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8th May 2008
By email and post

Dear Sirs

Town and Country Planning Act 1990 – Section 78
Appeal by BAA Limited and Stansted Airport Limited
Application ref: UTT/0717/06/FUL
Stansted Airport, Stansted, Essex CM24 1QW

We refer to the letter dated 23rd April of this year from Communities and Local Government and the Department for Transport, inviting the Rule 6 Parties to the G1 Inquiry to make final comments in respect of the further representations received pursuant to your letter of 12th March of this year. Please treat this letter as our Clients' response to that invitation.

The contents of this letter should be read in conjunction with our letters of 18th February, 3rd April and 10th April, the information exhibited thereto, and the documents referred to therein.

BAA has carefully considered the matters raised by the other Rule 6 Parties in response to your letter of 12th March, none of which could properly be said to justify the refusal of planning permission for this important piece of national infrastructure.

BAA's response to those letters of representation is set out below, addressing each letter in turn. In responding to the points raised in those letters, we have confined ourselves to those matters which are

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directly concerned with the further information provided with our letter of 18th February apart from one issue where we consider it would be helpful for the Secretaries of State to have a response from BAA.

Uttlesford District Council

In its letter dated 11th April, Uttlesford District Council (“UDC”) seeks to argue that there is agreement between the parties that exceedence of the 30 µg/m³ limit value “*represents harm to an interest that is of acknowledged importance*”. As BAA’s submissions have consistently made plain, that is simply not correct. Moreover, it is not a submission that can fairly and properly be made on the basis of the evidence before the inquiry.

There are two matters that we would draw attention to in this respect.

First, UDC’s submissions appear to take no account whatsoever of the evidence of Dr. Gibson, its own expert nature conservation witness, as to the nature of the 30 µg/m³ limit value. The expert opinions he expressed in evidence are recorded at paragraph 613 of BAA’s Closing Submissions and set out on pages 2 and 3 of our letter dated 10th April. There was no transcript of the Inquiry at the time that Dr. Gibson gave his evidence, but BAA’s Closing Submissions provide an accurate reflection of the clear answers given by Dr. Gibson in cross-examination.

His expert evidence makes it clear that the 30 µg/m³ limit value is not a threshold above which damage is likely to occur, and that it cannot therefore be concluded that if the level is exceeded it is likely that there would be damage to vegetation in Hatfield Forest. On the basis of Dr. Gibson’s evidence, exceedence of the 30 µg/m³ limit value cannot therefore be treated as a proxy for harm.

Second, UDC’s submissions rely on taking certain answers given by Mr. Pratt, BAA’s expert air quality witness, out of their proper context. The following points are apparent from the transcript of Mr. Pratt’s oral evidence:

- i. Mr. Pratt’s field of expertise lies in the assessment of air quality, and not the environmental consequences of particular concentrations of pollutants. In other words, as it was expressed in re-examination, he provides the contours which show the concentrations so as to allow others to assess the environmental consequences (Transcript 5.7.07, page 165, lines 10-14).
- ii. He made clear that in his evidence he did not seek to address the likelihood of ecological effects occurring within or without the contour one way or the other, and that he gave no evidence one way or the other on where the burden of proof might lie in that respect (Transcript 5.7.07, page 165, lines 15-21).
- iii. In short, Mr. Pratt did not give expert evidence on the significance or otherwise of an exceedence of the 30 µg/m³ limit value in terms of likely environmental effects. He made clear that such matters were beyond his expertise and outside the scope of his expert evidence. The only expert evidence presented to the inquiry on this point was given by UDC’s nature conservation witness, which we have summarised above.

We therefore invite the Secretaries of State to reject the allegation in UDC’s letter that BAA’s submissions do not properly acknowledge the evidence that was presented to the Inquiry. BAA’s submissions reflect a very careful and fair assessment of all the evidence presented to the Inquiry, and the conclusions they invite as to the significance or otherwise of that evidence are undoubtedly correct.

There is therefore nothing in UDC’s further submissions which could properly be said to justify the refusal of planning permission.

The National Trust

The National Trust's letter of 18th April raises three broad points, which we respond to in turn.

First, it is said that BAA must prove a negative, i.e. it must demonstrate the absence of a likelihood of harm before planning permission can be granted. That submission is misconceived.

In this respect we would respectfully remind the Secretaries of State of the relevant policy provisions, which are set out at paragraphs 577 to 584 of BAA's Closing Submissions. In summary:

- i. There are no specific national, regional or local standards or tests to apply in development control decisions when considering the contribution that an individual development is predicted to make to the levels of NO_x affecting nearby vegetation.
- ii. The absence of any standard or test in policy indicates this is not an issue where simply exceeding a given level (or contributing to an existing exceedence) would in itself be expected to lead to the refusal of planning permission.
- iii. The relevant development plan policies provide a test for acceptability based on a demonstration of material harm to the relevant interest of acknowledged importance, and whether the need for, or public interest in, the development outweighs such harm.
- iv. It is not, therefore, for the appellant to prove the absence of harm. Rather, in order to establish a breach of the relevant development plan policies, and therefore the starting point for any reason for refusal, it is for those opposed to the proposed development to demonstrate through evidence that there would be likely to be material harm to the relevant interest of acknowledged importance, in this case the vegetation in Hatfield Forest and Eastend Wood.

That has not been done in this case, for the reasons we have articulated in the Closing Submissions made on behalf of BAA and in our earlier correspondence.

Such an approach also reflects the advice in Circular 8/93 that in any appeal proceedings the local planning authority will be expected to produce evidence to substantiate each reason for refusal. It is for the local planning authority to produce evidence to show clearly why the development cannot be permitted (Annex 3, paragraph 8).

Second, it is said that as a condition of any grant of planning permission BAA should provide long-term high quality NO_x monitoring of the northern end of Hatfield Forest that is robust and is done at sufficient temporal and spatial scale to detect changes to the vegetation. That is precisely what BAA has agreed to provide (see the Second Schedule, Parts 3, 12 and 14 of the section 106 obligation provided by STAL to UDC and ECC dated 19th October 2007). In so far as the National Trust has put forward specific additional measures that it would wish to see incorporated in such a monitoring regime, these have been addressed at paragraph 646 of BAA's Closing Submissions.

Third, it is said that if detrimental changes are detected, BAA must be required to make "*adjustments to their operation to ensure there are improvements in air quality to ensure there is no further vegetation damage*". The National Trust's suggested requirement is unnecessary, unreasonable and unrealistic, for the following reasons:

- i. The proportion of the concentration of NO_x at any point within Hatfield Forest that would be attributable to the proposed development would be minor, as would be the extent of the difference between the 25mppa and 35 mppa cases.
- ii. Figure 2.1 in BAA/4/D includes a North to South transect showing the contribution that the proposed development would make to concentrations of NO_x from a point just outside the

northern boundary of Hatfield Forest to a point at its southern boundary. The contribution that the proposed development would make to concentrations of NO_x within the Forest is no greater than 2 µg/m³ throughout, with a contribution of no more than 1 µg/m³ at the mid-point of the transect. The concentration differences shown in Figure 2.1 remain unaffected by the subsequent adjustment to the background concentration, although this adjustment does mean that the percentage contributions shown are overstated by several percentage points.

- iii. The predicted concentrations of NO_x at any point within Hatfield Forest would be lower in 2014 with the proposed development than they are today, when there is no evidence of any damage being caused to vegetation. This can be illustrated through a comparison of Figure 1 in BAA/4/F, showing the modelled concentration for October 2003 to May 2004, with the updated Figures 4 and 8 provided with our letter of 18th February, showing the updated modelled concentrations for the 25 mppa and 35 mppa cases respectively. When making this comparison, it is necessary to note that Figure 1 in BAA/4/F has not been adjusted to reflect the higher background concentrations used in producing the updated Figures 4 and 8. If such an adjustment were made to Figure 1, the degree of improvement over what can reasonably be described as a current case (see Mr. Pratt's evidence-in-chief, Transcript 5.7.07 pp. 24 (line 8) to 24 (line 3)) would be increased.
- iv. Most of the sources of NO_x which affect concentrations within Hatfield Forest are outwith BAA's control. The same is true of factors such as prevailing weather conditions, which by themselves can affect concentrations to a far greater extent than the proposed development.
- v. BAA has sought to address this issue in Parts 3 and 14 of the Second Schedule to its section 106 obligation to the extent that it is reasonable and proportionate to do so. BAA has undertaken to monitor levels of NO_x in Hatfield Forest, and to carry out a study of the effects of (amongst other things) air pollution on flora and fauna within Hatfield Forest. Should any material adverse effects on vegetation within Hatfield Forest be identified that arise from levels of NO_x exceeding 30 µg/m³, BAA has undertaken to provide appropriate compensation proportionate to the extent that the proposed development contributes to the measured levels. The obligation would thus be triggered if annual mean levels within Hatfield Forest exceed 30 µg/m³, and if that causes identifiable harm to vegetation.
- vi. BAA does not believe that the need for compensation will arise, for the reasons we have set out. If the Secretaries of State accept that, we acknowledge that less weight will therefore be attached to that part of the obligation. However, if the contrary conclusion is reached, BAA has ensured that appropriate and proportionate compensation would be provided. No more can reasonably be required.

There is therefore nothing in the National Trust's further submissions which could properly be said to justify the refusal of planning permission.

Stop Stansted Expansion

The letter from Stop Stansted Expansion ("SSE") dated 18th April raises a number of points which we have already addressed in our responses to the representations made on behalf of UDC and the National Trust. We do not repeat those points here.

The additional relevant submissions made on behalf of SSE will be addressed under three headings: law, policy and technical data.

Law

At paragraphs 8 to 14 of SSE's letter, a series of brief submissions are made as to whether there is a legal requirement to achieve a concentration of NO_x below 30 µg/m³ within Hatfield Forest. Those brief

submissions, although slightly re-ordered and re-phrased, are in substance exactly the same as the submissions made on its behalf at the close of the G1 Inquiry (see paragraphs 8.2 to 8.10 of SSE's Closing Submissions). No additional analysis is presented in its further representations.

As the Secretaries of State will be aware, Appendix 3 to BAA's Closing Submissions comprises a detailed and comprehensive analysis of this legal issue. It considers the relevant terms of Directive 96/62/EC ("the Parent Directive") and Directive 99/30/EC ("the First Daughter Directive"), the background to the relevant obligations in the First Daughter Directive, and the practical rationale behind them.

In the light of those matters, BAA's submissions explain clearly why the obligations imposed by the First Daughter Directive in respect of NO_x and vegetation are not engaged in the areas defined in Annex IV(I (b)), which include areas such as Hatfield Forest which is within 5km of a motorway, and why the contrary position would make a nonsense of the Directives.

It also explains, by reference to a number of EC and UK Government publications, that both bodies are clearly of the same view as to the effect of the First Daughter Directive.

SSE's repetition of its brief and superficial legal submissions makes no attempt to engage with and respond to that detailed analysis, and therefore no substantive response is warranted in this letter.

Policy

Paragraphs 15 to 21 of SSE's letter are concerned with matters of policy. BAA's position in respect of the relevant policy provisions is set out in its Closing Submissions (see in particular paragraphs 577 to 584 and Appendix 3 paragraphs 53 to 65), and those points are not repeated here. The passages of PPS23 referred to in SSE's representations do not raise any new issues.

Paragraph 19 of SSE's letter asserts as follows:

"The Air Quality Strategy includes a target "to get 95% of SSSIs into a favourable condition by 2010" [paragraph 301]. This implies that measurement will need to take place in Hatfield Forest (and other SSSIs within 5km of a motorway) to ascertain whether that target has been achieved."

In making that submission, SSE has conflated and confused two distinct concepts: (i) whether a SSSI is in "favourable condition", and (ii) whether the concentration of NO_x within a SSSI is above or below 30 µg/m³. In so doing, it has fallen into the same error as that made by Saffron Walden Friends of the Earth ("SWFoE") in its Closing Submissions to the Inquiry (see BAA's Closing Submissions page 173, footnote 110).

The concept of "favourable condition" was considered at the Inquiry (see BAA's Closing Submissions at paragraph 671 and the footnotes thereto). The following points were made:

- i. English Nature's assessments of site condition at Hatfield Forest have not identified any issues of poor air quality leading to vegetation damage.
- ii. The only reasons given for the current "unfavourable recovery" condition of Hatfield Forest are excessive deer browsing and unsympathetic woodland management.
- iii. The view of the National Trust is that this assessment of Hatfield Forest's current condition is unduly negative, and the result of the absence of a suitable assessment category for this type of habitat, rather than any actual problem with the condition of the Forest (see Transcript 7.9.07, pp 118 (line 11) to 120 (line 9)).

- iv. Eastend Wood has been assessed as being in favourable condition.

In short, whilst Hatfield Forest is currently classified as in unfavourable recovery, this is for reasons entirely unconnected with air quality, and is probably unduly negative in any event. Eastend Wood is in favourable condition. As we explained on pages 2 and 4 of our letter of 10th April, in both the 25 mppa and 35 mppa cases a smaller area of Hatfield Forest and Eastend Wood would exceed a concentration of NO_x of 30 µg/m³ than is presently the case.

The Defra PSA target to get 95% of SSSIs into a “favourable condition” by 2010 cannot therefore be treated as if it were a target to get concentrations of NO_x to below 30 µg/m³ in 95% of SSSIs. To treat it as such would effectively be to reverse the carefully considered approach taken by the Government in producing the Air Quality Strategy 2007 (see Appendix 3 to BAA’s Closing Submissions, paragraphs 53 to 65).

Technical data

In these final representations we have not sought to respond to matters raised by SSE which simply rehearse general submissions made on its behalf at the G1 Inquiry. These are dealt with, to the extent necessary, in BAA’s Closing Submissions.

SSE’s letter includes three additional substantive submissions on the technical data that we would wish briefly to respond to under this heading.

First, at paragraph 23 of SSE’s letter an issue is raised as to why it has been concluded that it is appropriate to make an adjustment to the background contribution, and not the contribution from airport sources. This matter has already been addressed in the Note attached to our letter of 3rd April (see the answers given to questions 3 and 4; and see further BAA/4/C paragraphs II.26 and II.31 dealing with the effects of “plume rise” on the tendency of the model to overestimate concentrations close to airport sources) and we do not repeat those points here.

Second, at paragraphs 24 and 25, SSE draws attention to the degree of variance identified at the individual monitoring sites. Reference is made to the fact that at some of the sites the degree of difference was on average 41% whilst at others it was on average 10.3%. BAA has applied an adjustment at all sites of 40%. SSE does not appear to suggest that there is any material difference between 40% and 41% (or that any further adjustment would be warranted as a result), and its only point in relation to this analysis appears to be that expressed at the end of paragraph 26, namely:

“...the evidence provided does not support BAA’s conclusion that its model uniformly over-predicts”.

BAA has not at any stage invited the Secretaries of State to draw such a conclusion. As we explained at page 2 of our letter of 18th February, for the purposes of the G2 assessment BAA’s consultants have advised that the difference should be treated as a systematic under-prediction that would be expected to affect predicted concentrations in other years.

If SSE intended to submit that the evidence does not support a conclusion that the difference should be treated as a systematic *under*-prediction, the only significance of such a submission would be that in some locations the values may be lower than predicted.

So far as the individual monitoring sites are concerned, BAA’s monitors are located close to the airport so as to monitor the effects of the airport on concentrations. At greater distances these effects are difficult to discern. The concentrations recorded by the monitoring equipment are unaffected by the identity of the operator, and the concentrations recorded at BAA’s monitors reflect their location close to a significant source. BAA’s monitors are not subject to the “dispersion” effects surrounding Enterprise House, as they have largely open aspects.

Third, at paragraph 27 SSE draws attention to the adjustment made to the NO_x concentration at the Sawbridgeworth roadside monitoring site EH3 between Tables 2b and 2c, which is explained at footnote 3 to Table 2c.

The adjustment made to the EH3 data, which is incorporated in the modelled NO_x value reported in Table 2c, consists of two elements: the revised background NO_x concentration; and an adjustment made to allow for the underprediction of road traffic contributed NO_x by the model at urban roadside locations.

This latter adjustment was made as part of the air quality assessment of the G2 Project, since this monitoring location was outwith the G1 study area. A comparison of the modelled and monitored NO_x concentrations at this location revealed a systematic underestimation by the model of road traffic NO_x contributions. This is a common phenomenon that has been widely reported in the local air quality management (LAQM) review and assessment process. Whilst the models can quite adequately estimate dispersion at open road locations, they cannot easily simulate the atmospheric processes at work in constricted urban environments. This is recognised in Defra guidance (Defra (2003) LAQM Technical Guidance, CD/373, pages A3.31-A3.41 “Model validation, verification, adjustment and uncertainty”, particularly paragraphs A3.172 to A3.175) for the LAQM process undertaken by local authorities across the UK and it is recommended and indeed accepted practice to make an adjustment to the modelled NO_x road traffic contributions to bring the total NO_x concentration into line with monitoring data.

Surface Access Forecasts

Paragraphs 45 to 47 of SSE’s letter comment on what it describes as material differences between the surface access predictions for the 35 mppa case provided by BAA in connection with the G1 application, and those presented for the baseline 35 mppa case in the Transport Assessment accompanying the application for planning permission for G2.

That is not, of course, a matter which arises from the further information that was provided under cover of our letters of 19th February, 3rd April or 10th April. It is therefore surprising that SSE has sought to address this matter in its letter, notwithstanding the clear injunction in your letter of 12th March of this year that the Secretaries of State:

“... are inviting representations only on the particular issue set out above [i.e. the further information supplied by BAA and subsequent correspondence], and do not regard this invitation as an opportunity to address other issues raised during the inquiry. Accordingly, parties should restrict their representations to the matters set out above” (emphasis in original).

Nevertheless, in so far as the Secretaries of State would find it helpful to have BAA’s response on this matter, it is as set out below.

- i. It is entirely unsurprising that there are some differences between the two sets of data, not least because they consider different assessment years, but those differences are not considered material for the purposes of determining the G1 application.
- ii. The G1 Transport Assessment was undertaken for the forecast years 2014 and 2023 and was based on planning and other data, including network assumptions, relevant to those years (CD/14 Chapter 6 and, in particular, Tables 6.7 and 6.8). Table 6.7 shows that the network assumptions for 2014 do not assume widening of the M11 between junctions 6 and 8 in that year for the ‘core’ or ‘increased supply’ scenarios. Table 6.8 shows, however, that by 2023 widening of the M11 between junctions 6 and 8 is assumed in the ‘increased supply’ scenario.
- iii. The G2 Transport Assessment, by contrast, is undertaken for the years 2015 and 2030, with some use of the intermediate year 2021, and is based on the planning data and network assumptions relevant to those years. The G2 assessment years are not, therefore, directly comparable to the G1

assessment years. As would be expected, there are some differences in the data and the assumptions for the 2015 G2 assessment compared to the 2014 G1 assessment. In particular, the 2015 G2 Transport Assessment (for both the Base Case and the Development Case) has assumed that capacity improvements in the M11 between junctions 6 and 8 are in place in that year and has modelled this as a widening from dual-three to dual-four lanes.

- iv. As would be expected, the assumed capacity improvements on the M11 junctions 6-8 in the G2 Base Case assessment for 2015 result in higher traffic flows on the Stansted-London corridor than in the G1 Development Case assessment for 2014, which did not include such widening. Thus the difference between the two assessments reflects the different data and assumptions for the different assessment years and, in particular, the assumptions as to the widening of the M11 junctions 6-8. It is, therefore, incorrect of SSE to characterise such differences in flow as a “*material understatement*” in the G1 Transport Assessment for 2014 (paragraph 47 of SSE’s letter).
- v. In those circumstances, BAA’s view is that it is not necessary or appropriate to invite the Secretaries of State to take into account the data to be found in the Transport Assessment provided in support of the G2 application in determining its appeal in respect of the G1 application.

There is therefore nothing in SSE’s further submissions which could properly be said to justify the refusal of planning permission.

Saffron Walden Friends of the Earth

SWFoE’s letter of 14th April raises a number of points which we have either dealt with above, or in our earlier representations.

No further substantive submissions are considered to be necessary in response to the remaining points made in SWFoE’s letter. BAA’s position in respect of those points remains as set out in our previous correspondence.

In particular, BAA’s position on the legal issues addressed in SWFoE’s letter is set out in detail at Appendix 3 to the Closing Submissions made on its behalf at the close of the G1 Inquiry.

All parties at that Inquiry had the opportunity to make such legal submissions as they considered appropriate in respect of this matter, and the legal position was addressed in the Closing Submissions made by counsel on behalf of UDC (paragraphs 88 to 90), SSE (paragraphs 8.2 to 8.10), the National Trust (paragraphs 7.12 and 7.13) and BAA (paragraphs 568 to 571, and Annex 3). The Closing Submissions made on behalf of SWFoE also considered this issue, endorsing the submissions made on behalf of SSE (pages 15-16, paragraph xi).

The new material submitted on behalf of BAA does not raise any new legal issues.

There is therefore nothing in SWFoE’s further submissions which could properly be said to justify the refusal of planning permission.

Much Hadham Parish Council

Much Hadham Parish Council (“MHPC”) has submitted four letters to the Secretaries of State, dated 14th March, 20th March, 8th April and 7th May respectively. Those letters either address the procedure that the Secretaries of State have decided to adopt to allow the parties to respond to the additional material provided on behalf of BAA on 18th February, or the issue of whether it is necessary to consult Defra in respect of the adjustments BAA has made as part of its air quality modelling exercise.

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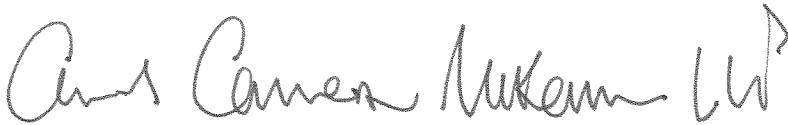
Those are matters for the Secretaries of State, and BAA does not consider it necessary to make submissions on either matter.

There is nothing in MHPC's further submissions which could properly be said to justify the refusal of planning permission.

Conclusion

For the reasons we have summarised above, and in our earlier correspondence, there is nothing in the further information BAA has provided, or in the subsequent correspondence, that could properly be said to justify the refusal of planning permission for this important piece of national infrastructure.

Yours faithfully

A handwritten signature in black ink that reads "Cameron McKenna LLP". The signature is written in a cursive, flowing style.

CMS Cameron McKenna LLP