

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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NORTH SOMERSET COUNCIL'S REPLY TO BRISTOL  
AIRPORT LIMITED'S COSTS RESPONSE

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1. North Somerset Council ("**the Council**") makes the following submissions in reply to Bristol Airport Limited's ("**BAL**") response to the Council's costs application ("**the Response**").
2. Firstly, the reliance at paragraph 4 of the Response on the absence of an invitation to BAL to withdraw is misguided. It is not the role of the Council to advise BAL as to when it should withdraw its application. Moreover, the Council's position in its letter of 5 May 2021 is entirely consistent with the position that it adopted in its Closing Submissions and underlying its costs application: the absence of an assessment of the Proposed Development in the cumulative context of airport expansion is ultimately fatal to BAL's case (see the Council's Closing Submissions at [111] – [125], [129] – [143] and [167] – [172] in particular).
3. Secondly, paragraphs 10 and 11 of the Response (continue) to fundamentally misunderstand the effect of the statutory scheme of the Climate Change Act 2008 ("**CCA 2008**") in this appeal.
  - (a) The whole purpose of the agreed policy test – namely, whether the Proposed Development will not have a material impact on the government's ability to meet its carbon reduction targets – is the development control expression of the duties in ss. 1 & 4 CCA 2008. If there is no material impact, then the duty to ensure the attainment of the 6CB and Net Zero can be complied with, but if there is a material impact or if the absence of a material impact cannot be demonstrated, then there is only one available conclusion: planning permission

cannot be granted whilst also ensuring the attainment of the 6CB and the Net Zero.

- (b) The effects that BAL claim arise from the Council's position are not "profound"; rather they have already been experienced, as in the case of the A38 Derbyshire Junctions DCO.
  - (c) As to the suggestion that the duties apply to the Secretary of State but not to Inspectors, that is patently wrong. It would mean that a different approach to the same appeal would have to be given depending upon whether or not the Secretary of State transferred jurisdiction to the Inspectorate or not. That would lead to absurd consequences. BAL's submissions must be rejected; rather the duties under the CCA 2008 fall upon all planning decision makers and Inspectors must comply with these duties just as the Secretary of State must.
4. Thirdly, BAL's submissions under the "*moratorium*" label are founded upon a false premise. It has never been the Council's case that the Government has announced a moratorium on airport expansion or promulgated a policy to that effect. Thus, the absence of "*any legal or policy statement to that effect*" is entirely irrelevant. The Council's point is different: the absence of a cumulative assessment – which only Government can undertake, but has not undertaken – has the effect, in the current statutory scheme, of preventing any further airport development. This is not novel: it is entirely the same position as the Inspectors were in the A38 Derbyshire Junctions DCO, where it was only possible to conclude that the DCO should be made after the Inspectors passed their report to the Secretary of State who could undertake a cumulative assessment.
5. Fourthly, BAL's reliance on the order of Lang J in the Stansted statutory review is of no assistance. That order is directed at the grounds advanced by Uttlesford District Council, not the Council. Further and in any event, the passage of the order quoted at paragraph 23 of the Response does not provide any answer to the Council's submissions, in particular:
- (a) Lang J refers to MBU being "*made in full knowledge of the UK's then commitments to combat climate change*", but this does not deal with the present climate change commitments, i.e. 6CB and net zero; and

- (b) Lang J's conclusion that the Inspectors were "*entitled to conclude that the Government has not altered the policies in MBU, notwithstanding changes to the targets for reduction of greenhouse gas emissions*" is nothing more than a confirmation of the current position i.e. that the Government has not yet undertaken the necessary assessment (as Mr Osund-Ireland accepted) to demonstrate that the airport expansion envisaged in MBU can be maintained whilst also ensuring attainment of the 6CB and Net Zero targets.
6. For the reasons above and in the Council's costs application, the Council submits that BAL should pay its costs of the appeal since 20 April 2021.

**REUBEN TAYLOR Q.C.  
MATTHEW HENDERSON**

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**22 October 2021**