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Our Ref: APP/C1570/A/06/2032278

8 October 2008

Dear Mr Watson

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTIONS 78 AND 266 .
APPEAL BY BAA PLC AND STANSTED AIRPORT LTD
APPLICATION REF: UTT/0717/06/FUL
STANSTED AIRPORT, STANSTED, ESSEX, CM24 1QW**

1. We are directed by the Secretaries of State for Communities and Local Government and for Transport (“the Secretaries of State”) to say that consideration has been given to the report of the Inspector, Alan Boyland, BEng(Hons) DipTP CEng MICE MIHT MRTPI, who held a public inquiry on dates between 30 May and 19 October 2007. The appeal was made under Section 78 of the Town and Country Planning Act 1990, against the refusal by Uttlesford District Council (UDC) to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted. The application sought the removal of condition MPPA1 and variation of condition ATM1 attached to a planning permission ref UTT/1000/01/OP, dated 16 May 2003. The relevant conditions state that:

MPPA1: The passenger throughput at Stansted Airport shall not exceed 25 million passengers in any twelve calendar month period.

Reason: To ensure that the predicted effects of the development are not exceeded.

ATM1: Subject to ATM2 below, from the date that the terminal extension hereby permitted within Site “A” opens for public use, there shall be at Stansted Airport a limit on the number of occasions on which aircraft may take-off or land at Stansted Airport of 241,000 ATMs during any period of one year of which no more than 22,500 shall be CATMs (Cargo Air Transport Movements).

Reason: To protect the amenity of residents who live near the airport and who are affected by, or may be affected by aircraft noise.

2. The decision on this appeal has been taken jointly by the Secretaries of State in accordance with section 266 of the Town and Country Planning Act 1990 because the application for planning permission was made by a statutory

undertaker to develop either operational land, or land which would become operational if planning permission were to be granted.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be allowed and planning permission granted, subject to conditions. For the reasons given below, except where stated, the Secretaries of State agree with the Inspector's conclusions and with his recommendation. A copy of the Inspector's report (IR) is enclosed for the main parties to the inquiry, and copies of the Inspector's conclusions are enclosed for other interested parties. All references to paragraph numbers, unless otherwise stated, are to the IR.

Procedural Matters

4. The Secretaries of State note that in a supporting letter submitted with the planning application, it was indicated that the application sought the variation of condition ATM1 to a new level of 264,000 Air Transport Movements (ATMs), including limits of 243,500 Passenger ATMs (PATMs) and 20,500 Cargo ATMs (CATMs) (IR1.1). The Secretaries of State also note that by letter dated 20 March 2007, BAA/STAL indicated that it would offer to the inquiry a planning condition that would control air passengers to "about 35 million passengers per annum (mppa)" and that this was confirmed orally at the inquiry (IR3.50). The Secretaries of State agree with the Inspector's approach in considering the appeal as set out in paragraph IR3.51 and have done so on the same basis.
5. The Secretaries of State have, like the Inspector (IR1.17, 2.8-2.12 and 14.3-14.12), taken into account the Environmental Statement and Supplementary Environmental Statements which were submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 and in response to further requests for information under Regulation 19 of those Regulations (as detailed in IR1.17). Like the Inspector, and for the reasons given in paragraphs IR14.3-14.12, the Secretaries of State consider that sufficient information has been provided for them to assess the environmental impact of the application and that this information complies with the requirements of the above regulations.
6. The Secretaries of State note that UDC resolved to substitute their original reasons for refusal as set out in paragraph IR1.2. Like the Inspector, the Secretaries of State have considered the appeal on this basis and agree that no-one has been prejudiced in doing so (IR1.3)
7. An application for an award of costs regarding this appeal has been made against UDC, Essex County Council (ECC) and Hertfordshire County Council (HCC) (IR1.23). This application is the subject of a separate letter.

Matters arising after the close of the inquiry

8. On 12 March the Secretaries of State referred back to inquiry parties on the basis that they were not yet in a position to determine the appeal. This is because they received new information from the appellant's lawyers, CMS

Cameron McKenna in a letter dated 18 February, relating to aspects of the air quality modelling that was used to predict the likely effects of the proposed development on concentrations of oxides of nitrogen (NOx) in the vicinity of the airport. This information was sent to inquiry parties, along with initial representations which had been received from Saffron Walden & District Friends of the Earth (FOE) dated 19 February, Stop Stansted Expansion (SSE) dated 25 February, UDC dated 29 February, Cameron McKenna dated 29 February, Much Hadham Parish Council dated 12 March, The National Trust dated 3 March, and a copy letter from SSE to Alistair Watson of CMS Cameron McKenna dated 25 February. These initial representations had been received by the Secretaries of State because the CMS Cameron McKenna letter of 18 February had been copied to inquiry parties at the same time it was sent to the Secretaries of State. The Secretaries of State wrote to all rule 6 parties on 18 March 2008 seeking the further information requested by SSE of BAA. This information was provided by BAA's solicitors, CMS Cameron McKenna (and copied to all rule 6 parties) on 3 April. On 10 April the Secretaries of State extended the deadline for responses to their reference back to 18 April. Responses to this reference back were received from CMS Cameron McKenna dated 3 April and 10 April, SSE dated 9 April and 18 April, Much Hadham District Council dated 14 and 20 March and 8 April, The National Trust dated 18 April, UDC dated 11 April, and Saffron Walden & District FOE dated 14 April. The Secretaries of State wrote to inquiry parties on 23 April circulating these responses and inviting final comments on them. They received responses from CMS Cameron McKenna dated 8 May, SSE dated 9 and 21 May and 5 and 27 June, Much Hadham Parish Council dated 7 and 26 May, Saffron Walden & District FOE dated 6 and 21 May and UDC dated 13 May. The Secretaries of State have taken full account of all post-inquiry correspondence in reaching their decision. The issues raised are considered in paragraphs 33-38 below.

9. On 17 July the Secretaries of State once again referred back to inquiry parties on the basis that they were not yet in a position to determine the appeals. This is because the Secretaries of State wished to ensure that there was an appropriate regime in place in respect of night noise and they were not persuaded that such a regime would be achieved by imposing either the BAA or UDC form of proposed condition offered at the inquiry to control night noise (IR13.17). Responses to this reference back were received from Saffron Walden & District FOE dated 2 August, Much Hadham Parish Council dated 4 August, UDC dated 12 August (also on behalf of East Herts DC, and Essex and Herts County Councils), SSE dated 11 August, The London Chamber of Commerce and Industry dated 12 August (not a Rule 6 party), and UPS (not a Rule 6 party), British Airways (not a Rule 6 party) and CMS Cameron McKenna, all dated 14 August. The Secretaries of State wrote to inquiry parties on 15 August circulating these responses and inviting comments on them. They also indicated that any further information would be considered, before coming to a final view on the appeal. They received responses from Much Hadham Parish Council, CMS Cameron McKenna and SSE all dated 1 September, Saffron Walden & District FOE dated 20 August, and UDC dated 3 September (also on behalf of East Herts DC, and Essex and Herts County Councils). They also received responses from the Board of Airline Representatives UK dated 20 August (not a Rule 6 party), Airport Coordination Limited dated 21 August (not a Rule 6 party), International Air Transport

Association dated 26 August (not a Rule 6 party) and Stansted ACC dated 29 August. These representations were also copied to inquiry parties for comment. Further responses were received from Saffron Walden & District FOE dated 14 September and CMS Cameron McKenna, SSE and UDC (also on behalf of East Herts DC, and Essex and Herts County Councils) dated 15 September.

10. Whilst taking account of the representations from non-Rule 6 parties in their consideration of matters set out in their letter of 17 July, the Secretaries of State have given these limited weight, given that they took no part in the inquiry process. The issues raised are considered in paragraphs 46-49 below.
11. After the inquiry closed the Secretaries of State also received separate written representations from SSE dated 30 January, The Rt Hon Sir Alan Haselhurst MP dated 1 March and a large number of representations from members of the public. The Secretaries of State have considered this correspondence very carefully, but it does not appear to constitute new evidence or raise new issues relevant to this application that either affect their decision, or require them to refer back to the parties for further representations before reaching their decision.
12. In order to take a fully informed decision on the appeal, the Secretaries of State wrote to CMS Cameron McKenna on 16 April requesting clarification on matters relating to the two section 106 Unilateral Undertakings dated 19 October 2007 offered by Stansted Airport Limited (STAL). This letter was also sent to the prospective beneficiaries of the undertakings, UDC, ECC, and HCC. They received a response from CMS Cameron McKenna dated 30 April which was also copied to the councils set out above. On 12 September the Secretaries of State wrote to CMS Cameron McKenna requiring that they provide new unilateral undertakings which stand alone from the existing s106 agreement dated 14 May 2003 between UDC, ECC and STAL. These were received on 26 September. A further letter was received from CMS Cameron McKenna on 7 October, copied to the councils set out above. This letter included the wording of an obligation which had been inadvertently omitted from the undertakings received on 26 September. The Secretaries of State have taken full account of this correspondence in reaching their decision, and this issue is considered further in paragraph 50 below.
13. After the inquiry, and during the reference back exercises referred to in paragraphs 8-9 above, the Secretaries of State received written requests from some interested parties to re-open the inquiry. The Secretaries of State carefully considered these requests but concluded that the further information sought by way of reference back to parties was directly related to material which was considered at the inquiry. They therefore considered that these matters could be adequately dealt with by means of a reference back. They consider that, following receipt of the further representations as detailed above, they had sufficient information on matters relating to the appeal to proceed directly to a decision, and that sufficient opportunity had been afforded parties to respond to these matters.
14. Copies of any of the above correspondence may be obtained on written request.

Policy Considerations

15. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises the Regional Spatial Strategy for the East of England (the East of England Plan) (published after the close of the inquiry on 12 May 2008) along with the saved policies within the Essex and Southend-on-Sea Replacement Structure Plan (2001) (ESSP), the Uttlesford Local Plan (2005) (ULP), the Essex and Southend Waste Local Plan (2001), and the Essex Minerals Local Plan (1997). The Secretaries of State agree with the Inspector that relevant development plan policies include those set out in IR3.13-3.22. The relevant policies identified in the ESSP and ULP were saved on 26 September 2007 and 19 January 2008 respectively. The Secretaries of State do not afford any weight to the unsaved policies.
16. The Secretaries of State agree with the Inspector that, at the time of the inquiry, the relevant emerging East of England Regional Spatial Strategy (ERSS) policies include those set out in IR3.24-3.32. They have compared the changes between the ERSS and published East of England Plan and do not consider that there have been material alterations on matters relevant to this appeal to an extent that it would affect their decision, or require them to refer back to parties for further representations prior to reaching their decision. All references to specific policies refer to those in the published East of England Plan.
17. The Secretaries of State note that the UDC Development Plan Document Core Strategy is nearing adoption. They have therefore afforded it some weight in determining this appeal.
18. In terms of national policy, the Secretaries of State agree with the Inspector that the Air Transport White Paper (ATWP) and The Future of Air Transport Progress Report (ATPR) are material considerations and agree with the Inspector's summary of relevant aspects of these as set out in IR3.34-3.41. Like the Inspector (IR14.60), they agree that the ATWP should be accorded considerable weight as a material consideration in this appeal. They also note that it is agreed between the appellants and the Council that significant weight can be attached to the policies in the ATWP (IR3.43).
19. The Secretaries of State agree with the Inspector that other relevant elements of national policy include those set out in IR3.42. They consider these to be material considerations.
20. The Inspector notes in IR1.24-1.25 three documents which were published after the close of the inquiry and which might be material to the decision on this appeal. The Secretaries of State consider that these documents are material considerations and have therefore given them careful consideration in determining this appeal.

21. In the case of the Attitudes to Noise from Aviation Sources in England Study (ANASE), published on 2 November 2007, the Aviation Minister, Jim Fitzpatrick, made a statement on the findings of this document. This statement is clear in setting out the policy context stating “it does not give us the robust figures on which it would be safe to change policy”. It further states that the “approach to a sustainable aviation industry remains the one set out in the ATWP and the ATPR”. In view of this, the Secretaries of State do not consider that the ANASE raises any new issues relevant to this application that either affect their decision or require them to refer back to the parties for further representations prior to reaching their decision on the application.
22. Since the inquiry closed, the Planning and Climate Change Supplement to Planning Policy Statement 1 (PPS Climate Change Supplement) has been published, the consultation draft of which was considered at the inquiry. The Secretaries of State have compared the changes between the consultation draft and the final PPS Climate Change Supplement and do not consider that there have been material alterations on matters relevant to this appeal to an extent that it would affect their decision or require them to refer back to parties for further representations prior to reaching their decision.
23. The Secretaries of State note that neither the Planning Bill nor Climate Change Bill have been enacted, and afford them little weight, as they might be subject to change.
24. The Secretaries of State have also taken into account as material considerations the “Consultation on the Commission’s proposal to include aviation in the European Union emissions trading scheme” (March 2007) and the “Consultation on the Emissions Cost Assessment” (August 2007). Like the Inspector, (IR14.79) the Secretaries of State give these limited weight. Since the close of the inquiry, agreement has been reached between the Council of Environment Ministers and the European Parliament over the terms of aviation’s inclusion in the EU emissions trading scheme. The Government has also published the response to consultation on the emissions costs assessment. The Secretaries of State do not consider that either of these developments raise issues which are material to their decision on this appeal and, in the case of the emissions costs assessment, the Government has made clear that it is a national analysis and will not be carried out on an ad-hoc basis to inform the consideration by the planning system of individual airport development proposals.
25. The Secretaries of State have also taken into account the consultation paper on draft PPS4: Planning for Sustainable Economic Development, published in December 2007. However, as this document is still at consultation stage and may be subject to change, they afford it little weight.

Introduction to Inspector’s conclusions

26. The Secretaries of State agree with the Inspector’s reasoning and conclusions on those introductory matters addressed in IR14.1-14.2 and IR14.13-14.37. They also confirm that, like the Inspector (IR14.2), nothing in their conclusions should be taken as an expression of a view on the need for, or acceptability of,

any proposal for a second runway at Stansted, nor, again like the Inspector (IR14.21), do they regard Graham Eyre's conclusions as constraining or prejudicing theirs on the current proposal. They agree with the Inspector that the air traffic forecasts considered at the inquiry represent a satisfactory basis for consideration of the appeal proposal (IR14.29). They also agree that the 25mppa at 2014/15 case represents an effective fallback position against which the appeal proposal should primarily be assessed (IR14.34).

Main Issues

27. The Secretaries of State agree with the Inspector's assessment of the main issues as set out in IR14.38-14.44. They agree with the Inspector that a planning inquiry is not the appropriate forum for challenging the merits of Government policy (IR14.41).

The extent to which the proposals accord in principle with current Government policy and with the statutory development plan

Government Policy on Air Transport

28. The Secretaries of State agree with the Inspector's reasoning and conclusions on Government policy on air transport as set out in IR14.46-14.71. They agree that while the ATWP is not part of the statutory development plan, it should be accorded considerable weight as a material consideration in this appeal (IR14.60). They also agree that the policy in the ATWP establishes an urgent need to provide additional runway capacity in the south east, with priority being given to making best use of existing runways and in particular it supports making full use of the existing runway at Stansted (IR14.71). They further agree that this is, nevertheless, subject to all normal planning considerations (IR14.71).

Government Policy on Climate Change

29. The Secretaries of State agree with the Inspector's reasoning and conclusions on Government policy on climate change as set out in IR14.72-14.80. They share the Inspector's view that Government policy seeks to reconcile growth in aviation to meet the needs identified in the ATWP with action to address climate change (IR14.77). They also agree with the Inspector's conclusion that questions of the appropriateness and effectiveness of Government policies on aviation and climate change, and their compatibility, are matters for debate in Parliament and elsewhere, rather than through this appeal (IR14.80). The Secretaries of State have addressed the matter of material considerations relating to climate change published after the close of the inquiry in paragraph 22 above.

The Statutory Development Plan

30. The Secretaries of State agree with the Inspector's reasoning and conclusions on the statutory development plan and the then emerging regional spatial strategy as set out in IR14.81-14.90. They agree that in terms of principle the appeal proposal is not in conflict with the development plan (IR14.87), including

the East of England Plan (IR14.90). They also agree that given the East of England Plan's acknowledgement of the objectives of the ATWP, the thrust of the requirements that are set out on these matters can be seen as creating a context for control, mitigation or compensation of the effects of airport growth rather than policy obstacles to this (IR14.89).

The effects of the proposals on the living conditions and health of residents in the area, particularly in terms of aircraft noise and air pollution and the effects of aircraft noise on the quality of life of the area in terms of the educational, cultural and leisure activities of local communities

31. The Secretaries of State agree with the Inspector's reasoning and conclusions on the living conditions and health of residents in the area, and the effects of aircraft noise on the quality of life of the area as set out in IR14.91-14.154. They agree with the Inspector that while concerns about effects on children's development and education are very understandable, and while acknowledging the doubts about the noise data, there is no convincing evidence to support a conclusion of significant harm in this respect (IR14.120). They also share the Inspector's view that the fact that visitor numbers to Hatfield Forest have increased as the Airport has grown suggests that aircraft noise is not as great a detractor from their enjoyment of the Forest as the National Trust suggests (IR14.124). They further agree with the Inspector's conclusion that, for those within the contours and to a reducing extent some way beyond, noise from the increased ATMs arising from the G1 development would be harmful to the living conditions and health of residents and to the quality of life in the area including cultural and leisure activities (IR14.147). Finally, the Secretaries of State agree with the Inspector that the impacts of the proposal on health due to changes in levels of air pollution would be likely to be very small, and that as a result there would be no significant conflict with ESSP policy BIW9 or ULP policies GEN2 and GEN4 in relation to these matters (IR14.154).

The effects of increased housing pressures arising from expansion of the airport on the nature and character of communities in the area

32. The Secretaries of State agree with the Inspector's reasoning and conclusions on the effects of increased housing pressures arising from expansion of the airport on the nature and character of communities in the area as set out in IR14.155-14.168. The Secretaries of State agree that, while the evidence is tenuous, some intensification of adverse effects could be expected with the proposal, involving further erosion of traditional social linkages in smaller settlements and increased unauthorised activity (IR14.167). They also agree that with respect to SP Policy BIW9, under criterion 6 there is no evidence that there would be a requirement for new housing or associated community facilities as a result of the development that could not be met, but that the findings do indicate some adverse effects with regard to impact on residential areas (IR14.168).

The effects of increased air pollution from aircraft and surface traffic on Hatfield Forest and nearby woodlands

33. The Secretaries of State have carefully considered matters relating to the effects of increased air pollution from aircraft and surface traffic on Hatfield Forest and nearby woodlands, including the further information provided on this matter by those parties following the reference back exercise, referred to in paragraph 8 above.
34. Article 4(1) of Directive 1999/30/EC requires assessment of NO_x levels in ambient air to be assessed in accordance with Article 7. That article states that criteria for the location of sampling points for measuring NO_x levels in ambient air are set out at Annex VI. And paragraph 1(b) of Annex VI states that “sampling points targeted at the protection of ecosystems or vegetation should be sited more than 20 km from agglomerations or more than 5km from other built-up areas, industrial installations or motorways”. With regard to the precise application of a 5km “exclusion” zone around other built up areas, industrial installations, or motorways, the Secretaries of State accept, like the Inspector, that the effect of the Directive is a matter of legal interpretation. However, the Secretaries of State agree with the Inspector that BAA puts forward a compelling case as to the scientific, economic and practical reasons for believing that such a zone exists (IR14.171) and thus conclude that it would be applicable to Hatfield Forest and nearby woodlands.
35. Notwithstanding this conclusion, the Secretaries of State agree with the Inspector’s conclusion in IR14.172 that it is important to protect the ecology of nearby woodlands and that NO_x levels above 30µg/m³ in Hatfield Forest and Eastend Wood are a cause for concern, irrespective of whether the limit value under the Directive applies here. They therefore regard this matter to be a material consideration in this case, particularly given the status of Hatfield Forest and Eastend Wood as SSSIs. They have therefore weighed this in the balance in determining this appeal and their assessment and conclusion is set out below.
36. The Secretaries of State consider, like the Inspector, that BAA’s choice of model is robust (IR14.173). However, they accept that NO_x levels used as the basis for modelling predictions submitted to the inquiry were based on inaccurate data. They have carefully considered the revised information provided by Cameron McKenna on this matter, in particular, that the predicted extent of pollution would be greater than that submitted to the inquiry. Notwithstanding the concerns expressed by interested parties regarding the accuracy of the further information provided, they are content that this now represents a robust and accurate assessment.
37. As part of their consideration of the representations received on this matter, the Secretaries of State noted the requests from a number of the main parties to consult the Department of Environment Food and Rural Affairs (DEFRA) on this issue. Whilst considering these requests carefully, they concluded that, in the light of the representations received, it was not necessary to consult Defra in relation to this aspect of the appeal.

38. On the basis of this revised modelling, and considering all inquiry evidence on this point and subsequent representations, the Secretaries of State, whilst acknowledging that any assessment should be based on a more extensive NOx impact than that assessed by the Inspector, nevertheless consider that his broad assessment of the key issues here holds good. On the matter of NOx levels to 2014/15, the Secretaries of State observe that there is no dispute that, regardless of the precise existing levels of NOx in Hatfield Forest, due to falling background levels, the situation in 2014 will be an improvement on the current position even with the effects of the proposal (IR14.176). So, whilst accepting that it is likely that there would be a slight reduction in the rate at which the NOx concentrations are expected to improve, the Secretaries of State are satisfied that there would be an improvement over existing levels. In addition, the Secretaries of State have (again notwithstanding the additional remodelling), taken into account the fact that the agreed difference between the 25 and 35 mppa cases is relatively small (IR14.176). In view of these factors, though they consider that NOx levels are a cause for concern, they afford limited weight to the impact of NOx on Hatfield Forest and nearby woodlands, and conclude that this would not on its own be sufficient to justify refusing planning permission.
39. The Secretaries of State have carefully considered the further air quality concern about the potential effect of nitrogen deposition on vegetation, and agree with the Inspector's assessment of this in IR14.179-14.181. They note that nitrogen deposition will be at a lower level than now in 2014 even with the proposal, as a result of wider reductions (IR14.179). They also note that no specific evidence has been put forward either of existing damage to Hatfield Forest and Eastend Wood associated with air quality, or of adverse effects that might arise from the likely differences in air quality between the 25 and 35 mppa cases (IR14.180). In view of this, and given that the relevant policies of the development plan are framed in terms of avoiding adverse effect and material harm to nationally important nature conservation sites, they agree that there is no evidence to establish that the proposal would breach the tests set out in these policies. Given that PPS9 takes a similar approach in relation to development potentially affecting SSSIs, they also agree that there would be no conflict with this national guidance (IR14.180). Having determined this, they conclude that the potential effect of nitrogen deposition on vegetation would not be in conflict with the development plan or national guidance.
40. The Secretaries of State are also satisfied that, on the basis of this assessment, the proposal would be in compliance with policies ENV 1 and ENV 5 of the East of England Plan.

The effects of expansion of the airport on the demand for water

41. For the reasons given in paragraphs IR14.182-14.187, the Secretaries of State agree with the Inspector that the water efficiency measures put forward with the proposal comply with East of England Plan policy WAT1, and meet the requirement of ULP policy GEN2 to minimise water consumption (IR14.186). They also agree that with respect to sewerage and drainage, the evidence demonstrates that the proposal would not in itself lead to problems of capacity, and that scope exists to make adequate provision to meet anticipated future needs that would arise from it (IR14.187).

The adequacy of the road network to accommodate increased road traffic arising from expansion of the airport without detriment to its safe and efficient operation and the adequacy and capacity of the rail and coach access to the airport to accommodate demand arising from expansion of the airport without increasing reliance on use of the private car

42. The Secretaries of State agree with the Inspector's reasoning and conclusions on the adequacy of the road network and the adequacy and capacity of the rail and coach access to the airport as set out in IR14.188-14.224. They agree that, subject to conditions and the mitigation proposed in respect of other roads, the additional traffic arising from the G1 development would not cause significant harm in respect of safety or road capacity, in accordance with ULP policy GEN1 (IR14.223). They also agree that BAA's stated aim of increasing the public transport mode share for air passengers from 40% to 43% by 2014 would, if realised, reinforce to a modest degree the shift to more sustainable travel which is sought by Government policy, ULP policy GEN1, and East of England Plan policy T12 (IR14.224). The Secretaries of State note the Inspector's comments regarding public transport improvements being contingent on the necessary capacity on the rail network being provided (IR14.224). In this respect the Department for Transport's rail white paper *Delivering a Sustainable Railway* and High Level Output Specification (HLOS), published in July 2007, includes a clear position on capacity enhancement anticipated for this route. They are therefore satisfied that appropriate enhancement measures will be forthcoming, albeit that these remain subject to regulatory determination and achievement of agreement with the Train Operating Company (National Express East Anglia) in 2008/9. As for the timing of proposed works, they note that the Inspector recognises that the scope and timescale of improvements have yet to be confirmed (IR14.219).

The economic (including employment) benefits of the proposal

43. The Secretaries of State agree with the Inspector's reasoning and conclusions on the adequacy of the economic (including employment) benefits of the proposal as set out in IR14.225-14.264. They agree that there is evidence that the proposal would deliver large direct economic benefits, although they accept that the evidence does not reliably quantify this (IR14.262). They also agree that the proposal would generate some employment growth of relatively modest scale, although in line with the East of England Plan projections (IR14.262). Overall, they agree with the Inspector that the proposal would give rise to economic benefits that carry weight in favour of the proposal, as well as according with ESSP policy BIW9 (IR14.264).

Whether or not it would be premature to make a decision on the appeal at this time

44. For the reasons given in IR14.265-14.273, the Secretaries of State agree with the Inspector that it would not be premature to make a decision on the appeal at this time (IR14.273).

Other matters

45. The Secretaries of State agree with the Inspector's reasoning and conclusions on those other matters addressed in IR14.274-14.283. They agree that the Health Impact Assessment supports the agreed position in the Statement of Common Ground that the proposal would have no unacceptable health effects (to the extent that planning permission should be refused), and that there would be no breach of Structure Plan policy BIW9 in this respect (IR14.278). They also agree with the Inspector's assessment of landscape, tranquillity and light pollution issues.

Conditions

46. The Secretaries of State agree with the Inspector's assessment of planning conditions as set out in IR14.284-14.329, except with respect to the matters addressed below. They have adopted the Inspector's recommended form of conditions except where indicated.

47. With regard to the proposed condition AN2, the Secretaries of State have carefully considered the inquiry evidence, the Inspector's reasoning and conclusions (IR14.302-14.308), and all representations received on this point following their letter of 17 July (see paragraph 9 above). The Secretaries of State consider that the imposition of condition AN2, whether as proposed by the Inspector (IR Annex D, conditions) or as offered by BAA (IR 13.17) would be contrary to the advice given in paragraph 22 of Circular 11/95: The Use of Conditions in Planning Permissions. They reach this conclusion on the basis that there is an established night noise regime¹ governed by the Aerodromes (Noise Restrictions) (Rules and Procedures) Regulations 2003 (the 2003 Regulations) and the Civil Aviation Act 1982 (CAA 1982).

48. Under the 2003 Regulations Stansted has a set noise abatement objective which operates over a 6.5 hour period from 11.30pm to 6am. In addition to this, Stansted is currently subject to noise quota and movement limits under the CAA 1982 which are designed to work in tandem with the noise abatement objective to keep noise at an acceptable and agreed limit. Either form of condition AN2 is, in practical effect, a new noise abatement objective set over an 8 hour period (11pm to 7am) which would regulate the shoulder periods (11-11.30pm and 6-7am) at Stansted, but without associated movement or quota limits. Such regulation over an 8 hour period was specifically rejected as part of an extensive consultation on the night noise regime which took into account the views of a much wider range of participants. The effect of regulation over an 8 hour period would also run contrary to a consensus reached as part of the night noise consultation exercise that there should be a uniform approach to regulation of night noise at Heathrow, Gatwick and Stansted. In addition the Secretaries of State have taken into account concerns expressed, which they share, over the enforceability of a condition in the form of AN2 without associated quota and movement limits; whether the condition is necessary given the projected movement limits for the shoulder periods, and the fact that

¹ Contained in the decision document Night Flying Restrictions at Heathrow, Gatwick, and Stansted dated June 2006.

the current night noise is subject to review, work on which is likely to start in 2010 with a new regime proposed in 2012.

49. For these reasons the Secretaries of State do not intend to impose condition AN2 which means that the existing regime which covers Stansted, as well as the other main London airports, will remain in place. In view of the fact that planning permission is therefore being granted on the basis of an agreed and established regime as regards any night noise impact of that permission, they do not consider that the removal of this proposed condition is prejudicial nor do they consider it weighs against the proposal.

Obligations

50. The Secretaries of State have considered the evidence put forward and discussed at the inquiry (IR13.40), along with the further information provided on this matter by those parties referred to in paragraph 12 above, and the Inspector's consideration of the matter (IR14.193). They have carefully considered the two new s106 Undertakings dated 26 September and conclude that these new obligations are acceptable and meet the tests set out in Circular 5/05 (Planning Obligations), in that their provisions are reasonable and necessary to ensure an acceptable form of development.

Overall Conclusion

51. The Secretaries of State consider that the proposal would accord with the ATWP, including that it seeks to reconcile growth in aviation to meet the needs identified in the ATWP. They also consider that in terms of principle, the appeal proposal is not in conflict with the development plan. The proposal would also be acceptable and in line with the development plan, the ATWP, and national policies in other respects, including that: there is no evidence that the proposal would breach relevant local and national policies relating to nitrogen depositions on vegetation; there would be adequate provision of water resources, including that sewerage and drainage capacity would be adequate; the road network and rail and coach access would be adequate; and, that there would be large direct economic benefits.
52. Factors weighing against the proposal are: that additional noise would be harmful to the living conditions and health of residents and to the quality of life in the area; that there would be some negative health effects due to changes in levels of air pollution, though these would be small and not a significant conflict with the development plan; that there could be further erosion of traditional social linkages in smaller settlements and increased unauthorised activity and some adverse effects with regard to impact on residential areas; and, that NO_x levels are a cause for concern in terms of their impact on Hatfield Forest and nearby protected woodland.
53. Having weighed up all relevant considerations, the Secretaries of State are satisfied that the factors which weigh in favour of the proposal, notably compliance with the ATWP and the development plan, outweigh the harm identified. They therefore do not consider that there are any material

considerations of sufficient weight which would justify refusing planning permission.

Formal Decision

54. Accordingly, for the reasons given above, the Secretaries of State agree with the Inspector's recommendation. They hereby allow the appeal and grant planning permission for the removal of condition MPPA1 and variation of condition ATM1 attached to planning permission ref UTT/1000/01/OP, dated 16 May 2003, subject to the conditions set out in Annex A.

55. An applicant for any consent, agreement or approval required by a condition of this permission has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the local planning authority fail to give notice of their decision within the prescribed period.

56. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than that required under section 57 of the Town and Country Planning Act 1990.

57. This letter serves as the Secretary of State's statement under Regulation 21(2) of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999.

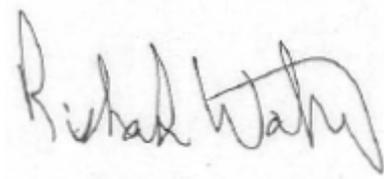
Right to challenge the decision

58. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within 6 weeks of the date of this letter.

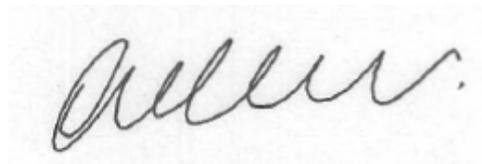
59. A copy of this letter has been sent to UDC, all parties who appeared at the inquiry, and all other parties who requested a copy of the decision letter.

Yours sincerely

Yours sincerely



Richard Watson



John Faulkner