engagement with the expansion process, and it wishes to encourage any applicant and local stakeholders to strengthen the way in which the airport and local stakeholders work together to make engagement effective. Local stakeholders, including those representing communities around Heathrow Airport, have the experience and expertise to identify solutions tailored to their specific circumstances. A number of engagement forums already exist at Heathrow Airport. These have developed over time in response to emerging needs and are consistent with the Government's view that, in principle, it encourages collaborative local solutions.

5.257 A community engagement board will be developed at Heathrow Airport to help to ensure that local communities are able to contribute effectively to the delivery of expansion, including to consultations and evidence gathering during the planning process.

Applicant's assessment

5.258 The applicant must engage constructively with the community engagement board throughout the planning process, with its membership (including an independent chair), and with any programme(s) of work the community engagement board agrees to take forward.

Decision making

5.259 The Secretary of State will consider whether the applicant has engaged constructively with this community engagement board throughout the planning process.

Skills

Introduction

5.260 The Government is committed to helping people into jobs and improving the skills of the UK workforce, with a target of three million new apprenticeships being created in the current Parliament.[228] Continuing to create jobs and new training opportunities will

[228] https://www.gov.uk/government/news/government-kick-starts-plans-to-reach-3-million-apprenticeships

help to consolidate the national economic recovery, put the UK on the path to full employment and raise the nation's productivity. Apprenticeships have an essential role to play within this work, helping individuals to develop key skills which will benefit both them and employers.

5.261 To help deliver the Government's wider skills agenda, the Department for Transport published *Transport Skills Strategy: building sustainable skills* in January 2016, setting out its skills strategy for transport, including aviation, and an additional 30,000 apprenticeships by 2020 across the road and rail sectors.[229] The Strategic Transport Apprenticeship Taskforce has been created to deliver this work.[230]

5.262 The Government notes that Heathrow Airport already makes a significant contribution to local employment and already has a number of skills and employment initiatives designed to support the business needs of the airport. The Heathrow Academy, established in 2004, supports recruitment and retention of local residents across the retail, construction, aviation and logistics sectors, and includes apprenticeships as a part of the package.[231]

5.263 The Government notes that, with expansion, Heathrow Airport has publicly committed to ensuring 10,000 apprenticeships before 2030, thereby doubling the number currently available at the airport and in its supply chain and airport-related businesses.[232]

5.264 The Heathrow Northwest Runway scheme represents an opportunity to grow the number of jobs and apprenticeships supported by the applicant and its supply chain and airport-related businesses, particularly in neighbouring communities.

Applicant's assessment

5.265 Heathrow Airport should put in place arrangements for the delivery of the 5,000 new apprenticeships which it has publicly stated would be created. Heathrow Airport should set out the timetable for delivering the apprenticeships, provide information on the areas and skills to be covered by these apprenticeships, the breakdown between opportunities to be created within the core airport and those being offered by companies within its supply chain and other airport-related businesses, and the qualification level and standards which they will need to achieve. Heathrow Airport should also set out how it will publicly report progress against the target.

5.266 The Government expects the applicant to maximise the employment and skills opportunities for local residents, including apprenticeships.

5.267 Heathrow Airport will also need to show how these measures will be administered to ensure that they are relevant to planning when in operation. The mechanisms for enforcing these provisions should also be demonstrated, along with the appropriateness of any identified enforcing body, which may include the Secretary of State.

Decision making

5.268 The Secretary of State will consider whether Heathrow Airport has set out a credible plan to implement its commitment to deliver a total of 10,000 apprenticeships at an expanded airport.

[229] https://www.gov.uk/government/publications/transport-infrastructure-skills-strategy-building-sustainable-skills
[230] https://www.gov.uk/government/news/strategic-transport-apprenticeship-taskforce-to-boost-apprenticeships
[231] http://www.heathrow.com/company/heathrow-jobs/heathrow-academy
[232] https://www.heathrowexpansion.com/uk-growth-opportunities/job-opportunities/

5.269 The Secretary of State will consider how these provisions are secured, and how they will be operated.

Ruling out a fourth runway

Introduction

5.270 As part of its work, the Airports Commission considered the possibility that, in addition to the increased capacity provided by a Northwest Runway at Heathrow Airport, the airport might wish in the future to develop a fourth runway. The Airports Commission found no sound case for such a development.

5.271 First, the Airports Commission concluded that the airspace around the airport would be increasingly difficult to manage if a fourth runway was built. It noted that the airport could safely support 800,000 air transport movements per year at a four runway site, only 60,000 more than under the (three runway) Heathrow Northwest Runway scheme, but that the airspace impacts would lead to reduced numbers of air transport movements at the other airports in the London area.

5.272 Second, the Airports Commission concluded that it would be increasingly challenging to physically accommodate a fourth runway at the Heathrow Airport site. Taken together, these conclusions mean that building a fourth runway at Heathrow Airport would result in significant costs while providing less overall additional benefit.

5.273 Finally, the Airports Commission noted that there would be no guarantee that the potential demand for a further runway would be backed by a strong economic or environmental case. Any project to deliver a fourth runway at Heathrow Airport would be costly and extremely difficult to deliver given all of these considerations.

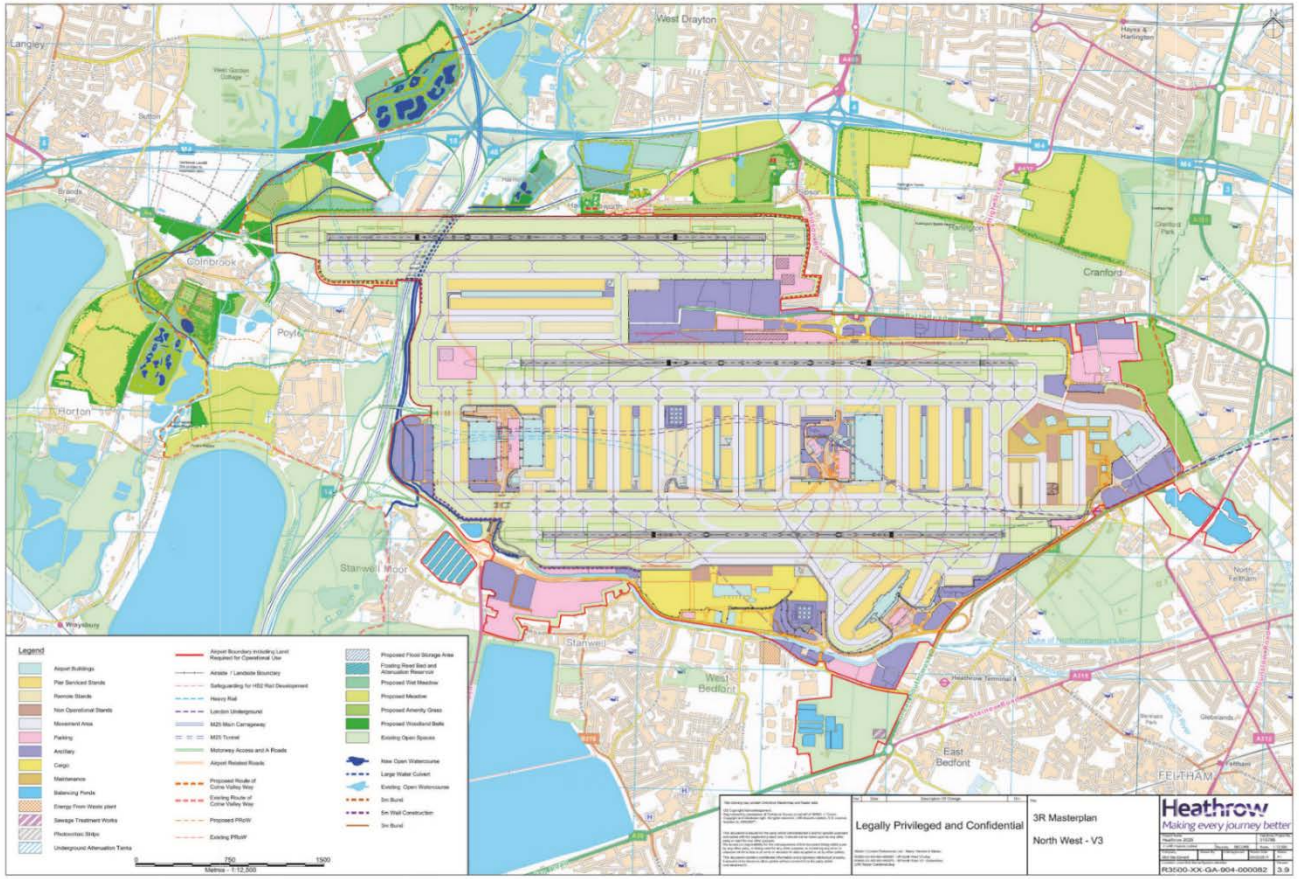
5.274 The Airports Commission also noted the importance of a clear signal from Government on limiting expansion to reassure local communities that Heathrow Airport will not expand any further.

Decision making

5.275 The Government agrees with the Airports Commission’s recommendation and the analysis that underpins it, and therefore does not see a need for a fourth runway at Heathrow Airport. An application in the vicinity of Heathrow Airport for a fourth runway would not be supported in policy terms, and should be seen as being in conflict with the Airports NPS.

Annex A: Heathrow Northwest Runway scheme boundary map

Annex B: Illustrative Heathrow Northwest Runway scheme masterplan



NB: This map is for illustrative purposes and is a masterplan of the Heathrow Northwest Runway scheme as submitted by Heathrow Airport to the Airports Commission. It should not be considered as a detailed site plan; the full detail and design of the scheme will be considered as part of Heathrow Airport's development consent application.

HM Government

Beyond the horizon
The future of UK aviation

Making best use of existing runways

June 2018

HM Government

Beyond the horizon
The future of UK aviation

Making best use of existing runways

June 2018

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1. Making best use of existing runways

1.1 The government's 2013 Aviation Policy Framework provided policy support for airports outside the South East of England to make best use of their existing airport capacity. Airports within the South East were to be considered by the newly established Airports Commission.

1.2 The Airports Commission's Final Report recognised the need for an additional runway in the South East by 2030 but also noted that there would be a need for other airports to make more intensive use of their existing infrastructure.

1.3 The government has since set out its preferred option for a new Northwest runway at Heathrow by 2030 through drafts of the Airports National Policy Statement (NPS), but has not yet responded on the recommendation for other airports to make more intensive utilisation of their existing infrastructure.

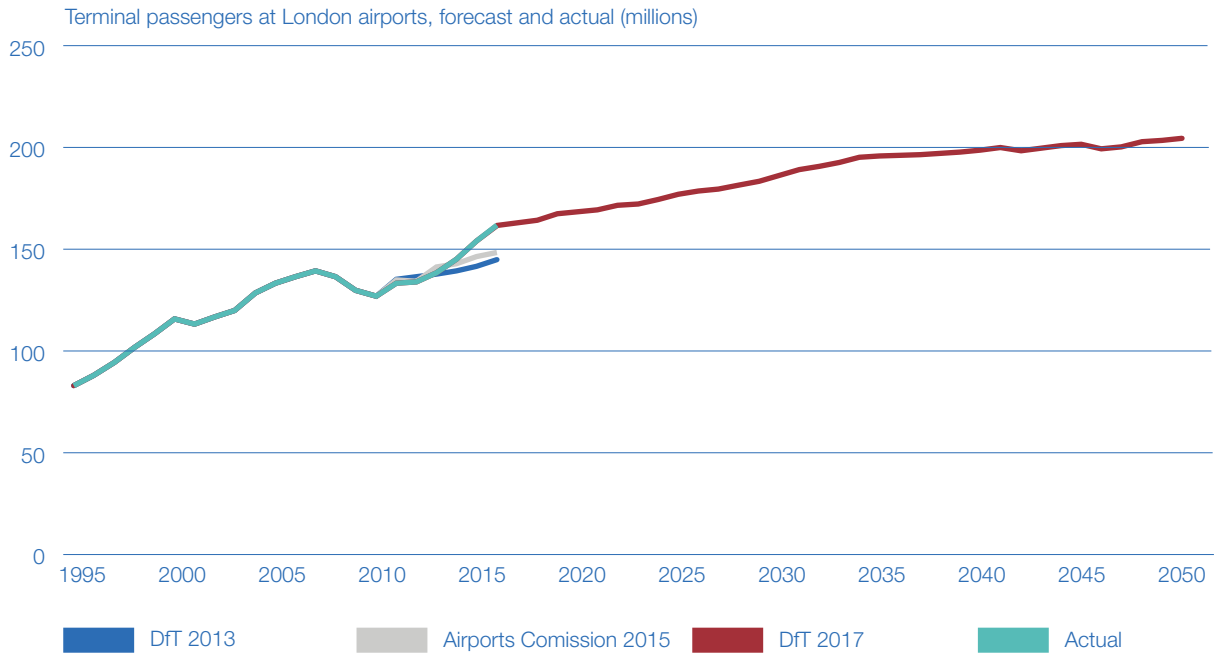
1.4 On 24th October 2017 the Department for Transport (DfT) released its latest aviation forecasts. These are the first DfT forecasts since 2013[1]. The updated forecasts reflect the accelerated growth experienced in recent years and that demand was 9% higher in London[2] in 2016 than the Airports Commission forecast[3]. This has put pressure on existing infrastructure, despite significant financial investments by airports over the past decade, and highlights that government has a clear issue to address.

1.5 The Aviation Strategy call for evidence set out that government agrees with the Airports Commission's recommendation and was minded to be supportive of all airports who wish to make best use of their existing runways, including those in the South East, subject to environmental issues being addressed. The position is different for Heathrow, where the government's proposed policy on expansion is set out in the proposed Airports NPS.

1 Additional aviation forecasts were published by the Airports Commission in 2015 to support their recommendations for an additional runway in the south east.

2 Heathrow, Gatwick, Stansted, Luton and London City

3 The difference is explained largely be the fact that oil prices were lower than expected



Call for evidence response summary

1.6 The Aviation Strategy call for evidence document asked specifically for views on the government's proposal to support airports throughout the UK making best use of their existing runways, subject to environmental issues being addressed.

1.7 We received 346 consultation responses. Excluding those who either did not respond or responded on a different topic, 60% were in favour, 17% against and 23% supportive provided certain issues were addressed.

1.8 The main issues raised included the need for environmental issues such as noise, air quality, and carbon to be fully addressed as part of any airport proposal; the need for improved surface access and airspace modernisation to handle the increased road / rail and air traffic; and clarification on the planning process through which airport expansion decisions will be made.

Role of local planning

1.9 Most of the concerns raised can be addressed through our existing policies as set out in the 2013 Aviation Policy Framework, or through more recent policy updates such as the new UK Airspace Policy or National Air Quality Plan. For the majority of environmental concerns, the government expects these to be taken into account as part of existing local planning application processes. It is right that decisions on the elements which impact local individuals such as noise and air quality should be considered through the appropriate planning process and CAA airspace change process.

1.10 Further, local authorities have a duty to consult before granting any permission, approval, or consent. This ensures that local stakeholders are given appropriate opportunity to input into potential changes which affect their local environment and have their say on airport applications.

Role of national policy

1.11 There are, however, some important environmental elements which should be considered at a national level. The government recognises that airports making the best use of their existing runways could lead to increased air traffic which could increase carbon emissions.

1.12 We shall be using the Aviation Strategy to progress our wider policy towards tackling aviation carbon. However, to ensure that our policy is compatible with the UK's climate change commitments we have used the DfT aviation model[4] to look at the impact of allowing all airports to make best use of their existing runway capacity[5]. We have tested this scenario against our published no expansion scenario and the Heathrow Airport North West Runway scheme (LHR NWR) option, under the central demand case.

1.13 The forecasts are performed using the DfT UK aviation model which has been extensively quality assured and peer reviewed and is considered fit for purpose and robust for producing forecasts of this nature. Tables 1-3 show the expected figures in passenger numbers, air traffic movements, and carbon at a national level for 2016, 2030, 2040, and 2050.

	Baseline	Baseline + best use	LHR NWR base	LHR NWR + best use
2016	266.6	266.6	266.6	266.6
2030	313.4	314.8	342.5	341.9
2040	359.8	365.9	387.4	388.8
2050	409.5	421.3	435.3	444.2

Table 1: Terminal Passengers at UK airports, million passengers per annum

	Baseline	Baseline + best use	LHR NWR base	LHR NWR + best use
2016	2,119	2,119	2,119	2,119
2030	2,330	2,358	2,459	2,460
2040	2,584	2,602	2,697	2,700
2050	2,901	2,958	3,013	3,043

Table 2: Air Transport Movements (ATMs) at UK airports, 000s

	Baseline	Baseline best use	LHR NWR base	LHR NWR best use
2016	37.3	37.3	37.3	37.3
2030	38.6	38.8	43.5	43.4
2040	38.1	38.7	42.3	42.4
2050	37.0	37.9	39.9	40.8

Table 3: CO_2 from flights departing UK airports, million tonnes

4 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/674749/uk-aviation-forecasts-2017.pdf

5 Modelled the impact of airports increasing their planning cap whenever they have become 95% full.

Implications for the UK's carbon commitments

1.14 As explained in Chapter 6 of the Aviation Strategy Next Steps document[6], we have made significant steps in developing international measures for addressing aviation carbon dioxide (CO_2) emissions, including reaching agreement at the International Civil Aviation Organisation (ICAO) in October 2016 on a global offsetting scheme for international aviation, known as the Carbon Offsetting and Reduction Scheme for International Aviation, or CORSIA. However, there remains uncertainty over future climate change policy and international arrangements to reduce CO2 and other greenhouse gases. The Airports Commission devised two scenarios which continue to be appropriate to reflect this uncertainty: carbon traded and carbon capped[7]. In this assessment the DfT has followed the same approach.

Carbon traded scenario

1.15 Under the carbon-traded scenario, UK aviation emissions could continue to grow provided that compensatory reductions are made elsewhere in the global economy. This could be facilitated by a carbon trading mechanism in which aviation emissions could be traded with other sectors. In this case, provided a global trading scheme is place, higher UK aviation activity would have no impact on global emissions as any increase in emissions would be offset elsewhere and therefore there is nothing to indicate that this policy would prevent the UK meeting its carbon obligations.

Carbon capped scenario

1.16 The carbon-capped scenario was developed to explore the case for expansion even in a future where aviation emissions were limited to the Committee on Climate Change's (CCC) planning assumption of 37.5Mt of CO_2 in 2050. Under DfT's carbon-capped scenario the cap is met using a combination of carbon pricing and specific measures. For the central demand case we determined that the most appropriate specific measures to use, based on cost effectiveness and practicality of implementation, were more efficient aircraft ground movements (using single engine taxiing) and higher uptake of renewable fuels[8].

6 https://www.gov.uk/government/consultations/a-new-aviation-strategy-for-the-uk-call-for-evidence

7 For background to the Carbon Policy scenarios used by DfT both in this document and in its airport expansion analysis see pages 9 and 33-38 of: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/653879/updated-appraisal-report-airport-capacity-in-the-south-east.pdf

8 These would be implemented alongside the carbon price.

1.17 The more efficient ground movement policy involves government action to incentivise the use of single-engine taxiing at UK airports. It is assumed that the policy would lead to a 95% take-up rate by 2030 and beyond and it is estimated that this measure would reduce fuel consumption by around 1% per flight on average[9].

1.18 The renewable fuels policy involves government regulations to mandate specific renewable fuel percentages in aviation fuel supply. Any measures deployed would be designed to ensure that the renewable feedstock is sustainable and delivers substantial lifecycle CO_2 savings, such as municipal waste, which on this basis could deliver savings of over 70%. Such a scheme would be consistent with the future aims of the Renewable Transport Fuel Obligation to include aviation and focus on advanced fuels, as set out in the government's response to its recent consultation[10]. The levels of carbon reduction delivered by the policy measures are presented in Table 4.

	No expansion base	No expansion + best use	LHR NWR base	LHR NWR + best use
Carbon reduction required, $MtCO_2$	-0.5	0.4	2.4	3.3
Abatement from single engine taxiing, $MtCO_2$*	0	0.3	0.3	0.3
Renewable fuel uptake required	0	0**	12%	16%

*Figure does not vary due to rounding
**Zero due to rounding

Table 4: Policies to meet CCC cap (37.5 $MtCO_2$), levels in 2050

1.19 The level of renewable fuels required is higher under the making best use sensitivity but these are still at the conservative end of the range of forecast future biofuel supply[11].

1.20 There is significant uncertainty over the likely future cost of these measures and their impact on carbon so this policy mix is presented to illustrate the type of abatement action that could be taken. It should not be interpreted as a statement of future carbon policy which will be considered through the development of the Aviation Strategy. Other measures are likely to be available and may turn out to be more cost effective or have greater abatement potential.

1.21 On balance, therefore, it is likely that these or other measures would be available to meet the planning assumption under this policy.

9 Ricardo Energy & Environment, 2017. *Carbon Abatement in UK Aviation* https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/653776/carbon-abatement-in-uk-aviation.pdf

10 DfT, 2017. *Renewable transport fuel obligations order: government response.* https://www.gov.uk/government/publications/renewable-transport-fuel-obligations-order-government-response

11 See Increased use of biofuels chapter in Carbon Abatement in UK Aviation Report prepared by Ricardo Energy & Environment for discussion https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/653776/carbon-abatement-in-uk-aviation.pdf

Local environmental impacts

1.22 The government recognises the impact on communities living near airports and understands their concerns over local environmental issues, particularly noise, air quality and surface access. As airports look to make the best use of their existing runways, it is important that communities surrounding those airports share in the economic benefits of this, and that adverse impacts such as noise are mitigated where possible.

1.23 For the majority of local environmental concerns, the government expects these to be taken into account as part of existing local planning application processes.

1.24 As part their planning applications airports will need to demonstrate how they will mitigate local environmental issues, which can then be presented to, and considered by, communities as part of the planning consultation process. This ensures that local stakeholders are given appropriate opportunity to input into potential changes which affect their environment and have their say on airport applications.

Policy statement

1.25 As a result of the consultation and further analysis to ensure future carbon emissions can be managed, government believes there is a case for airports making best of their existing runways across the whole of the UK. The position is different for Heathrow Airport where the government's policy on increasing capacity is set out in the proposed Airports NPS.

1.26 Airports that wish to increase either the passenger or air traffic movement caps to allow them to make best use of their existing runways will need to submit applications to the relevant planning authority. We expect that applications to increase existing planning caps by fewer than 10 million passengers per annum (mppa) can be taken forward through local planning authorities under the Town and Country Planning Act 1990. As part of any planning application airports will need to demonstrate how they will mitigate against local environmental issues, taking account of relevant national policies, including any new environmental policies emerging from the Aviation Strategy. This policy statement does not prejudge the 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.

1.27 Applications to increase caps by 10mppa or more or deemed nationally significant would be considered as Nationally Significant Infrastructure Projects (NSIPs) under the Planning Act 2008 and as such would be considered on a case by case basis by the Secretary of State.

1.28 Given the likely increase in ATMs that could be achieved through making best use of existing runways is relatively small (2% increase in ATMs "without Heathrow expansion" scenario; 1% "with Heathrow"), we do not expect that the policy will have significant implications for our overall airspace capacity. However it is important to note that any flightpath changes required as a result of a development at an airport will need to follow the CAA's airspace change process. This includes full assessment of the likely environmental impacts, consideration of options to mitigate these impacts, and the need to consult with stakeholders who may be affected. Approval for the proposed airspace change will only be granted once the CAA has been satisfied that all aspects, including safety, have been addressed. In addition, government has committed to establish an Independent Commission on Civil Aviation Noise (ICCAN) to help ensure that the noise impacts of airspace changes are properly considered and give communities a greater stake in noise management.

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 prejudge the 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.**

Ministry of Housing,
Communities &
Local Government

National Planning Policy Framework

February 2019
Ministry of Housing, Communities and Local Government

National Planning Policy Framework

Presented to Parliament
by the Secretary of State for Housing, Communities and Local Government
by Command of Her Majesty

February 2019

CP 48

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Contents

1. Introduction 4
2. Achieving sustainable development 5
3. Plan-making 8
4. Decision-making 13
5. Delivering a sufficient supply of homes 17
6. Building a strong, competitive economy 23
7. Ensuring the vitality of town centres 25
8. Promoting healthy and safe communities 27
9. Promoting sustainable transport 30
10. Supporting high quality communications 33
11. Making effective use of land 35
12. Achieving well-designed places 38
13. Protecting Green Belt land 40
14. Meeting the challenge of climate change, flooding and coastal change 44
15. Conserving and enhancing the natural environment 49
16. Conserving and enhancing the historic environment 54
17. Facilitating the sustainable use of minerals 58

Annex 1: Implementation 62

Annex 2: Glossary 64

1. Introduction

1. The National Planning Policy Framework sets out the Government's planning policies for England and how these should be applied[1]. It provides a framework within which locally-prepared plans for housing and other development can be produced.

2. Planning law requires that applications for planning permission be determined in accordance with the development plan[2], unless material considerations indicate otherwise[3]. The National Planning Policy Framework must be taken into account in preparing the development plan, and is a material consideration in planning decisions. Planning policies and decisions must also reflect relevant international obligations and statutory requirements.

3. The Framework should be read as a whole (including its footnotes and annexes). General references to planning policies in the Framework should be applied in a way that is appropriate to the type of plan being produced, taking into account policy on plan-making in chapter 3.

4. The Framework should be read in conjunction with the Government's planning policy for traveller sites, and its planning policy for waste. When preparing plans or making decisions on applications for these types of development, regard should also be had to the policies in this Framework, where relevant.

5. The Framework does not contain specific policies for nationally significant infrastructure projects. These are determined in accordance with the decision-making framework in the Planning Act 2008 (as amended) and relevant national policy statements for major infrastructure, as well as any other matters that are relevant (which may include the National Planning Policy Framework). National policy statements form part of the overall framework of national planning policy, and may be a material consideration in preparing plans and making decisions on planning applications.

6. Other statements of government policy may be material when preparing plans or deciding applications, such as relevant Written Ministerial Statements and endorsed recommendations of the National Infrastructure Commission.

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[1] This document replaces the first National Planning Policy Framework published in March 2012, and includes minor clarifications to the revised version published in July 2018.
[2] This includes local and neighbourhood plans that have been brought into force and any spatial development strategies produced by combined authorities or elected Mayors (see glossary).
[3] Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

2. Achieving sustainable development

7. The purpose of the planning system is to contribute to the achievement of sustainable development. At a very high level, the objective of sustainable development can be summarised as meeting the needs of the present without compromising the ability of future generations to meet their own needs[4].

8. Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives):

   a) **an economic objective** – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;

   b) **a social objective** – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; and

   c) **an environmental objective** – to contribute to protecting and enhancing our natural, built and historic environment; including making effective use of land, helping to improve biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.

9. These objectives should be delivered through the preparation and implementation of plans and the application of the policies in this Framework; they are not criteria against which every decision can or should be judged. Planning policies and decisions should play an active role in guiding development towards sustainable solutions, but in doing so should take local circumstances into account, to reflect the character, needs and opportunities of each area.

10. So that sustainable development is pursued in a positive way, at the heart of the Framework is a **presumption in favour of sustainable development** (paragraph 11).

[4] Resolution 42/187 of the United Nations General Assembly.

50. Refusal of planning permission on grounds of prematurity will seldom be justified where a draft plan has yet to be submitted for examination; or – in the case of a neighbourhood plan – before the end of the local planning authority publicity period on the draft plan. Where planning permission is refused on grounds of prematurity, the local planning authority will need to indicate clearly how granting permission for the development concerned would prejudice the outcome of the plan-making process.

Tailoring planning controls to local circumstances

51. Local planning authorities are encouraged to use Local Development Orders to set the planning framework for particular areas or categories of development where the impacts would be acceptable, and in particular where this would promote economic, social or environmental gains for the area.

52. Communities can use Neighbourhood Development Orders and Community Right to Build Orders to grant planning permission. These require the support of the local community through a referendum. Local planning authorities should take a proactive and positive approach to such proposals, working collaboratively with community organisations to resolve any issues before draft orders are submitted for examination.

53. The use of Article 4 directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the well-being of the area (this could include the use of Article 4 directions to require planning permission for the demolition of local facilities). Similarly, planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so.

Planning conditions and obligations

54. Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.

55. Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Agreeing conditions early is beneficial to all parties involved in the process and can speed up decision making. Conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification[23].

56. Planning obligations must only be sought where they meet all of the following tests[24]:

---

[23] When in force, sections 100ZA(4-6) of the Town and Country Planning Act 1990 will require the applicant's written agreement to the terms of a pre-commencement condition, unless prescribed circumstances apply.

[24] Set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.

14. Meeting the challenge of climate change, flooding and coastal change

148. The planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change. It should help to: shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure.

Planning for climate change

149. Plans should take a proactive approach to mitigating and adapting to climate change, taking into account the long-term implications for flood risk, coastal change, water supply, biodiversity and landscapes, and the risk of overheating from rising temperatures[48]. Policies should support appropriate measures to ensure the future resilience of communities and infrastructure to climate change impacts, such as providing space for physical protection measures, or making provision for the possible future relocation of vulnerable development and infrastructure.

150. New development should be planned for in ways that:

a) avoid increased vulnerability to the range of impacts arising from climate change. When new development is brought forward in areas which are vulnerable, care should be taken to ensure that risks can be managed through suitable adaptation measures, including through the planning of green infrastructure; and

b) can help to reduce greenhouse gas emissions, such as through its location, orientation and design. Any local requirements for the sustainability of buildings should reflect the Government's policy for national technical standards.

151. To help increase the use and supply of renewable and low carbon energy and heat, plans should:

a) provide a positive strategy for energy from these sources, that maximises the potential for suitable development, while ensuring that adverse impacts are addressed satisfactorily (including cumulative landscape and visual impacts);

b) consider identifying suitable areas for renewable and low carbon energy sources, and supporting infrastructure, where this would help secure their development; and

c) identify opportunities for development to draw its energy supply from decentralised, renewable or low carbon energy supply systems and for co-locating potential heat customers and suppliers.

[48] In line with the objectives and provisions of the Climate Change Act 2008.

HM Government

The Government Response to the Committee on Climate Change's 2020 Progress Report to Parliament

Reducing UK emissions

Presented to Parliament pursuant to section 37 of the Climate Change Act 2008

October 2020

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Contents

Ministerial Foreword 4
Executive Summary 7
Building Back Greener 10
Sector-specific action 15
- Power 15
- Buildings 21
- Industry 28
- Transport 31
- Natural Resources 36

Adaptation and Resilience 40
Action in Devolved Administrations 43
- Northern Ireland 43
- Scotland 47
- Wales 49

International leadership and countdown to COP26 51
Annex 1: Responses to departmental recommendations 54
- Priorities for all departments 54
- Recommendations for the Cabinet Office and N°10 62
- Recommendations for the Foreign Commonwealth and Development Office, the Department for Business, Energy & Industrial Strategy, and the COP26 Unit 66
- Recommendations for HM Treasury 71
- Recommendations for the Department for Business, Energy & Industrial Strategy 75
- Recommendations for the Department for Environment, Food and Rural Affairs 90
- Recommendations for the Department for Transport 101
- Recommendations for the Ministry of Housing, Communities & Local Government 107
- Recommendations for the Department for Education 113
- Recommendations for the Department for International Trade 117
- Recommendations for the Department of Health and Social Care 119
- Recommendations for the Ministry of Defence 122
- Recommendations for the Home Office and Ministry of Justice 124
- Recommendations for the Department for Digital, Culture, Media & Sport 127
- Recommendations for the Department for Work and Pensions 129

Annex 2: Progress against milestones from 2019 report 132
Annex 3: Progress against Clean Growth Strategy metrics 142
Endnotes 146

Ministerial Foreword

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The Rt Hon Kwasi Kwarteng
Minister of State for Business, Energy and Clean Growth

It is clear that the coronavirus pandemic has caused significant harm – both human and economic – and has led to an unprecedented shutdown of large parts of the global economy with severe consequences for all sectors and countries.

As the Committee on Climate Change (CCC) acknowledged, Covid-19 has presented immense challenges for businesses and governments. Chief among these is how we recover from the pandemic, stimulate economic growth and create employment while ensuring we also address the linked challenges of safeguarding public health, tackling climate change, and preserving biodiversity.

As the Prime Minister said in May, we owe it to future generations to build back better and base our recovery on solid foundations including a fairer, greener, and more resilient global economy. The recovery is a chance for us to build back better, build back greener and to do that at the pace that this moment requires. This means placing clean growth and our target to achieve net zero greenhouse gas emissions by 2050 at the heart of our economic recovery. We have taken huge strides in bringing forward ambitious net zero policies across all sectors of the economy. That is what we are doing here in the UK.

Since March, the Government has announced billions in support of the green economic recovery, including: over £3 billion to reduce emissions from the UK's buildings which includes our £2 billion Green Homes Grant, launched in September[1], which will allow homeowners to obtain funding for up to two-thirds of the cost of energy saving home improvements, as well as to save up to £600 a year on their energy bills; £250 million for an emergency active travel fund as part of a £2 billion package for cycling and walking within plans to boost greener, active transport; £191 million into a Sustainable Innovation Fund; and £100 million into research, development and demonstration of direct air capture technologies, alongside £350 million into cutting emissions in heavy industry.

On 6 October, the Prime Minister announced that £160 million will be made available to increase our offshore wind capacity in order to meet the Government's updated ambition of generating 40GW through offshore wind by 2030, an increase from the previous 30GW target, which means that offshore wind could produce enough electricity to power every home in the country by 2030[2].

This funding builds on earlier green commitments made at the Spring Budget including: a record £5.2 billion investment in flood defences between 2021 and 2027 which will better protect 336,000 properties; over £1 billion of support for ultra-low emission vehicles; £640 million in a Nature for Climate Fund to deliver England's contribution towards planting 30,000 hectares of trees a year across the UK by 2025 and to restore 35,000 hectares of peatland in

England; and £270 million for the Green Heat Networks Scheme[3]. In addition, £100 million was announced in August 2019 to scale up low carbon hydrogen production[4].

In supporting families and businesses to recover from the pandemic, we cannot lose sight of our wider climate ambition and our legal obligation to achieve net zero greenhouse gas emissions by 2050. As the CCC notes, the urgent need for action on climate change has not diminished and the significant changes required to our economy to achieve net zero have not been altered by the pandemic.

Against this backdrop, we welcome the CCC's annual Progress Report for 2020, published in June[5]. We are pleased that the Committee has recognised the progress we have made over the last year in establishing an appropriate policy framework to deliver our net zero ambitions across the whole UK economy. This includes:

- In October 2019 it was announced that the Prime Minister would chair a Cabinet committee on climate change. The Climate Action Strategy Committee (CAS) determines the UK's overarching climate strategy, both domestically and internationally. It is supported by the Climate Action Implementation Committee (CAI), chaired by the Secretary of State for Business, Energy and Industrial Strategy, which seeks to operationalise the Government's climate strategy and drive implementation.

- The Government has announced that the Net Zero Review report will be published in spring 2021. In the meantime, HM Treasury will publish an interim report this autumn. This will present some of our initial findings and analysis for the Review.

- In the government Response to the Future of UK Carbon Pricing consultation published in June 2020[6], we committed to consulting on the most appropriate trajectory for the UK Emissions Trading System (ETS) cap for the remainder of its first phase within nine months of the CCC's sixth carbon budget advice being published, should that be the method of carbon pricing we choose to adopt on leaving the EU ETS.

- In the lead-up to COP26 in Glasgow in November 2021, we continue to drive climate ambition on the global stage. We have established a dedicated COP26 Unit to deliver our ambitious presidency plans and announced last year that we will double our International Climate Finance to £11.6 billion[7].

- Building on our success to date, we continue to support and drive decarbonisation across the power sector, creating thousands of jobs in new industries in the process. The price of offshore wind energy has fallen by two-thirds between 2015[8] and 2019[9] and UK offshore wind capacity is now the largest in the world[10]. From April to June this year we went 67 days without using coal for our power generation and we can say with confidence that the UK will meet its ambition to phase out coal power by 2024.

- On 26 March 2020, we took the important step of publishing "Decarbonising Transport: Setting the Challenge", taking a holistic view of emissions across the entire transport sector and launching our work on preparing a Transport Decarbonisation Plan. To be published in 2020, the Transport Decarbonisation Plan will set out a credible and ambitious pathway to cut greenhouse gas emissions across the entire transport system.

However, just as importantly, we have heard the strong message from the CCC that progress has been greater in some areas than others. While we have decarbonised our economy faster than any other major economy over the past two decades[11], we recognise that more needs to be done if we are to meet the size of our net zero and carbon budgets ambitions.

We are pleased to announce today that, in addition to ambitious plans across key sectors of the economy, including an Energy White Paper, Transport Decarbonisation Plan and Heat and Buildings Strategy, we will publish a comprehensive Net Zero Strategy in the lead up to COP26. The strategy will set out the Government's vision for transitioning to a net zero economy, making the most of new growth and employment opportunities across the UK. These will raise ambition as we outline our path to hit our 2050 target.

As we continue to deal with the Covid-19 pandemic, we agree wholeheartedly with the CCC on the need to ensure that our recovery plans support our climate change response. By building back greener and better, we can achieve our climate goals, protect our biodiversity and natural capital, and sustain climate-resilient economic development, all in a fair and inclusive way.

We also agree with the CCC that as we do this it is important that we involve the public and bring them with us, so that the decisions we make align with society's concerns and values. As the Committee has pointed out, 62% of emissions reductions involve some form of behaviour change. In June 2019 six Select Committees of the House of Commons convened the Climate Assembly UK. The Assembly produced its final report[12] this September. We welcome the report and will be considering its findings closely as we shape our approach to net zero. We have already committed to many policies in line with the report and wholeheartedly agree with the spirit of its recommendation on greater citizenship involvement around climate change. The green recovery and move to a net zero economy affect every one of us, and getting there will require politicians, policy makers, businesses, and the public to work together.

As the CCC rightly notes, 2021 will be a critical year for climate ambition, both domestically and internationally. Through our COP26 and G7 presidencies, the UK is well-placed to drive international cooperation in the year ahead and we will continue to press for more ambition to reduce emissions, build resilience, and support each other.

We recognise and agree with the CCC that UK international climate leadership must be underpinned by robust domestic policy and continued progress at home. In the report that follows, we set out in detail the progress we have made so far in pursuit of the decarbonisation of the UK economy as well as further actions that we will undertake to deliver net zero and meet our carbon budgets.

We would like to reiterate our thanks to the CCC for its 2020 Progress Report and the detailed analysis and recommendations that it contains. It is clear that the immense challenges of addressing climate change can only be met by working together across government, business and civil society. The Government will continue to work closely with the CCC as we continue to drive our transition to net zero by 2050 and we look forward to receiving further advice from the Committee on Carbon Budget 6 in December.

The Rt Hon Alok Sharma

Secretary of State for Business, Energy and Industrial Strategy

The Rt Hon Kwasi Kwarteng

Minister of State for Business, Energy and Clean Growth

Executive Summary

The truly global challenge presented by climate change cannot be underestimated. The science is clear. To limit the Earth's warming to 1.5 degrees Celsius, we need to halve global greenhouse gas emissions over the next decade[13].

The UK has taken considerable steps to meet this challenge. We have reduced emissions faster than any other G7 nation since 1990[14], and in 2019, we became the first major economy to legislate to achieve net zero greenhouse gas emissions.

Reaching net zero will involve fundamental changes across the UK economy. Under any feasible scenario, meeting net zero will require reductions in emissions across the economy on a scale not previously seen; ambitious and early deployment of existing technologies and approaches; and innovation in new technologies, including greenhouse gas removal technologies which will enable us to sequester or offset emissions from sectors which cannot fully decarbonise and could offset the highest cost measures in other sectors.

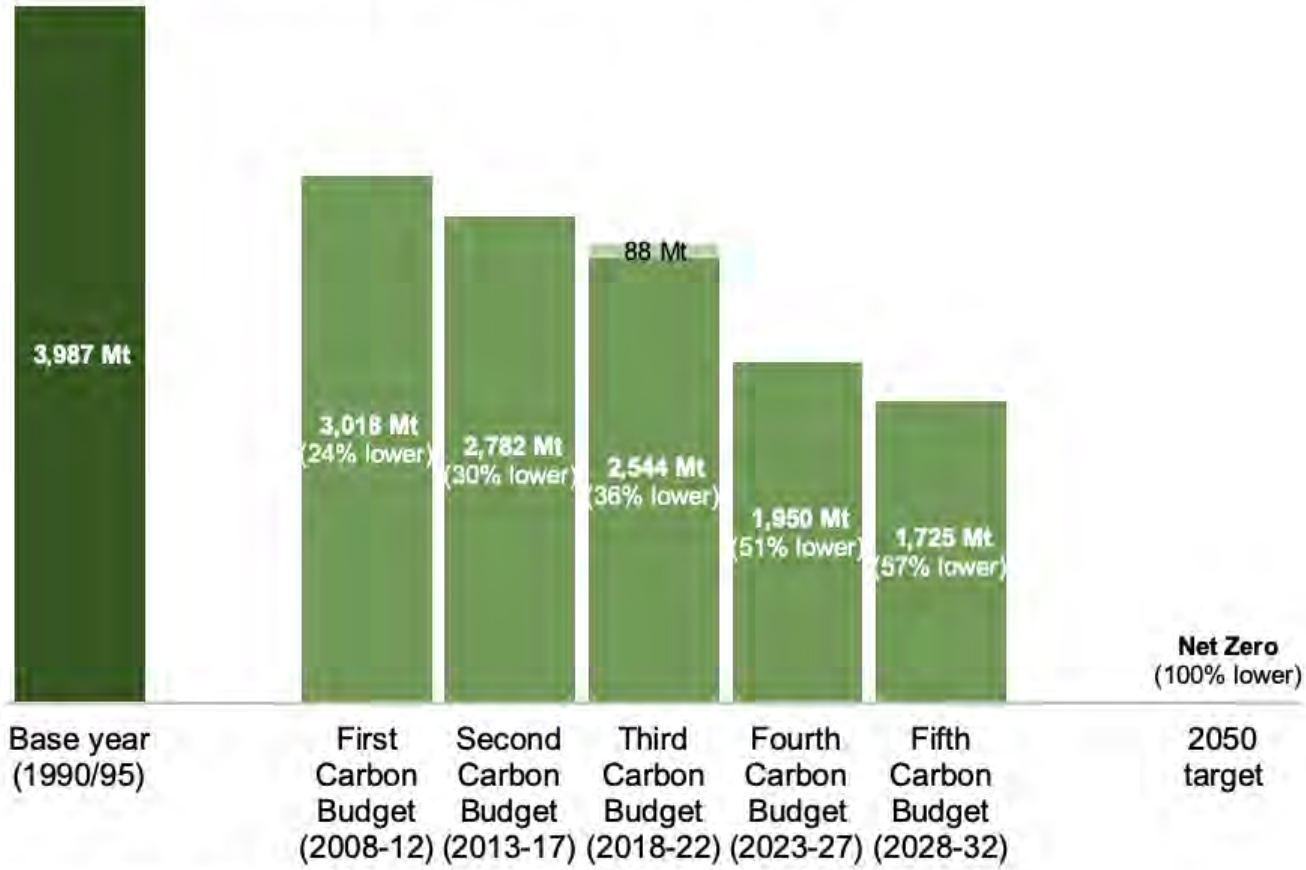
In delivering net zero, we want to ensure we deliver emissions reductions at a rate which:

- reflects our scientific knowledge on climate change;
- ensures a cost-effective transition; and
- maximises the economic opportunities for the UK, both from domestic deployment of clean technologies as well as through realising export opportunities in what promise to be large and growing international markets in low carbon technologies and services such as renewables, carbon capture usage and storage (CCUS), hydrogen, smart energy systems and storage, and road transport.

Delivering net zero will have a profound effect on our economy. It presents a major opportunity for growth in some areas. The UK's low-carbon economy already supports over 460,000 jobs[15] and, by one estimate, the low carbon economy in the UK could grow 11% per year between 2015 and 2030 - supporting up to two million jobs[16]. Research published last year estimated that with high levels of innovation and ambitious policy, the UK's 12 low carbon sectors with the largest potential for innovation could contribute £27 billion to the economy through domestic economic activity and £26 billion through exports by 2050[17].

But there are also risks as we transition to net zero which require careful management – in particular for 'higher-carbon' sectors and the workers and places that depend on them. Currently around 10% of UK GVA[18] comes from a group of sectors that are potentially exposed to the transition, and our financial markets are particularly exposed to fossil fuels. For some sectors like coal electricity generation the impacts are being felt now and will lead to the closure of the industry over the next five years, whilst for others like automotive or oil and gas the transition will play out over a longer time horizon and there are routes to low carbon futures for these sectors and workers, if managed effectively. HM Treasury's Net Zero Review will consider how the transition to net zero will be funded, helping ensure an equitable balance of contributions between households, businesses and taxpayers.

Figure 1: UK carbon budgets and 2050 target



Source: BEIS, UK Legislation.

As the Prime Minister said in May, our significant national efforts will count for little, unless they are fortified with international cooperation. In the run up to COP26 in November 2021, the UK as COP Presidency will continue to work with all involved to increase climate ambition and focus on the actions that can support our goals, build resilience and lower emissions.

We welcome the CCC's 2020 Progress Report, and in particular the structural changes from previous years' reports.

These include dedicated recommendations for individual departments for the first time. The Government has always been clear on our commitment to ensure that climate mitigation and adaptation are embedded as priorities across Whitehall departments. We have sought to mirror the CCC's progress report in our response, where possible, including by providing specific departmental responses to each of the recommendations. In doing so we have detailed the actions that are being taken across different policy areas and departments to facilitate our transition to net zero by 2050 as well as outlining next steps in specific areas. They give a clearer picture of the broad spectrum of efforts that will be required across the UK economy to decarbonise by 2050.

Further detail about the structure of the report is set out below.

Structure of the Report

This report sets out the Government's response to the Committee on Climate Change's 2020

annual Progress Report to Parliament, assessing progress in reducing UK emissions over the past year and the impact of government policies. The structure of the report is as follows:

- **Building Back Greener** sets out the UK's approach to ensuring a green and resilient recovery from the Covid-19 pandemic and the links to achieving net zero emissions by 2050. It outlines steps that we have already taken to ensure that our response to the pandemic is built on sustainable foundations as well as future activities we are undertaking to build back better.
- **Sector-specific action** assesses our progress in reducing emissions across the key sectors identified in the Clean Growth Strategy: Power, Buildings (domestic and non-domestic), Industry (including Carbon Capture Usage and Storage (CCUS) and hydrogen), Transport, and Natural Resources (including agriculture, forestry, land use, waste and fluorinated gases (F-gases)).
- We have heard the CCC's clear message that further action is required to embed adaptation to climate change across government policy, including long-term planning to help the country prepare for scenarios such as global temperature rise of 2°C (and consideration of 4°C) at the end of the century. **Adaptation and Resilience** looks at the actions the Government is taking on climate adaptation. Annex 1 also outlines additional developments taking place to address priority risks outlined in the second Climate Change Risk Assessment ahead of the CCC's next report on progress in adapting to climate change impacts in England in 2021.
- **Action in Devolved Administrations** provides an update on action to reduce emissions undertaken by the Devolved Administrations. Recognising that many of the actions required to decarbonise our economy and meet our net zero target fall under devolved competence, we outline current progress to reduce emissions in Scotland, Wales and Northern Ireland.
- **International leadership and countdown to COP26** provides an overview of the actions that the UK is undertaking internationally to drive climate ambition ahead of the pivotal COP26 summit that will take place in Glasgow in 2021.
- **Annex 1** provides specific responses to the CCC's recommendations for individual departments as well the priorities identified for all departments.
- **Annex 2** provides an update on progress against the milestones for 2018/19 we committed to in the Government's response to the CCC's 2019 Progress Report in October 2019.
- **Annex 3** assesses our performance against the economy-wide and sector-level metrics set in the Clean Growth Strategy to benchmark progress.

Recommendations for the Department for Transport

Active travel and public transport:

Invest in walking and cycling infrastructure and strengthen other schemes to support active travel modes. Invest in public transport and other measures to reduce car travel demand (e.g. car sharing and mobility as a service). Improve infrastructure connectivity to lock-in positive behaviours that reduce travel demand (e.g. home-working).

The Prime Minister's new plan for cycling and walking, "Gear Change: a bold vision for cycling and walking" was launched in July 2020 and committed to a wide range of measures to increase cycling and walking and make them the natural choices for short journeys[287]. The 33-point plan sets out commitments to improve safety, infrastructure, and the quality of our streets and enable people to take up higher levels of cycling and walking.

£2 billion of dedicated funding, from the £5 billion described below, over the next five years for active travel will support this change in behaviour.

In addition, we are undertaking research with the public to understand the barriers to mode shift away from cars to public transport and active travel, and the public acceptability of different policy options to encourage this.

Better Deal for Bus Users

As part of the 'Better Deal for Bus Users' package announced in September 2019[288], we will be funding £50 million for Britain's first All-Electric Bus Town and a £20 million Rural Mobility Fund to support demand responsive services in rural and suburban areas.

We held a competition for this fund with the deadline for Local Authorities to apply by 4 June. We received 19 and 53 bids respectively and are currently reviewing these. We hope to announce the winner(s) of the All-Electric Bus Town soon.

£5 billion funding

The Prime Minister announced on 11 February 2020 £5 billion of new funding to overhaul bus and cycle links for regions outside London[289]. This additional investment will include support for at least 4,000 new zero emission buses to make greener travel the convenient option.

The funding outlined for buses will also go towards measures to encourage modal shift onto the bus, such as higher frequency services, more 'turn up and go' routes, new priority schemes, and more affordable fares. The details of the programmes, including how funding will be distributed, will be announced in due course alongside the Spending Review.

National Bus Strategy

We are developing a long-term National Bus Strategy to ensure that buses will continue to have a significant role in connecting people, helping the economy meet our net zero ambitions, and improving air quality.

Cars and vans:

Confirm bringing forward the ban on new petrol/diesel and plug-in hybrid car/van sales to 2032 at the latest. Apply the same rules to motorcycles

The Government's aim is to put the UK at the forefront of the design and manufacturing of zero emission vehicles. We are already investing around £2.5 billion with grants available for plug in cars, vans, lorries, buses, taxis and motorcycles, as well as funding to support charge point infrastructure at homes, workplaces, on residential streets and across the wider roads network. Since February we have been consulting on bringing forward the end to the sale of new petrol and diesel vehicles to 2035 (from 2040), or earlier if a faster transition appears feasible, as well as including hybrids for the first time[290].

As part of this consultation, we asked stakeholders what accompanying package of support is needed to enable the transition and minimise the impacts on businesses and consumers across the UK, building on the significant demand and supply side measures already in place. The consultation ended on 31 July 2020 and we are considering the responses. We will announce the outcome of the consultation in due course.

The consultation focused on the sale of new cars and vans, rather than new motorcycles, though we did receive comments on motorcycles in consultation responses. We provide grants for the purchase of zero emission powered two wheelers and - recognising that the market for other plug-in motorcycles is still at an early stage of development - the Chancellor announced at the Budget that the Government will extend the grant for motorcycles to 2022-23.

Back up the end date by introducing a Zero Emission Vehicle Mandate requiring increasing shares of sales to be zero-carbon, reaching 100% by 2032 at the latest. Continue to support EV infrastructure to ensure it is not a barrier to high uptake levels including for those without individual offstreet parking, and implement recommendations from the EV Energy Taskforce and the Faraday Institute.

Zero Emission Vehicle Mandate

We recognise that we need to go further than the existing regulatory regime to reduce CO_2 emissions from road transport to deliver our climate goals and we are considering this as part of the Transport Decarbonisation Plan.

Infrastructure

Our vision is to have one of the best electric vehicle infrastructure networks in the world. This means a network for current and prospective electric vehicle drivers that is affordable, reliable, accessible and secure. Government and industry have supported the installation of over 18,000 publicly available charging devices. This includes over 3,100 rapid devices – one of the largest networks in Europe. Our grant schemes and our £400 million public-private Charging Infrastructure Investment Fund will see thousands more electric vehicle chargepoints installed across the UK. We have consulted on proposals for chargepoints to be installed with all newly built homes in England, where appropriate[291]. The Government is providing £500 million over the next five years to support the rollout of-charging infrastructure for electric vehicles. Today, a driver is never more than 25 miles away from a rapid chargepoint anywhere along England's motorways and major A roads. By 2023, we aim to have at least six high powered, open access chargepoints (150-350kW capable) at motorway service areas in England, with some larger sites having as many as 10-12, and by 2035 we expect the number of increase to around 6,000 high powered chargers across the network. In May, funding this financial year for

local authorities under the On-street Residential Chargepoint Scheme was doubled to £20 million. This will fund up to another 3,600 chargepoints (7,200 in total for 2020/21) across the country to make charging at home and overnight easier for those without an off-street parking space. It is also vital that consumers can charge efficiently and safely. The Government will consult on using its powers under the Automated Electric Vehicles Act[292] to mandate minimum standards, such as requiring contactless payment for rapid chargepoints, to improve the consumer experience.

Electric Vehicle Energy Taskforce and smart charging

The taskforce reported in January with 21 proposals for government, industry and Ofgem[293]. The report recognises the progress already made to ready the grid for EV uptake and sets out challenges for future attention, including proposals to encourage smart charging[294]. In 2019 government consulted on mandating that all private chargepoints must be smart and comply with minimum device standards[295]. A summary of responses was published in May 2020, and it is our intention to lay the relevant legislation next year[296].

Many proposals in the EV Energy Taskforce report aimed at government are already being addressed. For example, a number of the proposals on smart charging will be considered as we develop our forthcoming smart regulations to mandate that all new private chargepoints must be 'smart'. The Government has prioritised the remaining proposals and identified where new workstreams need to be created to address them. Our work with the taskforce is continuing into a second phase, to develop more detailed plans to deliver the proposals, building on the positive cross-sector collaboration achieved in the initial phase.

Faraday Institution

The Faraday Institution's report called for timely and coordinated efforts to attract battery manufacturing to the UK. The Government is committed to supporting the automotive sector. We have recently announced up to a further £1 billion of additional funding to develop and embed the next generation of cutting-edge automotive technologies through the Automotive Transformation Fund. Of this funding, £10 million has been made available for the first wave of innovative R&D projects to scale up manufacturing of the latest technology in batteries, motors, electronics and fuel cells. The Government is also calling upon industry to put forward investment proposals for the UK's first 'gigafactory' and supporting supply chains to mass manufacture cutting-edge batteries for the next generation of electric vehicles, as well as for other strategic electric vehicle technologies. Further investment in the Automotive Transformation Fund will be finalised with the Treasury, as part of the Spending Review, in line with all spending programmes.

Set more ambitious UK regulations on new car/van CO_2 to 2030, with more regular intervals than the EU's five years, backed by a rigorous realworld testing regime

The Government has committed that the UK will pursue a future approach that is as least as ambitious as the current arrangements for emissions regulation. As it stands, the current regulatory regime will transfer into UK law at the end of the transition period on 31 December 2020 under the terms of the EU Withdrawal Act. The Government has just consulted on the approach it proposes to take to deliver the resulting new UK regime. But as noted above under its response to recommendation 3, the Government recognises that it needs to go further and we are considering this as part of the Transport Decarbonisation Plan.

Heavy Goods Vehicles

Set out and implement a strategy to transition to zero-carbon freight, including stronger purchase incentives, infrastructure plans and clean air zones. Evaluate schemes to reduce HGV and van use in urban areas (e.g. ecargo bikes and use of urban consolidation centres), to reduce traffic and improve the safety of active travel.

Trial zero emission HGVs to establish which is the most suitable and cost-effective technology for the UK. Evaluate existing and increase support for HGV logistics improvement schemes. Strengthen incentives to buy more efficient and zero-carbon HGVs. Include HGV recharging in Project Rapid plans.

Plans for decarbonising freight will form part of the Transport Decarbonisation Plan. We are considering how to incentivise operators and industry to transition to zero emission HGVs and manage emissions from the existing fleet. This will bring together and build on the existing measures already announced.

We have consulted on the regulation of CO_2 emissions from new heavy-duty vehicles (HDVs), which includes trucks, buses and coaches, through emission performance standards. The regulation sets reduction targets for HDV vehicle manufacturers of 15% for 2025 and 30% for 2030 against a 2019 baseline, and includes incentives for sales of zero and low emission HDVs. As set out in the Government's Road to Zero strategy, the UK is intending to pursue "a future approach as we leave the European Union that is at least as ambitious as the current arrangements for vehicle emissions regulation". This consultation, which closed on the 21 August, was in line with that commitment.

Published in July, Gear Change: a bold vision for cycling and walking[297] announced plans to extend the e-cargo bike grant programme as part of government's wider programme to decarbonise deliveries. The grant, delivered by the Energy Saving Trust, contributes 20% of the purchase price of a new e-cargo bike up to the first £5,000 of any purchase price. This gives a maximum grant of £1,000 per bike, regardless of the purchase price of the bike.

Urban consolidation centres can help to alleviate congestion, while making life easier for both shippers and receivers of goods. They can also improve air quality, by reducing vehicle movements in dense urban areas. Gear Change: a bold vision for cycling and walking announced plans to pilot compulsory freight consolidation schemes in one or two historic city centres with narrow and crowded streets. This will seek to ensure that all deliveries (except perishables and items which require specialist carriers) are made to consolidation centres on the edge of the city centre, or the edge of the city, then taken to their final destinations in a far smaller number of vehicles, including cargo bikes and electric vans wherever possible. These pilots could complement work already underway by cities and towns to develop Clean Air Zones to improve air quality.

The Department is working with the Connected Places Catapult to explore and assess the zero emission technologies most suitable for HGVs on the UK road network, including hydrogen fuel cell and electric road systems. This work will feed into the Transport Decarbonisation Plan.

We continue to work with the Energy Saving Trust to develop, improve and promote their existing online Freight Portal, which provides information and support to operators seeking to reduce their vehicle emissions. In particular, we have developed a new section of the site dedicated to small and medium sized operators that focuses on the practical actions that they can take to achieve significant emission reductions and realise the commercial benefits that come through improved fuel and logistical efficiency.

Rail:

Support Network Rail in developing plans to deliver the target to remove all diesel trains by 2040.

Work led by Network Rail on a Traction Decarbonisation Network Strategy[298] (TDNS) is developing costed rail decarbonisation options. TDNS will examine which parts of the network are most suited to electrification, and which will be better suited to alternative technologies such as hydrogen and battery.

DfT is working closely with Network Rail on TDNS in order that it properly informs government decisions about the scale and pace of rail decarbonisation. These decisions will support delivery of both our ambition to remove all diesel-only trains from the network by 2040 and achieve net zero by 2050.

Aviation and Shipping:

• Formally include International Aviation and Shipping emissions within UK climate targets when setting the Sixth Carbon Budget.

• Work with ICAO to set a long-term goal for aviation consistent with the Paris Agreement, and to strengthen the CORSIA scheme.

• Continue working with the IMO on global shipping policies, and updating their 2050 target.

• Commit to a Net Zero goal for UK aviation as part of the forthcoming aviation consultation and strategy, with UK international aviation reaching net-zero emissions by 2050 at the latest, and domestic aviation potentially earlier. Plan for residual emissions, after efficiency, low-carbon fuels and demand-side measures, to be offset by verifiable greenhouse gas removals.

• Build on the Clean Maritime Plan to develop incentives for zero-carbon ammonia and hydrogen supply chains for UK shipping.

• Monitor non-CO_2 impacts of aviation and shipping and consider how best to tackle them alongside UK climate targets.

• Review the UK's airport capacity strategy in light of COVID-19 and Net Zero, including a household & business survey of long-term travel expectations.

Later this year a consultation on net zero aviation will be published. This consultation represents the growth in government ambition since the 2018 "Aviation 2050" green paper, reflecting the 2050 net zero target, further CCC advice on international aviation and shipping, and the latest evidence on non-CO_2 impacts, and will propose how the Government plans for aviation to play its part in delivering our net zero ambitions. The UK is already a global leader in decarbonising aviation. We plan to build on our existing work that is delivering clean aerospace R&D, supporting the deployment of sustainable aviation fuels, modernising our airspace, and establishing domestic and international market-based mechanisms, to reduce emissions faster and further.

Domestic aviation and shipping emissions are included in the UK's carbon budgets, with

international aviation and shipping emissions accounted for via "headroom" within our existing carbon budgets, meaning that the UK can remain on the right trajectory for net zero across the whole economy. International emissions are treated differently, largely because the inherently international nature of both sectors means that it is difficult to attribute these emissions to individual states. It is widely agreed among states that a sectoral approach (rather than state-by-state) is preferable, which is why the Kyoto Protocol gave the UN International Civil Aviation Organisation (ICAO) and the International Maritime Organization (IMO) responsibility for pursing measures to reduce these emissions.

Internationally, we are committed to negotiating in ICAO for a long-term emissions reduction goal for international aviation that is consistent with the temperature goals of the Paris Agreement, ideally by ICAO's 41st Assembly in 2022. At the 40th ICAO Assembly in October 2019, ICAO not only reaffirmed its commitment to CORSIA but, crucially, prioritised work towards a long-term climate goal for international aviation. Through the Aviation 2050 green paper[299], the UK became the first country to publicly call for such a long-term goal. We are committed to this, as well as to ensuring that CORSIA is implemented and enforced effectively and strengthened over time.

Airport expansion is a core part of boosting our global connectivity and levelling up across the UK. The Government takes seriously its commitments on the environment and the expansion of any airport must always be within the UK's environmental obligations.

For international shipping, through the IMO we will continue to pursue agreement of substantive short and medium term measures to peak and begin reducing emissions from international shipping, and we will work actively at the IMO to support the development of ambitious measures to fully decarbonise the sector in advance of the IMO revising its initial strategy for GHGs in 2023.

As a responsible national government, we need a contingency measure in case international progress does not go far enough or fast enough. That is why we have been clear that we would be minded to include international aviation and shipping emissions in our carbon budgets if there is insufficient progress at an international level.

We continue to build upon the Clean Maritime Plan[300], undertaking research considering the role of Maritime Clusters in delivering clean innovation and growth, exploring whether and how to include maritime elements in the Renewable Transport Fuel Obligation for public consultation later this year, and working with HM Treasury to consider the potential extension of the Carbon Emissions Tax (CET) to the shipping sector in the years after 2021, as set out in the July consultation[301], should that be the method of carbon pricing we choose to adopt on leaving the EU ETS.

December 2020

The Sixth Carbon Budget

The UK's path to Net Zero

Climate Change Committee

The Sixth Carbon Budget
The UK's path to Net Zero

Committee on Climate Change
December 2020

Presented to the Secretary of State pursuant to
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Foreword

I am pleased to present the Climate Change Committee's recommendations for the UK's Sixth Carbon Budget which will run from 2033 to 2037. This report builds on the advice we gave last year, which led to Net Zero becoming law throughout the UK.

Whereas then we painted a detailed picture of the UK in 2050, now, we describe the path to Net Zero. We explore the changes that the UK will see on that journey and detail the steps that must be taken to ensure we stick to our essential endeavour.

This is the most comprehensive advice we have ever produced. It is a blueprint for a fully decarbonised UK. A rich depiction of the choices before us in reaching the goal of net-zero greenhouse gases by 2050 at the latest.

Our recommended pathway requires a 78% reduction in UK territorial emissions between 1990 and 2035. In effect, it brings forward the UK's previous 80% target by nearly 15 years. There is no clearer indication of the increased ambition implied by the Net Zero target than this. Our pathway meets the Paris Agreement stipulation of 'highest possible ambition'. It is challenging but also hugely advantageous, creating new industrial opportunities and ensuring wider gains for the nation's health and for nature.

Some of our most important work is on the costs of the transition. Low carbon investment must scale up to £50 billion each year to deliver Net Zero, supporting the UK's economic recovery over the next decade. This investment generates substantial fuel savings, as cleaner, more-efficient technologies replace their fossil-fuelled predecessors. In time, these savings cancel out the investment costs entirely – a vital new insight that means our central estimate for costs is now below 1% of GDP throughout the next 30 years.

The pace of our recommended emissions path tells an important story about what must follow and what has gone before. We don't reach Net Zero simply by wishing it. There must be a process and a sequence by which we reach the goal. Progress is more gradual in the early years as we make up for lost ground. Scaling up new policy development, ramping up new supply chains for low-carbon goods, addressing sectors that have progressed too slowly: transport, industry, buildings, agriculture. A critical moment arrives in the early 2030s, as sales of most high-carbon goods are phased out altogether. UK emissions fall sharply over the 2030s, before levelling off in the 2040s, as we clear the final hurdles to Net Zero.

The implication of this path is clear: the utmost focus is required from government over the next ten years. If policy is not scaled up across every sector; if business is not encouraged to invest; if the people of the UK are not engaged in this challenge - the UK will not deliver Net Zero by 2050. The 2020s must be the decisive decade of progress and action.

Yet, that progress will be impossible if it is not just. Fairness in the transition to Net Zero is an essential constituent for its success. In aggregate, the costs are low - but that must not hide the need to distribute the costs and the benefits fairly. Our recommended path heralds a major transition in the economy and jobs. There will be new low-carbon employment opportunities, but there will also be high-carbon sectors that shrink.

These impacts can be highly concentrated in some regions of the UK. We must prepare now for those changes. It is the government's role to ensure we have the training and the skills that those changes require. National, regional, and local investment in low carbon industries is now an economic and social priority. Combatting climate change provides us with the means of levelling up as an essential part of our economic revival.

In this endeavour, we will not be alone. The club of nations that has committed to Net Zero has grown significantly since our report last year. These new pledges, including those of China and the EU, South Korea and Japan, as well as the expected pledge from the US, offer mutual advancement. These are our markets of the future and, as low-carbon technologies and strategies develop around the world, we can be more assured of the global response to climate change and the widespread transitions that are underway in energy, transport, and industry. These will also mean that the reduction in our territorial emissions will be mirrored in the reduction of the carbon footprint of our imported goods and services.

The signs point to a propitious moment for global climate ambition in Glasgow next year. But our international leadership, in the Presidency of COP26 and of the G7, must begin at home. Our influence in the wider world rests ultimately on strong domestic ambition.

For this we look to the framework provided by the UK's Climate Change Act, which has governed the work of the Committee in producing this report. The basis of the British approach to tackling climate change is contained in the mix of responsibilities that the Act lays out so clearly. An independent body, the Climate Change Committee, advises on targets and delivery and measures progress. The long-term emissions goal is determined by the UK's international obligations, themselves reflecting the scientific imperatives. Interim targets, expressed in the carbon budgets, are set in line with that long-term goal, stimulating short-term action. But the responsibility of meeting these carbon budgets – of actually *delivering* on the advice and the commitments – rests with Government. This Report gives the Government and Parliament the route map to meeting those statutory obligations.

This is the governance system that has served the UK well since 2008 and this Sixth Carbon Budget is its most complete expression. It is the product of an immense effort from my Committee and the talented team that supports it. I commend the advice strongly to Ministers and I urge the Government to legislate for the Sixth Carbon Budget as soon as possible. That would constitute the strongest statement of our ambition to tackle climate change. It is a decisive moment for global Britain.

Lord Deben
Chair of the Climate Change Committee

December 2020

Policies for the Sixth Carbon Budget and Net Zero

Climate Change Committee

Committee on Climate Change
December 2020

The Committee

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Lord Deben was the UK's longest-serving Secretary of State for the Environment (1993 to 1997). He has held several other high-level ministerial posts, including Secretary of State for Agriculture, Fisheries and Food (1989 to 1993). Lord Deben also runs Sancroft, a corporate responsibility consultancy working with blue-chip companies around the world on environmental, social and ethical issues.

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Contents

The Committee 3
Policies for the Sixth Carbon Budget and Net Zero 7

Chapter 1 – The overarching policy framework for the 2020s 10
1. Climate policy as part of the economic recovery 14
2. The importance of the 2020s 18
3. Cross-economy climate policy priorities 23
4. Roles of a wider set of actors 40

Chapter 2 – Surface transport 51
1. Challenges in decarbonising surface transport 55
2. Current Government policy commitments 59
3. Key changes needed 60

Chapter 3 – Buildings 68
1. Current Government policy commitments 73
2. Key changes needed 75

Chapter 4 – Manufacturing and construction 94
1. Existing manufacturing & construction decarbonisation policy 98
2. What is needed from the Industrial Decarbonisation Strategy 100

Chapter 5 – Electricity generation 113
1. Current policy and gaps to be addressed 117
2. A policy framework for the Sixth Carbon Budget & Net Zero 119

Chapter 6 – Fuel supply 130
1. Decarbonising fossil fuel supply 134
2. Low-carbon hydrogen supply and use 137
3. Bioenergy supply and use 143

Chapter 7 – Agriculture and land use, land-use change and forestry (LULUCF) 147
1. Challenges in decarbonising agriculture and land use 151
2. Current Government policy commitments 154
3. Key changes needed 156

Chapter 8 – Aviation and shipping 160
1. The respective roles for international and domestic policy 164
2. Existing UK policy, gaps, and planned publications 166
3. Key policy changes needed 168

Chapter 9 – Waste 176
1. Challenges for waste policy and strategy 180
2. Existing policy and planned publications 181
3. Key policy changes needed 185

Chapter 10 – F-gases 191
1. Existing policy 193
2. Policy recommendations 194

Chapter 11 – Greenhouse gas removals 196
1. Current policy and gaps to be addressed 200
2. Key policy actions required 201

Chapter 8

Aviation and shipping

1. The respective roles for international and domestic policy 164
2. Existing UK policy, gaps, and planned publications 166
3. Key policy changes needed 168

Table 8.1
Summary of policy recommendations in aviation and shipping

Aviation	• Formally include International Aviation emissions within UK climate targets when setting the Sixth Carbon Budget. • 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. • Commit to a Net Zero goal for UK aviation as part of the forthcoming Aviation Decarbonisation Strategy, with UK international aviation reaching Net Zero emissions by 2050 at the latest, and domestic aviation potentially earlier. Plan for residual emissions, after efficiency, low-carbon fuels and demand-side measures, to be offset by verifiable greenhouse gas removals, on a sector net emissions trajectory to Net Zero. • There should be 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. • Monitor non-CO_2 effects of aviation, set a minimum goal of no further warming after 2050, research mitigation options, and consider how best to tackle non-CO_2 effects alongside UK climate targets without increasing CO_2 emissions. • 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. • Continue innovation and demonstration support for SAF technologies, aircraft efficiency measures, hybrid, full electric and hydrogen aircraft development and airspace modernisation.
Shipping	• Formally include International Shipping emissions within UK climate targets when setting the Sixth Carbon Budget. • Continue working with the IMO on global shipping policies, research funding, tighter efficiency targets, and strengthening the IMO 2050 global target. • Build on the Clean Maritime Plan to set a Net Zero 2050 goal for UK shipping, and develop incentives for zero-carbon ammonia and hydrogen supply chains. • Commit to the UK's first clean maritime cluster(s) operating at commercial scale (supplying at least 2 TWh/year of zero-carbon fuels) by 2030 at the latest, with zero-carbon fuels expanding to 33% of UK shipping fuel use by 2035. • Provide support for ports' investment in shore power and electric recharging infrastructure. • Continue innovation and demonstration support for zero-carbon fuel technologies and their use in shipping, and ship efficiency measures. • Monitor non-CO_2 effects of shipping and consider how best to tackle them alongside UK climate targets.

Progress in decarbonising aviation and shipping has been slow over the past decade, and changes in emissions have primarily been driven by changes in demands along with some improvements in efficiency. Policy to date has been mainly driven by international fora (negotiations at ICAO and the IMO), although neither organisation has both established ambitious 2050 global goals and a set of policies to meet these goals.

The main policy challenges in aviation and shipping are the international nature of these sectors requiring fuel infrastructure coordination, long asset lifetimes and economic competitiveness concerns.

Aviation policy in the UK has previously focused on aerospace developments, although several announcements have been made in 2020, with an Aviation Decarbonisation Strategy now due in 2021. Funding is still mainly directed at innovation and demonstration activities, rather than long-term market deployment support for sustainable aviation fuels and GHG removals.

Shipping policy in the UK has had much less funding to date, but starting from the Clean Maritime Plan is now progressing to feasibility studies for zero-carbon maritime clusters. Policy incentives still need developed to enable production and use of zero-carbon fuels in shipping.

Our recommendations are based on an assessment of existing policies and announcements, a review of evidence (including the views of the Climate Assembly) and updating our existing findings set out in our 2020 *Progress Report* and 2019 *International aviation & shipping letter*.[1]

This chapter covers:

1. The respective roles for international and domestic policy
2. Existing UK policy, gaps, and planned publications
3. Key policy changes needed

1. The respective roles for international and domestic policy

Inclusion of IAS emissions in UK climate targets does not imply taking a unilateral policy approach for them.

Even with their emissions formally included in UK carbon budgets and the Net Zero target, the primary policy approach to reducing emissions from international aviation and shipping (IAS) should be at the international level. These sectors are global in nature and there are some risks that a unilateral UK approach to reducing these emissions could lead to carbon leakage (under certain policy choices) or competitiveness concerns.

The UK has played a key role in progress by both the International Civil Aviation Organisation (ICAO) and International Maritime Organisation (IMO). In the context of international negotiations at the ICAO and the IMO, inclusion of IAS emissions in the Net Zero target should not be interpreted as a rejection of multi-lateral approaches or as prejudicing discussions on burden sharing.

International approaches are unlikely to overcome all barriers to decarbonising the IAS sectors.

However, international approaches are unlikely to overcome all barriers to decarbonising the IAS sectors. Supplementary domestic policies should also be pursued where these can help overcome UK-specific market barriers, and where these do not lead to adverse impacts on competitiveness and/or carbon leakage.

a) International approaches

At the international level, global policies consistent with the ambition in the Paris Agreement are required to provide a level playing field for airlines and shipping operators, and to guard against the risk of competitive distortions. The international trade bodies for both aviation and shipping have begun to develop their approaches but further progress is required:

- **Aviation.** The ICAO's current carbon policy to 2035, the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA), aims to ensure that most emissions increases above a baseline year are balanced by offsets.
  - In light of COVID-19, ICAO agreed a baseline year change to 2019 (instead of averaging over 2019-2020). This will reduce offset requirements in the initial years of the scheme as the sector recovers. CORSIA's list of eligible emissions reduction measures has also been finalised.
  - A new long-term goal for global international aviation emissions is now required that is consistent with the Paris Agreement. CORSIA then needs to be extended and aligned with this goal, and rules need to be put in place to ensure that CORSIA offsets deliver genuine emission reductions, transitioning to sustainable, well-governed greenhouse gas removals (see Chapter 11).

ICAO needs to set a long-term goal aligned with the Paris Agreement, and strengthen CORSIA.

IMO needs to strengthen its long-term goals and develop a policy package to meet these.

- **Shipping.** The IMO has agreed to reduce global international shipping emissions by at least 50% by 2050 compared to 2008 levels, and fully decarbonise "as soon as possible" after 2050. It must now put in a place a package of policies to deliver these targets. That should include carbon pricing, measures such as slow steaming and operations optimisation, support for RD&D, and a co-ordinated approach to provision of refuelling infrastructure and engine retrofits for alternative fuels.

- The IMO's 2050 ambition should also be strengthened to align with the more ambitious end of the temperature goal in the Paris Agreement, given the potential for much deeper reductions in global shipping emissions (e.g. to nearly zero by 2050 through use of ammonia or other hydrogen-based fuels).
- In November 2020, IMO formalised some measures towards its 2030 carbon intensity target (a 40% improvement from 2008 levels), agreeing to new energy efficiency requirements from 2023 and mandatory carbon intensity targets from 2026. However, more stretching targets should be introduced for new ship and fleet efficiencies, given that fleet carbon intensities in 2018 had already improved by 30% from 2008 levels.2
- Proposals for an International Maritime Research and Development Board (IMRB), funded by a fuel levy, are still under consideration.

b) Supplementary domestic policies

Domestic policy can focus on supporting low-carbon fuels, managing demand, domestic fleet decarbonisation and developing GHG removals.

Supplementary domestic policies that have limited competitiveness or carbon leakage risks should be pursued in parallel to international approaches to decarbonisation. These include support for developing alternative fuels and associated infrastructure, managing demand, decarbonising domestic fleets, and kick-starting a UK market for greenhouse gas removals (see Chapter 11). These domestic policy recommendations are discussed in section 3 below.

By taking these domestic and international policy approaches in parallel to including IAS formally within carbon budgets and the Net Zero target, the UK will be contributing fully to the global effort to tackle aviation and shipping emissions.

a) Aviation

Aerospace development has been a focus in UK policy, although the RTFO is yet to bring forward renewable jet fuel.

Existing UK policy in Aviation has been focused on match-funding for aircraft technology development (e.g. the £300million Future of Flight Challenge), and traded certificate price support for aviation biofuels and synthetic jet fuels under the Renewable Transport Fuel Obligation (RTFO)'s 'development fuels' sub-mandate. Recent announcements include:

- The Jet Zero Council has also been established as a forum with the ambition for developing zero-emissions commercial flight.
- £15 million has been invested into FlyZero, with the Aerospace Technology Institute looking at design challenges and the market opportunity for zero-emissions aircraft concepts from 2030.
- £15 million will be invested in a new grant-funding competition for SAF production.
- A SAF clearing house will be set up to enable UK to certify new fuels.
- A planned consultation on a SAF blending mandate has been announced, for a potential start in 2025.
- An aviation Net Zero Consultation and following Strategy were planned for 2020. Plans are to now consult on a combined Aviation Decarbonisation Strategy in 2021.

Government announcements and support to date focuses on innovation and demonstration, but long-term deployment policy needs developed.

However, there remain significant gaps within the policy framework for aviation. Government support at present is focused on innovation funding and demonstration activities, but without clear long-term policy mechanisms driving SAF uptake or valuing negative emissions in the UK:

- The RTFO development fuels sub-mandate is unlikely to drive significant development of jet fuels, as it can be met with cheaper fuels.
- There is currently no price signal for GHG removals in the UK.
- There is a lack of larger-scale deployment support and policy frameworks specifically for sustainable aviation fuel and GHG removals.

UK aviation industry has committed to reaching Net Zero by 2050.

Although the UK aviation industry has committed to a Net Zero goal for 2050 (via the Sustainable Aviation coalition),[3] this is not yet a policy goal for Government. Higher-level strategic gaps include the lack of formal inclusion of international emissions in UK carbon budgets and the Net Zero target, and the need for a sector emissions trajectory to inform demand management and airport capacity policies. Further research is also needed on non-CO_2 effects and potential mitigation options.

b) Shipping

UK shipping policy has recently emerged out of the Clean Maritime Plan, and is still ramping up.

Existing UK policy in shipping has been focused on small-scale funding of research projects, establishment of advisory functions and mapping of priority cluster locations, all as outcomes of the 2019 Clean Maritime Plan.[4] Recent developments include:

- £20 million is to be invested into a Clean Maritime Demonstration Programme, to fund several clean maritime cluster feasibility studies at key sites across the UK, including Orkney and Teesside. This activity has a target milestone of 2022 for vessels trials starting in Orkney and work launched on a hydrogen refuelling port in Teesside.
- A consultation on supporting zero-carbon shipping fuels under the Renewable Transport Fuel Obligation (RTFO) has been expected in 2020.
- A Call for Evidence on non-tax incentives in shipping has been delayed. However, Government will be providing a response to HM Treasury's Carbon Emissions Tax consultation that may extend carbon taxation to shipping if a UK ETS is not adopted from 2021.

Shipping innovation and feasibility studies are necessary, but so is a long-term commercial incentive for producing and using zero-carbon fuels in shipping.

The main policy gaps in shipping include the lack of incentives for commercial use of zero-carbon fuels in shipping, plus the lack of deployment support for port infrastructure changes and construction of zero-carbon fuels plants. Higher-level strategic gaps include the lack of formal inclusion of international emissions in UK carbon budgets and the Net Zero target, and the need for a sector trajectory to inform new fuels deployment timings and efficiency expectations.

a) Aviation

International aviation emissions to be included in Carbon Budgets.

The Government should include international aviation emissions within the Sixth Carbon Budget, subsequent carbon budgets and the 2050 Net Zero target.

Government should commit to a 2050 Net Zero goal for UK aviation, with use of verifiable GHG removals.

The forthcoming Aviation Decarbonisation Strategy should commit to a 2050 Net Zero goal for UK aviation, with use of verifiable GHG removals (but with limits), and set out demand management policies to ensure a trajectory to 2050 is achieved and that non-CO_2 effects are addressed.

i) Aviation emissions on the way to Net Zero

The Government should commit to UK international aviation reaching net zero GHG emissions by 2050 at the latest, and UK domestic and military aviation potentially earlier.

An emissions trajectory to 2050 will set expectations for use of GHG removals over time.

This will necessarily entail having a plan for how verifiable greenhouse gas removals will offset residual emissions over time (i.e. after contributions from efficiency improvements, low-carbon fuels and demand-side measures). DfT should set a net emissions trajectory for aviation (net of a constrained level of GHG removals), or as a minimum, interim targets on the way to 2050.

- Following the Balanced Net Zero Pathway, the remaining 23 $MtCO_2e$/year of gross aviation emissions in 2050 would require 40% of total UK engineered greenhouse gas removals to be assigned to the aviation sector to achieve Net Zero within aviation.
- With the ramp-up in GHG removals in the UK over time, Figure 8.1 gives an indicative net aviation emissions trajectory that could be followed if 40% of UK GHG removals were assigned to aviation in all years.
- Interim targets for aviation emissions net of greenhouse gas removals could therefore be 31 $MtCO_2e$/year in 2030, 21 $MtCO_2e$/year in 2035 and 14 $MtCO_2e$/year in 2040.

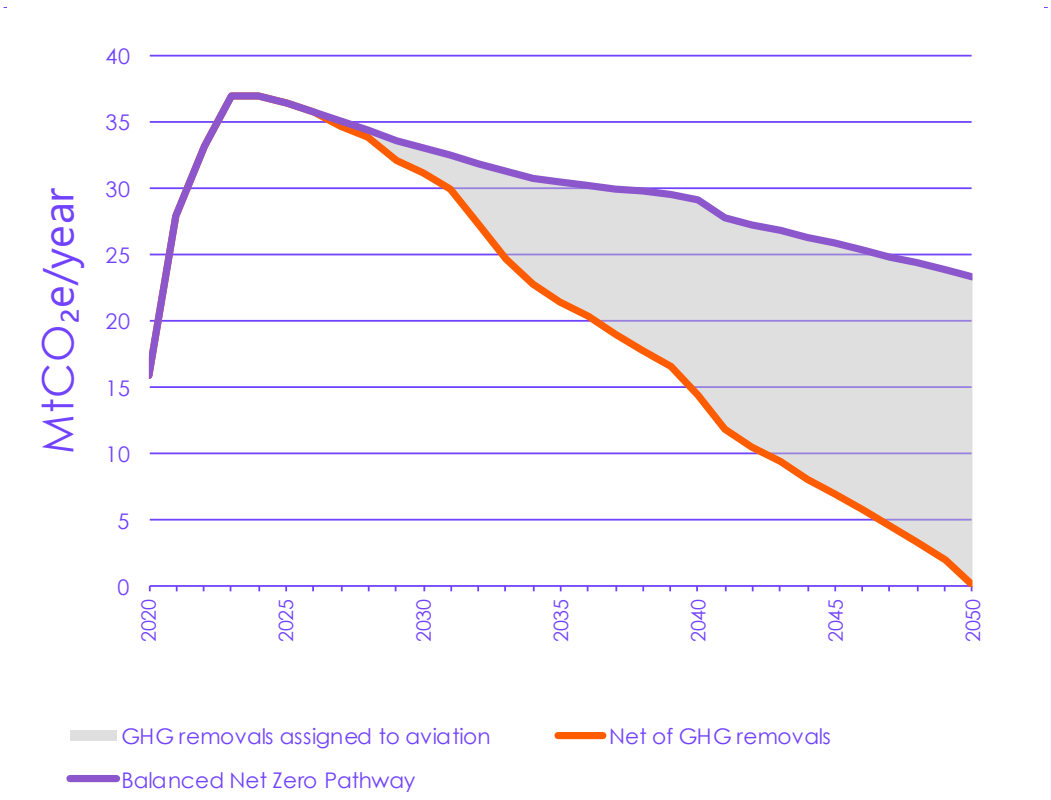
Inclusion of IAS in Carbon Budgets does not diminish the value of a sector target and trajectory.

- Setting an aviation sector net emissions target and trajectory is not obviated by IAS inclusion with carbon budgets. This is more important in aviation than other emitting sectors, given that without policy action aviation emissions could rise significantly (as would non-CO_2 effects) and that, even with appropriate action, residual positive GHG emissions are very likely to remain by 2050 (and need compensating for with greenhouse gas removals). The UK aviation industry has also already committed to a 2050 Net Zero target.

This plan should dovetail with the wider overall strategy for Net Zero, which should set out how this can be achieved with manageable volumes of sustainable greenhouse gas removals.

From the Balanced Net Zero Pathway, aviation emissions net of GHG removals fall relatively smoothly from the mid-2020s to 2050 Net Zero.

Figure 8.1 Indicative UK aviation emissions trajectory to achieve Net Zero with GHG removals



Source: CCC analysis.
Note: Net of GHG removals trajectory assumes that 40% of UK engineered GHG removals are assigned to/bought by the aviation sector. COVID-19 recovery assumed from 2020 to 2024.

ii) Demand management

Demand management policy is required, as demand growth will need significantly constrained from baseline assumptions, and there are non-CO_2 risks.

Demand management policy should be implemented, as given expected developments in efficiency and SAF deployment, demand growth will need to be lower than baseline assumptions, and likely constrained to 25% growth by 2050 from 2018 levels for the sector to contribute to UK Net Zero.

If efficiency or SAF do not develop as expected, further demand management will be required. Conversely, if efficiency and SAF develop quicker, it may be possible for demand growth to rise above 25%, provided that additional non-CO_2 effects are acceptable or can be mitigated.

Demand management needs to act as a back-stop to keep emissions on track to the sector trajectory to Net Zero.

A demand management framework will therefore need to be developed and in place by the mid-2020s to annually assess and, if required, act as a backstop to control sector GHG emissions and non-CO_2 effects.

- There are a number of demand management policies that could be considered, as we outlined in our 2019 *IAS letter.*[1] However, the Climate Assembly has provided valuable evidence that demand management policies will have to be fair and be seen as fair, with a clear preference for any taxes to increase as people fly more and fly further (Box 8.1).

- As part of providing wider information regarding transport choices, Government should also consider the feasibility and benefits of providing flight CO_2 labelling to prospective aviation passengers, building on the work of the Civil Aviation Authority (CAA).

The Government should assess its airport capacity strategy in the context of Net Zero and any lasting impacts on demand from COVID-19. Investments will need to be demonstrated to make economic sense in a Net Zero world and the transition towards it.

- Unless faster than expected progress is made on aircraft technology and SAF deployment, such that the sector is outperforming its trajectory to Net Zero, current planned additional airport capacity would require capacity restrictions placed on other airports.

No net expansion of UK airport capacity unless the sector is on track to sufficiently outperform its trajectory.

- Going forwards, there should be no net expansion of UK airport capacity unless the sector is assessed as being on track to sufficiently outperform a net emissions trajectory that is compatible with achieving Net Zero alongside the rest of the economy, and is able to accommodate the additional demand and still stay on track.

The Climate Assembly stated a clear preference for demand taxes to increase as people fly more and fly further.

Box 8.1
Climate Assembly aviation demand findings

Box 8.1 from the ***Methodology Report***, Chapter 8, highlights the Climate Assembly's preferences regarding demand growth. The Assembly recommended 25-50% demand growth by 2050 from 2018, depending on how quickly technology progressed. A weighted average of the scenario votes was a 24% growth.

80% of assembly members 'strongly agreed' or 'agreed' that taxes that increase as people fly more often and as they fly further should be part of how the UK gets to Net Zero. Assembly members saw this as fairer than alternative policy options, such as a carbon tax that would impact all flights.

There were also strong calls for making alternatives to flying cheaper and better, and for the UK to influence the rest of the world in implementing global decarbonisation policies.

Source: Climate Assembly UK (2020).

iii) Wider supporting policies

Alongside the Aviation Decarbonisation Strategy, UK policy should also:

Support is needed for the UK's first commercial SAF plants.

- Set out a policy package for supporting the near-term deployment of commercial sustainable aviation fuel (SAF) facilities in the UK (with carbon capture and storage (CCS) where applicable). This may involve capital or loan guarantee support. In the mid-term, SAF support should transition to a more bespoke policy than the RTFO.
  - The existing RTFO will not be suitable for delivering mass commercial roll-out of SAF, due to decreasing liquid road fuel use. It may also make more sense for long-term SAF deployment to be paid for by the aviation sector rather than road fuel users.

A SAF blending mandate could provide more certainty to SAF plant investors.

  - Government has indicated willingness to consider introducing a SAF blending mandate from 2025,* which could ultimately provide more certainty to SAF plant investors than the RTFO. A SAF mandate is likely to be more effective than Contracts for Difference (as the technology maturity of many routes are not high enough and there are variable feedstock costs), inclusion in an Emissions Trading Scheme (likely insufficient and volatile pricing signal) or carbon taxation (would have to be high to incentivise initial SAF deployment, and not perceived as fair by the Climate Assembly).

Many other European countries already have SAF blending mandates, so carbon leakage risks are decreasing.

  - Whether the mandate's added SAF costs then fall to the aviation sector or general taxation will depend on the policy design and any concerns regarding UK operator competitiveness or carbon leakage. Several other European countries already have SAF blending mandates and are introducing ambitious blending trajectories, which suggests the risk of leakage is decreasing (e.g. France is targeting 5% by 2030 & 50% by 2050; Finland & Sweden 30% by 2030; Germany 2% by 2030; with an EU-wide proposal for 1-2% by 2030).[5]

  - Ongoing uncertainty until 2025 about a new UK SAF mandate, and withdrawal of SAF from the RTFO, may risk delaying first commercial SAF projects in the UK reaching financial close for several years. Consideration could be given to either RTFO grandfathering, starting the SAF mandate earlier or running it in parallel to the RTFO.

- Continue innovation and demonstration support for newer SAF technologies, ensuring fuels can meet international standards. The newly announced £15m competition focused only on SAF is welcome, although is smaller than previous competitions.

- Continue RD&D support for aircraft efficiency measures, hybrid, full electric & hydrogen aircraft development and airspace modernisation. Continue to use existing delivery bodies, such as ATI, the Future of Flight Challenge, NATS, and guided by the Jet Zero Council.

Strict sustainability standards will need to be enforced, any double-counting of removals avoided, and SAF plants should be built with CCS.

- Continue to enforce strict sustainability standards, and work to consistently account for fuels produced with biogenic CO_2 capture without allowing double-counting of any GHG removals.

  - SAF facilities should have to install CCS, or be built CCS ready, in order to maximise GHG savings from any concentrated CO_2 streams or dilute flue gases.* The 2022 Bioenergy Strategy should set a date after which all new build plants must use CCS, and a date after which existing plants should retrofit CCS.

  - An accounting choice needs to be made as to whether the consumer of a fuel made with CCS gets to account for the GHG removals (i.e. fuels can be carbon negative, further reducing end-use sector direct emissions),† or whether the producer of the fuel gets to account for the GHG removals (and the fuel is carbon neutral).

* From our analysis, potential UK SAF blending levels could be 1.5-3.5% by 2030, 4-9% by 2035 and 11-17% by 2040, although the top end of these figures could almost be doubled in a Tailwinds scenario, due to faster technology deployment and higher biofuel imports.

* Some SAF conversion plants do not produce CO_2, and hence these CCS provisions may not apply to them. For example, synthetic jet fuel routes use CO_2 as a feedstock, and waste fats/oils to biojet will produce little CO_2. However, these plants may still have dilute flue gas streams from which CO_2 should still be captured.

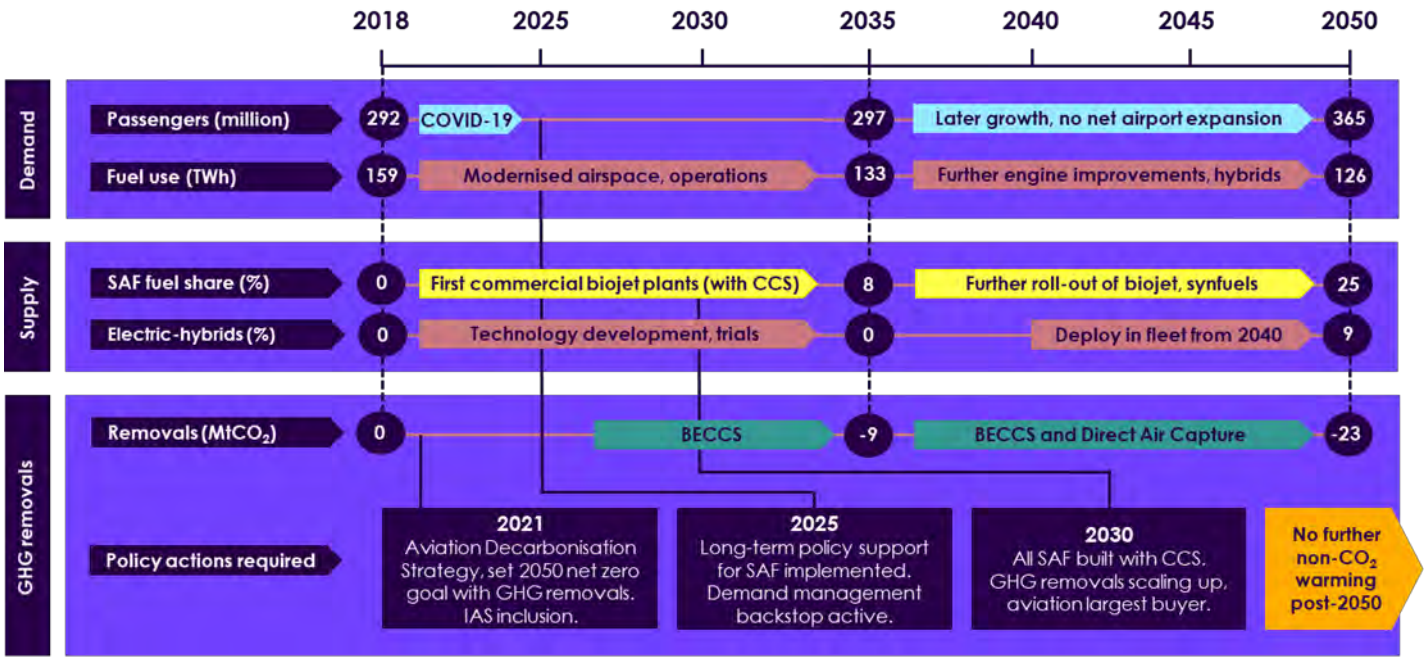
† UK biofuels policy currently uses GHG emissions thresholds (gCO2e/MJ of fuel) as one set of eligibility criteria for support. Setting a negative GHG emissions threshold may lead to perverse outcomes, where only less efficient plants meet the threshold. Any negative threshold would have to be accompanied by a minimum efficiency and would preclude carbon-neutral fuels. It is likely more appropriate to maintain low positive GHG emissions thresholds for

  - Any GHG removals accounted for within a fuel carbon intensity factor or by a producer cannot also be claimed by another actor or sector.
  - A clear GHG savings methodology needs to be established for wastes.
- Monitor non-CO_2 effects of aviation, continue to work to reduce scientific uncertainties, and fund research into mitigation options such as SAF benefits and engine design improvements.
  - Once mitigation options are better characterised, consider policy responses as to how best to tackle them alongside UK climate targets without increasing CO_2 emissions.
  - As a minimum goal, there should be no additional non-CO_2 warming from aviation after 2050. If mitigation options develop quickly, or new risks are identified, DfT could consider an earlier date, or setting a maximum level of allowable non-CO_2 warming from a base year.

There should be no additional non-CO_2 warming after 2050.

Alongside efforts at ICAO, the Aviation Decarbonisation Strategy and the package of domestic policies, plus parallel progress on a mechanism for deploying GHG removals in the UK (see Chapter 11), should put UK aviation emissions on track to contribute fully to meeting the Sixth Carbon Budget and the Net Zero target. A summary of the required steps in aviation is given in Figure 8.2.

Figure 8.2 Timeline of key outcomes and policy requirements under the Balanced Pathway (2020-50)



Source: CCC analysis.
Note: SAF = Sustainable Aviation Fuel. BECCS = Bioenergy with carbon capture and storage

eligibility purposes but allow additional benefits to flow to conversion plants capturing biogenic CO_2 (this may be achieved already by the design of wider GHG removals policies).

b) Shipping

Government should commit to a 2050 Net Zero goal for UK shipping.

The Government should include international shipping emissions within the Sixth Carbon Budget, subsequent carbon budgets and the 2050 Net Zero target.

The Clean Maritime Plan set out many of the initial decarbonisation steps needed and commits the UK to 'moving faster than other countries and faster than international standards', although does not yet commit to a firm sector 2050 target. It should now be strengthened to commit to a 2050 Net Zero goal for UK shipping. Government should also support supply chains and the roll-out of clean maritime clusters by 2030:

Incentives need developed for low-carbon hydrogen and ammonia, and a range of policy options exist.

- Develop incentives for zero-carbon ammonia and hydrogen supply chains for UK shipping.
  - To support the deployment of zero-carbon fuels in shipping at low volumes during the 2020s, one option could be inclusion within the Renewable Transport Fuel Obligation (RTFO). If this option is pursued, given the potential for ammonia to become the lowest-cost transport option for hydrogen globally, and the ability to retrofit existing engines for ammonia, both fuels should be set on an equal basis for development fuel support under the RTFO.

Carbon pricing options will still likely need supplementary policies for zero-carbon fuel infrastructure.

  - However, in the longer term, for commercial roll-out from 2030, more bespoke zero-carbon shipping fuel policy will likely be required than the RTFO, given declining road fuel use. It may also make more sense for deployment to be paid for by the shipping sector rather than road fuel users.
  - Given these longer-term considerations, alternative policy options to RTFO inclusion could be considered. These could be including shipping within a UK emissions trading scheme or carbon taxation. However, there are risks that either of these options do not provide a high enough effective carbon price to incentivise the required zero-carbon fuel infrastructure and any ship retrofits (e.g. we estimate that an effective carbon price well above £200/tCO_2e is likely to be needed in the 2020s). Supplementary support for construction of new zero-carbon fuel infrastructure and ship retrofits may therefore be required alongside these carbon pricing options.
  - Any GHG emissions thresholds should incentivise the use of zero carbon renewable fuels in shipping, with minimal upstream emissions.

A clear timeline and roll-out plan needs to be published to achieve zero-carbon shipping clusters by 2030.

- Commit to delivery of a phased roll-out of clean maritime clusters:
  - Feasibility studies for the UK's first zero-carbon shipping clusters launched in early 2020s.
  - Initial smaller-scale port demonstrations in the early to mid-2020s, and learnings shared.
  - A full roll-out plan for zero-carbon shipping fuels, and accompanying fleet retrofits or modifications, to be in place by the mid-2020s, to allow time for investment and construction.
  - The UK's first clean maritime cluster at commercial scale (e.g. supplying more than 2 TWh/year of zero-carbon fuels) to be operating by 2030 at the latest – and ideally more than one cluster operational by 2030.

  - Roll-out during the early 2030s to achieve a 33% share of zero-carbon fuels being used in UK shipping by 2035 (this is a ten times scale-up from 2030, following the Balanced Pathway deployment profile). The UK's domestic fleet is likely to take a leading role in initial deployment.

Further research should continue into efficiency, zero-carbon fuels production and air quality aspects.

- Accelerate marine RD&D funding, including for ship efficiency measures, alternative propulsion testing, high efficiency cracking of ammonia to hydrogen, electro-chemical synthesis of ammonia, and mitigating ammonia combustion air quality concerns. Conduct further research on the decarbonisation options available to naval shipping.
- Provide financial support (e.g. capital support or loan guarantees) for ports looking to invest in shore power and electric vessel charging infrastructure.
- Monitor non-CO_2 effects of shipping and consider how best to tackle them alongside UK climate targets without increasing CO_2 emissions.

Endnotes

[1] CCC (2019) *Net-zero and the approach to international aviation and shipping emissions*
[2] IMO (2020) *Fourth IMO GHG Study*
[3] Sustainable Aviation (2020) *UK aviation commits to net zero carbon emissions by 2050*
[4] DfT (2019) *Clean Maritime Plan*
[5] Argus (2020) *Europe makes legislative push for aviation transition*

GOV.UK

1. Home (https://www.gov.uk/)
2. Housing, local and community (https://www.gov.uk/housing-local-and-community)
3. Planning and building (https://www.gov.uk/housing-local-and-community/planning-and-building)
4. Planning system (https://www.gov.uk/housing-local-and-community/planning-system)

Guidance

Appeals

Advice on planning appeals and the award costs.

From:
Ministry of Housing, Communities & Local Government
(https://www.gov.uk/government/organisations/ministry-of-housing-communities-and-local-government)
Published
3 March 2014

Contents

- Planning appeals – general
- Appeals against refusal of planning permission
- Appeals against other planning decisions
- The award of costs – general
- How to make an application for an award of costs
- Behaviour that may lead to an award of costs against appeal parties
- The award of costs and compulsory purchase and analogous orders

Print this page

Where plans are being prepared under the transitional arrangements set out in Annex 1 to the revised National Planning Policy Framework (https://www.gov.uk/government/publications/national-planning-policy-framework--2), the policies in the previous version of the framework published in 2012 (http://webarchive.nationalarchives.gov.uk/20180608095821/https:/www.gov.uk/government/publications/national-planning-policy-framework--2) will continue to apply, as will any previous guidance which has been superseded since the new framework was published in July 2018. If you'd like an email alert when changes are made to planning guidance please subscribe (https://www.gov.uk/topic/planning-development/planning-officer-guidance/email-signup).

Planning appeals – general

Is there a right of appeal against decisions on planning permission and other planning decisions?

- in relation to (e) above, where the appeal must be made before the tree replacement notice takes effect

Detailed guidance on the procedures for appeals made to the Secretary of State under regulation 19 of the 2012 Regulations (http://www.legislation.gov.uk/uksi/2012/605/regulation/19/made) are on the appeal a decision about a tree preservation order (https://www.gov.uk/appeal-decision-about-tree-order) pages.

Paragraph: 025 Reference ID: 16-025-20140306

Revision date: 06 03 2014

Appeals against the non-validation of an application

For further information see the guidance on delay in the validation of an application (https://www.gov.uk/guidance/making-an-application#validation-of-an-application).

Paragraph: 026 Reference ID: 16-026-20140306

Revision date: 06 03 2014

The award of costs – general

What is an award of costs?

An award of costs is an order which states that one party shall pay to another party the costs, which may be in full or in part, which have been incurred by the receiving party during the process by which the Secretary of State's or Inspector's decision is reached. The costs order states the broad extent of the expense the party can recover from the party against whom the award is made. It does not determine the actual amount.

Paragraph: 027 Reference ID: 16-027-20140306

Revision date: 06 03 2014

Why do we have an award of costs?

Parties in planning appeals and other planning proceedings normally meet their own expenses. All parties are expected to behave reasonably to support an efficient and timely process, for example in providing all the required evidence and ensuring that timetables are met. Where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.

The aim of the costs regime is to:

- encourage all those involved in the appeal process to behave in a reasonable way and follow good practice, both in terms of timeliness and in the presentation of full and detailed evidence to support their case
- encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, not to add to development costs through avoidable delay,
- discourage unnecessary appeals by encouraging all parties to consider a revised planning application which meets reasonable local objections.

Paragraph: 028 Reference ID: 16-028-20140306

Revision date: 06 03 2014

Who can apply for an award of costs and who can have costs awarded against them?

Local planning authorities, appellants and interested parties who have taken part in the process, including statutory consultees, may apply for costs, or have costs awarded against them. A party applying for costs may have costs awarded against them, if they themselves have behaved unreasonably.

An Inspector or the Secretary of State may, on their own initiative, make an award of costs, in full or in part, in regard to appeals and other proceedings under the Planning Acts if they consider that a party has behaved unreasonably resulting in unnecessary expense and another party has not made an application for costs against that party.

Paragraph: 029 Reference ID: 16-029-20140306

Revision date: 06 03 2014

In what circumstances may costs be awarded?

Costs may be awarded where:

- a party has behaved unreasonably; and
- the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

Paragraph: 030 Reference ID: 16-030-20140306

Revision date: 06 03 2014

What does “unreasonable” mean?

The word “unreasonable” is used in its ordinary meaning, as established by the courts in Manchester City Council v SSE & Mercury Communications Limited [1988] JPL 774.

Unreasonable behaviour in the context of an application for an award of costs may be either:

- procedural – relating to the process; or
- substantive – relating to the issues arising from the merits of the appeal.

The Inspector has discretion when deciding an award, enabling extenuating circumstances to be taken into account.

Paragraph: 031 Reference ID: 16-031-20140306

Revision date: 06 03 2014

What counts as unnecessary or wasted expense?

An application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. This could be the expense of the entire appeal or other proceeding or only for part of the process.

Costs may include, for example, the time spent by appellants and their representatives, or by local authority staff, in preparing for an appeal and attending the appeal event, including the use of consultants to provide detailed technical advice, and expert and other witnesses.

Costs applications may relate to events before the appeal or other proceeding was brought, but costs that are unrelated to the appeal or other proceeding are ineligible. Awards cannot extend to compensation for indirect losses, such as those which may result from alleged delay in obtaining planning permission.

Paragraph: 032 Reference ID: 16-032-20140306

Revision date: 06 03 2014

Can costs be claimed for the period during the determination of the planning application?

No, but all parties are expected to behave reasonably throughout the planning process. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.

Applicants for planning permission should not attempt to delay a decision on their application, simply to obtain a fee refund. A local planning authority will be justified in refusing permission where an applicant causes deliberate delay and has been unwilling to agree an extension of time; such behaviour will be taken into account in determining any claim for costs if the applicant then makes an appeal.

Paragraph: 033 Reference ID: 16-033-20140306

Revision date: 06 03 2014

How does the award of costs apply to called-in planning applications?

When a planning application is "called-in", it is determined by the Secretary of State rather than by the local planning authority. This places the parties at a called-in proceeding in a different position from that in a planning appeal. The local planning authority is not defending a decision to refuse planning permission, or a failure to determine the application within the prescribed period.

In these circumstances, it is not envisaged that a party would be at risk of an award of costs for unreasonable behaviour relating to the substance of the case or action taken prior to the call-in decision. However, a party's failure to comply with the normal procedural requirements of inquiries, including aborting the process by withdrawing the application without good reason, risks an award of costs for unreasonable behaviour.

Paragraph: 034 Reference ID: 16-034-20140306

Revision date: 06 03 2014

How to make an application for an award of costs

How does a party make an application for costs?

Applications for costs should be made as soon as possible, and no later than the deadlines below:

- In the case of appeals determined via the Householder Appeals Service, Commercial Appeals Service, appeals against the refusal of advertisement consent and appeals against tree preservation orders the costs application must be made in writing when the appeal is submitted, if the application is made by the appellant, or within 14 days of the date of the 'start date' letter for the appeal if the application is made by the local authority.
- In the case of appeals determined via written representations, the costs application must be made in writing by any party no later than the final comments stage. The Planning Inspectorate has the flexibility to set an alternative deadline, which would be notified to all parties. Where the costs application concerns conduct relating to the site visit itself, applications should be received no later than 7 days after the date of the site visit.
- In the case of hearings and inquiries:
    - All costs applications must be formally made to the Inspector before the hearing or inquiry is closed, but as a matter of good practice, and where circumstances allow, costs applications should be made in writing before the hearing or inquiry. Any such application must be brought to the Inspector's attention at the hearing or inquiry, and can be added to or amended as necessary in oral submissions.
    - If the application relates to behaviour at a hearing or inquiry, the applicant should tell the Inspector before the hearing is adjourned to the site, or before the inquiry is closed, that they are going to make a costs application. The Inspector will then hear the application, the response by the other party, and the applicant will have the final word. The decision on the award of costs will be made after the hearing or inquiry.
- For all procedures, no later than 4 weeks after receiving notification from the Planning Inspectorate of the withdrawal of the appeal or enforcement notice or other planning matter which is the subject of the proceedings, irrespective of procedure . An application for costs can be made by letter, or by using the Planning Inspectorate's application form (https://www.gov.uk/claim-planning-appeal-costs/how-to-claim).

Anyone making a late application for an award of costs outside of these timings will need to show good reason for having made the application late, if it is to be accepted by the Secretary of State for consideration.

Paragraph: 035 Reference ID: 16-035-20161210

Revision date: 10 12 2016 See previous version (http://webarchive.nationalarchives.gov.uk/20161202154107/http://planningguidance.communities.gov.uk/blog/guidance/appeals/how-to-make-an-application-for-an-award-of-costs/)

When may Inspectors initiate an award of costs?

The award of costs supports an effective and timely planning system in which all parties are required to behave reasonably. In order to support this aim further, Inspectors may use their existing legal powers to make an award of costs where they have found unreasonable behaviour, including in cases where no application has been made by another party. Inspectors, or the Secretary of State, will apply the same guidance when deciding an application for an award of costs, or making an award at their own initiative.

Paragraph: 036 Reference ID: 16-036-20140306

Revision date: 06 03 2014

Can I apply for costs in other types of appeals or planning proceedings?

It may be possible to apply for an award of costs in regard to appeals under legislation made by other government departments. See the full list of appeals where costs may be sought (https://www.gov.uk/government/publications/illustrative-list-of-case-types-for-which-costs-awards-are-available). Information on the award of costs as it relates to major infrastructure (https://www.gov.uk/government/publications/awards-of-costs-examinations-of-applications-for-development-consent-orders).

Paragraph: 037 Reference ID: 16-037-20140306

Revision date: 06 03 2014

Is there an opportunity for the party against which the application of costs is made to provide comment?

Yes. A written application for costs will be disclosed to the party against whom the application is made, so that they can respond in writing. Where a party has made a written application for costs, clearly setting out the basis for the claim in advance, their case will be strengthened if the opposing party is unable to, or does not offer evidence to counter the case. The applicant then has the opportunity to make a final reply in writing.

For hearings and inquiries, the party against whom an application is made will have the opportunity to reply, either at the event or in writing. Similarly, a party will be given an opportunity to comment, where an Inspector is considering initiating an award of costs against them.

Paragraph: 038 Reference ID: 16-038-20140306

Revision date: 06 03 2014

Who makes the decision about the award of costs?

Most cost applications are determined by Inspectors. However, the Planning Inspectorate’s Costs and Decisions Team may deal with some cases. This includes applications arising from withdrawal of an appeal or enforcement notice. The Team also decides on the admissibility of late applications for costs.

Paragraph: 039 Reference ID: 16-039-20140306

Revision date: 06 03 2014

What is a full award of costs?

A full award of appeal costs means the party’s whole costs for the statutory process, including the preparation of the appeal statement and supporting documentation. It also includes the expense of making the costs application.

Where the process concerns a called-in planning application, the eligible costs start from the date of the letter notifying the applicant of the decision to call-in the application.

In other non-appeal cases, the eligible costs start from the date of the notification or statutory publication of, for example, the relevant order. This is the point at which the applicant for costs begins to incur expense in the ensuing statutory process.

Paragraph: 040 Reference ID: 16-040-20140306

Revision date: 06 03 2014

What is a partial award of costs?

Some cases do not justify a full award of costs, for example where the appeal is one of several joint appeals with evidence in common. Where the application for costs relates to one or some of the grounds of refusal but not all of them, an award might relate to the attendance of only particular witnesses. In these circumstances, a partial award may be made. The partial award may also be limited to a part of the appeal process. For example, where an unnecessary adjournment is caused by the unreasonable conduct of one of the parties, the award of costs may be limited to the abortive costs of attending the event on the day of the adjournment. A partial award may result from an application for either a full or a partial award.

Paragraph: 041 Reference ID: 16-041-20140306

Revision date: 06 03 2014

What happens if the appeal or an enforcement notice is withdrawn and the appeal is not decided?

If the appeal or enforcement notice is withdrawn without sound reason, or with avoidable delay, giving rise to unnecessary or wasted expense for another party, an application for costs can be made. Such applications should be made in writing to the Planning Inspectorate's Costs and Decisions Team no later than 4 weeks after receiving confirmation from the Planning Inspectorate or the local planning authority (in the case of an interested party) that no further action is being taken.

In such cases the decision on the award of costs will be taken by an officer in the Planning Inspectorate's Costs and Decisions Team, on behalf of the Secretary of State, following an exchange of written comments from the parties.

Paragraph: 042 Reference ID: 16-042-20161210

Revision date: 10 12 2016 see previous version (http://webarchive.nationalarchives.gov.uk/20161202154107/http://planningguidance.communities.gov.uk/blog/guidance/appeals/how-to-make-an-application-for-an-award-of-costs/#paragraph_042)

Can a claim for an award of costs be withdrawn?

Yes, if the party who applied for an award of costs formally notifies the Planning Inspectorate of the withdrawal. This does not prevent another party from seeking costs, nor the potential for an Inspector to initiate an award against either party.

Paragraph: 043 Reference ID: 16-043-20140306

Revision date: 06 03 2014

How is the amount settled where an award is made?

The Inspector or Secretary of State can only address the principle of whether costs should be awarded in full or in part, and not the amount – this is settled subsequently between the parties.

Where a costs order is made, the party awarded should first send details of their costs to the other party, with a view to reaching agreement on the amount. Where costs are awarded against a party and the parties cannot agree on a sum, the successful party can apply to the Senior Courts Costs Office (https://www.gov.uk/courts-tribunals/senior-courts-costs-office).

Paragraph: 044 Reference ID: 16-044-20140306

Revision date: 06 03 2014

What if the party does not pay?

Once the Planning Inspectorate has made an award of costs, it has no further role and it is for the parties to negotiate the amount and to agree on the arrangements for payment. Failure to settle an award of costs is enforceable through the Courts as a civil debt. If a party has any doubt about how to proceed in a particular case, they should seek legal advice.

Paragraph: 045 Reference ID: 16-045-20140306

Revision date: 06 03 2014

Behaviour that may lead to an award of costs against appeal parties

- Local planning authorities
- Appellants
- Statutory consultees
- Interested parties

Local planning authorities

When might an award of costs be made against a local planning authority?

Awards against a local planning authority may be either procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal. The examples below relate mainly to planning appeals and are not exhaustive. The Planning Inspectorate will take all evidence into account, alongside any extenuating circumstances.

Paragraph: 046 Reference ID: 16-046-20140306

Revision date: 06 03 2014

What type of behaviour may give rise to a procedural award against a local planning authority?

Local planning authorities are required to behave reasonably in relation to procedural matters at the appeal, for example by complying with the requirements and deadlines of the process. Examples of unreasonable behaviour which may result in an award of costs include:

- lack of co-operation with the other party or parties
- delay in providing information or other failure to adhere to deadlines

- only supplying relevant information at appeal when it was previously requested, but not provided, at application stage
- not agreeing a statement of common ground in a timely manner or not agreeing factual matters common to witnesses of both principal parties
- introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen
- prolonging the proceedings by introducing a new reason for refusal
- withdrawal of any reason for refusal or reason for issuing an enforcement notice
- failing to provide relevant information within statutory time limits, resulting in an enforcement notice being quashed without the issues on appeal being determined
- failing to attend or to be represented at a site visit, hearing or inquiry without good reason
- withdrawing an enforcement notice without good reason
- providing information that is shown to be manifestly inaccurate or untrue
- deliberately concealing relevant evidence at planning application stage or at subsequent appeal
- failing to notify the public of an inquiry or hearing, where this leads to the need for an adjournment

(This list is not exhaustive.)

Paragraph: 047 Reference ID: 16-047-20140306

Revision date: 06 03 2014

When might a local planning authority's handling of the planning application or enforcement notice prior to the appeal lead to an award of costs?

If it is clear that the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation. In any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period.

If an appeal in such cases is allowed, the local planning authority may be at risk of an award of costs, if the Inspector or Secretary of State concludes that there were no substantive reasons to justify delaying the determination and better communication with the applicant would have enabled the appeal to be avoided altogether. Such a decision would take into account any unreasonable behaviour on the part of the appellant in causing or adding to the delay.

For enforcement action, local planning authorities must carry out adequate prior investigation. They are at risk of an award of costs if it is concluded that an appeal could have been avoided by more diligent investigation that would have either avoided the need to serve the notice in the first place, or ensured that it was accurate.

Paragraph: 048 Reference ID: 16-048-20140306

Revision date: 06 03 2014

What type of behaviour may give rise to a substantive award against a local planning authority?

Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. Examples of this include:

- preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
- failure to produce evidence to substantiate each reason for refusal on appeal
- vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
- refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead
- acting contrary to, or not following, well-established case law
- persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable
- not determining similar cases in a consistent manner
- failing to grant a further planning permission for a scheme that is the subject of an extant or recently expired permission where there has been no material change in circumstances
- refusing to approve reserved matters when the objections relate to issues that should already have been considered at the outline stage
- imposing a condition that is not necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects, and thus does not comply with the guidance in the National Planning Policy Framework (https://gov.uk/guidance/national-planning-policy-framework) on planning conditions and obligations
- requiring that the appellant enter into a planning obligation which does not accord with the law or relevant national policy in the National Planning Policy Framework (https://gov.uk/guidance/national-planning-policy-framework), on planning conditions and obligations
- refusing to enter into pre-application discussions, or to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal
- not reviewing their case promptly following the lodging of an appeal against refusal of planning permission (or non-determination), or an application to remove or vary one or more conditions, as part of sensible on-going case management.
- if the local planning authority grants planning permission on an identical application where the evidence base is unchanged and the scheme has not been amended in any way, they run the risk of a full award of costs for an abortive appeal which is subsequently withdrawn

(This list is not exhaustive.)

Paragraph: 049 Reference ID: 16-049-20140306

Revision date: 06 03 2014

When might an award of costs not be made against a local planning authority?

Where local planning authorities have exercised their duty to determine planning applications in a reasonable manner, they should not be liable for an award of costs.

Where a local planning authority has refused a planning application for a proposal that is not in accordance with the development plan policy, and no material considerations including national policy indicate that planning permission should have been granted, there should generally be no grounds for an award of costs against the local planning authority for unreasonable refusal of an application.

Paragraph: 050 Reference ID: 16-050-20140306

Revision date: 06 03 2014

Appellants

When might an award of costs be made against an appellant?

Awards against appellants may be either procedural in regard to behaviour in relation to completing the appeal process or substantive which relates to the planning merits of the appeal. The examples below are not exhaustive. The Planning Inspectorate will take all evidence into account, alongside any extenuating circumstances.

Paragraph: 051 Reference ID: 16-051-20140306

Revision date: 06 03 2014

What type of behaviour may give rise to a procedural award against an appellant?

Appellants are required to behave reasonably in relation to procedural matters on the appeal, for example by complying with the requirements and deadlines of the appeals process. Examples of unreasonable behaviour which may result in an award of costs include:

- resistance to, or lack of co-operation with the other party or parties in providing information, discussing the application or appeal, or in responding to a planning contravention notice
- delay in providing information or other failure to adhere to deadlines
- only supplying relevant information at appeal when it was requested, but not provided, at application stage
- introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen
- prolonging the proceedings by introducing a new ground of appeal or issue
- not completing a timely statement of common ground or not agreeing factual matters common to witnesses of both principal parties
- failing to attend or to be represented at a site visit, hearing or inquiry without good reason
- providing information that is shown to be manifestly inaccurate or untrue
- deliberately concealing relevant evidence at planning application stage or at a subsequent appeal.
- withdrawal of an appeal without good reason

(This list is not exhaustive.)

Paragraph: 052 Reference ID: 16-052-20140306

Revision date: 06 03 2014

What type of behaviour may give rise to a substantive award against an appellant?

The right of appeal should be exercised in a reasonable manner. An appellant is at risk of an award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding. This may occur when:

- the development is clearly not in accordance with the development plan, and no other material considerations such as national planning policy are advanced that indicate the decision should have been made otherwise, or where other material considerations are advanced, there is inadequate supporting evidence
- the appeal follows a recent appeal decision in respect of the same, or a very similar, development on the same, or substantially the same site where the Secretary of State or an Inspector decided that the proposal was unacceptable and circumstances have not materially changed in the intervening period
- in enforcement and lawful development certificate appeals, the onus of proof on matters of fact is on the appellant. Sometimes it is made plain by a recent appeal decision relating to the same, or a very similar development on the same, or substantially the same site, that development should not be allowed. The appellant is at risk of an award of costs, if they persist with an appeal against an enforcement notice on the ground that planning permission ought to be granted for the development in question
- lack of co-operation on any planning obligation

(This list is not exhaustive.)

Paragraph: 053 Reference ID: 16-053-20140306

Revision date: 06 03 2014

Can an award of costs be made if the appellant withdraws an appeal?

Yes, if the appeal is withdrawn without good reason. Appellants are encouraged to withdraw their appeal at the earliest opportunity if there is good reason to do so.

If an appeal is withdrawn without any material change in the planning authority's case, or any other material change in circumstances relevant to the planning issues arising on the appeal, an award of costs may be made against the appellant if the claiming party can clearly show that they have incurred wasted expense as a result.

Paragraph: 054 Reference ID: 16-054-20161210

Revision date: 10 12 2016 See previous version (http://webarchive.nationalarchives.gov.uk/20161202154107/http://planningguidance.communities.gov.uk/blog/guidance/appeals/behaviour-that-may-lead-to-an-award-of-costs-against-appeal-parties/#paragraph_054)

Statutory consultees

When might an award of costs be made against a statutory consultee?

Statutory consultees play an important role in the planning system: local authorities often give significant weight to the technical advice of the key statutory consultees. Where a local planning authority has relied on the advice of the statutory consultee in refusing an application, there is a clear expectation that the consultee in question will substantiate its advice at any appeal.

Where the statutory consultee is a party to the appeal, they may be liable to an award of costs to or against them.

Where a local planning authority has placed significant weight on the view of the statutory consultee in its reasons for refusal, the local planning authority may wish to request the statutory consultee attends the inquiry or hearing, or makes written representations, to defend its position as an interested party.

Where it is considered that the evidence of the statutory consultee is relevant to the determination of the appeal, the Inspector may use powers under section 250(2) and (3) of the Local Government Act 1972 (http://www.legislation.gov.uk/ukpga/1972/70/section/250) to summon the statutory consultee to an appeal held as an inquiry, which may make them a party at the inquiry.

Where the Mayor of London or any other statutory consultee exercises a power to direct a planning authority to refuse planning permission, this party will be treated as a principal party at the appeal, and may be liable for an award of costs if they behave unreasonably or have an award of costs made to them.

Any allegations of unreasonable behaviour directed at a statutory consultee should be drawn to their attention at an early stage.

Statutory consultees must, at the earliest opportunity, notify the planning authority if their evidence or advice changes from that provided during the determination of the application to which the appeal relates.

Paragraph: 055 Reference ID: 16-055-20140306

Revision date: 06 03 2014

Interested parties

When might an award of costs be made against an interested party?

Interested parties who choose to be recognised as Rule 6 parties under the inquiry procedure rules, may be liable to an award of costs if they behave unreasonably. They may also have an award of costs made to them. See the Planning Inspectorate guide (https://www.gov.uk/government/collections/taking-part-in-a-planning-listed-building-or-enforcement-appeal) on Rule 6 for more detail.

It is not anticipated that awards of costs will be made in favour of, or against, other interested parties, other than in exceptional circumstances. An award will not be made in favour of, or against interested parties, where a finding of unreasonable behaviour by one of the principal parties relates to the merits of the appeal. However an award may be made in favour of, or against, an interested party on procedural grounds, for example where an appeal has been withdrawn without good reason or where an unnecessary adjournment of a hearing or inquiry is caused by unreasonable conduct. In cases dealt with by written representations, it is not envisaged that awards of costs involving interested parties will arise.

Paragraph: 056 Reference ID: 16-056-20161210

Revision date: 10 12 2016 See previous version (http://webarchive.nationalarchives.gov.uk/20161202154107/http://planningguidance.communities.gov.uk/blog/guidance/appeals/behaviour-that-may-lead-to-an-award-of-costs-against-appeal-parties/#paragraph_056)

The award of costs and compulsory purchase and analogous orders

How does the award of costs apply in the case of compulsory purchase and analogous orders?

Compulsory purchase and analogous orders seek to take away a party's rights or interest in land. Further information on compulsory purchase orders can be found in the Guidance on compulsory purchase process and the Crichel Down Rules for the disposal of surplus land acquired by, or under the threat of, compulsion (https://www.gov.uk/government/publications/compulsory-purchase-process-and-the-crichel-down-rules-guidance). Where objectors are defending their rights, or protecting their interests, which are the subject of a compulsory purchase or analogous order, they may have costs awarded in their favour if the order does not proceed or is not confirmed.

For the purposes of this Part, "remaining objector" means a person who is defending their rights, or protecting their interests, which are the subject of a compulsory purchase or analogous order, and who has made a "remaining objection" within the meaning of section 13A(1) of the Acquisition of Land Act 1981.

Costs will be awarded in favour of a successful remaining objector unless there are exceptional reasons for not making an award. The award will be made by the Secretary of State against the authority which made the order.

Normally, the following conditions must be met for an award to be made on the basis of a successful objection:

(a) the claimant must have made a remaining objection and have either:

- attended (or been represented at) an inquiry (or, if applicable, a hearing at which the objection was heard); or
- submitted a written representation which was considered as part of the written procedure; and

(b) the objection must have been sustained by the confirming authority's refusal to confirm the order or by its decision to exclude the whole or part of the claimant's property from the order.

In addition, a remaining objection will be successful and an award of costs may be made in the claimant's favour if an inquiry is cancelled because the acquiring authority have decided not to proceed with the order, or a claimant has not appeared at an inquiry having made an arrangement for their land to be excluded from the order. For more detail see section 5(4) of the Acquisition of Land Act 1981 as inserted by section 3 of the Growth and Infrastructure Act 2013 (http://www.legislation.gov.uk/ukpga/2013/27/section/3/enacted).

Paragraph: 057 Reference ID: 16-057-20140306

Revision date: 06 03 2014

How are objectors notified of the award of costs?

When notifying successful objectors of the decision on the order under the appropriate rules or regulations, the confirming authority, usually the Secretary of State, will tell them that they may be entitled to claim costs and invite them to submit an application for an award of costs on the basis of

their successful objection. The details of the level of costs are then a matter for negotiation between parties.

Paragraph: 058 Reference ID: 16-058-20140306

Revision date: 06 03 2014

Can an award be made for unreasonable behaviour?

An award of costs cannot be made both on grounds of success and unreasonable behaviour in such cases; but an award to a successful objector may be reduced if they have acted unreasonably and caused unnecessary expense in the proceedings – as, for example, where their conduct leads to an adjournment which ought not to have been necessary

Paragraph: 059 Reference ID: 16-059-20140306

Revision date: 06 03 2014

Can an award of costs be made to an unsuccessful objector?

Yes, an award of costs may be made to an unsuccessful remaining objector or to an order-making authority aecause of unreasonable behaviour by the other party. In practice, such an award is likely to relate to procedural matters, such as failing to submit grounds of objection or serve a statement of case, resulting in unnecessary expense – for example, because the inquiry has to be adjourned or is unnecessarily prolonged.

An application for costs (on the grounds of unreasonable behaviour) should be made to the Inspector at the inquiry or hearing, or in writing if appropriate. The Inspector may also initiate an award of costs if they consider a party has behaved unreasonably and an application is not made. The Inspector will provide a recommendation to the confirming authority, usually the Secretary of State, for a decision on whether to award costs.

Paragraph: 060 Reference ID: 16-060-20140306

Revision date: 06 03 2014

Can an award of costs be made against interested parties?

Yes. Interested parties may attend the inquiry and may be allowed to be heard. If they behave unreasonably at the event, they may have an award of costs made against them.

Paragraph: 061 Reference ID: 16-061-20140306

Revision date: 06 03 2014

What if the objection is partly successful?

Where a remaining objector is partly successful in opposing a compulsory purchase order, the confirming authority will normally make a partial award of costs. Such cases arise, for example, where the authority, in confirming an order, excludes part of the objector’s land.

Paragraph: 062 Reference ID: 16-062-20140306

Revision date: 06 03 2014

What if the compulsory purchase or analogous order is linked to another application?

Sometimes joint inquiries or hearings are held into 2 or more proposals, only one of which is a compulsory purchase (or analogous) order, for example an application for planning permission and an order for the compulsory acquisition of land included in the application. Where a remaining objector, who also makes representations about a related application, appears at such inquiries or hearings and is successful in objecting to the compulsory purchase order, the objector will be entitled to an award in respect of the compulsory purchase or analogous order only.

An objector is not, however, precluded from applying for the costs relating to the other matter on the grounds that the authority has acted unreasonably.

Paragraph: 063 Reference ID: 16-063-20140306

Revision date: 06 03 2014

What orders are analogous to compulsory purchase orders?

In general an order or proposal will be considered to be analogous to a compulsory purchase order if its making, or confirmation, takes away from the objector some right or interest in land for which the statute gives them a right to compensation. The analogous orders are:

- Orders under sections 97 and 98 of the Town and Country Planning Act 1990 (http://www.legislation.gov.uk/ukpga/1990/8/part/III/crossheading/revocation-and-modification-of-planning-permission) revoking or modifying a planning permission
- Orders under sections 23 and 24 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (http://www.legislation.gov.uk/ukpga/1990/9/part/I/chapter/II/crossheading/revocation-and-modification-of-consent) revoking or modifying listed building consent
- Orders under regulation 18 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (http://www.legislation.gov.uk/uksi/2007/783/regulation/18/made) revoking or modifying a grant of advertisement consent
- Orders under sections 102 and 103 of, and Schedule 9 to, the Town and Country Planning Act 1990 (http://www.legislation.gov.uk/ukpga/1990/8/contents) –
  a. requiring discontinuance of a use of land (including the winning and working of minerals), or imposing conditions on the continuance of a use of land or
  b. requiring the removal or alteration of buildings or works or
  c. requiring the removal or alteration of plant or machinery used for winning or working of minerals or
  d. prohibiting the resumption of winning or working of minerals or
  e. requiring steps to be taken for the protection of the environment, after suspension of winning and working of minerals
- Orders under sections 14 and 15 of the Planning (Hazardous Substances) Act 1990 (http://www.legislation.gov.uk/ukpga/1990/10/contents) revoking or modifying a hazardous substances consent, or refusal of an application under section 17(1) of the Act for continuation of a consent, on change of control of land

A petition under section 125 of the Local Government Act 1972 (http://www.legislation.gov.uk/ukpga/1972/70/section/125) as substituted by section 43 of the Housing and Planning Act 1986 (http://www.legislation.gov.uk/ukpga/1986/63/section/43) relating to compulsory acquisition of land on behalf of parish or community councils.

Paragraph: 064 Reference ID: 16-064-20140306

Revision date: 06 03 2014

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Guidance

Use of planning conditions

Explains how conditions attached to a planning permission should be used and discharged effectively

From:
Ministry of Housing, Communities & Local Government
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Contents

- Why and how are conditions imposed?
- What approach should be taken to using conditions?
- Conditions relating to time limits
- The use of pre-commencement conditions
- Discharging and modifying conditions once planning permission is granted
- Deemed discharge

Print this page

Where plans are being prepared under the transitional arrangements set out in Annex 1 to the revised National Planning Policy Framework (https://www.gov.uk/government/publications/national-planning-policy-framework--2), the policies in the previous version of the framework published in 2012 (http://webarchive.nationalarchives.gov.uk/20180608095821/https://www.gov.uk/government/publications/national-planning-policy-framework--2) will continue to apply, as will any previous guidance which has been superseded since the new framework was published in July 2018. If you'd like an email alert when changes are made to planning guidance please subscribe (https://www.gov.uk/topic/planning-development/planning-officer-guidance/email-signup).

Why and how are conditions imposed?

Why are conditions imposed on a planning permission?

When used properly, conditions can enhance the quality of development and enable development to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects. The objectives of planning are best served when the power to attach conditions to a planning permission is exercised in a way that is clearly seen to be fair, reasonable and practicable. It is important to ensure that conditions are tailored to tackle specific problems, rather than standardised or used to impose broad unnecessary controls.

Paragraph: 001 Reference ID: 21a-001-20140306

Revision date: 06 03 2014

What are the main legal powers relating to use of conditions?

The main powers are in sections 70, 72, 73, 73A, and Schedule 5 of the Town and Country Planning Act 1990 (http://www.legislation.gov.uk/ukpga/1990/8/section/70). Powers to impose conditions on appeal are also given to the Secretaries of State or their Inspectors by sections 77, 79, 177, and Schedule 6 of the Act (http://www.legislation.gov.uk/ukpga/1990/8/section/77). In some areas there may also be powers under local Acts which complement or vary the powers in the 1990 Act.

Section 70(1)(a) of the Act (http://www.legislation.gov.uk/ukpga/1990/8/section/70) enables the local planning authority in granting planning permission to impose “such conditions as they think fit”. This power needs to be interpreted in light of material considerations such as the National Planning Policy Framework, this supporting guidance on the use of conditions, and relevant case law.

A pre-commencement condition must not be imposed on the grant of permission (other than a grant of outline planning permission within the meaning of Section 92 of the 1990 Act) without the written agreement of the applicant except in the circumstances set out in the Town and Country Planning (Pre-commencement Conditions) Regulations 2018 (http://www.legislation.gov.uk/uksi/2018/566/made).

Paragraph: 002 Reference ID: 21a-002-20190723

Revision date: 23 07 2019 See previous version (https://webarchive.nationalarchives.gov.uk/20190606212244/https://www.gov.uk/guidance/use-of-planning-conditions#why-and-how-are-conditions-imposed)

What approach should be taken to using conditions?

What should a local planning authority do to ensure that the tests in national policy have been met?

Paragraph 55 (https://gov.uk/guidance/national-planning-policy-framework/4-decision-making#para55) of the National Planning Policy Framework makes clear that planning conditions should be kept to a minimum, and only used where they satisfy the following tests:

1. necessary;
2. relevant to planning;
3. relevant to the development to be permitted;
4. enforceable;
5. precise; and
6. reasonable in all other respects.

These are referred to in this guidance as the 6 tests, and each of them need to be satisfied for each condition which an authority intends to apply. See also guidance on the use of model conditions (https://www.gov.uk/government/publications/the-use-of-conditions-in-planning-permissions-circular-11-1995).

Paragraph: 003 Reference ID: 21a-003-20190723

Revision date: 23 07 2019 See previous version (https://webarchive.nationalarchives.gov.uk/20190606212244/https://www.gov.uk/guidance/use-of-planning-conditions#Application-of-the-six-tests)

How does the Local Planning Authority ensure that the 6 tests in paragraph 206 of the National Planning Policy Framework have been met?

Paragraph deleted.

Paragraph: 004 Reference ID: 21a-004-20190723

Revision date: 23 07 2019 See previous version (https://webarchive.nationalarchives.gov.uk/20190606212244/https://www.gov.uk/guidance/use-of-planning-conditions#Application-of-the-six-tests)

How can the local planning authority and the applicant reduce the need for conditions?

Rigorous application of the 6 tests can reduce the need for conditions and it is good practice to keep the number of conditions to a minimum wherever possible. Early engagement and positive dialogue between the local planning authority and the applicant can also result in planning permission being granted with fewer conditions attached. Effective pre-application discussions can help to establish early in the process what may need to be the subject of conditions. A Planning Performance Agreement can be used to set a timetable for when discussions about conditions will take place.

An applicant may, where it is feasible to do so, seek approval at the application stage for matters which may otherwise have been the subject of conditions. This can reduce potential delays between the decision being taken and development taking place on site.

Paragraph: 018 Reference ID: 21a-018-20190723

Revision date: 23 07 2019 See previous version (https://webarchive.nationalarchives.gov.uk/20190606212244/https://www.gov.uk/guidance/use-of-planning-conditions#what-approach-should-be-taken-to-imposing-conditions)

Are there any circumstances where planning conditions should not be used?

Any proposed condition that fails to meet one of the 6 tests should not be used. This applies even if the applicant suggests or agrees to it, or it is suggested by the members of a planning committee or a third party. Specific circumstances where conditions should not be used include:

- **Conditions which unreasonably impact on the deliverability of a development:**

Conditions which place unjustifiable and disproportionate financial burdens on an applicant will fail the test of reasonableness. In considering issues around viability, local planning authorities should consider policies in the National Planning Policy Framework and supporting guidance on viability (https://www.gov.uk/guidance/viability).

- **Conditions reserving outline application details:**

Where details have been submitted as part of an outline application, they must be treated by the local planning authority as forming part of the development for which the application is being made. Conditions cannot be used to reserve these details for subsequent approval. The exception is where the applicant has made it clear that the details have been submitted for illustration purposes only.

- **Conditions requiring the development to be carried out in its entirety:**

Conditions requiring a development to be carried out in its entirety will fail the test of necessity by requiring more than is needed to deal with the problem they are designed to solve. Such a condition is also likely to be difficult to enforce due to the range of external factors that can influence a decision whether or not to carry out and complete a development.

- **Conditions requiring compliance with other regulatory requirements (eg Building Regulations, Environmental Protection Act):**

Conditions requiring compliance with other regulatory regimes will not meet the test of necessity and may not be relevant to planning. Use of informatives to remind the applicant to obtain further planning approvals and other consents may be more appropriate.

- **Conditions requiring land to be given up:**

Conditions cannot require that land is formally given up (or ceded) to other parties, such as the local highway authority.

- **Positively worded conditions requiring payment of money or other consideration:**

No payment of money or other consideration can be positively required when granting planning permission. However, where the 6 tests will be met, it may be possible use a negatively worded condition to prohibit development authorised by the planning permission until a specified action has been taken (for example, the entering into of a planning obligation requiring the payment of a financial contribution towards the provision of supporting infrastructure).

Paragraph: 005 Reference ID: 21a-005-20190723

Revision date: 23 07 2019 See previous version (https://webarchive.nationalarchives.gov.uk/20190606212244/https://www.gov.uk/guidance/use-of-planning-conditions#what-approach-should-be-taken-to-imposing-conditions)

Can a local planning authority use model conditions?

Model conditions can improve the efficiency of the planning process, but it is important not to apply them in a rigid way and without regard to whether the 6 tests will be met. Local planning authorities may want to consider national model conditions where appropriate in the interests of maintaining consistency. (See also model conditions (https://www.gov.uk/government/publications/the-use-of-conditions-in-planning-permissions-circular-11-1995).)

Paragraph: 021 Reference ID: 21b-021-20190723

Revision date: 23 07 2019 See previous version (https://webarchive.nationalarchives.gov.uk/20190606212244/https://www.gov.uk/guidance/use-of-planning-conditions#the-use-of-pre-commencement-conditions)

Can conditions be used to require the applicant to submit further details after permission has been granted?

For non outline applications, other than where it will clearly assist with the efficient and effective delivery of development, it is important that the local planning authority limits the use of conditions requiring their approval of further matters after permission has been granted.

Where it is justified, the ability to impose conditions requiring submission and approval of further details extends to aspects of the development that are not fully described in the application (eg provision of car parking spaces).

Where it is practicable to do so, such conditions should be discussed with the applicant before permission is granted to ensure that unreasonable burdens are not being imposed. The local planning authority should ensure that the timing of submission of any further details meets with the planned sequence for developing the site. Conditions that unnecessarily affect an applicant's ability to bring a development into use, allow a development to be occupied or otherwise impact on the proper implementation of the planning permission should not be used. A condition requiring the re-submission and approval of details that have already been submitted as part of the planning application is unlikely to pass the test of necessity.

Paragraph: 006 Reference ID: 21a-006-20140306

Revision date: 06 03 2014

Can conditions be used to stipulate the sequence that development should be carried out in (phasing)?

Where the circumstances of the application make this necessary and the 6 tests will be met, conditions can be imposed to ensure that development proceeds in a certain sequence. Conditions may also be used to ensure that a particular element in a scheme is provided by/at a particular stage or before the scheme is brought into use.

It is important that the local planning authority and the applicant discuss and seek to agree any such conditions before planning permission is granted. This is in order to understand how the requirements would fit into the planned sequence for developing the site, impacts on viability, and whether the tests of reasonableness and necessity will be met.

See guidance on multi-stage consents and Environmental Impact Assessment (https://www.gov.uk/guidance/environmental-impact-assessment#subsequent-applications).

Paragraph: 008 Reference ID: 21a-008-20140306

Revision date: 06 03 2014

When can conditions be used relating to land not in control of the applicant?

Conditions requiring works on land that is not controlled by the applicant, or that requires the consent or authorisation of another person or body often fail the tests of reasonableness and enforceability. It may be possible to achieve a similar result using a condition worded in a negative form (a Grampian condition) – ie prohibiting development authorised by the planning permission or other aspects linked to the planning permission (eg occupation of premises) until a specified action has been taken (such as the provision of supporting infrastructure). Such conditions should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission.

Paragraph: 009 Reference ID: 21a-009-20140306

Revision date: 06 03 2014

Is it possible to use a condition to require an applicant to enter into a planning obligation or an agreement under other powers?

A positively worded condition which requires the applicant to enter into a planning obligation under section 106 of the Town and Country Planning Act 1990 (https://www.legislation.gov.uk/ukpga/1990/8/section/106) or an agreement under other powers, is unlikely to pass the test of enforceability.

A negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. Ensuring that any planning obligation or other agreement is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed. It encourages the parties to finalise the planning obligation or other agreement in a timely manner and is important in the interests of maintaining transparency.

However, in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate, where there is clear evidence that the delivery of the development would otherwise be at serious risk (this may apply in the case of particularly complex development schemes). In such cases the 6 tests should also be met.

Where consideration is given to using a negatively worded condition of this sort, it is important that the local planning authority discusses with the applicant before planning permission is granted the need for a planning obligation or other agreement and the appropriateness of using a condition. The heads of terms or principal terms need to be agreed prior to planning permission being granted to ensure that the test of necessity is met and in the interests of transparency.

Paragraph: 010 Reference ID: 21a-010-20190723

Revision date: 23 07 2019 See previous version (https://webarchive.nationalarchives.gov.uk/20190606212244/https://www.gov.uk/guidance/use-of-planning-conditions#what-approach-should-be-taken-to-imposing-conditions)

What approach should be taken where the same objective can be met using either a condition or a planning obligation?

It may be possible to overcome a planning objection to a development proposal equally well by imposing a condition on the planning permission or by entering into a planning obligation under section 106 of the Town and Country Planning Act 1990 (http://www.legislation.gov.uk/ukpga/1990/8/section/106). In such cases the local planning authority should use a condition rather than seeking to deal with the matter by means of a planning obligation.

Paragraph: 011 Reference ID: 21a-011-20140306

Revision date: 06 03 2014

Can conditions be used to modify plans and other details submitted with an application?

If a detail in a proposed development, or the lack of it, is unacceptable in planning terms the best course of action will often be for the applicant to be invited to revise the application. Where this involves significant changes this may result in the need for a fresh planning application.

Depending on the case, it may be possible for the local planning authority to impose a condition making a minor modification to the development permitted. It would not be appropriate to modify the development in a way that makes it substantially different from that set out in the application.

Paragraph: 012 Reference ID: 21a-012-20140306

Revision date: 06 03 2014

Can conditions be used to limit the grant of planning permission to only part of the development proposed (a split decision)?

Express powers to issue split decisions are given to the Secretary of State and Inspectors in section 79 of the Town and Country Planning Act 1990 (http://www.legislation.gov.uk/ukpga/1990/8/section/79).

In cases where the local planning authority considers part of the development to be unacceptable, it will normally be best to seek amended details from the applicant prior to a decision being made. In exceptional circumstances it may be appropriate to use a condition to grant permission for only part of the development. Such conditions will only be appropriate where the acceptable and unacceptable parts of the proposal are clearly distinguishable.

Paragraph: 013 Reference ID: 21a-013-20140306

Revision date: 06 03 2014

When can conditions be used to grant planning permission for a use for a temporary period only?

Under section 72 of the Town and Country Planning Act 1990 (http://www.legislation.gov.uk/ukpga/1990/8/section/72) the local planning authority may grant planning permission for a specified temporary period only.

Circumstances where a temporary permission may be appropriate include where a trial run is needed in order to assess the effect of the development on the area or where it is expected that the planning circumstances will change in a particular way at the end of that period.

A temporary planning permission may also be appropriate to enable the temporary use of vacant land or buildings prior to any longer-term proposals coming forward (a ‘meanwhile use’).

It will rarely be justifiable to grant a second temporary permission (except in cases where changing circumstances provide a clear rationale, such as temporary classrooms and other school facilities). Further permissions can normally be granted permanently or refused if there is clear justification for doing so. There is no presumption that a temporary grant of planning permission will then be granted permanently.

A condition requiring the demolition after a stated period of a building that is clearly intended to be permanent is unlikely to pass the test of reasonableness. Conditions requiring demolition of buildings which are imposed on planning permissions for change of use are unlikely to relate fairly and reasonably to the development permitted.

Paragraph: 014 Reference ID: 21a-014-20140306

Revision date: 06 03 2014

Is it appropriate to use conditions to limit the benefits of the planning permission to a particular person or group of people?

Planning permission usually runs with the land and it is rarely appropriate to provide otherwise. There may be exceptional occasions where development that would not normally be permitted may be justified on planning grounds because of who would benefit from the permission. For example, conditions limiting benefits to a particular class of people, such as new residential accommodation in the open countryside for agricultural or forestry workers, may be justified on the grounds that an applicant has successfully demonstrated an exceptional need.

A condition limiting the benefit of the permission to a company is inappropriate because its shares can be transferred to other persons without affecting the legal personality of the company.

Paragraph: 015 Reference ID: 21a-015-20140306

Revision date: 06 03 2014

How can conditions that are requested by statutory consultees and other third parties be approached?

Statutory consultees and other third parties can suggest conditions to mitigate potential impacts and make a development acceptable in planning terms. The decision as to whether it is appropriate to impose such conditions rests with the local planning authority (except for the circumstances set out in the Town and Country Planning (Development Affecting Trunk Roads) Direction 2018) (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/745435/180223__TC_Planning_Development_on_the_Trunk_Road_Direction.pdf). As with any condition, the parties involved should consider whether the 6 tests will be met. Blanket standard conditions are inappropriate without proper consideration of whether they are necessary.

It is not appropriate to require in a condition that a development should be carried out to the satisfaction of a third party as this decision rests with the local planning authority.

Paragraph: 016 Reference ID: 21a-016-20140306

Revision date: 06 03 2014

Is it appropriate to use conditions to restrict the future use of permitted development rights or changes of use?

Conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity. The scope of such conditions needs to be precisely defined, by reference to the relevant provisions in the Town and Country Planning (General Permitted Development) (England) Order 2015 (http://www.legislation.gov.uk/uksi/2015/596/contents/made), so that it is clear exactly which rights have been limited or withdrawn.Area-wide or blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity. The local planning authority also has powers under article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (http://www.legislation.gov.uk/uksi/2015/596/article/4/made) to enable them to withdraw permitted development rights across a defined area, where justified.

Paragraph: 017 Reference ID: 21a-017-20190723

Revision date: 23 07 2019 See previous version (https://webarchive.nationalarchives.gov.uk/20190606212244/https://www.gov.uk/guidance/use-of-planning-conditions#what-approach-should-be-taken-to-imposing-conditions)

Is it acceptable for a local planning authority to explain in their Local Plan where conditions may be used?

Paragraph deleted.

Paragraph: 020 Reference ID: 21a-020-20140306

Revision date: 06 07 2019 See previous version (https://webarchive.nationalarchives.gov.uk/20190606212244/https://www.gov.uk/guidance/use-of-planning-conditions#what-approach-should-be-taken-to-imposing-conditions)

Can conditions be used to specify the application drawings and other details which form part of the permission?

Paragraph deleted.

Paragraph: 022 Reference ID: 21a-022-20190723

Revision date: 23 07 2019 See previous version (https://webarchive.nationalarchives.gov.uk/20190606212244/https://www.gov.uk/guidance/use-of-planning-conditions#what-approach-should-be-taken-to-imposing-conditions)

Does the local planning authority need to give reasons for imposing conditions?

Clear and precise reasons must be given by the local planning authority for the imposition of every condition.

Paragraph: 023 Reference ID: 21a-023-20140306

Revision date: 06 03 2014

How should a local planning authority order conditions on decision notices?

In addition to precise drafting, clear ordering of conditions on a decision notice will help ensure they are understood. It is good practice to list the conditions in the order that they need to be satisfied. A good structure is:

1. the standard time limit condition for commencement of development
2. the details and drawings subject to which the planning permission is granted
3. any pre-commencement conditions
4. any pre-occupancy or other stage conditions
5. any conditions relating to post occupancy monitoring and management.

Paragraph: 024 Reference ID: 21a-024-20140306

Revision date: 06 03 2014

Conditions relating to time limits

How should conditions be used to specify the time limit within which development granted planning permission must begin?

Under section 91 Town and Country Planning Act 1990 (http://www.legislation.gov.uk/ukpga/1990/8/section/91) if the local planning authority grants planning permission it is subject to a condition that sets the time limit within which the development must begin.

The relevant time limit for beginning the development is not later than the expiration of:

- 3 years beginning with the date on which the permission is granted, or;
- such other period (whether longer or shorter) as the local planning authority may impose.

The local planning authority may wish to consider whether a variation in the time period could assist in the delivery of development. For example, a shorter time period may be appropriate where it would encourage the commencement of development and non-commencement has previously had negative impacts.

The national planning policy framework encourages local planning authorities to consider imposing a shorter time period to ensure that proposals for housing development are implemented in a timely manner. A longer time period may be justified for very complex projects where there is evidence that 3 years is not long enough to allow all the necessary preparations to be completed before development can start.

Where planning permission is granted and the decision notice does not include a condition stating the time limit within which development must begin, it is deemed to be granted subject to the conditions set out in section 92 Town and Country Planning Act 1990 (http://www.legislation.gov.uk/ukpga/1990/8/section/92).

Paragraph: 027 Reference ID: 21a-027-20140306

Revision date: 06 03 2014

What about time limits for outline planning permissions?

Paragraph deleted.

Paragraph: 028 Reference ID: 21a-028-20190723

Revision date: 23 07 2019 See previous version (https://webarchive.nationalarchives.gov.uk/20190606212244/https://www.gov.uk/guidance/use-of-planning-conditions#conditions-relating-to-time-limits)

What happens if planning permission is granted but there is no condition specifying the time limit within which development must begin?

Paragraph deleted.

Paragraph: 029 Reference ID: 2a-029-20190723

Revision date: 23 07 2019 See previous version (https://webarchive.nationalarchives.gov.uk/20190606212244/https://www.gov.uk/guidance/use-of-planning-conditions#conditions-relating-to-time-limits)

Can conditions be attached to reserved matters applications relating to outline planning permissions?

The only conditions which can be imposed when the reserved matters are approved are conditions which directly relate to those reserved matters. Conditions relating to anything other than the matters to be reserved can only be imposed when outline planning permission is granted.

Paragraph: 025 Reference ID: 21a-025-20140306

Revision date: 06 03 2014

What status do informative notes appended to decision notices have?

Informative notes allow the local planning authority to draw an applicant's attention to other relevant matters – for example the requirement to seek additional consents under other regimes. Informative notes do not carry any legal weight and cannot be used in lieu of planning conditions or a legal obligation to try and ensure adequate means of control for planning purposes.

Paragraph: 026 Reference ID: 21a-026-20140306

Revision date: 06 03 2014

The use of pre-commencement conditions

When can pre-commencement conditions be used that prevent any development until the requirements of the condition have been met?

Care should be taken when considering using pre-commencement conditions that prevent any development authorised by the planning permission from beginning until the condition has been complied with. This includes conditions stating that 'no development shall take place until…' or 'prior to any works starting on site…'

Such pre-commencement conditions should only be used where there is a clear justification, which is likely to mean that the requirements of the condition (including the timing of compliance) are so fundamental to the development permitted that it would otherwise be necessary to refuse the whole permission.

A pre-commencement condition that does not meet the legal and policy tests may be found to be unlawful by the courts and therefore cannot be enforced by the local planning authority if it is breached. Development carried out without having complied with a pre-commencement condition would be unlawful and may be the subject of enforcement action.

Paragraph: 007 Reference ID: 21a-007-20180615

Revision date: 15 06 2018 See previous version (http://webarchive.nationalarchives.gov.uk/20180411211011/https://www.gov.uk/guidance/use-of-planning-conditions#what-approach-should-be-taken-to-imposing-conditions)

When must a local planning authority agree pre-commencement conditions with an applicant before imposing them?

Section 100ZA(5) provides that planning permission for the development of land may not be granted subject to a pre-commencement condition without the written agreement of the applicant to the terms of the condition (except in the case of a condition imposed on the grant of outline planning

permission within the meaning of Section 92 of the 1990 Act or in the circumstances set out in the Town and Country Planning (Pre-commencement Conditions) Regulations 2018) (http://www.legislation.gov.uk/uksi/2018/566/made).

Paragraph: 036 Reference ID: 21a-036-20180615

Revision date: 15 06 2018

When may local planning authorities serve a notice to seek the written agreement of the applicant to a pre-commencement condition?

A local planning authority may decide to serve a notice if it has not been able to obtain written agreement, to a pre-commencement condition it wishes to impose, during the course of negotiations, as described in paragraph 019.

The application cannot be determined until the period specified in the notice has expired unless, before that date, the applicant provides a substantive response or written agreement to the pre-commencement condition.

Paragraph: 037 Reference ID: 21a-037-20180615

Revision date: 15 06 2018

What options are available to the applicant if they have received a notice from the local planning authority seeking to impose a pre-commencement condition?

The applicant can:

- provide written agreement (within the time limit) to the terms of the proposed pre-commencement condition, in which case the local planning authority may grant planning permission subject to that pre-commencement condition
- provide comments (within the time limit) on the proposed pre-commencement condition, in which case that condition cannot be imposed
- choose not respond (i.e. remain silent). If there is no response by the date given in the notice the local planning authority may grant planning permission subject to the terms of the pre-commencement condition specified in the notice
- indicate (within the time limit) that they do not agree to the terms of the proposed pre-commencement condition, in which case the local planning authority may then either:
  i. grant planning permission without the pre-commencement condition,
  ii. seek written agreement to an alternative pre-commencement condition, or
  iii. refuse to grant permission (if it considers that the disputed pre-commencement condition is necessary to make the development acceptable in planning terms).

Paragraph: 038 Reference ID: 21a-038-20180615

Revision date: 15 06 2018

What options are available to an applicant who does not wish to comply with a condition?

Following the decision of a local planning authority to grant planning permission subject to conditions, an applicant may consider taking the following actions if they do not wish to be subject to a condition.

These options remain available where the applicant has agreed a pre-commencement condition, or the pre-commencement condition has been imposed where the applicant has not responded within the time limit set out in a notice served under the Town and Country Planning (Pre-commencement Conditions) Regulations 2018 (http://www.legislation.gov.uk/uksi/2018/566/made):

- Some or all of the conditions could be removed or changed by making an application to the local planning authority under section 73 of the Town and Country Planning Act 1990 (http://www.legislation.gov.uk/ukpga/1990/8/section/73). In deciding an application under section 73, the local planning authority must only consider the disputed condition/s that are the subject of the application – it is not a complete re-consideration of the application. A local planning authority decision to refuse an application under section 73 can be appealed to the Secretary of State, who will also only consider the condition/s in question.
- Appeal to the Secretary of State against the decision of the local planning authority to grant planning permission subject to conditions. An appeal must be received within 12 weeks of the date on the decision notice for householder planning applications or 6 months for other planning decision types. A Planning Inspector on behalf of the Secretary of State will re-determine the whole application (not only the decision to impose the conditions) – so there is a risk that the Inspector could refuse planning permission and therefore reverse the decision of the local planning authority. Further guidance on appeals (https://www.gov.uk/guidance/appeals).

Development that is taken forward in breach of conditions may be subject to local authority enforcement action. It is also possible to apply for retrospective planning permission under section 73A of the Town and Country Planning Act 1990 (http://www.legislation.gov.uk/ukpga/1990/8/section/73A). Further guidance on enforcement (including section 73A) (https://www.gov.uk/guidance/ensuring-effective-enforcement).

Paragraph: 031 Reference ID: 21a-031-20180615

Revision date: 15 06 2018 See previous version (https://webarchive.nationalarchives.gov.uk/20190606212244/https://www.gov.uk/guidance/use-of-planning-conditions#the-use-of-pre-commencement-conditions)

What information must be included in a notice under the Town and Country Planning (Pre-commencement Conditions) Regulations 2018?

Paragraph deleted.

Paragraph: 039 Reference ID: 21a-039-20190723

Revision date: 23 07 2019 See previous version (https://webarchive.nationalarchives.gov.uk/20190606212244/https://www.gov.uk/guidance/use-of-planning-conditions#the-use-of-pre-commencement-conditions)

Should the local planning authority agree conditions with an applicant before imposing them?

Paragraph deleted.

Paragraph: 019 Reference ID: 21a-019-2090723

Revision date: 23 07 2019 See previous version (https://webarchive.nationalarchives.gov.uk/20190606212244/https://www.gov.uk/guidance/use-of-planning-conditions#what-approach-should-be-taken-to-imposing-conditions)

What are pre-commencement conditions?

Paragraph deleted.

Paragraph: 035 Reference ID: 21a-035-20180615

Revision date: 23 07 2019 See previous version (https://webarchive.nationalarchives.gov.uk/20190606212244/https://www.gov.uk/guidance/use-of-planning-conditions#the-use-of-pre-commencement-conditions)

How are conditions treated under section 73?

The original planning permission will continue to exist whatever the outcome of the application under section 73. The conditions imposed on the original permission still have effect unless they have been discharged. In granting permission under section 73 the local planning authority may also impose new conditions – provided the conditions do not materially alter the development that was subject to the original permission and are conditions which could have been imposed on the earlier planning permission. For the purpose of clarity, decision notices for the grant of planning permission under section 73 should should set out all of the conditions imposed on the new permission, and restate the conditions imposed on earlier permissions that continue to have effect.

Any pre-commencement conditions may not be imposed without the written agreement of the applicant to the terms of the condition (except in the case of a condition imposed on the grant of outline planning permission within the meaning of section 92 of the 1990 Act or in the circumstances set out in the Town and Country Planning (Pre-commencement Conditions) Regulations 2018) (http://www.legislation.gov.uk/uksi/2018/566/made). Further guidance on section 73 (https://www.gov.uk/guidance/flexible-options-for-planning-permissions).

Paragraph: 040 Reference ID: 21a-040-20190723

Revision date: 23 07 2019

Will conditions on planning permissions affect future purchasers of the land?

Paragraph deleted.

Paragraph: 030 Reference ID: 21a-030-20190723

Revision date: 23 07 2019 See previous version (https://webarchive.nationalarchives.gov.uk/20190606212244/https://www.gov.uk/guidance/use-of-planning-conditions#discharging-and-modifying-conditions)

Discharging and modifying conditions once planning permission is granted

How can a developer seek to discharge conditions attached to a planning permission that require local planning authority approval of further details?

Requests for approval of further details required by conditions must be made to the local planning authority in writing, enclosing any relevant details.

Paragraph: 032 Reference ID: 21a-032-20140306

Revision date: 06 03 2014

Is there a fee payable to a local planning authority to discharge a planning condition?

The local planning authority will charge an application fee for written requests for both:

- written confirmation of the discharge of conditions; and
- written confirmation that one or more of the conditions imposed on a grant of planning permission have been satisfied

More details on fees (https://www.gov.uk/guidance/fees-for-planning-applications). The fee must be paid when the request is made, and cannot be paid retrospectively.

Paragraph: 033 Reference ID: 21a-033-20140306

Revision date: 06 03 2014

How long should it take for a local planning authority to discharge a planning condition?

The local planning authority should respond to requests to discharge conditions without delay and must give notice to the applicant of its decision within a period of 8 weeks, beginning with the day immediately following that on which the application is received, or any longer period agreed in writing between the applicant and local planning authority.

Where the LPA is determining an application for approval required by a condition imposed on planning permission for EIA development, which must be obtained before all or part of the development may be begun, the period is 16 weeks. (Article 27 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (http://www.legislation.gov.uk/uksi/2015/595/article/27/made) and regulation 68 of the Town and Country Planning (Environmental Impact Assessment) Regulations (http://www.legislation.gov.uk/uksi/2017/571/regulation/68/made)).

If no decision is made to discharge the condition within 12 weeks, the local planning authority must return the fee to the applicant without further delay.

These timeframes and the return of fees do not apply to prior approval procedures under Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (http://www.legislation.gov.uk/uksi/2015/596/schedule/2/made), or where the request relates to a reserved matter, which should be subject to a reserved matters application.

Where an applicant has concerns about the timeliness of the local planning authority in giving notice of its decision, a deemed discharge may be available under article 28 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (http://www.legislation.gov.uk/uksi/2015/595/article/28/made).

There is a right of appeal where an application is refused or is not determined within the statutory timescale.

Paragraph: 034 Reference ID: 21a-034-20190723

Revision date: 23 07 2019 See previous version (https://webarchive.nationalarchives.gov.uk/20190606212244/https://www.gov.uk/guidance/use-of-planning-conditions#discharging-and-modifying-conditions)

Deemed discharge

What is deemed discharge?

Deemed discharge of a condition means that the local planning authority's consent, agreement or approval to any matter as required by the condition is deemed to have been given.

If seeking a deemed discharge the applicant must follow the procedure set out in Articles 27 to 30 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (http://www.legislation.gov.uk/uksi/2015/595/article/27/made).

The procedure is designed to avoid unacceptable delays and costs at a stage in the development process where applicants are close to starting on site or where development is underway.

Paragraph: 041 Reference ID: 21a-041-20190723

Revision date: 23 07 2019

What conditions are eligible for deemed discharge?

The deemed discharge procedure only applies to a condition which: (a) has been imposed on the grant of planning permission for the development of land in England after April 15, 2015; and (b) requires the consent, agreement or approval of an authority to any matter – i.e. the applicant has to come back to the authority for their approval.

The deemed discharge procedure cannot be applied:

(a) to a condition attached to the grant of planning permission where the condition falls within the exemptions listed in Schedule 6 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (http://www.legislation.gov.uk/uksi/2015/595/schedule/6/made); or

(b) where the applicant for planning permission and the local planning authority have agreed in writing that the provisions of section 74A of the 1990 Act (deemed discharge of planning conditions) do not apply.

Paragraph: 042 Reference ID: 21a-042-20190723

Revision date: 23 07 2019

What is the process for activating deemed discharge?

Deemed discharge needs to be activated by the applicant.

If the applicant considers there is a delay in the discharge of a condition, the 'deemed discharge' process may be activated (where that is permitted, and where no appeal has been made under section 78 of the 1990 Act) by serving a 'deemed discharge' notice on the local planning authority.

A deemed discharge notice may only be served once one of the following have elapsed:

- at least 6 weeks beginning with the day immediately following that on which the application is received by the local planning authority; or
- such shorter period as may be agreed in writing between the applicant and the local planning authority for serving a notice.

If the applicant has served a deemed discharge notice and the local planning authority fails to determine the application by the date specified in the notice or such later date as may have been agreed in writing, approval is deemed to have been given, with the consequence that the condition is deemed to be discharged.

Paragraph: 043 Reference ID: 21a-043-20190723

Revision date: 23 07 2019

How is the date specified in the notice calculated?

The date specified in the notice must be no earlier than the date referred to in paragraph 034 above elapses, or 14 days after the day immediately following that on which the deemed discharge notice is received by the local planning authority, whichever is later.

Paragraph: 044 Reference ID: 21a-044-20190723

Revision date: 23 07 2019

What information needs to be included in the deemed discharge notice?

Statutory requirements for what information must be included in the deemed discharge notice are set out in Article 29 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (http://www.legislation.gov.uk/uksi/2015/595/article/29/made).

Paragraph: 045 Reference ID: 21a-045-20190723

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1. 23 July 2019
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