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Stop Stansted Expansion

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Introduction

1. When Inspector Graham Eyre QC recommended refusal of permission for a second runway at Stansted in the 1980s, he expressly concluded that a proposal for an airport capable of handling 50 million passengers per annum ('mppa') should be rejected¹²:

"A major ... airport with an ultimate capacity of up to 50mppa should never be developed at Stansted and whether such a project represents a commitment, a proposal, a probability or a mere possibility there is no justification for pursuing it."

2. The terms in which Inspector Eyre dismissed a 50mppa airport at Stansted (unreservedly adopted by the Secretaries of State for Transport and for the Environment³) could hardly have been more emphatic. It would be an "environmental catastrophe" and "a major environmental and visual disaster"; "such a monster cannot and must not be inflicted on this precious landscape"⁴. To do so would be "an unprecedented and grotesque invasion of a large area of pleasant countryside" and "wholly unacceptable"⁵.
3. And yet whilst a second runway has repeatedly been rejected, passenger throughput has been permitted to grow - from less than 1 mppa in the early 1980s to 8mppa in 1985; 15mppa in 1991; 25mppa in 2003; and, most recently, to its present cap of 35mppa in 2008. This appeal, which seeks to increase that cap to 43mppa ('the Proposals'), is a continuation of that incrementalism.
4. Any proposal to expand airports may bring socio-economic benefits, of course, both to users and to business. But increased flying is also inherently harmful, both to those who live nearby and are inevitably and directly impacted; and to those more generally as the world warms up. Planes are noisy. They pump out carbon ('CO₂'), other greenhouse gases ('GHG'), and Ultra Fine Particles ('UFP'). They have the inherent potential, therefore, to harm not just amenity, health and well-being, but the ability of the Government to meet its statutory duty under the Climate Change Act 2008⁶ ('CCA 2008'). And they do so as we transition to a Net Zero World - not an emerging policy,

¹ CD14.22. At that time, 25mppa was assumed to be the maximum capacity of one runway.

² Ibid, Inspector's Report to the Secretary of State, 1984, Chapter 50, para. 6.41.

³ Hansard 5 June 1985, Col. 309.

⁴ CD14.22, Chapter 50, para. 6.17.

⁵ Ibid, Chapter 28, para. 2.29.

⁶ CD17.1.

but a legally binding statutory duty to end the UK's contribution to global warming by 2050⁷.

5. That is why the UK's planning regime treats airport expansion very differently from other forms of proposed development. Very little is said in the National Planning Policy Framework⁸ ('NPPF') about aviation, and there is not much more on global warming. Rather, one has to look elsewhere to find guidance relevant to decision-making for such proposals:
 - i. On aviation generally, to the bespoke policy regime contained in the March 2013 'Aviation Policy Framework'⁹ ('APF'); the Interim¹⁰ and Final¹¹ Reports¹² of the Airports Commission ('AC'); the June 2018 'Making Best Use' policy document¹³ ('MBU'); the 2018 'Airports National Policy Statement'¹⁴ ('ANPS') published on the same day; and emerging policy also, as most recently set out in the December 2018 Green Paper 'Aviation 2050: the future of UK aviation'¹⁵; and
 - ii. On global warming specifically, to the advice given to Government as to how to reconcile increased aviation with the Net Zero duty by the body Parliament established with the specific statutory duty to give that advice¹⁶ – the Climate Change Committee ('CCC') – and, most specifically, to its landmark Sixth Carbon Budget¹⁷ ('6CB'), the first carbon budget published after enactment of the Net Zero duty.
6. And so in these brief, introductory, opening remarks on behalf of Stop Stansted Expansion ('SSE'), I shall follow a course which is perhaps unusual for normal planning

⁷ Ibid, Section 1, as amended. The UK became the first major economy to make this commitment in June 2019. <https://www.gov.uk/government/news/uk-becomes-first-major-economy-to-pass-net-zero-emissions-law>.

⁸ CD14.6. With the exception of two references which relate to aviation safety (at paragraphs 204(h) and 205(b)) the text of the NPPF contains only one mention of aviation in the context of promoting sustainable transport at paragraphs 104 (e) (together with footnote 42) and paragraph 104 (f) relating to policy making rather than decision-taking.

⁹ CD14.1.

¹⁰ December 2013.

¹¹ July 2015.

¹² CD14.28 and CD14.29.

¹³ CD14.2. *'Beyond the horizon, the future of UK aviation: Making the best use of existing runways'*.

¹⁴ CD14.3.

¹⁵ CD14.27.

¹⁶ CD17.1, Part 2.

¹⁷ CD17.75 and CD17.77 to CD17.81.

Inquiries, but essential for those concerned with airport proposals on the very cusp of being a Nationally Significant Infrastructure Project, or 'NSIP'¹⁸.

7. I shall touch only lightly on the traditional statutory planning balance afforded by the Town and Country Planning Act 1990¹⁹ ('TCPA 1990') and the Planning and Compulsory Purchase Act 2004²⁰ ('PCPA 2004'); and almost as lightly on both a Development Plan which is now considerably out-of-date, the Uttlesford Local Plan 2005²¹ ('ULP'), and the near-silent NPPF²².
8. I will, thereafter, outline the important points made by the SSE witnesses on the important considerations which fall to be weighed in the traditional planning balance:
 - i. On the harm side: noise, air quality, surface infrastructure, health and wellbeing, and on the two matters which are fundamental to the correct assessment of those impacts – air and road traffic forecasts; and
 - ii. On the benefits side: the socio-economic implications of the Proposals.
9. However, I will concentrate my comments towards the end of these opening remarks on those questions which aviation and climate change policy make determinative of Proposals such as these:
 - i. Whether there is sufficient need for the Proposals to be permitted now, based on the best and most authoritative evidence available, sourced in the air traffic projections of the AC and the Government; and
 - ii. Whether It can be demonstrated today, on evidence, that:
 - a) The Proposals will not materially impede the Government's ability to meet its Net Zero duty in the future; and that
 - b) The aviation sector is on track to outperform its Net Zero emissions trajectory sufficiently to accommodate the additional demand which these Proposals purport to meet²³.

¹⁸ The threshold for an NSIP is a proposed increase in the cap on passenger throughput of 10 million passengers per annum ('10mppa'). The Proposals involve an increase of just under that threshold (indeed, the initial proposal was for an additional 9½mppa at this stage), alongside alterations to the runway infrastructure which will afford the potential for far greater increases in the future.

¹⁹ CD14.12.

²⁰ CD14.11

²¹ CD14.9.

²² CD14.6.

²³ CD17.78, Table P8.1.

Statutory Planning Balance

10. But I start with the statutory test applicable to all developments, for this appeal is to be determined within the framework of the TCPA 1990²⁴ and PCPA²⁵, and, accordingly, in accordance with the Development Plan unless material considerations indicate otherwise.

Local Plan

11. The relevant Local Plan for Stansted Airport is the ULP²⁶. However, that was adopted in January 2005, seven years before even the first version of the NPPF was published. It is notably old, therefore, Uttlesford District Council ('UDC') having twice failed to replace it. And this factor alone clearly diminishes the weight to be attached to its policies, especially where superseded by policy statements made thereafter.

Other Material Considerations

12. As for "other 'material considerations'", alongside the impacts and benefits (identified in paragraph 8 above) and the national aviation and climate change policies (referred to in paragraph 5 above), these include:
- i. The national planning policies contained within the latest version of the NPPF²⁷;
 - ii. Relevant policies within the neighbouring East Hertfordshire District Plan ('EHDP')²⁸; and
 - iii. Certain parts of the latest UDC attempt to replace the January 2005 ULP, the Regulation 19 Pre-submission Emerging Local Plan ('ELP')²⁹.

The NPPF

13. Whilst the applicable NPPF at the time of submission of the Proposals in February 2018 was the 2012 edition³⁰, and contained substantive paragraphs³¹ with regard to the growth of airports, the NPPF was updated in February 2019³² and now mentions airports only very briefly, and even then not in the context of decision-taking³³. This

²⁴ CD14.12.

²⁵ CD14.11.

²⁶ CD14.9.

²⁷ CD14.6.

²⁸ CD14.10.

²⁹ CD14.57.

³⁰ CD14.7.

³¹ *Ibid*, paras 31 and 33.

³² CD14.6.

³³ *Ibid*, paragraphs 104(e) and 104(f), and footnote 42. See also 204 (h) and 205 (b) re. aviation safety.

absence of specific guidance on airports policy in the 2019 NPPF reflects the fact³⁴ that, since the 2012 NPPF, we have seen publication of the aviation policy documents I have already referred to – the 2013 APF³⁵; the 2018 MBU policy document³⁶; and the 2018 ANPS³⁷. Together, these three national policy documents provide an extensive framework to assist decision-makers when considering airport development proposals and I shall return to them shortly.

The EHDP

14. So far as the wider planning context is concerned, however, the NPPF makes it clear that airport development should be a matter for “strategic policy-making authorities”³⁸. That means that consideration needs to be given to regional and cross-boundary planning policies and, in particular, to the EHDP³⁹ which was adopted in December 2018 and is the Development Plan for Bishop’s Stortford, the largest town in East Hertfordshire and within 2km of the Airport. That Plan supports the shared vision of the five Local Authorities⁴⁰ in the Core Area of the London Stansted Cambridge Corridor (‘LSCC’) for Stansted to grow to its “full permitted_capacity”⁴¹, that is to say to 35mppa, albeit subject to careful account being taken of noise⁴² and air quality⁴³.

The ELP

15. As for the ELP⁴⁴, this was published in the summer of 2018 and was withdrawn by the Council on 30th April 2020, after five years in preparation. However, the reasons for its withdrawal were wholly unrelated to its draft Policies for Stansted and concerned instead the highly controversial proposal for three new Garden Communities, as was made clear in the Post-Hearings’ letter from the Inspectors in January 2020⁴⁵. That letter expressed no concerns at all about the ELP policies towards Stansted Airport, elements of the ELP which therefore remain relevant to the current appeal.
16. They include ELP Objective 2c, which is as follows⁴⁶:

"To accommodate development by ...

³⁴ See also: CD14.74, *R (on the application of Friends of the Earth and Ors) v Heathrow Airport Ltd* [2020] UKSC 52 at [20-21].

³⁵ CD14.1.

³⁶ CD14.2.

³⁷ CD14.3.

³⁸ CD14.6, para 104(e), footnote 42.

³⁹ CD14.10.

⁴⁰ Broxbourne, East Herts, Epping Forest, Harlow and Uttlesford.

⁴¹ *Ibid*, p.21.

⁴² *Ibid*, para 24.3.2.

⁴³ *Ibid*, para 24.5.3.

⁴⁴ CD14.57.

⁴⁵ CD23.48.

⁴⁶ CD14.57, p.14.

Utilising the permitted capacity of the existing runway and provide for the maximum number of connecting journeys by air passengers and workers to be made by public transport"

17. The '*permitted capacity*' of Stansted Airport is, of course, 35mppa; and the Proposals are, therefore, clearly not in accordance with Objective 2c.
18. Moreover, Objective 2c would have been delivered by draft Policy SP11⁴⁷, which continues to be the clearest available statement by UDC on Stansted Airport; and it requires all of its criteria to be satisfied, which these Proposals⁴⁸ plainly fail to achieve:
 - i. Criterion 3 requires that proposals are in accordance with the latest permission, when the current Proposals are not, seeking a considerable uplift in the 2008 passenger cap;
 - ii. Criterion 4 requires that development should not result in a significant increase in Air Transport Movements ('ATMs') that would adversely affect the amenities of surrounding occupiers, when the current Proposals will significantly increase the number of ATMs and affect amenity adversely;
 - iii. Criterion 5 requires further noise reduction to be achieved, when the current Proposals will worsen the noise environment; and
 - iv. Criterion 8 requires the minimisation of car travel, when the current Proposals project a reduction in public transport mode share from 54% to 50%⁴⁹, which clearly does not comply with the requirement.
19. SSE acknowledges that insofar as the ELP has been withdrawn, albeit at an advanced stage, the usual position would be to attach minimal, if any, weight to its policies. However, in the exceptional circumstances of this particular case and for the following reasons, the ELP policy framework should be accorded significant weight, at least insofar as it specifically relates to the development of Stansted Airport:
 - i. First, the adopted ULP dates back to January 2005, since when there have been major advances in the academic and scientific understanding of the harms associated with aircraft noise and pollution, and fundamental changes

⁴⁷ Ibid, Policy SP11 p.73-76.

⁴⁸ Leaving aside, for the moment, Criterion 2 which is considered later when I look at national aviation and climate change policy.

⁴⁹ CD9.2, Transport Assessment Addendum, para 6.1.3; and CD23.34, STAL Analysis for 2019, p.3.

in national policy, not the least in relation to carbon emissions and climate change (and that will continue as identified in 6CB⁵⁰).

- ii. Second, the adopted ULP contains no specific policies relating to the development of Stansted Airport which, at the time of the ULP, was of a much smaller scale⁵¹.
 - iii. Third, Policy SP11 was considered at length in the course of the Examination Hearings and the Inspectors expressed no criticisms of Policy SP11 in their 24-page Post-Hearings' letter to UDC⁵².
 - iv. Fourth, paragraph 48 of the NPPF explains that the weight to be attached to individual policies in emerging Local Plans increases as they move through each preparatory stage⁵³, and Policy SP11 has been independently examined and not been found to be unsound.
 - v. Fifth, Policy SP11 of the ELP was unanimously approved by UDC's Cabinet on 12th June 2018, and was so after a number of proposed amendments (mostly in response to representations by the Appellant) were rejected precisely because they would have weakened important safeguards against the unfettered expansion of the airport. It was then ratified by UDC Full Council on 19th June 2018.
20. Put shortly, the ULP does not provide an up-to-date strategic framework for determining this application, but draft Policy SP11 of the ELP does; and given that it has been independently examined and not questioned or challenged in any way, it is entirely appropriate that significant weight is attached to that draft Policy.

Impacts

21. Let me turn then to the impacts occasioned by these Proposals. As you will be aware, in the light of the health risks arising from the Covid-19 pandemic, and concerns over the remote option, a number of SSE witnesses who submitted written evidence on those impacts will not be presenting that evidence orally. We have explained why in pre-Inquiry correspondence, noting the difficulties facing a community organisation like SSE, unavoidably placed in a very different position to the other parties to this Inquiry

⁵⁰ CD17.75 and CD17.77 to CD17.81.

⁵¹ Stansted Airport handled 18.7mppa in 2003, the baseline year for the January 2005 ULP.

⁵² CD23.48.

⁵³ CD14.6, para 48.

– a large corporate entity and a District Council. The evidence of those SSE witnesses has, however, been adduced, is before this Inquiry, and it remains relevant to the weighing of the overall planning balance.

22. One witness who will be giving oral evidence, moreover, is Mr Ross; and his evidence on air traffic forecasts necessarily feeds into the impacts in terms of noise, air quality, surface access, and health and well-being. It is to his evidence that I turn first.

Air Traffic Forecasts

23. The Stansted Sustainable Development Plan ('SDP'), published in 2015, projected a passenger throughput of up to 45mppa by 2030 and noted that Stansted would be capable of handling 285,000 passenger air transport movements ('PATMs') in 2030⁵⁴. This equates to a passenger throughput of 48.7mppa based on an average of 171 passengers per PATM, as projected by MAG for 2032⁵⁵.
24. In June 2017, MAG submitted a Scoping Report⁵⁶ for the proposed expansion of Stansted to 44.5mppa and 285,000 aircraft movements ('AMs') by 2029. Thereafter, and in October 2017, MAG altered its Scoping Report⁵⁷ to 43mppa and 274,000 AMs by 2028, and this became the basis for the Proposals which were submitted in February 2018⁵⁸. Post-Covid, MAG now projects that Stansted will not reach 43mppa until 2032-2034⁵⁹, between 4-6 years later than previously suggested.
25. These MAG forecasts are in very stark contrast to the comparable Government forecasts, those of the Department for Transport ('DfT') published October 2017⁶⁰, and the partial update of these in the June 2018 MBU policy document (and those Government forecasts are all broadly consistent with those of the AC⁶¹). Two main scenarios were presented in the case of the DfT's October 2017 forecasts, each with clearly stated sensitivities and assumptions⁶²; and two further scenarios were added in June 2018 for the MBU policy⁶³. These four main scenarios present as follows:

- i. In the Base Case, Stansted reaches the 35mppa cap in 2034;

⁵⁴ CD15.1, Stansted SDP, Land Use, May 2015, p.29.

⁵⁵ CD7.4, ESA, Ch.4, para 4.2.20.

⁵⁶ CD4.2, Scoping Report, 1 Jun 2017 (p.10, Table 2.3 & Table 2.4).

⁵⁷ CD4.3, MAG letter requesting alteration to Scoping Report, 18 Oct 2017.

⁵⁸ CD3.4, ES, Ch.4.

⁵⁹ CD7.3 and para 2.4.16.

⁶⁰ CD14.14. The DfT aviation forecasting models and assumptions are explained in detail in Chapters 2, 3, 4, 5 and 9, and Annexes A and B.

⁶¹ CD14.48.

⁶² DfT provides 'high', 'central', and 'low' forecasts. The central forecasts are used in this Opening.

⁶³ CD14.2.

- ii. In the Base Case + HR3⁶⁴, Stansted reaches 35mppa in 2043;
 - iii. In the Base Case + MBU, Stansted reaches 35mppa around 2041; and
 - iv. In the Base Case + HR3: + MBU, Stansted reaches 35mppa in 2049/50.
25. Mr Ross' Table 5⁶⁵ shows the DfT (pre-Covid) central passenger forecasts for Stansted for 2030-2050 under these four scenarios, alongside the MAG forecasts. As noted above, MAG initially projected that Stansted would reach 43mppa in 2028, but now (post-Covid) projects that this will not be until 2032-2034. The DfT, however, takes a far less optimistic view in all scenarios, as Mr Ross's Table illustrates:

Passenger Forecasts for Stansted⁶⁶

Year	DfT Scenarios				MAG Forecasts
	Base Case	Base + HR3	Base + MBU	Base + HR3 + MBU	
2030	31.0	22.3	26.6	21.3	N/A
2031	32.4	22.7	N/A	21.5	
2032	33.7	23.1		21.6	43.0 - central case
2033	34.3	24.0		22.1	N/A
2034	35.1	24.7		22.2	43.0 - low growth
2035	35.2	25.8		22.9	
2040	35.4	31.9	34.7	26.4	
2045	35.2	34.5		30.6	
2050	35.5	35.5	44.8	36.1	

26. And as Mr Ross notes, the focus of the DfT forecasting models is upon long-term projections⁶⁷. Given that the new forecasts provided in the ESA for 2032 and 2034 clearly fall within the definition of 'long-term', they should be directly comparable with the DfT long-term forecasts. However, the MAG forecasts are very substantially higher than the DfT forecasts under each of its scenarios. Moreover, it is the MAG forecasts which are the outliers: the DfT's forecasts are in line with other independent forecasts, including those of the AC⁶⁸.

⁶⁴ Third Heathrow Runway.

⁶⁵ SSE 3-2, para 3.2.3.

⁶⁶ CD14.37 & CD17.43.

⁶⁷ CD14.14, para 1.3: "The purpose of these forecasts is primarily in informing longer term strategic policy rather than in providing detailed forecasts at each individual airport in the short term".

⁶⁸ CD14.48.

27. That begs an obvious question:

What explains the fact that the MAG forecast is emphatically more optimistic about aviation expansion than independent forecasts based on an in-depth examination of the long-term outlook for growth in air travel and the dynamics of the London airports market?

28. One possible explanation is to be found in MAG's assertion that there is "... little hope of new runway capacity in London becoming available in the next 15 years"⁶⁹. In this regard, however, we now know from Mr Galpin's evidence that MAG's forecasts were based on the "legal planning limits that are in place today"⁷⁰. That, however, is an entirely false premise from which to work. All of London's six airports have plans for significant expansion which would provide far more capacity than is needed to meet the DfT growth forecasts⁷¹.

29. The bottom line is therefore this:

- a. The original MAG forecast, for Stansted to grow to 43mppa by 2028, was over 50% higher than the DfT Base Case forecast for Stansted even without Heathrow R3⁷²; and
- b. The post-Covid MAG forecast that Stansted will now reach 43mppa in 2032 is still almost 30% higher than the DfT Base Case forecast, pre-Covid, again without Heathrow R3⁷³.

30. The gulf between the DfT outlook for Stansted, and the emphatically more expansionist picture painted by MAG, plainly calls into question the credibility of the MAG forecasts. Moreover, MAG have form for this kind of exaggeration: there is considerable evidence of a past record of overestimating demand, on average, by c.40%⁷⁴. This is known as 'optimism bias' and it is normal practice to adjust for this⁷⁵. If so adjusted, as MAG's forecasts need to be, they would align quite closely with the independent DfT and AC forecasts and underline the lack of need for the Proposals.

⁶⁹ CD7.4, ESA Vol.1, Ch.4, para 4.2.13.

⁷⁰ STAL/2/2, para 3.9.

⁷¹ SSE/3/2, Table 7.

⁷² CD14.37a.

⁷³ Ibid.

⁷⁴ SSE/3/2, para 5.1.3.

⁷⁵ CD23.31, HM Treasury Green Book, 2018, Annex A5.

31. Moreover, the MAG inaccuracies extend to the base case also, as Mr Ross again comprehensively demonstrates. And that inevitably distorts all projections of the impact of the Proposals: overestimating the Base Case has the effect of overstating the environmental impacts for the Base Case also; and, hence, of reducing the apparent incremental impact of the Proposals.
32. That this is what MAG has done, and done consistently, can be understood readily by looking at just two of the categories of AMs at Stansted: PATMs; and Cargo Air Transport Movements ('CATMs'):
- a. So far as the first category is concerned, the number of passengers per PATM ('pax/PATM') is, self-evidently, a key forecasting parameter when calculating the number of aircraft movements since it determines how many PATMs are needed for a given passenger throughput. In earlier applications, however, Stansted has underestimated the pax/PATM ratio in its forward projections, with the result that the passenger cap was always reached before the PATM cap. And the same sleight of hand is tried this time also. MAG projects an average of 171 pax/PATM⁷⁶ by 2032, which compares to 163 pax/PATM achieved in 2019 and therefore represents an increase of only 0.37% per annum. The long-term trend (1999-2019) for Stansted, however, shows an average annual increase in pax/PATM of 3.8%⁷⁷, more than 10 times the MAG forward projection.
 - b. As for CATMs, Stansted already accounts for two-thirds of these movements at all of London's airports, handling 10,208 CATMs in 2019 out of a total of c.15,100. It is therefore perplexing that MAG projects 15,000 CATMs for Stansted in 2032 if its appeal is upheld; and 20,000 CATMs if it is refused. The number of CATMs is in long-term decline⁷⁸ and it is not at all clear where these additional CATMs would come from. And neither is it clear why, if they are potentially available, STAL is not taking advantage already.
33. Taking all of this together, Mr Ross demonstrates that the difference between the Appellant's 35mppa Base Case and the 43mppa Development Case, indicating an increase of only 22,000 aircraft movements⁷⁹, constitutes a significant underestimation.

⁷⁶ CD7.4, ESA Vol.1, Ch.4, para 4.2.20.

⁷⁷ CAA statistics <https://www.caa.co.uk/Data-and-analysis/UK-aviation-market/Airports/Datasets/UK-airport-data/>.

⁷⁸ SSE3/2, Table 16.

⁷⁹ CD7.4, Tables 2.2 and 2.3.

The real increase will be twice that⁸⁰. And that means that the net additional adverse impacts of the Proposals have been significantly understated by MAG.

34. Moreover, MAG's assessment of these adverse impacts is also based on its assumption that new "cleaner and quieter" aircraft will represent 66% of Stansted's narrow-bodied PATMs by 2032⁸¹. However, the MAG assumptions in these regards are also highly speculative and overly optimistic. Close analysis indicates a more realistic replacement rate of only about 37% by 2032⁸². These fleet replacement assumptions are fundamental to the projections for the noise, air quality, carbon emissions and health impacts of the proposed development and should, therefore, be evidence-based and precautionary, rather than speculatively optimistic, as MAG's are.

Road Forecasts

35. If Mr Ross is wholly unconvinced by the Appellant's forecast for ATMs, the same can be said for Mr Bamber's reaction to the Appellant's predictions for the traffic generated by the Proposals. Had Mr Bamber been assessing this from scratch, his starting point would, quite sensibly, have been observable data: the daily profile of vehicle arrivals and departures at the various car parks around the site. Indeed, the original Scoping Report⁸³ included exactly this type of information and proposed that it would inform the road traffic predictions. However, as Mr Bamber points out, in all subsequent work, the profile of car park use was abandoned, to be replaced by a highly convoluted methodology that pays no regard whatsoever to observable car movements⁸⁴.
36. It is against the backdrop of that initial observation that Mr Bamber identifies a series of significant problems that result from the methodology adopted by MAG, largely related to the unreliability of key assumptions used in MAG's unnecessarily complicated methodology for predicting road traffic impacts. His overall conclusions, as presently informed, are that⁸⁵:
 - a. MAG's road traffic predictions are seriously and fundamentally flawed and cannot provide a reliable basis for assessing highways and environmental impact and afford no confidence in the modelling of off-site junctions.

⁸⁰ SSE3/2, para 5.4.7.

⁸¹ CD7.4, para 4.2.21.

⁸² SSE3/2, para 8.2.13.

⁸³ CD5.1, Appendix A.

⁸⁴ SSE9.2, Section 2.1.

⁸⁵ Ibid, Section 5.

- b. The use of flight profiles and assumed lag times suggest that vehicle generation during the 07:00-08:00 period has been severely under-estimated by MAG.
 - c. Issues regarding kiss and fly and employee mode share suggest that vehicle trip generation during all periods has also been under-estimated.
 - d. In addition, the failure to allow for seasonal variation indicates that impact will be greater than predicted for more than half the year.
37. That means that the predicted level of impact of the Proposals on the external highway network has been severely under-estimated, particularly at J8 of the M11 during the 07:00-08:00 period. It also means that the impact has been severely under-estimated on the congested and sensitive Four Ashes junction in Takeley and on the sensitive and congested highway network in Stansted Mountfitchet. More importantly perhaps, these flaws mean that the consideration of both ground noise and air quality in the ES is fundamentally undermined, and, in consequence, the Health Impact Assessment ('HIA') also. Before I turn to those impacts, however, let me first make just a few points about access by rail, post-Covid.

Rail

38. SSE's witness, Mr Rhodes, has very considerable expertise and experience in the rail industry; and in his written Proof of Evidence he has made clear why, at the present time, post-Covid, there is considerable uncertainty over the industry's outlook.
39. On the evidence currently available, the outcomes may range between two extremes:
- a. On the one hand, air travel and surface access travel patterns and numbers could return to pre-pandemic levels in a few years' time, in which case there are considerable doubts about the adequacy of meeting demand simply by running longer trains;
 - b. At the other extreme, commuter rail traffic may not return to its pre-pandemic level, in which case there would be likely to be some rationalisation of rail services and a potential reduction in the frequency and capacity of services.
40. Such is the current level of uncertainty that it cannot be concluded that the proposed development could be supported by the available surface access infrastructure. Accordingly, this is a singularly inappropriate time to make long term decisions about increasing airport-related rail demand by raising the passenger limit at Stansted Airport

Noise

41. As for noise, the wrong and over optimistic assumptions regarding fleet replacement⁸⁶, and inaccurate road traffic predictions⁸⁷, are not the only reasons for rejecting the Appellant's case. There are even more fundamental problems than that, the most important of which is the manifest weakness of relying upon the LAeq noise metric to judge the noise impact of aviation.
42. As Mr Peachey's written Proof of Evidence explains, LAeq is an 'averaging metric' which has limited value in assessing the noise impacts of the repeated, individual aircraft movements which cause harm to amenity, disturb school children when studying, and wake people up. We do not perceive aircraft noise as an average noise level over 16 hours in the day and 8 hours at night, after all. Rather, we hear aircraft noise as a discrete number of noisy events; and yet the impact of each of these individual noise events can be completely lost within the averaged LAeq.
43. This inadequacy can be easily demonstrated, and especially so noting that the Appellant relies heavily on not just the LAeq metric to make its case, but the projected use of "quieter" aircraft:
 - a. A 3dB change represents a doubling or halving of noise energy⁸⁸, but is barely perceptible under normal conditions⁸⁹. If "noisier" aircraft were to be replaced by "quieter" aircraft, therefore, each with their noise emissions reduced by 3dB, not one of those flights would be perceptibly quieter.
 - b. If, at the same time, the number of (notionally) "quieter" aircraft movements were to double, the increase in noise energy would also be 3dB, and would therefore balance the 3dB reduction of each individual flight. The LAeq contour would therefore stay exactly the same as before the type of aircraft and number of flights changed.
 - c. The doubling of air traffic movements would, however, be very noticeable indeed. There would be twice the number of noise disturbances, none of them perceptibly quieter than before. But that doubling of equally noisy events would be entirely unrecognised by the unchanged, averaging, LAeq metric.

⁸⁶ See paragraph 33 above.

⁸⁷ See paragraphs 34-36 above.

⁸⁸ CD23.56, Appendix C.

⁸⁹ CD19.35, Definition of overflight CAP 1498, April 2017, para.3.19.

Air Quality

44. ATM and road traffic forecasting inaccuracies inevitably feed through into the assessment of air quality impacts also, in respect of which Dr Holman has expressed concerns regarding five 'main issues'⁹⁰, about which SSE will seek clarification at this Inquiry – namely, the road traffic data which has been used; the model set-up and verification; the failure to demonstrate compliance of the Proposals with ULP Policy ENV13 or with EHDC Policy EQ4; the inadequate assessment of Fine Particulate Matter ('PM_{2.5}'); and the non-existent assessment of Ultrafine Particles ('UFP').

Health and Well-Being

45. All of these concerns feed through, also, into the HIA, of course, in relation to which Professor Jangu Banatvala CBE, SSE's very distinguished health expert, has expressed deep personal and professional disappointment in his written Proof of Evidence⁹¹.
46. Exposure to noise has a health impact as the new, evidence-based, WHO 'Noise Guidelines'⁹², which have very much lower thresholds, reflect. In addition, studies conducted in three European countries⁹³ have shown that noise pollution from airports results in reduced cognitive performance for school children and can have an impact on their education and their life prospects. Children with retention disorders, or who are learning in a second language, experience even more impairment⁹⁴.
47. As for air pollution, a 2016 report from the Royal College of Physicians⁹⁵ highlighted the links between air pollution and cancer, asthma, stroke, heart disease and diabetes. In the UK, around 40,000 deaths a year are attributable to air pollution. It is one of the major health challenges of our day. Fine particles can enter deep into the lungs and is associated with increased risk of all the above conditions. Recent research has shown there is no safe limit for PM_{2.5}⁹⁶ and that air pollution caused by PM_{2.5} can shorten life expectancy by more than a year⁹⁷.

⁹⁰ SSE/6/2, para 1.3.5.

⁹¹ SSE/5/2.

⁹² CD19.3.

⁹³ Stansfeld SA, Berglund B, et al, 'Aircraft and Road Traffic Noise and children's cognition and health: a cross-national study'. Lancet 2005 365: 1942-49.

⁹⁴ Klatte M, Bergstrom K & Lachmann T - 'Does noise affect learning? Short review on noise effects on cognitive performance in children'. Frontiers in Psychology, 2013 - <https://www.frontiersin.org/articles/10.3389/fpsyg.2013.00578/full>.

⁹⁵ CD16.11, 'Every breath we take', Royal College of Physicians, Feb 2016, Executive Summary.

⁹⁶ The cost of air pollution to Health', Wei Y, Wang Y, Di Q et al, BMJ, 30 Nov 2019 (CD23.28) and editorial statement in that same BMJ confirming that "the conclusions of other authors finding no safe lower limit for exposure to PM_{2.5}."

⁹⁷ Apte J et al, University of Texas, published in 'Environmental Science & Technology', Aug 2018 - see <https://www.sciencedaily.com/releases/2018/08/180822112406.htm>.

48. Turning to UFP – particles below 0.1 micrometres in diameter - these can be absorbed via the respiratory epithelium into the circulation and may be an important factor in inducing cardiovascular disease⁹⁸. And yet MAG’s consultants, RPS, ignore the impact of UFP on the grounds that their impact cannot be quantified. Health risks should not, however, be disregarded simply because we cannot yet measure their seriousness.

Socio-Economic Benefits

49. As for the purported benefits of the Proposals, SSE's case is that the above harms are not outweighed by either need (there is none) or socio-economic benefits. As Mr Ross will demonstrate, the employment benefits are overstated and any new jobs at Stansted would be at the expense of jobs elsewhere, including in areas more in need of economic stimulus (at odds, therefore, with the Government's 'Levelling-up' agenda). The Proposals would also have a significant adverse impact on the UK trade balance and on the economic cost of carbon – together, about £2bn per annum. Even weighing the 'traditional planning balance' therefore, whilst there are notable planning harms on one side, there are no countervailing net benefits on the other.

National Aviation Policy and the Heathrow Judgment

50. Against that backcloth, however, let me turn to an even more compelling reason why you may consider that permission simply cannot be granted now, noting that it also falls to be determined within the framework of the bespoke policy regime for aviation established by successive Governments⁹⁹.

51. As recently as July 2015, the AC stated as follows in its Final Report¹⁰⁰:

"The Commission considers that there may be a case for reviewing the Stansted planning cap if and when the airport moves closer to full capacity. Its forecasts indicate that this would not occur until at least the 2030s."

52. That is hardly a ringing endorsement of the Proposals. Quite to the contrary. It is a recognition that, although there are potential benefits which might arise from the expansion of aviation capacity, there are also inherent environmental and amenity harms which have to be carefully weighed and balanced; and, perhaps most important

⁹⁸ Schulz H et al, 'Cardiovascular effects of fine and ultrafine particles', J Aerosol Med. 2005 Spring;18(1):1-22.

⁹⁹ CD14.74, R (on the application of Friends of the Earth and Ors) v Heathrow Airport Ltd [2020] UKSC 52 at [20-21].

¹⁰⁰ CD14.28, para 16.49.

of all, adverse impacts on the Government's ability to meet its statutory duty with regard to emissions and climate change as we transition into the Net Zero world¹⁰¹.

53. And lest it be thought that all (or any) of this can simply be ignored because the AC's Final Report pre-dates the MBU policy document published in June 2018¹⁰², as Mr Ross explains, and has set out already in paragraph 4.2.6 of his Proof of Evidence on Air Traffic Forecasts and Projections¹⁰³, both the 2003 'Future of Air Transport' White Paper¹⁰⁴ ('ATWP') and its successor, the 2013 'Aviation Policy Framework'¹⁰⁵ ('APF'), also espoused a MBU policy. Indeed, the 2003 ATWP not only supported "best use", it explicitly supported "full use" being made of existing runway capacity at Stansted¹⁰⁶. That, however, is no longer the Government's policy; rather, the policy today is heavily influenced by the findings of the AC following an independent investigation lasting more than 2½ years; and the AC has made it clear that the appropriate time for even considering the further expansion of aviation at Stansted would not come until a period of sustained growth has moved it towards meeting its permitted capacity of 35mppa.
54. Moreover, whilst all commercial operators will want to maximise the use of their capital assets, this is not what the current MBU policy advocates. "Best use" no longer means "full use", as once it did. The June 2018 MBU policy document makes it quite clear that negative as well as positive impacts need to be carefully considered and each case must be decided on its merits¹⁰⁷:

"As part of any planning application airports will need to demonstrate how they will mitigate against local environmental issues, taking account of relevant national policies, including any new environmental policies emerging from the Aviation Strategy. This policy statement does not prejudge the decision of those authorities who will be required to give proper consideration to such applications. It instead leaves it up to local, rather than national government, to consider each case on its merits."

55. The current MBU policy does not, therefore, provide a policy mandate for the Proposals. It pre-judges nothing and says so expressly. This appeal must, therefore,

¹⁰¹ In June 2019, at the Government's behest, Parliament amended the Climate Change Act 2008 to set a legally-binding duty to reduce greenhouse gas emissions by 100% of 1990 levels by 2050, compared to the previous target of an 80% reduction.

¹⁰² CD14.2, 'Beyond the horizon, the future of aviation: Making the best use of existing runways'.

¹⁰³ SSE-3-2.

¹⁰⁴ CD14.1, paras 1.24, 1.60, 1.67.

¹⁰⁵ CD14.24, Executive Summary, pages 7, 10, 13 and 14, and paras 2.11, 2.18, 11.7, 11.8 and 11.108.

¹⁰⁶ Ibid, para 11.26.

¹⁰⁷ CD14.2, para 1.26. See also para. 1.39 of the Airports National Policy Statement ('ANPS') (CD14.3), where a near identical passage is included.

be determined on its own merits; on the best and most up-to-date information available; by reference to extant and emerging policies, including environmental policies.

56. And the appeal must also be determined in accordance with the latest case law, the Supreme Court’s judgment, issued on 16th December 2020, in ***R (on the application of Friends of the Earth Ltd. and others) v Heathrow Airport Ltd*** [2020] UKSC 52¹⁰⁸ (‘the Heathrow case’), an intervening change of circumstance which post-dates the Council’s consideration of the Proposals.

57. The ***Heathrow*** case is important to this appeal for three principal reasons:

- a. First, it made it clear that the policies against which this appeal must be determined include the 2018 ANPS¹⁰⁹, which the Supreme Court declared entirely lawful, overturning the contrary decision in the Court of Appeal¹¹⁰.
- b. Second, it made it clear that issues regarding the compatibility of airport proposals with the UK’s obligations to contain carbon and other GHG emissions should be addressed at the stage of the assessment of any such application¹¹¹.
- c. And third, in so deciding, the Supreme Court expressly noted that paragraph 5.82 of the ANPS states as follows¹¹²:

“Any increase in carbon emissions alone is not a reason to refuse development consent, unless the increase in carbon emissions resulting from the project is so significant that it would have a material impact on the ability of Government to meet its carbon reduction targets, including carbon budgets.”

58. And so, whilst MAG asserts at this Inquiry¹¹³ that Net Zero is beyond its remit, we know that is not the case. The question as to whether the emissions from these Proposals would have a “material impact on the ability of the Government to meet” the Net Zero target is very much a live issue for you to address and determine.

59. Furthermore, the ANPS¹¹⁴ goes on to make it clear that, given the adverse impacts of any proposed expansion of aviation, among the considerations which will be not just

¹⁰⁸ CD14.74.

¹⁰⁹ CD14.3.

¹¹⁰ [2020] EWCA Civ. 214.

¹¹¹ [2020] UKSC 52, at [10]; [98].

¹¹² *Ibid*, at [98]; [87].

¹¹³ For example, STAL Statement of Case (SoC1), para 2.14.

¹¹⁴ CD14.3.

relevant but important when addressing the Proposals, is the requirement for the Appellant to demonstrate both that there is a need for the increased capacity which is proposed¹¹⁵; and that the Proposals are the most appropriate means of meeting that need. That is expressly stated in the ANPS at paragraphs 1.41-1.42¹¹⁶.

60. This is a policy context very different indeed from that which prevailed in 2007, the last occasion when significant expansion proposals for Stansted were examined at a Public Inquiry. At that time, the ATWP¹¹⁷ was the overarching policy and, unlike the current ANPS¹¹⁸ and MBU policy¹¹⁹, it was not just unequivocal in its specific support for full use of the Stansted runway, but was so for the following reason¹²⁰:

“Because we expect there to be an increasingly severe shortage of runway capacity at the major South East airports over the remainder of this decade, making full use of the available capacity at Stansted will be essential to avoid stifling growth. ... We therefore support growth 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.”

61. That one paragraph in the ATWP not only endorsed full use of the Stansted runway, therefore, it also purported to establish the need for the development and the urgency of that need. However, just as the current MBU policy does not pre-determine this appeal but requires it to be determined on its merits¹²¹, neither does the MBU policy establish any current need for the Proposals. Indeed, it is quite clear from the DfT’s own projections for Stansted¹²², made in the light of its MBU policy, that not only is there no urgency for the Proposals, but that they will not be needed, if at all, for a generation or more. As we have seen, the DfT forecasts, published three years after the AC’s Final Report¹²³, indicate that the passenger cap may very well not be reached until as late as 2049-50, making this application premature by as much as 30 years¹²⁴.

¹¹⁵ Additional to (or different from) the need which is met by the provision of a [Third] Runway at Heathrow.

¹¹⁶ Ibid. at paras 1.41 and 142.

¹¹⁷ CD14.24.

¹¹⁸ CD14.3, paras 1.41-42.

¹¹⁹ CD14.2, para 1.26.

¹²⁰ CD14.24, para 11.26.

¹²¹ Ibid.

¹²² CD23.26,p1 and 17.43a.

¹²³ Ibid.

¹²⁴ SSE/3/2, paras 3.2.1-3.2.3, 4.2.3 and Table 11: The Department for Transport (‘DfT’) ‘UK Aviation Forecasts’, October 2017 were as follows:

- Base Case – where Stansted reaches the 35mppa cap in 2034; and

- Base Case + HR3 – where Stansted reaches 35mppa in 2043.

Two further scenarios were added in June 2018 for the Making Best Use policy:

- Base Case + MBU – where Stansted reaches 35mppa around 2041; and

- Base Case + HR3 + MBU – where Stansted reaches 35mppa in 2049/50.

And those forecasts are pre-Covid, of course, since when matters have moved on with MAG conceding that the pandemic will delay reaching the cap by another 4-6 years¹²⁵.

62. The AC's pre-condition for even considering whether the case might be made for an increase in the passenger cap at Stansted may very well not be reached till 2050 (or later) therefore. That, of course, is the date by which the Government's statutory duty to meet Net Zero must be met. And that is the final policy matter to which I must turn, not the least because of a second change of circumstance which not only post-dates the appeal application but also the submission by MAG of its evidence to this Inquiry: the publication by the Climate Change Committee ('CCC'), on 9th December 2020, of 6CB¹²⁶, the first carbon budget after the enactment of the Net Zero target.

Net Zero and the Sixth Carbon Budget

63. In 6CB, the CCC make seven policy recommendations¹²⁷ for achieving a '*Balanced Net Zero Pathway*' for aviation, including the following three:
- a. To include International Aviation emissions within UK climate targets;
 - b. To commit to a Net Zero goal for UK aviation as part of the forthcoming Aviation Decarbonisation Strategy, with UK international aviation reaching Net Zero emissions by 2050 at the latest, and domestic aviation potentially earlier: and
 - c. To have no net expansion of UK airport capacity unless the sector is demonstrably on track to sufficiently outperform its net emissions trajectory and can accommodate the additional demand.
64. It is the last of these recommendations which is the most relevant for the purposes of the present Inquiry. The CCC recommends that, on current best estimates of the rate at which aviation can decarbonise, passenger numbers will need to be constrained to 365mppa in 2050. Current UK airport capacity is, however, already more than 365mppa and there are proposals in the pipeline, including the Proposals before this Inquiry, to increase this to more than 500mppa¹²⁸. It is in that context that the CCC's statutory advice to Government is that there should be no further expansion of any UK airport

¹²⁵ See: CD7.2, Table 2.1; and CD7.4, para 4.2.9.

¹²⁶ CD17.75.

¹²⁷ CD17.77, p.162, Box 8.1.

¹²⁸ SSE-7-3.

capacity unless balanced by a capacity reduction elsewhere¹²⁹, concluding inter alia as follows in 'Table P8.1, its Summary of Policy Recommendations'¹³⁰:

“There should be no net expansion of UK airport capacity unless the sector is on track to sufficiently outperform its net emissions trajectory and can accommodate the additional demand.”

65. This is not, then, just a ‘prematurity’ point in the terms meant by paragraphs 49 and 50 of the NPPF 2019¹³¹. It is a substantive one and vitally important.

The Required Approach to Aviation

66. If you put all this together, the applicable policy regime for aviation therefore mandates as follows:

- a. As we transition towards the Net Zero world, any proposals to expand capacity at Stansted should not be considered until it is clear that such expansion is needed.
- b. That will not arise at Stansted until it is approaching the current 35mppa cap, which the AC predicts will not be until at least the 2030s, and the DfT projects may not be until around the late 2040s (and on MAG’s own case it will be around 4 years later in the light of the Covid-19 pandemic, in other words 2050 or later).
- c. The year 2050 is the date by which the Net Zero duty must be met.
- d. In the intervening period no proposals to expand aviation should be approved unless it can be demonstrated that they would not have a material impact on the ability of the Government to meet the Net Zero target and that the aviation sector is demonstrably on track to outperform its net emissions trajectory.

67. As SSE will demonstrate, however, the expansion of Stansted’s capacity is not needed, on the DfT’s own projections, and will not be so for a generation. Furthermore, neither of the above preconditions can here be met. The Proposals will, inevitably, have a material impact on the Government’s ability to meet the Net Zero target. And it will not be known for some time whether the aviation sector will be able to demonstrate that it

¹²⁹ CD17.77, p.170.

¹³⁰ CD17.78, Table P8.1.

¹³¹ CD14.6, paras 49-50.

is on track to outperform its net emissions trajectory sufficiently to accommodate additional demand.

Conclusions

68. In these circumstances the Proposals must be refused. It would clearly be wrong to permit the expansion of Stansted (or any airport) before the Aviation Decarbonisation Strategy has been adopted, given the crystal-clear advice of the CCC that there should be no net expansion of UK airport capacity.
69. However, there should be no concern about that. It is a good thing, not bad. Nobody loses. If Mr Robinson's expectations prove correct¹³², if the industry does outperform expectations, then (on CCC recommendations), additional airport capacity could be released, but only when this is properly demonstrated through monitoring ongoing progress. That is plainly the responsible way to proceed. The alternative – expanding airports now in the hope of faster technological progress in the future – is gambling with the UK's climate objectives and, ultimately, with the stability of the global climate system itself.
70. And that we must never do.

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¹³² STAL/8/3 and STAL/8/4.