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Dear Sirs

Town and Country Planning Act 1990 - Section 78: Appeal by BAA Ltd and Stansted Airport Ltd against the decision of Uttlesford District Council; land at Stansted Airport, Stansted, Essex CM24 1QW: Submissions by Stop Stansted Expansion on the revised air quality projections provided by BAA in February 2008.

Introduction

1. We should state from the outset that we reject BAA's hypothesis that its inability to reconcile actual measurements with the results of its air quality ('AQ') modelling is entirely due to understatement of the Defra (NAEI¹) background levels for NO_x. There is nothing in the data provided by BAA in February and April 2008 which demonstrates that the understatement of NO_x levels discovered by real time monitoring arises solely from understated background concentrations of NO_x rather than the BAA model under-predicting or a combination of both. We return to this point later but first we wish to set this issue in its wider context.
2. The December 2003 Air Transport White Paper ('ATWP') did not provide a blank cheque for airport expansion projects but argued for a "*measured and balanced*" approach where the airport operator must meet "*stringent environmental conditions*" for its development proposals to have a prospect of approval. In the light of the revised air quality data provided by BAA, it is now clear that air pollution impacts can be added to the long list of other serious environmental harms that would arise if the Stansted G1 proposal were to be approved. It would be contrary to the concepts of "measured and balanced", "stringent environmental conditions" and indeed "sustainable development" if the G1 proposal were to be approved.
3. As with any planning application, the G1 application "*must be determined in accordance with the relevant Development Plan unless material considerations indicate otherwise*". The fact that the G1 application does not accord with the relevant Development Plan was demonstrated

¹ National Atmospheric Emissions Inventory (data provided by AEA Technology).

at the G1 Inquiry and that evidence need not be repeated here. What has changed, however, as a result of BAA's revised AQ data, is the weight of the other material considerations and the overall weighing of harm against benefits. The scales have been tilted further towards the side of harms, if any further tilting were possible in circumstances where BAA failed to provide any direct evidence of economic benefits from its proposed development.

4. This belated admission by BAA that it provided erroneous air quality evidence to the G1 Inquiry is yet another failure to add to the catalogue of failures which have characterised BAA's handling of its G1 planning application, for example:

- Failure to produce a long term airport masterplan;
- Failure to assess cumulative impacts;
- Failure to provide evidence of economic benefits;
- Lack of rigour in forecasting aircraft movements and passenger traffic;
- Lack of integrity in assessing surface access implications;
- Ambivalent approach to water wastage and usage;
- Manipulative approach to the Health Impact Assessment and Sustainability Appraisal to the extent that both of these exercises lacked credibility;
- Failure to provide a Quality of Life Assessment;
- Failure to acknowledge any significant noise impact of the G1 proposal despite all of the evidence presented to the contrary and despite pre-publication knowledge of the main findings of the ANASE study;
- Failure even to consider aircraft CO₂ emissions in the environmental statement.

5. From the outset of its G1 planning application BAA has brandished the ATWP as ultimate authority for its application as if nothing else mattered. This may be why BAA's approach to G1 has been so casual and complacent. However, in its selective interpretation of the ATWP, BAA has lost sight of the fact that a great deal else matters – procedurally and substantively. The impact upon Hatfield Forest is a case in point.

6. The erroneous AQ data provided in the G1 environmental statement is further evidence that BAA failed to carry out a proper environmental assessment for the proposed development and, in this regard, we refer to Schedule 4 of the Town and Country Planning (Environmental Impact Assessment) Regulations 1999 (implementing Directive 85/337/EEC into UK law) which requires 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."

and to the DCLG's own guidelines ("Environmental Impact Assessment: Guide to Procedures") which state:

"... if the developer fails to provide enough information to complete the environmental statement, the application can be determined only by refusal."

Rebuttal of BAA arguments

7. We now turn to the five points made by BAA in its closing submission to the G1 Inquiry and repeated in the CMS Cameron McKenna letter to DCLG of 18 February 2008. We will deal with these in turn:

(i) There is neither a legal requirement, nor a policy objective, to achieve a concentration below 30 µg/m³ in Hatfield Forest.

8. With regard to the legal position, BAA asserts that the 30 µg/m³ annual mean limit value for NO_x does not apply to areas which lie within 5km of motorways and therefore does not apply to Hatfield Forest because such areas are defined as 'exclusion zones'.

9. Nowhere in the EU Air Quality Framework Directive (96/62/EC) or in the First Daughter Directive (99/30/EC) is the type of exclusion zone advanced by BAA expressly referred to and the existence of an exclusion zone cannot be implied. Given the lack of legislative support for the concept of an exclusion zone, we submit that the NO_x limit value of 30 µg/m³ applies to Hatfield Forest.

10. BAA's argument confuses the process by which ambient NO_x levels are to be established with the NO_x limit values for the protection of vegetation. The aim of the Framework Directive is set down in Article 1, inter alia, to *"define and establish objectives for ambient air quality in the Community designed to avoid, prevent or reduce harmful effects on human health and the environment as a whole"*, and to *"assess the ambient air quality in Member States on the basis of common methods and criteria"*.

11. The Framework Directive also sets out the mechanism by which compliance is to be assessed. Article 4(3) provides that when limit values are set, criteria and techniques shall be established for the measurement to be used, the location of sampling points and the minimum number of sampling points and Article 6 notes that *"once limit values ... have been set, ambient air quality shall be assessed throughout the territory of the Member States"*.

12. Article 4(1) of the Daughter Directive requires Member States to *"take the measures necessary to ensure that the concentrations of nitrogen dioxide, and where applicable, of oxides of nitrogen, in ambient air... do not exceed the limit values laid down in Section I of Annex II"*. Section 1 of Annex II states that *"the NO_x annual limit value for the protection of vegetation over a calendar year is 30 µg/m³, with no margin of tolerance, to be achieved by 19 July 2001."*³

13. Article 7(2) of the Daughter Directive states that the criteria for determining the location of sampling points for the measurement of, inter alia, oxides of nitrogen are those listed in Annex VI. Annex VI provides that sampling points targeted at the protection of the ecosystems or vegetation should be sited more than 5km from motorways. In summary, this is dealing with where representative measurement of ambient air quality should be taken, i.e. measurements which are unaffected by proximity to a motorway. There is no suggestion that the substantive limit values do not apply within 5km from a motorway.

14. Insofar as the legal position has not yet been tested it cannot be conclusively stated that our interpretation is correct or that BAA's interpretation is correct. But even if our interpretation were not to be upheld, the breach of the NO_x limit value in Hatfield Forest is unquestionably a material planning consideration. Indeed, were this not the case, we doubt that BAA would have gone to such lengths during the G1 Inquiry to deny that there would be a breach.

15. The emerging East of England RSS specifically identifies Hatfield Forest, in Policy ENV1, as one of the *"assets of particular regional significance of green infrastructure"* which should be *"...protected and managed to ensure that an improved and healthy environment is available for*

*the benefit of present and future communities."*² In addition, Policy ENV5 states that "*Ancient semi-natural woodland and other woodlands of acknowledged national or regional importance should be identified in local development documents **with a strong presumption against development** that would result in their loss or deterioration."*³ [our emphasis]

16. The Uttlesford Local Plan states that "*Sites of Special Scientific Interest and National Nature Reserves have the maximum degree of protection from development*"⁴ and this is reflected in policy ENV7 of the Local Plan.

17. PPS23 advises, in para 2, that:

" – any consideration of the quality of land, air or water and potential impacts arising from development, possibly leading to impacts on health, is capable of being a material planning consideration, in so far as it arises or may arise from or may affect any land use;

*– the planning system plays a key role in determining the location of development which may give rise to pollution, either directly or indirectly, and in ensuring that other uses and developments are not, as far as possible, affected by major existing or potential sources of pollution;"*⁵

PPS23 goes on to state, in Appendix A, that:

" – the possible impact of potentially polluting development (both direct and indirect) on land use, including effects on health, the natural environment or general amenity;

– the potential sensitivity of the area to adverse effects from pollution, in particular reflected in landscape, the quality of soil, air, and ground and surface waters, nature conservation (including Sites of Special Scientific Interest (SSSIs), National Parks, Areas of Outstanding Natural Beauty (AONBs), Special Areas of Conservation (SACs), Special Protection Areas (SPAs), Wetland of International Importance (RAMSAR sites), agricultural land quality, water supply (Source Protection Zones), archaeological designations and the need to protect natural resources; ... [and] ...

– the need for compliance with any statutory environmental quality standards or objectives (including the air quality objectives prescribed by the Air Quality Regulations 2000 and Amending Regulations 2002

*... may also be material in the consideration of individual planning applications where pollution considerations arise."*⁶

18. PPS23 also makes clear that the Government's Air Quality Strategy is a key document in informing the preparation of PPS23 and in setting the context for plan-making and development control in accordance with it.⁷ The Government's latest Air Quality Strategy, published by Defra in July 2007, states:

² Secretary of State's Proposed Changes to the Draft East of England Plan, Dec 2006, Policy ENV1, p152. [CD/76].

³ Ibid, Policy ENV7, p160.

⁴ Uttlesford Local Plan, adopted January 2005, para 5.15, [CD/57].

⁵ PPS23, 'Planning and Pollution Control', para 2, [CD/248].

⁶ Ibid, Appendix A.

⁷ Ibid, para 7.

*"The Air Quality Strategy sets objectives for the protection of vegetation and ecosystems based on a critical levels approach, i.e. concentrations of pollutants in air above which damage to sensitive plants may occur."*⁸

19. The Air Quality Strategy includes a target "to get 95% of SSSIs into a favourable condition by 2010".⁹ 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.

20. BAA now admits that Eastend Wood, also designated as an SSSI and located at the opposite side of the airport to Hatfield Forest, would also be subjected to an annual mean concentration of NO_x above the EU limit value if the G1 application were to be approved:

*"The updated contours would consequently lead to a different conclusion from that expressed in ... the Environmental Statement accompanying the G1 Application - to the effect that the 30µg/m³ NO_x contour is now predicted to extend into Hatfield Forest and Eastend Wood in both cases."*¹⁰

21. It would undermine the credibility of the Government's target of getting 95% of SSSIs in a favourable condition by 2010 if, within 12 months of setting that target, permission were granted for a development which would ensure that NO_x limit values could not be met at two important SSSIs in the vicinity of Stansted Airport.

(ii) NO_x concentrations in Hatfield Forest are steadily improving and will be lower by 2014/15 (with or without G1) than they are at present.

22. Given all the questions about the validity of the BAA data, on what basis can BAA be confident in its ability to project forward? BAA has not measured NO_x concentration levels in Hatfield Forest and such continuous measurement as has been carried out (by Uttlesford District Council at Shell House) did not commence until December 2006. The results that have so far been produced do not support BAA's hypothesis and we have seen no evidence which enables a reliable prediction to be made that NO_x levels would be lower in Hatfield Forest in 2014/15 than they are today if G1 were to be approved. However, if G1 were not approved we would indeed expect NO_x levels to be lower in Hatfield Forest in 2014/15 than they are today due to reducing emissions from road traffic. The predictive Defra background maps show steadily falling NO_x values to 2015 but this prediction takes no account of the impact of G1.

23. If BAA has based the assertion made in Point (ii) above upon its own modelling then it is even more questionable because of the doubts about the reliability of BAA's AQ modelling. The data which BAA provided in April 2008 to 'support' its assertion that the under-prediction of NO_x levels is entirely due to errors in the Defra background data does not demonstrate that at all and raises further questions about the robustness of BAA's analysis. We note that BAA has not discussed its adjustments to the background data with Defra even though the adjustments are very substantial (+c40% after discounting the assumed airport-related impacts).

24. Of the six monitoring sites relied upon by BAA for concluding that an adjustment to the Defra background data was necessary, four produced measured NO_x results higher than BAA's predicted concentrations (by an average of 41.0%) and two sites showed measured results lower than BAA's predicted concentrations (by an average of 10.3%).¹¹ We note that it was the four monitoring sites independently operated by local authorities which showed that BAA was

⁸ 'The Air Quality Strategy for England, Scotland, Wales and Northern Ireland', DEFRA, July 2007, Vol 2, para 300, [CD/427.2].

⁹ Ibid, para 301.

¹⁰ CMS Cameron McKenna letter to DCLG, 18 February 2008.

¹¹ Based on data provided by BAA in Table 2(b) of the attachment to CMS Cameron McKenna letter of 3 April 2008.

under-predicting (by 41.0%) and it was the two sites operated by BAA which showed BAA was over-predicting (by 10.3%). It is also worth noting that the location of the two BAA analysers (one located close to the airport perimeter on the north side of the runway and the other located close to the airport perimeter on the south side of the runway and separated from the runway by the terminal buildings¹²) could have effects on dispersion.

25. Taking account of the uncertainties in modelling, 10.3% is not a significant variance. The variance of 41.0% at the independent monitoring sites is however significant and lends support to the evidence we gave to the G1 Inquiry about the risk of BAA's model under-predicting the AQ impacts of the proposed development, although perhaps not within the airport perimeter. One of the difficulties in drawing a firm conclusion here is BAA's failure to carry out adequate monitoring for model verification purposes.

26. We acknowledge that the available evidence is not conclusive as to the balance of error between the background data and the modelled airport-related impacts. BAA's model could be over-predicting concentrations in areas very close to the source whilst under-predicting them at a greater distance, for example, by under-predicting plume dispersion or road traffic emissions. However, the evidence provided does not support BAA's conclusion that its model uniformly over-predicts.

27. Quite how BAA has arrived at the adjustments that it has made to NO_x levels is puzzling in many respects. The information provided in April 2008 in response to our request for further explanation raises more questions than it answers. For example, the adjustments to the EH3 data between Tables 2(b) and 2(c) are out of all proportion to the adjustments made to the other modelled data. It appears to be a case of BAA trying to reconcile the irreconcilable.

28. The serious shortcomings in BAA's modelling which became apparent at the G1 Inquiry include:

- BAA was unable to produce a year's monitoring and, for verification purposes, relied upon results from just one continuous analyser for a period of seven months and from four diffusion tubes which BAA acknowledged could be subject to more than 30% error;
- The Technical Report produced as part of the Project for the Sustainable Development of Heathrow ('PSDH') considered it essential that modelling should be verified against a set of [several] real time monitoring points using continuous analysers for at least a year in order to obtain a reliable annual mean. The PSDH Report identified many inaccuracies in the model used by BAA and emphasised the importance of an accurate emissions inventory for aircraft operations, airside vehicles and landside traffic and the inclusion of allowances for engine deterioration, speed of aircraft, APU use, use of reverse thrust, accurate times-in-mode and engine testing. The Netcen AQ modelling report for the G1 proposal¹³ comments upon the absence of reliable records at Stansted in relation to many of these emissions-producing activities, resulting in the need for numerous broad assumptions and estimates;
- BAA had assumed there would be a significant increase in new aircraft types with reduced fuel use and therefore reduced emissions. However in BAA's forecasting evidence it was argued that Ryanair and Easyjet (who account for more than 80% of Stansted's traffic) had recently renewed their fleets and were unlikely to do so again during the period between now and 2015;

¹² G2 Environmental Statement, Vol 4: Air Quality, BAA, March 2008, App 1, Fig 2.

¹³ 'Stansted Air Quality beyond 25mppa: Modelling Test Report', Underwood et al (Netcen for BAA), Aug 2005 [CD/278].

- BAA's use of vehicle occupancy ratios some 30% higher than those published by the CAA must result in road traffic emissions being significantly underestimated. The effect of this understatement is that BAA's model may predict very little change in road traffic emissions of NO_x (because vehicles are gradually becoming cleaner). However, the reality is that the increase in traffic (7%+ per annum to 2014/15 for airport-related and non-airport related combined¹⁴) will outweigh the reducing emissions footprint per vehicle. In addition, BAA's predicted trebling of cargo tonnage at Stansted by 2014/15 must result in a disproportionate increase in HGV vehicles whose NO_x emissions are said to be, on average, between 10 and 15 times as much as the average car;¹⁵
- Lack of transparency in relation to the basis for the emissions inventory, the input data in general, the model algorithms and model sensitivities.

29. Having told the G1 Inquiry that the NO_x limit value would not be breached in Hatfield Forest in 2014 in either in the 25mppa case or the 35mppa case, BAA now states that the NO_x limit value would be breached in 2014 in both cases. Leaving aside the reasons for the breach, there should be no disagreement that, provided the airport does not expand beyond 25mppa, there would be a steady reduction in NO_x levels in Hatfield Forest because of the downward trend in road traffic emissions. This would result in NO_x levels in Hatfield Forest returning to within the limit value. Whether this would be achieved by 2014 or slightly sooner or later cannot reliably be predicted without more monitoring work. What is clear however is that approval of G1 would at least significantly delay, and possibly prevent for all time¹⁶, compliance with the 30 µg/m³ NO_x limit value in Hatfield Forest.

30. PPS23 makes clear that the relevant consideration is the **combination** of background levels of pollution and the additional effects arising from the development:

*"Development control decisions can have a significant effect on the environment, in some cases not only locally but also over considerable distances. LPAs must be satisfied that planning permission can be granted on land use grounds taking full account of environmental impacts ... [and] ... to ensure that in the case of potentially polluting developments ... the effects of existing sources of pollution in and around the site are not such that the cumulative effects of pollution when the proposed development is added would make that development unacceptable."*¹⁷

31. BAA has not provided the current baseline but if this were to show that the NO_x limit value is already being breached in Hatfield Forest urgent action would be needed to address this and it would be wholly inappropriate to approve a development which would prolong or exacerbate the breach.

32. The BAA AQ model is under-predicting partly due to shortcomings in the model identified by the PSDH Technical Report but above all due to BAA's tendentious approach to the input data (seeking to minimise airport-related impacts) and its casual approach to model verification.

(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 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.

¹⁴ Based on HA traffic forecasts for the East of England, BAA's G1 road mode share projection ('enhanced case') and CAA vehicle occupancy data.

¹⁵ PSDH Surface Access Report, BAA, Nov 2007, para 153.

¹⁶ Approval of G1 would be followed by a request for approval of G2 and we note that the AQ projections for G2 (BAA Environmental Statement Vol 4, App1, Fig 46) predict that the NO_x limit value would be exceeded in Hatfield Forest in 2030 if G2 were approved.

¹⁷ PPS23, para 15, p6. [CD/248].

33. Again, BAA has produced no reliable evidence to support its view that the proposed G1 development would make very little difference to NO_x concentrations in Hatfield Forest or that NO_x concentration levels in Hatfield Forest will decline even if the G1 proposal were permitted. It beggars belief that BAA should claim that this is not a controversial point. The representations made to the G1 Public Inquiry by Uttlesford District Council, the National Trust, SSE and many members of the public are testimony to the fact that the difference the proposed development would make to concentrations of NO_x within Hatfield Forest is an extremely controversial point.

(iv) A concentration of NO_x above 30 µg/m³ 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.

34. It is not for objectors to prove that there would be a likelihood of harm if the 30 µg/m³ limit value for NO_x is breached. Having admitted that the limit value would be breached, the onus is upon BAA to demonstrate that, despite the breach, there would be no likelihood of harm. BAA has provided no evidence to that effect. Indeed, BAA accepted, at the G1 Inquiry, that 30 µg/m³ was an appropriate limit for NO_x, for example, in the following exchange during the cross-examination of Mr Pratt by Counsel for UDC:

"Q. So we may presume that the level has been set correctly by the competent authorities, may we, for the purposes of this exercise?"

A. I assume we must, yes.

Q. And it is certainly not part of your case that it is necessary for UDC to prove that harm will occur by the exceedence of this value in this case, is it? That's not part of your case? Again I have looked at your proof of rebuttal very carefully, Mr Pratt.

*A. I think that's correct."*¹⁸

35. The 30 µg/m³ limit value for NO_x was set in the light of extensive scientific evidence and consultations with EU Member States over a period of many years. BAA's argument here is nothing more than an attempt to shift the goal posts because it has now found them to be inconveniently located.

36. We refer to the following commitment in the Sustainability Report for the Stansted G2 second runway ('G2') planning application:

*"BAA recognises its role in contributing to sustainable development and the company's approach to sustainable development forms part of its corporate responsibility policy. Specifically BAA is committed to ...minimising negative impacts and working with others to help ensure that aviation plays its role in **respecting scientifically agreed environmental limits;**"*¹⁹ [our emphasis]

37. We refer also to the Government's sustainable development strategy as set down in the 'Securing the Future' White Paper. *"Living within environmental limits"* and *"Using sound science responsibly"* are listed as two of the strategy's five guiding principles and the former is defined as:

¹⁸ Cross-examination of Mr Malcolm Pratt, G1 Transcript, 5 July 2007, p.62.

¹⁹ G2 Sustainability Report, ARUP on behalf of BAA, March 2008, para 3.2.2.

*"Respecting the limits of the planet's environment, resources and biodiversity – to improve our environment and ensure that the natural resources needed for life are unimpaired and remain so for future generations."*²⁰

The importance of respecting environmental limits is repeated in PPS23 which also lists "applying the precautionary principle" and "using scientific knowledge" as principles which are "particularly relevant to the consideration of planning and pollution control".²¹

(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.

38. The points we have made in response to (iv) above apply equally here. It is not for other parties to second guess the NO_x limit value for the protection of vegetation as set down in the First Daughter Directive.²² We would however point out that Dr Nicholas Haycock, for the National Trust, presented extensive expert evidence to the Inquiry on the risks to the ecology of Hatfield Forest.²³ BAA's claim that no party called any evidence on this point should also be viewed in the context of BAA repeatedly insisting that the 30 µg/m³ limit value for NO_x would not be breached.

Concluding points

39. In the light of the new AQ data provided by BAA in February 2008, it is now clear that the statutory limit value for NO_x for vegetation laid down by the Air Quality Standards Regulations 2007²⁴ and the First Daughter Directive²⁵ would be breached if BAA's planning application were to be approved. These breaches would occur in both Hatfield Forest and Eastend Wood at 35mppa and would create the likelihood of irreversible damage to the ecology of these SSSIs.

40. Hatfield Forest is of national and international significance as a rare surviving example of a medieval royal hunting forest. The historic provenance of Hatfield Forest is evidenced by the fact that it was recorded in the Domesday Book and was owned by King Harold before passing to William the Conqueror. It is designated as a National Nature Reserve as well as an SSSI. The unique nature of Hatfield Forest with its irreplaceable ancient trees and ecosystems entitles it to a very high level of protection, as does its important amenity value as the largest public open space in North Essex.

41. BAA's attempt to place the entire blame for the modelling errors on the Defra background data will come as no surprise to those familiar with BAA's whole approach to the G1 planning application. BAA has sought throughout to understate the environmental impacts of its proposed development by making optimistic and unrealistic assumptions and by manipulating data in its attempts to portray the environmental impacts of its G1 proposal as minimal.

42. In addition, BAA has displayed a lamentable lack of transparency in relation to the input assumptions it has used, making it difficult for others to test the input assumptions because of the limited information provided. In one notable instance, when SSE were able to forensically test the accuracy of BAA input data by interrogating the source material – in respect of vehicle occupancy where BAA declared its source to be CAA data – there was a difference of 30% between the assumption used by BAA and the CAA data. We do not shrink from stating the

²⁰ 'Securing the Future: The UK Government Sustainable Development Strategy', Defra, March 2005, para 4, p16. [CD/91].

²¹ PPS23, para 5, p2. [CD/248].

²² Council Directive 1999/30/EC. [CD/349].

²³ Proof of Evidence NT/2/a.

²⁴ [CD/349] Air Quality Standards Regulations 2007, Statutory Instruments 2007 No. 64. [CD/190].

²⁵ Council Directive 1999/30/EC. [CD/349].

implications of that. It is a matter of trust; and in this case also BAA has demonstrated that its modelling of the AQ impacts of its proposed G1 development is untrustworthy.

43. As we stated earlier, the information provided by BAA in April 2008 in response to our request for further explanation raises more questions than it answers. It is however very clear that BAA has still failed to provide any proper evidence to support its hypothesis that its inability to reconcile actual NO_x measurements with the results of its AQ modelling is entirely due to understatement of the Defra background levels for NO_x.

44. In our view the Secretaries of State should be persuaded by these arguments. If not, however, we would wish to have a proper opportunity to test BAA's revised evidence in the manner normally provided, namely, via cross-examination before an independent inspector of BAA's expert witness(es) and by bringing forward our own expert witness(es) on this subject.

45. Finally we would like to draw the attention of the Secretaries of State to the fact that a similar situation to the AQ matter in hand has now come to light in relation to the G1 surface access projections. The Transport Assessment submitted by BAA on 11 March 2008 in support of its G2 application²⁶ contains 35mppa 'baseline' projections which are materially different from the equivalent projections provided by BAA to the G1 Inquiry. For example, there is a significant increase in the traffic forecast for the already congested London-Stansted transport corridor.

46. The Secretaries of State will be aware that surface access forecasting was an extremely contentious issue at the G1 Inquiry not least because other parties considered that BAA had materially understated the impacts on the London-Stansted transport corridor. BAA vehemently denied any understatement at the time²⁷ but now appears to admit to a material understatement.

47. Before commenting further on this issue, we consider it appropriate to allow BAA an opportunity to explain the reasons for the amendments to its surface access projections and their implications. We also seek advice from the Secretaries of State as to how this new matter should be handled.

Yours sincerely



Peter Sanders
Chairman

²⁶ G2 Environmental Statement, Vol 14: Transport Assessment, BAA, March 2008.

²⁷ Cross examination of Mr Maiden, Transcript pp141-148, 22 June 2007 and cross examination of Mr Forsheew, Transcript pp189-193.