



## **SSE Briefing Note on Planning Application UTT/18/0460/FUL**

### **Material Considerations: Number of Aircraft Movements**

#### Introduction/Synopsis

1. Following the provisional approval of Planning Application UTT/18/0460/FUL on 14<sup>th</sup> November 2018 (by the narrowest of margins, namely, the Chairman's additional casting vote), it emerged that the Chairman of the Planning Committee and at least one other member of his Committee had not appreciated that approving Planning Application UTT/18/0460/FUL would result in an increase in the number of flights.
2. SSE's investigation of the circumstances behind this fundamental misunderstanding of the effects of Planning Application UTT/18/0460/FUL has led to the conclusion that members of the Planning Committee were blameless for this misunderstanding because UDC planning officers provided misleading advice on this point.

#### Planning Law: Environmental Impact Assessment

3. SSE was concerned from the outset (June 2017) that UDC officers appeared overly keen to approve Stansted Airport's latest expansion plans – as evidenced by:
  - (i) The refusal of officers to discuss with SSE its 109 identified shortcomings in the June 2017 STAL Scoping Report for the impending airport planning application;
  - (ii) The responses to SSE's requests under the Freedom of Information Act which confirmed that UDC officers held no fewer than 36 meetings with MAG/STAL in the two years immediately prior to Planning Application UTT/18/0460/FUL being submitted. Most of these meetings are claimed by officers to have been informal and so (they argue) there was no requirement to produce minutes. Handwritten 'jottings' (often unintelligible) were provided to SSE for nine meetings and officers claimed a confidentiality exemption from disclosure for eight meetings. No record has been provided – and seemingly there is no record – for the other nineteen meetings; and
  - (iii) SSE's meeting with the Council Leader and CEO accompanied by the UDC Director of Public Services on 28<sup>th</sup> July 2017 which left SSE in no doubt that the Council's firm intention was to approve the impending Stansted Airport planning application and seek to maximise the Section 106 benefits. (SSE's file note of this meeting was shared at the time with all those present, with an invitation to amend/correct. That file note has now been in the public domain unchallenged for over two years.)
4. The statutory requirements for the scope and content of the environmental assessment to be submitted for major planning applications such as UTT/18/0460/FUL are set down in Schedule 4 of The Town and Country Planning (Environmental Impact Assessment) Regulations, 2017 ("the EIA Regulations"). For ease of reference the relevant extract is attached at Annex A.
5. In summary, the EIA Regulations require the Applicant to set out the environmental effects of the proposed development compared to two yardsticks, namely:

- (i) The **Baseline** – i.e. the current environmental effects (normally the previous year);
  - (ii) The **Base Case** – i.e. the environmental effects which would evolve without the proposed development.
6. In the case of Planning Application UTT/18/0460/FUL, the Environmental Statement ("ES") submitted by STAL in February 2018 complied with these requirements and in relation to the number of passengers and aircraft movements included the following information:

**Passengers and Aircraft Movements<sup>1</sup>**

	Unit	Baseline 2016	Do Minimum 2028	Development Case 2028
<b>Passengers</b>	'000	24,300	35,000	43,000
<b>Aircraft Movements</b>	no.	180,619	248,820	273,966

*Source: Tables 2.3 and 2.4 in ES Volume 1, Chapter 2 and Table 12.11 in Chapter 12.*

7. In the above table, STAL has used 2016 as the **Baseline**, which is not unreasonable since the Environmental Impact Assessment ("EIA") was largely prepared in 2017. The **Base Case** is described by STAL as the "Do Minimum" scenario, i.e. the outturn in the absence of the proposed development and the "Development Case" shows the effect of the development.
8. It can clearly be seen from the above table that the effect of the proposed development is to increase the number of aircraft movements by:
- (i)  $273,966 - 180,619 = 93,347$  (52%) compared to the **Baseline**; and
  - (ii)  $273,966 - 248,820 = 25,146$  (10%) compared to the **Base Case**<sup>2</sup>.
9. Comparisons against the **Baseline** and the **Base Case** are the only two relevant yardsticks required by the EIA Regulations. The **2008 permission** is irrelevant to the EIA. In any event, as is clear from the above table, it is of academic interest only since the extant permission for 274,000 annual aircraft movements could not be reached unless the proposed increase in the permitted number of passengers from 35mppa to 43mppa was approved.
10. Moreover, it is comparing apples with oranges to refer back to the 2008 permission, where the assessment was carried out using a 2004 baseline, i.e. 14 years prior to Planning Application UTT/18/0460/FUL being submitted. In 2004, the average number of passengers per passenger aircraft ("PATM") at Stansted was just 126 whereas the current planning application projects 170 passengers per PATM for 2028. On a like-for-like basis, aircraft may be getting less noisy but the average size of the aircraft operating from Stansted is increasing and so it is not a like-for-like comparison. This is one of the reasons why the extant permission for 274,000 aircraft movements is not relevant to the assessment and determination of the current planning application.
11. It is entirely understandable that STAL, for presentational reasons, focussed on the fact that its 2018 planning application did not seek any increase in the number of aircraft movements approved ten years earlier. However, whilst STAL may be excused for its PR focus, it is inexcusable that officers also focused on the 2008 permission rather than on the two statutory

<sup>1</sup> Air Transport Movements ("ATMs") are landings or take-offs of aircraft engaged on the transport of passengers, freight or mail on commercial terms, whereas Aircraft Movements comprise all ATMs plus non-commercial flights, for example, training, testing, repositioning, recreational, private/business, diplomatic, military and royalty. The 2008 Planning Permission allowed 264,000 ATMs and a further 10,000 'non-ATMs' for other aircraft movements.

<sup>2</sup> For 2028, STAL projects 212,000 PATMs in the Base Case (equivalent to an average of 165 passengers per PATM) and 253,000 PATMs in the Development Case (equivalent to an average of 170 passengers per PATM). Thus, if the passenger cap were to be raised to 43mppa, STAL projects an additional 31,000 PATMs in 2028. SSE's estimate (based on 170 passengers per PATM in both cases) is an additional 47,059 PATMs in 2028 ( $8,000,000 \div 170$ ).

yardsticks, namely the baseline and the base case.

12. Nowhere in the text of the October 2018 Officers' Report for Application UTT/18/0460/FUL does it mention the Base Case of 248,820 aircraft movements and nowhere does it seek to explain to members that approval of the Planning Application would increase the number of aircraft movements by more than 25,000 per annum compared to the Base Case and by more than 93,000 compared to the Baseline. Members would need to arrive at these numbers themselves by studying the tables on pages 22 and 74 of the Officers' Report which are copies of tables provided by the Applicant in Chapters 2 and 12 of Volume 1 of the ES.

13. In contrast, as well as the tabular references on pages 22 and 74, the Officers' Report adds emphasis in the text (in paragraph 3.3 and again in paragraph 9.33), repeating the point that there would be no increase in the number of aircraft movements from the 2008 permission, even though this comparison is not a requirement by the EIA Regulations.

14. The same emphasis was placed on this point at the meeting of the UDC Planning Committee on 14<sup>th</sup> November 2018. In her opening statement the case officer said as follows:

*"So the planning application relates to an uplift in passenger numbers from the currently consented 35 million passengers per annum to 43 million. This is proposed to be within the current consented number of air transport movements of 247,000."*

15. The figure of 247,000 is assumed to be a slip of the tongue where the intention was to say 274,000. However, the reference to air transport movements is also incorrect. The 2008 permission allows 274,000 aircraft movements but only 264,000 air transport movements. This important distinction is explained in footnote 1 above.

16. Later that same day, at that same meeting, UDC planning officers gave the following response to a member of the Planning Committee who had queried whether there would be an increase in flights. The transcript record of that part of the meeting is as follows:

*"Councillor Fairhurst: Let's not kid ourselves. There is more noise. Let's not talk about LEQ, contours and all the wonderful science. There is more noise. More aeroplanes means more noise. We've got to try and avoid the science. It's confusing people."*

*Chairman: Mr Brown. Just briefly.*

*Nigel Brown: This isn't science at all. I think that 3.3 of the Officers' Report clearly states what the proposal is. The application does not – that's English; that's not science; that's 'not' – propose to increase the number of aircraft movements from 274,000. **So there will not be an increase of flights. So the words 'more of this' and 'more of this' is not the case. It's more passengers, not more flights, and that cap will still be there. I think Karen will clarify.***

*Karen Denmark: The airport already has planning permission for 274,000 flights per annum, so this application is seeking to increase the number of passengers within that flight cap. So, yes, there will be more flights, but it will be within an existing cap that they already have planning permission for."*

*[emphasis added]*

17. The more junior officer (Ms Denmark) gave the correct advice to members but the advice given by the senior planning officer (Mr Brown) was both incorrect and misleading, i.e. **"It's more passengers, not more flights"**. Moreover, neither planning officer took the opportunity to advise members of the comparisons against the **Baseline** and the **Base Case**, even though these are the two yardsticks prescribed by the EIA regulations (and comparison against the

extant permission is not prescribed by the EIA regulations).

18. In the charged environment of a highly controversial planning committee meeting in the presence of a packed public gallery, it is perhaps understandable that a planning officer may not always choose his or her words with precision. That potential explanation cannot however be advanced in defence of Ms Elizabeth Smith, the Council's Litigation and Planning Solicitor.
19. In May 2019 Ms Smith was tasked with providing instructions and briefing material to Stephen Hockman QC so that he could provide 'independent' advice to members as to whether UDC officers were entitled to issue a Decision Notice in respect of Application UTT/18/0460/FUL. Ms Smith briefed Stephen Hockman QC – emphatically and erroneously – in the following terms: **"The application is about numbers of people not numbers of planes"**.
20. Ms Smith should have been aware that *The Town and Country Planning (Environmental Impact Assessment) Regulations, 2017, Schedule 4* make clear that the key EIA comparisons to be made are against the Baseline and the Base Case. Against these statutory yardsticks the proposed development would mean **10% more** 'planes' compared to the Base Case and **52% more** 'planes' compared to the Baseline. Ms Smith's briefing on this point had more in common with STAL's position than with the statutory position.

#### Correspondence with Cllr Mills and Cllr Wells following the meeting on 14 November 2018

21. This is set out in full in Annex B. Key extracts are as follows:

*Councillor Mills, 21<sup>st</sup> November 2018:*

*"Dear Mr Banatvala*

*Thank you for your correspondence on this matter and for matters of clarity I feel that an important issue should be clarified that has been continually misrepresented in this debate. MAG had an existing permission for 174,000 [sic] flights from 2008. This application was not about increased flights, only passenger numbers/throughput in the airport."*

*Councillor Wells, 13<sup>th</sup> December 2018:*

*Question put by local resident via email:* *"Are you saying that Stansted Airport would have grown to 274,000 flight movements a year by 2028 even if you had not approved the planning application for 43mppa?"*

*Answer from Councillor Wells:* *"Yes. The airport already has permission for 274,000 flight movements per annum which it has not yet reached and therefore with or without this latest permission, flights can and will increase."*

22. The above replies from Councillor Mills and Councillor Wells make it clear that neither of them realised that 274,000 flight movements per annum could not be reached unless the passenger cap was raised from 35mppa to 43mppa.
23. Finally, it should be noted that MAG has overstated its Base Case projection of 248,800 aircraft movements. At an average of 170 passengers per aircraft, only 205,882 PATMs are needed for 35mppa, and MAG has projected a combined total of 21,000 for CATMs and 'non-ATMs', making a total of 226,882 aircraft movements, i.e. 47,118 below the 274,000 cap.

#### Conclusion

24. In reviewing the evidence above, it has become clear since 14<sup>th</sup> November 2018 that at least some members of the Planning Committee were unaware that approval of Planning

Application UTT/18/0460/FUL would result in more flights. It is also clear that officers did not explain to members at the time that the key yardsticks set down by the EIA Regulations were the Baseline and the Base Case.

25. In the absence of evidence to the contrary, or a valid explanation from planning officers as to why they did not explain to the Planning Committee the importance of comparisons to the Baseline and Base Case scenarios, this is clearly a new material consideration.

## **Attachments**

Annex A – Extract from The Town and Country Planning (Environmental Impact Assessment) Regulations 2017

Annex B – Correspondence with Councillor Mills and Councillor Wells

*Stop Stansted Expansion  
31 October 2019 (R)*