

IN THE MATTER OF AN APPEAL PURSUANT TO SECTION 78 OF  
THE TOWN AND COUNTRY PLANNING ACT 1990

BRISTOL AIRPORT, NORTH SIDE ROAD, FELTON,  
WRINGTON BS48 3DP

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OPENING STATEMENT ON BEHALF OF NORTH  
SOMERSET COUNCIL

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I. INTRODUCTION<sup>1</sup>

1. National aviation policy has recognised for years that technological improvement via the introduction of cleaner and quieter aircraft provides the scope for the environment within local communities around airports to improve. In that context it only supports expansion plans which still ensure that those local communities share these benefits. North Somerset Council ("**the Council**") will contend that the Proposed Development does not achieve this objective.
2. The Council will argue that Bristol Airport Limited ("**BAL**") has failed to recognise the requirement in national aviation policy to reduce the impacts upon, and maximise the benefits for, the local community affected by the airport's operations as an inherent part of the design process. In large part the mitigation proposed to reduce impacts upon the local communities remains inchoate and of undefined effect – almost as if the mitigation has been brought forward as an afterthought.
3. The result is a scheme which imposes a significant environmental cost, particularly in relation to noise disturbance at night, on a local community which then does not obtain any material benefit from the proposed growth. BAL's appraisal of the degree of environmental harm is understated whilst its assessment of the benefits of expansion is overstated. The Council will contend that the development proposed by BAL in this appeal ("**the Proposed Development**") will give rise to adverse impacts and risk to health and quality of life to such an extent that it should be refused.

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<sup>1</sup> References in the form "*CD + number*" are to core documents. Where a page is referred to, the internal printed pagination of that document is used, unless there is no pagination, in which case the electronic page number is used, denoted by "*PDF p. number*".

4. The recognition that the world faces a climate emergency by the UK Parliament and the adoption of a net zero target by the UK Government was a watershed moment. It means that we have re-evaluate all aspects of our lives. It means that the basis on which we take decisions about infrastructure growth is altered forever.
5. Whilst the Government has identified that we must achieve a 78% cut in emissions for 2035 and net zero by 2050, it is yet to determine the extent of the carbon emission reductions that are necessary within the aviation sector. The Committee on Climate Change ("**the CCC**") has explained that additional airport capacity can only come forward when it is established that the aviation is meeting its sectoral target to an extent that allows for additional growth. The absence of such a target means this cannot be done. Thus, the Council will contend that it is simply too soon to allow the Proposed Development to proceed.
6. BAL's claims of becoming a net zero airport are a smokescreen – they omit to include the far greater extent of emissions associated with aircraft and surface transportation. There is no clear evidence that total carbon emissions associated with the airport will reach net zero at any particular point in the future.
7. This appeal concerns the latest instalment in the incremental expansion of Bristol Airport ("**BA**"). BA (formerly known as Lulsgate Airport), opened in 1957 and has expanded in repeated increments since that date: in the 1960s the runway was extended and the former terminal building expanded; further expansion to that terminal building and car parks occurred in the 1980s; a new terminal building (the current building) was completed in 2000; the 2000s saw a litany of additional development including a new control tower; and in 2010 planning permission was granted for a significant expansion ("**the 2010 Permission**"), consisting principally of an increase in passenger throughput to 10 million passengers per annum ("**mppa**"), a near doubling of the floorspace in the terminal building, a host of new aircraft stands and extensive carparking, both surface parking and a multi storey car park ("**MSCP**").<sup>2</sup> Remarkably, the development permitted by the 2010 Permission has not been completed, over 10 years later, and BA has not come close to serving 10 mppa.

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<sup>2</sup> See CD 4.01A at PDF pp. 5 - 6 and CD 4.11 at p. 2.

8. This creeping form of development, in a sensitive location and giving rise to a multitude of harmful effects, is poor planning. This was recognised by the Council in the formulation of its Core Strategy (“**the CS**”):

*‘Additional development requiring consent beyond 2011 is expected to form the subject of an Area Action Plan (AAP) or other development plan document, such as a subject based plan for aviation, refining detailed criteria inappropriate at Core Strategy scale. This is not supported by Bristol Airport but it remains the council’s preference because it will enable community expectations to guide the planning process from an early stage pending adoption of an AAP [...]’<sup>3</sup>*

9. Bristol Airport Limited (“**BAL**”) has simply ignored the Council’s preference for an Area Action Plan. BAL does not even have an up-to-date masterplan: the last master plan was published in 2006 and consultation on an updated masterplan petered out in 2018. This approach has resulted in a series of missed opportunities, in particular the opportunity to formulate a form of development which is guided by community expectations and which is consistent with the Council’s planning for its area, as expressed through the development plan. The first of these failings is made plain simply by looking around the room: the Proposed Development has failed to match the expectations of a range of different stakeholders, in particular the local community. The second of these failings is demonstrated through the Council’s evidence: the Proposed Development is in conflict with a range of policies in the development plan, fails to accord with the development plan as a whole and represents a form of development which is inimical to the vision for the Council’s area that is enshrined in the development plan.
10. Further, the Proposed Development must now be considered in a radically different world to that which has formerly prevailed. Never before has significant expansion at BA been assessed against the NPPF, the current development plan or in a legislative framework which mandates the achievement of net zero greenhouse gas emissions. These matters represent a watershed in the assessment of development at BA. Indeed, they represent a watershed in the consideration of aviation development throughout England. The consistent thread through local and national policy (as well as the legislative framework) is one of responsible growth. Policy support for aviation development at any level can only be unlocked if the environmental effects of such development are resolved. The Proposed Development is not responsible growth;

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<sup>3</sup> CD 5.06 at [3.293] (on p. 95).

rather it gives rise to a range of harmful, unresolved, environmental effects and provides modest countervailing benefits. It is a form of development stuck in the past and which fails to live up to the expectations of the modern world.

11. Before outlining the Council's case on the main issues in this appeal, we address the key features of the policy framework.

## **II. THE POLICY FRAMEWORK**

12. The policy framework for this appeal is characterised by two matters: first, as already foreshadowed, the consistent theme of responsible growth at all levels of policy; and secondly, the dynamic nature of national policy concerning carbon emissions.

### **(a) The development plan**

13. The starting point is the development plan, which for the purposes of this appeal consists principally of the CS and the Sites and Policies Plan Part 1: Development Management Policies ("DMP").<sup>4</sup> The development plan is entirely consistent with the NPPF and should be afforded full weight in the determination of this appeal. BAL do not contend to the contrary.
14. The CS and DMP (together with the Site and Policies Plan Part 2: Site Allocations Plan ("SAP")) represents the spatial, land use expression of the priorities in the North Somerset Vision. That vision is summarised in the CS as '*sustainable, inclusive, safe, healthy, prosperous communities thriving in a quality environment*'.<sup>5</sup> Underpinning the vision is six priorities: tackling disadvantage and promoting equality of opportunity; development strong inclusive communities; ensuring safer communities; improving health and well-being; developing a prosperous economy and enterprising community; and living within environmental limits.<sup>6</sup> The policies in the CS and the DMP provide the framework for the delivery of this vision and these priorities.
15. The Council's evidence deals with the full suite of relevant policies, but we dwell here on policy CS23 of the CS which concerns BA specifically and which provides:

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<sup>4</sup> CD 5.06 and 5.04 respectively. The Sites and Policies Plan, Part 2: Site Allocations Plan (CD 5.26) is also part of the development plan.

<sup>5</sup> CD 5.06 at [2.2] (p. 14).

<sup>6</sup> CD 5.06 at [2.3] (p.14).

*'Proposals for the development of Bristol Airport will be required to demonstrate the satisfactory resolution of environmental issues, including the impact of growth on surrounding communities and surface access infrastructure.'*<sup>7</sup>

16. The Council is not blind to the potential for growth at BA to benefit its area: to the contrary, the third priority objective in the CS recognises the need to *'support and promote major employers in North Somerset, such as Bristol Airport'*.<sup>8</sup> However, this priority is set in the context of the Council's vision, which we repeat: *'sustainable, inclusive, safe, healthy, prosperous communities thriving in a quality environment'*. Policy CS23 mediates the positive potential for growth at BA in this context: in order to grow BA, BAL *'is required to demonstrate the satisfactory resolution of environmental issues, including the impact of growth on surrounding communities and surface access infrastructure'*.<sup>9</sup> There is no unqualified support for growth at BA; quite the opposite – growth is only supported where the environmental issues and impact of growth are resolved. This is an imposing hurdle for BAL because the resolution of environmental issues is not, as BAL seek to argue in this appeal, a mere simplistic question of balancing harm and benefit; rather it requires development which delivers growth without compromising the environment – both human and physical – in which it is situated. Moreover, this is a burden which rests on BAL: *'Development of the Airport is led by its owners, whose responsibility it is to ensure that the environmental impacts of growth are addressed to the satisfaction of the council or other relevant decision-maker.'*<sup>10</sup> The same approach is adopted in linked policy DM50 of the DMP.<sup>11</sup>
17. In this respect, policy CS23 draws together the other relevant policy imperatives in the CS, in particular: the reduction of carbon emissions and tackling of climate change in policy CS1; the prevention of unacceptable environmental pollution or harm to amenity and health in policy CS3; the achievement of sustainable transport which does not adversely affect the environment or undermine carbon reduction in policy CS10; and the achievement of healthy communities in policy CS26. Taken together, these policies, as applied to BA by policy CS23, require that any growth at BA is responsible growth. We return to specific aspects of these policies below.

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<sup>7</sup> CD 5.06 at p. 95.

<sup>8</sup> CD 5.06 at p.20.

<sup>9</sup> See policy CS 23 at CD 5.06 on p. 95.

<sup>10</sup> CD 5.06 at [3.296] on p. 95.

<sup>11</sup> CD 5.04 at p. 117.

**(b) National Aviation policy**

18. As with local policy, national aviation policy only supports aviation development when the environmental effects are resolved. This can be traced through the full suite of policies.
19. Starting with the Aviation Policy Framework ("APF"), the Government recognises that the aviation sector is a major contributor to the economy and 'support[s] its growth within a framework which maintains a balance between the benefits of aviation and its costs, particularly its contribution to climate change and noise' (emphasis added).<sup>12</sup> Accordingly, there is no unconditional support for aviation growth; rather the support of the APF for growth can only be obtained once it is established that the benefits of growth outweigh its costs, particularly in relation to climate change and noise. These environmental considerations are not simply matters to be taken into account; rather they shape the manner in which growth must be delivered.<sup>13</sup>
20. The absence of any unconditional support for growth is particularly apparent in the approach of the APF to growth outside of London. The APF explains:
- 'we recognise that the development of airports can have negative as well as positive local impacts, including on noise levels. We therefore consider that proposals for expansion at these airports [outside London] should be judged on their individual merits, taking careful account of all relevant considerations, particularly economic and environmental impacts.'*<sup>14</sup>
21. The Council's decision in this case is an example of such local decision making in action: as the Council will explain through its evidence, the claimed positive economic benefits of the Proposed Development are overstated and uncertain; at the same time the environmental and health impacts are tangible and unresolved.
22. At the heart of APF is also the clearly identified need for aviation development to tackle its environmental impacts. This is particularly the case in respect of carbon emissions, congestion, air quality and noise, and indeed APF mandates airports not just to avoid gross impacts on air quality, but actually to deliver improvements in air quality. We return to these matters below.

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<sup>12</sup> CD 6.01 at [5] on p. 9.

<sup>13</sup> See especially CD 6.01 at [1] and [1.57] on pp. 10 & 29 – 'in a balanced way, consistent with the high-level policies set out in this document'.

<sup>14</sup> CD 6.01 at [1.24] on p. 22.

23. Turning to consider ‘*Beyond the Horizon: The future of UK aviation – Making best use of existing runways*’ (“**MBU**”), a consistent position is adopted to that set out in APF. MBU explains:

*‘The Government wants to see the best use of existing airport capacity. We support the growth of airports in Northern Ireland, Scotland, Wales and airports outside the South East of England. However, we recognise that the development of airports can have negative as well as positive local impacts, including on noise levels. We therefore consider that proposals for expansion at these airports should be judged on their individual merits, taking careful account of all relevant considerations, particularly economic and environmental impacts.’<sup>15</sup>*

24. There is no unconditional support for growth here. To obtain the benefit of the support of MBU it has to be established that the benefits of the Proposed Development outweigh the costs. Just as with APF, MBU does not provide any in principle support *per se* for applications to increase the use of existing runways. MBU only provides weight in favour of a scheme once it is established that the benefits outweigh the costs.
25. Indeed, MBU was promulgated at a time when it was anticipated that the environmental impacts of aviation upon those living in the vicinity of airports would reduce over time as expected technological change would deliver cleaner quieter aircraft. The Government was astute in determining that the headroom created by such change was not to be used by airports as a justification for further expansion thereby eroding the environmental gains which would otherwise be made. As with APF, MBU expects that local communities are to obtain a share of the benefits of any airport expansion, both economic and environmental:

*‘The government recognises the impact on communities living near airports and understands their concerns over local environmental issues, particularly noise, air quality and surface access. As airports look to make the best use of their existing runways, it is important that communities surrounding those airports share in the economic benefits of this, and that adverse impacts such as noise are mitigated where possible.’<sup>16</sup>*

26. As we explain below, one of the fundamental difficulties in the present case is the failure of the Proposed Development to recognise this imperative to share the benefits of expansion with local communities. The Council intends to explore the extent to

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<sup>15</sup> CD 6.04 at [1.11] on p. 5.

<sup>16</sup> CD 6.04 at [1.22] on p. 8.

which the case for the Proposed Development actually shares environmental benefits with the ‘communities surrounding’ the airport.

27. Finally, the Green Paper ‘Aviation 2050 – The future of UK aviation’ (“**Aviation 2050**”) very clearly explains that the support for growth is conditional on resolution of the environmental impacts: the Government ‘supports airports throughout the UK making best use of their existing runways, subject to environmental issues being addressed’.<sup>17</sup> This is affirmed in the discussion of sustainable development: the Government ‘supports the growth and the benefits this would deliver, provided that growth takes place in a sustainable way, with actions to mitigate the environmental impacts’.<sup>18</sup> Again, and consistently with APF, Aviation 2050 goes beyond the mere avoidance of impacts to require reductions in carbon and congestion, and improvements in air quality.
28. Stepping back and looking at these documents in the round, there is a clear picture: the Government does not support growth unconditionally, rather aviation development can only benefit from the support in national policy when it has resolved its environmental impacts and where expected environmental gains are shared with the community surrounding the relevant airport. This is entirely consistent with the expression of responsible growth in local policy.
29. This approach emerges clearly on the face of these policies, but the reality of the situation today, as the Council’s evidence will demonstrate, is that even these expressions of conditional support for growth are out-of-date. Changes in both legislation and policy concerning carbon emissions after the publication of current aviation policy means that the scope for aviation growth is now extremely limited and cannot be determined in an *ad hoc* fashion *via* isolated planning appeals such as the present. When extant aviation policy is understood in today’s circumstances, it fails to provide a robust and up to date framework for the assessment of future aviation development.

### **(c) National Planning Policy Framework**

30. Multiple parts of the NPPF are material to the assessment of the Proposed Development. It is not necessary to recite each provision here, but is clear that the concept of sustainable development in the NPPF, as embodied in NPPF paragraph 11,

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<sup>17</sup> CD 6.05 at [1.3] and [1.21] on pp. 18 and 26.

<sup>18</sup> CD 6.05 at p. 12.



is consistent with the theme of responsible growth in both the development plan and aviation policy. Sustainable development is, of course, development which achieves environmental, economic and social gains. The Council will contend that in circumstances where the scope for further airport expansion is limited, only the airport expansion schemes which are the most sustainable can be permitted to come forward. Any other approach would not be consistent with the objective of attaining sustainable airport growth.

### **III. OUTLINE OF THE CASE FOR THE COUNCIL**

31. The Council submits that this appeal should be dismissed because the Proposed Development fails to accord with the development plan and the other material considerations in this case do not indicate that planning permission should be granted contrary to the development plan.
32. There are four fundamental deficiencies in BAL's case. First, BAL fail to adequately address the uncertainty which pervades the assessment of the Proposed Development. Secondly, BAL has not demonstrated, and it cannot be demonstrated, that the Proposed Development can be delivered on a basis which is consistent with the UK meeting either the 6th Carbon budget ("6CB") target or net zero in 2050. BAL fails to grapple with the dynamic nature of policy on carbon emissions, providing no coherent explanation for how the Proposed Development is consistent with the attainment of these targets. Thirdly, BAL underestimates the adverse effects of the Proposed Development and fails to take the opportunity to deliver improvements and provide innovative solutions to these problems. Fourthly, BAL overestimates the benefits of the Proposed Development. We will outline the nature of each of these deficiencies in turn.

#### **(a) Failure to adequately address the uncertainty which pervades the assessment of the Proposed Development**

33. Forecasting the growth in the demand for air travel from a particular location is an inherently uncertain activity. This applies across the sector and is not specific to BA, as Mr Folley's evidence demonstrates: forecasts for Belfast, Birmingham, East Midlands and Stanstead airports range in accuracy from 51% above to 50% below the

actual figure.<sup>19</sup> The uncertainty in this appeal is even more significant given the unknown impact of Brexit and Covid. Indeed, the circumstances now are such that the uncertainty in forecasting airport growth has never been greater

34. BAL's evidence fails to grapple with this uncertainty or its consequences adequately. BAL has provided its forecast fleet mix and night movements for its core case alone. No sensitivity test has been applied to these factors for the slower or faster growth scenarios. In short, the implications for the full range of impacts and benefits associated with the uncertainty in the forecast has not been assessed and are unknown.
35. This failure by BAL is compounded by other errors of approach in BAL's forecasting, in particular:
  - (a) BAL has utilised airline interviews to inform its forecasts but has only provided high-level anonymous responses from those interviews. Neither the Council nor this inquiry is able to interrogate this sterilised data, despite it forming an important part of BAL's forecasting exercise. Similarly, BAL has not explained what values have been assigned to each market segment in its long-term forecasting. This too is an important matter which the inquiry is unable to interrogate.
  - (b) BAL's route development assumptions for forecasting in the shorter term do not provide sufficient evidence to either support the growth assumptions made with regard to business travel or to support the assumption that business travellers will make up the same proportion of passengers in 2030 as it did in 2019.
  - (c) BAL's bottom-up forecasts have failed to consider a reduction or levelling off of route frequency EU worker markets, e.g. Eastern Europe.
  - (d) BAL has used historic elasticities from the Department for Transport's UK Aviation Forecasts 2019 which are drawn from a world without Covid and before the implementation of Brexit.
36. Of further significance is BAL's failure to properly take into account the arrival of Jet2 to BA. Jet2 has historically brought second hand and older generation aircraft which

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<sup>19</sup> See Mr Folley's Appendix 1.

it operates for a long period. This is in contrast to easyJet and Ryanair who tend to buy aircraft new and replace them at a higher frequency. When Jet2 is taken into account, it results in a number of stark differences both in the number of annual movements and the aircraft undertaking those movements.<sup>20</sup>

37. Far from being sterile matters of forecasting, BAL's failure to account for this uncertainty – and its failure to properly account for Jet2 – in its assessment of the effects of the Proposed Development cuts across a number of issues, in particular noise, air quality and carbon emissions. The effect of this is twofold: first, BAL's evidence cannot be considered to be robust; secondly, it has resulted in the underestimation of the adverse effects of the Proposed Development.

**(b) Failure to grapple with the dynamic nature of policy and legislation on carbon emissions**

38. As explained in Mr Hinnells' evidence, policy and legislation on carbon emissions is dynamic and fast moving. Indeed, there have been changes in this area since both the decision of the Council to refuse planning permission and the exchange of evidence in this appeal.
39. The clear thrust of the NPPF is to ensure that the planning system in both policy making and decision taking terms plays its part in securing the attainment of climate change targets and objectives. This can also be seen in the Airports NPS:

*"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."*<sup>21</sup>

40. Thus, it has to be demonstrated that if planning permission is granted the UK will still be able to achieve the 6CB targets and net zero in 2050. If this cannot be demonstrated then to grant planning permission would be inconsistent with the legal duty in section 1 of the Climate Change Act 2008 ("CCA 2008").
41. In the absence of a government adopted aviation sector target for the 6CB period and/or for net zero by 2050, the only means by which it can be established that the

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<sup>20</sup> While BAL has identified some issues with the Jet2 fleet mix produced on behalf of the Council, it will be argued that these do not materially affect the conclusions drawn by the Council's witnesses.

<sup>21</sup> CD 6.09 at [5.82] on p. 60.

targets could be met would be to undertake a cumulative assessment of all UK emissions including those anticipated from other airport expansions. BAL has not undertaken such an assessment. Indeed, when asked to produce one by the PCAA its response indicated that it was not in a position to undertake this exercise.

42. Moreover, as MBU recognised, such an exercise is for Government to undertake. The Council will contend that the Government has not presented any concluded exercise which establishes that existing carbon emission targets will be attained with any degree of certainty if planning permission for the Proposed Development is granted.<sup>22</sup> The result is that this Inquiry does not have any assessment before it which demonstrates that if the proposed development is permitted, the UK will still meet the 6CB target and/or the 2050 net zero target. This means that it has not been established that the Proposed Development can come forward on a basis which is consistent with the 78% cut in emissions for 2035 or the net zero 2050 target which is required.
43. This is not a new position for Inspectors to find themselves in. In the recent DCO examination for the A38 Derby junctions DCO, the Applicant sought to demonstrate that the scheme in that case would not affect the ability of the Government to meet the net zero target. The ExA concluded that *'we are unable to make a recommendation on this as the relevant interim carbon budgets have not been published. The SoST will need to satisfy themselves on that matter before making their decision.'*<sup>23</sup>
44. Further the ExA was not satisfied that the Applicant for that DCO (Highways England) adequately considered cumulative climate change effects:

*'In our view a more suitable assessment would adopt a reasonably consistent geographical scale by, for example, considering the Road Investment Strategy (RIS)1 or RIS2 programme, of which the Proposed Development is a part, against the UK carbon budgets. The SoST will need to satisfy themselves on that matter before making their decision.'*<sup>24</sup>

45. The ExA also explained that the evidence presented was:

*'[...] not sufficient for us to conclude whether or not the Proposed Development, or the RIS1 or RIS2 programmes of which it is a part, would cause the UK to be in breach*

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<sup>22</sup> The recent Jet Zero consultation presents four scenarios but the assumptions behind them has not been present and nor has any assessment of the likelihood of the scenarios coming about been conducted.

<sup>23</sup> ExA Report A38 Derbyshire Junctions.

<sup>24</sup> ExA Report at [6.4.56].

*of its international obligations. The Applicant has suggested that evidence that there would not be a breach of the obligation would be available to the SoST. The SoST will need to satisfy themselves on this matter before making their decision.'*<sup>25</sup>

46. The Secretary of State concluded in respect of these matters:<sup>26</sup>

*'The Secretary of State notes that the ExA has recommended that further consideration should be given to the cumulative effects of carbon emissions from the Proposed Development and proposed that this should be undertaken in relation to consideration of the cumulative effects of the Road Investment Strategy ("RIS") 1 and 2. The Secretary of State is satisfied that appropriate consideration was taken of the carbon impacts of the RIS programmes during their development and that any impact is not incompatible with the national wide carbon targets and commitments of the Government. The Secretary of State considers that the cumulative assessment of the RIS is a matter for national consideration and as mentioned above, is satisfied that appropriate consideration was given during the RIS's development. The Secretary of State is content with the assessment undertaken by the Applicant and that it is in accordance with paragraphs 5.17 and 5.18 of NPSNN. The Secretary of State is satisfied that any increase in carbon emissions that would result from the Development is not so significant that it would have a material impact on the ability of the Government to meet its carbon reduction targets and that having regard to s104(4) of the PA2008 would not result in a breach of international obligations.'*

47. This decision was the subject of a challenge in the High Court. The Secretary of State consented to judgment on the basis of inadequate reasons.
48. The Council will argue that you are in the same position as the ExA. The interim targets for the aviation sector have not been published. There has been no definitive appraisal of the cumulative effects of carbon emissions from airport expansion proposals presented to you which enables you to conclude whether or not the Proposed Development would cause breach of the 6<sup>th</sup> Carbon Budget target or the net zero target for 2050. The Council will contend that since you are not in a position to undertake the assessment necessary and neither is BAL, the Proposed Development cannot proceed unless the Secretary of State satisfies himself that climate change obligations can be met. But to do that an appraisal must be conducted and presented in detail to allow the parties to this Inquiry to make appropriate representations and to address the relevant matters in their evidence.

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<sup>25</sup> ExA Report at [6.4.57].

<sup>26</sup> Decision Letter at [72].

49. The Government announced in April that alongside domestic aviation, international aviation is to be included in assessing the achievement of the 6CB target and in attaining net zero by 2050. Whilst aviation emissions may represent a small proportion of total UK carbon emissions now, that will not be the case as other sectors respond to the need for significant carbon reductions. By 2050 the CCC expects the sector to be the second largest contributor to UK greenhouse gases (“GHG”) emissions unless significant action is taken.<sup>27</sup> In the “Decarbonising Transport Plan” published only last week, the Government explains that:

*‘Decarbonising aviation is one of the biggest challenges across the global economy. The technological requirements to provide the power to propel aircraft the distances required far outstrip those for equivalent land-based transport.’<sup>28</sup>*

50. Further, the foreword of the Jet Zero consultation which was also announced last week describes aviation as ‘one of the most challenging sectors to decarbonise’.<sup>29</sup> Indeed, it explains that the aviation sector will not achieve net zero itself:

*‘Aviation is expected to be one of the few residual emitting sectors in 2050. Many of the technologies we need are in their infancy and will take time to develop.’<sup>30</sup>*

51. Thus, the Proposed Development would simply add to the difficulty of attaining net zero in a sector where the attainment of the targets is ‘one of the biggest challenges’ faced by the economy. In that context, the Council will argue that it cannot be established that the addition of the carbon emissions associated with a 2mppa increase in capacity at BA would not have a material impact on the ability of the Government to meet its carbon reduction targets.

52. Indeed, the CCC in its assessment of the difficulties that the aviation sector presents for the attainment of net zero was very clear. In its 6CB report the CCC’s pathway to net zero only allowed for a 25% growth in the aviation sector in the period to 2050 and it recommended the introduction of demand management, explaining that for every 1 mppa increase in capacity that was granted, 1 mppa of capacity would have to be lost at another airport elsewhere. Even these assumptions resulted in the aviation sector

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<sup>27</sup> Climate Change Committee (2020). Sixth Carbon Budget.

<sup>28</sup> At p. 118.

<sup>29</sup> At p. 4.

<sup>30</sup> Jet Zero consultation at [2.2].

producing significant amounts of carbon emissions as at 2050 and not attaining net zero.

53. It is clear that, even on the basis the level of growth examined by the CCC, for the aviation sector to attain the 6<sup>th</sup> Carbon Budget target and net zero as at 2050, GHG removal measures will have to be relied upon. The CCC noted, however, that such measures are yet to be demonstrated to be available at the required scale in the UK for the aviation sector to achieve net zero.

54. The CCC re-iterated this advice as recently as 24 June 2021 in its update to Parliament:

*‘The UK already has more than enough capacity to accommodate the demand increases in our Balanced Net Zero Pathway. Our advice in the Sixth Carbon Budget was therefore that 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.*

*Outperforming the net emissions trajectory means making significant progress on nascent and untested technologies like hybrid electric planes, and developing and scaling up markets for sustainable aviation fuels (SAF) and greenhouse gas removals.*

*It is not possible to have certainty today over the pace of development of these technologies in future. It is therefore difficult at present to justify capacity expansion on the basis of outperforming the emissions trajectory, particularly given the uncertainty around the permanence of impacts on aviation demand from COVID-19.*’ (emphasis added)

55. Thus, in essence the CCC’s position is that it is too soon to be able to allow any further net expansion of UK airport capacity. In other words, it is premature to grant permission for schemes such as the Proposed Development. The CCC’s position is that further expansion can only be contemplated in the future if it is established that the aviation sector is outperforming the emissions trajectory required to meet the carbon emissions reduction targets. We return to this theme of prematurity further below.

The APF and MBU in respect of carbon emissions

56. The Council will contend that both APF and MBU are out of date in so far as their policy approach is justified by reference to an appraisal of the implications of growth against a now out of date set of emissions reduction targets.

57. The APF was published in March 2013 and as such it was formulated in the context of a statutory duty in the CCA 2008 to cut emissions to 80% of 1990 levels by 2050. Further, APF adopted a policy approach (within the context of an 80% cut in emissions) where international aviation was not to be included in the attainment of national targets. An 80% target of course would allow for off-setting from other sectors which achieve a greater than 80% reduction in carbon emissions.
58. This position has been overtaken, is no longer tenable and APF must be considered to be out of date. Today, the Government has committed to including international aviation with carbon reduction targets, to the CCC recommendation for the 6CB of a cut in carbon emissions to 78% of 1990 levels by 2035 and to achieve net zero by 2050. The approach set out in APF is entirely at odds with those objectives and its support for growth can only be seen to be support for growth on a basis which was not established to be consistent with the recently adopted targets.
59. Further, the policy approach in MBU was founded on it being established that the small increase in capacity that it contemplated could come forward on a basis which would ensure that the then existing climate change targets could still be met. Of course, those climate targets were not those which apply today: there was no commitment to net zero and the policy was promulgated several years before the publication of the 6CB by the CCC and its acceptance by the Government.
60. MBU does not contain any assessment which demonstrates that the increase in capacity that it contemplates can come forward on a basis which will ensure that either the 6CB target or net zero in 2050 will be attained.
61. The Jet Zero consultation paper published last week states:

*'Beyond the horizon The future of UK aviation: Making best use of existing runways (2018) and Airports National Policy Statement: new runway capacity and infrastructure at airports in the South East of England (2018) are the most up-to-date policy on planning for airport development. They continue to have full effect, for example, as a material consideration in decision-taking on applications for planning permission. The government is clear that expansion of any airport must meet its climate change obligations to be able to proceed'*<sup>31</sup>

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<sup>31</sup> At footnote 39.



62. Whilst the Council recognises that the APF and MBU are the most recent policy statements made by Government, that fact alone does not mean that the justification for the policy approach contained within those statements remains up-to-date;<sup>32</sup> rather the Council will contend that in so far as support for additional airport expansion is provided in those documents, that support is founded upon an appraisal of compliance with carbon reduction targets which is wholly out of date.
63. Neither the APF nor MBU tested the ability for the UK to meet its current climate change obligations (6CB and net zero 2050 including international aviation emissions). As such, to the extent that either of these policy documents can be construed as giving any in principle support for airport expansion, that support must be out of date since it was not provided on the basis of any assessment which establishes that airport expansion can be achieved on a basis which is consistent with the current climate change obligations.
64. As a result, the Council will argue that to the extent that the APF and MBU support additional airport expansion, those expressions of support are to be given little weight, since it has not been established that such growth is deliverable on a basis which is consistent with existing carbon emissions reductions targets.

#### Recent Announcements – Decarbonising Transport Plan

65. The Government's Decarbonising Transport Plan published last week does not alter this position. It does not contain any assessment which is comparable to the exercise set out in MBU. Indeed, that document does not identify the scale of growth for the aviation sector the Government contemplates in the period to 2050.

#### Recent Announcements - Jet Zero Consultation

66. The Jet Zero consultation published last week and which runs to 8 September 2021 will also be a particular focus at this Inquiry. That document is notable because it:
- (a) brings into sharp focus that the Government has set legally binding targets for the UK but has not adopted policy which demonstrates how these will be attained by the aviation sector;

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<sup>32</sup> Indeed, the Jet Zero paper footnote 39 is careful not to state that these statements are up to date.

- (b) proposes to set a CO<sub>2</sub> emissions reduction trajectory for aviation from 2025 to 2050 which would see in-sector CO<sub>2</sub> emissions of:
  - (i) 39 Mt in 2030;
  - (ii) 31 Mt in 2040; and
  - (iii) 21 Mt in 2050 (with any residual emissions in 2050 to be offset by greenhouse gas removal methods).
- (c) alternatively, it proposes a trajectory based on net CO<sub>2</sub> emissions – where offsetting and removals are considered as part of the target – which require CO<sub>2</sub> emissions of:
  - (i) 23-32 Mt in 2030
  - (ii) 12-19 Mt in 2040; and
  - (iii) 0 Mt in 2050.

67. These trajectories are more stringent than the planning assumption identified in MBU against which the acceptability of the limited capacity expansion contemplated by that document was assessed. Indeed, the higher ambition trajectory which is tougher than the CCC trajectory, still requires some 21 MtCO<sub>2</sub> to be off-set by GHG removal methods.

68. The Jet 2 Consultation states:

*'We currently **believe** the sector can achieve Jet Zero without the Government needing to intervene directly to limit aviation growth. The industry's need to rebuild from a lower base is likely to mean that plans for airport expansion will be slower to come forward. Our analysis shows that there are scenarios that can achieve similar or greater CO<sub>2</sub> reductions to those in the CCC's Balanced Pathway (which limits growth to 25% by 2050 compared to 2018 levels compared to a baseline of 65% growth) by focussing on new fuels and technology, with the knock-on economic and social benefit, rather than capping demand.'*

*'We recognise that net zero 2050 must be achieved and we must ensure that any growth in aviation is compatible with our emissions reduction commitments.'*<sup>33</sup>

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<sup>33</sup> At [3.41] – [3.42].

69. The basis for the “belief” that the Government does not need to intervene directly to limit aviation growth appears to be founded in four scenarios summarised in the accompanying “Evidence and Analysis” document. But these scenarios contain no appraisal of the degree of risk associated with each of them. In other words, there is nothing which indicates the extent to which they can be relied upon. The supporting document explains:

*‘In order to achieve the CCC’s proposed demand limit of a 25% increase in passenger numbers on today’s levels by 2050, our modelling suggests a carbon price substantially higher than £600/t could be necessary. However, given the current evidence on the costs of SAF and hydrogen, we think before carbon prices reached this level, they would be sufficient to incentivise technologies to reach net zero GHG emissions by 2050.*

*This analysis suggests that capping demand **may not** be necessary to reduce emissions to levels which can be offset by GGRs to achieve net zero (such as the level suggested by the CCC’s Balanced Net Zero Pathway, 23 Mt in 2050). **There is much uncertainty however, and clearly there could be many combinations of technology improvements, GGR costs and demand growth which would achieve net zero.** The challenge is to provide the right incentives and support to achieve this aim in the least restrictive and most cost-effective way possible.”<sup>34</sup> (emphasis added)*

70. The statement that capping demand “may not” be necessary cannot be read as a conclusion that capping demand is not necessary.
71. The Evidence and Analysis paper examines four scenarios containing varying levels of growth (between 58% and 60% increase in passengers. It explains:

*‘[...] the four scenarios we have modelled result in residual in sector emissions of between 9 Mt and 36 Mt in 2050. The scenarios show that significant in-sector abatement could be possible if we make substantial progress with new technologies. However, making the required technological progress will be very challenging and there are many barriers that will need to be overcome, especially for the final two scenarios. Our trajectories also indicate that aviation net zero can be met by 2050 with future capacity assumptions consistent with Making Best Use policy and the Airports National Policy Statement.’<sup>35</sup>*

72. The Council is still seeking to understand the basis of this last statement, since it seems to suggest some assumptions have been made regarding future airport growth which are not presented in the consultation documentation. There are concerns whether, as

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<sup>34</sup> At [2.21 – 2.22] on p. 9.

<sup>35</sup> At [4.1] on p. 19.

a result, sufficient information is provided to enable respondents to engage meaningfully with the appraisal which has been undertaken. The Council reserves its position to comment further in the light of any information that it may obtain in this regard.

73. The Council will contend that the “evidence” supporting the Jet Zero consultation paper does not support a conclusion that airport expansion now will be consistent with the achievement of existing emissions reduction commitments. The evidence does not support the view that capping demand will not be necessary in order to achieve existing emissions reduction commitments. The evidence does not demonstrate that very challenging technological progress to deliver the trajectories modelled will be made – nor does it assess the consequences if it is not.
74. In essence, what the “evidence” identifies is that it is too soon to conclude that capping airport growth is not necessary. The Council will argue that this material also points to the conclusion that there is no analysis which demonstrates that permitting the Proposed Development now can be done without there being any likely material impact on the Government’s ability to meet its climate change obligations.

#### Stansted Airport appeal decision

75. There will inevitably be some discussion of the implications of the Stansted Airport appeal decision letter. The Council will contend that the decision is flawed in numerous respects, not least its failure to consider the weight to be ascribed to MBU in the light of the factors set out above. It is notable indeed, that the Inspectors failed to consider whether the rationale for growth contained within MBU remained sound notwithstanding the inclusion of international aviation within UK targets and the adoption of the 6CB and net zero targets. It is understood that the decision is now the subject of challenge in the High Court. The Council has been identified as an interested party and is currently considering the extent to which it may wish to become involved in that litigation.

#### BAL’s evidence

76. BAL simply fails to grapple with any of the difficulties set out above. Indeed, Mr Melling’s evidence does not even contemplate that the above matters could afford a basis for reducing the weight to APF and MBU. The further difficulty with BAL’s case

is that it fails to recognise the consequences of the current wave of airport expansion in the context of a policy framework which is out of date and wholly unable to guide aviation growth in a manner which is consistent with the attainment of net zero.

77. Over time, aviation carbon emissions will become more and more significant. The extent to which growth can be allowed depends on the extent to which there is the ability to use greenhouse gas reduction (“GGR”) measures during the 6CB period and as at 2050. Asserting that the impact of a scheme is small does not establish that the additional emissions it will give rise to will be reduced/offset to a sufficient degree that the 6CB target can be met and that net zero 2050 will be attained.

#### Prematurity

78. What is clear from Mr Hinnells’ proof is that not all airports will be able to expand. That is because the expansion plans of all airports cumulatively go beyond what could have been permitted under previous climate change targets. Since the new targets are even more stringent and require greater carbon emission reductions, it follows that only some of the airport expansion plans can come forward between now and 2050 on a basis which ensures attainment of the UK climate change obligations.
79. Since there are more schemes than carbon headroom, there has to be a process of identifying which schemes should come forward and which should not. A comparative exercise needs to be undertaken by national government to identify the scheme which achieve “sustainable growth” objectives of Aviation 2050 and the NPPF. Only the schemes which rank highest in the attainment of these objectives, consistent with the amount of capacity for growth which is available to ensure attainment of climate change targets, can be permitted to come forward.
80. Since such a concluded exercise has not been undertaken by Government, BAL cannot demonstrate that its scheme would be selected ahead of other airport expansion schemes. It follows that to grant planning permission for the Proposed Development now would be premature. It would prejudice the outcome of that exercise. To grant permission for the Proposed Development would utilise capacity that might otherwise be assigned to a different airport to better attain sustainable development objectives.

81. It is no answer to this difficulty to contend that airport expansion schemes should be permitted since their use can be subsequently regulated by central Government introducing controls to inhibit the use of any increase in capacity. Such an argument fails to recognise that planning decisions have to be taken on the basis of a balance of the impacts and benefits that will arise if planning permission is granted. If it is the case that once built the use of a scheme would be inhibited in order to meet climate change targets, then the benefits of the scheme that were used to justify the grant of planning permission would not be realised.
82. If in reality a proportion of the benefits of a scheme will not be capable of realisation, or there is a substantial risk that it will not, then that proportion must not be taken into account by a planning decision maker or it should be given limited, if any, weight.
83. It follows that the extent to which Government is likely to allow an airport to use any increase in capacity must be known prior to any decision maker granting planning permission, in order for that decision maker to weigh the degree of benefit that would actually be realised against the adverse impacts that would arise.
84. BAL has chosen to present its case in the present appeal on the basis of an assessment of benefits and impacts that assumes the full growth of 2 mppa. It has not demonstrated that the Government will or can allow this level of growth to occur consistent with the UK's climate change obligations. Further, BAL has not demonstrated that its scheme is justified if only a lower level of growth or indeed no growth is permitted by the Government. There has been no appraisal which demonstrates that the benefits of a lower level of growth would outweigh the harm.
85. In the light of the above, it has not been demonstrated that the Proposed Development will not have a material impact on the Government's ability to meet its carbon reduction targets.
86. Indeed, this application is premature. The concept of prematurity is well established in planning law, albeit usually in the context of the development plan process. The essence of a successful claim of prematurity is that the development proposed predetermines and pre-empts a decision which ought to be taken in the development plan process by reason of its scale, location and/or nature or that there is a real risk that it might do so: see *Truro City Council v Cornwall Council* [2013] All ER 108 at [63].

87. In the present case, the prematurity arises in the context of national policy. To grant planning permission for the proposed development predetermines and pre-empts a decision which ought to be taken in the context of a national evaluation of the constraints that exists as a result of adopted carbon emission reduction targets or that there is a real risk that it might do so. If the constraints are such that only some airport expansion schemes can be permitted then the national evaluation must decide which schemes come forward as best representing sustainable development.
88. The capacity of GGR measures that will be available in the future is fraught with uncertainty. Yet, since aviation will still be emitting carbon above the target levels in 2035 and at 2050, the extent of growth within the aviation sector can be accommodated depends in large part on the extent of available GGR capacity as at 2035 and 2050. Given the scale of the uncertainties associated with the provision of GGR measures, BAL cannot demonstrate that granting consent for the proposed development will not be material to the Government's ability to achieve climate change targets.
89. In "*A Green Future: Our 25 Year Plan to Improve the Environment*" the Government explained that:
- ' [...] the European Union (Withdrawal) Bill (now Act) will ensure that the body of existing EU law, including environmental law, continues to hold sway in the UK. Key underlying principles of existing policy, such as the 'polluter pays' principle and the precautionary principle, are reflected in this legislation.'*<sup>36</sup>
90. Further, the Environment Bill (currently at the report stage prior to third reading in the House of Lords) requires a policy maker to have regard to amongst other matters, the precautionary principle (see current clauses 18 & 19). The adoption of a Jet Zero policy is thus likely to be considered in the context of the application of that principle, which already forms a part of the Government's approach to the Environment.
91. The precautionary principle states that where there are threats of serious or irreversible environmental damage, a lack of scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation. Thus, whilst there is significant uncertainty whether further airport expansion can be permitted on a basis which will be consistent with the attainment of carbon reduction targets, Government will have to err on the side of caution by refusing to permit

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<sup>36</sup> At p. 129.

additional capacity until it has been established that allowing such development will be consistent with the attainment of such targets. The application of the precautionary principle leads to the adoption of the approach identified as appropriate by the CCC and explained above: there should be no net expansion of UK airport capacity, until it is proven that the aviation sector is on track to sufficiently outperform its net emissions trajectory to provide the headroom for expansion. Even, then the expansion which is permitted to come forward should be that which best delivers the objectives of sustainable development.

92. The Jet Zero consultation paper contains no discussion of the implications of the precautionary principle. The Council intends to explore the implications of this at this Inquiry.

#### Conclusion on carbon emissions

93. The proposed development is premature. It would add to carbon emissions in a sector which will not attain net zero even assuming substantial progress with new technologies and where the delivery of these new technologies will be “very challenging”. On any view, in order to attain net zero the aviation sector will be dependent upon greenhouse gas reduction measures to offset its residual emissions as at 2035 and 2050 on a scale which is yet to be established as deliverable on the necessary timescale.
94. The Council will contend that result is that it has not been established that the carbon emissions associated with the proposed development would not have a material impact on the ability of Government to meet its carbon reduction targets. The Council will argue that granting planning permission has not been demonstrated to be consistent with the attainment of the 6CB target or net zero by 2050 target. As such it is contrary to the NPPF (in particular the objectives in paragraphs 7 and 148), policy CS1 of the CS and the duty in the CCA 2008 (as amended) to ensure that the net UK carbon account for the year 2050 is at least 100% lower than the 1990 baseline. It will be said that this is a significant material factor weighing heavily against the grant of planning permission.



**(c) Underestimation of the adverse effects of the Proposed Development and failure to deliver improvements**

95. The common characteristic of BAL's evidence on the issues of noise, air quality, carbon emissions, Green Belt and surface access is that it underestimates the adverse impacts of the Proposed Development and fails to take the opportunity to provide innovative solutions to these problems.

Noise

96. There are two threads in local and national policy on noise. First, future aviation growth should ensure that the benefits of anticipated noise reductions are shared between the aviation industry and local communities. This means that the aviation industry must continue to reduce and mitigate noise as airport capacity grows and as noise levels fall with technological improvements, those benefits should be shared with local communities.<sup>37</sup> Thus local communities should be left with an improved noise climate over time even where an airport expands. Secondly, the number of people significantly affected by aircraft noise is to be limited and where possible reduced. This means that significant adverse effects of noise should be avoided, harm to amenity and health by noise must be limited to acceptable levels, quality of life shall be protected against adverse noise effects and health should be improved where possible.<sup>38</sup>
97. The Proposed Development fails to accord with either policy strand. In particular:
- (a) Contrary to the assessment in the Environmental Statement ("**the ES**") and the Addendum Environmental Statement ("**the AES**"), the Proposed Development would increase the number of people experiencing significant adverse and adverse impacts on health and quality of life from air noise.

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<sup>37</sup> See, for example APF CD 6.01 at [3.12] "*The Government's overall policy on aviation noise is to limit and, where possible, reduce the number of people in the UK significantly affected by aircraft noise, as part of a policy of sharing benefits of noise reduction with industry.*" Repeated at [3.1.3] of Aviation 2050 CD 6.05 and [5.6] of the ANPS CD 6.09: "*The benefits of future technological improvements should be shared between the applicant and its local communities, hence helping to achieve a balance between growth and noise reduction*". See also [4.1] of DoTs Air Navigation Guidance: Guidance on airspace & noise management and environmental objectives CD 10.12: "*The benefits of any future growth in aviation and/or technological development must be shared between those benefitting from a thriving aviation industry and those close to the airports that facilitate it.*"

<sup>38</sup> See Mr Fiumicelli's POE at [3.52] and the supporting paragraphs preceding.

- (b) The Proposed Development would not sufficiently mitigate and minimise adverse impacts on health and quality of life. For example, the proposed noise insulation scheme is insufficient in terms of spatial scope and only addresses internal noise impacts, not those in private and public outdoor amenity spaces. Further, the result of reliance upon noise insulation scheme is that in order to experience lower noise levels residents must keep windows closed, something which gives rise to a further significant adverse impact on quality of life in locations (particularly rural locations) which would otherwise be relatively quiet.
  - (c) As a result, the Proposed Development would contribute to a deterioration rather than improvement in the health and well-being of the local population, in particular those who are already affected by aircraft noise by worsening the already significant adverse and adverse effects of noise associated with the operation of BA.
98. Further, there are a number of reasons why the conclusion in the ES and AES regarding the absence of significant adverse noise effects are likely to be unsafe. In particular:
- (a) The LAeq,T metric is used as a standalone metric for the assessment of significance, without consideration of supplementary metrics. LAeq does not capture all of the impacts upon individuals and their quality of life.
  - (b) The ES and AES fail to assess established direct effects of aviation noise on health, such as cardiac effects, stroke, hypertension.
  - (c) The air noise impact ratings used in the ES and AES underestimate the degree of impact caused by the substantial increase in air traffic movements. This is particularly the case in terms of the impacts upon sleep disturbance at night within the local community
  - (d) The failure to take into account the decision by Jet2 to operate from Bristol Airport means that the future fleet mix is likely to be noisier than has been assessed in the ES and the AES.
99. The Council will contend that the proposed development will give rise to a material increase in the number of households subjected to levels of noise above SOAEL at

night. These are impacts which national and local planning policy says should be avoided but which are not. As a result, the NPPF and the NPPG support an approach that planning permission should be refused. In essence, the Council will contend that the noise impacts alone create a presumption in favour of refusal of the Proposed Development.

#### Air quality

100. At the international level, emissions of air pollutants should be avoided where possible, prevented if they cannot be avoided, and where they cannot be prevented then they should be controlled to reduce the emissions as far as possible. This is particularly important for PM<sub>2.5</sub>. Air quality standards/objectives are set nationally, but mere compliance with these standards/objective is not enough to prevent impacts upon human health from arising; a complete assessment of the potential impacts of the Proposed Development must include consideration of the effects on health which occur even when levels of airborne pollutants comply with the current national air quality standards.<sup>39</sup>
101. This is reflected in local policy, in particular policy CS26 of the CS. BAL contend via Mr Peirce that the CS does not require development to improve the health and well-being of the local population. The Council contends the contrary. CS policy CS26 requires *“Health Impact Assessments (HIA) on all large scale developments in the district that assess how the development will contribute to improving the health and well being of the local population; ...”*.<sup>40</sup> The Council will argue that Policy CS26 cannot be read as simply process driven i.e. it is not simply about conducting an HIA where there is large scale development. Such a policy would not have any land use consequences since it would achieve nothing other the carrying out of an HIA. The Council will contend that Policy CS26 was included in the Plan to deliver a particular land use outcome; that outcome, explicitly stated in CS26, is to ensure that large scale development contributes to the achievement of the objectives of the CS which include an improvement in the health and well-being of the local population.
102. Consistently with this, both national aviation policy and the NPPF require new development to positively demonstrate ongoing improvements in air quality by

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<sup>39</sup> See Mr Broomfield’s POE, section 4.

<sup>40</sup> CD 5.06 at p.100.

providing innovative solutions and incentives against ambitious targets; and by identifying opportunities to improve air quality or to mitigate impacts. This requires a comparison of air quality without development with air quality with development with the presumption that, with the development in place, air quality will improve.

103. BAL's assessment of the Proposed Development is flawed because it focuses on compliance with national air quality standards and omits consideration of how even compliance with those standards is insufficient to avoid harm to health to the local population living in the vicinity of the airport, particularly in a policy context which requires positive steps to be taken to improve the present situation.
104. The Council contends that the Proposed Development omits to include the identification of any ambitious targets relating to the reduction of polluting emissions and does not include any deliverable and measurable innovative solutions or incentives to achieve such targets. Despite having had years to develop a robust set of targets, solutions and incentives, BAL propose to postpone the identification, evaluation and possible implementation of any such targets and measures to an Action Plan at some point in the future. This would not take place until any leverage to require such measures to be taken in fulfilment of policy objectives is long gone. The extent to which the airport is actually committed to doing what can reasonably be done to reduce the impact of its polluting footprint is questioned.
105. These omissions are all the more stark when BAL's assessment reveals a worsening of air quality due to increases in nitrogen dioxide and PM<sub>2.5</sub> resulting from the appeal proposals. The Council will contend that the only reasonable conclusion is that the development would result in an increase in risks to human health, thus failing to comply with the clear requirements of national and local policy. These impacts are matters which have to be weighed in the balance against the grant of planning permission.

#### Green Belt

106. There is no dispute between the parties that the extension of the silver zone car park and the lifting of seasonal restrictions within the Green Belt is inappropriate development. However, BAL's assessment of the degree of harm arising to the Green Belt is a woeful underestimate. The Proposed Development results in a permanent loss of openness to the Green Belt in both spatial and visual terms. The current

seasonal silver zone car park and the proposed extension to that cover 12.9ha. That area will be block parked with up to 6,350 cars, in addition to a range of parking paraphernalia. The harmful impact of such development has been repeatedly recognised by Inspectors in enforcement appeals concerning off-airport parking around BA, none of which have involved development of a comparable size (they have all been smaller). Here, not only is there a loss of openness of the Green Belt but there is also a clear and tangible encroachment into the countryside, resulting in the loss of an important openness buffer around BA, contrary to the purposes of including land in the Green Belt.

107. In order to obtain planning permission for the Proposed Development BAL must establish that very special circumstances (“VSC”) exist to justify the harm by reason of inappropriateness. VSC will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm from the Proposed Development is clearly outweighed by other considerations.
108. The Council will argue that it has not been established that any necessary additional parking provision could not be provided outside of the Green Belt within the inset via a multi storey provision. As we explain below, the Council contends the amount of parking identified by BAL represents significant over-provision. Further, a Public Transport Interchange is required as part of the sustainable transport proposals. At present that can only be delivered by building out the previously granted planning permission for MSCP1. The provision of that additional parking reduces the need for additional parking in the Green Belt.
109. In *R. (Langley Park School for Girls Governors) v Bromley LBC* [2009] EWCA Civ 734, [2010] 1 P. & C.R. 10, the Court held that where there are no clear planning objections to a proposed development, alternative proposals (whether for an alternative site, or a different siting within the same site) will normally be irrelevant.<sup>41</sup> However, where there are clear planning objections to a proposed development such as the provision of inappropriate development in the Green Belt, the more likely it is that an alternative will be relevant, and may in some cases be necessary, to consider whether that objection could be overcome by an alternative proposal.

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<sup>41</sup> See also *R. (Mount Cook Land Ltd) v Westminster City Council* [2003] EWCA Civ 1346, [2004] 2 P. & C. R. 405.

110. In the present case, the ability to provide further multi storey car parking within the Green Belt inset (i.e. outside of the Green Belt) is clearly an alternative means of meeting such parking demand as may exist. Whilst BAL has a preference not to provide additional multi storey parking within the inset, that preference is driven by its own commercial considerations rather than by any necessity. The extent to which it has been established that the provision of multi storey car parking would make the entire development financially unviable and undeliverable will be explored.
111. The Council will also contend that the provision of additional surface level parking in the Green Belt will not resolve historic issues relating to off-airport parking since off airport parking will always undercut BAL's parking provision in order to sustain itself
112. Taken together, the Council will contend that BAL falls quite some way short of establishing that the harm to the Green Belt by reason of inappropriateness, and any other harm from the Proposed Development is clearly outweighed by other considerations. The Council will contend that VSC do not exist and that there is a conflict with national and local planning policy in this regard which is to be given significant weight against the grant of planning permission.

#### Surface access

113. Providing sustainable surface access to/from airports is an essential part of achieving sustainable growth in the aviation sector, especially because surface access is an important component in combatting climate change and because the impacts of inadequate surface access are felt acutely by local communities. This is recognised throughout national and local policy.
114. Within national aviation policy, four themes are readily apparent: (1) the important role of surface access provision in reducing emissions, in particular carbon emissions;<sup>42</sup> (2) the need to reduce congestion related to airports;<sup>43</sup> (3) the need to increase the use of public transport to access airports;<sup>44</sup> and (4) the importance of up to date surface access strategies which underpins these other objectives.<sup>45</sup> These themes are replicated

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<sup>42</sup> See APF CD 6.01 at [1.96] and [4.22]; and Aviation 2050 CD 6.05 at [3.67] and [3.101].

<sup>43</sup> See APF CD 6.01 at [1.96] and [5.11]; and Aviation 2050 CD 6.05 at [3.67] and [3.101].

<sup>44</sup> See APF CD 6.01 at [4.20] and [5.11]; MBU at [6.40]; and Aviation 2050 CD 6.05 at [3.67] and [3.99].

<sup>45</sup> See APF CD 6.01 at [4.20] – [4.30] and Annex B; and Aviation 2050 CD 6.05 at [3.67 – 3.68, 3.99 and 4.32 – 4.40].

in the NPPF and in the development plan.<sup>46</sup> Indeed, policy CS23 makes specific reference to the need to resolve the adverse effects of expansion at BA on surface access provision.<sup>47</sup>

115. In this context, BAL's Transport Assessment ("TA") and Addendum Transport Assessment ("TAA"), as well as the various iterations of the Parking Demand Study, fail to demonstrate compliance with these policy objectives in multiple respects. In particular:

- (a) There are a number of deficiencies in the TA and TAA which results in an incomplete and inaccurate understanding of the effects of the Proposed Development, especially in relation to: mitigation drawings; swept path analysis; road safety audits; walking, cycling and horse-riding audits; and junction modelling of the Slower Growth Scenario. The consequence of this is that it has not been demonstrated that the impact of the Proposed Development on congestion and highway safety has been mitigated to an acceptable degree, and as such the only conclusion is that there is inadequate surface access infrastructure to accommodate the Proposed Development.
- (b) There are a number of deficiencies in the Parking Demand Studies and the level of car parking proposed as part of the Proposed Development has not been justified. There is overprovision as a result of BAL's choice of operational utilisation percentage and demand to capacity ratio in the studies, as well as the growth in parking provision relative to passenger numbers and BAL's failure to assess the current sustainable mode share. Ultimately, these matters indicate that parking provision in the Proposed Development is overprovided to the extent that the Phase 2 Silver extensions is not required.
- (c) Similarly, there are a number of deficiencies in the assessment of public transport usage in the TA and TAA. It is clear that both national and local policy requires the sustainable mode share to be maximised but there is no evidence in the TA of what the maximum is, or that it will be achieved by the Proposed Development. Further, BAL's arguments concerning public transport are undermined by the lack of an up to date surface access strategy

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<sup>46</sup> See Mr Colles' POE at [3.2.6] – [3.2.18].

<sup>47</sup> CD 5.06.

and passenger travel plan, as well as the absence of analysis to demonstrate geographically where the unmet public transport demand is situated, and the absence of any commitment or certainty that the required Public Transport Interchange will be delivered. Ultimately, the level of public transport provision within the Proposed Development is inadequate, does not take account of all the opportunities to maximise sustainable transport solutions, fails to deliver a genuine choice of transport modes and will not sufficiently reduce the reliance on the car to access BA.

#### Carbon emissions

116. BAL's evidence on carbon emissions fails to recognise that there is an inconsistency between the emissions from the Proposed Development and the attainment of both the emission reductions envisaged in the 6CB and the CCA 2008.
117. The Council intends to explore the reality of BAL's claim that the airport will attain net zero. This will include the relative importance of carbon emissions related to the airport as opposed to carbon emissions from all carbon emissions associated with the operation of the airport (i.e. including aviation). In addition, the Council will examine the extent to which BAL is committed to deliverable and measurable carbon reduction measures from all carbon emissions associated with the operation of the airport if permission is granted for the Proposed Development (and if permission is refused). This includes seeking to understand the measures proposed to deliver Sustainable Aviation Fuel at BA and the timescale for this.

#### **(d) Overestimation of the benefits of the Proposed Development**

118. The Council will contend that the constraints brought about by the UK's climate change obligations mean that there is only the ability to bring forward capacity to meet demand where this can be done on a basis which ensures that those obligations are met and where the benefits of expansion (including the benefits of meeting demand) outweigh the costs. To elevate the benefits of meeting demand to a "need" is to fail to appreciate the nature of these constraints. The Council will contend that it should not be accepted that there is a need for the Proposed Development; rather the position is that meeting demand will bring some benefits albeit not of the scale identified by BAL



119. BAL has overstated the benefits of the Proposed Development across a number of areas and has failed to provide a comprehensive estimation of negative economic impacts, including environmental impact monetisation. Indeed, it is notable that the benefits claimed by BAL have declined: in its 2018 economic impact assessment, BAL claimed benefits amounting to £1565m, but this was slashed to £863m in 2020.<sup>48</sup> The deficiencies noted by Mr Siraut's evidence can be summarised as follows:
- (a) BAL has assumed that business passengers will make up the same proportion of total throughput as was recorded in the CAA 2019 Passenger Survey. This approach fails to take account of the long term trend of lower business travel growth compared to leisure, and fails to recognise the effects of the Coronavirus pandemic or the climate emergency on the attitude of business passengers.
  - (b) Any expansion at BA is likely to lead to displacement from other airports in the South West of England and South Wales, all of which have spare capacity. When displacement is considered realistically, the result is a significant reduction in the jobs and GVA arising from the Proposed Development.
  - (c) Similarly, BAL's assessment of GVA per construction job is significantly higher than ONS data suggests and is not justified.
  - (d) BAL fails to take into account: the effects of Brexit; the negative factor of outbound expenditure; and a number of monetised environmental impacts such as noise and air quality. Indeed, even though carbon costs have been monetised, BAL's calculation of these costs is opaque and cannot be fully interrogated.
120. Another factor to which regard must be had is that the proposed development will lead primarily to additional outbound tourism.
121. Mr Siraut also identifies that that most of the direct jobs provided by the expansion are likely to be low-value and low-skilled posts. This may lead to adverse impacts locally in terms of an overtightening of the local labour market.

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<sup>48</sup> Compare CD 2.08 p. 59 at [6.8] and figure 6.1 and CD 2.22 p. 37 at [4.14] and figure 4.2

122. BAL's claims of increased connectivity will be questioned. The Council accepts that whilst there may be some changes in connectivity they are likely to be limited in terms of the factors which the APF considered to be important and thus of limited weight.
123. BAL claims that the Proposed Development will result in the clawback of passengers who would otherwise make longer journeys to other airports to fly. The extent to which that is the case depends very much on the change to the services on offer at Bristol which the proposed development will facilitate compared to the position if planning permission is refused. The Council will contend that those changes seem to be likely to be small. As a result, clawback is a matter to be given only limited weight.

#### **IV. CONCLUSION**

124. For these reasons, as will be developed by the Council, the Proposed Development is contrary to the development plan and to national planning policy. It does not represent sustainable development.
125. Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives):
- (a) In terms of the economic objective – it has not been established that the Proposed Development can come forward at the present time consistently with the now adopted carbon emission reduction targets. This is not a development that is needed now. It has not been established that this is development of the right types in the right place or at the right time. It has not been established that those in the local community who will be subject to the adverse impacts of the development will obtain any economic benefit from it. They will not share in the benefits as national aviation policy requires.
  - (b) In terms of the social objective, it has not been established that the proposed development will support a strong, vibrant and healthy local community communities; rather the local community's health, social and cultural well-being will all be detrimentally affected.
  - (c) In terms of the environmental objective, the proposed development does not deliver any net environmental benefit – rather it will be argued it will lead to

greater carbon emissions, an increased risk to the local community's health via increased air pollution and significant and substantial adverse impacts upon health and quality of life as a result of increased air noise particular at night.

126. The Council will argue that, whilst the Proposed Development would give rise to some benefits, these are not sufficient to outweigh the conflict with the development plan and national planning policy that the Proposed Development will give rise to.
127. For the reasons above, as will be developed in the Council's evidence and submissions at this inquiry, the Council will submit that the appeal should be dismissed.

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