**STANSTED AIRPORT 35 + PLANNING APPEAL**

**PINS Appeal Ref: APP/C1570/W/20/3256619**

---

# CLOSING SUBMISSIONS ON BEHALF OF THE APPELLANT

---

## INTRODUCTION AND TAKING STOCK

1. The Submissions incorporate without repetition our Opening Submissions[1].

2. We begin by reviewing briefly the position of the main parties following the completion of the hearing of evidence over the 7 weeks during which the inquiry has been sitting and against the background of their previously stated positions.

## STAL

3. STAL's case remains precisely as originally set out in the Statement of Case[2] submitted with the appeal, supported evidentially in the Proofs of our expert witnesses and summarised in our Opening Submissions, namely that the appeal proposals accord with the development plan, are directly supported by Government policy and would give rise to minimal local environmental impacts whilst strongly supporting local and regional job creation and broader economic growth - all within a framework of conditions and obligations which would secure reduced local impacts and an improved package of mitigation measures going forward.

4. STAL has called and made available for questioning by the Panel, and by others where appropriate, 13 witnesses, all of whom have supported evidentially their respective elements of STAL's case. Some have been subjected to extensive cross examination over several days by UDC and SSE. The Panel will have heard the clarity and consistency of this expert evidence and observed the degree to which STAL's written

---

[1] INQ1
[2] CD24.1

proofs of evidence were fully supported by the answers given by its witnesses in XX and ReX. It is on the basis of this evidence that we will, at the close of these submissions, request that this appeal is allowed.

**UDC**

5. Of course, UDC's decision of 24 January, 2020 is the reason why this lengthy appeal has been necessary.

6. That decision was made 14 months after the resolution of its Planning Committee on 14 November 2018 to grant planning permission for the appeal development and constituted a complete *volte face* from the position it had previously taken. The Minute of the meeting of 24 January 2020[3] (eventually approved in September 2020, 8 months after the event) identify a number of matters which the Planning Committee considered to constitute *not merely* "material changes in circumstance" since the 2018 resolution, but matters sufficient to warrant refusal of planning permission: fleet mix variability and the WHO ENG18; PM2.5s and UFPs; "direction of travel" on CC and net zero. Faced with repeated and crisply expressed advice from all its Senior Officers, independent advice from external consultants of high repute and experience and Opinions from a raft of senior Members of the Bar (Stephen Hockman QC, Christiaan Zwart & Philip Coppel QC[4]), the UDC Planning Committee simply would not accept the advice it was being given and instead preferred to follow the urgings of SSE, recorded for all to see on its lengthy powerpoint presentation.

7. As Mr Andrew explained in his XinC: notwithstanding the seriousness of the decision:

   i. no opportunity was taken by Members to defer this momentous decision in order to seek further information from STAL;

   ii. no opportunity was taken to consider the potential to impose planning conditions which might have secured Members concerns; and

[3] CD.13.4a
[4] Ibid, page 7

iii. no opportunity was taken to consider whether the package of planning obligations agreed over the course of a year's discussion between STAL and UDC Officers and Members could be modified to meet the concerns of the Planning Committee.

8. Permission was simply refused. Mr Andrew, who sat through all 11 hours over two days, comments upon the extraordinary nature of the proceedings.

9. The UDC Statement of Case[5] submitted on 16 September, 2020, largely followed the themes contained within the RfR, but elaborated these in great detail over 30 pages to include a host of alleged deficiencies and additional requests for information and detail which had never previously been raised (or had been raised earlier and satisfied long prior to Jan 2020).

10. By December 2020, UDC's position had transformed once again into that confirmed in evidence by Mr Scanlon, presumably following mature reflection by its recently appointed new consultant team, including Dr Chris Smith, an air traffic forecasting expert.

11. Accordingly, UDC has run a very narrow case at this inquiry, which has accepted that the appeal should be allowed but has focused instead upon the form and content of conditions which should be imposed. The latest transformation of its case did not become apparent until its proofs of evidence were received and there has been no amendment to its Statement of Case. STAL has repeatedly expressed its fundamental concerns about the newly emergent Condition 15 concept (see our Opening Submissions[6] and Mr Andrew's Rebuttal[7]). However, Mr Scanlon's written proof[8] – and oral evidence[9] – were clear that his acceptance on behalf of UDC that the planning balance falls in favour of allowing the appeal is quite independently of the Council's case on Condition 15, so long as this is subject to an appropriate set of conditions which secure to a sufficient degree the impacts in the ESA. We will address below why the Panel can indeed be satisfied in this regard - and of course the Panel has a complete

[5] CD24.2
[6] INQ1
[7] STAL/13/4
[8] UDC/4/1
[9] See in particular the answer to the Inspector (Mr Boniface) on Day 24 that para.9.77 of his proof stands as written

discretion as to the scope and content of any conditions which it considers should be applied, subject to the normal tests. What is clear, however, is that UDC's planning evidence, expressed by Mr Scanlon after exhaustive consideration of the planning balance in his section 9, is that the appeal should be allowed whether or not a "Condition 15" type condition is imposed.

12. The Council's evidence has at the same time sought to assert that the concerns expressed by Committee in January 2020 were a proper basis for the reasons for refusal. Mr Scanlon accepted in XX that the assessment of environmental impact in the ESA[10] is not materially different from that set out in the ES[11]. However, he asserted that the level of information provided to UDC in relation to these concerns as at January 2020 was inadequate. We will consider below in relation to our consideration of local impacts whether this is a tenable proposition.

**SSE**

13. The application of Rule 6 of the Inquiries Procedure Rules has effectively given SSE equivalent status to UDC at this inquiry and it has taken full advantage of this status to occupy a great deal of inquiry time with extended XX of STAL witnesses. However, it must be borne in mind at all times that SSE is an anti-airport local pressure group, has no democratic mandate within Uttlesford or beyond, no special status within the planning regime and, in our view, has occupied a disproportionate amount of inquiry airtime when compared with all those who depend upon the airport for their livelihoods, their economic prospects, the development of their businesses, their opportunities to visit family and friends overseas or to take highly valued and eagerly awaited holidays abroad, but who could not reasonably be expected to assemble as a Rule 6 party represented by 2 QCs and to participate at this inquiry for 8 continuous weeks.

14. SSE has submitted evidence upon all matters, the recurring factor in which has been Mr Ross. We note in SSE's Closing[12], the hint of a prejudice claim in respect of the witnesses which they did not call. However, we do not accept that these parties could

[10] See CD3.18
[11] See CD7.18
[12] SSE Closing, para.1.2

not have given evidence remotely (as did many of our witnesses and all of UDCs) and we note that Dr Holman (who did not appear and whose evidence was not tested in XX) is noted[13] as giving air quality evidence in another case just a few weeks before the commencement of the inquiry. However, the evidence has revealed SSE's position to have been misconceived throughout. It is based upon the proposition that any airport development is "inherently harmful"[14], with the inference that any and all aviation development is bad. This is patently not a proposition which finds support in law or in government policy.

15. Moreover, SSE's entire case has also proceeded upon what has seemed at times to be a wilfully misconceived approach:

    i. It has asserted a requirement to demonstrate "sufficient need", which is entirely unreferenced in the MBU policy. This has been linked with preposterous and patently wrong-headed assertion that MBU policy provides no "in principle" support for the appeal proposals, even though the policy provides this support expressly and in terms;

    ii. It has insisted that DfT MBU carbon modelling provides relevant and reliable evidence that DfT does not intend Stansted to grow above 35mppa in the period to 2050, despite an earlier assault by Mr Ross himself upon the credibility of the very same forecasts and in the face of written evidence from the most senior civil servants within DfT that SSE has completely misconstrued these forecasts.

16. SSE, alone of the main parties to this inquiry, maintains root and branch opposition to this most benign of proposals and does so, in this case, on a series of patently misconceived and/or irrelevant bases. It also appears to be setting up a series of arguments which it will seek to pursue as grounds of legal challenge if it is unhappy with the outcome of this appeal process. Unfortunately, a major task for the Panel will be to deal comprehensively with SSE's various complaints, as we can be sure that, if this is not done, we will back in the High Court with yet another legal challenge - this time to the outcome of this appeal.

[13] SSE Closing para.12.20
[14] SSE/10/2, para.1.3.3

17. We note that Mr Stinchcombe & Mr Wald have already flagged up five threatened points of legal challenge at para.1.4 of their Submissions. These are all addressed elsewhere in our Submissions and we are confident that the Panel will reject SSE's assertions in respect of these 5 matters.

## STRUCTURE OF STAL'S SUBMISSIONS IN SUPPORT OF THE CASE FOR ALLOWING THE APPEAL

- The Nature of the Development
- Development Plan Compliance and the Presumption in Favour
- Other considerations: National Aviation Policy
- Forecasting and the Reliability of the Assumptions underlying the ESA
- Socio-Economic Benefits
- Local Environmental Impacts: Noise & Air Quality
- Carbon & Climate Change
- Surface Access
- Planning Balance
- Condition 15
- Conclusion

## THE NATURE OF THE DEVELOPMENT

18. The proposed development comprises minor airfield works to improve the efficiency of runway operation and a modest number of additional stands to support increased Passenger ATMs ("PATMs"). The potential for an increased proportion of PATMs would be reflected in the proposed combined ATM condition and an increased maximum number of passengers permitted to pass through the airport in any given year ("mppa"). The total number of ATMs would not exceed that already permitted. The difference is simply in the proportion of PATMs and the rate of growth predicted - all within the already permitted maximum number: see the full explanation in Mr Andrew's Proof[15] at paragraph 9.4. This reflects a deliberate decision by STAL not to promote an

[15] STAL/13/2

increased total number of ATMs following public consultation on the scoping of the EIA for its application in 2017[16].

19. The increase from 35 to 43mppa is achieved through a combination of factors: one is simply the larger size of passenger aircraft and increased load factors - bringing more passengers through the airport per average PATM than was anticipated in 2008 when condition MPPA1 was imposed in 2008; the other is the product of the increased proportion of PATMs and reduced number of CATMs and Other AMs. As we have seen, the increased total number of mppa is precisely as forecast in 2014 when STAL consulted upon its SDP, which was adopted in 2015[17].

20. Mr Hawkins' evidence has set this increase in its commercial context for STAL, explained the ambitions of STAL to sustain and enhance its route network, increasing connectivity both in its already well established short haul European network but also with the addition of targeted long haul services. He has explained the significance of "headroom to grow" in attracting airline operators prepared to make the investment in expanding the network of routes from Stansted – and the vital role which clarity and certainty play in securing that investment.

21. Mr Hawkins was clear that Stansted could not expand up to its present ceiling and only then seek a further segment of capacity, but that investment in new routes, especially for long haul operators, would only come if there was reliable headroom to accommodate a material level of growth. He was also clear that, immediately prior to the pandemic, a variety of new routes were being discussed.

22. Thus the only material change in off-site impact over and above what was permitted by the SoS in 2008, is the additional 8mppa. Given STN's outstanding public transport offer, at least 50% of these passengers would be expected to use rail, bus or coach. The impact of the other 50% of additional passengers, heading in a variety of different directions, and spread as they are across the year and across the hours of the day, does not unduly exacerbate local peak hour congestion on the network. In consequence, even if the previously agreed ECC improvements to J8 of M11 are delayed or abandoned

[16] SCI: see CD2.5
[17] See CD15.1: 40-45mppa

altogether, it has been possible to agree directly with HE and ECC (advised by Jacobs and AECOM respectively) a bespoke scheme of measures which would address airport related impacts on J8 - and by a comfortable margin.

23. Accordingly, it has been established that STN can deliver a meaningful increment in passenger capacity for London and the East of England, with minimal additional operational development, whilst remaining within its existing overall ATM cap, and taking advantage of its already record-breaking public transport facilities for terminal passengers. No party has seriously challenged these facts, which form the bedrock of the appeal proposal, and it should come as no surprise, therefore, that Senior Officers of UDC have so consistently recommended approval and that Mr Scanlon has now joined in the chorus.

## DEVELOPMENT PLAN COMPLIANCE: SECTION 38(6) AND THE PRESUMPTION IN FAVOUR OF SUSTAINABLE DEVELOPMENT

24. STAL and UDC agree that there is compliance with the development plan. SSE does not engage with this exercise in Mr Arnott's proof and Mr Ross, unqualified as a planner, was not in a position to elaborate: XX3.

25. Mr Scanlon and Mr Andrew also agree that the presumption in favour of sustainable development is engaged via paragraph 11c of the NPPF, as the environmental protection policies of the ULP 2005 are consistent with the NPPF and not out of date. We do not believe the authorities in respect of the determination of whether or not development is "sustainable development" are in dispute, but they are referenced below for completeness[18].

[18] The presumption in favour of sustainable development is to be found only in para 11 NPPF and by working through the test in para 11: see ***Barwood Strategic Land II LLP v East Staffordshire Borough Council*** [2017] EWCA Civ 893**.** There is no "wider" presumption in favour of sustainable development arising outside para 11, including by reference to para 7 onwards. A decision-maker will only know if a proposal is sustainable or not by applying the test in para 11: see ***Cheshire East BC v Secretary of State for Communities and Local Government***

26. The first "trigger" for the application of the tilted balance under paragraph 11d is "where there are no relevant development plan policies". "That describes the situation where there is no policy in the development plan that is relevant to the decision whether the application should be granted or refused": see ***Paul Newman New Homes*** [2021] EWCA Civ 15. That is plainly not the case here, as Mr Scanlon's review of the LP policies demonstrates. The second trigger is "where the policies which are most important for determining the application are out-of-date.": "That involves an evaluation by the decision maker of which of the relevant policies in the local plan are the most important, and whether they accord with current national policy": *Paul Newman New Homes* at para 43. A full evaluation of these policies has been undertaken by Mr Scanlon. Mr Andrew agrees with his analysis that these policies comply with the NPPF and are up to date.

27. Mr Andrew additionally took the (belt and braces) view[19] that, even if paragraph 11d were engaged, a similar outcome would ensue, as limb (i) was not engaged and the many benefits of the proposed development were not significantly and demonstrably outweighed by their adverse impacts.

28. As noted above, SSE does not apply the statutory development plan, leaves this matter and its consequences for paragraph 11 of NPPF to UDC, and does not advance a case on this issue.

29. Worthy only of a footnote, the "emerging" ULP is no longer emerging. UDC agree it is withdrawn; and has no status or relevance whatsoever. NPPF guidance about the weight to be attached to emerging policies cannot apply once they have ceased to emerge. For the avoidance of doubt, the Inspectors expressed no conclusions on the airport specific policies, notwithstanding that a days' time was occupied at the EIP with these policies. It is quite impossible to draw any conclusions from this position which would allow

[2016] EWHC 571 at 26-27. Conversely, a development which satisfies the presumption under para 11 clearly cannot be rendered unsustainable by reference to paragraphs in the NPPF outside para 11.

[19] ReX'd Day 27

weight be attached to the now abandoned policies extensively trailed in Mr Arnott's Proof. This was another bad point which should not have been taken by SSE.

30. Accordingly, Appellant and LPA agree there is a presumption in favour or granting permission without delay. Such a presumption is of course rebuttable, but the balance is strongly tilted and a consideration would, it is submitted, need to be very powerful indeed in order to rebut this presumption.

## DO OTHER CONSIDERATIONS "INDICATE OTHERWISE"?

31. We now proceed to consider whether, against the background of agreed compliance with the statutory development plan and the engagement of the presumption in favour of sustainable development, there are other considerations which might conceivably indicate that planning permission should be refused. We consider, in turn, national aviation policy, the socio-economic benefits of the proposals and their local environmental impact.

### National Aviation Policy

32. As all parties agree, NPPF is effectively silent on aviation, and current government policy is set out clearly in the APF[20] and MBU[21].

33. APF, whilst adopting a holding position pending outcome of Airports Commission ("AC")'s work, expressly supported the concept of MBU to meet the need for increased capacity at least until a clearer national strategy - and timetable for its delivery - emerged[22]. This remains national policy.

34. Once the government had accepted the Airports Commission ("AC")'s recommendation for a new NWR at LHR, it became necessary to consider again the role of other airports in the context of the government's broader emergent Aviation Strategy. This happened

[20] CD14.1
[21] CD14.2
[22] See, for example, CD14.1, para.1.60

with the publication in July 2017 of "Beyond the Horizon: The Future of UK Aviation; A call for evidence"[23] 2017. Here the government records[24]:

"The AC noted in its final report that a new runway will not open for at least 10 years and it is vital that the UK continues to grow its domestic and international connectivity in this period, which will require the more intensive use of existing airport capacity….We are aware that a number of airports have plans to invest further, allowing them to accommodate passenger growth over the next decade using their existing runways, which may need to be accompanied by applications to increase existing caps. The government agrees with the AC's recommendation that there is a requirement for more intensive use of existing airport capacity and is minded to be supportive of all airports which wish to make best use of their existing runways including those in the South East. The exception to this is Heathrow, whose expansion is proceeding through the draft ANPS process….Airports with planning restrictions that wish to take forward plans to ….increase the utilisation of existing runways will still need to submit a planning application to the relevant authority…environmental issues, such as noise and air quality and other others that supported the existing planning restrictions will be taken into account….the government believes that this issue cannot wait until the publication of the new Aviation Strategy. Therefore, as part of the call for evidence, it would welcome views with regards to this proposed policy." (emphasis added). This critical document, setting out the government's purpose in publishing the MBU Policy, goes entirely unmentioned in SSE's Closing.

35. In parallel with this Call for Evidence, the ANPS was advancing slowly through various draft stages. By October 2017, the then Draft[25] ANPS noted at (what was then) paragraph 1.37, the above development and that "The Government's policy on this issue will continue to be considered in the context of developing its new Aviation Strategy, and in the light of the responses to the call for evidence".

36. By June 2018, the DfT had completed both its consideration of consultation responses on its proposed policy in relation to MBU and its preparatory work on the ANPS.

[23] CD14.30
[24] Para.7.19-7.21 ibid.
[25] CD14.5, as put to Mr Ross in his XX3

Accordingly, on the same day were published both the ANPS (pursuant to section 5 of the Planning Act 2008) and MBU (as an early component part of the new Aviation Strategy: see HMG Webpage on the Aviation Strategy). Even Mr Ross accepted in XX3 that MBU policy was an early and "highly important" element of the Aviation Strategy.

37. The appeal proposals fall squarely within the scope of the MBU policy statement. This is not in dispute. However, the meaning and effect of the policy appears to be disputed by SSE and the weight to be attached to it was questioned by UDC. The latter questioning was expressed to be on the basis of the Court of Appeal's judgment in the ANPS/Heathrow challenge - although Mr Scanlon retreated from this in XX, as that judgment was subsequently overturned in December 2020 by the Supreme Court[26], of course, *after* his proof had been written.

38. The policy states in terms that "the government is supportive of airports beyond Heathrow making best use of their existing runways"[27] subject to assessment of locally associated benefits or environmental impacts and proposed mitigations.

39. It is STAL's case that this allows the proposals to take advantage of "in principle support" for MBU given by national government to MBU proposals made to local planning authorities. Of course, it does not prejudge the weighing of local benefits and impacts, but it does make it unnecessary for local planning authorities to grapple with the highly complex issue of aviation need and whether, in principle, there is a national need for making best use at any given airport. As is clear, the government has consulted upon this positon - in the terms set out in CD14.30[28] - and has expressed a clear policy response.

40. It is submitted that there is simply no other sensible interpretation of CD14.2. We note that UDC does not dispute this approach. Only SSE is maintaining its completely wrong-headed suggestion that MBU merely invites airports to make applications and that, thereafter, the local planning authority is at liberty to reach whatever conclusion it might wish on "the need" for the development, rather as it might in respect of a new

[26] CD14.74
[27] CD14.2, para.1.29
[28] See above

foodstore. This is manifestly wrong, would defeat the purpose of the policy (and the very considerable effort taken by government to publish it at an early stage) and place a burden upon LPAs to grapple with issues which it has taken national governments, independent commissions of experts and the Higher Courts many years to resolve. The SSE approach to the interpretation of national MBU invites confusion, dissension and delay. It should be firmly rejected.

41. We also have the great advantage in this case that DfT and MHCLG are clearly and unambiguously aligned on the meaning and effect of MBU policy as applied to the very proposals now before the Panel. This arises as a direct result of SSE bringing claims for judicial review against both Government departments in respect of their rejection of SSE's request that the application be "deemed an NSIP" or "called in" for determination by either or both Secretaries of State. This led ultimately to the disclosure of Ministerial Submissions to both Secretaries of State, in each case signed off by Senior Officials within the DfT and MHCLG.

42. The first such advice[29] is dated June 2018 and is contemporaneous with the publication of MBU policy. In this document, at paragraph 28, the DfT records that STAL's application is "in line with Government policy on airports making best use of their existing capacity in the South East". There is no suggestion that an additional "need" test should be applied, nor that the application is deficient for not setting out to demonstrate a nationally contextualised bespoke need case.

43. The second such advice[30] is dated March 2019 and follows on from UDC's resolution of November 2018 to grant planning permission for the appeal proposals. Here the senior civil servant in the Planning Casework Unit advises the Minister, at paragraph 13, that "this proposal accords with current national aviation policies, which are supportive of airports beyond Heathrow making the best use of their existing runways". It also notes[31] that these policies "highlight the importance of aviation to the UK economy following the country's decision to leave the EU and the importance of increasing airport capacity to support the development of long-haul routes to and from

[29] CD14.71
[30] CD12.15b
[31] Paragraph 14 ibid.

the UK post exit from the UK." It notes, quite properly, that local economic and environmental impacts will be for LPAs to judge, but does not suggest that STAL should have demonstrated a "need" for the development in national terms independently of that set out in the referenced government policy.

44. It is also noteworthy that this Ministerial Submission was supported (at Annex D) by clear advice from DfT which cited the MBU Policy[32] and confirmed its status as "part of the Aviation Strategy", published "separately alongside the NPS".

45. In summary, it is simply untenable to reach any conclusion other than that "supportive", means that the government expresses in principle support for MBU proposals. Anything less, would render the publication of MBU nugatory and a worthless exercise.

46. Of course, the other central element of the MBU policy is its "carbon stress test", which examines the impact by 2050 of all UK airports pressing ahead, subject to defined criteria, with MBU. This exercise and its implications will be considered later in the context of our submissions on carbon, but this further reinforces our submissions above. Why would the government go to the very considerable trouble of modelling these carbon impacts if it was entirely neutral as to whether or not MBU applications come forward or are approved?

47. There are two further points which are made by SSE under this head, which derive from the wording of the ANPS[33]. These points are new to the SSE case, and were entirely absent from the legal onslaught mounted by its QCs upon the decision-making process of both DfT and MHCLG in 2018-2019, where no suggestion was made by SSE that the Departments had failed to apply the government's own policy and should have considered whether STAL's proposals met a "sufficient need" test.

48. Absent from the High Court challenges and SSE's Statement of Case, these newly trailed points appeared for the first time in Mr Arnott's proof and in SSE's Opening Submissions. Mr Ross, on his third appearance[34], suggested in XX that these points were the product of Mr Arnott's scrutiny of the Manston DCO process. We shall never

[32] CD14.2
[33] CD14.3
[34] Day 25

be able to confirm that with Mr Arnott, but it has not escaped our notice that SSE's Counsel were jointly instructed in the 2020 challenge to the Manston DCO and would have been alive to the argument.

49. In summary, first, SSE has contended that para.1.41 of the ANPS declares that the ANPS is "important and relevant" for other applications for development consent for an airport development not being one to which the ANPS relates. The formulation "important and relevant" derives from section 105(1)(c) of the Planning Act and signals that a given NPS represents the nationally adopted way to meet a given national infrastructure need and that this NPS should carry weight when determining a DCO application for development which seeks to meet the same need. In our submission, it is unarguable that the expression "application for development consent" refers to an application for a DCO and cannot apply to an application of planning permission. However, even if it did, the fact that the MBU as a policy statement has been published by the same Department of Government on the same day as the ANPS is surely sufficient to rebut any suggestion of conflict or even tension. Indeed, the DfT has stated expressly in CD14.71[35] that "Modelling undertaken to consider the policy of making best use of existing runways… did not affect the forecasts associated with proposed Heathrow expansion."

50. Second, SSE now contends that paragraph 1.42 of ANPS imposes a requirement upon any applicant for planning permission or development consent wishing to make more intensive use of existing runway to demonstrate "sufficient need for their proposals additional to (or different from) the need which is met by the provision of a NW Runway at Heathrow". The passage in question notes that "it may well be possible" for such need to be demonstrated; indeed this is expressed in precisely the same terms within draft paragraph 1.40 of the Draft ANPS of October 2017[36]. However, the final sentence of the comparable paragraph 1.42 in final version of ANPS has now evolved to read: "…Government policy on this issue will continue to be considered in the context of developing a new Aviation Strategy". As has already been observed, the first substantive component of the new Aviation Strategy "caught up" with the slowly

[35] Para.26
[36] CD14.5

emerging statutory ANPS and was published on the same day as the ANPS, viz. the MBU Policy[37].

51. As Mr Ross expressly agreed in XX3, MBU Policy is not referenced in ANPS. This is no doubt because it did not exist as adopted policy when ANPS was completing its final procedural stages. However, it does now exist; it set out what the government expects from applications below the DCO threshold and notes that those above that threshold will be "considered on a case by case basis by the Secretary of State"[38] There is no suggestion that "sufficient need" is a question for applications below the DCO threshold and, as we have seen above, the DfT modelling for the MBU Policy confirmed that the policy "did not affect the forecasts associated with proposed Heathrow expansion"[39].

52. Accordingly, it is submitted that the government's own MBU policy (which is formally part of the Aviation Strategy) fully addresses any question of need in relation to the appeal proposals. Moreover, the supporting modelling work for MBU confirmed the absence of any impact on the case for the NWR at LHR. This is the basis upon which Mr Andrew (rightly) considers that ANPS is not relevant to this appeal. Mr Scanlon, for UDC, takes precisely the same view.

53. Of course, as with so many matters, SSE considers that it "knows better" than the Government itself and the local planning authority in this regard, but we have been denied the opportunity to test this policy issue properly by the non-appearance of Mr Arnott and the absence of a suitably qualified planning witness to replace him.

54. We suspect that Mr Arnott's misconceived new point on sufficient need has emerged from a mis-application of the facts underlying the Report of the Manston ExA to the STN35mppa plus context.

55. The Manston ExA was faced with a full DCO application to re-open the airport and was obliged to examine in detail the question of "sufficient need" for those freight/cargo-led proposals. They noted the MBU Policy Paper[40], but observed, correctly, that "freight or

[37] CD14.2
[38] Paragraph 1.27 ibid.
[39] CD14.71, para.26
[40] CD14.59, para.5.5.20 & 5.5.21

cargo flights are not mentioned within this paper"[41] and do not return to consider it again. Manston was, of course, a DCO scale proposal and the ExA undertook a thorough UK-wide review of freight capacity, demand and forecasts, before concluding that the promoters had failed to establish sufficient need. Of course, the Secretary of State ultimately took a different view, although his reasoning has been quashed and the decision has been remitted to him for reconsideration.

**Policy Summary**

56. In our submission, the support in principle for MBU so clearly articulated in recently published government policy documents offers yet further reinforcement to the development plan and NPPF presumptions in favour of this development. We do not suggest that this agglomeration of presumptions is incapable of rebuttal, but it is submitted that residual impacts of real weight and substance, incapable of adequate mitigation, would need to be identified in order to overcome the positive case for the development.

57. MBU policy asks local planning authorities to take "careful account of all relevant considerations, particularly economic and environmental impacts"[42]. These submissions will go on to consider the socio-economic evidence supporting the STAL's proposals in order to examine whether there is yet a further layer of supportive considerations to weigh before turning to the local environmental impacts and associated mitigation in order to consider whether there are any considerations which might tell against the development. However, before the assessment of local impacts can be addressed, it is necessary to pause and consider the evidence which has been heard on the topic of forecasting, which necessarily underpins the assessment of these impacts – both economic and environmental.

**FORECASTING AND THE RELIABILITY OF THE ASSUMPTIONS UNDERLYING THE ES & ESA**

[41] Para. 5.5.21 ibid
[42] CD14.2, para.1.29

58. Mr Galpin is the only expert air traffic forecasting witness who has given evidence to the inquiry. It submitted that his professional credentials and experience at ICF, a major international provider of forecasting advice, entitles the Panel to accord very considerable weight to his evidence. He has provided carefully considered forecasts, using recognised ICAO procedures and having interrogated likely route developments at Stansted. Following the lengthy delay in determining the application and the emergence of the pandemic, these forecasts have updated by Mr Galpin for the ESA 2020 and an additional Covid low case has been developed as a sensitivity. It is submitted that this work represents a well-considered and robust approach to the likely growth of traffic at the airport over the next decade to 2032 (or to 2034 in the Covid low case). Moreover, STAL's case is strongly endorsed by two of its most important carriers: see WR2 and WR3. Stansted is home to Ryanair, one of the most dynamic and financially robust carriers operating in the UK, with the drive and vision to deliver substantial growth over the next decade; Emirates, is a key player in the long haul sector, with the financial strength and ambition to build its already impressive network of routes, supporting the critical international hub role of Dubai. We invite the Panel to reflect on this strong expression of support from the airlines who will actually be delivering much of the planned growth, (which is in stark contrast to the opposition expressed by airlines to BAA's G1 proposals in 2006-07).

59. By contrast, UDC position on forecasting is, to say the least, somewhat contradictory. On the one hand, Mr Scanlon tells us: "The Council has not challenged the Appellant's forecasting exercise and there is no suggestion that the updated forecast provided within the ESA does not represent a reasonable account of future growth in demand"[43]. At the same time, there has been excessive emphasis on the alleged unreliability of forecasts, with comparisons regularly being drawn with reading tea leaves.

60. The position of UDC is all the more curious given that the Council took advice from an independent air traffic forecaster, Dr Chris Smith, whose position in the UDC witness team was obviously sufficiently advanced for his evidence to be cross-referenced in Dr Broomfield's Proof & Appendices[44] and for a slot to be allocated for him in early versions of the programme. However, at the eleventh hour, Dr Smith was mysteriously

[43] UDC/4/1, paragraph 8.5
[44] UDC/4/3, para.132

cast adrift and no satisfactory explanation has been offered for his disappearance from the UDC witness line up. Even though UDC is participating at this inquiry as the statutory planning authority, supposedly acting in the public interest, it has refused to share Dr Smith's advice to it, hiding behind the cloak of legal professional privilege to refuse to shed any light on the outcome of this publicly funded review of the ESA forecasts. There would be no need for "wild theories" (or, indeed, any theories) if reasonable requests for disclosure had been met.

61. Mr Scanlon appeared very uncomfortable when asked questions in XX about the role of Dr Smith in the UDC witness team, conceding eventually that Dr Smith did participate in team meetings to determine the shape and content of the UDC case. It is inconceivable, in our submission, having received expert advice on the subject, that UDC would not have proffered alternative forecasts or an informed commentary upon STAL's forecasts if it considered that it had an evidential basis for so doing which supported its case.

62. Instead, the inquiry has had the Condition 15 debate foisted upon it, at least in part founded upon the UDC-generated proposition that forecasting is wholly unreliable, akin to reading the tea leaves, and that, accordingly, UDC needs to be able to review any approval of the proposal at frequent intervals in the future, when there will be far greater clarity as to the rate of growth of traffic at Stansted. It is submitted that the positon adopted by UDC is highly unsatisfactory, that Dr Smith's review should have been fully disclosed and that the attempt to airbrush him from the UDC case leaves one with real – and entirely legitimate - doubts as to the content of this advice and its likely consequences for UDC's evidential position at this inquiry. As it is, UDC has adopted "a position" on forecasting at this inquiry (namely that it is so unreliable that Condition 15 is required), but has not supported this evidentially and has actively removed from the inquiry the one expert whose evidence would have enabled the robustness of UDC's position to be tested. It was therefore with some surprise that we listened to several pages of UDC Submissions on forecasting founded upon an evidential vacuum. We ask the Panel to discount any aspect of UDC's Submissions or broader case in this regard which it considers to be unsupported by evidence.

63. SSE's position in relation to forecasting is scarcely more edifying. Its case is firmly rooted in the proposition that the Panel should adhere to the DfT 2017 Forecasts[45], as re-run for the MBU Policy Paper in 2018. This is said in SSE's opening submission and Mr Ross's evidence[46] to be the "authoritative and independent" basis for forecasting growth at Stansted.

64. What, however, SSE failed to do was to acknowledge in Mr Ross's evidence that SSE – and Mr Ross in person in sworn testimony to the High Court[47] – had only a year before lodging his "Forecasting" Proof of Evidence publicly denounced these very same forecasts now asserted to be "authoritative" as:

i. making "little sense";

ii. raising "fundamental questions about the reliability of the [DfT] model"; and

iii. containing "a staggering degree of error".

65. This omission, in circumstances where Mr Ross knew[48] that he had a duty to the Panel to set out all relevant matters in his proof of evidence, was astounding. It suggests that he was more intent on generating an arguable case for this inquiry than in ensuring that his evidence was complete, coherent and consistent with his previously expressed testimony. Whilst Mr Ross described his/SSE's behaviour as "naughty", that adjective scarcely does justice to his conduct. We note that SSE's Closing Submissions completely avoid mention of this woeful passage of evidence from Mr Ross.

66. At the same time, and in the same part of his evidence, Mr Ross has wilfully distorted the position carefully explained by the DfT in the same High Court proceedings that the airport specific (and in particular Stansted specific) forecasts were <u>not</u> intended by the DfT to be relied upon as indications of growth, but that the exercise was expressly directed to the aggregate effect of the MBU policy: see in particular the First & Second Witness Statements ("WS") of Sarah Bishop for the Secretary of State for Transport[49].

---

[45] CD14.14
[46] SSE/3/2, para.9.1, for example.
[47] CD14.61, paragraphs 57-58
[48] XXd by THQC on Day 7
[49] CD17.65, paragraphs 86-90; CD17.66, para.12

67. WS2, para.12 notes, referring back to paras 87-90 of WS1, that there is "uncertainty in any forecast, especially at airport level where there are strong overlapping passenger catchments that may make forecasting demand less predictable (the overlap of Stansted Airport and Luton Airport catchments is a good example of this). However, regardless of whether or not the predicted statistical distribution of passenger demand at a given airport is fully accurate, at national level the predicted overall or total passenger demand is unchanged and will be met by other airports and produce aggregate CO2 emissions which can be identified with a greater degree of certainty. This overall demand and resulting CO2 emissions figure was shown to be compatible with carbon targets in place at the time of MBU policy formation."

68. This passage is worthy of quotation in full, as it provides clear and irrefutable evidence that the DfT 2017 Forecasts[50] (as re-run for MBU in 2018) are not intended to be reliable at an individual airport level, certainly not in the shorter term and certainly not "where high levels of competition between airports occur". As Mr Ross's own Third Witness Statement in these same proceedings observed[51] "a further example of our concern regarding the models reliability is the DfT forecast that Stansted would handle 22.3m passengers in 2018 whereas it actually handled 28.0m". Given these substantial inaccuracies in these forecasts for the early years, it is hardly surprising that their projection and extrapolation from such an inaccurately low base cannot provide a reliable picture of Stansted's growth over the next decade or so. The problem is compounded with the AC's forecasts and commentary, which are now long out of date and simply fail to paint an accurate picture of Stansted's potential for growth, as subsequently illustrated – indeed proven - in its performance the years leading up to 2020.

69. Notwithstanding their patent temporal and geographic weaknesses, as described by Ms Bishop, Mr Ross and SSE now cling on to the DfT 2017 forecasts[52], following their Damascene conversion as to their reliability and now they think they can deploy them evidentially to their advantage. However, these forecasts are not expressed[53] to be policy, but simply a basis for informing policy decisions. As Mr Galpin explained in

[50] CD14.14
[51] CD14.61, pasa.57-58
[52] CD14.14
[53] Ibid Introduction

evidence, CD14.14 was the forecasting document which the government used in reaching its decision on which of the three options of new runway capacity in the SE it wished to support (out of the two at LHR and LGW). This is the reason for the reference at para.1.2 that forecasts can be "used to inform decisions on the need for and location of new airport capacity": see the detailed assessment of the three options at Annex E and elsewhere.

70. By contrast, Mr Galpin's forecasts do rely upon accurate figures for the Stansted's traffic levels up to 2019, they do factor in specific local market data and assess the opportunity to serve Stansted's strong local catchment. These forecasts will, necessarily, be vastly more reliable than those of DfT, but particularly so for the period to 2032 (or 2034 in the Covid low case), which is the period for which they are expressed to be valid. The labels "short term" and "long term" do not have a standardised meaning in air traffic forecasting, but it is clear that DfT was forecasting strategically to 2030, 2040 and 2050. In the short term, DfT 2017 did not forecast Stansted to reach its actual 2018 throughput until 2028[54] (10 years later than in reality!). It is inevitable that they will be far less accurate than Mr Galpin's for the period for which Mr Galpin has produced his forecasts and with which this inquiry is principally concerned. If the picture changes by 2050, due for example, to the opening of a third runway at LHR, then Stansted, along with other South East airports, may conceivably lose traffic to an expanded and reinvigorated Heathrow. That, however, is not a relevant consideration for the MBU policy where building UK capacity and connectivity in the interim is the critical objective.

71. Contrary to SSE's Submissions, we do not accept that MBU Policy obliges an airport such as Stansted, seeking to make best use of its existing capacity, to anticipate or assess which other proposals for MBU *might* be approved in the future elsewhere. That is not how the planning system works. Many airports may have aspirations or ambitions (expressed with varying degree of vagueness) to expand, but until these are approved, they do not have status for planning purposes and do not need to be treated as commitments. If, in due course, these proposals are formally advanced, then their promoters will have to have regard to any consent for MBU expansion granted at

[54] See STAL/2/2

Stansted (or elsewhere). By contrast, where there is already room for some incremental growth without the grant of further consents (such as at LHR or LGW), then Mr Galpin explained that he had allowed for such growth in producing his forecasts[55].

72. Mr Ross has mounted an attack on the Mr Galpin's "base case" for the DM scenario. However, Mr Galpin fully justified this in evidence: see in particular his Rebuttal Proof[56], sections 3 and 4. It was Mr Ross's material which was found wanting when tested in XX. He was particularly asked to explain the provenance for the assumptions as to pax/PATM made in section 5 of his Forecasting Proof[57]. He could only suggest that his figures were his "judgments" and confirmed that none of these figures had been validated by a forecasting expert. In particular, he could point to no evidential basis for his assumed 0.65% annual growth rate in pax/PATM. There was mention of some spreadsheets, but these were never produced. We ask the Panel to prefer Mr Galpin's expert evidence on these matters.

73. A final point on the forecasting evidence is SSE repeated litany that previous forecasts have shown "optimism bias" and should be discounted. Whilst it is true that many earlier forecasts have not come to pass, this has usually been for perfectly understandable reasons, such as the impact of the global financial crisis. However, other than SSE point scoring, it is very difficult to see why this matters to the planning decision which the Panel is required to make. If the predicted impacts (economic and environmental) are ultimately postponed for a year or even several years, due to growth following a slower trajectory, this would have no meaningful impact on the assessment of the proposed development and cannot possibly provide a reason to refuse planning permission.

## THE SOCIO-ECONOMIC BENEFITS OF THE DEVELOPMENT

74. As we noted in our Opening Submissions, Stansted is the largest passenger airport serving North and East London and the East of England Region, providing balance to the London system of airports, which is otherwise so heavily weighted towards the West and South by Heathrow & Gatwick. It is also located at a pivotal location regionally, at

[55] STAL/2/2, para.3.10
[56] STAL/2/3
[57] SSE/3/2, paras.5.3.7 & in section 5.4

the junction of the M11 and A120, half way between London and Cambridge and just north of the new A414 junction 7A on M11. This enables Stansted to make a major contribution to the region and to the growth corridors in which it sits, as explained by Ms Congdon[58]. This contribution will be all the more valuable as the UK tries to develop its connectivity and boost economic growth post Brexit and post Covid. Connectivity as an engine for growth has many dimensions, ranging from the obvious facilitation of travel by business passengers, through increased bellyhold cargo opportunities, to the provision of an air-bridge for highly valued employees in the bio-tech sectors who rely on air travel to maintain regular links with family overseas.

75. On Day 4 of the inquiry, a wide range of witnesses gave direct and eloquent testimony as to the critical connectivity role which Stansted plays for the region. These witnesses represented the regional business community (including exporters) and included the CBI, regional Chambers of Commerce, Cambridge Ahead and one of the region's largest, fastest growing and most dynamic employers, Astra Zeneca. They gave powerful qualitative evidence, subject to cross examination by Mr Ross, of the user benefits which they would derive from growth and in particular network growth at Stansted.

76. Additionally, in this context, it is important to have regard to the range of educational facilities which STAL sponsors on the airport campus and which is providing learning and training opportunities for hundreds of students annually, along with a clear route to employment thereafter. As Ms Karen Spencer explained on Day 4, these facilities now have a proven track record and are being expanded. The provision of a greater number of potential jobs on site will enable the conversion rate from education to employment to be increased. This is plainly both a social and economic benefit.

77. UDC does not contest the socio-economic benefits of expanding capacity at STN. A wide range of key regional economic stakeholders, including Essex County Council, is strongly supportive of growth at Stansted. Mr Scanlon, for UDC, reviews the evidence in his proof and concludes that these considerations should attract "significant positive weight in the balance"[59].

[58]STAL/12/2 & 4
[59] UDC/4/1, para.9.34

78. *Only* Mr Ross seeks to diminish these benefits. We do not accept that Mr Ross's previous business career with Bass (some decades ago) puts his evidence on a par with that of Ms Congdon and Ms McDowall. Mr Ross was unable to refer us to a single piece of economic advice provided to an airport sector client which is in the public domain. Whilst Mr Ross's long history of carrying forward SSE's assault upon proposals to expand Stansted's operations is not in doubt, that is not the same as undertaking a balanced and independent expert assessment of the socio-economic impacts of airport growth, as STAL's two witnesses on this topic have sought to do.

**User Benefits**

79. Mr Ross has tried to goad STAL into commissioning a complex piece of modelling to quantify user benefits. This can only be undertaken on a national basis and STAL simply did not - and does not - consider that such an exercise would be of value either to UDC or to the Panel, especially given the regional focus of the case advanced by STAL. Moreover, such an exercise is not required by MBU nor by any other element of national aviation policy.

80. STAL made its position clear in its Scoping Report[60]. SSE, despite a very lengthy response, running to over 20 pages[61], did not request that user benefits be monetised or otherwise subjected to quantification, as Mr Ross conceded in XX. So this yet another bad SSE point, raised late in the day and after the scope of the ES had been fully and properly determined by UDC subject to normal statutory processes – and with the participation of SSE.

81. Mr Ross did concede in XX, however, as he was obliged to, that user benefits can be evidenced directly by parties who wished to take advantage of improved connectivity, precisely as has happened at this inquiry. He did not challenge the global economic role and profile of Cambridge tech cluster (rivalled only by E & W Coast of the USA) and accepted in XX that "Cambridge is driving extraordinary levels of job and broader economic growth and is of great importance to the economy of the East of England".

[60] CD4.2, para.12.13
[61] CD4.4, p.21 onwards to p.25 & CD23.55

82. Mr Ross has certainly not undertaken any numerical assessment (declaring that this was "not my job" XX'd). At the same time, he seemed not to have engaged fully with Ms Congdon's evidence, with which he did not claim particular familiarity and did not challenge once during his 2 hours XinC, although this evidence had been in the public domain for 2 months by the time this topic was heard at the inquiry.

83. In XX, he did not challenge Ms Congdon's conclusion as to the role of connectivity in economic growth; nor Stansted's role as a key driver of growth in the region. Mr Ross was obliged to acknowledge (XX2) that not a single business has given evidence that its prospects of growth will be *hampered* by the proposed expansion of Stansted's route network. On the contrary, representatives of the business community have given extensive evidence that the converse is true and that economic growth will flow from increased connectivity. This evidence is simply ignored in SSE's Submissions.

**Displacement**

84. This is yet another woefully misconceived SSE argument, obliging LPAs determining MBU applications to assume that proposed additional capacity they are considering is "footloose" and to undertake a comparative exercise to examine where in the UK such capacity might, in theory, be better directed. This is another example of wrong-headed thinking by SSE: it cannot possibly have been in the contemplation of the government when it published its MBU policy and it is a task which individual LPAs are self–evidently not well equipped to undertake.

85. Although Mr Ross purported not to be pointing the finger at Luton, he plainly was; although neither Luton Airport nor Luton Borough Council object to these proposals and, indeed, Luton's forecasts assume that Stansted gains planning permission to grow to 43mppa.

86. Moreover, additional capacity can be provided at Stansted with the bare minimum of additional infrastructure. This is in contrast to other proposals such as those at Luton, which require extending the airport infrastructure across a sensitive valley and are far

more capital intensive[62]; and, as we have seen, there is no requirement at Stansted for any greater number of ATMs, merely a modest re-assignment of PATMS within the total already permitted.

**Trade balance**

87. This is a very well–rehearsed argument for Mr Ross and SSE, who ran a very similar point at the G1 inquiry and subsequently in the High Court[63] – all to no avail. The simple point is that Government policy does not treat outbound tourism in the simplistic way which Mr Ross suggests is appropriate[64]. There is no legal or policy basis to suggest that the government supports constraining air travel, with all the social and economic benefits which it brings (many of which are not easily capable of monetisation) by reference to the trade balance. Moreover, even if this was the case, then the issue is a complex one, with the need for very careful interrogation of the alternative ways in which such monies might be spent and the potential for these, too, to contribute negatively to the trade balance (for example by the purchase of imported goods, such as cars or furniture, or by taking a foreign holiday by other means than air travel).

**Cost of carbon**

88. This is considered to be neutral factor in this case, as the incremental impact in carbon terms of DC over DM is a tiny, negligible fraction. This assessment is before one takes account of the convergence between DC and DM up to 2050, as shown on Mr Andrew's Figure 1[65]. In any event, the DfT does not ask that this be assessed for MBU applications.

**Job creation**

89. The predicted growth will provide jobs and increased economic activity, as explained by Ms McDowall in her proof and rebuttal proof. UDC does not challenge Ms

[62] See Figure 3.1 of CD 14.46
[63] CD12.3a, para.14.237 & CD14.64, para.50
[64] See APF and WP refs
[65] STAL/13/2, page 35

McDowall's assessment of 3,000 additional direct jobs and 5,600 total (to include indirect and induced): see her Table 3.3.4[66].

90. SSE, as recently as last September in its SoC[67], asserted that the true figure should be 2,000 direct jobs. However, by the time Mr Ross's proof was issued, this figure had been slashed to 1,200. The adjustment went completely unexplained by Mr Ross in XX2, although we hazard that the explanation may be "pessimism bias". Whatever the explanation, Mr Ross went on to accept the even 1,200 jobs was a "substantial number", with the clear implication that even he could not completely gainsay the benefits of the development.

91. Mr Ross's assessment is rendered even more unreliable by his assertion that the proposed growth will generate *no* indirect or induced jobs, despite SSE requesting at the Scoping stage that STAL assess precisely these elements of job growth, presumably in the knowledge that these categories of jobs are universally assessed for proposals such of this scale and nature. The SSE response given in XX by Mr Ross, namely that SSE simply wanted these figures to be assessed so that they could ignore them, lacked credibility and suggested that SSE was, even at the earliest stage in the planning process, more interested in the forensic endeavour of manufacturing an objection than in a genuine examination of the merits of the appeal proposals.

92. Mr Ross's minutely argued examination of the range of jobs (and salaries) available at Stansted Airport was a self-defeating exercise. It revealed that Stansted generates a good range of jobs across all categories to suit a very wide variety of employee. SSE's case that UDC is a district largely populated by executives, as well as being a highly unattractive argument, is a complete red herring. Indeed, Mr Ross was obliged to admit that there is no conceivable objection to an employment hub (such as STN) providing a variety of jobs attractive to workers beyond its district boundaries so long as there is good public transport access available to take them to and fro their workplace. This is patently the case for much of NE London, Harlow and other settlements served by WAML and the parallel (and perpendicular) bus routes.

---

[66] STAL/11/2, page 17
[67] Paras.8.1-8.4

93. Accordingly, it is submitted that Mr Scanlon for UDC was entirely correct to attach significant weight to the socio-economic issue. Thousands of jobs and a real boost to regional economic growth are at stake, such that the arguments for allowing the appeal become even more heavily tilted in its favour.

**WHAT THEN ARE THE LOCAL ENVIRONMENTAL IMPACTS WHICH MUST BE WEIGHED IN THE BALANCE?**

94. At the outset, we observe that the ES & ESA have assessed a wide range of effects in considerable detail. No Regulation 25 requests have been made by UDC in respect of the EIA provided. Mr Thomson of RPS coordinated the assembly of the ES and ESA. He submitted a Proof of Evidence to the inquiry[68] speaking to the scope and comprehensive nature of the EIA process for the appeal development. No challenge was made to his evidence and no rebuttal evidence was served by any party seeking to contradict the account he gives in his Proof. We reject any suggestion that this EIA did not comply with the 2017 Regulations.

**NOISE**

95. It is, in our submission, highly significant that the noise impacts of the proposed development have been the subject of so little dispute at this inquiry. If, as SSE allege, all airport development, including these proposals, is inherently harmful, then the most obviously controversial impact by far would have been expected to be noise. This has not proved to be the case.

96. The noise impacts of the development have been the subject of extensive analysis by Mr Vernon Cole, a distinguished expert in this field. He concluded in the Chapters which he contributed to the ES and ESA that there were no unacceptable impacts associated with the appeal proposals. His work was reviewed for UDC by their own officers and independently by Mr Peter Henson of Bickerdike Allen Partners, another highly experienced consultant. Their combined view was that the noise impacts were acceptable and so professional officers reported to UDC on numerous occasions.

[68] STAL/3/2

However, SSE's presentation[69] on the inapplicable WHO ENG18 and entirely speculative fleet mix issues misled the Committee into rejecting the soundly based recommendations of Officers, supported by a phalanx of well-aligned professional advice.

97. Mr Trow was newly instructed in September 2020 to advance the Council's noise reason for refusal and, after a lengthy discourse, he concluded[70] that "the Development is acceptable having regard for [sic] the effects presented within the ESA" and subject to appropriate conditions.

98. The Panel now has the benefit of a SoCG on Noise[71]. This leaves little room for doubt: "The development is acceptable and there are no noise grounds on which to refuse the current application". Mr Trow confirmed in XX his complete contentment with that proposition.

99. Mr Peachey's evidence for SSE is focussed upon methodological disputes and disagreements and completely fails to establish any basis for the refusal of permission. We have been completely unable to test this evidence, but it has been addressed and rebutted by Mr Cole at STAL/4/4, Part 2 In particular, we reject Mr Peachey's speculation as to how government noise policy should or might develop.

100. In short, there is nothing approaching a noise based reason for refusal disclosed by the evidence of any party.

**Mitigation**

101. What is clear from the ES and ESA is that the noise effects reported therein support the imposition of a noise contour condition which will be considerably tighter than area conditioned by the 2008 planning permission and currently in force, thereby securing a reduction in community noise impacts going forward when compared with those which the Secretaries of State authorised in 2008. This reduction would be secured as a direct consequence of the grant of planning permission for the appeal proposals.

[69] CD 13.4(c)
[70] Trow Proof, para.8.11
[71] CD25.3

102. The "51, 54 or 57" dB LAeq daytime contour dispute was never a dispute of principle. It did not reflect any unwillingness on the part of STAL to accept the adjustment to the contour level which is considered to represent the onset of community annoyance (i.e. 54 rather than 57). It simply reflected the preference of STAL for a contour which could easily be compared with historic noise contours in operation at Stansted for two decades. The contours move together, so a tighter 54dB contour will also be a tighter 57dB contour. This preference for consistency was shared with UDC Officers[72], who proposed a 57dB LAeq contour as Condition 7 to the permission. Mr Trow has now moved on from his preference for a 51 dB contour and both parties have "met halfway" at 54dB LAeq 16 hour.

103. Another notable feature of the noise assessment reported in the ESA is that the night noise analysis for the Development Case is actually more favourable than that which would obtain in the Do Minimum Case, due to the increased numbers of quieter "new gen" aircraft which would make up the fleet utilising Stansted if the development goes ahead. Mr Cole has also given evidence on the shoulder periods, in which there will be virtually no change in aviation activity.

104. Noise contours have been produced, which illustrate these effects. This has led to a rehearsal of the debate at the G1 Inquiry as to whether or not a night noise contour should be imposed. STAL has resisted this on the basis that this would result in two overlapping regimes operating to control night noise impacts. Indeed, this is precisely the basis upon which the Secretaries of State rejected such a proposal in 2008. This is an outstanding matter upon which the Panel will need to take a view; however, the positions of the parties are clear. One factor which can be dismissed is Mr Ross's assertion that the DfT is currently consulting on the de-designation of Stansted airport. This is patently not the case[73]. Moreover, if Stansted were ever to be the subject of de-designation, it is perfectly obvious that the existing regime would need to be replaced by something else. The nature of that replacement regime would inevitably be the subject of consideration at that time.

[72] See CD13.1b Schedule of Conditions attached to the Committee Report, Condition 7
[73] See CD19.37, page 23

**Other noise mitigation**

105. This includes a major enhancement of the noise insulation grant scheme, with wide ranging benefits for both residential properties and schools, as set out in Schedule 2 to the UU, with generous geographic and financial provision, as Mr Trow accepted. The scope of this mitigation is all agreed, with one exception to which we now turn.

**Thaxted School**

106. Government policy as set out in the APF[74] requires for schools to be provided with acoustic insulation when exposed to noise levels above 63 dB $L_{Aeq,16h}$. This is likely to be reduced to 60dB if the provisions in Aviation 2050[75] are adopted into policy. [Qualification for the residential SIGS scheme is set out in Schedule 2 of the UU[76]. For daytime noise, the lowest level of qualification starts at 57dB $L_{Aeq,16h}$ or N65 200.]

107. Schedule A7.A/SCH8 in ES Appendix 7.A[77] reveals that no schools are exposed to noise levels above the current government SIGS threshold of 63 dB $L_{Aeq,16h}$ for any of the assessment scenarios. Only Howe Green, is exposed to levels above the proposed reduced threshold of 60dB. In total, only three schools (Howe Green, Spellbrook and Little Hallingbury) are exposed to levels above the lowest SIGS daytime qualification threshold of 57dB.

108. Following submission of the 2018 ES, discussions with UDC and their noise advisors resulted in an agreement that STAL would also consider noise effects at schools where flyover noise levels exceed 72dB $L_{Amax}$ in accordance with guidance in BB93[78]. The

[74] CD 14.1
[75] CD 14.27
[76] CD 26.30a
[77] CD 8.3
[78] INQ 14

subsequent assessment is discussed in Section 3.2 of the Notes to inform the UDC Planning Committee[79] Report prepared by Mr Henson of BAP in August 2018.

109. The results of the flyover analysis at schools are set out in Section 8 of Mr Cole's proof[80] and Appendix 8[81]. A total of five schools are assessed as likely to be exposed to aircraft flyover noise levels above 72dB $L_{Amax}$, the three listed above plus Leventhorpe and Mandeville. Thaxted was the subject of a detailed analysis[82] to verify whether it would be eligible for SIGS, but the analysis determined that it was not forecast to be exposed to noise levels in excess of:

- Government SIGS threshold: 63 dB $L_{Aeq,16h}$ (now) or 60 dB $L_{Aeq,16h}$ (future, possible);
- STAL residential SIGS
- daytime lowest threshold: 57 dB $L_{Aeq,16h}$ or N65 200;
- BB93 based flyover noise level: 72 dB $L_{Amax}$.

110. Mr Trow suggested in his proof that it should be considered eligible for qualification on the basis that it is forecast to be exposed to higher $L_{Aeq,16h}$ noise levels than Leventhorpe and Mandeville, and to exclude it is therefore inconsistent. However, he failed to point out that it is not the $L_{Aeq,16h}$ value that justifies qualification for those particular schools but the 72 dB $L_{Amax}$ flyover value.

111. In Mr Trow's XinC, he also suggested that, although the N65 value at Thaxted for future development cases does not exceed the SIGS qualification value of 200, it is close enough to indicate likely qualification. A7.A/SCH8 in ES Appendix 7.A identifies values of 189 for 2027DC and 161 for 2032DC. Mr Cole pointed out in XinC and XX

[79] CD 19.38
[80] STAL 4-2
[81] STAL 4-3
[82] CD 19.25

that the value in 2019 was already 164 and if this were sufficient to be a cause of noise disturbance at Thaxted School this would have already been highlighted and may have given substance to his claim. However, there is no history of Thaxted School raising concerns about levels of noise due to aircraft flyovers and forecast noise changes associated with this development are small enough that we do not expect that situation to change.

112. This is a matter upon which the Panel will not doubt wish to reflect and reach a clear view so as to trigger the "blue pencil" clause in the UU as appropriate. We consider it highly relevant that neither Thaxted School itself, nor ECC as Education Authority has made representations during this lengthy process to suggest that sound insulation is required.

**The reason for refusal in relation to noise impacts**

113. The Panel will recall all too well that UDC Members reached their conclusions on noise in reliance two clearly identified matters:

    i. The significance of the WHO ENG18; and

    ii. The possibility that the forecast fleet mix at Stansted might change, giving rise to different impacts in the DC case.

114. First, in relation to the WHO ENG18, Mr Trow offers not one word of support for the position adopted by UDC Members. He is clear in his proof that he regards these guidelines as "idealistic"[83] and that their implementation is "not feasible without a significant step change in aircraft technology, otherwise reduction to these levels would result in significant harm to the aviation industry and economies"[84]. In XX, Mr Trow expressly accepted that the WHO Guideline levels "have no current status in government policy for the assessment of aircraft noise" and that he was "not advocating their use by UDC". This approach is identical to that adopted by Mr Cole, who discusses the WHO ENG18 at length in his main proof[85].

[83] UDC/x/y, para.4.20
[84] Ibid para.4.21
[85] STAL/4/4

115. Second, in XX, Mr Trow was categoric in his rejection of the need for a LPA to give any consideration at all to fleet mix issues. He was adamant that the issue for the LPA was simply the setting of an appropriate "noise related restriction" and that it would then be for the airport to ensure that flights were scheduled in order to achieve compliance with that restriction.

116. We looked at the Jan 2020 Report[86] at the end of Mr Trow's XX, which concluded with him accepting that he agreed with UDC Officers that WHO ENG18 were and are "not government policy and not the appropriate way to assess this application" and that there was "no requirement for an additional sensitivity test" or address any uncertainties regarding the fleet mix as "the noise contour was the appropriate safeguard, which puts the ball firmly in the Airport's court".

117. Accordingly and in our submission, the noise reason for refusal and the basis upon which it was advanced remain entirely undefended by UDC's expert noise witness. Indeed, Mr Trow readily accepts that there is no noise based reason to withhold permission. We will return to this reason for refusal again in our submissions on costs.

**AIR QUALITY**

118. As with noise, air quality is no longer pursued as a reason for refusing permission. Dr Broomfield accepts that the development is acceptable on AQ grounds subject to the imposition of suitable conditions[87]. This is, of course, the same conclusion as was arrived at by UDC's original air quality consultants, WYG[88], and its experienced planning officers, who advised the Committee accordingly.

119. Before turning to consider the negligible impacts of the development on air quality, it is necessary to set out the relevant policy context in a little more detail, in light of Dr Broomfield's surprising contention that national policy in the NPPF obliges STAL to demonstrate an absolute reduction in emissions as a result of the development,

[86] CD13.4b
[87] Ms Holman, on behalf of SSE, was not called to give evidence. Her evidence has been comprehensively addressed by Dr Bull in his rebuttal proof and Dr Bull has also responded to further requests for clarification by SSE. Her evidence is not therefore addressed further in these closing submissions.
[88] See CD 13.1b for WYG final comments

regardless of whether or not these emissions result in any adverse air quality impacts; and that any increase in emissions would therefore be contrary to the policy objective in paragraph 170(e) of the NPPF to help to improve local AQ "*wherever possible*".

120. This interpretation of para 170(e) is then relied upon to seek to justify the imposition of a set of air quality conditions, which would constrain emissions to the levels assessed in the do minimum case at 2027 and 2032[89].

121. The rationale for this is said by Dr Broomfield to be to "*specify a limit on emissions which would result in an improvement in the air quality impact of the airport compared to the situation if the proposed development does not go ahead*"[90]. In reality, the effect of the condition would be to prevent the airport from growing to 43mppa at all (or, indeed, from utilising the number of atms already permitted), based on its projected fleet mix.

122. Having abandoned any attempt to defend the reasons for refusal, this is now the central plank of UDC's air quality case. However, it is hard to believe that Dr Broomfield really considers this to be a sensible argument. There can be no possible justification for constraining the airport to the emissions forecast for the DM scenario, when the air quality assessment does not predict *any* adverse impacts on air quality based on the fleet mix assumptions in the ES/ESA. This would negate the purpose of undertaking an EIA in the first place. It would also defeat the primary purpose of this planning application, which is not to deliver improvements in air quality *per se* but rather to enable the airport to grow to 43mppa, in a manner that does not give rise to unacceptable air quality and other local environmental impacts.

123. Moreover, anyone reading UDC's closing submissions would be forgiven for thinking that AQ will get *worse* between now and 2032 with the development in place. It is said in terms that there will be a "*consistent picture of worsening air quality*."[91] This is simply incorrect. The correct position, as Dr Broomfield accepted in XX, is that there will be a significant *improvement* in AQ between now and 2032 with the development

[89] CD 26.10
[90] CD 26.11
[91] UDC Closings para 47

in place. There is, therefore, nothing remotely incompatible about this development with the Government's ambitions to continue to "improve" air quality over time.

124. With these preliminary observations in mind, we turn to consider the policy context.

**The policy context**

*UDP Policy ENV13*

125. The starting point is the policy ENV13 of the up-to-date Local Plan. It is common ground that the development complies with this policy.

NPPF paras 170 and 181

126. Air quality is addressed primarily in para 181. However, para 170 contains an overarching objective for planning decisions to contribute to and enhance the local environment. This translates into a requirement (in sub-para e) to prevent new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of air pollution. The reference to "unacceptable" provides a benchmark against the relevant air quality standards[92]. The objective in para 170(e) that development should also "*help*" to "*improve*" local environmental conditions, such as air quality, is qualified by the words "*wherever possible*." This recognises, in terms, that it may not always be possible to deliver an absolute reduction in emissions or overall improvement in air quality, commensurate with delivering growth.

127. The specific paragraph dealing with AQ impacts is para 181. Para 170 and para 181 must be read together.[93] Para 181 requires planning policies and decisions to "*sustain and contribute towards*" compliance with air quality limit values and objectives, "*taking into account*" the presence of AQMAs. As Dr Bull emphasised in XX, this is focussed on ensuring that development meets those standards and does not exceed them. Consistent with the qualification in para 170, there is no absolute requirement to

[92] See UDC/4/2 "*A concentration recorded over a given time period, which is considered to be acceptable in terms of what is scientifically known about the effects of each pollutant on health and on the environment*"
[93] Dr Bull ReX

improve air quality, only to identify opportunities for mitigation or improvement (preferably at the plan-making stage). The kind of broad measures identified in para 181 – "*traffic and travel management and green infrastructure provision and enhancement*" – are typical mitigation measures. It will be virtually impossible to *quantify* the precise level of reductions in emissions arising from such measures, and there is clearly no requirement to do so.

128. Dr Broomfield's interpretation also completely ignores the *in principle* policy support for aviation growth, established by MBU. It is implicit in MBU that a proportionate increase in emissions from additional flights and surface access movements associated with delivering additional capacity will be acceptable, provided no adverse impacts arise which cannot be mitigated against.

129. The same is clearly true of the APF and the Aviation 2050 green paper. Indeed, the paragraph in Aviation 2050 relied upon by UDC, and to which Dr Bull was taken in XX, expressly confirms that "the Government *supports* continued growth in aviation over the next 30 years."[94]

130. Moreover, and as Dr Bull was at pains to point out[95], the significance of air quality impacts depends on the pollutant concentration levels experienced at sensitive receptors. The inventory of emissions, from which Dr Broomfield derives his proposed emissions limits in condition 10/ 15, is merely an "*input*" into the air quality model. It "*cannot be used to assess the impact of the emissions*"[96] because this will depend to a very large extent on the location of the source and manner of release. Dr Broomfield's interpretation is also completely at odds with the way that air quality impacts are actually measured and assessed.

131. NPPF paras 170 and 181 must therefore be read in a straightforward manner, as set out above. There is no requirement to demonstrate absolute reduction in emissions, in the absence of any evidence of adverse air quality impacts.

East Herts District Plan

[94] CD 14.27 para 3.3
[95] In XinC
[96] Bull p/e para 57

132. Policy EQ4 is also a material planning consideration. It requires applicants to "*take account of*" the East Herts AQ Guidance, which contains guidance about AQ assessment and the assessment of mitigation for schemes within (or affecting) East Herts. However, as Dr Broomfield agreed[97], this guidance ultimately leaves it to the LPA to determine the acceptability of mitigation measures.[98] Moreover, there is no objection from East Herts to this development on AQ grounds (or at all) and it was also satisfied with the AQ mitigation measures to be secured under the UU and conditions[99]. As we explain below, only Dr Broomfield still seeks to pursue the argument that there will be *any* adverse impacts on the Bishop's Stortford AQMA.

Aviation 2050 and the Clean Air Strategy

133. There is nothing in either of these documents to suggest that there is any emerging policy requirement for development to deliver an absolute improvement in AQ. As noted above, the Government instead makes clear its support for aviation growth, while acknowledging that this *can* have "significant environmental impacts", which this development clearly does not. This is squarely on all fours with the approach in MBU. A requirement for every aviation proposal to deliver an absolute improvement in AQ, even where no significant impacts are predicted to arise would plainly be incompatible with a framework which positively *promotes* aviation growth.

134. The Clean Air Strategy[100] contains an ambition "progressively" to cut exposure to particulate matter, but no new target for PM 2.5 emissions has yet been set and the timescales within which the WHO guidelines can be met remain uncertain[101]. As Dr Bull put it in XX, to try to read more into this document is to "speculate on a policy which the Government hasn't yet formulated."

135. In any event, what relevance this has to the determination of this appeal is wholly unclear. It is agreed by Dr Broomfield that the incremental PM 2.5 emissions from this development will not exceed 1% of the WHO guideline and it is no part of his case to

[97] Broomfield xx
[98] CD 16.10 para 3.1.1
[99] CD 16.15
[100] CD 16.4
[101] CD 16.19

suggest that this development will give rise to unacceptable PM 2.5 concentration levels[102]. The Panel will note the unchallenged evidence of Dr Bull that the highest annual mean concentration at any receptor as a result of this development is just 11.6ug/m3 for both 2027 and 2032[103]. This is well below the AQ standard of 25ug/m3. As Dr Bull confirmed in ReX, it is also well below the Government's "second stage" limit of 20 ug/m3, referred to at page 28 of the Clean Air Strategy. There could be no possible objection to this development on the grounds of PM 2.5 impacts, although this is precisely the basis on which UDC refused permission in Jan 2020, as we explain below.

**Air quality effects**

136. All relevant pollutants (nitrogen oxides, PM 10 and PM 2.5 emissions) have been assessed as part of the air quality assessment in the ES/ ESA. The impacts on air quality at all modelled human or ecological receptors as a result of this development will be negligible and comfortably below the relevant AQ standards. There will be an overall improvement in AQ at all receptors in the DC at 2032, compared to the 2019 baseline. This was accepted by Dr Broomfield in XX.

137. For the avoidance of doubt, the impacts of the revised daily traffic flows associated with the two-way trips on sensitive receptors have also been assessed. There is no predicted change in the traffic flows, and therefore no change in the assessment of AQ impacts, within the Bishop's Stortford AQMA, or at Stansted Mountfitchet and Takeley. For other locations, including along the M11, Round Coppice Road, and the A120, the degree of traffic changes would lead to negligible changes in NO2 concentrations and all sensitive receptors would experience negligible impacts in 2032.

138. Total NO2 concentrations would remain well below the air quality standard of 40µg/$m^3$ at all sensitive receptors, even after the revised daily traffic flows are taken into account.[104]

[102] See UDC/4/3 para 136 and 147
[103] STAL/5/2
[104] STAL/10/4

*The Bishop's Stortford AQMA*

139. As we have noted, *only* Dr Broomfield maintains that this development has the potential to give rise to "*significant*" impacts on the AQMA. This view is not shared by EHDC, which withdrew its original objection at the application stage[105], and which would surely have made its presence known at this Inquiry in support of UDC if it had any lingering concerns about the AQ impacts of this development. Mr Andrew was clearly right to say in XinC that substantial weight must be given to the lack of any objection from EHDC, when considering the impacts on its AQMA.

140. In XinC, Dr Broomfield belatedly conceded that he was also in no position to challenge the modelling of traffic flows through this junction by Mr Rust. The traffic flows through the AQMA associated with the development were the subject of sensitivity testing in the TAA[106] precisely in order to assess the extent of any "*causal link*" between the use of the airport and traffic through the Hockerill Junction. UDC's assertion that such a link exists flies in the face of the agreed evidence before the Inquiry.

141. This sensitivity testing confirmed that the additional daily flows as a result of the increase from 35 to 43mppa are tiny: 61 vehicles per 24 hour period, or just 1 vehicle every 24 minutes. It is ludicrous of UDC to suggest that this is "*just below*" the threshold in the IAQM guidance of [107] 100 vehicles AADT in an AQMA, above which an air quality assessment even needs to be considered in the first place. 61 vehicles is clearly *well* below this threshold. Outside an AQMA, this threshold rises to 500 AADT.

142. The reason for this, as Mr Rust explained[108], is that this is a congested junction and not therefore an attractive route for traffic. There is an attractive and quick alternative to the town centre in the form of the ring road and northern bypass, with several access points to new housing. Moreover, even these "*infinitesimal*" traffic flows are a conservative

[105] CD 16.15
[106] CD 11.24 and STAL/10/3
[107] CD 16.9, page 21, Table 6.2
[108] Rust XinC

assessment because this assumes that these are all new trips, whereas in reality many of these will already be travelling through the junction[109].

143. In light of these agreed traffic flows, Dr Broomfield's insistence that there remains the potential for a significant AQ impact on the AQMA is absurd. If there was any merit in his claim that the location of this AQMA was so unusual, or its features so distinctive, that an additional vehicle every 24 minutes might have the potential to cause a significant air quality impact[110], this would surely be a matter that EHDC would be capable of judging for itself. UDC's suggestion in closings that the "ebb and flow of traffic" and drivers avoiding the bypass "due to accidents" might somehow materially increase these impacts only serves to demonstrate just what a bad point this is.

144. In fact, and as Dr Bull explained in XX, there are many similar examples of AQMAs based around confined junctions in historic market towns and it is not unusual in this regard. But in any event, the Panel is not concerned with assessing the AQ issues in the AQMA generally. It is concerned with the AQ impacts arising from this development. In XinX, Dr Bull drew attention to Table 7 of his proof, which demonstrates that airport-related road traffic contributes just 0.4% of NOx concentrations in the AQMA. Road vehicles not connected to the development and background concentrations contribute 99% of the NOx levels in the AQMA.

145. To put this in context, Mr Andrew explained[111] that the East Herts District Plan has allocated some 4,500 new homes in Bishops Stortford. As he explained, this new housing will result in transport movements in and around the town resulting in impacts "*well beyond*" those associated with this development.

146. The performance of the model and the impacts on the AQMA were also the subject of extensive scrutiny and sensitivity testing following submission of the ES, in consultation with UDC and WYG.[112] This tested the impacts of the development if background concentration levels are held constant at 2016 levels, which Dr Broomfield

---

[109] Rust XinC
[110] An assertion that was fairly described as "astonishing" by Dr Bull
[111] XinC
[112] Inexplicably, Dr Broomfield failed to acknowledge any of this work when formulating UDC's statement of case, although even the most cursory glance at the November 18 OR should have drawn it to his attention.

accepts is not remotely realistic; and applying an adjustment factor of 8.5 to bring the modelled concentrations in line with measured concentrations, and confirmed that the impacts remained negligible[113].

147. As Dr Bull explained, on the basis of the agreed "infinitesimal" traffic flows through this junction, no amount of adjustment to the model would change the conclusion that the development makes a negligible contribution to $NO_2$ levels in the AQMA[114]. This was agreed with UDC, and with WYG, and it is the reason that EHDC – whose absence UDC skates around in its closing submissions - plays no part in this appeal.

*UFPs*

148. It is common ground that there is no air quality standard for UFPs and no means of assessing the impacts of UFPs, based on current scientific knowledge. If it becomes necessary or possible to regulate these impacts in the future, Dr Bull explained that it is highly likely that the Government will take steps through the regulatory regime to tackle UFPs at source, rather than trying to prevent or restrict the UFP-emitting activity through the planning system.[115]

149. Dr Broomfield's solution was, instead, to impose a condition requiring an absolute reduction in PM 2.5 emissions, on the basis that "*you would expect UFPs to behave similarly*" to PM 2.5 emissions. There is clearly no policy basis for the imposition of such a condition, for the reasons we explain above. However, on the basis that PM 2.5 emissions are the best available proxy for assessing the impacts of UFPs, and that PM 2.5 levels are assessed as negligible, there is also no reason to believe that UFP impacts will not also be negligible.

150. We note that UDC has not suggested any measures, to be secured by way of condition or by the UU, which would directly address these impacts. This is, of course, because there is no way of even assessing these impacts at the current time, let alone addressing

[113] No challenge was made by UDC to Dr Bull's evidence in his rebuttal that Dr Broomfield has himself authored assessments including similar – and higher – adjustment factors. As Dr Bull confirmed, the scale of adjustment used is by no means exceptional.

[114] Bull XinC

[115] Other examples of regulatory measures include the introduction of smokeless zones through the Clean Air Act, the removal of lead from petrol and the removal of sulphur from coal and oil combustion: Bull XinC

them. But in any event, if new air quality standards for UFPs emerge in the future, these can be addressed through the air quality management strategy proposed by STAL. UFPs are not an issue that the Panel needs to – or can – resolve now.

*Impacts on ecological receptors*

151. It is common ground that the development will not give rise to any unacceptable air quality impacts at any of the sensitive ecological receptors. There is no objection to the development from NE, which was closely involved at the application stage and has confirmed that it has no objection to this appeal.

152. The only outstanding issue is whether a condition should be imposed, requiring assessment against the 24-hour mean concentration at the Elsenham Woods and Hatfield Forest SSSIs.

153. As Dr Bull explains, Dr Broomfield's insistence on this assessment is directly contrary to the explicit advice contained in the IAQM guidance, that only the annual mean should be used in assessments unless "specifically required by a regulator."[116] NE has never asked for this assessment to be undertaken.

154. Mr Barker had the final say on this issue and his evidence has not been the subject of challenge. As he explained, in order for an acute impact on vegetation to occur, so as to require a 24-hour assessment, there has to be an interaction between NOx, sulphur dioxide and ozone. However, high concentrations of sulphur dioxide and ozone levels are uncommon in the UK and they do not occur here.

155. At its apex, UDC's case in its Closings[117] concludes that "each of the air quality impacts identified by UDC is capable of being mitigated through an appropriate condition and/ or mitigation package." However, the evidence demonstrates that the development will have no significant air quality impacts and so there is no requirement, in EIA terms, to provide any mitigation to offset these impacts and it is for this very good reason that the ES/ESA does not need to set out specific mitigation measures. As Dr Bull put it in XX,

[116] STAL/5/3, Appendix 4, page 16 para D.4.10
[117] Para.76

in the absence of any more than negligible air quality impacts, any measures to tackle AQ will therefore deliver "*improvements*" meeting the requirements of para 170 and 181 of the NPPF.

156. As we go on to explain, the package of measures secured by the UU[118] and conditions[119] is extensive and yet it appears to have been almost entirely ignored by Dr Broomfield.

**The package of mitigation and improvement measures proposed as part of this application**

157. In claiming that the UU was "*business as usual*", in terms of measures to reduce AQ impacts, Dr Broomfield conceded that he was unaware of the circa £1.7million pa additional funding generated by the sustainable transport levy ("STL"), to be put towards sustainable transport measures as a result of the development.

158. As Mr Andrew explains, the purpose of the STL is to promote the use of modes of transport other than private car and to promote the use of sustainable measures of transport including the introduction of new technologies. It is administered by the Stansted Area Transport Forum ("SATF"), which includes Officers from both UDC and East Herts (as well as NR, TFL and HE).

159. Mr Andrew provided further detail about the SATF in XinC. As he emphasised, the SATF is a long-standing partnership approach, set up in 1999. It has a track record of investing successfully in sustainable transport measures, including substantial investment in local bus networks (£1million invested to date from previous obligations), including to upgrade these to the latest vehicle technology.

160. The UU also provides for a top-up to the ring-fenced bus network development fund (of £1million), with priority to be given to funding for ULEV and low emissions vehicles once the technology becomes viable. In XX, Dr Broomfield seemed to cast doubt on the value of this mitigation, on the basis that there is a prerequisite for a business case to be made out. As with so much of his evidence, however, this criticism takes no account of

[118] CD 26.30a
[119] CD 26.26a & b

commercial and practical realities. As Mr Andrew explained, it would make no sense for the SATF to invest in services that cannot become self-sustaining, and there would be "*no positive outcome either in terms of sustainability or air quality if the service fails*".

161. Once drawn to Dr Broomfield's attention, he accepted that the UU provides "*substantial investment*" and generates "*significant*" sums towards sustainable transport measures and that these measures are "*directly relevant*" to reducing emissions, including in the AQMA[120].

162. Moreover, the *beauty* of these mechanisms is that they are not set in stone nor fixed at the time of the grant of permission and so there is clearly no justification for a "Condition 15" type mechanism in order to keep the mitigation measures "*up to date*" with technological advances[121]. The flexibility to invest in new technologies over time means that technological advances to deliver AQ improvements will indeed be shared with the local community, as a direct result of the funding generated by the development.

163. As well as the sustainable transport measures, the UU also secures ongoing monitoring of air quality at locations around the airport.

164. In addition to the package of measures under the UU, STAL has also agreed to a condition requiring an air quality management strategy to be submitted to and approved by UDC before 35mppa is reached[122]. The strategy will be subject to regular review and will therefore be an evolving document, which will take account of any new AQ standards or policies.

165. Finally, rapid electric vehicle charging points will be provided at the airport, as requested and agreed with EHDC.

166. This package of measures goes well beyond meeting the requirement to mitigate the <u>negligible</u> air quality impacts of the development. UDC's assertion that the UU simply

[120] Broomfield xx
[121] Agreed by Broomfield in xx
[122] CD 26.14

"rolls forward" measures already contained in previous s106 agreements is unfair and is clearly refuted by the table in Mr Andrew's rebuttal, which shows the true scale and value of the UU sustainable transport measures, which are all "new" and directly related to this development[123]. It is admirable in its scope and ambition, as well as in its flexibility, and it more than satisfies the high-level objective contained in paragraph 170(e) of helping to improve local air quality "*wherever possible*".

**The Committee's decision in January 2020**

167. UDC's case on appeal bears little resemblance to the reasons given by the Committee for refusing permission on AQ grounds. As the minutes of the Jan 2020 meeting make clear[124], the Committee focussed exclusively on PM 2.5 emissions (assessed as being negligible at all human and ecological receptors) and perceived concerns around UFPs (not capable of being quantified or assessed at all). No consideration was given to $NO_2$ emissions in the AQMA, which was the focus of Dr Broomfield's evidence. [125]

168. In resolving to refuse permission on this basis, the Committee also ignored the clear and correct advice of Mr Harborough, who reminded Members that "*Dispersion modelling of fine particles had been carried out and concluded that the airport expansion would have no significant effects on the concentration of such particles*."[126] [emphasis added].

169. What, then, was the basis for the Committee's decision to refuse permission? The answer is to be found in the presentation made by SSE[127], which included a slide headed "*Health Impacts*". This made generic references to health impacts from PM 2.5 emissions arising "*at levels below WHO guideline limits*" and noted a "*growing concern*" around UFPs, which - it was said - "*have been found 14 miles from an airport*."

170. There was no evidence before the Committee to indicate that the development would give rise to unacceptable PM 2.5 concentration levels at any human or ecological receptor, by reference to any relevant air quality standards or policy test, let alone that

[123] STAL 13/4 Table 1
[124] CD 13.4a
[125] Accepted by Dr Broomfield in xx
[126] CD 13.4b para 5
[127] CD 13.4a

any impact which could not have been mitigated to an acceptable level. On the contrary, the ES demonstrated that PM 2.5 concentrations would be well below the AQ standard at all receptors.[128] UFPs are, of course, not even capable of being quantified or assessed by reference to any air quality standard or at all.

171. Moreover, the *health* impacts of PM 2.5 emissions "*below WHO guideline levels*" and of UFPs, as a subset of PM 2.5 particles, were indeed assessed as part of the Health Impact Assessment in the ES, as Dr Buroni explained in XinC. This concluded that the development would have negligible health impacts associated with AQ changes.

172. As Mr Andrew confirmed, no consideration was given by the Committee to the measures to be secured under the UU at all. The extensive package of surface access measures to deliver AQ improvements, described above, was entirely ignored.

173. The decision to refuse permission on AQ grounds, contrary to the clear and correct advice of senior UDC officers, without any evidential or policy basis for doing so, and without any consideration of the scope for mitigation of any residual impacts, was plainly therefore unreasonable. We return to this reason for refusal in our submissions on costs.

## PUBLIC HEALTH AND ECOLOGY

174. The development will not give rise to any adverse public health or well-being impacts, including impacts associated with air quality and noise. It will have a positive influence on health and well-being at a regional scale through generation of employment opportunities and through leisure, travel and social connections. Overall, there will be a minor beneficial public health and well-being effect as a result of the development (changed from a minor adverse effect in the ES).

175. There was no challenge to this evidence and no request was made to cross-examine Dr Buroni. His evidence must therefore be given full weight. The absence of any serious

[128] The highest level of PM 2.5 emissions was assessed as being just 13.7ug/$m^3$ in 2023 and 14.4ug/$m^3$ at 2028: see CD 13.4g

challenge to this evidence is, in itself, a clear indication of the very limited environmental impacts of this development.[129]

176. Likewise, there was no request to XX Mr Barker, and no challenge to his expert ecological evidence that the development will have no adverse impacts on any sensitive ecological receptor. But in any event, STAL has committed to continue air quality monitoring at Hatfield Forest and Elsenham Woods SSSIs with mitigation to be agreed with UDC, in the event of any damage arising to vegetation as a result of the NOx air quality standard being exceeded.

## CARBON AND CLIMATE CHANGE

177. As foreshadowed, this issue occupied a great deal of time at the Inquiry, and yet the correct approach to the assessment of carbon impacts remains as set out in our Opening Submissions[130]. The start and end point for the Panel's consideration of the carbon impacts of this development is MBU, which remains in force and has not been withdrawn nor superseded by later Government policy. Its lawfulness is "*beyond argument*"[131]. As we explain below, arguments about the merits of MBU - whether dressed up in terms of its 'soundness' or the weight to be given to the policy – are not matters which are suitable for investigation at all, per ***Bushell***.

### The legal and policy context

MBU

(i) Carbon impacts of MBU proposals have been pre-authorised by MBU

178. The approach to be taken to the carbon impacts of MBU proposals is crystal clear. As Mr Hawkins put it[132], MBU "*narrows the range of issues*" for LPAs to consider "*on the merits*" to local environmental impacts only. It is a cumulative impact assessment of small scale (less than 10mppa) MBU proposals, which models and therefore

[129] Dr Banatvala's evidence was addressed fully by Dr Buroni in his rebuttal evidence and we do not address it further here.
[130] INQ1
[131] CD 14.62a para 115 per Dove J
[132] Hawkins XX'd

preauthorises the carbon impacts of these developments, and therefore takes this issue away from local planning authorities.

179. This was confirmed in the High Court by Ms Bishop for the DfT, who deals in terms with the correct approach to assessing carbon impacts under MBU:

> *"there is no requirement for local authorities to assess individual airport planning applications for an increase of less than 10 mppa or 10,000 CATMs against wider national carbon emission ambitions, as impacts within these parameters and how to mitigate against them have already been considered by my team in formulating and developing the government's MBU policy"*[133].

180. Faced with the clear wording of the policy, and evidence from a DfT senior official that carbon emissions from MBU proposals are not a matter for LPAs to consider, both Mr Lockley and Dr Hinnells sought to argue that, although MBU may not "*require*" LPAs to assess the carbon impacts of an MBU proposal, it nonetheless leaves it open to them to assess and weigh these impacts in the balance, presumably at their absolute discretion.

181. This is a hopeless argument. The length and nature of the closing submissions made by UDC and SSE on this subject only serves to illustrate why these complex matters are wholly unsuited to be addressed and resolved by Local Planning Authorities determining smaller scale MBU applications. It also flies in the face of the clear wording of MBU and the evidence from the DfT itself as to how the policy should be interpreted and applied. It also flies in the face of SSE's own evidence in the same proceedings, when Mr Ross sought to argue that this application should be treated as an NSIP precisely because carbon emissions were a national issue and outside the merit of LPAs.[134] In XX, Mr Lockley suggested that Mr Ross may have "*changed his mind*" since that time. Such a *volte face* would be true to form but on this, at least, Mr Ross was entirely correct.

182. In its closings, UDC claimed that Mr Robinson had agreed that "*carbon emissions can be a matter for the LPA to take into account*." This is a complete misrepresentation of his evidence, as the Panel's notes of the evidence will show. His evidence was that the

---

[133] CD 17.65 para 61

[134] CD 14.61 para 47: "*MBU… states, <u>in terms</u>, that it is not necessary for CO2 emissions to be considered by LPAs when deciding planning applications because these have been taken into account at national level*."

use of the qualification "local" would have been unnecessary, unless the draughtsman was intending to distinguish local impacts, to be taken into account by the Local Planning Authority, from national impacts i.e. carbon. While he agreed that MBU does not say explicitly that local authorities "should not" look at carbon emissions when making their decision, he maintained – throughout his evidence - his position that MBU advocates an approach which removes carbon from the matters to be considered by LPAs.

183. We are, therefore, squarely in ***Bushell*** territory. The merits of MBU and the carbon modelling underpinning it are not suitable or eligible for investigation at this Inquiry at all.

184. In this regard, we respectfully urge the Panel to be extremely wary of arguments by UDC and SSE, which are couched in terms of the "*weight*" to be given to MBU. This is an illegitimate attack on the merits of MBU, dressed up as a question of planning judgment. While the relevance of national policy to a particular development is, of course, a matter for the decision maker, it cannot be open to the Panel to determine that MBU should attract *less weight* on the basis that it is no longer said to be legally sound in the absence of any suggestion from the Government that MBU is no longer extant policy. This would amount to a legal challenge to MBU by the back door. It would also be an attack on the merits of the policy and the modelling underpinning it, contrary to ***Bushell***.

(ii) The approach to modelling carbon impacts in MBU

185. With this caveat in mind, we turn to consider the approach taken in MBU to modelling the cumulative carbon impacts of MBU proposals. This was clearly set out and explained by Ms Bishop in her second witness statement[135]:

> *"at the seven airports assumed to increase permitted use in response to demand pressure, MBU used publicly available proposals to increase permitted use caps. Elsewhere, we assumed an increase in permitted use by a third (up to a limit of 9.5 mppa, as any increase of 10 mppa or above would fall above the threshold for NSIP status and therefore be required to be decided nationally, by central government, at which point further assessment may be carried out)."*

[135] CD 17.65 para 71

186. Mr Galpin was therefore clearly right to describe MBU as a "*stress test*" of the carbon implications of the policy. As Ms Bishop put it, the approach in MBU was to see "*what could be the largest amount of carbon that could be produced across the whole of the UK airports system commensurate with our forecast of passenger demand*."

187. In light of this explicit evidence as to the approach adopted by the DfT in formulating MBU, we simply do not understand UDC's assertion[136] that MBU "*does not name or assess any single or cumulative set of airport proposals*" and so is not a "cumulative assessment" at all. It suggests a complete failure to grapple with the evidence before this Inquiry, which has spent a disproportionate amount of time examining this policy and the methodology behind it. It is precisely because MBU has already assessed the cumulative impacts of small scale MBU proposals that there is no question of an "unstructured free for all", as suggested. Expansion proposals of greater than 10mppa will, of course, be considered at a national level under the DCO regime.

188. As we go on to explain, the modelling underpinning MBU was also undertaken in the full awareness that "*other or improved*" abatement measures were likely to become available by 2050. It is, as Mr Robinson put it, a "*stress test*" to determine "*what mitigation measures would be needed to meet the planning assumption*". It is not a statement of carbon policy, which will be set out in the Aviation Strategy.

**The NPPF**

189. We have heard a great deal about para 148 of the NPPF from UDC but we can deal with it briefly here. As Mr Andrew confirmed, para 148 is not new and it appeared in a similar form in the 2012 NPPF, which pre-dated MBU. It establishes a high-level objective for the planning system to "*support the transition to a low carbon future in a changing climate*." It is clearly not directed at, and takes no account of, the "*complexities of aviation*"[137] such as IAS. For that, we need to look to national aviation policy, including the detailed carbon modelling which informed MBU.

[136] UDC closings para 89
[137] Robinson XX

**The CCA 2008 and the approach to IAS**

190. In light of the way the arguments have been put, it is necessary briefly to consider the statutory framework under the CCA 2008[138]. This establishes the respective roles and duties of the Secretary of State and the CCC. Thus, part 1 of the Act establishes duties, imposed on the Secretary of State, in relation to the setting of carbon budgets and policies for meeting carbon budgets and, ultimately, the duty to meet the 'net zero' target established under s1.

191. The Government has not delegated the Part 1 duties to another body, in clear recognition of the importance that Parliament accords to tackling climate change[139].

192. The CCC is established by Part 2 of the Act. It has an important advisory role, including (by virtue of section 35) to advise the Secretary of State on the consequences of treating emissions from international aviation and shipping ("IAS") as emissions from sources in the UK for the purposes of Part 1. However, it is not the body with ultimate responsibility for discharging the duties under Part 1 and the Government is not obliged to follow its advice. All of this was accepted by Mr Lockley in XX.

193. Despite the importance that the Government accords to tackling climate change, IAS emissions do not count as emissions from sources in the United Kingdom for the purposes of Part 1, including the net zero target, "*except as provided by regulations made by the Secretary of State*". No such regulations have been made to date.[140]

194. Unless and until any Regulations are made, IAS emissions continue to be accounted for informally, via a "headroom" or "allowance" made when setting the carbon budget. This headroom is not a legally binding target at all. It has been set, for the purposes of the fifth carbon budget, at 37.5Mt$CO_2$. This is the most recent carbon budget to be published by the Secretary of State under Part 1 and it runs from 2028-2032.[141]

---

[138] CD 17.1

[139] Accepted by Mr Lockley in XX

[140] This is a good example of the Government declining to follow the CCC's advice. As Mr Lockley put it in XX, "*the Committee has advised [under Part 2] that they should be included but, as a result of the Government not having to accept their advice, they remain excluded at this date*."

[141] In XinC Dr Hinnells appeared to suggest that the planning assumption might be 32.6MtCO2 but he agreed in XX that the current headroom is 37.5MtCO2.

195. As recently as October 2020, the Government made clear in its response to the CCC's June 2020 progress report (which recommended formal inclusion of IAS in the net zero target) that the Government is not currently minded to include IAS in the UK's carbon budgets or in the net zero target. Instead, the Government's approach remains to prioritise the international process and to negotiate in ICAO for a long-term emissions reduction goal consistent with the temperature goals of the Paris Agreement[142]. At the time of writing, inclusion of IAS in the carbon budget – and therefore in the net zero target - remains no more than a *"contingency measure in case international progress does not go far enough or fast enough"* and only to be deployed *"if there is insufficient progress at an international level."*[143]

196. Clearly, it will be for the Government to decide – taking account of advice by the CCC and in accordance with its statutory duties under the CCA - how to deal with IAS emissions and whether and when to activate contingency plans to impose limits on IAS at a national level. It is certainly not for LPAs, or Inspectors on appeal, to seek to regulate IAS emissions at a local level, and on an airport-by-airport basis, through the development control process.

**Matters relied upon by UDC and SSE to "reduce the weight" given to MBU**

197. A great deal of time has been spent at this Inquiry analysing the advice of the CCC. However, as the CCA makes clear, the CCC's role is to advise the Government. It is not providing advice to this Panel and it will be for the Government to decide whether to accept its advice or not. It is because this advice is directed at the Government, and it is for the Government to decide how to address in the first instance before formulating a policy response, that SSE's "prematurity" analogy does not get off the ground[144].

198. Moreover, as we go on to explain, the detailed scrutiny to which the CCC's advice has been subjected (which has only been necessary because of the undue weight which UDC and SSE seek to place on it), has given rise to a number of queries about the assumptions

[142] As Mr Coppel helpfully clarified in XX of Mr Robinson, the Government's commitment to the international process in fact reflects its obligations under sub-article 2 of the Kyoto Protocol, which commits Annex 1 member states including the UK to pursuing limitations or reductions in greenhouse gas emissions via ICAO.
[143] CD17.64, p.106
[144] SSE closings para 1.26

underpinning the CCC's advice. These will ultimately be for the Government to resolve but the fact that there remain outstanding queries about the CCC's approach, which it has not been possible to resolve on any of the extensive documentation from the CCC which is before the Inquiry, clearly underlines the dangers of treating the CCC's advice as if it was akin to Government policy.

**The amendment to net zero and the CCC's September 2019 advice**

199. The relationship between the net zero amendment and IAS emissions has caused a great deal of confusion, particularly on the part of Dr Hinnells, who appeared to be under the impression that the "headroom" for IAS had "vanished" altogether, following the amendment to s1 of the Act, and that there was no longer any "space" for any residual IAS emissions.[145]

200. The correct analysis is that IAS are not caught by the amendment to net zero at all. They continue to be excluded from carbon budgets set under the Act, and the Government continues to prioritise the international process to address these emissions. The planning assumption remains set at 37.5Mt$CO_2$ for the fifth carbon budget, which will run until 2032. Moreover, and as Mr Robinson emphasised[146], in deciding how to get to net zero, the Government will need to look at emissions across the whole economy, of which aviation accounts for just 7%[147]. It will then be a matter for the Government, taking account of the advice from the CCC, to decide how to balance emissions from competing sectors, and what level of IAS emissions to allow for, in order to achieve an overall net zero outcome.

201. Nor has the amendment to s1 resulted in the headroom for aviation growth being "*squeezed*"[148]. This reveals a complete misunderstanding of the CCC's advice at that time (since updated in the 6th CB, as we explain below), that "*aviation emissions could be reduced from 36.5 MtCO2 in 2017 to around 30 MtCO2 in 2050*"[149]:

[145] Hinnells XinC
[146] XX by UDC
[147] CD 17.78 pg 6
[148] Hinnells XinC
[149] CD 17.28

i. In advising the Government on how to get to "net zero" IAS emissions, the CCC assumed a 25% growth in demand by 2050, compared to 2018 levels. This equates to 365-370mppa i.e. exactly the same level of aviation growth as was assumed in the CCC's 2009 advice when the 37.5Mt$CO_2$ headroom was originally set[150]. This was also the advice of the CCC at the time when the Government published MBU.

ii. The only change in the CCC's advice following net zero related to the abatement measures potentially available to *bring down* the level of emissions associated with the same level of aviation activity:

(a) In 2009, the CCC assumed a "likely" fuel efficiency improvement rate of 0.8% and just 10% SAF uptake. In its "speculative" scenario, the CCC assumed 1.5% fuel efficiency improvements and SA penetration of 30% by 2050, which is much closer to its projections in its most recent advice on the 6th CB.

(b) By 2019, the CCC assumed a fuel efficiency rate of 1.4%. However, the CCC continued to assume just 10% uptake of SAF by 2050. The CCC assumed that limited use of GGR offsets would be required to get remaining IAS emissions to net-zero.

202. As we explain below, the CCC's latest advice on the 6th CB is more optimistic still, and this has enabled the CCC to conclude that the emissions associated with the CCC's recommended level of aviation activity can now be reduced to just 23MtCO2.[151]

203. All of the CCC advice, pre- and post- MBU, therefore assumes exactly the same level of aviation growth to be compatible with the Government's obligations under the CCA. We note that the CCC's advice that "*limits to further airport expansion*" should be considered as one option to constrain demand to 365mppa also first appeared in 2009[152].

[150] Agreed by Mr Lockley in XX
[151] CD 17.78 Figure A3.7.a
[152] CD 17.2

204. However, as Mr Lockley confirmed[153], the Government has given no indication that it plans to adopt the CCC's advice on capping growth to this level. Instead it published MBU, which supports growth to 444mppa as being compatible within the current planning headroom.

205. It is also far from clear how the CCC has arrived at the conclusion, in its advice since MBU was published, that aviation activity should *continue* to be constrained to 365mppa:

i. As Mr Lockley confirmed, it is ATMs not passengers, which generate CO2 emissions. However, the only reference in any of the documentation before the Inquiry to the number of ATMs associated with 365mppa is in the CCC's 2009 advice, when the CCC advised that the Government should plan for a "*maximum allowable increase in ATMs of around 55% and a maximum demand increase of around 60%"*[154] and that the "*maximum increase in ATMs compatible with the emissions target is around 3.4 million per year in 2050 compared to around 2.2 million per year in 2005*."

ii. Mr Lockley agreed, therefore, that the 365mppa figure was set up to align with 3.4m ATMs. However, the ATM assumption relating to this mppa figure appears to have vanished from the CCC's more recent advice altogether.

iii. Absent a clear understanding of and explanation for the CCC's approach, this raises questions because 365mppa today would align with anything like the same number of ATMs as in 2009. We know from evidence put by SSE before the Inquiry that, between 2009 and 2019, the average passengers/ATM increased from 105 to 135[155]. The CCC's assumption in 2009 of 365mppa from 3.4m ATMs translates into 107 pax/ATM, which is in line with average load factors at that time. By contrast, using the 2019 ratio (of 135 pax/ATM), 3.4m ATMs would align with a passenger throughput of 459mppa.

[153] Lockley XX
[154] CD 17.2 page 148
[155] CD 23.62

iv. Table 2 in MBU[156] reveals that the DfT assumed, based on its 2017 aviation forecasts for 2050, that 444mppa was aligned with just 3.043m ATMs. This equates to a ratio of 146 p/ATM at 2050. Applying the same ratio to 3.4m ATMs would generate 496mppa.

206. In his note[157], Mr Lockley confirmed that he had been unable to identify the ATM analysis underpinning the CCC's latest advice. He suggested, however, that the CCC had simply adopted the methodology in the DfT's 2017 Aviation Forecasts to convert mppa to ATMs. However, MBU is also based on the 2017 Aviation Forecasts. Applying the same alignment between ATMs and mppa as used in MBU would lead to either a much higher passenger throughput, or a much lower ATM assumption, but the explanation for this is not to be found anywhere in the documents published by the CCC, which are before this Inquiry.

207. As we explain below, the CCC's long-standing advice that demand should be constrained to 365mppa has also directly informed the CCC's "*no net expansion*" advice in the 6th CB, which has generated so much hot air at this Inquiry.

**The CCC's advice on the 6th CB**

208. As Mr Robinson explains, the 6th CB is unchanged in key respects, including its long-standing advice that aviation growth should be constrained to 365mppa.[158] Set against this, however, is a "*growing confidence*"[159] in the potential of mitigation measures, particularly the take up of SAF, as well as the potential for carbon removals to become available to compensate for residual emissions.

209. In its balanced pathway, the CCC now assumes 25% uptake of SAF by 2050, compared to just 10% in its September 2019 advice. It has therefore moved substantially towards

[156] CD 14.2
[157] INQ 036
[158] STAL/8/4
[159] STAL 8/4 para 7.3

the 32% SAF assumption adopted in the SA's road map[160], described by Dr Hinnells in XinC as a "*powerful piece of work*."[161]

210. The dramatic effect of the CCC's new abatement assumptions can be seen in Figure A3.7.a of the "Aviation Summary"[162], which now shows residual emissions reduced to just 23MtCO2. However, this is also another key area of the CCC's advice, where questions remain unanswered at the end of this Inquiry:

i. The CCC assumes "*baseline*" emissions of approx. 51MtCO2. This baseline[163], we are told, is taken "*direct from DfT modelling*" and assumes "*high demand growth (64% growth in passenger numbers by 2050, from 2018 levels), low efficiency improvement (0.7%/ year), no hybrid electric aircraft and no SAF deployment*."[164] However, 64% growth on 2018 levels gives a "baseline" of 478mppa, which is substantially higher than the 444mppa assumed in MBU, also derived from the DfT's 2017 aviation forecasts.

ii. Neither Mr Robinson nor Mr Lockley was able to explain where the CCC derived this baseline from. In his note, however, Mr Lockley suggests that it reflects the DfT's *unconstrained* demand forecast, adjusted to take account of "*later available data*" and "*the effects of COVID*."[165]

iii. However, the 2017 DfT Aviation Forecasts make clear that the *unconstrained* forecasts are a "*modelling diagnostic tool*" which are "*highly theoretical in that they include input assumptions that could not exist*."[166] They are not the basis for calculating actual demand at all and they are not the basis for the $CO_2$ emissions forecasts in the 2017 Aviation Forecasts. These use the capacity constrained forecasts[167]. The capacity constrained forecasts are also the basis for MBU[168]. If

[160] CD 17.5
[161] Although both UDC and SSE belatedly sought to discredit the SA Road map and its projections in closings, no evidence was led by either UDC or SSE in relation to this issue and nor was this the subject of XX of Robinson.
[162] CD 17.78
[163] CD 17.78, page 10
[164] Ibid
[165] INQ 036, para 13
[166] CD 14.14, para 6.3
[167] See, for example, CD 14.14, para 8.3 "As with the constrained ATM forecasts, from which these emissions forecasts are developed."
[168] CD 14.14 para 7.4 and figure 1

Mr Lockley is correct, which we do not believe to the case, this would be a major departure from the methodology used by the DfT.

iv. From this baseline of 51MtCO$_2$, demand measures are applied to reduce emissions to 37.5MtCO2. The CCC then assumes that SAF will reduce emissions by approximately 10MtCO2 and that efficiencies and hybrids deliver a further reduction of 4.5MtCO2. Thus, abatement measures deliver a reduction of 14.5MtCO2, even after demand measures have been implemented.[169] This leaves residual emissions of 23MtCO$_2$ to be offset with GHG removals.

211. As Mr Lockley accepted, these abatement measures are "*far more extensive in their scope*" than at the time MBU was undertaken. Applying a similar level of abatement from SAF and efficiencies and hybrids to the 40.8MtCO$_2$ in MBU would clearly dramatically reduce overall emissions, compared to the reduction of just 3.6MtCO$_2$ assumed at that time.

212. Mr Robinson was clear, therefore, that *even if* the DfT were to repeat the modelling exercise in MBU but applying a lower planning assumption, this would be highly unlikely to change the policy approach in MBU. As he put it, "*the Government would apply the same stress test and arrive at the same conclusion*".

213. This brings us to the CCC's advice in the 6$^{th}$ CB on demand management, including its "*no net capacity*" advice. As Mr Robinson explained, the scope of this advice and the work underpinning it need to be carefully considered and understood. As with the other aspects of the CCC's advice, considered above, it is by no means as clear cut as it may appear at first glance.

214. In particular, and as Mr Robinson explained, although the CCC identifies a range of demand management measures[170] that could be pursued to meet its demand profile, it has not undertaken *any* analysis to see which demand measures – or combination of measures - would be most effective. Indeed, the CCC states in terms that "*Our analysis only assumes a demand profile is achieved, and does not model the policies required to*

[169] CD 17.78, Figure A3.7.a
[170] Reducing passenger demand for flying through carbon pricing, a frequent flyer levy, fuel duty, VAT or reforms to Air Passenger Duty, and/or restricting the availability of flights through management of airport capacity

*achieve these profiles*."[171] Mr Lockley agreed in XX that ***"****the CCC has taken the view that it is not for them to recommend a specific policy mix for demand management"*.

215. It is indeed, therefore, "*surprising*"[172] that the CCC should have opted in its policy recommendations to go straight to an immediate moratorium on new airport capacity. As Mr Robinson put it, even if the Government were persuaded of the case for demand management, it would be for the Government to explore all of the options and to decide how to achieve the right balance of demand management measures "*in the most proportionate and least damaging way*."[173] That exercise forms no part of the advice provided to it by the CCC.

216. Moreover, very recent pronouncements from the Government make it absolutely clear that it has no intention of imposing a moratorium on new airport capacity, with all the economic damage this would entail:

i. In its October 2020 response to the CCC[174], the Government responded head on to the CCC's recommendation that the Government should "*review its airport capacity strategy in light of COVID and net zero*". Having reiterated its commitment to the international process and to negotiating through ICAO, the Government stressed that *"Airport expansion is a core part of boosting our global connectivity and levelling up".*

ii. It is equally clear from this response that the Government is developing its strategy for aviation emissions and that its focus will be on technological innovation and investment, together with market-based mechanisms, rather than constraining demand:

> *"The UK is already a global leader in decarbonising aviation. We plan to build on our existing work that is delivering clean aerospace R&D, supporting the deployment of sustainable aviation fuels, modernising our airspace, and establishing domestic and international market-based mechanisms, to reduce emissions faster and further."*

---

[171] CD17.78, pg 9
[172] Robinson XinC
[173] Robinson XinC
[174] CD 17.65 page 106

iii. As Mr Robinson explained, this focus on green investment reflects the Government's long held support for green aviation and the UK's historic strengths in this area. As recently as 27 January 2021, we saw further evidence of this support for green investment, with the Government's announcement of a further £84million to invest in the green aviation sector.[175]

iv. This approach is entirely consistent with the strategy set out in the very recently published National Infrastructure Strategy, published in November 2020[176]. This emphasises that "*infrastructure investment is fundamental to delivering net zero emissions by 2050*"[177]. At the same time, it confirms the Government's long held position that aviation connectivity is essential for a global Britain. It is clear from this document that the Government is fully aware of the challenge of reconciling connectivity with net zero and is developing its response to this issue. Moreover, there is no evidence that the Government has suddenly gone lukewarm on aviation, and there is nothing to suggest any waning in support for MBU as a means to deliver growth. All of this was agreed by Dr Hinnells in XX.

v. Instead, the Government intends to "*square the circle*" of connectivity and net zero[178], by focussing at a domestic level[179] on a blitz of green investment, which (as the NIS notes) will "*create jobs to support the recovery from COVID-19, and support the government's levelling up agenda by ensuring key industrial areas are at the heart of the transition to net zero*." It is a policy approach which ticks all of the boxes as the UK emerges from COVID and the Government looks for opportunities to rebuild the economy and deliver growth and jobs, whilst simultaneously moving towards a net zero future. It is also squarely on all fours with MBU's in principle support for aviation growth, subject to local environmental impacts being addressed.

---

[175] INQ 19
[176] CD 23.41
[177] Ibid pg 12
[178] Hinnells XX
[179] Noting, as set out above, that IAS continue to be treated as excluded from UK emissions sources: see pg 47

Non-CO2 Impacts

217. We can deal briefly with this issue. Both the recent ***Heathrow*** judgment and the CCC's advice in the 6th CB emphasise the significant uncertainties surrounding these impacts and how to account for them. Far from promoting a policy response now to address these impacts, the CCC's 6th CB advice re-iterates that *'there remain significant uncertainties in the science and mitigation options, and therefore uncertainties regarding the policy response."*[180]

218. In XX, Dr Hinnells confirmed, correctly, that it is "*clearly not a requirement*" to assess non-CO2 impacts at the present time. Mr Lockley was also unable to point to any basis or requiring an assessment of non-CO2 impacts to be undertaken.

219. Mr Vergoulas clearly explained in his evidence why it is not possible to assess non-CO2 impacts at the current time.[181] As he explained, there is not even any scientific consensus as to what multiplier to use to account for non-CO2 impacts, nor any consensus about what mitigation measures should be employed to reduce these impacts (not least because reducing non-$CO_2$ impacts by, for example, re-routing to avoid contrails, can result in additional fuel burn and therefore increase CO2 emissions). Moreover, the "great advantage", as he said, of these short-lived effects is that they do not remain in the atmosphere and so, by reducing ATMs, it is possible to have an immediate beneficial effect on the warming consequences of non-$CO_2$ emissions once the science becomes more clearly understood.

220. SSE in its closings tried to claim that Mr Vergoulas had agreed in XX that non CO2 impacts were "to be considered a significant adverse environmental impact for the purposes of EIA". However, this is plainly not what Mr Vergoulas said, as the Panel's notes will show. Mr Vergoulas did not dispute that non CO2 impacts were "important". However, he went on to explain that it was currently impossible to assess the significance of these impacts at all, based on current scientific knowledge and in the

[180] CD 17.78 pg 18
[181] STAL/9/3 and Vergoulas XX

absence of any agreed multiplier or metric. He explained that he had followed the advice of the CCC, as well as the approach adopted by the DfT and the Government.

221. Mr Vergoulas was clearly therefore correct to say that non-$CO_2$ impacts do not need to be addressed in the ES/ ESA. This is entirely consistent with the advice of the CCC and the approach taken by the DfT in MBU. These are highly complex questions, which will be for the Government – not LPAs considering MBU applications - to resolve in due course, and as a scientific consensus emerges.

Summary of the policy position

222. The above submissions are made without prejudice to our primary position that this extensive scrutiny of the merits of the carbon assessment underpinning MBU is not an appropriate or lawful exercise at this Inquiry. However, after a full week of evidence, it is also clear that there is no merit whatsoever in the arguments pursued by UDC and SSE that MBU has been somehow rendered "unsound" by subsequent developments, including the amendment to net zero and the CCC's recent advice. The approach to carbon impacts underpinning MBU has been shown to be entirely sound and, indeed, conservative in its assumptions. It must be given full weight, as an up-to-date statement of national aviation policy, which deals expressly with this development.

**The carbon emissions associated with this development**

223. Faced with legal and policy arguments that ranged far and wide, and a great deal of grandstanding about the existential threat posed by climate change (which no one – least of all STAL's witnesses - sought to dispute for one moment), there is a real risk of losing sight of the scale of impacts under consideration here.

224. The ES/ ESA contains a detailed, airport specific assessment of the carbon emissions associated with this development, unlike the DfT's model which SSE sought to rely on to suggest that the emissions had been "down played". This is a favourite SSE argument, but it has no more merit in relation to carbon emissions than it does in relation to demand forecasts. For all the reasons we have already explained, the DfT model plainly is not

intended to be used at an airport specifc level. In any event, and as Mr Vergoulas explains, this argument goes nowhere because the 2.08MtCO2 which the DfT modelled for growth to 44.8mppa is closely aligned with the 2.03MtCO2 modelled in the ES for the same baseline year.[182]

225. That is sufficient to dispense with SSE's case on the carbon emissions actually associated with this development.

226. As Mr Andrew explained, the carbon assessment was undertaken before MBU was published and so, in the absence of the clear policy direction in MBU, the ES included an assessment of the emissions from this development against the 37.5MtCO2 headroom. It concluded, correctly, that the development was unlikely to materially impact the UK's ability to meet its carbon reduction targets and that Stansted's share of the headroom would not materially change as a result of the proposed development.

227. Dr Hinnells confirmed in XinC that the carbon modelling in the ES/ ESA "*reflects a reasonable range of outcomes*" and neither he nor Mr Young seriously sought to dispute the assessment undertaken by Mr Vergoulas. Dr Hinnells agreed that the incremental emissions generated by this development compared to the DM scenario are just $\underline{0.09MtCO_2}$. This increment is not only accepted by UDC but is now positively relied upon by UDC in its closing submissions in support of the contention that the carbon emissions from this development are "significant"[183]. In the best practice scenario, which is now more closely aligned with the CCC's latest projections[184], the incremental emissions associated with this development would be just $\underline{0.07MtCO_2}$.

228. An increase of 0.09MtCO2 equates to just 0.24% of the current planning assumption of 37.5$MtCO_2$ or 0.3% against 30MtCO2 or 0.39% against 23$MtCO_2$. As Dr Hinnells fairly conceded, these are "*tiny fractions for a non-DCO development under the MBU proposal*." On no sensible analysis can this be said to be "significant". In this regard, the IEMA guidance prayed in aid by UDC[185] plainly does not say that any GHG emissions, even at this level, should be treated as "significant" for EIA purposes. It

[182] STAL/9/3
[183] UDC closings, para 106(2)
[184] As confirmed by Mr Vergoulas in XX
[185] Para 106(11)

advises, in the absence of any clear "standard" against which significance can be assessed, that professional judgment is required. The exercise of that judgment here leads necessarily and inevitably to the conclusion that the carbon impacts of this development are negligible.

229. To put these emissions into context, the emissions associated with the Heathrow NWR are projected to be 21MtCO2, or nearly the entire amount of the residual emissions recommended by the CCC.[186]. The scale of that project is clearly "*a world away*"[187] from the impacts the Panel is considering here. While we say para 5.82 of the ANPS does not apply at all to this development, SSE's reliance on this paragraph (said to be of "key importance")[188] therefore takes it nowhere, as the stark comparison with Heathrow makes clear. Para 5.82 says in terms that an increase in emissions alone is <u>not</u> a reason for refusing permission, and it is simply fanciful to suggest that an "increase in carbon emissions resulting from this development" of just 0.09MtCO2 is "so significant that it would have a material impact on the ability of Government to meet its carbon reduction targets".

230. Moreover, this "*tiny fraction*" assumes that the airport does not seek to utilise its permitted 274,000 ATMs, in the event that permission is refused. As Mr Andrew explained, however, in the event that permission is refused the airport will plainly seek to "*make the best use of the asset that we've got*"[189] - and certainly by 2050.

231. In short, therefore, this development delivers a material increase in airport capacity with <u>no new ATMs</u>[190], a modest amount of hardstanding and an increase of, <u>at most</u>, 0.09Mt$CO_2$. The undisputed gravity of climate change and the challenges faced by the Government in tackling this issue - whilst simultaneously delivering on its objective to boost connectivity and deliver economic growth - only serves to emphasise that this development is a very "*easy win*", in terms of delivering additional airport capacity at

[186] CD 14.26, PEIR Vol 1, Chapter 9, Fig 14.6
[187] Hinnells XX
[188] SSE closings para 5.9
[189] STAL/13/2, para 9.6 and figure 1
[190] C/f the Luton DCO, which is seeking consent for 72,000 additional ATMs

absolutely minimal environmental cost. Or, as Mr Robinson put it, this development is **"*about the most efficient way that you could have to deliver new capacity*".**

**Conditions**

232. As with noise and air quality, UDC no longer argues that permission should be *refused* on the grounds of carbon impacts. However, it continues to insist on the imposition of a set of conditions to micro-manage carbon emissions from every aspect of the airport, including – primarily - emissions from IAS[191]. We can deal with this briefly in light of our submissions above:

i. Just as it is no part of an LPA's remit to consider IAS emissions when determining MBU applications, so it is not for LPAs to seek to regulate IAS emissions through planning conditions. As Dr Hinnells accepted, carbon emissions from IAS are not a local impact: they are a national or even international impact. Quite apart from the fact that STAL has no control over these emissions, they are clearly unsuitable to be regulated at an airport or local level.

ii. There is no policy basis for the imposition of a condition controlling IAS emissions and Dr Hinnells is clutching at straws by suggesting this can be derived from para 148 of the NPPF. On the contrary, the emissions from this development have been 'pre-authorised' by MBU, without any requirement to demonstrate mitigation of those impacts at a local level. The imposition of this condition is plainly not therefore necessary to make the development "*acceptable in planning terms*".

iii. It is also neither necessary nor reasonable for landside/ airside activities at the airport to be micro-managed to the extraordinary degree proposed by UDC. The emissions from all landside activities at 2032 are projected to be just 0.005MtCO2. Emissions from airside activities are only fractionally higher, at 0.021MtCO2. These are tiny levels and they arise from the operations of the airport as a whole, not from the impacts of this development.

[191] Assessed in the ES as comprising 93.5% of the total emissions airport, as Mr Robinson agreed in XX by SSE

iv. As Mr Andrew explained, it is also not within STAL's gift to micro-manage all emissions from the operation of the airport. There are 180 businesses on the airport site and many of these activities, including vehicle movements, are undertaken by third parties and are outside STAL's control.

v. The same is true of surface access movements to and from the airport and "*in its vicinity*". The decarbonisation of these movements is a matter for the DfT, not STAL[192]. In XX, Dr Hinnells conceded that "*this is not the principal issue because travelling in vehicles is dealt with by clear policy elsewhere*". He also acknowledged that "*Stansted does better than most airports… in terms of public transport*."

233. As Mr Robinson explained, the airport has worked hard to reduce all carbon emissions from operations and buildings under its control. This includes airport buildings and plants and the limited number of airport vehicles controlled by it. It has achieved Level 3+ Airport Carbon Accreditation and it has committed to reducing these emissions to net zero by 2038. The airport is already doing everything to reduce emissions that it is within its power to do.

**The reason for refusal**

234. Our submissions, above, concerning the correct approach to this issue and the negligible impacts of this development are entirely consistent with the careful advice and clear direction given to Members by UDC's Officers in advance of the Jan 2020 committee meeting:

i. As Dr Hinnells agreed, the Nov 18 OR reviewed the ES in some detail. It faithfully recorded the conclusions in the ES, including the incremental difference of just 0.3Mt$CO_2$ (in the ES *pessimistic* scenario). Officers advised in light of these conclusions that the development was unlikely to impact on the UK's ability to meet its climate change target.[193]

[192] Although the UU measures to reduce trips by private car will also help to reduce carbon emissions associated with these movements.
[193] CD 13.1(b), para 9.350 onwards

ii. The updated OR in Jan 2020 dealt squarely with the amendment to net zero and the CCC's subsequent advice[194]. It correctly advised, however, that these were matters for the Government to consider and address through the Aviation Strategy and that it was not for LPAs to try to predict what policy choices the Government may or should take. It advised Members that, in the meantime, MBU had not been withdrawn or qualified and remained extant Government policy.[195]

235. The advice given to Members, both as to the legal and policy approach, and the negligible impacts of the development, was clear and cogent and it was correct. Had Members followed this advice, they would inevitably have concluded that there was no valid basis for refusing permission on carbon grounds.

236. Instead, Members simply ignored the relevant policy context and decision-making framework, and the negligible impacts arising from this development. The minutes reveal that they focussed instead on UDC's "*declaration of a climate emergency*", although this is not adopted policy and it does not deal with IAS at all.[196] Instead of considering the additional emissions compared to the DM scenario, Members apparently concluded that the "*increase in passengers*" would "*increase carbon dioxide emissions by 1.0MtCO$_2$*"[197]. To compound the confusion, Members went on to compare these emissions to UDC's "*net zero target*" of 0.5MtCO2 by 2030.

237. This discussion led to the formulation of a reason for refusal which is near incomprehensible and which makes no attempt to engage with the relevant policy framework, including MBU. It has ultimately led to an Inquiry involving a full week of evidence on carbon emissions, which are not a matter for consideration by the Panel at all. The Committee's decision to refuse permission contrary to the clear advice of its Officers was plainly unreasonable. We return to these matters in more detail in our application for costs.

---

[194] CD 13.4(b), para 40 onwards
[195] CD 13.3(b) at para 43
[196] Hinnells XX
[197] See CD 13.4(a) and the SSE presentation slide on pg 31, which drew Members' attention to the difference between the 2016 baseline and the 2028 DC scenario and referred to an "additional" 1MtCO2.

## SURFACE ACCESS

238. STN is admirably well suited to perform this role both geographically and by virtue of the road and rail links which serve it. It already operates a major Public Transport Hub, with the highest public transport mode share of any major UK airport (50%). Further growth at Stansted therefore enables these facilities to be utilised to a greater degree, supports their reinforcement and sustains their viability via a virtuous circle.

### Position of the Highway Authorities

239. Agreement had been reached about the appropriate mitigation to address increased traffic flows at the time of the November 2018 and January 2020 Committees. However, this has been revisited following the statement by ECC that financial constraints would cause it to defer its intention to implement a scheme for the improvement of J8 of the M11, to which STAL was to make an agreed contribution. Further discussion with HE and ECC has now led to a new stand-alone mitigation strategy, which is the subject of a recent additional HSoCG[198] and has now been incorporated into the planning obligation, with the agreement and support of ECC. HE & ECC have, accordingly, withdrawn from the inquiry.

### Position of UDC

240. UDC has been very clear that it takes no objection on surface access grounds and, although RfR No.4 is alleged to be infrastructure related, UDC has made no attempt to evidence an objection which relies upon highways and transportation issues.

241. This is particularly significant for the issue of impacts on local roads. As would be expected, UDC has taken a keen interest in impacts on local roads and settlements from an early stage in the planning process. Indeed, and by way of example, UDC sought from STAL a detailed assessment of the impacts on Parsonage Lane and Takeley, which is before the Panel as CD11.12. It is not credible to suppose that UDC Members would have omitted to include impacts on local villages if they had been sufficient to support a reason for refusal on the basis of the severity of residual impacts (as per NPPF109).

[198] CD25.6

**Position of Mr Bamber**

242. Mr Bamber alone (for SSE) pursues a series of complaints about the exercise which all statutory bodies have now signed off. These are pursued by SSE and Mr Bamber in terms which tend to suggest that SSE sees itself as an alternative highways authority with wholly unrealistic expectations about "consultation" and data disclosure to a third party objector (quite irrespective of GDPR requirements).

243. Mr Bamber has been extensively occupied acting for a host of opponents of development in the Uttlesford area. However, he is does not act for any statutory body at this inquiry, nor does he have any experience or expertise in assessing the surface access impacts of a major airport. We do not accept that these impacts are similar (or even akin) to other forms of development which highways consultants are called upon to assess. On the contrary, they require intimate knowledge of the internal workings of (and consequential traffic patterns at) a major passenger airport, which Mr Rust has in spades[199], but which Mr Bamber simply does not possess (however experienced he may be in other areas).

**The significance of the operational characteristics of a major passenger airport**

244. For example, Mr Bamber appears to be particularly exercised by the fact that the AM peak for airport related traffic does not coincide with the highways network AM peak. He insinuates that this is contrived and that the two peaks could easily coincide such that the impacts would greatly exceed those predicted. However, as Mr Rust explained, this is simply a function of the morning operation of Stansted Airport, with very few aircraft landing in slots which would disgorge passengers onto the road network at 0700-0800 and the Stansted "based" aircraft getting airborne as soon as possible to complete their daily triangulation, generating a peak in inbound traffic movements to the airport long before 0700-0800 network peak. These characteristics are effectively "hard wired" into the operation of an airport such as Stansted.

245. Mr Rust has studied the operation of the airport in great detail and is confident that his assessment is robust. His reliance upon forecast schedules is entirely appropriate; this

[199] Having worked for STAL undertaking operational studies at STN for many years

approach was supported evidentially by Mr Andrew. In essence the "shape" of the airport day is highly unlikely to change, even with increased throughput. Mr Bamber's extrapolations are simply seeking to sow seeds of confusion. A further level of reassurance is available in the form of the endorsement of the HAs. This is particularly significant as ECC and HE have direct responsibility for the operation of the M11, A120 and J8 and have many years of experience of the impact of the airport on the adjoining highway network. Indeed, they are the source of the J8 traffic counts. With respect to Mr Bamber, they are far better placed to judge these traffic patterns at Stansted than a sole practitioner traffic consultant based in Berkshire.

246. Mr Bamber has himself undertaken no traffic counts, no surveys, carried out no modelling and made no alternative assessment of flows on any given link or junction. He expressly accepted in XX that he does not claim to have demonstrated any unacceptable levels of impact, but has focused instead on attacking the inputs to the modelling work – and in one respect the outputs.

247. However, a consequence of the late change of heart by ECC in relation to its planned J8 works has been that the full extent of Mr Bamber's critique of the TAA has been shared with the HAs (and their consultants Jacobs and Aecom) before they "signed off" the modelling and agreed the HSoCG. It is very clear from the extremely detailed Appendix A to the HSoCG that the HAs tested the assumptions in the TAA carefully and only "signed off" the model runs when they were satisfied with the reasonableness and robustness of the assumptions adopted.

**Methodology**

248. Notwithstanding the HSoCG, Mr Bamber has maintained his catalogue of criticisms and complaints, including has assertion that the TAA methodology is "ludicrous"[200]. It is submitted that the Panel will need to decide how far it wishes to go in interrogating the TAA's inputs, in circumstances where 5 sets of highway professionals have agreed them and against the backdrop of the test at para.109 of NPPF test which demands that demonstration of "severe residual impacts" before a development should be refused planning permission on highways grounds. Mr Bamber again accepted in XX that his

[200] Proof, para.2.1.3

proof does not set out or apply the test in para.109 of NPPF and that his proof does not demonstrate "severe residual impact" on the network. A lame attempt to assert such a possibility in ReX is absolutely no substitute for proper examination of this issue in a lengthy written proof, with extensive appendices. There was no such examination in Mr Bamber's proof.[201]

**Two-way trip uplift**

249. Mr Bamber's XinC and XX of Mr Rust by SSE focused on two points: first the correct level of uplift to adopt for two-way trips and second, whether this had been adopted for daily flows.

250. Mr Rust has explained that the TAA adopted a two-trip proportion of 33;23;23 (for 2019; DM;DC) but that these figures were not accepted by the HAs, who agreed by way of substitution the 43;33;33 figures - which had been used in the original TA. The figure of 43% for 2019 had been assessed by Mr Rust following the collation of an entire year of data for vehicular trips to the Express Set Down Area and to the barriered carparks. The 33% for the assessment year assumed a 10% reduction in two way car trips, which Mr Rust considered reasonable and achievable over a 12 year period. The HAs considered and accepted these revised input assumptions[202].

251. Mr Bamber, by contrast, has requested CAA passenger data for 2019, which is extensively categorised by modes of travel and has sought to make assumptions about which of those might or might not be two-way trips. This exercise is heavily dependent upon judgment, as the CAA data does not investigate this variable for taxis and the like. Mr Rust and the HAs prefer to utilise the STAL year-long data set (as this is a comprehensive measure for private cars and taxis, which STAL can monitor). We ask you to prefer their judgment.

252. Mr Rust has used the 43;33;33 inputs originally set out in the TA to model peak hour flows at J8 and the HAs have accepted these model outputs: see HSoCG dated 7 Jan

[201] Mr Rust dealt fully with SSE's obsession with Employee Mode Share. This was fully accepted by the HAs: see CD25.6, Appendix A, page 4, box 4.12 et seq
[202] CD25.6, Appendix A, page 3

2021. Had anyone wished to challenge or explore these further there has been ample opportunity to do so over the past 2 months. Mr Bamber accepted in XX that Mr Rust's two-way uplift had been applied to this modelling and agreed that highways assessment is conducted for the peak hours on the basis that, if the network operates satisfactorily then, it will also operate satisfactorily off-peak. Mr Rust explained that the agreed highway works deliver an improvement in capacity and congestion at J8. As noted above, Mr Bamber puts forward no alternative assessment.

253. Mr Bamber's second point is that the two-way uplift has not been applied to the daily flows in the TAA or Chapter X of the ESA. This is correct, but has no impact on the HSoCG[203], which does not – and does not need to – address daily flows, as these are not a relevant metric for this exercise. Mr Rust and Mr Bamber were intending to agree a full position statement on these flows when Mr Bamber unfortunately became indisposed. This has been taken forward to some degree with the kind assistance of Mr MacDonald of SSE, but does not have the scope which had originally been hoped for. The additional SoCG[204] which it has been possible to agree has attached at Figure 1 Mr Rust's assessment of the additional increments on network flows between the DM and DC cases at 2032[205]. This data is presented for precisely the same links as for the TAA (compare with Figure 7.3 as updated in CD11.25). It will immediately be seen that these increments are of a very small scale on the links which comprise the strategic highway network carrying the overwhelming majority of traffic to (and dispersing traffic from) Stansted Airport, i.e. the M11 N&S and the A120 E&W. There are no measurable changes in the assessed impacts on the other links, which are relevant primarily for employee trips. These are not, of course, affected by the uplift for daily two-way movements, which is relevant for passenger trips only.

254. Daily trips on these strategic links have a potential significance for two other impacts considered in the ES and ESA, namely surface access noise and air quality. Mr Rust accordingly consulted his colleagues in these disciplines, who have confirmed the minor changes to the daily flows on the strategic highway network have no material impact on

[203] Ibid
[204] CD25.8
[205] Ibid, para.5

their assessments of surface access noise or air quality[206]. It had been hoped to take matter this forward to a conclusion with Mr Bamber, but he has not produced an alternative assessment of the impact upon the highway links in question for us to review. We invite the Panel to review these documents and revert if there are any matters upon which it seeks further advice or assistance, especially given (for unfortunate reasons with which we entirely sympathise) the difficulty in taking this matter forward in the way which was originally envisaged when both SA witnesses agreed to produce a SoCG. However, we note that the underlying concern of Mr Bamber, expressed very clearly in his oral evidence, was in relation to impacts on sensitive receptors, in particular the villages of Takeley and Stansted Mountfitchet. As Mr Rust's Figure 1 amply demonstrates, there will be no additional impact upon either settlement – nor, for good measure, upon the Hockerill AQMA.

255. Accordingly, it is submitted that, notwithstanding the very late change of position by ECC in relation to its intended works at J8, a replacement scheme has now been developed to the satisfaction of the HAs and their independent consultants which will ensure no severe residual impacts in the DC at 2032. On the contrary, the proposed works will deliver an improvement when compared against the DM case (2033 @35mppa v 2033 @43mppa with Mitigation)[207]. SSE Submissions[208]seek to compare DC with 2014, but of course they should be comparing DC with DM.

256. Additionally, STAL has submitted a robust package of surface access mitigation to reinforce its already impressive credentials as a public transport hub – for rail, coach and bus services. This very high level of public transport provision is, of course, available for use by the local community. All public transport stakeholders (including Network Rail and National Express) have expressed strong support for these proposals and confirmed in evidence that they have existing (or planned) capacity available to meet the additional passenger demand expected. No party has seriously challenged this position. Mr Rhodes evidence was fully rebutted by Mr Rust[209].

[206] STAL/10/4
[207] CD25.6, Appendix B, Table 4-2 (AM 932-713; PM 1445- 1190)
[208] Para.9.11(iv)
[209] STAL/10/3, section 3

## PLANNING BALANCE

257. Having reviewed the evidence in relation to local economic and environmental impacts, it is necessary to return to the planning balance. We do so, at the risk of repetition, emphasising that this balance is already strongly tilted in favour of allowing this appeal and granting planning permission for the appeal proposals.

258. To:

i. compliance with the statutory development; and

ii. the operation of the NPPF presumption in favour of the grant of planning permission; (both of which are agreed by STAL and UDC)

must be added:

iii. the "in principle" support of recently stated national policy in MBU, formally adopted as part of the government's new Aviation Strategy; and

iv. the range of socio-economic benefits to which STAL's witnesses have spoken and which has been so clearly endorsed by third party evidence.

259. Only the local environmental impacts have the theoretical potential to outweigh this powerful case for the grant of permission. However, for the reasons we have already discussed, none of these, either individually or cumulatively, comes close to meeting this high threshold. Indeed, on the contrary, when properly analysed, it can be seen that allowing the appeal will result in some beneficial local environmental impacts, when the DC is compared with the DM, for example, in relation to noise.

260. Aviation carbon is self-evidently not a local environmental impact. We submit that MBU policy is clear as to the way in which the government intends this to be addressed by local planning authorities. However, if a carbon crusading LPA were to seek to usurp the role which we think the government has reserved to itself for an application such as STAL's, then the facts of this case could scarcely be of less assistance to such an

authority. Aviation carbon is the product of ATMs and not passengers. The ATMs upon which STAL relies have already been consented. At 2050, the extrapolated DC v DM carbon increment is miniscule. However, if the DM case is realigned post 2032 to allow the STAL to optimise the commercial potential of its 274,000 ATMs, in accordance with the evidence of Mr Andrew, then this trajectory will plainly converge with that of the DC and there will **no net carbon impact at all** at 2050 and no increase in the only element of "airport capacity" which generates aviation carbon. UDCs and SSEs cases on this topic have been completely misdirected and a great deal of evidence, submissions and time has been wasted.

261. Accordingly, we do not accept that carbon is one of the local environmental impacts which MBU policy intended to be weighed in the planning balance, but even if it is weighed in the balance, on the facts of this case, it makes a negligible impact.

262. No doubt it is for all these reasons that UDC (through Mr Scanlon) accepts that this appeal should be allowed subject to conditions. We note again that he confirmed (in answering Inspectors Questions) that paragraph 9.77 of his Proof[210] stands, uncontaminated by consideration of Condition 15, to which he does not turn until the succeeding paragraphs, which follow the next subheading in his proof. UDC's Closing Submissions on this point beggar belief. The denial that Mr Scanlon undertook a staged assessment of the balance, factoring in Condition 15 and "revisiting"[211] the planning balance with Condition 15 in place is a delusion of Mr Coppel's and is so far as removed from the plain words of Mr Scanlon's proof (confirmed orally to the Inspector) as to engender real doubts as to how Mr Coppel has the nerve to advance it in UDC's Closing.

263. SSE has not undertaken a valid planning balance exercise[212], (which is the province of the planning witness not the advocate).

**CONDITION 15**

[210] UDC/4/1
[211] Ibid, para.9.80.
[212] See Arnott, SSE/11/1

264. We set out our full response to condition 15 in our submissions of 24 February 2021[213]. UDC's reply to these submissions[214] is extremely brief and is largely bald assertion as to the alleged lawfulness of the condition. It is telling that not a single authority is referred to by UDC to rebut any of the legal principles cited in our submissions.

265. We can therefore deal briefly with condition 15 in these closing submissions.

266. In light of the Court of Appeal's judgment in ***HS2***, UDC accepts – as it must do – that a condition which seeks to revisit the grant of permission at a later stage would be unreasonable and unlawful. Instead, UDC seeks to distinguish ***HS2***, on the basis – it is said – that condition 15 does not "*take away from the airport operator what is permitted by the grant of planning permission*" but instead simply "*defines the mitigation measures needed to regulate the environmental effects of the proposed development*."

267. However, condition 15[215] plainly does not simply "*define*" the mitigation measures needed to regulate the development, which must in any event be done at the time of granting permission. Its effect is to require the authority to revisit *later* whether the airport should be permitted to grow beyond 35mppa, based on the legislative and policy framework in force at that time. This is not a "fantasy", as suggested in UDC's Closing Submissions. It is the effect of the operation of the condition. Thus:

i. Clause (4) of condition 15 provides that "*An airport operator must not at any time operate the airport where for that year the ppa at the Airport exceeds or will exceed the maximum ppa*." The "*maximum ppa*" is defined as "*the higher of (a) 35 million ppa; and (b) the number of ppa <u>allowed under the Environmental Modalities Scheme having effect</u>*".

ii. As Mr Andrew noted[216], in determining whether to grant such approval, clause 10 hands back "*substantial discretion*" to the LPA at each stage to make "*such modifications*" and "*impose such conditions, limitations and restrictions as it considers expedient*". These include the discretion to limit the increase in the

[213] CD 26.8
[214] CD 26.17a
[215] CD 26.23
[216] Andrew re-x

maximum ppa to 1 million or more and to limit the period for which the scheme is effective to 2 years or more.

268. The requirement to obtain approval for an "*Environmental Modalities Scheme*" is, therefore, a requirement to obtain permission for the additional ppa by another name, as the definition of "*maximum ppa*" (i.e. "*the number of ppa allowed under the [scheme]*") makes clear. Increasing capacity would be contingent on securing UDC's approval first, after permission has been notionally granted. Unless this approval is granted, STAL would be liable to enforcement action and could be required to cease operating the airport altogether. It is impossible to see how this is reconcilable with the *in principle* grant of planning permission now.

269. In XX of Mr Andrew, it was suggested that condition 15 simply "*enables the conditions [attached to the grant of permission] to be recalibrated*". However, there is absolutely no conceptual or practical difference between "*recalibrating*" the application of this condition and "*recalibrating*" the question of whether the additional 8mppa should be allowed. The effect of Condition 15 is that STAL is prohibited from growing to the 43mppa notionally permitted, without first obtaining the approval of UDC.

270. Indeed, Condition 15 arguably goes even further than just revisiting the principle of the grant of permission for 43mppa. Its purported effect is also to revisit the principle of the consents *previously* granted in 2003 and 2008, by imposing new and unwarranted thresholds on noise, air quality and carbon emissions up to 35mppa, and by preventing the operation of the airport at all after 2027 unless UDC "signs off" on each increment of additional capacity, applying whatever policies may be in force at that time. There is no comparison between Condition 15 and the "Luton 10" condition, where the "tightening"[217] is fixed and pre-determined at the date of the original consent and no further application to the LPA is required.

271. As Mr Andrew correctly put it, "*this is not the way the planning system works and it isn't how it should work*". Instead "*the planning system needs to take decisions based on the evidence and policies available at the time of the decision*". These are wholly uncontroversial propositions.

[217] UDC closings para 139

272. The other basis on which condition 15 is said to be distinguishable from the condition in ***HS2*** is because it is not a "*Grampian condition*."[218] Instead, UDC blithely says that if permission is granted "*the airport operator can grow its operations up to 35mppa without doing more than what is required by Schedule A*". However, STAL already has permission to grow to 35mppa and there is no earthly reason why it should therefore be required to comply with the restrictions imposed under Schedule A, which were not deemed necessary by the Secretaries of State in granting permission in 2008.

273. Condition 15 plainly therefore undermines the "*fundamental objective of providing, through planning decisions made under the statutory regime, certainty and finality for those affected by them*" (per the Court of Appeal in ***Connors*** at §90). Quite how Condition 15 is said to provide STAL with this certainty[219] is a mystery: if Condition 15 was imposed, STAL would have no idea whether it would ever be able to grow to 43mppa at all. It would not even know against what "*contemporaneous policies*" the "*evaluation of a modalities scheme*" would be assessed by UDC.

274. In response to questions from the Inspector (Mr Boniface), Mr Scanlon suggested that a Condition 15 type mechanism was necessary in order to provide *"security that Stansted by getting consent now won't be ahead of the game on other airports*". But this is also not how the planning system works, as Mr Scanlon well knows. This scheme is before the Panel now and it has to be determined on the basis of the policy framework and evidence before the Panel now. In the unlikely event that the policy framework changes dramatically between the date of the decision on this appeal and the point when STAL reaches 43mppa, Stansted's permitted 43mppa will simply become part of the baseline against which other airport expansion proposals will need to be considered.

275. Nor, for all the reasons set out in our submissions (which UDC's very thin reply does not begin to address), does the "*alternative dispute mechanism*" proposed by Schedule C provide a lawful mechanism for remedying this uncertainty. The proposition that planning legislation provides "*a complete statutory code*" for the determination of planning applications is not, as UDC suggests, an "*over-simplification*": this formulation is lifted directly from the Court of Appeal in ***Connors***, referring back to the

[218] UDC reply §16
[219] CD 26.17a para 20

decision of the House of Lords in ***Pioneer Aggregates***. Schedule C flies in the face of this well-established principle and it is unsurprising that UDC has been unable to identify any authority or precedent for importing a binding private law dispute mechanism into the statutory procedure for the discharge of planning conditions.

276. As to para 24 of UDC's reply, it is extremely difficult to see how the "*alternate decision maker*" in Schedule C can be said to be the "*alter ego of UDC*"[220], given that its decision is final and binding on UDC even if UDC disagrees with it. This would amount to a clear surrender of the Council's discretion, contrary to the principles cited at para 28 of our submissions. UDC's insistence that condition 15 "*does not contain a delegation of power*" therefore makes little sense. The role of the "*alternate decision maker*" is also a world away from that performed by "*outside consultants*" engaged to advise UDC on the proper exercise of its functions, whose advice UDC is free to accept or reject (as it did here).

277. None of this should require spelling out in these closing submissions. There is a sense that UDC and its experts have fallen down a rabbit hole and into an alternative planning universe in their fixation on Condition 15 as the answer to this appeal. There is a very good reason why UDC has been unable to identify any precedent for this condition, and why Mr Scanlon was obliged to concede in response to questions from Mr Boniface that condition 15 is, indeed, "*novel*".

278. Unfortunately, a great deal of time has also been wasted at this Inquiry, dealing with this condition in evidence and submissions. UDC's continued defence of this appeal on the "*primary*" basis[221] of a manifestly unlawful and non-policy compliant condition is plainly unreasonable behaviour, for reasons we expand upon in our submissions on costs.

## CONCLUSION

279. We conclude by submitting, with perhaps unusual vigour, that the case for allowing this appeal is an exceptionally powerful one; so much so, of course, that the LPA's

[220] Ibid para 25
[221] Scanlon response to Inspector's questions

planning witness has expressed agreement with the conclusion that this would be the correct outcome.

280. UDC's Planning Committee, having filibustered for 14 months following its resolution to grant planning permission, ultimately allowed itself to fall completely under the spell of SSE in January 2020 and refused planning permission for the appeal development for a series of completely unsustainable reasons. It is notable that not one Member of that Committee has been called to explain the rationale for this refusal. SSE has run a series of additional arguments, in an effort to bolster the Council's refusal, but none of these has come to anything.

281. We hope that the analysis set out in these Submissions (based upon the evidence which this Inquiry has heard) has now established irrefutably what the correct outcome should have been in January 2020 and what the correct outcome should be today.

282. We respectfully request on behalf of STAL that this appeal be allowed.

**THOMAS HILL QC**
**PHILIPPA JACKSON**
12 March 2021

**39 ESSEX CHAMBERS**

81 Chancery Lane
London WC2A 1DD