

TOWN AND COUNTRY PLANNING ACT 1990

STANSTED AIRPORT

STANSTED GENERATION 1 PLANNING APPEAL

OPENING SUBMISSIONS ON BEHALF OF BAA LIMITED AND STANSTED AIRPORT LIMITED

INTRODUCTION

1. Stansted Airport is a major piece of the UK's transport infrastructure and is of acknowledged national strategic importance¹. It currently handles some 23.7 mppa and this is expected to rise to about 25 mppa in 2008. In terms of passenger numbers it is currently the third largest airport in the UK and the eleventh largest airport in Europe.
2. The runway capacity already exists as Stansted to allow it to handle some 35 mppa in about 2015. Whilst some additional terminal and other infrastructure will be needed to allow the airport's throughput to rise to that level, for the most part that additional infrastructure already has planning permission.
3. What prevents the airport's throughput reaching that level, however, is the imposition of two planning conditions on the grant of planning permission in 2003. Those conditions are ATM1, which imposed a limit on air transport movements of 241,000 per annum, and MPPA1, which imposed a limit on passenger movements of 25 mppa. Thus the airport's capacity is effectively constrained by condition.

¹ See, for example, Essex and Southend Structure Plan (CD/59) para 10.40

4. In a context where Government has decided, as a matter of national policy, that there is “*an urgent need for additional runway capacity in the South East*” it would be wholly irresponsible and, indeed, unsustainable not to make “*best use of the existing runways*”² in the South East. That is why Government has identified it as a “*first priority*”.
5. The application the subject-matter of this appeal seeks to vary conditions ATM1 and MPPA1 to allow the airport’s capacity to grow to 264,000 ATMs and 35 mppa thereby making better use of the existing runway capacity. The use of the word ‘better’ is quite deliberate; as BAA does not accept that 264,000 ATMs and 35 mppa represents the limit of environmental acceptability.
6. Infrastructure projects are, of course, often controversial. As a generality it can be said that people like the benefits that infrastructure brings, but often do not like living near to such infrastructure. People expect their lights to come on when they turn the switch on the wall, but don’t like living near power stations; they want their gas central heating to work in the winter, but do not like living near gas storage or distribution facilities; they want water on demand, but do not want reservoirs in their part of the countryside; they expect proper waste disposal for their homes and work-places, but object strongly to landfill sites, incinerators or sewage treatment works. The list goes on and includes road, rail, and, of course, airport infrastructure.
7. It is, of course, for the planning system to reconcile these differences within the context of policy. Infrastructure projects often involve some balancing of national and/or regional needs and benefits against very real local impacts. In carrying out that balancing exercise, however, it can be difficult for a local authority to see very far beyond those local impacts; as has been amply demonstrated by the Council’s handling of this planning application.

² ATWP (CD/87) p. 13

8. In the recent Planning White Paper ('Planning for a sustainable future') Government made its position quite clear in stating that:

*"... a purely local approach to planning cannot deliver the best outcome for us as a society or nation, or for the environment. Sometimes, development may have national or regional benefits or impacts which go far beyond the immediate impact on local communities. Planning needs to reflect these wider regional and national factors."*³

And that:

*"... we expect local authorities and regional planning authorities to take full account of relevant national policy."*⁴

9. It is in that context, in particular, that the broader perspective of national policy is so important. This inquiry benefits enormously from detailed, specific and up to date national policy in the Air Transport White Paper (ATWP), confirmed in the Air Transport Progress Report (ATPR). It is important that the local impacts from the proposed development - and of course there will be some - are seen against the background of that very clear national policy framework. As the ATWP put it, *"Airports are an important part of our national transport infrastructure, and their development needs to be planned in that context."*⁵

DESCRIPTION OF THE PROPOSALS

10. What BAA calls the Generation 1 (or G1) application, has been submitted under section 73 of the Town and Country Planning Act 1990 ("the 1990 Act"). It seeks planning permission for the same physical development as that permitted by UDC in May 2003 (reference UTT/1000/01/OP) ("the 2003

³ 'Planning for a sustainable future' para 1.48

⁴ 'Planning for a sustainable future' para 1.51

⁵ ATWP (CD/87) Executive Summary p.11

permission”), subject to the replacement of the limitations contained in Conditions ATM1 and MPPA1 imposed on that permission.

11. Section 73(2) of the 1990 Act provides that, in determining this appeal, the decision maker shall consider:

“only the question of the conditions subject to which planning permission should be granted”

12. It is proposed that the limit in Condition ATM1 be changed from 241,000 ATMs per annum (including up to 22,500 CATMs), to a limit of 264,000 ATMs of which not more than 243,500 could be PATMs and not more than 20,500 could be CATMs.

13. It is also now proposed that Condition MPPA1 should be replaced by a new condition, limiting the passenger throughput at the airport to about 35 mppa. That might be achieved by simply replacing the number 25 in the existing condition MPPA1 with the number 35. BAA did not draft the existing condition, however, and has been discussing with UDC an alternative form of words which focuses on the scheduling of passenger throughput. The suggested alternative draft reads:

“The scheduling of aircraft take off and landing slots at the airport, as undertaken in accordance with the Slot Regulations (Council Regulation ECC No. 95/93 as amended by Regulation EC No. 793/2004 and its successors), shall be undertaken so as to correspond to a passenger throughput of not more than 35 mppa.”

Whilst UDC and BAA have not agreed the wording of any revised MPPA1 condition, it is fair to record that they are agreed that it will be possible to draft an appropriate condition and discussions continue. BAA is mindful, of course, that at the end of the day the formulation of any condition will be a matter for the Inspector and the Secretary of State.

14. The Generation 1 application also provides an opportunity for additional conditions to be imposed, and for other existing conditions to be amended as appropriate⁶. In the proofs of evidence submitted on its behalf, BAA has identified where it considers that additional controls and/or mitigation measures are justified. In many cases these would take the form of new or revised conditions, others will be reflected in the revised section 106 obligation. BAA has sought agreement with UDC on those additional controls and mitigation measures and will continue to do so as the inquiry progresses.
15. Planning permission has not been sought for any additional physical developments or facilities that do not currently benefit from planning permission. Where it is considered that additional facilities, which do not currently have planning permission, may be brought forward in due course as the airport continues to grow, these have been identified in the documents submitted in support of the application, and taken into account in assessing the environmental impacts associated with the proposed development.
16. The proposed development would enable the airport to grow to serve about 35 mppa from the existing runway.

THE CONTEXT FOR THE DETERMINATION OF THIS APPEAL

(a) Planning for national infrastructure

17. As we have said, decisions on infrastructure projects call for the reconciliation of issues of need and benefit at a national and/or regional level, with impacts felt most acutely at a local level. The Government has sought to improve the way in which that process is undertaken by issuing clear national policy statements in relation to particular infrastructure projects. The purpose of

⁶ Section 73(2)(a) of the 1990 Act

such statements was made clear in the consultation paper “*Streamlining the Processing of Major Projects through the Planning System*”⁷, namely:

*“... to set a clear national policy framework for the consideration of specific projects and thereby avoid unnecessary speculation and debate at subsequent planning inquiries. National policy statements will address such issues as the need for and benefits of major projects, criteria for site selection, relationships with other policies etc. The existence of such statements will help the Inspector ensure that time is not wasted at inquiry going over issues which have been settled.”*⁸
(emphasis added)

18. This theme is revisited in the recent Planning White Paper which states that:

*“A key problem with the current system of planning for major infrastructure is that national policy and, in particular, the national need for infrastructure, is not in all cases clearly set out. This can cause significant delays at the public inquiry stage, because national policy has to be clarified and the need for the infrastructure has to be established through the inquiry process and for each individual application. For instance, the absence of a clear policy framework for airports development was identified by the inquiry secretary in his report on the planning inquiry as one of the key factors in the very long process for securing planning approval for Heathrow Terminal 5. Considerable time had to be taken at the inquiry debating whether there was a need for additional capacity. The Government has since responded by publishing the Air Transport White Paper to provide a framework for airport development. This identifies airport development which the Government considers to be in the national interest, for reference at future planning inquiries. ...”*⁹ (emphasis added)

⁷ BAA/1/A para 4.7

⁸ See BAA/1/A p. 9, para. 4.7

⁹ ‘Planning for a sustainable future’ para 3.1

19. BAA recognises that many people, including some of the Council's witnesses, simply do not accept the thrust of Government policy as set out in the ATWP. It is important to stress, however, that it is not for this inquiry to debate the merits of Government policy and that certain matters, including need and benefits, have been 'settled'.

(b) The ATWP and the ATPR

20. This inquiry has the benefit of a detailed, specific and up to date expression of the Government's policy position in the form of the ATWP and the ATPR.

The weight to be attached to the ATWP and the ATPR

21. It is common ground between the main parties (i.e. BAA and UDC) that significant weight can be attached to policies contained in the ATWP¹⁰. In addition, we would emphasise the following points.

- (i) The weight to be attached to the policy set out in the ATWP and the ATPR must reflect the fact that it is based on an unprecedented exercise of detailed study followed by extensive public consultation. The nature and extent of this exercise is described by Mr. Rhodes in his evidence¹¹. Amongst other things, the environmental effects of different options were assessed by reference to their impacts on land use, ecology, heritage, landscape/townscape, construction, water, noise and air quality. Furthermore, during the consultation exercise some half a million people gave their views¹². As Sullivan J later explained in his judgment in the case of R (on the application of LB Hillingdon and others) v. Secretary of State for Transport¹³:

¹⁰ SoCG (BAA/20) p. 22, para. 4.1.1

¹¹ BAA/1/A, section 5

¹² ATWP (CD/87) Foreword p. 7

¹³ [2005] EWHC 20 (Admin), p. 18, para. 45 (CD/342)

“... it is important to appreciate that the White Paper and the Consultation Document are but the tip of a very large iceberg. To the best of my knowledge, the scale of SERAS and the extent of the consultation exercise are unprecedented in the planning field. Those who criticise the outcome must acknowledge that, in terms of process, this was a serious attempt to grapple with the immensely difficult problem of devising an airports policy for the South East of England.”

Sullivan J went on to point out that the policies in the ATWP are likely to be given added weight precisely because they were underpinned by the very many reports comprising SERAS, and were the subject of an extensive consultation exercise¹⁴.

- (ii) The policies in the ATWP have recently been confirmed in the ATPR, which reaffirms the Government’s commitment to the strategy set out in the ATWP as striking the right balance between economic, social and environmental goals¹⁵. The ATPR was formulated in the light of, and informed by, a number of reports, studies and other developments since the publication of the ATWP. It removes the need for speculation as to whether the ATWP still represents Government policy, and whether there is any inconsistency between different strands of Government policy.

- (iii) The ATWP and ATPR will shortly be incorporated as part of the development plan through the adoption of the Regional Spatial Strategy for the East of England (“the RSS”). Once that process is complete, the policies in the ATWP which relate to Stansted Airport will also have the weight given to the development plan by section 38(6) of the Planning and Compulsory Purchase Act 2004 (“the 2004

¹⁴ CD/342, p.77, para. 226

¹⁵ ATPR (CD/88) para. 1.2

Act”). This was also a matter acknowledged by Sullivan J in his judgment on the challenge to certain parts of the ATWP¹⁶.

The policy in the ATWP

22. It is common ground that the application is, in principle, in accordance with the Government’s policy in the ATWP¹⁷. That much is unsurprising. What should be noted, however, is the explicit support for the proposed development and the terms in which that support is expressed. There are four points to note.

- (i) There is an “*urgent need*” for additional runway capacity in the South East¹⁸, and failing to provide additional capacity where it is needed would “*significantly damage the economy and national prosperity*”¹⁹.
- (ii) In the light of that urgent need, the Government’s “*starting point*” and “*first priority*” is that the best use must be made of existing runways²⁰. That much is also unsurprising, because it reflects a basic principle of sustainable development. If additional capacity is to be created, as is national policy, one must make sure that existing infrastructure is best utilised.
- (iii) The ATWP provides explicit support for making best use of the existing runway at Stansted Airport²¹. It is the Government’s policy that

“... making full use of the available capacity at Stansted will be essential to avoid stifling growth. Making full use of Stansted would generate large net economic benefits. We therefore support growth

¹⁶ CD/342, pages 76-77, para. 226

¹⁷ SoCG (BAA/20) p. 22, para. 4.1.5

¹⁸ ATWP (CD/87), Executive Summary p.13

¹⁹ ATWP (CD/87), Executive Summary p.9

²⁰ ATWP (CD/87), Foreword p.7 and Executive Summary p.13

²¹ ATWP (CD/87), paragraph 11.10

at Stansted to make full use of the existing runway and expect the airport operator to seek planning permission in good time to cater for demand as it arises.”²²

- (iv) Those conclusions are reinforced by the ATPR, which, as we have said, reaffirms the Government’s commitment to the strategy set out in the ATWP as striking the right balance between economic, social and environmental goals²³. In particular, the ATPR confirms that the Government’s “*first priority*” remains making the most of the UK’s existing airports²⁴, which includes making best use of the existing runway at Stansted²⁵.

(c) The RSS and the RES

23. It is common ground between the main parties that significant weight must be attached to the policies contained in the RSS Proposed Changes in light of the stage that has been reached in the process towards adoption²⁶. It is also common ground that

- (i) the RSS Proposed Changes adopt the strategy expressed in the ATWP, and seek to give effect to the consequence of that strategy in terms of spatial land use planning²⁷; and
- (ii) in due course, UDC’s Local Development Framework will need to be generally consistent with the RSS.

24. A key strand of the RSS is to ensure that the region’s relatively strong economy continues to grow²⁸. The RSS is intended to assist the

²² ATWP (CD/87), paragraph 11.26

²³ ATPR (CD/88), paragraph 1.2

²⁴ ATPR (CD/88), paragraph 1.12

²⁵ ATPR (CD/88), paragraph 5.7

²⁶ SoCG (BAA/20) paragraph 5.3.1

²⁷ SoCG (BAA/20) paragraph 5.3.2

²⁸ RSS (CD/76) Page 101, paragraph 4.1

implementation of the Regional Economic Strategy for the East of England (2004) (“the RES”), and the RES and the RSS should be complementary to each other²⁹. In order to achieve the RES objectives, employment growth must be well above a “business as usual” forecast³⁰.

25. The additional jobs that would result from the expansion of Stansted Airport are an important element in the indicative targets for net growth in jobs in the period 2001-2021³¹.
26. The most directly relevant policy in the RSS is Policy E8: The Region’s Airports³², which refers to and reflects the policy in the ATWP. The supporting text states that new capacity at Stansted Airport is supported with the first priority to make maximum use of the current facilities³³. It goes on to explain that:

*“Studies have highlighted the important role that airports perform in their local area and in the regional economy. They provide a range of employment opportunities with a significant proportion of jobs that do not rely on high skill and educational attainment levels, and can attract firms that value proximity to airport services. Airport growth will provide a useful catalyst for economic regeneration of nearby towns, notably at Harlow, Luton, Norwich and Southend. Local planning authorities will need to make appropriate provision to meet the direct and indirect employment generation arising from airports operating in their area and nearby.”*³⁴

27. It is common ground between the main parties that the G1 application is in accordance with the policies in the draft RSS³⁵.

²⁹ RSS (CD/76) Page 101, paragraph 4.2

³⁰ RSS (CD/76) Page 102, paragraph 4.4

³¹ RSS (CD/76) Policy E1, pages 102-104 and page 69, paragraph 13.

³² RSS (CD/76) pages 114-115

³³ RSS (CD/76) Page 115, paragraph 4.32

³⁴ RSS (CD/76) Page 116, paragraph 4.35

³⁵ SoCG (BAA/20) paragraph 5.3.10

(d) Local Policy

28. There are six short submissions we would make about the Essex and Southend on Sea Replacement Structure Plan (“the Structure Plan”) and the Uttlesford Local Plan (“the Local Plan”):
- (i) Both policy documents pre-date the ATWP and the ATPR and have not, therefore, taken account of national policy support for both the best use of the existing runway at Stansted Airport and the development of a second runway. Whilst the Local Plan was not adopted until January 2005, the publication of the ATWP came too late to influence the draft Plan during its substantive stages.
 - (ii) In due course, the Structure Plan will be replaced by the RSS, and the Local Plan will be replaced by the LDF which will be required to be in general conformity with the RSS and to be ‘sound’ having regard to, inter alia, its relationship with national policy in the ATWP.
 - (iii) Neither the Structure Plan nor the Local Plan contains policies which seek to resist the growth of the airport, or place any limit on the use of the runway.
 - (iv) The G1 development complies with those policies which seek to control the physical location of development directly related to the airport (Structure Plan policy BIW7 and Local Plan policies S4 and AIR1-7). That is common ground between the main parties³⁶.
 - (v) The G1 proposals satisfy the criteria for the acceptability of airport development set by Structure Plan BIW9.
 - (vi) The G1 proposals comply with all other relevant development plan policies, for the reasons given in BAA’s evidence.

³⁶ SoCG (BAA/20) paragraphs 5.5.3-5.5.5

(e) Forecasts

29. Before saying anything else about forecasts, it is worth just saying a few words about the terms ‘capacity’, ‘demand’ and ‘throughput’.
30. In broad terms, the throughput of an airport is driven by demand, as constrained – if at all, at any point in time - by the physical capacity of the principle elements of the airport’s infrastructure (runway, terminal apron etc) to accommodate that throughput. In previous airport inquiries there has often been lengthy debate about the physical capacity of the additional infrastructure being provided and, as a consequence, about demand and throughput. That analysis does not apply with this application, however.
31. In this case Stansted’s physical runway capacity (i.e. the numbers of aircraft that can take-off and land) is constrained by condition ATM1 and its passenger capacity is constrained by condition MPPA1. This application is about raising the ‘planning’ constraints on Stansted’s capacity from 241,000 ATMs and 25 mppa, to 264,000 ATMs and 35 mppa. Thus the maximum additional passenger throughput as a result of the proposed G1 development is not an issue properly for debate; the increment of additional capacity is defined by condition.
32. It is also important to appreciate that the year 2014/15 (now possibly 12-18 months later) is simply the year in which demand and, therefore, throughput is expected to reach the new capacity constraint. If demand arises slightly faster than BAA has forecast, as SSE suggests, then the 35 mppa capacity will be used up slightly earlier. If demand arises slightly slower than BAA forecasts, as suggested by the ACC, then the 35 mppa capacity will be used up slightly later.
33. In each of these cases benefits and impacts may be brought forward slightly in time or deferred slightly in time; but they will in all other respects be the

same. Thus arguments about whether 35 mppa will be reached in 2015 or 2017 or 2013, are fairly pointless.

34. The same point can be made about BAA's cargo forecasts, which a number of objectors criticise. If BAA was wrong, which it does not accept, and cargo tonnage grew more slowly than forecast, then the benefits and impacts of such cargo growth would simply be deferred.
35. It is important to note that UDC has endorsed BAA's overall forecasts as being "*reasonable*"³⁷ and their consultants, SH&E, described them as "*robust*"³⁸; that subject to two issues on which BAA has carried out sensitivity tests the results of which were themselves described as "*reasonable*"³⁹.
36. Within the overall forecasts there may be elements of the passenger mix that do need to be considered. For example, SH&E, on behalf of UDC, suggested that BAA's forecasts of long haul passengers were too low; whilst York Aviation, on behalf of the ACC, argue that they are too high. These points, however, are relatively limited in number.
37. BAA's forecasts are set out in ES Volume 16⁴⁰ as supplemented and updated in Mr Maiden's evidence. As stated in BAA/6/A para 18.7, BAA now expects Stansted's throughput to reach the proposed 35 mppa capacity some 12-18 months later than previously forecast, that is, by 2015/2016.

(f) Need and benefits

38. The need for the G1 development, and the economic and social benefits associated with it, have been established through the ATWP and the ATPR. That much was acknowledged in the officer's report to committee⁴¹. As we

³⁷ SoCG (BAA/20) para 6.1.3

³⁸ CD/35 para 84

³⁹ SoCG (BAA/20) para 6.1.5

⁴⁰ CD/19

⁴¹ CD/33 paragraph 4

have said, one of the primary objectives of producing such statements of national policy was to address issues such as need and benefits at the national level, so that it would not be necessary for public inquiries, such as this, to take time going over issues that are settled⁴².

39. UDC's ninth reason for refusal (R.90H, Economic Benefits) amounts to either a rejection or a misunderstanding of the position reached by the Government in the ATWP and the ATPR. By suggesting that the benefits of making better use of the existing runway have not been "*sufficiently demonstrated*", UDC is either challenging the Government's conclusion on this issue in the ATWP, or suggesting that there is an onus on BAA to demonstrate that the Government's conclusion was justified. That is clearly an attack on the merits of Government policy itself. The same point can be made in respect of much of SSE's evidence on economics. It is either a challenge to the correctness of Government policy or implies that BAA should in some way have to 'justify' Government policy. Again, this is a direct challenge to Government policy.
40. It is clear that UDC's original reason for refusal was formulated in the hope that the publication of the Stern Review would lead the Government to change its policy on the future of air transport in the UK. Shortly after UDC's adoption of that reason for refusal, the ATPR was published and it became apparent that the Government's policy remained the same. This reason for refusal was subsequently revised, but the misconceived suggestion that the benefits have not been "*sufficiently demonstrated*" has been retained.
41. BAA's case on the issue of need and benefits can be summarized shortly. In view of the clear conclusions of the ATWP and the ATPR, neither matter should be controversial.
42. Our evidence will show that the Government's clear and up to date policy is that the forecast demand for air travel should be met to the extent set out in the ATWP, and that making the best use of the existing runway at Stansted is the

⁴² See BAA/1/A paragraph 4.7

Government's first priority. The 'need' is thus clearly established in Government policy.

43. It will also show that the Government has reached a clear view about the economic and other benefits associated with air travel in general, and with the expansion of capacity at Stansted in particular. It is the express view of Government in the ATWP that making best use of Stansted would generate large net economic benefits⁴³, and in our evidence we will show that those substantial benefits have been endorsed in authoritative national and regional policy statements. They should carry very substantial weight in the determination of this appeal.

THE MAIN ISSUES

(a) UDC's reasons for refusal

Overview

44. In the decision notice issued on 30 November 2006, UDC set out nine reasons for refusal. These are set out in paragraph 1.3.1 of the Statement of Common Ground⁴⁴. Reasons for refusal eight and nine were subsequently amended in the light of the publication of the ATPR. The revised reasons for refusal are set out at paragraph 1.3.2 of the Statement of Common Ground⁴⁵.
45. As we made clear in our Statement of Case, in refusing planning permission for those reasons, UDC has clearly failed to attach appropriate weight to the national planning policy support contained in the ATWP, and has failed to identify any, or any proper, reasons for refusal which outweigh that support.

⁴³ ATWP (CD/87) paragraph 11.26

⁴⁴ BAA/20, pages 7-9

⁴⁵ BAA/20, page 9

This is a fundamental failing in UDC's treatment of the planning application⁴⁶.

46. Furthermore, seven of UDC's nine reasons for refusal allege that the mitigation measures proposed are inadequate or insufficiently clear, in circumstances where UDC failed to engage with BAA to discuss mitigation measures in advance of the decision and, furthermore, has a duty to consider for itself whether its view of the impacts of the development could be met by mitigation measures, secured by condition or obligation. Moreover, the terms of the remaining two reasons for refusal (numbers 8 and 9) are, in effect, a direct challenge to the merits of Government policy.

Reasons for refusal that have subsequently been resolved

47. In addition to the amendments made to reasons for refusal R.90G (Climate Change) and R.90H (Economic Benefits), two issues raised in the reasons for refusal have now been resolved.
48. Reason for refusal R.90A (Noise (1)), included an allegation that the noise effects of moving from 25 mppa to 35 mppa would result in detriment to the cognitive development of primary school children. In the Statement of Common Ground, the main parties have agreed that on the basis of all the currently available information, there is no evidence of a material effect on the cognitive development of primary school children due to current or forecast air noise around Stansted Airport⁴⁷. The remaining concerns expressed in this reason for refusal remain an issue between the parties, and are addressed below.
49. Reason for refusal R.90D (Water Conservation) has now been resolved. Following the refusal of the G1 application, BAA has engaged in detailed discussions with the Environment Agency to agree a suitable package of measures to ensure that improvements continue to be made to the efficiency of

⁴⁶ BAA/20, page 19, paragraph 4.2

⁴⁷ BAA/20, page 37, paragraph 7.1.3

the use of water at the airport. Those measures have been agreed, and they are set out in the Statement of Common Ground at section 7.15⁴⁸. In the light of that agreement, it is common ground that the impacts of the proposed development on the region's water resources, supply and efficiency of use, foul water infrastructure and discharges, and surface water drainage systems including discharges to surface watercourses would be acceptable⁴⁹.

The remaining reasons for refusal

50. BAA's case in respect of the remaining reasons for refusal can be briefly summarized as follows.

Noise (1) (reason for refusal R.90A)

51. There are four points to note at this stage:
- (i) Any increase in capacity will bring with it some increase in noise. What needs to be determined is the extent of that increase, the likely impact it will have on the amenity of those affected, and whether that impact is unacceptable in the clear policy context provided by the ATWP.
 - (ii) In that regard, the Government's guidance on noise and development control is contained in PPG24. Paragraph 10 of that guidance provides as follows:

“Much of the development which is necessary for the creation of jobs and the construction and improvement of essential infrastructure will generate noise. The planning system should not place unjustifiable obstacles in the way of such development. Nevertheless, local planning authorities must

⁴⁸ BAA/20, pages 57-58

⁴⁹ BAA/20,, page 57, paragraph 7.15.3

ensure that development does not cause an unacceptable degree of impact.”

In other words, the fact that an important infrastructure project will generate additional noise is not enough in itself to justify a refusal of planning permission. The degree of impact must be shown to be “unacceptable”.

- (iii) In this case, the noise impact has been properly assessed in accordance with the most up to date Government policy guidance, and the impacts have been shown to be relatively small.
- (iv) The noise impact associated with the G1 proposal will be less than that predicted when planning permission was granted in 2003 to increase throughput to 25 mppa, and less than was predicted by the Government when it decided to support best use of the existing runway in the ATWP. Indeed, BAA has indicated that it is willing to accept a reduction in the area covered by the noise contour contained in condition AN1.

Noise (2) (reason for refusal R.90A)

- 52. The principal impact on culture and leisure associated with air noise generated by the proposed development would be on the use of parks and open spaces. Increasing the number of aircraft movements may give rise to some additional air noise impact on people using parks and open spaces close to the airport, but not to an extent that could properly be said to outweigh the strong policy support for the proposal, and the significant economic and wider benefits that will arise from it.

Quality of Life (reason for refusal R.90B)

- 53. This reason for refusal is entirely insubstantial, for the following reasons.

- (i) There is no statutory requirement to carry out a ‘quality of life assessment’, nor is one required – or said by UDC to be required – to comply with the requirements of the EIA Regulations. No requirement to undertake such an assessment is to be found in national, regional or local planning policy.
- (ii) The material submitted in the ES, the Sustainability Appraisal, the Health Impact Assessment and other documents supporting the application for planning permission provide more than sufficient information on which to assess the effects of the proposed development in land use planning terms.
- (iii) There is no need for a ‘quality of life assessment’ to enable proper account to be taken of any material issues raised by local residents in their representations.
- (iv) It is important to recall that the specific concern raised in this reason for refusal was the potential effect on the cohesion of local communities “*caused by the pressures on the nature and character of residential accommodation*” arising from the Generation 1 proposal and the absence of appropriate mitigation to address that impact. No particular harmful impact was alleged, and the evidence that UDC has now produced does not identify any particular land use planning harm arising from the Generation 1 proposal that might need to be mitigated, or the type of mitigation that could be relevant in respect of any such harm.
- (v) Any proposal for major employment-generating development may be expected to give rise to some changes in the housing market in the local area. Such development is, however, an essential element of the emerging RSS and the RES. The evidence produced by UDC and others does not demonstrate that any changes in the “*nature and character of residential accommodation*” that might occur as a result of the G1 proposal would give rise to adverse land use planning

consequences, let alone consequences that might properly be said to justify the refusal of planning permission for this important development.

Air Quality (reason for refusal R.90C)

54. The air quality issues in this inquiry are relatively narrow, because the vast majority of the air quality impacts are agreed to be acceptable⁵⁰. All that remains in issue is the effect of the Generation 1 proposal in terms of (a) the change in the concentration of NO_x at Hatfield Forest, and (b) the change in the rate and effects of Nitrogen deposition within Hatfield Forest and Eastend Wood. The sole concern is that there could be an incremental risk of vegetation damage in Hatfield Forest and Eastend Wood⁵¹. BAA's case can be summarised as follows:

- (i) The incremental changes between the 25 mppa and the 35 mppa cases are small, and are not predicted to result in the NO_x limit value for vegetation being exceeded in either Hatfield Forest or Eastend Wood.
- (ii) In any event, the Government has made clear its view that the NO_x limit value does not apply to either site, because they lie within 5km of a motorway. The ATWP states in terms that *"The NO_x concentration limit for the protection of vegetation is not considered to be applicable around a developed Stansted."*⁵²
- (iii) Nitrogen deposition is a regional and national problem, and the vast majority of the impact comes from non-airport sources. The change predicted to result from the G1 development (calculated on a conservative basis) is very small, and will occur against a

⁵⁰ SoCG (BAA/20), pages 40-41

⁵¹ SoCG (BAA/20), page 39, paragraph 7.2.2

⁵² ATWP (CD/87) para 11.34

background of a considerably larger reduction in the overall level of Nitrogen deposition experienced at these two sites.

Surface Access – Road (reason for refusal R.90E)

55. In relation to surface access issues, UDC's interests are represented by the two highway authorities – Essex County Council (ECC) and Hertfordshire County Council (HCC).
56. There is a large measure of consensus that (i) the transport assessment methodology, (ii) the existing Stansted travel demand and surface access network, and (iii) the surface access modelling suite and inputs described in the Transport Assessment ('TA') are an appropriate basis for assessing the surface access impacts of the G1 development⁵³. There is also consensus that (i) the additional transport measures described in the TA are aligned with relevant policy objectives and are, therefore, appropriate and, furthermore, that (ii) the overall demand forecasts in the TA are also an appropriate basis for evaluating the G1 development⁵⁴. It would also be fair to record that there is a great deal of agreement on the appropriate surface access mitigation.
57. There are only two main highways issues outstanding between the County Councils and BAA.
58. Firstly, there is disagreement as to the appropriate sum that BAA should pay towards the cost of additional highway works to local roads. BAA's evidence will show that the additional sums sought by way of contribution are beyond what can be justified by reference to Circular 05/2005, and that the offer it has made towards various highway improvement schemes is entirely appropriate..
59. Secondly, there is a concern on the part of the County Councils as to the modelling process undertaken for the purposes of producing the Addendum to Volume 11 of the ES. As Ian Forshew's evidence explains, the model used

⁵³ Surface Access SOCG (BAA/21) sections 2.2-2.4

⁵⁴ Surface Access SOCG (BAA/21) sections 2.5-2.6

was the best available for this purpose, and the results broadly confirm those in the original TA⁵⁵.

60. Now that the issue of surface access has been deferred until later in the inquiry, BAA anticipates that there will be scope for agreeing further common ground in respect of both of these issues.

Surface Access – Rail (reason for refusal R.90F)

61. UDC's concerns in respect of rail surface access are again limited. The TA demonstrates that passenger crowding may become an issue on Stansted Express ("STEX") at or around 2014, with or without the proposed development, but that demand at 35 mppa can readily be accommodated by the provision of additional rail capacity, likely to be achieved by the use of 12-car trains.
62. UDC's position is simply that it wishes to have greater clarity as to the mechanisms and measures that will ensure that any necessary improvements to the STEX take place in a proportionate and timely manner. There does not appear to be any suggestion that BAA has failed to take any particular step in this regard. Nor could such a suggestion properly be made. BAA has agreed to take all reasonable steps within its control to ensure that any necessary rail access improvements required as a result of the G1 proposal will be provided in a proportionate and timely manner.
63. In particular, BAA has agreed to the following:
- (i) BAA will monitor rail patronage from 2008, and report this to the rail working group on the Stansted Airport Transport Forum ("SATF"). The exact details of the monitoring study will be agreed with the DfT in consultation with the rail working group.

⁵⁵ BAA/3/A p. 72, para. 17.1.1

- (ii) BAA will enter into an agreement with DfT (Rail) that when required to do so by the DfT it will make available appropriate and proportionate funds for bringing forward the works, and provide the land necessary within the airport to provide the rail capacity for the G1 development.
- (iii) The land necessary to provide the additional platform capacity at Stansted required for 12-car trains will be safeguarded.

64. Ultimately, however, the provision of additional rail capacity is not within BAA's control. With that in mind, BAA has sought and obtained the agreement of DfT (Rail) to its suggested approach. In so far as rail surface access is still in issue, the remaining concerns appear primarily to be directed at the way that changes to the rail network are planned for under the current system.

Climate change (reason for refusal R.90G)

65. As we have said, this reason for refusal was originally based on UDC's hope that the Government would change its policy on air transport in the light of the Stern Review. Now that the Government has reaffirmed its policy on air transport, UDC's position has shifted.
66. It is now said that it would be premature to grant planning permission in advance of the Government carrying out an emissions cost assessment. This is said to be in accordance with the Government's policy as set out in the ATPR.
67. UDC's new reason for refusal is equally as untenable as that it replaced, for the following reasons:
- (i) The important issue of climate change is not readily addressed through the consideration of individual applications for planning permission. It is common ground between the main parties that no

climate change effect directly linked to the proposed additional air traffic movements could be demonstrated⁵⁶.

- (ii) There is a clear national policy position in relation to aviation and climate change, and that position has been confirmed by the ATPR. In short, the Government's policy is to ensure that over time aviation pays the external costs that its activities impose⁵⁷, and that the best way of ensuring that aviation contributes towards the goal of climate stabilisation would be through a well-designed emissions trading scheme⁵⁸. The Government's policy is clearly not to seek to tackle climate change by constraining capacity at Stansted Airport to 25 mppa.
- (iii) UDC's position involves an untenable interpretation of Government policy on air transport, in that it assumes that no further significant expansion would be permitted until the concept of an emissions cost assessment has been through the process of consultation, consideration and application. No fair and proper reading of the ATWP and the ATPR could support such an interpretation.
- (iv) As Mr. Rhodes' evidence makes clear, the revised reason for refusal represents an attempt to frustrate the clear intentions of national policy⁵⁹.

Economic Benefits (reason for refusal R.90H)

68. We have already set out BAA's case on the economic benefits associated with the appeal proposal, and we do not rehearse all of those points again here. In summary:

⁵⁶ Officers' Report (CD/33), page 4, paragraph 14

⁵⁷ ATWP (CD/87), paragraph 2.18

⁵⁸ ATWP (CD/87), paragraph 3.39

⁵⁹ BAA/1/A pp. 78-79, paragraph 14.19

- (i) The Government has made clear that it considers that there are substantial net economic benefits associated with making best use of the existing runway at Stansted.
 - (ii) The Government's policy in the ATWP is reflected in the emerging RSS, which itself identifies and acknowledges important economic and other benefits associated with the expansion of Stansted Airport, and will in turn become part of the development plan for the purposes of section 38(6) of the 2004 Act.
 - (iii) The appeal proposal is in accordance with, and supported by, the economic strategy set out in the RES. It is also in accordance with, and important for, the Government's overall objectives for both the regional and the national economy.
 - (iv) No adverse impacts have been identified which could properly be said to outweigh those benefits, or the specific and up to date policy support that this proposal enjoys.
69. Furthermore, in so far as the reason for refusal fails to accept the economic benefits of the G1 development it is a clear challenge to the merits of Government policy.

(b) Issues raised by other parties

Stansted Airline Consultative Committee (ACC)

70. The ACC represents the airlines currently operating from Stansted. There is clearly an important commercial relationship between those airlines and BAA; and one that BAA values. As with all commercial relationships, however, there can be commercial tensions.
71. BAA considers that the vast majority of the issues raised in the ACC's case are matters for the Civil Aviation Authority (CAA) and the Competition

Commission (CC) and are not relevant to this inquiry. In that context, it needs to be clearly understood that BAA is currently under scrutiny by the CAA and the CC in two parallel regulatory reviews as part of the fifth quinquennium review on airport changes. In addition, the DfT is considering the case for the de-regulation of Stansted airport. There are therefore two alternative scenarios under which BAA Stansted will be operating in the future.

72. If Stansted remains regulated, the CAA, and then the CC, will undertake a regulatory review which will, amongst other things, lead to the CAA setting the airport's landing charges for the period April 2009 to March 2014. That process started in 2005 and will conclude with the CAA's decision on landing charges in early 2009. Not surprisingly, the airlines and BAA have different commercial objectives on many of the issues under review and do not always agree. One of the points of contention is BAA's future capital expenditure plans because capital expenditure is a major factor in setting future landing charges. The important point for this inquiry, however, is that this a matter which the regulator, the CAA as advised by the Competition Commission, not only can investigate - but is actively investigating at the moment. All aspects of Stansted's forecasts are being scrutinised by the CAA – and the CC – as part of this process.
73. If Stansted is de-regulated, there would still be regulatory scrutiny of Stansted's forecasts. The Competition Commission is investigating whether (i) BAA, (ii) the regulatory framework, and (iii) the provision of capacity, act to "*prevent, restrict or distort competition*". BAA Stansted's business plans and its forecasts will necessarily be a key feature of that detailed enquiry.
74. The ACC has made a number of allegations about BAA's failure to provide information or engage in 'constructive engagement'. BAA strongly refutes those allegations, but the important point to note in this inquiry is that the CAA has investigated and reported on those matters in its 'Annex 4 Review' (ACC/115 p1084 et seq). In so far as he needs to, the Inspector will be informed by that document of the CAA's views of the correctness, or otherwise, of the ACC's allegations.

75. In addition, the DfT (taking into account the views of the CAA) will also have to take a view as to BAA's performance in these areas. These allegations are clearly not a relevant matter for this inquiry, however, which is to consider the planning merits of an application to vary two planning conditions.
76. The Inspector should be very wary of attempts to use his inquiry as an opportunity to cross-examine witnesses in order to gather information which really relates to these various strands of regulatory review.
77. Whilst the ACC argues that the planning status of the airport may be relevant to the on-going regulatory review, the converse is certainly not true. The on-going process and, indeed, ultimate outcome of the regulatory review is clearly not material to the planning merits of this appeal. Indeed, assuming Stansted remains a regulated airport, any announcement on landing charges for the next quinquennium is not expected until long after this inquiry will have closed.
78. Much of the ACC's evidence relates to regulatory matters, or matters of detailed forecasting, which feed through to the specification and phasing of buildings which may need to be developed to support a throughput of 35 mppa. For example, long haul passengers tend to require more processing space than short haul passengers and so the ACC is very concerned that BAA should not over-forecast long haul passengers and thus, as the ACC would see it, inflate its capital expenditure plans. As a result of the ACC's regulatory concerns about BAA's capital expenditure plans it has proposed an "*interim*" 30 mppa condition to, in effect, control BAA's that expenditure. Subject to the CAA's five yearly reviews, however, the phasing of BAA's capital expenditure program is a matter for its commercial judgment and not a proper matter for this planning inquiry.
79. Of the ACC's headline passenger forecast, this is some 26-32.5 mppa in 2014/15, just below BAA's (revised) 33 mppa at that date. In other words, the ACC sees a 35 mppa throughput being achieved some (say) 12-24 months

later than BAA. As stated earlier, under the heading of forecasting, there is an important distinction to be drawn between ‘demand’ and ‘capacity’. Much of the ACC’s forecasting evidence focuses on overall ‘demand’ in the light of future airport landing charges and other economic instruments, including Air Passenger Duty. This application, however, is for an additional increment of 10 mppa ‘capacity’. In general it can be said in relation to the ACC’s forecasting evidence that very little of it is of much relevance to the issues before the Inspector.

80. As far as ACC’s surface access evidence is concerned, that has been deferred with the rest of the surface access evidence to after the summer adjournment, but to a large extent it is dependent on the forecasting evidence.

SSE

81. We do not propose to take time now in responding to each and every one of SSE’s many objections, but there are three short points that deserve emphasis.
- (i) SSE’s proofs of evidence to this inquiry make for familiar reading. The vast majority of the points made on its behalf are not new. Many if not most of those points were made in SSE’s unsuccessful representations to the Government in response to consultation about the ATWP. Many were made again in SSE’s representations to the emerging RSS. SSE’s detailed concerns about the G1 application itself were almost all made in its representations to UDC. Those concerns that UDC considered to have merit were incorporated into the reasons for refusal, but the bulk were rejected as either being unsound or not justifying refusal.
 - (ii) This inquiry is not the appropriate forum for considering
 - a. the merits of Government policy on aviation and climate change;
 - or

b. the wisdom, or otherwise, of Government policy on aviation generally.

(iii) Much of the case made by SSE on the environmental impacts associated with the G1 proposal is based on a concern that the outcome of the application will be an airport that could and probably would grow beyond 35 mppa to 45 or even 50 mppa. This was never an objection of any substance, but in any event it has been overtaken by BAA's acceptance of a 35 mppa condition.

The National Trust

82. The National Trust's objection to the G1 proposal is based on air noise and air quality impacts on Hatfield Forest.

83. As BAA's rebuttal evidence has explained⁶⁰, the National Trust's evidence on these issues differs in some respects from the equivalent evidence on behalf of UDC. In neither case, however, does the evidence amount to a justification for refusing planning permission for the reasons we have summarized above.

Others

84. The evidence submitted by the other parties to this inquiry covers much of the same ground as that covered by UDC and SSE. In some cases there are new points raised, and BAA has sought to respond to the main points in its rebuttal evidence. However, no additional objections have been raised that could possibly justify refusal.

CONCLUSIONS

85. In conclusion, BAA once again draws attention to the detailed, specific and up to date national policy framework that informs the consideration of this appeal

⁶⁰ See BAA/2/E and BAA/4/D

and also to the Government's clearly expressed expectation that inquiry time should not be 'wasted' on issues that have been 'settled'. BAA does not underestimate the very genuine opposition to its plans to vary conditions ATM1 and MPPA1, and it accepts that there will be impacts from the growth to 35 mppa. The real question, however, is whether those impacts – as controlled and mitigated by conditions and obligations – are sufficient to outweigh Government policy and the economic and social benefits it has identified. BAA says that they are not.

Michael Humphries Q.C.

Hereward Phillpot

30th May 2007