APPEAL REFERENCE: APP/D0121/W/20/3259234

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

SPEAKING NOTE ON BEHALF OF NORTH SOMERSET COUNCIL

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1. This is a speaking note. This speaking note has been produced given the sensible time constraint of two hours that has been imposed for the presentation of closing submissions. This document does not substitute for the full submissions submitted on behalf of North Somerset Council ("**the Council**") and is not to be relied upon as such. The Council's case and submissions are set out in the document handed out marked Closing Submissions and it is to that document that you should reference when considering the Council's case.

I. INTRODUCTION

2. The Proposed Development does not represent sustainable development. The objective of sustainable development can be summarised as "meeting the needs of the present without compromising the ability of future generations to meet their own needs"[1]. This is to be achieved by making net gains in each of three interdependent and overarching objectives: economic, social and environmental.

3. BAL's proposed airport expansion has not been pursued with this objective in mind; rather, Bal has pursued its own interests ahead of the achievement of the objectives of sustainable development. BAL is an airport operator so convinced of its self-importance that in its Annual Report even contains a section entitled "*maintaining our licence to grow*"[2] relating to its expansion proposals - as if it is already possessed of a right to expand. BAL is a company so self-involved that it cannot even contemplate

[1] NPPF para. 7
[2] INQ78 p.8

that there might be a reasonable alternative view. Indeed, comments from BAL's Chief Executive appeared in the local media radio on the first day of this Inquiry explaining that a costs application would be made; that said even before he had heard the case to be presented against the scheme.

4. That closed-mindedness, however, is symptomatic of BAL's approach to this appeal. BAL is a company which is so lacking in appreciation of its impacts upon those living around Bristol Airport ("**the Airport**") that it has failed to assess its noise impacts upon thousands of them. It is a company so focussed on profit that it pursues growth without designing in inherent mitigation. It is a company that seeks to limit the amount it has to pay to the community by way of mitigation and has proposed a development which includes wholly inadequate mitigation as result. For all the warm words it puts into print, this Inquiry has revealed that BAL is a company that puts the pursuit of profit before the well-being of the people its operations affect.

5. Indeed, this is not a company which even recognises that national aviation policy requires a fair balance to be struck between its interests and those whose health and quality of life, its pursuit of profit affects. This is a company that seeks expansion on a basis that is the very opposite of the approach required by Government. It is a company stuck in the dark ages of aviation planning – but we are in a new world now. A world where a 1990s type approach to airport expansion no longer has weight. A world where responsible growth is required by Government as a condition of expansion. A world where, in order to expand, the aviation sector has to demonstrate that its activities will strike a fair balance, will share its benefits with those it affects, will ensure attainment of new climate change targets and will minimise impacts.

II. POLICY CONTEXT

Conditional support

6. The APF and MBU do not provide unconditional support for growth of airports. Mr Melling's approach of including "in principle" support for growth in the planning balance as a freestanding benefit must be rejected. It is only where it is demonstrated that the benefits outweigh the costs that airport expansion obtains the weight of support from the APF & MBU.

7. Where, however, the costs outweigh the benefits, then the APF/MBU weigh against the grant of planning permission. Whether APF/MBU support or weigh against the grant of planning permission, weight is to be given to them as material considerations in the s. 38(6) determination. There is no redundancy in this approach. It is a simple application of what s38(6) requires.

Sharing Benefits

8. It is a core principle of the APF that growth in aviation must strike a fair balance between negative impacts and positive impacts. That approach requires airports to share the benefits of expansion with the communities surrounding airports. This is an applicable development control policy, since it applies generally and no reasons to depart from that policy have been proffered. The benefits of expansion must be demonstrated to be shared on a fair basis with those who bear the environmental impacts of expansion. Expansion which does not deliver a fair share of the benefits to those adversely affected is expansion which is contrary to the APF/MBU.

9. Further, the APF expects noise levels to continue to reduce as airport capacity grows. This means that the expectation is that noise levels in the future with an expanded airport will not be worse than the present day. Indeed, as noise levels fall, airports are expected to share the benefit of these improvements with those who live around the airport.

Core Strategy

10. The Council recognises the potential for growth at the Airport to benefit its area, but the potential for that growth is mediated through policy CS23 of the Core Strategy ("**CS**") which requires BAL to demonstrate the satisfactory resolution of environmental issues. Thus, just as at the national level, at the development plan level there is no unqualified support for growth at the Airport. The resolution of environmental issues pursuant to CS23 requires a qualitative assessment of the environmental impact, addressing whether the particular impact has been avoided or mitigated to a policy compliant level. The same approach is adopted in linked policy DM50. In this way, policy CS23 does not operate on the basis of a simplistic balancing of harm and benefit; rather, it is more demanding and targeted in its approach.

Weight and policy

11. It is well established that as a matter of law the weight to ascribe to policy is a matter for the decision maker: ***Tesco Stores Ltd v Secretary of State for the Environment*** [1995] 1 WLR 759 , 780, *per* Lord Hoffmann.

12. Any policy can become out of date where undermined by a change in circumstances since adoption. That is the case even with national planning policy. Where policy is out of date this reduces the weight that can rationally be ascribed to it.

13. The Council submits that the APF and MBU are both out of date and to be given limited, if any, weight. Both of these policy documents were promulgated before the adoption by Government of the 6th Carbon Budget ("**6CB**"), the net zero 2050 target and before the decision to include international aviation within domestic targets.

14. The Council's submissions in respect of climate change and MBU are not about what aviation policy should be in the future or should have been in the past; the submissions simply relate to whether there is evidence to support a view that the APF/MBU are up to date today. The submissions are not a full-frontal attack on the merits of Government policy as BAL claim; but rather they entirely properly address the weight that you should ascribe to APF/MBU in the s38(6) balance. The ***Bushell*** case is thus entirely beside the point since it does not concern arguments relating to the weight to be given to adopted policy.

15. You have to determine the weight to be given to these policy statements as a matter of law. If those statements are out of date then that is a material consideration in determining the weight to give to them. If you fail to have regard to whether they are up to date or not then you will make an error of law.

16. Only Central Government can undertake the exercise[3] which is necessary to provide the cumulative impact context for decision making in relation to the aviation sector, since it is only Central Government that is able to form an overall view of the cumulative pathway to the attainment of 6CB and/or net zero at a national level. The Council and the Appellant agree that this is the case and that no other party can provide that necessary cumulative assessment.[4] The exercise looking at compatibility

[3] Agreed in XX by Osund-Ireland and explained by Hinnells XinC.

[4] XinC Hinnells and XX Osund-Ireland by RTQC

of airport expansion with climate change targets contained in MBU is hopelessly out of date.

17. MBU contains an assessment exercise which only looks at the compatibility of its approach with the previous 80% target.[5] It sets out an appraisal which established that a particular level of airport expansion would be compatible with the achievement of the UK's previous climate change commitments.[6] The planning assumption adopted of 37.5 MTCo2 was formulated by the CCC to achieve the 80% reduction in CO2 to 1990 levels i.e. the previous 2050 climate change target.[7] The assessment in MBU concluded that the policy support for the scale of expansion of airports which it envisaged would be consistent with the achievement of the UK's climate change commitments as they existed in 2018.[8]

18. No similar exercise is before this Inquiry. Central Government has not undertaken any concluded exercise which establishes that the policy support for airport expansion in APF/MBU is consistent with ensuring the attainment of 6CB and/or net zero 2050 with the inclusion of carbon emissions from international aviation. Indeed, BAL does not contend that such an exercise exists, but rather accepts that it does not.[9] Mr Osund-Ireland agreed in XX[10] that the Government has produced no concluded assessment which establishes that the policy approach set out in MBU is compatible with the attainment of the 6CB target or net zero 2050.

19. The Jet Zero consultation cannot be relied upon as demonstrating that further airport expansion is compatible with the 6CB because it contains no assessment against 6CB targets. Indeed, the Government has not produced a sectoral target for the aviation

[5] Agreed by Osund-Ireland in XX to RTQC

[6] XX Osund-Ireland by RTQC

[7] Agreed Osund-Ireland in XX to RTQC

[8] CD6.4 p9 para 1.25

[9] Osund-Ireland in XX to RTQC

[10] XX by RTQC

sector.[11] In the absence of a sectoral target for the aviation sector, it is not possible to demonstrate that further airport expansion is compatible with the legal duty to ensure the attainment of the 6CB target.

20. Further, Jet Zero is to be given limited weight in your considerations because it is a consultation paper, the consultation is not complete, it is highly controversial, and the assessment undertaken is inconsistent with the duty to ensure attainment of climate change targets.[12]

21. Jet Zero, of course, contains a footnote which states[13]:

> *"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."*

22. This wording is very carefully drafted. That this is so can be seen by the fact that these precise words were repeated by the DfT in its response to the Council's information requests.

23. The words "have full effect" do not have full weight. 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;[14] rather the Jet Zero paper footnote and the DfT Response are careful <u>not</u> to state that the APF and MBU are up to date and does not do so.

24. Neither footnote 39 nor the DfT's response state that APF of MBU are to be given full weight. This can be seen from the highlighted text above – the DfT has expressly stated

[11] INQ42 para 24.1 – DFT confirms that Jet Zero does not seek views on sectoral target for the aviation sector for the 6CB and see the failure to answer the question in 24.3 which asked when the assessment showing the compatibility of the proposed policy with the 6CB would be conducted.

[12] See ss. 1 & 4 of the Climate Change Act 2008.

[13] CD9.135 footnote 39

[14] Indeed, the Jet Zero paper footnote 39 is careful not to state that these statements are up to date.

that it is for the decision maker to determine the weight to be given to the APF/MBU. If the policy position was that the APF and/or MBU are to be given full weight then the DfT/Government would say so in terms. The fact that they have not, but instead indicate that weight is for the decision maker, makes it clear that DfT/Government expresses no view on the question of weight.

25. Accordingly, where footnote 39 states that the APF and MBU are of full effect, that is not a statement that those policy documents are up to date and to be given full weight. Rather, it is a statement that they remain adopted policy and are material considerations in the determination of airport an expansion proposal. Consequently, the APF and MBU are material considerations and are to be given weight in the decision – however the weight to be given to these policy statements is a matter for you.

26. Other documents relied upon, including the Stansted decision, do not identify that APF & MBU are up to date, in the light of the adoption of 6CB targets and the net zero 2050 target. Accordingly, and in any event, you have to consider and determine this issue yourselves.

27. The Council submits that the evidence and submissions in the present case mean that the Stansted decision cannot be relied upon as establishing that MBU is up to date and to be given full weight. Indeed, we submit that to follow the Stansted Inspector's approach would be to err in law. You have to base your decision on the evidence and submissions made in this case. The evidence and submissions provided in the Stansted inquiry are not before the present Inquiry. The evidence and submissions provided in the present inquiry result in a different conclusion.

28. In this regard, it is also important to note that MBU examined whether the expansion of capacity by 11.8 mppa would be compatible with the 80% climate change target for 2050. It has been agreed in the present case[15], that the total amount of identifiable expansion in the pipeline within the UK amounts to 88 mppa. There is no evidence that establishes that all of this development could come forward consistently with the attainment of the 6CB and the net zero 2050 target. Thus, the possibility that there will be insufficient carbon capacity to enable all these schemes to come forward cannot be ruled out. That means that the need for a choice to be made by Central Government

[15] XX Osund-Ireland by RTQC

as to which schemes can come forward and which cannot, cannot be ruled out as Mr Osund-Ireland readily accepted in XX.

29. If there is uncertainty whether a grant of planning permission would be consistent with the attainment of the 6CB target of net zero 2050, it cannot be rationally concluded that granting planning permission would "ensure" attainment of these targets. As a result, if there is any uncertainty whether a grant of planning permission would be consistent with the attainment of the 6CB target of net zero 2050, a grant of planning permission would be contrary to the statutory duties to ensure attainment contained in s1 and s4 of the CCA 2008 and unlawful.

30. This is obviously the case and it has been obvious since BAL determined to pursue this appeal. To pursue an appeal for a planning permission that cannot lawfully be granted is manifestly unreasonable.

31. Further and in any event, a grant of planning permission now could prejudice the formulation of national policy in the sense that it pre-determines which airports should expand prior to any comparative exercise that may be required being undertaken. Thus, the grant of planning permission is premature. That is a factor which must be given significant weight against the grant of planning permission in the determination of this appeal.

32. The simple reality is that planning permission cannot be granted for the Proposed Development. Further, the APF/MBU are out of date and to be given little, if any, weight to the extent that they support the expansion of airport capacity.

III. CLIMATE CHANGE

33. If it is necessary to go further in the consideration of the implications of climate change, the central issue is whether, if planning permission is granted, the evidence demonstrates that compliance with the UK's climate change targets is ensured.

34. BAL has not identified and cannot identify any assessment by Central Government which demonstrates that a policy of supporting airport expansion is compatible with ensuring the attainment of the 6CB target or net zero 2050.

35. As explained above, there is no evidence that a policy of expansion of all airports is compatible with the attainment of the 6CB target or net zero 2050. As a result, there is

no evidence which establishes that all airports can expand consistent with the achievement of climate change targets and the need to choose between airports cannot be ruled out[16].

36. Further, the aviation sector will become more significant as an emitter of carbon over time. The extent of GGR capacity that can be ensured to be available as at 6CB and as at 2050 is unknown. The proportion of that unknown amount of GGR capacity which it is cost-effective to ascribe to the aviation sector (as opposed to other sectors also competing for GGR capacity) as at 6CB and as at 2050 is also unknown.

37. The Secretary of State has acknowledged that the amount of carbon that the aviation sector will be allowed to emit is yet to be determined.[17]

38. Emissions trading does not provide the answer as the UK ETS only runs to 2030 and CORSIA only runs to 2035. The evidence before this inquiry indicates that market-based measures cannot, of themselves, ensure attainment of carbon reduction targets as Mr Osund-Ireland agreed in XX.

39. Since the amount of emissions that the aviation sector will be allowed to emit consistent with climate change obligations is yet to be determined, BAL is unable to demonstrate that the scale of emissions related to the Proposed Development will not have a material impact on the UK's ability to meet climate change targets. This position is not new: the position of the Inspectors in the A38 scheme was analogous and they were unable to conclude that the scheme they were considering was consistent with the attainment of climate change targets because they did not have evidence before them to prove that a sector wide appraisal demonstrating that growth was consistent with climate change targets. Those Inspectors were able to pass the difficulty to the Secretary of State but you cannot. Your only choice is to conclude that the Proposed Development is contrary to national aviation policy, contrary to the NPPF (in particular, the objectives in paragraphs 7 and 148), contrary to policy CS1 of the CS and the duties in the CCA 2008 (as amended) to ensure attainment of the 6CB target and net zero 2050. Thus, if you reject the submission that a grant of planning permission would be unlawful, these conflicts are substantial and must be given very significant weight against the grant of planning permission.

[16] This is addressed above at paragraph [x]

[17] See INQ62, p. 2.

IV. NOISE

40. BAL's approach to the consideration of the noise impacts seriously under-estimates the impact of the proposed development upon the local community. Its proposed mitigation package is inadequate, ill-thought out and reactive. Indeed, it is contrary to the approach required by the NPPF to minimise the adverse effects noise. Further, BAL fails to deliver anything close to the fair balance between the negative impacts of noise and the positive benefits to those living around the airport that national aviation policy requires. Indeed, it visits only harm upon them without providing any economic benefit to them whatsoever – this is the very antithesis of the approach to fair sharing required by national aviation policy.

41. The proposed development will have wide ranging and significant adverse impacts upon many thousands of people including widespread sleep disturbance impacts. It will impinge upon the quality of life for many thousands inhibiting the use of their homes and gardens in a substantial way. The proposed development is contrary to Policy CS3, CS23, CS26, the NPPF and national aviation policy as a result of its impacts which weigh very substantially against the grant of planning permission.

42. The Proposed Development will consume the noise reductions that would otherwise be experienced if planning permission was refused, compared to the baseline of 2017. Indeed, the noise at night will increase to the extent that at least some 7,000 extra people will suffer significant adverse noise impacts compared to the position in 2017.

43. This is not an Airport expansion which delivers the noise improvement as envisaged by national aviation policy. This is a development which only delivers a material reduction in the noise environment which was already adversely affected by the operation of the Airport.

44. When the consequences of what it is proposed are examined, it is little wonder then that the community living around the airport express the views heard at this Inquiry which are critical of BAL's warm words of "community involvement" and "engagement". Mr Williams's evidence demonstrates beyond peradventure that those words are hollow. There is no sharing of anticipated noise reduction; rather the proposed development removes almost entirely any improvement that would otherwise be delivered from technological improvement. There is no sharing of the benefits of aviation in a fairer way than in the past as the core principles of the APF

expect. There is no fair balance struck here. The local community does not get a fair share; rather it gets no share at all since BAL seeks to take everything for itself.

45. The noise impact assessment conducted by BAL in the ES/ESA significantly underestimates the nature of the noise impacts of the proposed development on the local community for a hose of reasons. In particular, it adopted an approach of relying solely on LAeq based metrics which are recognised by both government and ICCAN as failing to reflect all aspects of the perception of aircraft noise. Especially that such metrics are insensitive to the changes in the number of events. Mr Fiumicelli was thus supported in his position by the Government and by ICCAN in stating that other indices had to be utilised, particularly the Number Above index. There is the no "primary" noise index; rather all indices need to be examined in the round.

46. The adoption by BAL of significance criteria solely related to the change in LAeq was flawed and has been rejected in the past as failing to reflect people's perception of aircraft noise when the number of events changes. Research demonstrates that in real life, each aircraft movement, even if undertaken by a less noisy aircraft, will still be perceived as a noisy event and will not be valued by the local community as being quieter. Thus, people affected by the development will notice the increase in the number of flights more than they will find value in the comparatively small reduction in noise from each new generation aircraft.

47. Utilising a change in exposure to LAeq as the basis for assessing significance is also inconsistent with the policy approach required by the NPPF/NPSE. Those documents require an approach where by acceptability of noise is examined against absolute levels, derived by reference to dose response research.

48. Where a receptor is already experiencing residual noise levels above SOAEL, there is a danger in adopting a criterion of acceptability which is based simply upon a change in noise. The danger is that such a criterion may identify an impact as insignificant when in fact a development adds to noise levels experienced at that receptor which are already above SOAEL and thus already experiencing a level of noise which is so significant that it should be avoided. An assessment methodology which simply determines that a small incremental change at such a receptor is insignificant fails to reflect the policy approach in the NPPF that a development which adds to an already noise environment already above SOAEL will result in noise environment even more above SOAEL which is to be avoided. That is because it adds to a noise environment

for that receptor which is already at a level which causes significantly adverse effect upon health and quality of life and makes that position worse – it simply adds noise to a noise environment which is already eroded beyond a level that is acceptable in policy terms. Thus, a development which increases noise levels which are already above SOAEL is a development which is to be avoided - it is not a development which has no significant impact.

49. Accordingly, the methodology utilised in the ES/ESA identifies as insignificant adverse impacts which the NPPF considers it necessary to avoid. Accordingly, a conclusion in the ES/ESA that an impact is not significant does not mean that there is no breach of the NPPF. The ES/ESA methodology cannot be used to assess compliance with the NPPF.

50. Noise above SOAEL is described in the NPPG Noise hierarchy table as:

> *"The noise causes a material change in behaviour, attitude or other physiological response, e.g. avoiding certain activities during periods of intrusion; where there is no alternative ventilation, having to keep windows closed most of the time because of the noise. Potential for sleep disturbance resulting in difficulty in getting to sleep, premature awakening and difficulty in getting back to sleep. Quality of life diminished due to change in acoustic character of the area."*

51. This means that you are free to review the evidence before you to consider all relevant noise indices, the likely impacts of the proposed development by reference to those indices, the implications of those impacts as identified by all relevant noise indices upon health and quality of life and whether those implications reveal impacts which are at or above LOAEL and/or at or above SOAEL.

52. Determining what is LOAEL and what is SOAEL is a matter for you, to be determined on the basis of the facts in this case. Mr Fiumicelli explained to this inquiry that there is strong evidence that attitudes to aircraft noise have changed over time. He pointed to the WHO Night Noise Guidelines. He also referred to the SONA 2021 sleep disturbance study which demonstrates that a much higher percentage of people are highly sleep disturbed than has previously been recognised. He also referred to the need to take into account the nature of the rural area in which the area is situated, a factor of importance when considering sleep disturbance, according to the WHO guidelines and the ICCAN report. This distinguishes Bristol Airport from the other

airports, and it means that Mr Fiumicelli's identification that SOAEL at night should be taken as 50 dB LAeq 8 hour is entirely appropriate in this case.

53. The ICCAN explained that the Number Above index reflects key aspects of aviation noise that are not covered by LAeq based metrics. It can be used for forecasting and the number of events is an important aspect of noise exposure and thus the number above index is more likely to be reflective of aviation noise and the annoyance that it causes than the LA MAX index which only takes into account the maximum noise level. Recent evidence in the SONA2021 study demonstrates that the N60 index correlates as well with night time self-reported sleep disturbance as the LAeq 8 hour index.

54. In summary, the results for the N70 index demonstrate that widespread speech disturbance will be caused to people in their houses, even with their windows shut. Over 1,100 extra people will be subjected to N70 between 100 – 199 times per day. They will avoid using their gardens, will have to keep their windows closed to talk to members of their household, to use the telephone or to watch television. They will have to live their lives with windows shut most of the time and, even then, their quality of life will be significantly adversely affected. You have heard local people describe that precisely these sorts of impacts already occur for many. That level of exposure will result in material changes in behaviour. A large number of residents' lives will be diminished by the acoustic character of the area changing because of the Airport's operations. They will experience a level of noise above SOAEL which is not mitigated, as Mr Williams agreed in XX.

55. However, it is at night when the N60 index really reveals the true extent of the impacts of the Proposed Development. If planning permission is granted, an additional 3,050 dwellings will be subject to 20 – 49 noise events of 60 dB LA s max or above, compared to the position if permission is refused. That is some 7,000 people. With the window partially open, they will suffer noise levels of 47 – 48 dB LA f max 20 – 49 times per night. That is a level considerably above the WHO Guidelines threshold of 45 dB LA f max 10 – 15 times per night, which is the threshold for sleep disturbance. To avoid sleep disturbance, all of these people will have to have their windows closed for most of the time; however, only 250 houses (or 575 people) qualify for noise mitigation as a result of impacts at night. That leaves at least 6,500 people suffering potential impact resulting in sleep disturbance and without mitigation, unable to sleep with windows

open, but unable to close them in summer because BAL does not provide what is necessary for them to have an appropriately noise insulated and ventilated bedroom. Indeed, it is possible to calculate by reference to SONA 21 that 1,038 people will report as highly sleep disturbed in the light of the N60 information. Again, substantially above the number of people who qualify for noise mitigation under BAL's scheme for impacts at night.

56. The proposed development will leave hundreds of people sleep disturbed and thousands without any mitigation suffering levels above SOAEL. That is a significant adverse impact which needs to be weighed heavily in the balance against the grant of planning permission.

57. The mitigation proposed does not result in impacts above SOAEL being avoided and is contrary to policy. The mitigation is also contrary to policy because no mitigation at all is offered to anyone in the bracket between LOAEL and SOAEL. Not one household. Not one person out of the thousands falling within this bracket. But the applicable NPPF policy is clear: the noise visited on these people must be reduced to a minimum by adopting all reasonable mitigation. Since none is offered, there is a clear breach of national policy. The noise mitigation scheme which is offered is too limited in extent, parsimonious and unjustified by reference to any evidence. There is no evidence, no cost appraisal, no evidence from past works, nothing before this inquiry that demonstrates that the proposed mitigation scheme provides sufficient funds to reduce noise impacts within homes to acceptable levels.

58. Accordingly, the proposed development is contrary to Core Strategy Policies CS3 and CS23 since the impacts have not been resolved and remain unmitigated. The impacts are of a scale and nature which means that they will cause harm to the health of those impacted and as we shall explain, those people do not receive any compensatory health benefit. Thus, the proposed development is contrary to CS26 of the Core Strategy.

59. The noise impacts weigh very heavily indeed against the grant of planning permission in this as a result of the breaches of national aviation policy, national planning policy and the Development Plan. These are factors to be given very significant weight in the planning balance.

60. Further, there is uncertainty in the forecasting process since it is dependent upon the appraisal of a single fleet mix. There are no guarantees that the fleet mix assessed will in fact materialise. Indeed, in cross-examination Mr Brass agreed that Brass there is no single correct fleet mix.

61. The Jacobs fleet mix demonstrates that it is necessary to impose controls over the type and number of aircraft using the airport in future in order to constrain the noise impacts of the proposed development. It establishes that without constraint noise impacts could be markedly different from those which have been assessed in the ES/ESA.

62. It has to be remembered that planning conditions cannot be imposed simply because the local planning authority and the applicant agree. They have to be justified as necessary by reference to evidence. At an Appeal, a local planning authority has to justify the conditions which it seeks to the decision maker.

63. As a result of the fleet mix evidence, the Council has established that without appropriate controls imposed in relation to a contour cap, there is a realistic prospect that a grant of planning permission would give rise to noise impacts which are materially greater than those which have been assessed in BAL's evidence. Accordingly, the fleet evidence justifies the imposition of the controls proposed in terms of the mitigation of the impacts including the atms limit condition which BAL disputes.

64. The noise contour condition proposed by BAL is insufficient to hold the airport to the likely significant impacts as set out in the ES/ESA. It must be rejected, or its imposition will lead to an error of law. The Council's condition which applies the contours from BAL's ES/ESA is to be preferred.

65. For the noise conditions proposed to be enforceable by BAL, the Airport must become co-ordinated. This does not present any barrier in terms of the development coming forward on the basis of the evidence. If a Grampian condition is not imposed, then the noise conditions will not be enforceable then the proposed development is entirely unacceptable. These controls are all necessary. Accordingly, if you consider that you cannot impose the Grampian condition requiring coordinate status prior to commencement of development you must refuse planning permission.

V. AIR QUALITY

66. BAL has adopted entirely the wrong approach to the assessment of air quality impacts from the outset of its application. Consistent with aviation policy and the approach within the 2010 Air Quality Standards Regulations there is a requirement for airport expansion schemes to go beyond mere compliance with adopted UK air quality objectives. The growth of airports is intended to be delivered by reference to the achievement of improvements in air quality through the adoption of ambitious targets and action plans.

67. The appeal proposals were never approached this way. There was no attempt to design the scheme from the outset so as to deliver improvement in air quality. The fact that no air quality action plan has even been produced even for the purposes of this inquiry demonstrates the distain with which BAL has approached this topic. This is notwithstanding the existence of considerable evidence demonstrating that adverse health impacts arise at levels below the UK AQO levels nor the evident risk that their proposals would harm the health of those living around the airport. That the proposed development will harm the health of those living around the airport is now confirmed by the publication of the latest international benchmark: the WHO Air Quality Guidelines.

68. When measured against the WHO Air Quality Guidelines the only conclusion that can be reached is that the proposed development will give rise to an increase in important risks to public health compared to the position if planning permission were refused. i.e. the baseline presents important risks to public health which the grant of planning permission for the proposed development will make worse. A reworking of BAL's own methodology against the WHO AQG's demonstrates widespread moderate impacts and widespread substantial impacts associated with exposure to NO2, PM10 and $PM_{2.5.}$ It is notable that BAL's "Note for Information" on the new WHO air quality guidelines contains no evidence-based reassessment of potential impacts, but instead simply states without foundation that "*the Appeal Proposal is likely to contribute to improving the health and well-being of the local population more than it detracts from it*." Very little weight should be attached to this assertion.

69. Rather, the conclusion that must be reached by reference to the WHO AQG 2021, that the proposed development will give rise to important risks to public health, is entirely aligned with the approach identified by Dr Broomfield in his evidence; but that

conclusion is entirely contrary to the approach adopted by Mr Pierce and BAL which focussed almost entirely on the question of compliance with existing limit values. After all the ES identifies the air quality impacts as insignificant – that is a total failure to acknowledge adverse impacts upon public health of a scale which the WHO identifies as "important". An impact which is important must be a significant one.

70. Existing limit values were not formulated against the background of the advances in scientific knowledge over the last decade and are not consistent with the new "international benchmark" WHO Air Quality Guidelines 2021. BAL's assessment and its identification of the degree of harm must be rejected.

71. As a result, it must be concluded that the proposed development would give rise to an increase in important adverse risks to the health of those living around the airport which have not been demonstrated to be mitigated to acceptable levels. Accordingly, and for the reasons explained above, the proposed development is contrary to national aviation policy, the NPPF and Policies CS3, CS23 and CS26 of the Core Strategy. This must be given significant weight in the balance against the grant of planning permission.

VI. HEALTH IMPACTS

72. The health impact assessment is flawed because it did not assess the health impacts as required by policy CS26. That policy requires it to be demonstrated that large scale development will result in improvement to the health and well-being of the local population, i.e. those living around the Airport.

73. Mr Pyper's assessment did not undertake this exercise and was based on a flawed methodology which did not accord with good practice and in respect of which it was entirely impossible to understand how he reached the judgments as to significance which he did. It was also reliant upon the ES/ESA conclusion that noise impacts and air quality impacts were not significant. As we have explained, the opposite conclusions should be reached.

74. Further, Mr Pyper did not assess impacts and benefits by reference to the same spatial extent: his health impacts were assessed at the North Somerset level; whereas his benefits were assessed at the South West & South Wales level. There is no examination of the relative effects on health that come in the with and without development

scenarios at the South West & South Wales level. Accordingly, there is no reliable evidence of significant net beneficial health effects arising if planning permission was granted compared to the position if planning permission was refused. For example, someone living in greater poverty in South Wales who obtains a job if planning permission is refused may obtain a greater health benefit than someone living in the more affluent areas around North Somerset would if permission were granted. There is nothing in Mr Pyper's assessment which demonstrates that this relative effect has been considered.

75. To conclude:

(a) The proposed development is contrary to the APF, Aviation 2050, the NPPF, and Policy CS3, 23 and CS26 in this regard. The breaches of policy here weigh heavily against the grant of planning permission.

(b) The wider health impacts of the proposed development are at best neutral.

VII. SURFACE ACCESS

76. This issue cuts across the first, fourth and fifth reasons for refusal. In summary, the Council submits:

(a) BAL's has not demonstrated that the proposed surface access infrastructure is adequate. To the contrary, the Council's evidence demonstrates that there are material unresolved issues with the proposed infrastructure.

(b) BAL has failed to demonstrate that is claimed level of parking is actually required. The Updated Parking Demand Survey ("**UPDS**") is not robust, does not justify the claimed level of parking demand and should be afforded no weight.

(c) BAL has failed to demonstrate that its proposed 2.5% increase in public transport mode share ("**PTMS**") is ambitious. To the contrary, the Council's evidence demonstrates that at least a 5% increase in PTMS could be achieved.

PTMS

77. There is a clear imperative to maximise the PTMS by setting ambitious targets. Aviation 2050 recognises the need for airports to "*deliver more ambitious mode share*

targets" and the government "*expects airports to make the most of their regional influence to provide innovative solutions and incentives against ambitious targets which reduce carbon and congestion and improve air quality*".[18] This is consistent with the APF.[19] Similarly, the NPPF requires that "*[t]ransport issues should be considered from the earliest stages*" so that inter alia "*opportunities to promote walking, cycling and public transport use are identified and pursued*".[20] In addition, the NPPF requires that appropriate opportunities to promote sustainably transport modes can be – or have been – taken up.[21] The same approach is reflected in policy CS1 and CS 10 and DM 26 and DM 50.

78. The starting point is to recognise that the Proposed Development has not been designed from the outset, "*from the earliest stages*" (in the language of the NPPF), to deliver an ambitious PTMS. BAL applied on the basis that it would simply maintain the 15% PTMS which it had already promused under the 10 mppa planning permission, i.e. its position was that no PT uplift would be provided. So the development was never designed to maximise PTMS or to achieve an ambitious target. To the contrary, it was devoid of any ambition and simply sought to roll over the status quo.

79. The deficiencies in the preparation of the Application, the TA and the ESA have not been cured in Mr Witchalls' evidence to this inquiry. In his POE Mr Witchalls attempts to justify the 2.5% retrospectively. This assessment does not assist BAL for the following reasons.

80. First, Mr Witchalls evidence does not undertake the correct exercise. In order to establish that the a 2.5% uplift is ambitious, it is necessary to establish what is possible and the difficulty of obtaining different levels of uplift. Mr Witchalls' exercise does not do this; rather, the assessment simply takes some (not all) of the proposed measures and seeks to understand what sort of uplift those measures could achieve. This does not establish what the maximum uplift it is possible to achieve.

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[18] See CD 6.05 at [3.100] and [3.101] on PDF pp. 76 – 77, respectively.

[19] See also the APF (CD 6.01) at [4.20] on PDF p. 71, first bullet point: "*surface access strategies to set out … targets for increasing the proportion of journeys made by public transport for both airport workers and passengers*".

[20] See NPPF para. 104(c)

[21] See NPPF para. 110(a).

81. Secondly, even if Mr Witchalls' exercise was the correct one, it does not represent a complete assessment because there are a range of proposed measures which are not assessed.

82. Thirdly, even on Mr Witchalls' own results, a PTMS increase of 2.5% is not ambitious. Mr Witchalls assessment indicates an improvement of at least 2.9% or 4.1% is possible. There is no good reason to discount this conclusion to 2.9% or 4.1%.

83. Mr Colles evidence was that a PTMS increase of at least 5% should be targeted. The challenge to this in XX was limited. It was put to Mr Colles that this figure was unevidenced. This omits to consider Mr Colles reasoning: on Mr Witchalls' own evidence, 2.9% or 4.1% PTMS increase is achievable from only some of the measures proposed by BAL, thus when the full range of proposed measures are included, a greater uplift in PTMS will be achieved and a PTMS of 5% is realistic. Further, Mr Colles was challenged on the basis that if a target of 5% uplift was set, it may not be met. Leaving aside the fact that the evidence does not show this, even if the target was missed, does not demonstrate that the target was inappropriate – there are many reasons why it could be missed – and the appropriate response in those circumstances is to revise the ASAS to include further or improved measures to achieve the uplift. That can only be a good thing: the more people on PTMS, the better. Moreover, it is an approach which is possible: recall again that Mr Witchalls evidence in XX was that there was "*no ceiling*" to the Airport's PTMS.

84. In light of the above, the Council submits that the Proposed Development fails to comply with national or local policy on public transport. In particular, the Proposed Development is not in accordance with policies CS1 and CS10 of the CS or NPPF paras. 104 &110 and the fifth reason for refusal is made out. This is a matter to which very significant weight against the grant of planning permission should be given, in light of the clear requirement for ambitious PTMS in national aviation policy which resounds in the NPPF and local planning policy.

Parking demand

85. The Council submits that the UPDS fails to provide any basis, let alone a robust basis, for concluding that the claimed parking demand is accurate. There are three principal and independent reasons for this.

86. First, the calculations underpinning the claimed parking demand have not been scrutinised and can be afforded no weight as a result.

87. Despite the UPDS seeking to reflect a higher level of PTMS (i.e. the 2.5% uplift to the 10 mppa baseline) than the PDS (15% - the 10 mppa baseline), the output of the UPDS actually shows a need for more car parking spaces, not fewer: the PDS predicts a need for 21,900 spaces, the UPDS predicts a need for 22,200 spaces.

88. By comparing the steps in the methodology in the PDS and UPDS, it can be seen that this discrepancy is a result of the occupancy to demand ratio. This is apparent because in the UPDS the OD ratio is applied to a lower number of total cars parking at the airport each year (see step 4) than in the PDS, yet despite this lower starting point in the UPDS, a greater peak demand results. However, the operation of the OD ratio (as well as a number of other inputs in the PDS & UPDS) is entirely opaque. This could not be scrutinised by the Council. As a result, the clear anomaly has not been explored or explained.

89. This opaqueness exists despite requests from the Council for further information. The refusal to allow scrutiny on the basis of commercial confidentiality means that no view on the robustness of the UPDS can be reached. The Council has been denied the opportunity to present evidence as to the robustness of the UPDS by BAL. The consequence is that no independent party to the Inquiry can reach a view on the robustness of the model and if you were to give it any weight, unfairness would arise.

90. Secondly, the UPDS has applied the 2.5% PTMS increase to the wrong baseline.

91. It is an agreed position that the 2.5% PTMS increase needs to be applied to a baseline which represents the PTMS required of the 10 mppa planning permission, i.e. 2.5% on top of the 15% PTMS measured by bus ticket data which is secured in the 10 mppa s. 106 Agreement.[22] Mr Witchalls confirmed this at the start of his XX.

92. However, the UPDS does not apply the 2.5% PTMS increase to a baseline which reflects the 10 mppa baseline. Put another way, the 2.5% PTMS increase is not applied to the correct starting point. It is apparent from this (and as Mr Witchalls confirmed

[22] See para. 2.1 of Part 1 of Schedule 4 to the 10 MPPA s. 106 Agreement at CD 4.2.2 on PDF p. 23.

in XX in any event), that the 2.5% uplift was applied to the CAA figure of 21.8% directly. There was no process of rebasing and the bus data was not used.

93. This approach is only robust if the 21.8 % CAA figure is equal to (or greater than) the 10 mpps baseline. However, there is no evidence that this is the case: Mr Witchalls accepted in XX that the comparative exercise (e.g. rebasing) had not occurred) and when pressed as to whether the CAA 21.8% figure was the same as, above or below the 10 mppa baseline figure of 15% measured by bus ticket data, Mr Witchalls simply did not know.

94. It follows that there is no rational basis for concluding that the 2.5% PTMS uplift has been applied to the correct baseline figure reflecting the 10 mppa s. 106 agreement baseline.

95. In fact, there are other parts of BAL's evidence which positively suggests that the 21.8 % CAA figure is not equal to (or greater than) the 10 mppa baseline. Mr Melling's written evidence is that the PTMS measured by bus ticket data is "*13.8% (as at 2019), against a 10 mppa target of 15%*".[23] Taking this at face value, the 21.9% CAA figure used by Mr Witchalls (which was also from 2019) was not equivalent to the 10 mppa baseline; rather it was below the 10 mppa baseline. It follows that the PTMS uplift calculated from that figure was too low. The PTMS in the UPDS should have been a higher figure, with the inevitable result that parking demand would be lower. This confirms the fact that the UPDS can be afforded no weight.

96. Thirdly, if the Council is correct that the proposed PTMS increase of 2.5% is not policy compliant and a higher PTMS increase (e.g. 5%) is policy compliant, it follows that UPDS is premised on an inaccurate input because it only considered an increase of 2.5%, not a great increase. Against, the inevitable consequence of a greater increase in PTMS is that the demand for car parking will be lower.[24] It follows that the claimed parking demand is not justified without more.

[23] Mr Melling's POE at [4.2.12] (first sentence) on PDF p. 52.

[24] Note that an increase in PTMS is not the same as moving passengers up the hierarchy. This means that when PTMS is increased that is not a shift from persons arriving by taxi/drop-off to people parking and flying (i.e. up the hierarch). Rather, it is an increase of people arriving by car (or taxi, or drop-off) to people arriving by non-car modes of transport.

97. For any or all of the reasons above, the UPDS should be afforded no weight and the claimed demand for on airport parking has not been demonstrated.

Surface access infrastructure

98. The specific issues with each junction are set out in Appendix A to these submissions. For the reasons in Appendix A, the mitigation proposed by BAL is inadequate because it would give rise to adverse impacts on highway safety and severe residual cumulative impacts on critical junctions near the airport.

99. On numerous occasions, both in his written and oral evidence, Mr Witchalls accepted that there was a deficiency in the proposed junction design. His response was simply to suggest that it would be dealt with by way of amendment "*in the detailed design*" of the junction. The realism and consequences of those amendments are dealt with in Appendix A. However, as a matter of principle, this response is inadequate. The highway aspects of this scheme are not reserved matters; rather, detailed planning permission is sought. Pursuant to proposed condition 3, the Proposed Development must be constructed in accordance with the approved plans, including the plans showing the junction improvements. Even if proposed condition 3 did not require compliance with the approved plans, nevertheless the junctions would need to be constructed in accordance with approved plans. The law has moved on from the practice of the past to inhibit ad hoc and informal deviation from approved drawings.[25] It follows that the junction design cannot simply be changed in some "*detailed design*" process after the grant of planning permission. The junction must be constructed exactly as it is shown in the approved plan

100. It follows that the Proposed Development is not in accordance with national aviation, the NPPF (in particular para. 110) or policy CS 23 of the CS. This factor should attract significant weight against the Proposed Development in the planning balance, given the clear conflict with the recurrent policy imperative to improve surface access, including infrastructure, to the Airport and to avoid adverse effects on the existing infrastructure.

[25] See, in particular: ***Singh v Secretary of State for Communities and Local Government*** [2010] EWHC 1621 (Admin) *per* Hickinbottom J (as he then was) at [20] (following ***Sage v Secretary of State for the Environment*** [2003] UKHL 22, [2003] 1 WLR 983 *per* Lord Hobhouse at [23]) and expressly endorsed by Singh LJ in ***Hillside Parks Limited v Snowdonia National Park Authority*** [2020] EWCA Civ 1440 at [67].

VIII. GREEN BELT

101. This issue embraces the fourth reason for refusal. In summary, the Council submits:

(a) the year round use of the existing Silver Zone car park and the Silver Zone extension (together "**the Silver Zone Development**") amounts to inappropriate development in the Green Belt;

(b) the Silver Zone Development will cause significant harm to the openness of the Green Belt;

(c) there are no other considerations which outweigh the harm to the Green Belt, which must be afforded significant weight in accordance with the NPPF, and the other harm resulting from the Proposed Development; and thus very special circumstances ("**VSC**") have not been demonstrated.

102. It has become apparent that BAL's case – and Mr Melling's evidence in particular - has not been advanced on the basis of the correct interpretation and application of the NPPF. BAL failed to recognise that spatial harm to openness can result even when there is no or limited visual impact. Mr Melling also struggled to understand that substantial weight is the starting point when ascribing weight to harm by reason of inappropriateness and to the openness of the Green Belt. Further, he did not realise that VSC is the outcome of a balancing exercise, not a freestanding set of factors which the Airport can trot out every time it wishes to develop in the Green Belt.

Harm to the Green Belt

103. It is agreed that the year round use of the existing Silver Zone car park and the Silver Zone extension amounts to inappropriate development in the Green Belt for the purposes of NPPF paras. 147 & 149.

104. The Council submits that the Silver Zone Development will cause significant harm to the openness of the Green Belt. This is the case even on Mr Melling's own methodology.

105. Taken together, the Council submits that both Cogloop 1 and Cogloop 2 contribute to the purposes of including land in the Green Belt, in particular Cogloop 2 makes an important contribution to safeguarding the countryside from encroachment. Further,

there is a high degree of spatial and visual openness to Cogloop 2 at all times; and in winter, the openness of Cogloop 1 is materially higher than when it is in use in the summer months.

106. It is well established through multiple appeal decisions in the Council's area that the block parking of cars results (at least) in spatial harm to the Green Belt. The Council submits that the introduction of block car parking onto the existing Silver Zone Car Park and the Silver Zone extension will have a stark and significant spatial impact. Mr Gurtler's unchallenged evidence was that the Silver Zone Development covers an area of 12.9 ha, with Cogloop 1 extending to 7.8 ha and Cogloop 2 extending to 5.1 ha. Further, under the Silver Zone Development, 6,350 cars will be block parked, with 3,650 cars on Cogloop 1 and 2,700 cars on Cogloop 2. Those 2,700 cars will cover 3.73 ha on Cogloop 2 (i.e. 73% of Cogloop 2).

107. Having regard to the extent of the block parking, there will be a significant permanent spatial effect on the openness of the Green Belt. Cogloop 1 will be affected during the winter period when it is presently free of cars and without vertical built form (because the lighting and CCTV is temporary), thus rendering the harm to the openness of the Green Belt permanent. Cogloop 2 will be affected all year round: an entirely open agricultural field will be transformed with built development – lighting poles, CCTV poles, fencing, asphalt – as well as the block parking. This effect will be permanent and stark, as Mr Melling accepted in XX. Moreover, these spatial effects cannot be mitigated, as Mr Melling also accepted in XX.

108. The starting point is that BAL does not contend that there is <u>no</u> harm to the visual aspect of openness. Accordingly, the dispute between the parties is the extent of the harm. The Council submits that Mr Melling's assessment of the visual impact is an understatement. Mr Melling's reliance on BAL's LVIA causes his assessment to be one which misses the target: it is an assessment of particular views and visual effects but not of the visual aspect of openness. In addition, Mr Melling's evidence failed to take proper account of the effects of lighting on the visual aspect of openness. Ultimately, free of this erroneous approach, it is clear that there will be adverse effects on visual openness and, whilst there are potential opportunities for mitigation, the nature of the mitigation proposed is unlikely to be acceptable, as it will itself shorten views, increase the sense of enclosure and thus exacerbate the harm to the Green Belt.

109. Moreover, the Silver Zone Development will result in additional traffic generation: there will be traffic in Cogloop 1 throughout the year (as opposed to only the summer months, as present) and there will be a significant increase of traffic in Cogloop 2 (where there is none, presently).

110. All of these effects will be permanent and will not be remediated.

111. The Council submits that the Silver Zone Development also conflicts with the purposes of including land in the Green Belt, namely the purpose of safeguarding the countryside from encroachment in NPPF para. 138(c). As set out above at paragraph XX, Cogloop 1 and 2, the latter in particular, assist in safeguarding the countryside from encroachment. The Silver Zone Development runs directly contrary to that purpose: increasing car parking in the Green Belt is another example of the creeping encroachment which has characterised the development of the Airport, as we explained in Opening. The encroachment is particularly stark in respect of Cogloop 2: Cogloop 2 is the most important parcel in preventing the sprawl of the Airport, yet that parcel will be lost to the Silver Zone Development.

112. For the reasons above, the Silver Zone Development will give rise to significant harm to the openness of the Green Belt and will conflict with the purposes of including land within the Green Belt. It is notable that the Council's officers also concluded that there would be significant harm to the openness of the Green Belt.[26]

No Very Special Circumstances

113. As we have already explained, BAL has not demonstrated its claimed parking demand. On this basis, the first factor advanced by BAL in its VSC case has not been made out. Given it is the parking which drives the development in the Green Belt, this is dispositive of both the VSC balance and, given the clear terms of national policy, the planning balance overall, as set out above. Moreover, it is not good enough to simply assert that there will be some unspecified increase in parking demand: BAL must demonstrate, but has not demonstrated, the need for the entirety of the claimed parking demand.

[26] See CD4.11 and officer's recommendation that referral to the Secretary of State under the Town and Country Planning (Consultation) (England) Direction 2009. See the explanation in Mr Gurtler's POE at [59] and fn. 15 on PDF p. 22.

114. For the avoidance of doubt, such uncertainty is not cured by the monitor and manage condition (or any obligation in the s. 106 agreement or unilateral undertaking). BAL's proposed monitor and manage condition (condition 6) simply requires the submission of a report: it does not – and cannot as a matter of principle - provide any mechanism by which the Council can restrict the extent of car parking in the Green Belt (because the Council cannot go back on the principle of the development). Moreover, it cannot cut across the phasing, which is deficient for the reasons above.

115. In any event, the monitor and manage approach proposed by BAL demonstrates the uncertainty in BAL's forecast demand and makes good the Council's position. Monitor and manage is advanced on the basis that there may be a change in circumstances which results in a lower level of demand. For example, Mr Melling states that '*the demand for car parking (and for specific products) may change over time*' and he highlights *inter alia* matters such as shifting travel behaviours, technological innovation and customer preference.[27] On this basis, Mr Melling contends that the monitor and manage approach will '*ensure that … additional car parking is only brought forward when the demand for spaces arises*'.[28] As is clear from Mr Melling's evidence, the monitor and manage condition is only proposed because it is not certain, today, that all of the proposed car parking spaces will be required. If it was otherwise, and there was certainty, today, that all the proposed car parking spaces were necessary, the monitor and manage condition would not be necessary and thus could not be imposed lawfully.

116. The principal argument advanced by BAL for providing the Silver Zone Development and for providing the Silver Zone Development in advance of MSCP 3, is the claimed need to provide low-cost car parking via surface parking. This argument is unsound for the following reasons:

(a) BAL have presented no viability evidence – or even basic evidence on costs, income and profit levels - to demonstrate that MSCP 3 could not be constructed and used for low-cost car parking. Without this evidence, it would be irrational to conclude that MSCP car parking could not be used for low-cost parking on the basis of construction costs or commercial considerations.

[27] Melling POE PDF pp. 99 – 100 at [5.4.46].

[28] Melling POE PDF p. 100 at [5.4.47], first bullet point.

(b) BAL's claimed competition risk does not withstand scrutiny. The legal advice note in Mr Melling's RPOE is given on the basis that BAL is required, whether by the Council or the Secretary of State, to provide low-cost car parking in MSCPs.[29] This is no answer to the Council's case: the Council's case is different and much simpler – if BAL wanted to use the MSCPs for low-cost car parking, it could do so. That would not pose any competition law risk because no requirement would be imposed on BAL and there would be no anti-competitive agreement.[30]

(c) Further, even if low-cost car parking in the MSCP could not be provided without cross-subsidy from the commercial revenue (e.g. duty free concessions etc) (which is not accepted) this would pose no competition law risk: it would be entirely lawful for such revenue streams to be used as a cross subsidy. Contrary to the suggestion in RX of Mr Melling, the advice note simply does not deal with the issue of cross subsidy.

117. In light of the fact that there is no cost or price-based justification for the Silver Zone Development, this issue does not form a reason to discount the provision of further MSCP in the Green Belt Inset in order to meet parking demand.

118. We turn now to deal with the alleged benefits of the Proposed Development, before dealing with the planning and green belt balance.

IX. BENEFITS

119. It is submitted that when considering the benefits of the proposed development that weight is given only to the net benefits of granting planning permission i.e. to the benefits that will only be delivered if planning is granted[31]. This requires the identification of the net benefits of the development. Looked at in this way, the net

[29] Melling RPOE PDF p. 66 - see the advice note at [4]: "*Any requirement by NSC, or others, that BAL builds MSCP2 and MSCP3 and uses either or both of these facilities to provide a low cost parking solution, could be deemed to be an anti-competitive agreement…*" (emphasis added).

[30] Notably, the cases referred to at [5] of the advice note all concerned situations where there was an actual written agreement in place which dictated car parking charges.

[31] Accepted by Brass socioeconomic XX to RTQC

benefits vary depending upon the geographic scope of the assessment. We return to this further below.

Carbon values

120. Past statements by Government recognising the economic benefit that the aviation sector brings to the UK were made in a world prior to the commitment to ensure achievement of the 6CB targets and the net zero 2050 targets. That commitment brings with it significant carbon abatement costs. These are apparent from the new values of carbon identified by DBEIS which are to be used in economic and policy appraisals and which change the approach with regard to the use of traded prices and non-traded values of carbon. Going forward, a single non-traded carbon value is to be used because it can be assumed that the traded sector will be managed to ensure that that sector pays for its emissions on an equal basis to the non-traded sector.

121. Accordingly, since the expansion of the Airport increases GHG emissions, they are required to be quantified and monetised using the new DBEIS non-traded carbon values. The cost of abatement reduces economic benefits because the development will give rise to carbon emissions which will have to be abated in order to obtain net zero.

122. In CD 2.08, figure 6.1 on p. 59, BAL indicated that the NPV benefits of expansion were £1,565m at the time of the original planning application, this decreased to £820m in CD 2.22, table 4.1 on p. 36, at the beginning of this Inquiry and with the latest change in the price of carbon these benefits are now stated to be £502m. That is the economic benefits of the scheme, as calculated by BAL, have declined by over two thirds since the original planning application was submitted. Further, the NPV is calculated over a 60-year period, thus it is the equivalent of less than £10m a year in terms of benefit – as we shall see this is about a tenth of the increase in outbound tourism.

123. BAL's contention that the cost of carbon should be excluded from the economic analysis is flawed. BAL has appraised the economic impact of the proposed development at three geographical levels: North Somerset, West of England and the South West and South Wales. It has not appraised the impact of the proposed development on the UK (since there would be a very low level of additionality from the airport expansion if the net impact were assessed on that geographic scale). BAL has not assessed the economic impact at a European or Global scale. As Mr Siraut

explained, it is crucial to include in the assessment the economic costs of carbon emission where these arise within the spatial area being assessed.[32] There are additional carbon costs within the North Somerset, West of England and the South West and South Wales areas if planning permission is granted which have to be taken into account.

124. Similarly, the contention that the modelling of future airfares includes the carbon costs associated with flights must be rejected. As Mr Siraut explains,[33] this conflates the impact of financial prices and economic costs. The traded price of carbon has been included in the air fare leading to higher prices and hence a marginal reduction in demand. This marginal reduction in demand does not prevent the airport reaching 12MPPA.

125. The socio-economic cost benefit analysis presents the economic impacts over a 60-year period. Over that 60-year period there is an annual economic cost associated with the carbon emissions of the additional flights arising from raising capacity from 10MPAA to 12 MPPA.

126. As stated by Mr Siraut in cross examination, these economic costs of carbon need to be included in the assessment. The situation is analogous to fuel duty being paid by motorists which leads to a reduced demand for road travel, but the economic cost of additional carbon emissions is nevertheless still required to be and is captured in the economic appraisal of road schemes.

127. Hence, the addition of carbon costs does not result in any double counting of carbon in the assessment undertaken by the appellant. Indeed, to adopt the view that there would be double counting would result in a failure to have regard to these additional carbon costs which are an important material consideration. To omit to take them into account would give rise to an error of law. The economic benefits must be assessed by making the reduction we have described.

[32] INQ78 p. 3 paras 19-20

[33] INQ78 p3 paras 21 to 24

128. The NPV benefits of the scheme on BAL's own evidence are thus some £500m, i.e. two thirds of what they originally claimed them to be. That is a very significant reduction in the level of benefit indeed.

Business Travel

129. BAL has significantly overstated the economic benefits associated with growth of business travel if planning permission is granted, compared to the position if planning permission is refused. Mr Brass's demand elasticity was based upon the patterns of the past, which do not reflect the post covid world. The Government has already recognised this in Decarbonising Transport, the Jet Zero consultation paper and the Secretary of State's decision not to review the ANPS. The Secretary of State has accepted that there is no evidence that the previous relationship between demand and its drivers remain valid. As York Aviation itself has identified, the key trend in business travel is for companies to focus on reducing and where possible eliminating unnecessary air travel in order to reduce costs, maximise efficiencies and demonstrate corporate responsibility in the context of the climate change emergency. The upskilling of the entire workforce presents major opportunities to reduce business travel in the future. These opportunities will be taken.

130. Mr Brass's scale of net growth in business passengers is greater than that which happened in the past and is unrealistic. Analysis of past data reveals that there is no representative evidence relating to past growth that can be reliably used to compare with the output of Mr Brass's model. With Jet2 coming to the airport, the percentage of leisure travel is only likely to rise. There is no evidence that the level of 3% growth in business passengers per annum is realistic or likely to occur.

131. However, there is a far more fundamental issue with the evidence presented regarding business travel. BAL has not proven that there would in fact be any net growth in business travel if planning permission is granted for the Proposed Development compared to the position if it were refused.

132. As Mr Siraut explained in his evidence to the Inquiry, business passengers are not as price sensitive as leisure passengers. They will pay more to travel than leisure passengers. In a capacity constrained airport where there is business passenger demand, busines passengers will displace leisure passengers since they will "outbid"

the more price sensitive leisure passenger for the available seats.[34] In XX Mr Brass was unable to identify where in his assessment he had taken this into account. He simply had no answer to it.

133. Mr Brass has presented an impact assessment which adopted the same business passenger elasticities in the with and without development scenarios up to the point where the airport becomes capacity constrained. He then continues the growth using the same elasticity beyond to 2030 in the with development scenario. In other words, his demand modelling did not address the fact that, in a capacity constrained airport where there is business passenger demand, business passengers will still fly because they will outbid leisure travellers on price.

134. Accordingly, BAL did not present any evidence which establishes that business passenger demand would be constrained in the do-nothing scenario, nor that there would be a net increase in business travel if planning permission were granted for the proposed development.

135. To conclude, it is submitted that in the absence of any evidence that demonstrates that there would be a net increase in business travel if planning permission were granted compared to the position if planning permission were refused, Mr Siraut's balanced assumption has to be adopted with the consequent reductions in the economic impacts that this means.

Displacement

136. A further and key aspect of considering the net economic benefits of the expansion of Bristol Airport is the concept of displacements i.e. of ensuring that you consider the difference between the with and without development scenarios at different geographical areas.

137. At the application stage, bizarrely, BAL contended that it was not relevant to consider displacement at all. This was supported by an analysis of why the other airports would not be able to meet demand if planning permission were refused. BAL's case as

[34] Agreed by Brass socio-economic XX to RTQC

presented to Officers and the Committee was accordingly that no other airport could meet the demand arising if permission was refused.[35]

138. This argument has since been significantly modified. At the end of November 2020 BAL published its ESA. That explained:[36]

> *"As described above, the original assessment did not seek to quantify the potential offsetting effect on GVA and employment impacts from passengers that cannot travel via Bristol Airport transferring to other airports in the Southwest and South Wales to undertake their journeys if the proposed development did not go ahead. It was assessed that this effect would likely be limited."*

139. In contrast to the position adopted at the application stage, the data now presented by BAL suggests that if planning permission were not granted, rather that that demand not being met, it would be met in large part at other airports. Mr Siraut explained in his evidence that of the 2mmpa, if planning permission were not granted, the new passenger allocation model identified that 1.24m passengers would fly from other airports with a total of 760,00 passengers would not fly at all. According to the model 570,000 passengers would fly from airports outside the region of which 180,000 were identified as flying out of Heathrow.

140. Mr Siraut explained this distribution in the no development scenario did not make sense. It has to be remembered after all that BAL started the year 2020 asserting to the Council that Heathrow and Gatwick would not meet any demand if planning permission were refused. Mr Siraut explained that:

> *"At present around 28% of passengers residing in the South West of England fly from Heathrow. This is principally due to Heathrow providing flights to destinations not served by South West airports, e.g. in North America, the Middle East and Asia. In addition, flights out of Heathrow to European destinations tend to be more expensive than those from regional airports. It would, therefore, appear unrealistic to suggest that 24% of passengers living in the West of England who were unable to fly from Bristol airport for a week's holiday in Alicante, if it was unable to expand, would end up flying out of Heathrow to say New York. More likely they would fly from another airport in the region to their preferred holiday destination as airlines expanded services to meet that displaced demand. Hence, my view is that the displacement figures used by BAL*

[35] CD4.11 bottom p. 16 and onto p. 17.

[36] CD 2.22 para 3.26

> *represent a significant overestimate of the number of passengers who would fly from outside the region."*[37]

141. He identified that as a result the "*economic benefit of the proposed development has been significantly overstated by*" BAL.

142. From the outset Jacobs on behalf of the Council sought information regarding the passenger allocation model in order to determine its robustness. It asked for information on the 23 December 2020, 21 January 2021, 13 February 2021, 15 February 2021, 4 March 2021, 9 March 2021 and 16 March 2021. On 7 April 2021 Mr Brass of York Aviation responded: "*I have discussed with the airport. They are keen to try to understand a bit more about what you are trying to get from the data…*" On 29 April 2021 there was a meeting regarding the Statement of Common Ground at which there was insufficient time to go into the matter. However, the draft Part 2 SoCG dated 15 June 2021 records the Council's position as:

> *"For the long term forecast an econometric passenger allocation model (logit model) has been used. This examines how passengers make choices between the different airports available based on multiple variables (e.g. flight time, quality of services, etc.). The Appellant has indicated that the values assigned to each variable differ by market segment. However, the values assigned to each market segment have not been provided despite a number of requests that they should be. No reason has been given for the failure to provide this information."*

143. The prospect of resolution of this issue was recorded as "*unlikely*".

144. In the absence of further information Mr Folley explained in his POE that he reserved his position "*on whether the passenger allocation model is appropriate*". As we have already explained, Mr Siraut questioned the reliability of the output of the passenger allocation model.

145. Mr Brass sought to contend that he had provided the information sought. In XX that did not end well for him. Shortly after the end of cross-examination further data was provided.

146. Jacobs requested a meeting with York Aviation to discuss that date, which had been provided as single list of values, absent any context.

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[37] Siraut p43 para 6.3.11

147. As a result of that meeting it became apparent that in order to understand the manner in which the passenger allocation (logit) model utilises the data provided, Jacobs needed to understand how the "lambda value" used in the model had been derived and verified.

148. As already mentioned, a passenger allocation model is used to determine the probability of an individual using one airport over another, or not flying at all, based on a range of factors including generalised cost (cost plus time taken to access each airport), airfare, frequency and destinations served. The lambda value used in the passenger allocation model dictates how sensitive passenger demand is to these range of factors (i.e. time, costs, frequencies etc.) which then determines which airport, if any, they will choose. The less sensitive, then the higher the cost needs to be before a person changes their preferences and vice versa. Hence the importance of knowing its value and derivation.

149. BAL/York Aviation has provided no information in evidence regarding the lambda value nor how it was determined. This is important since even small changes in the value can result in major changes in the output of the model. It is also important to understand how benchmarking has been undertaken since using a benchmarked value from another airport may not be appropriate in the case of Bristol.

150. In the absence of understanding the lambda value used and its justification, Jacobs has been unable to advise the Council that the passenger allocation model utilised by York Aviation is robust. Indeed, in the absence of such understanding, the passenger allocation model has not been the subject of scrutiny by this Inquiry, the Council or indeed any third party.

151. Notwithstanding an offer to treat the information provided confidentially, BAL/York Aviation refused to provide any information.

152. In effect, the refusal to allow access means that no view can be reached on the robustness of the passenger allocation model in circumstances where there is good evidence that its output is inconsistent with reality (see above).

153. The practical effect is that the model has not been subject to any meaningful form of public scrutiny whatsoever.

154. Mr David Lees, BAL's Chief Executive, in the foreword to BAL's 2019 airport monitoring report referred to the "*ongoing commitment to engagement and transparency within our community*". The refusal to allow access, even on a confidential basis, to the information necessary to enable the Council's consultants to determine whether the passenger allocation model is robust is the very antithesis of a commitment to "*engagement and transparency*". It is an attempt to avoid scrutiny in a process where disclosure is required in the public interest.

155. The extent to which the passenger allocation model is robust is a matter which is material to the determination of this appeal. As decision makers, you need to determine the weight to be ascribed to the model's output. Accordingly, in order to assist you, the Council needed to be provided with access to the model, even if this was only on a confidential basis.

156. The Council submits that the passenger allocation model has not been the subject of public scrutiny through the Inquiry process. The model output has not been independently verified as robust. There is no independent evidence that demonstrates that it is robust. Its output is unreliable for the reasons identified by Mr Siraut (see above). The model has not been the subject of any independent scrutiny whatsoever.

157. As such the output of that model and all of the impact assessments based upon it (including for example the economic impact, parking demand and junction capacity assessments) can be given little, if any, weight. Indeed, if you as decision makers were to give any material weight to the output of the passenger allocation model that would give rise to an error of law, namely a breach of natural justice, unfairness and substantial prejudice to the Council who has been denied the opportunity to provide any meaningful response to the model regarding the lambda value adopted.

Consequences of Displacement

158. The Council's administrative area and the West of England generally are prosperous areas with average GDP per capita 20% higher than the UK (excluding London) average, as well as higher rates of economic activity and lower levels of unemployment than the national average. Employment growth between 2012-19 was over 15% in both areas, again higher than the national average. While levels of deprivation are significantly lower than the national average.

159. Bristol Airport competes for passengers with other airports. That is because their catchments and the destinations that they offer all overlap with Bristol Airport's. York Aviation previously advised that Bristol and Cardiff airports' catchment areas overlap significantly.[38] The OFT has identified competition between Bristol and Exeter airports.[39]

160. Mr Siraut produced his own estimated amount of displacement. His Table 6.4 examines the displacement effects without taking into account of those who do not fly.[40] This reveals that at the South West and South Wales level the effect of granting planning permission is to reduce GVA and jobs at other airports that would otherwise occur at Cardiff, Newquay, Exeter and Bournemouth airports, with Cardiff being hardest hit, losing between £40m-£58m GVA, between 635-802 jobs or between 525 and 647 FTEs.[41]

161. All of these airports lie in areas of greater deprivation than Bristol Airport as Mr Siraut demonstrated in his evidence where he examined the GVA per head in the regions where the airports are located. This table shows that Cardiff and the Vale of Glamorgan together are substantially less prosperous that the area around Bristol Airport.

162. The grant of planning permission would also have significant long-term implications for Cardiff Airport going forward. A grant of planning permission for expansion at Bristol Airport will create a critical mass in favour of Bristol. As Mr Siraut explained in his evidence in chief, this is likely to inhibit further growth as airlines will wish to come to the larger expanded Bristol Airport and not the smaller Cardiff airport. Thus, it has future implications for the economy of South Wales beyond the losses identified by Mr Siraut in his Table 6.4.

163. For the purposes of the Levelling Up fund, three of the local authorities in the West of England are level 2 while South Gloucestershire is level 3 i.e. least in need of levelling up. By contrast, the Vale of Glamorgan where Cardiff airport is located is level 2, with

[38] Siraut p 34 and figure 6-1 on p35.

[39] Siraut p35 para 6.2.3

[40] INQ20 p6

[41] See INQ20 Table 6.4

all three of the local authority areas which neighbour the Vale of Glamorgan (Cardiff, Bridgend and Rhondda) at level 1.

164. There is no doubt that the area around Cardiff airport is considerably more deprived than that around Bristol Airport. Whilst there is no aviation policy which prioritises one area for growth over another (with the exception of the additional runway for Heathrow in the ANPS), it is the case that the Government is pursuing a levelling up agenda.

165. In Build Back Better the Government explains that:

> *"There are parts of the country where people feel left-behind, that they are not getting fair access to jobs, wages and skills opportunities, and that their local priorities are not being delivered on by government.*
>
> *Levelling up is about improving everyday life for people in those places. It is about ensuring people can be proud of their local community, rather than feeling as though they need to leave it in order to reach their potential."*[42]
>
> *"We will tackle geographical disparities in key services and outcomes across the UK: improving health, education, skills, increasing jobs and growth, building stronger and safer communities and improving infrastructure and connectivity. We will focus on boosting regional productivity where it is lagging to improve job opportunities and wages"*[43]
>
> *"Above all, this is a plan that will build on the strengths of the Union. The Union is core to our economic model and at the heart of our prosperity."*[44]

166. A decision to grant planning permission for the proposed development would be entirely contrary to this policy objective. Mr Siraut has demonstrated that expansion at Bristol Airport would come at real economic costs to the far more deprived economy of South Wales. It would result in hundreds of jobs that would otherwise be created in South Wales not materialising there at all. It is self-evident that to grant planning permission for the expansion of Bristol Airport would be contrary to the levelling up approach and to Build Back Better. It would simply reinforce for those in Cardiff, the Rhondda, and Bridgend that they are to be left behind and that they are not prioritised

[42] CD11.10 p68-69

[43] CD11.10 p70

[44] CD11.10 p70

in terms of access to jobs, wages and skills opportunities. They would feel as though they have to leave Wales in order to reach their potential. It would simply reinforce the existing economic disparity between the West of England and that in turn would undermine rather than support the Union with Wales.

167. In this context it is small wonder that the Welsh Government has objected to the grant of planning permission on behalf of the entire Welsh nation. A grant of planning permission for expansion at the Airport would achieve the very opposite of current Government policy as set out in "Build Back Better". It is contrary to that policy document and to the levelling up agenda. This is a material consideration which must weigh heavily against the grant of planning permission.

Clawback of Trips

168. BAL contends that a grant of planning permission will result in the clawback of unsustainable trips to airports further afield, particularly Heathrow. That conclusion is dependent upon the output of the passenger allocation model and something to be given limited weight for reasons explained above.[45]

Outbound Tourism

169. The Airport principally serves an outbound tourist market which accounts for nearly two thirds of its business. Mr Brass takes no account of the economic effect of outbound tourism in his economic appraisal. That matter is simply excluded. There is no policy basis for this exclusion. Moreover, while accounting for this effect is a complex matter, it is contrary to general principles of economic impact assessment to exclude it entirely.[46] This needs to be included in an assessment, not as part of any argument that suggests that people should be constrained from flying (as BAL sought to cast this issue), but rather of ensuring that all relevant costs and benefits are taken into account.[47]

[45] To give this matter anything more than limited weight would result in an error of law on the same basis as is explained above in relation to the passenger allocation model.

[46] Siraut p.53 para 8.3.3 – contrary to the approach in HM Treasury Green Book.

[47] Siraut p.53 para 8.3.4

170. Mr Siraut assessed the additional outbound trips that will occur as a result of the Proposed Development and the level of spend that is incurred outside the UK associated with the trips abroad that it would generate. He then offset against this the spend that occurs in the UK in relation to overseas trips. The result is an annual negative impact of £123m due to the increase in outbound tourism[48]. This has to be taken into account when considering the overall economic impacts of granting planning permission.

171. All of this is not to overlook the social benefits of flying. However, since it is necessary to focus upon the net impacts (i.e. those that occur by comparing the with and without development scenarios) it is crucial to recognise that the refusal of planning permission does not prevent people from flying abroad. Of the 2mppa on BAL's case, 1.24m still fly if planning permission is refused. There is no social impact upon them. Of the remaining 760,000 passengers some 650,000 are domestic passengers who do not fly. But that does not mean they do not have another holiday within the UK or indeed that they do not travel aboard by other means. It cannot be accepted that a holiday abroad is of greater social value than a holiday within the UK. As a result, there is no material social benefit in granting planning permission compared to refusing it. This is a factor which is to be given limited if any weight.

Connectivity of the United Kingdom

172. The Government's objective is to make the UK one of the best connected countries in the world. The policy is one to be judged on a UK wide basis. This means that what has to be judged in the present case is whether the grant of planning permission will result in benefits to the UK as a whole in terms of connectivity that will not arise if planning permissions is refused.

173. BAL's case in this regard is simply assertive. It says that there will be an increase in connectivity but it provides no evidence. There is no appraisal before this Inquiry which examines the net impact that the proposed development will have on connectivity either at a national or even a regional level. It has not been established that grant of planning permission for the proposed development would increase the

[48] Siraut p.54 para 8.3.6

number of routes or the frequency of service on routes to any particular destination compared to the position if planning permission were refused. Indeed, Mr Brass explained to the inquiry that "*[we] cannot sensibly know which airlines will be flying, what routes and with how many passengers in 9 years time*".[49]

174. It has to be remembered that of the 2 mppa growth, 1.24m will fly anyway and the remainder is induced demand.[50] There is then no evidence on which it can be rationally concluded that the grant of planning permission would deliver any material increase in connectivity on either a UK wide basis or indeed any other geographical basis compared to the position if planning permission is refused. As a result, in the total absence of any net benefit, this is a factor to which no weight can be ascribed.

Overstating the importance of economic benefits

175. BAL has completely overstated the importance of the benefits that the Proposed Development will deliver. For example, its economic benefits are small when compared, say, to those of the Junction 21 Enterprise Area. The Airport is far from the most important element of growth in the local economy. After all, as we have explained above, the Proposed Development's NPV benefits represent about £10m a year – that is not even enough to return the Airport to profitability assuming its 2019 loss of £33m[51] continues for the foreseeable future. Now that carbon costs have been properly accounted for, the benefits of the Proposed Development are, in the context of the area, economically small.

Regeneration of deprived areas

176. In its statement of case BAL identified that the Proposed Development would support regeneration, including in two of the South West's most deprived areas – Weston-Super-Mare and South Bristol. It now transpires that the "regeneration" is not any physical regeneration as such within these areas – rather it is a Skills and Employment Plan (secured by a planning obligation). Whilst welcome - and supported by financial contribution which is yet to be determined but which is "up to £300,000" - it would be easy to overstate the significance of this Plan. It is a drop in the ocean compared to

[49] INQ 28 at [3].
[50] Agreed by Brass in socio-economic XX to RTQC

[51] See INQ78 p26

the investment and physical regeneration which South Bristol and Weston-Super-Mare require.

177. Further, one of the major barriers to work at the Airport from both South Bristol and Weston-Super-Mare is access via public transport on a 24/7 basis. The mitigation on offer does not include guaranteed public transport access by staff who will be working on a shift basis on a 24/7. There is no evidence of how the public transport improvements will help these members of staff in a practical way, such that travel by public transport is realistic and reliable, particularly when working shifts. For the low paid who cannot afford the costs of running a private car, the absence of such public transport access is highly likely to prevent them from taking up any employment opportunities that arise. Accordingly, BAL again overstated the extent of benefit that will be provided in terms of reducing deprivation South Bristol and Weston-Super-Mare. There will be some, but in terms of the context of those areas as a whole, it will be economically small and thus of little weight.

Conclusion on Benefits

178. The economic benefits of Bristol Airport's expansion are significantly over-stated by BAL and will not provide "significant" economic benefits as claimed.

179. Other claimed benefits have been addressed above.

X. STANSTED DECISION

180. The statutory review of the Stansted decision is not yet finally determined. In any event, there is great danger in lifting conclusions from that decision letter into the determination of the present appeal.

181. Each appeal falls to be determined on its merits by reference to the evidence and submission presented. As far as we are aware, no party to the Stansted Inquiry contended that MBU was out of date, nor that the grant of planning permission would be contrary to the duties in the CCA 2008 nor that a grant of planning permission would be premature.

182. All of these matters have been argued in the present case in detail. It is your duty to determine this appeal by reference to the evidence and submissions that have been

made. That duty will not be fulfilled by simply following blindly the conclusions of other Inspectors which are founded on other evidence and other submissions.

XI. PLANNING BALANCE

183. Section 38(6) PCPA 2004 requires a decision maker to determine whether the proposed development accords with the development plan. We have provided references to case law in our detailed closing from which we submit that in determining this appeal:

(a) You must begin with the development plan policies and decide overall whether the proposed development accords or conflicts with the Plan as a whole;

(b) In conducting that exercise you must construe the policies correctly;

(c) The application of the facts to the policies with the Development is a matter for you.

(d) The weight you give to the Development Plan and to all material considerations is a matter for you.

184. The proposed development is contrary to the Development Plan in numerous respects, as we have explained and as was set out in the Reasons for Refusal. It is agreed that the Development Plan has full weight. Accordingly, the Development Plan provides very significant weight against the grant of planning permission.

185. Applying section 38(6) of the 2004 Act, planning permission for the proposed development must therefore be refused unless material considerations indicate otherwise.

186. The APF and MBU are both material considerations in the determination of this appeal, just like the NPPF. Just like the NPPF, they both require an exercise to be undertaken in order to determine whether they weigh in favour or against the proposed development. That exercise requires the decision maker to weigh the costs and benefits of the proposed development against one another and to determine generally whether the proposed development accords with each document.

187. We have already explained that the proposed development conflicts with the APF in a number of respects including:

(a) The failure to provide those living around the airport are not provided with any share, let alone a fair share, of the benefits of expansion; and

(b) The failure to expand without making noise worse than in the past;

(c) The failure to provide a fair share of the benefits of noise reduction produced by technological improvement.

188. It is also the case that the adverse impacts associated with the residual net effects of climate change, noise, air quality, surface access, health and the green belt significantly outweigh the economically small **net** benefits that the proposed development would deliver. There is no free-standing support for the expansion of airports to be weighed in this balance and to include this as a free-standing material consideration weighing in favour of the development would be an error of law.

189. On this basis, it is submitted that it is demonstrably the case that the costs of expansion outweigh the benefits. It follows that the condition of support provided by APF/MBU is not fulfilled and the proposed development is contrary to national aviation policy.

190. It is trite planning law that the weight to be given to all material considerations is a matter for you. Mr Melling's approach to national aviation policy was that he gave these documents full weight and contended that questions as to whether they are up to date or not were irrelevant. That approach is totally flawed. To follow it would be to err in law.

191. As we have explained, any policy support as there may be in the APF/MBU is out of date. Thus, even if you conclude that the proposed development obtains the condition support of these policy statements, that policy support can only be given limited weight.

192. By contrast it has not been demonstrated that where conflict with national aviation policy arises, that the support that these policies give to refusal is out of date. Accordingly, once you accept the submission that there is conflict with the APF/MBU, it follows that these documents provide very significant weight against the grant of planning permission.

193. So far as the green belt balance required by NPPF paragraph 148 is concerned the harm by reason of inappropriateness and to the openness and purposes of the Green Belt,

which is given substantial weight, coupled with the very significant "other harm" we have already identified, significantly outweighs the flawed attempt to suggest that parking is required in the Green Belt. The conflict with Green Belt policy at the national and local level weighs very significantly against the grant of planning permission.

194. The proposed development also conflicts with numerous policies within the NPPF in terms of climate change, noise, air quality, surface access and health. Paragraph 11 (d) does not bite and it is agreed that it is paragraph 11(c) which is to be applied. This provides that

"Plans and decisions should apply a presumption in favour of sustainable development. For decision taking this means

approving development proposals that accord with an up-to-date development plan without delay."

195. It is submitted that this requires application of the general s38(6) approach.

196. NSC submitted that the material considerations which weigh in favour of grant do not come close to rebutting the presumption in favour of refusal due to conflict with the Development Plan and the material considerations, which together weigh very significantly against the grant of planning permission.

197. The only reasonable outcome of the s38(6) approach is to conclude that planning permission must be refused.

XII. CONCLUSION

198. The Proposed Development is not sustainable development. Indeed, so much so it would be unlawful to grant planning permission for it as to do so will breach sections 1 and 4 of the Climate Change Act 2008.

199. BAL has not pursued a development which comes close to delivering the fair balance national aviation policy requires between its interests and those whose health and quality of life its activities affect. Rather it has pursued growth to meet its own interests, failed to design in mitigation from the outset. Even now it proposals for noise mitigation continue to evolve. Further, it has sought to avoid public scrutiny of key

aspects of its arguments. It has, in short, sought to obtain planning permission to expand on a basis that is the very opposite of the responsible growth required by Government. It is time to send a message to airport operators like BAL who consider themselves to have a "licence to grow". They do not.

200. The small economic benefit which the proposed development would deliver, just £10m a year [52], does not come close to justify the sleepless nights for thousands living around the airport or the harm to health and quality of life that would be visited on them. This is the wrong development, proposed in the wrong location and proposed at the wrong time.

201. It would be unlawful to grant planning permission for the proposed development and it is, in any event, a scheme which is entirely unacceptable. On behalf of North Somerset District Council we ask you to refuse planning permission.

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6 October 2021

[52] by reference to an NPV calculated over a 60-year period