

**Statutory duties and material policy considerations  
relating to BAA planning application UTT/0717/06/FUL**

**Annex D**

| Statutory Requirements  | Issue   | Reference Source  |
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| The Council has a statutory duty "to exercise its planning function with the objective of contributing to the achievement of sustainable development".  | No reference to this in Position Statement. However, the proposal would detrimentally affect the local environment and the quality of life in the locality to an unacceptable degree and thus fail to contribute to sustainable development. The proposal would also increase the airport's greenhouse gas emissions from the present equivalent of 7 million tonnes of carbon dioxide to some 12 million tonnes and thereby seriously undermine the UK's stated commitment to reducing the emission of greenhouse gases and would thus demonstrably not contribute to sustainable development. | Planning & Compulsory Purchase Act, 2004, Section 39(2). This places a legal duty on all Members of Development Control Committee requiring that they have the objective of contributing to the achievement of sustainable development. A legal duty takes precedence over all 'policy' considerations. |
| Requirement for the developer's EIA to include an assessment of the development's "... direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects resulting from the existence of the development, the use of natural resources and the emission of pollutants, the creation of nuisances and the elimination of waste". | Not complied with by BAA and not referred to in Position Statement.   | Schedule 4 of the Town and Country Planning (Environmental Impact Assessment) Regulations, 1999.  |
| Requirement for the developer's EIA to include "an outline of the main alternatives studied by the applicant or appellant and an indication of the main reasons for his choice, taking into account the environmental effects".   | Not complied with by BAA and not referred to in Position Statement.   | Schedule 4 of the Town and Country Planning (Environmental Impact Assessment) Regulations, 1999.  |
| The proposed development anticipates that its implementation would contribute to a breach in 2014 of the legislative standards that will then apply under the EU Air Quality Directive.   | There is a clear example of a breach (accepted by BAA) in relation to PM10 but this is not mentioned in the Position Statement.   | EU Air Quality Directive 1999/30/EC, the UK Air Quality Limit Values Regulations 2001 and the UK Air Quality Strategy Addendum 2003.  |

| National (Central Government) Policy Issue  | Issue   | Reference Source  |
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| <p>"The Department [for Transport] and the Secretary of State accept that the obligation, in European Law, to consider an Environmental Impact Assessment before granting a development consent necessarily carries with it an obligation to consider whether that development consent should be refused because of alleged adverse environmental impacts, even if such a refusal would frustrate Government policy."</p> | <p>This is of fundamental importance to the policy context of the Air Transport White Paper and there is no reference to this in Officer's Position Statement.</p>  | <p>Statement by the Secretary of State for Transport during the 2004 judicial review of the ATWP. Reference: Second Witness Statement by MR Fawcett on behalf of the Secretary of State, 17 Sep 2004, Para 2.</p> |
| <p>"We will expect airport operators to produce master plans or, where appropriate, to update existing master plans to take account of the conclusions on future development set out in this White Paper." ... " Airport operators should begin this process immediately, with a view to the production of new or revised master plans as soon as possible, and preferably within the next twelve months."</p>            | <p>Position Statement acknowledges receipt of interim master plan from BAA but does not highlight absence of final master plan or the fact that this is contrary to ATWP policy. Letter to BAA requests final master plan but not as part of Reg 19 Notice.</p>   | <p>ATWP, paras 12.8 and 12.9.</p>   |
| <p>Inadequacy of the BAA Environmental Statement: "If the developer fails to provide enough information to complete the environmental statement, the application can be determined only by refusal."</p>  | <p>The Environmental Statement is unreliable and inadequate in a number of material respects and as a result fails to demonstrate that the proposal would meet the criteria set out in the Development Plan. However, the Position Statement makes no attempt to examine/critically review the reported inadequacies or comment on these one way or the other. Instead (with a few exceptions) it simply quotes BAA's projections as if they were undisputed matters of fact.</p> | <p>ODPM (now DCLG) Planning Guidelines, para 51.</p>  |
| <p>"We want to preserve and enhance our environment: the places where we live and work, our built and natural heritage and our richly diverse countryside."</p>   | <p>No reference to this in Position Statement. However, the proposal would detrimentally affect the local environment and quality of life in the locality to an unacceptable degree and thus be in conflict with this policy.</p>   | <p>1998 Transport White Paper, "A New Deal for Transport: Better for Everyone", Chapter 1, page 11.</p>   |

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| <p>Under the Kyoto agreement, the UK is committed to reducing its emissions of greenhouse gases to 12.5% below 1990 levels by 2012. In addition, the UK Government has set a national target to reduce carbon dioxide (CO2) emissions by 20% over the same timescale.</p> | <p>The Position Statement appears to imply that these national targets (and the wider global threat of climate change) are not relevant to the Stansted planning decision because of ATWP policy support for full use of the existing Stansted runway. In this respect the Position Statement overlooks the legal duty under S39(2) of the Planning &amp; Compulsory Purchase Act, the statement by the Secretary of State for Transport during the 2004 judicial review of the ATWP (as above) and the reality that there is a contradictory national policy framework.</p> | <p>UK Climate Change Programme, DEFRA, 2005. Planning &amp; Compulsory Purchase Act, 2004, Section 39(2).<br/>Statement by the Secretary of State for Transport during 2004 judicial review of the ATWP.<br/>Reference: Second Witness Statement by MR Fawcett on behalf of the Secretary of State, 17 Sep 2004, Para 2.</p> |
| <p>"The goals of our new energy policy ... to cut the UK's carbon dioxide emissions contributor to global warming by some 60% by about 2050"</p>  | <p>No reference to this in the Position Statement. Moreover, we can find no reference to support the assertion, in the Position Statement, that the UK's climate change programme explicitly states that it takes into account the implications of the ATWP policies.</p>  | <p>2003 Energy White Paper, "Our Energy Future – Creating a Low Carbon Economy", para 118, page 11.</p>  |
| <p>"Use parking policies, alongside other planning and transport measures, to promote sustainable transport choices and reduce reliance on the car for work and other journeys; ..."</p>  | <p>No reference to this in Position Statement.</p>   | <p>PPG 13, clause 7.</p>   |
| <p>"Reducing the amount of parking in new development (and in the expansion and change of use in existing development) is essential, as part of a package of planning and transport measures, to promote sustainable travel choices."</p>                                 | <p>No reference to this in Position Statement.</p>   | <p>PPG 13, clause 49.</p>  |
| <p>Government's transport policy objective of "reducing the need to travel, especially by car."</p>   | <p>Position Statement does not highlight BAA's prediction - directly in conflict with Government policy - for employee car use to INCREASE even as a percentage of all journeys to work by 2014 compared to 2005 and for public transport to account for a SMALLER percentage of Stansted passengers in 2014 under the 35mppa scenario, compared to the 25mppa scenario. This reflects a steady decline in rail modal share.</p>   | <p>PPG 13, clause 4.3 and Tables 4.1 and 8.1 in Vol 11 of the BAA ES (Surface Access).</p>   |

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| "Local controls should operate ...to manage the environmental impact of aviation and airport development so that: ..surface access to airports is designed to help limit local environmental impacts."   | Position statement makes no mention of policy contradiction in BAA's surface access strategy for expanding Stansted to full use of the existing runway, namely an increasing reliance on road based transport access.   | ATWP, para 3.6.   |
| "The New Deal for transport means ... local targets e.g. for improving air quality, road safety, public transport and road traffic reduction." "The New Deal for transport therefore sets the framework to: - reduce road traffic growth; ..."   | Government Transport policy expresses not only a policy preference for public transport but also for a reduction in road traffic, i.e. a policy preference for rail rather than bus/coach. BAA surface access strategy for expanding Stansted to full use of the existing runway is based on an increasing reliance on road based transport access. | "A New Deal for Transport: Better for Everyone", Transport White Paper, DfT, 1999<br>Chapter 1, page 9<br>Chapter 2, page 20. |
| The need to deal effectively with noise: "Special consideration is required where noisy development is proposed in or near Sites of Special Scientific Interest (SSSIs). ...The effect of noise on the enjoyment of other areas of landscape, wildlife and historic value should also be taken into account."  | No reference to this in Position Statement but the National Trust submission and SSE Response demonstrate that BAA has disregarded the serious issues that exist in relation to impacts on Hatfield Forest if this planning application were to be granted.   | PPG 24, clause 20.  |
| Requirement to protect and enhance the natural environment: "Where a planning decision would result in significant harm to biodiversity and geological interests which cannot be prevented or adequately mitigated against, appropriate compensation measures should be sought. If that significant harm cannot be prevented, adequately mitigated against, or compensated for, then planning permission should be refused." | As above.   | PPS 9, Clause 1 (vi).   |
| <b>Regional Policy</b>   | <b>Issue</b>  | <b>Reference Source</b>   |
| "Proposals for new development relating to any existing operational airport ... will be considered having regard to the need for an appropriate hierarchy of aerodrome and aviation sites and determined in relation to the following criteria:-   | Position Statement refers to this policy but does not identify its individual components as specific tests which the proposed development requires to satisfy.  | Essex and Southend-on-Sea Structure Plan, Policy BIW9.  |
| 1. General planning policies for the area;   | See below.  |   |
| 2. Air travel needs of residents, business and air sports users;   | Definition of "needs"?  |   |

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| 3. Economic benefits to local and regional businesses;  | (Note that this excludes London.) SSE submitted strong evidence of serious detrimental effects upon the local and regional economies.   |   |
| 4. Impact upon public health and safety, noise pollution levels, environmental conditions, visual amenity, and residential and urban areas affected by the proposal;  | The impacts generated by the proposal in its entirety, individually and cumulatively would give rise to unacceptable deterioration in public health, surface access, economic and social conditions and would thus not meet the standards required by the structure plan policy BIW9. |   |
| 5. Requirement for new housing, commercial development, and associated community facilities arising from the proposal;  | Not addressed.  |   |
| 6. Demand for the establishment of airport related facilities outside the airport site itself, to serve both it and its users;  |   |   |
| 7. Adequacy of the arrangements for surface access to the site by all means of transport."  | A major issues - see below.   |   |
| "Year-on-year improvements in noise pollution should be a strategic goal."  | No reference to this in Position Statement.   | RPG9, Chapter 5.  |
| "Areas and networks of green infrastructure will be identified, protected and maintained to ensure that an improved and healthy environment is available for the benefit of both present and future communities."<br>The policy goes on to list assets of particular regional significance for the retention, provision and enhancement of green infrastructure. The list includes Hatfield Forest. | Position Statement addresses concerns about Hatfield Forest but only in the context of EU air quality limit values and Government air quality objectives being breached. It does not address the regional policy context, which provides much greater protection for the Forest.      | Panel's recommended wording of Policy ENV1 (Green Infrastructure) in East of England Regional Plan, following Examination in Public.            |
| 'Planning authorities and other agencies...will ensure that internationally and nationally designated sites in the region are given the strongest level of protection.'   | As above, noting that Hatfield Forest is a national nature reserve and an SSSI.   | Panel's recommended wording of Policy ENV3 (Biodiversity and Earth Heritage) in East of England Regional Plan, following Examination in Public. |
| 'All ancient semi-natural and existing woodlands of acknowledged national or regional importance will be identified in LDDs with a strong presumption against development that would result in their loss or deterioration; aged or veteran trees will also be conserved.'  | As above.   | Panel's recommended wording of Policy ENV4 (Woodlands) in East of England Regional Plan, following Examination in Public.                       |

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| <p>'Development will not be permitted that would have an adverse effect on an SSSI or a NNR unless the need outweighs the conservation importance of the site.'</p>  | <p>As above.</p>  | <p>Essex &amp; Southend Replacement Structure Plan, Policy NR6.</p>   |
| <p>"... adopt a precautionary approach to climate change by avoiding or minimising potential contributions to adverse change and incorporating measures which adapt as far as possible to unavoidable change."</p>   | <p>No reference to this in the Position Statement.</p>  | <p>Panel's recommended wording in Policy SS1 (Achieving Sustainable Development) in East of England Regional Plan, following Examination in Public.</p> |
| <p>"The Regional Transport Strategy develops investment priorities that support these themes. Over the period to 2021 these show prioritisation of policies to: achieve modal shift away from road-based transport towards public transport; increase the priority and funding to smaller more local improvements; and invest in demand management."</p>         | <p>Position statement makes no mention of policy contradiction in BAA's surface access strategy for expanding Stansted to full use of the existing runway, namely an increasing reliance on road based transport access.</p>  | <p>Draft East of England Plan, para 4.30, (unchanged by Panel following Examination in Public).</p>   |
| <p>Demand management measures for highway use will be pursued to effect a reduction in road traffic growth.</p>  | <p>Position statement makes no mention of policy contradiction in BAA's surface access strategy for expanding Stansted to full use of the existing runway, namely an increasing reliance on road based transport access.</p>  | <p>Policy T3 (Managing Traffic Demand), Draft East of England Plan. Panel's recommended wording following Examination in Public.</p>                    |
| <p>"A key priority will be to ensure that airport surface access facilities reinforce and help to contribute to the shift to more sustainable travel sought by the RTS objectives."</p>  | <p>Nor does the Position Statement point out that Stansted is becoming more road-dependent rather than less. In 2005, 74.3% of Stansted's passengers travelled to/from the airport by road) - a higher figure than in 2000 (72.8%).</p>                                   | <p>Policy T12 (Airports), Draft East of England Plan, taking account of Panel's recommended wording following Examination in Public.</p>                |
| <p>"Within this context LDDs will develop policies which ensure that new development contributes towards the creation of more sustainable communities in accordance with the definition above and, in particular, require that new development contributes as appropriate to the improvement of quality of life, community cohesion and social inclusion..."</p> | <p>This policy is not considered in the Position Statement but it points up major issues for this planning application in relation to the adverse impacts that would arise, for example, in relation to quality of life, social cohesion and unsustainable commuting.</p> | <p>Policy SS2 (Overall Spatial Strategy), Draft East of England Plan. Panel's recommended wording following Examination in Public.</p>                  |

| <p>"... increasingly unsustainable water abstraction and constraints on supply are serious issues for the region as a whole but are especially critical in some of the central and southern parts in line for considerable development. We reiterate here the essential point that, by whatever route it is achieved, all new development in the region must secure water savings of at least 25% over current consumption."</p> | <p>No reference to this in Position Statement - which is surprising in view of the fact that water is a major strategic issue for the Region and Sub-Region and BAA states in its environmental statement that no efficiency improvements are considered likely over the planning period. In addition, the Position Statement does not highlight the fact (not included in BAA's ES) that the airport's water consumption increased 14% last year compared to only a 5% increase in passengers handled. This alters the arithmetic very substantially going forward and without efficiency gains the available 3MLD would be exceeded even at 35mppa.</p> | <p>East of England Plan: Examination in Public, Report of the Panel, Jun 2006, para 2.4, page 4. See also Draft Policy ENVxx (Water Efficiency).</p> |
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| Local Policy   | Issue   | Reference Source   |
| <p>"Noise generating development will not be permitted if it would be liable to affect adversely the reasonable occupation of existing or proposed noise sensitive development nearby, unless the need for the development outweighs the degree of noise generated."</p>   | <p>No reference to this in Position Statement.</p>  | <p>Uttlesford Local Plan, adopted 2005, Policy ENV 11.</p>   |
| <p>"Development that would have a harmful effect on wildlife will not be permitted unless the need outweighs the importance of the feature."</p>   | <p>Impacts on Hatfield Forest are directly relevant here but there is no reference to this in the Position Statement. Hatfield Forest is both an SSSI and a NNR and as such should have the maximum degree of protection.</p>   | <p>Uttlesford Local Plan, adopted 2005, Policy GEN 7</p>   |
| <p>"Development that adversely affects areas of nationally important nature concern such as SSSIs and NNRs will not be permitted unless the need outweighs the importance of the site."</p>  | <p>As above. And in defining "need", what weight should be attached to increasing the availability of cheap leisure flights abroad as compared to the protection of an SSSI and NNR and the local environment generally.</p>  | <p>Uttlesford Local Plan, adopted 2005, Policy ENV 7.</p>  |
| <p>"To ensure that a range of employment opportunities is available at key locations across the district and that alternative employment exists other than on the airport at Stansted."</p>  | <p>No mention of this in Position Statement despite the fact that BAA proposed expansion would militate against achievement of these regional policy objectives</p>   | <p>Uttlesford Local Plan, adopted 2005, para 4.1, Economic Activity.</p>   |
| <p>"To enable opportunities for local employment close to where people live, which may potentially reduce travel to work."</p>   | <p>As above.</p>  | <p>Uttlesford Local Plan, adopted 2005, para 4.1, Economic Activity</p>  |

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| <p>"New developments will not be permitted unless the design ... helps to minimise water consumption."<br/>Note also that the Draft Regional Policy states the need for a 25% efficiency improvement for all new developments (see above).</p> | <p>Position Statement makes no reference to the Draft Regional Policy in relation to water efficiency or to the incompatibility of BAA's assumption that no efficiency improvements are considered likely over the planning period (Vol 14, para 6.1.1) or to the fact that the airport's water consumption increased 14% last year compared to only a 5% increase in passengers handled (not mentioned in the ES) which alters the arithmetic very substantially going forward and without efficiency gains the available 3MLD would be exceeded even at 35mppa.</p> | <p>Uttlesford Local Plan, adopted 2005, Policy GEN 2 - and also Draft Regional Policy ENVxx (see above).</p> |
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