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10<sup>th</sup> April 2008  
**By email and post**

Dear Sirs

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

We refer to the letter of 12<sup>th</sup> March of this year from Communities and Local Government and the Department for Transport, inviting the Rule 6 Parties to the G1 Inquiry to make any comments on the further information we supplied on 18<sup>th</sup> February of this year, and the subsequent correspondence, no later than 11<sup>th</sup> April. 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 18<sup>th</sup> February and 3<sup>rd</sup> April, the information exhibited thereto, and the documents referred to therein. In the light of what we have already said on this matter, and the fact that differing levels of NO<sub>x</sub> were expressly considered at the inquiry, we have kept our response relatively brief.

### Overview

As we explained in our letter of 18<sup>th</sup> February, BAA's case at the G1 Inquiry was, and remains, that the likely impact of the G1 proposals on the concentrations of NO<sub>x</sub> in Hatfield Forest would not be such as to justify the refusal of planning permission. That remains BAA's case in the light of the new information it has supplied, for the reasons explained on pages 3 and 4 of our letter of 18<sup>th</sup> February.

For ease of reference, we repeat the essential points below.

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BAA's Closing Submissions explicitly addressed the possibility that concentrations of NO<sub>x</sub> in Hatfield Forest might exceed 30 µg/m<sup>3</sup>, and made clear why that would in no sense justify the refusal of planning permission for this nationally important infrastructure project. The principal reasons for that submission are to be found in the following paragraphs of BAA's Closing Submissions: 558-561, 566-584, 609-611, 613i-v, 630-633. The Closing Submissions that BAA made on these points can briefly be summarised as follows:

- i. There is neither a legal requirement, nor a policy objective, to achieve a concentration below 30 µg/m<sup>3</sup> in Hatfield Forest.
- ii. NO<sub>x</sub> concentrations in Hatfield Forest are steadily improving and will be lower by 2014/15 (with or without G1) than they are at present.
- iii. Whatever the actual concentration may turn out to be in 2014/15, the difference that the proposed development would make to those concentrations is small and is not controversial. In effect, it would result in a slight reduction in the rate at which the concentration is expected to improve in future years.
- iv. A concentration of NO<sub>x</sub> above 30 µg/m<sup>3</sup> cannot be taken as a proxy for likely harm. It is not a threshold, and it cannot be concluded that if the concentration is exceeded it is likely that there would be damage to vegetation in Hatfield Forest. There is no evidence to show that harm is or is likely to be occurring at present when concentrations exceed 30 µg/m<sup>3</sup> in some areas of the Forest.
- v. No party called any evidence to explain the likely effect on vegetation as a result of the proposed development, or to seek to demonstrate that the difference between the 25 mppa and 35 mppa cases would be likely to have any demonstrable impact on the vegetation in Hatfield Forest.

## **Matters raised in correspondence**

We would also take this opportunity briefly to respond to two matters raised by other parties in the correspondence that followed our letter of 18<sup>th</sup> February.

### Stop Stansted Expansion

In its letter of 25<sup>th</sup> February, Stop Stansted Expansion ("SSE") stated that:

*"Contrary to what it now appears to be suggesting, BAA told the Inquiry that the 30 µg/m<sup>3</sup> limit value for NO<sub>x</sub> was correctly set by the competent authorities and that it was not part of its case to argue that other parties had to prove that harm would occur by the exceedence of this limit value. It was in fact a fundamental part of BAA's case that the 30 µg/m<sup>3</sup> annual mean limit value for NO<sub>x</sub> would not be exceeded in either Hatfield Forest or Eastend Wood."*

SSE's suggestion is plainly incorrect and is misleading, as any reading of the relevant passages of BAA's Closing Submissions identified on page 3 of our letter of 18<sup>th</sup> February would demonstrate. For ease of reference, the relevant paragraphs in BAA's Closing Submissions were as follows: 558-561, 566-584, 609-611, 613i-v, and 630-633. In particular, it may be helpful to set out here what was said at paragraph 613 about the nature of the 30 µg/m<sup>3</sup> limit value.

*"Following the cross-examination of UDC's nature conservation witness, the following points about the nature of the 30 µg/m<sup>3</sup> limit value are common ground between BAA and UDC:*

- i. *The 30 µg/m<sup>3</sup> limit value is not a threshold, in the sense that we know that damage is likely to occur above that level, it is simply that there is an increased risk (see also paragraph 8 of the nature conservation/air quality workshop [CD/136]).*
- ii. *It cannot therefore be concluded that if the 30 µg/m<sup>3</sup> limit value is exceeded, it is likely that there would be damage to vegetation in Hatfield Forest.*
- iii. *However, it is clear that below the 30 µg/m<sup>3</sup> limit value the risk of harmful effects from NO<sub>x</sub> is not raised as a concern by UDC, and there is no support in policy terms for any such concern.*
- iv. *There is no evidence from any party to show that harm is or is likely to be occurring at present, when UDC's case is that the 30 µg/m<sup>3</sup> limit value is being exceeded. Had such evidence existed, it is inconceivable that it would not have been adduced.*
- v. *Even if (contrary to BAA's evidence), it were concluded that parts of Hatfield Forest would be likely to experience NO<sub>x</sub> levels above the 30 µg/m<sup>3</sup> limit value in 2014, UDC's nature conservation witness confirmed in cross-examination that he was presenting no evidence to demonstrate that there is likely to be an adverse impact on vegetation as a result of any change brought about by the proposed development."*

## The National Trust

In its letter of 3<sup>rd</sup> March, the National Trust ("NT") states that:

*"BAA claim that no evidence was introduced to explain the likely effect on vegetation as a result of the proposed development. This is clearly untrue as you can see above".*

The NT's letter relies on the evidence of Dr. Haycock (NT/2/a), and in particular on the summary of that evidence it provides, to substantiate that assertion. Dr Haycock did not of course appear at the inquiry to give evidence, and none of what was said in his statement was subject to cross-examination (see paragraph 636 of BAA's Closing Submissions). In any event, it would simply not be correct to say that his evidence sought to "explain the likely effect on vegetation as a result of the proposed development" or that he sought "to demonstrate that the difference between the 25 mppa and 35 mppa cases would be likely to have any demonstrable impact in Hatfield Forest" (emphasis added).

At no point in Dr Haycock's evidence did he seek to demonstrate either that potentially harmful effects on vegetation associated with NO<sub>x</sub> levels above 30 µg/m<sup>3</sup> were occurring in Hatfield Forest at present (when the levels are higher than predicted at 35 mppa in 2014), or that those effects were likely to occur if the development were permitted. Dr Haycock's evidence only dealt with potential harm to vegetation from elevated concentrations of NO<sub>x</sub> as a generality, and did not seek to explain what effect (if any) the proposed development would have on the vegetation within Hatfield Forest.

The claim made by the NT in its letter is therefore without any proper evidential foundation whatsoever and is misleading.

## **Eastend Wood**

As in Hatfield Forest, there is neither a legal requirement, nor a policy objective, to achieve a concentration below 30 µg/m<sup>3</sup> in Eastend Wood.

## C/M/S/ Cameron McKenna

As set out in our letter of 18<sup>th</sup> February the effect of the adjusted background concentration would be to move the 30 µg/m<sup>3</sup> NO<sub>x</sub> contour into Eastend Wood in both the 25 mppa and 35 mppa cases by about 10m and 185m respectively. The modelled 30 µg/m<sup>3</sup> NO<sub>x</sub> contour for 2003/04 shown in Figure 1 (BAA/4/F) already extends into Eastend Wood by about 200m; a distance that would be increased if the adjusted background was applied to this Figure. This comparison shows smaller areas within Eastend Wood would exceed a concentration of 30 µg/m<sup>3</sup> than presently occurs. Moreover the difference in area in the two cases would remain small.

For the reasons we have explained a concentration of NO<sub>x</sub> above 30 µg/m<sup>3</sup> cannot be taken as a proxy for likely harm, and the absence of evidence of harm from existing concentrations of NO<sub>x</sub>, or evidence that the proposed development is likely to result in such harm, applies to Eastend Wood in the same way as it applies to Hatfield Forest.

### Further data

On 3<sup>rd</sup> April, BAA provided further data in response to twelve specific requests made by SSE in its letter of 25<sup>th</sup> February. That data was provided by e-mail directly to all Rule 6 parties on 3<sup>rd</sup> April, with hard copies being sent by first class post on the same day.

It is apparent from BAA's response to those twelve questions that the additional data supplied does not give rise to any material change to the position as considered at the G1 Inquiry.

The magnitude of the changes to modelled NO<sub>x</sub> and NO<sub>2</sub> concentrations brought about by the adjustment to the background concentrations is set out in our letters of the 18<sup>th</sup> February and 3<sup>rd</sup> April. The difference between the 25 mppa and 35 mppa cases however is completely unaffected by the adjustment to the background concentration. None of the NO<sub>2</sub> concentrations approach the air quality objectives when these adjusted background concentrations are taken into account.

### Conclusions

For the reasons we have summarised above, 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.

Finally, we have not copied this correspondence to the Rule 6 parties as you explained in your letter of 12<sup>th</sup> March that all replies would be circulated for comment as soon as practicable after 11<sup>th</sup> April.

Yours faithfully



CMS Cameron McKenna LLP