

BETWEEN

R (ON THE APPLICATION OF) 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

DOCUMENTS TO SUPPORT THE SUMMARY GROUNDS OF DEFENCE
OF THE FIRST INTERESTED PARTY

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STANSTED AIRPORT 35 + PLANNING APPEAL

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

OPENING SUBMISSIONS on behalf of STAL

THE PROPOSED DEVELOPMENT

1. This appeal is concerned solely with the question of whether STAL should be allowed to undertake a small number of adjustments to its airfield infrastructure (in the form of additional taxiway and stand provision¹) and at the same time utilise these elements along with its existing and permitted airport infrastructure to accommodate an eventual annual passenger throughput of 43mppa (that is 8 mppa more than the 35mppa presently permitted), whilst remaining within the total number of aircraft movements for which it already has planning permission, as a result of the permission granted by the Secretaries of State in 2008².
2. This increase in passenger throughput is attributable in part to increased numbers of passengers now flying per PATM³ (as average aircraft size and load factors increase) and in part to a modest re-assignment of the permitted aircraft movements from cargo and general traffic to passenger ATMs (circa 3.5%).
3. The aggregate number of aircraft movements will therefore remain as already permitted; it is the number of passengers passing through the terminal which will increase. Here the principal impact of the development manifests itself in the form of additional passengers seeking to use Stansted's excellent public transport links and, for the balance, additional road traffic movements on the network. We note at the

¹ CD 23.63a & 23.63b: Aerial photographs of Stansted annotated to show proposed operational development.

² CD 12.3

³ Passenger Air Transport Movement

outset that STAL has analysed this issue at length with the assistance of expert consultants Steer, whose work has, in turn, been assessed by Network Rail and by HE (and its consultants AECOM) and ECC as highway authority (and its consultants Jacobs), who have reached the conclusion there will be no unacceptable impacts on the rail or highway networks and that suitable mitigation measures can be secured by a section 106 planning obligation, the revised terms of which are now very largely agreed.

4. The proposed development is not an NSIP and is not required by virtue of the Planning Act 2008 to be promoted by DCO. On the contrary, it is precisely the type of development which is intended to be promoted by planning application for determination initially by the local planning authority and on appeal by the Secretary of State⁴. We can be categorical about this as SSE has for several years pursued a claim in the High Court challenging the Secretary of State for Transport's decision (i) that the proposed development did not comprise an NSIP and (ii) refusing to exercise his discretion to direct that it should be treated as such. It has also challenged the Secretary of State for Housing, Communities and Local Government's decision not to call the application in for his own determination. In rejecting the request to call in, the SoS expressly confirmed that he did not consider STAL's application to raise matters of more than local significance⁵.
5. Both challenges failed⁶. Having concluded that the Secretary of State for Transport's interpretation of section s23(5)(a) Planning Act 2008 was one "which was sound and a reliable basis for taking the decision as to whether or not the proposal was an NSIP" [para 110], Dove J went on to hold that the SoS' judgment that the development would not "increase by at least 10 million per year the number of passengers for whom the airport is capable of providing air passenger transport services" was reasonable and lawful. Moreover, the SoS was entitled to find that the development was not one which should be treated as being an NSIP on the basis of its national significance.

⁴ See further in relation to MBU below.

⁵ CD 12.15a

⁶ CD 14.62

6. In this context, the Court considered and rejected the argument made by SSE that the proposed increase by 8mppa formed part of a wider NSIP to increase capacity beyond 10mmpa:

“112... I am not satisfied that such of this material as was before the defendant could have led to him properly concluding that the application he was considering was part of a wider or larger project which, taken together with that which was before him, justified the conclusion that the present proposal should be considered an NSIP on the basis of applying s.35 of the 2008 Act.”

7. Although the rationale for these High Court challenges was alleged to be that SSE wanted to force a public inquiry at which to air their concerns, they pursued their unsuccessful challenge long after it became clear that there would indeed be such an inquiry and only threw in the proverbial towel last week⁷, when an application by SSE for permission to appeal to the Court of Appeal against the decision of Dove J was refused on the papers by Lewison LJ, who held that the reasoning of the Court below, rejecting the challenge to the merits of the SoS’ judgment, was “clear and convincing”.

STAL’S SUSTAINABLE DEVELOPMENT PLAN

8. STAL’s present plans have long been foreshadowed. In particular, they were the subject of public consultation in 2014-15 on its Sustainable Development Plan (“SDP”), which was published following MAG’s acquisition of Stansted from BAA in 2013. The SDP expressly flagged up the intention to seek consent for 40-45mppa in the early 2020s⁸. This view was based upon MAG’s experience of operating airports successfully across the UK for many decades. MAG was – and remains - committed to delivering growth at Stansted in a planned way, which enables all its stakeholders to look ahead with the maximum degree of clarity and certainty, so as to encourage sustainable investment and growth.

⁷ See covering email from SSE Campaign HQ attaching Supplementary Proof of Evidence of Messrs Lockley & Young

⁸ CD15.1 see e.g. page 6, page 28

9. STAL initially contemplated an increase in capacity to 44.5mppa, with an associated increase in ATMs to 285,000. However, after public consultation on scoping revealed clear opposition to increased numbers of ATMs, STAL decided not to seek permission for increased ATMs, but to work within its approved aggregate number of ATMs, to propose a small increase in the proportion of PATMs, with a consequential reduction in CATMS and other ATMs, sufficient to support 43mppa.

10. STAL considers this pattern of use to “make best use” of its existing runway. We note that the SoS agrees with this assessment, a judgment which was found to be soundly based by the High Court. Dove J held as follows:

“118. The next point raised by the Claimants is the suggestion that the proposal was not consistent with the MBU policy on the basis that it in fact represented a sub-optimal development, which did not make full use of available capacity or potential, as it had been trimmed back to avoid proper scrutiny under the 2008 Act. I am unable to accept this submission: it appears to me both that it was reasonable for the Defendant to conclude that the policy applied to the proposal, and that it was consistent with it. There was nothing to which the court was directed in the policy to require, as the Defendant observed in his submissions, that every last drop of capacity had to be squeezed out of infrastructure so as to ensure it was consistent with the policy. As the Ministerial Submission made clear in its reasons in paragraphs 26 to 28, the proposal is consistent with making best use of its existing infrastructure without being of a scale with wider or long-term implications.

[emphasis added]

MBU

11. The national aviation policy context has for many years encouraged airports to make best use of existing runways⁹. The most recent re-statement of this principle by the Government could scarcely be more current, as it was made in June 2018, shortly

⁹ See, for example, CD 14.1, executive summary, para 2

after the submission of the present application, in the form of the document known as “Beyond the Horizon, the Future of UK Aviation: Making Best Use of Existing Runways”¹⁰ (“MBU”).

12. This policy document was published alongside the Airports National Policy Statement (“ANPS”), which sets out the Government’s support for the North West Runway at Heathrow as a means of providing additional runway capacity in the SE. The ANPS is made pursuant to section 5 of the Planning Act 2008 and is expressly intended to inform the determination of a DCO application for the development to which it relates.
13. However, MBU has a different status. It is identified as an early element of the Government’s forthcoming Aviation Strategy 2050. Unlike the ANPS, MBU has been subject to no legal challenge and has full force as a current statement of Government policy.
14. MBU is very clear about what the Government expects from airports beyond Heathrow, such as Stansted: see in particular paragraph 1.29. It expresses in principle support for airports beyond Heathrow making best use of their existing runways. There is clear recognition that the development of airports can have negative as well as positive local impacts, including on noise levels. Accordingly, proposals should be judged by the relevant planning authority, taking careful account of all relevant considerations, particularly economic and environmental impacts and proposed mitigations. No initial bar or test of “need” is set, because the Government has already expressed its support for MBU development in principle for clearly expressed reasons.
15. Paragraph 1.29 of MBU mirrors almost word for word paragraph 1.39 of ANPS. It is evident from both documents that support for MBU flows directly from the

¹⁰ CD 14.2

Government's acceptance of the Airports Commission's view that a new runway at Heathrow will not open for a considerable period of time. 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 Gatwick¹¹. The DfT tested "MBU capacity" across the UK - both with and without the provision of the new runway at Heathrow - before confirming its strong policy support in principle for MBU, which it plainly regards as complementary to the ANPS. We note that the Manston proposals referred to by SSE did not have the support of MBU, which is silent on freight¹².

16. The Government states expressly in MBU that carbon is: "an important environmental element which should be considered at a national level¹³, rather than a local level, and has even gone so far as to model the UK-wide impact of the MBU policy to ascertain the likely carbon effects in combination. In so doing it has satisfied itself that the carbon impacts of MBU are acceptable.
17. This is a fixed element of national policy and one that is eminently sensible, as the acceptability of the carbon effects of national aviation policy are self-evidently effects which require consideration at a national rather a local level. Carbon targets are for national governments to meet and there can be no surprise that national governments will seek to exercise control over them centrally.
18. Moreover, it is not for local planning authorities such as UDC or local pressure groups such as SSE to challenge or seek to go behind Government policy in MBU at this inquiry. This is a fundamental and long-established principle of law: that neither the legitimacy of national Government policy, nor the technical modelling or assumptions underpinning the formulation of national policy, are matters which are appropriate for determination at the level of an individual planning decision. Instead,

¹¹ CD 14.3 ANPS para 1.6

¹² The Manston Airport proposals were freight-led (and did not have the support of MBU policy, which did not test freight)

¹³ CD 14.2 MBU para.1.11

the focus of planning decisions at local (and appellate) level must be on matters which are of local relevance and which are therefore capable of being determined on the evidence before a Local Planning Authority or an Inspector on appeal.

19. This principle was clearly established by the House of Lords in *Bushell & Anor v Secretary of State for the Environment* [1981] A.C. 75, where Lord Diplock emphasised that:

“Policy in the sense of departmental decisions to pursue a particular cause of action” is a topic “which is unsuitable to be the subject of an investigation as to its merits at an inquiry at which only persons with local interests affected by the scheme are entitled to be represented.”

20. The parallels between *Bushell* and the current appeal are striking. In *Bushell*, the Government policy in question involved a decision to construct a nationwide network of motorways. Lord Diplock described this as:

“clearly one of government policy in the widest sense of the term. Any proposal to alter it is appropriate to be the subject of debate in Parliament, not of separate investigations in each of scores of local inquiries before individual inspectors up and down the country upon whatever material happens to be presented to them at the particular inquiry over which they preside.”

21. Applying these well-established principles, it is clear that the MBU policy support for airports across the country making best use of their existing runway capacity cannot be a matter for debate at this Inquiry.

22. But the point goes further. As the House of Lords emphasised in *Bushell*, the same principle applies equally to the assessment of the merits of the methodology or modelling work underpinning the formulation of Government policy. As Lord Diplock emphasised, in the context of that case:

“whether the uniform adoption of particular methods of assessment is described as policy or methodology, the merits of the methods adopted are, in my view, clearly not appropriate for investigation at individual local inquiries by an inspector whose consideration of the matter is necessarily limited by the material

which happens to be presented to him at the particular inquiry which he is holding. It would be a rash inspector who based on that kind of material a positive recommendation to the minister that the method of predicting traffic needs throughout the country should be changed and it would be an unwise minister who acted in reliance on it.” [emphasis added]

23. As was explained in evidence in the High Court¹⁴, the modelling undertaken in formulating MBU has already assessed the impact of permitting growth at Stansted to up to 44.5 mppa and has concluded that growth to this level is acceptable. Growth to 43mppa therefore falls within the DfT’s national modelling.

24. The principle of growth to 43mppa is therefore a matter which is established by national policy and which is not open for debate at this Inquiry, subject to relevant local considerations being satisfactorily addressed. We return to these principles below, as they apply equally to consideration of the carbon and climate change impacts of the development.

THE CASE FOR THE DEVELOPMENT

25. How then does the proposed development perform when considered “on its merits”, as MBU requires? The positive case has several components.

i. Policy support in principle

26. Mr Hawkins explains that the Government largely relies upon the private sector to meet demand for air travel. MBU offers express support in principle to existing airports in increasing their capacity, as a means of meeting demand and enhancing the UK’s connectivity pending the opening of R3 at Heathrow (whenever that may be). This establishes an “in principle” case for the proposed development.

ii. Benefits of expanding capacity at Stansted

¹⁴ CD17.66 para 24

27. 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 the junction of the M11 and A120, half way between London and Cambridge and just north of the new A414 junction 7A on M11.
28. It is also home to one of the most dynamic and financially robust carriers operating in the UK, Ryanair, with the drive and vision to deliver substantial growth over the next decade: see Ryanair's recent strong endorsement of these proposals in its letter to the Inquiry dated 8th January, 2021¹⁵.
29. 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 of York Aviation. As Ms Congdon explains, 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. The predicted growth will provide jobs and increased economic activity, as further explained by Ms McDowall.
30. 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.
31. Moreover, additional capacity can be provided at Stansted with the bare minimum of additional infrastructure, in stark contrast to other proposals such as those at Luton, which require extending the airport infrastructure across a sensitive valley and are far

¹⁵ CD WR2

more capital intensive. AND there is no requirement for any more ATMs, just a minor re-assignment of PATMS within the total already permitted.

32. UDC does not contest the economic benefits of expanding capacity at STN. A wide range of key regional economic stakeholders and businesses are strongly supportive of growth at STN. *Only* Mr Ross seeks to diminish these benefits. He argues that other airports have expansion plans and that it is somehow the function of the LPA (and indeed this inquiry) to review other potential contributors to MBU across the UK and undertake an assessment of their comparative advantages and disadvantages in reaching a judgment upon this application, notionally on the basis of a misconceived application of the Government's "levelling up" agenda.

33. SSE's argument is entirely without policy support. Moreover, the Government is fully aware of the appeal proposals and has been requested by SSE - and declined twice - to recover this application for its own determination. Other larger applications, such as Luton's DCO, are already being made to the SoS and the SoS will be in a position to intervene if it considers that such an application risks going beyond the terms or scope of its MBU policy.

34. In summary, at Stansted, we already have a major international passenger airport, already with a full suite of supporting infrastructure, including a major Public Transport hub, at a geographical location which is ideal for supporting regional economic growth.

iii. Detailed Forecasts of demand

35. STAL has commissioned detailed forecasts from ICF, which show strong demand for travel at Stansted once patterns of growth have recovered from the Covid pandemic. These forecasts have been developed following careful analysis of the ambitions of airline operators, likely route development and the expectations of demand. These

forecasts have been produced for STAL by a highly experienced consultancy and reviewed by another highly experienced consultancy for UDC. Mr Scanlon notes that UDC does not challenge STAL's forecasting exercise and makes "no suggestion that the forecast provided within the ESA does not represent a reasonable account of future growth in demand".¹⁶ So, once again, the only challenge comes from Mr Ross of SSE.

36. Mr Ross's criticisms are focused upon optimism bias and an attempt to suggest that these forecasts are over-ambitious to a substantial degree. We disagree. UDC disagrees. But, even if Mr Ross is correct, then, of course, there is absolutely no downside to such an outcome, other than to STAL, if it has invested to meet demand which does not ultimately materialise.

37. Mr Ross seeks to find succour from the detailed airport specific forecasts which he has prized out of DfT by various FOIA or other requests for disclosure, notwithstanding that DfT has said, in terms, that whilst these forecasts are outputs of the broader MBU forecasting work, they do not represent reliable forecast levels of traffic on an airport by airport basis, certainly over the short term; but rather that it is the aggregate figures which are relied upon for the purposes of the MBU policy statement¹⁷.

Summary

38. Accordingly, there are powerful aviation policy and economic arguments for the proposed growth, which are not disputed by the LPA. Moreover, this growth has been mapped out by ICF in a way which is accepted by the LPA to be reasonable and appropriate. Only SSE takes issue – inevitably with both elements.

39. What then are the main local environmental impacts which may need to be weighed in the balance against the powerful case for the development (which is now unchallenged by the LPA)?

¹⁶ Scanlon proof, para.8.5.

¹⁷ See further below and WSs of Sarah Bishop for DfT: CD 17.65 & 17.66

LOCAL ENVIRONMENTAL IMPACTS

40. The main environmental impacts of an airport derive from increased ATMs, in the form of noise, air quality and carbon but, as has already been stated, planning permission is not sought for an increase in the permitted number of ATMs. Other impacts are a function of increased mppa, which manifest themselves principally in additional road traffic movements.
41. The scope of the EIA to accompany STAL's application was agreed with UDC and sought to identify a reasonable worst case derived from comparison between a "Development Case" scenario at the first year at which 43mppa was achieved, when compared with a "Do Minimum" case, which assumes growth to 35mppa and then flat-lining thereafter. Because the Development Case "uses up" permitted ATMs at a faster rate than the Do Minimum case, this suggests that the development will lead to an increase in the number of flights which will be experienced in the "Development Case" world. In fact, whilst this is numerically true, one has to bear in mind that these are already permitted flights under the 2008 permission and the development is simply accelerating the time frame within which already permitted ATMs would be utilised. Thus, these are not "additional flights" over and above those already consented.
42. The Do Minimum case did not explore the potential for growth in utilisation of the permitted ATMs beyond that necessary to achieve 35mppa. In fact, as is explained in STAL's evidence, there is every reason to assume that there would be continued incremental growth in ATMs beyond the year when 35mppa was reached - in order to exploit the commercial value of the existing 2008 permission, albeit that this growth would focus to a greater degree on the cargo and business jet markets. Accordingly, the ES assesses what no one could sensibly complain was anything other than a reasonable worst case in terms of the incremental impacts of the development.

Nonetheless, these impacts are revealed by the ES to be entirely acceptable, when judged against accepted benchmarks.

43. As we remark below, the extensive delays involved in the determination of the application, followed by the Covid pandemic, have required STAL to update and refresh its ES via the ESA of October 2020. The compendium ES is now the basis upon which the appeal is to be determined, with the latest forecast impacts set out in the ESA. The comparison between the Do Minimum and Development Case permits the identification of impacts associated with the development. In these short opening submissions, we will touch only on the headline points in relation to the key areas of local environmental impact identified in MBU¹⁸, namely noise, air quality and surface access.

NOISE

44. The noise impacts of the development have been the subject of extensive analysis by Mr Vernon Cole. He concluded 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 noise consultant. Their combined view was that the noise impacts were acceptable and so professional officers reported to UDC on numerous occasions. However, SSE's presentation¹⁹ on the inapplicable WHO ENG and entirely speculative fleet mix issues misled the Committee into rejecting the soundly based recommendations of Officers.

45. Now Mr Trow has been newly instructed to advance the Council's noise reason for refusal and, after a lengthy discourse, he concludes²⁰ that "the Development is acceptable having regard for [sic] the effects presented within the ESA" and subject to appropriate conditions. There remain a few outstanding issues in relation to the content and structure of the conditions, but these do not take away from the central

¹⁸ Para.1.22

¹⁹ CD 13.4(c)

²⁰ Trow Proof, para.8.11

conclusion of UDC's expert witness that the Development is acceptable in noise impact terms.

46. The impacts reported in the ESA support the imposition of a noise contour condition for the 57 dB LAeq contour at 27 sqkm, which is very considerably tighter than the 33.9 sqkm area conditioned by the 2008 planning permission and currently in force.
47. 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.
48. 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 by reference to applicable metrics. In short, there is nothing approaching a noise based reason for refusal disclosed by the evidence of any party.

AIR QUALITY

49. The air quality reason for refusal is impossible to reconcile with the comprehensive air quality assessment provided as part of the ES; the extensive further scrutiny and sensitivity testing undertaken of that assessment by UDC, its external air quality consultants, White Young Green ("WYG"), and EHDC as the authority with responsibility for air quality levels in the Bishop's Stortford AQMA; or, ultimately, with the informed judgment of all of these parties that the air quality impacts of the proposal on both human and ecological receptors would be negligible and that these negligible impacts would be outweighed by the benefits of the mitigation proposed by STAL.²¹

²¹ This conclusion was also supported by Natural England whose expert views as a statutory consultee must be accorded significant weight: see *Shadwell Estates v Breckland DC* [2013] EWHC 12 (Admin), per Beatson J at [72]

50. We consider the sorry saga relating to the handling of this application by UDC in more detail below. In relation to air quality, however, it is clear from the way the reason for refusal is drafted that the Committee again ignored the professional advice of its Officers, informed by the views of its air quality advisors and the relevant consultees, and was instead misled by the presentation made by SSE²², which made a series of unsubstantiated and misconceived assertions about the air quality impacts of the scheme, with a particular focus on PM2.5 and UFP emissions.

51. It is telling, therefore, that PM2.5 emissions are not now one of the (limited) issues still pursued by Dr Broomfield on behalf of UDC.

52. Dr Broomfield was subsequently instructed to support UDC's case in this appeal. Unfortunately, and incomprehensibly, it appears that UDC neglected to appraise him of the detailed discussions that had already taken place between UDC, EHDC and WYG in relation to air quality. This led to the preparation of a detailed statement of case on this issue, which raises a series of complaints extending far beyond the scope of the air quality reason for refusal, and a number of which had already been addressed and resolved many months beforehand.

53. Now that Dr Broomfield has had his attention drawn to this material, through his discussions with Dr Bull, many of the issues raised in UDC's statement of case have fallen away, and the extensive areas of agreement are set out in the air quality Statement of Common Ground ("SOCG"). Only a handful of issues remain and these are briefly addressed in outline below.

(i) Alleged failure by STAL to demonstrate ongoing 'improvements' in air quality by reducing emissions

54. The argument that national policy and/or the SDP require it to secure an absolute reduction in emissions, at the expense of growth, is clearly hopeless. It is clear on any sensible reading of the SDP and of national policy as set out in the NPPF that neither document seeks to preclude growth by making a reduction in emissions an absolute requirement, and that commitments to reduce emissions or improve air quality must be

²² CD 13.4(c)

read in this context. Moreover, this argument ignores the substantial package of mitigation which is proposed as part of this scheme and which is described by Mr Andrew in his evidence. In relation to air quality, this mitigation is plainly intended to deliver air quality improvements and a proportionate reduction in emissions.

(ii) Impacts on the Bishop's Stortford AQMA

55. Dr Broomfield is out on a limb in persisting with the argument that there are - or may be - unacceptable air quality impacts on the AQMA as a result of the development. His view is certainly not shared by EHDC, which is the body with statutory responsibility for air quality in the AQMA, and which withdrew its objection to the planning application following agreement of a package of "quantifiable"²³ mitigation measures to offset the negligible impacts of the development and which has confirmed that it does not object to this appeal.

56. Nor are Dr Broomfield's non-expert views about the modelling of traffic movements in the AQMA shared by the relevant highway authorities, which have withdrawn from the Inquiry following agreement of a statement of common ground on highways. As Mr Rust explains, the assessed traffic flows in the AQMA, in particular at the Hockerill Junction, have been exhaustively scrutinised and have been agreed as being robust and reliable.

(iii) EHDC's air quality guidance relating to damage costs

57. The same points can be made in response to Dr Broomfield's criticism that the air quality assessment is somehow deficient for not including a damage costs assessment, as referred to in EHDC's air quality guidance.²⁴

58. As will be explored in evidence, the airport traffic makes a negligible contribution to air quality impacts on the Bishop's Stortford AQMA and a package of air quality mitigation has already been agreed by STAL with UDC and EHDC (who - as the author of the guidance and the body with statutory responsibility for managing emissions in the AQMA - did not require a damage costs assessment and was satisfied

²³ C/f Broomfield para 84

²⁴ CD 16.10

with the quantum and nature of the mitigation proposed to offset the negligible impacts).

(iv) Use of the 24-hour mean concentration

59. The air quality reason for refusal makes no reference to ecological impacts and no reference to UDC policy ENV7, which is the Local Plan policy which addresses impacts on designated sites. It is therefore unclear why this issue is being pursued by Dr Broomfield in the first place.

60. In any event, the only outstanding issue in relation to the two ecological receptors is Dr Broomfield's assertion that NOx emissions should also have been assessed against the 24-hour mean concentration, in addition to the annual mean concentration, which is the standard prescribed by statute²⁵. Dr Broomfield's insistence on this assessment is however misplaced, as demonstrated by the fact that this assessment has never been requested by Natural England and as will be explored further in evidence.

(v) Ultrafine Particles ("UFPs")

61. Both Dr Broomfield and Dr Holman assert a failure to assess the impact of UFPs. However, neither of them is able to offer any explanation as to how UFPs should have been assessed or quantified, in the absence of any agreed methodology for carrying out such an assessment.

62. As the evidence will show, this criticism is therefore also wholly misconceived. Moreover, it was plainly unreasonable for UDC to have refused permission on this basis, when this issue was never raised during the many extensive discussions which took place concerning the air quality assessment and when neither Dr Broomfield nor Dr Holman has any constructive or sensible answer to the scientific uncertainty surrounding UFPs, and the absence of any agreed methodology for assessing them.

63. All of these issues will be explored further in evidence. None of them has any merit. Moreover, ultimately, and even putting his case at its highest, Dr

²⁵ CD 16.1, Schedule 6

Broomfield still does not consider that any of these matters would merit the refusal of permission on air quality grounds²⁶.

SURFACE ACCESS

64. 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 SoCG²⁷ and is being consolidated into the draft planning obligation. HE & ECC have, accordingly, withdrawn from the inquiry. Mr Bamber alone (for SSE) pursues a series of complaints about the exercise which all statutory bodies have now signed off, which we will be obliged to address in evidence in due course.

ECOLOGY & HEALTH

65. There is no evidence at all from UDC from a public health witness and no substantial evidence from SSE that there will be either adverse ecological or health impacts arising from the proposed development which should carry significant weight in the balance.

CONCLUSION ON LOCAL ENVIRONMENTAL IMPACTS

66. The impacts discussed in STAL's evidence and largely accepted by UDC are not of a scale which could conceivably outweigh the positive case for permitting the proposed development, which, as we have noted, UDC does not dispute.

²⁶ Broomfield proof, para 117

²⁷ CD25.6

67. SSE directs much effort at seeking to demonstrate that STAL's forecasts are over-optimistic. Whilst we entirely refute these assertions, even if SSE were to be proved correct, the consequence will simply be that the predicted impacts which we have assessed and found to be acceptable will all be *even smaller* than set out in the ES & ESA.

CARBON & CLIMATE CHANGE

(i) Carbon emissions and local decision-making

68. Although more time has been allocated to this topic than to any other issue at the Inquiry, the way the case is put by UDC and SSE in relation to carbon emissions is fundamentally misconceived, for reasons we have already touched upon above.

69. As we explain above, the distinction between matters to be determined at national and local level underpins the rationale for MBU. To this end, national policy as set out in MBU stipulates that carbon emissions from making best use applications, including at Stansted, are to be addressed at a national level and ultimately through the formulation of national policy. They are not suitable or eligible for local determination at all.

70. Moreover, in formulating MBU, the Government has already modelled the cumulative carbon emissions associated with this airport and all airports in the UK making best use of existing runway capacity and has concluded that the carbon emissions are compatible with the current planning assumption of 37.5MtCO₂. The DfT's model "has been extensively quality assured and peer reviewed and is considered fit for purpose and robust for producing forecasts of this nature": see MBU at §1.13²⁸.

71. We do not repeat our submissions in relation to *Bushell*, above. Nonetheless, it is relevant to note that the carbon modelling underpinning MBU was also the subject of extensive debate in the High Court, when SSE sought to argue that the MBU model was flawed and underestimated the effects of growth in aircraft traffic at Stansted airport, so that the Secretary of State should properly have treated this application as being of national significance under section 35 of the 2008 Act.

²⁸ CD 14.2

72. Rejecting this argument, Dove J considered the evidence filed by the DfT²⁹ and held that:

“116. The Defendant has provided in the evidence a clear and coherent explanation of the purpose of the modelling (namely for long-term forecasting at a national level) and the basis on which it was constructed so as to inform and justify the policy in MBU relating to whether planning proposals at airports could be adequately mitigated and dealt with at the local level. ... The various detailed points raised by the Claimants do not properly acknowledge the purpose of the model as one which was designed to forecast a national outcome across a lengthy time period.”

73. In short, therefore, it is neither necessary nor appropriate for the Panel to consider the carbon impacts of this development at this Inquiry. This complex exercise has already been undertaken in formulating MBU and the Government has therefore taken it out of the hands of local planning authorities and Inspectors, whose remit (per *Bushell*) is to consider the impacts of the development at a local level.

(ii) Climate change policy and the ‘direction of travel’

74. The Supreme Court has recently provided an authoritative statement of Government policy relating to aviation emissions in the *Heathrow* judgment³⁰. This confirms that the Government’s policy on aviation emissions will be set out in the Aviation Strategy, which is yet to be published³¹.

75. At the current time, therefore, Government policy in relation to aviation emissions is as encapsulated by the Climate Change Act 2008 (“CCA 2008”). Thus: (i) international aviation emissions continue to be excluded from the carbon budget and the net zero targets in s1 CCA 2008; and (ii) these emissions are instead taken into account via the ‘allowance’ or ‘headroom’ set for budgeting purposes, which seeks

²⁹ CD17.65 and 17.66

³⁰ *R (on the application of Friends of the Earth Ltd and others) v Heathrow Airport Ltd* [2020] UKSC 52: CD 14.74

³¹ Paragraph 111

to limit aviation emissions to 2005 levels by 2050 and which is at the time of writing set at 37.5MtCO₂. This policy approach is entirely consistent with MBU.

76. The Supreme Court also gave helpful guidance as to the status and relevance of the Paris Agreement in domestic law. It confirmed that the obligation under the Paris Agreement is given effect in domestic law by section 1 CCA 2008 and the carbon budgets set under section 4 of that Act. Thus, by having regard to the CCA 2008, the Secretary of State also had regard to the Paris Agreement in adopting the ANPS.
77. As we emphasise above, the lawfulness and/ or merits of MBU are not a matter for debate at this Inquiry³². Nonetheless, and in light of the way the case is put by UDC/ SSE on this issue, there can be no doubt - per *Heathrow* - that the Government also had regard to the Paris Agreement, in concluding that the policy of making best use would indeed be compatible with the UK's climate change commitments.³³
78. Moreover, neither the advice from the CCC since the adoption of MBU nor the Government's response to this advice provides any support for the argument that this development is "against the grain... from a policy and a statutory perspective."³⁴ On the contrary, and as will be explored further in evidence, the CCC's advice on aviation growth to 2050 has been consistent since 2009 and still allows generous headroom for growth and to accommodate the 8mppa sought by this development. Moreover, the Government has consistently adopted a different approach to the CCC in relation to demand management measures, including by publishing MBU. Little weight can therefore be given to the CCC's advice on this issue.
79. Briefly, we also note in opening that the approach to non-CO₂ emissions (never previously raised by UDC, prior to the proof of evidence of Dr Hinnells) was also addressed by the Supreme Court in *Heathrow*. Having reviewed the evidence as to

³² See also *Ross & Sanders (Acting on Behalf of Stop Stansted Expansion) v Secretary of State for Transport & Anors* [2020] EWHC 226 (Admin) per Dove J at §116 where he confirmed that "the legality of [MBU] is now beyond argument" [CD ref]

³³ CD 14.2 [para 1.12 MBU and table 3].

³⁴ Lockley/ Young proof, para 8.10

the limited scientific knowledge concerning non-CO₂ emissions at the current time, the Court held that it was not even reasonably arguable that the SoS was required to consider non-CO₂ emissions in formulating the ANPS. The Court's observations on this issue in *Heathrow*, together with the very recent advice of the CCC that these impacts should not even be included in carbon targets at this stage, provides a complete answer to the suggestion that STAL was required to assess the non-CO₂ emissions of this development in the ES/ ESA.

80. For the reasons we have already set out, MBU must be given full weight in the overall planning balance, as a recent and lawful expression of Government policy.

(iii) STAL's carbon projections

81. At the time when the ES was prepared in February 2018, MBU had not yet been published. Consequently, and contrary to the evidence of Dr Hinnells and Mr Scanlon³⁵, the carbon assessment did indeed assess Stansted Airport's contribution against the national headroom of 37.5MtCO₂ as well as the cumulative impacts of the development. The ES concluded that these would not materially change as a result of the development, ranging from between 4% and 5.3% of total emissions by 2050 in the 'with development' scenario, compared to 4% as at the ES 2017 baseline. The updated projection for 2050 in the ESA is slightly lower and assumes that Stansted's share of emissions will be between 3.2% and 5.3% i.e. aligned with its current share of UK emissions.

82. Even if it was appropriate to go behind the policy in MBU, therefore, the Panel has the benefit of a detailed, airport-specific carbon assessment, which confirms that the development will make no material impact on the headroom available for aviation growth and is not likely to impact the UK's ability to meet its net zero target.

83. Outstanding issues will be explored further in evidence but, ultimately, no serious attempt is made by either Dr Hinnells or Mssrs Young and Lockley to challenge the methodology in the ES or the (conservative) projections in the ES/ ESA.

³⁵ C/f Scanlon §9.51(3) and Hinnells §93

84. The conclusions of the ES/ ESA can therefore be relied upon as being a robust assessment of the negligible carbon impacts associated with this development.

85. Moreover, and as Mr Thompson explains³⁶, in the context of the net zero target date of 2050, it is relevant to consider how the airport might seek to grow beyond 2032, in the event that permission is not granted. It is clearly realistic to assume that, if permission is not granted for this development, the airport will nonetheless grow to utilise its full allowance of 274,000 AMs by 2050 in any event. Consequently, there would be no material difference in the number of flights (and therefore the emissions, in broad terms) in the DM and DC case.³⁷

DETERMINATION OF THE APPLICATION

86. This is a very sorry tale. Mr Andrew, who gives STAL's planning evidence, has been witness to the entire saga and will elucidate as necessary in his evidence.

87. STAL has sought to cooperate with UDC throughout, to agree the scope of its ES and to supplement application materials wherever necessary to assist. Professional officers, who are very familiar with the airport's planning history and operations, also consulted independent experts in the fields of noise and air quality; statutory consultees such as NE were also fully consulted. None suggests that the application should be refused.

88. This process led to an unequivocal recommendation in November 2018 that planning permission should be granted, which was accepted by the then Planning Committee – resolving to grant planning permission subject to conditions and to the agreement of a planning obligation (Heads of Terms of which were approved by the Committee).

³⁶ Thompson proof para 2.3.4

³⁷ Thompson proof, page 12

89. The process of considering these terms in detail then began and planning permission was close to being issued, when the May 2019 local elections resulted in the previous administration being replaced by a “Residents 4 Uttlesford” administration.
90. There then followed a further 9 months of filibustering, with Officers seeking advice from Junior Counsel and Leading Counsel (including a former Chairman of the Bar and environmental lawyer of high repute) to try to keep the new administration in order, all of whom confirmed that there was no proper basis to refuse to issue the permission and, in particular, that there were no material changes in circumstance sufficient to warrant a change of course from that set by the November 2018 resolution.
91. However, the Members of the new administration have simply not been prepared to listen to reason, with the result that, in January 2020, not only did they refuse to approve the section 106 package painstakingly prepared by their Officers and legal advisers over a 14 month period, but also performed a complete *volte face* and determined to refuse the application altogether on the basis of four hastily concocted reasons for refusal.
92. STAL was therefore left with no alternative but to appeal and was preparing to do so when the pandemic erupted. It soon became clear that new forecasts would need to be prepared to reflect both its effects and the passage of time since the ES was originally scoped in 2017.
93. Now the baton has passed once more from the Members to the independent professionals who have subsequently been called upon to defend the conduct of UDC since May 2019. No Member of the Planning Committee which concocted the reasons for refusal has been called to explain the conduct of the Committee.

94. It therefore comes as no great surprise to STAL that, once an independent expert is asked to review the UDC case, in the form of Mr Scanlon of Lichfields, he should find in his planning proof for UDC:

- i. That the proposed development complies with the development plan³⁸;
- ii. The presumption in favour of development is considered to apply;³⁹
- iii. That the “planning balance” exercise favours approval of the scheme, subject to conditions⁴⁰; and
- iv. It is judged that the appeal proposals should be approved⁴¹.

95. It is fair to summarise the UDC case (as now advanced at this inquiry) as being focused upon securing appropriate planning conditions and obligations; the acceptability of the development in principle is accepted.

96. Whilst STAL acknowledges the need for appropriate conditions to regulate the future operation of the airport, it cannot support the imposition of a system of “micro-management” such as apparently now proposed by UDC in the form of its new “Condition 15”. STAL is content to maintain a dialogue with UDC in relation to conditions, but these must pass the conventional tests. As Mr Andrew will explain, Condition 15 is neither necessary nor reasonable, in view of the evidence in relation to the potential impacts of the proposed development.

97. We have noted a marked focus upon the impacts assessed in the ESA as providing the alleged basis for this shift in position, with an insistence that reasons for refusal as issued in January 2020 on the basis of the ES were justifiable. Whilst we welcome the concession that the appeal should be allowed (as the impacts are indeed predicted to be as now set out in the ESA), we do not accept that the conclusions of the ESA are materially different from those of the ES and will need to explore the evidential basis for UDC’s position in due course.

³⁸ Scanlon para.9.71

³⁹ Scanlon para.2.7

⁴⁰ Scanlon, para.9.77

⁴¹ Scanlon para.2.9

SSE

98. SSE is a local pressure group, which has been established to do “what it says on the tin”: ie Stop Stansted Expansion. It is no exaggeration to say that SSE has been involved at every stage of this process: meeting with UDC, briefing Members, addressing Planning Committees at length (including by Leading Counsel), threatening and ultimately challenging in the High Court the decisions of the SsoS for Transport and for H,C & LG in relation to NSIP and call-in matters, seeking delay and postponement at every available opportunity.
99. It is a well-resourced and experienced pressure group which has waged a long guerrilla war of attrition against STAL’s growth plans. Mr Ross is the motive force behind SSE, who has lost no opportunity to press SSE’s case on UDC’s Members, many of whom are also longstanding members and supporters of SSE.
100. Whilst it is, of course, entirely legitimate for local objectors to a particular development to band together to seek to achieve their end, on this occasion, the levels of intervention have certainly reached new levels in STAL’s experience and it is difficult to avoid the conclusion that Mr Ross and SSE have played the role of Pied Piper in relation to STAL’s application and have led UDC’s Planning Committee over the metaphorical cliff.
101. Let there be no doubt that this is SSE’s inquiry. It has manipulated the outcome of the planning process and forced STAL’s hand into appealing after 2 ultimately abortive years of trying to work cooperatively with the local planning authority to deliver the objectives of both STAL’s SDP and Government policy. SSE’s conduct and evidence reveals that it has set itself up as an alternative (“we know better”) voice of local and central government. However, one has to remember that it has no democratic mandate and that its central purpose is to frustrate, to delay and to disable growth at Stansted.

102. We have learned that, for reasons which we do not fully understand, SSE will not be calling oral evidence to support many of its proofs and accordingly have devoted considerable time and resource to setting out written rebuttals covering points which might otherwise have been taken in cross examination. However, we note that SSE has been placing very extensive new (and previously unreferenced) documentation on the Core Documents list and we are concerned that SSE may be seeking to utilise these to re-formulate its case extensively in both oral X in C or XX. We will object to such a course.

103. We are also very conscious of the fact that SSE will be looking for any opportunity to bring proceedings in the High Court to challenge the outcome of this appeal if it does not agree with your decision or recommendation (precisely as it did following the G1 decision of the Secretaries of State in 2008). Accordingly, we have taken the trouble to respond comprehensively to SSE's case in our Rebuttals.

CONCLUSIONS

104. Having reviewed the objections to the appeal proposals, there is a very real sense that many of these proceed on the basis that *any* airport application is automatically to be treated as harmful – quite irrespective of government support for the aviation sector and the economic growth which it stimulates and supports. However, to proceed on that basis for this appeal would be deliberately to ignore the facts. These proposals enable Stansted to achieve the objectives both of its own SDP and of Government policy, with the very minimum of change to the physical infrastructure and operating parameters of the airport (in particular, no increase in Stansted's permitted ATMs). Our proposals represent a very "easy win" in terms of making best use of existing runway capacity. At the same time, STAL is committed to planning conditions and a mitigation package which will actively bear down upon the external impacts of its operations, including a material tightening of its permitted noise contour.

105. UDC's case has now contracted to the extent that it accepts that the appeal should be allowed and planning permission granted. Its focus is now clearly upon the structure and content of any accompanying planning conditions. In fact, its case could be very largely disposed of at an extended "Conditions and Obligations" Session. By contrast, SSE is so deeply entrenched in its opposition to growth at Stansted that it has fought tooth and nail for this inquiry and seems determined to have its day in court. However, its case is predicated throughout upon positions which represent direct opposition to - or wilful misreading of - government policy. STAL considers the behaviour of UDC and SSE to be unreasonable and warns now that, when the evidence is complete, it will be seeking compensation for any wasted costs which it has been obliged to bear in prosecuting this appeal.

106. That, however, is for another day and for the time being, we commend these proposals to you and assure the Panel that we will offer whatever assistance we can in ensuring that this inquiry is disposed of in a fair and yet efficient manner.

THOMAS HILL QC

12th January, 2021

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that such a facility was provided previously but was not successful and subsequently closed.

9.486 Given the flawed analysis by ECC, which has not been reassessed despite requests to do so, it is not considered that the proposed request would meet the NPPF or CIL Regulations tests. Therefore, it would not be appropriate to request the financial contribution of £3,194,180 for the 220 EYCC places.

9.487 *Rapid Transit System*

One of the requirements set out in the Regulation 19 Uttlesford Local Plan Policy SP11 is "*To assist development of new rapid transit options between the airport and new and existing communities, land will be safeguarded to allow access at the terminal. The council will seek financial contributions from the airport operator for the delivery of an appropriate scheme.*"

9.488 There is an ambition to develop an RTS connecting proposed new settlements across North Essex, including the settlement West of Braintree, proposed Easton Park and Stansted Airport, and potentially Gilston located in the East Herts district. To date the feasibility study work on the Stansted Airport to West of Braintree section is on-going and no firm conclusions have been reached about mode or proposed route(s).

9.489 ECC has set out a requirement in their response for the applicant, in agreement with the local highway authority to identify and reserve land required to accommodate any future Rapid Transport System, and form an east-west link between the airport and any future growth locations identified in the Local Plan(s).

9.490 The ES has not identified a significant increase in demand as to warrant the development of an RTS to serve the airport, either in isolation or in combination. Furthermore, the stages reached in the preparation of the relevant local plans mean that there are still uncertainties as to where new growth will be proposed in plans yet to be examined or still being examined and not yet adopted, with the potential for main modifications. Given the uncertainties around future development, and the fact that the development does not generate a requirement for the RTS, it would be inappropriate to require the applicant to safeguard the land as part of this application.

9.491 The potential provision of the RTS will need to be explored by way of the Local Plan process.

10 Conclusion

10.1 In paragraph 1.26 of Beyond the Horizon (June 2018), the government expects applications to increase existing planning caps by fewer than 10 million passengers to be taken forward under the Town and Country Planning Act 1990. The application was made in February 2018 and proposes to change the existing cap by increasing the passenger numbers that can go through Stansted Airport by 8mppa, from 35mppa to 43mppa.

10.2 The application is made against a backdrop of national and local policy support for, and new particular national policy for, making best use of the existing runway infrastructure, as set out in the Aviation Policy Framework (2013), and the most recent Policy Statement on best use of existing capacity, taking careful account

of relevant considerations, particularly economic and environmental impacts and proposed mitigations taking account also of relevant national policies in “Beyond the Horizon” (June 2018).

- 10.3 The application is for EIA development and Regulation 3 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 requires that the planning authority not grant planning permission unless an EIA has been carried out in respect of that development. The application is accompanied with an ES which demonstrates the applicant’s case that the proposals represent sustainable development and would not result in significant adverse impacts. This ES has been assessed for its adequacy in accordance with the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 and has been considered to be adequate notwithstanding some omissions and inadequacies (see section 10 below).
- 10.4 Regulation 4(5) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 requires the local planning authority to ensure they have, or have access as necessary to, sufficient expertise to examine the environmental statement. In this regard, the case officer has worked in conjunction with officers from Essex County Council (ECC), Hertfordshire County Council (HCC), East Herts District Council (EHDC), Place Services (ECC), Network Rail, Highways England (HE), Natural England, and UDC’s Environmental Health Manager (Protection), Senior Health Improvement Officer and the Communities Manager. Further expertise has been provided to ECC and HE by Jacobs and AECOM respectively. Officers have also been advised by consultants from WYG (air quality) and Bickerdike Allen Partners LLP (BAP). Consultation advice has been given by Thames Water and the Environment Agency (EA).
- 10.5 Regulation 63 of the Conservation of Habitats and Species Regulations 2017 requires the competent authority, before deciding to give any permission for a plan which is:
- a. 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
 - b. Is not directly connected with or necessary to the management of that site,

make an appropriate assessment of the implications of the plan or project for that site in view of that site’s conservation objectives. Natural England is satisfied that the application is broadly acceptable, alone and/or in combination with the Regulations, in particular, in relation to Epping Forest SAC. An Appropriate Assessment has concluded that only a de Minimis effect from nitrogen deposited on vegetation on a particular unit in that SAC, resulting from vehicles related to the development passing along the nearby M25, occurs and that as such adverse effects will not arise.

Development Plan

- 10.6 Section 38(6) of the Planning Act 2004 requires that the determination be made in accordance with the provisions of the development plan unless material considerations indicate otherwise.
- 10.7 Paragraphs 9.78 to 9.105 set out the planning balance in respect of the Development Plan.

Material Considerations

- 10.8 The Regulation 19 Uttlesford District Plan is a material consideration but carries limited weight at this time. The Spatial Vision identifies the importance of Stansted Airport in the London Stansted Cambridge Corridor and Policy SP11 – London Stansted Airport reflects this. This policy is subject to 20 objections and has not yet been tested for soundness. Notwithstanding this, the emphasis of the policy at the present time is to support sustainable growth of the airport. This assessment will be made in respect of adopted policies, the NPPF and other material considerations.
- 10.9 The NPPF (2018), Aviation Policy Framework (2013), the emerging Aviation Strategy (April 2018), and Beyond the Horizon, The Future of UK Aviation, Making best use of existing runways (June 2018), are material considerations. In summary, the first supports sustainable development and the last provides government support for making best use of existing runways, taking careful account of all relevant considerations, particularly economic and environmental impacts and proposed mitigations. The NPPF (2018), Beyond the Horizon (April and June 2018) carry substantial weight because each have an evidence base, are up to date, and were widely consulted on. The Aviation Policy Framework (2013) carries substantial weight insofar as it is the government's policy in respect of aviation. However, some aspects may be slightly dated in their approach and also overtaken by the more recent particular Policy Statement in "Beyond the Horizon" (June 2018).

Growth and Need

- 10.10 The ES sets out the predicted growth of the airport from the baseline of 2016 with a DM scenario of the consented 35mppa and a predicted growth to 43mppa, as applied for in this application. The ES then assesses the impacts of the additional growth from 35mppa to 43mppa with a DM and DC scenario for 2023, the year at which the divergence is predicted to occur, and 2028, the year in which the level of growth is predicted to reach the limits applied for. The approach by the ES to growth and need of the particular airport is reasonable.

Surface Access

- 10.11 The impacts on the strategic and local road networks have been considered in conjunction with Highways England, ECC and HCC. Overall, it is predicted that there would be no significant adverse impacts on either the strategic or local road networks subject to appropriate mitigation being secured by way of s106 Legal Obligation. The mitigation measures include a scheme for alterations to the M11 Junction 8 which is considered to be acceptable to Highways England. Other mitigation measures relate to funding for improvements to local roads, including the improvements to cycling and walking links, and bus and coach services and infrastructure. The funding mechanisms would be overseen by the SATF and its working groups. Funding would come from the Transport Levy plus sums of ring fenced capital funding.
- 10.12 These funding mechanisms have previously been incorporated into earlier s106 Legal Obligations (or equivalents) and have been assessed as being the most appropriate mechanism for delivering the mitigation measures. However, the terms of reference for SATF working groups, in particular the Bus and Coach Group need to be refreshed to enable future flexibility given the changes in

technology and service delivery that are being explored. Whilst specific routes and services have been identified by consultees it is not considered that this is an appropriate way of delivering the mitigation as the services are reliant on third party bus and coach companies who will need a business case for delivering a new or improved service. The SATF will also need to be reassured that any proposal represents value for money before agreeing to release funding.

Noise:

- 10.13 Air noise is an area of great complexity given different perceptions to noise across the population. The government recognises that 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 noise can adversely affect people's health.
- 10.14 There is also recognition that over recent decades there have been reductions in aviation noise (air and ground) due to technological and operational improvements and that this trend is expected to continue. The government, therefore, wants to strike a fair balance between the negative impacts of noise and the positive impacts of flights. They expect airports looking to make best use of their existing runways to share in the economic benefits of expansion with the communities by way of reducing noise impacts.
- 10.15 Impacts from air noise and ground noise from aircraft and associated operations, construction operations and vehicles associated with the proposed growth of the airport have been considered in the ES.
- 10.16 The ES demonstrates that there will be an increase in population within the LOAEL category in daytime, as set out in the NPSE. There will be a reduction of population affected by night time noise. However, whilst there will be an increase of people affected, the increases in noise levels will be around 0.5 and 0.6dB and therefore imperceptible.
- 10.17 Noise contours only tell part of the story and relate to average noise levels across a specific time period, 16 hours in the day and 8 hours at night. However, noise isn't perceived on an average basis but rather in terms of the number of events. Averaging can hide impacts from increases in numbers of events. In order to enable an assessment of overflight impacts Nx contours were produced, N65 for daytime (number of flights exceeding 65dB(A)) and N60 for night time (number of flights exceeding 60dB(A)). These demonstrate that there will be an increase of 72 movements per day. The N65 contours at levels of 100 and 200 (the number of overflights) closest to the airport enlarge at 2028 in comparison to the 2016 baseline as these areas will experience the increased number of overflights.
- 10.18 There are concerns in respect of noise levels at four schools, Howe Green School, Spellbrook Primary School, The Leventhorpe School and Mandeville Primary School. Spellbrook Primary School is predicted to experience noise levels slightly higher than the recommended 73dB L_{Amax} when B737Max are in operation.
- 10.19 The mitigation measure for properties, including schools, community buildings and places of worship, affected by noises is a revised and updated SIGS. This offers financial support for noise insulation measures. The current scheme requires funding from property owners and covers 1088 properties. The revised scheme offers maximum grants and would not require funding from the owner.

The scheme would be available for over 2000 properties offering different levels of grants according to the noise levels experienced at the property.

- 10.20 An additional mitigation measure in respect of daytime noise is a noise contour which currently has a maximum area of 33.9km². Operations at the airport are not predicted to exceed this contour and the ES predicts that this would reduce over time with the introduction of quieter aircraft. Therefore, it is considered that to ensure the operations at the airport share the benefits with the local community it is appropriate to impose a noise contour condition which reduces in size over time. If, as a consequence of slower uptake of quieter aircraft for example, noise levels do not reduce at the rate set out in the ES then operations at the airport would be curtailed by the noise contour.
- 10.21 Night noise is controlled by measures put in place by the government and is not a matter for the local authority to seek to control. Night movements are predicted to increase from 82 movements per night to 104 and 107 in the DM and DC scenario under the current restrictions. These levels would be reached irrespective of planning permission being granted for this proposal.
- 10.22 An additional mitigation measure is the imposition of fines for flights exceeding noise levels. The fines are proposed to be paid into a Community Fund which would be given over to community projects to improve health and wellbeing.
- 10.23 In terms of air noise, the assessment methodology, approach and level of detail contained in the ES is satisfactory and the proposed mitigation measures are adequate. As such the proposals should not result in significant adverse impacts in respect of air noise.
- 10.24 Ground noise comes from various sources including the use of power units, plant and equipment and also construction. Comparison of the data sets shows increases in noise levels indicate an increase at Molehill Green (the worst affected location) of +3dB during the daytime and +2.5dB at night from the 2016 baseline. However, the comparison between the DC and DM scenarios indicates an imperceptible change.
- 10.25 Construction is predicted to take place between 2021-2 and the main focus of the assessment was the key sensitive night time period. This showed increases at the receptors of between 0.2dB and 10.6dB. Whilst the increase of 10.6dB (at the Ash Public House) is a large increase, the noise level experienced at that receptor would still be below the 45dB threshold where annoyance is expected to be experienced.
- 10.26 Some of the mitigation measures associated with air noise would also be applicable to receptors affected by ground noise. The findings of the ES are not disputed and the proposed mitigation measures are considered to be acceptable.
- 10.27 Surface access noise assessments did not include rail on the basis that the new rolling stock which would accommodate that additional growth in passenger numbers would be coming on-line with or without the proposed development.
- 10.28 Comparisons between the 2028 DC and DM scenarios indicate that noise levels would increase by 0.1dB and 0.7dB with the largest increase being at Thremhall Avenue. In comparison to the 2016 Baseline, increases of 3.8dB would be experienced at Round Coppice Road. The receptors at this point are the Novotel Hotel, located more than 150m from the road, and Stansted College which has

- been designed with noise protection measures incorporated into the fabric of the building.
- 10.29 Surface noise impacts are therefore considered to be negligible and no mitigation is required.
- 10.30 *Air Quality:*
- Air quality is an area of concern raised in many of the representations. There are two particular areas to consider, impacts on AQMA, (focussing on human health), and impacts on sensitive ecological receptors. There is an AQMA located in Saffron Walden in the Uttlesford district which would not be impacted by the proposals. In addition, there is an AQMA located at Hockerill junction in Bishop's Stortford which would experience an increase in traffic.
- 10.31 The local plan policy position in East Herts has recent been clarified with EHDC expecting to adopt their new District Plan on 23 October 2018. The proposed policy in the East Herts District Plan refers to a requirement for applications to be accompanied by an Air Pollution Assessment in line with the Council's Air Quality Planning Guidance Document. However, whilst this policy has full weight in East Herts it is a material planning consideration in Uttlesford and there is no policy basis for any such assessment in national planning policy, for example the NPPF (2018) and the National Planning Policy Guidance.
- 10.32 The impacts at Hockerill are predicted to be negligible, even after sensitivity testing. However, the benefits of the proposal would need to be weighed against the potential health impacts resulting from this negligible increase.
- 10.33 Mitigation measures aimed at improving sustainable links to the airport, such as a 50% mode share of employees and passengers accessing the airport by public transport, and the improvement to bus services, are measures that improve air quality. Bishop's Stortford is well connected to the airport by both direct rail and bus services. The continuation of air quality measures would be secured by way of s106 Legal Obligation if planning permission were to be granted. On balance, the benefits of the mitigation measures outweigh the negligible harm arising from air quality impacts.
- 10.34 In terms of impacts on ecological receptors, there are two principal areas of concern, local SSSIs and Epping Forest SAC and SSSI. In terms of impacts on SSSIs, the impacts are predicted to be negligible when comparisons between the DM and DC scenario are made. However, mitigation measures for Hatfield Forest and Elsenham Woods by way of monitoring, and the implementation of additional mitigation measures if identified as being required as a result of the monitoring, would be secured by way of s106 Legal Obligation if planning permission were to be granted.
- 10.35 NE raised concerns about the alone and in-combination impacts on Epping Forest SAC. Additional work was carried out in this respect by the applicant that demonstrated that the impacts would be negligible. To ensure the Council can comply with Regulation 63 of the Conservation of Habitats and Species Regulations (2017), Place Services was commissioned to carry out an Appropriate Assessment (11 October 2018). This concluded that the project for the development will not have an adverse effect on the integrity of Epping Forest SC as no failure of the conservation objectives is predicted, either alone or in combination.

Socio-economics

- 10.36 The ES sets out the benefits arising in respect of socio-economics. Concerns were raised in respect of the potential impacts of Brexit and the fact that the negative impacts, such as tourism deficit, were not considered. The ES was based on the Oxford Economics scenario whereby the UK leaves the EU on unfavourable terms, without negotiating a significant trade deal and the trade relationship between the UK and the EU therefore reverts to WTO rules.
- 10.37 The benefits of the proposals are recognised by a variety of parties, and the ECC Economic Growth and Skills Department consider that the increase in capacity is important to growth in Essex. In addition, the proposals increase job and skills training opportunities as well as supports local businesses and employment growth in Essex.
- 10.38 The findings of the socio-economics chapter of the ES are considered to be sound and would deliver in respect of the economic growth aspirations of national and local policy.
- 10.39 *Carbon emissions:*
- The policy in respect of carbon emissions sets out that this is an issue best dealt with at a national level. The ES used the pessimistic approach for assessing the impacts of carbon emissions as a result of the proposals. This indicates that the difference between the DM and DC scenario would be 0.3MtCO₂e. When assessed as a value per passenger, the development case would see an improvement in emissions by 4 kgCO₂e.
- 10.40 The ES concludes that Stansted Airport's share of UK aviation carbon emissions would rise from 4% in 2016 to between 4% and 5.3% of the UK's aviation emissions target in 2050, with annual aviation carbon emissions predicted to decrease between 2028 and 2050. It is considered that the DC scenario is unlikely to materially impact the UK's ability to meet its 2050 national aviation target of 37.5MtCO₂e.
- 10.41 The findings of the ES in this respect are not disputed, and as already stated, this is an issue to be addressed at a national level by the government.
- 10.42 *Climate Change:*
- National policy in respect of aviation and climate change focusses on the vulnerability of the asset in extreme weather arising from climate change impacts. In addition, the APF seeks to ensure the aviation sector makes a significant and cost-effective contribution towards reducing global emissions. However, this aspect requires intervention at a global and national level and is not appropriate for discussion at a local level.
- 10.43 In terms of resilience of the airport in respect of climate change, mitigation measures to ensure the continued operation of the airport are identified. On this basis, the applicant has met the requirements of the EIA Regulations and no significant effects are identified.
- 10.44 *Public Health and Wellbeing:*

Decisions in respect of aviation growth are required to be in accordance with sustainable development principles, and this includes maximising wellbeing and protecting our environment, without negatively impacting on the ability of future generations to do the same.

- 10.45 The ES follows a source-pathway-receptor approach to identify and assess health impacts that are plausible and directly attributable to the proposed development.
- 10.46 Benefits, both direct and indirect, would arise from increased employment, quality of life and wellbeing from the predicted £357m GVA per annum by 2028, additional leisure trip opportunities and the associated family and social benefits arising from these.
- 10.47 Impacts on health and wellbeing are not predicted in relation to surface access, congestion or potential for reduced access to services.
- 10.48 Less than one additional emergency hospital admission and less than one additional death per annum are predicted as a result of impacts in respect of air quality. A less than 1% increase from the baseline in hypertension, depression or anxiety is predicted.
- 10.49 An increase of around 339 people who consider themselves highly annoyed by aircraft noise is predicted, which is around a 28% increase compared to the DM scenario. However, those affected at night is predicted to be very limited due to the controls set out in the Night Noise Regulations.
- 10.50 A predicted 13% increase in daytime noise events above the assessment threshold are predicted at Howe Green School, St Giles Church in Great Hallingbury, and Falcon House Care Home in Little Hallingbury. In this respect, the impacts are considered to be minor adverse. Similar impacts are considered in respect of the quality of life and wellbeing in association with amenity of green space.
- 10.51 Mitigation in the form of a Community Fund is proposed which it is envisaged would cover all the parishes in Uttlesford and the parishes falling within a 10 mile radius of the airport (whole parishes included where part of the parish falls outside of the radius). The Community Fund would be available for health and wellbeing projects within the parishes. (see attached map for proposed areas for funding)
- 10.52 *Water Resources and Flood Risk:*
- The airport has significant drainage infrastructure in place, including the balancing ponds located between the A120 and B1256. As a result of the new infrastructure an increase in capacity will be required and the proposals have been assessed by the LLFA as being acceptable and not increasing the risk of flooding.
- 10.53 Water efficiency measures are proposed to be increased on the airport and Anglian Water, as the utility provider, has not commented on the application.
- 10.54 In terms of demands on foul water infrastructure, Thames Water has identified that increased capacity will be required in association with the predicted housing growth and as a result of the proposals in this application. A technical option is

believed to be feasible and Thames Water does not object to the proposals. Likewise, the EA does not object to the proposals, subject to a condition in respect of modelling to ensure that the increased passenger numbers and associated increase in total foul water volumes will not result in a deterioration of the water body known as Great Hallingbury Brook.

10.55 *Non-Significant Topics:*

Non-significant topics relate to biodiversity, land and soil, cultural heritage, landscape, waste and major accidents and/or disasters.

10.56 Contamination and spoil are not considered to be issues resulting in significant impacts. Likewise, archaeology is not an issue in the location of the proposed airfield infrastructure works. Similarly, the construction works would not be harmful to the character of the area and would not result in harm to the landscape.

10.57 Waste would be dealt with in accordance with the Airport's Waste Strategy. This sets out its monitoring and targeting of waste, including reduction measures to be implemented across the airport. Therefore, no significant impacts are predicted.

10.58 Major accidents and/or disasters are not predicted to increase as a result of the proposals, not least because of the stringent safety regimes in place outside of the planning system.

10.59 In terms of biodiversity, translocation of protected species will be required as a result of the infrastructure works. This would be to a translocation site owned by the applicant and monitoring would be required after translocation has taken place. As a result no significant impacts would arise in respect of biodiversity.

Cumulative Effects:

10.60 Cumulative effects of the proposals with committed schemes have been assessed. This includes works proposed under permitted development by the applicant within the airport boundary.

10.61 Cumulative effects are assessed as being negligible. In respect of socio-economic impacts, the residual impacts were concluded to be minor-major beneficial and the cumulative effects moderately beneficial. In terms of public health and wellbeing, the residual impacts should be negligible – major beneficial and the cumulative effects are considered to be the same. Negligible – minor adverse residual impacts and cumulative effects are predicted in relation to water resources.

Consistency

10.62 Paragraph 213 of the NPPF (2018) states that, "existing policies [in adopted Local Plans] should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)."

10.63 Policies S4 and AIR1-6 relate to proposed development within the airport boundary. S4 relates to the whole airport site and is a strategic policy and

Policies AIR1-6 are site specific. These have been assessed as being in accordance with the NPPF and can be afforded full weight, subject to their compliance with government's policy in respect of aviation.

- 10.64 Policy GEN1 relates to highway safety and alternative transport options rather than the private car. The policy is generally consistent, although there is more emphasis in the NPPF to sustainable transport modes whilst acknowledging that there will be differences in opportunities between rural and urban areas. Uttlesford is a rural area where there are challenges in providing public transport for a dispersed population, but at the same time airport demand boosts services along certain transport corridors. The NPPF is more positively worded in seeking to minimise the need to travel and maximise cyclist and pedestrian and public transport opportunities. This policy should therefore be given moderate weight.
- 10.65 Policy GEN2 relates to design and as such is only partially relevant to the application. The policy is generally in conformity with the NPPF and the areas where it doesn't strictly comply are areas around sense of place, mix of uses and function, which would not be applicable in this instance. The criteria applicable to the application are e) – water and energy consumption; g) – waste; h) environmental impacts on neighbours. Insofar as it is relevant to the application, the policy should be given full weight.
- 10.66 Policy GEN3 relates to flooding and is only partly consistent with the NPPF with approaches to flooding issues having developed considerably in the time since the policy was adopted. Therefore, the policy has limited weight with full weight being given to the NPPF and associated guidance.
- 10.67 Policy GEN4 relates to good neighbourliness and seeks to protect existing properties and users from harm arising from nuisance. This can include noise, pollution, light pollution and fumes. The policy has been assessed as being consistent with the NPPF and should be given full weight.
- 10.68 Policy GEN5 seeks to protect against harmful impacts arising from light pollution. This policy has no compatibility issues with the NPPF and should be given full weight.
- 10.69 Policy GEN6 relates to securing infrastructure required in association with proposed development. This policy is generally consistent with the NPPF, but the latter recognises the need for viability of development to be considered. In addition, there is a requirement to take into account the Community Infrastructure Regulations. The policy should be given moderate weight.
- 10.70 Policy GEN7 relates to nature conservation, seeking to protect and enhance biodiversity. The policy is only partially consistent with the NPPF with the latter document clarifying and strengthening the requirements in protecting and enhancing the natural environment. The policy therefore has little weight.
- 10.71 Policy ENV2 is consistent with the NPPF as it is in line with statutory duties as set out in the Planning (Listed Buildings and Conservation Areas) Act 1990. The NPPF gives additional assessment criteria relating to the assessment of substantial and less than substantial harm. The policy therefore carries full weight.
- 10.72 Policy ENV4 relates to the protection of archaeological remain and scheduled protected ancient monuments. The policy is consistent with the NPPF and

therefore carries full weight. The assessment of substantial and less than substantial harm for designated assets is also relevant in respect of this policy.

- 10.73 Policy ENV7 relates to the protection of designated ecological assets. The policy is only partly consistent with the NPPF with the emphasis shifting from the need for development to the benefits needing to clearly outweigh the harm. In addition, there are additional requirements under the Habitats and Species Regulations (2010) which relate to European designated sites. Therefore, the policy has little weight.
- 10.74 Policy ENV9 relates to the protection of historic landscapes. The assessment criteria for the assessment of substantial and less than substantial harm for designated assets is also relevant in respect of this policy. It is consistent with the NPPF and therefore carries full weight.
- 10.75 Policy ENV11 seeks to protect existing uses from noise generators. The policy is generally consistent with the NPPF but the NPPF is more specific with regard to existing businesses recognising the need to balance the needs of business and the protection of existing amenities. The policy therefore carries moderate weight.
- 10.76 Policy ENV12 relates to the protection of water resources in respect of pollution. The policy is consistent with the NPPF and carries full weight.
- 10.77 Policy ENV13 seeks to prevent development in areas of poor air quality. This is generally consistent with the NPPF, although the latter document sets out a requirement that any development in Air Quality Management Areas and Clean Air Zones is consistent with the local air quality action plan. The policy therefore carries moderate weight.

The Planning Balance

- 10.78 S70(2) of The Town and Country Planning Act 1990 requires the local planning authority, in dealing with a planning application, to have regard to:
- (a) the provisions of the development plan, so far as material to the application,
 - (aza) a post-examination draft neighbourhood development plan, so far as material to the application,
 - (b) any local finance considerations, so far as material to the application,
 - and
 - (c) any other material considerations.
- 10.79 S38(6) of the Planning and Compulsory Purchase Act 2004 requires that, if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.
- 10.80 Policy S4 supports the principle of development directly related to or associated with Stansted Airport that Policy S4 covers. The proposed infrastructure applied for in this application is directly related to the airport and therefore complies with Policy S4. Policies AIR1-6 do not directly relate to any of the areas where infrastructure is proposed to be constructed and likewise do not specifically relate to a proposed uplift in passenger numbers.

- 10.81 Other policies relevant to the consideration of this application fall within two general categories – general policies and environmental policies.
- 10.82 Policy GEN1, which received moderate weight due to its compatibility with the NPPF, states that development will only be permitted if all of the following criteria are met:
- a) Access to the main road network must be capable of carrying the traffic generated by the development safely
 - b) The traffic generated by the development must be capable of being accommodated on the surrounding transport network
 - c) The design of the site must not compromise road safety and must take account of the needs of cyclists, pedestrians, public transport users, horse riders and people whose mobility is impaired
 - d) It must be designed to meet the needs of people with disabilities if it is development to which the general public expect to have access
 - e) The development encourages movement by means other than driving a car.
- 10.83 The proposal does not propose any new or alterations to access to the main road network so criterion a) is not relevant. Similarly, there are no alterations to the layout of the site itself proposed within the application so criteria c) and d) are also not relevant. In terms of traffic generation, the proposals have been considered by the highway authorities for Essex and Hertfordshire and Highways England who have all concluded that the proposals, subject to appropriate mitigation measures would comply with criterion b).
- 10.84 In terms of criterion e), the application site is already well served by public transport, and there are commitments to use best endeavours to maintain and/or increase sustainable transport mode shares. Furthermore, whilst limited options exist for access by walking and/or cycling, the Stansted Area Transport Forum and the reporting sub-groups (bus and coach, highways and rail) have the ability to authorise funding for sustainable transport improvements, including schemes which incentivise walking and/or cycling. The schemes are funded by two means; two fixed capital ring fenced sums, one associated with bus and coach improvements and the other related to local roads. In addition, there is funding secured by way of a transport levy, a on every car parking transaction, and a fixed annual sum for staff parking. These mechanisms already exist and have performed well and, if planning permission were to be granted are proposed to be carried forward in a new s106 Legal Obligation. As such, the mitigation measures proposed result in the proposals complying with Policy GEN1. Furthermore, they would comply with the sustainable transport objectives of the NPPF.
- 10.85 Policy GEN2 sets out various design criteria and proposals are required to meet all aspects. However, as these are generally related to physical structures or developments freely accessible by members of the public. In this instance the proposed physical works relate to infrastructure within the airfield and therefore the majority of the criteria are not relevant to the proposals. However, criterion e) relates to energy and water consumption, g) relates to waste and h) relates to environmental impacts. Insofar as these criteria are relevant to the proposals, the statutory consultees have confirmed that they have no objections to the proposals and as such they comply with Policy GEN2.

- 10.86 Policy GEN3 relates to flood protection and is only partially compatible with the NPPF and therefore only has limited weight. In terms of flood protection, the proposals have been considered by the LLFA who confirm that they have no objections to the proposals. This would be subject to appropriate mitigation measures being secured by condition relating to increased storage capacity for surface water runoff. Insofar as the policy relates to the prevention of increased risk of flooding the proposals comply with Policy GEN3 and with the requirements set out in the NPPF.
- 10.87 Policy GEN4 does not permit development where it will give rise to nuisance, such as noise, pollution or cause material disturbance or nuisance to occupiers of surrounding properties. In this regard, the proposals do not comply with Policy GEN4 due to the impacts arising from noise and air pollution. Paragraph 180 requires decisions to mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development.
- 10.88 Currently the applicant operates a Sound Insulation Grant Scheme (SIGS) which covers around 1080 properties. A new, enhanced scheme is proposed in relation to this application which would increase the funding available and around 2000 properties would be eligible for grants.
- 10.89 Other mitigation measures currently in place are a limit on the number of flights, capped at 274,000, and a noise contour. Outside of the planning system there are also controls on night flights which are not affected by this application. The Aviation Policy Framework and subsequent documents in relation to the development of the aviation strategy recognises the need for airports wishing to make better use of their runways to pass on the benefits of quieter aircraft. Currently, the 57dB leq noise contour has a maximum area of 33.9sqkm. The airport is operating well inside that limit, and could continue to do so up to and including their current cap of 35mppa. Therefore, if planning permission were to be granted, it is appropriate to require the applicant to put forward a scheme to reduce the size of the contour in line with the increase of their operations. This can be secured by way of a condition and the Council would seek a reduction to 28.7sqkm, in line with the predictions in the ES. These measures would ensure that the proposals would comply with the NPPF and the APF.
- 10.90 Policy GEN5 does not permit lighting schemes unless the level of lighting is the minimum necessary and glare and light spillage from the site is minimised. Whilst no details of lighting is included in the application, given the location and nature of the proposals it is acknowledged by the applicant that additional lighting will be required in this location. Given the operational requirements of the applicant, as regulated by bodies and legislation outside of the control of the planning system, the lighting will be the minimum necessary. The location of the infrastructure works is within the operational airfield and therefore an area which already has significant lighting requirements. Therefore, in this context the proposals comply with Policy GEN5.
- 10.91 Policy GEN6 states that development will not be permitted unless appropriate infrastructure which arises as a result of the proposals is secured. In this case, the proposed development would result in impacts on the strategic highway network which would require mitigation works to be carried out. A mitigation scheme has been identified and could be secured by way of a clause in s106 Legal Obligation, as recommended by HE. However, given the potential lead-in time before the requirement for the mitigation package being required to be delivered, there is the potential that the proposed identified mitigation may not be

the appropriate mechanism. Therefore, a secondary clause is proposed which requires a reassessment of the situation at the time the mitigation is required and the implementation of an alternative scheme, or if funding for a strategic mitigation measure for the M11 J8 being forthcoming, a financial contribution towards that scheme would be required as alternative mitigation.

- 10.92 Additional mitigation measures associated with surface access will also be required. These would be delivered through the Stansted Area Transport Forum. The funding mechanisms will be a mix of fixed capital sums to be spent over a period of time and funds raised by the Transport Levy. By securing the mechanisms by way of s106 Legal Obligation the proposal would meet the requirements of Policy GEN6.
- 10.93 Policy GEN7 does not permit development that would have a harmful effect on wildlife, protected species or habitats suitable for protected species unless the need for development outweighs the importance of the feature for nature conservation. Mitigation and/or compensation measures are acceptable provided they can be secured by way of condition and/or s106 Legal Obligation. The proposal will result in direct impacts on protected species and their habitat through the development of the new infrastructure. Mitigation by means of translocation to an off-site receptor has been put forward by the applicant. The off-site receptor is within the control of the applicant and the mitigation measures proposed would be appropriate.
- 10.94 Policy ENV2 seeks to protect, inter alia, the setting of listed buildings. The location of the proposed infrastructure is such that impacts are unlikely to arise. Indirect impacts in terms of increased flights would arise from the proposals. On balance, it is considered that the proposals comply with Policy ENV2.
- 10.95 Policy ENV4 seeks to protect archaeological remains in situ, unless the need for development outweighs the importance of the archaeology. In this instance, whilst there are areas within the airport boundary where significant archaeological remains have been discovered, it is considered that there is little scope for there to be any in the locations of the proposed infrastructure. On that basis, the proposals would comply with Policy ENV4.
- 10.96 Policy ENV7 does not permit development which would adversely affect nationally or locally designated sites unless the need for development outweighs the particular importance of the nature conservation value of site or reserve. Any potential impacts on such sites would be indirect as a result of pollution, in particular in respect of Hatfield Forest SSSI and East End Wood SSSI. In this instance there would need to be a balance between the potential harm, although no significant levels of harm have been identified in the ES, and the need for the development. Both sites are currently experiencing harm due to pollutants and mitigation measures in the form of long-term monitoring are proposed to be continued, with appropriate mitigation being identified and implemented if required. Given the limited weight that can be applied to this policy due to the shift in national policy towards assessing the benefits of the proposal against the harm, the proposals can be considered to comply with Policy ENV7. In terms of the NPPF, this states that unless the benefits of development outweigh the harm to designated sites then planning permission should be refused. The APF sets out that the social and economic benefits of aviation growth need to be weighed against the environmental impacts. On the basis that no significant impacts have been identified and mitigation measures involving monitoring and implementing

mitigation if harm is arising as a result of the proposals, it is considered that the proposals comply with the NPPF and the APF.

- 10.97 Wider potential impacts were identified by Natural England in respect of Epping Forest SSSI and SAC, the latter designation requiring the Council to undertake an Appropriate Assessment. The additional information submitted by the applicant, and the Appropriate Assessment, confirm that the proposals would not adversely affect the integrity of the Epping Forest SAC either alone or in combination. In addition, there would not be any adverse impacts on Epping Forest SSSI.
- 10.98 Policy ENV9 does not permit proposals likely to harm significant local historic landscapes, in this instance protected lanes, unless the need for development outweighs the historic significance of the site. The proposals would not have a direct impact on historic landscapes, but there is the potential for indirect impacts arising from activities such as fly parking. The applicant, by way of the Stansted Area Transport Forum, operates a mechanism for trying to resolve or at least minimise fly parking issues. As such, any potential impact on historic landscapes would be minimal and the proposal can be considered to comply with Policy ENV9.
- 10.99 Policy ENV11 prevents noise generating development particularly where it would adversely affect the reasonable occupation of existing or proposed noise sensitive development nearby. The exception is where the need for the development outweighs the degree of noise generated. In respect of aircraft noise, the impacts arising affect people in different ways. Some people can live very close to the airport and not consider themselves to be affected by noise, whereas people living some distance from the airport, where aircraft are overflying at heights in excess of 5,000 ft consider themselves to be adversely affected. In order to assess noise impacts a series of analytical measures are used in the form of various noise contours. Historically noise contours have been set at 57dB leq and the current noise contour must not exceed 33.9sqkm. The assessment of the application using a mix of contour types has demonstrated that the proposals would not exceed the current conditioned noise contour, and will reduce in the future. On the basis of the assessment the proposals would not give rise to increased noise and would result in a reduction of the existing 57dB leq noise contour to no more than 28.7sqkm by the end of 2028, which could be secured by way of a condition. On balance, it is considered that the proposals comply with Policy ENV11.
- 10.100 Policy ENV12 does not permit development likely to cause contamination of groundwater unless effective safeguards are provided. An analysis of the predicted impacts has indicated that contamination is not likely and as such the proposals comply with Policy ENV12.
- 10.101 Policy ENV13 does not permit development where users would be exposed on an extended long-term basis to poor air quality outdoors near ground level. The development itself does not result in a scheme where users would be exposed to poor air quality. However, the vehicular movements associated with surface access to the airport, plus the pollution from aircraft, would result in impacts on the local area. On the basis that this policy is specifically directed towards two specific areas adjacent to the M11 and the A120, the proposals technically comply with the requirements of the policy.

- 10.102 However, on air quality issues, the NPPF states that 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. Opportunities to improve air quality or mitigate impacts should be identified.
- 10.103 Uttlesford only has one AQMA this is located in Saffron Walden where impacts are unlikely to arise as a result of the development proposals. However, Bishop's Stortford, falling under the administration of East Hertfordshire District Council, has an AQMA based around the Hockerill junction, and a further one located in Sawbridgeworth. The East Herts adopted policy is Policy ENV27 which states, inter alia, that development which will significantly increase air pollution will not be permitted. East Herts District Plan Policy EQ4, which has been tested for soundness but not yet adopted, states that the effect of development on air quality is a material consideration. The policy refers to that Council's Air Quality Action Plan and Air Quality Planning Guidance.
- 10.104 The ES identifies additional traffic would flow through the Hockerill AQMA but this increase would result in negligible impacts on the AQMA. EHDC does not have a mitigation plan for the AQMA but seeks to ensure that appropriate alternative sustainable transport measures are incorporated into developments affecting the AQMA. As discussed above, the applicant already provides sustainable transport initiatives by way of funding for new bus and coach routes, funding towards local schemes for improving walking and cycling opportunities. Additional funding for schemes could be secured in respect of the current proposals and appropriate sustainable transport schemes can be identified and financed by way of the SATF and the Working Groups. On this basis, the proposals comply with the requirements of the NPPF.
- 10.105 Overall, the proposals comply with the relevant local plan policies. The proposals also comply with the material considerations of national policy, the policies as set out in the NPPF (2018), the APF (2013) and the BTH (June 2018), and insofar as it is relevant ANPS (2018). The APF sets out the government's primary objective which is to achieve long-term economic growth. The aviation sector is seen as a major contributor to the economy and its growth is supported but within a framework which maintains a balance between the benefits of aviation and its costs, particularly its contribution to climate change and noise. Whilst issues around climate change and carbon emissions are to be dealt with at a government level, it is considered that this application balances the primary objective of economic growth with the impacts of aviation. Appropriate mitigation measures are identified and could be secured by way of conditions or s106 Legal Obligation.

Overall Conclusion:

- 10.106 The ES has demonstrated that there would be negligible impacts arising from the proposals. These have been assessed and tested by various consultees and issues arising have been addressed and appropriate mitigation measures identified.
- 10.107 Section 38(6) of the Planning Act 2004 requires that the determination be made in accordance with the provisions of the development plan unless material considerations indicate otherwise. The application accords with the development plan.

- 10.108 It is considered that the proposal represents a sustainable form of development in line with the NPPF (2018) paragraph 8 and accords with the NPPF.
- 10.109 The application makes best use of the existing runway infrastructure in accord with Beyond the Horizon (June 2018) and the Aviation Framework (2013).
- 10.110 No other matters sufficiently outweigh these considerations.
- 10.111 It is therefore recommended that the application be approved subject to s106 Legal Obligation and conditions, as set out below.

11 Adequacy of the ES

11.1 Uttlesford District Council commissioned ESIA-Consult Ltd to undertake an Independent Peer Review of the Environmental Statement submitted with the application (<https://uttlesford.moderngov.co.uk/documents/s8353/ES%20Review.pdf>). The evaluation was undertaken by Martin Broderick (principal reviewer) and Dr Bridget Durning (secondary reviewer). The ES was assessed using a grading system A-F which are used to establish whether the document overall passes or fails the assessment.

11.2 The Assessment Grades are as follows:

A = indicates that the work has generally been well performed with no important omissions

B = is generally satisfactory and complete with only minor omissions and inadequacies

C = is regarded as just satisfactory despite some omissions or inadequacies

D = indicated that parts are well attempted but, on the whole, just unsatisfactory because of omissions or inadequacies

E = Not satisfactory, significant omissions or inadequacies

F = Very unsatisfactory, important task(s) poorly done or not attempted

N/A = Not applicable in the context of the ES or the project

11.3 The results of the assessments are as follows:

Section in proforma	Overall grade for that section	Area where more information required
1 Description of the development	B/C	The description of the development is generally satisfactory and complete. However, there are some omissions or inadequacies relating to raw materials usage, waste arisings and discussions of limitations.
2 Description of the environment	B/C	The description of the environment is generally satisfactory and complete. However, there are some omissions or inadequacies relating to addressing uncertainty, assessment of alternatives and need to provide a policy compliance schedule.
3 Scoping, consultation and effect identification	C	There are omissions and inadequacies relating to showing where responses to consultation comments have been addressed in ES. Also no

Committee:	Council	Date:	Thursday, 25 April 2019
Title:	Motion to Council: Stansted Airport Planning Application and S106 Agreement.		
Report Author:	Roger Harborough, Director - Public Services rharborough@uttlesford.gov.uk Tel: 01799 510457		

Summary

1. This report is provided to members in relation to the motion before them: 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 scrutinized, reviewed and approved by the Council's Planning Committee after the local elections.
2. For clarity, it is important to understand the nature of the proposal before the Council meeting. This, in essence, is that officers should not rely on delegated powers but should refer the draft section 106 agreement and conditions back to the Planning Committee for consideration. The Council's Procedure Rules state that "no business other than that set out in the summons shall be considered" at an extraordinary meeting (CPR 3.2.). Members should focus on this issue. It would not be appropriate for the Council meeting to reconsider or revisit the merits of the planning application or the merits of the Planning Committee's resolution. The Scrutiny Committee is to review separately the processes by which the Council deals with major planning applications, including the Stansted application.
3. In considering the proposal and this report, it is critical that members understand the legal framework within which planning obligations may be imposed and the risks associated with going beyond the legal framework. A planning obligation can only be imposed as a reason for granting planning permission, if the obligation is
 - a. *Necessary to make the proposed development acceptable in planning terms.*
 - b. *Directly related to the proposed development.*
 - c. *Fairly and reasonably related in scale and kind to the proposed development.*
4. This is not a commercial negotiation with a developer. The Council cannot impose or accept obligations that do not meet these tests. To do so runs the risk of legal challenge, whether by way of appeal or by judicial review. Officers have taken expert external legal advice to ensure that the obligations set out in the section 106 agreement meet the statutory tests.

5. This report also sets out some wider points of principle relating to good governance for members to consider.

Recommendations

None. This report is prepared as a briefing note to inform Members' debate of the Motion before this Extraordinary Meeting of Council.

Financial Implications

6. There are no direct financial implications arising from this report.
7. There should be no financial implications if the planning permission Decision Notice containing the planning conditions endorsed at Planning Committee on 14 November is issued following the completion of the S106 Agreement that has been prepared and agreed encompassing all the necessary obligations identified fully in the report before the Planning Committee
8. There could be financial implications in the event the matter is referred back to the planning committee as the applicant may appeal for non-determination of the application.

Background Papers

9. The following papers were referred to by the author in the preparation of this report and are available for inspection from the author of the report.

Report to Planning Committee on 14 November 2018
 Deed of Planning Obligations (April 2019)

Impact

- 10.

<p>Communication/Consultation</p>	<p>Consultation and public speaking arrangements on the planning application by Stansted Airport Ltd reflected the level of public interest in the proposals.</p> <p>As required by law, officers undertook a range of consultations on technical matters. The Environmental Impact Assessment Regulations mandate the use of suitable expertise when needed, and officers engaged external specialist expertise in noise and air quality. Officers of the local highways authority and the expert consultants were present at the</p>
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	Planning Committee to advise Members as necessary.
Community Safety	
Equalities	
Health and Safety	
Human Rights/Legal Implications	Set out fully in this report
Sustainability	Addressed comprehensively in the Environmental and Planning Statements submitted with the planning application, and in the case officer's report, to ensure compliance with the Environmental Impact Assessment Regulations
Ward-specific impacts	
Workforce/Workplace	The local planning authority, the local highways authority and the applicant entered into a Planning Performance Agreement. Such agreements are commonplace and merely secure contributions to additional resources so that councils can deal with complex applications without unduly prejudicing normal workflow.

Situation

11. The Council has a statutory responsibility to determine planning applications in accordance with the provisions of the Town and Country Planning Act 1990. As is standard practice, it has delegated its responsibilities for determining applications to the Planning Committee and to officer level. The Council's scheme of delegation sets out matters reserved for the Planning Committee and those delegated to officer level.

12. The delegation to officers to settle the detailed drafting of a section 106 agreement is usual practice. The preparation of a section 106 agreement is a technical exercise relying on professional legal and planning expertise. However, the detailed terms of the agreement should flow from the "heads of terms" set by the resolution to grant planning consent. If it does not prove possible to agree terms reflecting the committee resolution, the matter should be referred back to Committee. In some cases, a change of circumstances might mean that officers should report back to Committee.

13. The delegation to officers serves a good purpose in ensuring that planning consents are issued in a timely manner. The consent is not treated as "issued"

when the committee resolves to grant consent, but is issued after the section 106 agreement has been completed. The delegation avoids delay in completing agreements and granting consent. This is important as delay gives rise to the risk of an appeal for non-determination. Delay will also damage the Council's performance figures, which carries a risk of reputational damage and possible central government intervention. The Council also has a service obligation to applicants and others to deal with applications in a timely and efficient manner.

14. Members should be very cautious about bringing planning matters to full Council meetings. This should only happen in very exceptional circumstances and must not be used to attempt to reopen planning decisions with which individual councillors disagree. The determination of planning applications is a complex and technical matter. For that reason, the Council delegates its planning function to the Planning Committee and to professional officers. Care is taken to ensure that members of the Planning Committee receive full training to allow them to exercise planning powers on behalf of the Council. Other members of the Council are unlikely to have received up to date training in the exercise of planning functions. In addition, for more complex cases, supplementary briefings are provided to the Planning Committee, as occurred for the application the subject of this debate.
15. A further risk is that the planning process could become politicised, bringing the Council into disrepute. Taking planning decisions on a whipped basis is likely to amount to maladministration. Planning decisions must be taken strictly on the basis of material planning considerations.
16. Members are advised to consider the wider implications of using Full Council to review the decisions of any committee or sub-committee, delegated to discharge functions on behalf of the council. As detailed, the scheme of delegation is established to enable the efficient and effective working of the council and seeks to provide a framework within which officers and members can confidently operate; it also provides residents, businesses, customers etc. clarity, transparency and some certainty on how the council makes decisions.
17. The application in this matter is a major application and it is also "EIA Development" so as to be subject to the requirements of the EIA Regulations 2017 that requires provision of an environmental impact assessment in the form of an Environmental Statement. Those Regulations also require under Regulation 4(5) that the local planning authority have available to it relevant expertise in order to assess the application. Planning officers in this district have considerable experience of Stansted Airport going back over many years. The report to the Committee on this major application set out the available expertise on further technical matters covered by the Statement.
18. The report to the Planning Committee on this major application was carefully structured on a thematic basis in order to consider each of the environmental, social and economic effects of the development and the variation to planning conditions sought. This was clearly explained at the beginning of the meeting, and Members were also requested to conduct the debate on a similarly

thematic basis for the purposes of clarity. The report considered on an effect by effect basis whether there was any adverse impact of the proposals and if so, the potential for addressing that impact by planning condition or planning obligation in the proposed terms to make the application acceptable.

20. A purpose of the Environmental Impact Assessment process is to establish whether measures may be necessary to mitigate likely significant effects resulting from the development. Such measures can be secured by planning condition or by planning obligations, as appropriate. In each section of the report there was an assessment of the possible mitigation measures. The report referred back to the submitted Environmental Statement and Planning Statement, both of which were available on the council's website for inspection. The Planning Statement included an Appendix D containing Draft S106 Heads of Terms drawing together the various measures set out in each of the topic chapters and clearly identifying the trigger points. These Heads of Terms were appended in full to the case officer's report.
21. The resolution of the Planning Committee to approve the application subject to an obligation under S106 TCPA 1990 as amended was made in the context of the application documentation in its entirety, together with the case officer's report which detailed the necessary clauses required in the planning obligation.
22. The appended Schedule identifies the relevant sections of the case officer's report dealing with each of the key mitigation measures and shows how those measures have been carried forward into the S106 Agreement.
23. The proposed planning conditions were also set out in full in the Planning Committee's report and have not been subsequently refined.
24. It was not part of the resolution of the Committee to require that any of the proposed obligations needed to be changed, strengthened or otherwise amended, nor that any additional obligations were necessary. The audio recording of the Committee proceedings confirms this.
25. Had there been any such additional requirements by the Planning Committee it would have been good practice to specify them sufficiently so as to avoid the need for a subsequent report back to the Committee, and any such additions and/or amendments would have been clearly recorded in the Minutes.
26. In accordance with both normal and best practice, since the planning obligation agreement incorporates pre-existing obligations by reference to previous agreements creating them, the opportunity was taken to review those obligations and where applicable, to adapt them to ensure they comply with legislative requirements subsequent to the date of the entering into of the original agreement. As a result all planning obligations binding upon Stansted Airport Limited are Regulation 122 CIL Regulations 2010 compliant.
27. The Agreement has been approved, signed and sealed by all the other parties: Essex County Council as the local highways authority, Citicorp Trustee Company Ltd which has a Legal Charge on the Airport Property and Stansted Airport Ltd as the proprietor of the Airport Property with freehold title.

28. The requirement under section 70(2) of the Town and Country Planning Act 1990 to have regard to material considerations subsists until the issue of the decision notice. Since a period has passed between the Committee's resolution and the conclusion of the terms of the planning obligation and the decision notice, it is necessary to consider whether there have been any new material considerations or changes in circumstances since 14 November 2018 justifying a further report to the Planning Committee before the decision notice is issued.
29. The application was considered in the context of the National Planning Policy Framework (July 2018) and the Government issued an update to its National Planning Policy Framework in February 2019, but this related to housing matters and reflected case law regarding the protection on designated environment sites.
30. The case law in question had also been taken into account in the report before the Planning Committee on the Stansted Airport proposals. Therefore the new document does not raise any material differences to the July 2018 version considered by that committee.
31. A note is also attached to this report setting out officer's comments on a number of points made by SSE in correspondence to the Leader of the Council with copies to other group leaders and the Chief Executive. These address suggestions that there may be other changes in circumstances

Risk Analysis

Risk	Likelihood	Impact	Mitigating actions
The risk analysis is covered in the body of the report			

1 = Little or no risk or impact

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

3 = Significant risk or impact – action required

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

Note on points raised by SSE in correspondence to the Leader dated 12 April 2019

1. It is known that the letter was copied to the other group leaders and to the Chief Executive, but officers are not aware if it has had a wider circulation amongst Members. This note sets out officers' comments on relevant extracts.
 - (i) "The determination of the Planning Application on 14 November 2018 was followed, five weeks later (17 December), by the publication of the Department for Transport's long awaited Green Paper, "**Aviation 2050: The future of UK aviation**". Amongst many other policy proposals to enhance protection for local communities and the environment, the Green Paper advises of the Government's intention *"to extend the noise insulation policy threshold beyond the current 63dB LAeq 16hr contour to 60dB LAeq 16hr"*. The proposed Stansted 'SIGS' scheme, as defined in the draft S.106, is based on a 63dBA threshold and so would not meet the requirements of the new policy threshold for fully funded sound insulation. By contrast the new Heathrow scheme is based on fully funding sound insulation for homes within the 60dBA threshold and is therefore compliant."

Officer comment:

2. The Government published "Aviation 2050" in December but this is a consultation document about future policy and the consultation period on most of the questions therein has been extended and subsists at this time. Little weight can therefore be attached to its content in determining current proposals, nor would it be reasonable to defer decisions until that Government policy is settled.
3. Significant weight was attached to the government interim guidance set out in its policy paper "Beyond the Horizon Aviation Strategy: Making best use of existing runways" in the recommendation to Planning Committee. This interim guidance has not been superseded and remains unchanged.
 - (ii) "On 21 November 2018 it emerged in correspondence that the Chairman of the Planning Committee, Councillor Alan Mills – whose (additional) casting vote was the determining factor at the Committee's meeting on 14 November 2018 – had not appreciated that approving the application would result in an additional 25,180 flights per annum compared to the number of flights achievable with a 35mppa cap. He had been led to believe that it would make no difference to the number of flights. It subsequently transpired, again, in correspondence provided to SSE, that at least one other member of the Planning Committee, Councillor Lesley Wells, was under the same misapprehension at the meeting on 14 November 2018. This is not to disparage Councillors Mills and Wells for their failure to understand all the implications of approving UTT/18/0460/FUL. As at the determination date for the application, there were 2,352 documents on the file, amounting to some 13,000 pages of evidence, analysis and commentary. By comparison, for the 2006 application (UTT/0717/06/FUL) there were fewer documents (1,854) and fewer pages (circa 11,000)."

Officer comment

4. This was included in the report to the Planning Committee on 14 November. The number of air transport movements now forecast at 35 mppa is not to be treated as a limit. The Secretary of State acknowledged in his 2008 decision that 264,000 ATMs were acceptable. STAL's current proposals do not seek to relax that limit.

(iii) "There is also the doctrine of **legitimate expectation** to be considered, whereby, in delegating the negotiation of the S.106 to officers, it is reasonable to expect that the level of mitigation negotiated **would not be substantially inferior** to the comparable level of mitigation provided to communities around other major UK airports. It is also reasonable to expect that all of the matters listed in the Committee Resolution would be addressed and that the proposed mitigation would be consistent with current and emerging Government policy."

Officer comment:

5. Each application for planning permission under the Town and Country Planning Act 1990 must be determined on its own particular merits. The CIL Regulations, Regulation 122(2)(a) requires that an obligation be necessary. This was not part of the delegation arrangements by the Committee to officers to undertake a nationwide comparison of other airport mitigation measures. Comparisons between the sound insulation grant schemes or schemes for community trusts for different airports are not relevant to this application in this district.
6. The effects of air transport movements are locally fact sensitive and will also vary from airport to airport self-evidently because of the number and type of air transport movements, the limits on such movements if any including night flying restrictions imposed by Government or through the planning process and the type of aircraft, and the character of areas under departure routes and glide paths, such as the degree of urbanisation. Individual planning decisions are fact sensitive and made on their particular merits.

(iv) "The long-awaited new World Health Organisation ("WHO") Environmental Noise Guidelines, although published on 22 October 2018, were completely overlooked in the Officers' Report and so it is not surprising that, as later learned in correspondence, the Planning Committee Chairman was completely unaware of them at the time of casting his decisive vote. The materiality of the new WHO Guidelines can hardly be understated since they set significantly lower thresholds than previously applied for the avoidance of adverse health impacts from environmental noise. Their importance was recognised, even before they were published, in UDC's December 2017 Scoping Opinion, as follows:

*"In the event that the World Health Organisation ("WHO")'s new evidence on the impacts of aviation noise is published before a determination to grant planning permission, the environmental statement assessment **must incorporate** this evidence (for example, by way of supplementary assessment)." [emphasis added]*

These new WHO Guidelines for the first time contain specific thresholds for aircraft community noise impacts and have been described as a landmark in seeking to protect community health. They clearly have a material bearing on the appropriate level of mitigation to be provided to safeguard the health of the local community affected by noise from Stansted Airport. At the very least, the Planning Committee should be given an opportunity to review the implications of the new WHO Guidelines – not having previously been given that opportunity – and to consider."

Officer comment:

7. The World Health Organisation Environmental Noise Guidelines published on 22 October 2018 were a matter put to the Planning Committee in SSE's presentation to members and in the officer's report. No weight can be attached to these guidelines as they are directed at Governments in preparing national policy on airports and aviation and not to local authorities. It is notable that the Airports 2050 consultation document questions the appropriateness of these guidelines.

(v) "One of the most controversial issues considered by the Planning Committee on 14 November 2018 was the assumption made by STAL that new aircraft, said to be 50% quieter, would quickly replace existing aircraft types thereby ensuring that the overall noise impacts would be kept within 'acceptable' levels. Members questioned – but to little avail – the plausibility of the claims made for the speed of the fleet replacement programme, with detailed evidence regarding the Ryanair fleet, noting that Ryanair accounts for about 80% of Stansted's passengers. The projected noise contours were based on Ryanair replacing the majority of its present fleet (all of which are Boeing 737-800s) with the "cleaner and quieter" Boeing 737-8 Max aircraft. Even the optimists would describe the original assumptions made with regard to the speed of the Ryanair fleet replacement programme as "challenging". In the light of the ongoing problems with B737-8 Max, these assumptions are now wholly implausible, and this was such a material component of the noise and air quality projections submitted by STAL in support of its application that there is a clear case for allowing the Planning Committee an opportunity to review the implications."

Officer comment:

8. In assessing air traffic effects, the Environmental Statement supporting STAL's planning application did make assumptions about aircraft fleet mix. It also included a sensitivity test that changes to the rate of new variant aircraft of up to 10% will be insignificant. Furthermore, the air noise contour condition is itself a measure that would safeguard against greater exposure to aircraft noise than predicted should the current problem with the airworthiness and passenger confidence in Boeing 737 8 MAX aircraft have a long lasting impact on fleet

mix.

9. Other points raised about enforcement for alleged breaches of planning control have no bearing on the application considered on 14 November. The expediency of enforcement action in any particular case depends on whether any planning harm has resulted from any breaches. For reasons in the knowledge of SSE because the matter was raised at a meeting of the Stansted Airport Consultative Committee, it is unlikely that there has actually been any breach of the air transport movements and other movements limits imposed by planning condition on the 2008 planning permission.

**Schedule to the report to the Extraordinary Meeting of Council 25 April 2019
Key examples of obligations flowing from the report to Planning Committee**

<p>Extracts from Report to Planning Committee 14 November 2019</p>	<p>Section 106 Agreement</p>
<p>Sound Insulation Grant Scheme</p> <p>The revised and updated scheme, which can be secured by way of a s106 Legal Obligation, proposes to remove the requirement for the householder to contribute financially to the cost of insulation works; will be a three-tiered offer, to target greatest support to those who are most impacted with increased grant payments. The qualification criteria are set out in Table 7.24 (page 7-72).</p> <p>For properties in upper noise impact band, 69 and 66 dB LAeq, 16h, there will be a maximum grant of £10,000</p> <p>For properties in the middle noise impact band, 63 and 60 dB LAeq, 16h there will be a maximum grant of £8,000</p> <p>For properties in the Lower impact band: 57 dB LAeq, 16h/N65 200/ 90 dBA SEL(the SEL footprint for the noisiest aircraft operating at night (23:00 to 06:00) 600m distance/55 dB LAeq, 16h ground noise there</p>	<p>Schedule 3 Obligations by STAL with UDC</p> <p>Part 1 Noise Mitigation</p> <p>Enhanced SIGS set out in Section 2 to 5 Same maximum grants by noise impact band defined by the same criteria Provision for bespoke mitigation package for non residential properties affected</p> <p>1. Enhanced Sound Insulation Grant Scheme General Statement</p> <p>By way of replacement for the Existing Noise Mitigation Regime applicable to Stansted Airport, STAL will with effect from the Enhanced SIGS Commencement Date be required to comply with the provisions of this paragraph 2 of this Part 1, to the intent that STAL will be subject to the obligation (at STAL's discretion) to make payments of or to be liable for reimbursement of the costs incurred in providing sound insulation grant for an extended geographic area (increasing the number of eligible properties) to affected eligible properties; enhanced eligibility involving increased levels of rate of financial contribution by STAL to affected properties; and an area of eligibility based on additional noise metrics all as detailed in this paragraph 2.</p>

will be a maximum grant of £5,000

This revised mitigation scheme will be available to 50 properties in the upper category, 400 in the medium and 1600 in the lower categories. In addition, 5 schools, 2 healthcare facilities, 8 places of worship (7 if Ebenezer Chapel is no longer to be used as a church) and 3 community facilities will be eligible, unlike under the current scheme.

There may be practical reasons as to why SIGS may not be appropriate mitigation for an educational facility. Therefore, alternative mitigation measures may be required, which would require engagement with the relevant bodies to identify any appropriate measures. These could be secured by way of an appropriately worded condition or s106 Legal Obligation if planning permission were to be granted.

Detailed contents of the enhanced scheme

The following elements shall be included in the Enhanced Sound Insulation Grant Scheme with effect from the Enhanced SIGS Commencement Date:

(a) Revised geographic area covered

- Eligible claimants entitled to make an application under the Enhanced Sound Insulation Grant Scheme will be freehold, and where applicable leasehold, owners of properties lying within the Revised SIGS Contour Plan, that is to say the area comprising the three areas respectively tinted red, tinted yellow and tinted green within the noise contours.

(b) Eligibility (noise impact, noise contour and grant – maximum amount)

- This is as set out in Table 1 below, and applies to all Residential Properties lying within any of the three areas referred to in paragraph (a) above falling within the defined noise contours shown on the Revised SIGS Contour Plan.

Table 1

Noise Impact	Noise Contour*	Grant Maximum
Upper (tinted in red)	• 69 and 66dB L <small>Aeq,16h</small>	£10,000 Indexed per property
Middle (tinted in red)	• 63 and 60 dB L	£8,000 Indexed

	yellow)	Aeq,16h	per property
	Lower (tinted in green)	<ul style="list-style-type: none"> ▪ 57 dB Aeq,16h/N65 200 / 90 dBA SEL ▪ 600m distance/55 dB LAeq,16h ground noise 	£5,000 Indexed per property

**The reference year for the contours set out on the Revised SIGS Contour Plan is 2023.*

(c) Non-residential properties affected

In addition to the residential properties falling within the areas designated by the Revised SIGS Contour Plan, the following non-residential properties shall be eligible for a bespoke mitigation package of works or other measures as may reasonably be agreed by STAL following discussion with individual building owners and occupiers under the Enhanced Sound Insulation Grant Scheme so long as the properties remain in education, healthcare, worship or community use (as applicable):

Schools

- Howe Green School
- Spellbrook Primary School
- Little Hallingbury C of E Primary School
- The Leventhorpe School
- Mandeville Primary School
- Healthcare Falcon House, Little Hallingbury

<ul style="list-style-type: none"> ▪ Humpfrey Lodge, Thaxted Worship ▪ St Giles Church Great Hallingbury ▪ St Mary the Virgin Church Broxted ▪ Ebenezer Chapel Molehill Green ▪ St Mary the Virgin Church Chickney ▪ Thaxted Baptist Church ▪ St Mary the Virgin Church Little Hallingbury ▪ Thaxted Church (St. John the Baptist) Thaxted ▪ Thaxted URC Church Community ▪ Thaxted Anglican Church Hall ▪ Little Hallingbury Village Hall ▪ Thaxted Baptist Church Hall 	<p>The respective levels of claim of the owners of each of these properties shall be a sum as may reasonably be agreed between the property owner and STAL having regard to the specific condition and characteristics of the individual property, the practicality of carrying out noise insulation works to the property and the change in noise impact resulting from the Development.</p> <p>In the event that agreement is not reached between the property owner and STAL as to the sum to be paid in respect of the cost of the noise mitigation works to a non-residential property, either the property owner or STAL may refer the matter to UDC who shall appoint an expert ("the Expert") with relevant qualifications to determine the matter. The Expert shall act as an expert and save in case of manifest error the Expert's decision shall be final and binding on the property owner and STAL. UDC's and the Expert's costs shall be payable by the property owner and STAL in such proportion as the Expert shall determine and failing such determination shall be borne by the property owner and STAL in equal shares.</p>
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General Statement with respect to the operation of the Enhanced Sound Insulation Grant Scheme

- Having regard to the planning purpose that the noise mitigation regime for Stansted Airport for those eligible to apply under the terms of the Enhanced Sound Insulation Grant Scheme shall be made available for claimants to secure measures to reduce the impact of aviation-related noise being in place early, the trigger for commencement of the Enhanced Sound Insulation Grant Scheme will occur at a point prior to the Passenger Level Trigger Date (35 mppa being exceeded). STAL operates, and will until agreed otherwise with UDC continue to operate, an annual applications-based grant scheme with a cut-off date of 31 October in each calendar year.
- The coming into operation of the Enhanced Sound Insulation Grant Scheme shall take effect from the Enhanced SIGS Commencement Date.
- Each Residential Property and non-residential property is entitled to make no more than one claim under the Enhanced Sound Insulation Grant Scheme unless otherwise agreed by STAL.

Lower noise penalty limits

- STAL shall use its Reasonable Endeavours to seek to secure the agreement of the Department for Transport of increased limits in noise penalties payable for breach of noise thresholds and off-track flying at Stansted Airport.

Noise penalty payments

- STAL shall pay to the Community Trust Fund the amount of any penalties received by STAL for breach of noise thresholds and off-track flying at Stansted Airport, such payments to be made annually prior to 31 May each year accompanied by a statement setting out details of all penalties received during the preceding 12 months.

<p>Strategic Route Network Improvements</p> <p>ECC are currently preparing to implement a major improvement to a short section of the A120 west of M11 J8 to support economic growth. These improvements are likely to be able to accommodate some of the traffic growth arising from the airport expansion beyond the current 35mppa limit. However, they are not sufficient to cater for 43mppa. Further improvements are therefore necessary to address the potentially severe impacts on the SRN at M11 J8 and at the A120 Priory Wood roundabout. A mitigation scheme was therefore submitted by the applicant which, in terms of capacity and safety should be adequate to address these impacts.</p> <p>The mitigation works relate to additional carriageway widening on key approach/exit arms to/from the M11 J8 signalised roundabout and a series of amendments to lane allocations and limited physical adjustment designed to enhance the capacity of the junction, along with the separate signalisation of the westbound entry of Priory Wood Roundabout. HE has concluded that the additional capacity achieved through these amendments provide mitigation that more than compensates for the additional traffic anticipated to arise from the proposed</p>	<p>Strategic Highways Review Part 2 Section 1 at 35 mppa trigger point Highways Mitigation Scheme following completion of the strategic highways review at the cost to STAL. Open to traffic before 39 mppa through put reached.</p> <p>Provision for Commuted Payment of £1,160,000 towards alternative major highways scheme for J8 in a future Roads Investment Strategy Scheme (sum calculated by Highways England's Quantity Surveyor).</p> <p>Definitions</p> <ul style="list-style-type: none"> ▪ "Airport Bus and Coach Station Upgrade" means a scheme of works to enhance capacity and improve existing bus and coach facilities for passengers arriving at and departing from Stansted Airport, such scheme to give consideration to increased passenger circulation and waiting areas, bus waiting area(s), DDA compliant infrastructure, covered waiting areas, electronic signing and to be prepared by STAL and approved by UDC in consultation with the County Council in accordance with the provisions of this Part 2; ▪ "Commuted Payment" means the sum payable under paragraph 1.3 of this Part 2 in the event that it is determined that STAL will make a financial contribution in lieu of carrying out or paying for the Highway Mitigation Scheme, such sum to be ONE MILLION, ONE HUNDRED AND SIXTY THOUSAND POUNDS (£1,160,000) Indexed; ▪ "Highway Mitigation Scheme" means a detailed mitigation scheme as shown in principle in the Junction 8 (M11) Scheme Drawing and the Priory Wood Roundabout Drawing (or subsequent versions approved in writing by UDC in consultation with Highways England and the County Council) to adapt the Motorway Junction and Priory Wood Roundabout and associated areas of existing adopted public highway and/or land
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<p>increase in operations of the airport.</p> <p>In parallel with the ECC scheme and the airport's additional improvements, calls have been made for more extensive improvements to the M11 to be included in a future Roads Investment Strategy (RIS). The next RIS covering the period 2020 to 2025 is currently being prepared on behalf of the Department for Transport (DfT). Study work is still progressing to support the development of the next RIS, which is not due to be published by DfT until the latter part of 2019, so it is not yet known whether a scheme to upgrade the M11 or its junctions could be included. However, the possibility of such a scheme being included has had to be acknowledged in the context of this application.</p> <p>In light of the above, HE are minded therefore to recommend conditions to be attached to any planning permission. These relate to delivery of the specific set of mitigation improvements to the SRN as proposed by the applicants. In proposing these conditions, HE are, however, mindful of the need to adopt a flexible approach that will enable the sensible coordination or adaptation of works for the benefit both of users of the road network and the airport, and to respond to factors that are currently unknown.</p> <p>Such an approach is especially relevant to</p>	<p>under the control of STAL agreed between Highways England and STAL in consultation with the County Council being a series of alterations and improvements to such infrastructure arising from increased traffic and forecast traffic at the Motorway Junction and using Priory Wood Roundabout associated with growth in passenger numbers at Stansted Airport between 35 and 43 mppa;</p> <ul style="list-style-type: none"> ▪ "Highway Mitigation Works" means the works within the existing adopted public highway required to implement the Highway Mitigation Scheme in accordance with the requirements of Highways England; ▪ "Junction 8 (M11) Scheme Drawing" means Drawing No Steer Drawing 23003401-SDG-HGN-100-DR-D-00104 Rev P1 comprising Annexure 4 to this Agreement; ▪ "Local Bus Network Development Fund" means a sum of ONE MILLION POUNDS (£1,000 0000) Indexed to be made available and operated by SATF in accordance with the provisions of paragraph 4 of this Part 2; ▪ "Local Road Monitoring Scheme" means a scheme of traffic monitoring on the local road and STAL network to be agreed with STAL and the County Council (where monitoring is not otherwise being carried out) which shall include the matters set out in Annexure 6 for the purpose of providing information to the SATF to inform its decisions on the administration of the Local Roads Network Fund and Sustainable Transport Levy and inform decisions made by the relevant highway authority on works that are required to their respective road networks to mitigate impacts on the public highway. ▪ "Local Roads Network Fund" means a sum of up to EIGHT HUNDRED THOUSAND POUNDS (£800,000) Indexed to be made available to and operated by SATF (a) to cover the reasonable costs incurred for the feasibility and design and implementation of infrastructure improvements for local bus services used by passengers and employees at Stansted Airport in accordance with the provisions of paragraph 2 of this Part 2; and (b) and to cover the reasonable costs
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future RIS programmes and timetables. As such, while the recommended conditions relate to specific improvement plans HE's aim is principally to achieve the required outcomes within an appropriate timetable but to allow either: (i) for the proposals to be reviewed and, if appropriate, revised to better achieve the outcomes in the light of emerging conditions; or (ii) for the possibility of the proposals to be superseded by another more extensive scheme or schemes that would achieve the same outcomes. In the event of the latter HE believe a financial contribution by the applicant equivalent to the cost of the proposed mitigation scheme would therefore be appropriate

incurred for the feasibility and design and implementation of highway improvements within a five mile radius of Stansted Airport, which include (but are not limited to) safety improvements, management/mitigation of combined impacts of future traffic, measures to improve accessibility and to assist in the enforcement of local parking controls and restrictions in order to control unauthorised parking associated with the operation of Stansted Airport; and for the avoidance of doubt the Local Roads Network Fund shall be expended within Essex only

- “Kiss and Fly” means the picking up and/or dropping off on the forecourt areas or any other area designated for set-down within the airport of passengers, by private car or taxi, for the purposes of air travel;

- “Motorway Junction” means the highway infrastructure within the boundaries of the existing adopted public highway at and in the immediate vicinity of Junction 8 of the M11 motorway;

- “Priory Wood Roundabout Drawing” means Drawing No Steer Drawing 2300340-SDG-HGN-100-DR-D-00101 Rev P1 comprising Annexure 5 to this Agreement showing a signalisation scheme for the roundabout;

- “Road Investment Strategy” means the Road Investment Strategy (RIS1) published by the Department for Transport, Highways England and (as highways monitor) the Office of Rail and Road (ORR) identifying the programme covering the period 2015 – 2020 and includes the successor project RIS2 covering the period following 2020 and any other equivalent projects designed to deliver long-term improvements in the operation of and investment in the Strategic Road Network;

- “Strategic Highways Review” means a review to be carried out jointly between STAL and Highways England (in consultation with the County Council) upon reaching the Passenger Level Trigger Date (35 mppa), or earlier if they jointly agree, to examine the most appropriate mitigation works for the Motorway Junction and for the Priory Wood Roundabout. Such Strategic Highways Review shall consider inter alia (a) outturn

traffic conditions current at the review, (b) any other relevant traffic changes forecast; and (c) the then-current Roads Investment Strategy Programme for the wider strategic road network for the county of Essex and for Trunk Roads in the vicinity as then relates to the Motorway Junction;

- “Surface Access Strategy” means the strategy (referred in the 2003 Agreement as SASAS), including subordinate modal strategies, prepared by and at the cost of STAL and overseen by SATF to increase the use of public transport by air passengers and staff at Stansted Airport as amended from time to time.;
- “Sustainable Transport Levy” means a levy operated in accordance with the existing Public Transport Levy operated pursuant to Part 4 of the Fourth Schedule to the 2003 Agreement (to be a minimum of £0.25 pence per transaction from passenger parking and staff charging at the minimum rate of £10 per annual parking permit) increased by the addition of a minimum of £0.10 pence contribution derived from every transaction resulting from visitor use of the Express Set-Down forecourt area on the south side of the Terminal Building (all amounts to be Indexed), subject to review in accordance with the provisions of paragraph 5 of this Part 2;
- “SATF” means the existing Stansted Area Transport Forum, the terms of reference for which are set out in Annexure 8;
- “Transport Forum Revised Terms of Reference” means the document so-entitled comprising Annexure 8 to this Agreement;
- “Travel Plan” means the Travel Plan adopted by STAL with respect to travel to and from Stansted Airport by staff of STAL and persons employed at Stansted Airport.

Strategic Highways Review

- Commencing within 14 days following the Passenger Level Trigger Date (35 mppa), or on such other date agreed with Highways England, STAL shall in consultation with Highways England undertake the

	<p>Strategic Highways Review in order to consider outturn traffic conditions and predicted future traffic conditions, taking account of the Road Investment Strategy programme for the Strategic Road Network in respect of the Motorway Junction.</p> <ul style="list-style-type: none"> • Following completion of the Strategic Highways Review the Highway Mitigation Scheme shall be carried out and completed at the cost of STAL (such works to be undertaken by Highways England or their agent as then agreed with STAL) so that the Highway Mitigation Works are completed and open to traffic no later than the end of the first calendar month at the point when passenger numbers at Stansted Airport are forecast to reach 39 mppa in any twelve month period. • If following completion of the Strategic Highways Review Highways England agrees, based on Highways England's objective of providing an alternative major highways scheme for the Motorway Junction in a future Roads Investment Strategy scheme, STAL shall instead of funding the Highway Mitigation Works pay the Commuted Payment to Highways England or named nominee. The Commuted Payment will be due and payable at the end of the first calendar month at the point when passenger numbers at Stansted Airport have reached a level of 39 mppa in any twelve month period, unless Highways England and STAL agree otherwise in writing.
<p>Local Roads Network</p> <p>In addition to the J8 measures as summarised above, mitigation measures would be required for the local roads to resolve issues at potential hot spots. ECC recommends a local road fund of £800,000 be set up, which could be secured by way of s106 Legal Obligation. The mechanism for</p>	<p>Local Roads Network Fund of £800,000</p> <p>Funding to be released in three stages for any scheme approved by the SATF: feasibility: detailed design and implementation</p>

allocating the funding would be the Stansted Airport Transport Forum. The Highways Working Group of the SATF takes an overview of network safety and access by road, bicycle and on foot, and is chaired by Essex County Council.

Local Roads Network Fund

Following the Implementation Date STAL hereby agrees to ring-fence and make available the amount of the Local Roads Network Fund, such fund to be administered by SATF constituted under the 2003 Agreement and the 2008 Undertaking (subject to the modified terms of its operation as provided in the Transport Forum Revised Terms of Reference referred to in paragraph 8 of this Part 2). It shall be a condition precedent to the payment by STAL to the County Council of any sums requested by the SATF that the works and / or payment, as the case may be, are for Qualifying Purposes.

Following the approval and inclusion of a scheme by the SATF in the relevant work programme, funding shall be made available to the County Council in three stages (feasibility, detailed design and implementation (as follows):

- (a) Before beginning any stage of a scheme, the County Council shall submit an estimate of costs and a timetable relating to that stage, to the SATF;
- (b) If the SATF is content that the submitted costs and timetable are reasonable, STAL shall make the funds available to the County Council in advance of the funds being required (either in one payment or in staged payments, to correspond with the terms for payment with the contractors) for that stage of the scheme; and
- (c) Where the County Council has not spent (and/or not incurred a liability to pay or reimburse) any funds received on the earliest of the following events (unless otherwise agreed by the SATF):
 - (i) within six months following the date that the stage was completed under the timetable provided by the SATF (or any agreed amendments to that timetable) pursuant to paragraph (b) above;
 - (ii) within six months following the date that the stage was

	<p>suspended (so long as it has not resumed); or</p> <p>(iii) within three months following the date that the stage was aborted, the County shall return the funds received by it to STAL to the Local Road Network Fund (unless otherwise agreed by STAL).</p> <p>The obligation to fund payments for the Local Roads Network Fund shall cease from the fifth anniversary of the 43 mppa Date. STAL shall have no further liability on and following that date with respect to the Local Roads Network Fund.</p> <p>Local Road Monitoring</p> <p>Within two (2) months of the Implementation Date, STAL shall have agreed an implementation plan for the Local Road Monitoring Scheme on roads within Stansted Airport and, subject to the agreement of the County Council, on local roads controlled by the County Council as highway authority.</p> <p>The Local Road Monitoring Scheme shall be implemented in accordance with the implementation plan for the Road Monitoring Scheme such scheme shall cease from the fifth anniversary of the 43 mppa Date.</p>
<p>Public Transport (paras 9.122 to 9.126)</p> <p>A key funding mechanism for SATF is the Transport Levy which is raised from car parking transactions at the airport (currently 25p per passenger parking transaction and £10 per annum for staff parking).</p> <p>It is proposed to extend the Transport Levy to the Kiss and Fly transactions at 10p per transaction. The combined income from the levy is predicted to be around £12m of</p>	<p>Sustainable Transport Levy</p> <p>Commencing no later than the 1st April following the Unchallenged Permission Date, the Sustainable Transport Levy will be collected by STAL and the funds made available to the SATF to finance initiatives in accordance with the Surface Access Strategy to promote the use by passengers and staff of STAL and others employed at Stansted Airport of:</p> <p>(a) modes of transport to and from Stansted Airport other than private motor vehicles, taxis and private hire vehicles, and to encourage and promote car-sharing by STAL staff and others employed at Stansted Airport in order to improve the modal</p>

<p>funding to 2028, increasing to £20m in 2033 (assuming operations remain at 43mppa). This is in addition to the Bus Fund, a ring fenced sum of money. This was originally £2m as part of the 2008 Unilateral Undertaking.</p> <p>A third source of funding for the bus network comes from the sale of airport travel cards to staff. This is predicted to increase to £1.4m per year at peak employment. This is a minimum increase assuming the same levels of staff public transport use and no future improvements. This would generate in at least £15.5m worth of revenue generated for bus operators from airport staff alone.</p> <p>The Bus and Coach Working Group is proposed to be refreshed and the terms of reference updated. This would enable flexibility in the delivery of sustainable transport options given the changes in technology and approaches to delivery of services. Approximately £1m of the original Bus Fund has been spent in improving services associated with passenger growth from around 17mppa to 26mppa. The applicant is proposing to top up the ring fenced bus fund to £2m.</p>	<p>split in operation and to limit the impact of traffic on the surrounding highway network; and</p> <p>(b) in addition to the purposes set out in paragraph 5 of Part 4 of Fourth Schedule to the 2003 Agreement, sustainable modes of transport, including but not limited to the introduction of new technologies for all vehicles and walking and cycling schemes (including off-site provisions),</p> <p>SUBJECT ALWAYS to the requirement that the Sustainable Transport Levy is applied solely to initiatives for Qualifying Purposes.</p> <p>Rail-Users: discount scheme</p> <p>STAL shall operate a parking discount scheme for season ticket holding rail users to and from Stansted Airport Station in general accordance with the Rail-Users discount scheme (annexed) to this Agreement as may be amended from time to time by agreement between STAL and UDC.</p> <p>Transport Targets</p> <p>STAL shall use Reasonable Endeavours to:</p> <p>(a) maintain a 50% public transport mode-share for non-transfer air passengers;</p> <p>(b) reach and thereafter maintain single occupancy private car use by Stansted Airport staff at 55% by the 39 mppa Date; and</p> <p>(c) to reach a passenger mode share by Kiss and Fly of:</p> <p>(i) 20% by the 39 mppa Date; and</p> <p>(ii) 12% by the 43 mppa Date.</p> <p>and in the event that any of the targets are not met, an interim review of the Surface Access Strategy measures (in addition to the provisions of (the surface access strategy and travel plan timetable below) will be triggered.</p>
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Local Bus Network Development Fund of £1,000,000 to top up the balance of the existing Fund to £2,000,000

Local Bus Network Development Fund

Following the Passenger Level Trigger Date, STAL hereby agrees to ring-fence the Local Bus Network Development Fund such fund to be administered by the SATF constituted under the 2003 Agreement and the 2008 Undertaking subject to the modified terms of its operation. It shall be a condition precedent to the payment by STAL of any sums requested by the SATF that the works and / or payment as the case may be are for Qualifying Purposes

The obligation to fund payments for the Local Bus Network Development Fund shall cease from the fifth anniversary of the 43 mppa Date. STAL shall have no further liability on and following that date with respect to the Local Bus Network Development Fund.

Transport Forum Revised Terms of Reference: revised working arrangements

Subject to the like agreement of the Authorities, STAL agrees to participate in the SATF following the Unchallenged Permission Date in accordance with the Transport Forum Revised Terms of Reference comprising Annexure 8 to this Agreement.

Surface Access Strategy and Travel Plan – timetable revisions

Following the Unchallenged Permission Date and prior to 31 December 2019, STAL shall provide updated drafts of the Airport Surface Access Strategy and the Travel Plan to UDC and the County Council; and STAL shall be under an obligation to undertake the review and updating of each of the Airport Surface Access Strategy and the Travel Plan at five yearly intervals in the cycle 2020 / 2025 / 2030 and thereafter (unless otherwise agreed between STAL and UDC); and to provide interim updates at the mid-point within each five yearly time-period.

	<p>Airport Bus and Coach Station Improvements</p> <p>Following the Implementation Date and prior to the Passenger Level Trigger Date STAL shall commission a technical study of enhancement to capacity and passenger facility improvements for the forecast Stansted Airport passenger and employee travel growth using the bus and coach station at Stansted Airport, in order to define the Airport Bus and Coach Station Upgrade.</p> <p>Following prior consultation with SATF concerning the Airport Bus and Coach Station Upgrade, STAL shall carry out and bring into operation the works required in order to comply with such scheme before passenger numbers reach 36 mppa.</p>
<p>Other matters</p>	<p>Part 3 Skills Education and Employment</p> <p>Part 4 Community Trust Fund</p> <p>Part 5 Ecology Provisions</p> <p>Part 6 Surface Water Discharge Quality Monitoring</p> <p>Members can see the obligations in respect of these matters by clicking on https://www.uttliesford.gov.uk/media/9082/Draft-S106-Agreement-Stansted-Airport/pdf/20190328144140.pdf</p>

Committee: Full Council **Date:** 28 June 2019

Title: Stansted Airport Planning Application
UTT/18/0460/FUL

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If members wish to discuss the legal position and the advice received, or if they wish to seek further advice from Council officers, they are recommended to resolve to exclude the press and public from the meeting while this takes place pursuant to paragraph 5 of Schedule 12A, Local Government Act, 1972: Consideration of legal advice in public would involve the disclosure of Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

Introduction

This Extraordinary Council Meeting was summoned to consider the following 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.

Since submission of the requisition calling the meeting, matters have moved on. The detailed legal advice called for by the motion has been obtained and has been shared with all members on a confidential basis. The advice confirms, subject to one point, that the draft S106 Agreement with Stansted Airport Ltd faithfully reflects the requirements of the resolution approved by the Planning Committee on 14 November 2018 and there is no impediment to issue under the second part of its resolution.

A minor amendment to the draft section 106 agreement has now been negotiated to meet the requirement of the Resolution with regard to the transport users' discount. (See paragraph 19.)

Background

1. On 22 February 2018, Stansted Airport Limited submitted an application for planning approval 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.

2. On 14 November 2018, Uttlesford District Council's Planning Committee resolved to grant the application, subject to conditions and subject to completion of an agreement imposing legally binding planning obligations ("section 106 agreement"). The Report and Supplementary Reports identified the planning obligations required. The precise form that the section 106 agreement should take in accordance with the amended recommendation was resolved to be delegated to officers. Subsequently, a proposed S106 Agreement was drawn up between the Council, Essex County Council (as relevant highway authority) and Stansted Airport Ltd.
3. An Extraordinary Meeting of the Council was called for 25 April 2019 to consider the following 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.

The motion was defeated by 14 votes to 18 votes.

4. A further Extraordinary Meeting was called to consider the following 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.

5. An informal meeting was held on 30 April with members who had requisitioned the Extraordinary Meeting. It was agreed:
 - That officers would not complete the section 106 agreement and issue the planning consent for the time being;
 - That the legal advice previously obtained from Christiaan Zwart, barrister, would be circulated to all members;
 - That a briefing session would be held for all members, with Christiaan Zwart in attendance to answer questions about his advice;
 - That, if need be, further advice would be sought at Q.C. level and a further briefing for all councillors would be held. This advice would focus on whether the planning obligation requirements made by the Planning Committee have been incorporated fully and effectively into the s106 agreement, and on the origin and consequences of any “gaps” if any between the Planning Committee Resolution and the resulting S106 Agreement.
6. A briefing meeting for all councillors was called for 14 May. Advice obtained from the Council’s barrister, Christiaan Zwart, was circulated prior to the meeting. He spoke to his advice on 14 May and answered questions.
7. Further advice was then obtained from Stephen Hockman, Q.C. working jointly with Christiaan Zwart. Their joint advice was sent to members prior to a second briefing meeting held on 21 May. They answered questions raised by members at that briefing. Issues raised at the briefing meeting by members, and by Stop Stansted Expansion separately, led to additional further advice from Stephen Hockman, Q.C. and Christiaan Zwart. This also was shared with all members of the Council. In all cases information was shared on a legally privileged and confidential basis.

Legal Background and Options

8. If members wish to discuss the legal position and the advice received, or if they wish to seek further advice from council officers, they should resolve to exclude the press and public from the meeting while this takes place. This is important. The advice obtained by the Council is protected from disclosure to third parties by “legal professional privilege”. It is addressed to it and it alone. This protection does not only arise where litigation may be pending, but also in the course of giving independent and objective advice to the client. The council is the client of the two barristers referred to above. Legal professional privilege may be lost if legal advice is published, or disclosed publicly. Once legal privilege is lost, protection can be removed from all legal advice, not just that advice disclosed. The Council is entitled to consider legal advice in private so that it can weigh the risks and benefits of any particular course of action, without damaging its position in any subsequent legal proceedings.

9. The circumstances in which it would as a matter of law be open to a local Planning Authority to reverse any previous resolution by a local authority committee in favour of granting planning permission were considered in the case of *Kings Cross Railways Lands Group v London Borough of Camden* in 2007. Mr Justice Sullivan drew attention to the desirability in principle of consistency in decision making by local Planning Authorities and pointed out that *“if a local Planning Authority which has decided only 8 months previously, following extensive consultations and very detailed consideration, that planning permission should be granted is unable to give a good and, I would say, a very good planning reason for changing its mind, it will probably face an appeal, at which it will be unsuccessful, following which it may well be ordered to pay costs on the basis that its change of mind (for no good planning reason) was unreasonable.”* The Judge accepted that a change of mind may (emphasis added) be justified even though there has been no change of circumstance whatsoever if the subsequent decision taker considers that a different weight should be given to one or more of the relevant factors, thus causing the balance to be struck against rather than in favour of granting planning permission. In that case, a new development plan had been adopted after the resolution to grant planning permission and it was the requirement of the granting committee that a subsequent planning obligation be reviewed at a later committee. In the circumstances of this Council, no development plan has been adopted after 18th November 2018 and the Planning Committee did not require the planning obligation to be reviewed by a subsequent committee before issue of the decision notice. Instead, that Committee required an officer to issue the decision notice after an agreement had been concluded.
10. It follows from that case that any reason relied upon for a change of course from the Planning Committee’s resolution of 14 November must satisfy two criteria. First it must be a relevant or material factor i.e. a factor which relates to land use issues. Second it must be a very good planning reason. Whilst such a reason may relate to the weight to be given to the particular factor, the reason must be a planning factor and a factor of such nature as to justify, or to help to justify, the refusal rather than the grant of permission, and to be capable (where appropriate in combination with other material factors) of constituting a reasonable case on behalf of the local Planning Authority in the context of a planning appeal.”
11. The Council is currently well outside the legal time limit for determining this application. The planning performance agreement between STAL , ECC and UDC provided for an extension of time beyond 13 weeks but this was concluded when the s106 was signed by them and their related signatories. The applicant is entitled to appeal to the Secretary of State for non-determination. If the applicant does this, the matter is taken out of the Council’s hands. An appeal hearing would be held by a planning inspector. Once an appeal is made, the Council cannot then recover the power to deal with the application.

Financial Implications

12. The usual rule in a planning appeal is that the parties bear their own costs. If there is an appeal to the Secretary of State, however, as well as incurring its own costs, the Council may be subject to an application for costs by the applicant. Interested parties, including statutory consultees, may also apply for costs, or the Secretary of State may choose himself to award costs without having been asked by any party to do so. It is obvious that the costs incurred by the applicant in relation to an appeal are likely to be very substantial indeed. The Council has previous experience of a planning appeal when it refused planning permission for the 2007 airport planning application. This was granted by the Secretaries of State on appeal and the appellant was successful in an application for costs.

13. The following information is provided to assist members in understanding how the issue of costs is addressed on appeal. Costs may be awarded where these criteria are met:

- A party has behaved unreasonably.
- The unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

The word "unreasonable" is used in its ordinary meaning rather than the public law meaning of what is generally known as "Wednesbury unreasonableness".

14. Unreasonable behaviour that could give rise to costs may be either

- Procedural (relating to the process).
- Substantive (relating to issues arising from the merits of the appeal).

15. In relation to non-determination, Government guidance on the award of costs includes:

"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."

16. Cost awards do not depend on the outcome of the appeal. Therefore, one party may win an appeal and obtain its costs, or lose an appeal and gain its costs. This is because the underlying concept in planning appeal costs awards is to instill discipline in decision making and appeal conduct.

17. The Council maintains a planning reserve to provide for the costs of the local plan in excess of the budget provided, and all planning appeals. A substantial award of

costs, together with the costs that would be incurred by the council, would significantly deplete the reserve.

18. In light of the legal advice received, it is therefore the strong advice of the s151 Officer 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. In the event that members refer the matter back to the Planning Committee, it is the strong advice of the s151 Officer that expenditure from the Strategic Initiative Fund (SIF) is suspended pending the outcome of this matter.

Matters relating to the Planning Obligations

19. Several points have been raised about the obligations to address the effects of the proposed development on transport networks. The mitigation measures stem directly from the Transport Assessment work and the consultation responses from the highways authorities (Essex and Hertfordshire County Councils and Highways England) as revised prior to the Planning Committee. The objections were withdrawn on the basis of the amended recommendation terms as amended that included the County's requirement for a commitment to use reasonable endeavours to ensure mode share targets were met. The mode share targets have their basis in the transport modelling work that the local highways authority had tested. They ensure that current voluntary targets are adhered to, and establish a baseline replacing the lower target that had been required in 2008. This is set out in the Transport Assessment of the Environmental Statement and its Addendum. Sensitivity testing was carried out using alternative mode share assumptions. The Local Road Fund of £800,000 was quantified from estimates for indicative local highway improvement schemes that the local highway considered could potentially be necessary from the TA work, subject to the impact on the network of specific non airport developments. The extended rail users discount scheme allows discounted parking to rail season ticket holders and its wording has been perfected to ensure a higher rate of discount would be provided. The amended clause in the obligation is appended.
20. The other principal point related to the Sound Insulation Grant Scheme. This is considered below in paragraph 26 in the context of the government's Aviation 2050 green paper. The point based on a per passenger comparison of airport operators' contributions to community trusts is not a material planning consideration.

Assertions of a material change in circumstances warranting consideration by the Planning Committee

21. The report to the ECM held on 25 April shortly before the local government elections set out officers' comments on a number of points which had been made by a third party, Stop Stansted Expansion in correspondence to the Leader of the Council with copies to other group leaders and to the Chief Executive. The correspondence asserted that there have been material changes in circumstances since the resolution of the Planning Committee on 14 November. The key point remains whether those changes are relevant to the consideration of

whether there be a change to the Planning Committee's resolution to approve the application to a decision that it should be refused and whether the weight that would potentially be applied to any changes could be justified.

22. It has been asserted by some that as the 35 million passengers a year limit effectively means that there would be fewer passenger flights than with 43 million passengers, the impact of the additional passenger aircraft should have been taken into account. This was taken into account. The information was before the Planning Committee on 14 November. Whilst a material factor, that Committee would not have been justified in refusing the application on this basis. This is because the 2008 decision by the Secretaries of State had approved 274,000 total aircraft movements of all types of flights. The airport has the benefit of the 2008 permission and by statute could remain able to handle up to 274,000 flights a year. Greater flexibility as sought by the application to enable more passenger flights by reducing the number of cargo flights and general aviation and other flights would not breach that total limit of 274,000 flights that today remains permitted. The change in the type of flights to passenger flights would not result in an increase in the area of the noise contour which is used as a key metric for community noise exposure, but would reduce its area. The current contour area was lawfully imposed by the Secretaries of State in 2008 and cannot be exceeded by virtue of a condition on the 2008 permission, a condition which the applicant has not sought to vary. The Planning Committee resolved in November to grant permission subject to condition 7 (like the previous Secretaries of State). Condition 7 ensures that the contour of noise must reduce by a particular date, regardless of the particular type of aircraft available at that date
23. The Government published "Aviation 2050" in December after the Planning Committee meeting but it is not itself a policy document and remains a consultation document about future policy. The consultation period on most of the questions therein was extended and closed as recently as 20 June. Negligible weight falls to be attached to its content in considering whether to impede Recommendation (2) and the determining of current proposals. Decision making in the planning sphere is made against the certainty of the development plan where other policy remains dynamic, It would not be reasonable to defer a planning decision until Government policy is settled.
24. Significant weight was attached by the Planning Committee in November 2018 to the most up to date government interim guidance set out in its policy paper "Beyond the Horizon Aviation Strategy: Making best use of existing runways (June 2018)". This interim guidance has not been superseded and remains unchanged, notwithstanding consultation on other policy and announcements..
25. It has been asserted that WHO Environmental Noise Guidelines published in October 2018 were not taken into account by the Committee in November. This is not correct. The report to the Planning Committee in November expressly referred to them on pages 8 (summary table row 8), pages 17, 52, and 161, as did some of those who made representations at the public participation events on 6 and 7 November to several of the Committee Members . The report to the Council meeting on 25 April advised that negligible weight can be attached to these guidelines as they are directed at governments in preparing national policy on

airports and aviation and not to local authorities carrying out their regulatory functions. It is notable that the UK Government's Aviation 2050 consultation document itself questions the appropriateness of these WHO guidelines. Whilst acknowledging that "there is also evidence that the public is becoming more sensitive to aircraft noise, to a greater extent than noise from other transport sources, and that there are health costs associated from exposure to this noise", and that "the government is considering the recent new environmental noise guidelines for the European region published by the World Health Organisation (WHO), and that it agrees with the ambition to reduce noise and to minimise adverse health effects, 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 report did not assess." Although the Council has expressed its support for the 2018 WHO Guidelines in its response to Aviation 2050, the government's consultation document would not form the basis for a sound reason for refusal at this time.

26. It has also been asserted that the application sound insulation scheme is in some way inadequate. This is another matter raised in the Aviation 2050 consultation document. The draft 2019 planning obligation sets out in detail the proposed scheme for Stansted. It was covered in the officer's report to the 2018 Planning Committee meeting and page 123 shows the area it would cover and its extended reach. The DfT policy proposal is that the noise insulation policy threshold should be extended beyond the current 63dB LAeq 16 hour contour to 60dB. The scheme that is subject of draft 2019 obligation is broader than the DfT's consultation proposals because the middle category noise impact zone would already cover the area between 63 to 60 dB LAeq 16 hour, and introduces a further and wider lower noise impact zone covering the 57dB LAeq 16 hour. The extent of the Upper, Middle and Lower noise impact zones would also be defined not only on the basis of the LAeq metric but also using other metrics if they indicate the need for broadening of the zones' extent.
27. Other topical matters raised by some are: the problem that Boeing has with its B737 Max-8 aircraft; Heathrow Airport Ltd's submission of its application for a Development Consent Order under the nationally significant infrastructure project regime, the date that its additional runway capacity would become available and any potential effect on demand at Stansted; and the government tabling a statutory instrument to put its net zero carbon emissions by 2050 target on a legal footing.
28. Boeing's problem is neither a new nor a material consideration, whether it proves to be transitory or of longer term significance. The general consideration of aircraft fleet mix assumptions over time was considered at the Planning Committee in November 2018. The resolution to grant planning permission was subject to condition 7 limiting the extent of the 57 dB LAeq 16 hour noise contour. It also required that: *By the end of the first calendar year that annual passenger throughput exceeds 35million, or by 31 December 2024, whichever is the sooner, a strategy shall be submitted to, and agreed with, the local planning authority, which defines the measures to be taken by STAL or any successor or airport operator to reduce the area of the noise contour by the end of 2028 for daytime noise to 28.7sq km for the area exposed to 57dB(A) Leq 16h (0700-2300).*

Thereafter, from 2029, the area enclosed by the 57dB(A) Leq 16hr (0700-2300) contour shall not exceed 28.7sqkm for daytime noise. This reduction is required regardless of the aircraft type available by 2028. It was one of a number of planning conditions that are considered enforceable (as the Secretaries of State also so considered in 2008 when they imposed a similar contour condition on the 2008 planning permission) and planning obligations that the Planning Committee deemed on 14th November 2018 to be then necessary to make the development acceptable. This particular condition has the effect of constraining the number and/ or type of aircraft. If more older and noisier aircraft are retained in airlines' fleets over time, then this must result in fewer slots being allocated to ensure compliance with the planning condition, which is a lawful and enforceable safeguard. Just as with the noise contour condition lawfully imposed by the Secretary of State in 2008, it has remained to be enforced by the local planning authority as the enforcing authority. The council would remain as the enforcing authority for the new noise contour condition 7. The general requirement is for the local planning authority to consider whether service of a breach of condition notice or an enforcement notice requiring cessation of any breach would be fair, proportionate and expedient, having regard to the degree of harm arising, but this is not a justifiable reason for refusing a development if a planning condition is necessary to make the development acceptable. In the event of a breach of condition, that would be a matter for the local planning authority to consider at that time.

29. In relation to the recent announcement of the third runway at Heathrow proposals, the Environmental Statement supporting the Stansted application set out the key assumptions on runway capacity that had been made. This included the assumption by the Department for Transport that it was confident that by 2030 a third runway at Heathrow would be open. The current government policy position on UK aviation, *Beyond the Horizon: The Future of UK Aviation* (June 2018), does not suggest any policy constraint on airports arising from Heathrow development but instead is a policy (stated in paragraph 1.29 of that document) for airports that wish to increase passenger or air transport movement caps to be able to do so, "taking careful account of all relevant considerations, particularly economic and environmental impacts and proposed mitigations". The Planning Committee undertook that careful consideration. The DfT's forecasts in that guidance are not meant to be interpreted as policy constraints. There is no policy requirement to demonstrate need. Additional capacity at Heathrow is needed because of its particular international hub role, hence policy on that is set out in the *Airports National Policy Statement* made for the purposes of a different statutory regime: the *Planning Act 2008*. By contrast Stansted primarily serves a point to point role, and there is no reason to believe in a competitive air transport sector, cost conscious point to point traffic will necessarily move to Heathrow just because it has more runway capacity. It is important to note that although Heathrow Airport is planning to have the third runway open by 2026, the full range of related facilities will be delivered on a phased basis. The additional runway capacity will provide greater resilience at Heathrow from 2026, if indeed the operator manages to meet its project delivery plan, rather than provide a basis for taking market share from other London airports in the South East.

30. The recent tabling of the Statutory Instrument committing the UK to achieve net zero emissions is not a new material planning consideration. The submitted Environmental Statement Chapter 12 addressed Carbon Emissions including agreement of the International Civil Aviation Organisation in 2016 to implement its Carbon Offset and Reduction Scheme for International Aviation (CORSIA) with the objective of achieving carbon neutral growth. The report to the November Planning Committee dealt with the consideration of reducing carbon emissions. Government policy set out in Beyond the Horizon recognizes CORSIA and provides guidance that carbon emissions from aviation would be addressed through aviation fuel taxation. The Statutory Instrument does not suggest any change in government policy in relation to appropriate mechanisms. The contribution of Stansted Airport to UK aviation to the UK's 2050 national aviation budget target is not expected to change substantially in any event, so the new net zero target does not make a material difference.

Background Papers

31. The draft section 106 planning agreement is available on the Council's website. Other background papers are legally privileged and are exempt from publication or inspection.

Appendix

Stansted Airport Planning Application UTT/18/0460/FUL S106 Planning Obligation

The amendment is to the second paragraph in Annexure 7 so that it reads as follows:

“As an extension to the 2003 Agreement, STAL will provide parking within the short-stay car parks for rail commuters in possession of a rail season ticket from Stansted Airport at a price discounted by no less than 90% from the turn-up parking rate (the turn-up parking rate being the price payable to park in the premium short-stay car parks at the airport (currently known as the orange and green car parks but which may include any temporary or permanent replacement for these car parks) for 365 full days (a full day being any 24 hour period)). This rate of discount represents a higher rate of discount than that in operation when the current owner acquired its interest in Stansted Airport in 2013 and took over the pre-existing rail users discount scheme (which was 85% on a comparable basis).“

In addition the following wording is to be added to the beginning of paragraph 6 of Part 2 of Schedule 3: “Within 30 days after the Unchallenged Permission Date” to ensure that the obligation comes into force at the intended time in line with the Annexure.

Committee: Planning

Date:

Title: UTT/18/0460/FUL – Stansted Airport

17 and 24 January
2020

Report Author: Roger Harborough, Director of Public Services

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01799 510457

If members wish to discuss the legal position and the advice received, or if they wish to seek further advice from Council officers, they are recommended to resolve to exclude the press and public from the meeting while this takes place pursuant to paragraph 5 of Schedule 12A, Local Government Act, 1972: Consideration of legal advice in public would involve the disclosure of Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

Recommendation

The Assistant Director – Planning be authorised to issue the decision notice approving the planning application subject to the planning conditions as resolved by the Planning Committee on 14 November 2018 on signing of the amended S106 Agreement appended to this report.

Financial Implications

1. Expenditure from the Strategic Initiative Fund (SIF) is suspended pending the outcome of this matter in order to ensure that sufficient resources would be available to address the consequences of non-determination of the application or refusal.

Background Papers

2. The following papers were referred to by the author in the preparation of this report and are available for inspection from the author of the report.

Notes of workshop meetings with Planning Committee members held 2 – 22 October 2019 and related papers

Note of meeting with the applicant held 22 November 2019

Correspondence from the applicant and annexes

Background

3. On 22 February 2018, Stansted Airport Limited submitted an application for planning approval 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.

4. On 14 November 2018, the Planning Committee resolved to grant the application, subject to conditions and subject to completion of an agreement imposing legally binding planning obligations ("section 106 agreement"). The Report and Supplementary Reports identified the planning obligations required. The precise form that the section 106 agreement should take, in accordance with the amended recommendation, was resolved to be delegated to officers. Subsequently, a proposed S106 Agreement was drawn up between the Council, Essex County Council (as relevant highway authority) and Stansted Airport Ltd.

5. An Extraordinary Meeting of the Council was called for 25 April 2019 to consider the following 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.

The motion was defeated by 14 votes to 18 votes.

6. A further Extraordinary Meeting was called to consider the following 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.

7. An informal meeting was held on 30 April with members who had requisitioned the Extraordinary Meeting. It was agreed:
 - that officers would not complete the section 106 agreement and issue the planning consent for the time being;
 - That the legal advice previously obtained from Christiaan Zwart, barrister, would be circulated to all members;
That a briefing session would be held for all members, with Christiaan Zwart in attendance to answer questions about his advice;
 - That, if need be, further advice would be sought at Q.C. level and a further

briefing for all councillors would be held. This advice would focus on whether the planning obligation requirements made by the Planning Committee have been incorporated fully and effectively into the s106 agreement, and on the origin and consequences of any “gaps” if any between the Planning Committee Resolution and the resulting S106 Agreement.

8. A briefing meeting for all councillors was called for 14 May. Advice obtained from the Council’s barrister, Christiaan Zwart, was circulated prior to the meeting. He spoke to his advice on 14 May and answered questions.
9. Further advice was then obtained from Stephen Hockman, Q.C. working jointly with Christiaan Zwart. Their joint advice was sent to members prior to a second briefing meeting held on 21 May. They answered questions raised by members at that briefing. Issues raised at the briefing meeting by members, and by Stop Stansted Expansion separately, led to additional further advice from Stephen Hockman, Q.C. and Christiaan Zwart. This also was shared with all members of the Council. In all cases information was shared on a legally privileged and confidential basis.
10. 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.
11. Since that meeting further expert legal advice has been obtained from Philip Coppel QC at the request of Members, and officers have been supporting members of the Planning Committee in preparing to consider the two matters set out above through a series of workshop sessions, in part owing to the significant change in membership of the committee. These sessions have taken members through the content of the draft obligations and issues that might be raised as potential new material considerations and regarded as a material change in circumstances since 14 November. They have provided opportunities for councillors and officers to ensure the obligations and issues are fully understood.
12. This report seeks to set out the issues comprehensively, to enable the Committee to comply with the Council resolution and authorise the release of the appropriate decision notice on the planning application.

The Adequacy of the S106 Agreement

13. The starting point for assessment of the Agreement's adequacy is the decision of the Planning Committee on 14 November 2018. It resolved to approve the planning application for the Stansted Airport proposals subject to the applicant entering into planning obligations complying with the Heads of Terms put to the Committee at the meeting. That decision to approve the application implicitly means an agreement that accorded with the Heads of Terms would adequately address the impacts of the proposed development.
14. The obligations fall into the following categories:
- Sound insulation grant scheme
 - Transport
 - Skills education and employment
 - Community Trust Fund
 - Environment (Ecology and Surface Water Discharge Quality)

Sound Insulation Grant Scheme

15. The draft March 2019 planning obligation sets out in detail the proposed sound insulation grant scheme (SIGS) for Stansted. It was covered in the officer's report to the 2018 Planning Committee meeting, and page 123 shows the area it would cover and its extended reach. This would exceed the DfT's Aviation 2050 consultation proposal that the national noise insulation policy threshold should be extended beyond the current 63dB LAeq 16 hour contour to 60dB.
16. The middle category noise impact zone would already cover the area between 63 to 60 dB LAeq 16 hour, and it introduces a further and wider lower noise impact zone covering the 57dB LAeq 16 hour.
17. The extent of the Upper, Middle and Lower noise impact zones would also be defined not only on the basis of the LAeq metric but also using other metrics if they indicate the need for broadening of the zones' extent.
18. For residential properties, the new scheme does not require any owner contribution, which enhances the existing scheme. It also distinguishes the new scheme from the existing grant schemes for other airports, which typically require such a contribution. It is expected that this enhancement will encourage a higher take up rate of grant aid than the normal 50% of eligible properties. Around 2,000 properties would be eligible, as set out in the applicant's clarification letter.
19. A bespoke approach is proposed for eligible non-residential properties, which are individually identified in the proposed obligation.
20. Since June, discussions have been underway with the applicant to determine whether there might be any scope to further improve the obligations within the regulatory constraints imposed by Parliament. Regulations require that obligations must be:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development.

21. This has resulted in a number of amendments to the sound insulation grant scheme., including a commitment to conclude a review of the SIGS zone boundaries in conjunction with the council, to respond where necessary to any confirmed airspace management change that may be introduced in the future; joint promotion of the new scheme with the council; and an openness to all available technologies when considering bespoke measures for non-residential properties.

22. The transport mitigation measures stem directly from the Transport Assessment work and the consultation responses from the highways authorities (Essex and Hertfordshire County Councils and Highways England) as revised prior to the Planning Committee in November 2018. The objections were withdrawn on the basis that the amended recommendations included ECC's requirement for a commitment to use reasonable endeavours to ensure mode share targets were met. The mode share targets have their basis in the transport modelling work that the local highways authority had tested during assessment of the submitted application. They ensure that current voluntary targets are adhered to, and establish a baseline replacing the lower target that had been required in 2008.

23. This is set out in the Transport Assessment of the Environmental Statement and its Addendum. Sensitivity testing was carried out using alternative mode share assumptions. The Local Road Fund of £800,000 was quantified from estimates for indicative local highway improvement schemes that the local highway authority considered could potentially be rendered necessary from the TA work, subject to the impact on the network of specific other (non-airport) developments.

24. The extended rail users discount scheme allows discounted parking to rail season ticket holders and its wording has been perfected to ensure a higher rate of discount would be provided.

25. Since June, a number of further amendments have been agreed:

- The Local Roads Network Fund has been increased to £1 million. This is to take account of the broadening of the definition of the scope of the Fund when compared to the definition used in 2008 obligation, to include measures to address off airport parking. This increased scope was reflected in the definition of the Fund in the March 2019 draft Agreement but without any commensurate uplift in the sum of money to be made available. This has now been rectified.
- The applicant is also prepared to agree to a clarification that, where eligible for funding support, highway improvements within a five mile radius of the airport means within 5 miles of the boundary of the airport.

- The applicant is also prepared to agree to a new clause including a commitment to prioritisation of grants from the Local Bus Network Development Fund when the grant application provides for the use of Ultra Low Emission Vehicles (ULEVs), and a business case exists.
26. Officers have raised the council's concerns about local residents being given the opportunity to apply for jobs on the airport. The applicant proposes to respond by adding a commitment to holding local jobs fairs in Part 3, 2(e) of the obligation.
27. On 20 November 2019, the Supreme Court issued its judgement in a case *R (Wright) v Forest of Dean District Council* [2019] UKSC 53. This case is relevant to the proposed obligations for Stansted Airport, particularly the community trust fund. It also contains an excellent explanation of what constitutes a material consideration. The link to the judgement is:
<https://www.supremecourt.uk/cases/docs/uksc-2018-0007-judgment.pdf>
28. The judgment is in line with advice consistently given to members on the Stansted application. It is very clear that community benefits unrelated to the development are not material considerations and the judgment stresses that planning consent cannot be "bought and sold". Accordingly, pressure to seek additional benefits should not be pursued, particularly in the light of the judgment, which has again authoritatively confirmed previously established case law.
29. The applicant is prepared however to insert a clarification into the community trust fund terms of reference appended to the Agreement confirming that that the reference to Parish Councils as bodies eligible to make applications to the Fund includes Town Councils.
30. The applicant has stressed that, while it is constrained by law from providing additional community benefits through the mechanism of a planning obligation linked to its development proposals it is prepared to consider enhancement of its support for community led initiatives, but this would need to be in a business as usual context. No weight should be attached to such potential partnership arrangements, and they should not be progressed for the time being until after the determination of the current planning proposals has been finally resolved. This was made clear by the Supreme Court in the case referred to above, and the judgement refers specifically to a planning permission already being in place.
31. No specific changes are justified in relation to the obligations to monitor effects on biodiversity and water quality. However, a general compliance monitoring financial contribution has also been added providing £25,000 up front, and ongoing sums of £5,000 a year for ten years. This is emerging standard practice in the planning system nationally for all new agreements, confirmed by Statutory Instrument creating a new CIL Regulation 122 (2A). The Regulations constrain such monitoring contributions to the estimated costs of the Council in carry out necessary monitoring activity.

New Material Considerations or other changes in circumstances

32. The Planning Officer's report on the planning application prepared for the Extraordinary Meeting of the Planning Committee held on 14 November 2018 came to an overall conclusion in paras 10.106 to 10.111 starting on page 109 of that report. It advised:

10.106 The ES has demonstrated that there would be negligible impacts arising from the proposals. These have been assessed and tested by various consultees and issues arising have been addressed and appropriate mitigation measures identified.

10.107 Section 38(6) of the Planning Act 2004 requires that the determination be made in accordance with the provisions of the development plan unless material considerations indicate otherwise. The application accords with the development plan.

10.108 It is considered that the proposal represents a sustainable form of development in line with the NPPF (2018) paragraph 8 and accords with the NPPF.

10.109 The application makes best use of the existing runway infrastructure in accord with Beyond the Horizon (June 2018) and the Aviation Framework (2013).

10.110 No other matters sufficiently outweigh these considerations.

10.111 It is therefore recommended that the application be approved subject to s106 Legal Obligation and conditions

33. There are no new material considerations or other change in circumstances that now justify a different overall conclusion.

34. The conclusion was based on an understanding of the implications of the proposals in terms of total passengers, passenger air transport movements, cargo air transport movements, other movements and total movements. These key statistics were set out in the report for a series of years as relevant baselines and the key milestones in the Do Minimum Scenario and in the Development Case: 2016 (existing baseline); 2021 (construction baseline); 2023 (Do Minimum baseline); 2023 (Transitional Year) and 2028 (Principal Assessment Year).

35. The report included the following tables:

	2016 (Existing baseline)	2021 (Construction baseline)	2023 (Do Minimum baseline)
Total passengers ('000s)	24,300	32,600	35,000
Passenger ATMs ('000s)	152	199	213
Cargo AMTs ('000s)	12	13	14
Other ('000s)	16	19	19
Total Movements	181	231	247

('000s)			
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	2023 Transitional Year		2028 Principal Assessment Year	
	Do Minimum Scenario	Development Case	Do Minimum Scenario	Development Case
Total passengers (‘000s)	35,000	36,400	35,000	43,000
Passenger ATMs (‘000s)	213	219	212	253
Cargo ATMs (‘000s)	14	14	17	16
Other (‘000s)	19	20	20	5
Total Movements (‘000s)	247	253	249	274

36. This made it clear that if the 35 million passengers per annum (35 mppa) limit were to be retained this would constrain the total number of aircraft movements to 249,000, notwithstanding that the 2008 planning permission granted by the Secretaries of State permitted 274,000 movements.
37. When the Secretaries of State made their decision in 2008 to approve development to subject to planning conditions limiting the passenger throughput and aircraft movements, it was on the basis that 35 mppa would necessitate 274,000 movements. To now refuse an increase in passenger throughput and effectively cap the number of movements to 249,000 would equate to a new noise restriction.
38. [The Airports \(Noise-related Operating Restrictions\) \(England and Wales\) Regulations 2018](#) came into force on 23 July 2018. The guidance is relevant when major airports in England or Wales are considering the introduction of operating restrictions. Where such restrictions are being introduced through the mechanism of a decision under the Planning Acts, the competent authority is the local planning authority. It must be able to show that in introducing any new restrictions, it is doing so within a balanced approach to noise management involving the reduction of noise at source, land use planning and management, noise abatement operational procedures and operating restrictions. There are process requirements that include the need to assess each type of measure to address noise, the relative cost effectiveness and consultation with all interested parties. Reducing the movement cap by limiting passenger numbers would need to be properly justified.
39. The recommendations to national governments set out in the World Health Organisation Community Noise Guidelines had been published before the meeting on 14 November 2018. There was reference to these guidelines in the public speaking sessions and at the commencement of the Planning Committee meeting. They are referenced in the Supplementary List of

Representations document circulated to the Committee. As noted in the document, these guidelines were not government policy. That remains the case. The government has said its response to the WHO recommendations will be set out in the forthcoming Aviation Strategy.

40. The government has adopted a similar approach in relation to carbon emissions and climate change. Whilst it has put its net zero carbon emissions target on a statutory footing, it has not yet developed a clear set of policies and interventions for achieving that target. There are no policy limits for individual airports that constrain the maximum permitted emissions from aircraft movements to and from each UK major airport. The Committee on Climate Change wrote a letter to the Secretary of State for Transport entitled Net Zero and the approach to international aviation and shipping emissions on 24 September 2019) <https://www.theccc.org.uk/wp-content/uploads/2019/09/Letter-from-Lord-Deben-to-Grant-Shapps-IAS.pdf>. Again the government's response was that the CCC's advice will be taken into account when it sets out its policy in the Aviation Strategy <https://www.gov.uk/government/publications/committee-on-climate-changes-2019-progress-reports-government-responses> .(See Chapter 5 pages 79-82 and page 90).
41. It is not open to a local planning authority in determining a planning application to seek to anticipate what national policy choices the government may, or should, take. Nor is it appropriate to assume that the government will seek to manage air noise impacts or carbon emissions mainly through land use decisions. It has other available mechanisms to control, influence or incentivise the behaviour of individuals and corporate bodies. It is notable that in deferring policy decisions to the forthcoming Aviation Strategy, it has not withdrawn Beyond the Horizon (June 2018), or issued a policy statement caveating the weight to be attached to it in the interim.
42. There is recent case law from an Appeal Court judgement which in part dealt with the matter of whether the High Court was wrong to have found that a Planning Inspector could not reach a view on the likely effectiveness of measures to improve air quality in the national air quality plan; and that the inspector should have seen the relevance to his decision of the proposed measures to bring air quality within limit values (*Gladman Developments, SSCLG, Swale Borough Council, CPRE Kent Case No: C1/2017/3476*). The Appeal Court did not agree with appellant on these points.
43. This Council faces an analogous issue in considering representations made to it. In law, the council needs to focus on the evidence presented to it as to the effects of the proposed development. It is not obliged to embark on predictive judgements as to the timing and likely effectiveness of government decisions on achieving the statutory net zero carbon emissions target.
44. The council has to form its own judgement on the effects of the specific development. It cannot reasonably know at present how measures taken at

national level will translate into measures that may be imposed on a particular airport.

45. The sensitivity evidence in the Environmental Statement for the planning application does not suggest that there would be national consequences resulting from planning permission being issued, one factor leading to the Secretary of State's decision not to call the planning application in for his own determination. As a matter of essential principle, the planning system should not seek to duplicate other regulatory controls, and should generally assume they will operate effectively.
46. Underlying the Environmental Statement's assessment of noise, carbon emissions and air quality effects are assumptions about aircraft fleet mix for air transport movements at Stansted in 2028 under the Development Case with 43 mppa and 274,000 total movements. Attention has been drawn in representations to the number of Boeing 737 MAX aircraft in the fleet assumed by 2028. As Members will be aware, currently regulatory authorities have withdrawn airworthiness certification from the aircraft in the 737 MAX series.
47. In an official media statement issued on 11 November 2019, Boeing acknowledges that the FAA and other regulatory authorities will determine the timing of certification and return to commercial service, however it continues to target FAA certification of the MAX flight control software updates during Q4 2019. It says: "based on this schedule, it is possible that the resumption of MAX deliveries to airline customers could begin in December, after certification, when the FAA issues an Airworthiness Directive rescinding the grounding order. In parallel, we are working towards final validation of the updated training requirements, which must occur before the MAX returns to commercial service, and which we now expect to begin in January". The first of five key milestones on return to service had been completed as at 11 November.
48. That statement proved to be optimistic, Airlines are taking a cautious view as to when they will receive deliveries and when they will be able to bring their ordered aircraft into service but they still expect to be able to do so during 2020. Ryanair, which is one of Boeing biggest customers for the 737 MAX with 210 on order, accepts that there is a real risk that it will have none of these aircraft in service in summer 2020 and that it expects to fly 157 million passengers in the financial year to the end of March 2021, up only 2.6% on its target outturn for 2020 but its chief financial officer has said that there is "no risk at all" that the airline would fail to meet its target of flying 200 million passengers by March 2024. It would be a matter of speculation to assert that fleet mix assumptions for 2028 will turn out to be materially incorrect.
49. The Environmental Assessment supporting the planning application included a sensitivity test in which there were 10% fewer aircraft reaching the noise and emissions performance standards of the 737 MAX series. This did not show any significant deterioration in effects. There are competitor manufacturers

with equivalent aircraft, and the fleet mix assumptions in the Assessment were also cautious in so far as they were based on a slower rate of take up than was viewed as likely. From the council's perspective as the local planning authority, 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.

50. In November 2018, officers' advice was that little weight could be attached to the emerging local plan. It was, and is a material consideration, but little weight can be attached to the detailed wording of Policy SP 11 Stansted Airport in the plan as submitted for examination. The first set of hearing sessions on the development strategy and strategic policies including that dealing with the Airport have been concluded, but the council is still awaiting a letter from the examining inspectors giving feedback.

51. It is clear from the hearing sessions and their requests for dialogue between parties before the next set of hearing sessions that the Inspectors may potentially be looking to recommend major modifications to Policy SP11. However, employment growth at the Airport is an integral part of the development strategy set out in the submitted plan, and airport development on the scale proposed in the planning application is included within the preferred scenario for employment growth in the evidence supporting the Local Plan. There are no compelling grounds to support an argument that issuing the planning permission for the development would prejudice the outcome of the plan making process.

Conclusion

52. There are no grounds for deeming the S106 Agreement to be inadequate. Further work to review the obligations has been concluded and it has been amended where possible within the legal constraints.

53. There are no new material considerations that would justify a different decision to that resolved by the Planning Committee on 14 November 2018.

54. The development plan framework position has not changed materially since 2018.

55. 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 appended amended planning obligations have been signed by all parties.

Risk Analysis

Risk	Likelihood	Impact	Mitigating actions
Planning permission is challenged in the Courts	2 Action at least to delay an unchallenged permission date would be unsurprising	2 Any such challenge would need to be defended in the Courts	Advice at QC level has been sought
Planning permission is refused, notwithstanding the resolution to grant in November 2018	2 The application is controversial and has attracted significant objection from local residents	3 A major planning inquiry would require significant reallocation of resources and the use of reserves	

- 1 = Little or no risk or impact
- 2 = Some risk or impact – action may be necessary.
- 3 = Significant risk or impact – action required
- 4 = Near certainty of risk occurring, catastrophic effect or failure of project.

TWO DAY PLANNING COMMITTEE held at COUNCIL CHAMBER - COUNCIL OFFICES, LONDON ROAD, SAFFRON WALDEN, CB11 4ER, on FRIDAY 17 JANUARY at 10.00 am, re-convening on FRIDAY, 24 JANUARY 2020 at 11.00 am.

Present: Councillor S Merifield (Chair)
Councillors G Bagnall, P Fairhurst, R Freeman, G LeCount, M Lemon, J Loughlin, R Pavitt, N Reeve, G Sell (substituting for M Caton), A Storah and M Sutton

Officers in attendance: A Bochel (Democratic Services Officer), N Brown (Development Manager), K Denmark (Development Management Team Leader), G Glenday (Assistant Director - Planning), R Harborough (Director - Public Services), E Smith (Solicitor) and M Watts (Environmental Health Manager - Protection)

Also present: Councillors C Day, A Dean, G Driscoll, M Foley, A Gerard, N Gregory, V Isham, B Light, L Pepper and M Tayler
K O'Toole and J Twigg (Manchester Airports Group)
B Ross and P Stinchcombe (Stop Stansted Expansion)
P Coppel (Barrister)
D Sprunt and K Wilkinson (Essex County Council).

Post meeting note: There is no sound recording of this meeting.

PC103 STATEMENT OF THE CHAIR

The Chair welcomed those present and stated that in order to comply with the Council's duty of care to its staff and Members the meeting would take place over two non-consecutive days. Day One would be devoted to public speakers and anyone with a pre-prepared text was requested to deposit a copy with the Democratic Services Officer. The meeting would adjourn at approximately 4.00PM and would reconvene on 24th January 2020.

It was further stated that planning permission had been granted on 14th November 2018 subject to conditions and to the entering into of a legally compliant S106 agreement. There was no lawful reason to revisit that decision and the purpose of the present meeting was to consider the adequacy of the mitigation package contained within the S106 agreement the text of which was included in the documents pack. The Council's officers and external legal advisers all considered that it complied with Regulation 122 of the Community Infrastructure Levy Regulations 2010 as amended. This is a mandatory requirement and anything more than that Regulation permitted would be void.

The Chair stated that the purpose of the Two Day meeting, as stated in the agenda, was to consider whether, having regard to the facts, circumstances and policies now applicable and to the earlier resolution in favour of the application, the information that has been so far supplied in support of the application

UTT/18/0460/FUL is sufficient to convince the Council that it should authorise the grant of planning permission for that development application or whether than information falls short of doing so.

The Chair also referred to the resolution of the Extraordinary Council Meeting held on 28 June 2019.

Officers confirmed that the draft S106 agreement as it stood complied with Regulation 122 Community Infrastructure Levy Regulations 2010 as amended This is a mandatory requirement and anything more than the Regulation permitted would be illegitimate and could be struck down by a Court.

PC104 **APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST**

Councillor Fairhurst said he sat on the Planning Committee when this application was considered in November 2018. He entered the meeting with an open mind.

Councillor Reeve said he was a ward member for Broad Oak and the Hallingburys and entered the meeting with an open mind.

Councillor Freeman said he sat on the Planning Committee when this application was considered in November 2018. He entered the meeting with an open mind.

Councillor Loughlin said she sat on the Planning Committee when this application was considered in November 2018. She entered the meeting with an open mind.

Councillor Sutton said she was a member of Stop Stansted Expansion. She entered the meeting with an open mind and did not pre-determine.

Councillor Bagnall said he was a ward member for Takeley.

Councillor Lemon said he was the ward member for Hatfield Heath and sat on the Planning Committee when this application was considered in November 2018. He entered the meeting with an open mind.

PC105 **PUBLIC SPEAKING**

Members of the public who had registered their intention to speak gave statements to the Committee. A full list of those that supported, objected and commented on the application is included in the table below.

Planning Speakers – 17 January 2020	
Name	Object/support
Martin Peachy	Object
John Farrow	Support
Parish Councillor Andy Bennett	Object
Councillor Vere Isham	Object

Parish Cllr Patricia Barber	Object
Jonathan Fox	Object
Councillor L Pepper	Object
Ray Woodcock	Object
Michael Young	Object
Town Cllr Terry Moore	Object
Irene Jones	Object
Parish Cllr Christina Cant	Object
Parish Cllr David Hall	Object
Peter Jones	Object
Suzanne Walker	Object
Peter Sanders	Object
Ken McDonald	Object
Robert Beer	Object
Jane Gray	Object
Parish Councillor Andy Dodsley	Object
Parish Cllr West	Object
Sarah Cousins	Object
Stephen Boulter	Object
Janct Robinson	Object
Tony Jones	Support
Russell Graham	Support
Monika Simonaityte	Support
Chris Hardy	Support
Neil Banks	Support
Joanne Kitteridge	Support
Alex Smith	Support
Nick Millar	Support
Mark Lucas	Support
LUNCHEON AJOURNMENT	
Julien Sample	Support
Nicola Ward	Support
J A Devoti	Object
James Sloan	Support
Andrew Brambridge	Support
Sam Johnson	Support
David Burch	Support
Chris Hindle	Support
Maddison Broadbent	Support
Emily Ferris	Support
Stuart Moodie	Support
Scott Barlow	Support
Edward Gildea	Comment
Councillor Geoff Driscoll	Comment
Jangu Banatvala	Comment
Michael Belcher	Comment

Councillor Alan Dean	Comment
Louise Yellowlees	Comment
Raymond Beverley	Speak
Mike Fairchild	Speak
Parish Councillor Tayler	Speak
Parish Councillor Webb	Speak
Margaret Beer	Object
Mr Aldridge	Object

The meeting adjourned at 3.50pm until 11.00am 24th January 2020.

DAY TWO

PC106 DISTRICT COUNCILLORS SPEAKING SESSION

The meeting reconvened at 11.00am on 24 January 2020.

The Chair welcomed people to the meeting and confirmed the procedure that would be followed. The Chair clarified that the purpose of the meeting stemmed from the resolution of the Extraordinary Council Meeting held on 28 June 2019 and read as follows:

RESOLVED that:

In accordance with Section 70(2) of the Town and Country Planning Act 1990 as amended by Section 143(2) of the Localism Act 2011 to instruct the Chief Executive and fellow officers not to issue a Planning Decision Notice for planning application UTT/18/0460/FUL unless and until the Council's Planning Committee have had a sufficient opportunity to consider in detail, as timely as possible: (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; And thereafter ask the Planning Committee to determine the authorisation of the issue of a Planning Decision Notice.

Those Members who making declarations of interest on 17 January confirmed their declarations.

Additionally, Councillor Sell said he was a ward member for Stansted North. He entered the meeting with an open mind.

Councillors Gregory, Light, Dean, Caton, Day, Gerard and Foley made statements to the Committee.

The Solicitor read out a statement from Robert Jones of Hatfield Heath, which had been unavailable at the session on 17 January 2020.

PC107 PRESENTATION BY STOP STANSTED EXPANSION AND STATEMENT BY MANCHESTER AIRPORTS GROUP

Brian Ross and Paul Stinchcombe gave a Powerpoint presentation on behalf of Stop Stansted Expansion. A copy of this presentation is annexed hereto.

Ken O'Toole and John Twigg made a statement on behalf of Manchester Airports Group, the Applicant in this matter. A copy of this statement is annexed hereto.

Break for lunch 1305 to 1405

PC108 UTT/18/0460/FUL - STANSTED AIRPORT

The Director – Public Services distributed a new paper titled 'speaking notes'.

A point of order was raised by Cllr Fairhurst. He stated that it was not normal practice for the case officer to give a second written report in response to matters arising out of public speaking to the Committee.

In response the Development Manager stated that it was standard practice for any necessary clarification to be provided to Members following the close of public participation and that normally this was supplied by himself. The Solicitor confirmed this and stated that the Director – Public Service would provide that clarification but that in this case a written note had been provided to assist Members in their deliberations.

The Director – Public Services gave a verbal report to the Committee. He said there needed to be a very good planning reason for the Committee to change its mind about publishing the decision notice granting planning permission. He noted the following points raised in public speaking and correspondence:

- World Health Organisation guidelines on community noise were referred to, however this is a matter which the government has reserved to itself and will address in its forthcoming updated Aviation Strategy. The level difference between the Do Minimum and the Development cases in both 2023 and 2028 was less than 1dB and therefore the difference had been assessed as negligible.
- 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. The highest predicted annual mean concentrations of PM2.5 were set out before the Committee in November 2018.

- There were no alternative fleet mix assumptions upon which to rebase the environmental statement, now that the Boeing 737MAX was grounded until at least summer 2020.
- In November 2018, the government believed there was a case for airports making best use of their existing runways and that this could be achieved within the statutory greenhouse gas emissions target. The emissions target had since shifted from 80% reduction to net zero output, but the Making Best Use of Existing Runways policy had not been withdrawn and remained current policy.
- Some representations had indicated that the Making Best Use of Existing Runways policy only supported planning applications to remove aircraft movements and passenger number caps, and not those where additional infrastructure other than an additional runway would be provided. However the policy did not include this caveat.
- The need for the current development had been raised via representations regarding a short term softening and dip in growth, as well as the existence of proposals for growth at Gatwick, Heathrow and London Luton. However the Making Best Use of Existing Runways Policy supported all applications to make best use of existing runways and did not require need to be demonstrated.
- It was not government policy that a balance of imports and exports should be achieved in each sector of the economy.
- The Council had not yet responded to Inspectors advising how it wished to proceed with its local plan, and therefore no more than limited weight could be attached to emerging policy SP11 in the terms in which it was submitted.

The Director – Public Services said the S106 agreement now proposed would adequately address the impacts of the proposed development, and the obligations were no less and no more than was necessary. The caveat attached to the resolution to refuse permission had therefore been discharged and a decision notice granting planning permission should now be issued.

Members Discussion

Members discussed whether there were discrete issues on which there had been a relevant material change in circumstance which should be considered sufficient to tip the tilted balance in deciding whether there had been any change therein.

Any changes to material considerations should be considered before identifying whether the Section 106 Agreement obligations adequately mitigated these. Six possible changes in circumstance by way of themes were suggested by Cllrs Fairhurst and Freeman were identified for further discussion:

- noise,
- number of flights,
- climate change,
- health and wellbeing,
- need and
- surface transport.

Noise:

In relation to noise the following matters were discussed with emphasis upon the publication of updated guidelines by the WHO pertaining to the health impact of noise upon populations. This was relevant to the question of there being more actual flights at Stansted :

- The Boeing 737MAX was now grounded until at least summer 2020. There was now no guarantee that noise restrictions could be met. The airport would be subject to a fine if it exceeded the noise limits presented in the application. The noise assessment contained in the ES was based on an outdated understanding regarding the impact of noise upon public health and upon assumptions as to the likely fleet mix of RyanAir at the date of the November meeting. These assumptions are as of January 2020 unlikely to come to fruition.
- The modelling that was done for the application in 2018 was based on noise levels of 55 decibels rather than 45 decibels.
- A revised impact assessment was unavailable and the Committee had no alternative fleet mix assumption. Any assumptions made about noise would be speculation.
- The health and wellbeing of residents of the district could be affected by the negative impacts of a possible breach of noise restrictions.
- The Committee considered increased awareness of the impact of noise nuisance upon health combined with fleet mix issues to be a change in circumstances which was a material consideration affecting the decision to approve the application.

Number of flights:

In relation to number of flights, the following matters were discussed:

- A member said that the November 2018 Planning Committee which had considered the application were not clear whether there would be an increase in the number of actual as distinct from permitted flights at Stansted Airport.
- Publishing the decision notice granting permission for this application would not grant permission for an increase in the number of flights permitted. The number of permitted flights, referred to in the documentation as Air Transport Movements (ATMs) was capped at 274K per annum in 2008 and this will not change. However, the Applicant has not reached this figure in terms of actual ATMs per year and an increase in the number of passengers passing through Stansted would result in a larger number of actual flights but still within the permitted movements total.
- The cap on passenger number is not synchronized with the cap on number of flights. One has always increased more quickly, leading to the need to apply for an increase in the other.
- The discussion on the number of flights ended with the Chair stating that it was up to members to decide whether this was a material change.

Climate change:

In relation to climate change, the following matters were discussed:

- Since the Committee considered the application in November 2018, the government had adjusted its target of an 80% reduction in carbon emissions by 2050 to a net zero emission goal.
- In December 2019, the Mayor of London had declared a climate emergency. In May 2019, the UK became the first country to declare a climate emergency. As of October 2019, over 200 local authorities had declared a climate emergency, including Uttlesford District Council which declared a climate and ecological emergency on 30 July 2019. In November 2019, the European Union declared a climate emergency. As of January 2020, 25 countries had declared a climate emergency. This timeline was a material consideration as it demonstrated a change in circumstances since the application was considered in November 2018.
- It was noted that the government intended to put restrictions on the amount of carbon that could be generated through aviation, but at present, there were no specified limits.
- Putting the green-house gas emissions in context, it was noted that Uttlesford needs to reduce its carbon dioxide emissions by 0.5 million tonnes per annum (rounded) to achieve its zero carbon target by 2030. In the application it is stated that the increase in passengers will increase the carbon dioxide emissions by 1.0 million tonnes per annum (rounded). i.e. the passenger increase causes double Uttlesford's target decrease.
- Members discussed the realities of the MaxJet engine and when it was likely, if at all, to come forward. There were concerns that as Ryanair had yet to place an order with Boeing, the new, and therefore more environmentally friendly aircraft would not be operational for a number of years. Members felt this was significant given that Ryanair accounted for 60% of operations at Stansted Airport.
- The Committee had a responsibility to consider the effects on Uttlesford residents and other people. With aviation responsible for 2% of global carbon emissions and 6% of the UK's carbon emissions, it would be difficult to justify not taking climate change into consideration, as a material consideration amounting to a change in circumstances.

Health and Wellbeing:

In relation to health and wellbeing, the following matters were discussed:

- Particulate matter was generated both by planes and other traffic entering and leaving the airport.
- It was important for the Committee to take the risks of exposing residents to PM2.5 and ultrafine particles into consideration. Reference was made to a paper in the British Medical Journal in this regard but the paper itself was not before the Committee.
- There was more evidence of the negative impact of particulates upon health available to the Committee now than there was in November 2018, particularly upon people with respiratory conditions and diabetes. The health of residents was of paramount importance.

- With the Boeing 737MAX grounded for the time being, no alternative aircraft with more efficient engines would be commercially available enabling a reduction in the amount of harmful particulate matter being generated.
- Members discussed the emission levels of the new MaxJet engine, and, as that engine was no longer on the table, said that new projections on air quality should have been provided.
- Air quality monitoring in Stansted Mountfitchet had not been included in the 2018 report to the Committee, however it was in the updated Environmental Study brought before this Committee today.
- Health and wellbeing was therefore a material consideration amounting to a change in circumstances. There was considerable agreement among the members who spoke to this topic that this was considered to be of great importance.

Need:

In relation to need, the following matters were discussed:

- The Development Manager advised that the need for expansion was not a material consideration.
- The expansion would clearly be good for the business environment, employment, incoming tourism etc.
- It was said an application might be considered unsustainable if it compromised the ability of future generations to meet their own needs.
- There was a danger of the 'airport in the countryside' concept being lost with continued expansion.
- The application could be considered to have been brought prematurely since at present only 28 million passengers travelled through the airport annually; below the current passenger cap of 35 million.
- The Director – Public Services stated that the Making Best Use of Existing Runways policy supported applications to utilize the capacity of existing runways. The only requirement of the policy was in so doing local environmental effects should be sufficiently mitigated.
- Expansion applications are also being considered for multiple other airports.
- The need for expansion is probably not a material consideration, since it is substantially unaltered since the Nov 2019 Committee meeting.
- The discussion on need concluded that it was most likely not a material change.

Surface Transport:

In relation to surface transport, the following matters were discussed:

- K Wilkinson (Essex County Council Highways) said the Local Plan had not been taken into account in the Committee's deliberations when the application was considered in November 2018. There was no change on this point and a monitoring scheme for the roads surrounding the airport was included within the s106 package in order to assist in mitigating the increased use of the surrounding roads.
- The discussion on transport concluded with the general view (also from the Chair) that it was probably not a material change.

Decision Notice

Councillor Fairhurst proposed that the decision made by the Planning Committee on 14 November 2018 in respect of application UTT/19/0460/FUL be overturned due to changes of material circumstances since the consideration of the application. These changes were in respect of the following matters:

- Noise
- Climate change
- The impact of particulates generated by the airport on health and wellbeing

It was requested that the issue of the potential increase in the number of actual flights within the parameters of the permitted maximum number of flights also be mentioned in the decision notice. There was some discussion surrounding the developing appreciation of the potential difference between the two figures but it was reiterated that the permitted overall cap on numbers was fixed.

In response to a member question regarding the preservation of the mitigation package, the Development Manager said if this application went to appeal, officers would ask for a Unilateral Undertaking to be put into place, thereby allowing the proposed s106 obligations to be retained.

Councillor Freeman seconded the motion.

The Chair read the draft decision notice to those present.

A recorded vote on Councillor Fairhurst's motion was requested. The results were as follows:

For: Councillors Bagnall, Fairhurst, Freeman, LeCount, Lemon, Loughlin, Merifield, Pavitt, Sell and Storah.

Abstain: Councillors Reeve and Sutton.

RESOLVED: Having regard to the changes between 14 November 2018 and now in relation 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,

the Committee resolves not to issue a planning decision notice for the development and, accordingly, the resolution of the planning committee of 14 November 2018 is no longer effective.

Planning Permission

Councillor Fairhurst proposed that permission for application UTT/18/0460/FUL – Stansted Airport be refused on the basis that it contravened policies ENV11

(Noise Generators), ENV13 (Exposure to Poor Air Quality) and the National Planning Policy Framework, as well as generally accepted perceptions and understandings of the importance of climate change and the timeframe within which it must be addressed.

Additionally, he proposed refusal on the basis that the application failed to provide the necessary infrastructure to support the application, contrary to policies GEN6 (Infrastructure Provision to Support Development), GEN1 (Access), GEN7 (Nature Conservation), ENV7 (The Protection of the Environment – Designated Site), ENV11 and ENV13

Councillor Pavitt seconded this motion.

A recorded vote on Councillor Fairhurst's motion was requested. The results were as follows:

For: Councillors Bagnall, Fairhurst, Freeman, LeCount, Lemon, Loughlin, Merifield, Pavitt, Sell and Storah.

Abstain: Councillors Reeve and Sutton.

RESOLVED that 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
- c) generally accepted perceptions and understandings of climate change, planning permission for the development is refused.

The full decision notice is available on the Council's website [here](#).

The Chair thanked everyone who participated for their input in the process.

The meeting closed at 18.15pm

7.16 Emissions from international aviation (along with international shipping emissions) are currently excluded from the legally-binding 2050 target which was set by the Climate Change Act 2008 and from the five carbon budgets which have been set to date (covering the period up to 2032). However, the UK's carbon budgets have been set at a level that accounts for international aviation and shipping emissions, so that the UK is on a trajectory that could be consistent with a 2050 target that includes these emissions.

Challenges for the future

- 7.17 The government has already taken significant steps to meet the challenges of a growing sector. It has:
- consulted on a draft NPS for its preferred option of a third runway at Heathrow
 - consulted on UK airspace policy in order to deliver the necessary framework and direction to unlock the benefits of modernised airspace, while addressing the local impacts of aviation noise
 - shaped the agreement of a global scheme to control the carbon emissions from international aviation

7.18 However there is still further work required if we are to reap the benefits that aviation can deliver for this country and ensure its environmental impacts are addressed.

Making best use of existing capacity

7.19 The government has set out its preferred option for one new runway in the South East by 2030 and in the Aviation Policy Framework expressed its support for the growth of airports in Northern Ireland, Scotland, Wales and airports outside the South East of England. The Airports Commission 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.

7.20 Strong growth in passengers over the past five years, including in the South East of England is putting significant pressure on existing infrastructure, despite significant financial investments by airports over the past decade. 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 Airports Commission's recommendation that there is a requirement for more intensive use of existing airport capacity and is minded to be supportive of all airports who wish to make best use of their existing runways including those in the South East. The exception to this is Heathrow, whose proposed expansion is proceeding through the draft Airports NPS process.





7.21 Airports with planning restrictions that wish to take forward plans to develop their airport and increase the utilisation of existing runways beyond those restrictions will still need to submit a planning application to the relevant authority, which we consider should be judged on the application's individual merits. As part of the consideration of any planning application environmental issues, such as noise and air quality, and other issues that supported the existing planning restrictions will be taken into account. Due to the recent rise in growth, the government believes that this issue cannot wait until the publication of a new Aviation Strategy. Therefore, as part of the call for evidence, it would welcome views with regards to this proposed policy.

Future growth beyond 2030

7.22 Since 2010, the number of passengers flying from and to UK airports has increased by 27% with almost 270 million passengers now passing through UK airports. Most airports in the UK are now flying more passengers than ever before, with airports such as Gatwick, Manchester, Luton, Edinburgh, Birmingham, Glasgow and London City all experiencing growth in excess of 35% since 2010. The government plans to publish revised aviation forecasts which will make use of DfT's updated aviation model. These forecasts will take account of new economic and environment data, while rebasing the model to take account of recent growth.

7.23 The government has set out its preferred option for an additional runway in the South East, which will be required by 2030. Beyond this there will be a need for the government to consider whether there is a need for a new framework to be developed to allow airports to grow sustainably and if so what that framework should look like.

Modernising our airspace

7.24 As demand for air travel has grown, so too have the demands placed on our airspace. If we are to foster growth and investment in the sector, we need to make efficient use of airspace. This includes using modern technology to its fullest effect. We also need to make sure that communities affected by current and new flightpaths are fully engaged. For example, they should be involved in the decisions on where aircraft are allowed to fly, and the times when they can do so.

7.25 Airspace modernisation is required right across the UK and we need to consider how it can be best delivered. The government, CAA, NATS, airports and air navigation service providers will all have roles to play in the success of the programme.

7.26 In the recent airspace consultation the government focused on providing high level direction and making sure the policies for individual airspace changes are fit for purpose. This approach left the proposal and pursuit of airspace changes to the regulator and the market. As part of the Aviation Strategy the government will consider the roles, structures and powers that currently exist and what, if any, new ones will be necessary to bring about the network wide, co-ordinated and complex changes needed for airspace modernisation.

TRANSFORMING LONDON STANSTED AIRPORT

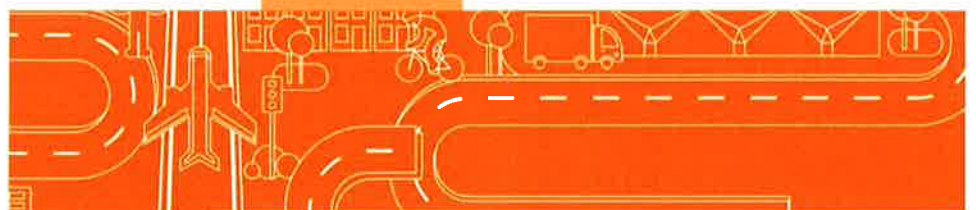
▶ 35+ PLANNING APPEAL

Planning

Alistair Andrew

Proof of Evidence

December 2020



8 Handling of the Application

- 8.1 The timeline and events describing the Council's handling of the application are summarised in the General SoCG in Table 2. It is undoubtedly one of the most extraordinary determination processes that I have witnessed during my career and it is necessary that I expand on the relevant chronology and process. This is both to set the proper context for the detailed evidence of STAL's witnesses and to correct a large number of errors and inaccuracies which appear in the UDC SoC.
- 8.2 As STAL's agent for the planning application, I attended all Council meetings and speaking sessions that took place, and naturally all application meetings with Officers and Members, that are discussed below.

Pre-application

- 8.3 I should introduce this section by describing MAG's approach to stakeholder engagement (especially with Local Planning Authorities). A major international airport is more than a significant transport facility and centre of economic activity. It is also an asset that touches the lives of local communities in many ways and has a permanent presence. MAG's philosophy is proactively to play a part in the life of the regions it serves and build a partnership approach with the widest range of stakeholders – local and regional; public and private. It also takes a long-term view. As a result, regular, open and honest engagement with LPAs (around 60 nationwide) is a key part of 'how MAG does business'. Its approach at Stansted is explained in the Community part of the SDP²⁶.
- 8.4 Thus, UDC was kept constantly updated as to our strategy, thinking and plans for Stansted. Six years ago, the draft SDP signalled our intent to raise the passenger limit. Consistent with our approach, we regularly engaged with officers and members at UDC from the outset. This approach to pre application discussions has, of course, long been recommended by national planning policy and contained in Section 4 of the current NPPF.
- 8.5 It was agreed with UDC's officers that the nature of the application warranted formal arrangements for its processing. A Planning Performance Agreement (PPA) was put in place with UDC and Essex County Council ("ECC"). This ensured that UDC was able to strengthen its capability to assess the application thoroughly and supplement its own internal resources. Specialist external consultant services were obtained by UDC from

²⁶ CD 15.4 SDP- Community

Bickerdike Allen Partners (noise) and WYG (air quality). Separately, ECC was supported by Jacobs in relation to highway modelling.

8.6 Mr Thomson's evidence describes in detail how the scoping of the ES was carried out, and the engagement with UDC and its advisers in agreeing the detail of how impacts would be analysed and judged. That engagement continued throughout the processing of the application, with regular contact between the airport's specialists and those of UDC.

Original Determination and November 2018 Planning Committee Resolution

8.7 Each of STAL's witnesses - especially Mr Cole, Dr Bull and Mr Rust - has explained how each individual topic area was scrutinised by the Council's Officers and advisors. During the eight months that passed from submission to the publication of the first Officer's Committee Report, many topic-based meetings were held on noise, air quality, surface access, ecology, planning & mitigation. These were not just attended by UDC and STAL but also included the relevant statutory consultees.

8.8 Ultimately, UDC's careful review process led to the production of STAL's "Consultation Responses and Clarifications" document²⁷ which set out detailed technical responses to various detailed points across the individual topic areas.

8.9 Clarification and explanation were provided, and the discussions also informed the approach to be taken to mitigation in the event of an approval. The outcome was that no statutory consultees raised objections. This included:

- Natural England;
- ECC (highway authority and county matters);
- Network Rail;
- Highways England;
- Environment Agency; or
- Thames Water.

8.10 The extensive public consultation activity carried out by STAL is set out in the SCI²⁸. The Council added to this with its normal formal consultation. Given the interest in the application, UDC chose to expand greatly its normal 'public speaking' opportunities at

²⁷ CD 11.2 Letter and Consultation Response and Clarifications, 5 July 2018

²⁸ CD 2.5 Statement of Community Involvement, February 2018

Planning Committee. Three 3-hour speaking sessions were held over the 6 & 7 November 2018. These included detailed presentations from STAL on the main issues & mitigation package and from SSE representatives on their objections and suggested seven reasons for refusal.

8.11 The 14 November 2018 Planning Committee had before it:

- The Officer's report and recommendation²⁹;
- A supplementary report setting out the content of the public speaking sessions; additional consultation replies and a summary table of the Officer's response to matters raised³⁰. I note here that this material included a number of matters which are now presented in UDC's SoC as either 'new information' or as constituting a 'material change in circumstances'. I use the publication of the WHO Guidance in October 2018 as one example, yet this document was subject to both submissions to the Committee and considered in Officer's advice to the Committee; and
- Late material from SSE and STAL's response.³¹

8.12 A full day's debate, informed by UDC officers, technical advisers and its Barrister's advice led to a resolution to grant permission subject to the specified conditions and a S106 agreement in line with the agreed Heads of Terms.

8.13 On 20 March 2019, MHCLG advised UDC that the Secretary of State, applying his normal policy, would not 'call in' the application³². This enabled UDC to issue a decision notice.

S106 Negotiations

8.14 In parallel to the MHCLG consideration period (from December 2018 to March 2019) UDC officers and STAL worked to convert the Heads of Terms to a full S106 Agreement. This was signed by STAL and formally sealed by ECC on 12 April 2019³³. A Certificate of Compliance with the CIL Regulations was prepared by UDC.

²⁹ CD 13.4b November 2018 Committee Report

³⁰ CD 13.1d November 2018 Supplementary Committee Report

³¹ CD 12.20 Letter from STAL: Clarification on points raised in SSE 'briefing note' - November 2018

³² CD 12.15 MHLG Response to Call-in Letter

³³ CD 11.16 Draft Section 106 Agreement, March 2019

8.15 In all my experience, the events at 8.12 - 8.14 would then naturally trigger the release of the decision notice, with conditions having already been agreed, and thus the discharge of the Planning Committee's resolution.

8.16 However, whilst ECC was in the process of sealing the agreement, behind the scenes at the Council, opposition Councillors were disrupting UDC's normal process of issuing the permission.

1st Extraordinary Council Meeting 25 April 2019

8.17 Spurred on by SSE's public campaign³⁴, a motion for an Extraordinary Council Meeting ("ECM") was put to Uttlesford's Full Council Meeting on 9 April 2019. It called for holding back the decision notice until the Planning Committee had scrutinised and reviewed the detailed text of the S106 Agreement and planning conditions until after the local elections (my emphasis added)³⁵.

8.18 The convened ECM on 25 April 2019 had before it;

- A very detailed Officer's report covering matters of Council procedure; the handling of the application and the risks associated with the Motion.
- A lengthy and detailed response from officers to matters raised in a letter dated 12 April 2019 from SSE to the Leader of the Council alleging a 'change in circumstances';
- A Schedule relating the agreed 'Heads of Terms' to the full text of the S106; and
- A letter from STAL to UDC's CEO that had been sent to all members prior to the meeting.³⁶

8.19 The full Council rejected the motion for delay by 18 votes to 14. Immediately after the vote was taken, a requisition for a further Council ECM was tabled by another opposition councillor (and soon to be the new Leader of the Council)³⁷ (CD13.2d).

8.20 This was in the following terms:

'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

³⁴ For example SSE Press Release 8 April 2019 (Appendix 5)

³⁵ CD 13.2b Paragraph 1, ECM 25 April 2019

³⁶ CD 12.29 STAL letter to UDC CEO

³⁷ CD 13.2d Requisition for ECM (2nd Motion)

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’.

8.21 On 5 May 2019 local elections led to a change in political control at UDC, with the former administration being voted out and replaced by a “Residents for Uttlesford” led administration.

2nd Extraordinary Council Meeting 28 June 2019 (Events leading up to & 2nd Legal Opinion)

8.22 On 30 April, 14 May and 21 May 2019, a series of private Council Member meetings were held where Councillors considered their officer’s advice on the issues raised by the further request for delay and re-consideration. They considered matters raised by SSE and received advice from their retained barrister (14 May meeting) and also further advice (as referred to in the motion at 8.20 above) from Stephen Hockman QC, a leading environmental lawyer and former Chairman of the Bar (21 May meeting).

8.23 During this same period, STAL clarified three points raised at the ECM concerning the S106 agreement – concerning the Rail Users Discount Scheme, the mode share targets and associated ‘penalty clauses’. This concluded with a clarificatory amendment of the Rail Users Discount Scheme (annexure 7 of the agreement).

8.24 Following the private member meetings, UDC’s CEO wrote to STAL advising that “*more time for greater reflection in order for a clearer proposition on the way forward to be articulated*” was needed by members “*to assist them in obtaining sufficient information in order to make a good decision*”³⁸.

8.25 This ultimately resulted in an amended motion published on 26th June 2019, immediately prior to the 2nd ECM (reported as UDC Agenda item 2b³⁹). It was conspicuously different from the original second motion tabled at the end of the first ECM, shifting the objective from obtaining ‘further legal corroboration’ of the S106 with the approved Heads of Terms to subjective consideration of the ‘adequacy’ of the S106 ‘having regard to the

³⁸ CD 12.30 UDC CEO letter to STAL dated 31 May 2019

³⁹ CD 13.3d Requisition for ECM (2nd Motion)

Heads of Terms agreed in November 2018' (my emphasis); and adding consideration of any 'new material considerations' before permission would be issued.

8.26 The second ECM was held on 28 June 2019. The meeting had before it:

- A detailed report from Officers and incorporating the updated further legal advice from Stephen Hockman QC. This set out in the clearest possible terms that there was no procedural, legal or technical basis that would warrant re-consideration of the application or further delay to issuing the permission. In particular, there had been no material change in circumstances. Two examples referred to were the WHO October 2018 Guidelines and the grounding of the B737Max8 aircraft. Amendments to the draft S106 Agreement were also explained⁴⁰.
- Advice from the S151 Monitoring Officer setting out the risks and financial measures that were necessary to protect the Council's position⁴¹.
- A petition presented by SSE requesting re-consideration by Planning Committee due to alleged changes in circumstances and deficiencies in the S106.

8.27 The motion was carried at the second ECM and thus the Council referred the application back to its Planning Committee⁴². This decision was, again, taken wholly contrary to clear, extensive and robust written advice from two barristers, including eminent Leading Counsel, senior Council officers (including the Chief Executive & the S.151 officer), and their technical advisers.

8.28 This sequence of politically manufactured events is, in my experience, extraordinary. What is notable is the degree to which the full Council's actions were so comprehensively and firmly rebutted and advised against by their own professional advisers and two independent barristers.

3rd Legal Opinion, S106 Workshops and Negotiations with STAL

8.29 Following the second ECM, two events warrant mention. First, the appointment "by UDC's Members" of a third barrister⁴³ (Philip Coppel QC) to give advice – particularly on the two matters subject to the ECM's resolution. Secondly, a series of five workshops with the Planning Committee, officers (from UDC and ECC) and legal advisors held from 2 to 18 October 2019. Each workshop examined, in detail, the various S106 provisions. The

⁴⁰ CD 13.3b ECM Report Park 28 June 2019

⁴¹ CD 13.3c ECM Supplementary Report Park- Amendment to Motion

⁴² CD 13.3a Minutes to June 2019 ECM

⁴³ paragraph 11 CD 13.4b January 2020 Committee Report

summary schedule of the outcomes of the negotiations is contained within the Committee Report⁴⁴.

- 8.30 This culminated in two meetings with STAL and UDC officers, which the Chair and Vice Chair of the Planning Committee attended. During these discussions with UDC, entered into in good faith by STAL, changes were agreed to the S106 Agreement and clarifications were provided on other clauses⁴⁵.
- 8.31 The new revisions, in conjunction with the rail users discount scheme noted above, now form the basis of the latest S106 draft agreement. This 2nd draft agreement was also sealed by ECC (on 22 January 2020).

24 January 2020 Planning Committee

- 8.32 The January Planning Committee followed the pattern of that in November 2018. A public speaking day was held on 17 January 2020, with further public speaking at the meeting on 24 January. The Committee had before them⁴⁶:

- An updated Officer's report
- A deed of amended planning obligations (revised S106)
- A letter from STAL (points of clarification and update)
- The Committee report & supplementary reports considered at the Planning Committee held on 14 November 2018.

- 8.33 The Committee report specifically covered⁴⁷:

- a) Aircraft Movements or alleged '*increase in flights*' (para 34-38);
- b) The reporting of WHO guidelines to the November 2018 committee (para 39);
- c) The approach to carbon emission and climate change, including the CCC's advice to Government and Government's MBU policy (para 40-45); and
- d) The B737 Max8 aircraft fleet issues (para 46-49).

- 8.34 The Officer's main report was supplemented by a written copy of further advice on the day from the Director of Public Services⁴⁸. It included further and /or additional advice to

⁴⁴ CD 13.4f Supplementary Committee Report January 2020- Track changes to s106

⁴⁵ Summarised at CD13.4f – ECM Track changes to S106

⁴⁶ CD 13.4b to CD 13.4f

⁴⁷ CD 13.4b January 2020 Committee Report

⁴⁸ CD 13.4g Speaking notes of UDC Committee Session January 2020

members following the speaking sessions on the topics of WHO guidelines, modelling of fine particulates, the CCC's advice to Government, the B737 Max8 aircraft, an alleged 'increase in flights' and Government's MBU policy. Again, what is notable is the degree to which the variously suggested 'change in circumstances' and 'deficiencies in the S106' were firmly and evidentially rebutted.

8.35 The sum of the consistent advice presented to members is best illustrated by the concluding section of the Officer's report (paragraphs 52 & 53):

"There are no grounds for deeming the S106 Agreement to be inadequate. Further work to review the obligations has been concluded and it has been amended where possible within the legal constraints.

There are no new material considerations that would justify a different decision to that resolved by the Planning Committee on 14 November 2018."

8.36 However, again spurred on by an SSE presentation (including the 'additional flights point'⁴⁹) and following a full day of debate, the Planning Committee resolved to refuse permission for the reasons on the decision notice. Three procedural points warrant mention:

- The public broadcasting of the Committee failed for large parts of the meeting, and the normal recording of the whole meeting failed for unspecified technical reasons;
- The Minutes of the meeting have been subject to extensive discussion and amendment within the Council, discussion at two meetings of the Planning Committee and were only finally agreed at the meeting on 9 September 2020, some 8 months later; and
- Notwithstanding the specific mandate handed to the Planning Committee by the full Council to consider two discrete issues, the vote to refuse the application was taken at the conclusion of the member's debate about whether there had been a 'material change in circumstances'. The second matter – 'the adequacy of the S106 Agreement' – was not subject to meaningful debate, and reason for refusal 4 was instead rushed through, following the application being refused for the first three reasons.

⁴⁹ Slide 17 of SSE Presentation (page 266 onwards CD 13.4b)

Summary

8.37 My conclusions on this topic are based on my extensive experience working in local authorities and as a consultant, and from being present at all of the meetings described above.

- This application was considered by members in a manner wholly outwith not only their own normal custom and practice, but also that of the vast majority of planning authorities.
- Members failed to determine the application on the correct statutory basis, that is to say a sound and objective consideration of development impacts, judged in accordance with the development plan, national policy and any relevant material considerations. Instead it was refused on the basis that, in Members' erroneous opinion, a 'material change in circumstances' from those pertaining at the time of the November 2018 resolution to grant planning permission simply *existed*.
- This was compounded by Members failing properly to revisit the 'planning balance' and weigh these perceived changes in circumstances with all other material considerations, including the benefits and national policy.
- Members failed to accept that matters raised ostensibly as new or significant matters were in fact, neither new nor significant. I use the WHO Guidelines and the 'number of flights' as examples. These were first considered as long ago as the November 2018 Committee.
- In my opinion, Members were unduly influenced by the representations and urgings of SSE⁵⁰, notwithstanding the very clear and consistent objective advice – spelt out on each occasion by their own officers, legal and technical advisers – as to the relevance, weight or evidential basis (or lack thereof) for many of the representations.
- These factors led to members misleading themselves and relying on unsubstantiated assertions, and no reasoned case was put forward to dispute the findings of the ES conclusions. This led directly, for example, to "general accepted perceptions" (sic) being used in framing its reason for refusal, contrary to all advice on how planning applications should properly be determined.

⁵⁰ CD 13.4a page 9 to 45, SSE presentation to January 2020 Planning Committee

TRANSFORMING LONDON STANSTED AIRPORT

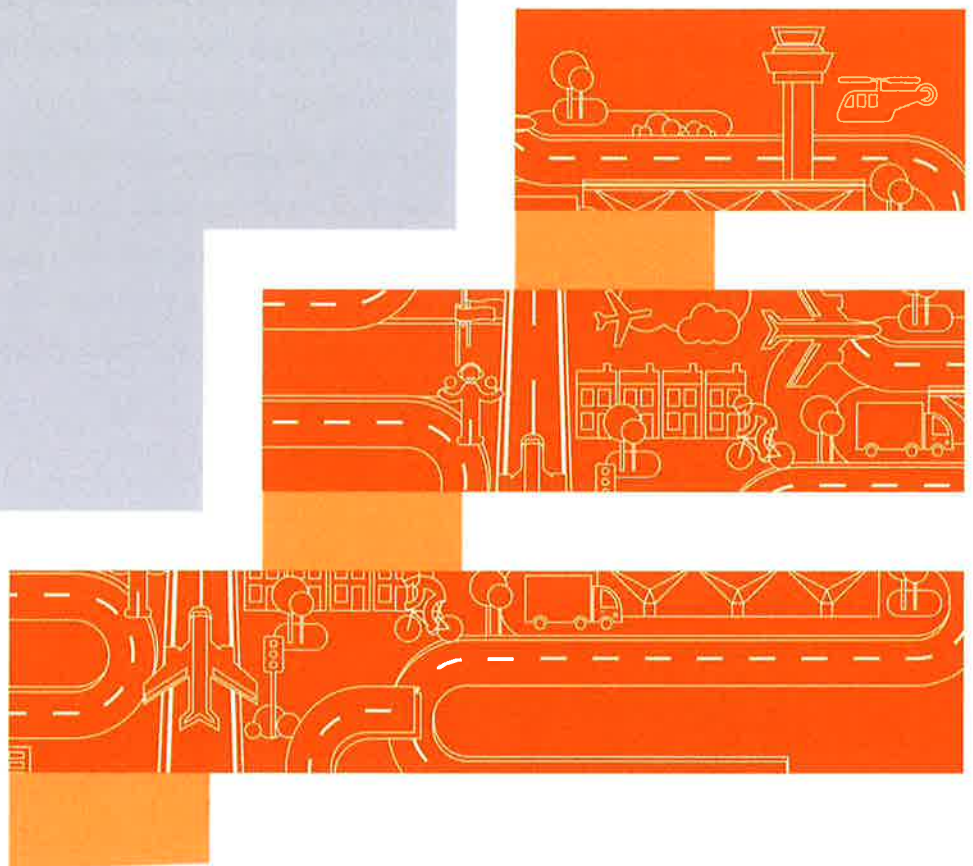
35+ PLANNING APPEAL

Planning

Alistair Andrew

Rebuttal Proof of Evidence

January 2021



3 “Condition 15”

- 3.1 UDC’s appeal case now focusses on the imposition of a new and novel form of control to manage future growth. ‘Condition 15’ is now put forward as a means of remedying alleged failings and uncertainties in the ES/ESA. It is suggested as being necessary to secure ‘a level of certainty and transparency to the environmental effects’ as introduced from paragraph 8.15 in Mr Scanlon’s proof.
- 3.2 This suggested approach as now proposed cannot be agreed to by STAL.

Certainty

- 3.3 A primary reason for making the application in 2018 was to create certainty and clarity. This was set out clearly in the Planning Statement (CD 2.3) at paragraph 2.102 & 2.103 and in detail in 8.19- 8.29. I do not repeat these sections here, but these points remain relevant.
- 3.4 The certainty created by a grant of planning permission for 43mppa benefits a range of stakeholders. This is not simply limited to the airport and airlines, but also to local councils, local communities, businesses (of any scale), regional investment agencies and national level transport infrastructure providers. Investment and planning decisions by most of these bodies are not, and cannot, be made sensibly on a short-term, annual basis, but must instead be based on longer time horizons.
- 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.

Planning Condition Tests

- 3.6 The NPPF sets out the long-standing tests for planning conditions at paragraph 55:
- Necessary;
 - Relevant to Planning;
 - Relevant to the Development Permitted;
 - Enforceable;
 - Precise; and
 - Reasonable in all other respects.

3.7 The NPPG sets out further guidance on the application of these tests. In light of this advice, the proposed condition to varying degrees fails all of these tests. It cannot therefore be considered appropriate, practical nor lawful.

3.8 As a starting point, the PPG (Paragraph: 006 Reference ID: 21a-006-20140306) 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”

and;

“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.”

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.

Other Draft Conditions

3.14 The above does not prejudice the productive on-going discussions with UDC over potential revisions to the draft conditions that may be appropriate, proportionate and justified, and this will continue unabated in order to inform the Planning Conditions Session scheduled towards the end of the Inquiry.

Proof of Evidence of Hugh Scanlon BA(Hons), MPhil, MRTPI

Stansted 35+ Appeal

Appellant: Stansted Airport Limited

Local Planning Authority: Uttlesford District Council

Planning Inspectorate No. Appeal: APP/C1570/W/20/3256619

Uttlesford District Council Application No. UTT/18/0460/FUL

Tuesday, December 8, 2020

UDC/4/1

LICHFIELDS

9.0 **Planning Balance**

9.1 In this section I undertake a planning balance exercise, with regard to the planning merits of the appeal proposals. In undertaking this exercise, I have regard to the planning balance exercise undertaken by the Planning Officer in the Officer Report to the 14th November 2108 Committee on pages 104-110 (CD 13.1b). However, I also have regard to the evidence present by the Council witnesses to this Inquiry, that considers the nature of changed circumstances since the 2018 Committee decision, as well as the implications arising from the additional environmental information that has now been submitted to this Inquiry, in the form of the ESA.

9.2 The starting point in this exercise is to have regard to the compliance of the development proposals with the prevailing development plan. I consider how the principle of the development proposed (i.e. the further growth of development at Stansted) accords with the development plan. I also consider compliance with the detailed topic-specific policies within the development plan. In this regard, I focus on compliance with development plan policies relating to air quality, air noise, carbon and climate change, noting the nature of the four reasons for refusal. I do, however, consider the additional policy compliance of the appeal proposals, as appropriate.

9.3 As referenced above, the Uttlesford Local Plan, adopted in January 2005, remains the relevant development plan for the purposes of this planning balance exercise. The majority of policies were saved by direction of the Secretary of State on 21 December 2007.

9.4 Where development plans are relatively dated, Paragraph 213 of the NPPF provides helpful guidance:

9.5 NPPF Para 213 – “*...existing policies should not be considered out of date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of*

consistency with the Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)."

9.6 As such, specific policy compliance with the NPPF is also important, to understand the relative weight to be given to each policy (and compliance with it) in the planning balance exercise.

9.7 My proof considers the degree of consistency between NPPF policies and Development Plan policies to assist understanding the planning balance exercise subsequently undertaken. My conclusions in this regard are set out within Table 6.1 in Section 6.0 of this proof, and I cross refer to these findings below, in brackets after each policy reference. Following the review of the appeal proposals against development plan policy, I then consider the nature of other material consideration that have the potential to influence the planning balance exercise.

Compliance with the Development Plan

Principle of Growth at Stansted Airport

9.8 There is no direct guidance on growth of Stansted Airport within the Development Plan. Policy S4 (which I give full weight) provides for development directly related to Stansted Airport to be located within the boundaries of the airport but this falls short of any support for the expansion of the Airport or the growth in passenger numbers. Policies AIR 1-7 (full weight) do not directly relate to the any of the areas where infrastructure is proposed, nor do they reference any support for an uplift in passenger numbers. Instead, there is a focus on reserving land for particular uses, protecting against change, to the Airport's general layout. They seek to resist non-airport related development within the Airport boundary. There is no anticipation or subsequent guidance within these policies to substantial growth, nor how it might be accommodated.

9.9 Hence there is no in-principle support for the appeal application in the Development Plan. This matter must be a neutral consideration.

Noise

9.10 Policy ENV11 Noise (to which I give moderate weight) was also considered by the Planning Officer in the 2018 Officer's Report to have moderate weight given that it is generally consistent with the NPPF other than the NPPF providing more detail regarding protecting existing business. Whilst I agree with the weight given to this policy, my distinction between the two relates more to the policy seeking to prevent development that adversely affects occupation of residential properties, whilst the NPPF appears more demanding, requiring new development to mitigate and reduce to a minimum potentially adverse effects (paragraph 180).

9.11 The Planning Officer concluded that the development would comply with Policy ENV11, referring to the results of the ES noise assessment. Concerns regarding the nature of the ES assessment are referenced by Mr Trow, and this detail is not repeated here. More relevant for this exercise is Mr Trow's conclusions regarding the nature of noise impacts. As above, he is able to confirm that subject to the realisation of the noise impacts of the development consistent with the findings of the ESA, the development proposals would result in an overall betterment in noise conditions.

9.12 It follows that the appeal proposals will not adversely affect the reasonable occupation of noise sensitive development and with such a finding, there is no need to undertake the balancing exercise identified in the policy (i.e balance harm against need for the project). Subject to the proposals being brought forward consistent with the positive noise impacts identified within the ESA, the proposals conform with Policy ENV11. This attracts moderate positive weight (reflecting the non-compliance with the NPPF).

Air quality

- 9.13 Policy ENV 13 (to which I give moderate weight) was also considered by the Planning Officer in the 2018 Officer's Report to carry moderate weight – it was generally consistent with the NPPF, but the later document set out an additional requirement in respect of AQMAs. I agree with this evaluation but would add this misses the additional requirement set out in paragraph 170 of the NPPF that establishes a requirement for development, wherever possible, to help improve local environmental conditions, including air quality. I would also disagree with the Officer's interpretation of this policy only applying to specific areas (i.e. land adjacent to the M1 and A120) and I refer to paragraphs 6.6 of this proof that, with cross reference to appeal precedent (CD23.43), concludes the policy has a wider effect.
- 9.14 Dr Broomfield considers the nature of air quality effects arising from the development within his proof and I highlight his conclusions in paragraphs 7.20-7.21 above. The proposals are confirmed as resulting in a worsening of conditions. Dr Broomfield notes the Appellant's conclusions regarding the lack of any significant impacts arising but expresses concerns regarding the details of the noise assessment undertaken, to the extent that he considers it fails to thoroughly review all likely impacts. He raises concerns in respect of the Bishop Stortford AQMA both in terms of the assessment undertaken and the impacts identified; the role of UFPs and a failure of the Appellant to consider these potential impacts; the potential impacts on nearby designated habitat sites given a failure to assess against an appropriate critical level for 24 hour mean NOx and a failure of the Appellant to commit to improving air quality, wherever possible, as promoted by NPPF policy.
- 9.15 However, Dr Broomfield notes the detail of policy ENV13, in that it sets a relatively low bar in respect of compliance (when compared to more recent 'betterment' wherever possible policy), and does not refer to impacts in AQMAs (noting that the Bishop's Stortford AQMA is in any event outside

Uttlesford) nor specifically to UFPs. He also accepts the Appellant's findings in respect of the M11 zone, where significant effects are avoided. Hence he is able to conclude that whilst the development proposals conflicted with this policy at the time of the decision on the planning application, with the publication of the ESA, this conflict has been removed. The proposals, as a consequence, comply with this policy and this attracts moderate weight in support of the proposals (noting the non-compliance with the NPPF).

Climate change and carbon

- 9.16 The Officer's Report noted that this is an issue addressed at a national level, with no directly relevant Local Plan policy. This interpretation of the 'national' issue of carbon potentially comes from the MBU June 2018 document, which does distinguish between local environmental impacts and national level impacts, with carbon falling into the second category. However, it confirms in its final paragraph that local authorities should take careful account of **all** relevant considerations, particularly economic and environmental impacts. It is for the local authority, rather than national government to consider each case on its merits. This must include those impacts associated with carbon emissions. That said, the dated Local Plan does not provide any directly relevant policy on carbon and hence the issue of carbon and climate change is not considered relevant to appreciate the extent of compliance with the Local Plan. I give further consideration to this topic as part of my review of other material considerations that influence the planning balance.

Infrastructure and Mitigation

- 9.17 With reference to highways, and as explained in paragraph 7.29-7.31 above, concerns are limited to the provision of a suitable package of highway works to Junction 8 of the M11, and the subsequent conflict with Policy GEN1 (b) (to which I give moderate weight, given the NPPF's greater emphasis on sustainable transport options). GEN1 (b) requires traffic generated by development to be capable of accommodation on the network. It is understood

that the current position is that there is a funding shortfall in respect of an ECC initial phase of work, the implementation of which is a prerequisite for the additional STAL proposal. Hence there are concerns that a suitable package of highway works can be delivered. However, it is noted that discussions between the various interested parties are well advanced, to find a solution for this predicament, to enable the delivery of sufficient highway improvements to the junction, and that there is a strong likelihood that this will be in place at the time of the Inquiry.

- 9.18 However, in advance of this it is considered that without the delivery of the highways works package to the motorway junction (or a similar agreed package that delivers the same mitigation), highway conditions will be prejudiced. As such, the proposals would be contrary to Policies GEN 1, and GEN 6 (Moderate weight) noting that this second policy references the more general requirement for necessary infrastructure. If an agreed solution to the junction is progressed, this conflict with development plan policy disappears.
- 9.19 Other mitigation shortcomings have been identified in respect of noise (i.e. the consistency school mitigation package; the noise contour mitigation to be updated, and the noise insulation package to be strengthened to better reflect impacts (including night-time impacts)); air quality (i.e. the potential for significant impacts on the AQMA, with no mitigation offered, the consideration of impacts from UFP with no mitigation offered); and carbon (i.e. mitigation to secure net zero development). With all three topics, other than the statements set out within the Airport's Sustainable Development Plan (SDP) (2015, CD 15.1-5) there is no commitment from the Appellant to deliver on a betterment strategy, seeking to minimise environmental effects over the longer term and respond to what is evidently a quickly changing policy context. Unfortunately, as I explain below, the SDP can provide no enforceable guarantees to the Council regarding the future growth of the Airport and the associated provision of necessary infrastructure.

Given this, the concerns regarding the nature of proposed mitigation remains, and as such the appeal proposals cannot currently be considered to comply with Policy GEN 1 and 6. This currently has moderate negative effect.

Other Policy Topics

- 9.20 The Planning Officer's Report to the 14th November 2018 Committee (CD13.1b.) provides a comprehensive review of compliance with other Local Plan policies and I agree with these findings with regard to the topics of design, flood protection, lighting, heritage assets, and groundwater. I consider the appeal proposals comply with Local plan policies across these issues.
- 9.21 However, I note Dr Broomfield's conclusions regarding the potential for adverse impacts on designated habitat sites given a failure to assess against an appropriate critical level for 24 hour mean NOx. He raises concerns regarding the impact on Hatfield Forest SSSI and Elsenham Woods SSSI, concluding that despite the information submitted in the ESA and subsequent exchanges with the appellant, the potential for adverse effects remain. Policy ENV7 of the Local Plan (moderate weight – given the tighter restrictions in the NPPF) requires that developments which adversely affect SSSIs will not be permitted, unless the need for the development outweighs the particular importance of the conservation value of the site.
- 9.22 With unknown impacts (noting the lack of assessment that results in this policy conflict) it is not possible to undertake any such balancing exercise (required by ENV 7). However, I do note Dr Broomfield's conclusions regarding the potential for some limited damage to vegetation. Hence, at this time, I give this matter moderate negative weight in understanding the extent of compliance with the development plan. I am not inclined to reduce this weight further to reflect the NPPF guidance, as this established a higher test for compliance.

Overall compliance with Development Plan

- 9.23 Overall, therefore have identified compliance with a majority of policies within the Development Plan, with currently non-compliance with policy GEN 6 Infrastructure Provision to Support Development and policy ENV7 The Protection of the Natural Environment – Designated Sites. I also note the potential for non-compliance with policy GEN 1 Access, should the highway package promoted by STAL not be implemented at Junction 8 of the M11.
- 9.24 However, I accept that compliance with the development plan is not dependent upon satisfying every policy in the Plan, and it is the case here that the extent of non-compliance is limited. I also note that compliance with GEN 6 is linked to the provision of an enhanced package of mitigation, and discussions regarding the detailed content of the s106 remain ongoing. Equally, the conflict with GEN 1 has the potential to be satisfactorily resolved.
- 9.25 As a consequence, I am of the opinion that despite the outstanding conflict with Policy ENV7 that attracts moderate weight, the appeal proposals would be consistent with the development plan. Importantly, this conclusion is reliant on the accuracy of the predicted environmental impacts as set out within the ESA, being those subsequently experienced by the local community as the Airport grows. This represents a significant positive weight in favour of the appeal proposals, within the planning balance exercise. There is a requirement for other material considerations to outweigh this to justify refusal of the appeal.

Other Material Considerations

NPPF

Air Quality

- 9.26 The distinction within the NPPF regarding the treatment of AQMAs, and this document's 'call' for environmental improvements wherever possible are relevant, given this document 'updates' the Local Plan policy. Dr Broomfield

concludes that the air quality impacts associated with the proposed development in Bishop's Stortford AQMA, have been under-estimated and as such, there is a risk of significant impacts on air quality in this AQMA. The NPPF, in contrast, calls for development in AQMAs to be consistent with local air action plans, within a general objective to improve air quality or mitigate impacts appropriately. (Paragraph 181) Dr Broomfield also remains concerned regarding the potential impacts arising from UFPs, that have not been considered in the appeal material. Plus the development, contrary to the NPPF requirement to where possible deliver betterment, results in a worsening of air quality with no substantive mitigation or offsetting measures proposed.

- 9.27 As such, there is conflict with the NPPF in respect of air quality impacts and this must attract significant negative weight in the planning balance. (I consider the conflict with the NPPF requirement to protect SSSs, below).

Noise

- 9.28 There is an additional requirement set out within the NPPF over and above the requirements of Policy ENV11, to minimise potential adverse noise effects (paragraph 180a). Mr Trow's evidence considers that that the appeal proposals are less successful at demonstrating compliance with this requirement. There are concerns regarding the adoption of a noise contour that exceeds Government standards, and the detail of the proposed noise insulation package, with regards to its coverage, application to night time noise effects, and its consistent application in relation to schools. Within this context, it is not possible to conclude the appeal proposals would necessarily reduce to a "*minimum potential adverse impacts resulting from noise*" (paragraph 180). This conflict weighs against the appeal proposals to a significant degree.

Climate Change

- 9.29 The NPPF promotes the principle of reducing carbon emissions and under the chapter title of 'Meeting the Challenge of Climate Change, Flooding and

Coastal Change’, it makes it clear the planning system should support the transition to a low carbon future in a changing climate (Paragraph 148). It continues, requiring the planning system to help shape places in ways that contribute to radical reductions in greenhouse gas emissions. Paragraph 150(b) requires new development to help reduce greenhouse gas emissions, such as through location, orientation and design. Perhaps most noteworthy, in defining sustainable development (i.e. the stated purpose of the planning system) it establishes three overarching objectives – economic, social and environmental, and as part of this last objective reference is made to a need to mitigate and adapt to climate change, including the move to a low carbon economy. Paragraph 8 confirms that opportunities to secure net gains across each objective should be secured.

- 9.30 The detailed performance of the development proposals in respect of the potential for carbon emissions and associated climate change is set out below (in respect of the consideration of prevailing airport policy) but the key outcomes are that the appeal proposals will result in an increase in emissions (compared to the no development scenario) with emission increasing to a projected peak in 2032, and from then on, reducing, with three separate reduction scenarios predicted – only one of which shows a reduction in emissions from that shown in 2019. The ability to satisfy appropriate emission targets is challenged in detail by Dr Hinnells, in his Proof of Evidence and this detail is not repeated. However, he highlights a potential for significant effects arising and, that the development will (almost certainly) adversely impact on the UK’s ability to meet it’s 2050 net zero targets to a degree that cannot be overlooked. As such, the appeal development’s contribution towards a low carbon future is questionable. I would consider that this results in a conflict with this NPPF objective with significant weight applying.

Nature Conservation

9.31 The NPPF states that those schemes that are likely to have adverse effect on SSSIs should normally be refused. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest and any broader impacts on the national network of SSSIs (Paragraph 175b). As above, Dr Broomfield's identifies the potential for adverse impacts on designated habitat sites given a failure to assess against an appropriate critical level for 24 hour mean NO_x. He raises concerns regarding the impact on Hatfield Forest SSSI and Elsenham Woods SSSI, concluding that despite the information submitted in the ESA and subsequent exchanges with the appellant, the potential for adverse effects remain. However, he notes that there is scope for some limited damage to vegetation, rather than anything more substantial.

9.32 That said, given the lack of information in this regard, it is not possible to undertake a balancing of benefits against harm. As a consequence, the proposals must be considered to be in conflict with the NPPF, weighing against the development proposals, but only to a moderate degree.

Economy

9.33 The NPPF provides strong support for the economy. Paragraph 80 makes it clear that significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and the wider opportunities for development. I have considered the scope of economic benefits identified by the appellant in the ES. Benefits are identified accruing from the increased access to air services (with knock-on increased business investment, business growth and tourism); increased cargo flights (noting the increase achieved despite the reduction in the cap, reflecting actual current number of cargo flights); substantial employment generation from construction and operation (including in direct and induced job generation). I

note that ECC's Economic Growth, Regeneration and Skills Department assessed the application material and concluded and concluded that the proposals were important to the growth of the Essex economy. I also note the nature of concerns regarding the identified benefits but having considered the assessment undertaken and the methodology adopted, I support the conclusions reached by the appellant.

9.34 I consider the scheme will support economic growth, and in accordance with the direction with the NPPF, I give this issue significant positive weight in the planning balance.

Sustainable Development

9.35 The NPPF also sets out the presumption in favour of sustainable development requiring the approval of development proposals that accord with an up to date development plan. (Paragraph 11). Paragraph 12 clarifies that this presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for the determination of applications.

9.36 The date of the Local Plan (i.e. 2005) does not necessarily result in its policies being considered out of date (NPPF paragraph 213). I have identified a number of discrepancies between the Local Plan and the NPPF, in terms of policies in respect of noise, and air quality, and nature conservation. The Local Plan also does not embrace the carbon agenda. However, as demonstrated in section 6.0 Table 6.1 of this Proof, there remains consistency between the majority of policies in the NPPF, and where discrepancies exist, there is consistency with general policy objectives. As such, I think it would be incorrect to label the Local Plan out of date for the purposes of Paragraph 11 of the NPPF.

9.37 I have undertaken a review of the appeal proposals in terms of its compliance with the Local Plan, identifying a small number of policy conflicts, but overall, reaching the conclusion that the proposals accord with the Plan. Hence, I also

conclude that the appeal proposals benefit from the presumption in favour of sustainable development (Paragraph 11 c). This represents a significant positive consideration in the planning balance.

East Herts District Plan

9.38 Dr Broomfield in his proof of evidence identifies shortcoming in the ESA in respect of compliance with EHDC District Plan Policy EQ4, that covers Air Quality issues. He concludes that the ESA fails to represent current levels of pollution with the AQMA accurately; it takes an optimistic approach to forecasting future trends in air pollution levels; it under-estimates the impact of the proposed development on traffic flows in the AQMA; and fails to consider the extent of potential air quality impacts throughout the AQMA. He also questions the methodology adopted in the submitted assessment that fails to reflect East Herts District Plan and accompanying guidance (i.e. Air Quality Supplementary Planning Document, CD16.10). He notes a failure to consider the economic costs of emissions to air in accordance with EHDC policy. As a consequence, Dr Broomfield is concerned that the package of mitigation proposed could be inadequate to address all future impacts on the AQMA. He concludes that the appeal proposals conflict with EHDC policy EQ4.

9.39 Such non-compliance must attract negative weight in the planning balance exercise. I am aware that EHDC do not formally object to the application which suggest that its concerns in this regard have been satisfied. Given this context, I am inclined to give some (rather than substantial) negative weight to this point.

Aviation policy

9.40 The APF (2013) (CD 14.1) and Beyond the Horizon, The future of UK Aviation, Making Best Use of existing runways (June 2018, 'MBU' CD14.2) remain current Government aviation policy. Relevant emerging policy includes the Aviation 2050 The Future of UK Aviation (CD14.27) and its associated policy papers. However, I am aware that since the publication of these important

policy documents, there has been a shift in context, perhaps led by a changed carbon emission agenda. Whilst not adopted Government aviation policy, there has been publication of a series of documents that I consider indicate a direction of travel for future policy. Key documents in this regard include the Decarbonising Transport – Setting the Challenge consultation document March 2020 (CD 17.38); the various advice letters and reports from the CCC; and the Government’s responses to these submissions. I suggest these all comprise material considerations, that have the potential to influence the weight to be given to existing policy in any planning balance exercise. I set out my approach to this below.

Aviation Policy Framework (APF) (2013)

- 9.41 The APF (CD 14.1) identifies itself as a potential material consideration in planning decisions, depending on the circumstances of a particular application (paragraph 5.6). Its Executive Summary references the APF as a high-level strategy setting out the Government’s overall objectives for aviation. As such, it must be the case that it represents material consideration in respect of the appeal proposals.
- 9.42 The APF initially recognises the positive role the aviation industry has on the economy – bringing benefits to society and individuals. The APF states that the future of the UK will continue to be shaped by the effectiveness of its international connections and establishes as one of its main objectives a desire to make the UK one of the best-connected countries in the world.
- 9.43 This clear support for aviation is balanced against a requirement to manage environmental impacts. The APF sets out a number of environmental objectives, referenced at paragraph 6.29 of this proof. In summary, they seek to ensure the sector contributes towards reducing global emissions; to limit and where possible reduce the number of people affected by noise; and to encourage the industry to work together with its stakeholders. With respect to carbon emission and climate change, the APF confirmed the then Government

policy of excluding international aviation from carbon budgets (paragraph 2.32) and avoided setting a national emission target for CO₂ for aviation, until there was certainty over the future of international negotiations on this matter. The APF confirms that the Government will seek improved international standards to reduce emissions from aircraft whilst working with airports (and local authorities) to improve air quality locally (para 3.48).

9.44 I note that the APF supports making best use of existing runway capacity. Paragraph 1.60 sets out the Government's short-term strategy that includes "*making best use of existing capacity to improve performance, resilience and the passenger experience*". Over the medium to long term beyond 2020, the APF acknowledges a capacity challenge in the South East of England and defers to the outcome of the Airports Commission assessment when considering with the principle of any long-term capacity change to airports in the South East.

9.45 Overall, considering the appeal proposals against these themes, I would conclude the following:

- 1 The appeal proposals will clearly assist with enhancing connectivity, to the betterment of the UK economy;
- 2 The proposals will result in an increase in carbon emissions (i.e. at a level above the no development scenario). The precise nature of predicted emissions is questioned by Dr Hinnells, who concludes, that there will be significant effects arising. However, whilst the APF encourages the sector to contribute towards reducing emissions, there are no set targets and the document does not include international aviation within existing carbon budgets;
- 3 The proposals do result in a reduction in the number of people being adversely affected by noise;

4 There are potential for adverse air quality impacts associated with ground operations, i.e. the main focus of the APF, the detail of which I reference above; and,

5 The APF is neutral on long-term capacity change, such that the appeal proposals are seeking.

9.46 As such, I conclude that the appeal proposals are broadly consistent with this policy document, noting the conflicting issues associate with air quality.

However, the weight I give to this conclusion in the overall balance is potentially influenced by changed circumstances and I come on to review this below, after initially considering the other existing policy document, MBU.

Beyond the Horizon, The future of UK Aviation, Making Best Use of existing runways (June 2018, 'MBU' CD14.2)

9.47 MBU is a follow on from the APF and a response to the Airports Commission recommendations (2016) and subsequent Government call for evidence (July 2017). MBU acknowledges the findings of the Airports Commission, that *'there would be a need for other airports to make more intensive use of their existing infrastructure'* (paragraph 1.2), and gives support for all airports who wish to make best use of their existing runways, including those in the South East, subject to environmental issues being addressed (paragraph 1.5).

9.48 This is not development at any cost. There is a need to mitigate against environmental impacts, with an emphasis on local impacts at a local level and the need to share the benefits of aviation with the local community. The support for an increase in capacity, ensuring the local community share the benefits of aviation, and the need to mitigate against local environmental issues therefore go hand in hand. As confirmed by paragraph 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'. The document concludes, noting that it is up to local, rather than national government, to consider each case on its merits (paragraph 1.29).

- 9.49 MBU references the consultation undertaken on the Aviation Strategy call for evidence document and highlights the extent of concerns raised during this consultation in respect of noise, air quality and carbon. It acknowledges that most of these environmental concerns can be addressed through existing policies set out in the APF, or through recent policy updates such as the new UK Airspace Policy or National Air Quality Plan (in this instance, the **Clean Air Strategy** and the **Consultation Response to Draft UK Airspace Policy**). It does, however, clarify that airports will need to mitigate local environmental issues (Paragraph 1.24) with adverse impacts mitigated where possible (Paragraph 1.22). “...As airports look to make use of their existing runways, it is important that communities surrounding those airports share in the economic benefits of this...”(Paragraph 1.22).
- 9.50 With respect to carbon emissions, MBU is based on growth projections in the DfT Aviation Forecast (2017) and has adopted the same approach as applied by the Airports Commission when looking at the impact of allowing all airports to make best use of their existing runway capacity, to ensure policy is compatible with the UK’s carbon commitment. The approach is reliant on carbon trading and carbon capping and applied the – at the time - Committee on Climate Change’s (CCC) planning assumption of 37.5Mt of CO₂ in 2050 (paragraph 1.16). MBU also notes that Government ‘*shall be using the Aviation Strategy to progress our wider policy towards tackling aviation carbon*’ (paragraph 1.12).
- 9.51 Overall, considering the appeal proposals against these themes, I would conclude the following:

- 1 The appeal proposals do seek to make best use its existing runway;

- 2 The Council's experts on noise concluded that with respect to potential adverse impacts, there will be a beneficial improvement in the noise environment with reduction in the number of people being affected by noise. With regard to air quality, there is the potential for harmful effects, and concerns remain about potentially additional impacts on and AQMA, designated habitat sites and those associated with UFPs. Proposed mitigation is not considered adequate.
- 3 The proposals will result in an increase in carbon emissions (i.e. at a level above the no development scenario). The appeal proposals lack any assessment of the potential carbon emissions against the MBU 37.5Mt of CO₂ in 2050, an omission highlighted by Dr Hinnells. He concludes that there remain uncertainties regarding potential for the appeal proposals to negatively impact upon the UK successfully achieving this target.
- 4 It is appropriate for UDC to consider the appeal proposals, on its own merits, taking careful account of all relevant considerations, particularly economic and environmental impacts (including carbon emissions) and proposed mitigations.

9.52 Overall, I note both the conclusions in respect of air quality and carbon emissions. Otherwise, I conclude that the appeal proposals can be seen to be largely consistent with this policy document. However, the weight I give to this conclusion in the overall balance is potentially influenced by changed circumstances which I set out below

Emerging Policy: Aviation Strategy 2050 and its associated policy papers (December 2018)

9.53 The aim of the 2050 strategy as set out in its first paragraph (page 8) is to achieve a safe, secure and sustainable aviation sector that meets the needs of consumers and of a global, outward-looking Britain. The objectives of the strategy include the need to support growth while tackling environmental impacts (Background paragraph 1, page 8). The consultation document

contains specific policy proposals and it is envisaged that the emerging Aviation Strategy would replace the APF on adoption.

- 9.54 On delivering sustainable growth, the document confirms that the Government welcomes the industry's future expansion, however, its growth must be sustainable with actions taken to mitigate environmental impacts. (Executive Summary, first highlighted text box page 12). It calls for making efficient use of infrastructure, the modernising of airspace to deliver capacity and environmental benefits and for communities living close to airports to benefit directly from growth (Executive Summary page 13 and 14).
- 9.55 The emerging Aviation Strategy confirms the Government's commitment to improve air quality generally (paragraph 3.123) and recommends better air quality monitoring programmes (to include UFP); the development of air quality plans to manage against local targets; and the adoption of cleaner fuels (paragraph 3.127).
- 9.56 The emerging Aviation Strategy also sets out proposals for a clearer, stronger, noise policy framework (paragraph 3.113-3.115) building on the APF's commitment to limit and where possible reduce the number of people significantly affected by aircraft noise. It introduces initiatives that the Government is considering as part of such frameworks to be applied to UK airports, and these include setting a new objective to limit and where possible reduce total adverse effects on health and quality of life from aviation noise; to routinely set noise caps as part of planning approvals for increase in passengers or flights; and requiring all major airports to set out a plan which commits to future noise reduction, to be reviewed periodically where no planning imposed cap exists. (paragraph 3.115).
- 9.57 On carbon, the emerging Aviation Strategy reflects the original Climate Change Act target (80% by 2050), and adopts previous CCC advice that international aviation emissions should continue to be formally excluded from

carbon budgets (paragraph 3.87). It does accept the CCC's recommendation that emissions from UK departing flights should be at or below 2005 levels.

9.58 Overall considering the appeal proposals against these themes, and similar to MBU, I would conclude the following:

- 1 The appeal proposals seek sustainable growth with affected communities supported and the environment largely protected.
- 2 The Council's experts on noise concluded that with respect to potential adverse impacts, there will be a beneficial improvement in the noise environment with reduction in the number of people being affected by noise. However, with regard to betterment and the Strategy's call for the airports to commit to future noise reduction, the proposals fall short. A noise cap is proposed, but this is not matched with a commitment to review this overtime, noting the conflict of the appellant's proposed cap with the latest advice in the Draft UK Airspace Policy, DfT, February 2017 and Consultation Response, DfT, October 2017.
- 3 With regard to air quality, negative effects are predicted to arise, and concerns remain about potentially additional impacts on an AQMA, designated habitat sites and those associated with UFPs. The Strategy is seeking to support aviation, but only if growth is achieved sustainably. It is noted that the commentary on air quality is set within the Government's ambitions to reduce harm to health from air pollution by half, although targets in terms of minimising impacts are not established;
- 4 The proposals will result in an increase in carbon emissions (i.e. at a level above the no development scenario) and as above, Dr Hinnells notes the potential for a negative impact on the UK's ability to meet this target.

9.59 Overall, I note the conclusions in respect of noise, and whilst improvements are proposed, this is by way of a static cap, contrary to recent DfT guidance, with no ability for this to be reviewed going forward. With regard to carbon

emissions, the appeal proposals are inconsistent with the document's objectives. With no air quality goals set out, whilst acknowledging a strong desire for the aviation sector to embrace sustainability, I suggest this matter is neutral. In other regards, the appeal proposals can be seen to be consistent with this policy document.

Overall weighting of aviation policy

9.60 Both the APF and the MBU, as national aviation policy, would normally carry significant weight in any planning balancing exercise. Consideration may also be given to emerging aviation policy – although here, compliance is more compromised given the commentary on noise, and carbon emissions noting

9.61 However, with respect to the climate change agenda, it is clear that there is a new direction of travel in policy, that must be considered relevant, to the extent that it is likely to alter the degree of weight given to the adopted and emerging aviation policy documents. Key influencing events and documents in the regard are as follows:

- 1 The **Climate Change Act target was amended** in 2019, setting a target of net zero by 2050;
- 2 There has been **evolving guidance from the CCC** (who benefit from statutory powers under the Climate Change Act) with a more restrictive approach to carbon emissions from aviation promoted – this includes proposals to reduce aviation's carbon budget target from 37.5MtCO₂ to 30MtCO₂ in 2050.
- 3 Government has now expressed intent to include aviation in the total carbon limits (**CCC response June 2020** and **Decarbonisation Plan Consultation 2020**).
- 4 The 'sister' document to MBU '**the ANPS**' also relied upon the '37.5 metric'. In January 2020 this was quashed by the Courts as it failed to

have regard to the climate change agenda. Government has yet to respond to this with a revised position.

9.62 The carbon agenda has moved on since the APF and MBU were published, and it has also overtaken the emerging Aviation Strategy 2050. I appreciate that it is not for UDC to predict future policy, but I note the statutory role of CCC and Government's response are 'minded to' – such that it appears an inevitability that policy will continue to move towards more carbon emission control. Within this context, Dr Hinnells provides an overview of the carbon 'performance' of the appeal proposals and he concludes that the appeal proposals, would potentially be inconsistent with the Paris Agreement, and the advice from the CCC regarding how airports must meet the requirements of the Paris Agreement. It would also be inconsistent with Government's response to the CCC report to Parliament. As such, the Appeal proposals, are inconsistent with the new direction signposted by Government. Dr Hinnells also concludes that the development will almost certainly adversely impact on the UK's ability to meet its net zero target. This would suggest that weight attributed to compliance with aviation policy should be muted. This is before any consideration is given to the potential for adverse air quality impacts arising, inconsistent with the various aviation policy documents that in contrast, require airports to take a leading role in reducing global emissions (for example, see APF Paragraph 12). Nor does it consider the advice within the emerging Aviation Strategy, that points towards a controlled approach to future noise emissions, encouraging future reductions.

9.63 Considering all of the above, I would conclude that to some extent, the proposals comply with aviation policy. Normally, I would give this positive weight in this exercise. However, given the nature of the changing carbon agenda, plus concerns regarding local air quality impacts, that it would be appropriate to reduce this. The role of carbon emissions in particular raises concerns, and I note the revoked nature of the ANPS when considered against

this same changed context. I am therefore inclined to give the issue of aviation policy compliance neutral weight in the overall balance.

- 9.64 The uncertainty associated with carbon emissions arising, their potential impact on the ability of the UK to satisfy carbon targets, and the implications for achieving a net zero future represent a significant negative consideration in the balancing exercise.

Stansted Airport Sustainable Development Plan (SDP) 2015 (CD15.1-15.6)

- 9.65 As a document produced by MAGs, effectively setting out its vision for the future of the Airport, the SDP is limited in its role in this appeal. Performance against its aims and objectives are of interest in that such an exercise would demonstrate how many of its commitments made in 2015 within the planning and policy context of that time have, been fulfilled. However, in terms of apportioning weight to either compliance or non-compliance in my planning balance exercise, noting its limited status, I am inclined to avoid giving it any materiality.

Overall summary of planning balance

- 9.66 As a general overview, and referencing back to the Council's RfR, it is possible to identify those matters which contribute positively to the balance and those that, in contrast, detract.
- 9.67 With regard to noise, positive aspects of the Appeal proposals are the predictions for day time noise exposure that show no effects beyond what already occurs; and those for night time noise exposure, which are predicted to reduce, thus presenting a beneficial reduction overall. A small improvement in annual health outcomes is also presented. Against this, the Appeal proposals do not deliver on minimising impacts arising, falling short in respect of the mitigation offered.

- 9.68 With regard to air quality, there is no beneficial aspect. Weighing against the scheme, there will be a worsening of air quality conditions, and concerns remain regarding the potential for additional unquantified and unmitigated impacts in respect of both the Bishop Stortford AQMA and UFPs. Potential limited impacts on designated habitat sites, given a failure to assess against an appropriate critical level for 24 hour mean NO_x, are also possible. The failure to take the opportunity to improve air conditions also weighs against the proposals.
- 9.69 With carbon, positively, there is no beneficial aspect. On the negative side, the development proposals do not satisfy relevant targets, and do not contribute towards achieving a net zero future for the UK. Impacts are predicted to be significant.
- 9.70 On infrastructure, the positive is that for the most part, appropriate mitigation is in place. However, without the security around the delivery of the M11 Junction works, there remains a potential negative impact, plus concerns have been expressed by the Council's experts regarding the detail of the s106 package i.e. the school mitigation package; the noise contour mitigation; the noise insulation package; mitigation for the AQMA and future proofing with regard to UFPs; and enhanced mitigation to secure net zero development, all of which have the potential to detract from the scheme's appropriateness.
- 9.71 However, in terms of undertaking a structured planning balance exercise, the starting point is compliance with the development plan. In this regard, I conclude that the proposals largely are in accordance with development plan. The exception is those policies that relate to nature conservation, and the provision of sufficient infrastructure and mitigation. I note, however, that there is not a requirement to accord with all policies in the Plan in terms of establishing compliance. I conclude, therefore, that the proposals do comply with the development plan, and I give this finding significant positive weight in support of the Appeal proposals. There is no policy-specific support for the

expansion of Stansted within the Development Plan, and this remains a neutral consideration.

- 9.72 Balanced against this, I note that the Local Plan is not completely consistent with the NPPF, and I highlight the noise and air quality policies in particular. The NPPF has a different agenda in respect of 'betterment' and with the Appeal proposals resulting in a worsening impact on air quality, this conflict must weigh against the Appeal scheme. Similarly, noise conditions whilst improving, fall short of minimising impacts given a need for enhanced mitigation. I give these NPPF conflicts a significant negative weight.
- 9.73 Other NPPF considerations include the priority given to the economy throughout the document, and given the nature of such benefits proposed, this must be seen as a significant positive in the planning balance. In terms of the carbon references in the NPPF, I conclude that the scheme cannot be considered to be making a positive contribution to a low carbon future, given increases in emissions are expected, and the impact of these emissions are predicted to be significant. I would give this consideration significant negative weight. Similarly, I note that in the absence of evidence to the contrary, the proposals conflict with the NPPF requirement to protect designated habitat sites, again attracting moderate negative weight.
- 9.74 Considering the NPPF's presumption in favour of development, the overall conclusion in respect of compliance with the development plan is noted. As such, I conclude that the presumption would apply, and this would carry significant positive weight.
- 9.75 The Appeal's support from existing and emerging aviation policy is mixed. It accords with the Government's clear support for the growth of the industry yet attracts negative considerations in respect of air quality, carbon (and from the emerging Strategy) noise. The proposals do make best use of the existing airport infrastructure and will contribute towards making the UK a better-connected country. However, this positive weight is matched by a negative

weight attributable to the changing carbon agenda for aviation. The Appeal proposals would be inconsistent with achieving a net zero future, consistent with the latest advice from the CCC regarding how airports must meet the requirements of the Paris Agreement. It would also be inconsistent with Government's response to the CCC report to Parliament. This is an important consideration that must attract significant negative weight. My conclusions in respect of Aviation Policy, considering all these factors, therefore, is that it is broadly a neutral consideration in the overall balance. The scheme's carbon emissions clearly represent a negative consideration in the overall balancing exercise.

9.76 Other material considerations are the Appeal's non-compliance with the East Herts Local Plan to which I give some negative weight, and compliance with the Stansted Sustainable Development Plan, to which I give no weight in this exercise, as explained above.

9.77 Overall, therefore, it remains a tight consideration, with factors of different weight working both for and against the Appeal proposals. It is the case that the relative weight given to the various issues is largely reliant upon the accuracy of the predicted impacts arising, and this has the potential to influence the outcome of this exercise. **However, if it can be assumed that the environmental impacts predicted by the Appellant are accurate**, and it is these impacts which the local community experience over what will be a period of decades, and subject to an agreed position regarding the nature of the s106 mitigation package (including but not limited to the nature of the proposed works to the M11 junction), I consider that the planning balance exercise would favour approval of the scheme.

The Influence of the Proposed Phased Development Condition

9.78 There are, however, no guarantees that the impacts predicted will be those realised, as the Airport grows to 2050. As referenced in Section 8.0 of this proof, there must be some uncertainty regarding the forecasts made today

about the Airport's growth, given the complex assumptions that underpin this work. It is these forecasts that dictate the environmental impacts that arise. Added to this, there are the various concerns raised by the Council's technical experts in terms of the findings of the ESA, that question to different extents the conclusions reached.

9.79 The proposed condition would act to remove these concerns, initially 'locking in' those impacts in respect of noise, air quality and carbon 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 effect, it would provide reassurances consistent with the commitments as set out within the Stansted Sustainable Development Plan. As above, this document sets out, a commitment from the operator to the principle of a proactive environmental management at the Airport. It promotes its own Environmental Management System that is designed to respond to the Airport's changing context, ensuring ongoing performance of the Airport remains consistent with national policies. It is this same reactive approach to a changing context that underpins the proposed condition referenced. Rather than rely on the good intentions set out within the SDP, the condition is seeking to secure firm commitments to environmental performance as the Airport expands. As such, the proposed condition and the SDP align in ambition.

9.80 Revisiting the planning balance with such a condition in place, would significantly add to the positives of the Appeal proposals - it would remove uncertainties regarding potential air quality impacts; remove the conflicts with the NPPF in respect of delivering betterment to air and noise conditions; enable the delivery of mitigation appropriate to the impacts arising; and give greater certainty regarding the positive application of the presumption in

favour of development. It would also allow controls over carbon emissions consistent with what is a rapidly moving policy context. Its application would have a significant influence over the planning balance exercise. In such circumstances, I would consider the balance would weigh strongly in favour of the development being positively considered.

10.0 **Conclusions**

10.1 Within the context of Section 38(6) of the Planning and Compulsory Purchase Act 2004, I have considered the appeal proposals seeking permission for the continued growth of Stansted Airport. I have assessed the conformity of the development proposals with Development Plan policy, with due regard to the results of the assessments undertaken by my colleagues acting on behalf of the Council. I have regard to:

- 1 The lack of policy support for the in-principle expansion of Stansted Airport;
- 2 An identified compliance with the Local Plan's noise and air quality policies;
- 3 A lack of direct policy guidance in respect of carbon emissions;
- 4 Potential conflicts in respect of infrastructure and provision and mitigation policies;
- 5 A conflict with nature conservation policies; and
- 6 General compliance in other respects.

10.2 I am of the opinion that despite the outstanding conflict with the Local Plan's nature conservation policy, Policy ENV7 that attracts significant weight, the appeal proposals overall would be consistent with the development plan. Importantly, this conclusion is reliant on the accuracy of the predicted environmental impacts as set out within the ESA, being those subsequently experienced by the local community as the Airport grows. This represents a significant positive weight in favour of the appeal proposals.

10.3 In terms of the nature of other material considerations, I have identified those associated with the NPPF; compliance with the East Herts District Plan; prevailing aviation policy including both existing and emerging policy; the nature and direction of carbon emission policy; and STAL's Sustainable Development Plan.

- 10.4 Conflicts with the NPPF in respect of noise, air quality, nature conservation and carbon are identified. Noise concerns focus on the requirement to reduce to a “minimum potential adverse impacts resulting from noise” (paragraph 180). Set against this requirement, there are concerns regarding the adoption of a noise contour that exceeds Government standards; and the detail of the proposed noise insulation package. In respect of air quality, the distinction within the NPPF regarding the treatment of AQMAs, and this document’s ‘call’ for environmental improvements wherever possible raise concerns.
- 10.5 The NPPF calls for developments that adversely affect SSSIs to be refused, other than in exceptional circumstances where benefits outweigh impacts. There remain concerns regarding potential impacts on two nearby SSSIs, creating conflict with the NPPF guidance. On climate change, the NPPF promotes the principle of reducing carbon emissions and it makes it clear that the planning system should support the transition to a low carbon future in a changing climate (Paragraph 148). Again, the appeal proposals fall short of satisfying this objective.
- 10.6 In contrast, the appeal proposals support the important NPPF objective on the economy and the presumption in favour of sustainable development (paragraph 11) is considered to apply, which represents a significant positive for the appeal proposals.
- 10.7 The identified concerns in respect of the potential for impacts on the AQMA raise conflicts with the East Herts District Plan.
- 10.8 The appeal’s scheme compliance with aviation policy is mixed. The principle of the development accords with policy, as it seeks to make best use of the existing runway but, given the environmental impacts arising (especially those associated with carbon emissions), overall compliance is prejudiced. Furthermore, with the changing carbon agenda, most clearly established in the CCC Reports and associated Government responses, that has overtaken both

the adopted and emerging aviation policy documents, it is difficult to give any weight to compliance with these documents.

- 10.9 There is a clear direction of travel in policy for carbon emissions from the aviation sector in all its guises, and whilst this has yet to be formally set out in a new policy, the Government has made it clear that it is minded to adopt stricter targets for the sector going forward, to include emissions associated with international flights. With the proposals not demonstrating a commitment to net zero emissions, the appeal scheme fails to comply with this emerging carbon agenda, and in particular would be inconsistent with the Paris Agreement, and the advice from the CCC regarding how airports must meet the requirements of the Paris Agreement. It would also be inconsistent with Government's response to the CCC report to Parliament.
- 10.10 With no formal status and importantly no ability to hold the appellant to the well-intentioned commitments within STAL's Sustainable Development Plan, this document is not considered to present a relevant material consideration for this appeal.
- 10.11 Overall, therefore, taking into consideration the identified compliance with the development plan and the nature of the other material considerations that work both for and against the Appeal proposals, I conclude that the appeal proposals should be allowed. However, this conclusion, both in terms of the noted compliance with the development plan and the weight given to the various material considerations is based on the predicted environmental impacts being accurate. i.e. it is these impacts which the local community experience following implementation of the scheme. It is also dependent on reaching an agreed position regarding the nature of the s106 mitigation package (including but not limited to the nature of the proposed works to the M 11 junction).
- 10.12 There are, however, no guarantees that the impacts predicted will be those realised, as the Airport grows to 2050. With unavoidable uncertainties

underpinning aviation forecasts, that have knock-on impacts on environmental assessment work, combined with those various concerns raised by the Council's technical experts in terms of the findings of the ESA, there is no certainty that over the life of any permission, that impacts experienced will be as predicted.

10.13 Given this, a proposed condition is promoted that would act to remove these concerns, 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.

10.14 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.

STANSTED AIRPORT 35 + PLANNING APPEAL
PINS Appeal Ref: APP/C1570/W/20/3256619

**APPELLANT'S FINAL REPLY TO UTTLESFORD DISTRICT COUNCIL'S
RESPONSE ON COSTS DATED 9 APRIL 2021**

INTRODUCTION

1. These submissions are made in reply to UDC's Costs Response, dated 9 April 2021, to STAL's application for a full award of costs made at the close of the inquiry on 12 March 2021. They should be read in conjunction with STAL's original submissions on costs, dated 12 March 2021, and with its Closing Submissions.

2. Despite the generous period of time granted to UDC to respond to this application (from 12th March to 9th April 2021), UDC devotes 27 pages of its response to a lengthy diatribe about the perceived unfairness of a costs application – of which UDC was given notice in STAL's Opening Submissions - being made at the close of the evidence and before the close of the inquiry, entirely in accordance with the costs guidance in the PPG and with normal practice. UDC appears to be under the completely erroneous misconception that STAL was required to make its application as long ago as July 2020¹, long before the true nature of UDC's case at this appeal became clear and without testing the evidence, including in respect of matters which were plainly relevant to the issue of costs and which were put in issue by UDC itself.

3. These submissions are addressed further below. At best, they betray an extraordinary and complete failure to understand the purpose, effect and operation of the costs regime in planning proceedings. At worst, they are a wholly disingenuous attempt to distract from the merits of an application for costs, which UDC plainly anticipated would be forthcoming and which it addressed at considerable length both in its written and its oral

¹ See paragraph 78 of UDC Costs Response (where it is asserted that the application could and should have been made "in July 2020 or shortly thereafter")

evidence. Indeed, we note that the Inspector, Mr Boniface, observed on the final sitting day that “much of UDC’s evidence at the inquiry” appeared to have been directed at responding to an application for costs. STAL agrees with this observation.

4. The costs regime is there to instil discipline into the conduct of the parties. It applies at all times to guide the conduct of the parties from the moment that a planning application is made. It is engaged at all times and parties should abide by it and avoid unreasonable conduct at all times. Indeed, Inspectors have the express power to make an award of costs quite irrespective of any applications which may be made by the parties². All parties are accordingly under a continuing obligation to adhere to the principles set out in the costs guidance in the PPG, and costs remain a sanction available to the parties (and the Inspector) right up to the closing day of any appeal proceedings.
5. A party which has kept these principles firmly in mind throughout the determination and appeal process and abided by them should have no difficulty in demonstrating the reasonableness of its conduct and in defending a costs application. Moreover, given that UDC was told in terms that a costs application would be made if the evidence at the inquiry supported it, it would have been well advised to focus its efforts on framing its evidence and its case accordingly, rather than seeking to rely on wholly unmeritorious procedural arguments to shirk the consequences of its unreasonable conduct.
6. STAL fully accepts that there may be cases where it is possible to reach a concluded view as to whether there are proper and fully established grounds for a costs application at an early stage in the appeal process (for example, where a reason for refusal is withdrawn without adequate explanation but after expenditure has been incurred by the Appellant in addressing it). But on many - indeed most – occasions, the merits of a costs application will turn on the evidence to be adduced and tested at the inquiry. For that reason, the overwhelming majority of costs applications are made at the close of appeal proceedings, when the evidence of the parties is concluded and clear.

² PPG para 029:

“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.”

7. There is absolutely no legal or procedural bar to a party making its application at the close of an inquiry and indeed this is the proper approach to the majority of costs applications, including the current one. It ensures that any such application is made on the basis of the evidence as properly tested and only where the evidence squarely supports an allegation of unreasonableness.
8. In this case, STAL's application plainly rests to a very large degree upon the evidence adduced by UDC at the inquiry, and the contrary evidence adduced by STAL, as to the basis for UDC's decision to refuse permission in January 2020 (in the face of the clear and consistent advice of its Officers that the development complies with all relevant national and local policies and that permission should be granted), and whether this decision was ultimately substantiated by its witnesses on appeal.
9. STAL went as far as it properly could in opening its case, by warning that it would make a costs application if it determined at the close of the evidence that such was justified when applying normal principles. It did not presume or prejudge what the outcome of the testing of the evidence might be, but it put each party on notice that a costs application was in contemplation. Again, quite properly, nothing was pre-determined; indeed it will be noted that STAL has only, in the event, made an application against UDC.
10. The unreasonableness or otherwise of the Council's conduct is a matter of judgment and that judgment could only reasonably be made at the completion of – and in the light of – all the evidence, including (and perhaps particularly) that of Mr Scanlon, adduced by the Council to defend its reasons for refusal (“RfRs”). That this would be STAL's approach was clearly stated and STAL duly reported its intentions to the parties at the close of the planning evidence.
11. While UDC has performed a complete *volte face* at the appeal stage and now accepts that permission should be granted subject to the imposition of conditions, it has not withdrawn any of the RfRs and it has continued to defend the appeal on all four grounds. It has also continued to plead alleged deficiencies in the information before the Committee in January 2020 in an attempt to justify the reasonableness of its decision to refuse permission. That the reasonableness of this decision was in issue cannot have been in

doubt; demonstrating that its refusal was reasonable in the circumstances is a basic obligation upon any local planning authority in an appeal context.

12. Plainly, UDC *might* have made good its case on this issue, so as to demonstrate that - whatever the position at the time of the inquiry - Members' conduct in rejecting their officers' advice and overturning the Council's previous resolution to grant was reasonable as at the date of the decision in January 2020. STAL gave UDC the benefit of the doubt at the opening of the inquiry. However, STAL took the view at the close of the evidence that there was no credible evidence of any material deficiencies in the information before the Committee and that UDC had failed to justify the original decision to refuse permission. Likewise, in relation to mitigation, STAL took the view that the mitigation package offered by STAL in January 2020 (or some reasonable variant of it which UDC could easily have sought) was and remained appropriate and CIL compliant and that it was wholly unreasonable of UDC to refuse permission without any consideration being given to whether this package, or some alternative package of mitigation, might address its concerns.
13. These preliminary observations provide a complete answer to UDC's preamble, much of which is laced with preposterous hyperbole and none of which goes to the merits of STAL's costs application at all. Nonetheless, it is also necessary for STAL to address the numerous legal and evidential misconceptions in UDC's lengthy response, in respect of both the procedural arguments and UDC's response to the substantive application for costs.
14. In the interests of concision and to avoid repetition, this reply does not respond to every point made by UDC, many of which have been anticipated and addressed in STAL's closing submissions and submissions on costs.

(1) **THE PROCEDURAL REQUIREMENTS FOR COSTS APPLICATIONS**

- (i) **Timing of costs applications by reference to the guidance in the PPG (see UDC Costs Response paras 9-16)**

15. UDC appears to be under the completely erroneous impression that, unless the costs application was founded upon procedural matters or the conduct of UDC at the inquiry itself, any application for costs had to be made before the start of the inquiry (see UDC response, para 10).
16. This is plainly not what the PPG says. The PPG makes clear that the only requirement (defined by the use of the verb “must” rather than “should”) is that applications are to be made no later than the close of the hearing or inquiry.

“Applications for costs should be made as soon as possible, and no later than the deadlines below:

...

In the case of hearings and inquiries:

- *All costs applications must be formally made to the Inspector before the hearing or inquiry is closed...”*

17. The guidance does not therefore even mandate that costs applications must always be made while the inquiry is still physically convened. The only requirement is that all applications must be made before the inquiry closes, which may not be the same as the final sitting day. Thus, in relation to behaviour at an inquiry, the PPG advises that the applicant need only “tell” the Inspector that an application will be made at the inquiry. The Inspector will then make arrangements for the inquiry to remain formally open until the costs application has been submitted, with sufficient time for a response and final right of reply, and any decision will be made following the close of the inquiry.
18. The PPG *encourages* applicants to make costs applications before the hearing or inquiry but only “as a matter of good practice and where circumstances allow”. Thus, even where circumstances do allow for an application to be made at an earlier stage, there is still no legal or procedural requirement to make an application at that time. Although costs are always at the discretion of the decision-maker, the PPG clearly sets out the timescales for costs application to be made. It is only when an application falls outside these timescales (i.e. it is not made before the close of the inquiry) that it will be deemed to have been submitted “late” and “good reason” will need to be shown under the PPG.

19. The use of the phrase “as soon as possible” plainly does not therefore oblige the Panel to “inquire as to when it would have been possible to make the application” (UDC response, para 12) and, by inference, reject any application not made at the earliest opportunity as being “late”. If this was the intention, the word “must” would also have been used (see, by analogy, CPR r54.5 in relation to (non-planning) judicial review timescales: “The claim must be filed promptly...”).
20. The PPG imposes no such requirement. The deadlines for making costs applications are clearly set out in the PPG and will be familiar to the Panel.
21. Moreover, even these deadlines are only guidance. They are not akin to statutory time limits and it is always open to a decision-maker to depart from the procedure in the PPG, provided that reasons are given. In particular, and as noted above, it is always open to Inspectors to order an award of costs of their own initiative, outside the normal procedure for the making of costs applications by the main parties to an appeal.
22. As to the rationale behind the guidance on timescales, this is clearly not to ensure (as UDC mistakenly asserts at para 15 of its Response) that “costs applications are front loaded”. The procedural guidance and the timescales for making costs applications are there to ensure the orderly conduct of proceedings and to ensure that the party at the receiving end of the application is given a reasonable opportunity to respond to it. Where the costs application does not depend on how the evidence emerges during the course of an inquiry, it is unsurprising that the PPG encourages applications to be made as soon as possible to enable the procedure to be accommodated within the timescales set for the inquiry. Where this is not possible because the application turns on the evidence, arrangements will have to be made to ensure that the party against whom the application is made is given an opportunity to respond. Ordinarily this will be by way of an exchange of written submissions, as has happened here.
23. None of this is remotely controversial, much less an ‘ambush’ (UDC Response, para 16), and it is frankly extraordinary that the very familiar procedure for making costs applications should need to be traversed – and at length - in this exchange of submissions.

24. For these reasons, there is plainly no requirement under the PPG to make a costs application at any time earlier than before the close of the Inquiry, although it may well be good practice to do so in a case where the application does not turn on the evidence nor on any issue which remains live between the parties. That is manifestly not the case here, for the reasons set out below.

(ii) **The nature and timing of this application (see UDC Response paras 19-59)**

25. Grounds 1-3 of the costs application all relate to the reasonableness of the decision by UDC to refuse permission for this development in January 2020 and whether the Council has substantiated its RfRs on appeal. Ground 4 relates to condition 15, which was formally aired for the first time at the appeal stage in Mr Scanlon's proof of evidence and was the subject of extensive discussion at the inquiry. Ground 5 relates to the case as put by UDC on appeal in relation to the MBU policy.

26. Thus, the first three grounds relate to the reasonableness of the decision taken in January 2020 and whether the RfRs have been substantiated on appeal. The fourth and fifth grounds relate to the case as advanced by UDC for the first time at appeal.

27. Even if there was any requirement under the PPG to make a costs application at any earlier time than before the close of the inquiry, it is nonsensical to suggest that a costs application made on these grounds should - or could properly - have been made before the evidence had even been heard. The merits of the application depend on whether the Council has been able to substantiate the RfRs promulgated in January 2020 on appeal. STAL's position from the outset was that it considered UDC's behaviour to have been unreasonable³; but UDC contested this. The competing positions therefore had to be tested in the evidence, in order to determine whether a costs application had merit.

28. In this regard, and as UDC emphasises in its response (see para 22(4)), a central part of UDC's case on appeal was that there were shortcomings in the information submitted by STAL as at January 2020 and that these shortcomings made it reasonable for UDC to

³ As UDC was well aware: see UDC Costs Response para 19

have refused permission at that time⁴. The adequacy of the material before the Committee in January 2020 (and whether any shortcomings justified the refusal of permission in any event, rather than seeking further clarification from STAL) was therefore a matter which was put in issue by UDC.

29. As this matter was put in issue by UDC, STAL's witnesses addressed not only the updated position in the ESA (necessary largely because of the length of time taken by UDC to determine this application) but also the adequacy of the original ES in their proofs of evidence⁵. The alleged deficiencies in the information provided – and the alleged reasonableness of the decision in January 2020 - were also explored by UDC in its evidence. Thus, UDC positively asserts in its response that each of UDC's witnesses gave evidence in their respective proofs that the Council's decision in January 2020 was "both reasonable and understandable" (see UDC Costs Response para 33).
30. The reasonableness of UDC's decision to refuse permission for this development in January 2020, which has resulted in STAL incurring the very substantial costs of this appeal, was therefore plainly a live issue about which there were conflicting views on the evidence before the Inquiry. That this issue was apparent from the outset is clear from the fact that both parties anticipated and addressed it in their main proofs of evidence (and did not wait to deal with it by way of rebuttal).
31. This issue was then the subject of extensive evidence at the inquiry, including XX of both Mr Andrew for STAL and Mr Scanlon for UDC, with the latter maintaining in XX that there were material deficiencies in the ES which had only been remedied by publication of the ESA. The question of whether there was some material deficiency in the information before the Committee in January 2020 therefore remained in issue right to the end of the proceedings.
32. Given that the reasonableness of the decision taken in January 2020 was a live issue, which had been squarely addressed by STAL and UDC's witnesses in their proofs of

⁴ See, generally, UDC SoC para 1.36. In relation to the RfRs see e.g. SoC para 4.2 (noise), para 4.46 (air quality), para 4.7 (carbon policy)

⁵ See, for example, Cole paras 2.5-2.6, 6.1.1-6.1.4, Bull, section 6, Vergoulas, section 7.1.

evidence, it is self-evident that no application for costs could properly have been made at any of the earlier points in time suggested by UDC (see response at para 19 onwards):

- a. **July 2020 (STAL's SoC)**: UDC protests that STAL should have made its application for costs at the same time as it filed its SoC, as long ago as July 2020. This is a hopeless argument. At that time, STAL quite properly pleaded its case that - in its view - UDC's conduct in overturning the original resolution and refusing permission for the reasons that it did amounted to unreasonable behaviour. This must have put UDC on notice from the outset that there was a risk of an application for costs being made in due course, if the evidence substantiated STAL's pleaded case. However, at that time STAL had no idea how UDC would develop or seek to support its RfRs or how it would put its case on appeal - particularly as it was clear that UDC would need to appoint a new team of experts to defend a decision which was taken in the face not only of advice from its Planning Officers but also of the independent consultants appointed to advise UDC on the air quality and noise impacts of the development (two of the three environmental RfRs).
- b. **September 2020 (UDC's SoC and the CMC)**: UDC's SoC was submitted on 16 September 2020. This was the first indication that STAL had of the basis on which UDC said (at that time) that it would defend the RfRs and resist the appeal. This was also the first time that STAL had any indication as to what RfR 4 might relate to, given that no consideration was given to the s106 at all during the Committee meeting (and the issue concerning the implementation of the Junction 8 works post-dated the decision). UDC's SoC also put the adequacy of the information in the ES squarely in issue and it said that it would 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". UDC also said that it would call a witness on "Aviation Forecasts and the implications for air transport and other aircraft movements at Stansted". This clearly indicated that UDC intended to take issue with the forecasts underpinning the assessment of environmental impacts as well.
- c. It would have been impossible and completely premature for STAL to make a costs application at this stage or at the CMC (which took place just one week after UDC's SoC had been filed, when STAL and its consultant team were still in the process of

reviewing the SoC, which in places expanded considerably on the original RfRs with a long list of additional complaints, many of which were not ultimately pursued⁶, and elsewhere did not particularise its case at all⁷). At that time, STAL still did not know what the evidential basis underpinning the RfRs and UDC's case as pleaded in its SoC would be, let alone whether UDC would be able to demonstrate evidentially at the inquiry that a reasonable decision had been taken. STAL was plainly not in a position to say at that stage whether a costs application would be made or not and it quite properly did not give an indication either way. The issue of costs was left open.

- d. The Panel's note of the CMC records, correctly, that no costs application was "anticipated" at that time and then goes on to remind the parties of the normal guidance in the PPG concerning the timing for such an application. The Panel also reminded the parties of its power to award costs. The Panel therefore understood perfectly well that an application for costs might be made at a later stage and had not been ruled out (and, indeed, that the Panel might itself make an order for costs).
- e. **October 2020 (publication of the ESA)**: At para 30 of the response, UDC criticises STAL for not making a costs application at the same time as publication of the ESA. However, the ESA has no bearing on the reasonableness of UDC's decision in January 2020, given that it post-dated that decision. It is UDC which now seeks to rely on the ESA in defence of the costs application. It would have made no sense for STAL to make a costs application on the back of publication of the ESA.
- f. **December 2020 (telephone call concerning condition 15 and exchange of proofs)**: The purpose of the telephone call between Counsel (referred to by UDC at para 32 of its Costs Response) was for UDC to try to explain its wholly new "condition 15" (an early draft of which was provided to STAL's Counsel on a confidential basis very shortly before the call). This was the first time that STAL had heard anything about "condition 15" and Mr Coppel QC confirmed at that time that this proposed condition would be addressed by UDC's witnesses in their evidence, to be served two working days later. However, it was only when proofs of evidence were exchanged on 8th December 2020 that UDC's changing position

⁶ See, further, fn 21 below in relation to air quality.

⁷ See, for example, para 4.76 in relation to RfR 4.

in these proceedings started to become apparent. This was when STAL first learned that UDC's planning witness, Mr Scanlon, considered that the planning balance favoured the grant of permission and that the appeal should be allowed subject to conditions. This was not made clear to STAL's Counsel during the call on 4th December and STAL could not possibly have known "what UDC's case was" before the exchange of evidence (let alone that it no longer intended to advance a case that any of the RfRs merited the refusal of permission on appeal). The suggestion that this telephone call should have immediately triggered a fully formulated costs application is risible.

- g. Moreover, as UDC is at pains to emphasise (see, for example, para 36 of the Costs Response), each of UDC's witnesses also argued in their proofs of evidence that – whatever the position on appeal now - the original decision in January 2020 had been "reasonable and understandable"⁸, based on the information available at that time, and that there were matters that had not been addressed in the ES, which should have been. Those issues were plainly relevant to the question of costs.
- h. As noted above, each of STAL's witnesses also spent some time in their main proofs of evidence dealing with the ES process, including the absence of any objection from UDC officers and statutory consultees, or any requests for further information, and responded to the allegations of deficiencies in the ES. Mr Andrew's proof of evidence also contained a lengthy section criticising UDC's handling of the application. He concluded that none of the RfRs provided a reasonable basis for refusing permission and referred in terms to the guidance in the PPG on costs⁹ and the examples of unreasonable behaviour, which now form the basis for the costs application. The position was clearly set out in the proofs of evidence of STAL's technical witnesses and did not need to be repeated in rebuttal proofs, save to address specific points raised by UDC's witnesses. However, STAL did respond to the newly formulated "condition 15" at that time and it made clear –

⁸ Para 33 UDC Costs Response

⁹ See e.g. section 9 of Mr Andrew's proof of evidence, headed "reasons for refusal", where he set out "the specific and detailed justification as to why the Council's reasons for refusal are unclear and imprecise, and formed without proper or reasoned consideration of the impacts clearly evidenced in the accompanying ES..." In the conclusions section, at para 11.11-11.2, Mr Andrew stated that UDC had "unreasonably and erroneously refused planning permission and formed unclear and imprecise reasons for refusal" and that "a correct approach to determining this application would have led any decision maker to approve planning permission."

through the evidence of Mr Andrew – that it considered that condition 15 was unlawful and failed the applicable policy tests.

- i. **January 2021 onwards (the inquiry)**: At paras 37-58 of its Costs Response, UDC rehearses the various points during the course of the inquiry when the issue of costs was raised, either by the parties or by the Panel. As this chronology confirms:
 - i. STAL made clear at the outset its intention to make a costs application at the close of the evidence, if the evidence supported it. The Panel heard UDC’s arguments at that time but it clearly did not accept them and made no objection to the approach and timescales indicated by STAL.
 - ii. An update on costs was sought in week 6 of the inquiry, when STAL again made clear that no final decision could be made as to costs until the evidence was complete and that any application would be made following the close of the evidence (see UDC Costs Response para 47). Again, UDC protested about this course of action but the Panel clearly did not accept the merits of its arguments and it was content for STAL to proceed as it had indicated.
 - iii. At the close of the evidence, STAL confirmed that it would be making an application for costs against UDC (but not SSE) and that the application would be submitted in writing together with (and cross-referring to) STAL’s Closing Submissions, upon which it would be parasitic. The Panel was clearly content with this approach and with the suggestion that costs be dealt with by way of an exchange of written submissions, and this is what it ultimately directed.
33. The reasonableness of the Council’s decision in January 2020, which was the basis for the first three costs grounds, was plainly a matter which was in dispute and which would need to be resolved as part of the inquiry process. Any application for costs made before the evidence of the parties on this issue had been tested would have been misconceived and premature. The other two grounds both related to the case as put by UDC on appeal and so were necessarily entirely contingent on the evidence adduced at the inquiry.

34. Moreover, it is appropriate to observe that at no point did the Panel object to or challenge the approach which STAL made clear that it intended to adopt, including the timescale for making its costs application. UDC took the opportunity to complain about the timing of the costs application on numerous occasions during the course of the inquiry but the Panel did not accept UDC's arguments. If UDC's procedural arguments had any merit, the Panel would plainly have made this clear to STAL and would have directed that any costs application be made at an earlier stage. Instead, having heard the arguments, the Panel did not object to - and ultimately adopted - the procedure that STAL had suggested for dealing with costs (which it maintains is entirely normal practice).
35. For all these reasons, UDC's contention that this application for costs should be rejected on the grounds that it was not made at an earlier stage, before the evidence had been explored at the inquiry - or even produced by UDC - is hopelessly misconceived. The application was made entirely in accordance with the guidance in the PPG and with the normal practice for making cost applications. STAL cannot possibly be criticised for waiting until the evidence had been tested before deciding whether or not UDC had substantiated its reasons for refusal such that a costs application should be made. On the contrary, this was an entirely proper course of action, and it is wholly unsurprising that the Panel was content with this approach. We note that in the second part of its Response (see below for Reply), UDC (see para 150) positively avers that "unreasonableness should be considered in the round, having regard to all the evidence submitted by UDC to defend the RfRs on appeal". We agree with that proposition, which must preclude the making of a premature costs application which has not had regard to all the relevant evidence before the Inquiry.
- (iii) **Has there been any procedural unfairness resulting in prejudice to UDC as a result of the procedure adopted in respect of costs? (reply to UDC Costs Response paras 60-95)**

Legal principles

36. The relevant legal principles are not controversial. The rules governing procedural fairness in the context of planning inquiries require that parties to a planning inquiry should know the case they have to meet and be given a reasonable opportunity to adduce

evidence and make submissions in response: see *Hopkins Developments Ltd v Secretary of State for Communities and Local Government* [2014] P.T.S.R. 1145.

37. However, where a party knows or ought reasonably to know that matters are in issue before the inquiry, it is incumbent upon that party to avail itself of the opportunity to test the evidence and to make its submissions in response. The onus on the parties applies even where an issue emerges for the first time during the course of an inquiry, for example where it is raised by a third party. As Beatson LJ put it, in the context of that case:

“97. In this case two issues not identified [at the outset by the Inspector] as a main issue clearly emerged as significant issues as a result of the evidence of the third parties at the inquiry. I have concluded that a developer who does not avail himself of the opportunity to test evidence adduced about such an issue (if necessary by seeking an adjournment to adduce further evidence) or to make submissions about it may not complain of procedural unfairness if the Inspector's decision is based in whole or in part on that issue. This conclusion follows from the fundamental nature of “natural justice”/ “procedural fairness”, the structure of the 2000 Regulations, and the approach of the authorities on planning inquiries.”

Application to the facts

- (i) Whether UDC knew or ought reasonably to have known that the reasonableness of its decision in January 2020 was in issue before the Inquiry

38. STAL has made a substantive application relating to the failure of UDC to justify in the evidence adduced its refusal of STAL's application in January 2020. Other matters relating to the case put by UDC on appeal are also pursued as separate grounds of challenge but the first three grounds of the costs application are clearly directed at the reasonableness of UDC's original decision, as is positively asserted by UDC (see Costs Response, para 62).
39. For UDC now to suggest that it did not appreciate that this was a live issue (and so did not know the case it had to meet) is simply absurd. UDC is trying to have it both ways, by arguing on the one hand that STAL always plainly intended to make an application for costs and, on the other hand, that UDC has somehow been caught by surprise by this application and has been prejudiced by it:

- a. UDC goes to great lengths in its Costs Response to emphasise that STAL first alleged unreasonable behaviour on the part of UDC in its SoC in July 2020, relating to the reversal of the original resolution to grant without any sound planning basis for doing so, and the absence of any evidential basis for each of the three RfRs. That remains precisely the basis for the costs application now. UDC cannot possibly now complain that it was unaware that the reasonableness of its decision to refuse permission (and therefore costs) would be in issue from the outset. The Committee was, of course, warned in the clearest terms that costs would be in issue if it ignored the advice of Officers and refused permission for the reasons it was contemplating, as far back as June 2019¹⁰.
- b. Mr Andrew's proof of evidence dealt with the Council's unreasonable conduct and handling of the application at length and it is replete with references to the unreasonableness of the Council's conduct and the wording of the PPG on costs: see fn 9 above. Faced with these explicit references, UDC could hardly have failed to appreciate that there was a risk of a costs application relating to its handling of this application and its decision to refuse permission. Mr Andrew's evidence could not have been clearer in this regard.
- c. In opening, STAL put UDC on notice that it considered UDC's conduct in refusing permission to be unreasonable in light of the position now taken by its experts and it warned that it would be seeking costs when the evidence was complete for any wasted costs which it had been obliged to bear in prosecuting this appeal. If UDC had somehow failed to appreciate that the reasonableness of its decision to refuse permission was in issue before then, it can have been left in no doubt - as a result of that explicit warning - of the need to ensure that it was in a position, evidentially, to defend a costs application in due course. The dicta of Beatson LJ in *Hopkins Developments* are directly relevant here.
- d. Thereafter, each of UDC's witnesses was cross-examined in relation to the Committee's handling of the application and the material which was before the Committee in January 2020, including exploration of the issue of the ES vs the ESA in XX of Mr Scanlon towards the close of the evidence.

¹⁰ CD 13.3b

- e. As submitted above, UDC was also fully aware of how STAL proposed to deal with costs and it knew that the Panel was content with this approach. It therefore knew how costs were to be dealt with at the inquiry and it should have prepared itself accordingly.
40. Far from “operating under the radar in relation to its potential costs application, leading its own evidence and asking some questions of UDC’s witnesses by stealth” (UDC Cost Response para 66), STAL (i) pleaded its case in July 2020 that it considered the Council’s conduct to be unreasonable, (ii) adduced evidence in terms as to the unreasonableness of UDC’s refusal of permission in its proofs of evidence, by reference to the guidance in the PPG, (iii) explicitly warned in its opening submissions that, subject to the evidence, it would be making a costs application at the close of the evidence, (iv) duly led evidence and cross-examined all of UDC’s witnesses as to the basis for UDC’s decision in January 2020 and as to the Committee’s reasoning in deciding to refuse permission contrary to all professional advice.
41. Moreover, UDC was plainly perfectly aware that the reasonableness of its decision was in issue, as demonstrated by its focus on the alleged deficiencies in the ES in its own evidence and by the way it put its case at the inquiry (as the Inspector, Mr Boniface, astutely observed). UDC’s allegation of procedural unfairness is an artificial and wholly opportunistic attempt to distract from the merits of the substantive costs application.
- (ii) Whether UDC has had a reasonable opportunity to adduce evidence and make submissions to defend the reasonableness of its decision in January 2020
42. At various points in UDC’s submissions (see, for example, Costs Response paras 42 & 44, para 50), it seems to be suggested that UDC was somehow misled into believing - as a result of comments from STAL or from the Panel - that costs were not an issue that had to be addressed and / or that UDC did not need to spend inquiry time dealing with the reasonableness of UDC’s original decision. This is absurd. Quite apart from the fact that UDC did, in fact, address this issue extensively in evidence, STAL made clear at the outset of the inquiry that it anticipated making a costs application and UDC could hardly have failed to notice that STAL cross-examined each of UDC’s technical witnesses at some length in relation to the January 2020 decision and the reasoning of the Committee.

43. Unsurprisingly, no objection was made by the Panel to this line of questioning by STAL. Nor was there any suggestion that matters relevant to the costs application could not be pursued with witnesses. On the contrary, and as UDC acknowledges at para 44 of its Costs Response, the Inspector - Mr Boniface - stated at the outset that he was “happy [for the procedure and justification for UDC’s decision] to be aired”, although clearly the appeal would be determined on the basis of the evidence at the time of the decision, and this had to be the main focus of the evidence. That approach was clearly correct.
44. Nor can UDC glean any support for its procedural complaints from the Panel’s approach to the issue of costs. As explained above, the chronology at paras 14-59 of the UDC Costs Response demonstrates that, despite UDC’s protestations (see, for example, paras 39 & 48), the Panel - having quite properly revisited and sought updates as to the position on costs with the parties at various stages during the course of the Inquiry - was content with STAL’s explanation that a final decision on costs could only be taken once the evidence was complete. This is wholly unsurprising, given that STAL’s application for costs was made entirely in accordance with the PPG and with usual practice.
45. In short, it is the fault of UDC – not STAL or the Panel - if UDC now feels that it failed to adduce sufficient evidence to enable it to respond to the costs application. Although, as noted above, it is submitted that UDC’s protestation is in reality an entirely forensic device to distract from the force of STAL’s application and the absence of evidential material ultimately available to UDC to defend its position.
46. If UDC genuinely believed that it did not need to have the costs guidance in mind unless an application had been formally made against it before the start of the inquiry (see para 68 of the Costs Response), it was operating under a woeful misapprehension as to the procedure for making cost applications under the PPG.
47. In any event, and as noted above, these protestations of ignorance cannot be reconciled with the way UDC actually put its case at the inquiry. Although UDC now complains that it has “not been afforded the opportunity to cross-examine STAL’s witnesses as to the reasonableness of UDC’s decision in January 2020”, the reality is that Mr Coppel QC cross-examined STAL’s witnesses, in particular Mr Andrew, at length in relation to the Committee proceedings and the alleged reasonableness of UDC’s decision.

48. Equally, although UDC now says that it would have taken instructions and / or submitted further evidence and / or prepared its case differently, had a formal application for costs been made before the inquiry began, UDC knew full well that the primary basis of any costs application would be that it behaved unreasonably by refusing permission in January 2020 and that it had not substantiated the RfRs on appeal. It knew that the history of the application would be in issue, as explored in Mr Andrew’s evidence and also by Mr Scanlon (c/f para 81 of the Costs Response). Even if UDC was somehow notionally unaware that the explicit references to unreasonable conduct in STAL’s SoC and Mr Andrew’s proof of evidence pointed to the risk of a costs application, it still had eight weeks from the point when STAL warned expressly that it would be seeking costs at the close of the evidence to consider how to present its case to defend the decision taken in January 2020.
49. No request was made to submit further evidence or call additional witnesses during the eight-week period of the inquiry. It remains wholly unclear what evidence UDC says it would have submitted, or what submissions it would have made, in response to a costs application which is entirely consistent with the case pleaded by STAL as far back as July 2020.
50. The “examples” given by UDC at paras 71-72 of the costs response only serve to illustrate this point. At para 71, UDC cites STAL’s submissions that “none of the evidence before the inquiry has pointed to any shortcoming in the assessment undertaken in the ES...”. UDC then argues that this “ignores UDC’s written evidence”, including the matters referred to at para 72. UDC was clearly not therefore deprived of any opportunity to put forward evidence to defend the reasonableness of its decision and these matters were then fully explored in oral evidence at the inquiry¹¹. STAL’s position following the close of the evidence remains that none of this evidence has pointed to any material shortcoming in the ES which made it reasonable to refuse permission, without considering whether its concerns could be overcome by mitigation, and that permission should clearly have been granted.

¹¹ In XX of Mr Trow, Dr Broomfield and Dr Hinnells

51. It will be a matter for the Panel to decide whether the matters raised at para 72 constituted a reasonable basis for refusing permission, but UDC cannot possibly complain that it did not have a reasonable opportunity to respond to the case made against it in evidence.
52. The same is true of evidence relating to the history of the application (see UDC Costs Response, para 81 onwards). As noted above, UDC was plainly aware that its handling of the application was a live issue. Although Mr Scanlon prepared a rebuttal proof of evidence, he failed to take the opportunity to respond to Mr Andrew's evidence on this issue, even though Mr Andrew devoted 9 pages of his proof of evidence to UDC's conduct. However, UDC duly did address this issue in oral evidence. The period when the call in application was being considered was addressed in evidence by Mr Scanlon, and a great deal of time was spent in XX of Mr Andrew considering the comments made by Mr O'Toole at the Committee. As part of this line of XX, there was nothing whatsoever to prevent UDC from referring to the planning performance agreement and putting questions to Mr Andrew on this issue, if it considered this to be helpful to its case. It failed to do so.
53. The suggestion that UDC was somehow deprived of the opportunity to call witnesses as a result of the timing of the application is also absurd. UDC now complains, for the first time, that had a formal application been made before the start of the Inquiry, it would have elected to cross-examine Mr Thomson on EIA matters, and that it would have called someone from UDC to defend the decision in January 2020. Yet:
 - a. As previously emphasised, the issue of the adequacy of the original ES was obviously a live issue, raised extensively by UDC in its SoC. STAL made clear from the outset (in its SoC) that it intended to call Mr Thompson to give evidence in relation to the EIA process. UDC presumably had its own reasons for deciding not to XX Mr Thompson – as STAL's witness on EIA matters - on the alleged deficiencies in the ES, but there was nothing to prevent it from doing so, having led evidence on this issue through its technical witnesses. Alternatively, it may well have taken the perfectly legitimate view that it would prefer to take any technical EIA points via its "topic specific" technical witnesses, as it had no overarching EIA compliance point to make.

- b. Given that the decision was taken contrary to officer recommendation and contrary to all professional and legal advice, it should have been obvious to UDC that it would need to justify the January 2020 decision on appeal, not just to rebut the allegations of unreasonableness in STAL's SoC and evidence (particularly the evidence of Mr Andrew) but also bearing in mind the Panel's own power to award costs. It is common practice for a member of the Committee to be called to give evidence in these circumstances, and UDC would have been well advised to call a member of the Planning Committee if it felt that this would have supported UDC's case.
- c. Even if UDC failed to consider the need to call a witness to speak to the Committee's decision when it identified its list of witnesses, there was nothing to prevent it from making an application to adduce further evidence at any time during the course of the eight weeks of the inquiry or from taking further instructions: see, by analogy, *Hopkins Developments*.¹² Instead, having been expressly warned that a costs application was in contemplation, UDC appears to have decided to focus its efforts on pursuing hopelessly misconceived procedural arguments, rather than putting its best case forward to justify the reasonableness of its conduct.
54. Unsurprisingly, given that UDC had ample notice of this application and ample opportunity to adduce evidence to demonstrate the reasonableness of its decision and to substantiate the RfRs on appeal, UDC's complaints that the inquiry should be reconvened to allow UDC to recall witnesses to address these well-trodden issues were rejected by the Panel. UDC seems to be under the extraordinary misapprehension that a party can only be expected to address the reasonableness of its conduct in evidence, once it has seen the costs submissions of the other party (see, for example, UDC Costs Response para 85). This is not how planning appeal proceedings work, as UDC's Counsel must surely know. Reconvening the inquiry to deal with a substantive costs application directed at the reasonableness of the Council's decision to refuse permission would have been a wholly exceptional course of action, particularly after an inquiry lasting for 30 sitting days.

¹² The same is of course true in relation to Councillor Hargreaves' comments, which were explored with Dr Hinnells in week 4 of the inquiry.

55. In short, there was nothing remotely unfair or unusual about the procedure adopted by the Panel in relation to costs. On the contrary, UDC was granted a generous period of time (28 days) to respond to the costs application and it has produced lengthy submissions running to 55 pages and responding to each of the grounds by reference to the evidence, together with a 44-page bundle of documents including two witness statements.
56. UDC cannot sensibly claim that it has not been given a sufficient opportunity to respond to this application, nor that it has been in any way prejudiced by a costs application which has been made entirely in accordance with the guidance in the PPG.

(2) **STAL'S REPLY TO UDC'S RESPONSE ON THE SUBSTANTIVE APPLICATION FOR COSTS**

Legal principles relating to costs applications (UDC Costs Response paras 96-124)

General principles

57. The general principles governing the award of costs in planning appeals are not in dispute (see Costs Response paras 96-103). In particular, and as emphasised above, it may well be the case that a Council is able to “salvage” the RfRs promulgated by its Committee at the appeal stage through the provision of further evidence. In those circumstances, an Appellant will face an uphill battle persuading an Inspector that the Council has acted unreasonably in refusing permission, since the decision will subsequently have been shown to have been a defensible one.
58. That is plainly not what has happened here. UDC’s witnesses have not substantiated the RfRs on appeal at all, let alone provided “some respectable basis” for its decision to refuse permission, per *North Norfolk*. On the contrary, each of UDC’s witnesses now accepts that the development is acceptable subject to the imposition of conditions, and the Council’s own planning witness has stated in terms that the planning balance favours the grant of permission and that the appeal should be allowed subject to the imposition of conditions¹³.

¹³ See, further, paras 11 and 262 of STAL’s closing submissions as to Mr Scanlon’s evidence

59. Consequently, the causation principle (UDC Costs Response, para 105) works against UDC, not in its favour. Had UDC not unreasonably refused permission in the first place, no appeal would have been necessary and there would have been no opportunity for SSE (and others) to add to the length of the inquiry process. The costs of the inquiry flow directly from UDC's unreasonable refusal of permission, which is why STAL is fully justified in making an application for a full award of costs against UDC only.
60. The 'causation' argument does not, however, work the other way and UDC's response at para 105 reveals a fundamental lack of understanding about the costs procedure. STAL's application is expressly made either for a full award of costs or, alternatively, for a partial award of costs on any of the grounds set out in its application, including RfR 4. This RfR forms the basis for a costs application in its own right, for the reasons set out at paras 71-74 of STAL's costs submissions. It is hopelessly vague and imprecise and UDC plainly has not substantiated its case on appeal that the s106 agreement was in any way inadequate, so as to justify refusing permission on the grounds of lack of supporting infrastructure or mitigation. Given that UDC has abandoned any attempt to defend the first three RfRs as reasons for refusing permission, the reasonableness of this RfR clearly needs to be considered in its own right when considering whether to make a full or a partial award of costs.
61. It follows that the Panel can indeed make a partial costs award, relating to the costs incurred by STAL in responding to any one of the RfRs, even if the Panel were to conclude that the other RfRs were justifiable. And it could do so of its own initiative, even if STAL's costs application were not framed in this way.

The Committee minutes and reasons

62. At para 106 onwards, UDC seeks to rely on the authorities relating to the scope of the legal duty to give reasons for planning decisions to suggest that it was somehow inappropriate of STAL to explore the minutes of the meeting in January 2020 with UDC's witnesses, in order to ascertain the matters which influenced the Committee's decision to refuse permission.

63. However, these authorities are directed at a completely different issue, namely the adequacy of the reasons provided by a Committee and whether a planning decision should be quashed for a failure to give adequate reasons i.e. “whether the information so provided by the authority leaves room for “genuine doubt ... as to what (it) has decided and why””: see *Dover District Council v CPRE Kent*¹⁴. The Panel is invited to read the relevant passages of this judgment to confirm that they do not bear upon the issues herein.
64. The exercise that STAL went through carefully with UDC’s witnesses was to establish the evidential basis for UDC’s decision, including whether the Committee turned its mind to the benefits of the scheme and the planning balance at all (c/f UDC’s response at paras 115-116), or the mitigation proposed by STAL or the scope for some variation of this mitigation to address its concerns, and whether there was any valid evidential or policy basis for rejecting the detailed advice and recommendations of UDC’s officers. The minutes of the meeting formed part of the evidence at the inquiry and it was entirely legitimate and proper for STAL to explore this evidence with UDC’s witnesses.
65. Moreover, STAL’s case that there was no reasonable basis for the decision to refuse permission in January 2020 does not depend on taking statements made by individual Members in isolation. It is squarely focussed on the issues which led the Committee collectively to determine that permission should be refused and which are clear to see from the “general tenor of the Minutes” (see UDC Costs Response paras 111-112)¹⁵.

¹⁴ The citation from Dover DC v CPRE Kent at para 114 of UDC’s costs response needs to be understood in its proper context. The full paragraph reads as follows:

“42. There is of course the important difference that, as Sullivan J pointed out in Siraj , the decision-letter of the Secretary of State or a planning inspector is designed as a stand-alone document setting out all the relevant background material and policies, before reaching a reasoned conclusion. In the case of a decision of the local planning authority that function will normally be performed by the planning officers' report. If their recommendation is accepted by the 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. However the essence of the duty remains the same, as does the issue for the court: that is, in the words of Sir Thomas Bingham MR, whether the information so provided by the authority leaves room for “genuine doubt ... as to what (it) has decided and why.””

¹⁵ The example given by UDC at para 113 of Councillor Hargreaves’ comments is a red herring in this regard. Councillor Hargreaves’ comments were not made in the context of determining this application. They are relied upon by STAL as evidence of the new administration’s reckless attitude towards its development control responsibilities and specifically towards this development.

66. Given that UDC took nine months to approve these minutes, it can hardly now complain that they are not a fair reflection of the discussion that took place. Nor is there in fact any dispute as to the issues which exercised the Committee and led it to refuse permission, namely the fleet mix issue, WHO ENG 2018, PM 2.5 emissions and net zero and the CCC's advice in September 2019 (see UDC response, para 142, where these issues are summarised).

The Council's advice on costs consequences

67. As with the authorities relating to Committee minutes, the dicta of Lindblom LJ in *R (East Bergholt PC) v Babergh DC* [2019] EWCA Civ 220 are also directed at a completely different issue to the one before the Panel now.

68. In *East Bergholt*, the question for the Court was whether there was anything unlawful about an Officer reminding Members about the financial consequences to the Council that would flow from a refusal of permission and a likely appeal. The Court of Appeal held that there was nothing unlawful about the Council's approach. On the facts of that case there was:

"... no evidence of an approach whose aim was to avoid for the district council the financial burden and risk of appeals, rather than one that would produce a "robust" assessment in accordance with national policy and guidance."(per Lindblom LJ at para 71)

69. Per *East Bergholt*, it is perfectly lawful for a Council to take account of the potential costs consequences in seeking to ensure that its decision is robust and can be defended on appeal by reference to relevant local and national policy and guidance. It is not lawful for a Council to allow its proper assessment of the merits of the decision, by reference to policy and other material considerations, to be distorted by concerns about the costs of an appeal.
70. There is no evidence whatsoever that Members here were being invited to take a decision which did not reflect the merits of the application, due to concerns about the costs of the appeal process. Quite to the contrary, Officers were urging Members to make their decision on the basis of the planning merits alone, and reminding Members that an indefensible decision would have serious costs consequences. The fact that Members

nonetheless proceeded to reach a decision which has been shown at this appeal to lack any valid evidential or policy basis, in reckless disregard of this advice, only serves to emphasise the unreasonableness of UDC's conduct. Indeed, far from the decision being influenced by concerns about costs, the attitude of the Council – as exemplified by Councillor Hargreaves' comments – appears to have been that the risk of costs need not stand in the way of making an indefensible decision, because the Council had the resources available to cover those costs. This is precisely the kind of unreasonable and irresponsible conduct, which the costs regime is there to prevent and to sanction.

Legal advice on material considerations

71. At paras 119-124 of its Costs Response, UDC dances around the question of whether the decision taken by the Committee was contrary to the legal advice received and suggests that the Committee's decision was simply a legitimate exercise of planning judgment as to the weight to be given to the "ncw" material considerations identified by it in the planning balance.
72. If this was an accurate reflection of the legal advice received, it is surely surprising that UDC has not chosen to disclose this advice, given its obvious relevance to the reasonableness of UDC's decision and the importance of the issues at stake for UDC.
73. In any event, it is clear from the January 2020 OR¹⁶ that the decision was not taken in accordance with the legal advice received and that there was no sound planning basis for overturning the original decision. On the contrary, having recorded the issue before the Committee as being whether there were "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", Officers advised in terms that there were no new material planning considerations, which might justify reversing the original decision. In other words, the matters being aired by SSE and by Members, as potentially justifying a reversal of the original decision – fleet mix concerns, the WHO ENG 2018 guidelines, fine particulates, and net zero – were neither "new" nor objectively or reasonably capable

¹⁶ See, further, STAL's costs submissions at para 19 and CD 13.3b

of tipping the balance “to some extent one way or the other”, per *Kides*. It is perfectly obvious that the legal advice received by the Council at the time of its decision in January 2020 supported directly the report and recommendation of its senior planning officers.

Reply to UDC’s response on grounds 1-3

The handling of the application by UDC (UDC Costs Response paras 126-139)

74. The Panel is respectfully referred to STAL’s costs submissions at paras 9-30 for a full account of the chronology leading up to the decision to refuse permission in January 2020. In this context, the suggestion that the events from April 2019 onwards were simply an unavoidable consequence of the change of administration and the need for the new administration to be “brought up to speed” on this development is, again, absurd. Moreover, the contention that this chronology showed that UDC “needed to be convinced about the nature and scale of effects that would result from implementation” (UDC Costs Response, para 22(3)) only serves to demonstrate the unreasonableness of UDC’s conduct: in light of the previous resolution, it was not open to UDC simply to change its mind as to the merits of the application, without “very good” planning reasons for performing such a *volte face*: per Sullivan J in *Kings Cross Railways Lands Group v London Borough of Camden* [2007] EWHC 1515 (Admin).¹⁷
75. In this regard, the call-in direction is a complete red herring (see UDC Costs Response, paras 127 onwards). At that time, STAL still believed that the negotiations it was conducting in good faith with UDC’s officers as to the terms of the s106 agreement would lead to the decision notice being issued in accordance with the November 2018 resolution (see STAL’s Opening Submissions at para 91). Even at the time of the Committee meeting in January 2020, STAL still hoped that Members might see sense, and it is therefore wholly unsurprising that Mr O’Toole adopted a diplomatic tone towards Members at that meeting (c/f UDC Costs Response, para 135).
76. The same is true of STAL’s willingness to agree to extensions of time for the determination of the application when these were requested by UDC (c/f UDC Costs

¹⁷ As referred to at CD 13.4g.

Response, para 138) particularly when a resolution to approve was still in existence right up until the January 2020 committee. STAL cannot possibly be criticised for making every effort to avoid incurring the very substantial costs and delay of this appeal. It was indeed keen for this application to be determined at a local level, provided - and on the understanding - that UDC would behave reasonably in determining the application.

77. It was only when Members threw out the application without any proper basis, having largely adopted the case made by SSE in its presentation to the Committee, that it became clear to STAL that its efforts had been wasted, and that UDC had indeed been engaged in filibustering for a very extensive period, and that the new administration never had any serious intention of determining the application on the planning merits nor of granting permission for this development.
78. UDC's submissions in relation to the handling of the application only serve to demonstrate that STAL has behaved entirely reasonably and in good faith throughout the period of the determination of the application. It is extremely regrettable that the same cannot be said of UDC, and that STAL has been left with no choice but to bring this appeal and now to seek compensation for the wasted costs it has incurred.

The decision in January 2020 (UDC Costs Response paras 140-149)

79. It is common ground that the factors relied upon by the Committee as constituting new material considerations said to justify the reversal of the original resolution and the refusal of permission were (i) the fleet mix issue, (ii) the WHO ENG 2018 guidelines, (iii) PM 2.5 emissions and (iv) net zero and the CCC's September 2019 advice: see para 142 of UDC's response.
80. These matters were fully explored in evidence and are addressed in STAL's Closing Submissions and its Costs Submissions (see, in particular, STAL Costs Submissions, paras 48-74 and STAL Closing Submissions at 113-117, 167-173 and 234-237). Those submissions are not repeated here. No further information was requested from STAL in relation to any of these matters by the Committee and, as Officers repeatedly advised, there was no proper evidential or policy basis for the Committee's decision to refuse

permission on these grounds, let alone any good planning reason to justify reversing the original resolution.¹⁸

81. Specifically, and in relation to the fleet mix issue (as considered at para 146 of UDC's Costs Response), UDC's submissions on this point make no sense. The noise contour condition before the Committee plainly is not just a "roll forward of the existing noise contour condition." The 27 sqkm contour is a consequence of the fleet mix projections and is very considerably tighter than the 33.9 sqkm area conditioned by the 2008 planning permission and currently in force. Moreover, this reduction is not affected by the debate about whether the condition should be tied to 57db (as agreed with UDC Officers) or 54db or indeed 51db (as proposed for the first time by UDC on appeal): as explained in STAL's closing submissions (para 102), and as is self-evident, the contours move together, so a tighter 54dB contour will also be a tighter 57dB contour. It is for this reason that Mr Trow conceded in XX that the noise contour condition provides a complete answer to this issue. This was also the advice of Officers in the January 2020 OR, which Members entirely disregarded.
82. As to para 147 of UDC's Costs Response, the fact that UDC is able to point to the words "planning balance" and "tilted balance"¹⁹ in the minutes of the January 2020 meeting does not begin to show that UDC turned its mind to the benefits of the scheme or conducted a proper planning balance. Mr Scanlon's evidence on appeal confirms that, had it gone through this exercise and done so properly, it would inevitably have concluded that the planning balance favoured the grant of permission and that permission should have been granted.
83. For all the reasons set out in STAL's Costs Submissions and Closing Submissions, it is clear that there was no reasonable basis for UDC's decision to refuse permission in January 2020, contrary to the advice of its officers and legal and professional advisers, and without giving any consideration to whether further information should be requested

¹⁸ As to fn 17 of UDC's response, it is difficult to understand how a factor which attracts only "negligible" weight could rationally be said to be capable of tipping the balance one way or another in the planning balance, so as to constitute a material planning consideration, per *Kides*.

¹⁹ Noting that there was also no suggestion in the Officer Report that the tilted balance under para 11(d)(ii) was engaged at all. Nor did Mr Scanlon suggest that the tilted balance applied: his evidence was that the development complied with the development plan so that para 11(d)(i) applied.

from STAL, or whether UDC's concerns were addressed by the mitigation proposed (or could be addressed by seeking different or additional mitigation, whether via planning conditions or an amendment to the s106).

UDC's case on appeal (UDC Costs Response paras 150-155, paras 166-169)

84. Far from being "caught off guard" by this costs application, UDC's submissions at para 150 onwards reveal that the focus of UDC's case at this appeal has been on the reasonableness of its original decision rather than defending the appeal on its merits (see, for example, para 151).
85. However, the onus on a Local Planning Authority is to produce evidence to substantiate its RfRs at the time of the appeal. If UDC was no longer of the view that the RfRs were properly defensible, the proper course of conduct would have been to withdraw those RfRs at the earliest opportunity and to amend its Statement of Case.
86. Neither course was adopted and UDC has plainly failed to discharge that obligation. Instead, each of UDC's witnesses now accepts that permission should be granted, but subject to the imposition of conditions. UDC has not substantiated the RfRs on appeal. This is quintessentially unreasonable conduct, which has led directly to the costs of this appeal.
87. In any event, there is no merit whatsoever in UDC's contention that there were material deficiencies in the ES, which meant that it was reasonable for UDC to refuse permission in January 2020. The various matters referred to by UDC's technical witnesses (and summarised at paras 151 and 153 of its Costs Response) are all either matters which were fully explored and addressed at the Committee stage²⁰, or which have only been raised for the first time by UDC's technical witnesses at this appeal in an attempt to substantiate the RfRs, and which have been shown to have no bearing whatsoever on the validity of the original assessment in the ES.²¹

²⁰ E.g. WHO ENG 2018 and net zero/ the CCC advice

²¹ See, for example, the long list of additional matters raised by Dr Broomfield and referred to at fn 21 of UDC's response, none of which has demonstrated that there was any shortcoming in the assessment of air quality impacts in the ES, nor that the original assessment was anything but entirely sound. See, in particular, STAL's Closing Submissions at paras 134-135 concerning the Clean Air Strategy, as referred to at para 153(2) of UDC's

88. In this regard, it is completely absurd for UDC to accuse STAL of “hiding behind the lack of specific requests from UDC’s officers for further environmental information” in relation to any such perceived deficiencies (UDC response, para 153). There is a statutory process for the determination of EIA applications, including the procedure for requiring the provision of further information under Regulation 25. It is plainly not for an applicant to try to second guess what further information a Local Planning Authority may require, particularly when the ES had been the subject of extensive scrutiny and discussion by UDC’s officers, expert advisors and all statutory consultees and had been signed off by them.
89. The deficiencies now alleged in the ES were never raised or explored at the time of the decision²². They have clearly been conjured up by UDC and its technical witnesses in an attempt to defend a costs application, which UDC anticipated would be forthcoming.
90. Moreover, none of the matters now said by UDC’s technical witnesses to have been omitted from the ES has, in fact, resulted in any adverse environmental impact being identified (see, further, below). UDC’s point about the alleged deficiencies in the ES does not therefore begin to demonstrate that the Committee acted reasonably by refusing permission outright in January 2020. Moreover, if UDC had any residual concerns about whether the likely significant environmental impacts of the development had been properly assessed in the ES (as has been demonstrated on appeal), it should – acting reasonably - have sought such clarification or further information from STAL as it required at that time.
91. Nor can it possibly be said to have been reasonable for UDC to refuse permission outright, in circumstances where it now accepts on appeal that the development is acceptable subject to the imposition of conditions (c/f UDC Costs Response, paras 166-168). As repeatedly emphasised by STAL, the imposition of conditions is within the gift of the Council. If the Council wanted to impose a different set of conditions it did not need STAL’s consent or agreement, and it is clearly no answer to this ground to suggest (see UDC Costs Response para 168) that STAL might have appealed against any condition

Costs Response. As explored with Dr Broomfield in XX, this long list also included a number of matters which had in fact been fully addressed at the ES stage in any event (see STAL Closing Submissions at para 146).

²² Ibid

which UDC sought to impose. The reality is that UDC gave no consideration whatsoever to whether there were conditions which might overcome its concerns (including the fleet mix issue, for which the noise contour condition provided a complete answer).

92. In any event, the Panel will also note that STAL has, in fact, agreed to various revisions to the conditions proposed by UDC on appeal, insofar as those conditions satisfy the relevant legal and policy tests, specifically the revised noise contour condition and the provision of an air quality management strategy. It does not agree to the imposition of condition 15 because condition 15 is manifestly unreasonable and unlawful for the reasons set out in STAL's costs submissions and in its closings.
93. At para 166 of UDC's Costs Response, and in the witness statement of Mr Glenday, reference is made to a meeting which took place between STAL and UDC after UDC's decision to refuse permission. The account of this meeting in Mr Glenday's witness statement is not accepted and the discussion at that time has clearly been misconstrued. In particular, it is self-evident that STAL never intended to pursue a judicial review or an ombudsman complaint, neither of which would have led to the grant of permission, and there was no question of STAL submitting an NSIP application for >10mppa because there is no project for >10mppa, which might qualify as an NSIP in the first place, as has been repeatedly confirmed by STAL in evidence. Plainly, however, once UDC had refused permission in the manner that it did, STAL turned its attention to the appeal process. It is impossible to understand what relevance this meeting can possibly be said to have to the reasonableness of UDC's decision as at January 2020.
94. At various places in UDC's Costs Response, it is asserted that STAL did not challenge UDC's witnesses in XX as to their views concerning the reasonableness of UDC's decision (see, for example, para 149 and para 155(1)). As with so many aspects of UDC's Costs Response, UDC appears to be operating under a complete misapprehension and has the cart before the horse. The question of whether UDC's decision was a reasonable one is a matter of judgment for the Panel at the close of the inquiry. STAL was under no obligation to formulate its costs submissions in advance of the evidence and put these submissions to the individual witnesses. Instead, it has made its submissions based upon the evidential picture which ultimately emerged (via its own and UDC's witnesses) as to the reasonableness of UDC's conduct. That is an entirely proper approach.

The relevance of the ESA (UDC Costs Response, paras 156-164)

95. As noted above, there is no evidence at the end of the inquiry that there were any significant environmental impacts, as at January 2020, which had not been assessed and which might reasonably have led to the conclusion that the adverse impacts of this development outweighed the benefits contrary to the previous resolution to grant permission. This was all explored in XX of Mr Scanlon, who confirmed that UDC's case was premised not on there being any material change in the environmental effects as between the ES and the ESA, but rather on the alleged deficiencies in the information provided to the Committee. This argument is addressed above.
96. It therefore remains wholly unclear how the ESA can be said to justify UDC's *volte face* in these proceedings. The ESA plainly is not "a new ES in all but name" (c/f UDC para 157) (if this were correct, it is extraordinary that UDC did not seek to raise this with Mr Thompson in evidence). However, it was regrettably necessary to update the baseline and forecasting years, largely due to the delays caused by UDC's conduct (see STAL Costs Submissions, para 41). While it is true that the updated forecasts have resulted in some further improvements in the assessment of environmental impacts (see UDC Costs Response, para 163), this is simply a consequence of the later forecasting dates. The fact that the position has now improved still further does not begin to justify the refusal of permission in January 2020, absent any evidence of any more than negligible environmental impacts at the time of the original decision.

Residual points

97. The matters raised by UDC under the heading "residual points" have all been addressed by STAL in its Costs Application and in its Closing Submissions in respect of each of the RfRs. Those submissions are not repeated here.

Reply to Ground 4: Condition 15

98. At para 177 of its response, UDC appears to suggest that condition 15 is somehow exempt from the test of reasonableness because the PPG refers to "imposing" a condition, whereas UDC has only conjured up condition 15 at the appeal stage.

99. This is a hopeless argument. The examples given in the PPG are not intended to be read as if they were a statute and they are not prescriptive. It is just as unreasonable to pursue an unlawful condition on appeal as it is to seek to impose an unlawful condition on the grant of permission, particularly where the Council has abandoned any attempt to argue that the development is not acceptable in principle and its case on appeal begins and ends with the conditions subject to which permission is granted.
100. It is equally hopeless for UDC to suggest (see response at para 182) that Mr Andrew's objections to condition 15 were based only on "practicalities of compliance and legal points" and did not go to the unreasonableness of the condition. Mr Andrew's evidence in relation to condition 15 was entirely clear and unequivocal. He went so far as to say in XX that the phased release approach which underpins condition 15 was not how the planning system was intended to operate (see para 271 of STAL's Closing Submissions). His position, as a planning witness, was that condition 15 failed every one of the six policy tests in the NPPF.
101. Thus, the unreasonableness alleged in relation to condition 15 is on substantive grounds. Paras 179-180 of UDC's Costs Response are wholly irrelevant to the merits of this argument. Para 180 was also fully addressed in STAL's Submissions in response to condition 15²³ and those submissions are not repeated here.
102. As UDC asserts in its response, it has (regrettably) been necessary to devote a great deal of time at the inquiry, traversing the lawfulness and policy compliance of condition 15 both in evidence and in submissions. This is the basis for ground 4 of the costs application. For the reasons set out in STAL's Costs Submissions, Closing Submissions (paras 264 onwards) and in STAL's Submissions on condition 15, UDC's promulgation of this condition on appeal – which it alone has pursued - is plainly unreasonable and this has led to substantial wasted inquiry time and wasted costs by STAL.

Reply to Ground 5: Acting contrary to, or not following, well-established case law

103. STAL does not repeat its submissions in relation to condition 15, as set out above.

²³ CD 26.8

104. As to **Bushell** (UDC Costs Response, paras 185-189):

- a. Unsurprisingly, UDC does not seek to argue that the “principle” in **Bushell**, that the merits of national policy and the methodology underpinning it are not a matter which are suitable for debate by local decision makers, does not have binding legal force. It is an uncontroversial and long-established proposition, which explains why it was conceded by the Secretary of State in that case. It is also a principle which is founded on good sense: the current appeal demonstrates very clearly why the merits of and methodology underpinning national policy are wholly unsuitable for interrogation through the narrow lens of a local planning inquiry.
- b. STAL has never sought to dispute that MBU leaves open to decision makers the assessment of local environmental and other impacts, and the weighing of these impacts against the in principle support provided by the policy for making best use applications, such as the current one. However, it is hopeless to suggest that MBU leaves it open to LPAs to assess the carbon impacts of an MBU proposal at their discretion, for the reasons set out in STAL’s Closing Submissions at para 181.
- c. Per para 182 of STAL’s Closing Submissions, para 190 (and para 173) of UDC’s Costs Response is a complete and unacceptable mischaracterisation of Mr Robinson’s evidence. Mr Robinson did not agree that carbon emissions were a matter which MBU left open to LPAs to take into account. As the Panel’s notes of his evidence will show, although he agreed that MBU does not explicitly say that LPAs “must not” consider carbon issues, he went on to say that MBU does “set out [the Government’s] expectation of how the issue should be treated. And carbon emissions should clearly be treated at a national level, and that is plainly what the document says.” As the Panel’s notes of the evidence will show, Mr Hawkins also gave evidence on this issue. He was also clear in his evidence that MBU deals with the national issue of carbon emissions and therefore narrows the range of issues for Local Planning Authorities to consider to local issues only. The good sense underlying this policy approach was addressed at the inquiry and needs no further comment here.
- d. For the reasons set out in STAL’s Closing Submissions (para 184), arguments about the “weight” to be given to MBU in this context are an illegitimate attack on the

merits of MBU, dressed up as a question of planning judgment. UDC's Costs Response does not address these submissions at all.

CONCLUSION

105. For the reasons set out above, and in STAL's submissions on costs and its Closing Submissions, the Panel is respectfully invited to make a full (or, alternatively, a partial) award of costs against UDC.

THOMAS HILL QC

PHILIPPA JACKSON

39 Essex Chambers

London WC2A 1DD

23 April 2021

7 May 2021

Ms E Humphrey
The Planning Inspectorate
3/J Kite Wing
Temple Quay House
2 The Square
Bristol
BS1 6PN

Dear Ms Humphrey,

Town and Country Planning Act
Appeal by MAG APP/C1570/W/20/3256619, London Stansted Airport, Essex CM24 1QW

Response to Panel Request of 24 April 2021 in Respect of Government Press Release of 20 April 2021

This letter is the Appellant's ("STAL's") response to the Panel's request for comments concerning the Government's press release about the inclusion of International Aviation and Shipping ("IAS") emissions within the UK's national carbon budget.

However, in light of Uttlesford District Council's ("UDC") response submitted on 23 April, it is necessary to address first the procedural matters that have been raised.

Procedural Issues

It is incorrect for UDC to suggest that the 'inquiry remains open'. The inquiry was in fact closed by the Panel on the last sitting day, 12 March 2021. Of course, a discretionary power exists for inspectors to re-open inquiries if it is considered 'fit' to do so.¹

Despite UDC's assertions, STAL does not consider the content of the press release merits re-opening the inquiry. The matters contained in the press release were traversed at length during the evidence of the carbon witnesses, including that of Mr Neil Robinson for STAL, as explained further below. In these circumstances, it is entirely appropriate (and in accordance with normal practice) that matters such as this be dealt with in writing. It is noted that since UDC's letter of 27 April 2021 the Panel has provided its response to UDC's request, and STAL is entirely supportive of the position taken by the Panel.

Response to the Government Press Release

The Government's approach to accounting for emissions from aviation has been set out in Mr Robinson's proof of evidence (STAL 8/2). In his proof, at section two, Mr Robinson explains that the first to fifth carbon budgets include emissions from domestic aviation and that, consistent with Section 30(1) of the Climate Change Act 2008, these budgets do not formally include emissions from international aviation (and

¹ Rule 19(4) The Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000.

shipping). However, the budgets were set at a level that took account of emissions from international aviation and shipping by providing headroom. For the purposes of the budget setting process, it was assumed that (at 2050) total emissions from international aviation would be 37.5Mt – referred to as the ‘planning assumption’ - and therefore this level of emissions would be consistent with the first to fifth carbon budgets.

The first to fifth carbon budgets were intended to set a trajectory consistent with the Government’s target to reduce emissions by 80% (against a 1990 baseline) by 2050. With the change in Government policy in 2019 to increase the stringency of the UK target to a reduction of 100% (otherwise known as “net zero” emissions), future carbon budgets will need to set out a more aggressive trajectory. To begin this process, in December 2020 the CCC published its advice on the sixth carbon budget (“6CB”). This advice was summarised in Mr Robinson’s supplementary proof of evidence (STAL 8/4).

As Mr Robinson set out in his supplementary proof of evidence, the CCC advised Government that emissions from international aviation should be included in the 6CB (para 4.2) but that *‘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’* (para 4.4).

The Government has announced its decision on the 6CB, confirming that it has accepted the advice of the CCC as to the level at which the budget should be set and that it intends to legislate for a more stringent emissions trajectory consistent with the achievement of net zero emissions.

With regard to emissions from international aviation, the Government has now confirmed that these emissions will be formally included in the UK’s 6CB, although this position will be subject to a further assessment in 2025, seven years ahead of the budget’s implementation, to reflect any *‘significant developments in international or domestic policy’*.

Whilst the recent announcement will affect how the Government formally accounts for emissions from international aviation, it does not imply any change in the Government’s approach to the management and mitigation of these emissions. As Mr Robinson set out in Section 4 of his proof of evidence, the Government has a long-standing policy approach to address aviation emissions as part of a global framework, under the leadership of ICAO. Furthermore, Mr Robinson went on to explain that this policy approach has been consistently and repeatedly re-stated by the Government, as set out in the body of evidence submitted to the inquiry and explored extensively during his own evidence.

To provide context and clarity to the recent decision on the 6CB, the DfT issued a statement to aviation stakeholders, a copy of which is appended to this letter. The DfT’s Deputy Director, Climate Change, has again re-stated the long-standing policy that the *“Government recognises that global action helps reduce the risks of competitive market distortions and carbon leakage that can come with acting alone, and remains committed to global action to tackle international aviation emissions through international processes at the International Civil Aviation Organization (ICAO)”*.

Mr Robinson also set out in Section 2 of his proof of evidence that the carbon budgeting process has always taken account of emissions from international aviation and that the inclusion of these emissions in the 6CB is a technical accounting change, not a substantive change in the Government’s approach. The press release accompanying the Government’s decision on the 6CB explicitly states that the change is intended to *“allow for these emissions to be **accounted for consistently**”* and that *‘following the CCC’s recommended budget level **does not mean** we are following their specific policy recommendations”* (emphasis added).

It remains to be seen how the Government will set the 6CB across all sectors of the economy to work towards the national net zero commitment at 2050 and its new 78% target for 2035. However, what is clear from the evidence considered at the inquiry, is that important technological advances in the aviation sector allow considerable scope for growth in aviation activity in parallel with a reduction in the aviation planning assumption of 37.5Mt, should the Government so determine.

There is no suggestion in the recent press release that the Government intends to move away from its MBU policy. As Mr Robinson emphasised in his evidence, the inclusion of IAS emissions in the 6CB does not change the nature of the assessment upon which the MBU policy is based: it merely formalises the status of the longstanding aviation planning assumption.

Yours sincerely,

Alistair Andrew, MRTPI
Head of Planning Services
MAG

Enc. DfT E-Mail to Stakeholders, 20 April 2021

Alistair Andrew

From: Holly Greig
Sent: 20 April 2021 14:15
Cc: Darryl Abelscroft; Alex Philpott; Phil Harper; Rannia Leontaridi
Subject: The Sixth Carbon Budget and International aviation emissions

Dear Stakeholder,

The Government has announced today that it will set the world's most ambitious climate change target in the Sixth Carbon Budget, to reduce carbon emissions by 78 per cent compared to 1990 levels, in line with the recommendation from the independent Climate Change Committee. For the first time, this Carbon Budget will also legally include the UK's share of international aviation (and shipping) emissions, which will allow for these emissions to be accounted for consistently (UK domestic aviation emissions are already included).

The Sixth Carbon Budget limits the volume of greenhouse gases emitted over a five-year period covering 2033-2037 at 965MtCO₂e, taking the UK more than three-quarters of the way to reaching net zero by 2050. The Sixth 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.

International aviation emissions are an important part of our decarbonisation effort. The Government recognises that global action helps reduce the risks of competitive market distortions and carbon leakage that can come with acting alone, and remains committed to global action to tackle international aviation emissions through international processes at the International Civil Aviation Organization (ICAO). We already play a leading role in the development and implementation of measures driving emissions reduction in the international aviation sectors at ICAO, including securing and developing the CORSIA scheme, and now in ICAO's work towards a long-term emissions reduction goal for international aviation.

The UK is also already taking domestic action to reduce aviation emissions, for example, through the work of the Jet Zero Council, the £125 million we are investing into the Future Flight challenge, including aviation within our new UK Emissions Trading Scheme and allocating £18m of further funding for commercialisation of Sustainable Aviation Fuels. We will set out further decarbonisation plans for aviation in the Transport Decarbonisation Plan and Net Zero Aviation Consultation, which I would encourage you to respond to.

The Government will conduct a further assessment of the treatment of international aviation (and shipping) emissions in carbon budgets in 2025, reflecting on any significant developments in international or domestic policy.

If you have any questions or would like to discuss any of the above, please do not hesitate to contact me.

Many thanks,
Holly

 Department for Transport

Miss Holly Greig
Deputy Director, Aviation Decarbonisation Division

Transport Decarbonisation

Statement made on 14 July 2021

Statement UIN HCWS174

Statement made by

**Grant Shapps**

Secretary of State for Transport

Conservative

Welwyn Hatfield



Commons

Statement

Transport decarbonisation is a dull way of describing something much more exciting and far-reaching.

Because transport is not just how you get around. It is something that fundamentally shapes our towns, our cities, our countryside, our living standards, our health, and our whole quality of life.

The Transport Decarbonisation Plan that will be published today, the first in the world, is not about stopping people doing things: it's about doing the same things differently. We will still fly on holiday, but in more efficient aircraft, using sustainable fuel. We will still drive on improved roads, but increasingly in zero emission cars. We will still have new development, but it won't force us into high-carbon lifestyles.

Transport is the largest contributor to UK greenhouse gas emissions (GHG), with road transport alone accounting for almost a quarter of our total emissions in 2019. We must deliver a step change in the breadth and scale of our ambition to reduce transport's GHG emissions to reach net zero. In March 2020, "Decarbonising Transport: Setting the Challenge" committed to bring together a Transport Decarbonisation Plan to deliver transport's contribution to carbon budgets and net zero across all forms of transport.

The plan published today is genuinely high ambition – technically and feasibly – for all areas of transport and notes that decarbonisation will rely, in part, on future transport technology, coupled with the necessary behavioural and societal change. Because of the pandemic, we are already seeing some of these changes in behaviour happen much faster than expected. We've seen homeworking change traditional commuter and leisure trips, video conferencing has changed business travel and we've seen a rise in cycling and walking all of which could save thousands of tonnes of carbon themselves.

In the sixteen months since March 2020, we have published ambitious policies to transform England for cycling and walking with an investment of £2 billion and more than 300 cycling and walking schemes already being delivered. We have published plans to fundamentally reshape our bus network along public service lines and have created Great British Railways to make services easier to use, to grow the network and build on the huge acceleration of electrification we've already seen since 2010.

The commitments set out today include linking local infrastructure funding to solutions that cut emissions - aligning that investment to our net zero programme, improving public transport, increasing support for active travel so mass transit and cycling and walking play a bigger role than ever, a net zero rail network by 2050, net zero domestic aviation emissions by 2040 and leading the transition to green shipping.

The Plan also sets out a world-leading pledge to consult on the end of sale of all new, non-zero emission road vehicles by 2040 at the latest.

As a major step towards that, alongside the Plan we have published a consultation on phasing out the sale of all new non-zero emission heavy goods vehicles (HGVs) by 2040, demonstrating our commitment to tackle the second largest source of domestic transport carbon emissions and furthering our ambition to decarbonise UK roads.

This comes with a Green Paper, which will set out options for a new regulatory framework requiring vehicle manufacturers to improve the efficiency of new road vehicles. This will allow us to meet our phase out ambitions whilst creating new jobs for the automotive sector and delivering certainty to drivers.

To underpin our petrol and diesel phase out dates and help achieve them, we are also publishing a 2035 Delivery Plan today. This Plan brings together all of our committed funding streams and measures for decarbonising cars and vans, from across Government, into a single document. It outlines the key timelines, milestones and how we will monitor progress towards our commitment to deliver mass ownership of zero emission cars and vans.

Leading by example, our decarbonisation plan will increase the level of ambition for the whole central Government fleet, moving the target date for the 40,000-vehicle fleet to be fully zero emission forward to 2027.

Today we are also publishing the Government's response to the Electric Vehicle Smart Charging consultation. The response commits to laying legislation later this year to ensure that all private EV chargepoints meet smart charging standards. The transition to EVs is central to Government's net zero commitment but will also increase demand on the electricity system. Smart charging can help mitigate these impacts. This legislation will play an important role in driving the uptake of smart technology, which can save consumers money on their energy bills.

We also intend to tackle the challenges of decarbonising the aviation and maritime sectors head on. Today, we are also launching a Jet Zero consultation that commits the aviation sector to a net zero emissions target by 2050 and sets out our approach and principles to achieve this. The consultation focuses on the rapid development of technologies in a way that maintains the benefits of air travel and maximises the opportunities that decarbonisation can bring for the UK.

The decarbonisation plan sets out further commitments for our maritime sector, establishing our 'Course to Zero', consulting on how we get more ships plugging in to our decarbonised grid, exploring how we phase out emissions from vessels, and considering how we take advantage of the UK's strengths in the maritime sector to support growth in green technology and shipbuilding,

The government is also publishing its Rail Environment Policy Statement, which will set the direction for the rail industry on environment issues and inform the forthcoming Sustainable Rail Strategy. The document will look at traction decarbonisation, air quality, decarbonising the rail estate and a range of other environmental-related issues on the railway, including biodiversity and waste.

This suite of announcements marks a major leap forward in delivering ambitions to decarbonise transport and we are the first country in the world to do this, taking a firm leadership position as we host COP26 later this year.

The Plan is ambitious, consumer friendly and world leading. It will create economic growth, new industries and jobs and help us Build Back Better and Greener.

Statement from

Department for Transport



Linked statements

This statement has also been made in the House of Lords

Department for Transport

Accelerating aviation decarbonisation¹¹⁵



MtCO₂e domestic emissions in 2019



MtCO₂e domestic and international emissions in 2019



1% of domestic GHG emissions from **aviation**



£21m investment in 2021/2022



over **£85bn** added to the economy through the ATI programme supported by UK government



over **73,000** high value jobs have been supported through the ATI programme supported by UK government



250-430 MtCO₂e savings from 2020 to 2050 (domestic and international)



We will support R&D to develop transformative green aviation technology



2021

We will consult on our Jet Zero strategy including, getting domestic aviation in the UK to net zero by 2040

2021

We have run a Sustainable Aviation Fuel (SAF) industry competition and set out our plans for a UK SAF blending mandate to accelerate the production and use of sustainable aviation fuels in the UK



2022

We will work internationally and aim to agree an ambitious long-term global emissions reduction goal in the International Civil Aviation Organization



2025

We will mandate the supply or use of sustainable aviation fuels



Co-benefits:

Air quality



Jobs & growth



Noise



Decarbonising aviation is one of the biggest challenges across the global economy. The technological requirements to provide the power to propel aircraft the distances required far outstrip those for equivalent land-based transport.

This, plus a projected increase in passenger numbers, and the need for global coordination, means that decarbonisation will require a consistent, long-term effort from government and industry, both in the UK and internationally. Through these efforts, we are determined to meet this challenge and are committed to UK aviation achieving net zero by 2050.¹¹⁶

UK aviation has grown significantly since 1990, with passenger numbers increasing threefold to reach 296 million in 2019.¹¹⁷ Aviation has been one of the sectors most severely impacted by COVID-19. While we expect air travel to recover, the speed of recovery and longer-term impact of COVID-19 on the aviation sector are uncertain. However, by 2050 the Climate Change Committee (CCC) expects the sector to be the second largest contributor to UK GHG emissions unless significant action is taken.¹¹⁸

We are already taking decisive action. Last year we launched the Jet Zero Council, a pioneering partnership between the government and the aviation sector to fast-track zero emission flight and the production of sustainable aviation fuels (SAF) in the UK. This was supported by an initial £21 million investment in SAF and R&D into airport infrastructure upgrades for zero emission flight.¹¹⁹ Earlier this year we also launched the UK Emissions Trading Scheme (ETS) which will be the world's first net zero carbon cap and trade market.

The Jet Zero Council

The Jet Zero Council is a partnership between industry and government that brings together senior leaders in aviation, aerospace, and academia to drive the development of new technologies and innovative ways to cut aviation emissions. Its aim is to deliver zero emission transatlantic flight within a generation. The Council is considering how to: develop and industrialise clean aviation and aerospace technologies; establish UK production facilities for SAF and commercialise the industry; and develop a coordinated approach to the policy and regulatory framework needed to deliver net zero aviation by 2050. The government will continue to work closely with industry on our Jet Zero ambition and provide information in a transparent and timely manner.

Internationally, the UK plays a lead role, for example in developing and securing agreement to Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) – the first scheme to address CO₂ emissions globally across a single sector.¹²⁰ The UK will be one of the earliest participants in the scheme, and recently implemented the monitoring, reporting and verification provisions in the UK.¹²¹ We aim to implement the offsetting provisions for CORSIA by April 2022.

What's more, the UK Emissions Trading Scheme already covers emissions from domestic flights, flights from the UK to the European Economic Area and flights between the UK and Gibraltar. In 2019, these flights made up 44 per cent of all commercial flights to and from UK airports.¹²²

This is just the start. Alongside this publication, we are publishing a consultation on Jet Zero – a draft strategy to reach net zero aviation by 2050. Delivering this will require ambitious action across a number of key areas: the development of new zero emission aircraft, accelerating the supply and uptake of SAF, modernisation of our airspace and airports, and the development of trusted and verifiable markets to offset residual emissions. Information also needs to be made available to consumers which allows them to choose the most sustainable routes and travel providers when planning and undertaking their journeys. We need rapid progress in each of these areas to put aviation onto a credible and sustainable pathway to achieving net zero.

As the sector emerges from COVID-19, we need to be very clear about where it will need to get to by 2050 and the years leading up to it. The Prime Minister's Ten Point Plan for a Green Industrial Revolution made clear that this is an opportunity to build back better and align our economic recovery with our environmental commitments.¹²³ Through our plan and draft Jet Zero strategy, not only will aviation reach net zero by 2050, but we will look to move even sooner in certain areas such as domestic aviation and airports.

And whilst the focus of this plan is on the UK's emissions, there's a bigger prize within our grasp in aviation: the chance to reach an ambitious long-term global agreement on reducing all international aviation emissions. This remains a key area of focus as our international leadership can help deliver much greater emissions reductions and help reduce the risk of carbon leakage¹²⁴ and competitive distortions that could undermine our domestic approach.

UK Emissions Trading Scheme (ETS)

On 1 January 2021 the government established a UK Emissions Trading Scheme (UK ETS) to replace the UK's participation in the EU Emissions Trading System (EU ETS).¹²⁵ The UK ETS covers emissions from the UK's power sector, heavy industry and aviation, and puts a cap on the greenhouse gases that businesses can emit, which will decrease over time.



ZeroAvia: The world's first hydrogen fuel cell powered flight

On 23 September 2020, the world's first hydrogen fuel cell powered commercial-grade aircraft, a Piper M-class six-seater, completed a full flight including taxi, take-off, circuit and landing at Cranfield Airport. The flight also showcased local hydrogen production onsite at the airport through electrolysis, showing a full zero emission ecosystem. Supported by £15 million of government funding as

part of the Aerospace Technology Institute's programme, ZeroAvia is working on scaling-up its hydrogen technology for use on a 19-seater aircraft, securing up to 300 design jobs and 400 manufacturing jobs in Cranfield, Warwick and Orkney.¹²⁶ Through our zero emission aircraft programme of work, we will help prepare airports and airfields to handle these new forms of aircraft.¹²⁷

Further details on our plans to decarbonise aviation will follow in our Jet Zero strategy.

Our plans to deliver the necessary carbon reductions:

Clear targets for getting to net zero

Commitment

We will consult on our Jet Zero strategy, which will set out the steps we will take to reach net zero aviation emissions by 2050

The strategy will set out our approach to accelerating efficiency improvements of aircraft, airports and airspace, positioning the UK as a global leader in zero emission flight and SAF, and will explore how we can support consumers to make more sustainable travel choices when flying.

Commitment

We will consult on a target for UK domestic aviation to reach net zero by 2040

Following the CCC's recommendation, we will consider whether UK domestic aviation should aim to achieve net zero earlier than the UK's share of international aviation emissions, which could support our wider ambitions by driving innovation and early technology adoption in the UK.

Commitment

We will consult on a target for decarbonising emissions from airport operations in England by 2040

Airports represent a small but material share of emissions from aviation. Several airports including Manchester and Gatwick have already achieved carbon neutrality;¹²⁸ and many are now setting more ambitious targets, including Bristol, which is aiming for net zero emissions by 2030.¹²⁹ We will consult on introducing an ambitious target across all airports.

Accelerating decarbonisation

Commitment

We are supporting the development of new and zero carbon UK aircraft technology through the Aerospace Technology Institute (ATI) programme

The ATI Programme provides £150 million of funding per year, matched by industry, for mid-stage collaborative R&D projects from 2013 to 2026.¹³⁰

This includes the ATI led FlyZero study – the first essential step in setting out a detailed plan for how the UK might best contribute to a zero emission aircraft by 2030.¹³¹ As of May 2021, 327 R&D projects valued over £2.9 billion involving 352 unique organisations (including 218 SMEs) have been supported by the UK Government through the ATI Programme.¹³²

Commitment

We will fund zero emission flight infrastructure R&D at UK airports

We will invest £3 million in 2021/22 through the Zero Emission Flight Infrastructure programme to accelerate R&D into infrastructure requirements at airports and airfields to handle new forms of zero emission aircraft.¹³³ This will help UK airports and airfields to adapt more quickly to handle these exciting new technologies.

Commitment

We will kick-start commercialisation of UK sustainable aviation fuels (SAF)

SAF are expected to play a key role in decarbonising aviation. We are putting in place a comprehensive policy framework that could enable greater SAF uptake than is accounted for within the CCC's Balanced Pathway if the market develops quickly.¹³⁴ We have recently launched the £15 million Green Fuels, Green Skies competition¹³⁵ to support the production of SAF in the UK, building on the success of the Future Fuels for Flight and Freight Competition.¹³⁶ We will invest £3 million to establish a SAF clearing house, the first of its kind announced in Europe, to enable the UK to certify new fuels, driving innovation in this space.

Commitment

We will consult on a UK sustainable aviation fuels mandate

In 2021 we will consult on a SAF mandate to blend greener fuels into kerosene, which will create market-led demand for these alternative fuels. With government support for the emerging industry, we want to position the UK as a market leader, capturing significant environmental and economic benefits from the emerging global SAF market, potentially worth up to £1.5 billion per annum for the UK economy by 2040.¹³⁷





Sustainable Aviation Fuels

Both DfT and industry research has highlighted the potential benefits the UK SAF sector could bring to the entire UK, including up to 11,500 jobs in the next few decades.¹³⁸ Our Future Fuels for Flight and Freight Competition (F4C) has received applications from and awarded funding to projects located in areas across the country. With SAF plants already planned in Immingham, Port Talbot

and Ellesmere Port, it is clear there is an opportunity to develop these areas further and help them transition to more sustainable fuels production. Our SAF programme of work, boosted by the new £15 million Green Fuels, Green Skies competition, will look at ways to scale up the domestic SAF sector and ensure it can bring about environmental and industrial benefits to the country.

Commitment

We will support UK airspace modernisation

We will support airspace modernisation to deliver quicker, quieter, and cleaner journeys, alongside annual carbon savings of up to 0.6 MtCO₂e (based on 2019 figures), for the benefit of those who use and are affected by UK airspace. The CAA's updated Airspace Modernisation Strategy, due to be consulted on later in 2021, will provide further detail. Meanwhile, the government is providing up to £5.5 million funding in the years 2020/21 and 2021/22 to ensure the programme remains on track through the global pandemic.

Airspace modernisation has the potential to deliver a reduction in planes queueing in holding stacks over the UK and allow more efficient flight paths to be optimised. These changes will help to bring emissions reductions and potential noise benefits to those living underneath flightpaths, as well as reduce delays.

Commitment

We will further develop the UK Emissions Trading Scheme (ETS) to help accelerate aviation decarbonisation

We will look to improve the system for aviation, for example by reviewing the sector's free allocation in line with the commitment to a net zero consistent ETS cap trajectory, exploring whether to expand the pollutants covered, and determining how the UK ETS will interact with the global offsetting scheme for aviation, CORSIA.

Commitment

We will work with industry to accelerate the adoption of innovative zero emission aircraft and aviation technology in General Aviation

General Aviation refers to the operation of non-scheduled commercial and leisure flights. The sector encompasses a wide range of aircraft and types of flying including private and business flights, flight training, emergency services and medical transfer services. The government has published the General Aviation Roadmap which states our support for encouraging the adoption of new technology in the sector.¹³⁹

Working internationally to deliver emissions reductions

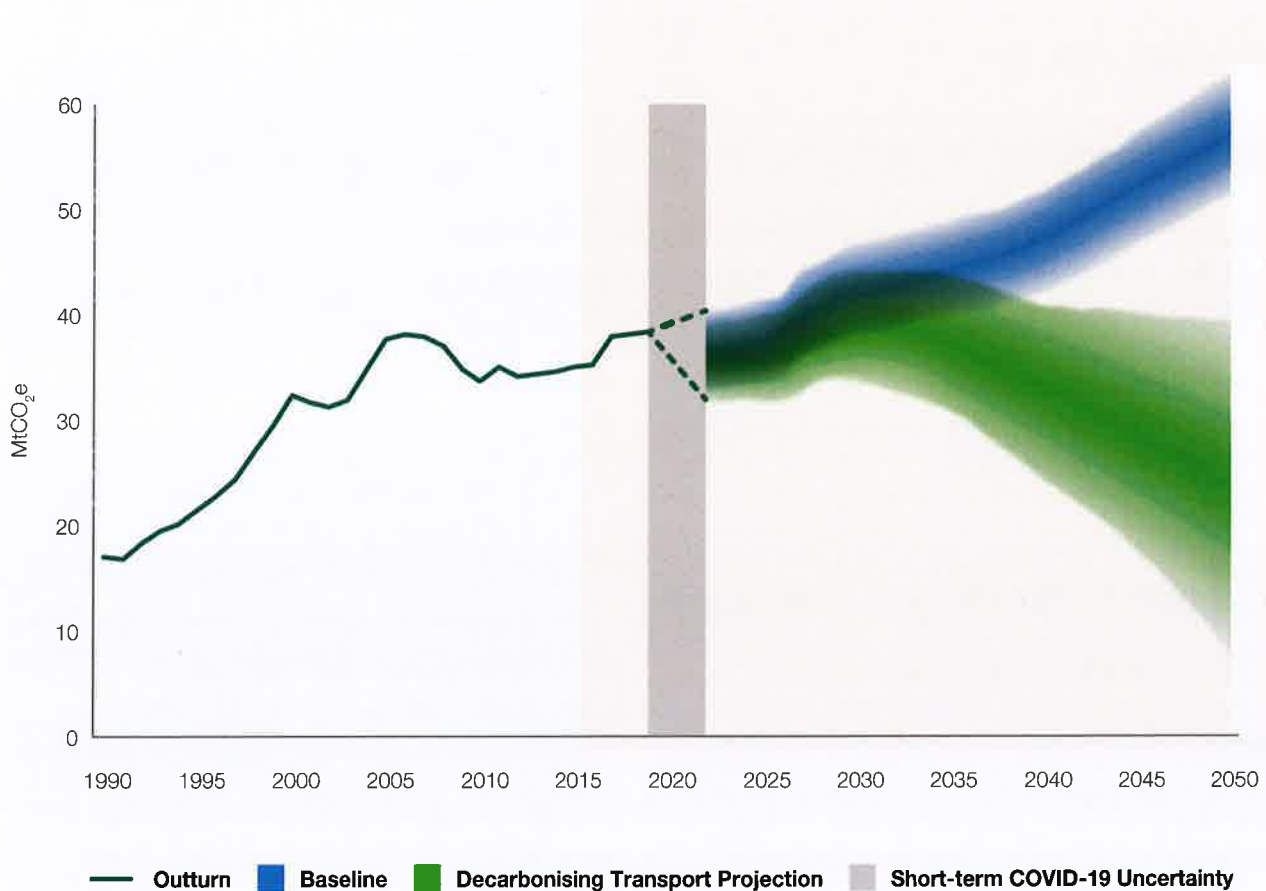
Commitment

We will aim to agree an ambitious long-term global emissions reduction goal in the International Civil Aviation Organization by 2022

A long-term climate goal for international aviation through the UN International Civil Aviation Organization (ICAO), which is consistent with the global temperature goals of the Paris Agreement, remains a top priority.¹⁴⁰ We will build on the success of CORSIA to negotiate for the adoption of an ambitious goal by ICAO's next Assembly in 2022.

A globally co-ordinated, sector-based approach to tackling international aviation emissions reduces the risk that these emissions simply move to other jurisdictions in response to individual countries taking unilateral action. Our focus therefore remains on international action to address emissions from this inherently international sector, alongside bold domestic action.

Figure 12: Decarbonising Transport aviation GHG projections, versus the baseline*



* Historic emissions taken from published UK GHG statistics. Emissions projections taken from the DfT Aviation model. The baseline represents no further policy intervention above that which is already in place. Uncertainty bands have been added, based on historic volatility within aviation emissions, to reflect uncertainty surrounding future emissions. GHG savings are driven by fuel efficiency improvements, uptake of sustainable aviation fuels, introduction of zero emission aircraft, and the impact of a carbon price on demand. Positive emissions in 2050 will be offset to ensure that transport achieves net zero.

The figure above shows our projections for carbon emissions from UK aviation (domestic and international). The baseline reflects a counterfactual scenario with no further policy intervention (no carbon price or uptake of sustainable aviation fuels, and only a low annual fuel efficiency improvement of 0.5%).¹⁴¹

The policy projection is based on illustrative scenarios that have been produced for the Jet Zero Consultation. These scenarios reflect the range of potential pathways to net zero for aviation, depending on how different technologies and their costs develop over time. The scenarios are based on 2017 forecasts of passenger demand and therefore do not take into account the potential long-term impact of COVID-19 on aviation demand. The upper bound of the projection broadly reflects a continuation of current trends, including annual efficiency improvements of 1.5% and moderate uptake of SAF (5% of total aviation fuel usage in 2050) and the application of a universal carbon price to all flights. The lower bound is a speculative scenario with some zero carbon aircraft and a very high uptake of sustainable aviation fuels (75% of total aviation fuel usage in 2050) – the feasibility of this will depend on the availability of sustainable feedstocks, blending limits and the extent to which costs fall in future. Any residual emissions in 2050 will be offset to ensure that aviation reaches net zero.

Offsetting

Residual emissions from the aviation sector will need to be offset by credible, verifiable and demonstrable additional offsets that would see an equivalent amount of carbon removed from the atmosphere. Our Jet Zero Consultation will consider how existing market-based mechanisms such as the UK ETS and CORSIA, as well as innovative greenhouse gas removal technologies, can address residual emissions.

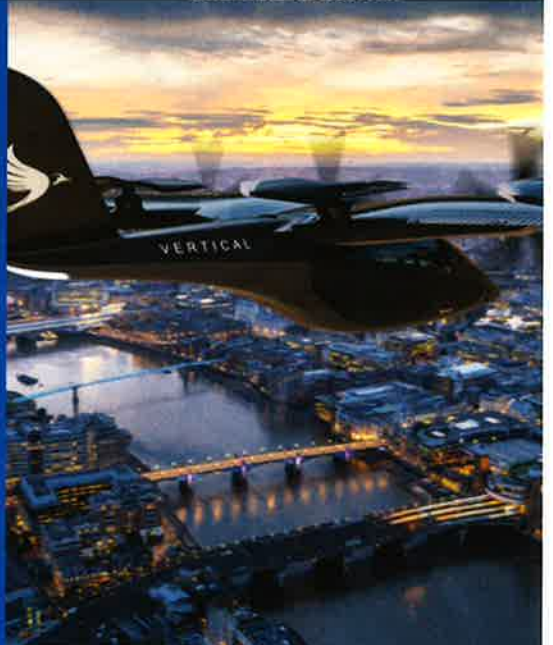
Carbon Offsetting in Transport

Carbon offsetting enables individuals and organisations to compensate for any emissions they cannot avoid or reduce by ensuring an equivalent amount of emissions is reduced or removed elsewhere. These emissions savings are generated through the implementation of a wide variety of projects, which range from planting trees and installing solar panels, to technologies which can capture and store atmospheric carbon, such as BECCS and DACCS. To meet net zero across the economy, any residual greenhouse gas emissions in 2050 must be offset. This includes any remaining emissions from transport. In 2019, the government ran a call for evidence on Carbon Offsetting in Transport,¹⁴² including asking for views on whether travel providers

should be required to provide offsets. Many respondents, from a wide range of organisations, suggested that government should focus on direct emissions reductions, and not on offsetting. Some respondents did support offsetting, while noting that it should only be used while the sector also attempts to reduce its own emissions, and not as an alternative. As set out in this document, our primary aim is to reduce and eliminate emissions wherever possible, and having considered responses to the call for evidence, the government does not consider it appropriate at this time to introduce a requirement for travel providers to offer offsets. This position will be kept under review to ensure it reflects the latest developments in technology and offsetting schemes.



Department
for Transport



Jet Zero Consultation

A consultation on
our strategy for
net zero aviation

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Foreword

Over the past 18 months the world has been grappling with a global pandemic from which we are only now – thanks to our world leading vaccine programme and the fortitude of the British people – beginning to emerge.

As we do, we must face another challenge no less daunting - climate change. The UK must be a leading voice in the search for solutions to this global threat. And, as host of the COP26 climate conference in Glasgow later this year, we have a unique opportunity to steer debate and address this climate emergency.

As a government we have shown our absolute commitment to reducing UK emissions in line with the Paris Agreement. We have legislated for net zero emissions by 2050 across the economy, and recently agreed with the Climate Change Committee to a 78% reduction in emissions in Carbon Budget Six by 2035 on 1990 levels.¹

Our ambition to decarbonise includes every sector of our economy. While aviation contributes only 2-3% of global greenhouse gas emissions today, it is forecast to become the second highest residual emitter in 2050 as other sectors reduce their emissions. Despite aviation being one of the most challenging sectors to decarbonise, we are clear that it will play its part in ensuring the UK reaches net zero.

So we have established the Jet Zero Council to accelerate action now, to deliver zero emission transatlantic flight within a generation, and for the first time our carbon budgets will now formally include emissions from both domestic and international aviation.

This consultation sets out our plans to take this even further through a strategy to deliver net zero aviation by 2050, or 'Jet Zero' as we call it.

The strategy will provide a clear 'Jet Zero' goal for the sector whilst allowing the different technological pathways to develop. It will ensure the UK is at the vanguard of progress on reducing aviation emissions and continues to drive international progress. And it will put partnerships at the heart of delivery – partnerships with industry, academia, NGOs and the public.

It is a strategy that will deliver the requirement to decarbonise aviation, and the benefits of doing so, whilst allowing the sector to thrive, and hardworking families to continue to enjoy their annual holiday abroad; we want Britons to continue to have access to affordable flights, allowing them to enjoy holidays, visit friends and family overseas and to travel for business.

Decarbonising, whilst retaining the connectivity we cherish and preserving our aviation sector means we must act quickly to revolutionise the technologies needed across the aviation industry: develop cleaner aircraft, produce and use more sustainable fuels, and make our airspace and airports more efficient.

This is your opportunity to help shape our strategy and give your perspective on how we decarbonise the aviation sector whilst continuing to benefit from the connectivity, jobs and economic benefits it provides.

We encourage you to respond.



Rt Hon Grant Shapps MP,
Transport Secretary



Robert Courts MP,
Minister for Aviation

How to respond

The consultation period began on 14 July 2021 and will run until 8 September 2021. Please ensure that your response reaches us before the closing date. If you would like further copies of this consultation document, it can be found at www.gov.uk/dft#consultations or you can contact NZaviationconsultation@dft.gov.uk if you need alternative formats (Braille, audio CD, etc.).

We strongly encourage responses via the online survey or by email to NZaviationconsultation@dft.gov.uk. If you are unable to respond by the online form or by email, we would invite you to please let us know by asking someone to email on your behalf. If none of the above is possible, then we invite you to provide responses to:

Aviation Decarbonisation Division,
Great Minster House, 33 Horseferry Road,
London SW1P 4DR.

When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

There will be consultation events held during the consultation period. If you would be interested in attending these events, please contact NZaviationconsultation@dft.gov.uk.

If you have any suggestions of others who may wish to be involved in this process please contact us.

Freedom of information

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.

If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the Data Protection Act (DPA) and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties

Confidentiality and data protection

The Department for Transport (DfT) is carrying out this consultation to gather evidence on our approach to meet our target of net zero aviation by 2050. This consultation and the processing of personal data that it entails is necessary for the exercise of our functions as a government department. If your answers contain any information that allows you to be identified, DfT will, under data protection law, be the Controller for this information.

As part of this consultation we are asking for your name and email address. This is in case we need to ask you follow-up questions about any of your responses. You do not have to give us this personal information. If you do provide it, we will use it only for the purpose of asking follow-up questions.

DfT's privacy policy has more information about your rights in relation to your personal data, how to complain and how to contact the Data Protection Officer. You can view it at www.gov.uk/government/organisations/department-for-transport/about/personal-information-charter.

To receive this information by telephone or post, contact us on **0300 330 3000** or write to Data Protection Officer, Department for Transport, Ashdown House, Sedlescombe Road North, St Leonards-on-Sea, TN37 7GA.

Your information will be kept securely on the IT system within DfT and destroyed within 12 months after the consultation has been completed.

1 Introduction

- 1.1 Aviation and the UK go hand in hand. We were pioneers of early flight, and the sector has long been at the heart of our economic success. It is vital for trade and the distribution of goods, creates jobs, connects friends and family, and – crucially for an island nation – links us to the rest of the world. Flight is essential for our Global Britain ambitions of openness as a society and an economy.
- 1.2 The importance of aviation to the UK is why we are supporting the sector through the COVID-19 pandemic – by the end of September 2021, the air transport sector (airlines, airports, and related services) will have benefited from around £7bn of government support. But we know that the virus has had a devastating effect, and our airports, airlines and aircraft manufacturers are all feeling the financial impact of reduced demand.
- 1.3 As our aviation sector recovers, we must address the next global challenge. Climate change is one of the greatest and most pressing threats facing the modern world. This Government is committed to going further and faster to tackle it, as evidenced by our commitment to net zero emissions by 2050, and a 78% reduction in emissions by 2035.² By providing the right policy framework, we will support the UK aviation sector to build back greener and take the steps we need, to put the sector on the road to net zero.
- 1.4 Our success will not only preserve the benefits of aviation, but also unlock a significant prize. Decarbonising our aviation sector is a huge opportunity for the UK, leading a global transition to net zero aviation, which will see new technologies, new companies and new markets all emerge. It is an opportunity for our world-class manufacturing sector to develop new low and zero emission aircraft technology, to build a dynamic sustainable aviation fuels (SAF) industry, employ people the length and breadth of the UK, reduce our reliance on imported fuels, and have airports, aircraft and airspace that are cleaner and quieter.
- 1.5 We have already made great strides. We have established the Jet Zero Council to focus the sector on developing UK capabilities to deliver both net zero and zero emission technologies, announced new funding for the UK's emerging SAF sector and zero emission flight infrastructure in the Prime Minister's Ten Point Plan for a Green Industrial Revolution,³ invested significantly into aerospace R&D through the Aerospace Technology Institute (ATI), established a new UK Emission Trading Scheme (UK ETS) with greater ambitions than the EU system it replaces, begun to implement the Carbon Offsetting and Reduction Scheme for International Aviation (CORSA) in the UK, and most recently committed to formally including the UK's share of international aviation and shipping emissions in the Sixth Carbon Budget.⁴
- 1.6 But there is more to be done and we want to set an ambitious framework to support the aviation sector to decarbonise. This framework is what our Jet Zero Strategy will set out, and what we are seeking your views on through this consultation. We are committing to the UK's share of aviation emissions reaching net zero by 2050 and proposing a suite of policies to support industry to make this happen. These policies span across five different measures: improving the efficiency of our aviation system, accelerating the deployment of SAF, supporting the



Photo by Dima Berlin on Shutterstock

development of zero emission aircraft, ensuring we use markets to drive down emissions in the most cost-effective way, and working to influence the behaviour of consumers.

- 1.7 And we recognise that we cannot act in isolation – aviation emissions are an inherently global issue and therefore the UK will continue to take a leading role in the work of the International Civil Aviation Organization (ICAO), drawing also on our COP26 Presidency, to reduce emissions from international aviation.

- 1.8 The focus of this consultation, and the forthcoming strategy, is reducing CO₂ emissions; however delivery on this can provide other environmental benefits, such as reducing non-CO₂ impacts and noise, and improving air quality.

- 1.9 We welcome views from all parts of the UK and recognise the important role that will need to be played by the sector, wider industry, academia, innovators and the public in realising our ambitions and showcasing the UK's leading role in tackling this once in a generation issue.

2 Our Approach and Principles

2.1 The aim of our strategy is for aviation to decarbonise in a way that preserves the benefits of air travel and delivers clean growth of the UK sector by maximising the opportunities that decarbonisation can bring.

2.2 This will not be easy. Aviation is expected to be one of the few residual emitting sectors in 2050. Many of the technologies we need are in their infancy and will take time to develop. Aviation emissions are an inherently global issue so we must continue to show leadership and work closely with other countries to deliver global change. And decarbonisation will require transformation across all parts of the aviation system: our aircraft, our airspace, and our airports.

2.3 However, it also presents huge opportunities: the global transition to net zero aviation will see new technologies, new companies and new markets all emerge. Being at the forefront of this transition will allow the UK to maximise the benefits from the green industrial revolution.

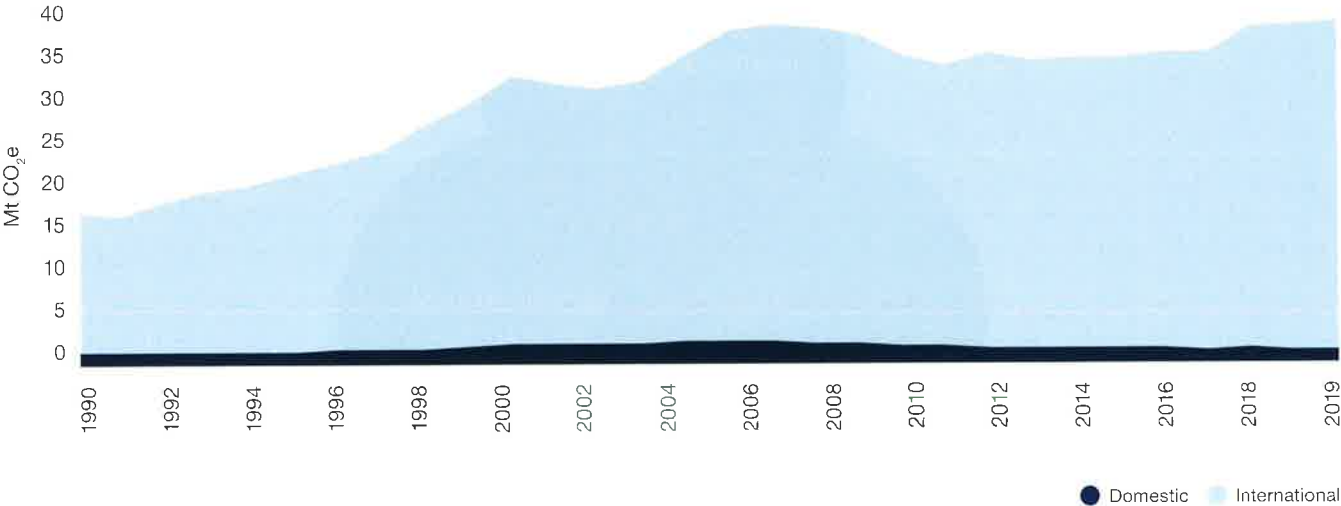
2.4 To ensure we achieve this, our delivery of Jet Zero will be underpinned by three principles:

- **Clear goal, multiple solutions:** we will focus on achieving net zero aviation by 2050 – or Jet Zero – whilst being flexible over the pathway to achieve it.
- **International leadership:** the vast majority of UK aviation emissions are from international flights; tackling these needs global agreement and UK leadership.
- **Delivered in partnership:** achieving Jet Zero requires all parts of the sector to work together to develop, test and implement the solutions we need.





UK Aviation Emissions 1990–2019⁵



Clear goal, multiple solutions

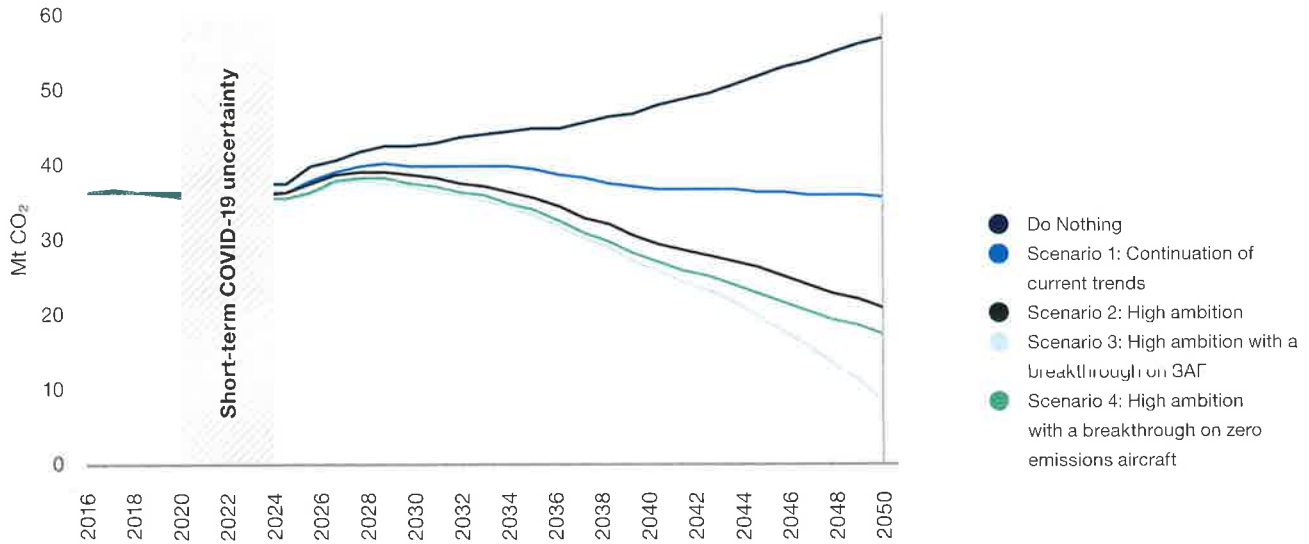
We will focus on achieving Jet Zero, whilst being flexible over the pathway to achieve it.

- 2.5 Many of the technologies we need to achieve Jet Zero are at an early stage of development or commercialisation. Sustainable aviation fuels, zero emission aircraft, and greenhouse gas removal technologies are hugely promising and exciting, and we expect a combination of these technologies will ensure the UK aviation sector reaches net zero by 2050.
- 2.6 It is too early to specify the optimal mix, so **our focus for the coming decade will be to accelerate the development of all these technologies**, such that by 2030 we have a clearer picture of what is needed to achieve Jet Zero.
- 2.7 Whilst there may be alternative pathways, the goal is clear. Through **our strategy, we will commit the UK aviation sector to reaching net zero by 2050 – or Jet Zero**. As staging posts, we have already committed to including international aviation (and shipping) emissions in the UK's Sixth Carbon Budget and **are consulting on an earlier target for UK domestic aviation to reach net zero by 2040**, following the Climate Change Committee's recommendation for an earlier target for domestic aviation in their Sixth Carbon Budget report.
- 2.8 And we need to make sure that, whichever mix of measures emerges, we remain on track to meet these goals. So, **we propose to set a CO₂ emissions reduction trajectory for aviation from 2025 to 2050** against which we will monitor progress. We propose to set this based on our 'high ambition' scenario (see page 14), whilst noting the uncertainty regarding the future technological mix.⁷ This would see in-sector CO₂ emissions of 39 Mt in 2030, 31 Mt in 2040 and 21 Mt in 2050 (any residual emissions in 2050 should be offset by greenhouse gas removal methods).
- 2.9 Alternatively, a trajectory based on net CO₂ emissions – where offsetting and removals are considered as part of the target – would see CO₂ emissions of 23-32 Mt in 2030, 12-19 Mt in 2040 and 0 Mt in 2050.
- 2.10 To ensure the strategy delivers the reductions needed, and reflects the emerging context as solutions develop, **we will review our strategy every five years and adapt our approach based on progress made**. The Government will also conduct a further assessment of the treatment of international aviation emissions in carbon budgets in 2025, reflecting on any significant developments in international or domestic policy.
- 2.11 Whilst the Jet Zero Strategy will be focussed on reducing CO₂ emissions, we will continue to work to increase our understanding of non-CO₂ impacts and their effects on the environment (see Chapter 4).

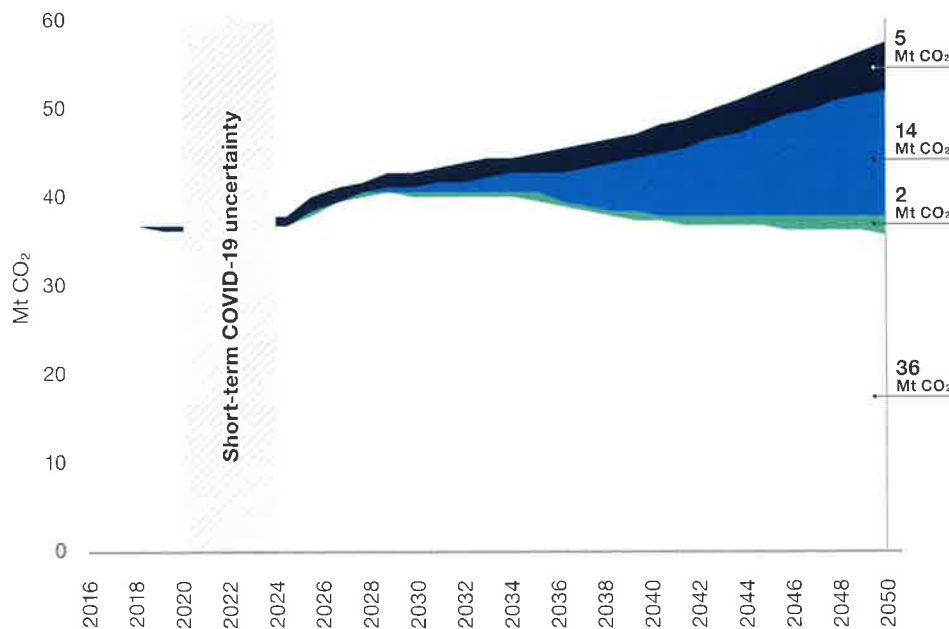
Illustrative pathways to UK net zero aviation by 2050

We have modelled four illustrative scenarios to reach UK net zero aviation by 2050 through different technological pathways. The proposed CO₂ emissions reduction trajectory for aviation from 2025 to 2050 is based on our 'High ambition' scenario shown in more detail on page 14. For further detail, see the supporting evidence and analysis document.

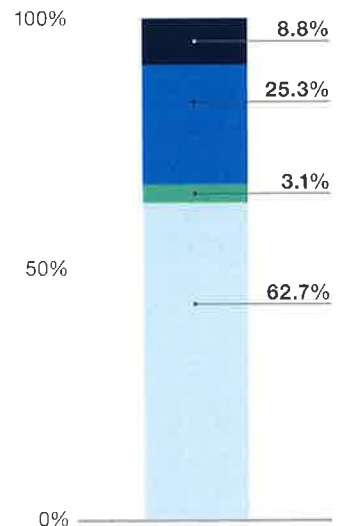
Aviation decarbonisation scenarios⁶



Scenario 1: Continuation of current trends

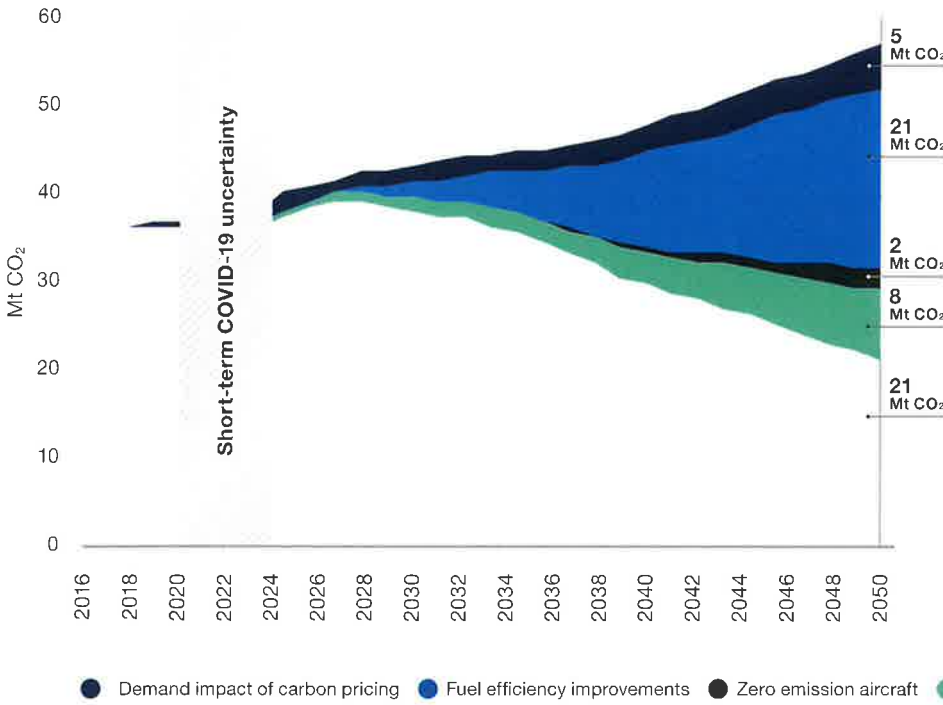


% abatement from each measure in 2050

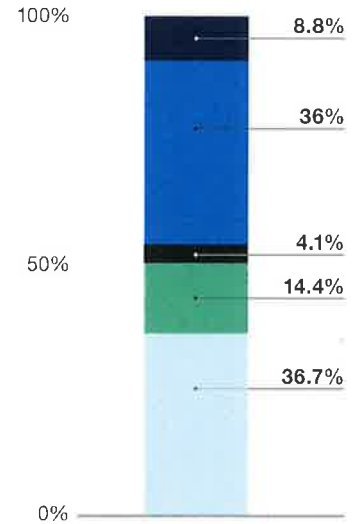


● Demand impact of carbon pricing ● Fuel efficiency improvements ● Zero emission aircraft ● SAF ● Abatement outside aviation sector

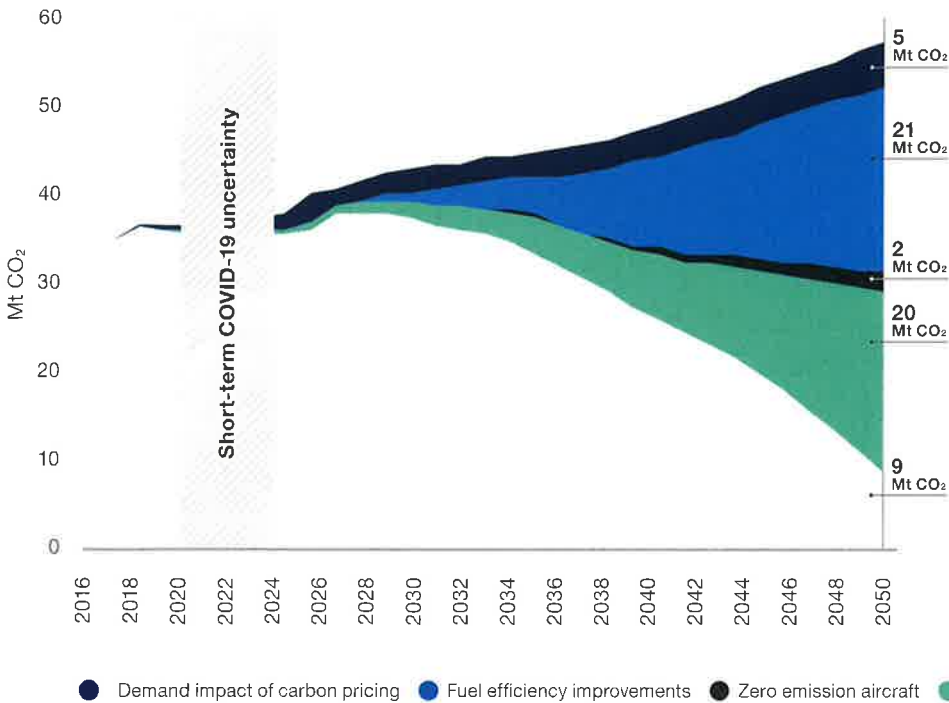
Scenario 2: High ambition



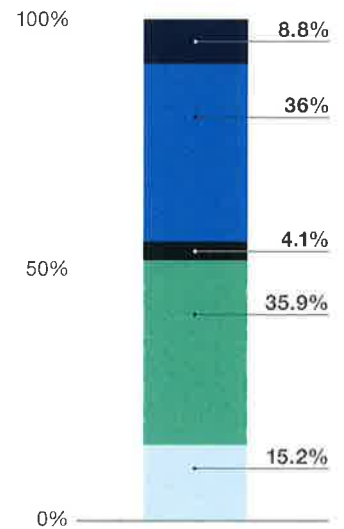
% abatement from each measure in 2050



Scenario 3: High ambition with a breakthrough on SAF

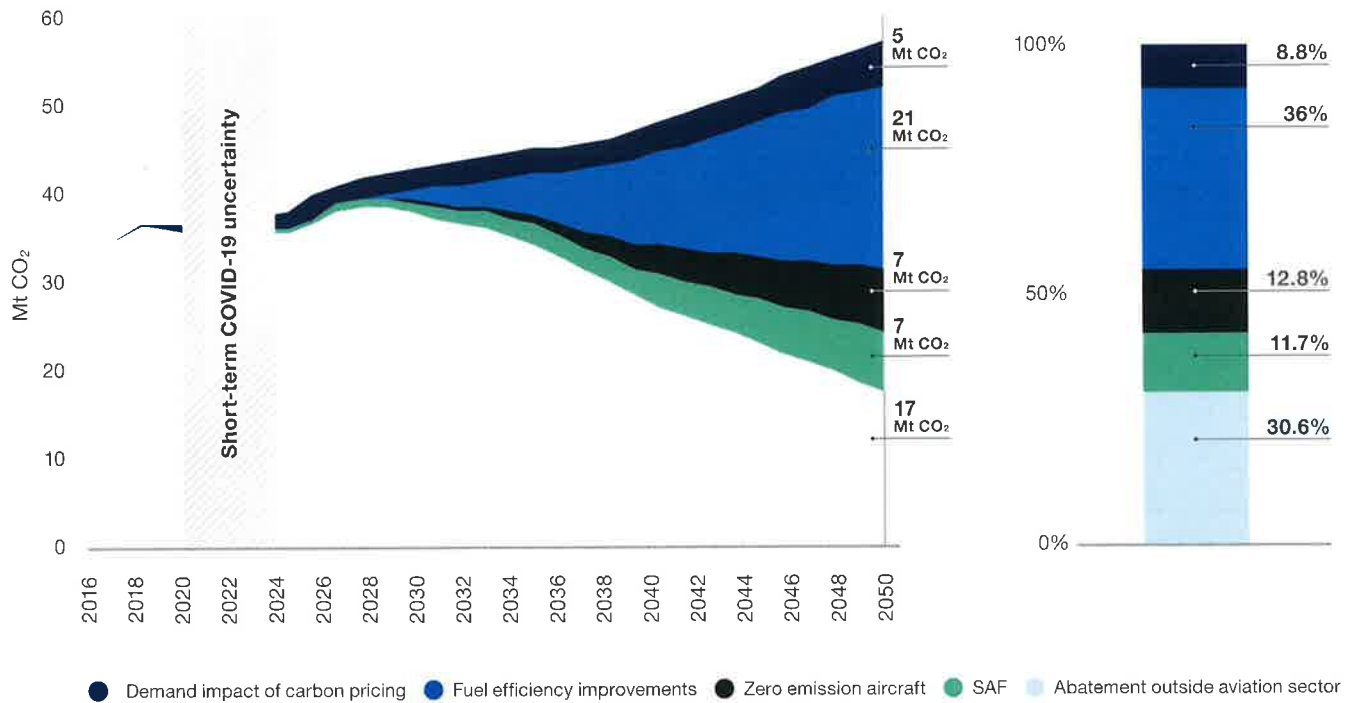


% abatement from each measure in 2050



Scenario 4: High ambition with a breakthrough on zero emission aircraft

% abatement from each measure in 2050



Questions...

1. Do you agree or disagree that UK *domestic* aviation should be net zero by 2040? How do you propose this could be implemented?

2. Do you agree or disagree with the range of illustrative scenarios that we have set out as possible trajectories to net zero in 2050? Are there any alternative evidence-based scenarios we should be considering?

3. Do you agree or disagree that we should set a CO₂ emissions reduction trajectory to 2050?
 - a. Should the trajectory be set on an in-sector CO₂ emissions basis (without offsets and removals) or a net CO₂ emissions basis (including offsets and removals)?

4. Do you agree or disagree with the possible trajectories we have set out, based on our high ambition scenario, which have in-sector CO₂ emissions of 39 Mt in 2030, and 31 Mt in 2040 and 21 Mt in 2050, or net CO₂ emissions of 23-32 Mt in 2030, 12-19 Mt in 2040 and 0 Mt in 2050?

International leadership

The vast majority of UK aviation emissions are from international flights; tackling these needs global agreement and UK leadership.

2.12 As an island nation, we rely heavily on overseas air travel, with 93% of our passengers flying internationally in 2019. As a result, in 2019 international flights accounted for 96% of total UK aviation emissions.⁸

2.13 The UK is at the forefront of global change, and the Government will continue to demonstrate global leadership in decarbonising aviation, both in the actions we take domestically and in our ambitious work with other countries on global decarbonisation measures. However, we recognise that the best way to reach our aviation net zero goal is by working with other countries, to reduce any risks of adding regulation or cost to *only* the UK's international aviation sector that could be challenging to implement, damage the UK's competitiveness, or risk carbon leakage.

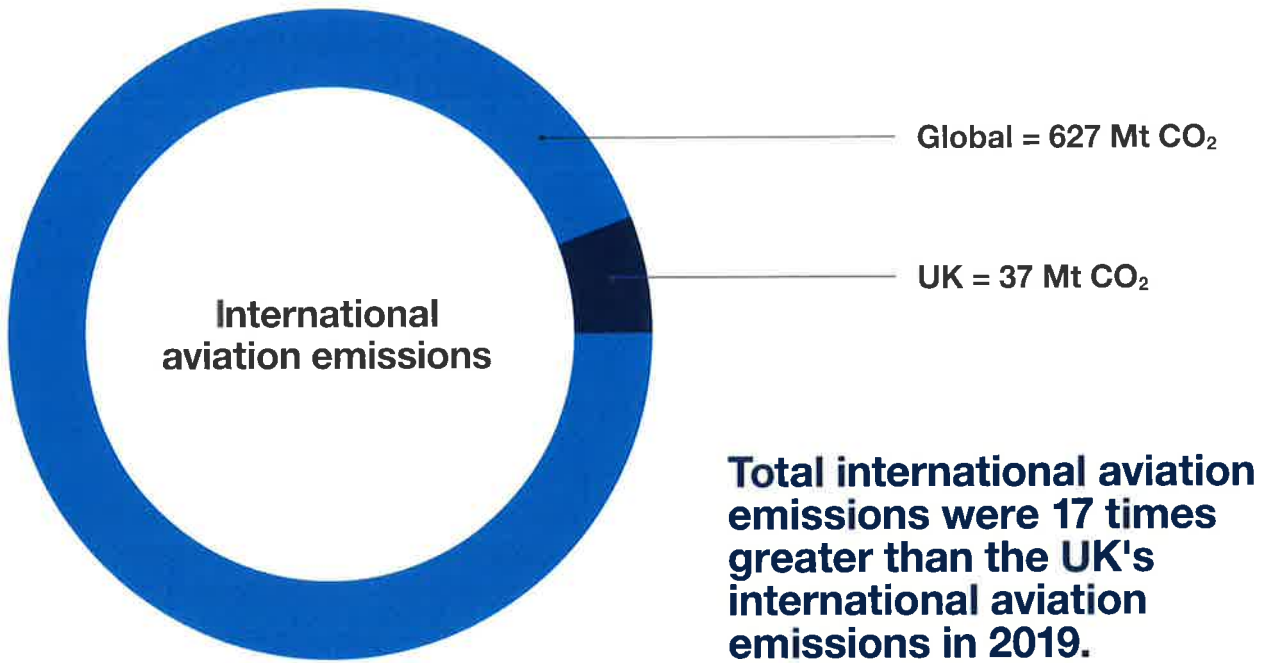
2.14 Our best path to tackling all aviation emissions is by using our international leadership and influence. We will continue to work with other states through the International Civil Aviation Organization (ICAO), drawing also on our COP26 Presidency, to agree ambitious emissions goals and effective mitigation measures for the entire global sector. This includes **securing agreement to a global**

long-term goal for international aviation CO₂ emissions that is consistent with the Paris Agreement, negotiating for the strengthening of the CORSIA offsetting scheme, and the adoption of policies that support the use of truly sustainable aviation fuels.

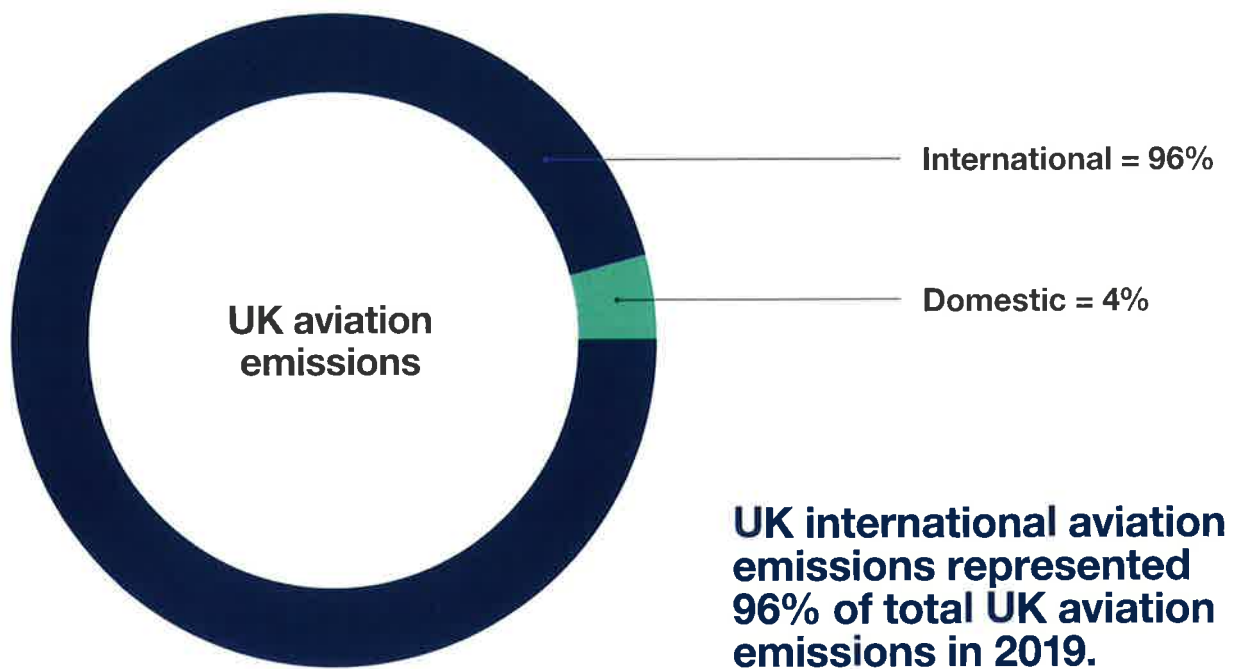
2.15 We will continue to work closely with our partners and allies to understand different perspectives, encourage greater ambition and coordinate national approaches. We will also support countries with less experience or resources with their aviation decarbonisation efforts.

2.16 Whilst these steps will be crucial in addressing UK aviation emissions, such an approach also puts an even bigger prize within our grasp: the opportunity to achieve significant reductions in **all international aviation CO₂ emissions**, which were around 600 Mt in 2019 – 17 times greater than the UK's contribution.¹¹ Given the global nature of both the aviation sector and of climate change, and with global demand for aviation expected to continue to grow, the UK's leadership in tackling aviation emissions can play a crucial role in the race to net zero.

UK share of international aviation emissions in 2019⁹



Proportion of UK international and domestic aviation emissions in 2019¹⁰



Delivered in partnership

Achieving Jet Zero requires all parts of the sector to work together to develop, test and implement the solutions we need.

2.17 Governments cannot achieve Jet Zero alone; success is dependent on all parts of the sector and the public working together, across the globe.

2.18 In the UK this collaborative approach is already well under way through the **Jet Zero Council, the Aerospace Technology Institute (ATI)** and through the **Aerospace Growth Partnership (AGP)**. We have also established the **Airspace Change Organising Group (ACOG)** to lead on modernising UK airspace, which engages and collaborates with a range of stakeholders in its delivery.

2.19 We will work closely with **Sustainable Aviation** as a key industry forum for reducing emissions. Launched in 2005, it is a world first, bringing together UK airlines, airports, manufacturers, and other sector partners to address climate change, noise and local air quality in the aviation industry. In 2020 it set out its plan for getting the UK aviation industry to net zero by 2050¹² and recently published interim targets for the sector.¹³

2.20 We will continue to collaborate with foreign governments, bilaterally, and through **ICAO, the European Civil Aviation Conference (ECAC)** and other multilateral forums, to share best practice, promote the UK's interests, and coordinate action.

2.21 Partnership will be embedded throughout our strategy, though we will also acknowledge where it is right for the Government to lead; whether through supporting R&D funding, or putting in place the policy and investment framework that will see the technologies we need deployed at scale.

Jet Zero Council

Established in 2020, the Jet Zero Council brings together government and industry, with the ambitious aim to deliver zero emission transatlantic flight within a generation.

To achieve this, it will consider how to develop and industrialise clean aviation and aerospace technologies, establish UK production facilities for sustainable aviation fuels and develop a coordinated approach to the policy and regulatory framework needed to deliver net zero aviation by 2050.

To accelerate progress on the objectives of the Council, two focused Delivery Groups have been established which reflect the priorities of the Council: zero emission flight and sustainable aviation fuels.



Aerospace Technology Institute (ATI) and Aerospace Growth Partnership (AGP)

The Aerospace Technology Institute (ATI) promotes transformative technology in air transport and developed the UK's Aerospace Technology Strategy.¹⁴ This strategy aims to maintain UK's competitive advantage in civil aerospace manufacturing as the sector accelerates the environmental performance of aircraft while developing emerging, and potentially transformative, zero emission technologies.

It complements the broader strategy for the sector created by the Aerospace Growth Partnership (AGP) – a joint government industry partnership to tackle barriers to growth, boost exports and grow high value aerospace jobs in the UK.

Through the AGP and guided by the ATI's technology strategy, government is investing £1.95bn, matched by industry, in mid-stage aerospace R&D through the ATI Programme.

3 Measures

3.1 Our Jet Zero principles – clear goal, multiple solutions; international leadership; delivered in partnership – are the foundations of our strategy to decarbonise aviation, and of the steps we will take to reduce and, where possible, eliminate CO₂ emissions from aviation.

3.2 Our consultation sets out planned action across five different measures. The first three – system efficiencies, SAF, and zero emission flight – are all focussed on our priority of maximising in-sector emissions reductions through different technological and operational approaches. The fourth

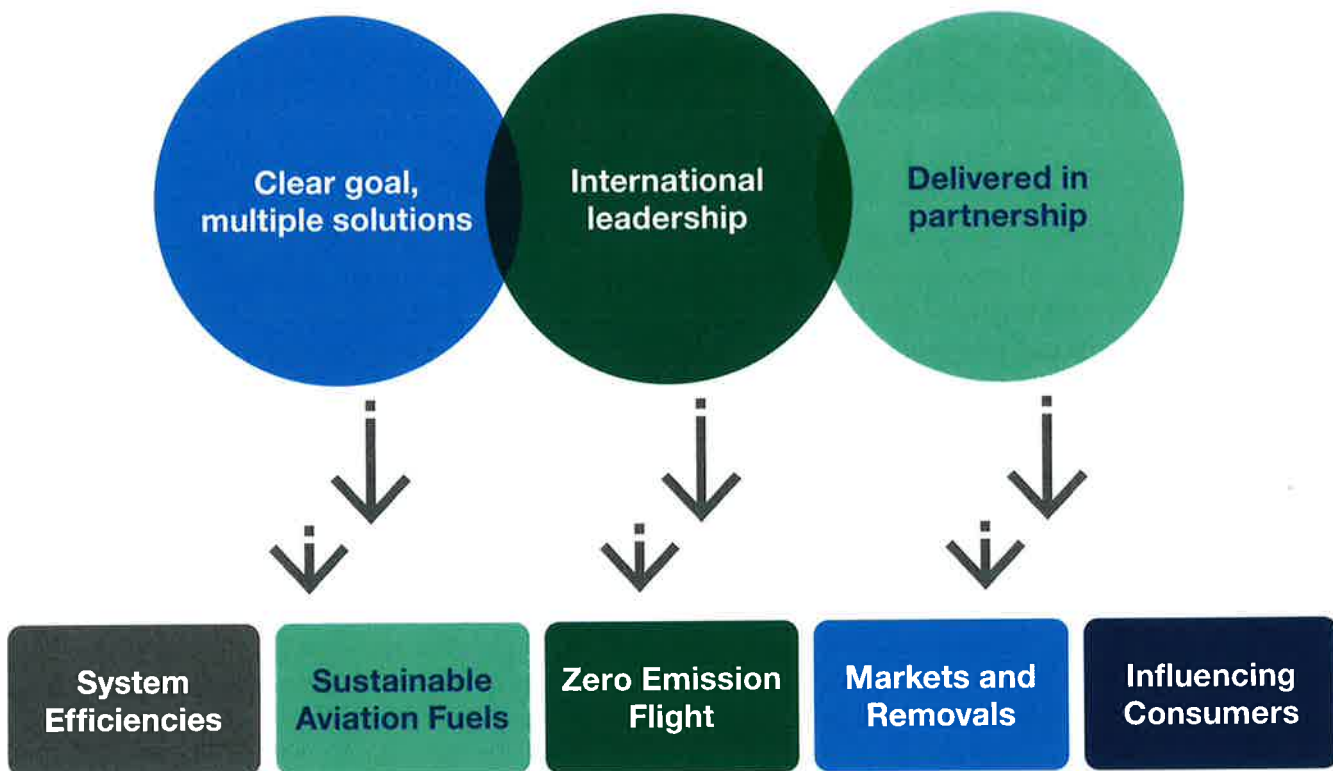
– markets and removals – gives a further driver for in-sector reductions by pricing emissions, whilst also providing a route for the sector to offset or remove any residual emissions. The final measure – influencing consumers – explores options for encouraging consumers to choose the most sustainable routes and travel providers when planning and undertaking their journeys.

3.3 This chapter sets out our approach across each of these five measures, including the policies we will look to implement, and asks for feedback.

Beluga super transporter being fuelled with SAF for the first time in Broughton in May 2021.

Image courtesy of Airbus.





System Efficiencies

A significant proportion of our emissions reductions will come from improving the efficiency of our existing aviation system: our aircraft, airports and airspace.

- 3.4 We can reduce CO₂ emissions by increasing the efficiency of our existing aviation system, through improving the efficiency of our aircraft, changing how our airports operate, and optimising the use of our airspace.
- 3.5 This is not wishful thinking. The aviation sector has shown significant improvement in efficiency over recent decades, investing in greener technologies, improving operations, and phasing out older aircraft. Since 1990, average efficiency improvements of 0.8% per annum (increasing to 2.1% per annum from 2010-2019) have led to significant CO₂ emissions reductions per passenger. Without these efficiency gains, in 2019 UK aviation emissions would have been more than 20% higher per passenger based on the same rate of growth in passenger numbers.^{16,17}
- 3.6 Given the lead-in times of other technological measures, **improving the efficiency of our current aviation system offers the best opportunities for short- to medium-term reductions in CO₂ emissions** and could also deliver immediate improvements in noise and air quality.
- 3.7 In our illustrative scenarios to 2050, improvements in the efficiency of our current aviation system deliver 25%-36% of the CO₂ savings, with fuel efficiency improvements of 1.5%-2% per annum. Indeed, failing to make improvements here will increase the likelihood that additional and more expensive interventions are needed.

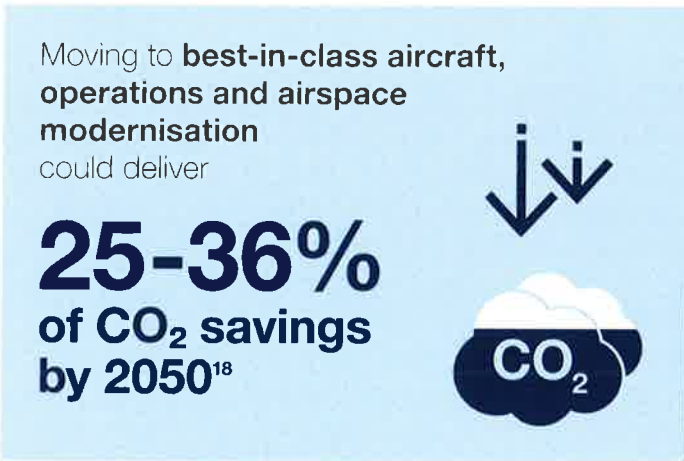


Photo by Jose Lebron on Unsplash

The benefits of system efficiencies

Aerospace R&D delivers significant spillover benefits

to the rest of the economy and high paid manufacturing jobs that boost productivity



Airspace modernisation will allow the aviation industry to deliver a further

£29 billion

to the UK economy and create nearly

116,000

more jobs by 2035.²¹



Many of the measures to improve efficiencies also result in noise reductions – new aircraft

technology alone could reduce perceived noise from aircraft by

65% by 2050²².



- 3.8 There is huge potential to increase the efficiency of conventional **aircraft** (those powered by fossil fuel or SAF) through improvements to jet engines, wings, structures, and other systems. Next generation models of aircraft, such as the Airbus A320neo, offer around 20% efficiency gains on their predecessors.¹⁹ Replacing older aircraft still in operation with the latest models could save approximately 20 Mt CO₂ by 2050.²⁰ The UK is working through ICAO to ensure stringent international standards for aircraft emissions as technology improves.
- 3.9 There are also significant savings to be made at **airports**, where changes to operations – such as the use of a single engine for taxiing, and eventual use of an electric motor – could cut CO₂ emissions by 60% in this phase of flight.²³ Connected and autonomous vehicles (CAVs) will also have a role to play in increasing the efficiency of airside vehicles, such as Aurrigo's automatic baggage dolly, and Oxbotica's autonomous cargo pod and driverless shuttles, which have already been trialled at Heathrow and Gatwick airports. Six UK airports²⁴ currently hold Airports Council International (ACI) Europe Carbon Neutrality accreditation and many are setting more ambitious net zero targets. For example, Bristol Airport has announced that it intends to be the UK's first net zero airport (including its building, airfield and fleet) by 2030.
- 3.10 CO₂ can be cut by reducing aircraft weight by precisely matching fuel and water requirements with passenger loads, through maintenance procedures that can improve engine performance, and by optimisation of speed, route

and altitude in flight planning. Ground handlers also have a role to play, with a transition to electric tugs (such as those used at Heathrow and other airports) further reducing CO₂ emissions.

3.11 Finally, improvements in our **airspace** will lead to more direct flights at more efficient altitudes and speeds. Holding in stacks for aircraft waiting to land at busy airports is a particular inefficiency that needs to be addressed through the Airspace Modernisation Programme.²⁵ Increased CO₂ emissions associated with fuel tankering, a practice whereby aircraft carry more fuel than required in order to reduce the need to refuel at their destination, should also be addressed, a practice estimated to produce an additional 0.9 Mt of unnecessary CO₂ emissions per year.²⁶

3.12 COVID-19 has significantly impacted the extent the sector is able to invest in new, more efficient technologies, systems or programmes. However, the pandemic presents opportunities too. As aviation demand has reduced, airlines have accelerated the phasing-out of older, more polluting aircraft. Lower traffic levels have enabled the testing of new procedures which would have otherwise been very difficult to do (see box).

3.13 Our approach to improving system efficiencies is guided by this current context: **we will ensure the aviation system has the right policy framework** to encourage continued investment in efficiency gains, and **we will take the learning opportunity of these past 16 months** to ensure that as traffic returns, it will be in a system making the best use of technology and procedures for optimised efficiency.

Removal of North Atlantic Track system case study

For decades, a lack of radar surveillance has meant aircraft flying across the North Atlantic have done so using an organised track structure, with fixed speeds and altitudes – essentially invisible high-altitude motorways.

As COVID-19 reduced traffic levels from around 1,300 flights to around 500 flights per day, this allowed NATS and NAV CANADA – who jointly operate the North Atlantic flight region – to test removal of the organised track structure. Instead, they used real time satellite-based surveillance, allowing aircraft to change their speed and altitude across the Atlantic in response to conditions, saving carbon by allowing all aircraft to fly their optimum route. A decision will be made day-to-day whether to remove the tracks with the ambition that this eventually will lead to their permanent removal.

Image courtesy of NATS.



Our existing policy commitments:

- We will support airspace modernisation, providing up to £5.5m funding in the years 2020/21 and 2021/22 to support sponsors to continue through Stage 2 of the airspace change process.
- We will work with the Civil Aviation Authority as co-sponsors of the Airspace Modernisation Programme to support Airspace Change Organising Group (ACOG) in ensuring carbon savings are realised and plans for airspace modernisation account for the introduction of zero emission aircraft.
- We will continue to work through ICAO to ensure a global baseline for fuel efficiency, both through CO₂ certification standards and guidance to states on implementing operational efficiencies.

Our new policy proposals:

- We propose that all airport operations in England should be zero emission by 2040 (scope 1 and scope 2 emissions).
- We will seek a voluntary agreement from all airlines to avoid tankering where there is no practical reason to carry additional fuel, such as immovable turnaround times or fuel supply issues.
- We welcome thoughts on whether there are wider changes to policy that might incentivise improved efficiencies, including:
 - Airport charges / slot allocation – the possible use of landing fees to charge for CO₂ (in addition to NO_x and noise) and/or consideration of environmental performance when allocating slots at constrained airports where new slots become available.
 - Making provision for Air Navigation Service Providers (ANSPs) to implement differential charging based on environmental performance within their controlled airspace.
 - Identifying where changes to regulations may be needed to implement new CO₂ emission saving operations e.g. formation flight.
 - Whether there are other ways to stimulate investment in greater operational efficiencies across the aviation system.

Questions...

5. Do you agree or disagree with the overall approach to improve the efficiency of our existing aviation system?
6. What more or differently could be done to ensure we maximise efficiency within the current aviation system?

Sustainable Aviation Fuels (SAF)

Sustainable aviation fuels could play a key role in decarbonising aviation, whilst also representing an industrial leadership opportunity for the UK.

- 3.13 As well as improving the efficiency of aircraft, we need to reduce the climate impact of the fuels that they use.
- 3.14 SAF are a ‘drop in’ option, meaning they can be blended into fossil-based aviation fuel and used in existing aircraft without modification and therefore could deliver both medium- and long-term CO₂ emissions savings. Many experts view SAF as the only alternative for long-haul flights up to 2050, which are the flights with the biggest climate impact; **it is estimated that flights greater than 5,000km (equivalent to a flight from London to Bahrain), which make up just 10% of overall flights, are responsible for over 60% of UK aviation emissions.**²⁷
- 3.15 When compared to conventional fossil aviation fuel, SAF produced from feedstocks with strong sustainability credentials can result in over 70% CO₂ emissions saving on a lifecycle basis²⁸ and could deliver net zero emissions with the addition of greenhouse gas removal technologies. Most SAF also emit less soot and particulate matter compared with conventional fossil jet fuel which is expected to reduce non-CO₂ climate impacts.

The benefits of sustainable aviation fuel²⁹



A UK SAF industry could generate between **£700m–£1.6bn** in Gross Value Added (GVA) per year.

Creating between **5,000–11,000 green jobs.**

Helping the UK to ‘level up’ and not rely on oil imports, with production facilities across the whole of the UK.

What are SAF?

“SAF” are low carbon alternatives to conventional, fossil-derived, aviation fuel – ‘drop in equivalents’ that present similar characteristics to conventional jet fuel. Generally, SAF can be produced from three types of feedstock:

- **Biomass:** this includes biogenic waste, e.g. used cooking oil.
- **Non-biogenic waste:** e.g. unrecyclable plastics or waste fossil gases from industry.
- **CO₂ + green hydrogen:** zero-carbon electricity is used to produce hydrogen through water electrolysis; hydrogen then reacts with CO₂ captured from the air or waste industrial exhaust streams to produce a synthetic fuel. This process is known as Power-to-liquid (PtL).

- 3.16 However, currently the costs of SAF are high and uncertain, ranging from 2-3 times compared to the price of the fossil counterfactual, and potentially up to 8 times more for certain technology pathways.³⁰ Development and production do however present an industrial leadership opportunity for the UK: a thriving domestic SAF industry will provide highly skilled jobs and support economic growth.
- 3.17 SAF supply is already rewarded through the Renewable Transport Fuel Obligation (RTFO) which provides tradeable certificates for every litre of certain sustainable fuels used for aviation. The Government has also provided grant funding to businesses through our Advanced Biofuel Demonstration Competition (2014) and Future Fuels for Flight and Freight Competition (2017), putting the UK in a strong position to develop advanced fuels capable of decarbonising harder-to-decarbonise sectors. We are now building on this ambition through the Green Fuels, Green Skies competition which is providing £15m in 2021-22 to support the early development of first-of-a-kind commercial SAF plants in the UK.
- 3.18 Our strategy will build on this commitment. We are continuing to develop plans for a SAF clearing house and will shortly consult on a UK SAF blending mandate to kick-start the market which could enable greater SAF uptake than is within the CCC's Balanced Pathway. We are keen to maximise the environmental and industrial opportunities that SAF offer and, in the upcoming months, we will also consider whether further innovative policy mechanisms are needed to provide greater confidence to UK SAF producers.
- 3.19 At the time of writing there is currently no comprehensive global regulatory standard for SAF sustainability. The UK is therefore active at ICAO in negotiating for a full set of sustainability criteria for SAF that will underpin its global deployment. At the same time, we recognise that a global ambition for future SAF deployment may help to give certainty to the global industry and avoid some of the challenges associated with states acting alone. Any such goal would need to be underpinned by strong sustainability criteria.
- 3.20 Our vision is to scale up SAF over the coming years, such that out to 2050 they are primarily used on flights that may be more challenging to conduct by zero emission aircraft – most likely the long-haul flights that are responsible for the bulk of emissions – whilst ensuring that the UK secures the huge economic prize on offer: reducing dependence on imported oil and creating new green jobs across the UK.

The Jet Zero Council SAF Delivery Group has been set up for government and industry to work together to establish UK SAF production facilities and accelerate the delivery of the fuel to market. It is focused on the development of a UK SAF mandate, the commercialisation of the sector, and the technologies and feedstocks that the UK should prioritise.



Rolls-Royce case study

As part of their ATI Programme project 'SIRUS', supported with a £16m government grant, Rolls-Royce have undertaken engine ground tests using 100% SAF. Covering emissions, efficiency, noise and operability, Rolls-Royce aim to make all their civil aero-engines in production compatible with 100% SAF by 2023, double the current maximum blend of 50%. This will allow SAF to contribute further to our net zero commitment and places Rolls-Royce and the UK at the forefront of this increasingly important field.

Image courtesy of Rolls Royce.

Our existing policy commitments:

- We will shortly consult on a UK SAF mandate setting out our level of ambition for future SAF uptake and defining the scope, technology, compliance and reporting implications underpinned by it.
- We have formed the Clean Skies for Tomorrow SAF Ambassadors group, which will develop, pilot and promote industry-led policy proposals for national SAF policies, ahead of COP26.
- We will continue to engage SAF stakeholders through the Jet Zero Council SAF Delivery Group, to ensure future SAF policy is robust.
- We have consulted on the possibility of expanding the RTFO to reward recycled carbon fuels (RCF) which are produced from fossil wastes that cannot be avoided, reused or recycled.
- We are supporting the development of SAF through the Green Fuel, Green Skies competition, through which companies will be able to bid for a share of £15 million in 2021-22 to kickstart the development of first-of-a-kind production plants in the UK. Successful projects are expected to be announced in summer 2021.
- We will establish a SAF clearing house to enable early stage aviation fuel testing as an essential capability to support our decarbonisation agenda.

Our new policy proposals:

- We will consider whether further policies are needed to provide SAF producers with greater confidence and encourage UK production.
- We will continue to negotiate in ICAO for comprehensive SAF sustainability standards and to work towards a future global SAF objective. We will also work with smaller groups of states to coordinate on SAF policies where this can be complementary to ICAO's work.
- We will look at the feasibility of using SAF on UK Public Service Obligation (PSO) routes.
- Alongside the five-year reviews of this strategy, we will undertake a SAF-specific review by 2030, once the supportive policy framework is in place, and SAF production is being scaled up, and use this to confirm a SAF trajectory to 2050.
- We will work across government to pioneer the accelerated procurement and use of SAF.

Questions...

7. Do you agree or disagree with the overall approach for the development and uptake of SAF in the UK?
8. What further measures are needed to support the development of a globally competitive UK SAF industry and increase SAF usage?



Fulcrum Sierra BioFuels is currently in the commissioning phase and expected on line in 2021.

The facility is capable of producing over 30 kt per year of SAF from 175 kt of processed residual household waste. Similar plants of various capacities are currently under development in the UK.

Image courtesy of Fulcrum BioEnergy Limited.

Zero Emission Flight (ZEF)

There is the potential for new, zero emission aircraft to play a role in the decarbonisation of aviation.

3.21 Zero emission flight technologies such as hydrogen-electric and battery-electric aircraft have already been demonstrated in the UK. Continued investment in these technologies could support a significant reduction in global aviation emissions.

3.22 A key role for the Jet Zero Council is to act as a catalyst for zero emission flight across the Atlantic. This is an exciting but challenging technological endeavour. Given our existing global position in aerospace and aviation, the UK is well placed to be at the forefront of developing and deploying new, potentially transformative, technologies.

3.23 Government and industry are investing in the development of emerging aircraft

technology through the ATI programme, including through FlyZero – a research project taking an in-depth look into the potential for a zero emission aircraft by 2030. The Government is also supporting wider programmes such as the Industrial Strategy Challenge Fund Future Flight, Faraday Battery and Driving the Electric Revolution challenges. The UK has a proud history of leading innovation in aviation and this will continue into a new era of low and zero emission flight.

3.24 Small scale electric aircraft have already been demonstrated in the UK. A range of hydrogen-electric and battery-electric aircraft could enter the sub-regional and General Aviation markets this decade, and other forms of propulsion such as

The benefits of zero emission flight

No tailpipe CO₂ emissions, and potential for reduced non-CO₂ impacts.



Funding through the ATI programme **could benefit the UK economy by £114 billion up to 2035** and **create and safeguard 95,000** direct and supply chain jobs.³¹

H2GEAR, a liquid hydrogen propulsion project supported by the ATI, **is expected to create over 3,000 jobs** alone over the next decade.³²



FlyZero Project

FlyZero is a 12-month research project, which is being delivered by the ATI and supported with a £15m grant from BEIS. The project brings together over 80 experts from across industry and academia to explore the design challenges and market opportunity of potential zero emission aircraft concepts. The work is aimed at preparing the UK for zero emission commercial flight. The UK is the first nation to invest in such a broad collaboration with industry.



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ZeroAvia case study

Supported by the ATI Programme, last year, ZeroAvia achieved the world's first hydrogen fuel-cell powered flight of a commercial-grade aircraft. The flight also showcased a full zero emission ecosystem, with onsite hydrogen production via electrolysis. ZeroAvia have secured further ATI funding to scale-

up and demonstrate their hydrogen-electric powertrain on a 19-seater aircraft, with the aim to achieve commercialisation in 2023. In March 2021, British Airways, Bill Gates's Breakthrough Energy Ventures and others invested over £17m to accelerate the development of a larger hydrogen engine.

hydrogen or ammonia combustion may also have a role. We are keen to accelerate the development of these aircraft, and welcome industry ambition to scale up the technology to larger commercial passenger usage, which currently account for the majority of carbon emissions from aviation.

- 3.25 We welcome views on our **aspiration, to have zero emission routes across the United Kingdom by the end of the decade** as part of our wider ambitions to improve connectivity across the UK. We would also welcome views on the potential **use of Public Service Obligation (PSO) routes – air routes which are vital for the economic and social development of a region – for early roll-out of such aircraft.** This is our starting point, but we aim to scale up these technologies to

achieve zero emission transatlantic flight within a generation.

- 3.26 We are providing support for the development of hydrogen technology, which we expect to play a key role in fuelling zero emission aircraft. The UK's first hydrogen transport hub, being developed in the Tees Valley, will support research, testing and trials as part of its cross-transport mode work to improve our understanding of hydrogen's role in reaching net zero by 2050. The UK Hydrogen Strategy will set out actions needed to decarbonise and expand hydrogen production, alongside speculative demand from aviation through to 2050. The Regulatory Horizons Council³³ has selected hydrogen regulation as an area that it will conduct a deep dive report into this year, and initially indicated a strong

interest in the transport aspects and aviation in particular.

- 3.27 We have an opportunity to utilise our world class manufacturing sector to build a leading position in the design and production of zero emission aircraft. Continued investment in technology development could unlock long-term economic benefits, and lead to UK-developed technology significantly contributing to the reduction of global aviation emissions.
- 3.28 For zero emission aircraft to be able to operate in the UK, we need to ensure that our airports and airfields have the infrastructure to fuel, take-off and land those planes, that pilots and staff have the skills to operate and maintain them safely, and that they are developed within a regulatory environment which enables their demonstration, certification and quick scale-up to safe deployment. As such, we are investing £3m into R&D this year to better understand the infrastructure needs at airports to ensure these aircraft can operate safely and efficiently.
- 3.29 We recognise that there are specific challenges for the General Aviation sector, such as transitioning from AvGas to affordable alternatives. There is however significant opportunity for the sector to lead on the introduction of zero emission aircraft. As set out in our General Aviation Roadmap³⁴ we will continue to encourage an innovative, environmentally sustainable sector, including the use of new technology.
- 3.30 Our approach to accelerating the development of future zero emission flight is therefore: to consider the recommendations of the FlyZero project and ongoing R&D programmes, work to ensure our airports have the infrastructure they need to manage these new technologies, and collaborate with the Civil Aviation Authority (CAA) to support the enabling of demonstration activity that supports these aircraft in a safe way.

Our existing policy commitments:

- We will continue to support industrial R&D through the ATI Programme, informed by the UK Aerospace Technology Strategy, with the objective of securing clean growth.
- We will continue to work with the ATI, industry and academia to establish a method for quantifying the potential emissions savings of future R&D projects in advance of publication of the Jet Zero Strategy, to allow us to quantify the sustainability benefits for the aviation sector the Programme seeks to achieve and prioritise the funding of projects most likely to deliver clean growth.
- We will support the FlyZero project, which will set out a plan by early 2022 for how the UK might best contribute to a zero emission aircraft by 2030.
- We are investing £3m into R&D funding in 2021/22 to understand the infrastructure needed by airports to handle new forms of zero emission aircraft.
- The Government will publish a UK Hydrogen Strategy which will detail the key steps needed in the 2020s to deliver our 5GW of low carbon hydrogen production capacity ambition and set the context for further scale up on the way to net zero.
- We will support the development of the Tees Valley Hydrogen Hub, including through industry engagement to generate demonstration activity at Teesside International Airport.
- We will work with the CAA and ICAO to ensure the UK remains the best location in which to develop and deploy new zero emission aircraft.



Rolls-Royce ACCEL electric aircraft.
Image courtesy of Rolls-Royce.

Our new policy proposals:

- We will ensure the UK is at the forefront of deploying zero emission aircraft. Our aspiration is to have zero emission routes connecting the United Kingdom by 2030.
- We will look at the feasibility of using zero emission aircraft on UK PSO routes.
- We will work with industry to encourage the adoption of innovative zero emission aircraft and aviation technology in General Aviation.
- We will work through the Jet Zero Council to consider the wider enabling framework for zero emission flight, including the infrastructure, regulatory and commercialisation requirements.

Questions...

- 9 Do you agree or disagree with the overall approach for developing zero emission flight in the UK?
- 10 What further measures are needed to support the transition towards zero emission aviation?

Markets and Removals

The implementation of carbon markets and greenhouse gas removal technologies is vital to achieving Jet Zero.

- 3.31 The UK remains a leading voice in the establishment and development of carbon markets and views carbon pricing as an essential lever for reaching net zero. We launched Europe's first emissions trading scheme in 2002, which served as a pilot for the EU Emissions Trading System (EU ETS) within which aviation was included from 2012.
- 3.32 At the start of this year, jointly with the devolved administrations, we introduced the UK Emissions Trading Scheme (UK ETS), replacing the UK's participation in the EU ETS. The UK ETS currently covers around a third of all UK emissions, including all domestic flights, flights from the UK to the European Economic Area and flights between the UK and Gibraltar. In 2019, these flights made up 44% of all commercial flights to and from UK airports.³⁵ Our UK ETS is also more ambitious than the EU system UK aviation was previously subject to. The cap on total emissions has already been reduced

Carbon Markets

A carbon market, such as the UK ETS or CORSIA, puts a price on each tonne of emissions included in the market, generating an incentive for participants to reduce their emissions.

The UK ETS works on the 'cap and trade' principle, where a cap is set on the total amount of certain greenhouse gases that can be emitted by sectors covered by the scheme and which decreases over time.

Under CORSIA, aeroplane operators offset the growth in international aviation CO₂ emissions covered by the scheme above 2019 levels*.

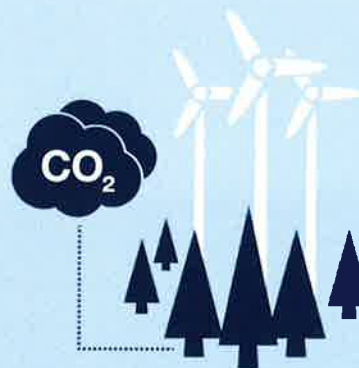
*The baseline is currently defined as an average of 2019 and 2020 emissions, however due to the COVID-19 pandemic, the ICAO Council agreed in June 2020 to change this to 2019 emissions only for the Pilot Phase. The CORSIA periodic review in 2022 will consider whether to extend the baseline change to the subsequent phases.

The benefit of markets and removals

Market-based measures, such as **the UK ETS and CORSIA, promote cost-effective decarbonisation**, allowing businesses to cut carbon where it is cheapest to do so.

Market-based measures **incentivise businesses to invest in green technologies.**

It is estimated that **14% of global emissions come under an ETS** in 2021.³⁶



Under the UK ETS, emissions from covered sectors will reduce in line with the cap, which will be set to an appropriate net zero trajectory.

by 5%, and **the Government will consult on how to align the cap with a net zero trajectory later this year.**

We also welcome views on whether the scheme could be expanded to cover other non-CO₂ gases from aviation.

- 3.33 The UK is particularly influential in the work of ICAO, the UN agency responsible for tackling international aviation emissions. It is a member of the Committee on Aviation Environmental Protection and was instrumental in the agreement and development of the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA). CORSIA is the first global market-based measure to address CO₂ emissions in any single sector. The UK is among 88 states that have volunteered to participate from the start of this year and we are now implementing the scheme in UK law.
- 3.34 To support countries with less experience in aviation decarbonisation policy and help secure the widest possible participation in CORSIA, we will explore how the UK can help to develop the capacity of other governments to implement ICAO's climate policies.
- 3.35 By pricing CO₂ emissions, market-based measures can drive cost-effective and technology-agnostic emissions reductions, making system efficiencies,
- SAF and zero emission flight more economically attractive, and influencing the travel choices of consumers. They also implement the 'polluter pays' principle – that those who engage in activity that has an environmental impact should bear the cost of that impact.
- 3.36 They also play a second role: whilst our priority is to deliver in-sector CO₂ emissions reductions, **most projections suggest there will be residual CO₂ emissions from aviation in 2050.** Markets can facilitate the offsetting of aviation's CO₂ emissions through investments in robust schemes that remove or avoid an equivalent volume of these emissions elsewhere.
- 3.37 Over time, as easier carbon reduction opportunities become scarce and the need for negative emissions becomes greater, we expect schemes that rely on offsetting through avoided emissions to shift to employing greenhouse gas removal methods. These take an equivalent amount of CO₂ out of the atmosphere in a verifiable and additional manner.
- 3.38 We will continue to review the opportunities for offset markets, so they can contribute to delivering the emissions reductions consistent with net zero by 2050, and further explore the potential role of greenhouse gas removal methods in addressing residual emissions from hard-to-abate sectors.

Loganair case study

Loganair, the UK's largest regional airline, has recently announced its "GreenSkies" environmental programme which includes mandatory carbon offsets to remove the same amount of carbon from the environment as that generated from every Loganair flight.

A £1 Carbon Offset charge will be included in the ticket price for every customer's flight from summer 2021. The mandatory carbon offset programme is the first such initiative by a UK regional airline to directly reflect the cost of offsetting emissions in ticket prices.

Greenhouse gas removal (GGR) and aviation

To achieve net zero by 2050, analysis from the CCC shows that a mix of engineered and nature-based GGRs will be required to balance residual emissions from aviation and other difficult-to-decarbonise sectors, such as agriculture and certain heavy industries.

GGRs are not yet implemented at commercial scale, either in the UK or globally, and forecasts of costs and scale-up potential

are highly uncertain. Demonstration of early-stage GGR solutions in the coming years will help to refine the Government's current assessment of GGR costs and the role they will play in achieving net zero. Work is ongoing to assess how the aviation sector could interact with GGRs, for example through bilateral agreements with GGR producers or through markets.

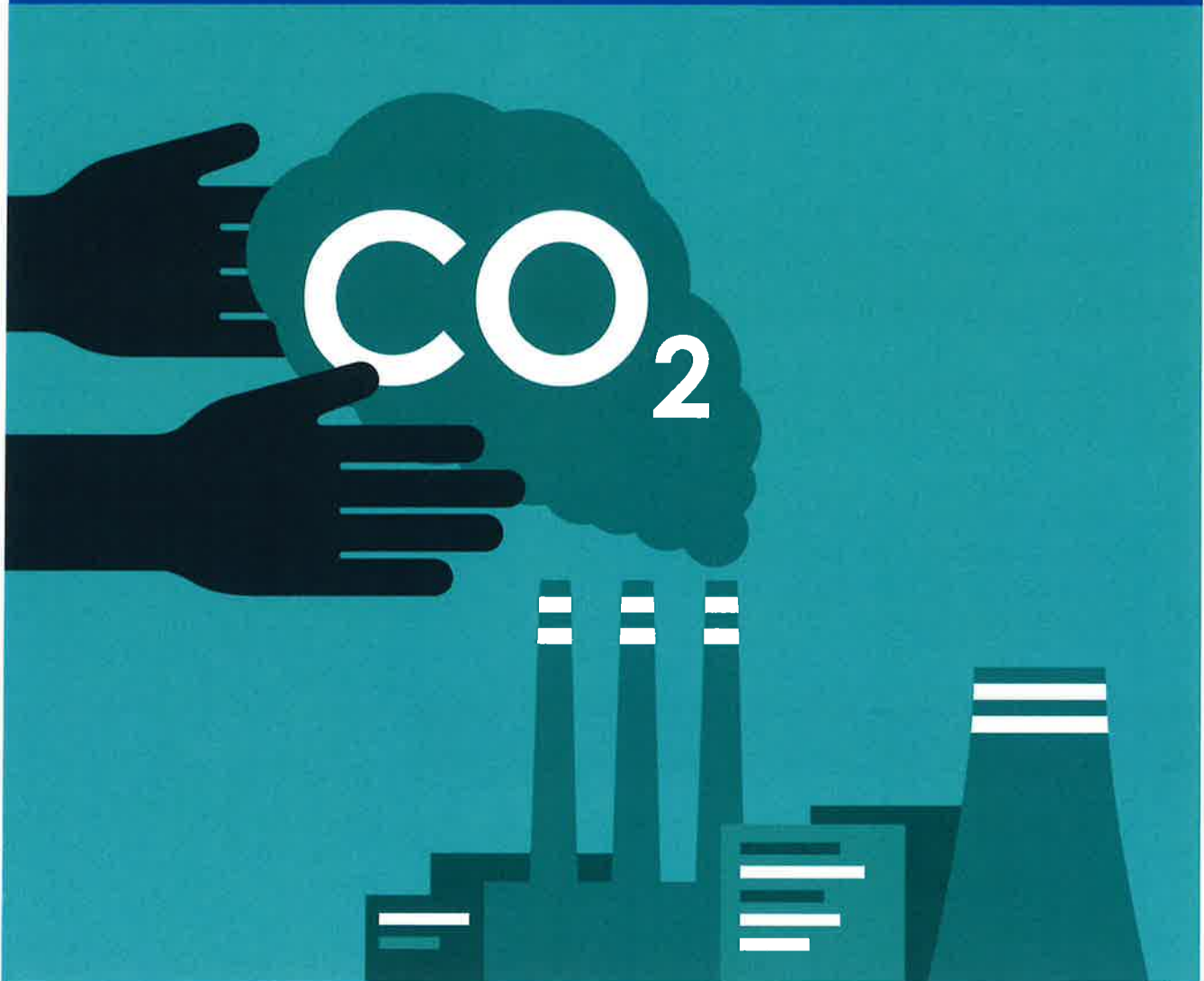


Image by Dmitry Kovalchuk on Shutterstock

Our existing policy commitments:

- We will have all legislation for CORSIA in force no later than the start of UK ETS Phase I(b) in 2024, enforce it robustly and encourage other states to do the same.
- We will, in collaboration with the devolved administrations through the UK ETS Authority, work to enhance the effectiveness of the UK ETS; ensuring that aviation is appropriately considered as we consult on amending the cap to align with net zero, reviewing the sector's free allocation, exploring expanding the pollutants covered, and making any changes that may be required to account for CORSIA.
- We will set out further details on the Government's approach to the development and deployment of greenhouse gas removal methods, following the Government's recent Call for Evidence.³⁷
- We will consider how the UK ETS could incentivise the deployment of greenhouse gas removal methods, in line with the Government's commitment in the Energy White Paper.
- We will negotiate for carbon pricing to be maintained and strengthened in the international aviation sector, including aligning the ambition of measures such as CORSIA with any long-term goal adopted by ICAO.
- We will be firm advocates within ICAO to improve the environmental ambition of CORSIA through ICAO's periodic reviews.

Our new policy proposals:

- We will strengthen carbon pricing for aviation to ensure we continue to apply the 'polluter pays' principle and consider incentives for greenhouse gas removal methods.
- We will explore how we can support other states that may need help implementing CORSIA effectively.

Questions...

- 11 Do you agree or disagree with the overall approach for using carbon markets and greenhouse gas removal methods to drive down CO₂ emissions?
- 12 What could be done further or differently to ensure carbon markets and greenhouse gas removal methods are used most effectively?

Influencing Consumers

We want to preserve the ability for people to fly whilst supporting consumers to make sustainable travel choices.

3.39 Flying is a social and economic good, and one that we wholeheartedly support as a key part of building a Global Britain; our strategy will focus on decarbonising aviation and delivering sustainable flying for everyone. This Government is committed to tackling the CO₂ emissions from flights, whilst preserving the ability for people to fly.

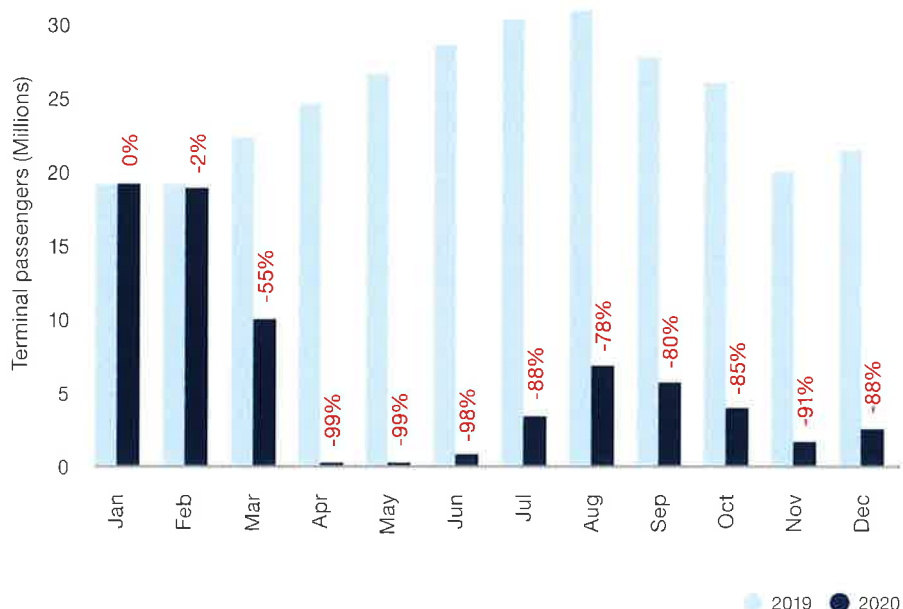
3.40 COVID-19 has devastated passenger numbers over the short-term, and we do not yet know what the longer-term effects on demand might be. Only as the pandemic continues to come under control and consumer confidence returns, will we begin to understand how it will affect the sector over the longer-term.

3.41 Nonetheless, even if the sector returns to a pre-COVID-19 demand trajectory, as we have assumed in our analysis, we currently believe the sector can achieve Jet Zero without the Government needing to intervene directly to limit aviation growth. The industry's need to rebuild from a lower base is likely to mean that plans for airport expansion will be slower to come forward.³⁹ Our analysis shows that there are scenarios that can achieve similar or greater CO₂ reductions to those in the CCC's Balanced Pathway⁴⁰ (which limits growth to 25% by 2050 compared to 2018 levels compared to a baseline of 65% growth) by focussing on new fuels and technology, with the knock-on

The impact of the pandemic on terminal passengers at UK airports³⁸

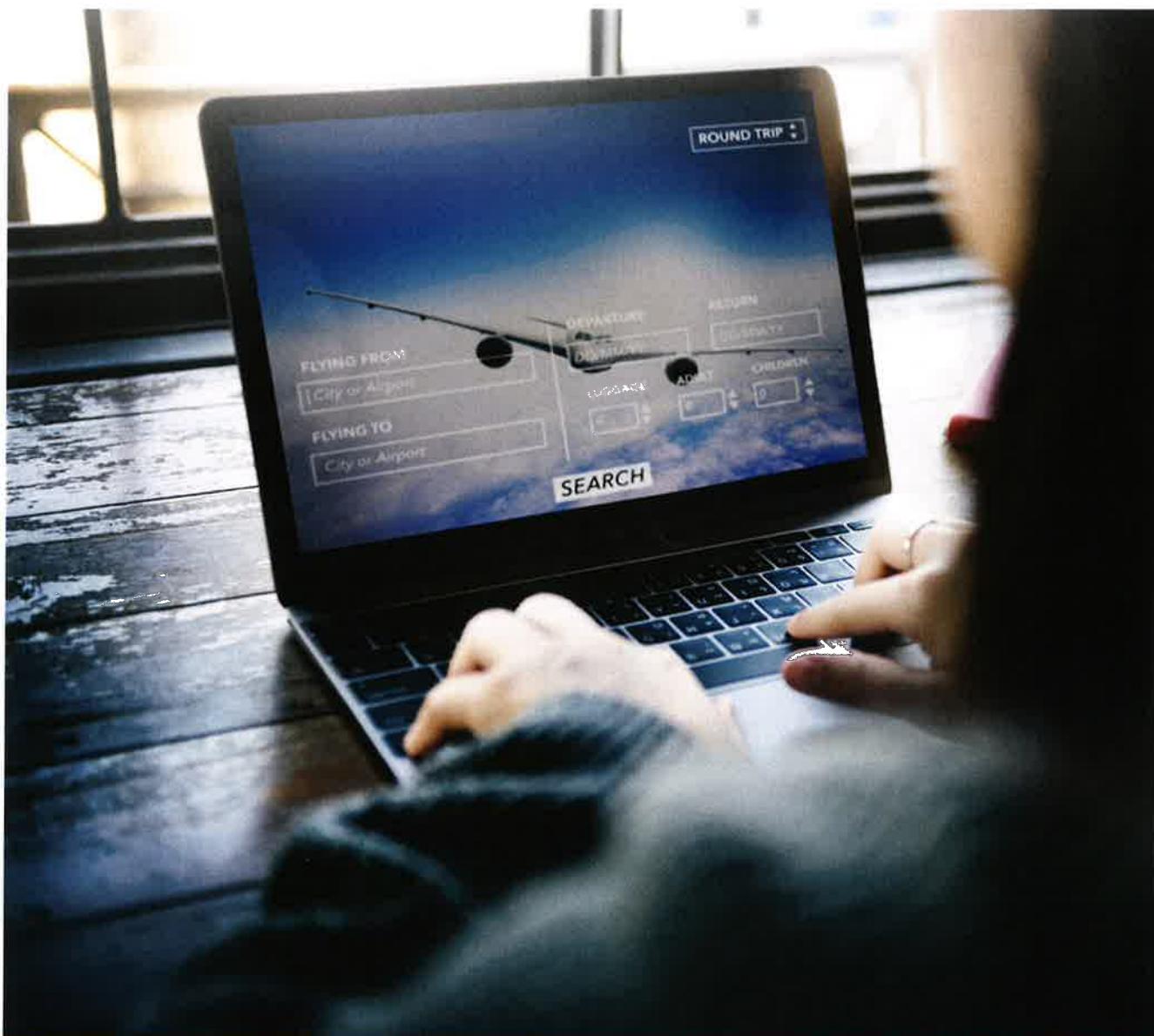
The coronavirus pandemic has led to an unprecedented decline in the number of terminal passengers at UK airports. **In April 2020, passenger numbers dropped by 99%** compared to April 2019, and remained low throughout the year.

Terminal passengers at UK airports – Change 2020 vs 2019



economic and social benefit, rather than capping demand.

- 3.42 We recognise that net zero 2050 must be achieved and we must ensure that any growth in aviation is compatible with our emissions reduction commitments. The approach we intend to set out in our Strategy will prioritise in-sector reductions through technological and operational improvements, then seek to address residual carbon emissions through robust, verifiable offsets and additional greenhouse gas removals. It relies on the rapid scale-up and deployment of technologies that are currently at a relatively early stage of development and requires collaboration and commitment across all parts of the sector if it is to succeed.
- 3.43 We also recognise that as a responsible government, we will need to keep our Strategy under review. As such **we intend to assess progress on the sector's CO₂ emission reduction pathway and our strategy for delivering through our five-year reviews.**
- 3.44 We expect the approach set out in this draft strategy could impact demand for aviation indirectly. Where new fuels and technologies are more expensive than their fossil-fuel equivalents, and where the cost of CO₂ emissions are correctly priced into business models, we expect, as with any price rise, a moderation of demand growth.
- 3.45 We have recently consulted as a government on changes to Air Passenger Duty (APD), including seeking views on a potential increase to the number of distance bands, in order to align the tax more closely with our environmental objectives. Airlines ordinarily pass the cost of APD onto the passenger and therefore those passengers who fly more will pay more tax.
- 3.46 And there are ways in which we can provide consumers with greater opportunities to make sustainable, informed choices on their travel plans, and in turn incentivise industry to decarbonise. For example, by providing better information on the climate impacts of travelling on different routes, or on different airlines. A study by the International Council on Clean Transportation (ICCT) suggests that emissions per passenger can differ by up to 63% on the same transatlantic route.⁴¹
- 3.47 The Civil Aviation Authority (CAA) are planning to consult on environmental information provisions later this year and we intend to work with them to explore whether mandating the provision of such information to passengers at the time of booking could enable better progress in this area. We will also work with the CAA to ensure that that any future requirements for environmental information provision does not have any unintended consequences such as distorting competition.



CAA environmental information provision case study

The CAA, in partnership with BritainThinks, recently launched a research project to explore the feasibility and utility of sharing carbon information with consumers, to enable better decision-making.

The most significant findings were:

- Most participants thought that emissions information should be universally provided across all sectors.
- Participants thought that information provision should both inform the public about the relative impacts of flying and encourage airlines to reduce emissions.
- Participants thought that information design should be standardised, easily accessible, and have third-party vetting to encourage trust and reliability.

The research indicated there is a broad spectrum of how responsive consumers would be to this information and concluded that better information provision could provide an opportunity for consumers to pick more sustainable flight options.

Photo by Rawpixel.com on Shutterstock

The benefits of influencing consumers

Work by the ICCT suggests that there can be **a difference of up to 63%** in emissions between different transatlantic flights.⁴²

Information provision could help:

- Passengers make informed decisions at the time of booking a flight.
- Increase public awareness of carbon emissions and climate change.
- Support aviation growth in a sustainable manner.



Our new policy proposals:

- We will work with the CAA to explore whether mandating the provision of environmental information to customers at the time of booking flights could influence consumer decision-making when presented with standard, reliable and accurate flight comparisons.
- We will look at other ways to support consumers to make sustainable choices when booking flights and reward those parts of the aviation sector that move more quickly to decarbonise.

Questions...

- 13 Do you agree or disagree with the overall focus on influencing consumers?
- 14 What more can government do to support consumers to make informed, sustainable aviation travel choices?

4 Non-CO₂ impacts

4.1 Tackling the climate impact of aviation is not just about reducing CO₂ emissions. Whilst the long-life span of CO₂ in the atmosphere makes tackling it of critical importance, there are other non-CO₂ impacts that also affect the climate and local air quality: in particular contrails and NOx emissions.

4.2 Contrails – or condensation trails – form from the initial emission of water vapour and soot particles in the exhaust of aircraft. In high humidity regions of the atmosphere these contrails can persist and create cirrus clouds. This is understood to create a net warming effect in addition to any CO₂ emissions, though the exact scale of the effect has a large degree of uncertainty. The contribution from any individual flight also depends on factors such as the time of day, as well as the atmospheric conditions.

4.3 NOx emissions increase the levels of ozone (leading to warming) and decrease ambient methane in the atmosphere (leading to cooling), which is understood to contribute to a net warming effect. Again, confidence in the magnitude of the effect is low.

4.4 Local air quality impacts from aviation occur in areas around airports, accounting for a small proportion of emissions e.g. 1% of nitrogen oxide emissions and 0.1% of particulate emissions⁴³. Aircraft NOx emissions have therefore long been regulated for air quality purposes, which is also understood to have climate benefits. The UK played a leading role in the recent

adoption by ICAO of the first scientifically based certification standards for aircraft non-volatile particulate emissions, which will again have local air quality and climate benefits.

4.5 We are working to address non-CO₂ impacts in the following ways:

- Many of the measures to improve efficiencies, rollout SAF, and accelerate zero emission flight are expected to have a positive impact on reducing non-CO₂ impacts. Where there is evidence to the contrary, we will carefully consider the overall impact on the climate.
- We are improving our understanding of non-CO₂ impacts and will ensure that the latest scientific understanding of aviation non-CO₂ impacts is used to inform our policy.
- ICAO now has standards in place to regulate all aircraft emissions with significant climate effects. We will continue to negotiate for these to be improved over time as well as consideration of other measures such as operational guidance and regulation of fuel composition.
- We will consider the outcomes of EUROCONTROL's Contrail Prevention Trial and whether it would be beneficial to undertake similar trials in the UK in the future.



Image courtesy of Vertical Aerospace.

Questions...

- 15 What could be done further or differently to ensure we tackle non-CO₂ impacts from aviation?



Image courtesy of Rolls-Royce.

5 Conclusion

5.1 This document sets out our proposed approach and principles to deliver the ambition of decarbonising aviation in a way that preserves the benefits of air travel and maximises the opportunities that decarbonisation can bring. To achieve this, we have set out proposed action across five different categories of measures to reduce and where possible, eliminate CO₂ emissions.

5.2 The purpose of this document is to consult widely on our proposed approach, principles, and measures, recognising the important role that will need to be played by the sector, wider industry, academia, innovators and the public in realising our ambitions and showcasing the UK as the leading voice in tackling this once in a generation issue.

5.3 We welcome views on the questions raised throughout this document, which are repeated below. We will develop a final Jet Zero Strategy later this year. It will be informed by the responses received, and build on previous public engagement around aviation decarbonisation, including the Climate Assembly UK's report on air travel and the path to net zero,⁴⁴ the Department for Transport's National Travel Attitudes Study⁴⁵ and the findings of a deliberative research project on decarbonising transport, commissioned by the Department of Transport and carried out by BritainThinks⁴⁶.

Consultation questions...



- 1 Do you agree or disagree that UK *domestic* aviation should be net zero by 2040? How do you propose this could be implemented?

- 2 Do you agree or disagree with the range of illustrative scenarios that we have set out as possible trajectories to net zero in 2050? Are there any alternative evidence-based scenarios we should be considering?

- 3 Do you agree or disagree that we should set a CO₂ emissions reduction trajectory to 2050?
 - a. Should the trajectory be set on an in-sector CO₂ emissions basis (without offsets and removals) or a net CO₂ emissions basis (including offsets and removals)?

 - b. Do you agree or disagree with the possible trajectories we set out, which have in-sector CO₂ emissions of 39 Mt in 2030, and 31 Mt in 2040 and 21 Mt in 2050, or net CO₂ emissions of 23-32 Mt in 2030, 12-19 Mt in 2040 and 0 Mt in 2050?

- 4 Do you agree or disagree that we should review progress every five years and adapt our strategy in response to progress?

- 5 Do you agree or disagree with the overall approach to improve the efficiency of our existing aviation system?

- 6 What more or differently could be done to ensure we maximise efficiency within the current aviation system?

- 7 Do you agree or disagree with the overall approach for the development and uptake of SAF in the UK?

- 8 What further measures are needed to support the development of a globally competitive UK SAF industry and increase SAF usage?

- 9 Do you agree or disagree with the overall approach for the development of zero emission flight in the UK?

- 10 What further measures are needed to support the transition towards zero emission aviation?

- 11 Do you agree or disagree with the overall approach for using carbon markets and greenhouse gas removal methods to drive down CO₂ emissions?

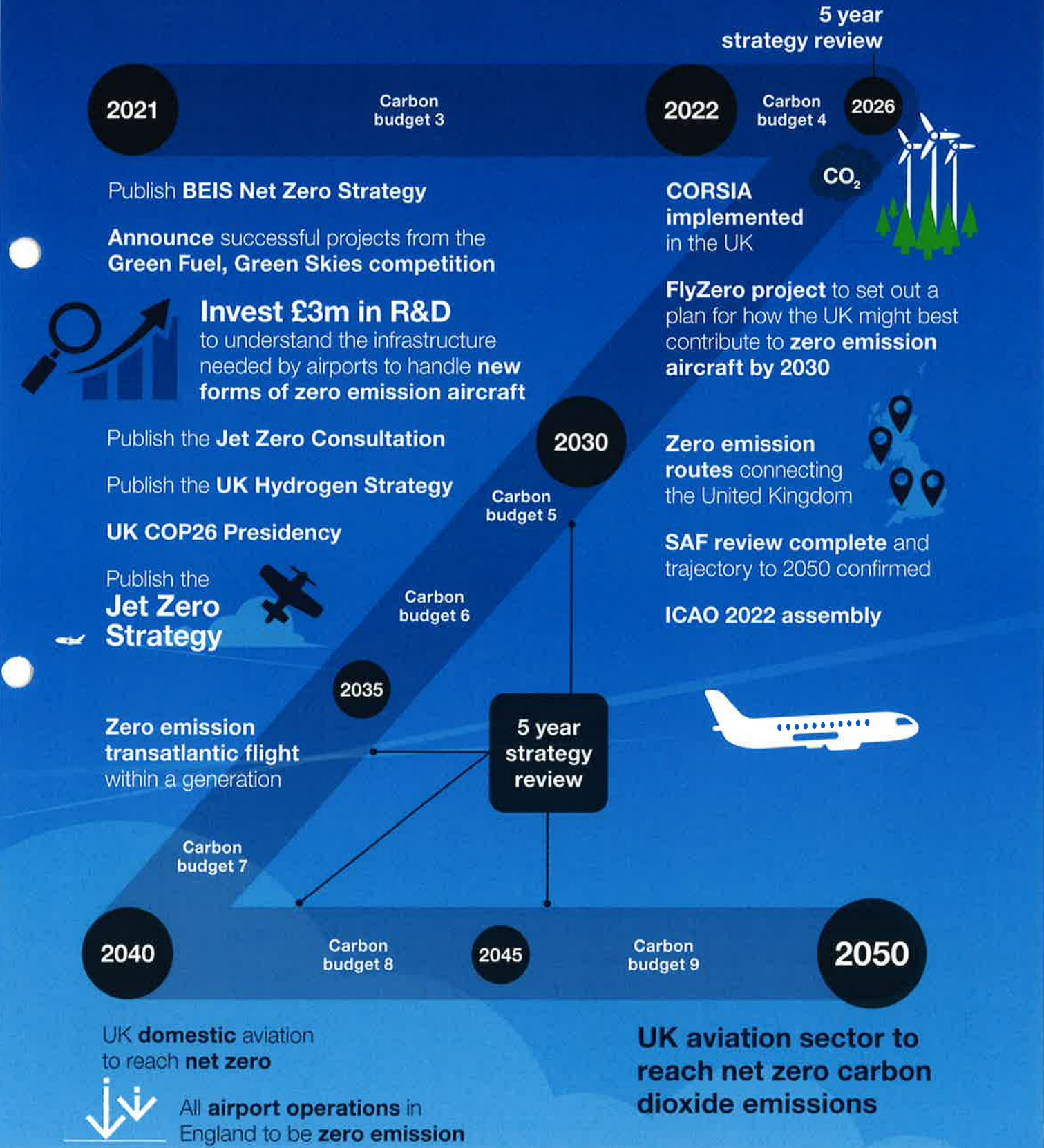
- 12 What could be done further or differently to ensure carbon markets and greenhouse gas removal methods are used most effectively?

- 13 Do you agree or disagree with the overall focus on influencing consumers?

- 14 What more can the Government do to support consumers to make informed, sustainable aviation travel choices?

- 15 What could be done further or differently to ensure we tackle non-CO₂ impacts from aviation?

Key milestones on our path to net zero aviation by 2050



Glossary of Terms

Airport operations – for the purposes of this document, airport operations refer to scope 1 and scope 2 emissions.

Greenhouse gases – greenhouse gases per the Kyoto protocol are: carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydro-fluorocarbons (HFC), perfluorocarbons (PFC), nitrogen trifluoride (NF₃) and sulphur hexafluoride (SF₆).⁴⁷

In-sector emissions – emissions produced by the aviation sector **before** consideration of offsets, avoided emissions in other sectors, or greenhouse gas removal methods.

Jet Zero – collective term used across government and industry for our ambition to achieve net zero CO₂ aviation by 2050.

Jet Zero Council – the Jet Zero Council (JZC) is a partnership between industry and government to bring together ministers and chief executive officer-level stakeholders, with the aim of delivering zero emission transatlantic flight within a generation.

Jet Zero Strategy – the Jet Zero Strategy will be published in response to this consultation.

Net emissions – emissions produced by aviation **after** consideration of offsets, avoided emissions in other sectors, and greenhouse gas removal technologies.

Net zero – refers to the Government target that the UK's total greenhouse gas (GHG) emissions should be equal to or less than the emissions the UK removed from the environment. This can be achieved by a combination of emission reduction and emission removal.

As this consultation is focussed on reducing carbon dioxide (CO₂) emissions specifically, net zero is used throughout the document to refer to net zero CO₂.

Net zero [CO₂] emission flight – can be achieved by deploying zero emission technologies or by reducing emissions and balancing out any remaining CO₂ emissions

produced by the aircraft by an equal share of negative emissions elsewhere. This could be achieved through zero emission aircraft, or through low emission aircraft in combination with sustainable aviation fuels with at least 100% lifecycle emission savings or off setting against greenhouse gas removals.

Public service obligations – public service obligations (PSOs) are a route-support measure that allow government to provide funding for the operation of air services on routes (to London or within a Devolved Administration) which are vital for the economic and social development of a region but are not viable on a wholly commercial basis.⁴⁸

Scope 1 emissions – emissions owned and controlled by the airport operator, such as energy generation and airport vehicles.⁴⁹

Scope 2 emissions – emissions from the off-site generation of energy purchased by the airport operator.⁵⁰

UK aviation emissions – defined as the CO₂ emissions arising from all flights (domestic, international, passenger and freighter) departing from UK airports, including during the taxiing and landing and take-off stages. This does not include General Aviation (non-commercial flights), international flights arriving into the UK, surface access emissions, non-aircraft airport emissions, or UK registered aircraft flying from non-UK airports.⁵¹

UK domestic aviation – for the purpose of this document is defined as flights which originate and terminate within the UK.

Zero emission aircraft – aircraft that do not emit any tailpipe CO₂ emissions. This could be achieved through a range of electric- or hydrogen-based propulsion technologies. This definition does not account for CO₂ emissions during manufacturing or aircraft maintenance.⁵²

Zero emission flight – the ecosystem supporting zero emission aircraft.

What will happen next

A summary of responses, including the next steps, will be published within three months of the consultation closing on www.gov.uk.

If you have questions about this consultation please contact:
NZaviationconsultation@dft.gov.uk

Consultation principles

The consultation is being conducted in line with the Government's key consultation principles which are listed below. Further information is available at www.gov.uk/government/publications/consultation-principles-guidance.

If you have any comments about the consultation process please contact: Consultation Co-ordinator, Department for Transport, Zone 1/29 Great Minster House, London SW1P 4DR
Email consultation@dft.gsi.gov.uk.

Public Sector Equality Duty

The Public sector equality duty came in to force in April 2011 (s.149 of the Equality Act 2010) and public authorities are now required, in carrying out their functions, to have due regard to the need to achieve the objectives set out under s149 of the Equality Act 2010.

The Department of Transport has assessed the strategic approach set out in this consultation with regard to Public Sector Equality Duty, and found that overall, climate change mitigation policies could advance equality of opportunity. Work will continue as individual policies are implemented.

We invite comment on how the Jet Zero Strategy could further achieve the objectives as set out under s149 of the Equality Act 2010 to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Endnotes

- 1 UK Government press release, 2021, available at: <https://www.gov.uk/government/news/uk-enshrines-new-target-in-law-to-slash-emissions-by-78-by-2035>
- 2 UK Government press release, 2021, available at: <https://www.gov.uk/government/news/uk-enshrines-new-target-in-law-to-slash-emissions-by-78-by-2035>
- 3 UK Government, The ten point plan for a green industrial revolution, 2020, available at: www.gov.uk/government/publications/the-ten-point-plan-for-a-green-industrial-revolution
- 4 UK Government press release, 2021, available at: <https://www.gov.uk/government/news/uk-enshrines-new-target-in-law-to-slash-emissions-by-78-by-2035>
- 5 DfT Analysis of BEIS Final UK greenhouse gas emissions national statistics 2019, available at: <https://www.gov.uk/government/statistics/final-uk-greenhouse-gas-emissions-national-statistics-1990-to-2019>
- 6 DfT analysis.
- 7 See supporting evidence and analysis document which provides further detail, as well as modelling different illustrative pathways for reaching net zero aviation by 2050.
- 8 DfT Analysis of BEIS Final UK greenhouse gas emissions national statistics 2019, available at: <https://www.gov.uk/government/statistics/final-uk-greenhouse-gas-emissions-national-statistics-1990-to-2019>
- 9 Joint Research Centre, European Commission, Fossil CO2 emissions of all world countries – 2020 report, available at: <https://publications.jrc.ec.europa.eu/repository/handle/JRC121460>
- 10 DfT Analysis of BEIS Final UK greenhouse gas emissions national statistics 2019, available at: <https://www.gov.uk/government/statistics/final-uk-greenhouse-gas-emissions-national-statistics-1990-to-2019>
- 11 Joint Research Centre, European Commission, Fossil CO2 emissions of all world countries – 2020 report, available at: <https://publications.jrc.ec.europa.eu/repository/handle/JRC121460>
- 12 Sustainable Aviation, Decarbonisation road-map: A path to net zero, 2020, available at: https://www.sustainableaviation.co.uk/wp-content/uploads/2020/02/SustainableAviation_CarbonReport_20200203.pdf
- 13 Sustainable Aviation, UK Aviation's Interim Targets to Achieving Net Zero Emissions by 2050, 2021, available at: <https://www.sustainableaviation.co.uk/news/uk-aviation-industry-strengthens-commitment-to-achieving-net-zero-and-launches-first-interim-decarbonisation-targets/>
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- 15 DfT Analysis of BEIS Final UK greenhouse gas emissions national statistics 2019, available at: <https://www.gov.uk/government/statistics/final-uk-greenhouse-gas-emissions-national-statistics-1990-to-2019> and DfT and CAA Aviation statistics, updated 2020, available at: <https://www.gov.uk/government/statistical-data-sets/aviation-statistics-data-tables-avi>
- 16 DfT Analysis of BEIS Final UK greenhouse gas emissions national statistics 2019, available at: <https://www.gov.uk/government/statistics/final-uk-greenhouse-gas-emissions-national-statistics-1990-to-2019>
- 17 DfT and CAA Aviation statistics, updated 2020, available at: <https://www.gov.uk/government/statistical-data-sets/aviation-statistics-data-tables-avi>
- 18 DfT analysis.
- 19 Airbus key figures, accessed 2021, available at: <https://www.airbus.com/aircraft/passenger-aircraft/a320-family/a320neo.html#details>
- 20 Sustainable Aviation, Decarbonisation road-map: A path to net zero, 2020, available at: https://www.sustainableaviation.co.uk/wp-content/uploads/2020/02/SustainableAviation_CarbonReport_20200203.pdf
- 21 Our Future Skies, Modernising the UK's infrastructure in the sky, 2018, available at: <https://www.ourfutureskies.uk/media/b1nfazlo/our-future-skies-modernising-the-uk-s-infrastructure-in-the-sky-web-version-final-170320.pdf>
- 22 Sustainable Aviation, The SA noise roadmap – a blueprint for managing noise from aviation, 2018, available at: <https://www.sustainableaviation.co.uk/wp-content/uploads/2018/06/SA-Noise-Road-Map-Report.pdf>
- 23 Air Transport Action Group, Waypoint 2050, 2020, available at: https://aviationbenefits.org/media/167187/w2050_full.pdf
- 24 London Gatwick, TAG Farnborough, MAG (Manchester, East Midlands and Stansted Airports), London City.
- 25 DfT and CAA, Airspace modernisation guidance, 2019, available at: <https://www.gov.uk/guidance/airspace-modernisation#what-is-happening>
- 26 EUROCONTROL Think Paper #1 – Fuel tankering in European skies: economic benefits and environmental impact, 2019, available at: <https://www.eurocontrol.int/publication/fuel-tankering-european-skies-economic-benefits-and-environmental-impact>
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- 28 Sustainable Aviation, Sustainable aviation fuels road-map, 2014, available at: https://www.sustainableaviation.co.uk/wp-content/uploads/2020/02/SustainableAviation_FuelReport_20200231.pdf

- 29** E4Tech, Targeted Aviation Advanced Biofuels Demonstration Competition – Feasibility Study, 2020, available at: <https://www.e4tech.com/uploads/files/final-report-aviation-abdc-feasibility-study-issue-v1-0.pdf>
- 30** The International Council on Clean Transportation, The cost of supporting alternative jet fuels in the European Union, 2019, available at: https://theicct.org/sites/default/files/publications/Alternative_jet_fuels_cost_EU_20190320_1.pdf
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- 32** GKN Aerospace, H2GEAR, accessed 2021, available at: <https://www.gknaerospace.com/en/our-technology/2021/H2Gear/>
- 33** UK Government webpage, Regulatory Horizons Council, accessed 2021, available at: <https://www.gov.uk/government/groups/regulatory-horizons-council-rhc>
- 34** DfT and CAA, General Aviation Roadmap, 2021, available at: <https://www.gov.uk/government/publications/general-aviation-roadmap>
- 35** DfT analysis of Civil Aviation Authority airports data.
- 36** International Carbon Action Partnership, Emissions trading worldwide, status report 2020, available at: https://icapcarbonaction.com/en/?option=com_attach&task=download&id=677
- 37** UK Government, Greenhouse gas removals: call for evidence, 2020, available at: <https://www.gov.uk/government/consultations/greenhouse-gas-removals-call-for-evidence>
- 38** DfT Analysis of CAA Airport Data.
- 39** Beyond the horizon The future of UK aviation: Making best use of existing runways (2018) and Airports National Policy Statement: new runway capacity and infrastructure at airports in the South East of England (2018) are the most up-to-date policy on planning for airport development. They continue to have full effect, for example, as a material consideration in decision-taking on applications for planning permission. The government is clear that expansion of any airport must meet its climate change obligations to be able to proceed.
- 40** Climate Change Committee, Sixth Carbon Budget, 2020, available at: <https://www.theccc.org.uk/publication/sixth-carbon-budget/>
- 41** The International Council on Clean Transportation, Transatlantic airline fuel efficiency ranking, 2017, available at: https://theicct.org/sites/default/files/publications/Transatlantic_Fuel_Efficiency_Ranking_20180912_v2.pdf
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- 44** Climate Assembly UK, The path to net zero, 2020, available at: <https://www.climateassembly.uk/report/read/how-we-travel-by-air.html#how-we-travel-by-air>
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- 48** DfT, Public service obligation: regional air access to London, 2013, available at: <https://www.gov.uk/government/publications/public-service-obligation-regional-air-access-to-london>
- 49** Verifavia website, accessed 2021, available at: <https://www.verifavia.com/greenhouse-gas-verification/fq-what-are-the-scope-1-scope-2-and-scope-3-emissions-151.php>
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- 51** DfT, UK Aviation Forecasts, 2017, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/878705/uk-aviation-forecasts-2017.pdf
- 52** UK Government webpage, Jet Zero Council, accessed 2021, available at: <https://www.gov.uk/government/groups/jet-zero-council#terms-of-reference>

Statement of Costs
(summary assessment)
 (CPR PD44 9.5)

In the High Court of Justice - Planning Court in the Administrative		Court
Case Reference	CO/2356/2021	

Judge/Master

Case Title Uttlesford District Council v Secretary of State for Housing, Communities and Local Government

First Interested Party's

Statement of Costs for the hearing on

(interim application/fast track trial)

Description of fee earners*

- (a) (name) (grade) (hourly rate claimed)
- (b) (name) (grade) (hourly rate claimed)
- (c) (name) (grade) (hourly rate claimed)
- (d) (name) (grade) (hourly rate claimed)

Simon Ricketts, A, £500
George Morton Jack, B, £350
Safiyah Islam, C, £195

Attendances on First Interested Party (Stansted Airport Limited)

Personal attendances

(a) (number)		hours at £		£	0.00
(b) (number)		hours at £		£	0.00
(c) (number)		hours at £		£	0.00
(d) (number)		hours at £		£	0.00

Letters out/emails

(a) (number)	0.25	hours at £	500.00	£	125.00
(b) (number)	1.00	hours at £	350.00	£	350.00
(c) (number)		hours at £		£	0.00
(d) (number)		hours at £		£	0.00

Telephone

(a) (number)		hours at £		£	0.00
(b) (number)		hours at £		£	0.00
(c) (number)		hours at £		£	0.00
(d) (number)		hours at £		£	0.00

Attendances on opponents (including negotiations):

Personal attendances

(a) (number)

--

hours at £

--

(b) (number)

--

hours at £

--

(c) (number)

--

hours at £

--

(d) (number)

--

hours at £

--

£	0.00
£	0.00
£	0.00
£	0.00

Letters out/emails

(a) (number)

--

hours at £

--

(b) (number)

0.50

hours at £ 350.00

350.00

(c) (number)

--

hours at £

--

(d) (number)

--

hours at £

--

£	0.00
£	175.00
£	0.00
£	0.00

Telephone

(a) (number)

0.25

hours at £ 500.00

500.00

(b) (number)

--

hours at £

--

(c) (number)

--

hours at £

--

(d) (number)

--

hours at £

--

£	125.00
£	0.00
£	0.00
£	0.00

Attendance on others:

Personal attendances

(a) (number)

--

hours at £

--

(b) (number)

--

hours at £

--

(c) (number)

--

hours at £

--

(d) (number)

--

hours at £

--

£	0.00
£	0.00
£	0.00
£	0.00

Letters out/emails

(a) (number)

1.00

hours at £ 500.00

500.00

(b) (number)

0.50

hours at £ 350.00

350.00

(c) (number)

1.50

hours at £ 195.00

195.00

(d) (number)

--

hours at £

--

£	500.00
£	175.00
£	292.50
£	0.00

Telephone

(a) (number)

--

hours at £

--

(b) (number)

--

hours at £

--

(c) (number)

--

hours at £

--

(d) (number)

--

hours at £

--

£	0.00
£	0.00
£	0.00
£	0.00

Site inspections etc.

(a) (number)

hours at £

hours at £

hours at £

hours at £

£	0.00
£	0.00
£	0.00
£	0.00

Work done on documents, as set out in schedule:

975.00

Attendance at hearing:

(a) (number)

hours at £

hours at £

hours at £

hours at £

£	0.00
£	0.00
£	0.00
£	0.00
£	

(e) Fixed costs

(a) (number)

hours travel and waiting time £

hours travel and waiting time £

hours travel and waiting time £

hours travel and waiting time £

£	0.00
£	0.00
£	0.00
£	0.00

Sub Total £ 2,717.50

- (A) Solicitors and Chartered Legal Executives with over eight years post qualification experience including at least eight years litigation experience.
- (B) Solicitors and Chartered Legal Executives with over four years post qualification experience including at least four years litigation experience.
- (C) Other solicitors and Chartered Legal Executives and fee earners of equivalent experience.
- (D) Trainee solicitors, paralegals and other fee earners.

“Chartered Legal Executive” means a Fellow of the Chartered Institute of Legal Executives (CILEx). Those who are not Fellows of CILEx are not entitled to call themselves Chartered Legal Executives and in principle are therefore not entitled to the same hourly rate as a Chartered Legal Executive.

Brought forward £ 2,717.50

ounsel's fees (name) (year of call)

Thomas Hill QC (1988) and Philippa Jackson (2008)

Fee for [advice/conference/documents]

£ 48,000.00

Fee for hearing

£

Other expenses

Court fees

£

Others (give brief description)

[Empty box for description of other expenses]

£

Total

£ 50,717.50

Amount of VAT claimed

on solicitors and counsel's fees

£

on other expenses

£

Grand Total £ 50,717.50

The costs stated above do not exceed the costs which the First Interested Party is liable to pay in respect of the work which this statement covers. Counsel's fees and other expenses have been incurred in the amounts stated above and will be paid to the persons stated.

Stansted Airport Limited

Town Legal LLP
Signed

02/08/2021

Dated

Simon Ricketts

Name of Partner signing

Town Legal LLP

Name of firm of solicitors

Schedule of work done on documents

Item	Description of work <i>(one line only)</i>	(A) hours	(B) hours	(C) hours	(D) hours	Total £
1	Acknowledgement of service			0.5		97.50
2	Statement of costs			1		195.00
3	Bundle of supporting documents			3.5		682.50
4						
5						
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8						
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11						
12						
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14						
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16						
17						
18						
19						
20						
21						
22						
23						
24						
25						
26						
27						
28						
29						
30						
Total						975.00

