

THE AIRPORTS ACT 1986 AND THE ACQUISITION OF LAND ACT 1981

THE BRISTOL AIRPORT LIMITED

(LAND AT A38 AND DOWNSIDE ROAD) COMPULSORY PURCHASE ORDER 2020

OPENING STATEMENT ON BEHALF OF BRISTOL AIRPORT LIMITED

Introduction

1. On 20 July 2021 the inspectors opened the planning inquiry into the expansion of Bristol Airport to accommodate 12 million passengers per annum ('mppa'), but on that day they also opened this inquiry into The Bristol Airport Limited (Land at A38 and Downside Road) Compulsory Purchase Order 2020¹ ('the Order'). The evidence for the inquiry into the Order was, however, programmed to start today following the closing of the planning inquiry. The planning inquiry duly closed on time on 8 October 2021 and we now turn to the evidence specifically focussed on the non-planning objections to the Order itself.
2. The Order was made by Bristol Airport Limited ('BAL') on 15 September 2020 under the provisions of the Airports Act 1986 ('the Airports Act'). The Order has been submitted to the Secretary of State for Transport with a request that it be confirmed. The Order is required to support BAL's planned increase in the permitted passenger cap at the Bristol Airport ('the Airport') from 10 mppa to 12 mppa, which is the subject of an appeal (reference APP/D0121/W/20/3259234) against the refusal by North Somerset Council ('the Council') of planning application (reference 18/P/5118/OUT) ('the Planning Application').
3. The Planning Application includes a number of new infrastructure components onsite and offsite to support the proposed increase in passenger numbers and to ensure safe and efficient

¹ CP001

passenger movements to and around the Airport site. Highway works to the A38 and Downside Road are required to accommodate additional traffic generated by the additional 2 mppa ('the Highway Works'). The Highway Works and the Airport expansion proposals ('the Scheme') are described in more detail later in this short opening.

4. BAL is seeking to acquire the land required for the Highway Works that it has not been able to secure by way of private treaty ('the Order Land'), which is shown on the CPO Map².
5. The determination of the planning appeal has not been recovered by the (now) Secretary of State for Levelling Up, Housing and Communities and so is for 'decision' by the inspectors, but the application for confirmation of the Order is to be determined by the Secretary of State for Transport with the inspectors writing a 'report' to that Secretary of State with a recommendation. The grant, or otherwise, of planning permission for the Scheme is, clearly, a material consideration in the determination of whether the Order should be confirmed and this does, therefore, mean that there will need to be sequential decision-making; the decision on the planning appeal first, with that then feeding into the decision on the confirmation of the Order. As the inspectors are both determining the planning appeal for the Scheme and writing the report to the Secretary of State on the Order that should, however, allow some 'working in parallel' on the two.
6. BAL accepts that the 'compelling case in the public interest' for the confirmation of the Order is the need for, and benefits flowing from, the grant of the planning permission for the Scheme and that if planning permission is refused then, subject to successful legal challenge to the refusal of planning permission, the Order should not be confirmed.
7. This short opening statement draws on and, where appropriate, updates the position in BAL's CPO Statement of Case³ and reflects the approach in the 'Guidance on Compulsory Purchase process and The Crichel Down Rules'⁴ (July 2019) ('the CPO Guidance'). It seeks to identify why the powers of compulsory purchase contained in the Order are necessary and identifies why there is a compelling case in the public interest for the Order to be confirmed by the Secretary of State. Much of the 'compelling case', however, was considered in relation to the merits of BAL's case at the planning appeal and so is not repeated here. These opening submissions also address the objections which have been made to the Order.

² CP002

³ CP004

⁴ CP013

8. As the Order was made during the time of the Coronavirus (COVID-19) pandemic, in complying with its notification requirements, BAL took into account the Ministry of Housing, Communities and Local Government's 'Coronavirus (COVID-19): compulsory purchase guidance'⁵ published on 13 May 2020 (and updated 27 May 2020) (COVID-19 Guidance).
9. Notices publicising the making of the Order appeared in the Western Daily Press on Thursday 17 September 2020 and Thursday 24 September 2020. Notices were also erected on the Order Land notifying of the making of the Order. BAL has prepared a 'Statement of compliance with statutory formalities' that confirms the dates when statutory formalities were undertaken and appends copies of the relevant notices. The 'compliance pack' has been supplied to the inspectors.
10. The period for submission of any objections to the Order expired on 16 October 2020. By that date, 3 statutory objections and 29 non-statutory objections (with 32 objections being received in total) had been made to the Secretary of State. The non-statutory objections were by persons having no interest in any of the Order Land that raised general objections to the confirmation of the Order.
11. On 29 January 2021, the Secretary of State gave notice to the Acquiring Authority that a public Inquiry would be held into the Order. Case Management Conferences took place on 8 March 2021 and 30 June 2021 and, as stated above, the inquiry opened on 20 July 2021.

Description of the Order Land

12. The land included within the Order to be compulsorily acquired is shown edged red and coloured pink on the Order Map ('the Order Land').⁶ The total area of land to be compulsorily acquired is approximately 9,293 square metres.
13. The Airport is located on the western side of the A38, approximately 11km south-west of Bristol City Centre, within the local authority administrative area of the Council. Covering an area of 196 hectares, it is situated on a ridge of high ground called Broadfield Down 183 metres above ordnance datum with the A370 Bristol to Weston-super-Mare road 4km to the north and the

⁵ CP006 and CP014

⁶ CP002

M5 motorway 11km to the west of the site (the total Application site area is circa 211 hectares). The A38 carriageway is directly adjacent to the Airport, on its eastern extent.

14. Two roundabout junctions provide access to the Airport site from the A38. The northern roundabout provides access to the northern parts of the Airport including the main terminal building, passenger pick up and drop off areas, hotel and operational facilities and both short and long-stay parking areas. This is also the main access for public transport links to the Airport. The southern roundabout, meanwhile, provides access to (inter alia) Silver Zone long-stay car parking, the main administrative building, staff car parking, taxi-waiting area, free drop off-car park, Staff Travel Hub, car rental hub, aircraft maintenance areas, fire station, Profred hangar, Bristol and Wessex Aeroplane Club, Bristol Flying Centre and Western Power Distribution Helicopter Unit.
15. Immediately to the north of the Airport are properties along Downside Road. Those properties along the southern side of this road fall within the parish of Wrington and those along the north fall within the parish of Backwell. Those properties along the southern side of Downside Road share a Boundary with the Airport. To the north-west is the village of Felton which extends northwards along the A38 and east towards Winford. To the south is the small settlement of Redhill and beyond is Wrington.
16. The Order Land is located to the north of the northern A38 roundabout which serves the Airport. The Order Land comprises land both adjacent to the A38 carriageway as well as along Downside Road.
17. The Order Land in detail comprises:

Plot no.	Plot description and present use of Order Land
1	The western portion of woodland and former quarry (south of Downside Road and west of Bridgwater Road, A38)
2	Woodland and former quarry (south of Downside Road and west of Bridgwater Road, A38) fronting the highways AC_166166470_5 5 Plot Description and present use of Order Land
3	Hardstanding between A38 highway and Airport Tavern building, hedgerow and shrubbery within field to the north of the Airport Tavern
4	Enclosed parking area adjacent to Downside Road and hedgerow (Airport Tavern)

5	Field, hedgerow and shrubbery (Airport Tavern) and public footpath (LA2/37/10/X)
6	Field, hedgerow and shrubbery (Airport Tavern) and public footpath (LA2/37/10/X)
7	Footway (north eastern corner Downside Road)
8	Hardstanding between A38 highway and Airport Tavern building
9	Hardstanding between A38 highway and Airport Tavern building, hedgerow and shrubbery within field to the north of the Airport Tavern
10	Hedgerow (land south of Oakwood House) and public footpath (LA2/37/10/X)
11	Hedgerow (land south of Oakwood House) and public footpath (LA2/37/10/X)
12	Caravan, garden and hedgerow (land south of Oakwood House) and public footpath (LA2/37/10/X)
13	Caravan, garden and hedgerow (land south of Oakwood House) and public footpath (LA2/37/10/X)
14	Garden and hedgerow (Oakwood House)
15	Garden and hedgerow (Oakwood House)
16	Grassed verge footway and shrubbery (north west of Felton Village Hall and east of Bridgwater Road, A38)
17	Grassed verge and footway (north west of Felton Village Hall and east of Bridgwater Road, A38)
18	Grassed verge footway and shrubbery (west of Felton Village Hall and east of Bridgwater Road, A38)
19	Grassed verge footway and shrubbery (west of Felton Village Hall and east of Bridgwater Road, A38)
20	Grassed verge footway and shrubbery (south west of Felton Village Hall and east of Bridgwater Road, A38)
21	Common land comprising grassed verge and footway on the corner of Bridgwater Road A38 and West Lane
22	Carriageway (east of Bridgwater Road, A38 leading to Lilac Cottages) and verge (east of Bridgwater Road, A38)

Present ownership and occupation of the Order Land

18. The Order Land is characterised by land adjacent to the existing A38 and Downside Road carriageways including the former quarry on the south side of Downside Road. None of the land comprises buildings other than a mobile home within parts of plots 12 and 13.
19. The CPO Schedule⁷ contains the names and addresses of all owners, lessees, tenants and occupiers (Table 1) who have interests within the Order Land together with other qualifying

⁷ CP001

persons such as mortgagees, beneficiaries of restrictive covenants and other right holders (Table 2).

20. Table 1 of the CPO Schedule contains 22 parcels of which 1 is unregistered and a number may contain unknown interests. Table 2 of the CPO Schedule identifies other qualifying persons under section 12(2A)(a) of the Acquisition of Land Act 1981 including interests of a mortgagee and those with access over plot 22. The CPO Schedule also identifies statutory undertakers and other like bodies who have or possibly have equipment on, in or over the Order Land.
21. The location of the plots is shown on the map accompanying the CPO.⁸
22. In order to ensure that the Highway Works can take place in a timely manner to allow delivery of the Scheme, it has been necessary for BAL to continue to seek compulsory acquisition of the Order Land, whilst still seeking to acquire the interests by agreement.

The need for and benefits of the Scheme and the Highway Works

The Scheme

23. The need for and benefits of the overall Scheme were considered at length during the planning inquiry and are not, therefore, repeated in any detail here. In summary, however, the Scheme will:
 - a. accommodate forecast passenger demand in order to meet the Government's national aviation policy of making best use and wider economic objectives and clawback the historic leakage of passengers from London's airports;
 - b. deliver substantial social and economic benefits, supporting national, regional and sub-regional economic growth and recovery from the COVID-19 pandemic. This aligns with the West of England Industrial Strategy and the North Somerset Economic Plan;
 - c. help meet the UK's global ambitions for increased international connectivity and trade following the UK's departure from the EU; and
 - d. ensure adverse impacts on the environment and local communities are minimised and secure, where possible, enhancements.
24. It is clear, however, that the wider need for and benefits of the Scheme cannot be delivered without the Highway Works. Thus the need for and benefits of the Scheme form part of the

⁸ CP002

compelling case in the public interest for the compulsory acquisition of the land required for the Highway Works. The Highway works, however, also bring their own benefits as outlined below.

The Highway Works

25. Mr Witchalls's CPO proof⁹ deals with the transport specific need for the Highways Works and the Order Land. His evidence covers, in particular:
 - a. Need for the Scheme and operational capacity;
 - b. Options considered;
 - c. Specific design considerations;
 - d. Construction requirements and Order Land summary; and
 - e. CPO objections.
26. The Transport Assessment showed that the A38 at its junction with Downside Road / West Lane is currently over capacity in the PM peak period (2018). The subsequent Transport Assessment Addendum, which updated the original Transport Assessment to take into account, inter alia, updated passenger forecasts including the Core Case, Faster Growth Case and Slower Growth Case, shows that *"the existing A38 signal junction would operate over capacity for all tests in 2030 during all peak periods."*¹⁰ and that *"the existing A38 junction with West Lane is forecast to operate over capacity in both the 2030 Reference Case and 2030 Test Case."*¹¹
27. The Transport Assessment also outlined that the highway improvements (including the Highway Works) proposed as part of the Scheme would deliver the necessary capacity improvements to ensure the A38 at its junction with Downside Road / West Lane would operate with reserve capacity in the (then) 2026 12mppa test case and offer significant improvements to pedestrian and cyclist facilities.
28. The Transport Assessment Addendum does not change the conclusions reported in the original Transport Assessment and demonstrates that the A38 at its junction with Downside Road / West Lane would operate with reserve capacity in the 2030 12mppa test case (i.e. with the Highway Works).

⁹ Scott Witchalls, **BAL/W4/4**

¹⁰ ES Addendum, Appendix 5F (**CD2.20.3**), TAA Table 5.5 and para 5.5.2 (pdf p.50/51)

¹¹ ES Addendum, Appendix 5F (**CD2.20.3**), TAA Table 5.6 and para 5.5.3 (pdf p.51)

29. As a result, the Highway Works are required to allow delivery of the Scheme. The analysis undertaken for BAL identifies that the full Highway Works are required to be implemented as soon as growth exceeds 10mppa. Alternative designs were considered (including potentially reducing the extent of the works and along an alternative alignment), but it was concluded that the Highway Works represent the most efficient design to meet the highway requirements associated with the Scheme. This conclusion on scheme preferred option was supported by Council officers following extensive discussions.
30. The Highway Works will deliver the following important transport specific benefits:
- a. A major improvement over the 'do nothing' scenario as a result of the additional capacity to accommodate a further 2 mppa and relieve significant congestion that would arise in the absence of the Scheme and Development, in accordance with the National Planning Policy Framework ('NPPF')¹² and Policy CS10 of the Core Strategy¹³;
 - b. Better facilities for pedestrians and cyclists, which would improve accessibility and safety to local residents by sustainable modes;
 - c. Improvements at the A38/Downside Road junction as a result of the proposed new access arrangements to the Airport Tavern;
 - d. A scheme that accords with the A38 Major Route Network ('MRN') corridor upgrade proposals outlined in Joint Local Transport Plan¹⁴ ('JLTP4');
 - e. Substantially reduced delays for all road users and improved journey time reliability for public transport services; and
 - f. A scheme in balance with the wider BAL proposed environmental enhancements, including public transport improvements and traffic management proposals, that will form part of the ASAS.
31. The planning officer's report for the Council's 10 February 2020 committee¹⁵ concluded that:
- "It is considered that these works would improve traffic flow and safety in the immediate vicinity of the airport and are proportionate mitigation in relation to the projected impacts arising from the proposed development. The detailed drawings submitted with the application showing the*

¹² CD 5.8

¹³ CD 5.6

¹⁴ CD7.5

¹⁵ CD4.11

proposed highway works are acceptable, although some final specifications will need to be agreed before works can commence. This can be controlled by planning condition.”¹⁶

Description of the Highway Works and the Scheme

32. The proposed Scheme seeks to facilitate an increase in the permitted passenger cap at the Airport from 10 mppa to 12 mppa. To support the proposed increase in passenger numbers and ensure safe and efficient passenger movement to and around the Airport site, the development includes a number of new infrastructure components, improvements to existing facilities and operational changes.
33. BAL is proposing to undertake a significant improvement of the A38 between the main Airport access road (being the most northern of the two roundabouts serving the Airport) and West Lane to accommodate any additional traffic generated by an extra 2 mppa. The improvement comprises:
 - a. The main carriageway between the northernmost airport roundabout and West Lane will be increased in width to allow two through lanes to be provided on each carriageway.
 - b. The widening will be mainly undertaken on the western side of the road providing an overall width of 16m. Level changes, Felton Common Land and residential properties prevent the carriageway works taking place on the eastern side.
 - c. The improvements taper back to join the existing carriageway width some 130m beyond West Lane.
 - d. A further dedicated lane will be provided for northbound traffic turning left into Downside Road, along with a right turn lane into West Lane. The centre of the carriageway will be hatched or have traffic islands in order to separate traffic flows.
 - e. Downside Road will be widened to two lanes for 80m prior to the junction with the A38 and a new access provided into the Airport Tavern car park from Downside Road to replace the current access from the A38 which currently does not meet the necessary highway standards.
34. The junction with Downside Road will remain controlled by traffic signals but will be linked to new signals controlling the West Lane junction. The junctions will monitor approaching traffic using Microprocessor Optimised Vehicle Actuation and will adjust the timings to enhance traffic

¹⁶ Officers' Report (CD4.11) page

flow and reduce queuing. Traffic will only be able to turn left out of West Lane, while traffic travelling southbound will remain unable to turn right into Downside Road and will continue to double back at the main Airport roundabout with the A38.

35. The existing footway / cycle track will remain on the eastern side of the A38 with a new footway provided north of the West Lane junction. An enhanced footway / cycle track will be provided on the western side of the road between the Airport and Downside Road, with a footway provided for the section north of the Downside Road tying in with the existing facility north of West Lane. Pedestrian and cycle facilities will be provided within the Downside Road junction. A pedestrian crossing is included within the West Lane signals and both junction designs will incorporate drop kerbs. Bus stops will be maintained albeit adjusted for the new carriageway alignment. Access will also be maintained to the public footpath which runs along the northern boundary of land at the Airport Tavern towards Lulsgate Bottom.
36. A table summarising the proposed use of each of the plots, both during and post construction is provided at Statement of Case Appendix 3.¹⁷
37. The proposed improvements are in-keeping with the current character of the area. The road will be constructed with an asphalt wearing course and antiskid surfacing will be applied on the approaches to the signal stop lines. All traffic signs, signals and markings will be provided in accordance with highway design standards applicable to the location and type of road. The area will continue to have street lighting in line with the Council's standards and local operations including dimming at night. Surface water drainage will be enhanced to accommodate the effects of the widened carriageway.
38. The Highway Works were agreed with the Council's officers and delivery of the Highway Works was included within the proposed heads of terms for the draft Section 106 Agreement submitted to the Council as part of the Application and in the Council's draft conditions for the Application. These heads of terms were agreed with Council officers and the Officers' Report stated¹⁸ that:

"A38 / Downside Road / West Lane Improvement Scheme

It is likely that NSC will implement the highway improvement scheme at the A38 junctions with Downside Road and West Lane, based on the approved scheme. BAL would meet all costs

¹⁷ CP004

¹⁸ Officers Report (CD4.11) Appendix 3 (pdf p.224) at pdf p.230

involved and NSC would deliver the scheme as soon as practical, but with a backstop agreement that BAL would deliver the scheme via a Section 278 Agreement should there be delays to NSC delivery. Formal agreements to be developed.”

39. Following refusal of planning permission the Council has sought further and different transport obligations from BAL and the parties continued to negotiate appropriate terms right up to the end of the planning inquiry. The obligations relating to the Highway Works (i.e. the improvements to the A38) are included at Schedule 3 to the final Section 106 Agreement.¹⁹
40. As stated in the planning committee report of 10 February 2020, however, it is anticipated that the Council may carry out the Highway Works at BAL’s expense. If, however, for any reason the proposed Highway Works are not commenced by the Council, then their delivery would revert to a ‘section 278’ process in which case BAL will be responsible for carrying out the Highway Works to the Council’s satisfaction. These scenarios, including the transfer of funds, are set out in the section 106 Agreement. There is a separate Land Agreement between BAL and the Council.

Justification of the use of the enabling power

41. On 27 August 2020, the BAL Board formally resolved to make the Order under the Airports Act 1986 (the Airports Act). In resolving to make the Order, the Board considered the effect of the proposed compulsory purchase on human rights under the Human Rights Act 1998, as set out at section 17 of BAL’s Statement of Case, and on equalities under the Equalities Act 2010, as set out at section 18 of BAL’s Statement of Case.
42. BAL is the ‘relevant airport operator’ for Bristol Airport, being the company responsible for management of the Airport. BAL holds a certificate from the Civil Aviation Authority (‘CAA’) under section 57A of the Airports Act. Accordingly, under section 58 and schedule 2 of the Airports Act, BAL is deemed to be a ‘statutory undertaker’ for the purposes of the Acquisition of Land Act 1981.
43. As a result, BAL, on being authorised to do so by the Secretary of State, has the power under section 59 of the Airports Act to acquire land compulsorily for any purpose connected with the performance of the airport operator's functions.

¹⁹ Section 106 Agreement, schedule 3 (pdf p.70)

44. As set out earlier, the Highway Works are necessary for the performance by BAL of its functions in ensuring the continued, effective operation of the Airport in accordance with the Scheme to be delivered pursuant to the Application.
45. Whilst freehold interests are sought over all of the Order Land, some of the land is required only for construction purposes, for example for working space to allow the Highway Works to be constructed. Some of that land may also need to be subject to permanent new rights, for example for diverted services or drainage rights. Compulsory purchase powers do not currently allow for the temporary acquisition of land, since the relevant provisions of the Neighbourhood Planning Act 2017 are not yet in force.
46. In addition, BAL does not consider that, in this circumstance, it could rely on Section 59(3) of the Airports Act to acquire new rights over land, since such rights sought do not fall within the categories listed in section 44 of the Civil Aviation Act 1982 ('the Aviation Act'). The permanent rights sought would be in connection with off-airport highway mitigation works, as opposed to rights required to construct airport infrastructure. As a result, BAL does not consider that it could rely on Section 44 of the Aviation Act to request that the Secretary of State make an (additional) compulsory purchase order to acquire permanent new rights for temporary construction areas required for the Highway Works.
47. Since BAL is not authorised to acquire new rights over land to use as construction areas for the off-airport highway works, and nor is it able to take temporary possession powers over such land, it must acquire the Order Land permanently, even on plots where BAL does not propose to undertake permanent highway works. However, BAL undertakes to offer back land which is not required permanently to the original landowners, subject to BAL retaining any necessary rights relating, for example, to diverted services and drainage and subject to other terms being agreed, including as to compensation. The Order Land falling within this category is plots 4, 6, 11, 13, 15, 17 and 22. BAL has, however, continued to negotiate with affected landowners to acquire the necessary use of the land and rights by agreement.
48. As well as having powers of compulsory purchase in respect of the Order Land, BAL will rely upon section 203 of the Housing and Planning Act 2016 to override third party rights over land and convert them into a claim for compensation. This will then enable the Highway Works to be carried out without the beneficiaries of rights being able to obtain an injunction against BAL or its successors in title. Instead, as stated above, former beneficiaries will have a right to claim

compensation. BAL has already acquired the properties known as High Lands and Greenacre so that parts of the rear gardens of those properties (which have a frontage but no access onto the A38) do not need to be included in the Order.

49. In order to deliver the increase in passenger numbers to 12 mppa as part of the Scheme, BAL needs to secure the Order Land to be able to deliver the Highway Works. Without the use of compulsory purchase powers, there is no guarantee that the acquisition of all interests through private treaty could be achieved within the timescales envisaged for the Highway Works, and in turn the expansion of the Airport, to proceed. Discussions with affected parties have continued with a view to securing the acquisition of interests and reducing the number of interests which need to be acquired compulsorily.

Timescale for delivery

50. The timescale for the delivery of the Highway Works is covered in Schedule 3 to the section 106 Agreement. The timing depends on who is to undertake the works. This is to be agreed between BAL ('the Owner' in the section 106 Agreement) and the Council pursuant to paragraph 9²⁰ in Schedule 3 to the section 106 Agreement, which provides as follows:

"Both parties will use reasonable endeavours to agree who will undertake the A38 Highways Works no later than 31 July 2022. In the event that the Council has not communicated its decision in writing to the Owner on whether it wishes to deliver the A38 Highways Works by 31 July 2022 then the Owner will have the option to deliver the A38 Highways Works."

51. In the event that BAL undertakes the works then paragraph 10²¹ of Schedule 3 provides that:

"In the event that the Owner undertakes the A38 Highways Works in accordance with paragraph 9 or paragraph 12 and subject to there not being any delays in programme due to Force Majeure Events the Owner covenants to complete the A38 Highways Works before the 10mppa Trigger Date."

²⁰ pdf p.72

²¹ pdf p.72

52. The '10 mppa Trigger Date' is defined²² in the section 106 Agreement as *"the date on which the latest monitoring report provided by the Owner to the Council in accordance with the 12mppa Planning Permission shows that the terminal throughput first exceeds 10 million passengers over a twelve month period"*.
53. Where the Council undertakes the Highway Works then paragraph 11 of Schedule 3 provides as follows:
- "In the event that the Council undertakes the A38 Highways Works in accordance with paragraph 10 above the Owner covenants to pay to the Council the Owner's Contribution in accordance with the Payment Schedule and the Owner shall offer to transfer to the Council on reasonable terms at nil cost (including the Council's reasonable legal costs incurred in the negotiation, preparation and completion of any such transfer) the Highways Land and offer a licence in accordance with the provisions of paragraph 14 below to the Council for the A38 Highways Works Land."*
54. Schedule 3 also provides for BAL to elect to carry out the works in the event that the circumstances in paragraphs 12 and 17 arise.
55. The Council has proposed a planning condition (Condition 43) that states as follows:
- "The passenger throughput at the Airport shall not exceed 10 million passengers per annum to be taken from 1st January to 31st December in any calendar year and no car parking hereby permitted shall be brought into use unless and until the A38 Highways Works shown in drawing number C1124-SK-A38-010 Rev 11.0 have been completed in full and are open to traffic."*
56. BAL's position is that the requirement to deliver the Highway Works before the Airport exceeds 10 mppa is already secured by Schedule 3 (above) and that there is no justification for requirement not to bring additional car parking into use until the Highways Works are completed as car parking demand is not directly correlated to junction capacity; for example, Cogloop 1 (the year round use of the existing seasonal car park) is required to meet winter parking demand when flows through the junction are lower than the summer peak.

Planning policy and planning position

²² pdf p.5

57. The planning policy context for the grant of planning permission for the Highway Works is set out in the Statement of Case²³ for the Planning Appeal and should be referred to but is not reproduced in full here.
58. Mr Melling has produced an appendix to his proof of evidence that deals specifically with planning policy relating to the Order.²⁴ That evidence covers:
- a. Introduction;
 - b. Context;
 - c. Planning permissions;
 - d. Order objections
 - i. prematurity of the Order as the planning application for the Appeal Proposal was refused/the planning appeal is not yet determined;
 - ii. the environmental impacts of the Appeal Proposal (including impact on the green belt);
 - iii. the Appeal Proposal being contrary to planning policy;
 - iv. impacts on Common Land;
 - v. impacts on overnight accommodation;
 - vi. extent of the CPO; and
 - vii. fuel dumping.
 - e. Conclusions
59. This evidence must be read, however, in the context of Mr Melling's overall planning evidence.
60. In terms of the Scheme, Mr Melling concludes that the development is in accordance with the Development Plan and national planning policy and that there are no other material considerations which indicate that planning permission should be refused. He explains that the Scheme will make best use of Bristol Airport's existing runway, delivering the UK Government's national aviation policy and wider economic objectives and delivering substantial, material benefits in terms of jobs, prosperity and increased connectivity whilst ensuring that adverse impacts on the environment and local communities are appropriately minimised and mitigated. Mr Melling concludes that the need for, and significant benefits of, the Scheme outweigh the

²³ Statement of Case (**CD21.1**), Appendix A contains a list of relevant policies.

²⁴ Alex Melling, proof of evidence, Appendix C (pdf p.213)

limited adverse impacts associated with increasing the capacity of Bristol Airport to serve 12 mppa such that the planning appeal should be allowed.

61. Overall, Mr Melling concludes that BAL is able to demonstrate that there are no sound reasons as to why planning permission for the Scheme, including the Highway Works, should be withheld. Further, there are no objections pertaining to planning matters which mean that the Order should not be confirmed.

Funding

62. Financial approval was obtained in September 2018 for funding to proceed with acquisition of the necessary land for the Highway Works. Since then, BAL has continued discussions with affected parties, with acquisition of the properties of Greenacre and High Lands achieved by agreement and approved by the Board. BAL has sought to acquire the remaining interests in accordance with that approval. The figures for the financial approval are commercially sensitive given the ongoing negotiations for acquisition.
63. The funding for the Highway Works will be confirmed once the Order powers are confirmed. BAL has a strong track record of capital investments. In 2018, this amounted to £20.3m which included the new administration building, multi-storey car park and new fire station. In 2019, the total spend was £46.6m. Whilst the final costs of the Highway Works will be settled as part of the tender process, BAL is confident that it has the capital resource to be able to fund them. The cost of the Highway Works (including land acquisition) is relatively low when considered in the context of the wider Scheme costs. BAL anticipates funding the construction of the Highway Works as part of its operational costs, with the costs of the wider Scheme being funded through equity and/or debt finance.

Special considerations affecting the Order Land

64. Whilst plots 9, 16, 17, 18, 19, 20 and 21 are listed as being owned by Highways England (now National Highways), the A38 has been de-trunked²⁵ as explained in the Statement of Case and the parcels should have been transferred to the Council, so BAL does not consider that this is special category land²⁶.

²⁵ CP007

²⁶ See further below.

65. Whilst BAL seeks to compulsorily acquire land belonging to the Council (as highway authority) to allow delivery of the Highway Works, under section 57A of the Airports Act, BAL is deemed to be a statutory undertaker. As a result, under section 17 of the Acquisition of Land Act 1981, the Order would not be subject to special parliamentary procedure.
66. Plot 21 falls within, and on the western boundary of, the Felton Common Land area. The total area of this plot at approximately 31 m² is less than 250 square yards and in any event, is needed for the widening /drainage of existing highway. It is adjacent to the current A38 highway and is in the ownership of National Highways. It is also located to the west of the existing cattle grid on West Lane. There is some uncertainty as to whether this land is in fact Common Land given its location to the west of the existing cattle grid on West Lane (which separates it from the vast majority of Felton Common) and given it is owned by National Highways. There may simply be an error in the mapping.
67. The giving of exchange land is unnecessary whether in the interests of any persons entitled to rights of common or other rights, or in the interests of the public due to the size and proximity of the plot to the highway and remainder of the Common. As a result, it is not considered that the Order should be subject to special parliamentary procedure, and the Secretary of State for Environment, Food & Rural Affairs has been asked to certify accordingly under section 19(1) of the Acquisition of Land Act 1981 ('the ALA 1981') that the provisions of section 19(1)(b) apply.
68. The Order also seeks to discharge plot 21 from all rights, trusts and incidents under section 19(3) of the ALA 1981. This is being done on a precautionary basis since the rights over plot 21 are uncertain. BAL has made enquiries with the Council as the Commons Registration Authority, but due to the pandemic has been prevented from accessing the documents listed on the Felton Common Register to assess whether plot 21 in fact forms part of the Common and if so, what rights may apply over it. The Council has now provided some of the documentation referred to on the Felton Common Register to allow BAL to confirm those rights which do not apply. The revised list of rights has been shared with the Secretary of State for Environment, Food & Rural Affairs. BAL is seeking to agree this list of rights with the Council in its role as the Commons Registration Authority. In addition, further documentation referred to on the Felton Commons Register is awaited from the Council.
69. In the meantime, BAL is continuing with its precautionary approach of seeking a certificate from the Secretary of State for Environment, Food & Rural Affairs under section 19(1) of the ALA

1981. The Secretary of State has notified of his intention to issue the requested certificate and this intention was advertised accordingly. The period for representations or objections to be received in relation to the Secretary of State's intention to issue the requested certificate expired on 8 January 2021. No objections or representations were received and the Commons casework team confirmed on 2 March 2021 that the section 19 certificate can be issued if the decision is taken by the Secretary of State to confirm the Order.²⁷

Details of attempts to acquire interests by agreement

70. Negotiations to acquire the land required for the Highway Works including the Order Land have been ongoing for some time since before the Application was submitted.
71. BAL has already acquired two properties – Greenacre and High Lands, located to the south of plot 1. The rear portions of the gardens of those properties (which, as explained above, have a frontage but no access onto the A38) will be required for the Highway Works. As they have already been acquired, they do not form part of the Order Land.
72. BAL has appointed CBRE to support it in the promotion of the Order, including engaging with affected parties in an attempt to acquire all interests required for the Highway Works by agreement in advance of the use of compulsory purchase powers.
73. Whilst Highways England (now National Highways) is registered at the Land Registry as owner of plots 9, 16, 17, 18, 19, 20 and 21, the Acquiring Authority understands that these parcels should have been transferred to the Council when the A38 was de-trunked as part of the Exeter-Leeds Trunk Road (Sidcot Lane (A371) Winscombe to Bristol City Boundary, Bedminster Down) (Detrunking) Order 1977 but no formal land transfer took place and the title has not been updated. Mr Church's Appendix HC7 contains a copy of the de-trunking order itself and the accompanying plan, and a copy of the Schedule to the London Gazette dated 24 March 1977 advertising the de-trunking is also available.²⁸ The Schedule confirms that:

"the length of the Exeter-Leeds Trunk Road (A.38) between its junction with Sidcot Lane (A.371), Winscombe and the Bristol City Boundary, Bedminster Down shall cease to be a trunk road and

²⁷ Email of 2 March 2021 (CP012)

²⁸ CP007

shall become a principal road"... "and the responsibility for that length shall be transferred from the Secretary of State to the County Council of Avon and the County Council of Somerset"

74. The Acquiring Authority has sought to confirm the extent of the land transferred and whether this included the Order Land as well as the highway forming part of the trunk road, but are unable to do so without sight of the plan accompanying the de-trunking order. As set out in their letter of objection, the Council do not consider that the land has been transferred to them. The Order is therefore essential for these plots to allow acquisition of the necessary interests by BAL to provide certainty of ownership to allow the Highway Works to proceed.
75. BAL and CBRE have been in contact with all parties with a confirmed and identifiable interest from whom permanent acquisition is required and offers have been made.
76. All parties who have the benefit of rights, easements and covenants in land which are affected by a compulsory purchase order and known to the acquiring authority must be served with notices of the making of the Order. Diligent enquiries have been carried out to identify these parties but if there are any parties who have not been notified of the Order who are within this category, they may still be notified of the Order by the posting of notices on site.
77. BAL remains committed to seek to acquire all interests by agreement.

Response to objections

78. As identified above, when the period for submission of any objections to the Order expired on 16 October 2020, a total of 3 statutory and 29 non-statutory objections had been received to the Order.
79. The statutory objectors to the Order at that time were Hawthorne Leisure (Mantle) Limited (**OBJ1**) (plots 3, 4, 5, 6, 7 and 8), The Trustees of the JV Wills Will Trust (**OBJ2**) (plots 1 and 2) and North Somerset Council (**OBJ4**) (5, 6, 7, 10, 11, 12, 13 and 22). On 11 August 2021 a further 'late' objection to the Order was made by Sutherland Property and Legal Services Ltd in an (undated) letter on behalf of Andrew Lane (**OBJ33**) who is a lessee of The Airport Tavern, (plots 3, 4, 5, 6, 7, and 8).²⁹ This late objection was accepted by the inspectors.

²⁹ CP048

80. On 11 October 2021, however, both North Somerset Council and Andrew Lane withdrew their objections, leaving two statutory objectors and 29 non-statutory objectors.
81. There were a number of common themes in the objections received to the Order, and in order to avoid repetition, BAL grouped these objection themes into 7 categories:
- a. Prematurity of the Order as Application refused/ Planning Appeal not yet determined;
 - b. Prematurity of the Order due to COVID-19 impacts;
 - c. Environmental impacts of the Scheme;
 - d. Scheme being contrary to planning policy;
 - e. Impacts on common land;
 - f. Traffic impacts of the Scheme; and
 - g. Impacts on local residents regarding access.
82. BAL provided its responses to these categories of general objection in the table provided at Appendix 4 to its Statement of Case. In addition, Appendix 4 also sets out BAL's responses to those issues raised which are unique to the relevant objection letter.
83. Section 4 of Appendix C to Mr Melling's proof of evidence also responds directly to various general planning objections to the Order and Mr Church's Appendix HS6 contains a helpful schedule that 'signposts' where BAL's planning inquiry evidence responds to the issues raised by the general objections to the Order.
84. In general, BAL's position is that those wider planning objections to the Order are, in effect, objections to the planning appeal itself and have been adequately dealt with during the 9-week planning inquiry. In its evidence for this part of the inquiry, therefore, BAL will focus on the compulsory purchase objections from the statutory objectors and, in particular, the two remaining statutory objectors, namely, Hawthorne Leisure (Mantle) Limited (OBJ1) and The Trustees of the JV Wills Will Trust (OBJ2).
85. BAL will call Henry Church of the property consultancy CBRE to give its evidence in relation to these objections. Mr Church has a main proof of evidence (**BAL/W9/2**), a summary (**BAL/W9/1**) and a supplementary proof of evidence (**BAL/W9/3**) that updated the position on objections as at September 2021.
86. Mr Church's evidence will explain:

- a. The background to the order;
 - b. The framework for securing the necessary powers;
 - c. BAL's position in relation to Objectors to the Order;
 - d. BAL's position in relation to parties with whom negotiations continue;
 - e. Agreements with affected persons; and
 - f. His conclusions.
87. To help the inspectors understand the need for each plot, whether the landowner has objected and the status of any negotiations, Mr Witchells and Mr Church have produced a short A3 schedule that summarises the up to date position. It is hoped that this will be a useful aide memoire.

Conclusions

88. BAL submits that there is a compelling case in the public interest that the Secretary of State should confirm the Order, that it has justified the extent of the Order Land and the powers that it seeks to exercise to acquire that land, that BAL has observed the CPO Guidance, that it has genuinely sought to acquire the Order Land by agreement where possible, and that the objections of affected persons do not lead to the conclusion that the Order should not be confirmed and / or that any plot should be excluded from the Order.
89. In all the circumstances, BAL will ask that the inspectors recommend to the Secretary of State for Transport that the Order should be confirmed.

Michael Humphries QC

Daisy Noble

Francis Taylor Building
Inner Temple
London EC4Y 7BY

12 October 2021