

Public Inquiry into BAA's Proposal to Develop a Second Runway and Associated Facilities at Stansted Airport (Stansted G2)

NOTE OF PROGRAMME MEETING held at the Hilton Hotel, Stansted Airport on Monday 19 January 2009

1. Introduction

The Inspector, Andrew Phillipson, introduced himself and the other members of his team that were present:

Deputy Inspector – Philip Asquith (replacing Stephanie Chivers who had had to withdraw from the inquiry for family reasons)
 Inquiry Manager (IM) – Carmel Edwards
 Other Planning Inspectorate staff present – Bob Young (Assistant Inquiry Manager), Barbara Bay and Ken Smith (the latter observing the meeting)

Principal Representatives of the Main Participants

Keith Lindblom QC	British Airports Authority and Stansted Airport Limited (BAA)
Thomas Hill of Counsel	Uttlesford District Council, Essex County Council, Hertfordshire County Council, East Herts District Council (The Councils)
Brian Ross	Stop Stansted Expansion (SSE)
Peter Fitzpatrick	Stansted Airlines Consultative Committee (SACC)
David Blundell of Counsel	Highways Agency (HA)
Alan Cook	Robert Brett and Sons
Keith Turner	National Trust
Hannah Quarterman	Land Securities
Craig Howell Williams of Counsel	Legal & General Insurance Society Ltd (L&G)
Stephen Whale of Counsel	Civil Aviation Authority (CAA)
Judith Damerell	Transport for London (TfL)
Graham Wrigglesworth	English Heritage

Purpose of the Meeting

The Inspector reminded everyone that the purpose of the meeting was to seek the views of those who would be major participants at the forthcoming inquiry,

and other participants, on the programming of the inquiry. It was not to discuss the merits of the G2 proposals. He understood that there were strong views on the proposals and he had seen the demonstration outside the venue. Those present should be in no doubt that they would be given the opportunity to express their views at the inquiry and that he would work to ensure that the inquiry would be full and fair. Views expressed at the current meeting on the inquiry programme and timetable would be reported to the Secretary of State who would make the final decisions on it.

An agenda for the meeting had been circulated, together with a preliminary schedule of topics to be considered at the inquiry, accompanying notes and a note on pending announcements.

2. Topics and Appearances

The Inspector's preliminary schedule of topics was used as the basis for discussion.

There was general agreement that *Ground Contamination* was not an issue on which any main party would wish to call evidence. Accordingly, it could be removed from the topic list.

It was agreed that *Planning Policy* should be renamed *Policy Context* and that *Historic Environment* should be renamed *Cultural Heritage*.

The Inspector clarified that he envisaged *Local Roads and Rights of Way* would deal with matters concerning those local roads and rights of way that it was proposed to close or alter as a result of the airport expansion (as opposed to those affected by the proposed new junctions on the M11 and A120 which would be considered under *Surface Access*).

Climate change was listed as a sub-topic under *Sustainability*. SSE wanted to make this a separate topic in its own right. BAA resisted this. The Inspector indicated that, in his view, climate change should remain as a sub-topic under *Sustainability*, but advised that doing so would not preclude SSE and others calling specialist witnesses on the matter, if they wished. He reminded the parties that when preparing their cases on climate change they should bear in mind that his remit was to consider the Stansted G2 proposal; the inquiry was not the appropriate forum in which to debate wider Government policy on the matter.

Alternative Proposals

The Inspector noted that SACC and L&G were both putting forward an alternative layout with the new runway not as widely spaced as that proposed by BAA. This, they argued, would reduce costs, reduce the environmental impacts and reduce the area of land to be compulsorily acquired. The Councils confirmed they were not promoting an alternative as such, but their position was similar in that they were arguing that a second runway could be achieved with less impact. SSE saw their position as advocating a 'do very little' alternative. The Inspector indicated that (contrary to L&G's suggestion in their letter sent shortly before the meeting) he saw it as important that any alternatives that were to be promoted by objectors to the proposals were fully disclosed early in the inquiry programme (i.e. within *The Proposals*). He further noted that, on the information now available, the alternatives being promoted by SACC and L&G appeared similar. He therefore urged them to get together and present, if possible, a single joint alternative.

As to L&G's case, the Inspector noted that they were proposing to call some six witnesses, but nonetheless wished their case to be dealt with as a discrete entity in the CPO topic. He appreciated their position and understood that they did not want their witnesses to appear more than once. Notwithstanding this, it was now apparent that many of L&G's intended witnesses were specialists and, in his view, it would be more efficient if their evidence was heard in the appropriate topic sessions when other witnesses bringing evidence on the same topic would be present. L&G agreed to reconsider their position and write suggesting a way forward that would not be prejudicial to the company's case or the efficient running of the inquiry.

The Inspector noted that L&G and others had made helpful suggestions as to the definition of sub-topics to provide clarity. Whilst time would not permit consideration of these at the meeting, he reassured the parties that they would be considered by the Inspector team and taken on board in due course.

3. Risk Factors that could Affect the Inquiry Programme

Announcements had been made in the previous week about a third runway for Heathrow. The DfT's revised air passenger forecasts had also been published.

The HA indicated that an announcement from¹ the DfT on capacity enhancements of both the M11 and the West Anglia Main Line (WAML) was expected within the next few weeks, but that the precise timing would be in the hands of Ministers.

BAA indicated that the Competition Commission's final decision on its BAA Airports Market Investigation was expected by mid March, though it could be sooner. Any decision could be appealed to the Competition Appeal Tribunal. Given that the Commission was clearly keen to ensure that nothing it did should disturb the G2 inquiry process, they saw no reason to delay the inquiry start pending publication of the Commission's final report.

SACC disagreed, maintaining that, if the Commission's decision was that there should be divestment of Stansted, this would be bound to affect the inquiry process. A new owner may not wish to pursue BAA's proposals and it would be sensible to defer the start of the inquiry pending the Commission's decision. The Councils and SACC² were concerned about the potential abortive inquiry costs that might be incurred should a new owner not view the G2 proposals as meeting its requirements. SSE took the view that it was now a question of how and when, rather than whether, divestment would take place; whilst the Commission would not want to make a decision that could delay the provision of additional capacity, it was not expressing a particular preference for the G2 proposals. In SSE's view it would be much more sensible to 'let the dust settle' and postpone the start of the inquiry to September, by which time the position of any new owner should be clear.

A challenge by SSE to the decision on Stansted G1 was scheduled to be heard in the High Court on 23 February. BAA reminded the parties that this was a legal challenge, not an appeal on the merits and that, if the challenge was successful, the decision on G1 would be retaken. Whilst there were inter-relationships between G1 and G2, the forthcoming inquiry was into the effects of G2; there was no reason why the inquiry should not carry on if the G1 decision were

¹ Revised 23 February 2009

² Revised 23 February 2009

quashed. The implications for the G2 inquiry were not as far-reaching as SSE was suggesting.

BAA indicated that, following the release of the DfT's forecasts, it would be updating its own air passenger forecasts. The results should be issued within a fortnight or so. They were not expected to weaken the medium to long-term case for a second runway.

4. Running Order and Time Estimates

The Inspector indicated his wish to consider a running order based on the topic approach agreed at the PIM and, initially, on the basis that there would be no concurrency of inquiry sessions (concurrency being considered below). He wanted the inquiry to proceed efficiently and fairly and, as far as possible, in a logical sequence that avoided the risk of repetition. Notwithstanding this he recognised that, where topics were dependent on announcements that had yet to be made, or forecasts that had yet to be generated, the order set down in the preliminary schedule circulated in advance of the meeting would have to be modified in order to reduce the risk of adjournments or the need for late alterations to the programme.

Discussion followed. The consensus was that:

- *Forecasting and Need* should be split from *Proposals* and taken as a separate topic, later in the programme.
- *Proposals* (including *Alternatives*) should follow *Policy Context* and be immediately followed by the land-based topics (as these are not dependent on the forecasts) – i.e. *Landscape and Visual Impact*, *Nature Conservation*, *Cultural Heritage*, *Agriculture* and *Water Supply and Drainage* (N.B. *Landscape and Visual Impact* to precede *Nature Conservation*).
- That *Forecasting and Need* should come next, followed by those topics dependent on the forecasting data – i.e. *Economics*, *Air Safety and Airspace*, *Noise*, *Air Quality* and *Surface Access*.
- That *Surface Access* should be considered towards the end of the programme, immediately followed by *Local Roads and Rights of Way*.

Following agreement on the running order, the discussion turned to the inquiry sitting time required to consider each topic. Consensus estimates were as follows:

<i>Topic</i>	<i>Time estimate</i>
Opening statements	1 – 2 days
Policy Context	1-2 weeks
Proposals (including Alternatives)	5 weeks
Landscape and Visual Impact	1-2 weeks
Nature Conservation	1-2 weeks
Cultural Heritage (including historic landscape)	2-3 weeks
Agriculture, Water Supply and Drainage, Energy and Waste	1-2 weeks
Forecasting and Need	1½-3 weeks
Economics (including Employment)	2-5 weeks
Air Safety and Airspace	1 week

Noise	2 -2½ weeks
Air Quality	1½ weeks
Surface Access	5- 6 weeks
Local Roads and Rights of Way	1 week
Health and Community	2 weeks
Sustainability (including Climate Change)	1-2 weeks
CPOs and CROs	1-3 weeks
Conditions/obligations	1-2 weeks
Part 2 participants and members of the public	2-3 weeks
Closing statements	2 weeks

Total c.35 - 50 weeks

The above estimates translate to around 140 – 200 inquiry sitting days, based on a four day sitting week. BAA hoped that the lower timescale estimate could be achieved based on dialogue continuing and agreement on various matters being achieved. The Councils and SSE considered the top end of the timescale to be more realistic, although SSE felt that the inquiry length could possibly be shortened if the start date was set back to September.

5. Concurrent Sessions

The Inspector reminded everyone that, in the interests of efficient inquiry-holding, the Major Infrastructure Project Inquiry Procedure (MIPs) Rules provide for concurrent sessions to be held. Notwithstanding this he recognised that concurrent sessions would present difficulties for some parties. That this was so had been made very clear at the PIM and in the subsequent letters he had been sent. Amongst concerns that had been expressed were that some parties would wish to give evidence on most topics, do not have unlimited resources and would not be able to be in two places at once, and the Inspector would not be able to hear all the evidence at first hand.

Given the expected length of the inquiry he nonetheless needed to consider the potential for holding concurrent sessions of the inquiry. The inquiry timetable was a matter which the Secretary of State would decide, but he needed to explore the matter of concurrent sessions fully, in order to be able to properly report to her on the matter. Accordingly, he invited the parties to consider carefully if, given the programming constraints that had been identified, there was any opportunity within the programme for topics to be considered concurrently in inquiry sessions held by different members of the Inspector team.

Discussion followed and a number of possibilities for concurrent sessions were discussed. The consensus view was that, given the circumstances of this particular inquiry, holding concurrent sessions would not provide any meaningful programme advantage, if fairness was to be preserved. This is particularly so if the inquiry starts in April as currently planned. Possibilities for concurrent sessions considered included:

Whether sessions dealing with ‘physical’ impacts of the proposals (e.g. *Landscape and Visual and Nature Conservation*) could be held concurrently with those dealing with ‘operational’ matters (e.g. *Noise and Air Quality*). This was discounted as the physical (land based) topics are now all programmed in the early part of the inquiry; but operational effects generally depend on (and therefore follow) *Forecasting and Need* (which it had been agreed should be deferred to later in the inquiry programme - see above).

Accordingly, there is no prospect of holding these sessions concurrently (assuming that the start date of the inquiry is not deferred).

Whether *Surface Access* could be concurrent with another topic. This was resisted as impractical as the data underpinning the traffic and other forecasts depend on the high level forecasting data (see above) and announcements on the M11 and WAML which had yet to be made. The topic therefore necessarily has to be programmed towards the end of the inquiry. Running it concurrently with one of the later operational topics would not be practical given (i) its importance and the widespread interest in the topic, and (ii) the overlap with material to be considered under other topics (e.g. *Noise* and *Air Quality*).

Whether *Cultural Heritage* could be run concurrently with another topic. This was rejected as, having regard to the agreed running order, a significant benefit would only accrue if *Cultural Heritage* were paired with one of the physical topics to be considered before the summer break. However, overlaps between the topics would preclude this (e.g. overlaps between historic landscape (in *Cultural Heritage*) and the more general landscape considerations (in *Landscape and Visual*) and ancient trees and woodland (in *Nature Conservation*).

Whether *CPOs and CROs* could be considered concurrently with another topic. Whilst in theory it was agreed that this would be possible, any time advantage gained thereby would be very modest, particularly if, as BAA anticipated, many outstanding objections to the CPOs and CROs were settled and withdrawn in advance of the inquiry hearing the topic. Care would also have to be taken if *CPOs* were considered concurrently to ensure that objectors to CPOs that were calling evidence on other matters (e.g. L&G – see above) were not precluded from doing so by clashes in the programme.

The outcome of the discussion was that there were no positive suggestions from any party as to feasibly running topics concurrently. The Councils felt that, for a development project of the size and complexity of G2, 18 months was a perfectly reasonable inquiry duration. SSE believed that efficiency was not the same thing as speed.

6. Other Measures that might Reduce the Inquiry Duration

The Inspector floated two further possibilities of ways in which the inquiry duration might be reduced:

Flexible Inquiry Blocks

Rather than having topic blocks with fixed start dates (as agreed at the PIM), this would involve simply agreeing the order of topics and proceeding to the next topic immediately the preceding topic finished. In this way any gaps in the programme that opened up because a particular topic took less time than anticipated would be avoided.

There was no support for this approach, the consensus view being that fixed topic blocks allowed witnesses to know well in advance when they would be needed, imposed timetabling discipline, and allowed the public to know when particular matters were to be considered. If some topics did finish early, then any 'spare' inquiry time could usefully be filled by bringing forward and hearing 'Part 2' participants; or, if later in the inquiry, by holding sessions on conditions and obligations.

Round-Table Sessions

The Inspector further suggested that for some topics a hybrid inquiry format might be adopted with examination-in-chief followed by a more inquisitorial round-table session led by the Inspectors. If required, cross-examination would be permitted thereafter. This possibility was generally not viewed favourably, with several parties taking the view that such a procedure would not be likely to save inquiry time. Notwithstanding this, it was agreed that a proactive approach on the part of the Inspectors with advance notice of what matters in each topic were of particular concern to them would help focus questioning. The Inspector confirmed that such an approach matched his intentions.

7. Other Programming Matters

Conditions and Obligations

The Inspector urged that relevant conditions and obligations should be flagged up early (without prejudice) and that discussion of conditions should permeate the inquiry. In his experience conditions, particularly those of a technical nature such as those concerning noise, were best dealt with initially in the relevant topic sessions when the expert witnesses were present. In that way the round-table conditions sessions towards the close of the inquiry would be shorter and could focus on consistency of drafting and the like.

SSE indicated that, following the procedure adopted at the G1 inquiry, SSE would probably choose initially to reserve its position as to whether it would wish to comment on conditions on a without prejudice basis. BAA was content to accept this stance but hoped that there would be timely comment and suggestions when necessary.

Interim Closing Submissions

The Inspector strongly urged the main participants to produce interim closing submissions which would be helpful to the Inspector team in summarising positions and bringing topics to a conclusion. There was a consensus view that preparation time for these would be needed.

Venue

The Inspector indicated that the likely inquiry venue would be Endeavour House, but this still had not been finally confirmed.

Local Inquiry Sessions

For those people wishing to speak at the inquiry, but who are not taking a major part, the Inspector indicated that it was intended to hold some local inquiry sessions and/or evening sessions for those who would find it difficult to come to the main venue during the normal inquiry hours. The IM was aware of two or three village halls that could be available. The IM was the point of contact for those who may wish to register an interest in speaking.

Proofs

The Inspector indicated that proofs of evidence for the following topics were required by 10 March 2009:

Policy Context

Proposals (excluding Need and Forecasting)

Landscape and Visual Interest
Nature Conservation
Cultural Heritage
Agriculture, Water Supply and Drainage, Energy and Waste

As to the proofs for other topics, it would plainly not be prudent to submit these on March 10, given the position on *Forecasting*. A programme would be fixed in due course, after the inquiry opened, but for planning purposes it should be assumed that proofs for the remaining topics would be required on a rolling programme about six weeks before the relevant topic is programmed to commence. Dates for submission of statements of common ground, supplementary and rebuttal proofs would move in tandem with the dates set for submission of proofs.

Inquiry Start Date

As noted above, both SSE and SACC suggested a postponement of the start of the inquiry. SSE were concerned that the inquiry could be derailed part way through (e.g. by fallout from the Competition Commission's decision); this would be avoided if the start date were put back to, say, September. A later start date could also allow the inquiry to be shortened as there would be fewer uncertainties and matters of conjecture; for example, adequate time would be available to properly consider the revised passenger forecasts and the implications of the other pending announcements. Postponing the start date would also avoid SSE having to prepare for the inquiry at the same time as preparing for the G1 challenge.

The Councils advised that they would be content to accept a postponement should the Secretary of State agree to the request.

In reply, BAA reminded everyone that the outcome of the Competition Commission's process was speculative. If divestment was the result, what this would mean is that the ownership of shares in STAL would change. There was no indication that the proposals would change. The inquiry date had been fixed in August 2008 and BAA had a statutory entitlement to a fair and timely resolution of its application. If the inquiry timetable was organised to allow the absorption of new evidence (as agreed above) there would be no unfairness to the parties. The challenge to G1 and preparation for G2 were two different work streams, the former being the province of lawyers; it was not correct to say that SSE was now being put in a position of not being able to cope. In an inquiry of this nature uncertainties would always exist and it would not be reasonable to delay its start for them all to be resolved.

Legal Submissions

SSE asked when the Inspector would want to hear legal submissions on matters such as the prematurity of the inquiry and inadequacy of the environmental statement, as set out in their Statement of Case. The Inspector stated that, if they were to be made, now was the time; if submissions were contemplated which aimed to derail the inquiry process, SSE should make these submissions in writing as soon as possible and in any event well before the start of the inquiry.

Request for Additional Information

The Inspector noted that he had recently received several copy letters in which BAA and others were seeking additional information. Responses would necessarily vary but he reminded everyone that, where the information sought

was available, it should be promptly disclosed. He strongly urged everybody to participate fully in the Topic Working Group meetings and not to cancel or postpone them unnecessarily. In the face of criticism from SSE and Roger Mance about what was seen as the use of incorrect flightpath information by BAA, and concerns about its lack of cooperation, BAA gave an assurance that it was extremely keen to see the Topic Working Group process succeed.

The Inspector noted that it had been suggested that the Inspectors should themselves attend Topic Working Groups to facilitate progress. This would not be possible, however, as it was critical in the interests of openness and fairness that the Inspector team did not hear evidence outside the formal inquiry sessions where everyone present could hear what was said and respond if necessary. He was also aware that Topic Working Groups often needed to consider matters on a without prejudice basis.

Notwithstanding this, if the parties felt that a particular Topic Working Group needed an independent person present to function correctly, he thought it might be possible to arrange for another Inspector to be brought in. This Inspector would act independently of the inquiry team and would have no subsequent involvement in the inquiry. Alternatively, one of the inquiry Inspectors (probably the deputy) might chair an umbrella group supervising the Topic Working Groups, along the lines adopted at the Dibden Bay container terminal inquiry.

BAA indicated that they would welcome some formal supervision of Topic Working Groups and that it would write to suggest how this might be achieved.

Technical Supporters and Assessors

The Inspector asked BAA to explain their proposal in their response to the agenda regarding the use of technical supporters for certain witnesses. BAA advised that it was envisaged that these might be experts who could sit beside witnesses to provide assistance, for example, in modelling work for topics such as *Noise* or *Economics*. It would not be the intention that the technical supporters themselves would give evidence, nor would it be the intention that their role would usurp or compromise the witness providing evidence. The Councils indicated that they had not come across this idea, could see some potential awkwardness in the approach, and viewed the concept with some trepidation. SSE could see merit in this idea for one or two topic areas, such as *Noise*, but felt that any technical supporter should be open to cross-examination. The Inspector expressed an element of sympathy for the concept but stated that if technical supporters were to be contemplated then a firm protocol must be established. The parties agreed to give the matter further thought.

SSE asked the Inspector to consider whether technical assessors should be appointed to assist the Inspector team with their consideration and understanding of the *Noise* and *Economics* evidence.

Transcripts

Written responses in advance of the meeting had indicated considerable support for having daily transcripts of inquiry proceedings. Whilst there had thus far been a lack of commitment to contributing to the cost of their provision, many of the principal participants at the meeting indicated their willingness to make fair and reasonable contributions. SSE indicated their willingness to contribute, commensurate with their ability to pay. The IM would organise quotations and apportionment of costs.

8. Open Floor

The Inspector provided the opportunity for members of the public and other participants to make comments on programming matters.

Ms Maggie Sutton (individual and SSE member)

Ms Sutton reiterated the SSE stance that postponement of the start of the inquiry should be considered to avoid having to put local people through more uncertainty should a new owner of Stansted decide not to pursue the G2 proposals.

Mr Jonathan Fox (individual and SSE member)

Mr Fox echoed the above point; the G2 proposals would have a fundamental impact for the local community and the country as a whole. Whilst accepting that planning permission runs with the land, this wouldn't necessarily mean that a new owner of Stansted would wish to pursue the G2 proposals. It would be sensible to postpone the inquiry until there was clarity as to the divestment of Stansted.

Mr Roger Mance (individual and SSE member)

Mr Mance reiterated his written concerns about what he saw as BAA's inadequate response to his belief that it had used unsafe and non-viable flightpath data. The public had not had the correct information which was necessary to enable them to decide whether to object to the proposals. BAA confirmed that they were producing new information. A view would then be taken as to what publicity was required in order to give everyone an appropriate and fair opportunity to comment upon it.

Ms Frances Winder (Woodland Trust)

The Woodland Trust expressed concern that they appeared to have been blocked from joining the Nature Conservation Topic Working Group. BAA stated that if there was a genuine desire to take part constructively the Trust should be invited.

Mr Stephen Bolter (Braintree and Witham Constituencies Liberal Democrats)

In response to a question, the Inspector indicated that if technical evidence was to be provided on matters such as noise and air quality, this should be within the context of the specific topics.

9. Inspector's Closing Remarks

The Inspector brought the lengthy meeting to a close by thanking everyone for their attendance and helpful contributions. He indicated that he expected to write to the Secretary of State reporting the views of the parties and setting out his recommendations on the inquiry programme. He anticipated doing this around the end of January. His report would also cover the requests to delay the inquiry start date. Under the MIPs Rules the Secretary of State had to approve a timetable no later than 4 weeks before the start of the inquiry.

Andrew M Phillipson
Inspector
28 January 2009