

NOTE TO THE INSPECTORS

ON BEHALF OF NORTH SOMERSET COUNCIL

1. This note responds to requests for comment from the Parties to the Inquiry on the COP26 decision, the implications of the Environment Act 2021 and the resolution to grant planning permission for the expansion of Luton airport by 1 mppa taken by Luton Borough Council on the 30th November 2021.

A. The COP26 Decision

2. There are a number of key matters which are material to the context for the consideration of the climate change issues in the determination of this appeal.
3. Firstly, the conference of Parties recognises the urgency of the need to address climate change. It:
 - a. expresses alarm and utmost concern that human activities have caused around 1.1 °C of warming to date, that impacts are already being felt in every region (section I paragraph 3);
 - b. stresses the urgency of enhancing ambition and action in relation to mitigation, adaptation and finance in this critical decade to address the gaps in the implementation of the goals of the Paris Agreement (section I paragraph 5);
 - c. recognises that limiting global warming to 1.5 °C requires rapid, deep and sustained reductions in global greenhouse gas emissions, including reducing global carbon dioxide emissions by 45 per cent by 2030 relative to the 2010 level and to net zero around mid-century, as well as deep reductions in other greenhouse gases; and
 - d. recognises that this requires accelerated action in this “critical decade”
4. Secondly it recognises that insufficient action is being taken to deliver the obligations of the Paris Agreement and that more must be done by all Parties. The decision:

- a. notes with serious concern the findings of the synthesis report on nationally determined contributions under the Paris Agreement, according to which the aggregate greenhouse gas emission level, taking into account implementation of all submitted nationally determined contributions, is estimated to be 13.7 per cent above the 2010 level in 2030 (section IV paragraph 25); and
 - b. emphasises the urgent need for Parties to increase their efforts to collectively reduce emissions through accelerated action and implementation of domestic mitigation measures in accordance with Article 4, paragraph 2, of the Paris Agreement (Section IV paragraph 26).
5. With this in mind, the COP26 decision requests that Parties:

“revisit and strengthen the 2030 targets in their nationally determined contributions as necessary to align with the Paris Agreement temperature goal by the end of 2022, taking into account different national circumstances” (section IV paragraph 29).
6. This means that the UK Government will have to revisit the nationally determined contribution which it has set for 2030 by the end of next year. It means that the possibility of greater carbon reduction targets in the years to 2030 cannot be ruled out (indeed, this appears to be the likely direction of travel, and there is no possibility of more lax targets).
7. This strengthens the submissions made on behalf of NSC relating to prematurity in the context of this appeal (see NSC’s closing submissions paragraph 159 and following). It is now known that climate change targets to 2030 will be reviewed in 2022 and could change so as to require greater reduction in carbon emissions. This increases the uncertainty as to whether all pipeline airport expansion schemes can come forward consistently with ensuring the attainment of carbon reduction targets as required by the CCA 2008. This reinforces the possibility that national policy may have to come forward on the basis that only some airport expansion schemes can be permitted, where central Government determines which schemes should come forward in the public interest and which should not. Further, since such a concluded exercise has not been undertaken by Government in the context of any new climate change targets that may emerge as a result of the 2022 review, BAL cannot

demonstrate that its scheme would be selected ahead of other airport expansion schemes. It follows that the review of carbon reductions target to be undertaken in 2022 reinforces the submission previously made that to grant planning permission for the Proposed Development now would be premature. It would prejudge the outcome of the 2022 review and its potential consequences for any exercise that may be necessary to determine which air expansions schemes should come forward and which should not.

8. The decision at COP26 that 2030 targets should be reviewed strengthens the submissions made previously on behalf of NSC that to grant permission for the Proposed Development would utilise a proportion of available carbon capacity that might otherwise be assigned to a different airport which may better achieve sustainable development objectives in the public interest. Thus, a grant of planning permission now would undermine the formulation of national policy by pre-determining matters that are central to that emerging national policy.

B. The Environment Act 2021

9. The Environment Act 2021 (“**EA 2021**”) requires the Secretary of State to set a number of environmental targets.
10. Section 1(1) EA 2021 provides the Secretary of State with the power to set long-term targets in respect of any matter which relates to the natural environment, or people’s enjoyment of the natural environment. The Secretary of State is required to set a long-term target in respect of at least one matter within each “priority area”. The priority areas are air quality, water, biodiversity and resource efficiency and waste reduction. Any target set must specify a standard to be achieved, which must be capable of being objectively measured, and a date by which it is to be achieved. A long-term target is one set for a date at least 15 years into the future.
11. In addition to the duty to set a long-term target for air quality arising from section 1 EA 2021, by section 2 EA 2021 the Secretary of State is required to set a target (“the PM2.5 air quality target”) in respect of the annual mean level of PM2.5 in ambient air. That target may be a long-term target but does not have to be.

12. Further and in addition to the duty to set a long-term target for biodiversity arising from section 1, by section 3 EA 2021 the Secretary of State is required to set a target (the “species abundance target”) in respect of a matter relating to the abundance of species. This is not a long term target but is to be set for the 31 December 2030. This is relevant to a number of issues raised by interested parties.
13. Section 5 EA 2021 imposes a statutory duty upon the Secretary of State to ensure that the targets set under sections 1 to 3 EA 2021 are met.
14. Whilst these provisions are not yet in force and targets remain to be set, if these provisions are enacted they could have significant ramifications for the decision in this Appeal and/or in future decisions relating to the discharge of planning conditions if planning permission is granted.
15. As explained in NSC’s Closing submissions (paragraph 321), at present in terms of PM2.5, the Secretary of State is under a duty to *“ensure that all necessary measures not entailing disproportionate costs are taken to ensure that concentrations of PM2.5 do not exceed the target value in Schedule of the Regulations”*.
16. There have been significant changes in scientific knowledge since the target values in the extant regulations were enacted. This has culminated most recently with the publication of the WHO 2021 guidelines which identify the annual mean AQG for PM2.5 is 5 µg/m³. This is a level the exceedance of which is identified by the WHO as *“associated with important risks to public health”*.¹ Indeed, the Clean Air Strategy recognises the WHO’s work on identifying air quality guidelines as *“the international benchmark for setting air quality standards”*.²
17. Given this, it seems likely that the Government will want to set the annual mean PM2.5 target at or below the WHO guideline level in order to protect public health. That is a level which, as has been explained at paragraph 384 of NSC’s closing submissions, the Proposed Development is forecast to breach in 2030 at all receptors.

¹ NSC closing submissions paragraph 356

² NSC closing submissions paragraph 368

18. Accordingly, if such a PM2.5 target is set prior to a decision being made in this appeal, a grant of planning permission would not ensure that the PM2.5 target is met and would be unlawful. It also raises the prospect that approval of any air quality strategy pursuant to any conditions imposed would have to consider the attainment of such a PM2.5 target. If it were the case that it could not be demonstrated that with the AQ Strategy proposed the duty under section 5 would be complied with then the approval of that AQ Strategy would be unlawful.
19. It is possible for other targets set pursuant to sections 1 or 3 EA 2021 could have similar ramifications.
20. It follows that the EA 2021 has potentially significant implications for the consideration of the air quality and other issues in this Appeal. Whether that is the case or not remains to be seen.

C. Luton Airport

21. On the 30th November 2021, Luton Borough Council resolved to grant planning permission for the expansion of the airport which it owns, namely Luton Airport, by 1 mppa. This resolution was subject to the imposition of conditions and was subject to the negotiation and execution of a s106 planning obligation.
22. Insofar as the Officer's Report might, potentially, be of interest in this appeal, it is in the consideration of policy and guidance. However, on examination, this is not the case because the Officer's Report does not consider a host of matters which were the subject of evidence and submissions in this appeal. The Officer's Report to committee does not begin to grapple with the submissions which have been by NSC in the present appeal relating to a host of matters including but not limited to NSC's submissions relating to:
- a. the status, weight and interpretation of MBU and the APF;
 - b. prematurity;
 - c. the status and weight to give to the Jet Zero consultation;
 - d. the lawfulness of granting planning permission in the light of Climate Change obligations; and

e. the WHO Air Quality Guidelines 2021.

23. Indeed, a number of these matters are simply not referred to at all in the Officer's Report.

24. As far as NSC has been able to discern no planning obligation has yet been entered into and no planning permission granted. NSC is aware that objectors continue to make representations relating to errors in the decision-making process. Accordingly, the possibility of the matter returning to the development management committee and/or being the subject of challenge in judicial review cannot be ruled out.

25. As a consequence, it is submitted that the resolution to grant planning permission in respect of the application for a 1 mppa increase in capacity at Luton Airport should be given limited, if any, weight.

16 December 2021