From: [redacted]
[redacted]
Subject: FW: For the Attention of the Manston Airport Case Team
Date: 09 July 2021 12:45:56
Attachments: Stansted Planning Appeal Decision 3256619 - FINAL - 26 June 2021 - no highighting.pdf
Costs Decision - 3256619.pdf
Council hit by hefty cost of Refusing Airport Planning Permission.pdf
Decision of Inspector Nunn 17vii2017 against SHP appeal against TCPA Planning Consent by TDC.pdf
Can P2F Conversions fulfil the unprecedented demand for Global Air Cargo .pdf
making-best-use-of-existing-runways.pdf
Angus Walker Blog - BDB Pitmans - December 2020 - Excerpts regarding the ANPS Decision of UKSC.pdf
Revised Submission by Dr R John Pritchard for the Secretary of State"s Consultation by the 9 July 2021 Deadline.pdf

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From: R. John Pritchard [redacted]
Sent: 09 July 2021 00:06
To: Manston Airport <ManstonAirport@planninginspectorate.gov.uk>
Subject: For the Attention of the Manston Airport Case Team

Please accept the following submission in response to the Secretary of State's *Statement of Matters* Letter:

Submission by Dr. R. John Pritchard

The remaining documents are offered in support of that.

Thank you,

Dr. R. John Pritchard

Submission by **Dr. R. John Pritchard**

For the Attention of the Secretary of State for Transport, in response to his Public Consultation on
The Redetermination of the Manston Airport Development Consent Application:

1. The final lines of the Decision reached by three superb Planning Inspectors who conducted a public inquiry into Uttersford District Council's refusal of planning consent for a very considerable increase in passenger flights and a significant decrease in cargo flights from Stansted Airport are worthy of consideration by the Secretary of State when the **Manston Airport DCO** is redetermined:

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

2. It is notable that in the Stansted case **the case for development was so overwhelming** and the **arguments against it were found to be so misguided and perverse** that the panel of Planning Inspectors "rocked the planning world" by imposing upon the local authority the burden of paying all the costs of the Appeal, estimated to be in excess of £1 million: see the Costs Judgment at https://www.nortontaylornunn.co.uk/council-costs-airport-wins-planning-appeal/, retrieved at 7 July 2021 and appended to this submission for consideration.

3. Indeed, I believe that the terms of that Decision granting consent are relevant to all four Questions raised in the Statement of Matters on behalf of the Secretary of State for Transport, for consideration in his Consultation, namely:

- the extent to which current national or local policies (including any changes since 9 July 2020 such as, but not limited to, the re-instatement of the ANPS) inform the level of need for the services that the Development would provide and the benefits that would be achieved from the Development;

- "whether the quantitative need for the Development has been affected by any changes since 9 July 2019, and if so, a description of any such changes and the impacts on the level of need from those changes (such as, but not limited to, changes in demand for air freight, changes of capacity at other airports, location-al requirements for air freight and the effects of Brexit and /or Covid)".

- the extent to which the Secretary of State should, in his re-determination of the application, have regard to the sixth carbon budget (covering the years between 2033 – 2037) which will include emissions from international aviation, and

- any other matters arising since 9 July 2019 which Interested Parties consider are material for the Secretary of State to take into account in his re-determination of the application.

4. It is submitted that the benefit but also the detriment of the Stansted Airport planning applications is vastly greater than the Manston in absolute terms. However, **the balance of convenience between the benefit and burden of the Manston Airport DCO is actually proportionately more favourable than at Stansted, not least in matters of numbers of ATMs, noise pollution, greenhouse gas emissions and impact on climate change. Manston is also likely to handle cargo far more expeditiously than Stansted will. Stansted is not set up to operate as a cargo hub, and when it comes to slots, cargo handling and storage facilities, dedicated cargo freighter flights take second place to Stansted's efficient handling of high volumes of air passenger aircraft movements.**

5. **Fortuitously, the revised, final Decision at Stansted is germane, timely and exceedingly recent.** It was published on 21 June 2021 and slightly amends the Decision originally published on 26 May 2021. The first paragraph of that Decision is therefore as highly pertinent to the Manston Airport case as the same Decision's final paragraph previously quoted and highlighted supra:

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

This currently may be found at https://www.uttlesford.gov.uk/media/10878/Decision-letter-Stansted-Airport-Appeal/pdf/Appeal_Decision_-_3256619(A).pdf?m=637576374558470000, and as retrieved here on 7 July 2021 is appended to this submission as a pdf document for consideration. **It is pertinent here because of the scale of the endeavour, which increased the permitted number of aircraft movements at Stansted above the existing actual number by 60%. It also capped the number of cargo freighter ATMs so as to permit less than 6000 more than at present. The airport will have more capacity for bellyhold cargo, but the constraints on the handling so many more passenger services that must run like clockwork will hamper efficient and timely handling of bellyhold cargo on available stands.**

6. All three of the Planning Inspectors that the Secretary of State for Housing Communities and Local Government appointed to serve as the Panel of Inspectors, namely Michael Boniface MSc MRTPI, Gareth D Jones BSc(Hons) DipTP MRTPI and Nick Palmer BA (Hons) BPl MRTPI, were and are experts and were appointed as such, and my understanding (the truth of which the Secretary of State for Transport's External Consultant will doubtless wish to confirm) is that within planning circles (although not by Uttlesford District Council or amongst protest groups) the **Decision that the Panel reached has been much admired and helps greatly to clarify the correct balance of how an Airport development plan should be examined** where it comes under the Town & Country Planning Act regime. The same can be said of a how a DCO Airport Project should be dealt with now, three years after having been accepted as an NSIP, two years after it was examined under the Planning Act 2008 development consent regime, and one year after having been granted consent originally, another year before the Government settled the Sixth Carbon Budget for a period that is due to commence more than a decade from now in the future. For reference, a copy

of the quashed first Manston Airport DCO Order and its Decision Letter, both previously available but at present removed from the online Manston Airport project section of Planning Inspectorate's NSIP portal, are appended to this Submission for consideration.

7. What also may seem bizarre, however, is that although the Stansted Public Inquiry was opened six months after the Manston Airport DCO was consented on 9 July 2020, the parties to the Stansted dispute did not see fit to take Manston Airport into consideration at all (at least explicitly) when calculating demand for cargo services at Stansted Airport. This means that **neither Stansted Airport nor the groups opposed to its expansion, explicitly factored in the effect of Manston Airport on the demand for dedicated cargo at Stansted or in the Southeast generally.** Yet as is well-known, even before the Manston Airport DCO Application was submitted to the Planning Inspectorate, Inspector Matthew C. J. Nunn's refused Stone Hill Park's Appeal against Thanet District Council's denial of Change of use for Four Airport Buildings in 2017. Thus, even then it was clear that Manston Airport's potential as an airport had to be taken into account by the Council and Inspectorate because it was consistent with the current local plan, the airport remained in being, and its redevelopment as an airport remained capable of being secured. It is therefore perverse that the Stansted Airport expansion plans in 2018, less than a year later, did not have any or any explicit regard for the statistical likelihood that the Manston DCO Application would be consented and thus affect the future of cargo traffic at Stansted. Their silence on that within their Proofs of Evidence is deafening. It is, however, clear that the new 16,000 cap on dedicated cargo ATMs at Stansted is not a target but a maximum figure. It is reasonable to conclude that Stansted would not be unhappy if dedicated freight traffic at Stansted were to shrink in volume in future as Stansted's growth in passenger flight numbers rises steeply: this is clearly the model that best suits that particular airport. See Appeal Decisions APP/Z2260/W/15/3140990, 3140992, 3140994 & 3140995, as retrieved at 7 July 2021, at the link https://acp.planninginspectorate.gov.uk/ViewCase.aspx?Caseid=3140990&CoID=0, also appended as an annex to this submission for consideration.

8. **Equally, it is noteworthy that the word "Stansted" does not appear in the first Manston Decision Letter at all,** even though the original Determination of the Manston Airport DCO took place while the Refusal of Planning Permission for Stansted's Expansion was expected to be challenged by means of a Public Inquiry and was deemed by experts to be almost certain to be overturned. The near certainty of that result is clear enough from the Planning Inspectors' cost order against Stansted's local district council. Please note that although the original Manston Airport DCO Decision Letter has been quashed, a copy of it that was retrieved from the Planning Inspectorate website before the original Manston development consent Order was quashed, and both documents are appended to the present submission for convenient reference.

9. I submit, that the calculations on projected cargo tonnage at Stansted that are to be found in the Stansted Appellant's documentation and factored into the Decision of the Stansted Public Inquiry cannot be regarded as robust and adequately evidenced. However, **it is the case that the Appellant at the Stansted inquiry correctly did maintain that any surpluses in cargo tonnage could be dealt with at other airports within the Southeast** despite evidence that Luton, Heathrow, Gatwick and Stansted would have no spare capacity for additional cargo from the mid-2030s. Given the known constraints in size, capacity, infrastructure and geographical factors at all other London and Southeast airports (e.g., Southend, City, and Lydd), **the missing link from the Proofs of Evidence at the Stansted Appeal is Manston Airport and its potential either as originally consented or potentially re-assessed to any higher figure that might in future be supported by greater demand and any possible future non-material change application should higher demonstrable need and lower actual environmental detriment be manifest in future**

years. Again, the inescapable conclusion is that Stansted is fixated upon passenger ATMs and has little if any interest in handling dedicated cargo freighters.

10. **None of those calculations at Stansted took into account how far their existing capacity to handle cargo would be affected flight delays, or early arrivals, impacting upon whether there would be available slots at the times when they might be needed, nor was there any fine analysis of how much priority cargo is not or could not be flown out within time constraints by reasons of the need of passenger aircraft to depart within their allocated time slots, leaving without that bellyhold cargo. These constrain the delivery of dedicated cargo freight services at Stansted but not the demand for such services within the Southeast.** I very much hope that the Secretary of State's Infrastructure Team will ask his Expert External Aviation Consultant to cast his or her professional eye over this issue, bringing to bear expert knowledge of the strengths and weaknesses of all Stansted and other airports in the Southeast, and factoring in the Azimuth Aviation's report by Dr. Sally Dixon which concludes that UK need for overseas air freight has been subject to displacement in recent years, being trucked from unconstrained airports in the European Union on the Continent to destinations in the Southeast of England. Before Brexit, her analysis may have been doubted by some, but constraints upon the shipment of freight by road from the Continent to Europe (and vice versa), since Brexit, have become so notorious and universally appreciated, to the great detriment of British and foreign businesses, that I strongly believe the Applicant's NSIP Justification for the Manston Airport DCO Project in July 2018, outlined here: https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR020002/TR020002-002382-2.3%20-%20NSIP%20Justification.pdf and supported by Dr. Dixon's evidence and expert conclusions, are now stronger than ever, not weakened by the events of the past two years. The Azimuth Report by Dr. Dixon, focussing on the need for the Manston Airport Application, as examined, can be found here: https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR020002/TR020002-002459-7.4%20-%20Azimuth%20Report.pdf?fbclid=IwAR3R7Ri2EnRlTFI7aWtEeC9hIsKnlLh7xnCzb9vqaL2wlUIn0m3Lqcg7Cqo.

11. **I also note that during the Covid-19 Pandemic, the number of cargo freighters worldwide has grown in response to an unprecedented level of demand for global air cargo. The number of stored aircraft across 60 different types increased by a factor of 2.5 between December 2019 and June 2021, according to an Insight IQ report for IBA published on 5 July 2021, which showed freighter utilization carried out by 78,000 aircraft in service per month prior to Covid-19 had increased with 138,000 freighters in service per month by the end of 2020.** The IBA reports that almost all cargo aircraft types showed increases in freighter numbers, **except** older aircraft. That growth was achieved by the re-entry of stored aircraft, new aircraft deliveries, and conversions of existing passenger aircraft to dedicated freighters. Since 2020, the number of **cargo aircraft in service** and also the number of **cargo flights** have increased **every** month except in January 2021. According to the IBA, that still has **NOT** met demand.The IBA's Insight IQ report cited is available here, as at 7 July 2021, https://www.iba.aero/insight/can-p2f-conversions-fulfil-the-unprecedented-demand-for-global-air-cargo and a copy of it is appended to this Submission for consideration.

12. The IBA also predicted on 5 July 2021 that equilibrium and a return to something nearer 'normal' could well return to something nearer 'normal' levels as the number of passenger aircraft in service return to previous numbers. However, they add the caveat that this would depend upon vaccine uptake as well as consumer spending patterns. I **believe that these two caveats are important and worthy of consideration.** It is highly relevant that much of Manston's potential traffic will be to and from countries with low vaccine takeups which would mean that passenger

services to such destinations may be subject to continuing Covid-19 traffic-light restrictions, given the continuing necessity of reducing imports of cases of Covid-19 and especially of the emergence of new challenging variants of concern that will have most scope to break out initially in countries where vaccine supply will be problematical, where resistance has been high, and where takeup will continue to be slow and haphazard, over a course of years and possibly decades to come. For these reasons, it would be less than prudent to assume that the pandemic's detrimental effects on scheduled passenger services will become a thing of the past any time soon. This may well continue to favour cargo freighter traffic to and from from many of the locations that Manston has been expected to serve in accordance with Dr. Sally Dixon's research. All experts seem to agree that we all will have to live with Covid-19 as part of our long-term future. Notwithstanding high levels of vaccination in a handful of countries, it is beyond contradiction that onstraints in global vaccine supplies, cost issues, vaccine hesitancy and geopolitics are all contributing to low takeups at a global level.

13. The other caveat mentioned by the IBA is the imponderable effect of changes in consumer spending patterns in first world countries that developed during the pandemic. Covid-19 brought in lockdown measures that prevented consumers from visiting shops. Consumer spending tended to be take place on-line where possible. The hospitality and manufacturing sectors were all but closed down for extended periods and many office-workers were furloughed, made redundant or worked from home. What is clear is that the convenience of buying on line has been welcomed by many consumers, and rapid carriage of goods by air freighters whether through integrators or sent directly to consumers from factories suits "just-in-time" purchasers. It should not be forgotten, either, that the whole purpose of a cargo hub is to enable incoming cargos by freighters to be broken down, brought together with other goods, and moved on to further destinations elsewhere as quickly as possible, whether by trucks, other aircraft, or other modes of transport. It remains to be seen whether this will occur in less well developed economies, too, as the pandemic continues to spread there. The pandemic certainly has produced changes in consumer behaviour across the world, but the way Manston Airport is being designed to operate is well-suited to respond with agility to those changes or to traditional patterns of commerce.

14. In conclusion, t**here is zero evidence that this pandemic is going away now or in future. That does not mean that demand for traffic in goods will be reduced, or that freighters will be less needed to transport such goods, but it will constrain capacity in passenger aircraft bellyhold cargo because scheduled passenger flights will continue to be constrained across much of the globe. The impact on freighter aircraft will be far less, as experience during the panemic has shown. Having responded to that need, upgraded, and invested in new fit-for-purpose air cargo freighters, it is likely that carriers will continue to use them or sell them to others who will use them.**

15 I appreciate that opponents of the Airport's regeneration may argue that the Sixth Carbon Change Budget may inconvenience or frustrate the Application for Development Consent, particularly as ss. 106(4) and 106(5) of the Planning Act 2008 cannot be said to frustrate the recently reinstated Airport National Policy Statement ['ANPS']: Heathrow's legal challenges have in effect failed, and it is difficult to see how a different outcome could be achieved against a cargo hub in a far better situated location as is the case of Manston Airport, all but 30% surrounded by sea in very close proximity. One struggles to believe that the ANPS document fully reflects the challenges Britain faces during the next ten years. Doubts about the deliverability of the Heathrow project continue, and political support for it has continued to wane. It does, however, remain as policy and has been tested through the courts and adjudged by the UK Supreme Court to be fit for purpose at least in terms of what the law requires. The detrimental effects of Heathrow's expansion

through the ANPS is not far short of being infinitely worse than any detriments that consent of the Manston Airport infrastructure development might cause in terms of climate change. But taking the ANPS together with Britain's Beyond the Horizon – The Future of UK Aviation: Making Best Use of Existing Runways ['MBU'] policy, then it would appear that nothing in ss. 105 or 106 of the Planning Act or the Sixth Carbon Budget can be regarded as sufficient to derail the Manston DCO project. If either were sufficient to prevent the Manston Airport DCO from being consented, it is hard to see how any other airport regeneration or expansion down the line could be consented in the immediate or near future. It has not been the intention of Parliament or of the Department for Transport to stop airport regeneration: quite the contrary! The Government is committed to reducing emissions and has committed itself to meeting its international obligations. It also strongly supports increased connectivity through passenger air travel and growth in air freight services. The present Government has a very large majority and is absolutely committed to infrastructure growth as well as to levelling up across the national economy and in growth through international trade and inward investment.

16. The Stansted Decision first made on 26 May 2021 and amended on 21 June 2021, indeed, was taken after having regard for the ANPS, following the decision taken by the UK Supreme Court on 16 December 2020 to reinstate it in a landmark ruling made during the pandemic, and the Stansted final Decision came at a time just days before the Sixth Carbon Capture legislation (first announced by Downing Street on 20 April 2021) was laid before Parliament as a Statutory Instrument on 23 June 2021, just two days after the minimally revised Stansted Airport Decision. Increasing Airport Capacity cannot be considered to be the polar opposite of Carbon Capture aims, for the reasons given in the Stansted Decision to grant Planning Consent. The decision-maker of the Manston Airport DCO Application took a similar view with respect to Planning Act 2008 s. 105 provisions: he decided, after comparing the benefits and detriments in the same way, that there was a compelling case for substantially increasing both airports in infrastructure and throughput.

17. In relation to the aforementioned reinstatement of the Airports National Policy Statement [ANPS], it is also worth noting a number of the key findings of that document. Rather that go back into that document here, I would hope that the Aviation Consultant retained by the Secretary of State will advise the Decison-maker to have regard for the observations made by RiverOak's solicitor, Angus Walker of BDB Pitmans, in his Infrastructure Planning blog for December 2020: https://www.bdbpitmans.com/blogs/planning-act-2008/884-supreme-court-reverses-airports-nps-judgment-other-news-and-a-christmas-competition/ in mid-December, extracts of which are appended to my submission here in relevant part for consideration.

18. In the Judicial Review of the Manston Airport DCO Decision Letter, the Appellant originally did put forward two grounds that were based on environmental grounds, but those grounds were abandoned by the Applicant just days before a Court hearing would have tested them. In the event, rather than testing those environmental grounds by proceeding with the hearing, by agreement those arguments fell away at that time, and it would be an abuse of process for that Appellant to re-raise them now. As already pointed out, I accept that the redetermination of the Airport DCO Application requires the Decision-taker to take a completely fresh view of the issues, but if he comes to the same conclusions, with a new Decision Letter based on a similar or identical balancing of the benefits against the detriments of Manston Airport, then the Appellant, at least, has little grounds for repeating objections that she dropped before. Further and alternatively, the balancing of such matters are reserved to the Decisiontaker. Having already abandoned one opportunity to press those arguments, bringing the same arguments against his reconsent of the DCO would be, on the face of it, vexatious.

19 It is not only vexatious individual litigants who may well find themselves blocked. The very issues and evidence they wish to present will be rejected as vexatious, too. It may be helpful to revert to the text of s. 106 of the Planning Act 2008 to explain this:

> 106 Matters that may be disregarded when deciding application
>
> (1) In deciding an application for an order granting development consent, the [Secretary of State] may disregard representations if the [Secretary of State] considers that the representations—
> (a) are vexatious or frivolous,
> (b) relate to the merits of policy set out in a national policy statement, or
> (c) relate to compensation for compulsory acquisition of land or of an interest in or right over land.
> (2) In this section 'representation' includes evidence.
> [Emphasis added]

20. The issue could scarcely be put more plainly, even bluntly, in the acknowledged, in the text of the one well-established and authoritative practitioner manual on the subject, now in its Third Edition:

> "**The ambit of judicial review is quite limited and so gives defendants a fair degree of protection from challenges. The merits of the decision cannot be considered. Matters of judgment are the exclusive province of the decision-maker. The assessment of facts and weighing of judgment are the exclusive province of the decision-maker alone and the court has no power to intervene. A decision-maker is entitled to attach what weight it pleases to relevant considerations, and the courts will not entertain a submission that undue weight was given to one consideration or too little weight was given to another. If a matter would not have caused the decision-maker to reach a different conclusion then it is irrelevant whether it was taken into account; and if a judge is undertain whether a matter would have made a difference to a decision then he cannot conclude that the decision was invalid. Where there was a factual error which is insignificant or insubstantial then the relevant decision will not be quashed. Where it can be shown that notwithstanding any error the decision-maker would have reached the same decision on the other factors stated, the court will not interfere."** [Emphasis added: the entire text of this extract is in effect established and definitive.]

See Article 86, "Legal Challenge to Grant of Development Consent," written by Richard Honey and edited by Michael Humphries, QC, in Humphries, *National Infrastructure Planning Handbook 2018* (third edition) at p. 462. Exactly the same text has been imported from the same article in Humphries, *National Infrastructure Planning Handbook 2016* (second edition) at p. 394, and from Humphries, *National Infrastructure Planning Handbook 2015* (first edition) at pp. 305-6. The matter is so embedded in Michael Humphries' authoritative practitioner manual as to be effectively beyond contradiction. No other authority is more compelling or more self-consistent across the whole history of DCO law and practice. I have no doubt that the same passage will appear in the next edition, too: I have no doubt that article will not be replaced by one written by anyone else: it is worth noting and celebrating the fact that Richard Honey, a highly regarded barrister in infrastructure planning who contributed the formulaic text of that Article, has this year taken silk as a QC at Francis Taylor Building, the Chambers led by Andrew Tait, QC, who represented the Government in the Manston Airport DCO Judicial Review, and seconded by Michael Humphries,

QC, who has represented the Applicant, RiverOak Strategic Partners, throughout this DCO Project. They are certainly very well prepared to bat away any suggestion that the Decision-maker may not reach the same conclusion he did before after looking at the issues again.

21. Although the quashing of a DCO (in this case by the consent of the parties and of the Applicant) requires the Decision-maker to consider the reasons for the Decision *de novo*, the **decision-maker cannot in effect re-run the Manston DCO Examination or, without fresh legislation that cannot be construed in any other way, disapply the law as it stood in 2019 and substitute a different regulatory framework retrospectively.** There is no provision in the text of the Planning Act 2008 to support either of those two things. The process of the Examination and of Decision-Making are quite distinct from each other and neither can displace the other. **The most that the decision-maker can do is consider the weight to be given to the findings of the Examining Authority, test those findings, and, as I previously said, reach his own conclusions with almost unfettered discretion (as was done before).**

22. We note that **Environmental Mediation really is something that, as the decision-maker's original Manston Airport DCO Consent Letter and Statutory Instrument demonstrated, can and should be fine-tuned on relevant issues only AFTER the DCO is granted** and can be **sorted out with the statutory authorities all the while the airport's new infrastructure is put into place but before commercial flight operations commence.** Until then we can expect any number of further reports and recommendations bearing upon climate change and its environmental effects. There will also be moving national policies and targets in respect to how changes in aircraft engines in new or retrofitted aircraft will affect their performance and operations over the lifetime of Manston Airport, all of which must remain highly speculative at present. Technology develops: it takes time. **That does not pre-empt and cannot displace the Need for the Airport**, which has already been established and certified as a Nationally Significant Infrastructure Project.

23. **I call for the decision-maker in his new Decision Letter to apply the right test for Need, as set out in the Summary of the Applicant's Case**). **I regret that the Examining Authority failed to see that the Compulsory Acquisition test could in no way be held to apply after the Applicant had acquired 95% of the land, and to note in particular that Mr. Edward Stanton, who owns scarcely more than one hectare of the remaining land there, declined to engage with the Applicant at all before and during the DCO Examination but has now sold off other land he holds just beyond the Manston Airport perimeter fence for a housing estate to be constructed there. He clearly is not wholly wedded to preserving the land held in his family for hundreds of years so that he may pass it on intact. If profit is his motive, it is reasonable to believe that he has now gained it through the sale of that adjacent farmland, but a Decision-maker might well believe he ought to have engaged with RiverOak Strategic Partners long before now. In any event, RiverOak Strategic Partners, the Applicant, now appears to have acquired 99% of the whole of the red-lined DCO area.**

24. When the correct test is applied, as set out in the Applicant's Summary Case for the Development on 5 July 2019 referenced earlier in my present Submission, it is clear that the Applicant has shown that RiverOak Strategic Partners has provided proof that there are sufficient funds to fully compensate the remaining holders of the DCO'ed red lined area, pay for the various obligations accepted by the Applicant during the Examination and set out in the original Development Consent Order, and that RiverOak Strategic Partners may reasonably expect to attract any unsecured funds required in ways generally undertaken by private development Applicants to complete the redevelopent of Manston Airport after development consent is granted by the relevant Government Department's decision-maker. A**ccordingly, I submit that the original Decision**

Letter did apply the same wrong test as the Examining Authority did, and I call for that mistake to be corrected in the new Decision Letter by the decision-maker in the name of the Secretary of State at the Department for Transport.

25. **I also submit that the quashed Development Consent Order was not itself seriously deficient or in error.** What was conceded by the Government, it might appear, was that the final sentence in the Decision Letter in its section on Need could be open to misinterpretation. The plain language of **that sentence could only be properly understood by its context through statutory interpretation.** I believe that what was meant can easily be inferred, but for the avoidance of doubt, here we are: the original Decision, in terms but not necessarily by intent and result, must be revisited but only on Need. **There is, within the text of the Planning Act 2008, no provision for producing a new Decision Letter** without quashing the Statutory Order to which it refers, so all of us but particularly the developer have had to endure this further delay. This is explained clearly in Humphries, *National Infrastructure Planning Handbook 2018*, the standard work on the subject, in Article 84, "Correction of Errors in Development Consent," written by Isabellla Tafur (a member of RiverOak Strategic Partners' legal team) and edited by Michael Humphries, QC (who heads that same team), in pp. 445-448, most succintly at p. 445:

> Pursuant to PA 2008, s. 119, Sch 4, the Secretary of State may correct certain errors in development consent decisions. The documents that can be corrected are:
>
> (a) where development consent has been granted, errors in the development consent order; and
>
> (b) where development consent has been refused, errors in the refusal letter.
>
> The Act, however, only allows corrections to 'correctable errors'. These are defined as errors or omissions that are part of the document recording the decision, but are *not* part of the statement of reasons for the decision (PA 2008, Sch. 4, para (1 (3)). **Any error in the statement of reasons for the decision cannot, therefore, be corrected**." [Emphasis added.]

26. I note that the same text appears, word for word, in the corresponding passages by the same authors in both previous editions of Humphreys, namely, in Humphreys, *National Infrastructure Planning Handbook 2016* at 377, and Humphreys, *National Infrastructure Planning Handbook 2015* at 295. It may be taken that this reading is beyond contradiction, even though that may point to the desirability of future Parliamentary reform of the relevant provision in the Act to enable decision letters to be amended by him when found to be unclear, thereby preserving the scope of the Decision-maker's exceedingly wide powers to balance the merits and detriments of a Project when determining the outcome himself.

27. **Having regard to all of the foregoing, it is important to realise that the Government has not conceded that the Development Consent Order itself was in error. It conceded that the Decision Letter was flawed. This is, so far as I can see, an unprecedented case of a successful use of alternative dispute resolution whereby both parties agreed to abandon an impending rolled-up Court Hearing of a DCO case so that the Order by the Decision-maker could be quashed by a single judge without the merits of the challenge being tested in Court. Their agreement to quash the Order was made to enable the Decision Letter to be corrected and/or strengthened through the process of a redetermination of the Order.** Teleologically that may seem absurd, but there we are. I therefore concur that the original Decision Letter was flawed,

because that was agreed be the parties (but only to the extent of that agreement), and I therefore accept that the only way to overcome those flaws was to quash the DCO and redetermine the matter.

28, **Given the foregoing, however, I see no justification for the Decision-taker in 2021 to be required to make any Order that would depart in any or any significant way from the text that was in the original Development Consent Order that was consented by the Decision-taker on 9 April 2019.**

Submitted **by Dr. R. John Pritchard**, AB, MA (History), PhD (Econ.), LLB, BVC, FRHistS since 1976; MBIM., 1979-1992; MBIICL, 1991-2011. Formerly IMTFE Research Project Lead, London School of Economics & Political Science, Univ. of London; MacArthur Research Fellow, Kings College, Univ. of London; Simon Senior Visiting Research Fellow, Univ. of Manchester; Fellow of St. Antony's College, Oxford Univ.; various teaching posts in the USA and UK; retired academic and recognised as a leading authority within cognate fields of History, International Relations, Politics and Law; independent consultant; company managing director & president; author; editor; commissioning editor, and broadcaster, with more than 180 published books, and author of numerous articles in peer-reviewed academic journals. Co-Founder and former Treasurer & Vice-Chair of the Save Manston Airport Association, and Member of Kent Needs Manston Airport.

Extract from Infrastructure Planning Blog by Angus Walker of BDB Pitmans, December 2020

Today's entry reports on the Supreme Court judgment on the Airports National Policy Statement and other news.

On Wednesday 16 December 2020 the Supreme Court issued its judgment on the appeal against the cancellation of the Airports National Policy Statement, which embodied the policy of support for a new runway at Heathrow Airport.

The court reversed the decision of the Court of Appeal, which itself had reversed the decision of the High Court – in other words the NPS is reinstated.

The judgment can be found here, and here is a summary and analysis.

After a lot of introductory text we get to the findings from paragraph 101 onwards, but it is worth noting one preliminary point.

At paragraph 98 the judgment notes that although the NPS reflected the policy situation when it was designated in 2018, when the application for a Development Consent Order (DCO) comes to be made it will be assessed against carbon budgets and other policies in place at that time, not 2018.

At paragraph 105 the court had a sound bite: policy must be in identifiable written statements otherwise it is a 'bear trap' that a Minister might have said something that is then said to be policy.

At paragraph 106 the court concluded that the statements of Andrea Leadsom and Amber Rudd in 2016 were not sufficiently 'clear, unambiguous and devoid of relevant qualification' to count as policy.

At paragraph 108 it concluded that the Paris agreement was not policy itself, it does not operate on the plane (sic) of domestic law, citing their Miller Brexit judgment.

At paragraph 110 it noted that Heathrow Airport Ltd was wrong to say that only if section 1 of the Climate Change Act 2008 (ie the net zero target) was amended did policy change, there were other ways it could.

At paragraph 124 it concluded that the section 10 ground (that the NPS actively did not take the Paris agreement into account) failed because the then section 1 of the Climate Change 2008 target was already potentially compatible with the Paris agreement, according to the Climate Change Committee. In my view this is the weakest point of the judgment, effectively saying that although the government got legal advice not to take the Paris Agreement into account, they had in fact done so, almost without realising it.

At paragraph 125 it said that it was therefore not a case of ignoring the Paris Agreement, but of giving it limited weight.

At paragraph 146 on the Strategic Environmental Assessment ground, the contents of the Environmental Report were not irrationally inadequate, and indeed too much ‘defensive drafting’ would drown the public in unhelpful detail.

At paragraph 155 on post-2050 emissions, the court held that these were in fact taken into account (up to 2086, at least, the design life of the runway). Finally, at paragraph 165 the court held it was not irrational not to take non-CO2 emissions into account.

So the policy of a new northwest runway at Heathrow is now unassailable. However, as the judgment notes in several places, not least paragraph 98 referred to above, Heathrow Airport Ltd still needs to apply for a DCO, and that will be examined and decided upon based on the climate change policy at that time. As recent blog posts have noted, these have ratched up considerably in recent weeks, and by the end of June next year the government will have to decide whether to adopt the Climate Change Committee’s recommendation that international aviation be included in the carbon budget spanning 2032-2037.

Furthermore the Prime Minister continued to be lukewarm towards the project, with his press secretary saying the ‘point the PM would make now’ was that ‘any expansion must meet strict criteria on air quality, noise and climate change and the government will come forward with a response shortly’.

05/07/2021

Can P2F Conversions fulfil the unprecedented demand for Global Air Cargo?

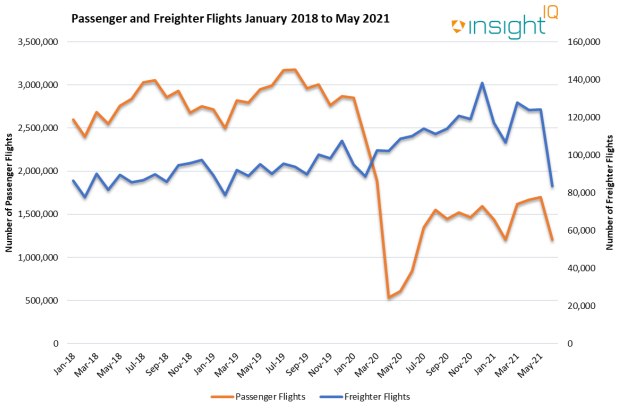
With the onset of the COVID-19 pandemic, airlines saw the majority (and in some cases all) of their passenger fleets grounded as various lockdowns came into force around world.

According to data from IBA's **InsightIQ**, the number of parked or stored aircraft has increased by a factor of 2.5 between December 2019 and June 2021*. This accounted for 60 different aircraft types operating in the narrowbody and widebody market. The grounding of the passenger fleet caused an expected drop in the amount of cargo space available in the hold of those passenger aircraft, and attention inevitably turned to passenger to freighter converted aircraft to cater for the increased demand for transportation of freight.

This grounding represents a substantial decline in the availability of cargo space, and when viewed in relation to the bigger picture, passenger to freighter conversions will likely have a minimal impact on capacity and Available Freight Tonne Kilometres (AFTKs). The issue of lack of capacity has been compounded by the increased volume of global e-commerce trade and demand for PPE supplies brought about by the Coronavirus pandemic.

Reduction in belly capacity leads to record freighter utilisation levels

These combined factors have resulted in freighter utilisation increasing to never before seen levels. Prior to COVID-19, **InsightIQ** recorded around 78,000 freighter flights per month. This had risen to over 138,000 flights per month by December 2020, representing an additional 30,000 flights when compared to December 2019.



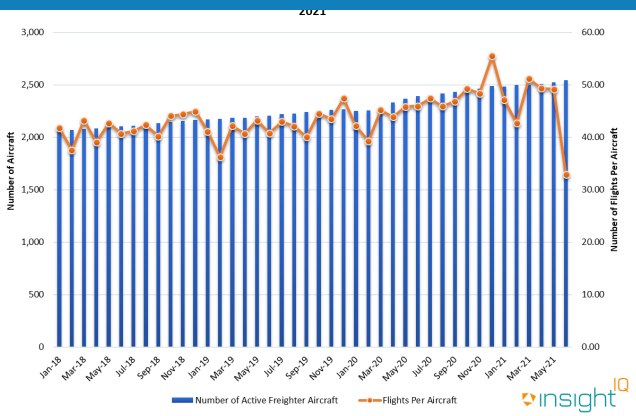
Source: IBA's **InsightIQ**

More flights for newer freighters, faster retirement for ageing types

Virtually all cargo aircraft types serving within the freighter market have seen an overall increase in the number of flights operated. The only types which have seen a decline are older generation aircraft such as the Airbus A310-300, Douglas DC-10 and McDonnell Douglas MD-11. These types were typically already in the process of retirement, and are being replaced by newer aircraft models such as the Airbus A330-200/300P2F, Boeing 777F and Boeing 767-300.

The growth in flights operated by freighter-configured aircraft has been achievable through 3 key initiatives.

- Stored aircraft re-entering service
- New aircraft deliveries
- P2F conversions.



Source: IBA's **InsightIQ**

Despite increased capacity, supply is still falling short of demand, so yields have been driven to new heights. Despite this, as passenger services emerge from the pandemic it is expected that yields will return closer to normal as more capacity is made available. The timescale for this will be dependent on a combination of factors, with vaccine uptake and consumer spending patters proving decisive drivers.

If you have any further questions please contact **Jon Whaley.**

IBA's **InsightIQ** analysis platform flexibly illustrates multiple asset, fleet and market positions, actual and potential, to inform client choices and identify acquisition opportunities. Immediate access to crucial aircraft, engine, lease rate and fleet data eases appreciation of historic and future aircraft concentrations and operator profiles.

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IBA's **InsightIQ platform recorded 2,645 aircraft as either being parked or stored in December 2019, increasing to 6,707 aircraft in June 2021, representing a factored increase of 2.5.*

HM Government

Beyond the horizon
The future of UK aviation

Making best use of existing runways

June 2018

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1. Making best use of existing runways

1.1 The government's 2013 Aviation Policy Framework provided policy support for airports outside the South East of England to make best use of their existing airport capacity. Airports within the South East were to be considered by the newly established Airports Commission.

1.2 The Airports Commission's Final Report recognised the need for an additional runway in the South East by 2030 but also noted that there would be a need for other airports to make more intensive use of their existing infrastructure.

1.3 The government has since set out its preferred option for a new Northwest runway at Heathrow by 2030 through drafts of the Airports National Policy Statement (NPS), but has not yet responded on the recommendation for other airports to make more intensive utilisation of their existing infrastructure.

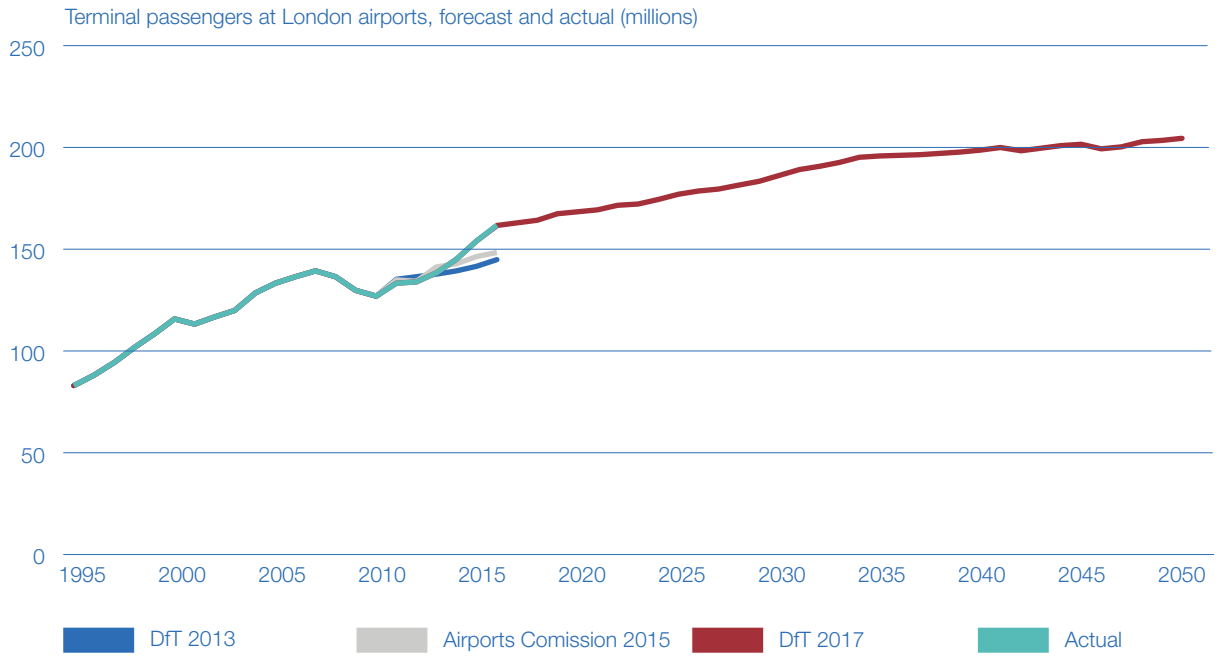
1.4 On 24th October 2017 the Department for Transport (DfT) released its latest aviation forecasts. These are the first DfT forecasts since 2013[1]. The updated forecasts reflect the accelerated growth experienced in recent years and that demand was 9% higher in London[2] in 2016 than the Airports Commission forecast[3]. This has put pressure on existing infrastructure, despite significant financial investments by airports over the past decade, and highlights that government has a clear issue to address.

1.5 The Aviation Strategy call for evidence set out that government agrees with the Airports Commission's recommendation and was minded to be supportive of all airports who wish to make best use of their existing runways, including those in the South East, subject to environmental issues being addressed. The position is different for Heathrow, where the government's proposed policy on expansion is set out in the proposed Airports NPS.

1 Additional aviation forecasts were published by the Airports Commission in 2015 to support their recommendations for an additional runway in the south east.

2 Heathrow, Gatwick, Stansted, Luton and London City

3 The difference is explained largely be the fact that oil prices were lower than expected



Call for evidence response summary

1.6 The Aviation Strategy call for evidence document asked specifically for views on the government's proposal to support airports throughout the UK making best use of their existing runways, subject to environmental issues being addressed.

1.7 We received 346 consultation responses. Excluding those who either did not respond or responded on a different topic, 60% were in favour, 17% against and 23% supportive provided certain issues were addressed.

1.8 The main issues raised included the need for environmental issues such as noise, air quality, and carbon to be fully addressed as part of any airport proposal; the need for improved surface access and airspace modernisation to handle the increased road / rail and air traffic; and clarification on the planning process through which airport expansion decisions will be made.

Role of local planning

1.9 Most of the concerns raised can be addressed through our existing policies as set out in the 2013 Aviation Policy Framework, or through more recent policy updates such as the new UK Airspace Policy or National Air Quality Plan. For the majority of environmental concerns, the government expects these to be taken into account as part of existing local planning application processes. It is right that decisions on the elements which impact local individuals such as noise and air quality should be considered through the appropriate planning process and CAA airspace change process.

1.10 Further, local authorities have a duty to consult before granting any permission, approval, or consent. This ensures that local stakeholders are given appropriate opportunity to input into potential changes which affect their local environment and have their say on airport applications.

Role of national policy

1.11 There are, however, some important environmental elements which should be considered at a national level. The government recognises that airports making the best use of their existing runways could lead to increased air traffic which could increase carbon emissions.

1.12 We shall be using the Aviation Strategy to progress our wider policy towards tackling aviation carbon. However, to ensure that our policy is compatible with the UK's climate change commitments we have used the DfT aviation model[4] to look at the impact of allowing all airports to make best use of their existing runway capacity[5]. We have tested this scenario against our published no expansion scenario and the Heathrow Airport North West Runway scheme (LHR NWR) option, under the central demand case.

1.13 The forecasts are performed using the DfT UK aviation model which has been extensively quality assured and peer reviewed and is considered fit for purpose and robust for producing forecasts of this nature. Tables 1-3 show the expected figures in passenger numbers, air traffic movements, and carbon at a national level for 2016, 2030, 2040, and 2050.

	Baseline	Baseline + best use	LHR NWR base	LHR NWR + best use
2016	266.6	266.6	266.6	266.6
2030	313.4	314.8	342.5	341.9
2040	359.8	365.9	387.4	388.8
2050	409.5	421.3	435.3	444.2

Table 1: Terminal Passengers at UK airports, million passengers per annum

	Baseline	Baseline + best use	LHR NWR base	LHR NWR + best use
2016	2,119	2,119	2,119	2,119
2030	2,330	2,358	2,459	2,460
2040	2,584	2,602	2,697	2,700
2050	2,901	2,958	3,013	3,043

Table 2: Air Transport Movements (ATMs) at UK airports, 000s

	Baseline	Baseline best use	LHR NWR base	LHR NWR best use
2016	37.3	37.3	37.3	37.3
2030	38.6	38.8	43.5	43.4
2040	38.1	38.7	42.3	42.4
2050	37.0	37.9	39.9	40.8

Table 3: CO_2 from flights departing UK airports, million tonnes

4 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/674749/uk-aviation-forecasts-2017.pdf

5 Modelled the impact of airports increasing their planning cap whenever they have become 95% full.

Implications for the UK's carbon commitments

1.14 As explained in Chapter 6 of the Aviation Strategy Next Steps document[6], we have made significant steps in developing international measures for addressing aviation carbon dioxide (CO_2) emissions, including reaching agreement at the International Civil Aviation Organisation (ICAO) in October 2016 on a global offsetting scheme for international aviation, known as the Carbon Offsetting and Reduction Scheme for International Aviation, or CORSIA. However, there remains uncertainty over future climate change policy and international arrangements to reduce CO2 and other greenhouse gases. The Airports Commission devised two scenarios which continue to be appropriate to reflect this uncertainty: carbon traded and carbon capped[7]. In this assessment the DfT has followed the same approach.

Carbon traded scenario

1.15 Under the carbon-traded scenario, UK aviation emissions could continue to grow provided that compensatory reductions are made elsewhere in the global economy. This could be facilitated by a carbon trading mechanism in which aviation emissions could be traded with other sectors. In this case, provided a global trading scheme is place, higher UK aviation activity would have no impact on global emissions as any increase in emissions would be offset elsewhere and therefore there is nothing to indicate that this policy would prevent the UK meeting its carbon obligations.

Carbon capped scenario

1.16 The carbon-capped scenario was developed to explore the case for expansion even in a future where aviation emissions were limited to the Committee on Climate Change's (CCC) planning assumption of 37.5Mt of CO_2 in 2050. Under DfT's carbon-capped scenario the cap is met using a combination of carbon pricing and specific measures. For the central demand case we determined that the most appropriate specific measures to use, based on cost effectiveness and practicality of implementation, were more efficient aircraft ground movements (using single engine taxiing) and higher uptake of renewable fuels[8].

6 https://www.gov.uk/government/consultations/a-new-aviation-strategy-for-the-uk-call-for-evidence

7 For background to the Carbon Policy scenarios used by DfT both in this document and in its airport expansion analysis see pages 9 and 33-38 of: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/653879/updated-appraisal-report-airport-capacity-in-the-south-east.pdf

8 These would be implemented alongside the carbon price.

1.17 The more efficient ground movement policy involves government action to incentivise the use of single-engine taxiing at UK airports. It is assumed that the policy would lead to a 95% take-up rate by 2030 and beyond and it is estimated that this measure would reduce fuel consumption by around 1% per flight on average[9].

1.18 The renewable fuels policy involves government regulations to mandate specific renewable fuel percentages in aviation fuel supply. Any measures deployed would be designed to ensure that the renewable feedstock is sustainable and delivers substantial lifecycle CO_2 savings, such as municipal waste, which on this basis could deliver savings of over 70%. Such a scheme would be consistent with the future aims of the Renewable Transport Fuel Obligation to include aviation and focus on advanced fuels, as set out in the government's response to its recent consultation[10]. The levels of carbon reduction delivered by the policy measures are presented in Table 4.

	No expansion base	No expansion + best use	LHR NWR base	LHR NWR + best use
Carbon reduction required, $MtCO_2$	-0.5	0.4	2.4	3.3
Abatement from single engine taxiing, $MtCO_2$*	0	0.3	0.3	0.3
Renewable fuel uptake required	0	0**	12%	16%

*Figure does not vary due to rounding
**Zero due to rounding

Table 4: Policies to meet CCC cap (37.5 $MtCO_2$), levels in 2050

1.19 The level of renewable fuels required is higher under the making best use sensitivity but these are still at the conservative end of the range of forecast future biofuel supply[11].

1.20 There is significant uncertainty over the likely future cost of these measures and their impact on carbon so this policy mix is presented to illustrate the type of abatement action that could be taken. It should not be interpreted as a statement of future carbon policy which will be considered through the development of the Aviation Strategy. Other measures are likely to be available and may turn out to be more cost effective or have greater abatement potential.

1.21 On balance, therefore, it is likely that these or other measures would be available to meet the planning assumption under this policy.

9 Ricardo Energy & Environment, 2017. *Carbon Abatement in UK Aviation* https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/653776/carbon-abatement-in-uk-aviation.pdf

10 DfT, 2017. *Renewable transport fuel obligations order: government response.* https://www.gov.uk/government/publications/renewable-transport-fuel-obligations-order-government-response

11 See Increased use of biofuels chapter in Carbon Abatement in UK Aviation Report prepared by Ricardo Energy & Environment for discussion https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/653776/carbon-abatement-in-uk-aviation.pdf

Local environmental impacts

1.22 The government recognises the impact on communities living near airports and understands their concerns over local environmental issues, particularly noise, air quality and surface access. As airports look to make the best use of their existing runways, it is important that communities surrounding those airports share in the economic benefits of this, and that adverse impacts such as noise are mitigated where possible.

1.23 For the majority of local environmental concerns, the government expects these to be taken into account as part of existing local planning application processes.

1.24 As part their planning applications airports will need to demonstrate how they will mitigate local environmental issues, which can then be presented to, and considered by, communities as part of the planning consultation process. This ensures that local stakeholders are given appropriate opportunity to input into potential changes which affect their environment and have their say on airport applications.

Policy statement

1.25 As a result of the consultation and further analysis to ensure future carbon emissions can be managed, government believes there is a case for airports making best of their existing runways across the whole of the UK. The position is different for Heathrow Airport where the government's policy on increasing capacity is set out in the proposed Airports NPS.

1.26 Airports that wish to increase either the passenger or air traffic movement caps to allow them to make best use of their existing runways will need to submit applications to the relevant planning authority. We expect that applications to increase existing planning caps by fewer than 10 million passengers per annum (mppa) can be taken forward through local planning authorities under the Town and Country Planning Act 1990. As part of any planning application airports will need to demonstrate how they will mitigate against local environmental issues, taking account of relevant national policies, including any new environmental policies emerging from the Aviation Strategy. This policy statement does not prejudge the decision of those authorities who will be required to give proper consideration to such applications. It instead leaves it up to local, rather than national government, to consider each case on its merits.

1.27 Applications to increase caps by 10mppa or more or deemed nationally significant would be considered as Nationally Significant Infrastructure Projects (NSIPs) under the Planning Act 2008 and as such would be considered on a case by case basis by the Secretary of State.

1.28 Given the likely increase in ATMs that could be achieved through making best use of existing runways is relatively small (2% increase in ATMs "without Heathrow expansion" scenario; 1% "with Heathrow"), we do not expect that the policy will have significant implications for our overall airspace capacity. However it is important to note that any flightpath changes required as a result of a development at an airport will need to follow the CAA's airspace change process. This includes full assessment of the likely environmental impacts, consideration of options to mitigate these impacts, and the need to consult with stakeholders who may be affected. Approval for the proposed airspace change will only be granted once the CAA has been satisfied that all aspects, including safety, have been addressed. In addition, government has committed to establish an Independent Commission on Civil Aviation Noise (ICCAN) to help ensure that the noise impacts of airspace changes are properly considered and give communities a greater stake in noise management.

1.29 **Therefore the government is supportive of airports beyond Heathrow making best use of their existing runways. However, we recognise that the development of airports can have negative as well as positive local impacts, including on noise levels. We therefore consider that any proposals should be judged by the relevant planning authority, taking careful account of all relevant considerations, particularly economic and environmental impacts and proposed mitigations. This policy statement does not prejudge the decision of those authorities who will be required to give proper consideration to such applications. It instead leaves it up to local, rather than national government, to consider each case on its merits.**

Council hit by hefty cost of Refusing Airport Planning Permission

Stansted Airport wins Planning Appeal

The planning world has been rocked this week by the news that a district council is likely to face a bill in excess of £1 million following an award of full costs by a panel of independent planning inspectors.

Uttlesford District Council were found to have given "imprecise, vague and unsubstantiated" reasons for refusing planning permission, with Stansted Airport alleging that they had persistently pursued the imposition of a condition which was "clearly unlawful".

The Council had resolved to grant permission to Stansted Airport for an expansion to the number of passengers per annum permitted to fly – from 38 million ppa to 43 million ppa – back in November 2018. However, in May 2019 a local political party – Residents 4 Uttlesford – gained control of the council in the local elections. They referred the decision back to the planning committee and, against the advice of professional officers and the council's legal team, refused consent.

With no material changes in policy or circumstances that could justify a different decision, the authority rejected the planning application and Manchester Airports Group – who own and operate Stansted – appealed the decision to a 3-month long public inquiry.

Experienced planning inspectors Michael Boniface MSc MRTPI, G. D. Jones BSc (Hons) DipTP DMS MRTPI, and Nick Palmer BA (Hons) BPI MRTPI found that the authority had acted unreasonably, in a scathing decision letter on costs, noting that:

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

The panel of inspectors further noted that:

> *"The reasons for refusal were unquestionably vague and generalised… [and] … could not reasonably have been expected to materially alter the favourable planning balance. Indeed, the Council's own appeal evidence was that the planning balance was favourable, such that planning permission should be granted."*

Most damning of all, the inspectors found that:

> *"The reasons for refusal became vaguer still at reason 3… [despite] …no material change in relevant and applicable policy was identified by the Council, nor were the negligible impacts of the development altered. It was not credible or respectable for the Council to identify this as a matter that should now result in the refusal of permission."*

The inspectors also condemned the behaviour of the council during the appeal itself, find that:

> *"Attempts to substantiate these reasons for refusal during the appeal were not convincing… …The Council nevertheless maintained its case and presented evidence relating to all four refusal reasons."*

The council were told that they could have dealt with many of the concerns raised by conditions or planning obligations, which was accepted individually by most of the council's witnesses. However, the council also relentlessly pursued a condition – condition 15, which the inspectors said was:

> *"an unnecessarily onerous and misconceived condition that patently fails to meet the relevant tests."*

Uttlesford District Council lost Planning Appeal

Uttlesford District Council lost this planning appeal, and the appellants were awarded full costs. All of this could have been avoided had the authority followed planning policy and planning law, which members were advised of by officers.

Participants in planning appeals usually meet their own costs, so costs awards are relatively rare. They are only available where one party has acted unreasonably and has cost the other party to spend money that would not be necessary but for the unreasonable behaviour. For an award expected to be at least £1 million, if not more, is quite astonishing, and demonstrates the very real risk of Local Planning Authorities digging their heels in, pursuing unreasonable refusals, and failing to properly communicate with applicants and appellants.

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The Planning Inspectorate

Appeal Decision

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

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

Panel of Inspectors appointed by the Secretary of State

Decision date: 21 June 2021

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

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

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

Decision

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

Application for Costs

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

Preliminary Matters

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

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

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

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

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

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

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

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

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

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

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

Main Issues

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

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

Reasons

National Aviation Policy and Introductory Matters

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Aircraft Noise

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Air Quality

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Carbon and Climate Change

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[17] Subject to footnote 9 above

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

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

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

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

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

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

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

Other Matters

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

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

Local Context

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

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

Health & Well Being

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

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

Ecology

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

Socio-Economic Impacts

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

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

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

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

Surface Access

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

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

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

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

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

Other Considerations

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

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

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

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

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

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

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

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

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

Planning Obligations

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

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

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

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

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

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

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

Conditions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Planning Balance

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

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

[19] Framework paragraph 11(c)

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

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

FOR THE APPELLANT:

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

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

FOR STOP STANSTED EXPANSION:

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

INTERESTED PERSONS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Table 1

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

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

Table 2

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Planning Inspectorate

Appeal Decisions

Inquiry held on 14-17 March 2017
Site visit made on 17 March 2017

by M C J Nunn BA BPL LLB LLM BCL MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 13th July 2017

Appeal A Ref: APP/Z2260/W/15/3140995
Building 1, Former Manston Airport, Kent, CT12 5BL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Lothian Shelf (718) Ltd against Thanet District Council.
- The application Ref: F/TH/15/0460 is dated 15 May 2015.
- The development proposed is described as 'change of use of Building 1 from sui generis to flexible B1(b-c), B2 and B8 for a temporary period of 3 years'.

Appeal B Ref: APP/Z2260/W/15/3140990
Building 2, Former Manston Airport, Kent, CT12 5BL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Lothian Shelf (718) Ltd against the decision of Thanet District Council.
- The application Ref: F/TH/15/0457, dated 15 May 2015, was refused by notice dated 22 October 2015.
- The development proposed is described as 'change of use of Building 2 from sui generis to flexible B1(b-c), B2 and B8, small extension, marking out of car parking, and associated works'.

Appeal C Ref: APP/Z2260/W/15/3140992
Building 3, Former Manston Airport, Kent, CT12 5BL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Lothian Shelf (718) Ltd against Thanet District Council.
- The application Ref: F/TH/15/0459 is dated 15 May 2015.
- The development proposed is described as 'change of use of Building 3 from sui generis to flexible B1(b-c), B2 and B8'.

Appeal D Ref: APP/Z2260/W/15/3140994
Building 4, Former Manston Airport, Kent, CT12 5BL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for

planning permission.
- The appeal is made by Lothian Shelf (718) Ltd against Thanet District Council.
- The application Ref: F/TH/0458 is dated 15 May 2015.
- The development proposed is described as 'change of use of Building 4 from sui generis to flexible B1(b-c), B2 and B8'.

Decisions

1. Appeals A, B, C and D are all dismissed.

Procedural Matters

2. The single reason for refusal in respect of Appeal B was: "the proposed development, by virtue of the loss of a building for airport use, would create the potential need for additional buildings within the countryside and would not constitute essential airside development, contrary to Thanet Local Plan Policies CC1 and EC4 of the Thanet Local Plan, and Paragraphs 14 and 17 and guidance within the National Planning Policy Framework". With regards to Appeals A, C and D, the Council failed to determine the applications within the prescribed period. On 17 February 2016, the Council's Planning Committee resolved that, had it determined the applications, it would have refused permission for these applications for essentially the same reason as for Appeal B.

3. The Council initially resisted these appeals, and produced Statements of Case urging their dismissal. Subsequently, the Council indicated[1] that it no longer raised any objections to the four appeals, subject to the imposition of appropriate conditions. This followed the publication of a Report by AviaSolutions[2] into the commercial viability of the airport.

4. The Council's representative did not present any formal evidence to resist the schemes, apart from providing an opening statement[3] setting out the new position, but attended throughout to provide support to the Inquiry and to participate in the discussion about conditions.

5. The Council, during the processing of the planning applications, revised the descriptions of the schemes, removing the 'flexible' nature of the uses sought. For the avoidance of doubt, I have dealt with the appeals as originally submitted on the basis of the 'flexible use'. Appeal A, concerning Building 1, relates to a change of use for a temporary period for three years, whereas in Appeals B, C and D, relating to Buildings 2, 3 and 4 respectively, the development is sought on a permanent basis.

6. RiverOak Strategic Partners Ltd ('RSP') appeared at the Inquiry as a Rule 6 Party, and gave detailed evidence inviting me to dismiss the appeals. RSP are promoting a project to reopen the airport. Although RSP currently have no legal ownership interest in the land, they are preparing to make an application for a Development Consent Order (DCO) to re-establish a predominantly cargo based aviation use at the site and are currently engaged in discussions with the Planning Inspectorate on this matter.

[1] Letter dated 15 December 2016
[2] Report on the Commercial Viability of Manston Airport, AviaSolutions (September 2016) [CD 14.2]
[3] Inquiry Document 2

7. A DCO is the means of obtaining permission for developments categorised as Nationally Significant Infrastructure Projects. Such consents are assessed under a separate regime to these appeals and it is not my role to express a view on the matter of any forthcoming DCO, or to prejudge its findings. I also note that, given that the site is not currently in the ownership of RSP, and because acquisition through negotiation with the owners has been unsuccessful, the DCO process is likely to entail the acquisition of the appeal site under compulsory purchase powers, for which a compelling case in the public interest will have to be shown. Again, this is not a matter for this inquiry.

Main Issue

8. The main issue in all four appeals is the acceptability of the proposals having regard to the adopted development plan and national policy, and whether there are material considerations to justify a determination other than in accordance with the development plan.

Reasons

Background

9. Manston was first used as an airfield from around 1915-16. The runway was built in the 1940s and civilian use began in the 1950s and 1960s. The Ministry of Defence sold RAF Manston in 1998, and Manston Airport has been in various ownerships since. The four buildings subject of these appeals fall within the confines of Manston Airport, itself located outside the urban area. Airport activities ceased in 2014 and much of the necessary operational aviation infrastructure and equipment has now been removed. The airport is now closed and has no aerodrome licence.

10. Building 1 is located close to the main terminal building, whereas Buildings 2, 3 and 4 are all clustered along the northern boundary of the Airport adjacent to, and accessed from, Spitfire Way. Building 1 is a substantial aircraft hangar, with large opening doors to allow aircraft access. Building 2 is of a more modern design and construction than the other three buildings, with openings to the front and rear. Building 3 has front and back sliding doors. Building 4 is significantly smaller than the other appeal buildings. They were previously used respectively for aircraft maintenance; cargo handling, storage and produce inspection; and to quarantine and inspect animals. Building 4 is now occupied by a business. The buildings vary in condition, with Buildings 1 and 3 appearing to be in a relatively poor condition, and 2 and 4 in a fair condition.

National and Local Policy Context

11. The relevant legislation[4] requires that the appeals be determined in accordance with the statutory development plan unless material considerations indicate otherwise. The statutory development plan comprises the Thanet Local Plan ('the Local Plan'), adopted in June 2006.

12. The Local Plan, in its chapter on Economic Development and Regeneration[5], recognises Manston Airport as an important regional hub and business location,

[4] Section 38(6) of the Planning and Compulsory Purchase Act 2004
[5] Chapter 2

and notes that its proximity to business parks ensures a key role in the economic regeneration of the area[6]. The Local Plan also records that the airport should play an important part in the economic regeneration not just of Thanet, but of the whole of East Kent[7].

13. Policy EC4 of the Local Plan is of most relevance to these appeals. The Proposals Map identifies the appeal site as falling within the 'Airside Development Area'. Policy EC4 reserves such land for airside development, and states that development proposals will require specific justification to demonstrate that an airside location is essential. Paragraph 2.74 of the Local Plan defines 'airside development' as uses with an operational requirement for direct access to aircraft and therefore dependent on a location immediately adjacent to the runway or capable of direct access to it via taxiways. All four appeal schemes are for flexible business uses, rather than uses for which an airside location is essential. As such, they are in conflict with Policy EC4 of the Local Plan. This conflict with the Local Plan is not disputed by the main parties.

14. The National Planning Policy Framework ('the Framework') sets out the Government's up-to-date planning policies and is a material consideration in planning decisions. Importantly, the Framework does not change the statutory status of the development plan for decision making. However, the Framework advises at Paragraph 215 that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework. Paragraph 14 of the Framework is clear that where the development plan is absent, silent or out of date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

15. It is the case that the Local Plan predates the Framework. Nonetheless, the Framework states that policies should not be considered out of date simply because they were adopted prior to the Framework's publication[8]. The Local Plan, as the appellant notes, is formally 'time expired', being designed to provide policy guidance up to 2011[9]. However, the mere age of a plan does not mean that it loses its statutory standing as the development plan. Furthermore, I find the overall approach of Policy EC4 to be consistent with the Framework. This recognises that plans should take account of the growth and role of airports and airfields in serving business, leisure, training, and emergency service needs[10].

16. Policy EC4's approach is also consistent with the Government's Aviation Policy Framework (APF)[11]. This recognises, amongst other things, that the aviation sector is a major contributor to the economy, facilitating trade and investment. The APF supports growth within a framework that maintains a balance between the benefits of aviation and its costs, particularly its contribution to climate change and noise. The APF also states in the short to medium term, a key

[6] Paragraph 2.4
[7] Paragraph 2.51
[8] Paragraph 211
[9] Local Plan, Page 5 [CD12.1]
[10] Paragraph 33
[11] Aviation Policy Framework, March 2013 [CD 11.2]

priority is to work with the aviation industry and other stakeholders to make better use of existing runway capacity at all UK airports[12].

17. It is certainly the case that the Local Plan was written and came into force at a time when the airport was operational. For this reason, the appellant contends that the Local Plan policies in relation to the airport are couched in terms that are plainly out-of-date, and that whilst some weight attaches to them, it must be limited because of changed circumstances at the site, namely the closure of the airport[13]. Indeed, the Local Plan states that the Council 'should plan for 1 million passengers, and 250,000 tonnes of freight per annum by the end of the Plan period'[14] which given subsequent events, was clearly optimistic.

18. Whilst the fact that the airport is not currently operational is an important material consideration in these appeals, it does not necessarily follow that the closure of the airport in 2014 means that the policies of the Local Plan should automatically be accorded less weight, or that they are necessarily out of date. It can often be the case that a landowner's aspirations for the use of a particular site may differ from those purposes identified in a statutory development plan. That fact does not, of itself, reduce the weight of the plan or its policies. If that were so, there would be little purpose to the statutory planning system, or identifying and allocating land for specific purposes. There is nothing before me to suggest that Policy EC4 only applies to an operational airport.

19. To sum up, I find the overall approach of Policy EC4 to be consistent with the Framework, and national aviation policy, notwithstanding its age and the fact it was drafted prior to the publication of the Framework. To that extent, I consider Policy EC4 continues to carry significant weight in the overall planning balance and that Paragraph 14 of the Framework does not apply in this case. However, it is relevant to consider whether there are other material considerations that warrant determining the appeals other than in accordance with the development plan. These considerations include the possibility of airport activities resuming in the future. I deal with this below.

Emerging Policy

20. A new Draft Local Plan is currently under preparation. The January 2015 Preferred Options Consultation sought, under Policy SP05, to designate Manston Airport as an 'Opportunity Area' for the purpose of preparing an 'Area Action Plan' (AAP) for the site. The AAP was to consider the 'retention, development and expansion of the airport and aviation operations', while 'exploring alternative options for the future development of the area for mixed-use development'.

21. Proposed revisions to the Draft Local Plan were published for consultation which took place between January 2017 and March 2017. The 2017 version of Policy SP05 takes a different approach in respect of the airport in that it is allocated as a 'mixed use settlement' with the capacity to deliver at least 2,500 homes and up to 85,000 sqm of employment and leisure floorspace. The

[12] Paragraph 10
[13] Inquiry Document 1, Paragraph 10
[14] Paragraph 2.65

Council acknowledged that the Draft Plan is in 'its comparatively early stages'[15] and that the latest version is still subject to various outstanding objections, including in respect of Policy SP05.

22. The future of the airport will no doubt be considered in a future Examination of the Local Plan. As a strategic matter, it is also, as the Council notes, an issue that is likely to be relevant to the Duty to Co-operate[16]. The current stage of the Draft Local Plan means its policies may be subject to change. In these circumstances, and in accordance with Paragraph 216 of the Framework, little weight can be given to the Draft Local Plan at this time.

Relevance of Paragraph 22 of the Framework

23. This states that planning policies should avoid the long term protection of sites allocated for employment use where there is *no reasonable prospect* of a site being used for that purpose. The paragraph continues that where there is no reasonable prospect of a site being used for the allocated employment use, applications for alternative uses should be treated on their merits, having regard to market signals and the relative need for different land uses to support sustainable local communities.

24. Applying Paragraph 22, RSP argue that the land is reserved for a specific employment use, namely aviation use, by virtue of Policy EC4, and any change to a general B1 (b) and (c) B2 and B8 would constitute an alternative use in terms of Paragraph 22, for the purposes of Policy EC4. The appellant, by contrast, takes a broader interpretation of Paragraph 22 contending that since the proposed uses are also employment uses, there is no conflict with the underlying purposes of Paragraph 22. In other words, there is nothing in the Paragraph implying that it applies narrowly only to aviation use, and that it should be applied as written without imputing other meanings. On this basis, the appellant says that application of the test in Paragraph 22 does not assist much in assessing these appeals, if at all.

25. It seems to me that the precise meaning of Paragraph 22 is somewhat ambiguous and open to interpretation. I accept that the third sentence of Paragraph 22, unlike the first, refers to '<u>the</u> allocated employment use' rather than 'employment uses' more generally. This lends weight to RSP's notion that, if applying Paragraph 22, it should be treated as referring to the specific airport employment use, by virtue of Policy EC4 of the Local Plan. However, there is a danger of an overly narrow or legalistic approach. Moreover the precise meaning of '*no reasonable prospect*' in this context is far from clear.

26. In my view, the test set out in Paragraph 22 is of limited assistance in determining the weight to the development plan. In any event, it cannot displace the approach set by statute, namely whether the appeals should be determined in accordance with the adopted development plan, or whether material considerations suggest otherwise. It is that latter approach that I prefer in assessing these appeals.

[15] Inquiry Document 2, Paragraph 9
[16] Inquiry Document 9, Paragraph 1.2

Possibility of airport use resuming

27. The appellant is of the view that there is not a realistic prospect of the airport use recommencing[17]. Reliance is placed on the AviaSolutions Report commissioned by the Council and published in September 2016 which concludes there is little prospect of a financially viable airport on the site[18]. However, and importantly, the AviaSolutions Report makes clear that it does not offer any opinion about the reasonableness or otherwise of RSP's plans for the airport[19].

28. I heard evidence that three successive owners of the airport had been unable to run it viably. Submissions were made that RiverOak Investment Corporation, based in the United States, and experienced in major projects and financially well-resourced, is an entirely separate legal entity from RSP. On this basis, RSP's financial resources and expertise, as well as their ability to re-open the airport was questioned. The appellant also highlighted that there is no information in the public domain about the likely sources of funding for the project, which will be substantial. Nor has any detailed business plan been revealed. This, it is said, calls into question the entire delivery of RSP's project for Manston.

29. Furthermore, the appellant highlights the significant environmental aspects of the RiverOak's project which have yet to be assessed or impacts mitigated. An Environmental Impact Assessment would be required, as well as a Habitats Regulations Assessment. A cargo based operation is likely to have significant transport impacts, again requiring proper assessment. Because the land is in the ownership of another party, the DCO application will require the compulsory purchase of the land, and the relevant tests will need to be satisfied.

30. On the other hand, RSP have adduced detailed aviation evidence that, contrary to the conclusions of the AviaSolutions Report, the airport could be reopened and operated viably, with appropriate levels of investment[20]. Detailed evidence was presented that the AviaSolutions Report was based on flawed assumptions and that the airport could be successfully developed as a mixed use airport, underpinned by a cargo operation, which could become an important infrastructure asset within the wider South East, and contribute to the local, regional and national economy. RSP were of the firm view that, subject to appropriate levels of investment, Manston would be capable of handling considerable air freight movements. The appellant did not call any aviation witnesses to directly rebut RSP's technical evidence, nor was RSP's key aviation evidence challenged[21]. However, the appellant made it clear that RSP's submissions on aviation were not accepted as correct.

31. Given this contradictory evidence, it is difficult to predict conclusively whether the airport will reopen or not. Indeed, no concluded view can be taken on RSP's proposals without all the information that will required for inclusion in any DCO application. It must be stressed it is not the purpose of this inquiry to

[17] Planning Statement, May 2015, Paragraph 1.3 [CD 5.1]
[18] This Report informed the latest iteration of the 2017 Draft Local Plan in respect of Policy SP05, which allows for a range of non-aviation uses.
[19] Page 14, Footnote 2
[20] Evidence of Mr George Yerrall, Dr Sally Dixon, and Mr Chris Cain
[21] Neither Dr Dixon or Mr Cain were cross-examined by Mr King

judge the merits or otherwise of RSP's project, which would be a matter for any forthcoming DCO. However, in considering whether the proposals should be determined in accordance with Policy EC4 or not, it is relevant to consider, in the light of the evidence presented, and as matter of planning judgement, if there is some possibility of the airport use resuming.

32. There are clearly a number of very significant hurdles and myriad important matters to be resolved if RSP's ambitious plans are to proceed to fruition. It relies, amongst other things, on the necessary investment and ownership matters being resolved. RSP's plans would also be dependent on the environmental impacts being satisfactorily addressed and mitigated. These matters are for a future DCO application, the success or otherwise of which cannot be known at this time.

33. The appellant accepts that the possible resumption of airport use at the airport cannot be ruled out, because of RSP's emerging proposals[22]. I have found that Policy EC4 is consistent with the Framework, as well as national aviation policy, and should therefore continue to carry significant weight in these appeals. In these circumstances, and until a new policy framework exists at the airport, I find that the evidence at the Inquiry did not demonstrate that the likelihood of the airport reopening was so slim that the conflict with Policy EC4 should be disregarded.

Whether the proposals would compromise the future aviation use of the airport

34. Given there is no active aviation use at the airport, the proposals could be seen as making efficient use of existing under-used buildings, and as a pragmatic response following the airport's closure. That said, granting permission would undermine the current policy protection afforded to airport land and be seen as setting a precedent for non-airport related use. This is more likely to lead to a situation where other floorspace could become used for activities that have little or no relationship with an airport function. All the appeal buildings are specifically designed for airport related uses, and their use for non aviation uses would undermine, rather than assist, any future operation of an airport.

35. In the case of Building 1, a temporary permission is sought that would enable control over future use. This could be seen as a flexible response without prejudicing future options given that there is no presumption that a temporary grant of planning permission should be granted permanently. However, a situation could develop where significant areas could be used for temporary non aviation related purposes, undermining the underlying policy objective of the adopted Local Plan.

36. I acknowledge that Buildings 2, 3 and 4 are located towards the periphery of the site, with vehicular access from Spitfire Way. It may be the case that these buildings could be capable of use as discrete units within the airport. But this does not alter the fact that non aviation uses would compromise the objective of Policy EC4. Building 1 is not located peripherally but close to the main terminal building and its use for non airport related activity so close to the terminal building would be likely to give rise to operational difficulties were the airport use to resume.

[22] Inquiry Document 20, Paragraph 18

37. It may well be the case that any successful DCO would include provision for a compulsory purchase order that would enable full vacant possession of the entire site to be secured, and that the proposed appeal schemes would not affect this process. In other words, were the site to be compulsorily acquired for the purposes of reopening the airport as part of a DCO, any existing occupiers could be given appropriate notice to leave their premises. However, I see no good reason to grant permission for non-aviation uses contrary to adopted development plan policy on the basis that non-conforming uses could be reversed in the future through a DCO. This would amount to granting permission under one regime only to override it under another.

38. Prior to withdrawing opposition to these appeals, the Council's actual and putative refusal grounds referred to the loss of buildings for aviation use potentially creating the need for additional buildings within the countryside, where under Policy CC1, there is a presumption against such development. The appeal buildings are all designed for specific aviation related uses and, as a consequence, new buildings could be required to replace those 'lost' to other non-aviation uses. That said, until any future airport operator is known, the exact operational requirements cannot be certain and it cannot be accurately predicted whether any future scheme would give rise to the need for additional buildings. This matter cannot be determinative in these appeals.

39. To sum up, even allowing for any DCO, it seems clear to me that granting permission for these schemes, contrary to Policy EC4, would be likely to compromise any future aviation use of the airport. It might set a precedent which would be difficult to resist. Consistent application of Policy EC4 is required to prevent the site becoming anything other than an airport, and speculative non-conforming commercial uses would undermine its designated aviation use. Indeed, the cumulative effect of such developments would mean that the airport, although currently closed, would begin to exhibit the characteristics more redolent of a business park, undermining the concept of an airport.

The availability of employment land

40. The Council, when it originally assessed the proposals, expressed the view that the appeal proposals were largely speculative and that alternative employment land existed within the district, including at Manston Business Park, adjacent to the airport[23]. The Council's review of employment sites to inform the new Draft Local Plan has revealed a significant over-supply of employment land within the district. I understand the Council is proposing to re-allocate some 30 hectares of older, less suitable, employment land for alternative uses such as housing[24].

41. However, in terms of premises, the appellant contends that there is a comparatively low amount of existing floorspace available in the district, that existing industrial floorspace has consistently low vacancy rates, and that much of the existing employment accommodation is of poor quality. As part of the consultation process on the original planning applications, the Council's Head of Economic Development noted that there were very few existing units of this size within the District.

[23] Council's Statement [CD 19.7]
[24] Report to the Overview and Scrutiny Committee, 21st November 2016 [CD13.5]

42. I accept that, with the necessary remediation and adaptation works, the appeal buildings may fill a gap in the supply of employment floorspace of this type and kind. This would bring some benefits in terms of job creation and economic activity, to which I accord some weight, but as the appellant acknowledges, such benefits would be relatively modest[25].

43. Notwithstanding submissions about the paucity of existing premises of comparable size to the appeal buildings, there is plenty of land for industrial and business development in the district[26]. It seems to me that, were there significant demand for employment premises, they would be built out on the land already identified for that purpose. The evidence before me suggests that premises are also available in the wider East Kent area since the tenant that was originally envisaged for Building 2 has found alternative accommodation. Overall, I am not persuaded that a lack of alternative employment land or premises is a reason to allow these appeals at this airport location, or that it justifies departure from Policy EC4 of the Local Plan.

Other matters

44. The appellant's submissions make it clear that there is no intention to re-open the site as an airport, since it was acquired with the aspiration to promote a comprehensive redevelopment for mixed uses[27]. Indeed, it is promoting a comprehensive mixed use scheme, comprising amongst other things some 2,500 new dwellings and up to 85,000 sqm of employment and leisure floorspace, retail, education, sport and recreation uses as well as open space, and associated infrastructure[28]. It is argued that this site-wide scheme would bring significant social, economic and environmental benefits. However, this scheme is not before me, and so I make no judgement on its merits.

45. Reference has been made to 'Operation Stack'[29] which allows part of the runway to be used for non-aviation uses, namely the stationing of goods and vehicles, the use of the control tower as a co-ordination centre and the erection of temporary structures. To date, it has not been used for that purpose. Drawing parallels with the appeal proposals, the appellant argues that 'Operation Stack' indicates the acceptability of a non-aviation use on a temporary basis at the site, which would not prejudice the potential longer term use of the airport.

46. However, I do not consider that this temporary Order lends any support for the appeal proposals. It seems to me that 'Operation Stack' is a short term temporary measure of expediency to alleviate acute and specific problems of traffic congestion on the M20 and surrounding roads, until a longer term solution is found. It does not grant permanent planning permission at the airport for non aviation uses, in the way that three of the four appeal proposals would. The circumstances are markedly different, and I consider that 'Operation Stack' cannot provide justification for these appeals.

[25] Inquiry Document 20, Paragraph 59
[26] Ibid, Paragraph 56
[27] Proof of Evidence of Nicholas Alston, Paragraph 6.29
[28] Stonehill Park Planning Application Summary Document [CD 18.2]
[29] Town and Country Planning (Operation Stack) Special Development Order 2015 & Town and Country Planning (Operation Stack) Special Development Order 2016

Overall Conclusions and Planning Balance

47. The relevant legislation requires that the appeal be determined in accordance with the statutory development plan unless material considerations indicate otherwise. The Framework states that proposals should be considered in the context of the presumption in favour of sustainable development, which is defined by the economic, social, and environmental dimensions and the interrelated roles they perform.

48. I have carefully considered the various arguments made by the appellant in support of these appeals. The re-use of the buildings would generate certain economic benefits, although as the appellant notes, they would be relatively modest. The proposals could be seen as making efficient use of existing under-used buildings, and as a pragmatic response to the fact that the airport has not been operational since 2014. I have also weighed in the balance that the Council has changed its original stance, and is no longer resisting these appeals.

49. Balanced against these factors is the conflict with the adopted development plan, which recognises the economic importance of the airport and safeguards the appeal site for aviation uses. Such an approach is in accordance with the Framework and with national aviation policy. In these respects, I consider Policy EC4 continues to carry significant weight in the overall planning balance. I make no judgement on the merits or otherwise of RSP's plans, or their future success. However, given a DCO application is currently being prepared, the possibility of the site being used as an airport in the future cannot be ruled out. This being so, and until a new policy framework exists at the airport, I see little justification for departing from adopted development plan policy which identifies the appeal site as falling within the 'Airside Development Area' where aviation uses are appropriate.

50. I have taken account of the appellant's contention that the resumption of airport use by RSP would not be prejudiced or compromised if these appeals were allowed because any future DCO would likely include compulsory purchase powers to secure vacant possession of the airport. However, I am not persuaded that granting permission for development that does not accord with the development plan can be justified on the basis that compulsory purchase powers can be used to reverse it in the future.

51. I have taken into consideration the latest emerging local planning policy which proposes to re-designate the airport for mixed use development. However, the consultation process has only recently occurred and the emerging Plan is subject to various outstanding objections and its policies may change. In accordance with Paragraph 216 of the Framework, I find little weight can be given to the emerging policy.

52. Overall, I conclude that the appeal schemes would conflict with Policy EC4 of the Local Plan, as well as its wider economic development and regeneration objectives. The proposals would conflict with the Council's current approach to the location of new development within the airport, which is consistent with national policy. The benefits of the scheme put forward by the appellants do not justify departure from Policy EC4 of the Local Plan. Hence I find there are no material considerations of sufficient weight that would warrant a decision

other than in accordance with the development plan. Accordingly, I conclude that the appeals should be dismissed.

Matthew C J Nunn

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Neil King QC	of Counsel, Instructed by Herbert Smith Freehills LLP

He called

Mr Nicholas Alston	Director, Bilfinger GVA

FOR RIVEROAK STRATEGIC PARTNERS:

Miss Suzanne Ornsby QC and

Miss Melissa Murphy	of Counsel, Instructed by Bircham Dyson Bell

They called

Mr Christopher Cain	Director, Northpoint Aviation Services Ltd
Dr Sally Dixon	Business and Aviation Consultant, Azimuth Associates
Mr George Yerrall	Director, RiverOak Strategic Partners Ltd
Ms Angela Schembri	Planning Director, RPS Group

FOR THE COUNCIL

Mr Iain Livingstone	Planning Applications Manager, Thanet District Council

INTERESTED PERSONS

Ros McIntyre	No Night Flights
Dr Beau Webber	Save Manston Airport Association

Mr Simon Crow

Mr Rex Goodban

Sir Roger Gale MP

Sue Girdler

DOCUMENTS SUBMITTED AT THE INQUIRY

1. Opening Statement on behalf of the Appellants
2. Opening Statement by the Council
3. Opening Statement by RiverOak Strategic Partners Ltd
4. Statement of Dr Beau Webber
5. Statement of Ms R McIntyre
6. Statement of Mr Simon Crow
7. List of draft conditions, annotated by RiverOak Strategic Partners
8. "Caxtons" bundle comprising particulars of employment land and property in East Kent
9. Report for Council Cabinet on 20th March 2017 on Proposed Revisions to Thanet District Council's Local Plan (Preferred Options)
10. Local Plan Proposals Map
11. Statement of Mr Rex Goodban
12. Statement of Ms Sue Girdler
13. Extract of House of Commons Transport Committee Report– 'Smaller Airports', Ninth Report of Session 2014-2015, dated 9th March 2015
14. Updated Draft Schedule of Conditions
15. Submissions of Sir Roger Gale MP
16. Schedule of employment land & premises, dated 17th March 2017-04-28
17. Further details of employment land & premises
18. Updated Statement of Common Ground, dated 17th March 2017
19. Closing Submissions of RiverOak Strategic Partners
20. Closing Submissions of the Appellant

The Planning Inspectorate

Costs Decision

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

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

Panel of Inspectors appointed by the Secretary of State

Decision date: 26 May 2021

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

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

Decision

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

The Submissions for Stansted Airport Limited

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

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

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

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

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

The Response by Uttlesford District Council

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

Reasons

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Costs Order

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

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

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