

# **SSE Presentation to UDC Planning Committee**

24 January 2020

**Planning Application  
UTT/18/0460/FUL**



# Brief Recap - Timeline

- Initial MAG Scoping Report – June 2017
- UDC Scoping Opinion – December 2017
- Planning Application – February 2018
- Conditional Approval – November 2018
- Council Resolution to Review – June 2019





# Planning Application – Summary

- Raise passenger cap to 43 mppa (originally 44.5mppa)
- Two new access/exit taxiways to increase runway capacity
- Nine new aircraft stands – again, to increase capacity
- More focus on long haul (i.e. larger, wide-bodied aircraft)



# Committee Resolution – Nov 2018

*“The applicant be informed that the Planning Committee would be **minded to refuse** planning permission ... unless the freehold owner enters into a binding obligation to cover the matters set out below under Section 106 of the Town & Country Planning Act 1990 ...”*

- This was followed by a ‘shopping list’ of items for the S.106.
- Approved by narrowest of margins – 5 for and 5 against.
- Chairman’s casting vote carried the resolution.



# Council Resolution – June 2019

*Planning Committee to consider:*

*(i) **adequacy of the proposed S.106 Agreement***

*and*

*(ii) **any new material considerations and/or changes in circumstances** since 14 November 2018 to which weight may now be given in striking the planning balance or which would reasonably justify attaching a different weight to relevant factors previously considered*

- **S.106 Agreement – i.e. the offsets offered – of secondary importance**
- **The Application should be decided on its merits and on the evidence**



# Paul Stinchcombe QC



# Introduction

- Familiar with this Planning Application
- Familiar with wider issues – going back to 2007 Public Inquiry
- Involvement with current application started in March 2018
- Issue of local or national determination led to legal challenge
- Provided Opinion in October 2019 which I believe was made available to the Council.
- No need to repeat all of that. I understand it's in the public domain
- Focus this morning is on a few key points



# Right to Reconsider

- November 2018 resolution is a material consideration to which the Planning Committee must have regard ...

*[North Wiltshire DC v Secretary of State for the Environment - ECWA, 1992]*

... but has no legal effect unless/until Decision Notice is issued.

*[Burkett v Hammersmith and Fulham LBC - House of Lords, 2002].*

- Any new factor(s) arising since November 2018 which might tip the balance one way or the other must be taken into account by you.

*[Erine Kides v South Cambridgeshire DC – Court of Appeal, 2002]*



# Planning Judgment

- A Planning Committee has wide discretion
- Entitled to come to different planning judgements leading to a different conclusion and can lawfully reverse an earlier decision provided it has good planning reason(s) even if there are no material changes of circumstances.

*“... while a material change of circumstances since an earlier decision is capable of being a good reason for a change of mind, it is not the only ground on which a local planning authority may change its mind. **A change of mind may be justified even though there has been no change of circumstances whatsoever** if the subsequent decision taker considers that a different weight should be given to one or more of the relevant factors, thus causing the balance to be struck against rather than in favour of granting planning permission.”*

*[Kings Cross Railway Lands Group v Camden LBC – EWHC 2007]*



# New Planning Committee

- Individual members of a newly constituted Planning Committee, many of whom had no involvement in the prior decision, are fully entitled to come to their own views
- Can make their own planning judgement, looking at not just new material considerations and changes of circumstance but all other relevant considerations also.
- Helpful for members to give brief reason for their decision when voting. Refusal notice must state formal reasons.
- Normally scope for broad range of possible views in any planning decision, none of which can be categorised as unreasonable.

*[Newsmith Stainless Ltd v Secretary of State for Environment, Transport and the Regions – EWHC, 2001]*



# Materiality

*“In my judgment a consideration is ‘material’, in this context, if it is relevant to the question whether the application should be granted or refused; that is to say if it is **a factor which, when placed in the decision maker’s scales, would tip the balance to some extent, one way or the other.**”*

*[Erine Kides v South Cambridgeshire DC – Court of Appeal, 2002, LJ Parker]*

- The fact that the November 2018 resolution was by the narrowest of margins needs to be taken into account when judging its materiality.



# Appropriate Matters for Review

- New evidence relating to aircraft noise and air pollution
- Impact of B737 MAX problems
- Number of flights
- Expansion plans of competitor airports – “Need” case
- Climate Change – new evidence, policy developments
- Emerging Policy – Local and National
- Economic and Employment considerations

I dealt with a number of these issues in my October Opinion. I’ll now hand back to Mr Ross who will say more about them.



# WHO Noise Guidelines

The New World Health Organisation ('WHO') *Noise Guidelines (October 2018)*, set **far lower thresholds than before** for the avoidance of adverse health impacts from aircraft noise:

*“For average (24hour) noise exposure the [WHO] **strongly** recommends reducing noise levels produced by aircraft **below 45dB<sub>Lden</sub>** as aircraft noise above this level is associated with adverse health effects.”*

- Noise and health impact assessments for UTT/18/0460/FUL were based on **55dB<sub>Lden</sub>** (the old WHO “safe” limit). Nothing lower than this was plotted.
- New WHO Guideline Limit of 45dB is **10dB less** than previous WHO Limit for the avoidance of adverse health impacts from aircraft noise.
- A reduction of 10dB equates to a halving of the acceptable “safe” level of noise to avoid adverse health impacts on communities (logarithmic scale)

Government is still considering policy implications but *“agrees with the ambition to reduce noise and minimise the adverse health effects”*. Meanwhile, no reason why Committee can't make **its own judgment** based on WHO recommendations.



## WHO Noise Guidelines – cont'd

Officers recognised the importance of the new WHO *Noise Guidelines* even before they were published and advised MAG as follows in December 2017:

*“In the event that the World Health Organisation (“WHO”) new evidence on the impacts of aviation noise is published before a determination to grant planning permission, the environmental statement assessment **must incorporate** this evidence (for example, by way of supplementary assessment).”*

- MAG has still not provided this supplementary assessment of noise and health impacts, **as insisted upon by UDC officers in December 2017.**
- If this was provided it would show that the noise impacts of the proposed expansion would exceed new WHO Guideline Limits for the avoidance of adverse health impacts over a wide area around the airport.

**Safeguarding the health of the community must be a material consideration**



# Health Impacts

- **New research** shows that emissions of fine particulate matter (“PM<sub>2.5</sub>”) can have serious adverse health impacts even at levels below WHO guideline limits.
- PM<sub>2.5</sub> emanates from fuel combustion and transport sources and is now one of the major health concerns relating to airport expansion.
- Ultrafine particles arising from aircraft take-off and landing operations are also a growing concern – have been found up to 14 miles from an airport.
- The new research confirms previously known associations between PM<sub>2.5</sub> and respiratory and cardiovascular disease. Also identifies health impacts not previously associated with particulate matter, including impacts on the CNS<sup>1</sup>.
- MAG's own figures show that at 43mppa Stansted would be responsible for emissions of 13.6 tonnes of PM<sub>2.5</sub> per annum = 26% more than today.
- No proposals for ongoing monitoring of PM<sub>2.5</sub>. Monitoring of NOx seems to be limited to Hatfield Forest SSSI and East End Wood SSSI.

**Safeguarding the health of the community must be a material consideration**

<sup>1</sup>CNS = Central Nervous System



# Issues with Boeing 737 MAX

- MAG's modelling of the **noise and air quality impacts** for 43mppa assumed Ryanair (which accounts for 80% of Stansted's passengers) would replace the great majority of its present fleet with Boeing 737 MAX aircraft by 2028.
- Ryanair currently has 470 aircraft and projects 585 by 2024, assuming deliveries of 135 Boeing 737 MAX aircraft (23% of fleet).
- MAG's fleet replacement assumptions always considered by SSE to be unachievable – even before problems arose with B737 MAX.
- Noise, air quality, CO<sub>2</sub> emissions and health impacts heavily dependent on B737 MAX, modelled as up to 40% “cleaner and quieter”.
- Ongoing issues with the B737 MAX, unforeseen in November 2018, are clearly a new material consideration.

Would Ryanair be told to stop flying if noise contours breached?



# Number of Flights

- Whilst the current permission allows for 274,000 flights, only 227,000 flights are achievable in practice with the current 35mppa cap.
- The distinction between “permitted” and “achievable” was not clearly communicated to Planning Committee in Nov 2018 – and not clearly understood by all members.
- Maximum number of flights achievable under **existing permission** is as follows:

Category	Flights
Maximum PATMs needed	206,000 <sup>1</sup>
Projected number of CATMs	14,000 <sup>2</sup>
Non-ATMs (MAG's figure)	7,000
<b>Total</b>	<b>227,000</b>

- Put simply: extra 8mppa needs 47,000 more PATMs at 170 passengers/plane.

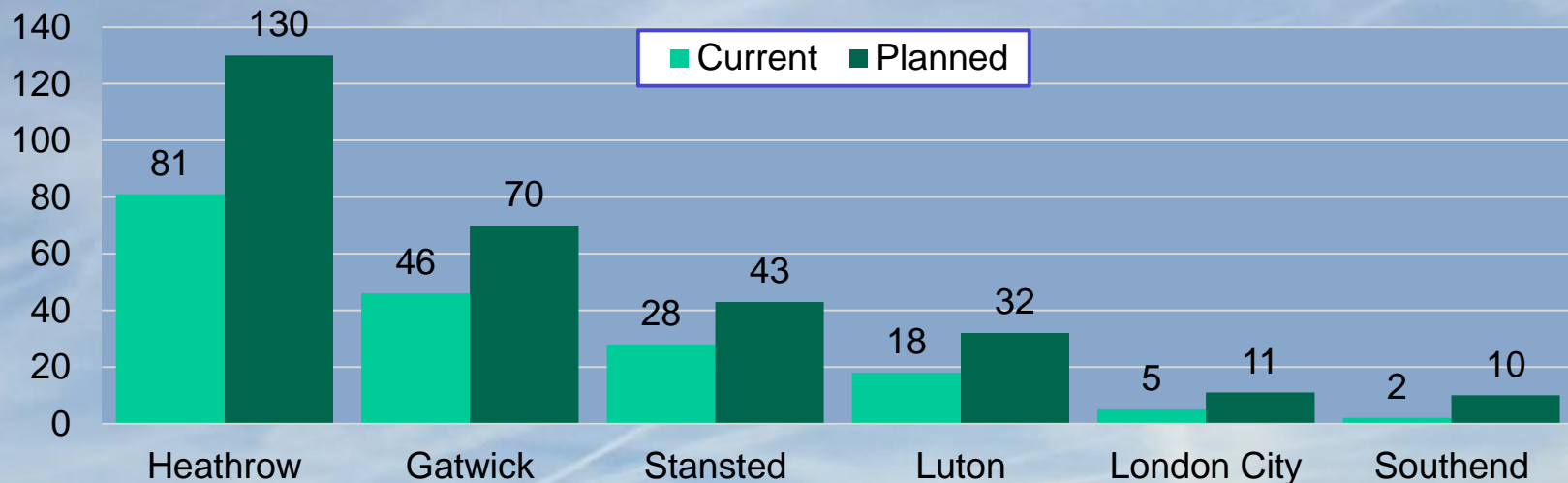
<sup>1</sup> 35mppa divided by MAG's conservative projection of 170 passengers per PATM in 2028. The average number of passengers per PATM has steadily increased at Stansted from 77 in 1999 to 163 in 2019.

<sup>2</sup> MAG projects 16,000 but CATMs are in long term decline at Stansted, from 13,400 in 1999 to 11,500 in 2019.

# The Question of 'Need'

- The “need” justification for cap to be raised to 43mppa was based on MAG’s claim that there was minimal scope for expansion at other London airports.
- This was accepted by officers despite far lower DfT forecasts for Stansted and SSE evidence of expansion plans elsewhere showing that capacity of London airports is planned to grow from 180mppa to 296mppa:

London Airports - Expansion Plans



- DfT projects 26mppa for Stansted in 2030 and below 35mppa until 2050.
- **There is no need for the Stansted cap to be raised to 45mppa.**



# Climate Change

- **June 2019** – Having regard to the latest CCC advice, Government amends Climate Change Act 2008 to require greenhouse gas emissions to be reduced by **100% by 2050** rather than original requirement for 80% reduction.
- **July 2019** – UDC declares **climate emergency** and commits to net zero carbon status by 2030. Other local authorities have taken a similar stance.
- **September 2019** – CCC publishes further report recommending that UK aviation growth is limited to “**at most 25% above current levels**”.
- **January 2020** – Scientists confirm that past decade was hottest on record, and that sea temperatures in 2019 were highest ever recorded.

- NPPF adopts UN definition of sustainable development:

*“The objective of sustainable development can be summarised as meeting the needs of the present **without compromising the ability of future generations to meet their own needs.**”*



# Climate Change – Continued

- MAG projects that Stansted's CO<sub>2</sub> emissions would increase from 1.74Mt baseline to 2.75Mt in 2028 at 43mppa – i.e. an additional 1Mt – of which aircraft emissions account for 1.56Mt and 2.50Mt respectively.
- This is **82% above the 1.37Mt** allowed for by the DfT.
- Airports National Policy Statement ('ANPS') says as follows:

*"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."*

- New material considerations since November 2018, include:
  - The new statutory net-zero target in the Climate Change Act
  - CCC assessment that aviation's 37.5Mt carbon budget should be reduced to about 30Mt and aviation growth limited to 25% from now to 2050
  - DfT disclosures showing Stansted CO<sub>2</sub> provision based on only 35mppa.



# Officers' Report

- Rejection of selected material considerations and silent on others
- Assessment of the B737 MAX position is at variance with the known facts
- Wrongly assumed that Inspectors would find SP11 unacceptable
- Interpretation of 35mppa decision: a curious new argument is advanced to suggest that to refuse 43mppa would amount to imposing a new cap on ATMs. This overlooks the fact that in 2008 the Secretary of State **imposed 5 planning caps**, namely:
  - PATMs = 243,500 per annum
  - CATMs = 20,500 per annum
  - Non ATMs = 10,000 per annum
  - Passengers = 35 million per annum
  - Noise = 33.9 km<sup>2</sup> noise contour for 57dBA



# Emerging Local Policy – SP11

- The current wording is substantially the same as agreed by Council in **July 2017** (Reg 18) and **June 2018** (Reg 19), and was included in the final version of the Local Plan agreed by Council in late 2018 to be submitted for examination.
- The Inspectors, having had a year to consider and comment on SP11, make no mention of SP11 in their 24-page letter of 10 January, which is otherwise highly critical of the Plan. Paragraph 3 of the Inspector's letter states:

*“Our letter focuses on those aspects of the plan and its evidence base which we do not consider to be justified.”*

- Whilst this does not amount to a ratification of SP11, it entitles the Planning Committee to attach considerably more weight to SP11 than in November 2018.
- The Officers' Report wrongly anticipates that SP11 would be found unacceptable and that the Inspectors “...*may potentially be looking to recommend major modifications to Policy SP11*”. [Para 40]



# Emerging National Policy

- The Planning Committee meeting in November 2018 was followed, in December 2018, by a Government 'Green Paper' setting out proposed new national policies for tackling the adverse environmental impacts of aviation.
- The final version of this – a new Aviation White Paper – has been repeatedly postponed. Within the past few days yet another postponement (perhaps 6 months) has been signalled.
- The new Aviation White Paper – just the third AWP since 1985 – is expected to set out far stricter policies in relation to:
  - Aircraft noise limits – responding to the WHO recommendations; and
  - Aviation CO<sub>2</sub> emissions – responding to the CCC recommendations.
- This may help explain the prematurity of the Application – i.e. in the hope of obtaining approval before stricter environmental policies are introduced.



# Economic Impacts

- UK trade balance (exports v imports) takes on new significance post-Brexit
- Using MAG's projections and its figures for inbound and outbound spend, proposal would have a significant **adverse** impact on UK trade balance.

Scenario	Million			Annual Trade Deficit
	UK residents' visits abroad	Foreign visits to UK	Difference	
Baseline (2016)	6.1	3.6	2.5	£1.7bn
Actual 2018	6.8	3.2	4.6	£3.2bn
35mppa Case 2028	10.1	4.7	5.4	£3.8bn
43mppa Case 2028	12.5	5.8	6.7	£4.7bn

- Economic impact would be significantly adverse for UK trade deficit
- More than 7 out of 8 Stansted's passengers were leisure travellers in 2018.
- Economic and employment issues were not discussed in November 2018.



# Employment

## Residency of airport employees

Year	Total airport employees	UDC residents	% UDC
2003	8,979	2,137	23.8%
2015	10,967	2,007	18.3%
2017*	11,898	1,892	15.9%

Source: STAL 2003 and 2017 employment surveys and STAL 2018 planning application

- Fewer Uttlesford residents work at Stansted Airport than 15 years ago
- Increased airport employment has implications for UDC housing targets
- New jobs at Stansted would be substitutional, not additional, for the UK

*\*The 2017 STAL Employment Survey was not made available to Planning Committee in Nov 2018*

# Conclusion

## Weighing Benefits v Harms

### Examples:

- Economic benefits
- Employment benefits
- Social benefits



### Examples:

- Noise impacts
- Air pollution
- Health impacts
- CO<sub>2</sub> emissions
- Road traffic
- Social harms

In this case, the environmental harms are clear whereas the economic and employment benefits are, at best, highly questionable



# Annexes

- **Draft Reasons for Refusal**
- **Supplementary Data**

# Draft Reasons for Refusal

## Glossary

ADP = Adopted Local UDC Plan

ANPS = Airports National Policy Statement

APF = Airports Policy Framework

BTH = Beyond the Horizon - DfT Policy (in progress)

CCC = Committee on Climate Change

DfT = Department for Transport

ELP = Emerging Local UDC Plan

IPCC = Intergovernmental Panel on Climate Change

NPPF = National Planning Policy Framework

WHO = World Health Organisation

## NOISE

**N1:** The assessment of noise impacts is unreliable because it is dependent upon modelling based on fleet replacement assumptions which are no longer realistic in the light of the extended grounding of the B737 MAX aircraft. The B737 MAX was projected by the Applicant to become the main aircraft in operation at Stansted under the development proposal and assumed to be significantly quieter (up to 40%) than the aircraft types it would replace

**N2:** The latest World Health Organisation ('WHO') advice "strongly recommends reducing noise levels produced by aircraft below 45dB Lden as aircraft noise above this level is associated with adverse health effects." Aircraft noise at Stansted already exceeds the WHO thresholds in the vicinity of the airport thereby exposing a significant number of residents within the local community to potential adverse health impacts. The proposed development would exacerbate the health risks to the local community.

**N3:** Inadequate mitigation measures are proposed to address the noise impacts of the proposed development which would be to the detriment of the amenity of the occupiers of buildings in the vicinity of the airport, to the cognitive development of primary school children and the health and wellbeing of local residents, contrary to policies ENV10, ENV11 and GEN4 of the adopted Local Plan ('the ALP') and policy SP11 of the emerging Local Plan ('the ELP').

# Draft Reasons for Refusal – Cont'd

## AIR QUALITY, PROTECTING THE ENVIRONMENT AND COMMUNITY HEALTH AND WELLBEING

**AQ1:** The assessment of the air quality impacts is unreliable because it is dependent upon modelling based on fleet replacement assumptions which are no longer realistic in the light of the extended grounding of the B737 MAX aircraft. The B737 MAX was projected by the Applicant to become the main aircraft in operation at Stansted under the development proposal and assumed to be significantly less polluting (up to 40%) than the aircraft types it would replace.

**AQ2:** Increased emissions of oxides of nitrogen ('NOx') and fine particulate matter (PM<sub>2.5</sub>) arising from the proposed development would be likely to have adverse local environmental impacts and potentially serious health impacts for local residents, respectively. Of particular concern are PM<sub>2.5</sub> emissions which would increase significantly under the proposed development. New research shows that there is no safe limit for PM<sub>2.5</sub> and confirms earlier links with respiratory and coronary disease. Research also now identifies links between PM<sub>2.5</sub> and other serious health conditions.

**AQ3:** Inadequate contingency measures for mitigation and/or compensation have been made, to the detriment of the health and wellbeing of local residents and contrary to ALP policies GEN4, ENV7, ENV8 and ENV13, and to ELP policy SP11. In addition, emissions of NOx would give rise to an increased risk of vegetation damage in Hatfield Forest SSSI and NNR and East End Wood SSSI to the detriment of biodiversity, contrary to paragraph 175 of the NPPF.

## INCREASED FLIGHTS

**FI:** The proposed development would result in a significant increase in the number of flights which would adversely affect the amenities of surrounding occupiers (in terms of, noise, disturbance, air quality and health impacts) contrary to ALP policies GEN4 and ENV11, and ELP policy SP11.



# Draft Reasons for Refusal – Cont'd

## CLIMATE CHANGE/CARBON EMISSIONS

**CC1:** The proposed development would be contrary to the principles set down in the National Planning Policy Framework ('NPPF') for sustainable development since it would give rise to a significant increase in Stansted Airport's emissions of CO<sub>2</sub> substantially in excess of the provision made by the Department for Transport (DfT). It would have a material impact on the ability of the Government to meet its carbon reduction targets, particularly having regard to the new statutory target in the Climate Change Act to reduce UK emissions by net zero by 2050. In such circumstances the Airports National Policy Statement ('ANPS') indicates refusal.

**CC2:** The Committee on Climate Change ('CCC') has advised that the 37.5Mt CO<sub>2</sub> currently allowed for UK aviation in 2050 should be reduced to about 30Mt and aviation growth limited to 25% from now to 2050. The Airport has scope to grow by 25% by 2050 within the existing cap and this is consistent with the DfT's long term forecast for Stansted.

**CC3:** No contingency measures have been made for the mitigation of the additional CO<sub>2</sub> emissions which would ensue from the proposed development, contrary to the policy set down in Section 9 of the NPPF and to para 175 of the NPPF.

## NEED FOR THE DEVELOPMENT

**ND1:** The need for the development has not been demonstrated. First, there is considerable headroom for expansion under the existing permission; second, the Applicant's long term forecasts are significantly higher than the DfT forecasts; third, passenger numbers at Stansted are currently in decline; and fourth there are plans for significant expansion at other/competitor London airports which were not taken into account in the Applicant's case for need.

**ND2:** The ANPS requires airports to "demonstrate sufficient need for their expansion proposals, additional to (or different from) the need which is met by the provision of a Northwest Runway at Heathrow." The Applicant has not met this requirement.

# Draft Reasons for Refusal – Cont'd

## **ECONOMIC AND EMPLOYMENT EFFECTS**

**EE1:** The proposed development would have an adverse impact on the UK trade balance and the Applicant has provided no quantified evidence of countervailing economic or user benefits sufficient to outweigh all other factors, with or without mitigation, to the detriment of the principles of sustainable development set down in the NPPF.

**EE2:** The additional jobs that would be provided would be predominantly low paid, requiring out-of-area recruitment which would increase the need for commuting, contrary to the principles of sustainable development set down in the NPPF.

**EE3:** The proposed development would not result in any net additional jobs in the UK since the expansion of other airports will lead to overcapacity in the London airports market. New jobs at Stansted, which is located in an area of minimal unemployment, would be at the expense of jobs at competitor airports with higher local unemployment.

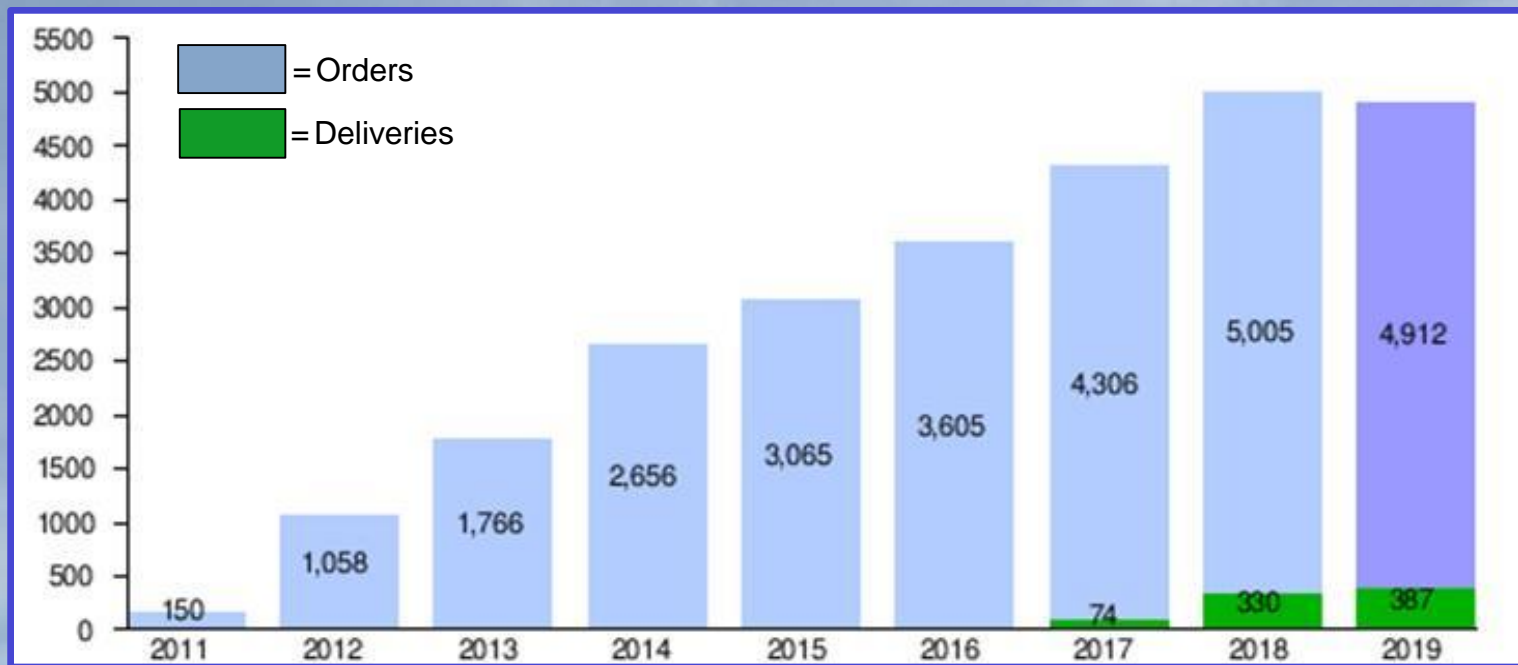
## **USE OF PUBLIC TRANSPORT**

**PT1:** The proposed development would result in reduction in public transport mode share compared to the level currently achieved and an increase in private car mode share, which is directly contrary to the Government's policy of 'Promoting Sustainable Transport', set down in Section 9 of the NPPF, and to Policy SP11 in the ELP.



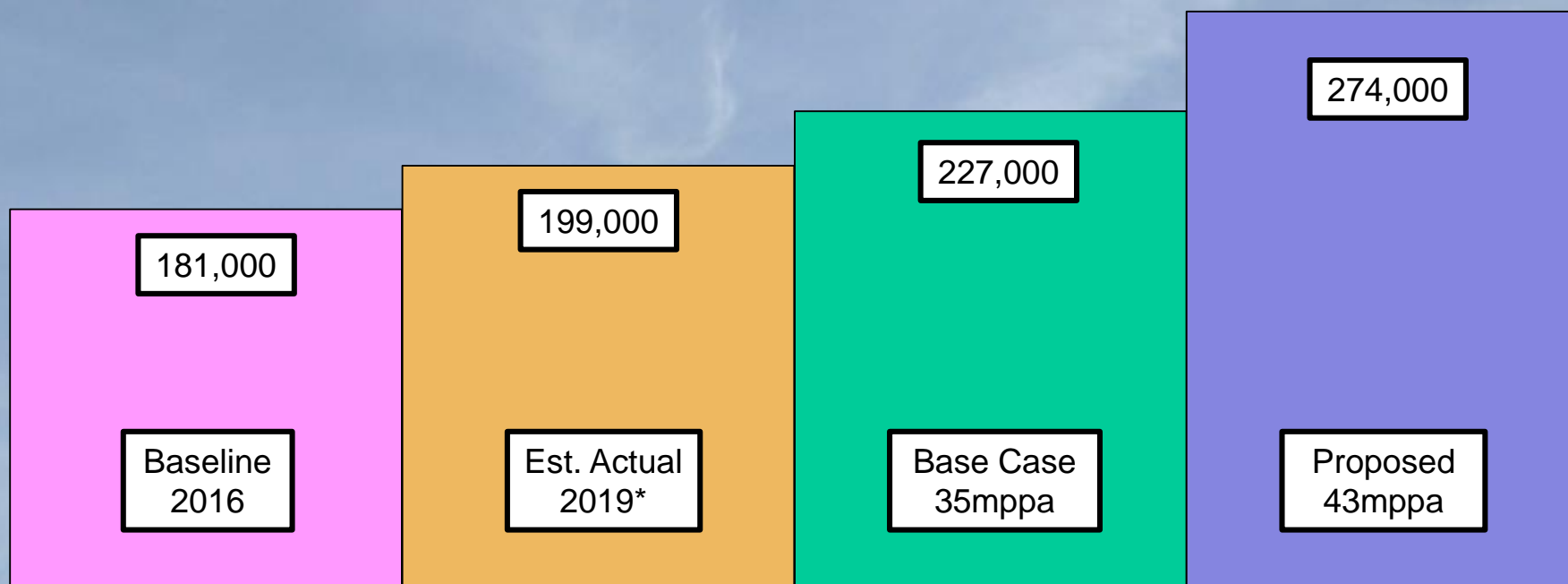
# Supplementary Data

# Boeing 737 MAX - Supplementary



- Current backlog = 8 years production – i.e. waiting time for new orders
- Airbus A320neo also has overflowing order book – also about 8 years

# Number of Flights

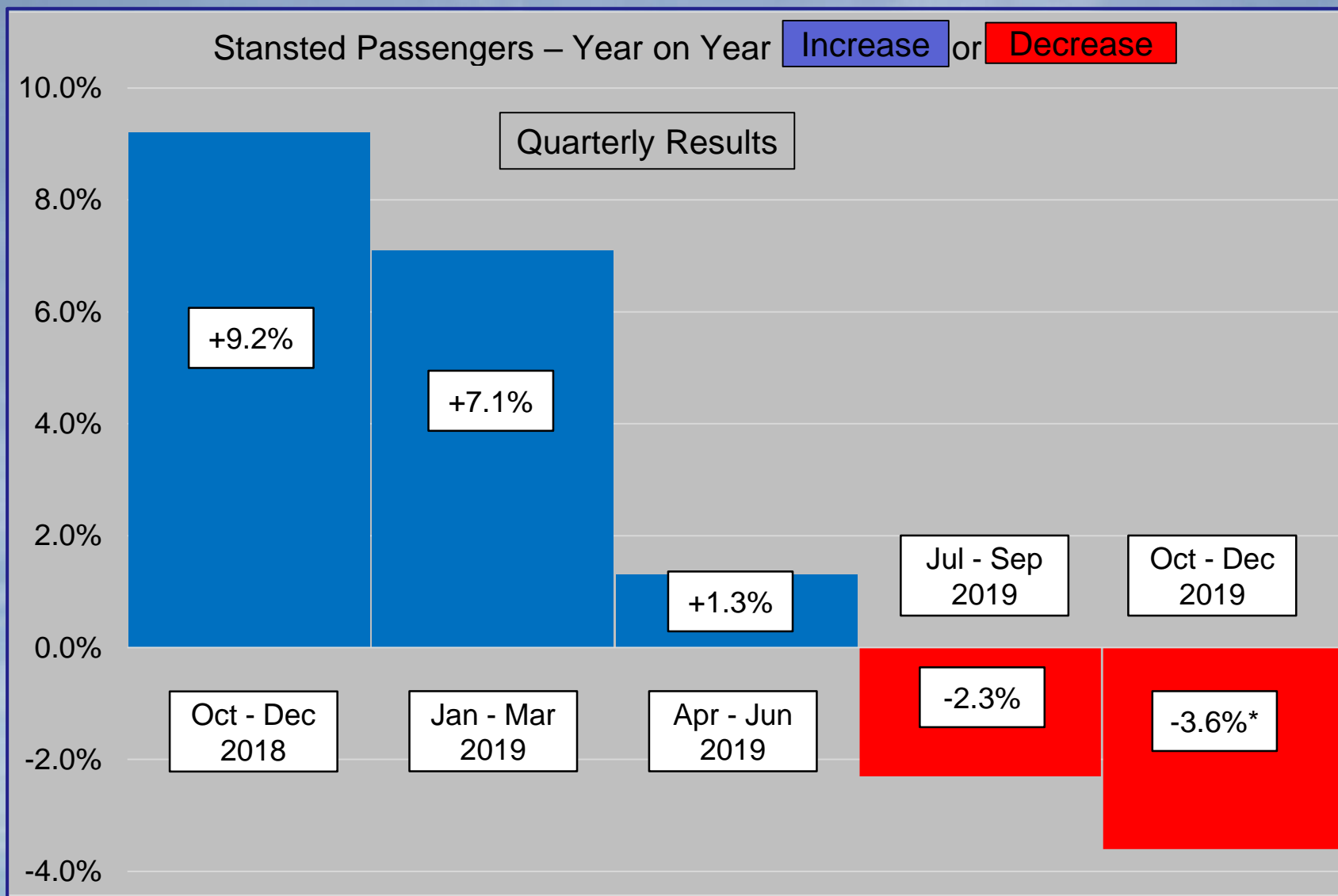


\*Dec 2019 estimated

- 93,000 extra flights/year compared to Baseline
- 47,000 extra flights/year compared to Base Case
- 75,000 extra flights/year compared to 2019

Town & Country Planning (EIA ) Regs 2017 (Schedule 4) require impacts of development to be compared to the current position – the “**baseline**” – and the position arising without the development – the “**base case**”. (No requirement to compare to existing permission.)

# Stansted Traffic Data 2018/19



\*Dec 2019 estimated

# Carbon Emissions – Further Data

## Projected carbon emissions for Stansted – Mt CO<sub>2</sub>

Year	DfT Assumption	MAG Projections	Excess
2023 (35mppa case)	1.45	2.30	+0.85 (+59%)
2028 (43mppa case)	1.37	2.50	+1.13 (+82%)
2050 (43mppa case)	1.64	2.19	+0.55 ( +34%)
Cumulative 2023-50	<b>38.9</b>	<b>67.8</b>	<b>+28.9 (+74%)</b>

- Officers conclude that *“the application proposals will not materially impact on the ability of the government to meet its national carbon reduction target.”*
- We submit that the excess of **28.9 MtCO<sub>2</sub>** compared to DfT’s planning assumption is – **by any measure** – a material consideration.
- Note that the UN Intergovernmental Panel of Climate Change (IPCC) – lists the atmospheric lifetime of CO<sub>2</sub> as between 50 and 200 years.



# Emerging Local Policy – SP11

*"Proposals for development [of Stansted Airport] will only be supported where **all of the following criteria** are met". This is followed by a list of criteria including:*

- "They are in accordance with the latest permission"*
- "Do not result in a significant increase in Air Transport Movements or air passenger numbers that would adversely effect the amenities of surrounding occupiers, or the local environment or transport networks (in terms of, noise, disturbance, air quality and climate change impacts);"*
- "Include proposals which will over time result in a **proportionate diminution and betterment of the effects of aircraft operations** on the amenity of local residents and occupiers ..."*
- "Incorporate sustainable transportation and surface access measures in particular which minimise use of the private car ..."*
- "Incorporate suitable road access ... and demonstrate that the proposals **do not adversely affect the adjoining highway network**; and will not lead to detriment to the amenity of the area and neighbouring occupiers"*