SSE/34

TOWN AND COUNTRY PLANNING ACT 1990
PLANNING AND COMPULSORY PURCHASE ACT 2004

APPEAL BY BAA LTD AND STANSTED AIRPORT LIMITED AGAINST THE REFUSAL BY UTTLESFORD DISTRICT COUNCIL OF PLANNING PERMISSION FOR DEVELOPMENT PERMITTED UNDER PLANNING PERMISSION UTT/1000/01/OP WITHOUT COMPLYING WITH CONDITION MPPA1 AND VARYING CONDITION ATM1

LOCAL AUTHORITY REF: UTT/0717/06/FUL
PLANNING INSPECTORATE REF: APP/C1570/A/06/2032278

OPENING SUBMISSIONS ON BEHALF OF SSE

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Introduction

1. In 1983, at the last Stansted Inquiry, Inspector Graham Eyre QC was considering an application then by BAA for a passenger throughput of 15 million passengers per annum (mppa). He heard from many worried residents concerned that granting permission for that 15mppa would only lead to an application in the future for yet more. It was a concern that Graham Eyre addressed in emphatic terms[1]:

> *"I would not be debasing the currency if I express my judgement that the development of an airport at Stansted, with a capacity in excess of 25mppa and requiring the construction and operation of a second runway and all the structural and operational paraphernalia of a modern international airport as we know the animal in 1984, would constitute nothing less than a catastrophe in environmental terms. … I take so strong a view on this aspect that if I believed, as many do, that a grant of planning permission at Stansted to a capacity of 15mppa would inexorably lead to unlimited and unidentifiable airport development in the future of an unknown capacity, I would, without hesitation, unequivocally recommend the rejection of BAA's current application…"*

2. He recommended, accordingly, that the application should be allowed only if the Government guaranteed that throughput would never go beyond 25 million and that there would never be a second runway[2].

3. And here we are, just as those concerned residents predicted twenty-four years ago, at another Stansted Inquiry with the Appellant asking for the removal of the very condition which limited the passenger throughput at Stansted to 25mppa[3], asking also to increase the maximum air transport movements to 264,000,[4] asking in short for permission to cross Graham Eyre's environmental Rubicon and cause the very environmental catastrophe against which he so vehemently warned. Further, this Inquiry proceeds in the shadow of the forthcoming "Generation 2" application for a second runway at Stansted. Little wonder that the local community view the appeal proposals with alarm.

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[1] Report of Inspector Graham Eyre QC, Chapter 25, para.12.12 **[CD/31.1]**
[2] Report of Inspector Graham Eyre QC, Chapter 50, para 9.7 **[CD/31.1]**.
[3] Condition MPPA1 of planning permission reference UTT/1000/01/OP **[CD/30]**.
[4] Namely a variation of condition ATM1 of planning permission reference UTT/1000/01/OP **[CD/30]**.

4. And yet the Appellant seeks from the outset to diminish the role and remit of this Inquiry into that alarming proposal, relying in turn on the Air Transport White Paper 2003, *The Future of Air Transport*[5], ("ATWP"); then the planning permission it obtained in May 2003 ("the 2003 planning permission")[6]; and, finally, its offer to accept a condition capping passenger movements at 35mppa.

5. Brandishing the ATWP, the Appellant tells us that the Government has already published its policy framework for aviation and stated that the first priority is to make the "best use" of the existing runway at Stansted[7], and by implication much greater use. That being the case, Mr Rhodes tells us, it is not the place of this Inquiry to question the ATWP's policy approach, one which will inevitably lead to additional impacts[8]. Moreover, the Government has, he states, already considered the noise of increased movements at Stansted when calling for its expanded use[9]. And even if adverse harm will be caused, whether by noise or otherwise, it is not this Inquiry's function, so he says, to question either the "need" for increased aviation capacity or the assertion that increased aviation will bring "significant benefits"[10]. So it is that the Appellant does not deign to adduce a single word of direct economic evidence to support its contention that the appeal proposal would be economically justified. The Government has, it claims, already determined all of the determining issues.

6. And if the matters of concern have not already been settled by Government, they have, so the Appellant claims, been settled by the 2003 planning permission, one which set the thresholds of local environmental acceptability in terms of air noise and air quality, below which everything will be permissible.

7. And, finally, we can find re-assurance in all of these regards, the Appellant tells us, in that even though it has applied to remove the limitation on the number of passenger movements per annum, it now volunteers a cap by condition at 35

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5 **[CD/87]**.
6 Planning permission reference UTT/1000/01/OP) **[CD/30]**.
7 **[CD/87]** at page 13.
8 Rhodes **[BAA/1/A]** at para 9.9.
9 Rhodes **[BAA/1/A]** at para 9.10-12.
10 Rhodes **[BAA/1/A]** at para 8.1.

mppa[11], so that any environmental impact beyond that figure need not even be considered.

8. SSE will invite you to find, however, that in all of the above regards, the Appellants' approach to this Inquiry is simply wrong.

9. First, the ATWP does not pre-determine this planning appeal, nor settle any of the issues to which the application gives rise. As we shall shortly see, the Secretary of State has expressly confirmed that they are all at large, to be determined at this Inquiry on the evidence that is called here.

10. Second, the 2003 permission does not operate to create some sort of environmental headroom, legitimising unnecessary harm in the future. Government policy is to make the best use of science, not to maintain a despoiled environment but to improve that environment. What was acceptable in the past, balancing need against harm on old technologies, may not be acceptable in the future, as advances in technology shift that balance fundamentally. The prospect in particular of fleets of cleaner, quieter planes in the future, should lead to a cleaner, quieter environment, not necessarily to more flights - whether pandering to an unconstrained demand or provoking such demand by unnecessarily increasing supply.

11. And the offer of a conditional cap on passenger movements is no more than a ruse to prevent the cumulative environmental impacts of the Appellant's real proposals from being assessed, in flagrant denial of the requirements of Regulation 3 of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. Indeed, that offer – cynically made - typifies the incrementalist approach to development at Stansted which has so bedevilled recent planning history.

[11] Letter from the Appellant to the Planning Inspectorate dated 20 March 2007. .

12. Forgive me, then, if I spend most of the few minutes available to me in these brief opening remarks, identifying for you the proper approach to take to this important application, and especially the ATWP.

The Proper Approach

13. This may be a Planning Inquiry of rare importance, but it is nonetheless just a Planning Inquiry, subject to the ordinary planning laws and processes. And as such, this application for planning permission must be determined in the ordinary way: in accordance with the Development Plan unless material considerations indicate otherwise[12]. The existence of the ATWP does not mean that the statutory test can in any way be side-stepped.

14. The Development Plan for present purposes is comprised by RPG 9[13], the Essex Structure Plan[14] and the Uttlesford Local Plan[15]. It does not include the ATWP which only enjoys the status of being a "material consideration", alongside all other "material considerations", including subsequently published statements of Government policy in related areas, especially on sustainability and global warming. Notably, Sullivan J's expectation in *R (Essex County Council) v. Secretary of State for Transport* [2005] EWHC 20[16] that the incorporation of the policies contained in the ATWP into the relevant development plan would enhance the weight to be accorded to them has not come to pass.[17]

15. Moreover, not one of the documents which make up the Development Plan encourages an enlarged Stansted. Rather, they require any such proposal to be considered against the concerns set out in environmental protection policies.

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[12] s.38(6) of the Planning and Compulsory Purchase Act 2004 **[CD/301]**.
[13] **[CD/66]**.
[14] **[CD/59]**.
[15] **[CD/57]**.
[16] **[CD/342]**.
[17] **[CD/342]** at para 53.

16. We point out, in particular, Policy BIW 9 of the Structure Plan[18], whereby any proposal for new development at Stansted is to be determined by reference to the impact of the proposal upon health, noise, environmental conditions, visual and residential amenity, the adequacy of arrangements for surface access, and the economic benefits of that proposal to local and regional businesses.

17. It is in the light of the plan-led approach to decision-making which is enshrined by legislation, that the ATWP itself acknowledges that it "does not itself authorise (or preclude) any particular development." [19] Rather, the proper role of the ATWP in decision-making is as stated in the Witness Statement served on behalf of the Secretary of State in *R (Essex County Council) v. Secretary of State for Transport*, confirming as follows[20]:

> *"It is important to recognise that statements of policy (whether at the national or regional level) cannot pre-empt a decision on an application for planning permission… The establishment of need for a type of development in a policy statement does not mean that an Inspector, and ultimately the decision-maker, will be precluded from considering the need for the proposed development…"*

18. Indeed, in *R (Essex County Council) v. Secretary of State for Transport*, Counsel on behalf of the Secretary of State expressly submitted that the ATWP did not authorise any development; that it merely informed and guided the consideration of planning applications; and that it was both possible and legitimate to argue at any subsequent Inquiry in respect of Stansted that the adverse environmental impacts were such that planning permission should be refused notwithstanding that this would frustrate national policy[21].

19. And that submission was rightly made. If it were otherwise, there would be a fundamental breach of the requirement not to grant planning permission for an application requiring an Environmental Impact Assessment unless all of the required environmental information has been taken into consideration[22], the

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[18] **[CD/59]**. Whilst this policy has not been saved, it provides a useful set of criteria against which to judge the appeal proposal.
[19] **[CD 87]** at para 1.4.
[20] **[CD/342]** at para 56.
[21] **[CD/342]** at paras 223-4
[22] Regulation 3 of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 **[CD/309]**.

direct, indirect, secondary and cumulative impacts of the proposal, including all of the impacts on the environment which would result from incremental changes brought about by past, present or reasonably foreseeable actions in the future[23]. The requirement of a full and proper EIA is not only essential if a decision-maker is to take a properly informed decision as to the merits of the application, vitally it also permits members of the public an opportunity to express an opinion on the environmental issues.

20. The approach which SSE therefore invite you to take is not a maverick one, it is prescribed by Section 38(6) of the Planning and Compulsory Purchase Act 2004, by the ATWP (as expressly confirmed to the High Court on behalf of the Secretary of State), and by the EIA Regulations: *to decide this application in accordance with the Development Plan unless material considerations indicate otherwise; and to do so after making detailed assessment of the direct, indirect, secondary and cumulative environmental impacts of the proposal, balancing those impacts against the evidence that you hear on the economic need for the proposal and /or the economic benefits it might generate.*

21. If the evidence indicates that substantial harm will be caused to the environmental interests of acknowledged importance protected by the Development Plan, then permission should only be granted if other material considerations so indicate; and if - in particular - there is cogent and compelling evidence to support the economic case which is assumed by the ATWP. If, however, the economic evidence shows that there is no need to inflict that environmental harm, and that such harm is not outweighed by economic benefits, then planning permission should be refused even if it does frustrate *one* aspect of stated Government policy – the asserted priority of making more use of the existing runway at Stansted.

[23] Paragraph 4 of Schedule 4 to the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 **[CD/309]**.

The Totality of Government Policy

21. I emphasise, however, the word "one". For if the conclusion of this Inquiry was that there was no economic case for inflicting here the additional environmental harm which this application contemplates, then that would not mean that *overall* Government policy would be frustrated. Rather, and taken as a totality, it would be fulfilled.

22. In particular, the ATWP calls for a "balanced and measured approach" [24] to the future of air transport, one which makes "best use of existing airports where possible"[25]. However, a "balanced and measured approach" requires that the impacts of airports on those who live nearby and on the natural environment are reduced and minimised; and that the rights and interests of those affected by airport development are respected. Likewise, the policy imperative to make the "best use of existing runways where possible" does not, and cannot, amount to an overriding policy to encourage or permit airports to develop to their full physical potential whatever the environmental, sustainability and planning consequences.

23. To argue otherwise would run counter to the express assertion in the ATWP that it did not authorise development[26]. It would run counter also to the evidence and submissions made on the Secretary of State's behalf in the *Essex County Council* case[27]. And it would run counter to legion other statements of Government policy, all of which are also "material considerations" to be taken into account alongside the ATWP.

23. The ATWP cannot, after all, be read alone and in isolation of other pronouncements of Government policy, especially *subsequent* statements of Government policy - ones which *post-date* the publication of the ATWP in December 2003. Indeed, it is only if we read the ATWP in the light of those other statements of Government policy that we can faithfully apply Government

[24] **[CD 87]** at para 2.18.
[25] **[CD 87]** at para 2.18.
[26] **[CD 87]** at para 1.4.
[27] **[CD/342]**.

policy as a whole and upon its most up-to-date basis, constituting - as it must do - a coherent and consistent policy framework.

25. It is imperative, in particular, that this Inquiry takes fully on board the most recent statements of Government policy on sustainability in general and on climate change in particular, proclaimed by Government to be the biggest single issue we now face[28]. There has, after all, been a dramatic shift in the Government's appreciation of the threat posed by global warming and carbon emissions since the publication of the ATWP in 2003, which in certain regards reads now as from another age - *before* the Government's Chief Scientist, Sir David King, advised the threat from climate change to be "far more serious than that of terrorism"[29]; and *before* the Prime Minister, Tony Blair, asserted climate challenge is "the world's greatest environmental challenge"[30].

26. Indeed, the new appreciation of the threat posed by climate change is reflected in all of the following actions taken *after* the publication of the ATWP in December 2003: the publication in February 2005 of *PPS1 paragraph 13*, with the effect that Local Planning Authorities need to promulgate and apply policies which drive down the need to use energy and so reduce emissions[31]; the publication in March 2005 of the Government's *Sustainable Development Strategy*, starkly warning in respect of climate change that wrong choices now would prejudice future generations[32]; the publication in October 2006 of the *Stern Review on the Economics of Climate Change*, recognising that henceforth international aviation must be included in any meaningful climate change policy and action; the publication thereafter,[33] and in December 2006, of the draft *Planning and Climate Change Supplement to PPS1*, setting down the target of reducing carbon emissions by 60% by 2050[34]; and culminating in the publication March 2007 of the *Climate Change Bill 2007*, a flagship of new

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[28] *The Future of Air Transport Progress Report* **[CD/88]** at para 2.1.
[29] "Climate Change Science: Adapt, Mitigate, or Ignore?" (2004) 303 *Science* 176-177.
[30] Speech presented on 14 September 2004 at the Exeter Conference, Avoiding Dangerous Climate Change, available at www.number-10.gov.uk.
[31] **[CD/92]**.
[32] **[CD/91]**.
[33] **[CD/157]**.
[34] **[CD/93]**.

Governmental policy in this crucial and challenging area. The ATWP must, therefore, be read in light of these subsequent statements of Government policy.

27. The material question is how it is possible to do so, when it is openly acknowledged that aviation is a major contributor to global warming. The answer lies in the words of the ATWP itself, where it calls for a "balanced and measured approach" to the future of air transport, one which makes "best use", not merely the "maximum use", of existing airports.

28. In short, when weighing that "balance" and determining what is for the "best", very considerable weight must now be given to the new policy imperative of bearing down on carbon emissions in order to address the signal challenge of climate change, far more so than can conceivably have been contemplated in December 2003. That too must be placed on the scales, alongside all of the other environmental impacts, and weighed against the evidence that you hear on economic need and benefit.

29. We invite you in particular, to reject the two arguments advanced in Mr Rhodes' evidence[35] for ignoring the carbon emissions of the Appellant's proposed increase in aviation: first, that climate change is not an issue to be addressed in individual planning applications because the effect on global temperatures of any individual proposal, even the thousands of additional flights that the Appellant proposes, would be insignificant; and second, that aviation emissions are properly to be addressed by other means in any event, the introduction of aviation into international carbon emissions trading as contemplated by *The Future of Air Transport Progress Report*[36].

30. So far as the first argument is concerned, Mr Rhodes is simply wrong. The carbon emissions of any proposed development is manifestly a material planning consideration to be taken into account when deciding whether or not it should be permitted. Moreover, it is especially so in an application such as this, whereby permission is sought to increase aviation - known to be a major

[35] Rhodes **[BAA/1/A]** at paras 14.8-20.
[36] **[CD/88]**.

contributor to global warming. In particular, the proposed expansion at Stansted would emit in the range of 2.124m tonnes to 4.248m tonnes of additional CO2e (carbon dioxide equivalent)[37]. Quite simply, that has to be a relevant consideration to take into account, given the consistent thrust of every recent policy document - that global warming is a threat of such gravity that we must make decisions now to dramatically reduce emissions, not increase them incrementally.

31. Indeed, Mr Rhodes' first argument is a paradigm of the incrementalist approach which so threatens the environment. Rather than take into account the carbon emissions of all proposed developments, he would have us take into account the carbon emissions of none since individually they will make no measurable difference to world temperatures.

32. The Government will not achieve its carbon emissions targets that way. It might, however, if it decides not to pander to the unconstrained demand to fly, but seek instead to test rigorously any such proposal against the evidence adduced in each particular case of economic need and benefit.

33. Mr Rhodes' second argument is that the carbon emissions of aviation can be ignored for present purposes because the Government intends to deal with them by other means, including them in the international trading of carbon emissions.

34. The Appellant relies on the Air Transport Progress Report to be the sole and sufficient statement of reconciliation between the Government's policies as expressed in the ATWP and its subsequent policies on sustainability and climate change. That, however, cannot be right. The Report is what it says on the tin - merely a *"Progress Report"*, not a finalised statement of Government policy. Indeed this was confirmed by the Secretary of State for Transport, Douglas Alexander, in evidence given to the Environmental Audit Committee on 14 June 2006. In response to a question posed as to the remit of the forthcoming review of the ATWP, Mr Alexander stated that the purpose of the Air Transport

[37] Figures calculated from those produced by the Appellant in Table 5.3 in Pratt's Appendices using the multipliers from the Stern Report **[BAA/4/c]**.

Progress Report was only to "report progress in implementing the policy commitments set out in the White Paper". [38]

35. It does not and neither has it ever been stated to be a policy review of the ATWP. None of the consultation processes necessary for such a review have taken place.

36. Moreover, no-one can be certain at this Inquiry that the mechanisms by which that Progress Report presently anticipates that such a reconciliation can be achieved will even be established, let alone succeed. In particular, the inclusion of aviation into that scheme has not yet happened and nobody (including the Government) can be certain that it ever will, for all of the reasons given by Mr Levett in his evidence[39]. International agreement would have to be reached on many controversial issues as to how the scheme will be implemented, the prospects of which are entirely unpredictable. Moreover, the resolution of those controversial issues will determine whether the agreed scheme will be effective or not. Worryingly, the portents of Phase I are not good.

37. In addition to the concern in the Local Planning Authority's amended reason for refusal that it would be premature to grant planning permission now and in advance of the Government carrying out an Emissions Cost Assessment, it would likewise be premature to grant permission in the absence any guarantee that the inclusion of aviation into the international trading of carbon will even take place.

The Planning Balance

38. And so we are faced, as we are in every Planning Inquiry, with a balancing exercise, one to be weighed on the evidence that is adduced. On the one side will be the evidence of all of the environmental and other harms occasioned by the proposal - its direct, indirect, secondary and cumulative impacts, including

[38] Evidence to the Environmental Audit Committee on 14 June 2006, HC 981-viii at question 702.
[39] Levett **[SSE/21/a]**.

all of the incremental impacts which are reasonably foreseeable; and on the other will be the economic evidence on both need and benefit.

Environmental Harm

39. I will not in opening endeavour to pre-empt the evidence you will hear, or the cross-examinations, on all of the issues arising in respect of environmental harm. It may help, however, if I indicate by way of illustration just a few of SSE's very many concerns about the Appellant's approach.

40. In particular, and from the outset, the Appellant's Environmental Assessment is skewed and misleading. Far from appraising the cumulative and incremental impacts of the proposal against the current environment, a "before and after" assessment, the Appellant seeks artificially and unfairly to compress the difference between the two. So far as "before" is concerned, the Appellant's assessment ignores the current environment in the favour of some hypothetical world in which 25mppa take place, but with a massively inflated number of cargo movements. And so far as "after" is concerned, the Appellant stops all assessment at year 2014 and just 35mppa, even though it signals its intention for far more movements to take place, and when we know that the physical capacity at Stansted is much larger. So it is that the Appellant's "before" is worse than in the real world it actually is; but the Appellant's "after" far better than it really will be.

41. Likewise, and so far as noise is concerned, the Appellant's assessment is both incomplete and partial. It divides air from ground noise when a cumulative assessment is required, and applies only an averaging noise standard, airbrushing out of consideration the impact of thousands more peak noise events. And even on this partial and unsatisfactory basis, over 50% more households will in the 57 dBA Leq area when contrasted to the Appellant's projected 25mppa scenario in 2014.

42. In relation to air quality, the Appellant blithely ignores the fact that the NOx limits for vegetation will be exceeded in Hatfield Forest, an SSSI and an ancient forest, if expansion to 35mppa is permitted[40].

43. And in relation to surface access, the Appellant predicts a dramatic and wholly counter-intuitive shift in the origins of new passengers, so as markedly to underestimate their true impact; and then proposes no additional funding for rail infrastructure, even though it would be overstretched by the additional 10mppa generated by the appeal proposal.

44. Taken cumulatively with the other impacts on water usage and landscape, health and quality of life, the scale and extent of these environmental harms on local communities comprise a clear contravention of the Development Plan. SSE therefore joins cause with Uttlesford District Council that Policies BIW9, ENV7, NR5, NR6, NR7, NR12, EG4 and T1 of the Structure Plan are contravened, as are Policies GEN1, GEN2 and ENV7 of the Local Plan. Planning permission should be refused unless the Appellant can demonstrate that there are compelling economic benefits which outweigh the adverse environmental impacts.

The Failure of the Appellant to Make its Case

45. And yet the Appellant adduces no direct evidence of either an economic need for Stansted to expand or of the economic benefits alleged to result on either a national or local level from this appeal proposal. Instead, it places all of its economic eggs into the ATWP basket and relies only upon broad generalisations relating to the importance of airports to the UK economy, the importance of freight traffic (which would be unchanged whether this application was approved or refused) and a partial argument as to the benefits of the increased number of foreign tourists.

[40] As contained in Council Directive 1999/30/EC and the implementing Regulations.

46. And yet as we have seen, it has expressly stated on the Secretary of State's behalf that it is important to appreciate that the establishment of a need for a type of development in a national policy statement such as the ATWP, does *not* preclude us from considering whether there is a need for this particular development in this particular locality[41].

The Evidence on the Economic Impacts of the Proposal

47. Unlike the Appellant, SSE has adduced detailed evidence on the economic impacts of the appeal proposals, demonstrating – and compellingly - that far from there being an economic case for the expansion of Stansted Airport, the appeal proposal will have negative economic implications. It will have a negative impact on the Balance of Payments as £18.6bn[42] is exported to be spent on leisure trips abroad, money which is in part diverted from domestic tourism creating unemployment in that sector. It will result in an over-dependency in the local economy upon Stansted for jobs, when Stansted itself is over-dependent on one main carrier, making the local economy excessively vulnerable to changes in that airline's fortunes. It will provide the wrong type of jobs in an area of low unemployment, thereby increasing long-distance employee commuting and having significant adverse implications for the local housing market[43]. And the cost of the additional carbon emissions will be between £147m and £290m per annum[44].

48. Far from justifying a proposal which is harmful in environmental terms, therefore, the economic evidence demonstrates that the expansion of Stansted will be economically harmful also.

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[41] *R (Essex County Council) v. Secretary of State for Transport* [2005] EWHC 20 **[CD/342]** at para 56.
[42] Ross and Young **[SSE/8/a]** at para 4.2.21 (a figure which is an increase on the 2004 baseline and which would be reduced by £6.2bn if the Appellant's 25mppa baseline were applied).
[43] Ross and Young **[SSE/10/a]**.
[44] Ross and Young **[SSE/8/a]**.

Conclusions

49. We opened with the conclusions of Inspector Eyre QC in 1983. He predicted an environmental catastrophe should Stansted Airport be permitted to expand beyond 25mppa. The evidence to be adduced by SSE and others shows that prediction to be prophetic. This appeal should be dismissed.

50. Such a determination would be in accordance with the Development Plan, in accordance with Government policy on sustainability and climate change and would not contravene the ATWP.

51. Moreover, it would send a message that incremental, "salami-sliced" developments are inappropriate. It would provide a beleaguered local community with some respite from the drip-drip of expansion that has characterised the Appellant's approach to development at Stansted Airport.

52. For all of these reasons, SSE invites the dismissal of this appeal.

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4-5 Gray's Inn Square
30 May 2007