

12 March 2021

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Our ref:
VJR2/ET4/381408.9
Your ref:
APP/D0121/W/20/3259234

Dear Ms Palmer

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

We act on behalf of the Appellant, Bristol Airport Limited, in connection with the above appeal. At the Case Management Conference (**CMC**) on Monday 8 March, the Inspectors requested written submissions on the main proposed issues for the Inquiry, witness details and timetabling. This letter contains the Appellant's submissions on these matters.

1. Main Issues

1.1 The Inspectors have had sight of the Appellant and North Somerset Council's (**NSC**) joint list of agreed matters (attached to our letter dated 3 March 2021) containing a suggested formulation of the main issues. The Appellant's comments on the main issues set out in the Inspectors' Pre-Conference Note are set out below.

1.1.1 *Issue (a): The acceptability of the scheme with regard to local and national planning policy as well as emerging policy*

- While the Appellant has no objection to this issue, removing the word "*planning*", would broaden the scope of the issue and allow consideration of aviation and climate change policy which may address some of the concerns raised at the CMC by Rule 6 parties.

1.1.2 *Issue (b): Green Belt issues - Whether inappropriate development, effect on openness, purposes, very special circumstances*

- The Appellant considers that the wording proposed in the joint list of agreed matters is more appropriate, as follows:

"The extent to which the harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposed development, is clearly outweighed by other considerations."

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- The Appellant has accepted that the proposed car parking is 'inappropriate' development in the Green Belt and therefore the extent to which it is 'appropriate development' need not be debated further. The Appellant considers that the car parking proposed is nonetheless acceptable given the limited harm to openness of the Green Belt and the very special circumstances in this case, as is outlined in Section 9 of the Appellant's Statement of Case.
- The Appellant notes that in their email correspondence of 8 March 2021, Sutherland Property & Legal Services (**SPLS**) have requested that the sequential testing process be specifically referred to in the issue formulation. This is not necessary as consideration of alternatives is required to demonstrate 'very special circumstances', as noted by SPLS. In addition, it is the appeal proposal which should be the subject of detailed consideration during the appeal, not the alternative site being promoted by SPLS. Aside from the question of whether SPLS's proposed alternative site would meet the demand identified (which is not accepted), the alternative site has yet to be progressed through the planning application process so has not yet been shown to be acceptable in planning terms. In any event, main issue (d) and main issues (e) to (f) are not solely related to car parking in the Green Belt, but fall to be addressed as part of the proposed increase in passengers to 12mppa.
- The Appellant's and NSC's wording also more closely reflects the wording used in paragraph 144 of the National Planning Policy Framework (**NPPF**).

1.1.3 *Issue (c): The effect on the character and appearance of the area*

- The Appellant submits that this is not a main issue in the appeal because:
 - The effect of the appeal proposals on the character and appearance of the area is not a matter which is identified as a specific Reason for Refusal (**RfR**).
 - Paragraph 10.7 of the Appellant's Statement of Case and Chapter 9 of the Environmental Statement demonstrate that there are no significant landscape effects and only a temporary visual effect of moderate significance on a single receptor as a result of the appeal proposals.
 - Neither the Appellant nor NSC identified the effect of the appeal proposals on the character and appearance of the area as a main issue in the joint list of agreed matters.
 - The effect of the appeal proposal on the character and appearance of the area has not been raised by any Rule 6 party or NSC as a main issue for the appeal.

1.1.4 *Issue (d): Highway matters – is public transport provision adequate to reduce reliance on private car, issues related to off-site car parking*

- The Appellant considers that the wording proposed in the joint list of agreed matters is more appropriate given its wider formulation:

"The effect of the proposed development upon sustainable transport objectives, the highway network and highway safety."
- The Appellant has no objection to issues relating to off-site car parking, or parking demand being included in that formulation, and it was the intention that this issue would encompass such matters.
- Thus this issue might be formulated as:

"The effect of the proposed development upon sustainable transport objectives, the highway network, highway safety and parking demand at the airport."

1.1.5 *Issue (e): The effects of the proposed development on air quality*

- The Appellant considers that the wording proposed in the joint list of agreed matters is more appropriate:

"The effect of air pollution associated with the proposed development on health and quality of life."

- This formulation focusses on "health and quality of life". The RfRs cited the "health and well-being" of residents, and therefore it is expected that this would feature as a main issue.
- This is reinforced by Core Strategy Policy CS3, which refers to "Development that, on its own or cumulatively, would result in air, water or other environmental pollution or harm to amenity, health or safety..." (our emphasis) and the Planning Practice Guidance (Paragraph: 005 Reference ID: 32-005-20191101), which states:

"Where air quality is a relevant consideration the local planning authority may need to establish:

- *the 'baseline' local air quality, including what would happen to air quality in the absence of the development;*
- *whether the proposed development could significantly change air quality during the construction and operational phases (and the consequences of this for public health and biodiversity); and*
- *whether occupiers or users of the development could experience poor living conditions or health due to poor air quality" (our emphasis)*
- Therefore, the Appellant considers that focussing the issue on health and quality of life (or health and well-being) is appropriate and properly reflects local policy and national guidance.

1.1.6 *Issue (f): The effects of the development on noise and disturbance*

- The Appellant also considers that this issue should be focussed on "health and quality of life" and that the wording proposed in the joint list of agreed matters is more appropriate:

"The effect of noise associated with the proposed development on health and quality of life."

- As noted above, RfR2 refers to the "health and well-being" of residents. Further, paragraph 3.42 of the supporting text to NSC's Core Strategy Policy CS3 refers to 'noise' and to NPPF paragraph 123 (now paragraph 180 of the 2019 NPPF) and the Noise Policy Statement for England (**NPSE**) (Defra March 2010). The NPPF and NPSE in-turn refer to avoiding noise that would give rise to "significant effects on health and quality of life" (our emphasis) and the NPSE sets an objective to "avoid significant adverse impacts on health and quality of life".
- This is appropriately reflected in the wording contained in the Appellant's and NSC's joint list of agreed matters.

1.1.7 *Issue (g): The extent to which the development would assist the move to a low-carbon future*

- While this wording partly reflects the RfR, the Appellant does not agree that the issue of transition to a low carbon future is reflective of the correct legal and policy framework. Therefore, the Appellant submits that the proposed wording in the joint list of agreed matters should be taken forward:

"The effect of permitting the proposed development on the ability of the UK to meet its climate change obligations."

- The Appellant considers this to more accurately reflect the existing legal and policy position.
- The Climate Change Act 2008 sets out the legislative regime at:
 - Section 1(1) – The target for 2050;
 - Section 27 – Net UK carbon account;
 - Section 29 – UK emissions and removals of greenhouse gases;
 - Section 30 – Emissions from international aviation or international shipping; and
 - Section 10(2)(i) – Matters to be taken into account in connection with carbon budgets.
- This establishes that international aviation does not fall within the UK carbon budgets or targets (following the international approach agreed under the Kyoto Protocol), albeit that budgets are set taking account of international aviation in accordance with section 10(2)(i) as referred to above.
- The Paris Agreement requires parties to set 5-yearly Nationally Determined Contributions. These were set EU-wide but will now be set by the UK, most recently in the Nationally Determined Contribution 2020 on 12 December 2020.
- Paragraph 5.82 of the Airports National Policy Statement (**ANPS**) states:

"Any increase in carbon emissions alone is not a reason to refuse development consent, unless the increase in carbon emissions resulting from the project is so significant that it would have a material impact on the ability of Government to meet its carbon reduction targets, including carbon budgets." (our emphasis)

Whilst the ANPS does not apply to the appeal proposal, it sets out the correct approach to be taken for planning decisions. The Supreme Court has upheld the approach advocated in the ANPS and made clear that the test in para 5.82 applies to targets and budgets at the time that the relevant planning decision is taken (see [2020] UKSC 52, paragraphs 98 and 132).

- At the recent Stansted Inquiry, the climate change issue was formulated as follows:

"Whether the development would conflict with UK obligations to combat climate change" (our emphasis).

- The DfT's "Aviation 2050: The future of UK aviation" (December 2018) said at paragraph 3.96 that the Government proposed to:

"...require planning applications for capacity growth to provide a full assessment of emissions, drawing on all feasible, cost-effective measures to limit their climate impact, and demonstrating that their project will not have a material impact on the government's ability to meet its carbon reduction targets"

- Furthermore, we note that in the European Commission's 'Environmental Impact Assessment of Projects: Guidance on the preparation of the Environmental Impact Assessment Report' (2017) it is said (page 39) that:

"Most Projects will have an impact on greenhouse gas emissions, compared to the Baseline (see the section on Baseline), through their construction and operation and through indirect activities that occur because of the Project. The EIA should include an assessment of the direct and indirect greenhouse gas emissions of the Project, where these impacts have been deemed significant:

- *direct greenhouse gas emissions generated through the Project's construction and the operation of the Project over its lifetime (e.g. from on-site combustion of fossil fuels or energy use)*
- *greenhouse gas emissions generated or avoided as a result of other activities encouraged by the Project (indirect impacts) e.g.*
 - *Transport infrastructure: increased or avoided carbon emissions associated with energy use for the operation of the Project;*
 - *Commercial development: carbon emissions due to consumer trips to the commercial zone where the Project is located.*

The assessment should take relevant greenhouse gas reduction targets at the national, regional, and local levels into account, where available. The EIA may also assess the extent to which Projects contribute to these targets through reductions, as well as identify opportunities to reduce emissions through alternative measures." (our emphasis)

- The joint list of agreed issues between the Appellant and NSC reflects this proper and legally sound approach.
- We have since seen Bristol Airport Action Network Coordinating Committee's (BAAN CC) written submission on this issue, dated 9 March 2021, and as proposed at the CMC and explained above, we consider that deleting the word "planning" in issue (a) should address BAAN CC's concerns.
- We have also seen NSC's suggested amendment to this issue and consider their suggested wording "and the consequences for compliance with development plan policy, national policy" to fall under the general planning issue at paragraph 1.1.1. Additionally, NSC's words "and the statutory framework" fall within the general wording of "climate change obligations" in the Appellant's formulation of this issue.

1.1.8 *Issue (h): The extent to which the proposed development would be consistent with Government policies for building a strong, competitive economy*

- This proposed wording is not materially different from the intent behind the proposed wording in the joint list of agreed matters. The Appellant prefers the wording in the joint list of agreed matters on the basis that it is slightly broader:

The extent to which the proposed development will deliver economic and/or other benefits

- The Appellant also considers it important to give weight to the wider benefits associated with aviation, such as the enjoyment gained from international visits and the ability to use aviation travel to see friends and family.

1.1.9 The Compulsory Purchase Order (**CPO**) Inquiry core issue is formulated as whether there is a compelling case in the public interest. The Appellant agrees that this is the main issue for the CPO Inquiry.

2. Witness Details

2.1 As submitted in the CMC, the Appellant currently intends to call witnesses on the following topics for the planning inquiry (and who may also be called to respond to objectors' evidence as part of the CPO inquiry):

2.1.1 Forecasting;

2.1.2 Noise;

2.1.3 Air quality;

2.1.4 Surface access (including parking demand);

2.1.5 Climate change;

2.1.6 Socio-economics; and

2.1.7 Planning issues (including green belt).

2.2 For the CPO Inquiry, the Appellant currently intends to call witnesses on:

2.2.1 Highway design; and

2.2.2 Compulsory Purchase.

2.3 These are provisional lists of witnesses and the Appellant reserves the right to amend this list in response to issues raised by NSC or the Rule 6 Parties.

3. Unavoidable Dates

3.1 During the CMC, the Inspectors requested that any unavoidable dates, save the proposed 16 to 27 August break, be submitted in writing.

3.2 The Appellant has the following unavailable dates:

Individual	Unavailable dates
Michael Humphries QC (Counsel for the Appellant)	Beyond 8 October due to a pre-existing Lands Tribunal hearing
Witness for forecasting and socio-economics	Tuesday 31 August 2021
Witness for air quality	Monday 6 to Monday 13 September 2021 inclusive

Timetable Deadlines

3.3 The Appellant noted the following provisional deadlines discussed during the CMC:

Document to be submitted	Deadline	Notes
Overarching Statement of Common Ground (SoCG)	26 March 2021	To be agreed between the Appellant and NSC
Topic Specific Statement of Common Ground (with topics)	18 May 2021	To be agreed between the Appellant and NSC

either standalone or included as a single SoCG)		
Draft conditions to be submitted to PINS	18 May 2021	Subject to ongoing refinement and further updates should be submitted to PINS as appropriate
Evidence in chief time estimates	15 June 2021	At the same time as submission of Proofs of Evidence
Cross-examination time estimates	22 June 2021	One week following submission of Proofs of Evidence
Rebuttal proofs	6 July 2021	
Final draft Section 106 Agreement (and CIL Compliance Statement)	6 July 2021	Updates to be provided to PINS on negotiation prior to submission of the final draft as appropriate

3.4 In addition, the Appellant understands that a deadline will be proposed by which Rule 6 Parties will be asked to comment on the Overarching and Topic Specific SoCGs.

4. Site Visit

4.1 Further to discussions at the CMC regarding a site visit to Bristol Airport, the Appellant confirms that an air-side site visit for the Inspectors can be facilitated.. However, due to security restrictions, it is not possible to facilitate an air-side site visit for other parties participating in the inquiry process.

4.2 In addition to the site visit during the Inquiry, the Appellant is able to assist with a familiarisation visit to the Airport by the Inspectors in advance of the Inquiry.

4.3 The Appellant suggests that a deadline is included in the timetable by which time the parties are required to propose locations for the site visit.

5. Potential Second CMC

5.1 During the CMC, it was indicated that a second CMC is likely to be held. The Appellant would be grateful for further clarification on the timing and subject matter of this potential additional CMC as soon as possible.

6. Legal Submissions on Adequacy of Environmental Information

6.1 During the CMC the Appellant made oral submissions on why it was not necessary or appropriate for the Appellant to undertake an appraisal of economic impacts in accordance with guidance contained in TAG A5.2 or an assessment of greenhouse gas emissions in the manner proposed by the Parish Councils Airport Association (**PCAA**) and BAAN CC in their Statements of Case. Whilst the PCAA acknowledged that there was no legal requirement on the Appellant to undertake these assessments, it was submitted by the PCAA that this approach was best practice. BAAN CC also submitted that the lack of a 'cumulative' assessment of greenhouse gas emissions was a matter on which they intended to make further legal submissions in due course.

- 6.2 The Appellant invites the Inspectors to request that BAAN CC, and the PCAA to the extent relevant, to make any such legal submissions promptly. This will not only allow a fair opportunity for the Appellant to consider and respond to them, but also enable the Inspectors to make any related procedural directions in a timely manner without impacting upon the efficient running of the inquiry process.
- 6.3 Accordingly, the Appellant requests that the Inspectors set a deadline for receipt of written legal submissions which NSC or the Rule 6 Parties wish to make on matters relating to the adequacy of the environmental information submitted by the Appellant, including the Appellant's approach to Habitats Regulations Assessment.

We trust that the above assists the Inspectors in preparation of the Pre-Inquiry Note but should you require any further information, please do not hesitate to contact us.

Yours faithfully

Womble Bond Dickinson (UK) LLP

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Copy to

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