

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

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

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CLOSING SUBMISSIONS ON BEHALF OF  
NORTH SOMERSET COUNCIL

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I. INTRODUCTION<sup>1</sup>

1. 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<sup>2</sup>. This is to be achieved by making net gains in each of the three interdependent and overarching objectives; economic, social and environmental.
2. BAL's development has not been pursued with this objective in mind; rather BAL is an airport operator so convinced of its self-importance that its Annual Report contains a section entitled "*maintaining our licence to grow*"<sup>3</sup> - as if it already has a right to expand. BAL is a company so self-involved that it cannot contemplate that there might be a reasonable alternative view. Indeed, BAL's Chief Executive appeared in local media on the first day of this Inquiry explaining to all who were listening that a costs application would be made; that said even before he had heard the case to be presented against the Proposed Development.
3. 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

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<sup>1</sup> These closing submissions use the same abbreviations as the Council's Opening Statement unless indicated.

<sup>2</sup> NPPF para. 7

<sup>3</sup> INQ78 p.8

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 said elsewhere, this Inquiry has revealed that BAL is a company that puts profit before people.

4. 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 the approach of the past to airport expansion no longer has weight. A world where responsible growth is required by Government. A world where the aviation sector has to demonstrate that its activities will strike a fair balance, share its benefits with those it affects, ensure attainment of new climate change targets and minimise its impacts.

## **II. POLICY CONTEXT**

5. The policies relevant to each identified issue are dealt with on a topic-by-topic basis below. However, at the outset the Council makes the following overarching submissions relating to the proper approach to national aviation policy and the Core Strategy (“**the CS**”).

### **(a) National Aviation Policy**

#### **No unconditional support for growth**

6. The starting point in respect of the full suite of national policy is that there is no unconditional support for growth.
7. In the Aviation Policy Framework (“**APF**”), the conditional nature of its support for expansion is expressed through the need for balance. For example, APF states:

*“The Government’s primary objective is to achieve long term economic growth. The aviation sector is a major contributor to the economy and we support its growth **within a framework which maintains a balance** between the benefits of aviation and its costs, particularly its contribution to climate change and noise ...”<sup>4</sup> (emphasis added)*

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<sup>4</sup> CD 6.01 at [5] on PDF p. 9.

8. Notably, the need for balance makes express reference to economic benefits on the one hand and the costs of growth on the other hand. Thus, whilst the APF recognises the economic benefits of aviation growth, the APF does not seek to prioritise such growth at all or costs or to achieve economic growth at the expense of the environment and local communities. This is also clear from the chapter of the APF dealing with the economic benefits (including enhanced connectivity) expressly:

*“One of our main aviation objectives is to ensure that the UK’s air links continue to make it one of the best connected countries in the world. This includes increasing our links to emerging markets so that the UK can compete successfully for economic growth opportunities. To achieve this objective, we recognise the importance of both maintaining the UK’s aviation hub capability and developing links from airports which provide point-to-point services (i.e. carrying very few or no transfer passengers). This must be done in a way consistent with the high-level policies set out in this document.”*  
(emphasis added)

9. Here, even when the Government is expressing enhanced connectivity for the UK as one (not the only) “main aviation objectives”, it tempers that objective by requiring consistency “with the high-level policies” in the remainder of the APF, for example the “overall policy on aviation noise ... to limit and, where possible, reduce the number of people in the UK significantly affected by aircraft noise”.<sup>5</sup> This is another example of balance: improved connectivity for the UK achieved consistently with the Government’s environmental objectives.
10. The APF emphasises the need for balance in respect of airport expansion outside of the South East in particular:

*“The Government wants to see the best use of existing airport capacity. WE support the growth of airports in Northern Ireland, Scotland, Wales and airports outside of the South East of England. However, we recognise that the development of airports can have negative as well as positive local impacts, including on noise levels. We therefore consider the proposals for expansion at these airports should be judged on the individual merits, taking careful account of all relevant considerations, particularly economic and environmental impacts.”*<sup>6</sup> (emphasis added)

11. Similarly, such support for growth as there in MBU is conditional. For example, MBU states:

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<sup>5</sup> CD 6.01 at [3.12] on PDF p. 57.

<sup>6</sup> CD 6.01 at [1.24] on PDF p. 22.

*“Therefore the government is supportive of airports beyond Heathrow making best use of their existing runways. However, we recognise that the development of airports can have negative as well as positive local impacts, including on noise levels. We therefore consider that any proposals should be judged by the relevant planning authority, taking careful account of all relevant considerations, particularly economic and environmental impacts and proposed mitigations. This policy statement does not prejudice the decision of those authorities who will be required to give proper consideration to such applications. It instead leaves it up to local, rather than national government, to consider each case on its merits.”<sup>7</sup>*

12. This could not be clearer: there is no free-standing presumption in favour of growth to be weighed in the s. 38(6) determination; decisions are to be taken at a local level and are not prejudged by MBU; and at that local level, the benefits must be considered alongside the costs.
13. This conditionality also continues into Aviation 2050: “[the] government supports the growth of aviation, provided that this is done in a sustainable way” (emphasis added); and the Government “supports airports throughout the UK making best use of their existing runways subject to environmental issues being addressed” (emphasis added).<sup>8</sup> The conditional nature of the support is clear beyond doubt in the provisos used: “*provided that*”, “*subject to*” etc.
14. BAL purports to accept the conditional nature of the support for growth in MBU: the questions of Mr Melling in XiC led on this basis and Mr Melling said so in terms in XX. Yet it is plain that BAL does not understand what this conditionality means. For example, Mr Melling referred to “*in principle support*” and then sought to weigh making best use in the planning balance as a free-standing benefit. We return to this in detail below when dealing with the planning balance, but this approach is obviously an incorrect interpretation of policy, and to pursue it would be an error of law. The idea of “*making best use of existing runway capacity*” is a policy approach which is set out in the policy documents – in APF and MBU – it is not a freestanding concept, detached from the document in which it is promulgated. As such, it cannot be weighed in the planning balance as providing free-standing for airport expansion; rather it supplies support only once the conditional basis for support within APF/MBU has been satisfied. If that condition is satisfied, APF/MBU are material

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<sup>7</sup> CD 6.04 at [1.29] on PDF p. 10.

<sup>8</sup> CD 6.05 – blue summary box and at [1.3] on PDF p. 20.

considerations that weigh in favour of the development for the purposes of s. 38(6) of the Planning and Compulsory Purchase Act 2004 (“PCPA 2004”); and if the condition is not satisfied, then APF/MBU weigh against a grant of planning permission in the s. 38(6) exercise.

Sharing the benefits of technology & growth

15. At the heart of national aviation policy is the requirement to share the benefits of technological improvement and growth between airport operators and local communities: it is only by sharing the benefits in this way that growth can accord with national aviation policy.

16. The first “core principle” in the APF embodies the need to share:

*“Collaboration: By working together with industry, regulators, experts, local communities and others at all levels, we believe we will be better able to identify workable solutions to the challenges and share the benefits of aviation in a fairer way than in the past.”<sup>9</sup>*

17. Further, the APF goes onto explain what a fair balance requires:

*“We want to strike a fair balance between the negative impacts of noise (on health, amenity (quality of life) and productivity) and the positive economic impacts of flights. As a general principle, the Government therefore expects that future growth in aviation should ensure that benefits are shared between the aviation industry and local communities. This means that the industry must continue to reduce and mitigate noise as airport capacity grows. As noise levels fall with technology improvements the aviation industry should be expected to share the benefits from these improvements.”<sup>10</sup>*

18. The same point is made in MBU:

*“As airports look to make best use of their existing runways, it is important that communities surrounding those airports share in the economic benefits of this, and that adverse impacts such as noise are mitigated where possible.”<sup>11</sup>*

19. The submissions below address the application of this policy imperative on a topic-by-topic basis, but we note the following overarching matters:

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<sup>9</sup> CD 6.01 at [3] (first bullet) on PDF p. 8.

<sup>10</sup> CD 6.01 at [3.3] on PDF p. 55.

<sup>11</sup> CD 6.01 at [1.22] on PDF p. 9.

- (a) The APF expresses the striking of a fair balance as “*a general principle*”. Far from negating the need to strike a fair balance, this underlines the importance of this approach. The imperative of striking a fair balance is a general principle because it applies **generally**; that is, to all development falling within the scope of the APF. Moreover, as a general principle, it falls to be applied unless there are clear reasons for not doing so. There are no such reasons here and BAL has not suggested otherwise.
- (b) Both MBU and APF are clear that the sharing of benefits must be with “*local communities*” (or “*the communities surrounding those airports*”). There is no confusion as to what this requires: the local communities referred to are those who bear the environmental impacts of the airport.<sup>12</sup> Of course, the extent of the environmental impact may vary depending on the nature of the environmental impact, but it those people with whom the benefits must be shared, not people many miles away from the Airport, in some other, unaffected, part of the Council’s area. Contrary to the questions put to Mr Gurtler in XX, this does not mean that wider benefits are to be ignored – plainly not; but when those wider benefits are taken into account they do not go towards the striking of a fair balance because they do not bear on the local communities, rather they are taken into account in the wider planning balance.
- (c) Mr Melling sought to suggest that the sharing of benefits was not a matter to be taken into account in the development control process. This is in error. If the imperative of sharing of benefits is not taken into account in the development control process, then there is no way that the Government can ensure that the benefits of future growth are shared. Growth is the very thing which the development control process is concerned with, and it is through the development control process that the benefits of growth are shared. Mr Melling sought to argue in XX that this principle was to be applied in air space changes alone. This cannot be correct: airspace change does not share the economic benefits of growth; and there is nothing in APF or MBU which restricts the application of the principle to airspace change – to the contrary, it obviously applies to development control, as explained above.

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<sup>12</sup> See the APF at [3.1] on PDF p. 55: “*there are costs associated with its local environmental impacts which are borne by those living around airports, some of whom may not use the airport or directly benefit from its operations*”.

- (d) In the context of noise, BAL sought to restrict the principle of sharing the benefits of growth to a comparison between what was permitted and what is proposed. This approach fails on the facts in this case, given the absence of any real prospect of the permitted impacts being realised, as Mr Williams accepted in XX. But in any event, this approach is wrong as a matter of principle: the sharing of benefit is based on the fair division of the capacity for growth which is generated by technological improvements (in particular quieter aircraft) and thus the division must be realistic – it must consider the difference between the actual impacts which would occur with and without growth, and thus the actual benefit which accrues, not some theoretical impact that is permitted. The Council’s approach, as explained below, considers the impacts in the ES/ESA in the no-development scenario and compares those impacts to the impacts in the with-development scenario.

#### Transparency

20. The second core principle in the APF is transparency:

*“To facilitate improved collaboration, it is crucial to have clear and independent information and processes in place. Those involved in and affected by aviation need to have a clearer understanding of the facts and the confidence that proportionate action will be taken at the international, national or local level.”<sup>13</sup>*

21. The failure of BAL to act in a transparent manner has recurred throughout its evidence and approach to this appeal. The submissions below highlight the most egregious examples of this.

#### **(b) The Core Strategy**

22. Policy CS23 of the CS concerns the Airport specifically and provides:

*“Proposals for the development of Bristol Airport will be required to demonstrate the satisfactory resolution of environmental issues, including the impact of growth on surrounding communities and surface access infrastructure.”<sup>14</sup>*

23. The Council is not blind to the potential for growth at the Airport to benefit its area: to the contrary, the third priority objective in the CS recognises the need to “support and

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<sup>13</sup> CD 6.01 at [3] (second bullet point) on PDF p. 8.

<sup>14</sup> CD 5.06 at p. 95.

*promote major employers in North Somerset, such as Bristol Airport*".<sup>15</sup> However, this priority is set in the context of the Council's vision: "*sustainable, inclusive, safe, healthy, prosperous communities thriving in a quality environment*". Policy CS23 mediates the positive potential for growth at the Airport in this context: in order to grow the Airport, BAL "*is required to demonstrate the satisfactory resolution of environmental issues, including the impact of growth on surrounding communities and surface access infrastructure*".<sup>16</sup>

24. There is no unqualified support for growth at the Airport; quite the opposite – growth is only supported where the environmental issues and impact of growth are resolved. This is an imposing hurdle for BAL because the resolution of environmental issues is not, as BAL have argued, a mere simplistic question of balancing harm and benefit. Rather, the resolution of environmental issues requires a qualitative assessment of the environmental impact, addressing whether the particular impact has been avoided or mitigated to a policy compliant level. In this way, policy CS23 requires development which delivers growth without compromising the environment – both human and physical – in which it is situated. Moreover, this is a burden which rests on BAL: "*Development of the Airport is led by its owners, whose responsibility it is to ensure that the environmental impacts of growth are addressed to the satisfaction of the council or other relevant decision-maker.*"<sup>17</sup> The same approach is adopted in linked policy DM50 of the DMP.<sup>18</sup>

**(c) Weight to be afforded to policy support for expansion of airports**

25. 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.
26. 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.

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<sup>15</sup> CD 5.06 at p.20.

<sup>16</sup> See policy CS 23 at CD 5.06 on p. 95.

<sup>17</sup> CD 5.06 at [3.296] on p. 95.

<sup>18</sup> CD 5.04 at p. 117.

27. The Council submits that the APF and MBU are both out of date and to be given limited, if any, weight because both of these policy documents were formulated and promulgated before the adoption by Government of the 6<sup>th</sup> Carbon Budget (“6CB”), the net zero 2050 target and the decision to include international aviation within domestic targets.
28. The Council’s submissions are not about what 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 s.38(6) exercise. 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.
29. 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.
30. Only Central Government can undertake the exercise<sup>19</sup> 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.<sup>20</sup>
31. MBU contains an assessment exercise which only looks at the compatibility of its approach with the previous 80% target.<sup>21</sup> 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.<sup>22</sup> The planning assumption adopted of 37.5 MTCO<sub>2</sub> was formulated by the CCC to achieve the 80% reduction in

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<sup>19</sup> Agreed in XX by Osund-Ireland and explained by Hinnells XinC.

<sup>20</sup> XinC Hinnells and XX Osund-Ireland by RTQC

<sup>21</sup> Agreed by Osund-Ireland in XX to RTQC

<sup>22</sup> XX Osund-Ireland by RTQC

CO2 to 1990 levels i.e. the previous 2050 climate change target.<sup>23</sup> 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, not as they exist today.<sup>24</sup>

32. No similar updated exercise using today's targets 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.<sup>25</sup> Mr Osund-Ireland agreed in XX<sup>26</sup> 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.
33. The Jet Zero consultation cannot be relied upon as demonstrating that 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 sector.<sup>27</sup> In the absence of a sectoral target for the aviation sector, it is not possible even for Central Government to demonstrate that further airport expansion is compatible with ensuring the attainment of the 6CB target.
34. Jet Zero cannot be relied upon as demonstrating that airport expansion is compatible with net zero 2050 since:
  - (a) It is not adopted policy and just a consultation paper; and
  - (b) It is to be given limited if any weight since:
    - (i) The consultation process is not complete;
    - (ii) The consultation process is highly controversial; and

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<sup>23</sup> Agreed Osund-Ireland in XX to RTQC

<sup>24</sup> CD6.4 p9 para 1.25

<sup>25</sup> Osund-Ireland in XX to RTQC

<sup>26</sup> XX by RTQC

<sup>27</sup> 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.

- (iii) The assessment work undertaken is inconsistent with the legal duty to adopt a policy framework which ensures that climate change targets are achieved.

35. The Jet Zero consultation amounts to emerging policy. As such, the weight to be ascribed to it must necessarily be more limited than that which can be ascribed to adopted policy. When considering the weight to ascribe to the Jet Zero consultation, it is also relevant to consider similar factors to those identified in paragraph 48 of the NPPF.
36. In terms of the *stage towards adoption* which the policy has reached, the Jet Zero consultation has now closed. The Department for Transport (“DfT”) has not indicated whether it will simply move to consider the representations received and then move to the adoption of a policy approach or whether further rounds of consultation will be required. As such, there is uncertainty as to the stage of consultation reached – it may be at a late stage, but it may not.
37. In terms of *the extent to which the proposals have attracted objection*, Dr Hinnells explained in his evidence that a large number of matters within the consultation process are highly controversial, in particular: (1) the absence of an impact assessment; (2) the failure to assess all policy options; (3) the failure to use the latest adopted Department for Business, Energy and Industrial Strategy (“DBEIS”) carbon values; and (4) the failure to assess risk of assumptions. We address these matters in turn.

#### Absence of Impact Assessment

38. The consultation process purports to accord with the Government’s consultation principles. These state that consultation should “*include validated impact assessments of the costs and benefits of the options being considered when possible; this might be required where proposals have an impact on business or the voluntary sector.*”<sup>28</sup> No validated impact assessment was provided alongside Jet Zero. The DfT in its response to the Council explained that:

*“An impact assessment was not deemed appropriate or possible at this stage given the consultation is on a broad strategy for achieving net zero aviation rather than setting out detailed policy proposals. Should they be required, the department will carry out*

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<sup>28</sup> See INQ11 p. 2

*impact assessments to accompany subsequent consultations on policy proposals to achieve the goals of this strategy."*

39. Thus, the DfT asserted that impact assessment was not conducted because Jet Zero is not determining "*detailed policy proposals*".
40. This assertion can be contrasted with the Secretary of State's view in the letter relating to the review of the ANPS which explains that the Secretary of State:<sup>29</sup>

*"considers that the question of whether or not to review the ANPS should be considered again after the Government's Jet Zero Strategy ("JZS") has been finalised following a consultation which was launched on 14 July 2021. This sets out **proposed policies that will be needed for aviation to meet net zero emissions by 2050**. These policies will influence the level of aviation emissions the sector can emit and the cost of flying in the future..."*

41. Accordingly, the rationale provided in the DfT response to the Council for not conducting an impact assessment no longer holds good, since the Secretary of State has explained that Jet Zero is intended to set out proposed policies to deliver the net zero 2050 target and those policies will affect the cost of flying and thus impinge upon business. This is a matter which is highly likely to trouble the Courts at some point in the future.
42. Further, as can be seen, the Secretary of State acknowledges in this letter that the level of emissions that the aviation sector can emit consistently with net zero 2050 has not yet been determined, since this will only be known after the adoption of a policy at some point in the future.

#### Failure to Assess all Relevant Policy Options

43. In its recent policy paper "*Valuation of greenhouse gas emissions: for policy appraisal and evaluation*"<sup>30</sup> DBEIS explains that policy choices relating to carbon reduction "*often involve making choices between competing policy objectives*" and that such choices by Government are to be "*made in a transparent fashion and in a way that seeks to be cost-effective for UK society as a whole*". Indeed, the Jet Zero – Evidence and Analysis paper refers to the need to deliver Jet Zero in the "*most cost-effective way possible*".<sup>31</sup>

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<sup>29</sup> INQ62 p.2

<sup>30</sup> INQ54

<sup>31</sup> CD9.136 p9 para 2.22

44. Accordingly, the Jet Zero consultation was required to appraise the cost effectiveness of all relevant policy options to deliver carbon targets in a transparent fashion. It can be argued that the consultation material does not achieve this objective in numerous respects.
45. Firstly, as explained above, Jet Zero does not appraise the compatibility of further airport expansion with the attainment of the 6CB target. That is entirely inconsistent with the statutory duty under s. 4 of the Climate Change Act 2008 (“CCA 2008”) to ensure attainment of carbon budgets and means that the consultation process is entirely flawed.
46. Secondly, it has failed to assess whether capping the capacity of airports would be a cost-effective means of delivering carbon reduction.
47. The Committee on Climate Change (“CCC”), of course, relied upon capping capacity in its balanced pathway to net zero. They explained that their balanced pathway included no net capacity expansion at UK airports. The CCC made clear that “*airport expansion could still occur under the Balanced Pathway, but would require capacity restrictions elsewhere in the UK (i.e. effectively a reallocation of airport capacity)*”. Thus, capacity restriction now formed a central part of the CCC pathway for the aviation sector.
48. As such it is a matter which (applying the DBEIS approach of seeking to identify the most cost- effective policy approach) the DfT was obliged to consider, however, it has not been so considered. Jet Zero contains no examination of the cost effectiveness of constraining additional capacity either in and of itself or relative to the cost effectiveness of other potential policy measures.<sup>32</sup> Indeed, the Jet Zero consultation contains no consideration of whether the costs of constraining additional capacity now would be less than constraining the use of capacity provided now at a later point in time if this were to become necessary to meet climate change targets. It has also failed to examine the likelihood of needing to constrain capacity a later stage if it is not constrained now.<sup>33</sup> It contains no comparative appraisal of the risks costs and benefits of constraining capacity now as against the other policy measures open to Government.

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<sup>32</sup> Agreed by Osund-Ireland in XX to RTQC

<sup>33</sup> Hinnells Supp Proof p6 para 15 and p11 para 38

49. Accordingly, it must be recognised that where the consultation paper states that “we currently believe the sector can achieve Jet Zero without the Government needing to intervene directly to limit aviation growth”,<sup>34</sup> that statement is not supported by any evidence, as Mr Osund-Ireland agreed. Indeed, the accompanying Evidence and Analysis document is itself inconsistent with the “current belief”. It explains:<sup>35</sup>

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

50. Thus, the Evidence and Analysis document does not rule out the potential to introduce capacity constraint at all. In the absence of any evidence to support the “current belief”, the Council submits that that the “belief” is a mere assertion and as such cannot be given any material weight.
51. In “A Green Future: Our 25 Year Plan to Improve the Environment” the Government explained that:

*“[...] the European Union (Withdrawal) Bill (now Act) will ensure that the body of existing EU law, including environmental law, continues to hold sway in the UK. Key underlying principles of existing policy, such as the ‘polluter pays’ principle and the precautionary principle, are reflected in this legislation.”<sup>36</sup>*

52. Further, the Environment Bill (currently at the report stage prior to third reading in the House of Lords) requires a policy maker to have regard to amongst other matters, the precautionary principle (see current clauses 18 & 19). The adoption of a Jet Zero policy must then be considered in the context of the application of that principle, which already forms a part of the Government’s approach to the Environment.
53. The precautionary principle states that where there are threats of serious or irreversible environmental damage, a lack of scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

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<sup>34</sup> CD9.135 para 3.41

<sup>35</sup> CD9.136 p9 para 2.22

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

Thus, whilst there is significant uncertainty whether further airport expansion can be permitted on a basis which will be consistent with the attainment of carbon reduction targets, Government may be required by the precautionary principle to err on the side of caution by refusing to permit additional capacity until it has been established that allowing such development will be consistent with the attainment of such targets.

54. It is difficult to see how the application of the precautionary principle leads to any other approach than that adopted by the CCC, i.e. no net expansion of UK airport capacity until it is proven that the aviation sector is on track to sufficiently outperform its net emissions trajectory to provide the headroom for expansion. Even then, the expansion which is permitted to come forward would need to be that which best delivers the objectives of sustainable development.
55. On this basis there are significant issues concerning the potential for capacity constraint to be utilised as part of a package to deliver 6CB and net zero 2050 targets which have not been addressed in the Jet Zero consultation in any meaningful way. It remains to be seen whether these matters will be considered by Government further and/or addressed in future High Court proceedings.

#### Failure to Use the Adopted DBEIS Carbon Values

56. The illustrative trajectories set out in the Jet Zero consultation adopt two assumptions – scenarios 1 and 2 adopted the previously applicable DBEIS central carbon values whilst scenarios 3 and 4 adopt the previously applicable DBEIS high carbon values. As Dr Hinnells explained, the new values adopted by DBEIS after the commencement of the Jet Zero consultation are required to be used in policy evaluation.<sup>37</sup>
57. This means that the Jet Zero consultation has been promulgated on the basis of carbon values which are out of date. Accordingly, the consultation material provided to the public is out of date and will have to be revised. To ensure fairness in the consultation process, any new assessment work will also have to be the subject of further public consultation. If this is not done, then the consultation process is likely to be challengeable in the High Court.

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<sup>37</sup> INQ54 p13 “A policy or project that increases or decreases GHG emissions domestically or internationally relative to a “business as usual” scenario is required to quantify the change in emissions, and then apply the carbon values.”

58. The adopted DBEIS carbon values now reflect the requirement to attain net zero (as opposed to the previous values which simply reflected the social value of carbon) and are substantially higher than those utilised previously. It cannot be said now that once the Jet Zero work is reappraised the Government is likely to determine that the same package of measures will be identified. Not least because the value of carbon has increased dramatically in the immediate years compared to the position previously assumed.
59. This means that carbon saved now has a much greater value than was previously the case. This affects the judgment to be made about the cost-effectiveness of constraining capacity relative to other potential policy responses – for example carbon reductions achieved now through capacity constraint will be far more valuable than was the case using the previous carbon values and than was previously assumed. Thus, the new carbon values adopted by DBEIS render the potential policy option of capacity constraint far more cost-effective than was previously the case. Accordingly, until a relative appraisal of costs, risks and likelihood is made of all policy options by reference to the new carbon values, capacity constraint cannot be ruled out as a means of delivering climate change targets.

#### Failure to Assess Risk of Assumptions

60. The Jet Zero consultation contains no assessment of relative risks, costs or benefits of the various assumptions it adopts or policy measures it considers. There is no relative assessment of the cost-effectiveness of the various policy options. Thus, that consultation paper does not appraise cost effectiveness on a basis consistent with the approach required by DBEIS nor with its own objective of delivering carbon reductions in the “most-effective way possible”.
61. This is important, because the policy being promulgated in the Jet Zero consultation is not policy formulated within a vacuum; rather it is policy formulated to achieve certain statutory duties. Accordingly, when considering the weight to be given to the Jet Zero consultation, it is relevant to consider the degree of consistency of the approach followed in the consultation exercise with other adopted policy/statutory objectives, e.g. ss. 1 & 2 4 CCA 2008; the greater the degree of inconsistency the less the weight can be ascribed to the policy proposals.

62. In its response to the Council, the DfT explains that its illustrative trajectories suggest that net zero could be achieved “*if the challenges we have outlined for each scenario are overcome*”.<sup>38</sup> However, the witness agree that the consultation material does not contain any appraisal of the likelihood of these challenges being overcome.<sup>39</sup> The consequence of this is that the DfT/Government has not considered the likelihood of the policy approach it proposes for attaining net zero – thus it has failed to consider whether its approach would “*ensure*” attainment of net zero 2050 as required by s.1 CCA 2008 or would “*ensure*” attainment of the 6CB target as required by s.4 CCA 2008. The approach adopted is thus inconsistent with the duties contained within that Act and unlawful.
63. By way of example, Dr Hinnells examined the nature of the appraisal of the assumptions relating to fuel efficiency, future fleet mix, sustainable aviation fuel and zero emission aircraft.
64. **Fuel Efficiency:** the Jet Zero consultation paper adopts assumptions regarding year on year fuel efficiency improvements which are materially higher than those utilised by the CCC in its balanced pathway. It does so by reference to a research paper by ATA/Ellondee which was commissioned jointly by the DfT and the CCC. The DfT has adopted the ATA/Ellondee optimistic scenario which was not adopted by the CCC. ATA/Ellondee describe the “*optimistic scenario*” as including some “*high-risk technologies*”. However, Jet Zero does not include any assessment of the extent of the risk associated with adopting these assumptions nor any appraisal of the likelihood of them coming on stream on the timescale assumed by ATA/Ellondee.<sup>40</sup>
65. **Future Fleet Mix:** the Jet Zero consultation paper adopts assumptions regarding the introduction of new generation aircraft designed to emit less carbon. However, the Covid 19 pandemic has affected the financial strength of many airlines significantly. Dr Hinnells explained that just prior to him giving evidence Ryanair and Boeing had broken off negotiations regarding Ryanair’s potential acquisition of Max 10 aircraft. The Jet Zero consultation contained no assessment of the likelihood of airlines being able to afford to invest in modernising their fleets at the speed assumed in the

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<sup>38</sup> See Hinnells Supp Proof p13 para 46.

<sup>39</sup> See XX of Osund-Ireland by RTQC.

<sup>40</sup> Hinnells Supp Proof p17 para 64 to 66.

scenarios.<sup>41</sup> This approach is not consistent with the statutory duty of ensuring attainment of carbon reduction targets.

66. ***Sustainable Aviation Fuel Assumptions:*** SAF is currently in very limited use. New production plants have a high capital cost,<sup>42</sup> and produce very expensive fuel which in turn constrains demand. This disincentivises private investment. There are significant hurdles for any first of its kind plant to come forward.
67. The Jet Zero consultation, however, assumes sustained growth of 14% per annum in the use of SAF between 2030 and 2050. It contains no examination of whether this is likely or realistic<sup>43</sup>. When asked for evidence to support the likelihood of that assumption being realised, the DfT produced references to only generalised estimates of costs.<sup>44</sup> There is no assessment of the likely abatement costs of SAF, no assessment of the potential fall in costs of production due to economies of scale and rise in demand and no assessment of the likelihood of the challenges facing scenario 3 coming about.<sup>45</sup> In addition, the Jet Zero consultation includes no examination of the relative risks, costs or benefits of alternate means of reducing carbon emissions compared to the use of SAF e.g. by constraining capacity.<sup>46</sup>
68. ***Zero Emissions Aircraft:*** The Jet Zero consultation contains no assessment which examines the likelihood of the challenges facing the introduction of zero emissions aircraft coming into service on the basis being overcome, as assumed in scenario 4<sup>47</sup>. (MH SP p23 paras 92-93).
69. **Greenhouse Gas Removals Measures:** one of the greatest areas of uncertainty relates to the likely availability of greenhouse gas removals measures (“GGRs”) which can be relied upon to reduce emissions to a net zero figure.

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<sup>41</sup> Hinnells Supp Proof p18 para 72-75 agreed Osund-Ireland in XX

<sup>42</sup> CD 9.94 p.68 paragraph 6 – Ricardo identifies a cost of £700m and significant hurdles in any FOAK plant coming forward.

<sup>43</sup> Hinnells Supp Proof p 21 para 84 and agreed by Osund-Ireland in XX

<sup>44</sup> Hinnells Supp Proof p 22 para 86.

<sup>45</sup> Hinnells Supp Proof p22-23 paras 88 and following.

<sup>46</sup> Hinnells Supp Proof p23 para 91

<sup>47</sup> Hinnells Supp Proof p23 paras 92-93. and agreed by Osund-Ireland in XX.

70. Both the CCC and the Government in the Jet Zero consultation agree that the aviation sector will still be emitting gross carbon emissions at the end of the 6CB period and at 2050. The aviation sector is then reliant upon GGRs in order to be able to meet the 6CB targets and net zero at 2050. However, other sectors are also reliant upon GGR measures (e.g. agriculture).
71. As part of the consideration of a path to net zero for the aviation sector, it is necessary to:
- (a) Identify the GGR capacity which is likely to be available; and
  - (b) Identify that capacity how much it is cost-effective to ascribe to aviation as opposed to other sectors.
72. The Council asked the DfT to provide its assessment of the likely amount of GGR capacity in 2050 and its assessment of the competing demands for that capacity from all sectors. The DfT confirmed in its response that no such assessment was undertaken<sup>48</sup>.
73. Accordingly, Government has not reached any concluded view on the amount of GGR capacity which is likely to be available as at the 6CB target period or as at 2050. It has also not reached any concluded view as to the amount of GGR capacity that it is cost-effective to ascribed to the aviation sector. As a result, the Jet Zero consultation cannot be relied upon as demonstrating that the gross emissions it identifies for 2050 can be ensured to be removed by available GGR measures.
74. There is no evidence before this Inquiry which establishes that sufficient GGR capacity will be available to off-set the gross emissions from the aviation sector if all airports are allowed to expand. It could be that there will be insufficient carbon capacity at 2050 to allow all airports to expand as they may wish – we simply do not know because Government has not concluded its assessment. We return to the implications of this further below
75. Thus, in all of these respects the illustrative trajectories do not appraise the risk associated with the adoption of the optimistic assumptions that have been adopted. There is no appraisal which enables a view to be reached as to the likelihood of these

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<sup>48</sup> Hinnels Supp Proof p24 paras 95-97 and INQ42

assumptions and policies ensuring the delivery of net zero in 2050 as required by s. 1 CCA 2008. The consultation thus does not assess what is necessary to demonstrate that the policy approach would be consistent with the duties contained within the CCA 2008.

76. On this basis, it can be seen that there is no evidence before this Inquiry which demonstrates that the Jet Zero consultation should be given anything more than limited weight. Mr Osund-Ireland readily agreed that Jet Zero should be given limited if any weight – he was right to do so.
77. The result of this is that:
- (a) Neither the APF nor MBU contain any assessment which demonstrates that a policy approach of supporting further airport expansion is compatible with attaining either the 6CB targets or net zero;
  - (b) There is no other assessment before this Inquiry which demonstrates that a policy approach of supporting airport expansion is compatible with attaining either the 6CB targets or net zero.
78. It follows that the only conclusion that can be reached based upon the evidence before this Inquiry is that any support for further airport expansion which is to be found in the APF or MBU is out of date since this has not been demonstrated to be consistent with the attainment of the 6CB target or net zero 2050.

#### Other Documents

79. BAL of course has not sought to identify any assessment to the contrary; rather BAL seeks to rely upon a series of statements which it asserts demonstrate that the Government considers APF/MBU to be up to date and of full weight.
80. In response the Council submits that even if this were true, it does not mean that the APF/MBU are in fact up to date. It would simply mean that Government is asserting that they are up to date without any evidential support for such an assertion. The only means to demonstrate that any support for further airport expansion which is to be found in the APF or MBU is up to date is by an assessment which demonstrates this. Since Mr Osund-Ireland agrees that there is no such assessment and BAL do not point to one, the only conclusion that can be reached on the evidence is that the APF/MBU are out of date, even if the Government are to be construed as asserting otherwise; an

unevidenced assertion by Government does not remove the legal duty on a decision maker to consider the weight to be ascribed to policy in the light of the evidence and any consideration of whether that policy is out of date.

81. Nevertheless, the documents referred to by BAL do not state that the APF/MBU are up to date nor that they should be given full weight.
82. The first is a statement from February 2020 by the Secretary of State. But that does not state that MBU is up to date nor that it is to be given full weight<sup>49</sup>.
83. The second document is the Inspector's decision letter in the Stansted appeal. However, the Inspectors do not grapple with the extent to which the APF/MBU are up to date and do not consider whether there was a concluded assessment by government before them which demonstrates that the policy to support further airport expansion contained in MBU was compatible with ensuring the achievement of 6CB target or net zero 2050. They did not then take the absence of such an assessment into account when determining the weight to ascribe to MBU. The evidence to the present inquiry, however, is clear. There is no such concluded assessment which has been undertaken. As a result of these matters the Stansted Inspector's failed to have regard to a material consideration and erred in their determination of the weight to ascribe to the APF and MBU. The Council has raised this issue as an error of law in the High Court proceedings commenced by Uttlesford District Council which challenge the grant of planning permission for the expansion of Stansted.
84. Further, the Inspectors in the Stansted decision did not address the question of whether the grant of planning permission for the expansion scheme before them is premature, in the sense of predetermining issues central to the formulation of emerging national policy. Thus, the Stansted Inspectors have not had regard to the issue of prematurity in making their decision. We return to this further below.
85. The recent decision of Mrs Justice Lang<sup>50</sup> to refuse permission to apply for Statutory Review does not assist you in your determination since she does not identify in her reasoning where the assessment is which demonstrates that the cumulative assessment in MBU is up to date and to establish that the expansion of all airports as

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<sup>49</sup> See CD9.131 and per Osund-Ireland in XX to RTQC

<sup>50</sup> INQ94

they proposed (some 88 mppa) will ensure attainment of the 6CB target and net zero 2050. She refers to the following paragraphs of the Stansted Inspector's decision letter when refusing permission:

86. DL 18 which states:

*"The in-principle support for making best use of existing runways provided by MBU is a recent expression of policy by the Government. It is given in full knowledge of UK commitments to combat climate change, having been published long after the Climate Change Act 2008 (CCA) and after the international Paris Agreement. It thoroughly tests the potential implications of the policy in climate change terms, specifically carbon emissions. To ensure that Government policy is compatible with the UK's climate change commitments the Department for Transport (DfT) aviation model was used to look at the impact of allowing all MBU airports to make best use of their existing runway capacity. This methodology appears to represent a robust approach to the modelling."*

87. That paragraph fails to appreciate that the assessment within MBU was undertaken against a target to achieve an 80% reduction by 2050 and not against the 6CB targets or net zero 2050 including international aviation as has been established in evidence before this Inquiry.<sup>51</sup>

88. DL 24-25 which state:

*"24. Since publication of MBU, UK statutory obligations under the CCA have been amended to bring all greenhouse gas emissions to net zero by 2050, compared to the previous target of at least 80% reduction from 1990 levels. In addition, the Government has indicated a new climate change target to cut emissions by 78% by 2035 compared to 1990 levels, effectively an interim target on the journey to net zero. Notwithstanding these changes, MBU has remained Government policy. There are any number of mechanisms that the Government might use to ensure that these new obligations are achieved which may or may not involve the planning system and may potentially extend to altering Government policy on aviation matters.*

*25. These are clearly issues for the Government to consider and address, having regard to all relevant matters (not restricted to aviation). The latest advice from the Committee on Climate Change (CCC) will be one such consideration for the Government but it cannot currently be fully known to what extent any recommendations will be adopted. The Government is clearly alive to such issues and will be well aware of UK obligations."*

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<sup>51</sup> XX Osund-Ireland by RTQC

89. These paragraphs do not consider whether MBU is out of date as a result of the adoption of the 6CB targets and the net zero 2050 target, and as a result of the failure to carry out an assessment which demonstrates that the policy within MBU ensures the attainment of those targets. Indeed, that matter is not considered anywhere within the decision letter as was put to Mr Osund-Ireland in XX. It will be recalled that he was unable to find any paragraph in the decision letter which addresses this point and he was not taken to one in RX. That is because the decision letter does not consider this matter.

90. DL 153 states:

*"153. Carbon emissions are predominantly a matter for national Government and the effects of airport expansion have been considered, tested and found to be acceptable in MBU. It is clear that UK climate change obligations would not be put at risk by the development, including in light of the Government's 20 April 2021 announcement. Carbon emissions from other sources associated with the development, such as the operation of airport infrastructure, on site ground based vehicles and from people travelling to and from the site are relatively small and would be subject to extensive sustainable transport measures secured by conditions and obligations that would minimise impacts as far as possible. Therefore, this matter weighs against the proposal only to a limited extent and could not be said to compromise the ability of future generations to meet their needs, or otherwise conflict with the objectives of the Framework taken as a whole."*

91. Again, this paragraph does not consider whether as a result of the adoption of the 6CB targets and the net zero 2050 target and the failure to carry out an assessment which demonstrates that the policy within MBU ensures the attainment of those targets, MBU is out of date.

92. Whether the local planning authority in the Stansted Statutory Review intends to renew their application and whether permission to apply for statutory review will be granted remains to be seen. Mrs Justice Lang's decision is then not determinative and in any event decisions on permission applications are not binding, particularly where such a decision is taken on the papers.

93. It is submitted that the evidence and submissions in the present case mean that the Stansted decision letter 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 Inspectors 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.

94. As a consequence, the only conclusion that is open to you on the evidence in the present case is that the APF and MBU are out of date and to be given limited, if any, weight.
95. The third document referred to by the Appellant was the recent policy statement “Decarbonising Transport”.<sup>52</sup> However, there is no reference to MBU in that document whatsoever. It contains no statement by the Government to the effect that MBU is up to date. It contains no statement that the Government has re-assessed the policy approach in MBU and considers that it is compatible with ensuring the attainment of 6CB targets or net zero 2050 targets
96. The fourth document relied upon is a letter dated 6 September 2021 from the Secretary of State in response to a request from a number of third parties that the ANPS should be reviewed. That letter needs to be read within the statutory context which applies to the consideration of review. Section 6(3) of the Planning Act 2008 (“PA 2008”) provides:

*“In deciding when to review a national policy statement the Secretary of State must consider whether –*

*(a) since the time when the statement was first published or (if later) last reviewed, there has been a significant change in any circumstances on the basis of which any of the policy set out in the statement was decided,*

*(b) the change was not anticipated at that time, and*

*(c) if the change had been anticipated at that time, any of the policy set out in the statement would have been materially different.”*

97. Thus, the decision taken in that letter did not involve determining whether the policy within the ANPS is out of date; rather the focus of the letter is not on the question of whether policy is out of date, but instead upon a different question which requires a decision that existing policy would be different if the change of circumstances had been anticipated.

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<sup>52</sup> CD9.16

98. The letter does not state that the Secretary of State has had regard to an assessment which examines the compatibility of the policy within the ANPS with the attainment of the 6CB target or net zero 2050.

99. Rather, what it states is that:

*"it is not possible to conclude properly that any of the policy set out in the ANPS would have been materially different had these circumstances been anticipated at the time of designation"*

100. In essence the Secretary of State has decided that he is not sure that his policy would have been different if he had known about the circumstances which now apply at the date when the ANPS was first published. The Secretary of State is not saying, however, that he has concluded that the policy would necessarily have been the same.

101. The letter goes on to state that:

*"the question of whether or not to review the ANPS should be considered again after the Government's Jet Zero Strategy ("JZS") has been finalised following a consultation which was launched on 14 July 2021. This sets out proposed policies that will be needed for aviation to meet net zero emissions by 2050. These policies will influence the level of aviation emissions the sector can emit and the cost of flying in the future, both of which are relevant to considering whether any of the policy set out in the ANPS would have been materially different had these circumstances been anticipated at the time of designation."*

102. Thus, the Secretary of State is determining that it is too soon to determine whether the ANPS needs a review, i.e. he is concluding that it is premature to reach a concluded view on that matter now in advance of the publication of the strategy for the aviation sector as a whole. The Secretary of State does not say that ANPS is up to date or out of date; rather, he expresses no view on that matter. Indeed, the Secretary of State does not identify that the ANPS should be given any particular level of weight in the current circumstances.

103. In terms of the implications of this for the status of MBU (which was, of course, published on the same day as the ANPS but applies to airports other than Heathrow and which is not a national policy statement to which s. 6 PA 2008 applies), the conclusion that there has been a material change in circumstances due to the various factors identified in the letter must equally apply to MBU. Further, the letter cannot be read as implying that MBU is up to date; rather it expresses no view on that. The letter

does not contain any assessment of the policy approach in MBU/ANPS which demonstrates that that approach is compatible with ensuring the attainment of 6CB targets or net zero 2050 targets. The letter does not imply that MBU is up to date nor that the policy in it will not change nor that MBU should be given any particular level of weight. It can also be inferred that the replacement policy for MBU will follow the publication of the Jet Zero policy following the outcome of the consultation process. In particular, the letter does not express any view (either explicitly or implicitly) as to the weight to be ascribed to MBU in the current circumstances.

104. The fifth document relied upon by the Appellant is the Jet Zero consultation. However, Mr Osund-Ireland agreed that this document is a consultation document, is not a statement of policy and as such to be given limited, if any, weight.<sup>53</sup>

105. Jet Zero, of course, contains a footnote which states:<sup>54</sup>

*“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.”*

106. 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:<sup>55</sup>

*“MBU remains the Government’s current policy and continues to have full effect in planning decisions. As stated in footnote 39 of the Jet Zero consultation, MBU continues to have full effect in relation to planning decision-taking. MBU sets out that for most environmental concerns, the government expects these to be considered as part of the local planning process.*

*However, MBU also makes clear that there are some important environmental elements, such as carbon emissions, which should be considered at the national level. The potential carbon emissions created by airports making best use of their existing runways are considered in MBU. Planning law requires that applications for planning*

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<sup>53</sup> XX by RTQC

<sup>54</sup> CD9.135 footnote 39

<sup>55</sup> INQ42 at p23 response to 24.3.

*permission be determined in accordance with the development plan, unless material considerations indicate otherwise.*

*MBU forms part of the overall framework of planning policy for airport development. Other statements of government policy may be material when deciding applications. It is for the decision-maker to determine the appropriate weight to attribute to relevant policy according to the stage of preparation, and other factors. Further policy and guidance on planning decision-making can be found in the National Planning Policy Framework."*

107. Whilst the Council recognises that the APF and MBU are the most recent policy statements made by Government, that fact alone does not mean that the justification for the policy approach contained within those statements remains up-to-date;<sup>56</sup> rather the Jet Zero paper footnote and the DfT Response are careful not to state that the APF and MBU are up to date and does not do so.
108. Indeed, where Government wishes a particular consideration to be given a particular level of weight by planning decision makers, it will say so explicitly, e.g. significant weight to the protection of the openness of the Green Belt or great weight to the conservation of the significance of heritage assets. Thus, the absence of any explicit statement to similar effect in relation to the weight to give to the APF or MBU is important.
109. Neither footnote 39 nor the DfT's response state that APF or MBU are to be given full weight. This can be seen from the highlighted text above – the DfT has expressly stated 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.
110. 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 expansion proposal. Consequently, the APF and MBU are material considerations and are to be given weight in the

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<sup>56</sup> Indeed, the Jet Zero paper footnote 39 is careful not to state that these statements are up to date.

decision – however the weight to be given to these policy statements is a matter for you.

#### The Scale of Growth Assessed in MBU

111. A further factor which must be taken into account in determining the weight to give to any support for further airport expansion that the APF/MBU may provide is the scale of development which was assessed as being compatible with the attainment of the 80% climate change target for 2050.
112. Dr Hinnells explained in his evidence<sup>57</sup> that MBU examined whether the expansion of capacity by 11.8 mppa would be compatible with the 80% climate change target for 2050 or 9mppa if the third runway proposal for Heathrow were to come forward.
113. Mr Osund-Ireland agreed that that was the level of development tested. He also identified the scale of airport expansion development already approved or about to be. He identified that a further 8 mppa has been permitted at Stansted, 1 mppa at Southampton, 3 mppa at Leeds-Bradford<sup>58</sup> and 1 mppa is proposed at Luton. These schemes alone amount to 13 mppa and are beyond the scale of development assessed as compatible with the attainment of the 80% climate change target. If the Proposed Development was permitted, this would bring the overall increase in airport capacity to a level beyond that which MBU assessed. There is no evidence that the addition of 2 mppa from the Proposed Development would be compatible with the attainment of the 80% climate change target, nevermind the stricter 6CB and net zero 2050 targets.
114. In September 2021, Gatwick airport commenced a consultation into its plans to increase capacity by making better use of its northern runway. The capacity increase proposed is for an additional 12.8 mppa. That proposal is sufficient of itself to go beyond the scale of development assessed in MBU as compatible with the attainment of the 80% climate change target. It means that in essence (even leaving aside the proposed development) there is some 26 mppa of expansion in the pipeline – far beyond the level assessed as being compatible with the attainment of the 80% climate change target, nevermind the stricter 6CB and net zero 2050 targets.

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<sup>57</sup> Hinnells proof para 59

<sup>58</sup> Subject to an Article 31 direction by the Secretary of State

115. Heathrow, of course, continues to pursue its own expansion agenda. It proposes to expand from 80 mppa in 2018 to 142 mppa in 2050. i.e. an additional 62 mppa. Bringing that in results in there being expansion plans in the pipeline for some 88 mppa.
116. There is no evidence that established that all of this development (or even just the 26 mppa without Heathrow) can come forward consistently with the attainment of the 6CB target and the net zero 2050 target. No concluded assessment which establishes that this is the case is before this Inquiry. Accordingly, the possibility that there will be insufficient carbon capacity to enable all of these schemes to come forward cannot be ruled out. That means that the need for a choice to be made by central government to choose which scheme comes forward cannot be ruled out as Mr Osund-Ireland readily accepted in cross-examination to RTQC.
117. The need for an examination of the extent to which airport expansion is compatible with the 6CB and net zero 2050 was immediately recognised by the CCC, as it explained in its 2020 update to Parliament in June 2020:<sup>59</sup>

*"The UK's airport capacity strategy should be reviewed in light of the net-zero target. Action is also needed on non-CO<sub>2</sub> warming effects from aviation."*

118. There is nothing new in Government determining as a matter of policy which airports should be permitted to expand. Indeed, it has done this recently. The process relating to the expansion of runway capacity in the South-East resulted in Government deciding that Heathrow should be the location for a new runway and not Gatwick, Stansted or a new Thames Estuary airport. That resulted in the adoption of a policy to this effect in the form of the ANPS.
119. That is not an example of North Korean style Government but rather sensible planning where Government policy intervention is required to identify the best option in the public interest. A similar process cannot be ruled out now; i.e. one in which, due to the degree of uncertainty and in order to ensure attainment of the climate change targets on a basis which is consistent with the statutory duties, it is necessary constrain capacity and thus necessary to identify which airport expansion schemes should come forward if there is insufficient carbon capacity to enable all schemes to come forward.

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<sup>59</sup> CD9.17 p22

120. Any comparison of schemes would have to be conducted on a basis which selected preferred schemes on the basis of rational policy based criteria e.g. contribution to the levelling up agenda, best public transport links, best improvement to connectivity and the like.
121. 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, 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 contained in ss.1 and 4 CCA 2008.
122. Since the Government has not published any cumulative impact for the sector going forward which demonstrates that all airports can grow as they wish (i.e. to the tune of some 88 mppa in additional traffic), the need for capacity constraint cannot be ruled out. It follows that this would lead to a beauty parade assessment being required.
123. Since the need for a “beauty parade” type process cannot be ruled out now and it has not been, and it cannot be established, that Bristol Airport would inevitably be selected as an airport which Government would conclude should expand, it cannot be concluded that to grant planning permission for the expansion of Bristol airport would ensure the attainment of the 6CB or the net zero 2050 target; rather, it means that there is uncertainty whether a grant of planning permission for the expansion of Bristol airport would ensure attainment of the 6CB or the net zero 2050 target.
124. Indeed, a grant of planning permission in these conditions of uncertainty would be unlawful as we have explained. 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 could not be granted lawfully is manifestly unreasonable.
125. 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 the comparative exercise that would be required being undertaken. We return to this when we address the issue of prematurity further below.

## Conclusion

126. The Government has put the cart before the horse by adopting targets prior to adopting the policy framework to deliver those targets. This renders the previous policy framework out of date but does not provide a new framework to replace it. Prior to the adoption of a policy position which sets out a cumulative impact assessment demonstrating that all of the growth anticipated by all airports can be accommodated on a basis consistent with ensuring the attainment of the CB target and net zero 2050, Government has left the airport sector unable to demonstrate that expansion is consistent with the relevant statutory duties. Whilst this policy vacuum continues, the grant of planning permission for any airport expansion is unlawful.
127. This position is of the Government's making, but it results in the simple reality that planning permission cannot be granted for the Proposed Development. Further, it means that 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.
128. In summary the Council submits that, for the reasons set out above:
- (a) Planning permission for the proposed development cannot be lawfully granted;
  - (b) The APF and MBU are adopted policy statements and are current Government Policy;
  - (c) As such they are material considerations and you are required to have regard to them;
  - (d) The weight to give to any support for the expansion of airports generally and to Bristol Airport particularly is a matter for you to determine;
  - (e) The APF and MBU are out of date since there is no evidence which demonstrates that the policy approach contained within them is consistent with the attainment of the 6CB target or net zero 2050 with international aviation included within those targets;
  - (f) Further and in any event the Proposed Development would result in a scale of development which was not established to be compatible with the attainment

of even the 80% carbon reduction target nevermind the 6CB target or net zero 2050; and

- (g) As a result, any support for further airport expansion which is to be found in the APF or MBU is to be given limited if any weight in the planning balance.

### **III. CLIMATE CHANGE IMPACTS OF THE PROPOSED DEVELOPMENT**

129. These submissions are made within the context of the statutory regime relating to climate change targets. Section 1 CCA 2008 imposes a duty on the Secretary of State to ensure attainment of the net zero 2050 target. Section 4 CCA 2008 requires the Secretary of State's policies and proposals ensure attainment of the carbon budgets (including 6CB). It follows that a policy which does not ensure the attainment of the 6CD target and/or net zero 2050 will be contrary to the duties in the CCA 2008.
130. That approach provides the legal framework within which it is necessary to consider the Proposed Development. The relevant national aviation policy test relating to the potential impact of the proposed development upon climate change is set out in Aviation 2050<sup>60</sup> where the Government explains that those proposing airport expansion are required to demonstrate that *"their project will not have a material impact on the government's ability to meet its carbon reduction targets"*. The Council and BAL agree that this is the appropriate test to adopt<sup>61</sup>.
131. The test in the ANPS was put to Mr Gurtler. That reads:
- "Any increase in carbon emissions alone is not a reason to refuse development consent, unless the increase in carbon emissions resulting from the project is so significant that it would have a material impact on the ability of Government to meet its carbon reduction targets, including carbon budgets."*
132. There was then a futile attempt to try and reverse the burden on proof – such that it has to be established that there would be a significant impact on the ability to meet climate change obligations in order for a policy conflict to arise. Firstly, the ANPS does not apply to appeals outside of the DCO process. Secondly, BAL's position is flawed since what matters here is whether it can be concluded that a grant of planning permission for the Proposed Development will ensure attainment of climate change

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<sup>60</sup> CD6.5 p76 para 3.96

<sup>61</sup> XX Osund-Ireland by RTQC

targets, since that is what the statutory duties in ss. 1 and 4 CCA 2008 require. Those duties are not complied with by deciding that there is no evidence that an increase in carbon emissions resulting from the project is so significant that it would have a material impact on the ability of Government to meet its carbon reduction targets. Nor are those duties complied with where there is uncertainty as we have explained.

133. The central issue is whether, if planning permission is granted, the evidence demonstrates that compliance with climate change targets is ensured. In order to apply that test it is necessary to consider the impacts of the proposed development in terms of its carbon emissions against the cumulative context of carbon emissions nationally i.e. against the carbon emissions during the 6CB period and as at 2050 (in order to apply the next zero target). Thus, it is necessary for those proposing airport expansion to provide evidence which:
  - (a) Identifies the likely increase in emissions that would result from the grant of planning permission; and
  - (b) Demonstrates that, within the cumulative context, the increase in emissions will not have a material impact on the ability to meet the 6CB target or net zero in 2050.
134. The Council and BAL have agreed the calculation of the impact of the proposed development.
135. 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.
136. The capacity of GGR measures that will be available in the future is fraught with uncertainty. Yet, since we know that aviation will still be emitting carbon above the target levels in 2035 and at 2050,<sup>62</sup> the extent of growth within the aviation sector that can be accommodated depends in large part on the extent of available GGR capacity as at 2035 and 2050. Given the scale of the uncertainties associated with the provision of GGR measures, BAL cannot demonstrate that granting consent for the Proposed

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<sup>62</sup> XiC of Hinnells and XX of Osund Ireland by RTQC

Development will not materially affect the Government's ability to achieve climate change targets.

137. Indeed, as we have already explained, the Secretary of State when determining not to review the ANPS explained that it will only be after the policy framework for Jet Zero is finally adopted that the level of aviation emissions the sector can emit between now and 2050 will be determined.<sup>63</sup> As a result, given that this is unknown, it is not possible to conclude on a rational basis that the scale of emissions associated with a grant of planning permission will not have a material impact on the ability to meet carbon reduction targets.
138. Further, BAL is unable to demonstrate this because central Government has not produced any assessment of the cumulative context as at 6CB period or as at 2050 which demonstrates that that further airport expansion will not have a material impact on the Government's ability to meet its carbon reduction targets. In the absence of such an assessment of the cumulative context, the policy test cannot rationally be satisfied and it cannot be concluded that the proposed development accords with that test.
139. As Dr Hinnells explained, because the aviation sector is one of the few which will be unable to attain net zero without relying upon GGR measures, its gross carbon emissions become a greater proportion of carbon emissions over time. Thus, the relative impact of aviation emissions increases with time. By 2050 the aviation sector is one of the largest carbon producing sectors. As a consequence, what may seem to be a small amount of carbon emissions now will become increasingly more significant over time as we head toward 2050.
140. 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 consistently with the achievement of climate change targets and the need to choose between airports cannot be ruled out.<sup>64</sup>
141. 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

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<sup>63</sup> INQ62 p2

<sup>64</sup> This is addressed above at paragraph [x]

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 unknown.

142. This means that it is not open to BAL to assert that the impact of its scheme is small. It has undertaken no appraisal of how significant that impact will be as at 6CB or as at 2050 in the context of the extent of the GGR capacity that can be ensured to be able at those points in time and in the context of the competing demands for that capacity from other sectors.
143. Consequently, it cannot be concluded that to grant planning permission for the proposed development will not have a material effect on the Government's ability to meet the 6CB target or net zero since it has not been established that there is any ability to permit additional airport capacity on a basis which is compatible with the attainment of those targets. It cannot then be demonstrated that the additional emission associated with the proposed development are de minimis since to establish that requires a comparison with the national context which central Government is yet to provide.

**(a) CCC assumed Growth**

144. BAL points to the CCC assumption of 25% growth in demand to 2050 in the CCC balanced pathway and contends that it could utilise some of that assumed growth. However, that argument is totally flawed. The CCC balanced pathway 25% growth allows for the growth of airports without further planning permission being granted i.e. it is growth that can arise in any event. Any additional amount of expansion which is permitted goes beyond and would be additional to the 25% growth assumed and thus is inconsistent with the CCC balanced pathway. As already explained, the CCC balanced pathway makes it clear that if an airport is permitted to expand then a capacity constraint would have to be imposed elsewhere:
145. Although BAL is owned by the same owner as Birmingham airport, it is notable that no offer to constrain capacity at Birmingham by 2mppa is being made. Accordingly, BAL cannot rely upon the 25% growth in the CCC balanced pathway as a basis for contend that it will not have a material impact on the ability to meet climate change targets.

**(b) Emissions Trading**

146. When Dr Hinnells was cross-examined it was put to him that emissions trading mechanisms already in place provide the necessary tools to ensure that the aviation sector would achieve the 6CB and net zero 2050 targets of themselves. As Mr Osund-Ireland explained, that is not the case. It is important to record that the case put to Dr Hinnells on behalf of BAL was not accepted by Dr Osund-Ireland. It was not accepted because it is not correct.

147. The CCC did not consider that emissions trading could be used in this way<sup>65</sup>:

*“As set out in our previous advice on the UK ETS, carbon trading and the resulting carbon price should be used **as one policy lever within a wider policy package** to drive emissions down.” (emphasis added)*

148. The CCC did not consider utilising emissions trading on its own to ensure delivery of net zero for the aviation sector; rather its balanced pathway assumed range of measures including emissions trading and capacity constraint.

149. Indeed, in Jet Zero the DfT identified that “*market based measures will play an important part*” of the package of measures to deliver net zero for the aviation sector.<sup>66</sup> But again, the DfT recognised that emissions trading is only one part of the policy package that will be required to deliver net zero. There is no suggestion in Jet Zero that emissions trading can be relied upon to deliver net zero on its own.

150. Further, the recent DBEIS policy appraisal relating to carbon values explains<sup>67</sup>:

*“The UK ETS is an important mechanism to achieve the UK’s climate goals. However, **it is likely that additional measures in the sectors covered by the UK ETS will need to be taken to reach net zero.** Therefore, any emissions increases or savings resulting from policies (either traded or non-traded) should be considered and valued during appraisal.” (emphasis added)*

151. The DBEIS do not see emissions trading as the sole policy solution either.

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<sup>65</sup> CD9.34 p438

<sup>66</sup> CD9.136 p 7 para 2.12

<sup>67</sup> INQ54 p11

152. In any event the existing UK ETS only applies to domestic flights and to flights to and from the European economic area<sup>68</sup>. The scheme also runs only to 2030 as enacted at present and so does not extend to the 6CB period or to 2050. Further, Government has a planned consultation regarding changes that are necessary to align the UK ETS cap with a net zero trajectory<sup>69</sup>. See CD 9.136, p.8, para 2.15.
153. Similar points also apply to the CORSIA scheme. It only runs to 2035 and so does not extend to the end of the 6CB period (2037) nor to 2050. That scheme is also not aligned to the attainment of net zero but rather to no greater emissions than now as Dr Hinnells explained.<sup>70</sup> Further, the interrelationship between CORSIA and the UK ETS has not been finally resolved by Government yet. As Dr Hinnells explained that CCC has advised Government that CORSIA should not be used to off-set against the UK ETS.<sup>71</sup>
154. It follows that emissions trading on its own cannot be relied upon to determine that expansion of airport capacity is consistent with ensuring the attainment of the 6CB target or net zero 2050. Indeed, Government does not propose this. Further, there is no evidence before this Inquiry which demonstrates that even if the UK ETS and/or CORSIA were amended in some unknown way, they will ensure attainment of the 6CB target and net zero 2050 even if airports are permitted to expand. That simply has not been assessed.
155. Rather, the evidence before this Inquiry indicates that market-based measures cannot of themselves ensure attainment of carbon reduction targets. The DfT in its Response to the Council<sup>72</sup> explains the assumptions adopted regarding carbon value in the illustrative scenarios presented in the Jet Zero consultation. These scenarios show a saving of 5 MtCO<sub>2</sub> per annum in every case. Thus, whether the central carbon value or high carbon value is adopted, in the overall market, an increase in the carbon price does not produce significant reduction in carbon – people will fly anyway. In essence, this work demonstrates that emissions trading measures cannot of themselves ensure that attainment of carbon reduction targets.

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<sup>68</sup> Including Gibraltar – confirmed by Osund-Ireland in XX by RTQC

<sup>69</sup> CD9.136 p 8 para 2.15

<sup>70</sup> Hinnells XnC

<sup>71</sup> Hinnells rebuttal p 9 paragraph 10(c)

<sup>72</sup> INQ42 p6 row 4.6

156. As a consequence, it can be seen that emissions trading which imposes a cost on airlines which is then passed on to passengers is unlikely to result in reduction in demand for flights across the market generally. Accordingly, emissions trading is unlikely to be an effective means of delivering carbon reductions in the aviation sector and other policy measures will have to be relied upon which would include the use of capacity constraint. This is presumably why the Government's preferred scenario in the Jet Zero consultation goes beyond the mere application of emissions trading and adopts the further measures in scenario 2.
157. BAL did not point to any statement by Government to the effect that emissions trading can be utilised to deliver net zero for an aviation sector that is expanded in line with the aspirations of airports as described above. Further BAL did not identify any assessment which demonstrates that emissions trading on its own can be utilised to deliver net zero for an aviation sector expanded in this way.
158. As a consequence of the above, the Council submits that emissions trading in isolation cannot and will not ensure the attainment of the 6CB target and/or net zero 2050 in a context where airports including Bristol are permitted to expand as they may desire.

**(c) Prematurity**

159. The concept of prematurity is well established in planning law, albeit usually in the context of the development plan process. The essence of a successful claim of prematurity is that the development proposed predetermines and pre-empts a decision which ought to be taken in the development plan process by reason of its scale, location and/or nature or that there is a real risk that it might do so: see *Truro City Council v Cornwall Council* [2013] EWHC 2525 (Admin) at [63].
160. In the present case, the prematurity arises in the context of national policy. To grant planning permission for the proposed development predetermines and pre-empts a decision which has to be taken in the context of a national evaluation of the constraints that exists as a result of adopted carbon emission reduction targets.
161. Since there is no evidence which establishes that all pipeline airport expansion schemes can come forward consistently with ensuring the attainment of carbon reduction targets as required by the CCA 2008, national policy may have to come forward on the basis that only some airport expansion schemes can be permitted. As

already explained, that would then require central Government to determine which schemes should come forward in the public interest and which should not.

162. Further, since such a concluded exercise has not been undertaken by Government, BAL cannot demonstrate that its scheme would be selected ahead of other airport expansion schemes. It follows that to grant planning permission for the Proposed Development now would be premature. It would prejudice the outcome of that exercise. To grant permission for the Proposed Development would utilise a proportion of available carbon capacity that might otherwise be assigned to a different airport which may better achieve sustainable development objectives in the public interest. Thus, a grant of planning permission now would undermine the formulation of national policy by pre-determining matters that are central to that emerging national policy. That emerging policy is at an advanced stage in the sense that the consultation process is completed and the next stage is a response to consultation and then the adoption of policy. Thus, in terms of the factors that paragraph 49 NPPF points to, there are clear grounds to conclude that a grant of planning permission would be premature.
163. It is no answer to this submission to contend that airport expansion schemes should be permitted since their use can be subsequently regulated by central Government introducing controls to inhibit the use of any increase in capacity. Such an argument fails to recognise that planning decisions have to be taken on the basis of a balance of the impacts and benefits that will arise if planning permission is granted. If it is the case that once built the use of a scheme would be inhibited in order to meet climate change targets, then the benefits of the scheme that were used to justify the grant of planning permission would not be realised.
164. If, in reality, a proportion of the benefits of an airport expansion scheme will not be capable of realisation, or there is a substantial risk that it will not, then that proportion must not be taken into account by a planning decision maker or it should be given limited, if any, weight. It follows that the extent to which the Government is likely to allow an airport to use any increase in capacity must be known prior to any decision maker granting planning permission, in order for that decision maker to weigh the degree of benefit that would actually be realised against the adverse impacts that would arise.

165. BAL has chosen to present its case in the present appeal on the basis of an assessment of benefits and impacts that assumes the full growth of 2 mppa. It has not demonstrated that the Government will or can allow this level of growth to occur consistent with the UK's climate change obligations. Further, BAL has not demonstrated that its scheme is justified if only a lower level of growth or indeed no growth is permitted by the Government. There has been no appraisal which demonstrates that the benefits of a lower level of growth would outweigh the harm.
166. In the light of the above, the only reasonable conclusion is that to grant planning permission for the proposed development would prejudice the formulation of national aviation policy by predetermining issues that are central to it. The Council submits that this is a factor which must be given significant weight against the grant of planning permission.

**(d) Conclusion**

167. Accordingly, BAL is unable to demonstrate that that scale of emissions associated with its scheme will not have a material impact on the UK's ability to meet the 6CB and/or net zero 2050 targets. That is because central Government has not produced any assessment to enable consideration of the cumulative context of this issue.
168. The Inspectors considering the A38 Derby Junctions road scheme DCO found themselves in a similar position i.e. without evidence as to the cumulative sector wide context against which to assess the materiality of the impact of the scheme before them. As a result, the Inspectors were unable to conclude that the scheme would not materially affect the ability to attain net zero 2050. Their solution was to pass the matter to the Secretary of State since he had the ability to undertake the assessment required in a way which the Inspector's did not.<sup>73</sup>
169. In the present Inquiry, however, you do not have that luxury. You have to determine this appeal yourselves. In these circumstances, the only option available to you is to conclude that it has not been demonstrated that a grant of planning would not materially impact upon the ability of the UK to meet the 6CB target or net zero 2050.

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<sup>73</sup> CD9.108 p258 para 4.15.110

170. Indeed, just like the Inspectors in the A38 scheme, in the absence of an adopted cumulative assessment produced by central Government there remains uncertainty whether a grant of planning permission would ensure the attainment of the 6CB target or net zero 2050. Since there are legal duties upon the Secretary of State **to ensure** the attainment of both targets, a grant of planning permission in a position of uncertainty would be in breach of these legal duties and unlawful.
171. In respect of climate change, the proposed development is accordingly 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. These conflicts are substantial and must be given significant weight against the grant of planning permission.
172. Further, to grant planning permission for the proposed development in advance of the formulation of aviation policy relating to the expansion of airports which reflects the statutory duty to attain the 6CB target and net zero 2050, would be premature since it would predetermine issues central to the formulation of policy. This too is a matter which must be given significant weight in the planning balance against the grant of planning permission.

#### **IV. AIR NOISE AND GROUND NOISE**

173. As with other topics, there has been a significant and material change in circumstances since Officer's made their recommendations to Committee. BAL produced new passengers demand forecasts, which resulted in a new assessment year and new fleet mixes. That in turn resulted in a new assessment of the noise impacts of the proposed development in the ESA.
174. The position in the ESA was then subject to further amendment at the Inquiry when Mr Williams produced an erratum which materially affected the portrayal of the noise impacts of the scheme. Where the scheme identified benefits in noise terms previously, these changed to adverse impacts, although the extent to which that was the case was unclear as the erratum did not identify impacts of zero change.
175. In addition, Mr Williams presented for the first time an assessment utilising a noise awakening methodology and the Number Above noise index. Further, after the start

of the Inquiry, two new SONA documents were published which contain information relevant to the appraisal of impacts which officers did not and could not have considered previously.

176. The result is that it cannot be said now, that if Officer's reconsidered the position in the light of the above they would reach the same recommendation regarding the noise impacts of the proposed development. The evidence is very different from that which existed at the date of determination, and, once properly examined, presents a very different level of impact than was recognised by Officers.
177. 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 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 required by national aviation policy.
178. 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.

**(a) National Aviation Policy**

179. The starting for considering the noise impacts of the Proposed Development is the approach set out in national aviation policy. The APF is clear. The Government states:

*"We want to strike a fair balance between the negative impacts of noise (on health, amenity (quality of life) and productivity) and the positive economic impacts of flights. As a general principle, the Government therefore expects that future growth in aviation should ensure that benefits are shared between the aviation industry and local communities. This means that the industry must continue to reduce and mitigate noise*

*as airport capacity grows. As noise levels fall with technology improvements the aviation industry should be expected to share the benefits from these improvements<sup>74</sup>."*

180. In essence the approach is that if those living around an airport are impacted by its operations then, if that airport wishes to expand, those living around the airport must be given a fair share of the benefits that expansion will deliver. As we shall explain, BAL's scheme falls woefully short of fulfilling the Government's objectives in this regard – it delivers nothing but impacts and no benefits to those who would be adversely impacted.

181. It is submitted that the APF can only be interpreted as meaning that:

- (a) The benefits of future growth in aviation are to be shared as between an expanding airport and those living around the airport who are adversely affected by it;
- (b) Government expects the noise levels experienced by those living around airports to fall over time;
- (c) Any growth in aviation must share the benefit of these noise reductions with those living around airports;
- (d) Where growth is permitted it must continue to reduce noise as capacity grows i.e. airport expansion must still deliver an improvement in the noise environment; and
- (e) The language used here is mandatory: "*should ensure*" and "*must continue to*" and "*should be expected to*". Thus, these are mandatory policy objectives which must be met in order to comply with national aviation policy.<sup>75</sup>

182. It follows that:

- (a) a proposed development that results in greater levels of noise impact than experienced now will be contrary to national aviation policy; and

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<sup>74</sup> CD6.1 para 3.3

<sup>75</sup> The suggestion put to Fiumicelli in XX that these were matters of general principle which could be departed from must be rejected since the language used does not permit such an interpretation.

- (b) a proposed development that does not share the benefit of noise reductions fairly with those living around the airport will be contrary to national aviation policy.
183. The ES and Mr Williams's POE present the same text relating to national aviation policy.<sup>76</sup> Neither mention the policy requirement of a fair balance, nor the requirement to share the benefits of noise reductions nor the requirement for expansion to still deliver noise improvement to those living around airports.
184. As a result, Mr Williams presented no evidence which examined these considerations. Even more importantly, the achievement of these mandatory national policy objectives did not form a part of the design objectives for the Proposed Development; rather, the proposed development was designed from the outset without consideration of the achievement of the objectives of national aviation policy.<sup>77</sup> This means that the Proposed Development has been designed without regarding the need to improve the noise environment for local communities as an environmental constraint. Sadly, this is far from the only example of BAL's disregard for the impacts of the Airport upon the local community – as we shall see later particularly with regard to the wholly inadequate and still evolving noise mitigation scheme on offer.

**(b) The Impact of the Proposed Development Compared to the Past**

185. Mr Fiumicelli explained in his XiC, by reference to the tables Mr Williams produced, the extent to which the Proposed Development would consume the noise reductions that would otherwise be experienced if planning permission were refused compared to the baseline of 2017. That exercise demonstrated that the scheme completely fails to ensure that a fair share of noise reductions is provided to those living around the Airport.
186. Mr Williams Table 6<sup>78</sup> identifies by reference to his daytime LOAEL that the number of dwellings within LOAEL would reduce by 650 if planning permission were refused. However, if permission is granted for the Proposed Development, 77% of that reduction would be consumed. By reference to that same table and Mr Williams's

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<sup>76</sup> ES CD2.05.17 pdf p12 and Williams proof p16-17

<sup>77</sup> Confirmed by Williams XX to RTQC

<sup>78</sup> Williams proof p46

Daytime SOAEL, the contour area would be reduced by 0.7 km<sup>2</sup> if planning permission were refused but only by 0.2 km if permission is granted for the proposed development – the expansion scheme thus takes 71% of the reduction in contour area that would otherwise be realised.

187. Mr Williams's Table 8 demonstrates that the number of people in the population highly annoyed reduces from 750 to 600 if planning permission is refused compared to 2017. However, the reduction is only to 700 people if permission is granted. The expansion scheme thus takes 66% of the reduction in number of people highly annoyed that would otherwise be expected.
188. Mr Williams's Table 9 p. 49 demonstrates that in respect of those within his night time LOAEL the number of dwellings would fall by 350 dwellings if permission was refused compared to 2017. But if planning permission is granted for the Proposed Development, 250 more dwellings fall within the night time LOAEL level than was the case in 2017. This same pattern can be seen in respect of the contour area with the LOAEL night time contour being larger with the Proposed Development than it was in 2017. In other words, a grant of planning permission results in a greater noise impact than in the past, notwithstanding the introduction of new technology. This is directly contrary to the approach set out in paragraph 3.3 of the APF.
189. This same pattern is also reflected in the position when one has regard to Mr Williams's assessment against his night time SOAEL. If planning permission were refused the number of dwellings subjected to noise levels above SOAEL would fall by 50 dwellings. But if planning permission is granted, the number of dwellings which would be subject to noise levels above Mr Williams's SOAEL would increase by 100 i.e. 66% increase in the number of dwellings subject to noise above SOAEL compared to the position in 2017.
190. In other words, the evidence demonstrates that there is a significant and material increase in the impact of the Proposed Development at night, such that the night time noise climate would be materially and significantly worse than that experienced by local people in 2017. This is the very antithesis of the requirements of national aviation policy. It is only expansion schemes which deliver noise improvement which accord with policy and the appeal scheme does not. Of itself, this is sufficient to demonstrate that the proposed development is contrary to national aviation policy.

191. Mr Williams's Table 12 examines the number of people that would be highly sleep disturbed. This shows that if planning permission was refused there would be a reduction of 50 people highly sleep disturbed. If planning permission is granted there would be an increase of 50 people who would be highly sleep disturbed compared to the position in 2017. Again, this is wholly contrary to the required policy approach in the APF. This too demonstrates that the proposed development is contrary to national aviation policy.
192. The Number Above assessment, which Mr Williams produced for the first time in his rebuttal evidence, also reveals a significant worsening of the noise environment if planning permission is granted compared to 2017. Mr Williams's rebuttal POE<sup>79</sup> reveals that the number of dwellings experiencing noise levels above 70 dBLA s max between 50 to 99 times a day increases by 50 dwellings compared to 2017 and those experiencing between 100 to 199 such events would increase by 480 dwellings if planning permission is granted compared to 2017; whereas, if planning permission is refused there would be no change compared to 2017. That is over 1,100 people<sup>80</sup> being subjected noise levels of 70 dBLA s max between 100 and 199 times a day. That is an outdoor level. Thus, it is highly relevant when considering the likely consequences for local residents in terms of inhibiting their use of gardens and amenity space as we shall explain further below.
193. The Number Above assessment at night is even more revealing. Mr Williams's Rebuttal POE<sup>81</sup> examines the N60 index. The number of dwellings exposed to between 10 and 19 events of 60 dBLA s max or above increases by 1600 if planning permission is granted compared to 2017. The number of dwellings exposed to between 20 and 49 such events a night increases by 3060 dwellings compared to the position in 2017. Even compared to the position if permission is refused, there is an increase of 3050 dwellings subject to 20 to 49 noise events of 60 dBLA s max or above if planning permission is granted. That is some 7000 people whose night time noise environment deteriorates compared to the position in 2017 and compared to that which would exist if planning permission is refused. We deal with what this means in terms of impact upon amenity and sleep disturbance further below.

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<sup>79</sup> Williams rebuttal POE p6 Table 1

<sup>80</sup> Using a multiple of 2.3 agreed by Williams to be appropriate in XX to RTQC.

<sup>81</sup> Williams rebuttal p7 Table 2

194. Of course, BAL does not give this material any particular weight since it focuses on the use of the LA eq 8 hour metric at night. Using that metric Mr Williams identifies an additional 150 houses as significantly affected (i.e. some 345 people).<sup>82</sup> By focussing on the LAeq index alone, the ES/ESA and Mr Williams in his original POE failed to capture important and significant the impacts which the Number Above index flags up for some 6655 people. This is a prime example of why it is necessary for decision makers to look at noise impact assessment in the round and by reference to all relevant noise indices.
195. The impact that the Proposed Development will have upon those circa 7000 people is one which is wholly contrary to the required approach in national aviation policy. This is not an airport expansion which delivers noise improvements; the Proposed Development only delivers a material reduction, particularly at night, in a noise environment which is already materially adversely affect by the operation of the airport.
196. In essence, BAL proposes a scheme to expand its operations without even beginning to attempt to design that scheme from the start so as to comply with the requirements of national aviation policy. As we have seen national aviation policy sets a general objective to achieve expansion within the noise reductions that new technology will deliver and to divide that reduction fairly. BAL have not begun to do this; their scheme was not designed to achieve this and they have not presented any cogent reasons why an exception to the general principle should be made in their case. It should not.
197. 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 sceptical 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.

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<sup>82</sup> Williams p49 Table 9

198. The only conclusion which you can reach is that the Proposed Development abjectly fails against the mandatory policy requirements within the APF relating to noise and is contrary to national aviation policy as a result.

**(c) The Nature of the Impacts**

199. BAL has significantly under-estimated the nature of the impacts of the Proposed Development upon the local community. It has done so for a host of reasons.
200. The ES/ESA relies upon the LAeq noise index for the purposes of its assessment (16 hour day period and an 8 hour night time period). As Mr Fiumicelli explained, that metric is insensitive to changes in number. For a +3 dB change to occur the number of movements would need to double. Mr Fiumicelli
201. Indeed, the APF explains:

*“Average noise exposure contours are a well established measure of annoyance and are important to show historic trends in total noise around airports. However, the Government recognises that people do not experience noise in an averaged manner and that the value of the LAeq indicator does not necessarily reflect all aspects of the perception of aircraft noise. For this reason we recommend that average noise contours should not be the only measure used when airports seek to explain how locations under flight paths are affected by aircraft noise. Instead the Government encourages airport operators to use alternative measures which better reflect how aircraft noise is experienced in different localities,<sup>96</sup> developing these measures in consultation with their consultative committee and local communities. The objective should be to ensure a better understanding of noise impacts and to inform the development of targeted noise mitigation measures.<sup>83</sup>”*

202. Mr Fiumicelli was not advocating that there should be no regard to the results of assessment utilising the LAeq; rather his evidence was that, in line with the Government policy set out in the APF, regard must be had to other metrics to make up for the fact that the LAeq metric does not reflect all aspects of the perception of aircraft noise.
203. This same position is supported by the ICCAN<sup>84</sup> Report whose first recommendation was that:

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<sup>83</sup> APF CD6.1 p58 para 3.19

<sup>84</sup> CD10.37 p64

*“ICCAN supports the continued use of the LAeq-based metrics currently used for noise monitoring and statutory reporting where appropriate. However, we also recommend that supplementary Single Event metrics are routinely published by airports to better reflect the way in which noise is experienced on the ground.”*

204. It is to be noted that the recommendations for the use of LAeq for monitoring and statutory reporting, but it does not refer to its use as the sole metric in assessing the significance of impacts upon human beings in a development control context.

205. ICCAN continued<sup>85</sup>:

*“We acknowledge that there is no one metric that can reflect annoyance, or associated health issues<sup>86</sup>. Having considered the metrics available, and the concerns frequently raised by stakeholders, we conclude that the best approach at present is to use different metrics for different purposes, in order to cater for the different needs of stakeholders...*

*...we acknowledge and agree that people do not experience noise as an average, and therefore reliance entirely on LAeq does nothing to aid public understanding, let alone trust, in the data being published. It is our view that the LAeq type metrics can be strengthened by coupling them with a complementary metric that represents different aspects of aviation noise. Our initial opinion is that the Number Above (Nx) is the most appropriate complementary metric.”*

206. As a result of the above, the ES/ESA adopted a flawed approach by relying solely upon LAeq based metrics to assess the significance of the development; one which does not reflect the full scope of the impacts particularly in relation to annoyance or other health issues. This is important since the HIA’s consideration of the health impacts of noise was founded entirely upon the ES/ESA assessment of significance and thus could not have and did not encompass the full scope of the adverse impacts that the proposed development would cause.

207. Indeed, it is bizarre that an ES which was updated at the end of 2020, some 5 months after the publication of the ICCAN review (in July 2020), should not include a Number Above assessment and embrace that in the significance criteria adopted. It was only in rebuttal evidence that BAL present such an assessment for the first time. The conclusion to be drawn from the Number Above data are important and reveal a very different picture in terms of the impacts than was presented in the ES/ESA and which Officers had considered previously.

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<sup>85</sup> CD10.37 p64

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208. In explaining that LAeq should not be used as the sole metric for assessing the significance of noise impacts upon human beings, Mr Fiumicelli is then far from alone. He is not some kind of anti-airport warrior, as Mr Humphries QC sought to portray in XX; rather he is a highly qualified and highly experience acoustician advocating an approach that is supported by the Government in the APF and by the ICCAN Report.
209. The ES/ESA used a scale that examined the perception of change which only flagged impacts as significant (for locations already at noise levels below Mr Williams's SOAEL level) when a particular level of change in the LAeq was experienced. This was used since it was contended that small changes in LAeq will not be perceived. Mr Fiumicelli explained however that this is not the case in respect of noise comprising a number of distinct events. For example, a 3 dB increase in noise would be associated with a double of the number of discrete events.
210. As can be seen from the extract of the APF, the Government makes no statement to the effect that the LAeq index is the primary or preferred index; rather it recognises that it is well-established as an index and of use when looking at historic trends – but it also recognises that it has limitations when it comes to reflecting all aspects of the perception of aircraft noise. Indeed, that is true of all noise indices – the reality is that there is no single noise index which reflects all aspects of the perception of aircraft noise by human beings.
211. BAL sought to rely upon Government's Response on UK Airspace policy as determining as a matter of policy that the LAeq index must be used as the primary index when assessing the air noise impacts in a development control decision. As Mr Williams fairly accepted in cross-examination it does not such thing.
212. Mr Williams referred to the Government's *"Consultation Response on UK Airspace Policy: A framework for balanced decisions on the design and use of airspace"* as establishing that there is an adopted policy approach. This explains<sup>87</sup>:

*"So that the potential adverse effects of an airspace change can be properly assessed, for the purpose of informing decisions on airspace design and use, we will set a LOAEL at 51 dB LAeq 16 hr for daytime, and based on feedback and further discussion with CAA we are making one minor change to the LOAEL night metric to be 45dB LAeq 8hr rather than Lnight to be consistent with the daytime metric."*

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<sup>87</sup> CD10.43 p19 para 2.72

213. As is clearly stated, the approach identified in this document is one for the CAA to apply as a matter of policy when considering airspace changes. It is not a policy that is required to be applied in assessing the impact of every expansion proposal for every airport. It is not a statement made by Government for the purposes of the town and country planning regime.<sup>88</sup>
214. The Response is simply an expression of view in terms of standardising criteria relating to airspace change – it has not policy consequence for the determination of development control decisions relating to airport expansion. It is concerned with the effect of the redistribution of noise from flights that are already occurring rather than concerned with the effects of new and additional numbers of flight. To that extent the limitations of the LAeq index, in terms of its insensitivity to number of flights, are not to the fore in airspace change decisions since it is just the distribution of flights rather than their number which alters.
215. It is also instructive to look at other decisions in relation to the limitations of an approach founded upon a change in LAeq. At the Heathrow T5 inquiry an expert witness for the DfT conceded that changes in LAeq,16 hr of less than 3 dBA could be significant. For example, if a less than 3 dB change in LAeq,16 hr was due to a large increase in aircraft movements overall or during a much shorter and sensitive part of that longer period e.g. early in the morning or late evening, being averaged over the longer 16 hour period. In which case even though the apparent variation in the LAeq,16 hr could be less than 3 dB, the impact of the increased number of noise events during the sensitive period would be likely to be clearly noticed by some of the persons affected.<sup>89</sup>
216. Indeed, at the George Best airport inquiry, the CAA explained that the 3dB criterion had been derived from laboratory studies during which human subjects were asked to differentiate between sounds of fixed frequency played to the subject at different noise levels. That is not reflective of a noise environment over a prolonged period comprising a number of discrete noise events. Thus, the CAA accepted that a change of 3 dB will be of greater significance than was stated in the ES in that case

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<sup>88</sup> Agreed by Williams in XX to RTQC

<sup>89</sup> Fiumicelli proof p100 para 6.62

which adopted the same essential approach to that utilised by BAL in the present case.<sup>90</sup>

217. In a conclusion with which the Secretary of State agreed, the Inspector at the Stansted G1 Inquiry concluded:<sup>91</sup>

*"I consider that changes in the noise levels of individual aircraft noise events and the number of such events are important. I share the view of UDC that it is straining credulity to suggest that the noise from an additional 170 ATMs per day (on average, more in summer) would not be perceptible even though the Leq would increase by less than 1.5 dBA [5.59-65]."*

218. Indeed, this was recognised by the WHO as long ago as 1999. In making its recommendations in relation to appropriate thresholds for sleep disturbance the WHO Guidelines 199 recommend an approach which looks at the average noise exposure and on which looks at the number of events<sup>92</sup>.

**(d) The Effect of More Less Noisy Aircraft**

219. BAL has focussed upon the claim that, whilst there will be more ATMs in future, a larger percentage of the increased movements will be by aircraft not as noisy as currently or would be in future if the fleet mix did not change as assumed in the ES and AES. The consequence is that BAL seeks to trade off future relatively small reductions of a few decibels in the noise emitted by individual aircraft, for a significant increase in ATMs.

220. Mr Fiumicelli explained however that this approach is flawed. There is research<sup>93</sup> which shows that for different individual aircraft noise levels:

- (a) A 2 to 3 dB difference between successive sounds was not particularly noticeable, although over half of the participants thought that it could lead to a more positive view of the airport, compared to providing no difference at all.
- (b) Differences of 5 to 6 dB between successive sounds may be needed for people to tell there is a difference.

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<sup>90</sup> Fiumicelli p101 quoting from CAA proof p 19-20.

<sup>91</sup> Fiumicelli p102 para 6.64-5

<sup>92</sup> CD10.1 p 10

<sup>93</sup> Fiumicelli p95 para 6.47.

- (c) A difference of at least 7 or 8 decibels may be needed between the average sound level of two sequences of aircraft sounds to provide a valuable break from aircraft noise.

221. Accordingly, based on that research, in real life each aircraft movement (even if undertaken by a less noise aircraft) will still be a noisy event that may either not be noticed as being less noisy or will not be "valued" by the local community as being quieter. This establishes that there is a substantial likelihood that those affected by the proposed development will not detect or value the comparatively small reduction in the noise from each aircraft, but will rather notice the increase in still noisy flights. This is another important reason why the LAeq index cannot be used in isolation to assess the significance of the impact of noise associated with airport expansions.

**(e) Incompatibility of Approach with the NPPF**

222. A further fundamental difficulty in utilising a change in exposure as the basis for assessing significance is that this approach is inconsistent with the policy approach required by the NPPF/NPSE.

223. The NPPF requires an approach whereby the acceptability of noise impacts is examined against absolute LOAEL and SOAEL levels. These are not relative values but are absolute levels to be derived by reference to dose response research. The policy approach is to avoid granting planning permission if people would experience a residual noise exposure above SOAEL. Where noise levels lie between LOAEL and SOAEL then national planning policy requires all reasonably practicable mitigation to be provided.<sup>94</sup> This policy approach does not state that the acceptability of development in noise terms is to be judged by reference to an examination of any change in noise levels that it would deliver.

224. A development which results in impacts which shift a receptor from a residual position below SOAEL to above SOAEL gives rise to effects which are not acceptable and which are to be avoided.

225. 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

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<sup>94</sup> Fiumicelli proof p13-14 and p22 to 26.

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.

226. The ES and ESA adopt an approach whereby a change in exposure of less than 1 or 2 dB experienced by a receptor that is either already above or below SOAEL respectively is not significant. In terms of assessing acceptability for the purposes of applying the NPPF that approach is clearly flawed; that approach ignores the fact that those receptors are already experiencing a significant adverse effect level of noise and the Proposed Development simply adds further impact to that already significantly adverse environment. Accordingly, the Council submits that the ES/ESA in this regard is not consistent with the approach required by national planning policy. That is not to say that the incremental change is not relevant to your consideration of the impacts; it plainly is and the NPPG says so. However, the simple fact that a change in the noise climate may be small does not mean that that change is not significant in noise policy terms if it is experienced in a noise environment which is already above the significant adverse effect; rather that change makes a situation which is to be avoided one which is to be avoided even more.
227. 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. This is trite, but seemingly overlooked by BAL. See, for example, **R.**

*(Thakeham Village Action Ltd) v Horsham DC* [2014] EWHC 67, [2014] Env LR 21 at [118].<sup>95</sup>

**(f) Conclusion on Sole Use of LAeq**

228. The approach adopted in the ES/ESA for determining whether noise is likely to have a significant effect upon human being solely by reference to criteria founded upon change in the LAeq noise metric must be rejected. Regard must be had to that metric of course but it presents only part of the picture. Since the ES/ESA does not capture the full picture of the adverse impacts its conclusions must be rejected and cannot be used as the basis for conclusions about compliance with either the national aviation policy, the NPPF or the development plan.

**(g) Sleep Disturbance**

229. Another reason to be cautious about reliance upon an assessment solely based upon the use of the LAeq index is that there is longstanding evidence that it should not be used in isolation to assess the likely impact upon sleep disturbance.

230. The WHO Guidelines for Community Noise explain that:<sup>96</sup>

*“For a good night’s sleep, the equivalent sound level should not exceed 30 dB(A) for continuous background noise, and individual noise events exceeding 45 dB(A) should be avoided. In setting limits for single night-time noise exposures, the intermittent character of the noise has to be taken into account. This can be achieved, for example, by measuring the number of noise events, as well as the difference between the maximum sound level and the background sound level. Special attention should also be given to: noise sources in an environment with low background sound levels...”*

231. The WHO Guidelines continue:<sup>97</sup>

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<sup>95</sup> “The conflict of that proposal with relevant policy in the development plan, which was accepted by the Council’s officers in their committee reports, did not compel the Council to require an EIA. No support for that idea is to be found either in the case law or in relevant policy and guidance. The submission made by Mr Taylor and Mr Warren that the screening process under the regime for EIA is different from the planning decision process is valid, and important. The difference between the two processes has been acknowledged by the Court of Appeal, for example in [20] of Moore-Bick L.J.’s judgment in *Bateman* and in [45] and [46] of Pill L.J.’s, with the agreement of Sullivan and Toulson L.JJ. in *Loader* (see [30] and [31] above). It is also implicit in government policy, in paras 34 and 35 of Circular 02/99. A proposal may be in conflict with one provision or another of the development plan, and the conflict may be a significant one. But it does not follow that the development in question must therefore be regarded as likely to have significant effects on the environment.”

<sup>96</sup> CD10.1 p 10

<sup>97</sup> CD10.1 bottom p12 to 13

*“Sleep disturbance from intermittent noise events increases with the maximum noise level. Even if the total equivalent noise level is fairly low, a small number of noise events with a high maximum sound pressure level will affect sleep. Therefore, to avoid sleep disturbance, guidelines for community noise should be expressed in terms of the equivalent sound level of the noise, as well as in terms of maximum noise levels and the number of noise events. It should be noted that low-frequency noise, for example, from ventilation systems, can disturb rest and sleep even at low sound pressure levels. When noise is continuous, the equivalent sound pressure level should not exceed 30 dB(A) indoors, if negative effects on sleep are to be avoided. For noise with a large proportion of low-frequency sound a still lower guideline value is recommended. When the background noise is low, noise exceeding 45 dB LAmax should be limited, if possible, and for sensitive persons an even lower limit is preferred.*

232. Thus, the WHO Guidelines indicate that the use of equivalent noise levels (I.e. LAeq) on their own will be insufficient to assess potential impact upon sleep disturbance. The advice is that LAeq and LAmax (combined with a number of events) should be used when considering impacts on sleep. Importantly, for the context of the present case, the WHO advise that where background noise levels are low, such as the rural location of Bristol airport, the exceedance of 45 dB LA max should be limited. It is important to note here that the WHO Guidelines are presented in relation to an LA max (fast).
233. The metric used in the ES and AES for assessing sleep disturbance is in terms of the percentage Highly Sleep Disturbed (%HSD) is the LAeq,t noise level over the 8 hours between 2300 and 0700<sup>98</sup>.
234. Another metric used is the LA max metric<sup>99</sup>. The ES utilises the LA max slow metric, whereas the WHO guideline LA max 45 dB is an LA max fast. As a result, a correction needs to be made to the assessment within the ES which was agreed by Mr Fiumicelli and Mr Williams to be 3 dB.<sup>100</sup> Once this correction is made it has a substantial impact on the number of people who would be exposed to noise above the WHO guideline level and would be subject to sleep disturbance which is not captured by the ES/ESA assessment.

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<sup>98</sup> ES paragraph 7.1.14 and AES Table 6.11

<sup>99</sup> AES para 6.3.3

<sup>100</sup> See XX of WLiams by RTQC.

**(h) Awakenings**

235. Mr Fiumicelli also pointed the Inquiry towards the lack of any assessment of awakenings despite the existing of a methodology to assess this. It was not until rebuttal evidence that BAL sought to address this matter.
236. Unfortunately, the assessment is not robust since it assumed that windows are open at night for only 25% of flights.<sup>101</sup> That assessment is not robust since the peak demand at the Airport when most night-time flights will arise is in the summer and it is in summer when most residents will wish to have their windows open. It is also based upon flights at night on an “average day”.<sup>102</sup> As a result, the calculation undertaken by Mr Williams is far from a worst case.
237. The result of this less than robust assessment is that there would be no additional awakenings in either the 10 mppa case nor the 12 mppa case although risk of awakening increases by some 35%. Given that (as we have explained) in the 12 mppa case the noise impacts at night are greater than in 2017 on BAL’s own assessment and that many many local residents have come to this inquiry explaining that they are woken up at night, this calculation does not fit with experience. This is no doubt due to the assumptions adopted which were not robust.

**(i) LOAEL and SOAEL**

238. There is no adopted national or local planning policy statement which states that in assessing the impact of the proposed development you must adopt particular values or indices for LOAEL/SOAEL for the daytime or the night time. Indeed, the Noise Policy Statement for England states:<sup>103</sup>

*“It is not possible to have a single objective noise-based measure that defines SOAEL that is applicable to all sources of noise in all situations. Consequently, the SOAEL is likely to be different for different noise sources, for different receptors and at different times.”*

239. Government has deliberately not defined LOAELs and SOAELs so that decision makers can have regard to the particular circumstances of the case when considering

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<sup>101</sup> Williams rebuttal p 9 para 4.1.4.

<sup>102</sup> Williams rebuttal p10 para 4.1.7

<sup>103</sup> CD10.4 para 2.22

what the appropriate thresholds should be. For example, a SOAEL within an urban area which has high background noise levels at night may differ to a SOAEL within a rural area which has very low background noise levels at night. The differing background noise environment may give rise to differing impacts on quality of life in the different locations.

240. The NPPG defines LOAEL as the level of noise exposure above which adverse effects on health and quality of life can be detected. It defines SOAEL as the level of noise exposure above which significant adverse effects on health and quality of life occur.

241. The noise exposure hierarchy set out in the NPPG is also very important when considering whether any particular level of noise that an individual would experience as a result of proposed development is above LOAEL or above SOAEL.

242. Noise above LOAEL is described in the NPPG Noise hierarchy table as:

*“Noise can be heard and causes small changes in behaviour, attitude or other physiological response, e.g. turning up volume of television; speaking more loudly; where there is no alternative ventilation, having to close windows for some of the time because of the noise. Potential for some reported sleep disturbance. Affects the acoustic character of the area such that there is a small actual or perceived change in the quality of life.”*

243. 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.”*

244. In identifying appropriate LOAEL/SOAELs to adopt the fact that a decision maker has used a particular definition or approach previously in another case does not constrain you from adopting a different approach in the present one, particularly if circumstances are different. Each case has to be assessed on its merits with regard to its particular circumstances and the evidence before the decision maker.

245. It is submitted that:

- (a) LOAEL/SOAEL has to be set by reference to dose response research. LOAEL/SOAELs are not set as policy aspirations or targets and are not mandated by policy. They are to be set by reference to scientific dose response research.
- (b) A LOAEL must be set at the level of noise at which represents the onset of an observable adverse effect upon health or quality of life can be identified. If research emerges which demonstrates that the onset of an observable effect arises at the different dose response level than had been understood previously to represent onset of effect, then a LOAEL can be set by reference to that new research.
- (c) The same approach applies in relation to a SOAEL. If research emerges which shows people suffer significant adverse effects upon health or quality of life at a level lower level than previous identified, then a decision maker can set SOAEL by reference to that new research.
- (d) There is nothing which mandates that any particular noise index must be used when determining LOAEL or SOAEL – indeed in a given case it may be that a number of different noise indices may be utilised to identify LOAEL or SOAEL each of which may capture different aspects of potential impact upon health or quality of life.
- (e) A decision maker is then required to review the evidence before them and to determine for themselves appropriate LOAEL and SOAEL's to adopt by reference to that evidence in that case.
- (f) When undertaking that task a decision maker can and must look at the example descriptors in the noise exposure hierarchy and ask themselves what row within the tables the effects being considered are likely to fall into.

246. 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.

**(j) Dose Response Has Changed Over Time**

247. Mr Fiumicelli explained to the inquiry that there is evidence that attitudes to aircraft noise have changed over time.
248. Since the WHO Guidelines which form the basis of the approach in the ES/ES, the WHO published the Night Noise Guidelines for Europe which identified LOAEL as 40 dBA Lnight. Indeed, that level was adopted in the HS2 ES and was a level approved by Parliament in the assessment of that project. This can be contrasted with the use of the 45 dBA by BAL. If the LOAEL threshold of 40 dB Lnight from the WHO Night Noise Guidelines for Europe 2009 is used, the number of dwellings exposed will be substantially greater than the 4000 reported in the AES.<sup>104</sup>
249. At paragraph 6.2.10 the AES seeks to justify rejecting the WHO Night Noise Guideline Level of 40 dB Lnight as part of the assessment and using a value of 45 dB Lnight instead. The reasoning is that to do so would impose *“very significant restrictions on the current permitted operations of most major airports”*. This rather misses the point. The purpose of the ES is to identify significance impacts upon the population affected by noise. The reason provided is not a justification for identifying that the population experiencing noise at night above 40 dBA Lnight will not experiencing adverse impacts. They will. The approach adopted by BAL is thus unjustified and the consequence is that it underestimates the number of people who will be adversely affected by noise. We shall see below that these people are offered no mitigation which reduces the impact upon them to a minimum.
250. It is also appropriate to consider SOAEL levels at night in the context of the nature of the rural area within which the airport is situated. The WHO Guidelines for Community Noise comments in regard to sleep disturbance in the executive summary that *“Special attention should also be given to: noise sources in an environment with low background sound levels”*.<sup>105</sup>
251. The nature of the background noise environment is also a factor that the NPPG indicates should be taken into account. Airports where 55 dB LAeq,16 hr has been used to assess the policy threshold of SOAEL have mainly been in urban or suburban

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<sup>104</sup> Fiumicelli p107 para 6.77

<sup>105</sup> Fiumicelli p106 para 6.75

locations with relative higher ambient and background noise conditions, without taking aircraft noise into account, compared to the largely rural environs of Bristol Airport.

252. Indeed, the ICCAN report notes that sleep disturbance was related to the level of background noise, with those in areas with lower background noise more disturbed at night compared to those with higher levels of background noise by same levels of noise. They also found that a greater percentage were highly sleep disturbed in rural areas.<sup>106</sup>
253. With a greater differential between underlying non-aircraft noise levels and aircraft noise levels around Bristol Airport, aircraft noise is likely to be more intrusive than in urban locations where the higher non-aircraft ambient and background noise levels are likely to provide a greater degree of masking for a longer period of each ATM than in rural locations
254. In addition, Mr Fiumicelli took the Inquiry to the SONA 2021 sleep disturbance study. This demonstrated that at 45 dB LAeq,8h, 8-10% were estimated to be highly sleep disturbed compared with 5% for the Miedema curve identified in the late 1990s. At 48 dB LAeq,8h, 10-12% were estimated to be highly sleep disturbed compared with 6% for the Miedema curve.
255. This demonstrates that a much higher percentage of people are highly sleep disturbed than has been previously recognised. Table 14 of that study identifies that 11% of the population reported as highly sleep disturbed at levels below 47.9 dBA LAeq 8 hour with this rising to 27% at levels below 50.9 dBA LAeq 8 hour. This shows a marked change in attitude to aircraft noise. And one which supports the view expressed by Mr Fiumicelli that SOAEL at night using the LAeq 8 hour index should be taken as 50 dBA.
256. BAL has sought to argue that this study is not definitive and that it has methodological deficiencies which mean it can be ignored. If that were the case then the CAA would have either not published it or they would have said that its conclusions cannot be relied upon. The CAA has done neither. As with all research in this field there is

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<sup>106</sup> Fiumicelli p106 para 6.73

always more work to do, particular when it is discovered that attitudes to noise have change substantially.

257. Whilst the recent Stansted decision did not adopt that approach advanced by Mr Fiumicelli, it did not consider the specific circumstances of the present case or the evidence outlined above. In particular the SONA 2021 reports were not available. Accordingly, a determination on the merits of the evidence in the present case is required.
258. As explained above there are very airport specific reasons founded upon new evidence why a lower SOAEL value should be adopted for assessing Bristol Airport - reasons which do not apply to other airports. This is yet another reason why BAL has seriously under-estimated the impact of the proposed development in noise terms.

**(k) The Number Above Index**

259. Since levels of aircraft noise vary according to type, size, height and location of aircraft, the noise levels at a particular location differ. As a result, what matters is the extent to which people are annoyed or disturbed e.g. by interruptions to conversation or activities, and to assess this it is necessary to balance the loudness of the event against the number of times the events of different loudness occur.<sup>107</sup>
260. As we have explained above, the ICCAN and the Government both require regard to be had to other indices and ICCAN recommended the use of an index such as Number Above.
261. ICCAN explained<sup>108</sup> that the Number Above index:

*“reflects key aspects of aviation noise that aren’t covered by LAeq based metrics. It can be used for forecasting and reporting actual events with equal clarity. The number of events is an important aspect of noise exposure and therefore the Nx is more likely to be reflective of aviation noise and the annoyance it causes than LAmax which only takes into account the maximum recorded noise. Hence, the Nx metric is more powerful, as it gives an indication of frequency of loud events, while still being a simple metric to generate and communicate. A consideration, however, is that once a noise event exceeds the Nx threshold there is no way to identify any further noise increases, so this metric is less likely to identify incremental aircraft changes and could result in*

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<sup>107</sup> Fiumicelli p102 para 6.66

<sup>108</sup> CD10.47 p36

*the flights that exceed the Nx threshold to be even louder, as there is no cap on the maximum loudness."*

262. Thus, the number above index addresses aspects of the perception of noise that are not taken into account by the LAeq index on its own. As we have already explained, the number of events is fundamental to an appreciation of the perception of aircraft noise. ICCAN's view is that the Number Above index is likely to be more reflective of aviation noise and the annoyance it causes than LAmax. Indeed, the only down side identified is that it is less likely to identify incremental changes – in other words does not capture the effects of even louder aircraft over flight.
263. Although it was put to Mr Fiumicelli in cross-examination that the ICCAN report established that the N60 did not correlate with sleep disturbance, no part of that report says this. In fact the most recent evidence demonstrates that the N60 correlates indistinguishably as well with night time self report sleep disturbance as the use of the LAeq 8 hour index. In the SONA2021 study it had a R<sup>2</sup> of 0.822<sup>109</sup> compared with an R<sup>2</sup> of 0.883 for the LAeq 8 hour index. That is a distinction without a difference as Mr Williams accepted.<sup>110</sup> It certainly does not provide a basis for ignoring the N60 or rationally preferring the LAeq 8 hour measure.
264. In this context it is remarkable that it was not until rebuttal evidence that any number above assessment was provided and that the ES/ESA does not provide any assessment against this noise index.
265. The N70 index identifies how often a property will experience a noise level above 70 dB LA s max. It is measured externally and represents the impact during the daytime.
266. The WHO Guidelines for Community Noise explain that the sound pressure level of normal speech is about 50 dB(A) and that for full sentence intelligibility in listeners with normal hearing, the signal-to-noise ratio (i.e. the difference between the speech level and the sound level of any interfering noise) should be at least 15 dB(A). Thus, to prevent speech interference noise levels of interfering noise would need to be below 35 dB(A).<sup>111</sup>

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<sup>109</sup> The R<sup>2</sup> is a coefficient which indicates how well a measure correlates with data. A coefficient of 1 means that the measures explains all the data perfectly – 0 means it does not explain the data at all.

<sup>110</sup> XX Williams by RTQC

<sup>111</sup> CD10.1 p10

267. Accordingly, noise levels of 70 dB or more are more than sufficient to interrupt speech. A partially open window will offer around 15 dB of attenuation.<sup>112</sup> Thus the 70 dB LA s max will reduce to around 55 dB LA s max internally. This is more than 20 dB above the threshold identified by WHO as likely to lead to speech interference. Mr Williams identifies that a closed window will provide 25 dB attenuation. Thus, with windows closed the figure will attenuation to 45 dB. Thus, even with windows closed during the day aircraft will cause noise levels which will rise to levels which are 10 dB above the level that the WHO identify as the threshold for speech interference.
268. As set out above, the Proposed Development results in over 1,100 people being subjected to noise levels of 70 dBLA s max between 100 and 199 times a day. As such those people will avoid using their gardens, will have to keep their windows closed to talk to members of their household, use the telephone or watch television. Even then their conversations will still be affected by aircraft as they go over. These people will have to live their lives with the windows closed for most of the time and even then, their quality of life will still be significantly affected.
269. The noise hierarchy identifies that noise above SOAEL:
- "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... Quality of life diminished due to change in acoustic character of the area."*
270. The effects of the exposure to N70 noise identified above plainly would result in material changes of behaviour as described. Their lives would be diminished as a result of the acoustic character of the area entirely due to the airports operations. These people will be suffering a level of noise which will be above the SOAEL threshold. It has not been demonstrated that they fall within the scope of the noise mitigation scheme offered by BAL although some may.
271. But it is at night where the Number Above index really reveals the true extent of the impacts of the Proposed Development. The N60 index identifies how often a property will experience a noise level above 60 dB LA s max. It too is measured externally and represents the impact during the night time.

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<sup>112</sup> Agreed by Williams in XX to RTQC and see his approach to awakenings rebuttal p 9 para 4.1.4

272. As explained above, Mr Williams's appraisal of the N60 concludes that an additional 3050 dwellings would be subject to 20 to 49 noise events of 60 dBLA s max or above if planning permission is granted compared to the position if planning permission is refused. That is some 7000 people.
273. If those people have a partially open window, the internal noise environmental that they would experience would reach 45 dB LA s max 20 to 49 times a night.
274. It is to be remembered that the WHO criterion from the WHO guidelines is an LA max f figure. Mr Fuimicelli and Mr Williams agreed that a correction factor of 2-3 3dB has to be added to an LA s max to convert it to an LA f max. Once this is done then on Mr Williams's own assessment some 7000 people would experience 47/8 LA f max 20 to 49 times a night. That is a level considerably above the WHO guidelines threshold of 45 dBA 10-15 times a night for sleep disturbance. It means that to avoid sleep disturbance all of those people will have to have their windows closed for most of the time.
275. As we have just explained, one of the key indicators that people are experience levels above SOAEL is that, where there is no alternative ventilation, having to keep windows closed most of the time because of the noise they experience. Mr Williams candidly accepted in cross-examination that the 55 dB LAeq 8 hour contour would not embrace these people. Indeed only 250 houses or 575 people are embraced by that contour<sup>113</sup>. Thus some 6,500 people are left enduring the impact of 20 to 49 events a night at levels which mean they will not sleep with windows open but which they cannot close in because BAL will not provide the mitigation necessary for them to have an appropriately ventilated bedroom.
276. Indeed, it is also possible to calculate the number who are likely to self report as highly sleep disturbed by reference to the latest SONA report.<sup>114</sup> The N60 assessment in Mr Williams rebuttal identifies that if planning permission is granted 600 houses will be above N60 10 to 19 times a night (1380 people) with a further 3060 (7015 people) above N60 20 to 49 times a night. That is a total of 8418 people. The SONA21 study Table 16 provides the percentage of these bands that can be expected to report as highly sleep disturbed. 7.7% of those experiencing 10 to 19 events would self report as highly sleep

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<sup>113</sup> Williams p49 Table 9

<sup>114</sup> INQ22 p27 Table 14

disturbed (i.e. 7% of 1380) that is 106 people. From Table 16 13.3% of those experiencing 20 to 49 would report themselves as highly sleep disturbed (i.e. 13.3% of 7015) that is 933 people. That is 1038 people who will report as highly sleep disturbed according to the latest research. That is substantially above the 575 people who may qualify for noise mitigation according to Mr Williams's 55 dB LAeq 8 hour contour.

277. The noise exposure hierarchy contained in the NPPG identifies that noise above SOAEL will have "potential for sleep disturbance resulting in difficulty in getting to sleep, premature awakening and difficulty in getting back to sleep." That applies to well over 6,500 people – they would all be living in an environment above SOAEL if planning permission is granted without any mitigation whatsoever.
278. Thus, the proposed development will leave hundreds of people sleep disturbed and thousands without any mitigation provided suffering levels above SOAEL. That is an impact which is to be avoided but which is not.
279. The Number Above assessment demonstrates that the Proposed Development will give rise to significant and wide-ranging impacts on those living around the airport. It will affect their everyday lives profoundly and significantly. It will adversely affect their health and it will cause a marked reduction on their quality-of-life due to changes in the acoustic character of the area that the airport expansion will visit upon them.

**(l) A 24 hour Assessment**

280. The WHO Guidelines for Community Noise also explain that the combined effects of noise throughout the 24 hours period on people must be considered.

*"noise may interfere with speech in the day and create sleep disturbance at night. These conditions certainly apply to residential areas heavily polluted with noise. Therefore, it is important that the total adverse health load of noise be considered over 24 hours..."*

281. Neither BAL's ES nor his evidence contains any appraisal which identifies whether the people experiencing levels above SOAEL during the day also experience levels above SOAEL at night. There is no consideration whatsoever of the total load of noise that residents may experience over 24 hours. It seems remarkable that the clear advice in the WHO Guidelines which has been around for more than 20 years was simply ignored.

282. However, in cross-examination by RTQC, Mr Williams confirmed that 1,100 people who would be subject noise levels of 70 dBLA s max or above between 100 and 199 times a day would also be within the 7000 people who would experience 20 to 49 events at night of 60 DB LA s max. Thus, there would be around 1,100 people for whom there would be no let-up day or night.
283. It is simply extraordinary that BAL's ES/ESA contains no assessment of these impacts; nothing which examined the extent to which people would be subject to adverse noise impacts both in the day and at night. This is yet another aspect of the assessment process whereby BAL has under-estimated the impacts of the Proposed Development.

**(m) Mitigation**

284. The required approach to mitigation is clear from the NPPF, NPSE and the NPPG. Where noise will be experienced above SOAEL it must be avoided. Thus, mitigation must be provided to ensure that every household that would experience noise levels above SOAEL can avoid the adverse consequences of noise exposure above this level.
285. In that context it is extraordinarily revealing of the BAL's priorities to examine the evolution of its noise mitigation scheme. The scheme put forward to Officers contained no cap of the amount available to provide mitigation each year.<sup>115</sup> Come this appeal however and in its initial Unilateral Undertaking a scheme which would have capped payments to £200,000. As explored in cross-examination with Mr Melling, that would have resulted in it taking nearly seven years for the 250 houses identified by Mr Williams as falling within the airports SOAEL night noise contour to have obtained mitigation, all the while they would be experiencing the night noise impacts of the proposed development as they waited their turn. That is a position that BAL explained was motivated by financial considerations. An example of money before people. The subsequent removal of this cap is welcome but it should not have to take cross-examination to produce improvements – BAL should have been offering a policy compliant mitigation scheme from the moment it appealed – but it still does not.
286. Even as late as the day before these submissions were made, new amounts of available funding were offered for each contour band.<sup>116</sup> Whilst the higher amounts for daytime

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<sup>115</sup> CD4.11 p231-2

<sup>116</sup> With the 63 dB contour band category removed all together.

mitigation now offered at this last minute are welcomed, the basis for the sums offered are not evidenced. Indeed, there is no evidence before this Inquiry which establishes that the amounts on offer to cover the costs of mitigation are sufficient to achieve the noise reductions that the scheme aims for<sup>117</sup>. There is no evidence that establishes that the amounts are enough to remedy windows/ventilation issues in all bedrooms or all houses. The amounts include have not been justified in any way shape or form.

287. Further the latest draft has been amended to remove any local planning authority control whatsoever on the scheme going forward. Clause 2.2.1 provides:

*"Prior to Commencement of Development, the Owner shall submit a Noise Mitigation Scheme to the Council for not less than three months consultation and shall not implement the scheme before taking into account any consultation feedback from the Council."*

288. This removes any ability on the part of the Council to insist on any aspect of the scheme which is not yet defined. In essence, it means that all that you can take into account is what is in the draft UU. What is in the draft UU is wholly inadequate and is contrary to policy.
289. In addition, the scheme offered in the UU does not provide any mitigation whatsoever to those revealed by the Number Above assessment to suffer impacts of the kind that must be categorised as above the SOAEL – the thousand or so who could not use their gardens without constant seriously disturbing interruption, talk on the phone or watch TV with the windows open, or sleep at night with the windows open. Or the thousand odd people who would self-report as highly sleep disturbed. As we have explained, it is evident that, apart from a lucky few, these people do not get any mitigation but all suffer impacts that must be classified as significantly adverse and above SOAEL.
290. In addition, the noise mitigation scheme does not apply to anyone in the bracket between LOAEL and SOAEL. Not one household or person. The NPPF, NPSE and the NPPG are clear that noise visited upon these people must be reduced to a minimum by adopting all reasonable mitigation. There is mitigation available – it is offered to the lucky few who fall with the scheme in the UU. But there is no evidence before this

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<sup>117</sup> i.e. those required by clause 2.2.4 of the draft UU

inquiry that demonstrates that it is not practicable or reasonable to provide it to those above LOAEL.

291. The Council via Mr Fiumicelli had sought a noise mitigation scheme which would ensure that BAL would provide noise mitigation for all of those living with the 54 dB LAeq 16 hour contour and those experiencing greater than 45 dB LA f max at night for more than 15 times a night. Included in this the Council sought the provision of appropriate ventilation to prevent overheating when windows are closed.<sup>118</sup>
292. The Council asked for this to be included in the s106 planning agreement so that you could utilise the blue pencil clause to have the choice as to which noise mitigation scheme you regarded as necessary. In this way, if you determined to grant planning permission and preferred the Council's approach you could say so and that approach would bite whilst the BAL scheme would not. However, BAL refused to agree to include the Council's clause in the section 106 planning obligation and instead has offered a unilateral obligation in respect of the noise mitigation scheme. The Council cannot force BAL to give you the choice, but it is to be noted that by acting in this way BAL has denied you the opportunity to make that choice.
293. Indeed, instead of recognising the scale of the impact that it is necessary to mitigate, BAL has referred to the need for mitigation to be "proportionate". That is a veiled way of saying that it cannot profitably mitigate the impacts of the development in line with the requirements of the NPPF and that instead they should be allowed to get away without providing any mitigation whatsoever. But the NPPF applies to them just as it does to any other developer. They are not in some special category in policy terms. The only limit on what can be required is what is reasonable i.e. what is not irrational. If mitigation is necessary and related to the impacts of a development then it can be required. The mitigation offered by BAL is wholly inadequate and contrary to policy.

**(n) Uncertainty**

294. 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 there is no single correct fleet mix.

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<sup>118</sup> Fiumicelli p147 para 9.15

295. The Council produced its own fleet mix. Whilst this attracted much attention from BAL the position ultimately produced demonstrates that in 2030 there is a reasonable prospect of an alternative fleet mix coming forward which would result in different and more significant noise impacts than that assessed by BAL
296. Mr Folley provided an update to his fleet mix prior to giving evidence<sup>119</sup>. After his cross-examination Mr Brass raised a number of matters which had not been put to him. Accordingly, Mr Folley provided a response in writing<sup>120</sup>. With Mr Brass then getting a further response.
297. Mr Folley explained that his fleet mix was based upon growth of the three main airlines but in line with Jet2's stated plans for growth at the airport. Mr Brass contended that this was not realistic but did not explain why in any coherent way. In the end Mr Brass's evidence on this point became a mere matter of assertion rather than evidence
298. Similarly, his contention that the approach to Ryanair was flawed was based upon the assertion that Ryanair would base its new aircraft at Bristol. No evidence was adduced to support this and Mr Folley's view was that Ryanair would base new aircraft at new bases rather than established existing ones like Bristol. Since then of course talks between Boeing and Ryanair have broken down.
299. In relation to TUI, Mr Brass boldly told the inquiry that TUI had ordered a new fleet. Mr Folley explained that he was unable to identify any such public statement by TUI. In the event all that Mr Brass could provide by way of evidence was an article in which provides speculation by a board member as to possible purchases in the future but which did not support the statement made by Mr Brass in evidence to the Inquiry.
300. As a result, it is submitted that Mr Folley's fleet mix demonstrates a possible variant fleet that could materialise in the future if planning permission were granted and no appropriate noise contour or other constraints were imposed.
301. 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

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<sup>119</sup> INQ10

<sup>120</sup> INQ18

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.

302. 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.
303. 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.
304. In that regard it is important to note the significant deficiencies in the contour condition proposed by BAL. After the session on 1 October 2021 where the Council explained its concerns, BAL has produced a new version the afternoon prior to making these submissions. Serious problems remain. It now proposes to keep in place the 10 mppa planning permission 57 dBA contour until the calendar year when 10 mppa is exceeded. Then from the point when 11 mppa is exceeded a different contour is to apply. The condition thus provides no enforceable noise contour where passenger throughput is above 10 mppa but below 11 mppa. It is frankly shocking that we are at closing submissions and BAL still has not provided a workable presentation of the noise contour mitigation it proposes. It is as if it is an after-thought but to thousands who live around the airport it is anything but. This is yet further evidence that BAL has never thought out its approach to ensuring a fair share for the local community.
305. Indeed, BALs proposed condition does not even impose a night noise contour until 12 mppa is reached. It also utilises the 57 dB contour for daytime which enables the size of the contours relating to LOAEL/SOAEL to be broader than is assessed in the ES.
306. In short, the 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.

307. Even with a contour in place, there is potential for the number of aircraft to change but for noise levels to remain within the contour. That is why the Council has sought an ATMs limit. BAL has also sought to resist this. The only reason for it doing so is because it wishes to leave open the possibility for a greater number of aircraft to operate to and from the airport than has been assessed. This demonstrates that BAL itself wishes to have the freedom to fly more planes of a different to those it has assessed in its fleet mix. As we have explained above, since the LAeq index used for the contour cap condition is insensitive to number and since the perception of noise for those on the ground is sensitive to the number of flights it is very important that an ATMs limit is imposed. It is entirely justified and indeed used at all of the most important airports in the UK<sup>121</sup>. If an ATMs limit is not imposed then the scale and nature of the impacts that would be permitted to arise could be materially different from those in the ES. It is therefore essential that an ATMs limit is imposed in order to ensure that the impacts that are experienced are those that were assessed in the ES. Any other approach would be unlawful.
308. Thankfully, the night noise QC condition is agreed – complicated though it is it is workable.
309. It is also the case, however, that for these conditions to be enforceable by BAL the Airport must become coordinated. As we explained in our note to the Inquiry in that regard, this is simply us repeating what was represented to the Secretary of State by BAL's consultants and what BAL's Chief Executive has stated to the consultative committee.<sup>122</sup> It is then a surprise to see BAL rowing back from the position that coordinated is necessary to be able to control the noise regime effectively to a position where this is not necessary because contracts can be relied upon. It is a surprise because, if correct, it would suggest that BAL's consultants misled the Secretary of State and Mr Lees misled the consultative committee. But thankfully that is not the case – the error comes in the submissions to you not to those made by BAL elsewhere.
310. We have explained in detail in our Note the legal position and why a Grampian condition is required before the Proposed Development can begin. The imposition of that condition presents no difficulty in obtaining coordinated status – the physical

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<sup>121</sup> See CD 10.13 p23 - Stansted, London City, Belfast City and Heathrow

<sup>122</sup> See INQ 79

constraints of the airport will remain those of a 10 mppa airport even though planning permission has been granted. Thus, there is a prospect that coordinated status will be granted. The forecasting evidence is that BAL will return to operations on a timescale consistent with the NPPG which advises that there must be a prospect of the condition being discharged in the lifetime of any permission. There is clearly a prospect of coordinated status being granted or BAL would not have made the application in 2019 when it was at 8.9 mppa. For all these reasons the imposition of the Grampian condition sought is essential.

311. If this Grampian condition is not imposed then the noise controls will not be enforceable. BAL will just be able to say that it has been unable to contract on a basis which enables them to deliver compliance. That would be a sufficient defence. If the noise controls are not 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.

**(o) Conclusion**

312. The Proposed Development will result the exposure of significant numbers of people which will have wide ranging and significant adverse effects upon the health/quality of life of those living around the airport. Such impacts are not avoided by the noise mitigation proposed. Since the residual impacts of the scheme are at a level which national planning policy indicates is to be avoided, this is a factor which weighs very heavily indeed against the grant of planning permission. Further those experiencing noise levels above LOAEL are offered no mitigation whatsoever despite the policy requirement that the impacts upon them should be minimised. The result is that the proposed development gives rise to serious and significant breaches of the NPPF.
313. Further, the 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.
314. The noise impacts weigh very heavily indeed against the grant of planning permission 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.

## **V. AIR QUALITY**

315. The central objective of air quality legislation and policy is to protect against adverse risk to public health. The current approach in the UK has its root in the founding Treaty of the EU. As this sets the framework within which air quality directives and associated standards are set, it provides a useful aid to interpretation of air quality standards, as follows<sup>123</sup>:

*“1 . Action by the Community relating to the environment shall have the following objectives:*

- to preserve , protect and improve the quality of the environment ,*
- to contribute towards protecting human health ...*
- to ensure a prudent and rational utilization of natural resources .*

*2 . Action by the Community relating to the environment shall be based on the principles that preventive action should be taken , that environmental damage should as a priority be rectified at source , and that the polluter should pay . Environmental protection requirements shall be a component of the Community's other policies.”*

*(Treaty establishing the European Economic Community, part Three “Policy of the Community,” Title VII: Environment, Article 130R)*

316. This sets out the basis for managing air quality issues in Europe, referring to preventive action, rectification at source, and the principle that “the polluter pays”. This has led to the development and implementation of directives which set limit values for air quality in the European Union. The direction of policy set out in these directives goes beyond simple compliance with the air quality limit values by the dates specified in the directives. For example, the Second Recital of the 2008 Air Quality Directive states<sup>124</sup>:

*“In order to protect human health and the environment as a whole, it is particularly important to combat emissions of pollutants at source and to identify and implement*

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<sup>123</sup> Broomfield proof p15 para 29

<sup>124</sup> Broomfield proof p15 para 30

*the most effective emission reduction measures at local, national and Community level. Therefore, emissions of harmful air pollutants should be avoided, prevented or reduced and appropriate objectives set for ambient air quality taking into account relevant World Health Organisation standards, guidelines and programmes."*

317. The 11th Recital of the 2008 AQ Directive states<sup>125</sup>:

*"Fine particulate matter (PM<sub>2,5</sub>) is responsible for significant negative impacts on human health. Further, there is as yet no identifiable threshold below which PM<sub>2,5</sub> would not pose a risk. As such, this pollutant should not be regulated in the same way as other air pollutants. The approach should aim at a general reduction of concentrations in the urban background to ensure that large sections of the population benefit from improved air quality. However, to ensure a minimum degree of health protection everywhere, that approach should be combined with a limit value, which is to be preceded in a first stage by a target value"*

318. Thus, the approach at a European level to a pollutant for which there is as yet no identifiable threshold below which that pollutant would not pose a risk was to aim at a general reduction of concentrations in background levels. As we shall see, the recently published WHO Air Quality Guidelines 2021 ("**the WHO AQG**") identify thresholds below which particulate matter and nitrogen dioxide would not pose a risk which are significantly below (i.e. significantly more demanding than) the thresholds that have been used by BAL for the purposes of its assessment of significance of risk to harm. Given the approach set out in the 11th recital above, as we shall explain further below, in the light of the publication of the WHO AQG, the proper approach in respect of NO<sub>2</sub> and particulate matter now is to drive down exposure to levels towards the WHO AQG levels.

319. The Air Quality Directives have been transposed into English law by the Air Quality Standards Regulations 2010. These place legal obligations on the Secretary of State to ensure that the annual limit values for nitrogen dioxide (NO<sub>2</sub>) and particulate matter are not exceeded<sup>126</sup>. Where levels of NO<sub>2</sub> and PM<sub>10</sub> are below the limit values the Secretary of State is under a legal duty to maintain those limit values and "*must endeavour to maintain the best ambient air quality compatible with sustainable*

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<sup>125</sup> Brromfield proof p 15 para 31

<sup>126</sup> CD8.3 p7 Reg 17 (1)

*development*”<sup>127</sup>. In other words, once ground concentrations of NO<sub>2</sub> or PM<sub>10</sub> are below the limit values there continues to be a duty to reduce levels further to the extent that this is compatible with sustainable development ie. to the extent that the costs of doing so are outweighed by the harm of not doing so.

320. It is then incorrect as a matter of law to assert that the Air Quality Standards regulations 2010 simply require attainment of limit values since reg. 17(2) imposes a duty on the Secretary of State to do more than this depending upon the costs and benefits of so doing.
321. In terms of PM<sub>2.5</sub>, the Secretary of State is under a duty to “*ensure that all necessary measures not entailing disproportionate costs are taken to ensure that concentrations of PM<sub>2.5</sub> do not exceed the target value in Schedule of the Regulations*”.<sup>128</sup>
322. It is to be noted however that the Air Quality Standards Regulations 2010 are now over 11 years old. As we shall explain below, since they were adopted medical research has established that the limit and target values in those Regulations in respect of NO<sub>2</sub>, PM<sub>10</sub> and PM<sub>2.5</sub> do not represent thresholds below which important risks to public health do not arise; rather the research establishes that important risks to public health do arise at levels below the limits and targets set out in the 2010 Regulations.
323. It is submitted that this makes the duty to go further than the limit values all the more important and it means that in the balance to ascertain whether further reduction is consistent with sustainable development the risk to public health will weigh all the more heavily that was the case in the past.
324. In the foreword to the Clean Air Strategy the Secretary of State explained:<sup>129</sup>

*“Air pollution is the top environmental risk to human health in the UK, and the fourth greatest threat to public health after cancer, heart disease and obesity”*

*“...the goals that we have set are even more ambitious than EU requirements because we want to do all that we can to reduce people’s exposure to toxic pollutants like nitrogen oxides, ammonia, particulate matter, non-methane volatile organic compounds and sulphur dioxide.”*

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<sup>127</sup> CD8.3 p7 Reg 17(2)

<sup>128</sup> CD8.3 p7 Reg 18(1)

<sup>129</sup> CD8.7 p4

*"Armed with increased awareness and improved scientific measurements, we must tackle these problems with a new goal that takes into account the World Health Organization's guidelines."*

325. The Government's Clean Air Strategy explains that:

*"The UK sets air quality goals, informed by evidence from a range of sources. These include the World Health Organization (WHO) 2008 guidelines, recognised as the international benchmark for setting air quality standards."*<sup>130</sup>

326. Thus, the strategy is to achieve ground level concentrations based upon the 2008 WHO guidelines which themselves were set at levels which reflected the state of scientific knowledge at that point in time. As we shall see things have moved on.

327. The Clean Air Strategy then explains that:

*"...road transport, domestic shipping, aviation and rail are responsible for a significant proportion of air pollutant emissions: 50% of nitrogen oxides, 16% PM2.5 and 5% of NMVOCs.*

*Transport therefore has a key role to play in reducing emissions and meeting the government's objectives on the environment and public health."*<sup>131</sup>

*"...airports are large, complex sites with a range of emission sources and so can be of concern for local air quality. They also generate significant land journeys by passengers, workers and freight transport."*<sup>132</sup>

328. The APF which was adopted in 2013 of course does not reflect the Clean Air Strategy since it pre-dates it. Nevertheless, its basic themes are similar:

*"Studies have shown that NOx emissions from aviation-related operations reduce rapidly beyond the immediate area around the runway. Road traffic remains the main problem with regard to NOx in the UK. Airports are large generators of surface transport journeys and as such share a responsibility to minimise the air quality impact of these operations. The Government expects them to take this responsibility seriously and to work with the Government, its agencies and local authorities to improve air quality."*<sup>133</sup>

329. It explains that:

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<sup>130</sup> CD8.7 p28 section 2.4

<sup>131</sup> CD8.7p 44 section 5.1

<sup>132</sup> CD8.7 p52 section 5.6

<sup>133</sup> CD6.01 at [3.51] on PDF p. 65.

*“considerable efforts to improve air quality to protect health and the environment continue to be needed.”<sup>134</sup>*

330. This highlights the need to pay particular attention to the impact on air quality of surface transport, and for airports to take specific steps, not just to avoid significant impacts, but actually to improve air quality. Such a requirement to improve aligns with the duty in the 2010 Regulations to go beyond the limit and target values where this is consistent with sustainable development. It aligns with the goal expressed by the Secretary of State in the Clean Air Strategy foreword to go beyond EU requirements.
331. The APF focuses on oxides of nitrogen (NO<sub>x</sub>) because it notes in para. 3.50 that “PM [Particulate Matter] limits are largely met ...” However, this is a statement of policy from 2013 and as such does not reflect the work which has been undertaken since that date which confirms that there is no safe level for airborne particulate matter, or the more recent moves towards more demanding standards for PM<sub>2.5</sub> set out in the more recent National Clean Air Strategy of 2019 (CD8.7)<sup>135</sup>. The commitment in the National Clean Air Strategy, to move towards a much more demanding air quality standard for PM<sub>2.5</sub> means that the APF is now out of date in relation to its consideration of particulate matter.
332. Aviation 2050 explains that aviation growth “*must be coupled with steps to mitigate environmental damage such as ...air quality.*”<sup>136</sup> It explains that the consultation “*sets out a robust policy framework and package of measures to reduce the harmful effects of aviation on the environment, such as ....air quality*”.<sup>137</sup>
333. Aviation 2050 recognises that:

*“Pollutants associated with aviation come from airborne aircraft, from ‘airside’ operations such as taxiing and airside equipment, and from passengers and staff (and other airport users) travelling to and from airports. The latter, referred to as surface access, is the largest source and has the most significant effect on local air quality. Action to tackle such emissions from surface access transport modes is*

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<sup>134</sup> CD6.1 p65 para 3.50

<sup>135</sup> Broomfield proof para 43

<sup>136</sup> CD6.5 p7

<sup>137</sup> CD6.5 p16 and p51 para 3.4

discussed in the section of this document on improving surface access to airports."<sup>138</sup> (emphasis added)

334. With the section related to improving surface access to airports, Aviation 2050 states:

*"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."*<sup>139</sup>

335. Thus, the action to tackle emissions from surface access transport are to adopt innovative solutions and incentives against ambitious targets which improve air quality. BAL interpret this to mean ambitious mode share targets for public transport (we address that issue elsewhere) but that is too limited an interpretation of a policy set in the context of a document seeking to reduce the effects of air quality and to improve air quality. Rather, it is plain that the approach is to require specific targets to be adopted in respect of air quality to drive down the contribution that airports make to air quality as Dr Broomfield explained in his evidence. That this is the case can be seen by the fact that it proposed that airports should be required to develop air quality plans to manage emissions within local air quality targets through establishing minimum criteria.<sup>140</sup>

336. Accordingly, the Council submits that an airport seeking permission for a new development should start by seeking to ensure that the new development will deliver an improvement in air quality, whether that is delivered through the inherent features of the proposed development, or through mitigation measures secured via conditions or planning obligations. An airport development which delivers a worsening of air quality, and which does not demonstrate that this will be comprehensively offset by the use of innovative solutions and incentives against ambitious targets, or even investigate the effect of possible mitigation measures on the air quality impact of the development will be in breach of the requirements of national aviation policy.

337. The fact of the matter here is that BAL should already have an air quality plan in place. It should already have adopted an ambitious air quality target for its operations involving the use of innovative solutions and incentives. But it does not. Further, it

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<sup>138</sup> CD6.5 p83 para 3.124

<sup>139</sup> CD6.05 at [3.101] on PDF p. 77.

<sup>140</sup> CD6.5 p84 para 3.127 third bullet point.

does not identify any ambitious target for air quality if planning permission is granted and has provided no indication of what its proposed air quality action plan might include nor any assessment of the extent to which such a plan will affect local air quality. For BAL the quality of the air that those who breathe in the pollution caused by airport related activity is plainly not a matter of priority.

338. NPPF paragraph 174 (e) provides:

*“Planning policies and decisions should contribute to and enhance the natural and local environment by*

*e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of ... air ... pollution ... Development should, wherever possible, help to improve local environmental conditions such as air and water quality”*

339. Thus, development which creates unacceptable risk from, or which adversely affects existing development (e.g. a local resident population) by, unacceptable levels of air pollution is to be prevented. As we shall explain below by reference to the WHO AQG, the proposed development will give rise to an increase in important adverse risks to human health if permitted as a result of levels of air pollution which are above acceptable levels. This is contrary to paragraph 174(e) of the NPPF.

340. NPPF paragraph 185 states:

*“Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development...”*

341. A development which gives rise to important adverse risks to public health cannot be appropriate to its location and will give rise to a breach of paragraph 185 of the NPPF. As we shall explain, the proposed development will give rise to an increase in important adverse risks to human health if permitted as a result of levels of air pollution which are above acceptable levels. As such it will breach paragraph 185 of the NPPF.

342. Further paragraph 186 of the NPPF provides that *“opportunities to improve air quality or mitigate impacts should be identified, such as through traffic and travel management, and*

*green infrastructure provision and enhancement.”* The NPPG also indicates that air quality assessments could include “*measures that could deliver improved air quality even when legally binding limits for concentrations of major air pollutants are not being breached*” (ID: 32-007)

343. Read together with the requirement in paragraph 174(e) that, wherever possible, development should improve air quality and the obligations to achieve improvement in air quality within national aviation policy, it is submitted that this imposes an obligation on those seeking airport expansion to design their scheme from the outset so as to take all opportunities to improve air quality.
344. BAL has not approached its proposed expansion on this basis. No assessment was undertaken at the design stage to identify all available options to deliver air quality improvement. Indeed, that process still has not been done. The air quality action plan has not even been formulated and no assessment has been undertaken of the available options and the improvement that they might deliver. This is in clear conflict with paragraph 186 of the NPPF.
345. A central focus of the Core Strategy is a commitment to delivering improved health and well-being. The starting point for the Core Strategy was the North Somerset Vision as set out in the Sustainable Community Strategy: ‘*Sustainable, inclusive, safe, healthy, prosperous communities thriving in a quality environment.*’<sup>141</sup> The Sustainable Development Strategy they took that vision and developed six shared priorities including “improving health and wellbeing” and “living within environmental limits”. Paragraph 2.4 of the CS explains:

*“The role of the Core Strategy and other planning policy documents is to provide the spatial, land-use expression of these shared priorities. In order to create a clear policy framework, the Core Strategy identifies a suite of spatial visions.”*

346. The Core Strategy is then divided into four section one of which is entitled “ensuring safe and healthy communities”<sup>142</sup>. Within that section of the CS are the strategies design to deliver the spatial expression of the objective of improving health and well-being. The three policies within that section of the CS are policies CS25, CS26 and CS27.

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<sup>141</sup> CD5.6 p16 para 2.2

<sup>142</sup> CD5.6 p23 para 3.4

347. CS26 states:

*"The planning process will support programmes and strategies which increase and improve health services throughout the district, promote healthier lifestyles and aim to reduce health inequalities. This will be achieved through:*

*1) Requiring Health Impact Assessments (HIA) on all large scale developments in the district that assess how the development will contribute to improving the health and well being of the local population..."*

348. It is submitted that Policy CS26 must be interpreted as requiring a Health Impact Assessment to be carried out to assess how a new large scale development will contribute to improving health and well-being of the local population.

349. The proposed airport expansion is agreed to be large scale development<sup>143</sup>. The policy is designed to ensure that the health impacts on the local community (i.e. those whose health is potentially adversely affect by the proposed large scale development) are positive and thus deliver the objective of improving health and well-being. In that context, it is important to note that it is the impacts on those living around the airport who would be adversely impacted by its expansion whose health is to be assessed. As we explain elsewhere in relation to the health impacts, BAL has not undertaken this exercise.

350. It is a key objective of Policy CS26 to identify the potential health gains that could result from new large scale development, and ensure that such development delivers improved health and well-being locally<sup>144</sup>. This is the approach advocated within the Officer's Report where they advised that Policy CS26 "expects applicants to demonstrate how proposed development will contribute to improving the health and wellbeing of the local population."<sup>145</sup> This approach is consistent with the policy objectives of national aviation, the clean air strategy and national planning policy.

351. As will be explained below, BAL's air quality assessment in its ESA demonstrates that a grant of planning permission will result in a ground level concentrations which will already be considerably above levels which present important risks to public health

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<sup>143</sup> See XX Pierce and Planning XX Melling

<sup>144</sup> CD5.6 para 3.320

<sup>145</sup> CD4.11 p128

rising further if planning permission is refused. This, combined with the noise impacts will worsen rather than improve public health. As we explained elsewhere in these submissions, since there is no evidence that those subject to the adverse impacts of air quality and noise will obtain any health benefits there are no countervailing positive health effects for those people to take into account. Thus the local population affected by the large scale development will suffer a reduction in their health and well-being contrary to Policy CS26.

352. Bizarrely BAL contends that to comply with CS26 simply requires submission of an HIA and that, once that is done, policy compliance is achieved whatever the actual outcome of the health assessment. Thus BAL's submission is that compliance with Policy CS26 is achieved even where large scale development results in a reduction in health and well being for the local population.
353. It is submitted that such an approach to CS26 must be rejected. Policy CS26 cannot be read as simply requiring a process to be carried out. That is, it is not limited to requiring a Health Impact Assessment (HIA) to be conducted where large scale development is proposed. Such a policy would not have any land use consequence since it would achieve nothing more than the preparation and presentation of a HIA. Policy CS26 was included in the Plan to deliver the outcome identified in the key priorities I.e, to improve health and wellbeing. That is the objective specified in policy CS26 itself: to ensure that large scale development will "contribute to improving the health and well-being of the local population."
354. CS Policy CS3 requires development which would result in air pollution only being permitted if the potential adverse effects would be mitigation to an acceptable level. As we shall explain below, BAL's assessment demonstrates that a grant of planning permission will result in ground level concentrations which will already be considerably above levels which present important risks to public health rising further if planning permission is refused. There is no mitigation proposed which has been demonstrated to reduce the impact of the proposed development to a level which does not present an important risk to public health. Accordingly, it is submitted that the proposed development conflicts with Policy CS3 of the Core Strategy
355. Policy CS23 requires the "satisfactory resolution" of environmental issues, and makes specific reference to the impact of airport growth on surrounding communities. Since the proposed development will result in ground level concentrations, that will already

be considerably above levels which present important risks to public health even if planning permission is refused, rising further if planning permission is refused and no mitigation is offered to reduce the impacts of the proposed development to a level which does not present an important risk to public health, there is conflict with Policy CS23.

**(a) The Air Quality Impact of the Proposed Development**

356. WHO Air Quality Guidelines 2021 explain that:

*"The overall objective of the updated global guidelines is to offer quantitative health-based recommendations for air quality management, expressed as long- or short-term concentrations for a number of key air pollutants. Exceedance of the air quality guideline (AQG) levels is associated with important risks to public health."*<sup>146</sup>

357. Thus, the WHO has concluded that exposure to ground level concentrations at levels above the AQG levels in the 2021 Guidelines will result in an "important risk to public health" arising. This is consistent with the evidence of impacts on health due to air pollution levels in compliance with the currently applicable air quality standards, presented in Broomfield evidence para 103, and accepted by Mr Pyper.

358. The AQG levels are set out in Table 0.1 of the WHO Air Quality Guidelines 2021<sup>147</sup>. In respect of NO<sub>2</sub>, PM<sub>10</sub> and PM<sub>2.5</sub> the AQGs are markedly lower (i.e. more demanding) than the UK Air Quality Objectives as set out in the 2010 Regulations.

359. As a result, and on a basis which is consistent with Dr Broomfield's evidence to the Inquiry, the WHO Guidelines establish that exposure to ground level concentrations at or below the UK Air Quality Objectives/Standards will give rise to "important risks to public health". This further supports Dr Broomfield's evidence<sup>148</sup> that "the proposed development would give rise to increases in air pollution. While these increases do not result in new exceedances of existing air quality standards/objectives, they would nevertheless constitute a worsening of air quality, and would result in increased health burdens for the local population."

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<sup>146</sup> INQ85 p17

<sup>147</sup> INQ85 p19

<sup>148</sup> Broomfield p40 para 124

360. The significance criteria adopted by BAL are explained in the ES.<sup>149</sup> This requires a combining of the percentage the process contribution of a limit value with the percentage of total emissions of that same limit value. In essence the higher both percentages are, the greater the level of significance.
361. However, BAL's methodology in the ES/ESA compares the PC and PEC against existing UK Air Quality Objectives which are significantly above the levels that the new WHO Guidelines 2021 indicate are the threshold for the onset of important risks to public health.
362. The Officers' report also followed this approach with officers relying on the fact that the forecast impacts were below relevant air quality objectives.
363. Officers did not consider whether the net impact of the proposed development i.e. the comparison between the with and without development scenarios gave rise to any material change in the risk to public health even though the forecasts in both scenarios were that levels would remain below air quality objective limits.<sup>150</sup>
364. The approach adopted by Mr Pierce and by Officers is far too simplistic. Dr Broomfield explained in his evidence that since the Air Quality Standards were set, research into the impacts of NO<sub>2</sub> and particulate matter has continued and has identified that adverse impacts to public health do arise at exposures below the limits set out in the AQS.
365. Dr Broomfield explained that, whilst compliance with AQO limits is a factor to be taken into account in assessing the air quality impacts of a development, it did not provide a complete assessment of the potential impacts of the Proposed Development in the context of wider policy and emerging understanding of the effects of air pollution on health. He explained his view that both local policy and recent national policy on air quality and aviation take a more ambitious approach and seek to ensure protection against the effects on health which are now known to occur even when levels of airborne pollutants comply with the current national air quality standards.<sup>151</sup>

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<sup>149</sup> CD2.5.20 p44 Table 8D.11

<sup>150</sup> CD4.11 p 83 conclusion paragraph and top p 144

<sup>151</sup> Broomfield proof p17 para 35

366. The assessment methodology used in the ES/ESA adopts the approach set out in Guidance by IAQM/EPUK. It involves comparing the PC and PEC against an Air Quality Assessment Level (AQAL). The IAQM guidance explains at paragraph 6.32:

*“One advantage of this approach is that it avoids the need for individual pollutants to have their own tailored method of assessment. Since air quality standards are set on the basis of harm, it is reasonable to assume that the degree of harm is represented by the margin by which the AQAL is exceeded.”*

367. The IAQM approach is thus intended to enable the assessment of the significance of changes in ground level concentrations by reference to the risk to human health such changes present. While the IAQM guidance envisages that air quality objectives, EU limit/target values or Environment Agency guidelines should be used as AQALs, this guidance predates the update to the WHO Guidelines which have significantly advanced our understanding of the risks to human health posed by air pollution.
368. As we explained above, the Secretary of State explains in the foreword to the Clean Air Strategy that air quality goals are informed by the previous WHO Guidelines since they are recognised as *“the international benchmark for setting air quality standards”*. There is no reason to suppose that the Government will view the WHO Air Quality Guidelines 2021 in any other light. The 2021 Guidelines represent the latest international benchmark for the consideration of health impacts associated with air quality.
369. Accordingly, it is no answer to suggest that since Government has not considered whether to adopt the WHO AQGs, the previous UK AQOs must continue to be applied. What is required is an assessment of the likely risk to human health that a grant of planning permission for the proposed development will give rise to. The international benchmark for that assessment are the WHO 2021 AQGs since this represents the most up to date conclusions relating to thresholds of harm to public health.
370. BAL’s Response that there is no need to change its assessment in the light of the WHO 2021 AQGs is entirely disingenuous. The international benchmarks have been fundamentally and significantly altered to indicate that the proposed development will give rise to impacts which are substantially above thresholds that mark the onset of important risks to public health. The WHO 2021 AQG’s represent a fundamental change in the benchmarking of the adverse health impacts of air pollution. The

consequence is that the degree of harm to human health identified by BAL in its ES/ESA/HIA is fundamentally under-estimated. This in turn means that the conclusions of its health impact assessment are flawed since the inputs to that assessment under-estimate the degree of harm to human health. As we shall explain, that is far from the only reason to reject the conclusions of BAL's HIA.

371. In the "Note for Information" on the new WHO guidelines submitted by BAL, Mr Peirce and Mr Pyper acknowledge that the IAQM guidance is designed to enable assessment of impacts at levels below the currently applicable standards and guidelines.
372. On this basis, in addition to the assessment presented in the ES/ESA, it is relevant to rework the IAQM methodology by applying the WHO Guidelines 2021 AQGs as the AQALs since these are thresholds above which important risks to human health arise.
373. If BAL's methodology is reapplied comparing the PC and PEC against the relevant WHO Guidelines 2021 AQGs a very different conclusions as to significance of impacts are reached.

**(b) Nitrogen Dioxide**

374. The annual mean AQG for nitrogen dioxide is 10 µg/m<sup>3</sup> compared the UK annual mean limit value of 40 µg/m<sup>3</sup>. BAL has forecast the ground level concentrations of NO<sub>2</sub> in 2030, with a summary of results in the ESA CD22.1 page 100 Table 7.1 and full results in the ESA CD22.5 Table 7A.1.
375. The process contributions identified in these Tables (i.e. the contribution the development would make to environmental concentrations of NO<sub>2</sub>) range from -0.56 to 3.1 µg/m<sup>3</sup>. As a percentage of the WHO AQG of 10 µg/m<sup>3</sup> this means a range of between -5.6% and 31%. Of the 385 receptors listed, 63 have a percentage of PC against the WHO AQG of above 10%.
376. The predicted total contributions (PEC) identified in these Tables (i.e. the total ground level concentration from all sources including the proposed development) range from 5.1 to 29.03 mg/m<sup>3</sup>. As a percentage of the WHO AQG of 10 mg/m<sup>3</sup> this means a range of between 51% and 290%, with 212 of the 385 receptors listed having a PEC above 100% of the WHO AQG.

377. Even without the Proposed Development, the forecasts indicated that the WHO AEG threshold will be breached. With the proposed development total ground level concentrations at 31 receptors are predicted to be more than twice the WHO AEG threshold. This means that the Proposed Development will give rise to an increase in the level of exposure to NO<sub>2</sub> at many locations and will be significantly above a level which the WHO Guidelines represents an important risk to health.
378. In BAL's methodology, where the PEC contribution is above 110% and the PC contribution 1.5% or above, BAL's methodology identifies a substantial impact at this location. 151 of the 385 receptors examined accordingly are forecast to experience a substantial impact when the methodology is reapplied using the health based AQG identified by the WHO for annual mean NO<sub>2</sub> levels.

**(c) PM10**

379. The annual mean AQG for PM<sub>10</sub> is 15 µg/m<sup>3</sup> compared to the UK annual mean limit value of 40 µg/m<sup>3</sup>. BAL has forecast the annual mean exposure to PM<sub>10</sub> with the proposed development in 2030, with a summary of results in the ESA CD 2.21 p.103 Table 7.2 and full results in the ESA CD 22.5 Table 7A.2.
380. The process contributions identified in these Tables range from -0.40 mg/m<sup>3</sup> to 0.81 mg/m<sup>3</sup>. As a percentage of the WHO AQG this represents ranges from -2.7% to 5.4%. Of the 133 receptors, 5 have PC contributions of 2% or more.
381. The PEC identified in the table ranges from 10.6 to 17.38 mg/m<sup>3</sup>. As a percentage of the WHO AQG of 15 mg/m<sup>3</sup>, this represents a range of 71% to 116%. 15 out of 133 receptors have PECs at levels of 100% of the WHO AQG or above. Thus predicted ground level concentrations of PM<sub>10</sub> at 15 out of 133 locations are predicted to be above a level which WHO Guidelines represents as an important risk to health.
382. The criteria in ES CD 2.5.20 p. 44 Table 8D.11 were used by the applicant to identify where a moderate to substantial impact will arise. 15 of the 133 receptors would experience at least a moderate impact when the methodology in the ESA is reapplied using the health based AQG identified by the WHO for annual mean PM<sub>10</sub> levels.

**(d) PM2.5**

383. The annual mean AQG for PM2.5 is 5 µg/m<sup>3</sup> compared to the 25 µg/m<sup>3</sup> AQAL adopted in the ESA. BAL has forecast the annual mean exposure to PM2.5 with the proposed development in 2030, with a summary of results in the ES CD2.21 p104 Table 7.3 and full results in the ESA CD 22.5 Table 7A.3.
384. The process contributions identified in these Tables range from -0.22 µg/m<sup>3</sup> to 0.49 µg/m<sup>3</sup>. As a percentage of the WHO AQG this represents ranges from -4.4% to 9.8%. Of the 133 receptors, 44 would have PC contributions of 2% or more. The PEC levels range from 6.7 to 10.15 µg/m<sup>3</sup> i.e. a PEC percentage ranging from 135% to 203%. In other words, with the proposed development all of the receptors will experience ground level concentrations above the level that WHO Guidelines identifies as giving rise to an important risk to health.
385. In BAL's methodology, where the PEC contribution is above 110% and the PC contribution 1.5% or above, BAL's methodology identifies a substantial impact at this location. 58 of the 133 receptors examined are forecast to experience a substantial impact, and a further 54 to experience a moderate impact, when the methodology is reapplied using the health based AQG identified by the WHO for annual mean PM2.5 levels.

**(e) Conclusion on Impact**

386. BAL has adopted entirely the wrong approach to the assessment of air quality impacts from the outset of its application. Consistent with national aviation policy and the approach within the 2010 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.
387. 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 disdain with which BAL has approached this topic, notwithstanding (1) the existence of considerable evidence demonstrating that adverse

health impacts arise at levels below the UK AQO levels and (2) 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 AQGs.

388. When measured against the WHO AQGs 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. A reworking of BAL's own methodology against the WHO AQG's demonstrates widespread moderate impacts and widespread substantial impacts associated with exposure to NO<sub>2</sub>, PM<sub>10</sub> and PM<sub>2.5</sub>. 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 opinion.
389. Rather, the conclusion 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 has been directed to 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.
390. 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.
391. 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

392. Reason for Refusal 2 states:

*“The noise and impact on air quality generated by the increase in aircraft movements and in particular the proposed lifting of seasonal restrictions on night flights would have a significant adverse impact on the health and well-being of residents in local communities and the proposed development would not contribute to improving the health and well-being of the local population contrary to policies CS3, CS23 and CS26 of the North Somerset Core Strategy 2017”*

393. This reason for refusal identifies that significant adverse impacts on health and well-being would be caused by the Proposed Development as a result of noise and air quality impacts. It alleges that as a result the proposed development will not contribute to improving the health and well-being of the “local population”. On an ordinary reading there can be no doubt that the “local population” being referred to here is the population who are affected by the noise and air quality impacts of the proposed development. Indeed, the NPPG emphasises the need to identify any significant impacts on the health and wellbeing of the local population “or particular groups within it”.<sup>152</sup>

394. As we have already explained, CS Policy CS26, part 1, is directed to the assessment of the health impacts on the “local population” whose health and well-being may be affected by large-scale development. Indeed, Mr Pyper agreed that this was the group within the population that the health assessment required by CS26 needed to be aimed at.<sup>153</sup> It is then evident that this reason for refusal is directed to the health implications of the Proposed Development for those affected by noise and air quality.

395. That is not to say that a wider assessment of the health effects is not relevant to the determination of this appeal, but it is to say that for the purposes of determining whether the proposed development accords with the Core Strategy a more focussed assessment is required.

396. Such an approach is entirely consistent with national aviation policy and with the NPPF. As we have explained, one of the core principles of the APF is that the benefits

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<sup>152</sup> CD20.67 p4

<sup>153</sup> Pyper in XX to RTQC

of aviation will be shared “*in a fairer way than in the past*”.<sup>154</sup> That involves ensuring that those living around the Airport who are affected by airport growth are given a fair share of the benefits of growth. Again, Mr Pyper agreed that this policy applied to those living around the Airport.<sup>155</sup> Part of that consideration relates to having regard to impacts upon health.<sup>156</sup> The APF recognises the particular health costs associated with noise and night and sleep disturbance<sup>157</sup>. It also recognises the need for airport growth to deliver air quality improvement as we have explained above.

397. The NPPF at para. 93(b) states that planning decisions should support the delivery of local strategies to improve health. This must include any strategic objectives in a development such as that contained in Policy CS26. It follows that a breach of policy CS26 will be a breach of the NPPF.
398. The NPPF at para. 130 provides that planning decision should ensure that developments “*promote health and well-being*”. It is axiomatic that a development which harms the health of those it impacts without appropriate mitigation cannot achieve that policy objective.
399. As we have explained, the Proposed Development will give rise to significant and adverse impacts upon those living around the airport as a result of significant and material changes to the noise climate, particularly at night most of whom do not qualify for any mitigation whatsoever and will have to suffer substantial adverse impacts upon their health and quality of life.
400. As we have explained, the scale and nature of those impacts was not recognised by BAL in its ES/ESA. It employed a methodology which examined significance on a basis which is wholly inconsistent with the policy approach required by the NPPF.
401. Mr Pyper explained that his judgment as to the adverse health impacts was founded upon the conclusions in the ES/ESA as to the significance of impacts for each topic area. Accordingly, his judgement as to the scale of the adverse health impacts is flawed since it is not founded upon an assessment which captures the full adverse effects of

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<sup>154</sup> CD6.1 p8 para 3 first bullet

<sup>155</sup> Pyper XX to RTQC

<sup>156</sup> See CD6.1 p55 paras 3.1 and 3.3.

<sup>157</sup> CD6.1 p62 para 3.34.

the proposed development. This is particularly true in respect of noise impacts and air quality impacts for reason set out above.

402. Indeed, his POE makes this clear. He explained:

*“Whilst there would be some localised increases in adverse effects during construction and operation for people living closest to the airport; at the population level the Proposed Development is unlikely to result in a discernible change to health outcomes.”<sup>158</sup>*

403. Thus, Mr Pyper’s conclusions regarding overall impact are reached at the broad population level; in contradistinction to the consideration of the health outcomes for people living closest to the airport.

404. When Mr Pyper’s health assessment is examined carefully it becomes apparent that it is flawed in numerous respects.

**(a) Noise and Health**

405. First, Mr Pyper’s assessment is founded upon an identification of the significance of noise and air quality impacts in the ES which is itself flawed for reasons we have already explained. For example, it did not take account of any impacts above LOAEL even though this represents the onset of adverse health impacts. Further, it did not include any impacts identified by reference to the use of the N60 or N70 assessment presented in Mr Williams’s rebuttal. As we have explained that N60 assessment reveals that some 8418 people will experience greater than 10 noise events at night at noise levels above the 45 dB Lmax s recommended by the WHO as the threshold of sleep disturbance (of which 7015 will experience between 20 to 49 such events). Of these 1038 are likely to report themselves as highly sleep disturbed. Mr Williams confirmed that only a proportion of those identified in his N60 assessment would fall within the noise mitigation scheme leaving a substantial number of people exposed to noise levels sufficient to cause sleep disturbance. None of this was in the ES/ESA and none of it was taken into account by Mr Pyper.

406. Thus, Mr Pyper’s starting point under-estimates the extent of the adverse effects which the Proposed Development will have upon health and quality of life due to additional

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<sup>158</sup> Pyper p25 para 4.3.15 second bullet

noise particularly at night and due to additional risk of important harm to public health associated with changes in air pollution.

407. Secondly, his methodology was, to use Mr Pyper's phrase, a "black box". It is entirely impossible to understand how he came to reach the judgments as to significance which he did. That is in part because he did not follow a methodology which accorded with any published guidance. Indeed, although he purported to have followed the guidance on Human Health assessment for EIA dated December 2020 - of which he was one of the authors - in cross-examination it became readily apparent that he had not.
408. The HIA followed its own approach to assessment and eschewed the general approach set out in Chapter 4 of the ES.
409. Its spatial scope was said to be at four levels<sup>159</sup>
- (a) Site-specific (the population near Bristol Airport);
  - (b) Local (the population of North Somerset Unitary Authority);
  - (c) Regional (the population of South West England and South East Wales); and
  - (d) National (and international) (the population of England and Wales (and beyond in relation to international travel.
410. The HIA explained that:
- "The significance of effects is determined with reference to the nature of the development, the receptors that could be significantly affected and their sensitivity, importance or value, together with the magnitudes of environmental change that are likely to occur."*<sup>160</sup>
411. This was carried out by reference to a significance evaluation matrix which required two inputs:
- (a) An evaluation of magnitude of change.
  - (b) An evaluation of sensitivity/importance/value.

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<sup>159</sup> CD2.5.42 p9 para 16.4.2

<sup>160</sup> CD2.5.6 p8 para 4.7.22

412. In terms of magnitude of change, the HIA identified a number of factors that were to be considered: Severity, Extent, Frequency, Reversibility and Exposure.<sup>161</sup> However, the EUPHA guidance identified the additional factor of duration as a relevant consideration.<sup>162</sup> It is self evident that when considering the health impacts of noise the duration of exposure is an important factor to take into account. Unfortunately, as we have seen, Mr Williams did not identify which houses would be affected by noise levels above SOAEL by day and by night nor those above LOAEL by day but SOAEL at night and so on. This was not a matter assessed by Mr Williams not within the ES/ESA. So even if he had sought to follow the EUPHA guidance and sought to take duration of exposure into account Mr Pyper could not have done. In the field of air quality the duration of exposure is also highly relevant since the health based standards are all set by reference to different durations of exposure. Accordingly, it can only be concluded that Mr Pyper did not follow the guidance that he himself had contributed to and as a result omitted consideration of a very important aspects of health assessment.
413. In terms of the evaluation of sensitivity, the HIA identified the following factors as matters considered: Inequalities, Deprivation, Health Status, Life Stage, Outlook<sup>163</sup>. However, the EUHPA guidance identified in addition daily activities i.e. the ability of people to perform day-to-day activities is relevant to their sensitivity and capacity to adapt i.e. the ability of the population or service to absorb the change or voluntarily (consciously or unconsciously) make small changes to their behaviour that lessen its effects.<sup>164</sup> These were not matters considered or addressed by the HIA or Mr Pyper in reaching his conclusions. He did not follow the guidance that he himself had contributed to producing.
414. To assist in determining significance, the HIA identified a number of guide questions.<sup>165</sup> The EUPHA guidance takes each of the areas where guide questions are asked and enables the answers to be categorised at different levels of significance. This is best seen in the conceptual model arranged as a series of concentric circles each

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<sup>161</sup> CD2.5.42 p26 Table 16.8

<sup>162</sup> CD20.65 p84 Figure C-2

<sup>163</sup> CD2.5.42 p25 Table 16.7

<sup>164</sup> CD20.65 p82 figure C-1

<sup>165</sup> See CD2.5.42 p27 Table 16.9.

relating to a different level of significance.<sup>166</sup> That methodology requires the outcome of each guide question category to be placed at a level of significance. Mr Pyper however had not done this in respect of his guide questions. As a result it was not possible to understand how he had reached his conclusions as to the overall significance of each of the impacts.

415. For example, in relation to noise, none of the answers to the guide questions identify a conclusion that is referable to the scale used in the EUPHA methodology. The noise impact baseline guide question should point to a conclusion on a scale ranging from very limited, slight, small, substantial<sup>167</sup> but the relevant paragraph in the HIA reaches no conclusion. This means that the reader of the HIA cannot determine where on the scale each of the conclusions relating to the guide questions on significance falls. This same problem arises in respect of all of the guide questions in respect of all impacts.
416. The consequences is that Mr Pyper has not applied the EUPHA methodology in a crucial respect. It means that his process of evaluating significance is entirely opaque – it is to use his phrase a “black box”. As such it can only be given limited weight since it has not been established to be robust.
417. In terms of the magnitude of change in relation to noise impacts, this was identified in the HIA as small.<sup>168</sup> The ESA confirmed that this remained the view. This conclusion is not supported by the application of the criteria in Table 16.8 of the ES. The Proposed Development will result in significant change in the noise environment every night for thousands of people and sleep disturbance for many of them which is not mitigated. These impacts do not meet the criteria adopted by Mr Pyper in his methodology for a small magnitude of change at all:
- (a) *“small change in symptoms, quality of life or day-to-day functioning”* – noise levels at night will adversely affect the quality of life for thousands; or
  - (b) *“few members of the relevant population affected”* – thousands are affected.
  - (c) *“monthly or year affects”* – but it is a daily/nightly affect.

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<sup>166</sup> CD20.65 p86 Figure C-3.

<sup>167</sup> See CD20.65 p86 Figure C-3

<sup>168</sup> CD2.5.42 p40 para 16.11.17

- (d) *“Change in health outcomes reverses once the Proposed Development change ceases”*  
– there is no evidence that the proposed development will cease once commenced
- (e) *“A low concentration over a short time”* – exposure is sufficient to impacts upon the quality of life of thousands and could lead to self-reported sleep disturbance by over a thousand people.

418. Mr Pyper’s conclusion in respect of the magnitude of change in relation to the health consequences of the noise impacts is evidently flawed since he has misapplied his own methodology. When his methodology is applied properly to the evidence, the noise impacts will be of a large magnitude.
419. His conclusion in respect of sensitivity and noise was that the general population a sensitivity of medium was appropriate.<sup>169</sup> This is difficult to follow since his bespoke methodology for sensitivity only presents two potential outcomes: “higher sensitivity” and “lower sensitivity”.<sup>170</sup> There is no “medium sensitivity” category defined nor any explanation of how a receptor falls into such a category. This is another aspect of the extent to which Mr Pyper’s methodology cannot be followed.
420. Further and in any event, the noise impacts vary depending upon where you live. Someone in Weston will not be impacted in the way someone living near the airport under the flight path will. The approach taken in the HIA is to ascribe a magnitude to change by reference **to the whole of North Somerset**.<sup>171</sup> An assessment taken at that geographical scale does not reflect to the true health impact of those affected. It should also be noted that the “vulnerable group” assessed which included those living near the airport, was not limited geographically to those adversely affected by noise – it included children and young people, older people, people with existing poor health (physical and mental health) and people living in deprivation throughout North Somerset as well.<sup>172</sup> Consequently, the assessment of the health outcome for the vulnerable group was not an assessment of the health outcome for those living around

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<sup>169</sup> CD2.5.42 p41 para 16.11.20

<sup>170</sup> See CD2.5.42 p26 Table 16.7

<sup>171</sup> CD2.5.42 p40 para 16.11.14

<sup>172</sup> CD2.5.42 p40 para 16.11.14 and 16.11.20

the airport but a much broader group experiencing widely varying impacts over a wide geographical scale.

421. As a result, the only reasonable conclusion on the evidence is that Mr Pyper did not assess the health impact of the noise impacts that would result from granting planning permission upon those living around the airport.

**(b) Air Quality and Health**

422. In respect of air quality, Mr Pyper has not drawn upon any assessment relative to the WHO Air Quality Guidelines 2021. The brief conclusion on health impacts in BAL's "Note for Information" on these guidelines (to which Mr Pyper contributed) is unsupported by any form of assessment or evaluation. When these guidelines are properly considered, it is established that the Proposed Development will result in increases in important risks to public health in respect of NO<sub>2</sub>, PM<sub>10</sub> and PM<sub>2.5</sub> as we have explained. Mr Pyper's assessment however is founded upon a comparison with the UK AQO's which do not take into account the latest "International benchmark" and which start from the premise that the impacts of the proposed development will be insignificant.
423. Further, Mr Pyper's assessment of magnitude of change is an overall view which is not referable to any particular geographically based sub-set. It does not capture the scale of the important additional risks to public health around the airport and its road links that will be caused.
424. Mr Pyper assessment relating to sensitivity is based upon as assessment of the "general population". Whilst this term is not defined, he identifies that the sensitivity of this populations as "low" since this "reflects that most people in North Somerset live, work or study at a distance from" the Airport.<sup>173</sup> Thus, the general population is an area at least as large as the entire local authority area of North Somerset.
425. His assessment of vulnerable groups includes residents who live near the Airport but it also embraces others who are more geographically dispersed such as children or older people. Thus, it is not an appraisal which identifies the sensitivity of those living near the Airport as a separate group.

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<sup>173</sup> CD2.5.42 p38 para 16.11.9

426. As a result, the only reasonable conclusion on the evidence is that Mr Pyper did not robustly assess the health impact of the air quality impacts that would result from granting planning permission at all and certainly not upon those living around the airport.

**(c) Health Benefits**

427. Thirdly, he appraised the impacts and the benefits at different geographical scales. The HIA identifies that the economic effects of granting planning permission result in positive health benefits. These benefits are said to arise from direct and indirect employment and local/regional economy opportunities for community residents and the wider population.<sup>174</sup> The population was examined in terms of the assessment of magnitude embraces the North Somerset area but extends to the South West and South Wales level.<sup>175</sup>

428. This is important since, if planning permission is refused, the consequences of displacement have to be taken into account. The evidence is that at the South West and South Wales level the net effect of granting or refusing planning permission is relatively low. But this net effect in health terms has not been examined. 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 nowhere in Mr Pyper's assessment which demonstrates that this relative effect has been considered.

429. In terms of economic benefits, the sensitivity of the "general population" is identified as "low" because most people would already be in stable employment. The extent of this area is not stated.<sup>176</sup> The sensitivity of vulnerable groups is considered to be high, but this group extends to include children, old people and people and their dependents who are on low incomes or who are unemployed. Again, no geographical basis for the assessment is provided.<sup>177</sup>

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<sup>174</sup> CD2.5.42 p44 para 16.11.35

<sup>175</sup> CD2.5.42 p45 para 16.11.40.

<sup>176</sup> CD2.5.42 p45 para 16.11.41

<sup>177</sup> *ibid*

430. The result is that Mr Pyper's conclusions of health benefits are flawed. In any event they are not referable to benefits experienced by the population who will be adversely affected by the proposed development i.e. those living around the airport.
431. Thus, Mr Pyper did not present any evidence which assessed whether those affected by the proposed development in terms of noise and/or air pollution would after mitigation achieve improved health and well-being. It simply was not a matter which he considered. The result in that whilst an HIA has been produced by BAL it cannot be used to demonstrate that the policy objective of CS26 is fulfilled.
432. The evidence is that those affected by the Proposed Development as a result of increases in noise (particularly at night) and by additional air pollution at a level which represents an important risk to public health would do not obtain any economic benefit. As a result, they would experience a significant reduction in their health without any compensatory benefit. This is the very antithesis of a core principle of the APF. It does not come close to a fair share of the benefits of airport expansion; rather it is no share at all.
433. 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.

**(d) Health Impacts More Generally**

434. As for whether wider health benefits will arise if planning permission is granted compared to if permission were refused, it is difficult to see how they could. It has to be remembered that this appraisal does not identify the true scale of the impacts arising from noise or air quality. The ES identifies that in the operational phase a series of effects for the general population the only benefits are non-significant. Mr Pyper concludes in his evidence that

*"My conclusion is that significant beneficial effects to population health are likely in relation to investment and employment due to the Appeal Proposal."*<sup>178</sup>

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<sup>178</sup> Pyper proof p43 para 6.1.11

435. However, as we have seen at the general population level, the HIA identifies only a “*minor beneficial*” i.e. a non-significant health benefit. To be significant a benefit has to attain a moderate level on the basis of the HIA methodology.
436. In terms of whether a significant beneficial effect to population health could arise in respect of vulnerable groups. A careful reading of the HIA will identify that the “*up to moderate adverse*” impacts identified are experienced by different categories of the vulnerable than would receive the benefits. For example, the air quality impacts the vulnerable group is defined as children and young people, older people and people with existing poor health (physical and mental health)<sup>179</sup>. However, the vulnerable group for benefits includes an additional category of “people living in deprivation, including those on low incomes”.<sup>180</sup> Further, the benefit relied upon is the uptake of employment.
437. Mr Pyper does not explain anywhere in his evidence how children and older people as a broad category will benefit from gaining employment at the airport since neither group is generally in employment at all. Accordingly, it is impossible to see how Mr Pyper has balanced the impact experienced by one vulnerable group against benefits which he asserts would be obtained by a different vulnerable group. His overall conclusion must be rejected as a result; just as with the rest of his methodology, it is opaque and does not stand up to scrutiny.
438. Further, as we have explained, Mr Pyper has not examined the relative effects on health that come in the with and without development scenarios e.g. greater deprivation in South Wales meaning greater health benefits if permission is refused compared to lesser benefit via employment in the relatively affluent West of England.
439. Accordingly, it is submitted that on the basis of the HIA, there is no evidence of significant net beneficial effects either at the general population level or by reference to vulnerable groups that can be seen to arise if planning permission is granted compared to if planning permission is removed. Thus, is at best a neutral factor in the planning balance.

440. To conclude:

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<sup>179</sup> CD2.5.42 p37 para 16.11.5

<sup>180</sup> Ibid.

- (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**

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

- (a) BAL 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 its 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.

### **(a) Policy context**

442. The Council highlights the following aspects of the policy context which are relevant to the consideration of surface access.

#### **Clear surface access proposals**

443. The first aspect is the overarching requirement for proposed airport development, such as the Proposed Development, to be "*accompanied by clear surface access proposals*" so as to achieve an improvement in surface access.<sup>181</sup> If proposed airport development fails to advance clear surface access proposals or if those proposals are inchoate,

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<sup>181</sup> See the APF (CD 6.01) at PDF pp. 37 (at [1.96]) and 75 (at [5.11]). See also Aviation 2050 at [3.67] on PDF p. 67. See also NPPF paragraph 113.

ineffective or inadequate, then the development will not comply with this fundamental requirement.

#### Imperative to maximise PTMS

444. The second aspect is the 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*”.<sup>182</sup> This is consistent with the APF.<sup>183</sup> 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*”.<sup>184</sup> In addition, the NPPF requires that appropriate opportunities to promote sustainably transport modes can be – or have been – taken up.<sup>185</sup>
445. At the local level, policy CS1 requires a “*commitment to maximising the use of sustainable transport solutions*” and “[o]pportunities for walking, cycling and use of public transport should be maximised through new development and in existing areas emphasising the aim to provide opportunities that encourage and facilitate modal shift towards more sustainable transport modes”. Policy CS10 seeks to support development proposals “*that encourage an improved and integrated transport network and allow for a wide choice of modes of transport as a means of access to jobs, homes, services and facilities*”, including by requiring the provision of “*innovative and adaptable approaches to public transport in the rural areas of the district*”. This is consistent with policy DM26 and DM50.
446. It is important to note that the policy imperative is not simply to increase PTMS; rather it is to maximise the PTMS. Similarly, the requirement is not simply to set a target for increased PTMS; rather, the requirement is to set an ambitious target. To achieve both of these matters it is necessary to understand what is possible, what is not possible and the difficulty of achieving a particular increase. Without an assessment and

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<sup>182</sup> See CD 6.05 at [3.100] and [3.101] on PDF pp. 76 – 77, respectively.

<sup>183</sup> 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*”.

<sup>184</sup> See NPPF para. 104(c)

<sup>185</sup> See NPPF para. 110(a).

understanding of such matters, it is simply impossible to determine whether maximisation and ambition has been achieved.

447. BAL has sought to negate this clear policy requirement by seeking to contextualise the targets, in particular the relatively rural location of the Airport. However, this approach is flawed. First, it cannot displace the clear words of the national and local policy. Secondly, the context here is an established airport, pre-existing infrastructure, with substantial volumes of existing surface access journeys. This is a context which requires even greater ambition and even greater focus on maximising the increase in PTMS, not a reduction in ambition or a settling for lower levels of PTMS.

#### Satisfactory resolution of the impacts of the proposed development

448. The third aspect, consistently with the foregoing, is the need to ensure the satisfactory resolution of the impacts of the proposed development, in particular in terms of surface access. Policy CS23 highlights surface access as a particular concern in this regard and this is reflected in policy DM50. In order to achieve satisfactory resolution, BAL must demonstrate that the adverse impacts are adequately mitigated, i.e. resolved. Moreover, that mitigation must ensure a satisfactory resolution, i.e. an outcome which reduces effects to an acceptable level. It follows that it would be a misinterpretation of policy CS23 to read “*satisfactory resolution*”, as BAL appears to do, as simply requiring benefits to outweigh the harm. Such an approach simply ignores the requirement for resolution. Equally, it is an error to equate “*satisfactory resolution*” with NPPF para. 111, as BAL appears to do. This approach is unduly narrow because the impacts of the Proposed Development on surface access extends beyond consideration of highway safety and capacity, to include consideration of PTMS and parking.

#### Sharing the benefits

449. The fourth aspect is the sharing of the benefits of the Proposed Development. For example, APF “*expects that future growth in aviation should ensure that benefits are shared between the aviation industry and local communities*” and MBU requires that “*communities surrounding [BA] share in the economic benefits*” of making best use of BA’s runway.<sup>186</sup> See also above. In terms of surface access, this is of clear import to the consideration of

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<sup>186</sup> CD 6.01, PDF p. 55 at [3.3]. CD 6.04, PDF p. 9 at [1.22]

car parking and BAL's claimed need for surface access parking to address the claimed need for low cost car parking.

#### JLTP4

450. Whilst not forming part of the development plan for the purposes of s. 70(2) TCPA 1990 and s. 38(6) PCPA 2004, JLTP4 provides a vision for transport in the West of England Combined Authority's area, including the Council's area, including the role of Bristol Airport. The Council highlights the following matters.

- (a) JLTP4 covers the period to 2036. It is in this context that its proposed initiatives and interventions are set out. The period to 2036 aligns closely, albeit not exactly, with the growth to 12 mppa in 2030 under the core scenario.<sup>187</sup>
- (b) Far from considering the Airport as being infrastructure which deserves more lenient treatment because of its relatively rural location, JLTP4 views the Airport as "*a local, sub-regional and regional transport interchange*" where improving connectivity "*is crucial*".<sup>188</sup> This is consistent with, and underscores, the Council's submission that the context of the Airport requires greater, not lesser, focus on the maximisation of PTMS and the setting of ambitious targets (see above).
- (c) JLTP4 does see improvements to bus and coach services serving the airport as being part of improving connectivity in the short term. However, JLTP4 is also clear that "*more significant improvements are needed*" and "*more significant measures will be required*" than bus improvements.<sup>189</sup> Further, the short term, in the context of the period that JLTP4 period is not the period to 2030: it is plainly a shorter period, given JLTP4 stretches to 2036, i.e. 2036 is the long term. For this reason, other measures, such as mass rapid transport, cannot be discounted (as BAL seeks to do) on the basis that it is a "*long term*" measure: long term in the context of a plan that runs to 2036 would relate to measures later in that period, when the airport is operating at 12 mppa. Consistently with

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<sup>187</sup> CD 7.05, PDF p. 3, left hand column.

<sup>188</sup> See CD 7.05 at PDF p. 19, right hand column, penultimate bullet point. See also PDF p. 20, left hand column, second principal paragraph.

<sup>189</sup> See CD 7.05 at PDF p. 20, left hand column, third paragraph and centre-right column, ante-penultimate paragraph.

this, the provision of high quality and reliable mass and rapid transport is identified as an intervention during the period of JLTP4.<sup>190</sup> Further, Bristol Airport Rail Link Phase One and Bristol Airport Rail Link Phase Two are both identified as part of the “*early investment scheme*” Bristol South West Economic Link.<sup>191</sup>

- (d) In this context, it is clear that JLTP4 has an ambitious vision for the Airport in terms of transport connectivity and PTMS which goes far beyond bus and coach routes.

## **(b) Public Transport Mode Share**

### Development of the Application

451. 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. This is another example of how the Proposed Development has not been designed to meet the form of development envisaged by planning policy. In respect of surface access, there are two tangible consequences: first, there was, and remains, no robust assessment from BAL to justify its proposed 2.5% PTMS increase; and secondly, as a result, the opportunities to use public transport have not been maximised.

452. When BAL submitted its application to the Council, it proposed 15% PTMS. For example, the Planning Statement states:

*“Building upon the significant progress made by BAL towards achieving the consented 10 mppa public transport strategy, the ASAS will deliver and maintain a passenger modal share target of 15%.”<sup>192</sup>*

453. This starting point is stark and important: the Proposed Development was not designed to deliver any PTMS increase above that which had already been secured in the 10 mppa s. 106 Agreement (i.e. nothing greater than 15%). On receipt, the Council’s officers indicated to BAL that this approach was simply unacceptable – and rightly so. The Council’s officers, without the information necessary to undertake the sort of

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<sup>190</sup> See CD7.05 at PDF p. 69, centre-left column, ante-penultimate bullet point.

<sup>191</sup> See CD 7.05 at PDF p. 87, right hand page.

<sup>192</sup> CD 2.03, PDF p. 83 at [5.5.12]. See also PDF p. 75 at [5.3.54].

assessment that is required to calculate what an ambitious PTMS should be, suggested that a PTMS of at least 17.5%, i.e. a 2.5% increase, was necessary. BAL agreed to this in a letter on 17 December 2019:

*“Our planning application for a 12mppa capacity airport and the accompanying proposed Section 106 Heads of Terms was based on a commitment to maintain a public transport mode share target of 15% for passengers, with at least 25% of airport employees using sustainable means of travel. The Transport Assessment that supported the planning application assessed the traffic impact of our proposals in this context and concluded that the highway impact of the development, taking into account the mitigation measures proposed at that time, was acceptable in planning terms.*

*Notwithstanding the conclusions of the Transport Assessment, following engagement with NSC officers and taking into account the Highways and Transport service comments, BAL agrees to adopt revised ambitious, stretching targets of 17.5% for passengers and 30% for employees supported by additional, significant investment in public transport. Importantly, the new stretch public transport modal share target of 17.5% would be benchmarked using the new CAA survey data. This will demonstrate that on a like-for-like comparison basis, our targets for public transport mode share will be ambitious.”<sup>193</sup>*

454. In XX, Mr Witchalls suggested that PTMS had been the subject of sensitivity testing. This answer needs to be properly understood. BAL’s transport assessment (“**the TA**”) (and thus the environmental statement (“**the ES**”)) was based on only a 15% PTMS, as the TA confirms expressly (and as is clear from the quotation above).<sup>194</sup> The addendum transport assessment (“**the TAA**”) (and thus the addendum environmental statement (“**the ESA**”)) was based on a 17.5% PTMS, as the TA confirms expressly. It follows that neither the TA nor the TAA (and thus neither the ES nor the ESA) contains any assessment based on different PTMS. There is no sensitivity testing of higher figures to understand what may be possible or not.
455. TN009 (referred to in Mr Witchalls’ POE at [6.1.3]) did undertake sensitivity testing, but this was not sensitivity testing to establish the appropriate PTMS, i.e. it was not sensitivity testing to establish that 17.5% PTMS was an ambitious target or to establish that 17.5% PTMS represented the maximisation of the opportunities for public transport (“**PT**”).<sup>195</sup> Rather, the sensitivity tests in TN009 varied the PTMS in order to

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<sup>193</sup> CD 3.9.1 at PDF p. 2.

<sup>194</sup> CD 2.9.1 at [1.3.3] on PDF p. 26.

<sup>195</sup> TN009 is at CD 3.4.2 at PDF pp. 2 – 14.

assess the effect of this on highways impacts, as is clear from TN009 at [5.1]: “*The agreed sensitivity test for the development of Bristol Airport to accommodate 12 mppa has demonstrated that the Core Test, set out in the TA, presents a robust assessment in terms of predicted transport impacts.*”<sup>196</sup> This is also confirmed by the fact that the conclusions of TN009 makes no reference whatsoever to whether the different PTMS used in the sensitivity testing are achievable or not. This is also consistent with the fact that the 17.5% PTMS was proposed by the Council not by BAL.

456. Mr Witchalls also referred to TN013 in XX, but this does not demonstrate any assessment of PTMS either.<sup>197</sup> The assessment in TN013 was only considering whether the current bus network had capacity to absorb a 15% PTMS. This is clear from the conclusion of TN013 at [3.1]: “*It can be concluded that the current bus network serving Bristol Airport has sufficient capacity to achieve a 15% passenger mode share and beyond*”.<sup>198</sup>
457. It follows that at no point during the preparation of the Application or after determination of the Application in the TAA and ESA has BAL actually assessed the proposed PTMS increase of 2.5%. Mr Witchalls tacitly concedes as much in his POE.<sup>199</sup>

Absence of any assessment before the inquiry

458. 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.
459. 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.

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<sup>196</sup> See also TN009 (CD 3.4.2) on PDF pp. 4 – 6 at [4.1] – [4.5] which illustrates how the sensitivity tests were used to vary the hourly vehicle profile, i.e. to vary the inputs to the assessment of the junction models etc.

<sup>197</sup> See CD 3.4.2 at PDF pp. 409 – 414.

<sup>198</sup> CD 3.4.2 at PDF p. 413.

<sup>199</sup> See his POE at [6.5.2]: “*these did not specifically identify the likely number of passengers that may use each of the services*”.

This does not establish what the maximum uplift it is possible to achieve. Further, this exercise does not consider any alternative options – for example, the introduction of new bus routes, a greater increase in frequency on existing routes or mass transit – to understand what effect these measures might have and how far those measures would be achievable. It was particularly important to undertake this exercise given Mr Witchalls’ evidence in XX that there was “*no ceiling*” on the PTMS that could be achieved: in such a circumstance a full and rigorous examination of the possibilities was required. That was not done.

460. 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. For example, Mr Witchalls omits to assess the effect of: the public transport interchange (“PTI”); the proposed publicity/marketing proposals; pricing controls; the community concessionary fare system; improvements to the 216 National Express Airport to South Wales; and the proposed improvements to the 404 National Express Airport to Devon and Cornwall.<sup>200</sup> These are all matters which will improve PTMS (indeed, they were specifically designed for that purpose).

461. 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% is possible in his scenario 1 or 4.1% in his scenario 2. There is no good reason to discount either scenario. Witchalls suggested that this was to ensure that there was some resilience and a higher likelihood of obtaining the target. However, this reasoning is flawed. Even if 2.9% (or 4.1%) was the maximum possible, a reduction from that level means that opportunities to increase PT usage have not been maximised and the target which is set is not ambitious. Such a reduction is not policy compliant. In any event, given that Mr Witchalls has not assessed a range of measures (see the preceding paragraph), even if it was justified to allow some “headroom” (which is not accepted), that headroom is provided by the additional unassessed measures.

#### Comparison with CAA data

462. BAL has also sought to rely on a comparison of PTMS at the Airport to other airports (using CAA) data to justify its position. This approach is surprising: in the

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<sup>200</sup> See, inter alia, the proposals in Schedule 1 to the Unilateral Undertaking; and CD 2.9.1 Table 9.1 on PDF p. 109 – especially the Public Transport row.

determination of the application, BAL told the Council's consultants that "*it is misleading to benchmark BAL's parking proposals and public transport modal share with other UK airports*".<sup>201</sup> There is no good reason for BAL's change of approach. In XX, Mr Witchalls attempted to draw a distinction between "*benchmarking*" and his comparative exercise. This is not a proper basis for any distinction: a comparative exercise is founded on the premise that the comparison is useful and will inform the level of PTMS achieved at Bristol – this is simply benchmarking by another name.

#### Mr Colles' evidence

463. 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, greater than 2.5% PTMS increase is achievable (i.e. 2.9% or 4.1%) 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, this 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 higher the 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.

#### Compliance with planning policy

464. 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.

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<sup>201</sup> CD 3.9.2 at PDF p. 21 (first paragraph).

**(c) Parking Demand**

465. As a preliminary matter, it is important to note that the updated parking demand study (2020) (“**the UPDS**”) post-dates the determination of the Application and thus was neither considered nor endorsed by the Council’s officers or consultants.

466. 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.

Reason 1 - Absence of scrutiny

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

468. The steps taken in the Parking Demand Study (2018) (“**PDS**”) and the UPDS were agreed in XX of Mr Witchalls and can be summarised as follows:

		<b>2018 PDS</b>	<b>2020 UPDS</b>
1	Baseline passengers (“ <b>pax</b> ”) parking	1.7 m pax. in 2017	1.73 m pax. in 2019
2	Forecast pax. parking @ 12 mppa	2.3m pax. in 2026	2.28m pax. in 2030
3	Number of cars p.a. @ 12 mppa (divide [2] by group size)	1.55 m cars p.a. in 2026	1.23m cars p.a. in 2030
4	Number of cars parked <u>at airport</u> @ 12 mppa (percentage of total demand which is on airport)	1.28m cars p.a. in 2026	0.96m cars p.a. in 2030
5	Demand @ 12 mppa (apply OD ratio)	22.6k @ 12.5% PTMS 21.9k @ 15% PTMS  Both PTMS based on bus data. Both in 2026.	22,200 in 2030 (@ 24.3% PTMS based on CAA data only)
6	Shortfall (capacity of 18,000)	@ 12.5% PT = 4.6k @ 15% PT = 3.9k	4.1k

469. 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.
470. By comparing the steps in the PDS and UPDS in the table above, it can be seen that this discrepancy is a result of the occupancy – demand (“OD”) ratio (i.e. step 5). 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. Put numerically:
- (a) in the PDS the OD ratio is applied to a starting point of 1.28m cars per annum parking at the airport in the 12 mppa scenario (see step 4), to arrive at a peak demand at 12 mppa of 21,900 cars (at 15% PTMs) (see step 5); but
  - (b) in the UPDS, the OD ratio is applied to a lower starting point of 0.96m cars per annum parking at the airport in the 12 mppa scenario (see step 4), to arrive at a higher peak demand at 12 mppa of 22,200 cars (with a supposedly higher PTMS) (see step 5).
471. The higher peak parking demand in the UPDS can only be explained by the OD ratio because the starting point was lower. 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.
472. This opaqueness exists despite requests from the Council for further information. For example:
- (a) The Council requested the calculations and analysis which supported the demand studies. This was not provided. The high point of the information was the propensity to park information. However, this was provided after the inquiry had started, considerably after the data had been requested and shortly before the break preceding the highways week. Moreover, this data was provided in PDF format, such that the calculations were simply not available as requested.

- (b) BAL provided the Council with the parking occupancy and car entrances data for 2017, but not for either 2018 or 2019, despite the OD ratio in the UPDS being based on an average across the years 2017 – 2019. Ultimately this prevented any meaningful interrogation: only part of the picture had been revealed.
473. Further, it is important to note that Mr Witchalls accepted in XX that the Council was not in a position where it could have replicated BAL's analysis: in short, the necessary input data was in BAL's possession, not the Council's. In light of this concession, any argument that the Council should have advanced a positive case, but did not do so, is untenable (leaving aside the error in this approach as a matter of principle – see above). Moreover, it is in these circumstances that effective scrutiny of BAL's calculations is even more important, yet that calculation was prevented, in particular on the "key input" of the OD ratio.
474. Two arguments were raised in XX and RX of Mr Witchalls on this issue. Neither provide an answer for the following reasons.
- (a) The professional obligations of Mr Witchalls and his colleagues cannot be relied upon in response to these submissions. The Council's submissions are not directed at whether Mr Witchalls and his colleagues have acted in accordance with their professional obligations – i.e. whether they have been honest – rather, it is directed at the competency of their work – i.e. whether any mistakes were made, whether the calculations were correct and whether the approach was correct. A consultant may act entirely in accordance with their professional obligations yet still make a mistake or adopt the wrong approach or make an error in their calculations. Professional obligations are no protection against such error.
  - (b) In RX of Mr Witchalls it was suggested that the higher parking demand in the UPDS despite the allegedly higher PTMS than the PDS was attributable to the PTMS because passengers were being moved up the transport hierarchy from taxi/pick up & drop off to park and fly. This suggestion is erroneous because insofar as there were any changes in the transport hierarchy, those changes are taken into account when calculating the number of cars parking at the airport annually (in steps 1 – 4 in the table above). This is not a factor which is relevant to the translation of that annual demand to a peak demand. That translation occurs only on the basis of the OD ratio, which is derived from car park

entrance data, not PTMS considerations. Accordingly, movement up the hierarchy cannot explain why there is a higher peak car demand in the UPDS despite a lower number of annual cars parking.

Reason 2 - PTMS uplift applied to the wrong baseline

475. Secondly, the UPDS has applied the 2.5% PTMS increase to the wrong baseline.
476. 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.<sup>202</sup> Mr Witchalls confirmed this at the start of his XX. In any event, it is clear from the s. 106 agreement and Mr Witchalls POE: "*A key objective of the ASAS is therefore to increase the public transport use from the 10mppa baseline by 2.5% by the time 12 mppa is reached*" (emphasis added).<sup>203</sup>
477. 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. The consequence of not using the 10 mppa baseline is that the output of the 2.5% PTMS uplift is not robust and as a result the UPDS is not robust because the PTMS is a critical input in calculating parking demand.
478. This error in the UPDS is readily apparent.
479. Mr Witchalls describes the process undertaken in the UPDS in his POE as follows:

*"It is important to note that a different approach was taken in forecasting car parking demand compared with highways impacts assessments. For the parking demand forecasts, a relative increase in PT use of 2.5% was assumed against the baseline 2019 dataset for parking demand, rather than an assumed absolute PT share of 17.5%. The parking forecasts therefore effectively represent a c. 24.3% PT share i.e. actual PT share at the time of parking surveys of 21.8% (based on CAA published data as shown in Table 6.3) + 2.5%."*<sup>204</sup>

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<sup>202</sup> 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.

<sup>203</sup> Mr Witchalls POE at [4.5.3] on PDF p. 27.

<sup>204</sup> Mr Witchalls POE at [6.2.5] on PDF p. 60.

480. It is apparent from this (and as Mr Witchalls confirmed 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.
481. This approach is only robust if the 21.8 % CAA figure is equal to (or greater than) the 10 mppa 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.
482. 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. The inevitable consequence is that it is impossible to conclude that the UPDS is robust. This has not been demonstrated and cannot be concluded on the available evidence.
483. The above submissions are sufficient to afford the UPDS no weight. However, 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%*".<sup>205</sup> 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.

#### Reason 3 - UPDS applied the wrong uplift

484. 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

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<sup>205</sup> Mr Melling's POE at [4.2.12] (first sentence) on PDF p. 52.

PTMS is that the demand for car parking will be lower.<sup>206</sup> It follows that the claimed parking demand is not justified without more. (For the avoidance of doubt, this third reason is independent of the foregoing two reasons. The first two reasons apply even if the Council is not correct regarding the PTMS as they operate on the basis of BAL's own figures.)

485. The matters raised in RX of Mr Witchalls are no answer to these points for the following reasons:

- (a) An increase in PTMS is not the same as moving passengers up the modal hierarchy. When PTMS is increased a passenger travels by public transport (e.g. rail, bus, coach, minibus, walking, cycling) rather than by private car (park and fly) or taxi. Thus, there is no shift from persons arriving by taxi/drop off & pick up to private car when PTMS is increased. By comparison if someone is moved up the modal hierarchy from taxi/drop off & pick up to park and fly that would be an improvement in modal shift but would not be a shift in PTMS.
- (b) It is not possible to assert that any overestimation of demand in the UPDS can be discounted because the additional on-site car parking will take a larger share of the off-site car parking. There are two reasons for this. **First**, the calculation in the UPDS has already made an assessment of how total demand will be split between on and off site provision: see the reduction from step 3 to step 4 in the table above. Thus, it is unjustified to consider that any greater reduction in off site demand could be achieved than that which has already been assessed in the UPDS. **Secondly**, as Mr Witchalls accepted in XX, he has no evidence (and has not assessed) whether BAL will ever be able to price on site parking at a sufficiently low level that it is not undercut by off site parking. Being realistic, Mr Colles' position should be preferred: BAL will never be able to undercut off site car parking which is inevitably priced to undercut BAL. This is particularly the case as BAL seek to use pricing as a mechanism to control demand (i.e. to reduce demand).

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<sup>206</sup> 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 hierarchy). Rather, it is an increase of people arriving by car (or taxi, or drop-off) to people arriving by non-car modes of transport.

### Conclusion

486. 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.
487. The consequence of this issue is dealt with below in respect of the Green Belt issue.

### **(d) Surface access infrastructure**

488. The specific issues with each junction are set out in Appendix A to these submissions. For the reasons set out therein, the surface access infrastructure proposals are inadequate, giving rise to conflict with the CS and the NPPF. By way of context to the submissions in Appendix A, the Council notes the following overarching and thematic matters.

### Reason for refusal

489. A large portion of the XX of Mr Colles sought to establish that his concerns about junction design fell outside of the first reason for refusal. Mr Colles did not accept this. He was correct to maintain that position. The first reason refusal refers *inter alia* to “*an adverse impact on an inadequate surface access infrastructure*”. Mr Colles’ concerns regarding the design of the junction improvements fall full square within this: the effects of a project, such as the Proposed Development, are assessed after consideration of the proposed mitigation, thus “*an adverse impact*” is an assessment after consideration of the junction improvements and is a clear overall conclusion that the improvements are insufficient – if it was otherwise, the impact would not be adverse.

### Detailed design

490. 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.<sup>207</sup> 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. See *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]):

*“... reflecting the holistic structure of the planning regime, for a development to be lawful it must be carried out fully in accordance with any final permission under which it is done, failing which the whole development is unlawful.”*

491. This approach was expressly endorsed by Singh LJ in *Hillside Parks Limited v Snowdonia National Park Authority* [2020] EWCA Civ 1440 at [67].
492. 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. This is particularly the case because “a change to a development for which permission has been granted is not allowed under that permission merely because it is minor or immaterial” (as such an approach is contrary to the statutory scheme following the enactment of s. 96A TCPA 1990): see *Singh* at [21]. Moreover, it cannot be concluded that a departure at detailed design would not be the subject of enforcement action: such a judgment is fact sensitive and cannot be prejudged; and in any event, it is trite that the determination must proceed on the basis that BAL will comply with the terms of any planning permission granted in full.
493. It follows that Mr Witchalls suggested solution is not an approach which can be lawfully adopted. The Proposed Development must be accepted on the basis of the plans before the inquiry, and on that basis, the surface access infrastructure is clearly deficient.

#### BAL’s approach to compliance with policy

494. In XX of Mr Gurtler and Mr Colles, it appeared to be BAL’s case that it would comply with local planning policy if there were any improvements in surface access

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<sup>207</sup> Notably: C1124-SK-A38-010 11.0 A38 Junction Improvements – Option 10

infrastructure. Such an approach is based on a misinterpretation of policies CS10 and CS23.

495. As to policy CS 10, it is clear from the opening words to the policy that it seeks “*an improved and integrated transport network*”. This overarching goal must be approached holistically for each development, viewing the development in the round. It would be contrary to that overarching goal if the requirements of policy CS10 – for example to “*improve road and personal safety and environmental conditions*” – were interpreted as being satisfied by any improvement, even where the improvements did not resolve all of the surface access impacts of the development. Such an interpretation would fail to view each development holistically – i.e. to consider the development in the round, including those aspects which are not improved or are made worse - and would run counter to the purposes of the policy: a development could deliver some improvements, but overall have a harmful impact on surface access and yet still comply with the policy. This would not secure the priorities which underpin the policy: see the supporting text at [3.145].
496. Similarly, as to policy CS 23, the policy requirement is not to deliver “*some improvement*”; rather it is “*to demonstrate the satisfactory resolution of environmental issues, including the impact of growth on surrounding communities and surface access infrastructure*”. As set out above in general terms, the requirement for satisfactory resolution is not a weighing harm and benefits rather it is a qualitative assessment of whether the impact has been resolved. In terms of surface access infrastructure, the application of this policy is straightforward: the issue is whether the surface access impacts have been resolved. Resolution is not the pursuit of some improvements; rather it is the resolution of all of the impacts of the Proposed Development.

#### The Council’s intended highway improvement works

497. In the XX of Mr Colles, BAL sought to rely on the fact that the Council’s ongoing consultation exercise for the major roads network scheme was based on a very similar junction design to that proposed by BAL. However, this is simply irrelevant to judging the acceptability of the Proposed Development. The Council’s consultation is exactly that – a consultation. The outcome has not been prejudged and the scheme will be worked up further in light of consultation responses. Indeed, Mr Colles confirmed that the design work was ongoing and would continue following the consultation. Thus both Mr Colles’ specific concerns – and any other concerns raised during the

consultation – can be and will be addressed before obtaining planning permission. This is the proper approach, unlike the approach adopted by BAL.

#### Reproduction of TA

498. Finally, it was suggested variously that the Council could have – or even should have – produced its own modelling to reproduce that undertaken in the TA. As a matter of principle, this assertion is untenable: it is not for the Council to undertake an assessment which both national policy (e.g. NPPF para. 113) and local policy (e.g. policy CS 23 - “will be required to demonstrate”) impose on BAL. In any event, this is not something which the Council would have been able to do: BAL did not provide the Council with traffic data which separated out background growth from growth in airport traffic. This was data which is only in BAL’s control and thus the Council could not undertake this exercise.

#### Compliance with planning policy

499. In light of the above, the Council submits that the Proposed Development fails to comply with national or local policy on surface access. In particular, for the reasons above and 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. Moreover, the Proposed Development fails to provide the necessary infrastructure for a development which maximises PTMS. 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.
500. For the avoidance of doubt, in light of the proper interpretation of the relevant transport policies set out above, BAL cannot achieve policy compliance by pointing to some isolated surface access improvements. First, those improvements are necessary mitigation, i.e. to offset harm that would otherwise arise. Secondly, a holistic view is required, looking at the Proposed Development in the round, including adverse impacts.

## VIII. GREEN BELT

501. 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.
502. The importance of the Green Belt resounds at all levels of planning policy: the opening words to Chapter 13 of the National Planning Policy Framework (“**NPPF**”) confirm that the Government “*attaches great importance to Green Belts*”; and the CS explains that the Green Belt “*makes an important contribution to [...] local character and distinctiveness, and is highly valued and strongly supported*”.<sup>208</sup>
503. Reflecting this importance, a longstanding feature of national policy, now contained in NPPF para. 147, is the principle that inappropriate development is by definition harmful to the Green Belt. This reflects the general difficulty of establishing in many cases that a particular proposed development within the Green Belt would of itself cause “*demonstrable harm*”; although clearly where there is such demonstrable harm – as is accepted in this case – the basis for protecting the Green Belt is even stronger. Moreover, by establishing that inappropriate development is by definition harmful, the Green Belt is protected from suffering the death of a thousand cuts: if it was otherwise then the cumulative effect of a number of individual and possibly very modest proposals with less “*demonstrable harm*” would be very damaging to the essential quality of openness of the Green Belt.<sup>209</sup>

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<sup>208</sup> CD 5.06 at [3.93] on PDF p. 45.

<sup>209</sup> In respect of this paragraph, see *R. (Heath and Hampstead Society) v Camden LBC* [2007] EWHC 977 (Admin), [2007] 2 P. & C.R. 19 *per* Sullivan J at [37], approved and applied in respect of the NPPF in *Turner v Secretary of State for Communities and Local Government* [2016] EWCA Civ 466, [2017] 2 P. & C.R. 1 *per* Sales LJ (as he then was) at [25].

504. Consistently with the manner in which national policy treats inappropriate development, it is a deliberate feature of national (and local) policy that inappropriate development should be allowed only where very special circumstances (“VSC”) are demonstrated. The bar for demonstrating VSC is set at a very high point. Given this, the circumstances in which VSC may be demonstrated are very narrow. If it was otherwise and exceptions were readily made, the protection to the Green Belt would be undermined by cumulative modest “cuts”. This is of particular importance in the present case given the creeping incremental development of the Airport, as we described in Opening.
505. It was against this background that the Committee, well versed in Green Belt policy and the need to protect the Green Belt given its prevalence in the Council’s area, refused the Application. It is against this well established background that this issue fall to be determined.

**(a) Approach to the Green Belt**

506. 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. Accordingly, we note the following matters.
507. First, pursuant to NPPF para. 137, the “*fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open: the essential characteristics of Green Belts are their openness and their permanence*”. Consistently with this, one of the five key purposes of the Green Belt is “*to assist in safeguarding the countryside from encroachment*”: see NPPF para. 138(c).
508. Secondly, pursuant to NPPF para. 147, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in VSC. As is clear from NPPF para. 148, VSC is the outcome of a balancing exercise: the balance of harm to the Green Belt by reason of inappropriateness and any other harm resulting from the proposal on the one hand, against other considerations, i.e. other material planning considerations, on the other hand.
509. Thirdly, it follows that as VSC is the outcome of a balancing exercise, it is incorrect to see VSC as a set of factors which can be applied universally to multiple different planning applications. However, it was precisely this erroneous approach which Mr

Melling adopted, as became clear in XX. The consequence of Mr Melling's erroneous approach was that he sought to pray in aid previous decisions concerning BAL's development in the Green Belt where VSC had been demonstrated on the basis that he was advancing the similar factors in this appeal as amounting to VSC. This was in error: the fact that previous decisions considered similar factors does not assist BAL because the conclusion of VSC is one which is specific to the balance in that case. The balance in this case is demonstrably different to the balance in any previous case: the need to take into account "*any other harm resulting from the proposal*" in NPPF para. 148 requires a holistic consideration of the entire Proposed Development, not simply the car parking element, and there is no previous decision which has considered the Proposed Development or its attendant – and unique – mixture of harms.

510. Fourthly, it is important to recognise the clear direction in NPPF para. 148 that any harm to the Green Belt, both that arising from inappropriateness and from any consequent harm to the openness of the Green Belt, must be afforded substantial weight. Thus, even where there is a very low level of harm to openness, that harm must be afforded substantial weight. Of course, in circumstances such as the present, where there is significant harm to the openness of the Green Belt, the result is that the weight to that harm must be even higher – i.e. greater than substantial weight – and thus the already high threshold required to demonstrate VSC is elevated yet further. It became clear in XX that Mr Melling's approach was confused and wrong: he described harm as an "important" factor, but did not recognise the clear starting point is that any harm must be afforded at least substantial weight.

511. Fifthly, the approach to consideration of openness is well established:

- (a) As the PPG explains, openness has both a spatial and visual aspect, and both should be considered when assessing harm to the Green Belt. Further, the duration of the development and its remediability, as well as the degree of activity likely to be generated, such as traffic generation, are all relevant considerations when assessing effects on openness.<sup>210</sup>
- (b) Openness is not defined in the NPPF, but it is established that openness is the "*state of being free from built development, the absence of buildings – as distinct from the absence of visual impact*": see **R. (Lee Valley Regional Park Authority) v**

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<sup>210</sup> See paragraph 001; reference ID 64-001-20190722. Quoted in Mr Gurtler's POE at [22] on PDF p. 10.

*Epping Forest DC* [2016] EWCA Civ 404, [2016] Env. L.R. 30 *per* Lindblom LJ at [7].<sup>211</sup> Thus, “[t]he extent to which the openness [of the Green Belt] is, or is not, visible from public vantage points and the extent to which a new building in the Green Belt would be visually intrusive are a separate issue”: see **R. (Heath and Hampstead Society) v Camden London Borough Council** [2007] EWHC 977 (Admin) *per* Sullivan J (as he then was) at [21], approved in *Lee Valley* at [7] (and upheld on appeal – [2008] EWCA Civ 193). One consequence of this is the limitation in using an assessment of visual impact prepared as part of a Landscape and Visual Impact Assessment (“LVIA”): such an assessment is not an assessment of openness and overlooks the distinction between visibility from public vantage points and visual intrusion which causes harm to openness. For this reason, Mr Melling’s claimed reliance on the view of a professional landscape architect is misplaced: as explained below, the focus on LVIA and the discipline of a landscape architect has ultimately led Mr Melling into error in his assessment. Similarly, questions put to Mr Gurtler in XX which focussed on “the character of the countryside” were questions which go to landscape character, not the consideration of openness, and thus ultimately do not assist.

- (c) The openness of the Green Belt has a spatial as well as visual aspect. Accordingly, “the absence of visual intrusion does not itself mean that there is no impact on the openness of the Green Belt”, although it does not follow that the openness of the Green Belt has no visual dimension: see **Turner v Secretary of State for Communities and Local Government** [2016] EWCA Civ 466, [2017] 2 P. & C.R. 1 *per* Sales LJ (as he then was) at [25].<sup>212</sup> See also **R. (Samuel Smith Old Brewery (Tadcaster) v North Yorkshire County Council** [2020] UKSC 3, [2020] PTSR 221. Put prosaically, development does not need to be seen in order to harm the Green Belt as the harm can be to the spatial aspect of openness alone.

512. Sixthly, it follows that the line of questions in XX of Mr Gurtler which focussed on the “need to experience” openness was in error: spatial harm can occur without any attendant visual harm; and harm to the visual aspect of openness is not the same as an LVIA assessment based on receptors (see below). In any event, this line of questions

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<sup>211</sup> See CD 19.15 on PDF p. 3.

<sup>212</sup> CD 19.16 at PDF p. 10.

missed the obvious: the effect of openness can be experienced from both outside and within the Airport, including Cogloop 2.

**(b) Inappropriate development in the Green Belt**

513. 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.
514. Much was made in XX of Mr Gurtler of the fact that he also considered that the A38 improvement works and the taxiway widening/fillets amounted to inappropriate development in the Green Belt. Ultimately, this line of questions does not assist BAL in obtaining planning permission. The Council's case is – and has always been – that VSC has not been demonstrated for the Silver Zone Development.<sup>213</sup> Mr Gurtler's balancing exercise is conducted on the same basis, as he stated expressly, both in writing and XiC.<sup>214</sup> These submissions proceed on precisely the same basis. Neither Mr Gurtler nor the Council, in either its evidence or submissions, invite the Inspectors to conduct a balancing exercise on the basis that the A38 improvement works and the taxiway widening/fillets amount to inappropriate development. The Inspectors may wish to consider this matter themselves and form their own view – as they are entitled to do, irrespective of the evidence of Mr Melling and Mr Gurtler – but that is not necessary for this appeal to be dismissed.

**(c) The year round use of the existing Silver Zone car park and the Silver Zone extension will cause significant harm to the openness of the Green Belt**

515. 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.

**Preliminary remarks on Mr Melling's evidence**

516. Mr Melling relied on the assessment of harm to the Green Belt in Appendix A to his POE. However, it is important to recognise that this assessment was produced in June

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<sup>213</sup> See the Council's SOC at [113] & [122] on PDF pp. 32 – 33.

<sup>214</sup> See Mr Gurtler's POE at fn. 20 on PDF p. 67.

2021, after the Application was refused and after the appeal was lodged.<sup>215</sup> However, by this date, BAL had already set out its position in this appeal that there was “*limited harm*” to the Green Belt.<sup>216</sup> Indeed, Mr Melling had made the same claim in his Planning Statement. Neither statement was supported by any analysis: Mr Melling considered that the extent of harm to the Green Belt was obvious and did not require assessment.<sup>217</sup> This was not a position supported by officers – see below – and it is not a position which is borne out by scrutiny. Ultimately, this is another example of BAL’s failure to properly assess the harms from the Proposed Development. The consequence is that Mr Melling has sought to justify retrospectively a conclusion on harm which was unsupported by any proper analysis.<sup>218</sup> The inevitable consequence, as set out below, is that this retrospective justification is inaccurate and underestimates the harm to the Green Belt.

517. Moreover, this failure by BAL cannot be explained on the basis that officers did not request a Green Belt assessment: first, officers had their own Green Belt assessment and ample local knowledge to reach their own view on the harm to the Green Belt; secondly, it is not for officers to tell BAL how to prepare its application – the policy tests relating to the Green Belt are well known and it was for BAL to produce the appropriate evidence. Notably, BAL do not seek to criticise the approach of officers in reaching their judgment on the level of harm to the openness of the Green Belt.

#### The baseline position

518. Before considering the harm to the Green Belt arising from the Silver Zone Development, it is important to note the baseline condition of Cogloop 1 and Cogloop 2.
519. In 2012, after the grant of the 2011 Permission, the Inspector examining the CS considered the development permitted on Cogloop 1 and concluded that “*the land*

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<sup>215</sup> See Mr Melling’s POE at PDF p. 150.

<sup>216</sup> See BAL’s SOC at [9.6] on PDF p. 22.

<sup>217</sup> See Mr Melling’s POE Appendix A at [1.1.2] on PDF p. 151 – “*would quite clearly result in only limited harm to the Green Belt*”.

<sup>218</sup> The consideration of harm to the Green Belt in the Planning Statement is contained in only three substantive paragraphs: see CD 2.03 at [5.3.65] – [5.3.67] on PDF pp. 76 – 7. The analysis in these paragraphs is woefully inadequate: there is no consideration of spatial harm; the assessment of visual harm is not concerned with openness, but rather simply seeks to read across the conclusions from the LVIA – an approach which is inadequate for the reasons below.

*outside the inset ... still contributes to the purposes of its inclusion within the Green Belt, notwithstanding the extant permission*".<sup>219</sup> This position holds good today: there has been no material change in policy or in the position on the ground, as Mr Melling accepted in XX. Indeed, Mr Melling accepts that Cogloop 1 continues to contribute to the purpose of safeguarding the countryside from encroachment.<sup>220</sup> Further, whilst the physical development and block car parking within Cogloop 1 harms the openness of the Green Belt, that harm is reduced in the winter months when Cogloop 1 is not in use.

520. Cogloop 2 makes an even greater contribution to the purposes of including land in the Green Belt. Cogloop 2 performs an important buffer function to safeguard the countryside to the south of the Airport from encroachment because of its location immediately adjacent to Cogloop 2.<sup>221</sup> There is no more important parcel of Green Belt land around the Airport: on the north of the airport, the existing development and Downside Road form a defensible boundary; to the east of the Airport, the A38 also forms a defensible boundary; and to the west Winter's Lane wraps tightly around the runway to form a defensible boundary. However, to the south, there is no such defensible boundary and thus Cogloop 2, as part of Mr Melling's parcel S2, is essential to preventing encroachment into the Green Belt in the south of the Airport. This was clearly recognised by Mr Gurtler in his evidence.<sup>222</sup>
521. Mr Melling acknowledges that Cogloop 2, as part of parcel S2, makes "*a contribution*" to the purpose of safeguarding the countryside from encroachment. However, he underplayed this contribution, refusing to assess this contribution as "*significant*" in his assessment.<sup>223</sup> There was no rational basis for ignoring the significance of the contribution that Cogloop 2 makes: as explained above, there is no parcel of land that makes a more important contribution to the safeguarding of the countryside around the Airport and Mr Melling was unable to identify such a parcel in XX. Mr Melling had to resort to the suggestion that parcel S3 performed an "*equally important*"

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<sup>219</sup> CD 15.2 at [64] on PDF p. 16, quoted in Mr Gurtler's POE at [28] on PDF p. 13.

<sup>220</sup> See Mr Melling's POE at PDF p. 185.

<sup>221</sup> See also the Council's Green Belt Assessment which confirms that Cell 7 (as defined in that assessment) "*mainly acts to contain the spread of development around the airport*": see Mr Gurtler's RPOE at PDF p. 58, right hand column, bottom row.

<sup>222</sup> See Mr Gurtler's POE at [51] and [61] on PDF pp. 19 & 23.

<sup>223</sup> See Mr Melling's Table 3.1, right hand column, at PDF p. 156 of his POE.

contribution to the safeguarding of the countryside, but this is demonstrably not the case: parcel S3 is located immediately adjacent to Winter's Lane, and it is Winter's Lane which forms the defensible boundary to prevent encroachment. The contribution from Cogloop 2 is also heightened by the previous creeping development at the Airport: as the development has encroached further and further into the Green Belt to the south of the Airport the remaining land increases in significance for the purposes of preventing that encroachment.

522. Further, Cogloop 2 makes a significant contribution to the openness of the Green Belt (and a greater contribution than Cogloop 1). Cogloop 2 is in agricultural use and is free from any development which encroaches on the spatial aspect of openness. Even Mr Melling was unable to ignore this obvious fact: see his conclusion that parcel 2 had a "high" degree of physical openness in the baseline situation (i.e. the highest level on his scale).<sup>224</sup> In addition, it is clear that Cogloop 2 is visually open. There are views into and out of Cogloop 2, including middle and long distance views. There is some boundary vegetation but the topography of the land, sloping north to south, facilitates these views, as the Council's Green Belt Assessment recognises: "*The land to the south [of the Airport] falls towards Redhill and is mainly open and visually prominent*".<sup>225</sup>
523. Mr Melling underplayed the baseline visual openness of Cogloop 2, even applying his own approach. In Mr Melling's table 3.3, a "mixed" (aka moderate/medium) level of visual openness is present where the land is: "*Partially enclosed (e.g. by landform, vegetation or built form) but with views in and out.*"<sup>226</sup> All of these factors are present in respect of Cogloop 2/parcel S2: there is – at worst – partial enclosure by virtue of the hedgerows (but not total enclosure, given the open fields and sloping topography); and there are views in and out, as Mr Melling accepted in XX. Moreover, as Mr Melling describes in his own assessment, there are some middle and long distance views across the land. Thus, applying Mr Melling's own description of "high" visual openness ("*clear, middle and long-distance views across the land*"), the correct conclusion is that the visual openness of the land is mixed – high, i.e. all of the factors in the mixed criterion are present and some of the factors in the high criterion (middle and long-distance views, albeit not clear ones). Given the foregoing, it is clear that Mr Melling's

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<sup>224</sup> See the scale in Table 3.3 on PDF p. 157 of his POE and table

<sup>225</sup> Mr Gurtler's RPOE at PDF p. 58, right hand column, bottom row.

<sup>226</sup> See Mr Melling's POE at table 3.3 on PDF p. 157.

assessment of “low” visual harm is yet another example of his attempt to underplay the baseline contribution of Cogloop 2.

524. 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.

#### Spatial harm

525. 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).
526. 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. Mr Gurtler recognises this in his evidence, referring to the Birds Farm Decision and the Barrow Fields Decision.<sup>227</sup>
527. In the Birds Farm Decision, the Inspector concluded at [15]:

*“The use of the land for the parking of airport customers’ cars does not involve the erection of any buildings. There is no statutory definition of openness, but I regard it as the absence of physical manifestations of development. The parking of densely packed cars on the scale involved here, where several hundred cars may be parked at one time, appears as man-made development and it clearly reduces the spatial openness of the land. My finding is consistent with those of Inspectors who also considered the effect of car parking on openness in the decisions referred to by the Council.”*

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<sup>227</sup> See Mr Gurtler’s POE at [56] – [57] on PDF p. 21. PINS references: APP/D0121/C/20/3250491 and APP/D0121/C/17/3175079 respectively.

528. In the Barrow Fields Decision, the Inspector concluded that the spatial impact of block car parking on openness was unaffected by the fact that the cars were not readily visible from the public domain. This is consistent with the principles note above.
529. Mr Melling accepted in XX that the block parking of cars does harm the spatial aspect of openness but sought to argue that the scale of the block parking does not correspond with the extent of harm. This argument is untenable. The greater the number of cars, or blocks of cars, the greater the impact in spatial terms: more land is covered by cars and those cars appear to be increasingly homogenous (particularly giving the organised block layout).
530. Having regard to the extent of the block parking, see above, 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.
531. Remarkably, Mr Melling’s evidence was that the harm to the openness of the Green Belt overall, i.e. including both visual and spatial effects, was “*limited*”. This conclusion is clearly in error: the spatial effects of the Silver Zone Development alone are significant and this is only exacerbated by the visual effects.
- (a) Mr Melling’s own criteria for a significant impact on openness is: “clear adverse effects of development on physical and/or visual openness and permanence which is unlikely to be able to be successfully mitigated”.<sup>228</sup> These criteria are all met: there will be an adverse spatial effect; that effect will be clear (see for example the stark contrast before and after development with Cogloop 2); the effect will be permanent; and there is no ability to mitigate that harm. Accordingly, even on Mr Melling’s own approach, there is clearly a significant effect on the Green Belt.

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<sup>228</sup> For the avoidance of doubt, as Mr Melling volunteered in XX, this criteria focuses on physical or spatial harm, i.e. a significant effect can arise in physical terms, even if it does not arise in visual terms.

- (b) Mr Melling's suggestion in his written evidence that the harm will "*be limited, i.e. no discernible effect of development on physical and/or visual openness and permanence*" is unreal and wrong.<sup>229</sup> There is an obviously discernible effect in spatial terms: for example, Cogloop 2 is presently free of development and will be transformed by the parking of cars year round.
- (c) In XX Mr Melling sought to argue that cars would not be present in Cogloop 1 and Cogloop 2 throughout the year. There are two difficulties with this argument. First, as Mr Melling conceded, he has no evidence of how car parking demand for individual car parks will fluctuate throughout the year (as opposed to parking across the airport as a whole), and thus this argument is unsupported by any evidence. Secondly, this argument does not reflect reality. BAL wish to market Cogloop 1 and Cogloop 2 as the lowest cost options (i.e. lower than the cost of MSCP parking or parking closer to the terminal). On BAL's case, this will make the Cogloop 1 and 2 more attractive car parks, i.e. more likely to be utilised. Accordingly, in circumstances where, on BAL's case, the lowest anticipated parking demand in any month is 13,000 cars and the total provision in Cogloop 1 and 2 is 6,350 cars, it is very likely on BAL's approach that Cogloop 1 and 2 will be, at worst, busy, if not full, throughout the year.<sup>230</sup>

532. For all these reasons, the Silver Zone Development will result in significant harm to the openness of the Green Belt in spatial terms.

#### Visual harm

533. The starting point is that BAL does not contend that there is no 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.

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<sup>229</sup> See his POE at Table 4.5 on PDF p. 175, right hand column.

<sup>230</sup> Figure 15 of the UPDS (see CD 2.23 on PDF p. 20) shows the lowest level of parking demand as 13,000 cars in November. This figure includes off site competition, but the point holds good notwithstanding this because it is likely that 78% of this overall demand will be on site demand. (The 78% is derived from figure 12 of the UPDS (CD 2.23 on PDF p. 17) – on airport demand in 2030 is 0.96m out of 1.23m total demand, i.e. 78%.)

534. The starting point is to note that BAL's landscape and visual impact assessment ("LVIA") is not an assessment of harm to the visual aspect of openness and cannot be used as such. The reasons for this are obvious. An LVIA adopts a process which is different to an assessment of openness, for example, the conclusion that the visual impact may be of a minor effect may be based on the proposed development's mitigation, e.g. additional planting will screen the proposed development. However, such analysis does not translate into a conclusion of low impact on the visual aspect of openness because the use of additional planting as screening will (as in this case) foreshorten views, increase the sense of enclosure and thus reduce the openness of the Green Belt. This difficulty arises from the contrast between the concept of openness and visual effects in an LVIA. As GLVIA3 explains, the assessment of visual effects in an LVIA is the assessment of "*effects on specific views and on the general visual amenity experienced by people*": this is not the same as an assessment of openness, which does not consider "*general visual amenity experienced by people*" and which is not a limited consideration of specific views.<sup>231</sup>
535. It follows that 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. This is particularly apparent in Mr Melling's assessment of his identified visual receptors: for example, in respect of (1) receptors off Winters Lane; (2) the public right of way network to the west and north of Redhill; (3) properties around Hailstones Farm and the A38; and (4) long range views from elevated land within the Mendip Hills AONB, Mr Melling simply copies and pastes parts of BAL's LVIA and adds no substantive analysis of his own in terms of openness.<sup>232</sup> This is not made good in his conclusions: there is the bald assertion of "no discernible effect" without further analysis.<sup>233</sup>
536. In addition, Mr Melling's evidence failed to take proper account of the effects of lighting on the visual aspect of openness. Mr Melling's assessment does not extend beyond repeating parts of the LVIA and relying on BAL's Lighting Report, but neither of these documents take account of (1) the impact of car headlights and (2) the pattern of flickering lights caused by the use of the infrared sensors. The effects of both matters

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<sup>231</sup> See CD 22.4 at [2.21] on PDF p. 30.

<sup>232</sup> See Mr Melling's POE, Appendix A, [4.4.15] – [4.4.23] on PDF p. 171 – 172.

<sup>233</sup> See tables 4.5 and 4.6 in Appendix A to Mr Melling's POE on PDF p. 175 – 177.

are obvious: when extracting a car at night, the headlights of both that car, and the other cars which must necessarily be moved given the block parking, will swing around, in an uncontrolled manner and negating the controlled nature of the lighting poles. Further, the infrared sensors will cause the lighting to come on and off as cars and/or drivers move through the car park. The effect will be noticeable. Taken together, these effects will exacerbate the harm to the visual aspect of openness.

537. Taken in the round, the Council submits on his own criteria, Mr Melling's assessment is an understatement of the harm. For example, Mr Melling defines moderate to significant harm as "*adverse effects of development on physical and/or visual openness and permanence with potential opportunities for mitigation*". This is criteria is met: 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 (see below).

#### Level of activity generated, including traffic generation

538. 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). This traffic is both in accessing and egressing the car parks and when moving around the car parks, as part of the block parking arrangement. This factor increases the harm to the openness of the Green Belt.

#### Mitigation

539. BAL relies heavily on its proposed mitigation scheme consisting of additional bunding and planting around the western and southern boundaries of Cogloop2. Far from alleviating the harm to the openness arising from the Silver Zone Development, the proposed mitigation exacerbates the harm. The bunding is an alien man made feature which shortens views across the land, both in and out. So to the increased planting: this shortens views across the land, both in and out, thus increasing the sense of enclosure and reducing the openness.

#### Permanence

540. All of the effects noted above are permanent and will not be remediated. BAL do not seek a temporary permission and there is no proposed programme of remediation. In

XX of Mr Gurtler, it was suggested that it would be straightforward to remove the net paving, lighting and CCTV poles. This line of questions missed the point: the fact that the development in the Green Belt could be removed does not mean that it is any less permanent or harmful. Nearly all development in the Green Belt could be removed. However, what matters is whether the development will be removed. Here, the Silver Zone Development will not be removed: BAL have expressed no intention to remove the development and there is no mechanism, either in the conditions, s. 106 agreement or Unilateral Undertaking to facilitate this.

#### Green Belt purposes

541. 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.

#### Conclusion

542. 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.<sup>234</sup>

#### **(d) No very special circumstances have been demonstrated**

##### The asserted need for additional car parking in the Green Belt

543. For the reasons set out above, 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.

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<sup>234</sup> See CD 4.11 at PDF p.111 (final paragraph) 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.

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.

544. Further, it is important to recognise that BAL must demonstrate the need for the entirety of the claimed parking demand. It may be concluded that BAL have demonstrated some need for parking demand, but not the entirety of the demand. In that circumstance, the extent of harm to the Green Belt has not been justified in its entirety, as it must be to demonstrate VSC.
545. The absence of justification for the entirety of the claimed parking demand is particularly important because of BAL's proposed phasing: BAL wish to deliver parking in the Green Belt in advance of MSCP 3. Accordingly, even if there was a mechanism for restricting car parking until demand is demonstrated (which there is not), this would not overcome the absence of justification, because by delivering parking in the Green Belt in advance of MSCP 3, BAL will cause harm to the Green Belt in circumstances where it may not ultimately be required, i.e. in circumstances where the provision of MSCP 3 alone may ultimately prove to be sufficient.
546. 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.
547. 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.<sup>235</sup> On this basis, Mr Melling contends that the monitor and manage approach will '*ensure that ... additional car parking is only brought forward when*

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<sup>235</sup> Melling POE PDF pp. 99 – 100 at [5.4.46].

*the demand for spaces arises'*.<sup>236</sup> 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.

The asserted absence of alternative and suitable sites for parking

548. 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. It has been suggested, in general terms, that MSCPs are more expensive to construct than surface car parking, but even if this is correct, it does not demonstrate that MSCPs could not be used for low cost parking because BAL has not explained: what the actual cost of constructing the MSCPs would be; why the income generated from low cost use would not be sufficient to cover that construction cost; why BAL could not accept a reduced profit on the MSCP parking; and why, even if the income generated from low cost use was not sufficient, why a loss could not be sustained on that part of its business (i.e. a cross subsidy situation). 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.
- (b) In XiC and XX, Mr Melling contended that there was no requirement to produce such evidence because the project is privately funded. This argument is clearly wrong. In circumstances where an appellant contends that it cannot afford to develop its land in such a way and thus looks to bring forward a more harmful form of development, it is well established that it must bring forward viability and/or costs evidence to make good that case. See, for example,

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<sup>236</sup> Melling POE PDF p. 100 at [5.4.47], first bullet point.

enabling development: where it is contended that a harmful form of development is needed in order to undertake other development which cannot be afforded by itself, there must always be viability evidence to justify that assertion. In any event, the point is more basic: he who asserts must prove.<sup>237</sup> BAL has asserted but not proved that there is any financial reason which prevents the use of the MSCPs for low cost car parking.

- (c) 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.<sup>238</sup> 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.<sup>239</sup>
- (d) 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. In RX, Mr Melling was directed to the first sentence of paragraph 3 of the advice note (*"The UK Competition Rules contained in the Competition Act 1998 apply to both anti-competitive agreements/arrangements, and to unilateral conduct by a business with market power."*) but this does not deal with cross-subsidy, rather it is a prosaic introductory statement regarding the scope of the UK Competition Rules. It follows that there is no competition law risk for BAL which would prevent the use of MSCPs for low cost car parking.

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<sup>237</sup> Actori incumbit onus probandi.

<sup>238</sup> 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).

<sup>239</sup> 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.

- (e) Finally, the argument that the MSCPs at the Airport could not be used for low cost parking because other airports use MSCPs for premium parking, not low cost parking, is desperate. The manner in which other airports, in other parts of the country, choose to price MSCP car parking has no bearing on this case. Indeed, to take the pricing at other airports into account would be an error of law: the inquiry has seen no evidence of that pricing and in any event, that pricing is an immaterial consideration.
549. In light of the fact that there is no cost or price based justification for the Silver Zone Development, there does not form a reason to discount the provision of further MSCP in the Green Belt Inset in order to meet parking demand.
550. The Parking Strategy identifies at least one option for additional MSCP car parking in the GBI: see option B in table 5.1 ("**the Option B MSCP**").<sup>240</sup> Leaving aside the cost based argument, which has been disposed of above, the only other reason for discounting the Option B MSCP is the alleged potential visual impact of the Option B MSCP. This argument is unsound for the following reasons:
- (a) In respect of the Option B MSCP, the Parking Strategy states: "*Potentially significant impact on visual amenity of nearby residential receptors (particularly along Downside Road). Would likely constitute over development of the northside of the airport site.*" There are thus two aspects to this reasoning: (1) impact on visual amenity; and (2) over development on the northside of the Airport.
- (b) As to the first matter, visual amenity, the analysis undertaken of the Option B MSCP in Mr Melling's RPOE concludes that: "*the Northside Option [i.e. Option B MSCP] would unlikely result in any new significant effects upon visual amenity*".<sup>241</sup> Thus the first reason for discounting the Option B MSCP in the Parking Strategy is expressly contradicted in Mr Melling's RPOE.
- (c) As to the second matter, over development on the northside of the Airport, in his RPOE Mr Melling makes the bare assertion that the Option B MSCP would result in "*a noticeable increase in the massing of built form perceived on the airport*

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<sup>240</sup> CD 2.12 on PDF p. 28.

<sup>241</sup> See [2.1.9] on PDF pp. 57 – 58 (quotation on p. 58). NB it is clear that Option B MSCP is "*the Northside Option*" in this paragraph from [1.1.3] – [1.1.5] on PDF p. 54.

site from a number of high sensitivity residential and recreational receptors". However, no views have been identified or modelled (e.g. via wirelines, CGI etc.) to make good this assertion. Further, it is an assertion which is unrealistic: the Option B MSCP is assessed as being 8.8m high.<sup>242</sup> This is substantially lower than MSCP 1, MSCP 2 or MSCP 3. Accordingly, in circumstances where the impact from those higher MSCPs is assessed as acceptable, and taking into the extensive mitigation, this effect is unlikely to result.

- (d) In any event, even if there is some effect arising from overdevelopment, BAL has not established that the harm is lower than the harm to the Green Belt arising from removing (or at least reducing) the amount of parking in the Green Belt. Given the lower height of Option B MSCP and the mitigation, as well as the requirement in NPPF para. XXX to give significant weight to any harm to the Green Belt, the realistic assessment is that the harm arising from Option B MSCP is likely to be less than the harm to the Green Belt. It follows that an approach which reduced the amount of car parking in the Green Belt by the same amount as the Option B MSCP is a realistic and preferable alternative.
- (e) Finally, for the avoidance of doubt, Mr Melling's new suggestion in his RPOE that *"the Northside Option ... would likely have a greater impact upon landscape character and the visual component of Green Belt openness compared with Phase 2 Silver Zone Car Park extension"* is untenable.<sup>243</sup> First, the Option B MSCP would not be located in the Green Belt (as it would be located in the GBI) and thus it would not – and could not – give rise to the visual component of openness, which applies only to development in the Green Belt. Secondly, given the Option B MSCP would be located in the Green Belt Inset and would have no greater visibility than the existing components permitted by the 2011 Permission (as Mr Melling accepts<sup>244</sup>), there is no rational basis for contending that there would be greater harm on landscape character: notably Mr Melling does not explain this bare assertion.

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<sup>242</sup> See Melling RPOE on PDF p. 55, final bullet point.

<sup>243</sup> See Melling RPOE at [2.1.9] on PDF pp. 57 – 58.

<sup>244</sup> See his RPO at [2.1.5] on PDF p. 57.

551. In light of the fact that the Option B MSCP cannot be discounted, either on the basis of cost or on the basis of visual impact, it forms a clear alternative and thus the amount of parking required in the Green Belt could have been reduced by at least 950 cars (the notional capacity of the Option B MSCP).<sup>245</sup> This presents another reason why the extent of land take in the Green Belt has not been justified. This is all the more the case if it is possible to construct further MSCP, as Mr Gurtler contended.

Asserted need for, and benefits of, the growth

552. This factor is discussed in detail below. In summary, the Council submits that the need for, and benefits of, the growth of the Airport has been overstated and the weight to be afforded to this factor must be reduced as a result.

The counterfactual

553. In XX of Mr Gurtler, BAL sought (for the first time) to advance its case by reference to the counterfactual, i.e. what would happen if car parking in the Green Belt was not provided. In this scenario, the total peak time supply in winter would be reduced by 6,350 spaces in winter (from 22,300 to 15,950 spaces) and 2700 spaces in summer (from 22,300 to 19,600 spaces). Demand would only outstrip supply in four months in this scenario.<sup>246</sup>
554. It was put to Mr Gurtler that this scenario would give rise to three possibilities: (1) an increased off site parking; (2) additional taxis/drop-off & pick up; and (3) additional public transport usage. As to this, the Council makes the following submissions:
- (a) There is no assessment of how many people would utilise off site parking in the counterfactual. Moreover, even if this was the case, there are specific targeted measures which can be deployed to prevent such parking, including enforcement action and, if necessary, an article 4 direction. BAL has not demonstrated that such measures would be ineffective in the counterfactual.

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<sup>245</sup> Notably, officers did not discount the possibility of further MSCP car parking in the GBI; rather, it was only additional surface level car parking that was discounted. See CD 4.11 at PDF pp. 106 – 107.

<sup>246</sup> June, July, August and September. Onsite parking is 78% of total demand – see final column in figure 14 in UPDS on p. 19. Apply 78% to the figures in figure 15 of the UPDS on p.20 to obtain onsite demand. Compare onsite demand to supply of 15,900 in winter (22,300 – 6,350) and 19,600 in summer (22,300 – 2,700).

- (b) There is no assessment of how many additional taxi/drop-off & pick up trips would arise in the counterfactual. Again, there are specific targeted measures which can be deployed to prevent such trips (e.g. pricing mechanisms) and to alleviate any adverse impacts (e.g. enforcement action against the behaviour of waiting drivers). BAL has not demonstrated that such measures would be ineffective in the counterfactual.
- (c) If there is an increase in PTMS, this is a positive outcome. Notably, Mr Witchalls conceded in XX that there was “*no ceiling*” to the PTMS use at the Airport.

555. Further, BAL cannot seek to rely on the anger of residents (for example in respect of discourteous driver behaviour) as evidence of the harmful effects of not providing further on airport car parking because there has been no shortage of car parking spaces over recent years, as the UPDS accepts.<sup>247</sup> Given there has been no shortage of car parking spaces, yet the residents’ complaints have continued, it cannot be established that there is a causal link between parking levels and residential impacts. For the same reason it cannot be established that providing additional car parking will reduce the residential impacts. Rather, the best way to reduce the residential impacts is through targeted interventions, as set out above.

556. Ultimately, in order for the counterfactual to carry any weight it needed to be supported by evidence from BAL. It has not been supported by any evidence. Moreover, it is not a counterfactual which stands up to scrutiny given the availability of alternative mechanisms which can be deployed in the counterfactual.

## **IX. BENEFITS OF THE PROPOSED DEVELOPMENT**

557. 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<sup>248</sup>. This requires the identification of the net benefits of the development. Looked at in this way, the net

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<sup>247</sup> See the UPDS at CD 2.23. Figure 3 on PDF p. 10 shows that actual capacity in 2017 – 2019 exceeded 16.7k (16.8k in 2017, 16.7k in 2018 and 17.7k in 2019). However, the peak demand was 16.6k vehicles in 2019: see the UPDS at [3.3] on PDF p. 9. Thus, whilst close to actual capacity, that capacity has not been exceeded. This is confirmed expressly in the UPDS at [3.5]: “the airport has come close to full capacity during the peak summer months in each of the last three years”.

<sup>248</sup> Accepted by Brass socioeconomic XX to RTQC

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

**(a) Carbon costs**

558. It is, of course, the case that the Government recognises the economic benefits that the aviation sector already brings to the UK:

*“Aviation benefits the UK economy through its direct contribution to gross domestic product (GDP) and employment, and by facilitating trade and investment, manufacturing supply chains, skills development and tourism. The whole UK aviation sector’s turnover in 2011 was around £53 billion and it generated around £18 billion of economic output. The sector employs around 220,000 workers directly and supports many more indirectly. The UK has the second largest aircraft manufacturing industry in the world after the USA and will benefit economically from growth in employment and exports from future aviation growth. Aviation also brings many wider benefits to society and individuals, including travel for leisure and visiting family and friends.”<sup>249</sup>*

559. The Government also recognises the potential economic benefits that further airport expansion can deliver albeit subject to balancing these benefits against costs:

*“The Government’s primary objective is to achieve long-term economic growth. The aviation sector is a major contributor to the economy and we support its growth within a framework which maintains a balance between the benefits of aviation and its costs, particularly its contribution to climate change and noise...”<sup>250</sup>*

560. However, these statements were made in a world prior to the commitment to ensure achievement of the 6CB targets and the net zero 2050 targets. It must then be recognised that the strength of statements of support for the economic benefits of airport expansion in national policy must be treated with caution since they were based upon an assessment of those benefits prior to taking the abatement costs associated with the aviation sector which will be necessary to ensure attainment of net zero and the 6th carbon budget (including international aviation within those targets). These costs are substantial and once taken into account will mean that economically the net benefit of the aviation sector to the economy will reduce significantly compared to the position as it was known when the APF or MBU were adopted. It is a different world now.

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<sup>249</sup> CD6.1 APF p9 para 7

<sup>250</sup> CD61. APF p9 para 5

561. That the commitment to deliver net zero brings with it significant carbon abatement costs can be seen in the very recent work undertaken by DBEIS in which it identifies the carbon values to be adopted to inform Government policy decision making.
562. The paper explains that:
- “Greenhouse gas emissions values (“carbon values”) are used across government for valuing impacts on GHG emissions resulting from policy interventions. They represent a monetary value that society places on one tonne of carbon dioxide equivalent (£/tCO<sub>2</sub>e). They differ from carbon prices, which represent the observed price of carbon in a relevant market (such as the UK Emissions Trading Scheme (ETS)).”*
563. Both carbon prices and carbon values are used in economic assessments informing decision making. This reflects the fact that the UK ETS does not cover all economic activities, being limited to energy intensive industries, the power generation sector and UK domestic aviation and flights to the European Economic Area (the 27 EU countries plus Iceland, Liechtenstein and Norway). Hence, in sectors not covered by the UK ETS, the non-traded value of carbon is used.
564. As the paper states: *“The new carbon values are based on a Marginal Abatement Cost (MAC) or “target-consistent” valuation approach. This involves setting the value of carbon at the level that is consistent with the level of marginal abatement costs required to reach the targets that the UK has adopted at a UK and international level.”*
565. That is, the value has been set at a level which puts the UK on a trajectory to achieve net zero by 2050. This is a change from the previous approach adopted by BEIS of using the social cost of carbon, which was an estimate of the economic damage that the emission of one tonne of CO<sub>2</sub>e causes.
566. The policy paper sets out the new values of carbon to be used in economic and policy appraisals, and a change in approach with regards to the use of traded prices and non-traded values of carbon in those appraisals.
567. The present price of traded carbon in the UK ETS is just over £50 a tonne, compared to the previous non-traded value used by BEIS of £22. The BEIS paper provides new non-traded values which under its central series rise from £241 in 2020 to £368 by 2050. That is, there is a considerable and an immediate increase in the values to be used in

appraisals. This is to reflect the cost of carbon abatement which is required now in order to attain climate change targets in 2050.

568. The paper goes on to state:

*"To achieve the economy-wide decarbonisation required to meet our net zero goals in a cost-effective way, it is important that our decarbonisation strategy gives equal weight to emissions from the traded and non-traded sectors."*

569. In other words, in policy and economic assessments, where there are traded and non-traded carbon emissions to be assessed, instead of using both traded carbon prices and non-traded carbon values, a single non-traded carbon value. Because it can be assumed that the traded sector will be managed so as to ensure that that sector pays for its emissions on a equal value basis to the non-traded sector.

570. As the paper states:

*"Carbon valuation is not a policy instrument in itself. It is a £-value applied in appraisal in order to guide government decision-making, and further signal the level of ambition that should be factored into those policies. Unless it is translated into a tangible incentive (and the incentive may exceed the carbon value in order to overcome barriers), it will not act upon private economic agents, whether individuals or business."*

571. Thus, to act as an incentive to individuals and businesses, the traded sector will be subject to further policy initiatives that over time will raise traded carbon prices so that they align with the non-traded values that are required to achieve the outcome of net zero by 2050.

572. The paper goes on to state:

*"A policy or project that increases or decreases GHG emissions domestically or internationally relative to a "business as usual" scenario is required to quantify the change in emissions, and then apply the carbon values"*

573. The expansion of Bristol Airport increases GHG emissions. These emissions are required to be quantified and monetised using the new BEIS non-traded carbon values. The cost of abatement reduces any economic benefits, that is, because the development will give rise to carbon emissions which will have to be abated in order to attain net zero.

574. In the socio-economic cost benefit analysis that York Aviation undertook, summarised in CD2.22, figure 4.1, they used the carbon prices set out in CD2.21 Appendix A to monetise all carbon emissions arising from the proposed development.
575. York Aviation has provided a revised version of CD2.22 figure 4.1 (that summarises the results of the socio-economic cost benefit analysis) in its note to the Inquiry regarding the BEIS revised carbon values. This takes into account the new September 2021 BEIS central series carbon values. The revised analysis shows a doubling of the carbon cost of the project from £305m to £623m. These values do not include an assessment of the economic cost of worsening air quality and noise impacts. They should have. There is an available methodology within the Department for Transport's TAG Unit A5.2 and Unit A3 (CD11.8) guidance which also sets out the values that are appropriate to apply for noise and air quality disbenefits. As a result the carbon costs of the development are an underestimate<sup>251</sup>.
576. 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.
577. The above assessment does not take into account any of the uncertainties relating to carbon emissions. For example, a different fleet mix may impact the level of emissions and hence their monetised value. A fleet with a larger proportion of older aircraft for example could have higher GHG emissions and hence a higher economic cost. Thus, the NPV in this situation could be reduced still further.
578. BAL, however, contends that the cost of carbon should be excluded from the socio-economic “cost benefit analysis on the grounds that it was highly questionable whether the emissions associated with the Proposed Development were likely in reality to be additional in a European or global context”.<sup>252</sup>

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<sup>251</sup> Siraut p56 para 8.5.5

<sup>252</sup> CD2.22 p. 35-36.

579. This is a flawed approach. 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.<sup>253</sup> 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.

580. BAL also argues that:

*“The modelling of future air fares includes an assumption that the cost of carbon associated with flights will have to be paid by passengers. In other words, the carbon costs of growth are internalised within the traffic forecasts and, hence, including the costs of carbon again as a cost in the socio-economic cost benefit analysis can be viewed as double counting”.*

581. As Mr Siraut explains,<sup>254</sup> 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.

582. 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.

583. 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.

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<sup>253</sup> INQ78 p. 3 paras 19-20

<sup>254</sup> INQ78 p3 paras 21 to 24

584. 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 is a material consideration. This would give rise to an error of law.
585. As a result, the NPV benefits of the Proposed Development should be seen to be some £500m. This is a 40% reduction on the £832m identified by BAL at the end of November last year and a 68% reduction on the £1565m originally contented to the Planning Committee to be the NPV benefits of granting planning permission.
586. The NPV benefits of the scheme on BAL's own evidence are thus two thirds of what they originally claimed them to be. That is a very significant reduction in the level of benefit indeed.

**(b) Business Travel**

587. The Council submits that BAL's assessment of the benefits of the Proposed Development include a significant over-estimate of the benefits which are likely to arise in relation to business travel.
588. First, Mr Brass's assessment of the level of business growth was based upon the patterns of the past which do not reflect a post-covid world in which business has successfully adapted to undertaking its activities on-line.
589. The Government has already recognised this issue. It explained in "Decarbonising Transport":<sup>255</sup>

*"It now seems likely some of the necessary short-term changes brought about by the pandemic, including the rise of home working, could remain for the longer-term and could become permanent shift in travel habits. This has created additional uncertainty for projecting forward transport usage and potential carbon emissions. It seems highly unlikely that the demand, patterns, timings, and modal choices of transport users across all forms of transport will simply return to those of 2019."*

590. In the Jet Zero consultation paper the DfT explains<sup>256</sup> that in relation to its scenario assessment to address the impact of covid on passenger demand:

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<sup>255</sup> CD9.134 Decarbonising Transport p21

<sup>256</sup> CD9.136 – p10-11

*“an uncertainty band has been added to the graphs covering 2020-2024. **However, it is likely that the impacts of COVID-19 on passenger behaviour and demand will continue to be felt long after this.** For example, Waypoint 2050 estimates that long-term global air traffic forecasts could be around 16% lower in 2050 than previously predicted...”*

591. Further in the Secretary of State’s decision not to review the ANPS, the Secretary of State explained that:

*“The impact of COVID-19 on aviation passenger demand will continue to be monitored by the Department and it is intended that medium to long-term forecasts will be produced as and when the data is available, and the outlook is more certain. The timing of any new forecasts will require some stability of the aviation sector and its operating environment and will also need to have regard to when it can be established if previous relationships between aviation demand and its drivers remain valid or have changed.”<sup>257</sup>*

592. Accordingly, the Secretary of State has already accepted that there is no evidence that the previous relationship between demand and its drivers (i.e. the previous elasticities remain valid). This is directly contrary to Mr Brass’s evidence in which he asserted that these elasticities remain valid. His evidence to that effect must be rejected.

593. The true position is that it is not possible to calculate an elasticity for business demand in a post-covid world, as Mr Brass accepted.<sup>258</sup> But this does not mean that there is any justification for utilising a pre-pandemic elasticity. There is not. Rather, there has never been a more uncertain time to produce an assessment of trends relating to aviation business travel and there is significant uncertainty which needs to be taken into account. The Council submits that this is best achieved by considering whether the demand for business travel is likely to return to pre-pandemic levels in the long-term basis. There are many good reasons to conclude, just as the Government has, that it “seems highly unlikely”<sup>259</sup> that it will.

594. Indeed, York Aviation itself identified in a pre-pandemic study that the key trend that it had identified was companies’ focus on reducing and where possible eliminating unnecessary air travel in order to reduce costs, maximise efficiency and to demonstrate

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<sup>257</sup> INQ62 page 2 under heading “Covid 19”

<sup>258</sup> Brass forecasting XX to RTQC

<sup>259</sup> See above.

corporate responsibility in the context of the Climate Change emergency.<sup>260</sup> That study identified that it is travel on internal company business which had seen the brunt of these reductions. It identified that client facing activity had remained an important driver for flying. Indeed, Mr Brass sought to emphasis the importance of face-to-face meetings.<sup>261</sup>

595. However, that study was conducted before the pandemic. Both Mr Folley and Mr Siraut explained to the Inquiry how the nature of business for the Jacobs consultancy had change since the pandemic, with clients who previously had been demanding of face-to-face interviews, particularly in the Middle East, had now become accustomed to the use of video conferencing technology.
596. This is unsurprising given the vast upskilling of the workforce in the use of such technology which has occurred because of the pandemic. As Mr Siraut explained, Zoom's number of meeting participants increase from 10 million in 2019 to 300 million in December 2020.<sup>262</sup>
597. Indeed, a pan-European 2021 YouGov poll of business travellers reported 40% of respondents said they would take fewer business flights when restrictions were lifted entirely, 38% would return to the same frequency, 13% would take more flights and 5% said they would stop flying for business altogether. For UK based respondents, 56% stated they would take less business flights. When asked about increased use of video conferencing and its impact on how often respondents would travel when restrictions were lifted, 42% said they would fly less because of video conferencing, 42% would return to the same frequency, while 11% would fly more. Again, UK respondents were less sanguine with 56% reporting that they would fly less. Asked how restrictions on flying had impacted on productivity, 12% reported that it had improved, 60% that it had had no impact and 28% stated that it had made it worse. That is, overall, 72% of respondents reported that not being able to fly had had little impact on productivity.<sup>263</sup>

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<sup>260</sup> CD13.14 p32 section 4.2

<sup>261</sup> Brass Rebuttal p11 para 2.2.21

<sup>262</sup> INQ15

<sup>263</sup> Siraut Proof p23 para 4.3.1

598. Further, Mr Brass's assumption that business travel is all about face-to-face meetings is not correct. The York Aviation study identified that some 40% of journeys were related to attending internal business.<sup>264</sup> These are precisely the types of journeys that companies were targeting prior to the upskilling of their workforces during the pandemic. There is then highly likely to be a significant reduction in these types of journeys going forward given the corporate pressures on costs reduction and to do their bit to assist in the attainment of climate change goals. Mr Brass's protestations that it will be back to business travel as usual must therefore be rejected; to use the Government's phraseology, this is highly unlikely.
599. Further, the scale of net growth in business passengers assumed by Mr Brass is greater than that which has happened in the past. It is unrealistic. The table produced by Mr Brass to support his growth assumption of 3% annual growth<sup>265</sup> omitted key years of CAA survey data – as presented it identified business growth percentages for three different periods of 4.2%, 2.6% and 4.9%.
600. In his written evidence, Mr Brass rejected the period 2000 to 2019 of 4.2% growth on the basis that this included the unrepresentative and rapid growth of the low-cost bubble. He also contended that the market had stabilised with the end of the global financial crisis. And that it was "*therefore, vastly more appropriate to look at the market post the disruptive effect of the 'low cost bubble'*".<sup>266</sup> Accordingly, he relied upon the period 2008 to 2019 (2.6% business growth per annum) and 2012 to 2019 (4.9% business passenger growth per annum).
601. But Mr Folley produced the further CAA data for 2003 and 2015 omitted by Mr Brass.<sup>267</sup> This shows that the global financial crisis was continuing to have effect at Bristol Airport in 2012. The total passengers remained at a lower level in 2012 than they were in 2008. Applying Mr Brass's approach of only looking at growth after the end of the global financial crisis, this rules out the use of 2008 as a starting point for examining past trends as basis for considering the reasonableness of the 3% per annum business travel growth. The growth in business passengers between 2012 and 2015

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<sup>264</sup> CD13.14 p 25 Table 3.6 – 557,195 journeys out of 1,412,683 = 39.44%

<sup>265</sup> Brass rebuttal p8 Table 1

<sup>266</sup> Brass forecasting rebuttal p7 para 3.2.2

<sup>267</sup> INQ13

however is 9.9% as business travel bounced back from the global financial crisis. This too is unrepresentative of business growth generally at the airport and is twice the level of growth seen in any other period in Mr Folley's table.<sup>268</sup>

602. That leaves only the period 2015 to 2019 to rely upon which reveals business growth of 1.3% per annum. Mr Brass contended however that that period was too short to rely upon and contained the year when BMI regional went into liquidation and ceased flying from the airport. This means that there is no period where the data produces a trend which can be relied upon to test whether the 3% business travel growth per annum output of Mr Brass's model is realistic.
603. In XX Mr Brass sought to fall back on the periods 2008 to 2019 and 2012 to 2019 as supporting the 3% annual growth he produced as representative. But these periods are not reliable for the reasons set out above. Both these periods include massive and unrepresentative growth as the airport recovered from the global financial crisis and the year when the airline collapsed. It follows that there is no representative evidence relating to past growth to compare the output of Mr Brass's model too and it cannot be established to be realistic as a result.
604. It has to be remembered that, over time, the Airport has become more and more important as a leisure focussed airport. Mr Folley's table shows that the percentage of business travel as a proportion of all travellers has dropped from 24% in 2000 to 14% in 2019, whilst the leisure travel percentage has risen from 76% to 86%.
605. With Jet2 coming into the airport, the percentage of leisure travel is only likely to rise since Jet2 primarily serves the ski and Mediterranean leisure destinations. Further, it is expanding its Jet2 holidays focus and leaning towards a TUI type operation. Business travel and business locations are not a focus for this airline. Since Jet2 seeks 1.3mmpa of the 2mppa uplift that would come with planning permission, the major growth at the Airport would be driven by this airline and its leisure travel focus. This supports the view that if planning permission were granted, any business travel growth would be likely to fall as a percentage of the total flights whilst leisure travel will grow.

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<sup>268</sup> See INQ13

606. It is submitted that there is no evidence that the level of 3% growth in business travellers per annum is realistic or likely to occur. As a consequence, this element of BAL's economic impact assessment must be treated with significant caution as it is highly likely to overstate the likely growth in business travel; the reality is that business travel will reduce as a percentage of total travel at Bristol airport if planning permission is granted and Mr Brass's forecasts do not reflect this.
607. 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.
608. 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, business passengers will displace leisure passengers since they will "outbid" the more price sensitive leisure passenger for the available seats.<sup>269</sup> 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.
609. 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.
610. 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.

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<sup>269</sup> Agreed by Brass socio-economic XX to RTQC

611. Indeed, the evidence is that in a constrained scenario, business trips are likely to be targeted by the airlines at Bristol Airport. As Mr Siraut explained,<sup>270</sup> of the 133 destinations Bristol Airport served in 2019, only 11 are served by regular flights, that is, an average of more than 2 flights per day, while 32 are served by more than 5 flights a week as illustrated in Figure 4 1 of his POE. Of these 32 destinations, 6 are in the UK. An increase in capacity of 20% is unlikely to lead to a significant uplift in frequency or new regular services to business destinations based on the present business model. In fact, as has happened at capacity constrained airports such as Heathrow, there is potential as demand increases to deepen services on existing routes and remove infrequent holiday routes to provide a more stable year-round offering which would be more beneficial to business travellers.
612. Mr Siraut, however, did take this into account. His balanced scenario identified that there is no net business travel growth. The consequence of this is set out in Table 4.3 of his POE.<sup>271</sup> At the North Somerset level, this would reduce BAL's impact assessment by £20m GVA (29% reduction), 130 jobs and 100 FTEs (18% reduction). At the West of England level, this would reduce BAL's impact assessment by £90m GVA (41% reduction), 620 jobs and 500 FTEs (25% reduction); and at the Southwest and South Wales level by £200m GVA (47% reduction), 1920 jobs and 1520 FTEs (45% reduction).
613. The Council submits that it is entirely appropriate to adopt Mr Siraut's balanced scenario and to reduce the economic benefits in this way.
614. Mr Siraut also examined a sensitivity. He explored in his optimistic view what could happen if business passenger demand were, contrary to the evidence, subject to a level of constraint in the do-nothing scenario. In other words, he looked at what would happen if in fact business passenger demand would not displace leisure passenger in the no development scenario. He terms this his "optimistic" scenario. It is optimistic since there is no evidence which demonstrates that there would be any level of constrained business passenger demand in a constrained airport if planning permission were refused.

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<sup>270</sup> Siraut proof p25 para 4.3.8

<sup>271</sup> Siraut proof p 27

615. In his optimistic scenario,<sup>272</sup> he assumed that the differential growth rate between business and leisure passengers would double. i.e. there would be an element of constrained business passenger demand in a constrained airport. The results of this are presented in his evidence and still result in a halving of the economic benefits associated with business travel compared to that identified by BAL<sup>273</sup>.
616. 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.

**(c) Displacement**

617. 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.
618. 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 offer a viable alternative to meet demand. BAL's case as presented to Officers and the Committee was accordingly that no other airport could meet the demand arising if permission was refused.<sup>274</sup>
619. This argument has since been modified. At the end of November 2020 BAL published its ESA. That explained:<sup>275</sup>

*"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."*

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<sup>272</sup> Siraut proof p24 para 4.3.12

<sup>273</sup> Siraut proof p 27 Table 4-3 – NS area -

<sup>274</sup> CD4.11 bottom p. 16 and onto p. 17.

<sup>275</sup> CD 2.22 para 3.26

620. The material provided alongside the ESA included a report entitled “*Passenger Traffic Forecasts for Bristol Airport to Inform the Proposed Development to 12 mppa*” (now CD 2.21). This explains that the “*passenger allocation model, described below, which identifies the traffic at individual airports has been developed specifically for the appeal*”.<sup>276</sup> The report explains that the allocation model:

*“examines how passengers make choices between the different airports available based on factors including surface access time, flight time, the availability of the relevant destination, the ‘quality’ of service as represented by the level of service frequency offered, the availability of indirect options, airline type and fares on offer.”*<sup>277</sup>

621. 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 than 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.

622. 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*

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<sup>276</sup> CD2.21 p7 footnote 3

<sup>277</sup> CD2.21 p11 para 2.27.

*represent a significant overestimate of the number of passengers who would fly from outside the region.”<sup>278</sup>*

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

624. 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.”*

625. The prospect of resolution of this issue was recorded as *“unlikely”*.

626. 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.

627. 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.

628. 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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<sup>278</sup> Siraut p43 para 6.3.11

629. 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.
630. 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.
631. Good practice as outlined by Department for Transport (“**DfT**”) (see TAG UNIT M2.1 Variable Demand Modelling at para. 6.7) states that a description should be provided as to the reasoning behind the choice of lambda parameter values and where these are derived from local calibration, the data source(s) used and the statistical estimation should be explained.
632. 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.
633. 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.
634. York Aviation expressed concerns to Jacobs that the lambda value was commercially confidential. In an email dated 11th August 2021, and in order to overcome concerns regarding commercial confidentiality, Jacobs asked York Aviation to provide access to the lambda value on a confidential basis, so that Jacobs could determine whether they

could advise the Council that the passenger allocation model is fit for purpose. In that email, Jacobs stated:

*"We are content to treat any information that you provide on the value of lambda and the process by which it has been verified as confidential. We would use this information solely to come to an opinion on the model's robustness. If it is robust we can inform the Inquiry that following our discussions we accept the appellant's position in relation to the model's outputs. If in our opinion it is not robust we can explain why without disclosing anything of IP value to yourselves."*

635. In their email response, dated 13th August 2021, York Aviation stated:

*"In relation to the constants within the model, we set out our position regarding commercial confidentiality and intellectual property rights during our meeting and this was expressly agreed as a reasonable position by Patrick Folley and the rest of your team. The detailed coefficients and calibration information in the model are commercially confidential and we will not be releasing this information. We have explained the workings of the model, discussed its functioning and the sources for our input assumptions in two meetings with Jacobs. Detailed outputs from the model have also been provided in terms of the way it is allocating passengers to other airports. That is sufficient basis on which to form a judgement as to whether the model is providing rational and reasonable outputs, particularly when considered alongside other evidence that is publicly available, such as the market shares of the other airports and the nature and extent of service that they offer."*

636. It is not accepted that Jacobs agreed that it did not require access to the information regarding the basis for the adoption of the lambda value at the meeting.

637. Accordingly, the position has been reached whereby BAL/York Aviation has refused to provide access to the lambda value utilised and has not provided information regarding the basis on which that figure was adopted, even on a confidential basis.

638. This refusal is to be deprecated. Since the Inquiry did not require access to be provided pursuant to its powers in s. 250(2) of the Local Government Act 1972, there is no means for the Inquiry, the Council as local planning authority or indeed any other party to scrutinise the basis on which a key component of the passenger allocation model operates.

639. 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).

640. The practical effect is that the model has not been subject to any meaningful form of public scrutiny whatsoever.
641. 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.
642. Given the history of refusal to provide access to data in relation to the passenger allocation model spanning many months prior to the start of the Inquiry (see above) and the evident issues with its output, it raises questions as to whether BAL/York Aviation has something to hide.
643. In any event, the fact that a report may contain information which is commercially confidential does not provide a basis for it avoiding scrutiny via the planning process. For example, it is commonplace for commercially sensitive information to be shared in viability assessments on a basis that it remains confidential as between applicant, the local planning authority and their appointed consultants. The Courts have emphasised the importance of public participation in the planning process requiring the disclosure of sufficient information to make engagement meaningful.
644. In *R. (Holborn Studios Ltd) v LB Hackney* [2020] EWHC 1509 (Admin) Dove J explained that decision makers need to be provided with access to confidential material in the context of viability appraisal: "*the inputs and findings of a viability assessment should be set out 'in a way that aids clear interpretation and interrogation by decision-makers' and be made publicly available save in exceptional circumstances.*"<sup>279</sup> This is a clear statement that decision-makers must not be deprived of the access to information that the need to evaluate the evidence before them even if it is commercially confidential.
645. 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

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<sup>279</sup> See *Holborn Studios* at [63].

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. It offered to look at the model on a basis that would be confidential so that having reviewed it could explain its views on robustness – but even that perfectly reasonable request was denied.

646. BAL/York Aviation have prevented the Council from reaching a conclusion on that matter. This is particularly important since the passenger allocation model provides inputs into the assessment of the economic benefits of the proposed development, the assessment of parking demand and the surface access junction capacity assessments.
647. 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.
648. 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.
649. If that submission is rejected, and indeed in any event, we present the Council's submissions relating to the context for the consideration of displacement.

**(d) Consequences of displacement**

650. 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. Tourism, which is overwhelmingly domestic, is important to North Somerset and the restrictions placed

on overseas travel is seen as a considerable opportunity for the area to attract and retain new visitors to the area<sup>280</sup>. The pandemic has encouraged North Somerset council to change its economic focus to investing in supporting local businesses which in turn support the local economy, improving digital access and developing a low-carbon economy and green recovery.

651. 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.<sup>281</sup> The OFT has identified competition between Bristol and Exeter airports.<sup>282</sup>
652. 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.<sup>283</sup> 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.<sup>284</sup>
653. 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 than the area around Bristol Airport.
654. 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 Sirayt 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,

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<sup>280</sup> Siraut POE p11 sections 3.2-3.5

<sup>281</sup> Siraut p 34 and figure 6-1 on p35.

<sup>282</sup> Siraut p35 para 6.2.3

<sup>283</sup> INQ20 p6

<sup>284</sup> See INQ20 Table 6.4

it has future implications for the economy of South Wales beyond the losses identified by Mr Siraut in his Table 6.4.

655. In March of 2021, the Government announced a Levelling Up fund of £4.8 billion. Mr Siraut explained in his XIC that the basis of the distribution of the fund is that it will be *“allocated to local authorities most in need of levelling up in England, as identified in the index published alongside the prospectus.”* The index identifies all the local authorities in England and Wales and ascribes each a priority level from 1 to 3, with 1 being an authority most in need of levelling up and 3 the least in need.
656. 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 all three of the local authority areas which neighbour the Vale of Glamorgan (Cardiff, Bridgend and Rhondda) at level 1.
657. 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.
658. 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.”*<sup>285</sup>

*“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”*<sup>286</sup>

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<sup>285</sup> CD11.10 p68-69

<sup>286</sup> CD11.10 p70

*“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.”<sup>287</sup>*

659. 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 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.
660. 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.

**(e) Clawback of Trips**

661. 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.<sup>288</sup>

**(f) Outbound Tourism**

662. North Somerset’s tourism is predominately made up of day visitors and in 2019 the area had a total of 7.7m day visitor trips who spent £356m in the local economy. There

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<sup>287</sup> CD11.10 p70

<sup>288</sup> 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.

were also 0.5m trips involving an overnight stay generating local spend of £106m. In total, the tourism industry in North Somerset provides 4,855 Full-Time Equivalent ("FTE") jobs, equivalent to 6% of total employment in the area.<sup>289</sup>

663. Of the 0.5m trips involving an overnight stay, only 11% are from overseas, with the remaining 89% being from domestic visitors. That 11% is made up of 2% business trips, 5% visiting friends and family and 4% coming for a holiday. This demonstrates that North Somerset's tourism industry is not reliant on overseas visitors, rather it is driven by domestic tourism. North Somerset is expecting to have a tourism boom this summer due to Covid restrictions on overseas trips. With an increase in the number of all-weather facilities, the expectation is that it can both extend its tourist season and increase its attractiveness over the long term compared to overseas locations. Thus, the Airport principally serves an outbound tourist market, which accounts for nearly two thirds of its business.<sup>290</sup>
664. 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.<sup>291</sup> 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.<sup>292</sup>
665. 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<sup>293</sup>. This has to be taken into account when considering the overall economic impacts of granting planning permission.

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<sup>289</sup> Siraut POE, section 3.5

<sup>290</sup> Siraut p.17 paras 3.5.2-3

<sup>291</sup> Siraut p.53 para 8.3.3 – contrary to the approach in HM Treasury Green Book.

<sup>292</sup> Siraut p.53 para 8.3.4

<sup>293</sup> Siraut p.54 para 8.3.6

666. All of this is not to overlook that it is important to take into account 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 abroad 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.

**(g) Connectivity of the United Kingdom**

667. The APF explains the Government's objective in terms of connectivity:

*"One of our main objectives is to ensure that the UK's air links continue to make it one of the best connected countries in the world. This includes increasing our links to emerging markets so that the UK can compete successfully for economic growth opportunities."*

668. The policy is thus 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 a benefits in terms of connectivity that will not arise if planning permissions is refused.

669. 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 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".<sup>294</sup>

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<sup>294</sup> INQ 28 at [3].

670. It has to be remembered that of the 2 mppa growth, 1.24m will fly anyway and the remainder is induced demand.<sup>295</sup> 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. As a result, in the total absence of any net benefit, this is a factor to which no weight can be ascribed.

**(h) The importance of the economic benefits**

671. BAL has completely overstated the economic importance of the benefits that the Proposed Development will deliver. To put the Proposed Development in context, it is helpful to place it alongside the Junction 21 Enterprise Area. The Enterprise Area which, in contrast to the Proposed Development, is on land which is not Green Belt and which is allocated in the Local Plan, currently accommodates 2,000 jobs with the aim of reaching a total of 9,000 to 10,000 jobs and 6,000 new homes by 2030.<sup>296</sup> The Enterprise Area aims to provide employment for those living in the more deprived parts of the Council's area. The Enterprise Area supports North Somerset's economic policies, particularly in terms of supporting local SMEs and creating jobs for the local economy.

672. Mr Siraut's estimates of direct employment generated as a result of the expansion for North Somerset (356 to 602 jobs, 288 to 485 FTEs)<sup>297</sup> are minimal when compared with the 7,000 to 8,000 additional direct employment Junction 21 Enterprise Area is planning to bring to the local North Somerset economy. As can be seen, the Proposed Development delivers minimal jobs in comparison. The Airport is far from the most important element of growth in the local economy and it is very important not to overstate the benefits it will bring to the North Somerset area. 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<sup>298</sup> continues for the foreseeable future. Now that carbon costs have been

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<sup>295</sup> Agreed by Brass in socio-economic XX to RTQC

<sup>296</sup> Siraut p45 para 7.2.4.

<sup>297</sup> See INQ20 p8 Table 9-1

<sup>298</sup> See INQ78 p26

properly accounted for, the benefits of the Proposed Development are, in the context of the area, economically small.

**(i) Regeneration of Deprived Areas**

673. 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 the investment and physical regeneration which South Bristol and Weston-Super-Mare require.
674. 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.

**(j) Conclusion on Benefits**

675. The economic benefits of Bristol Airport's expansion are significantly over-stated by BAL and will not provide “significant” economic benefits as claimed.
676. Other claimed benefits have been addressed above.
677. For the avoidance of doubt, on the issues of landscape and visual impact, ecology, land quality, surface water and flood risk, groundwater and historic Environment, the

Proposed Development neither delivers any benefits nor results in adverse residual impacts and these matters are neutral in the planning balance.

## **X. STANSTED DECISION**

678. 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.

679. 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.

680. 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. THE NEW PLANNING BALANCE**

681. The reality in this case is that matters have moved on considerably since Officers provided their recommendation to the Committee. Indeed, as Mr Melling confirmed in XX, BAL's case is founded upon a planning balance based upon the large volume of evidence provided since the Committee's decision to refuse planning permission.

682. He confirmed that his case was based upon:

- (a) New assessment years;
- (b) New passenger demand forecasts;
- (c) A new passenger allocation model;
- (d) A new fleet mix;
- (e) A new parking demand study;

- (f) An updated socio-economic impact assessment which identify significantly reduced NPV even on BALs own case;
- (g) An updated noise impact assessment;
- (h) An updated air quality impact assessment;
- (i) A new surface access impact assessment;
- (j) A new green belt study; and
- (k) An updated health impact assessment;

683. In addition, since Officers advised, the Government has adopted the 6CB target and determined that international aviation should be included in domestic climate change targets.
684. It is submitted that in these circumstances, where BAL presents an entirely new planning balance founded upon an entirely new and update assessment of impacts, it cannot assert that the Officer's recommendation is of any probative value; the reality is that we do not know what officers would recommend if they were provided with the evidence that exists now.

## **XII. PLANNING BALANCE**

685. Section 38(6) PCPA 2004 requires a decision maker to determine whether the proposed development accords with the development plan. As the House of Lords explained in relation to s18A (the Scottish equivalent to s. 38(6)) in *City of Edinburgh v Secretary of State for Scotland* [1997] 1 WLR 1447 per Lord Clyde at 1458:

*"By virtue of section 18A the development plan is no longer simply one of the material considerations. Its provisions, provided that they are relevant to the particular application, are to govern the decision unless there are material considerations which indicate that in the particular case the provisions of the plan should not be followed. If it is thought to be useful to talk of presumptions in this field, it can be said that there is now a presumption that the development plan is to govern the decision on an application for planning permission...."*

*By virtue of section 18A if the application accords with the development plan and there are no material considerations indicating that it should be refused, permission should be granted. If the application does not accord with the development plan it will be*

*refused unless there are material considerations indicating that it should be granted. One example of such a case may be where a particular policy in the plan can be seen to be outdated and superseded by more recent guidance. Thus the priority given to the development plan is not a mere mechanical preference for it. There remains a valuable element of flexibility. If there are material considerations indicating that it should not be followed then a decision contrary to its provisions can properly be given....*

*[s18A] still leaves the assessment of the facts and the weighing of the considerations in the hands of the decision-maker. It is for him to assess the relative weight to be given to all the material considerations. It is for him to decide what weight is to be given to the development plan, recognising the priority to be given to it. As Glidewell L.J. observed in **Loup v. Secretary of State for the Environment** (1995) 71 P. & C.R. 175, 186:*

*"What section 54A does not do is to tell the decision-maker what weight to accord either to the development plan or to other material considerations."*

*Those matters are left to the decision-maker to determine in the light of the whole material before him both in the factual circumstances and in any guidance in policy which is relevant to the particular issues."*

686. Indeed, that the matter of weight is for the decision maker in respect of all material considerations was also addressed by the Supreme Court in **Tesco Stores Ltd v Dundee City Council** [2012] P.T.S.R. 983.:

*"...in principle, in this area of public administration as in others (as discussed, for example, in **R (Raissi) v Secretary of State for the Home Department** [2008] QB 836 ), policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context.*

*That is not to say that such statements should be construed as if they were statutory or contractual provisions. Although a development plan has a legal status and legal effects, it is not analogous in its nature or purpose to a statute or a contract. As has often been observed, development plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another. In addition, many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment. Such matters fall within the jurisdiction of planning authorities, and their exercise of their judgment can only be challenged on the ground that it is irrational or perverse: **Tesco Stores Ltd v Secretary of State for the Environment** [1995] 1 WLR 759, 780, per Lord Hoffmann."*

687. Accordingly, it is submitted 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.
688. The Proposed Development is contrary to the Development Plan in numerous respects, as we have explained and as 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.
689. Applying section 38(6) PCPA 2004, planning permission for the proposed development must therefore be refused unless material considerations indicate otherwise.
690. 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.
691. 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.

692. 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.
693. 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.
694. 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.
695. 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 conditional support of these policy statements, that policy support can only be given limited weight.
696. By contrast it has not been demonstrated that where conflict with national aviation policy arises, that the support that these policies (i.e. the protective environmental 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.
697. 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. VSC are not demonstrated. The conflict with Green Belt policy at the national and local level weighs very significantly against the grant of planning permission.

698. 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.”*

699. It is submitted that this requires application of the general s.38(6) approach.
700. 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 and the material considerations which weigh very significantly against the grant of planning permission.
701. The only reasonable outcome of the s.38(6) approach is to conclude that planning permission must be refused.

### **XIII. CONCLUSION**

702. 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.
703. 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 its 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.
704. The small economic benefit which the proposed development would deliver, just £10m a year <sup>11</sup>, 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.

705. 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.

**REUBEN TAYLOR QC**  
**MATTHEW HENDERSON**

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**6 October 2021**

## APPENDIX A – INADEQUATE SURFACE ACCESS INFRASTRUCTURE

1. This appendix deals with the technical matters relating to surface access infrastructure.

### (a) Queue Surveys

2. BAL undertook queue length surveys for all modelled junctions at the same time as the traffic turning flow counts when working up its evidence. Queue length surveys can be - and should be - used to validate the modelling. Indeed, in the one (and seemingly only) instance where BAL did compare the observed queue lengths and modelled queue lengths, it did so “*to check the accuracy of the model validation*”.<sup>299</sup>
3. The importance of this exercise is also recognised in relevant guidance. For example, the TFL Traffic Modelling Guidelines explains that queue survey data is “*useful when determining bottlenecks within the network. It can be used as a measure of the model’s performance and for direct comparison with scheme proposals. Modelled and surveyed queues should be compared and presented in accompanying reports*”. This applies directly here: the Proposed Development requires the assessment of a number of junctions, i.e. bottlenecks, with high traffic flows in a strategically important location.
4. However, this validation has not been provided: indeed, there is no evidence, save in the one example noted above, that this validation exercise was actually undertaken by BAL. In his RPOE Mr Witchalls suggested that the queue survey data had been shared with the Council during the application process, but this is no answer: the sharing of the raw data is not the same as undertaking the necessary validation exercise, comparing modelled and actual surveys. This can also be seen by TN016: this is an example of the information provided to the Council, yet in the section where the comparison would be expected, it was not provided.<sup>300</sup>
5. The result is a situation where the data has been collected, the validation exercise appears not to have been done – or if it was done, it has not been shared – and thus the accuracy of BAL’s model cannot be scrutinised. This matters here because the junctions of principal concern are accepted as being at or close to practical capacity

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<sup>299</sup> See CD 3.6.12 at [11.1] on PDF p. 8.

<sup>300</sup> CD 3.4.1 – go to PDF p. 421 and then look at p. 428 – this is where the exercise would be included, but it has not been.

and thus there is a high risk of unacceptable effects if the modelling does not properly reflect the queues. Ultimately, BAL has not presented a robust evidence base.

**(b) Swept Path Analysis**

6. The first time that BAL provided all of the required swept path analysis was as an appendix to Mr Witchalls POE. However, as Mr Colles explained in his evidence, this disclosure has not alleviated concerns, rather it has revealed real issues which persist. For example, the swept path analysis in respect of West Lane reveals that:
  - (a) HGVs turning right into West Lane will overrun the adjacent highway, risking side swipe accidents;
  - (b) HGVs turning left in to West Lane will overrun the opposing stop line and the vehicles waiting there; and
  - (c) HGVs turning left out of West Lane will overrun the traffic islands and the signal heads.
7. On any view, these issues give rise to unacceptable impacts on highway safety. More fundamentally, the junction will not work acceptably and adequate mitigation has not been provided by BAL.
8. Mr Witchalls does not dispute the issues identified by Mr Colles. However, as with much of his evidence, his response is simply to suggest that “*minor modifications*” will be made at the detailed design stage.<sup>301</sup> The nature of those modifications is not specified. In any event, there are two principal difficulties. First, those modifications will require a deviation from the approved plans. For the reasons explained above at XXX, that deviation is not permissible: the approved plans must be implemented entirely. Secondly, this junction is an example of where there is a very tight red line area, in particular because the junction lies adjacent to Felton Common. The result of this is that there is very limited space for adjustments to be made. Indeed, despite recognising the need to make modifications, Mr Witchalls did not go on to assess whether those adjustments could be accommodated. The likelihood is that they could not be accommodated, thus requiring works outside of the red line and an amendment to the scheme. BAL have not sought such an amendment in this appeal.

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<sup>301</sup> See RPOE at [2.2.17] on PDF p. 12.

**(c) Road Safety Audit & Walking, Cycling and Horseriding assessment**

9. A Road Safety Audit (“RSA”) has been undertaken, but Mr Witchalls accepts that a further RSA will be required. The issue between the parties is thus one of timing: the Council submits that a further RSA is required before the grant of planning permission. Further, there are clear alterations to the scheme design which postdate the RSA; those alterations are significant; and those alterations give rise to the imperative to provide an updated RSA. In particular:

(a) Junction 1 – The former left turn merge lane is now a three lane exit. At the time of the first RSA, the A38 northbound funnelled traffic from two lanes down to one, thus slowing the speed of the traffic. By comparison, the altered scheme, which post dates the RSA, will see traffic travelling through the junction at much greater speeds, giving rise to different (and more severe) accident risks.

(b) After the initial RSA the pedestrian crossing was reintroduced on the northern side of Junction 1. The consequence of this location, immediately adjacent to the junction is that it is now more difficult for pedestrians to scan, interpret and synthesise the moving traffic.

10. These are exactly the sort of alterations which are significant and thus which necessitate an updated RSA.

11. Further, the consequence of undertaking a further RSA is that further amendments are likely to be necessary, with consequential effects on junction capacity. DMRB CD 116 states:

*“Where the speed limit within 100 metres of the give way line is greater than 40 mph on any approach, and the traffic flow on any approach is greater than 8,000 two-way AADT, any pedestrian crossing facilitated provided should be either signal-controlled or grade-separated.”<sup>302</sup>*

12. Here, the speed limit is 50 mph to the south on the other side of the roundabout at Junction 1. Grade separation is not practical – the crossing will be used by people dragging suitcases etc and thus the junction will need to be signalised. The inevitable effect of signalising this junction will be to reduce capacity. That has not been

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<sup>302</sup> CD 7.3.2 at [8.1.1] on PDF p. 115.

analysed. However, the RfC for this junction, even on the revised analysis in Mr Witchalls' RPOE is 0.84 and this will inevitably increase.

13. BAL's position in respect of the WCHRA is more extreme: Mr Witchalls does not even consider that a revised assessment is necessary. But it follows from the above that as significant amendments have been made, that updated assessment is necessary, particularly when those amendments affect pedestrian crossings. Ultimately, it is remarkable that in a circumstance where there is a policy imperative to maximise PTMS, BAL is treating the application of the WCHRA as an afterthought.

**(d) Junction 1 – A38/Bristol Airport Northern Roundabout**

14. In respect of the geometry of junction 1, it is accepted that the shared use pedestrian and cycle route on the eastern side is a substandard width. That width cannot be increased because of the land constraints. The calculations in Mr Witchalls RPOE as to pedestrian levels do not overcome the difficulty: those calculations have not been (and cannot be) scrutinised; they contradict the RSA which noted high levels of pedestrian usage; and in any event, Mr Witchalls has not assessed how the increased PTMS will change these numbers in the future.
15. In respect of capacity, the TAA shows an RFC of 0.94 and 0.90.<sup>303</sup> There is a consistent position in the best practice guidance which shows that these levels are inadequate:

- (a) The TFL Modelling Guidelines state:

*"Engineers should be mindful that delay begins to increase exponentially above approximately 85% DoS. At junctions operating close to zero Practical Reserve Capacity (PRC), corresponding to approximately 90% DoS, small reductions in capacity can result in significant increase in delay. For this reason a DoS of 90% represents an upper limit of practical capacity for signalised junctions. Unsignalised junctions typically have a lower practical capacity limit, with DoS in the range 80 – 85%."<sup>304</sup> (emphasis added – Junction 1 is unsignalised)*

- (b) Similarly the Junctions 9 User Guide states:

*"The RFC provides a basis for judging the acceptability of junction designs and typically an RFC of less than 0.85 is considered to indicate satisfactory performance.*

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<sup>303</sup> See CD 2.20.3 at PDF p. 48. PM A38 (N) and A38 (S).

<sup>304</sup> CD 7.21 at [2.6.1.4] on PDF p. 89,

*This depends however on the context of the study and so the user's own judgment is also required.*"<sup>305</sup>

- (c) BAL was keen to stress the "*context of the study*" when applying this guidance. But this is not a matter which assists – the context here is a large infrastructure project on a strategically important road. This requires greater adherence to the guideline rates, not less.

- 16. It follows that the performance of this junction is clearly unacceptable in terms of its capacity. The revised assessment in Mr Witchalls' RPOE does not ameliorate this position: this assessment is less robust as the necessary forecasting safeguards have been removed and this analysis cannot be scrutinised.

**(e) Junction 4A – A38/Downside Road**

- 17. The same issue of geometry noted above at paragraph 14 applies equally here. Those submissions are relied on but not repeated.
- 18. In terms of capacity, the TAA assesses a DoS at 88.2%.<sup>306</sup> However, it is important to note that the TAA assessment did not consider the fact that this junction incorporates the principal pedestrian and cycle crossing facilities. This omission is significant: the inclusion of these facilities in the assessment will inevitably result in an increase in DoS and it is very likely that when the assessment is undertaken on a proper basis, the junction will exceed the PRC of 90%.
- 19. The approach of Mr Witchalls in his RPOE is to highlight the improvement against the no development scenario. But this needs to be considered realistically: at its highest, the Proposed Development is making a very bad situation slightly less bad. On any view, the performance of this junction, which is impacted by the increased traffic flows from the Airport, is not acceptable.

**(f) Junction 4B – A38/West Lane**

- 20. In terms of geometry, three issues arise.

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<sup>305</sup> CD 7.22 at PDF p. 93.

<sup>306</sup> CD 2.20.3 at PDF p. 53. PM – A38/Downside Road – A38(N) Ahead and left.

21. The first issue is the width of the shared surface. The submissions above at paragraph 14 are relied on but not repeated.
22. The second issue is the merge length on the northbound carriageway exit arm. DMRB CD 123 states:

*"Where it is necessary to reduce the number of lanes on the exit arm, a single lane should be reduced over a distance of 100 metres starting at or beyond the limit of the junction intervisibility zone, as illustrated in Figure 7.10.1."*<sup>307</sup>

23. The need to start this measurement "at or beyond the limit of the junction intervisibility zone" is clear on the diagram accompanying this text.
24. Here, the measured distance is 60m, not the required 100m on the original design. Thus, it falls well below the space which DMRB considers necessary. Mr Witchalls' response in his RPOE was further minor modifications. Again, these modifications cannot be relied upon if planning permission is granted because they represent a departure from the approved plans. In any event, the modifications will not work because the principal effect is to reduce the length of the two lanes, which will make drivers less likely to use the outside lane as they seek to avoid merging therefore reducing capacity further.
25. The third issue is the splitter island at the entrance to West Lane. It is agreed by Mr Witchalls in his RPOE that this splitter island does not accord with DMRB and needs to be set back or an alternative position for the signal head will need to be found.<sup>308</sup> Again, the insuperable difficulty of departing from the approved plans applies here. In any event, it is not possible to move the splitter island back because there is too little space and it will be overrun, as the swept path analysis in Mr Witchalls POE demonstrates.<sup>309</sup> Further, the cantilever option can be given no weight: a cantilever will require significant foundations, the location for the cantilever has not been demonstrated (particular as the signal, and thus the cantilever, must be behind the stop line) and this solution cannot be interrogated, which poses a substantial risk to deliverability given the very tight red line and the adjacent Felton Common.

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<sup>307</sup> CD 7.3.4 at [7.10.1] on PDF p. 54.

<sup>308</sup> RPOE at [2.2.77] – [2.2.78]

<sup>309</sup> See Appendix D.

26. As to capacity, the TAA identifies a DoS at 89.7%. However, that assessment did not take into account the effect of the unsignalized pedestrian and cycle crossing facilities. If these facilities were to be included in the analysis – as they should have been – the inevitable effect will be to reduce capacity and to elevate the DoS above 90%, i.e. to an unacceptable level. Mr Witchalls' by now familiar responses do not overcome this challenge: at best, the scheme is making a bad situation slightly less bad, but is not rendering junction performance acceptable, despite the impact of airport traffic on the junction; and the revised modelling is done on a basis which removes the necessary forecasting safeguards and which has not been scrutinised.

**(g) Junction 7 – A38/A4174 South Bristol Link**

27. The starting point in respect of Junction 7 is the guidance on sliver queues in the TFL modelling guidance:

*“Due to the simplified mathematical nature of a deterministic software model, behaviour can sometimes occur that whilst mathematically correct does not actually happen in the real world due to driver behaviour. An example of this within LinSig is the formation of ‘sliver queues’.*

*A sliver queue occurs when vehicles are approaching the back of a discharging queue of traffic. In practice, drivers will typically regulate their speed if they see a queued vehicle in front of them is about to accelerate, whereas in LinSig they are assumed to progress at free-flow speed until the joint the back of the stationary queue. This can lead to successive vehicles joining the back of a modelled queue which leads to excessive and unrepresentative queuing behaviour [...]*

*A modeller can recognise the formation of a sliver queue by examining the LinSig queue data or a uniform queue graph. As Figure 10 illustrates, the data will highlight a small amount of traffic in the queue relative to the total queue length.”<sup>310</sup>*

28. When considering figure 2.1 in Mr Witchalls' RPOE, the queues shown there are not sliver (or “moving”) queues: applying the TFL guidance, there is not a small amount of traffic in the queue relative to the total queue length.
29. Moreover, this figure demonstrates that the queues are 4 and 7 PCUs (i.e. 23m and 40m respectively): this is more than enough to block the junction because signalised roundabouts have short internally queueing lengths.

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<sup>310</sup> CD 7.721 at [3.11] on PDF pp. 105 – 107.

30. It follows that the queues at this junction will have a severe residual effect – the junction will be blocked.

## **APPENDIX B – SUBMISSIONS ON UNILATERAL UNDERTAKING**

1. The Council has reviewed the updated unilateral undertaking (“**the UU**”). The Council does not consider that the provisions in the UU provide sufficient mitigation.
2. Detailed submissions on the noise mitigation scheme and the PTMS are dealt with above. Accordingly, only brief reference is made to those matters here.
3. References below are to the internal pagination, not the PDF pagination.

### **Schedule 1 - Transport**

4. **Generally** – Unlike in respect of the noise mitigation scheme, there is no provision for even consulting the Council (compare to para. 2.1 of Schedule 2). This is unacceptable and the discrepancy is not justified. The only constraints on the nature of the Replacement ASAS are the high level objectives in Schedule 1. This is insufficient given the extensive nature of the improvements required. Notwithstanding the fact that the UU is offered on a unilateral basis, there are common mechanism which can be included that would have ensured that the Replacement ASAS was acceptable to the Council, whilst not imposing an obligation on the Council.
5. **Definition of “Public Transport Modal Share”** – It is unclear why this definition has not been tied either to the calendar year or a 12 month rolling period. All of the evidence has been addressed on this basis. Given the terms of para. 2.3.3.(b) (“*achieved prior to the air passenger throughput reaching 12 mppa*”), this is open to abuse, particularly as the Council has no mechanism for approving the Replacement ASAS.
6. **Para. 2.3.3(b)** – As explained in the Council’s submissions, 2.5% is an insufficient increase. This increase should be at least 5%.
7. **Para 2.3.3(c)** – The KPIs and monitoring referred to in para. 2.3.3(d) - (f) should also be included in the annual reporting to the Council.
8. **Para. 2.3.3(d)** – Reflecting the Council’s submissions on the 2.5% uplift, the 0.5% annual increase should be increased to 1% (i.e. adjusted on a proportionate basis).
9. **Para. 2.3.5(c)** – The period of 18 months is unreasonable and unjustified. A period of 12 months is necessary in order to ensure early delivery. This integration is not equivalent to the Metrobus works in scale or complexity (see para. 2.3.3.(f)) and can

therefore be achieved at an earlier stage. There is a clear justification, both in terms of policy and local circumstances, to deliver this integration as early as possible because bus services and the linking of those services to other modes of public transport is the principal measure for increasing PTMS.

10. **Para. 2.3.5(g)** – There are two problems:

- (a) Main clause - This is unacceptable because the £200,000 funding limit is derived from the Public Transport Fund and the Public Transport Improvement Fund, i.e. it is taken out of those funds. Given the restricted nature of those funds, this restriction undermines the availability of funding or improving long distance routes. Again, those long distance routes are essential to increasing the PTMS given that it is the longer journeys which are most likely to be by car.
- (b) Sub-clause (iii) – “*subject to a positive outcome from the feasibility study*” is imprecise and impossible to enforce as there is no indication of what a “positive outcome” would be.

11. Long distance bus/coach routes are an essential component in lifting PTMS because of the high percentage of long distance journeys to the Airport by car. This mechanism is inadequate to achieve this objective. Accordingly, the necessary measures to improve PTMS have not been effectively secured.

12. **Para. 2.3.5(j)** – BAL have not heeded the advice of the Inspectors or responded to the Council’s concerns. There are three problems:

- (a) “*support and develop*” is generalised and unclear. There is no way to enforce this obligation – there is no way for the LPA to measure whether this has been achieved;
- (b) “*local bus services*” is generalised and undefined. It is impossible to understand what the scope of this obligation is and thus it is impossible to enforce;
- (c) “*subject to patronage and viability*” is similarly incapable of enforcement. There is no indication of how this qualification operates, for example, what an appropriate level of patronage or viability may be.

13. It follows that whilst the UU correctly identifies the need to improve local bus services, it does not have an enforceable or adequate mechanism for securing this. Accordingly, the necessary measures to improve PTMS have not been effectively secured.
14. **Para. 3.1** – This is inadequate for the following reasons:
  - (a) The Flyer Shuttle is required as there is ongoing low public transport use within the Council's area for access to the Airport. Staff hours are not consistent with traditional public transport services resulting in more airport staff driving to and from the airport. BAL have consistently supported the Flyer Shuttle provision for both staff and passengers to link to key corridors/interchanges and stations other than Bristol Temple Meads (Yatton and Nailsea).
  - (b) As drafted, this provision restricts the long-term funding of the Flyer Shuttle to the limited pool available in the PTF and PTIF. This will be inadequate to fund the Flyer Shuttle, even at today's costs, let alone future inflated costs.
  - (c) The following are minimum costs for the Flyer Shuttle:
    - (i) Up front vehicle cost £320,000. 2 x ULEV low floor 12 to 16 seater - approx. £160k per vehicle. 2 likely to be required;
    - (ii) Driver costs £192,000 (4 drivers). Staff costs approx. £25-30/hour inc. on-costs (c. £48k pp) in current market;
    - (iii) Back office system £14,400 (2 vehicles) £600/month per vehicle; and
    - (iv) Maintenance costs £11,000. £5,500 pa per vehicle based on third of purchase cost over lifetime.
    - (v) The total costs would be from 2023 (after the 24 month trial) to 2030 (in the Core Growth Scenario) or 2034 (in the Slow Growth Scenario).
    - (vi) The total cost a 7 year scheme is therefore vehicle cost £320,000 + 7 years x total annual cost £217,400 = £1,521,800.

- (vii) The total cost a 11 year scheme is therefore vehicle cost £320,000 + 11 years x total annual cost £217,400 = £2,391,400.
- (viii) The above costs exclude fuel, marketing/promotion and inflation as well as fare income.

- 15. It follows that one of the most important services for increasing access to the airport for staff – and in turn delivering the claimed economic benefits to the deprived areas of Weston-Super-Mare and South Bristol – is inadequate and is not secured for anything more than 24 months, let alone the long term or the life time of the development. Similarly, the Flyer Shuttle is an important service for improving passenger PTMS uplift.
- 16. Accordingly, the necessary measures to improve PTMS have not been effectively secured.

#### **Schedule 2 – Noise**

- 17. Please refer to the submission above under the heading “Mitigation” in section IV(m) of the Council’s main submissions.
- 18. In summary:
  - (a) The required approach to mitigation is clear from the NPPF, NPSE and the NPPG. Where noise will be experienced above SOAEL it must be avoided. Thus, mitigation must be provided to ensure that every household that would experience noise levels above SOAEL can avoid the adverse consequences of noise exposure above this level.
  - (b) Whilst the higher amounts for daytime mitigation now offered at this last minute are welcomed, the basis for the sums offered are not evidenced. Indeed, there is no evidence before this Inquiry which establishes that the amounts on offer to cover the costs of mitigation are sufficient to achieve the noise reductions that the scheme aims for<sup>311</sup>. There is no evidence that establishes that the amounts are enough to remedy windows/ventilation issues in all

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<sup>311</sup> i.e. those required by clause 2.2.4 of the draft UU

bedrooms or all houses. The amounts include have not been justified in any way shape or form.

- (c) Further the latest draft has been amended to remove any local planning authority control whatsoever on the scheme going forward: see clause 2.2.1. This removes any ability on the part of the Council to insist on any aspect of the scheme which is not yet defined. In essence, it means that all that you can take into account is what is in the draft UU. What is in the draft UU is wholly inadequate and is contrary to policy.
- (d) In addition, the scheme offered in the UU does not provide any mitigation whatsoever to those revealed by the Number Above assessment to suffer impacts of the kind that must be categorised as above the SOAEL – the thousand or so who could not use their gardens without constant seriously disturbing interruption, talk on the phone or watch TV with the windows open, or sleep at night with the windows open. Or the thousand odd people who would self-report as highly sleep disturbed. As we have explained, it is evident that, apart from a lucky few, these people do not get any mitigation but all suffer impacts that must be classified as significantly adverse and above SOAEL.
- (e) In addition, the noise mitigation scheme does not apply to anyone in the bracket between LOAEL and SOAEL. Not one household or person. The NPPF, NPSE and the NPPG are clear that noise visited upon these people must be reduced to a minimum by adopting all reasonable mitigation. There is mitigation available – it is offered to the lucky few who fall with the scheme in the UU. But there is no evidence before this inquiry that demonstrates that it is not practicable or reasonable to provide it to those above LOAEL.
- (f) The Council via Mr Fiumicelli had sought a noise mitigation scheme which would ensure that BAL would provide noise mitigation for all of those living with the 54 dB LAeq 16 hour contour and those experiencing greater than 45 dB LA f max at night for more than 15 times a night. Included in this the Council sought the provision of appropriate ventilation to prevent overheating when windows are closed.<sup>312</sup>

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<sup>312</sup> Fiumicelli p147 para 9.15

- (g) BAL rejected those requests.
- (h) Taken together, as explained above, the proposed mitigation is inadequate, fails to comply with national or local policy and justifies the refusal of planning permission.