



[www.stopstanstedexpansion.com](http://www.stopstanstedexpansion.com)  
email: [info@stopstanstedexpansion.com](mailto:info@stopstanstedexpansion.com)

P.O. Box 311  
Takeley  
Bishops Stortford  
Herts. CM22 6PY  
Tel: 01279 870558  
Fax: 01279 870786

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by email and post

Richard Watson Esq  
Planning Central Casework Division  
Department for Communities and Local Government  
Zone 1/J1 Eland House  
Bressenden Place  
London SW1E 5DU

John Faulkner Esq  
International Networks & Environment Division  
Department for Transport  
1/18 Great Minster House  
76 Marsham Street  
London SW1P 4DR

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.**

1. We refer to your letter of 23 April 2008 inviting further comments on the representations made to you on matters regarding the above planning application. In the interests of brevity, we focus our comments on responding to the points made by CMS Cameron McKenna ('CMK') on behalf of BAA in their letter of 10 April 2008.
2. The CMK letter of 10 April is largely a reiteration of the arguments advanced on behalf of BAA in the CMK letter of 18 February. Insofar as we have dealt with these points in earlier correspondence we will avoid repetition here. However we stress that this response should be read in conjunction with our letters of 25 February, 13 March and 18 April 2008.
3. We note that only one of the points made in our letter of 25 February has been challenged by BAA, namely where we stated:

*"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, 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 NOx would not be exceeded in either Hatfield Forest or Eastend Wood."*

Patron: Terry Waite CBE

Stop Stansted Expansion is a working group of the North West Essex and East Herts Preservation Association

4. The five points which BAA presents in 'rebuttal' of our statement are not in fact rebuttal points at all but either tangential points which seek to deflect attention from the underlying issue or repetitious points which are largely dealt with in our letter of 18 April. We would however make the following additional comments:

4.1 For the purposes of challenging our point, BAA relies upon its Closing Submissions rather than upon the actual evidence presented at the Inquiry. Closing Submissions are not of course a reliable evidence source in themselves because – as in this case (and not unusually) – they were made on the last day of the Inquiry, were not subject to cross-examination and the very nature of Closing Submissions is that they provide the parties with an opportunity to present their arguments in the best possible light.

4.2 A far more reliable evidential source is the transcript of the evidence given to the Public Inquiry by BAA's Air Quality ('AQ') witness, Mr Malcolm Pratt, and that could hardly be more clear, for example: [our emphasis]

*"The information in the assessment shows that all the health-based objectives would be achieved and **the NO<sub>x</sub> limit value for vegetation protection is not exceeded within Hatfield Forest or East End Wood.**"*<sup>1</sup>

and, during cross-examination by Counsel for Uttlesford District Council ('UDC'):

*"Q. What is clear, Mr Pratt, is there is a national and international consensus that for the protection of eco-systems and vegetation in particular, concentrations of NO<sub>x</sub> in excess of 30 micrograms per cubic metre expressed as an annual mean should be avoided?"*

*A. I presume that's the basis of setting the value.*

*Q. Put shortly, and we can look at your proof in a moment, **30 micrograms per cubic metre has been established as the critical level or limit value for NO<sub>x</sub> with respect to impacts on vegetation?***

*A. **That's my reading of the documents, yes.**"*<sup>2</sup>

and:

*"Q. So we may presume that the level [the NO<sub>x</sub> critical limit value] 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.**"*<sup>3</sup>

4.3 Nowhere in BAA's evidence to the Inquiry was the possibility of a breach of the NO<sub>x</sub> limit addressed nor was it argued by BAA at any stage other than in its Closing Submissions that a breach of the limit would not necessarily be harmful. BAA's position at the Inquiry was based on its confident assertion that the NO<sub>x</sub> limit value would not be breached, for example, in the closing paragraph of Mr Pratt's proof of evidence: [our emphasis]

*"The modelling concentrations are clearly set out in the ES (CD/6) and compared directly with the relevant objectives in both the 25mppa and 35mppa cases. The difference between the cases is also shown. The information in the assessment*

<sup>1</sup> Cross-examination of Mr Malcolm Pratt, G1 Transcripts (CD/700), 5 July 2007, p.55.

<sup>2</sup> Ibid, p.59-60.

<sup>3</sup> Ibid, p.62.

***shows that all the health based objectives would be achieved and the NO<sub>x</sub> limit value for vegetation protection is not exceeded within Hatfield Forest or Eastend Wood.***<sup>4</sup>

- 4.4 BAA now displays the same level of confidence in its new AQ evidence as it displayed in relation to its original AQ evidence and currently seeks to persuade the Secretaries of State that the errors in its predictions are entirely down to underestimation of Defra background levels. We demonstrated in our letter of 18 April that the evidence simply does not support this new BAA hypothesis and in fact BAA summarily dismissed this hypothesis at the Public Inquiry, for example:

***"There is no proper basis for arguing that the contours should be adjusted because of a possible underestimation of background levels. As we shall go on to explain, the measured concentrations at Shell House for 2007 are atypical when compared to other sites in the area, and the causes for this difference are unexplained. It is therefore not appropriate to use the data from that site to establish or adjust the background levels.***

***In any event, if the suggested difference were due to an underestimation of background levels, the additional figure (whatever it might be) would not just need to be added to the contour affecting Hatfield Forest – it would need to be added everywhere. There is no possible justification on the evidence for making that radical adjustment.***<sup>5</sup>

BAA has of course now made that radical adjustment.

5. BAA's most recent adjustment to predicted NO<sub>x</sub> levels in the vicinity of the airport should also be viewed in the context of the dramatic adjustment that BAA made to its modelling assumptions between 2001 (for the 15mppa+ planning application) and 2006 (for the G1 application). During cross-examination by Counsel for UDC, Mr Pratt confirmed that the G1 AQ model was predicting only half the NO<sub>x</sub> load for the same 25mppa scenario compared to the predictions of BAA's 2001 modelling. In addition, at one of the most important monitoring sites, High House, Takeley, BAA's NO<sub>x</sub> predictions had reduced by a factor of four between 2001 and 2006 for the same 25mppa scenario.<sup>6</sup>
6. BAA asserts that the revised AQ modelling results provided in February 2008 are robust. In considering this assertion, the Secretaries of State should be mindful that BAA made the same claim for the very different modelling results it presented to the G1 Inquiry last year and for the modelling results it presented to UDC in 2001 in support of its 15mppa+ planning application. We respectfully suggest that the dramatic variation in these three sets of modelling results over a relatively short space of time, together with the inadequacy of BAA's AQ monitoring, should make the Secretaries of State very wary about accepting BAA's latest modelling results and its explanation that understated background levels are the sole reason for erroneous AQ data being presented to the G1 Public Inquiry.
7. BAA's belated and superficial response to the submissions we made on 18 February highlights the unsatisfactory situation that we find ourselves in, namely that we are being limited to an exchange of correspondence rather than being afforded the opportunity to expose the flaws and inconsistencies in BAA's revised AQ evidence through cross-examination. We would regard it as wholly unfair if BAA were to be rewarded for providing the G1 Inquiry with erroneous AQ information by being excused from cross-examination on its revised evidence.

<sup>4</sup> Rebuttal Summary Proof of Evidence by Mr Malcolm Pratt (BAA/4/E), para 32.

<sup>5</sup> BAA Closing Submissions, para 616(iv)a

<sup>6</sup> Cross-examination of Mr Malcolm Pratt, G1 Transcript (CD/700), 5 July 2007, p.73-74.

8. We expect the Secretaries of State to be persuaded by the arguments we have submitted in this and our previous responses. If, however, they are not yet persuaded, we reiterate the request made in our letter of 18 April for a proper opportunity to test BAA's revised evidence in the manner normally provided, namely, via cross-examination before an independent inspector.
9. Finally, we refer again to the fact that the Transport Assessment submitted by BAA on 11 March 2008 in support of its G2 application<sup>7</sup> contains 35mppa 'baseline' projections which are materially different from the equivalent projections provided by BAA to the G1 Inquiry. As stated in our letter of 18 April, we await advice from the Secretaries of State as to how this matter should be handled.

Yours sincerely

A handwritten signature in cursive script that reads "Peter Sanders". The signature is written in black ink and is positioned below the text "Yours sincerely".

Peter Sanders  
Chairman

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<sup>7</sup> G2 Environmental Statement, Vol 14: Transport Assessment, BAA, March 2008.