

**APPEAL BY BRISTOL AIRPORT LIMITED**  
**AGAINST THE REFUSAL OF APPLICATION 18/P/5118/OUT**  
**SEEKING PLANNING PERMISSION FOR AIRFIELD INFRASTRUCTURE**  
**AND AMENDMENTS TO EXISTING PLANNING CONDITIONS**  
**AT BRISTOL AIRPORT**

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**BAL'S RESPONSE**  
**TO NSC'S APPLICATION FOR COSTS**

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1. This is Bristol Airport Limited's ('BAL') response to the application for costs submitted by North Somerset Council ('NSC') on 8 October 2021. NSC's application seeks an order that BAL pays NSC the costs it has incurred in dealing with BAL's appeal since 20 April 2021. The significance of this date is that it is the date on which the Government made an announcement in relation to the Sixth Carbon Budget,<sup>1</sup> which will run for the period between 2033 and 2037.
2. NSC relies on one ground in support of its application for costs, namely, that it would be unlawful to grant planning permission for the proposed development because to do so would breach the duties imposed on the Secretary of State by sections 1 and 4 of the Climate Change Act 2008 ('CCA 2008')<sup>2</sup>. This is because, NSC argues, the Inspectors cannot rationally conclude that granting planning permission for the proposed development would "*ensure*" the attainment of those duties<sup>3</sup>. In light of this, NSC's position is that as at 20 April 2021, the date on which the Government published details of the Sixth Carbon Budget and the inclusion of international aviation emissions within it, BAL should have withdrawn its appeal. Its failure to do so was, NSC alleges, unreasonable.

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<sup>1</sup> Government press release, 20 April 2021 (**CD9.37**). NSC Costs Application, para 2.

<sup>2</sup> Section 1(1) imposes a duty on the Secretary of State to "*ensure that the net UK carbon account for the year 2050 is at least 100% lower than the 1990 baseline*". Section 4(1) imposes a duty on the Secretary of State to "*ensure that the net UK carbon account for a budgetary period does not exceed the carbon budget*".

<sup>3</sup> NSC Costs Application, para 28.

3. Much of the substance of the argument advanced by NSC in its application for costs was addressed by BAL in its Closing Submissions. Where this is the case, this response will cross-refer to the relevant sections in those submissions, rather than reproduce that argument in full. This response should, therefore, be read together with BAL's Closing Submissions.

### **BAL's response to NSC's application for costs**

#### *Preliminary*

4. It is important to note at the outset that NSC's suggestion that BAL should have withdrawn its appeal in April 2021 is made for the first time in its Costs Application, some five months after that date. At no time did NSC write to, or otherwise communicate to BAL or to the Planning Inspectorate, setting out its position that BAL should withdraw its appeal and that failing to do so amounts to unreasonable conduct. This is even more surprising in light of the fact that NSC did write to the Planning Inspectorate in respect of the Sixth Carbon Budget announcement. In a letter dated 5 May 2021, NSC set out its support for requests made by the PCAA that BAL produce a cumulative assessment of the carbon impact of all airport expansion projects and provide updated environmental information.<sup>4</sup> Nowhere in that letter was it suggested that BAL ought to withdraw its appeal and that to do otherwise would be unreasonable. This would have been the obvious opportunity to do so. Nor was the suggestion that BAL should withdraw its appeal made by any of NSC's seven witnesses at any point during the Inquiry.
5. By way of contrast, BAL's letter in response to the PCAA's request, dated 5 May 2021, set out clearly its position in respect of both the need for a cumulative assessment and the Sixth Carbon Budget.<sup>5</sup> In particular, that letter explained that a cumulative assessment was neither necessary or appropriate, but that information on other airport expansion projects was provided by way of context. In respect of the Sixth Carbon Budget, the letter explained that further environmental information was not required and that the Carbon Budgets had always allowed for international aviation emissions, albeit previously through providing 'headroom'. It was explained that aviation emissions would be part of a 'cap and trade' system under the UK ETS, which would encourage innovation in the sector. That explanation is wholly consistent with the case presented by BAL throughout the inquiry and in its Closing Submissions.

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<sup>4</sup> Appendix 2.

<sup>5</sup> Appendix 3.

6. It is somewhat surprising, therefore, that after eight weeks of evidence and extensive opening and closing submissions, this suggestion is made for the first time in NSC's Costs Application. Had it actually been NSC's position since April 2021 that BAL ought to withdraw its appeal, one would have expected that to be communicated to BAL or, at least, for it to have featured in the evidence presented by NSC before the Inquiry.
7. BAL notes too that NSC's position is, in some respects, confused. NSC portrays the Sixth Carbon Budget announcement in April 2021 as a significant turning point, following which the context for the consideration of climate change issues has become "*materially different*".<sup>6</sup> But NSC also seeks to rely on wording in its Statement of Case to demonstrate that it has always been NSC's case that the grant of BAL's application would be contrary to sections 1 and 4 of the CCA 2008.<sup>7</sup> NSC's Statement of Case was filed in February 2021, some two months before the Sixth Carbon Budget announcement. Presumably, at that time, NSC was not of the view that it would be unlawful for the Inspector to grant planning permission, or it would now be claiming its costs for the whole appeal process and not just from 20 April 2021. Indeed, if NSC did consider it unlawful to grant BAL's application before April 2021, that could not have been because of the Sixth Carbon Budget announcement. In these circumstances, the significance of April 2021 falls away entirely. As it stands, however, NSC's application for costs relates only to the period following the announcement in April 2021.
8. Standing back, therefore, the argument advanced in NSC's Costs Application appears somewhat contrived.

*BAL's response*

9. BAL makes seven points in response to the substance of the argument presented in NSC's Costs Application, as follows.
10. First, NSC's construction of the duties in section 1 and 4 is simply wrong. Paragraphs 496 to 523 of BAL's Closing Submissions set out the international and national legal context for the determination of the appeal in detail. Much of this was agreed with Dr Hinnells in cross-examination and was not understood to be controversial.<sup>8</sup> Paragraphs 505 to 507 of BAL's Closing Submissions respond

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<sup>6</sup> NSC Costs Application, para 3.

<sup>7</sup> NSC Costs Application, para 32.

<sup>8</sup> Dr Hinnells, cross-examination, Day 21 pm session.

directly to the substance of the argument now advanced by NSC in its Costs Application. By way of summary, BAL explained that:

- a. Sections 1 and 4 of the CCA 2008 impose duties on the Secretary of State, not on individual planning Inspectors (or local planning authorities). Inspectors do not “*stand in the shoes*”<sup>9</sup> of the Secretary of State in this regard. The relevant duties on inspectors determining planning appeals are imposed by the Town and Country Planning Act 1990 and related legislation, not the CCA 2008;
  - b. The practical implications of NSC’s argument would be profound; no applicant for planning permission could demonstrate to an inspector that granting a particular application would ‘ensure’ the attainment of the Carbon Budgets and net zero, as NSC erroneously suggest the law requires; and
  - c. In the context of this appeal, the Inspectors must take into account the emissions from the proposed development (the scale of which are agreed), and consider the significance of those within the relevant legal and policy framework. This framework includes the duties under the CCA 2008, but also the fact that aviation is a traded sector within the UK ETS.
11. Indeed, if the Secretary of State’s duties in sections 1 and 4 fall upon Inspectors (and local planning authorities) then, logically, all the other duties imposed on the Secretary of State must fall on the Inspectors. This, presumably, would include duties relating to social security, national defence, public appointments and many, many more. Such a suggestion seems extraordinary.
12. Secondly, NSC argues that there must be some central assessment of greenhouse gas removal capacity followed by a Government decision on the proportion of that capacity to allocate to the aviation sector, and to particular airport projects, before planning permission can be granted for the proposed development. This is, in substance, the ‘second fallacy’ identified in BAL’s Closing Submissions.<sup>10</sup>
13. At paragraphs 542 to 544, BAL sets out five points that explain why it is erroneous to suggest that such an assessment must be carried out by Government prior to planning permission being granted

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<sup>9</sup> NSC Costs Application, para 7.

<sup>10</sup> At paragraph 535 of BAL’s Closing Submissions, BAL identified three ‘fallacies’ that had been presented during the course of the Inquiry, each of which are debunked in detail.

for any airport development. This explanation includes the implications of this approach for MBU<sup>11</sup>, the absence of any basis in national policy for such an approach, the inconsistency of this argument with other recent decisions and with the Secretary of State's decision not to call in BAL's appeal, and the resulting moratorium on development that it would produce. In the interests of efficiency, this response does not reproduce that explanation, which is set out in full in BAL's Closing Submissions. Certain points made by BAL in its Closing Submissions are, however, emphasised below.

14. Thirdly, for the first time in its Costs Application, NSC appears to acknowledge that the corollary of its approach is a 'moratorium' on development in the aviation sector.<sup>12</sup> NSC argues, however, that any moratorium created is "*a temporary one*"<sup>13</sup>. This is a clear departure from the position of Dr Hinnells, who expressly agreed in cross-examination that there was no moratorium on airport development, temporary or otherwise.<sup>14</sup> The position now adopted by NSC that there may be a 'temporary moratorium' is not supported by any witness that gave evidence before the Inquiry. On the contrary, NSC's witnesses were at pains to deny that they were suggesting that there was any sort of moratorium on airport development.
15. Indeed, one would expect that if the Government had adopted such a radical position as to impose a moratorium on a certain form of development, it would make that position very clear to the public at large. NSC has not pointed to any legal or policy statement to that effect. That is plainly because there is none.<sup>15</sup> On the contrary, Government has, of its own volition, restated its policy support for runways outside Heathrow making best use of their existing infrastructure<sup>16</sup>.
16. Fourthly, it is agreed that an appropriate test of significance to apply to the carbon emissions from the proposed development is whether they are so significant as to have a material impact on the Government's ability to meet its carbon reduction targets.<sup>17</sup> This test is, at best, distorted and, at worst, abandoned by NSC in its Costs Application. NSC present what appear to be two alternative tests to be applied, namely:

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<sup>11</sup> DfT's 'Beyond the Horizon – The future of UK aviation: Making best use of existing runways' (June 2018) (CD6.4).

<sup>12</sup> NSC Costs Application, para 34.

<sup>13</sup> NSC Costs Application, para 34.

<sup>14</sup> Dr Hinnells, cross examination, Day 21 pm session: "*that would be a moratorium and we do not have that*".

<sup>15</sup> As agreed by Mr Dr Hinnells, cross-examination, Day 21 pm session.

<sup>16</sup> BAL's Closing Submissions, paras 42 to 43.

<sup>17</sup> Accepted by Dr Hinnells, cross-examination, Day 21 pm session.

- a. whether it has been demonstrated that *“all of the 88 mppa of pipeline airport growth in respect of UK airports could be permitted to come forward on a basis consistent with ensuring attainment of the statutory duties in sections 1 and 4 of the CCA 2008”*; and
- b. whether it has been demonstrated that *“in any exercise in which the Government chooses which airports should be permitted to grow and which should not, Bristol Airport would inevitably be selected to grow to the extent sought in the present appeal on a basis consistent with ensuring attainment of the statutory duties in sections 1 and 4 of the CCA 2008.”* (Original emphasis).

Neither of these tests are appropriate tests to be adopted by the Inspectors in the determination of the appeal, for the reasons explained at paragraphs 542 to 543 of BAL’s Closing Submissions.

17. Fifthly, the line of argument now advanced by NSC was, in substance, considered and rejected by Lang J in the context of the application for permission for statutory review by Uttlesford District Council in respect of the Inspectors’ decision to grant planning permission for the expansion of Stansted Airport.<sup>18</sup>
18. NSC, having applied to be joined as an Interested Party to that claim, argued in relation to Ground 1 in its Summary Grounds of Resistance<sup>19</sup> (‘SGR’) that:

*“(a) the Inspectors failed to take into account the absence of any assessment demonstrating that the development (such as the Proposed Development) contemplated by national aviation policy, in particular MBU, could come forward on a basis which would ensure that either the 6CB target or the Net Zero Target will be attained; and*

*“(b) in the absence of any adopted sectoral target for aviation within the 6CB target, the Inspectors could not determine whether the grant of planning permission for the Proposed Development would be consistent with the duty in s. 13 CCA 2008. The Inspectors failed to have regard to this material consideration when determining whether granting planning permission might make the attainment of carbon reduction targets materially more difficult.”*

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<sup>18</sup> (INQ/094).

<sup>19</sup> Appendix 1 to this response, pdf page 11, para 12.

19. NSC’s argument relies on the absence of a national assessment demonstrating that the proposed development (as well as other airport development ‘contemplated’ by MBU) could come forward consistently with the Sixth Carbon Budget and net zero. This is repeated in NSC’s Costs Application.<sup>20</sup>
20. The second element of NSC’s argument in its SGR alleges an inability on the part of the Inspectors to determine whether or not permission should be granted consistently with section 13 of the CCA 2008. Section 13 states (emphasis added) that *“the Secretary of State must prepare such proposals and policies as the Secretary of State considers will enable the carbon budgets that have been set under this Act to be met”*. This duty on the Secretary of State to ‘prepare such proposals and policies’ that will enable the carbon budgets to be met is entirely consistent with the thrust of BAL’s case that there is a duty on the Secretary of State to ‘ensure’ that the carbon budgets and the 2050 net zero target are met and that, under paragraph 188 of the NPPF, the Inspectors should assume that regimes to control emissions will operate effectively.
21. Whilst NSC does not expressly rely on section 13 in its present Costs Application, in substance, NSC’s argument in the present context is the same as that advanced in its SGR; that the necessary proposals and policies to obtain net zero have not yet been adopted, and in the absence of any evidence demonstrating that existing policies could achieve net zero, the Inspectors cannot grant planning permission for the proposed development<sup>21</sup>.
22. Lang J, considering the application for permission on the papers, found in respect of this ground:<sup>22</sup>

*“... On a fair reading of the Decision Letter (DL), the Panel correctly identified and understood the relevant national and local policies. It was correct to find that carbon emissions policies are addressed at a national level, in the MBU, and are not a matter for local planning decision-makers. It was entitled to conclude that the national policy “Making best use of existing runways” (“MBU”), published in June 2018, was made in full knowledge of the UK’s then commitments to combat climate change, and that it thoroughly tested the potential implications of the policy in climate change terms ... It was also entitled to conclude that the Government has not altered the policies in the MBU, notwithstanding changes to the targets for reduction of greenhouse gas emissions. (DL 24 – 25)*

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<sup>20</sup> NSC Costs Application, para 24.

<sup>21</sup> NSC Costs Application, paras 27 and 28.

<sup>22</sup> (INQ/094).

*Under the heading “Carbon and Climate Change”, the Panel considered the specific climate change implications of the proposed development. It clearly considered the competing views of the parties and took into account Government announcements which post-dated the MBU. Its judgment was that carbon emissions weighed against the proposal only to a limited extent (DL 153). It is not open to the Claimant to challenge that exercise of planning judgment in a claim for statutory review.”*

23. In so finding, Lang J concluded that Ground 1 was “*unarguable*”. As such, NSC’s argument in its SGR, which is in substance the same as that now advanced, has already been considered and rejected by the High Court. NSC’s attempt to re-run this argument by framing it in terms of the section 1 and section 4 duties should be rejected.
24. Sixthly, at paragraph 35 NSC asserts that no evidence has been produced to show that its line of argument would have implications for any other sectors. It relies upon the electrification of road vehicles to demonstrate that other sectors do have a pathway to net zero, unlike the aviation sector. In its Closing Submissions, BAL referred to the residential sector, which is recognised as being a major contributor to greenhouse gas emissions. But it could have referred to any sector of the economy. NSC’s argument is that any development proposal must demonstrate that central Government has carried out an assessment demonstrating that the sector can reach net zero, including the emissions from that particular development. Whilst NSC has selected a sector in which the Government has identified a measure that will significantly assist in reaching net zero, the same cannot be said for all other sectors of the economy. The absence of an identified pathway to net zero for other sectors of the economy has not, however, resulted in a moratorium (temporary or otherwise) on development in that sector.
25. Seventhly, as BAL noted in its Closing Submissions, NSC’s position is simply not consistent with the decision by the Secretary of State not to call in BAL’s appeal. If NSC’s position was correct, the Secretary of State would have had to call in BAL’s appeal to ensure that planning permission was not granted in breach of sections 1 and 4 of the CCA 2008 and in advance of a central assessment of the compatibility of airport expansion with net zero. Nor is it consistent with the very recent grant of planning permission for the expansion of Stansted Airport.

## **Conclusions**

26. For the reasons explained above, the suggestion that BAL should not only fail in its appeal, but that it has acted unreasonably in not withdrawing its appeal in April 2021, is totally misconceived. NSC's application for costs should be refused.

**Michael Humphries QC**

**Daisy Noble**

15 October 2021

Francis Taylor Building  
Inner Temple  
London EC4Y 7BY

## **Appendices**

**Appendix 1** – NSC's Acknowledgement of Service and SGR in respect of the application for permission for statutory review by Uttlesford District Council (excluding Appendices).

**Appendix 2** – Letter from NSC to the Programme Officer dated 5 May 2021.

**Appendix 3** – Letter in response to the PCAA from BAL to the Programme Officer dated 5 May 2021.

## **Appendix 1**

NSC's Acknowledgement of Service and SGR in respect of the application for permission for statutory review by Uttlesford District Council (excluding Appendices).

**Date:** 29 July 2021  
**My ref:** SMB/Is043021  
**Your ref:** CO/2356/2021  
**Contact:** Sue Buck  
**Direct dial:** 01934 634926  
**Email:** [sue.buck@n-somerset.gov.uk](mailto:sue.buck@n-somerset.gov.uk) &  
[Legal.support@n-somerset.gov.uk](mailto:Legal.support@n-somerset.gov.uk)



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North Somerset Council  
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Administrative Court Office – Planning Court  
Room C315  
The Royal Courts of Justice  
Strand  
London  
WC2A 2LL

**Via email only:**  
[generaloffice@administrativecourtoffice.justice.gov.uk](mailto:generaloffice@administrativecourtoffice.justice.gov.uk)

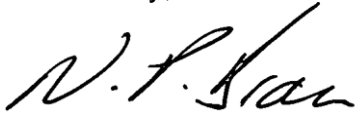
Dear Sir/Madam,

**Re: Uttlesford District Council versus Secretary of State for Housing Communities & Local Government CO/2356/2021**

Further to the above matter, please find enclosed an Acknowledgment of Service on behalf of North Somerset Council. The Council supports the claim. I enclose brief legal submissions and a witness statement from Mr Richard Kent, setting out the extent to which the Council wishes to participate in the claim. As explained in those documents, the Council will confine its submissions to Ground 1 and will remain neutral on Ground 2.

I can confirm that a copy of the enclosures will be sent to the parties within 7 days.

Yours faithfully,

PP /SMB  
Mrs S Buck  
Solicitor

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# Statutory Review

## Acknowledgment of Service

Name and address of person to be served

<b>name</b>
<b>address</b>

**In the High Court of Justice**  
**Planning Court in the Administrative Court**

**Claim No.**

**Claimant(s)**  
*(including ref.)*

**Defendant(s)**

### SECTION A

Tick the appropriate box

1. I intend to contest all of the claim

☐

2. I intend to contest part of the claim

☐

3. I do not intend to contest the claim

☐


complete sections B, C, D, E and F

complete section E and F

### SECTION B

Insert the name and address of any person you consider should be added as a defendant.

<b>name</b>
<b>address</b>
<b>Telephone no.</b>
<b>Fax no.</b>
<b>E-mail address</b>

<b>name</b>
<b>address</b>
<b>Telephone no.</b>
<b>Fax no.</b>
<b>E-mail address</b>

## **SECTION C**

Summary of grounds for contesting the claim. If you are contesting only part of the claim, set out which part before you give your grounds for contesting it.

**SECTION D**

Give details of any directions you will be asking the court to make, or tick the box to indicate that a separate application notice is attached.

If you are seeking a direction that this matter be heard at an Administrative Court venue other than that at which the claim was issued, you should complete, lodge and serve on all other parties form N464 with this acknowledgement of service.

**SECTION E**

Do you deny that the claim is an Aarhus Convention claim?

☐ Yes

☐ No

If Yes, please set out your grounds for denial in the box below.

## SECTION F

*\*delete as appropriate*

~~\*(I believe)(The defendant believes) that the facts stated in this form are true.~~

\*I am duly authorised by the defendant to sign this statement.

(if signing on behalf of firm or company, court or tribunal)

Position or office held

(To be signed by you or by your solicitor or litigation friend)

Signed

*N. P. Khan.* /SMB

Date

Give an address to which notices about this case can be sent to you

name

address

Telephone no.

Fax no.

E-mail address

If you have instructed counsel, please give their name address and contact details below.

name

address

Telephone no.

Fax no.

E-mail address

**Completed forms**, together with a copy should be lodged with the Planning Court in the Administrative Court Office (court addresses below) in which this claim was issued **within 21 days** of the service of the claim upon you, and further copies should be served on the Claimant(s) and any other Defendant(s) within 7 days of lodgement with the Court.

## Administrative Court addresses

- Administrative Court in **London**

Administrative Court Office, Room C315, Royal Courts of Justice, Strand, London, WC2A 2LL.

- Administrative Court in **Birmingham**

Administrative Court Office, Birmingham Civil Justice Centre, Priory Courts, 33 Bull Street, Birmingham B4 6DS.

- Administrative Court in **Wales**

Administrative Court Office, Cardiff Civil Justice Centre, 2 Park Street, Cardiff, CF10 1ET.

- Administrative Court in **Leeds**

Administrative Court Office, Leeds Combined Court Centre, 1 Oxford Row, Leeds, LS1 3BG.

- Administrative Court in **Manchester**

Administrative Court Office, Manchester Civil Justice Centre, 1 Bridge Street West, Manchester, M3 3FX.

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**  
**PLANNING COURT**

Claim No. CO/02356/2021

**B E T W E E N:**

**UTTLESFORD DISTRICT COUNCIL**

**Claimant**

**-and-**

**SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL  
GOVERNMENT**

**Defendant**

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**LEGAL SUBMISSIONS ON BEHALF OF NORTH  
SOMERSET COUNCIL**

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**I. INTRODUCTION<sup>1</sup>**

1. North Somerset Council ("**the Council**") supports the claim and makes the following brief submissions to set out the extent to which it intends to participate in the claim. The Council's submissions will address Ground 1 only and will focus on the manner in which the Inspectors approached national aviation policy in the context of more recent legislative and policy developments concerning climate change (see, in particular, the submission by the Claimant ("**UDC**") in its Statement of Facts and Grounds ("**SFGs**") at [111] - [113]). The Council is neutral in respect of Ground 2.
2. The accompanying witness statement of Mr Richard Kent, the Council's Head of Planning, explains the background to the Council's decision to participate in this claim when it was served with the claim form and accompanying papers by UDC.

**II. FACTUAL BACKGROUND**

3. The SFGs set out factual background to the appeal at length. The Council does not rehearse those matters but notes the following events in chronological order:

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<sup>1</sup> References: in the form [CD/tab] are to tabs in the bundle of Claim Documents provided by the Claimant; and in the form "DL paragraph" are to paragraphs in the decision letter under challenge.

<b>26 November 2008</b>	Climate Change Act 2008 (" <b>CCA 2008</b> ") comes into force. Pursuant to s. 1(1) CCA 2008, it was the duty of the Secretary of State ' <i>to ensure that the net UK carbon account for the year 2050 is at least 80% lower than the 1990 baseline</i> ' (as defined in s. 1(2)).
<b>22 March 2013</b>	Aviation Policy Framework (" <b>APF</b> ") published.
<b>5 June 2018</b>	Airports National Policy Statement (" <b>ANPS</b> ") and ' <i>Beyond the horizon: The future of UK aviation</i> ' (" <b>MBU</b> ") published.
<b>27 June 2019</b>	The Climate Change Act 2008 (2050 Target Amendment) Order 2019 (" <b>the 2019 Order</b> ") amends s. 1(1) CCA 2008 so that the duty on the Secretary of State is ' <i>to ensure that the net UK carbon account for the year 2050 is at least 100% lower than the 1990 baseline</i> ' (" <b>the Net Zero target</b> ").
<b>29 January 2020</b>	UDC refuse to grant planning permission for ' <i>Airfield works comprising two new taxiway links to the existing runway (a Rapid Access Taxiway and a Rapid Exit Taxiway), six additional remote aircraft stands (adjacent Yankee taxiway); and three additional aircraft stands (extension of the Echo Apron) to enable combined airfield operations of 274,000 aircraft movements (of which not more than 16,00 movements would be cargo Air Transport Movements (CATM)) and a throughput of 43 million terminal passengers, in a 12-month calendar period at Stanstead Airport</i> ' (" <b>the Proposed Development</b> ").
<b>24 July 2020</b>	Stansted Airport Limited (" <b>STAL</b> ") appeals UDC's refusal of planning permission.
<b>9 December 2020</b>	The Committee on Climate Change (" <b>CCC</b> ") publishes the Sixth Carbon Budget (" <b>6CB</b> ") Report.
<b>20 April 2021</b>	Government announces that it accepts the CCC's recommendation in the 6CB Report.

<b>21 April 2021</b>	The Carbon Budget Order 2021 (" <b>the 2021 Order</b> ") is laid before Parliament.
<b>7 May 2021</b>	UDC, STAL and Stop Stanstead Expansion (" <b>SSE</b> ") make written submissions to the Inspectors on the 6CB and the 2021 Order.
<b>21 June 2021</b>	The decision letter under challenge (" <b>the DL</b> ") is issued.
<b>23 June 2021</b>	2021 Order was made, coming into force on the next day (24 June 2021). In the 2021 Order, the carbon budget for the 2033-2037 budgetary period (i.e. the 6CB period) is set at 965,000,000 tonnes of carbon dioxide equivalent (" <b>the 6CB target</b> ").

### **III. LEGAL FRAMEWORK**

#### **(a) The Climate Change Act 2008**

4. Part 1 CCA 2008 concerns the carbon target and budgeting. The carbon target for 2050 is set out in s. 1 which provides:

- '(1) *It is the duty of the Secretary of State to ensure that the net UK carbon account for the year 2050 is at least 100% lower than the 1990 baseline.*
- (2) *"The 1990 baseline" means the aggregate amount of –*
  - (a) *net UK emissions of carbon dioxide for that year, and*
  - (b) *net UK emissions of each of the other targeted greenhouse gases for the year that is the base year for that gas.'*

5. Pursuant to s. 2, the Secretary of State may *inter alia* amend the percentage specified in s. 1(1) by order. So far as material, s. 2 provides:

- '(1) *The Secretary of State may by order –*
  - (a) *amend the percentage specified in section 1(1) [...]*
- (2) *The power in subsection (1)(a) may only be exercised –*
  - (a) *if it appears to the Secretary of State that there have been significant developments in –*

(i) *scientific knowledge about climate change, or*

(ii) *European or international law or policy,*

*that make it appropriate to do so [...]*

(3) *The developments in scientific knowledge referred to in subsection (2) are –*

(a) *in relation to the first exercise of the power in subsection (1)(a), developments since the passing of this Act [...]*

6. Pursuant to s. 4, it is the duty of the Secretary of State to set the carbon budget. So far as material, s. 4 provides:

*‘(1) It is the duty of the Secretary of State –*

(a) *to set for each succeeding period of five years beginning with the period 2008–2012 (“budgetary periods”) an amount for the net UK carbon account (the “carbon budget”), and*

(b) *to ensure that the net UK carbon account for a budgetary period does not exceed the carbon budget [...]*

7. Further provision in respect of carbon budgets is made by s. 8 which materially provides:

*‘(1) The Secretary of State must set the carbon budget for a budgetary period by order.*

(2) *The carbon budget for a period must be set with a view to meeting –*

(a) *the target in section 1 (the target for 2050), and*

(b) *the requirements of section 5 (requirements as to level of carbon budgets),*

*and complying with the European and international obligations of the United Kingdom [...]*

8. In addition, pursuant to s. 13 the Secretary of State is under a duty to prepare proposals and policies for meeting carbon budgets. So far as material, s. 13 provides:

*‘(1) The Secretary of State must prepare such proposals and policies as the Secretary of State considers will enable the carbon budgets that have been set under this Act to be met.*

- (2) *The proposals and policies must be prepared with a view to meeting –*
  - (a) *the target in section 1 (the target for 2050), and*
  - (b) *any target set under section 5(1)(c) (power to set targets for later years).*
- (3) *The proposals and policies, taken as a whole, must be such as to contribute to sustainable development [...]*

9. The background to, and operation of, the CCA 2008 has been summarised by the courts on a number of occasions. The Council relies on the in particular on *R. (Friends of the Earth Ltd) v Secretary of State for Transport* [2020] UKSC 52, [2021] P.T.S.R 190 *per* Lord Hodge and Lord Sales at [39] - [46], drawing upon the account given by the Divisional Court in *R. (Spurrier) v Secretary of State for Transport* [2019] EWHC 1070 (Admin), [2020] PTSR 240 at [558] - [570]. See also *R. (Transport Action Network Limited) v Secretary of State for Transport* [2021] EWHC 2095 (Admin) *per* Holgate J at [38] - [49].

**(a) Principles which apply to a claim pursuant to s. 288 TCPA 1990**

10. The principles which apply to the determination of a claim pursuant to s. 288 TCPA 1990 were summarised in *St Modwen Developments Ltd v Secretary of State for Housing, Communities and Local Government* [2017] EWCA Civ 1643, [2018] PTSR 746 *per* Lindblom LJ at [6]. The Council highlights the third principle in particular:

*‘(3) The weight to be attached to any material consideration and all matters of planning judgment are within the exclusive jurisdiction of the decision-maker. They are not for the court. A local planning authority determining an application for planning permission is free, "provided that it does not lapse into Wednesbury irrationality" to give material considerations "whatever weight [it] thinks fit or no weight at all" (see the speech of Lord Hoffmann in *Tesco Stores Limited v Secretary of State for the Environment* [1995] 1 W.L.R. 759, at p.780F-H). And, essentially for that reason, an application under section 288 of the 1990 Act does not afford an opportunity for a review of the planning merits of an inspector's decision (see the judgment of Sullivan J., as he then was, in *Newsmith v Secretary of State for Environment, Transport and the Regions* [2001] EWHC Admin 74, at paragraph 6).’*

11. The Supreme Court has given recent guidance on the approach to challenges based on alleged failure to take into account a material consideration: see *R. (Samuel Smith Old Brewery (Tadcaster)) v North Yorkshire County Council* [2020] UKSC 3, [2020] P.T.S.R 221 *per* Lord Carnwath at [29] - [31] and *R. (Friends of the Earth Ltd) v Secretary of*

*State for Transport* [2020] UKSC 52, [2021] P.T.S.R 190 *per* Lord Hodge and Lord Sales at [116] - [121]. The Council highlights the following matters from this guidance:

- (a) There are three categories of considerations: first, those clearly (whether expressly or impliedly) identified by the statute as considerations to which regard must be had; secondly, those clearly identified by the statute as considerations to which regard must not be had; and thirdly, those considerations to which the decision-maker may have regard if in his judgment and discretion he thinks it right to do so. See *Friends of the Earth* at [116].
- (b) In this third category, it is possible to subdivide considerations into two types of case: first a decision-maker may not advert at all to a particular consideration, but in such a case the decision is not affected by unlawfulness unless the consideration is obviously material according to the *Wednesbury* irrationality test; and secondly, a decision-maker may in fact turn their mind to a particular consideration but decide to give the consideration no weight and again the question is whether the decision-maker acted rationally in so doing. See *Friends of the Earth* at [120] and *Samuel Smith* at [30] and [32].
- (c) There is no obligation on a decision maker to work through every consideration which might conceivably be regarded as potentially relevant to the decision they have to take and positively decide to discount it in the exercise of their discretion: see *Friends of the Earth* at [120].

#### **IV. SUBMISSIONS ON GROUND 1**

12. The Council makes the following submissions in support of Ground 1:

- (a) the Inspectors failed to take into account the absence of any assessment demonstrating that the development (such as the Proposed Development) contemplated by national aviation policy, in particular MBU, could come forward on a basis which would ensure that either the 6CB target or the Net Zero Target will be attained; and
- (b) in the absence of any adopted sectoral target for aviation within the 6CB target, the Inspectors could not determine whether the grant of planning permission for the Proposed Development would be consistent with the duty in s. 13 CCA 2008. The Inspectors failed to have regard to this material consideration when

determining whether granting planning permission might make the attainment of carbon reduction targets materially more difficult.

**(a) Failure to take into account the absence of any assessment demonstrating that development contemplated by national aviation policy could come forward consistently with the 6CB target and the Net Zero target.**

13. National aviation policy, as considered by the Inspectors (i.e. APF, the ANPS and MBU) was all formulated before the adoption of the 6CB target and before the introduction of the Net Zero target. As a necessary consequence of this, the policy in those documents was formulated in – and designed for – a world where decision makers did not need to grapple with the 6CB target or the Net Zero target. This is apparent on the face of these documents: see the APF at [2.29] – [2.32] and MBU at [1.11] – [1.21]. The Council highlights the following parts of MBU in particular.
14. After setting out at [1.9] that *‘for the majority of environmental concerns, the government expects these to be taken into account as part of existing local planning application processes’*, MBU material states at [1.1] – [1.13]:

*‘1.11 There are, however, some important environmental elements which should be considered at a national level. The government recognises that airports making the best use of their existing runways could lead to increased air traffic which could increase carbon emissions.*

*1.12 We shall be using the Aviation Strategy to progress our wider policy towards tackling aviation carbon. However, to ensure that our policy is compatible with the UK’s climate change commitments we have used the DfT aviation model to look at the impact of allowing all airports to make best use of their existing runway capacity. We have tested this scenario against our published no expansion scenario and the Heathrow Airport North West Runway scheme (LHR NWR) option, under the central demand case.*

*1.13 The forecasts are performed using the DfT UK aviation model which has been extensively quality assured and peer reviewed and is considered fit for purpose and robust for producing forecasts of this nature. Tables 1-3 show the expected figures in passenger numbers, air traffic movements, and carbon at a national level for 2016, 2030, 2040, and 2050.*

15. Table 3 which accompanies these paragraphs shows that of the four assessed scenarios, only the baseline scenario (i.e. without either development to make best use of runway

capacity and without the Heathrow Airport North West Runway scheme) complied with the planning assumption of 37.5Mt CO<sub>2</sub>.

16. At [1.14] MBU states:

*'As explained in Chapter 6 of the Aviation Strategy Next Steps document, we have made significant steps in developing international measures for addressing aviation carbon dioxide (CO<sub>2</sub>) emissions, including reaching agreement at the International Civil Aviation Organisation (ICAO) in October 2016 on a global offsetting scheme for international aviation, known as the Carbon Offsetting and Reduction Scheme for International Aviation, or CORSIA. However, there remains uncertainty over future climate change policy and international arrangements to reduce CO<sub>2</sub> and other greenhouse gases. The Airports Commission devised two scenarios which continue to be appropriate to reflect this uncertainty: carbon traded and carbon capped. In this assessment the DfT has followed the same approach.'*

17. MBU then considers the carbon traded scenario at [1.15] and the carbon capped scenario at [1.16] - [1.21]. Notably, at [1.21] in respect of the carbon capped scenario, MBU concludes that *'it is likely that'* the measures discussed in the previous paragraphs (more efficient ground movement policy and renewable fuels policy) *'would be available to meet the planning assumption under this policy'*. This is also reflected in table 4, titled *'Policies to meet CCC cap (37.5MtCO<sub>2</sub>) levels in 2050'*.
18. Taking all these matters in the round, it is clear beyond argument that the effects of MBU as national policy were only assessed against the planning assumption of 37.5MtCO<sub>2</sub>. That planning assumption was a figure identified to meet the 80% reduction target by 2050 (i.e. s. 1 CCA 2008 prior to amendment). There was no assessment of the effects of MBU against the 6CB target or the Net Zero target which prevailed at the time of the DL (and there would have been no reason for such an assessment, as the 6CB target and the Net Zero target had not been set when MBU was promulgated, and the sectoral carbon targets are still to be set today).
19. The Inspectors erred in law when applying MBU by failing to take into account the absence of any assessment which established that the expansion of capacity envisaged by MBU was consistent with the attainment of the 6CB target and the Net Zero target. The absence of such an assessment was a matter which was so obviously material that it was irrational for the Inspectors not to take it into account for the following reasons:
- (a) The adoption of the 6CB target and the Net Zero target was, on any view, a significant development. This is apparent from the CCA 2008 itself. First,

pursuant to s. 2(a), the Secretary of State was only empowered to amend s. 1 to adopt the Net Zero target because he was satisfied that there were ‘*significant developments*’ since the passing of the CCA 2008 in respect of scientific knowledge about climate change, or European or international law or policy. Secondly, pursuant to s. 8(2)(a) CCA 2008 the Secretary of State was required to set the carbon budget in order to meet the Net Zero target. Reflecting the significant change in the adoption of the Net Zero target, the 6CB was itself a significant change, given the incorporation of international aviation within the budget (rather than dealing with it by way of the planning assumption).

- (b) In promulgating the policy in MBU, it was essential that the Secretary of State tested the enhanced use of existing runways against the prevailing climate change targets. The detailed assessment work undertaken in this regard is apparent on the face of MBU: see MBU at [1.12] – [1.13] (and the footnotes thereto) and table 1 – 3. Indeed, one of the principal purposes of MBU was to demonstrate that enhanced use of existing runways was compatible with the prevailing climate change targets, such as to limit consideration of this matter by local planning authorities.
- (c) In these circumstances, the adoption of the 6CB target and the Net Zero target represented a fundamental shift in the legislative and policy basis on which MBU was formulated and a fundamental shift in the basis of the detailed assessment work which was undertaken to support MBU. Accordingly, the absence of any updated assessment which established that the expansion of capacity envisaged by MBU was consistent with the attainment of the 6CB target and the Net Zero target was critical for considering the weight to be afforded to MBU. In the event that there was such an assessment, MBU could be given weight as being consistent with the 6CB target and the Net Zero target. However, if there was no such assessment, the weight to be afforded to MBU could be reduced. It follows that the absence of such an assessment was obviously material.

- 20. The error in the Inspectors’ approach is particularly apparent at DL 21 - DL 24. At DL 21 the Inspectors state that ‘*MBU sets out a range of scenarios for ensuring the existing planning assumption can be met*’. At DL 24, the Inspectors recognise the adoption of the Net Zero target in the first sentence and the 6CB target. However, the Inspectors then

state: *'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'*. The statement that *'MBU has remained Government policy'* betrays the Inspectors' failing: the fact that MBU remained Government policy despite the changes to the legislative and policy framework necessitated consideration of whether there was an assessment demonstrating that the development envisaged by MBU was consistent with the Net Zero target and the 6CB target. There was no such assessment and that was obviously material.

21. This error by the Inspectors was material and it cannot be said that relief should be refused applying *Simplex* because it is impossible for the court to know what weight the Inspectors would have attributed to MBU if they had considered the absence of any updated assessment which established that the expansion of capacity envisaged by MBU was consistent with the attainment of the 6CB target and the Net Zero target. Weight is a matter for the decision maker – see the third principle in *St Modwen*, above – and there is no basis for the court to step into the decision maker's shoes in this case.

**(b) The Inspectors could not determine whether the grant of planning permission for the Proposed Development would be consistent with the duty in s. 13 CCA 2008.**

22. Pursuant to s. 13 CCA 2008, the Secretary of State *'must prepare such proposals and policies as the Secretary of State considers will enable the carbon budgets that have been set under this Act to be met'* and the proposals and policies must be prepared with a view to meeting the Net Zero target.
23. As the Inspectors recognised in the final sentence of DL 19, the Secretary of State had not adopted any sectoral target for aviation within the 6CB target.
24. In these circumstances, the Inspectors were simply unable to determine whether the grant of planning permission for the Proposed Development would be consistent with the duty in s. 13 CCA 2008. The Inspectors failed to have regard to this material consideration when determining whether granting planning permission might make the attainment of carbon reduction targets materially more difficult, rather the Inspectors gloss over this matter at DL 20 having identified the difficulty in the previous paragraph and the Inspectors do not deal with this matter later in the DL.

**V. CONCLUSION**

25. For these reasons, the Council supports this claim and submits that the DL should be quashed.

**REUBEN TAYLOR QC  
MATTHEW HENDERSON**

**Landmark Chambers,  
180 Fleet Street,  
London EC4A 2HG.**

**29 July 2021**

## **Appendix 2**

Letter from NSC to the Programme Officer dated 5 May 2021.

**Date:** 5 May 2021  
**My ref:** 18/P/5118/OUT  
**Your ref:** APP/D0121/W/20/3259234  
**Contact:** Sue Buck  
**Telephone:** 01934 634926  
**Email:** DMAppeals@n-somerset.gov.uk



Ms J Vincent Programme Officer  
By email only  
Joanna.Vincent@gateleyhamer.com

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Town Hall  
Walliscote Grove Road  
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BS23 4EJ

DX 744990 Clevedon

Dear Ms. Vincent

**Appeal by Bristol Airport Limited against North Somerset Council's refusal of planning permission for the development of Bristol Airport. Application Reference: 18/P/5118/OUT. Appeal reference APP/D0121/W/20/3259234**

Further to the letter from the PCAA dated 27<sup>th</sup> April 2021.

### **The Legal Background**

The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 require an EIA Application to be accompanied by an environmental statement (Regulation 18(1) of the 2017 Regulations). An Environmental Statement is required to include a "description of the likely significant effects of the proposed development on the environment" (Regulation 18(3)(b) of the 2017 Regulations) and to include additional information specified in Schedule 4 of the 2017 Regulations which is relevant (Regulation 18(3)(f) of the 2017 Regulations).

Schedule 4(5) to the 2017 Regulations states:

*"A description of the likely significant effects of the development on the environment resulting from, inter alia:*

*...*

*(e) the cumulation of effects with other existing and/or approved projects, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources..."*

An ES accompanying the application for determination in the present case must therefore describe the likely significant effect upon the environment resulting from the cumulation of effects with other existing and/or approved projects.

The 2017 Regulations recognise that environmental impact is a process rather than simply a requirement to produce an environmental statement.

Regulation 4(1) of the 2017 regulations explains that

*"(1) The environmental impact assessment ("EIA") is a process consisting of—*

*(a) the preparation of an environmental statement;*

*(b) any consultation, publication and notification required by, or by virtue of, these Regulations or any other enactment in respect of EIA development; and*

*(c) the steps required under regulation 26."*

Regulation 26 of the 2017 Regulations requires decision makers to examine the "environmental information", reach a reasoned conclusion on the likely significant effects of the proposed development upon the environment by reference to that "environmental information" and their own supplementary examination and integrate that conclusion into the decision as to whether planning permission should be granted.

Regulation 26(2) of the 2017 Regulations prevents a decision maker from granting planning permission unless they are satisfied that the reasoned conclusion they have reached is "up to date".

## **Recent Events**

The Environmental Statement (ES) produced by the Appellant in the present case pre-dated the publication in December 2020 of the Sixth Carbon Budget proposals by the Committee on Climate Change.

On the 20th April 2021 the Government announced it was laying legislation to set the budget for 2033 to 2037 at the level recommended by the CCC. Indeed, the Draft Carbon Budget Order proposes a budget for the 2033-2037 budgetary period at 965,000,000 tonnes of carbon dioxide equivalent.

The Government announcement also explained that:

"CB6 includes emissions from International Aviation and Shipping (IAS) for the first time. Previous carbon budgets have formally excluded these emissions, instead leaving 'headroom' for them. However, IAS emissions were included in the CCC's advice, and are included in our 2050 net zero target, which was set on a whole economy basis."

The Government also explained that:

"Following the CCC's recommended budget level does not mean we are following their specific policy recommendations. Our published analysis is based on the government's own assumptions and does not, for example, assume the CCC's change in people's diet. Ahead of COP26, we will be setting out our own vision for net zero, and ambitious plans across key sectors of the economy to meet carbon budgets"

And further:

"Setting CB6 is about the government's ambition to cut emissions, rather than announcing specific policies that will deliver that reduction in emissions. We will bring forward policies to

meet carbon budgets, and the Net Zero Strategy, to be published before COP26, will set out our vision for transitioning to a net zero economy”

COP26 is the 26th UN Climate Change Conference of the Parties (COP26) in Glasgow on 1 – 12 November 2021.

Thus, Government has adopted a carbon budget for 2033-37 which includes international aviation for the first time and it has not adopted any policy recommendations on how the reduction in emissions will be delivered. It has indicated that it will bring forward policies to meet carbon budgets before “COP26” i.e. before the 1<sup>st</sup> November 2021.

### **The PCAA Request**

The PCAA has asked for two items of further work to be produced:

- a) A cumulative impact assessment of the carbon emissions from other airports and proposed airport expansions (Cumulative Assessment); and
- b) Updated environmental information and assessment on carbon emissions to include international emissions and the effects on these emission on the ability of the UK to meet the 6th Carbon Budget.

The Council recognises that the requirements for an ES only require cumulative impact assessment of projects that are “existing and/or approved” to be included. This gives rise for a potential dispute as to whether the projects listed by the PCAA are existing and/or approved. However, the Council regards such a debate as unnecessary.

The Council considers that both elements of the PCAA request are material considerations in the determination of the appeal.

Aviation 2050 states that planning applications should demonstrate “that their project will not have a material impact on the Government’s ability to meet its carbon reduction targets”. A decision maker will have to take into account whether the grant of planning permission is consistent with the carbon budgets adopted and with the net zero duty contained in the Climate Change Act 2008.

If it is the case that existing proposals for airport expansion at airports around the UK exceed the relevant aviation sector budget, not all of those airports with expansion plans will be able to expand as they desire consistently with the UK’s climate change commitments. If that is the case, then a choice has to be made at a national level as to which airport expansion plans should come forward and which should not. That choice would have to be made via a comparative exercise which examines all of the competing potential airport expansion proposals against a wide range of considerations relevant to the achievement of sustainable development (i.e. the economic social and environmental objectives of sustainable development). In such an exercise, all of the competing expansion proposals, including the Proposed Development, would need to be considered and compared, with only the highest ranked being selected to come forward and to utilise the carbon budget available and which can be offset.

In advance of that exercise, it would be premature to permit the Proposed Development to come forward since to do so will prejudice the ability of another airport or airports to expand consistent with Net Zero 2050 obligations, in circumstances where it has not been established

that the Proposed Development is to be preferred as best representing sustainable development.

Thus, the cumulative assessment of the airport expansion proposals at Bristol and other airports around the UK between now and 2050 is a material consideration in determining the Appeal. Also material is the extent to which expansion can be permitted consistent with the relevant carbon budgets.

The Council recognises that, at present, the Government has not adopted a budget for the aviation sector; rather, it is understood that the Government will confirm this in the policy statements to be given prior to CPO26 i.e. prior 1<sup>st</sup> November 2021. The absence of a budget for the aviation sector does not justify any failure to carry out the cumulative assessment as suggested since that assessment will be relevant to the comparative exercise that will have to be undertaken once an aviation sector budget is adopted.

If BAL were to assert that an appraisal of cumulative impact is not currently possible due to the Government's position, then that would be a recognition that BAL cannot currently demonstrate "that their project will not have a material impact on the Government's ability to meet its carbon reduction targets" and is thus currently contrary to national policy (see Aviation 2050). At the very least, it would also mean that this appeal is potentially premature and needs to await further action from Government before the appeal can proceed towards determination. The alternative would be for BAL to appraise the cumulative impacts of its scheme and the other proposals for airport expansion at airports around the UK adopting the budget for the aviation sector identified by the CCC. This would seem to be the most sensible course of action. The draft 6<sup>th</sup> Carbon Budget dated December 2020 produced by the CCC recommends a budget for the aviation sector of 23MtCO<sub>2</sub> with this amount being offset by greenhouse gas removals.

The CCC report 'Sixth Carbon Budget – The path to Net Zero' (December 2020) explains that

"Aviation is one of the sectors in which we expect there to be significant remaining positive emissions by 2050, given the limited set of options for decarbonisation. Remaining residual emissions will need to be offset by greenhouse gas removals (see section 11) for the sector to reach Net Zero."

Any increase in the 23 MtCO<sub>2</sub> in the CCC budget would thus require further removal/reductions in other sectors. However, as is plain from the CCC's work on the 6<sup>th</sup> Budget, there is simply no ability for the rest of the economy to make yet further cuts or removals to compensate for additional aviation emissions over and above the 23 MtCO<sub>2</sub> budget.

Thus, the Council contends that the parties should all adopt 23 MtCO<sub>2</sub> as the aviation sector budget in advance of a further Government announcement.

In the light of the above, the Council considers that it would be sensible to ensure that the information sought by the PCAA is provided by the Appellant in a timely manner so that the public is fully informed and also so that the other parties to the Inquiry have the ability to address BAL's assessment in their primary proofs of evidence, rather than in a more time constrained way via the rebuttal proof process.

The production of this information at the earliest opportunity and in any event by the 31<sup>st</sup> May 2021 by the Appellant is thus supported by the Council.

On the present timetable, the Inquiry may finish before the Government has issued its policy statements indicating how the relevant carbon emission reductions are to be achieved (on or around the 1<sup>st</sup> November 2021). However, it also seems likely that the appeal decision in the present case will be issued after the Government has issued its policy statements indicating how the relevant carbon emission reductions are to be achieved. The Council is very concerned to ensure that there is full and appropriate scrutiny of the climate change issues raised by the Appeal. That will not be achieved if the Inquiry is held and closed only for the Government's policy statements to follow later. We would ask the Inspectors to begin to consider how these timing issues might be addressed on a basis which is fair to all parties and which allows full scrutiny of the Appeal Scheme at Inquiry.

Yours sincerely

Mrs S Buck  
Solicitor

cc: Appellant and Rule 6 Parties

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### **Appendix 3**

Letter in response to the PCAA from BAL to the Programme Officer dated 5 May 2021.

5 May 2021

Ms J Vincent  
Programme Officer  
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One Eleven  
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**By email only**

**Email: [joanna.vincent@gateleyhamer.com](mailto:joanna.vincent@gateleyhamer.com)**

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Our ref:  
DLW1/DLW1/PERSONAL.DLW1  
Your ref:  
APP/D0121/W/20/3259234

Dear Ms Vincent

**Our client: Bristol Airport Limited**  
**Appeal Reference: APP/D0121/W/20/3259234**

We act on behalf of the Appellant, Bristol Airport Limited, in connection with the above appeal. We are writing in response to Lyons Bowe's letter dated 27 April 2021, submitted on behalf of the Parish Councils Airport Association (**PCAA**).

Whilst the Appellant does not accept that it is appropriate or necessary to undertake a cumulative assessment of GHG emissions for the reasons explained below, we are enclosing a table summarising the forecast emissions available in the public domain in response to the PCAA's request. This letter also clarifies the Appellant's position in relation to the recent announcement regarding the upcoming 6<sup>th</sup> Carbon Budget.

## **1. Forecast Emissions at Other Airports**

- 1.1 At Appendix 1 we set out a table summarising the forecast carbon emissions in line with expansion proposals at London Stansted Airport, Southampton International Airport, Leeds Bradford Airport, Luton Airport and Manston Airport based on information contained in the respective Environmental Statements submitted for each of these proposals. None of the Environmental Statements submitted for the proposals included in Appendix 1 have undertaken a cumulative assessment in the form proposed by the PCAA. As no application has been submitted for Gatwick or Heathrow, there is no publically available information for these potential expansion proposals and, therefore, these have not been included in Appendix 1. Please note that potential differences in the methodologies for calculating GHG emissions have not been reviewed for the purposes of this table.
- 1.2 The appended table collates the stated emissions from other known airport developments purely by way of context and, for the avoidance of doubt, this is provided as 'any other information' for the purposes of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (**EIA Regulations**). As explained at the Case Management Conference on 8 March 2021, it is the Appellant's position that a cumulative assessment of the effects of GHG emissions on the global climate is not appropriate, or indeed possible, for the purposes of this appeal. This is because such an assessment of the cumulative effects of the proposed development with other existing or approved projects would require an assessment of all global emissions created by the international aviation sector and, indeed, all other sectors of the global economy.

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- 1.3 Within this context, it is clear that the proposed expansion of Bristol Airport itself would have no discernible effect on the global climate and to seek to assess it cumulatively with all other global development is meaningless. Paragraph 5(f) of Schedule 4 to the EIA Regulations does require *“a description of the likely significant effects of the development on the environment resulting from, inter alia ... (f) the impact of the project on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the project to climate change”*. In that context, the Appellant has provided an assessment of the nature and magnitude of the GHG emissions from the proposed development and put that in the context of the UK legislative and policy framework on climate change. It has also, at the PCAA’s request, identified (Appendix 1) the stated emissions from other known airport expansion projects in the UK. Accordingly, there is no further requirement to conduct a cumulative assessment of GHG emissions on the global climate and, in any event, it would not be feasible to do so.
- 1.4 It is also important to recognise that GHG emissions from the aviation sector are to be controlled at a national level and, to that end, Government has legislated for a UK Emissions Trading Scheme (**ETS**) that came into effect on 1 January 2021 and encompasses international aviation: see the Greenhouse Gas Emissions Trading Order 2020, made pursuant to the Climate Change Act 2008. It has also set out policy as to how the UK ETS relates to both the EU ETS and the ICAO’s CORSIA scheme. Emissions from the aviation sector must also now be understood in the context of the carbon budget to be set for the period 2033-2037 in the proposed 6th Carbon Budget, which is expected to include international aviation.
- 1.5 It is now clear that GHG emissions from the UK aviation sector are to be controlled at a national level and that Government has put in place legislative and policy mechanisms to achieve this. This is now the context for considering the contribution that the proposed development will make to UK GHG emissions and the impact of the proposed development on those GHG emissions and the ability of the UK to meet its climate change obligations.

## 2. **6<sup>th</sup> Carbon Budget**

- 2.1 The effect of bringing international aviation within the 6<sup>th</sup> Carbon Budget will be that for the years 2033-2037 (and presumably beyond) it will no longer need to be compared with the existing ‘planning assumption’ (i.e. 37.5Mt CO<sub>2</sub>), as international aviation will not have a set ‘headroom’ within carbon budgets, as at present. Domestic and international aviation will operate within the ‘cap and trade’ mechanism set by the UK ETS, as supplemented by CORSIA. This will allow the aviation sector to buy and sell carbon permits from and to other sectors, but will also encourage a move towards reducing absolute emissions (i.e. greater innovation).
- 2.2 In this context, it is not clear what is meant by the PCAA’s request for the information in the ES Addendum to be ‘updated’ in line with the 6<sup>th</sup> Carbon Budget. The ‘planning assumption’ is still relevant as being the ‘headroom’ that was actually allowed in the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Carbon Budgets (2018-2022, 2023-2027 and 2028-2032 respectively). In other words, when those budgets were set in terms of “tonnes of carbon dioxide equivalent” for the “net UK carbon account” (the budgets are not broken down by sector) they were reduced to ‘allow for’ international aviation. It has been announced by Government that the 6<sup>th</sup> Carbon Budget will include international aviation and so that budget will not need to be reduced by a ‘headroom’ allowance for that sector. During the period of the 6<sup>th</sup> Carbon Budget (2033-2037), however, international aviation will continue to operate within the ‘cap and trade’ system under the new UK ETS as supplemented by CORSIA, introduced at the start of 2021. Thus it is no longer possible, from the period starting 2033, to compare Bristol Airport’s emissions with a ‘headroom’ allowance for aviation, as it will be an indistinguishable part of the overall UK carbon budget.
- 2.3 Whilst it will clearly be important to explain the new regime for international aviation in evidence, and we have tried to briefly outline this above, we do not believe that any further information is required in our ES Addendum as this is a matter of legal and policy context, rather than environmental information.

### **3. Further Environmental Information**

- 3.1 For the reasons given above, we do not believe that the information requested by PCAA should be treated as further environmental information for the purposes of Regulation 25 of the EIA Regulations.

Should the Inspectors require any further information with regard to the content of this letter, please do not hesitate to contact us.

Yours faithfully

*Womble Bond Dickinson (UK) LLP*

**Womble Bond Dickinson (UK) LLP**

#### **Copy to**

1. Leanne Palmer (PINS)
2. North Somerset Council
3. Bristol XR Elders
4. Sutherland Property & Legal Services
5. Bristol Airport Action Network Committee Coordinators
6. Parish Councils Airport Association
7. British Airline Pilots Association

## APPENDIX 1: FORESCAST EMISSIONS AT OTHER AIRPORTS

Airport	Growth	Forecast Date	Forecast Emissions	Status
London Stansted Airport	8 million passengers per annum (mppa) (35 to 43mppa)	2032/2050	Total aviation emissions (2050) = 1.20MtCO <sub>2</sub> to 1.98MtCO <sub>2</sub>  Aviation emissions from the proposed development (2032) = 0.14MtCO <sub>2</sub> , in 2050 = 0.08 – 0.12 MtCO <sub>2</sub>	Pending appeal decision
Southampton International Airport	1mppa (2mppa to 3mppa) – no current cap	2050	Total aviation emission from ‘with development’ = ~ 0.6MtCO <sub>2</sub> e/yr  Total aviation emissions from the Proposed Development = ~ 0.367 MtCO <sub>2</sub> e/yr	Approved with 3mppa cap (subject to Section 106 Agreement).
Leeds Bradford Airport	3mppa (circa 4mppa to 7mppa) – no current cap	2050	Total aviation emissions = 0.22 to 0.30 MtCO <sub>2</sub> e  Aviation emissions from the proposed development = 0.062 MtCO <sub>2</sub> e to 0.093 MtCO <sub>2</sub> e	Conditional approval
Luton Airport	1mppa (18mppa to 19mppa)	2050	Total aviation emissions in ‘with development’ = 0.720 – 0.848 MtCO <sub>2</sub> /yr in 2050	Pending

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Airport	Growth	Forecast Date	Forecast Emissions	Status
			International Aviation emissions from the proposed development in 2050= 0.018 MtCO <sub>2</sub> to 0.021 MtCO <sub>2</sub>	
Manston Airport	N/A (non-passenger airport)	2040	Total aviation emissions = 0.730 MtCO <sub>2</sub> e/yr in 2040	Pending
Bristol Airport	2mppa (10mpa to 12mppa)	2050	<p>Total aviation emissions = 0.413 – 0.488 MtCO<sub>2</sub>e/yr in 2050</p> <p>International aviation emissions from the proposed development in 2050 = 0.064MtCO<sub>2</sub> to 0.076MtCO<sub>2</sub></p>	At appeal