



UTTLESFORD DISTRICT COUNCIL

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Chief Executive: Dawn French

22nd September 2020

Ms E Humphrey
Planning Inspectorate
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2 The Square
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BS1 6PN

Our ref: ES/10849

Your ref: APP/C1570/W/20/3256619

Please ask for Mrs Smith on 01799 510420
email: esmith@uttlesford.gov.uk

Dear Ms Humphrey

S78 TOWN AND COUNTRY PLANNING ACT 1990
APP/C1570/W/20/3256619: APPEAL BY MANCHESTER AIRPORTS GROUP PLC,
STANSTED AIRPORT, ESSEX CM24 1QW

- 1 Further to the Inspector's Pre-Conference Note for the 24/9/20 CMC, this note sets out the stance of Uttlesford District Council ("**UDC**") on the points raised using the headings in the Note.

Preliminary issues (§§1-3)

- 2 The Council notes and agrees that the inquiry is likely to sit for up to 40 days. UDC expects that the inquiry will follow the normal format for sitting days (i.e. Tuesday – Friday each week). UDC's preference is that there be no breaks to the hearing pattern until the conclusion of evidence, with a short break (say, 2-3 hearing days) before final closings are delivered: see further below.

Main issues (§§4-6)

- 3 The Council is in broad agreement with what the Inspector has identified as the main issues, save to note that the issues of aircraft noise and air quality will each involve evidence on related health effects. UDC does not propose to call a separate witness on health effects.
- 4 Plainly, each of the four main issues identified by the Inspector embodies sub-issues, e.g. air traffic forecasting. This is expected to pick up most of the matters raised by the Rule 6 parties.

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Format of the Inquiry (§§7-8)

- 5 First and foremost, the preferences expressed by UDC in this Note are tentative: at all times, UDC considers that if circumstances and/or government requirements require change or adaptation to the hearing procedures then those should be made. What guides UDC in expressing its preferences is to maximise public participation without prejudicing the health of those participating.
- 6 Based on things as they stand, UDC proposes what it would call a “teleconferenced bubbled conventional hearing.” In essence, this would involve a sufficiently large hearing room in which there are five or more “bubbles” with each “bubble” being separated throughout by not less than 2 metres. There would be a “bubble” for each of:
 - (1) The Inspectors.
 - (2) Witnesses giving evidence on a particular day.
 - (3) The Appellant.
 - (4) UDC.
 - (5) Stop Stansted Expansion.

If there were to be further Rule 6 parties, then there would be a “bubble” for each of them. Within each of the “bubbles” there would be no more than 5 individuals at any given time, the composition of which could change from time to time as needs require and which would be entirely at the discretion of the particular party. There would be no mingling between bubbles. The hearing would be broadcast by whatever means the Inspectorate considers most convenient.

- 7 The thinking behind this proposal is as follows.
- 8 First, the proposed development has on any view generated a great deal of local interest as evidenced by the very large number of representations received, the 3 periods of consultation and public speaking sessions held by the Council before its first consideration of the application, and the anxious scrutiny given to the application by the Council over a series of meetings between November 2018 and January 2020. For that reason alone, a physical hearing would ordinarily best meet the requirement for the issues to be scrutinised in a public setting.
- 9 Secondly, technical expert evidence will be given on areas of some complexity, including aircraft noise and air quality, involving 3 separate main parties who will each be represented. The papers are likely to be voluminous. Hearing that evidence at a conventional physical event will allow for the issues to be investigated most efficiently, with a view to saving inquiry time.

- 10 Thirdly, self-evidently these are not “normal times” and what would ordinarily best meet the above requirements must be adapted to minimise the health risks to all those concerned. The proposal seeks to do that by enabling all those involved both to control mingling and to maintain a record of who has mingled with whom. In this regard, it accords with current government guidance.
- 11 The main parties have already discussed the availability of venues and the Radisson Blu Hotel on the Stansted Airport site has been identified as an appropriate venue to accommodate the parties as set out above.
- 12 Finally, UDC would reiterate that at all times the arrangement should be open to modification should circumstances require it. UDC would also add, that this is put forward as a proposal and that it is open to suggestions and adaptations.

Dealing with the Evidence (§§9-14)

- 13 The Council agrees that the conventional format for giving evidence is most appropriate (evidence in chief, cross examination, and re-examination), and that a topic basis following the order of the main issues (ie (1) aircraft noise, also covering air traffic forecasting and health issues; (2) air quality, also covering air traffic forecasting and health issues; (3) conflict with UK obligations to combat climate change; and (4) mitigation through infrastructure) would be most logical.
- 14 On each topic, the order of witnesses would be: (a) UDC; (b) SSE; (c) other Rule 6 parties (if any); (d) any members of the public; and finally (e) Appellant.
- 15 The Council would suggest that closing submissions (reduced to writing) are delivered 2-3 hearing days after the close of the evidence to ensure that sufficient time is given for their preparation.
- 16 It is suggested that each party be restricted to a ½ day speaking limit, covering the salient points in that party’s written closing. The break before closing submissions could usefully be used for the site view, if appropriate.
- 17 I would be grateful if you could place this letter before the Inspector in advance of the CMC on Thursday.

A copy of this letter has gone to the representatives of each of the Appellant and

SSE.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Elizabeth Smith'. The signature is written in a cursive style with a large, prominent 'E' at the beginning.

Elizabeth Smith
Interim Legal Services Manager
Uttlesford District Council

23 September 2020

Elizabeth Humphrey
Planning Inspectorate
3/J Kite Wing
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Dear Ms Humphrey,

Re: Appeal APP/C1570/W/20/3256619 by STAL, Stansted Airport, Essex CM24 1QW

This letter sets out STAL's position in respect of procedural issues arising in relation to its appeal, ahead of the first Case Management Conference (CMC) to be held on 24 September 2020.

In respect of the Inspector's pre-conference note and both the UDC and SSE's position statements received yesterday, the following points are addressed:

- 1) Preliminary Issues (Inquiry opening and length)
- 2) Main Issues
- 3) Format of the Inquiry
- 4) Dealing with the evidence.

I address each in turn.

- 1) Preliminary Matters

Firstly, STAL does not support any arguments for a delay to the opening of the Inquiry in order to allow SSE to renew its unsuccessful application for permission to appeal against the unsuccessful outcome of its judicial review claim in the High Court. We note the Inspector's comments yesterday in Mr Boulton's email to SSE and fully agree with the position taken by him.

Secondly, STAL initially suggested that the inquiry could sit for up to 40 days, but that is of course dependent on the length of evidence in chief and cross examination of each witness and the number of witnesses. STAL considers that this approximate length of time is still an appropriate working assumption, when taking into account the indicated number of witnesses and consideration of the number of interested parties that may attend. Moreover, the additional time which may be involved in conducting the inquiry virtually (in whole or in part) needs to be factored in. If some evidence is to be dealt with by written representations, then the number of sitting days would of course reduce.

We do not support the UDC's preference for the 40 days to be run entirely without a break. In our experience a pattern of 3-4 sitting weeks followed by a week-long break has usually been adopted by PINS for an inquiry

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of this scale, often to try to align with school holidays. We do agree with the UDC's proposition that a break before closing submissions would be appropriate.

2) Main Issues

STAL agrees with the Inspector's initial views, and those of UDC, that the main issues are correctly identified in the pre-conference note. However, we note that these issues sit within a broader legal, policy and factual context which will need to be the subject of expert evidence at the inquiry, for example national planning and aviation policy.

3) Format of the Inquiry

STAL understands UDC's preference for a conventional inquiry format albeit incorporating measures to ensure socially distancing so far as possible. Nevertheless, we are concerned that an arrangement of the type proposed by UDC will be very vulnerable to one or more persons in the inquiry room falling ill and there being a need for everyone else to isolate, if we are to spend as long as 40 days together with a large number of personnel in the same room at the same time.

We are therefore of the view that the vast majority of the inquiry will need to take place virtually with some limited exceptions if participants are simply not able to participate virtually.

STAL notes SSE's concerns in respect of fairness. However, SSE do not provide reasons as to why virtual participation is not "transparent". Indeed, such a format could in fact lead to more people being able to view proceedings. Many inquiries have taken place virtually and the Inspector will be best placed to ensure fairness throughout the process.

In respect of any potential disadvantages surrounding access to necessary technology, STAL would be willing to assist in facilitating a Covid-19 safe facility at a location to be agreed, that would allow for any member of SSE, or any other interested party, to provide evidence to the Inquiry.

We are still reflecting carefully on the implications of the Prime Minister's statement yesterday. We do have some concerns about the inevitable requirement to bring numbers of people together for an extended period of time, even remotely, in order to accommodate a start date on 12 January 2021 and ten weeks of sittings during the winter period (in addition to the concentrated periods of preparation required during the preceding weeks in December and January). These issues should be aired during the CMC, including the possibility of a short postponement until the end of the winter period.

4) Dealing with the Evidence

STAL agrees that a conventional format is appropriate, and that a topic-based approach is the most efficient way to hear the evidence. The order of topics will need to be established once the proofs of evidence are available.

We agree with the order of appearance suggested by UDC and with a ½ day speaking limit for each party's closing submissions.

ES Addendum

In informal discussions with UDC and the PINS case officer, we had originally indicated a target date of end September for the publication of an ES Addendum, recognising the passage of time since the submission of the original ES. However, in its Statement of Case received last week, UDC has for the first time raised a

whole series of new questions relating to the content of the ES, notwithstanding that its officers, consultants and legal team agreed as recently as January this year that the ES was satisfactory. We are now required to review this new list of suggested deficiencies and to consider our response. It is likely that this exercise will take several weeks to complete, given the extent of the matters now raised and the need for us to engage with our consultant team.

It is therefore unlikely that the ES Addendum will now be available before 16 October 2020, which will still be 12 weeks before the intended start date of the inquiry.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Alistair Andrew', written in a cursive style.

Alistair Andrew, MRTPI
Head of Planning Services
MAG

Case Management Conference - 24 September 2020
Stop Stansted Expansion Position Statement

SSE's position is that it would be wholly inappropriate, under the present circumstances, to start this Inquiry in the middle of winter, in the middle of a pandemic.

It is regrettable that the Inspectorate has been put in this position and, even at this late stage, we hope that MAG might think again, and accept the decision of the LPA, without prejudice to its ability to bring forward a similar planning application in the future.

Failing that, we would ask for the Inquiry be adjourned, at least until SSE's legal challenge has run its course, and we hope that the other parties would support this. MAG and the LPA are fully familiar with this legal challenge, and it is summarised in SSE's Statement of Case, so there is no need to elaborate here. I cannot give the precise timing as to when SSE's legal challenge will have run its course but I expect this to be some time next spring, or possibly next summer.

If the Inquiry has already taken place by then, and SSE's legal challenge succeeds, then the Inquiry will be null and void. All of the parties would have invested considerable time and expense for no purpose, and there would have been unnecessary health risks for participants.

The Inspectorate's proposed answer to minimise the risks of Covid-19 is for a significant part of the Inquiry to be conducted digitally. We respectfully suggest that this is not a satisfactory basis for an Inquiry of this type. This is a controversial, high-profile case and there is very significant public interest, in the local community and beyond.

Whilst a virtual event can address concerns about public health, this would, at least to some extent, be at the expense of transparency and fairness.

Dealing first with transparency, may I start by drawing a comparison with the two most recent Stansted Inquiries, the so-called 'G1' Inquiry in 2007 and the planned 'G2' Inquiry in 2009 – which in the event did not proceed because the application was withdrawn.

The G1 Inquiry was held on conventional lines. It sat for 49 days between 30 May 2007 and 19 October 2007. On one occasion, some 400 people attended the Inquiry. There was also significant media interest, including regional and national television teams within the venue.

The intended G2 Inquiry only got as far as two pre-inquiry meetings. According to media reports one of these was attended by some 700 people. (One journalist claimed to have counted.) Again, there was regional and national television interest.

I do not suggest that this particular Inquiry would necessarily generate the same degree of interest. Normally at this stage in the process SSE would be holding public meetings in local town and village halls, explaining the issues to local communities and encouraging people to attend the Inquiry and express their views.

In the months leading up to the G1 Inquiry, SSE held about 70 such meetings. These not only helped raise awareness but also helped raise funds. Because of the pandemic, we have not been able to hold any of these public meetings. Nevertheless, there will still be considerable public interest in this Inquiry and we have no doubt that SSE will receive sufficient funding from the local community to meet our costs. However:

Will it be enough that local people can watch online?

Will it be enough that they can give evidence online?

I do not believe so.

Turning, now, to the question of fairness.

Under normal circumstances, SSE operates very efficiently and effectively and is not lacking in technical expertise when it comes to the main issues for this Inquiry to consider, namely, noise and air quality, surface access, economics and employment, forecasts, climate change and health and wellbeing. On all those issues we can make an important contribution to the Inquiry.

However, even within the leadership of SSE, some of our key people, quite frankly, are not in the first flush of youth, and are not familiar with the technology. They would have difficulty in giving evidence online, being cross-examined online, and taking part in online cross-examination of other witnesses.

Notwithstanding these difficulties, this Inquiry is of fundamental importance to the community we represent and if we had to make a choice between putting our people at risk, or taking part in an Inquiry largely based on virtual hearings, the latter would be the lesser of two evils.

In that event, however, SSE obviously does not have the technology expertise or the resources available to MAG and the LPA but we would explore all reasonable options available aimed at equipping our people to deal with virtual hearings, and at overcoming the difficulties we currently foresee. We would hope the other parties to the Inquiry might assist SSE in that endeavour.

There would still however be an impairment for many members of the local community who would be reluctant to appear at the Inquiry in person in the current circumstances and also unable to access the technology to present their evidence, or even to follow proceedings.

Ultimately, if it was felt that the Inquiry would not provide fair and equitable arrangements for SSE to present its case and/or would not provide adequate access and transparency for the wider community, SSE would need to review its position, having regard to our obligation to make best use of our members' funds.

Yes, it is understood that the Inspectorate, rightly, has guidelines to follow and targets to meet, aimed at achieving efficiency and effectiveness. However, we respectfully suggest that, during this current pandemic, there is justification for a pragmatic, common-sense approach.

There is compelling logic for a short adjournment. If SSE's legal challenge succeeds, there would be no need for this Inquiry, saving all of the parties, and the Inspectorate, considerable time and expense, whilst also avoiding Covid-related risks.

Moreover, there is no real downside in an adjournment. It is common ground that the current consent for 35 mppa is more than adequate to meet MAG's needs for many years to come.

And even if, having agreed an adjournment, SSE then lost its legal challenge (and MAG had chosen not to withdraw its appeal) the pandemic is expected to have eased by next spring or summer (compared to mid-January), allowing a more conventional Inquiry to take place.

And if the pandemic has not eased by next summer, the reality is that Stansted Airport will have more important priorities than seeking an increase in the present 35mpa cap.

*Stop Stansted Expansion
21 September 2020*