



Gatwick Airport Northern Runway Project

Appendix H: Response to CAGNE's Deadline 4
Submission – Issue Specific Hearing 6 Post-Hearing
Submission

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1 Response to CAGNE's Deadline 4 Submission – Issue Specific Hearing 6 Post-Hearing Submission

- 1.1.1 In the introduction to their Deadline 4 Submission - Issue Specific Hearing 6 Post-Hearing submission [[REP4-093](#)], CAGNE raise concerns relating to the extent of information that has been provided to enable an assessment of the carbon emissions from the project against the policy test in paragraph 5.82 of the ANPS. They align their position with the AEF in this respect. The Applicant has already responded to the AEF representations at **The Applicant's Response to Written Representations** [[REP 3-072](#)] and does not repeat these here. As for the policy test in paragraph 5.82, it has explained why the project would not be so significant that it would have a material impact on the ability of Government to meet its carbon reduction targets, including carbon budgets. To assist in reaching the judgment that this policy requires, it has properly assessed emissions having regard to the IEMA guidance, which describe how a judgment on significance in EIA terms can be reached having regard to the contextualisation of emissions against the national budget along with other potential contextualisation sources which have been applied appropriately to the different forms of carbon emissions that fall for assessment. The Applicant notes that the policy test applies to the government meeting its carbon reduction targets, including carbon budgets, and considers that this applies to the net zero target and related carbon budgets, not to other trajectories or in-sector targets – although these may be taken into account, as the Applicant has done, in order to reach a contextualised judgment on the significance of the emissions that would be created by the project. The emissions generated by the project are in any event consistent with the Jet Zero strategy (see further below). The Applicant also notes that CAGNE accept the difference between the project and baseline emissions as relevant to the application of the policy test. As the Applicant has submitted, this is consistent with policy which specifically applies to the “increase in carbon emissions resulting from the project”.
- 1.1.2 In relation to the policy approach, the Applicant has acknowledged (paragraph 3.18 of the Applicant's **Written Summary of Oral Submissions ISH6: Climate Change (including Greenhouse Gases)** [[REP 4-032](#)]) that not all of MBU is intended to be policy – the policy itself is clearly headed as such (see the heading above the section beginning with paragraph 1.25) and distinguished as policy, and it is clear from the structure and headings of the document that parts are explanatory and not policy. However there is nothing to suggest that these other parts of MBU are irrelevant or that any distinction is to be drawn between

different parts of the MBU in a manner which has any particular material bearing on the determination of the application. As for Jet Zero, the Applicant has never stated that Jet Zero amounts to policy support specifically for the project, but does say that its modelling shows an understanding by government of general airport capacity which it regards as consistent with its policies and consistent with the delivery of its net zero commitments (Paragraph 3.1.15 of the Applicant's **Written Summary of Oral Submissions ISH6: Climate Change (including Greenhouse Gases)** [[REP 4-032](#)]). As the Applicant has explained, the Jet Zero Modelling Framework March 2022 included the NRP in its modelling assumptions and set out at paragraph 3.18:

“In June 2018, the government set out its policy support for airports to make best use of their existing runways in Beyond the Horizon: The future of UK aviation: making best use of existing runways (“MBU”) and a new runway at Heathrow Airport in the Airports National Policy Statement: new runway capacity and infrastructure at airports in the South East of England (ANPS), subject to related economic and environmental considerations. In common with the Jet Zero Consultation the capacity assumptions in our modelling reflect and are aligned with these policies.”

1.1.3 The Applicant does not consider that the naming of Jet Zero as strategy to achieve net zero in the aviation sector should have any bearing on its relevance or weight. Whilst named as a strategy, it plainly sets out a commitment to the UK aviation sector reaching net zero by 2050 along with a series of principles and policy measures (within which there are set out five-year delivery plan policies) to achieve that overall commitment. Within the strategy the five-year delivery plan is explained by reference to a series of policy commitments. As the JZS explains, it commits the government to monitoring progress against a trajectory which is consistent with Net Zero, to developing initiatives and interventions to secure that trajectory and to intervention with further measures if that trajectory is not being met. The publication JS one year on evidences that determination and also ensures that the strategy is being kept up to date. The Applicant does not understand how it could be suggested that “very little to no weight” can be placed on these clearest statements of the Government’s committed strategy. The ExA and the Secretary of State can accord substantial weight to these commitments, contrary to CAGNE’s suggestions to the contrary that are addressed below.

1.1.4 CAGNE wrongly rely on the Stephenson case to claim that little to no weight can be placed on Jet Zero. That case concerned a challenge to the introduction of

new policy in the NPPF (paragraph 209a which stated that decision-makers should recognise the benefits of on-shore oil and gas development, including unconventional hydrocarbons) on the grounds that the consultation exercise leading up to the publication of the new policy had not properly taken into account scientific evidence relating primarily to updated methods of assessing carbon emissions resulting from fracking. The judgment went on (see [71]-[73]) to refer to the new policy in the context of other policy “pulling in different directions” in particular what was then paragraph 148-9 of the NPPF, which referred to planning contributing to radical reductions in carbon emissions. The judgment was doing no more than anticipating that decisions would need to resolve that tension in policy and that evidence on the extent of emissions that would arise from proposed shale gas extraction could be taken into account in doing so. There is nothing in the judgment to suggest that decisions on individual projects are the appropriate forum to consider evidence which is directed at the merits of the policy itself or at changes which are alleged to be necessary to that policy.

- 1.1.5 In so far as CAGNE rely on the AEF evidence, AEF itself accepts that it is not the role of the Planning Inspectorate to change or to challenge Government policy (paragraph 3.1 of the **AEF Written Representation** [\[REP 1-114\]](#)); and claims relating to the weight to be given to policy should not circumvent that principle, which has been confirmed recently in the NNNPS (paragraph 5.38). The submission amounts to general claims there are uncertainties in the delivery of policy measures set out in Jet Zero, such as the reliance on SAF. This amounts to an attempt to direct or subvert policy, which is a matter more properly considered by government; but in any event it should not alter the weight to be given to Jet Zero, which not only maintains the government commitment to net zero but acknowledges the need for monitoring and review of its measures to achieve decarbonisation, within the wider legal duty that AEF accept is ultimately the responsibility of the government (paragraph 4.3 of the **AEF Written Representation** [\[REP 1-114\]](#)). Jet Zero already acknowledges the uncertainties and challenges in the delivery of the High Ambition Scenario and related policy measures, which is why it commits to a range of initiatives in parallel (“A clear goal, with multiple solutions” – page 13) and provides for close monitoring and regular reviews accordingly, in order that the measures can be adjusted as necessary to ensure the commitment to net zero will be achieved. There is no proper basis then for the claim that reduced weight should be accorded to Jet Zero, which sits within wider legal obligations to meet net zero which government has to discharge.

- 1.1.6 Similarly CAGNE read too much into the Carbon Budget Delivery Plan (CBDP) judgment, which was fact specific to that case and does not affect the examination of this Project's application. Three of the grounds of challenge were dealt with together as there was a significant overlap between them. The arguments before the Court related to the way in which risk material specific to the delivery of individual proposals/policies in the context of the achievement of the carbon budgets the 2050 net zero target was presented to and interpreted by the SoS, and the extent to which it was sufficient for him to take a lawful decision specifically under the section 13 duty. The SoS had acted on the understanding that not all of the policies and proposals listed would be delivered in full; however, this was not held to be a reasonable interpretation of the advice that was put forward to him. On the basis that he had made his decision on a mistaken assumption, the decision was unlawful as it was made based on a misunderstanding of the true position (paragraphs 119-127). The Court went on to find that in the context of the section 13 duty, further information was required as part of the submission to the SoS in order to allow him to judge whether proposals would miss their targets or by how much. In reaching these findings, the focus of the judgment was on the decision-making process pursuant to the duty on the SoS under section 13, not on the merits or efficacy of individual policy commitments themselves. In the context of aviation, nothing in the judgment can be taken to undermine the Jet Zero commitment for the sector to play its part in achieving net zero, or the acknowledgement within the strategy that government will carry out monitoring and review of its overall strategic approach to decarbonising aviation in line with the latest technological developments, evidence of progress against the emissions reduction trajectory, and performance indicators for each policy measure every five years (p 59). This was not the subject or focus of the litigation or judgment, and it is inaccurate to suggest otherwise.
- 1.1.7 As for the final basis on which CAGNE rely on the judgment, this relates to a finding on the interpretation of section 13(3) of the 2008 Act - the requirement that proposals and policies in a CBDP must be such as to contribute to sustainable development. It was held that whereas this connotes a degree of certainty that an outcome will eventuate, a judgment that the CBDP was "likely" to achieve this objective was not sufficient. This finding again related to the specific discharge of the section 13 duty which does not arise in this case and the difference between a judgment of "likely" and "must" in that statutory context should not have any bearing on the decision in the present case.
- 1.1.8 For these reasons, the suggestion that little or no weight can be given to Jet Zero as a result of the judgment is misplaced. The SoS is entitled to rely upon his

policies and strategies designed to assist with the decarbonisation of the aviation sector to help achieve its binding carbon reduction targets, including the carbon budgets. If anything, the CBDP judgment, rather than undermining government policy to achieve net zero, confirmed that it is for government to make the difficult evaluative and predictive judgments that arise in this field (see paragraph 141). It also reinforces how the SoS is under a continuing obligation to prepare proposals and policies which will enable the UK to meet its net zero duty under the 2008 Act, and the confidence that can be placed in the SoS being held to judicial scrutiny and enforcement in circumstances where he fails in his duties. This is confirmed by the outcome of the judgment which requires the SoS to submit a further report to Parliament within a year which addresses the specific issues that arose in that case.

- 1.1.9 Turning to IEMA guidance and “local budgets”, the Applicant does not need to rely on the Bristol Airport case alone to suggest that contextualisation against local carbon budgets should not be undertaken in this case, but in any event the suggestion that the existence of the previous iteration of the IEMA guidance somehow distinguishes the finding in that case is misplaced.
- 1.1.10 The fundamental finding in the judgment was to reject the submission that the Panel had improperly given no weight to a local carbon budget for the Council area; and in so doing had ignored the IEMA guidance at the time. The Court held that the Panel did not act irrationally in giving the issue of local carbon budgets no weight, on the ground that such budgets had no basis either in law or in policy (paragraph 171). This judgment was reached in the light of a full recognition of practitioners’ IEMA guidance and does not depend on examining the relationship between different versions of that guidance.
- 1.1.11 In any event, there is no proper basis for relying on differences in the previous and current versions of the guidance to distinguish the judgment. The earlier version stated that this could be “compared against an existing budget (global, national, sectoral, regional, or local - as available), to identify the percentage impact the project will contribute to climate change. Consequently, the greater the project’s carbon budget, the greater its significance” (paragraph 165 of the judgment). It recognised that “it is down to the practitioner’s professional judgment on how best to contextualise a project’s GHG impact” (paragraph 164). The latest version of the guidance states under section 6.4 that “It is down to the practitioner’s professional judgement on how best to contextualise a project’s GHG impact”; and although it goes on to give examples of local budgets and policies, it recognises that “effects of GHG emissions are not geographically circumscribed, so a geographic budget (below a national budget...) is not very

meaningful”. There is no difference between the two which lends greater support for a geographically based approach – if anything the latest guidance goes further in highlighting the difficulties with such an approach - and the guidance still confirms that this is ultimately a matter of judgment for the practitioner in any individual case. This guidance on its own provides a legitimate basis for not adopting a local contextualisation.

- 1.1.12 Beyond the Bristol case, the reference to the Goesa case, as relied on by CAGNE, in fact states “that ‘there is nothing unlawful in the decision maker using benchmarks he considers to be appropriate in order to help arrive at a judgment on those issues. The statutory carbon budgets are one example...’. At paragraph 123 [of Goesa], Holgate J concluded that, given current policy and law, “it is permissible for a planning authority to look at the scale of GHG emissions relative to a national target and to reach a judgment, which may inevitably be of a generalised nature, about the likelihood of the proposal harming the achievement of that target” (see the Bristol Airport judgment, paragraph 115, emphasis added).
- 1.1.13 In relation to the exclusion of inbound flights, the Applicant has explained its position (see most recently at Action Point 12 of **The Applicant’s Response to Actions ISH6: Climate Change (including Greenhouse Gases)** [\[REP4-036\]](#)). The Applicant has responded previously on the rationale for the inclusion of outward flights only within the GHG assessment also within **The Applicant’s Response to Actions ISH6: Climate Change (including Greenhouse Gases)** [\[REP4-036\]](#) (Action 12). It remains the position of the Applicant that this is appropriate to reflect the contribution of the Project on the ability of the UK to meet its carbon commitments, including carbon budgets. There the Applicant also explained: “While it would be technically feasible to estimate emissions from inbound international flights these would not provide a meaningful quantification for comparison and contextualisation; the relevant contextualisation metrics from the UK carbon budgets; the ANPS; the NNNPS; and the Jet Zero Strategy do not include emissions from inbound international flights. Contextualising against global emissions would not be meaningful”. The only context could be to express such emissions against the scale of global emissions and the outcome would be infinitesimal.
- 1.1.14 The Applicant notes that in the Ashchurch case, it was held that a local planning authority had erred in granting permission for a bridge with no connection to the wider road network, by considering the benefits of the wider development it was intended to facilitate, but not the adverse effects, as far it was possible to do so ([2023] EWCA Civ 101 at [64]). That unusual case was decided on its own facts;

as the Court of Appeal accepted in the Finch case (see [2022] EWCA Civ 187 at [92]), there is nothing that is necessarily incompatible between taking into account general economic benefits in favour of a proposal (in that case the need for hydrocarbons) and excluding from assessment downstream greenhouse gas emissions (in that case from the burning of refined oil products). There is nothing inconsistent in a decision-maker taking into account the former but not requiring the environmental statement to include an assessment of impacts which the decision-maker properly judges to lie beyond the proper scope of environmental assessment (there the emissions resulting from the refinement process). In this case, this issue has arisen in the context of inbound flights. As the Applicant has explained its approach to assessing emissions relating to inbound flights, in particular international flights. As explained above, these emissions have not in fact been disregarded, but they cannot be reliably contextualised as part of the wider consideration of the significance of aviation emissions. There is no inconsistency between this approach to assessing greenhouse gas emissions and recognising how national policy refers to the potential for increased connectivity to generate tourism benefits. Reliance by CAGNE on the Ashchurch case in relation to this project is therefore misplaced.

- 1.1.15 As for non-CO2 impacts, there is no reason for the Secretary of State to take a different approach to non-CO2 impacts as he was held to have lawfully taken in the Bristol Airport case. In that case, the Court rejected the claimant's submission that the relevant EIA had improperly failed to assess non-CO2 effects. Underlying that submission was reliance on a BEIS multiplier for assessing such effects. The Court held however that there is very far from being any scientific consensus that this was a relevant tool in determining non-CO2 emissions from aviation, other than in the context of company reporting; and the Panel was entitled as a matter of judgment not to apply it due to this uncertainty (paragraphs 202, 206). It also held that the EIA was not defective because whilst it acknowledged that non-CO2 effects may well have a climate impact, it had noted (as the Panel subsequently accepted) that the state of scientific knowledge of non-CO2 effects was too uncertain for accurate measurement at this stage. This approach was consistent with the EIA Regulations which also acknowledge there may be limits on current knowledge and methods of assessment.
- 1.1.16 These principles remain applicable to this case, for reasons explained under Action Point 14 in **The Applicant's Response to Actions ISH6: Climate Change (including Greenhouse Gases)** [[REP 4-036](#)], which referred to paragraphs 16.4.12-14 of **ES Chapter 16: Greenhouse Gases** [[APP-041](#)]. The lack of consensus and accuracy relating to the potential measurement on non-CO2 emissions persists and has more recently been recognised by government

in JZ, which acknowledges that the uncertainties are real and that more research is necessary in this field. There is no sound reason for the Secretary of State to take a different view to the one regarded as lawful in the Bristol Airport case.

- 1.1.17 In relation to Green Controlled Growth, the suggestion by CAGNE that Gatwick should be the subject of annual emissions caps raises similar issues of approach to those discussed at ISH2 and ISH6 which have been addressed further in **Appendix B: Response to the JLAs' Environmentally Managed Growth Framework Proposition** (Doc Ref. 10.38).