

14 January 2022

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Our ref:
VJR2/ET4/381408.9
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 (**BAL**), in connection with the above Appeal proposal. We are writing in response to your request of 12 January 2022 to comment on whether the email of 3 January 2022 from Mr Clarke of Bristol Airport Action Network Committee Coordinators (**BAAN CC**) should be accepted into the Inquiry by the Inspectors. In principle, the Appellant has no objection to this but is firmly of the view that BAAN CC's proposed submission will not be of material assistance to the Inspectors in their determination of the Appeal proposal.

The BAAN CC proposed submission relates to permission granted at a renewal hearing by Mrs Justice Lang in the High Court for a judicial review claim against the grant of planning permission for expansion of Southampton Airport. The third ground of challenge is cited by BAAN CC as being of relevance. This ground reads as follows:

"By making no assessment of the cumulative effects of GHG emissions in combination with other projects, the Defendant breached its duty under Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (SI 2017 No. 571) ("the EIA Regulations"), and/or failed to take into account an obviously material consideration"

This is explained at paragraph 66 of the application, as follows:

"The Defendant was required to consider the overall trends of UK emissions and/or UK aviation emissions, because it was required to consider cumulative impacts on the climate as a mandatory aspect of the EIA process, and/or because that context was obviously material to assessing the significance of the GHG impacts of the development. Accordingly, the EIA was manifestly inadequate in that it involved no assessment of the cumulative impact of the proposal whatsoever; and/or the decision to grant consent failed to take account of a consideration that was mandatory because it was obviously material."

It is difficult to see how this is relevant to the circumstances of the Bristol Airport Inquiry where the 'environmental information' before the Inspectors did include these matters and they were considered at the Inquiry.

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The difference in circumstances between those alleged in the Southampton Airport challenge (above) and the Bristol Airport Appeal are quite stark, for the following reasons:

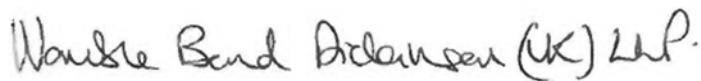
1. Regulation 26 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (**EIA Regulations**) states that “(1) *When determining an application or appeal in relation to which an environmental statement has been submitted, the relevant planning authority, the Secretary of State or an inspector, as the case may be, must— (a) examine the environmental information ...*” (emphasis added). The term ‘environmental information’ is defined in regulation 2 as meaning “*the environmental statement, including any further information and any other information, any representations made by any body required by these Regulations to be invited to make representations, and any representations duly made by any other person about the environmental effects of the development*” (emphasis added). Thus, the duty is to take into account the Environmental Statement, but also “*any other information*” and various representations.
2. The issue of the cumulative effects of the proposed Bristol Airport development was raised in a letter from Lyons Bowes (solicitors to Parish Councils Airport Association) dated 27 April 2021. In our letter on behalf of BAL to the Inquiry programme officer dated 5 May 2021, we included at Appendix 1 the forecast carbon emissions from a number of known airport developments, including Southampton International Airport. At paragraph 1.2 of that letter, we made clear that “*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).*” We also made clear that “*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.*” We also commend the rest of that letter to the Inspectors as it sets out the approach that BAL then adopted to this issue during the Inquiry. This included considering the effects of airport expansion in the context of the ‘planning assumption’ and the UK’s carbon budgets, within the context of the controls set out in the UK’s Emissions Trading System and CORSIA. That letter was copied to the Rule (6) parties, including BAAN CC.
3. The emissions from other known airport expansion proposals was also considered during the Inquiry itself and BAL produced evidence on this issue and parties were given the opportunity to cross-examine on the same. The proof of evidence of BAL’s climate change witness, Dr Ösund-Ireland (**BAL/W6/2**), reproduced the data on these emissions at page 47, Table 4.3. These data were reproduced in section 3.4 of Dr Ösund-Ireland’s evidence where he contextualises the emissions from the proposed Bristol Airport expansion against the 37.5Mt CO₂ ‘planning assumption and, indeed, the Sixth Carbon Budget. Comparisons are also included for the other airports in Table 3.4. All of this was before the inspectors at the Bristol Airport Inquiry and BAAN CC and others had the opportunity to make representations and/or cross examine on it. Indeed, this table was expressly referred to in BAL’s closing submissions on the issue of cumulative climate change effects at paragraph 580 (fn179).
4. It is clear, therefore, that whatever the position in relation to the Southampton Airport challenge, the Inspectors at the Bristol Airport Inquiry (and indeed other parties including BAAN CC) were made fully aware of the emissions from other known airport expansion projects from as early as 5 May 2021 and that this was submitted as ‘other environmental information’ pursuant to the EIA Regulations and was considered at the Inquiry itself.
5. The Inquiry also considered the UK’s current and projected performance against its carbon budgets. The Inquiry had before it the BEIS Energy and Emissions Update 2019 (**CD9.78**) and the Climate Change Committee’s Progress Report to Parliament 2021 (**CD9.130** and Hinnells Rebuttal **NSC/W6/3** p.11 Fig.2) that set out the current net carbon account performance against future carbon budgets. Again, evidence was given on this issue and was indeed cross-examined during the Inquiry. This issue was also referred to in BAL’s closing submissions at paragraph 545.

6. It is again clear, therefore, that whatever the position in relation to the Southampton Airport challenge, this matter was fully canvassed before the Bristol Airport Inquiry Inspectors and they were given 'environmental information' on the issue.

In this context, it is difficult to see the relevance of the Southampton Airport challenge application documents that appear to relate to a completely different factual matrix; one where it is alleged that this information was not before the decision-maker. Furthermore, and in any event, the granting of permission by Lang J indicates nothing more than that the low threshold of being 'arguable' has been met in what is alleged to be the completely different factual circumstances of the Southampton Airport challenge.

As such, whilst BAL has no objection to the Inspectors being shown the Southampton Airport challenge application documents, we doubt that they will find them of any material assistance in relation to their determination of the Bristol Airport Appeal.

Yours faithfully

A handwritten signature in dark ink, appearing to read '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