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# **CPO Report to the Secretary of State for Transport**

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**Inspectors appointed by the Secretary of State**

**Date: 12 May 2022**

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**AIRPORTS ACT 1986**

**ACQUISITION OF LAND ACT 1981**

**APPLICATION FOR CONFIRMATION OF  
THE BRISTOL AIRPORT LIMITED  
(LAND AT A38 AND DOWNSIDE ROAD)  
COMPULSORY PURCHASE ORDER 2020**

Inquiry Held on 20 July & 12 October 2021

Site Inspections carried out on 22 July, 25-26 August & 13 October 2021

Land at A38 and Downside Road

File Ref: DPI/BRISTOLAIRPORTCPO

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## GLOSSARY/ABBREVIATIONS

APF	Aviation Policy Framework (March 2013)
A1P1	Article 1 Protocol 1
BA	Bristol Airport
BAL	Bristol Airport Limited
CEMP	Construction Environmental Management Plan
CPO	Compulsory Purchase Order
CPO Guidance	Guidance on Compulsory Purchase process and The Crichel Down Rules (July 2019) Ministry of Housing, Communities and Local Government
CS	North Somerset Core Strategy (adopted January 2017)
Development	The proposed development underpinning the CPO
DMP	Sites and Policies Plan Part 1: Development Management Policies (adopted July 2017)
EIA	Environmental Impact Assessment
EU	European Union
Hawthorne Leisure	Hawthorne Leisure (Mantle) Limited
Highways Works	Highway works at the A38 and Downside Road
HRA	Human Rights Act
IATA	International Air Transport Association
MBU	Beyond the Horizon – the future of UK aviation: making best use of existing runways (June 2018)
mppa	Million Passengers per Annum
MSCP	Multi Storey Car Park
NPPF	National Planning Policy Framework
NSC	North Somerset Council
Order	The Bristol Airport Limited (Land at A38 and Downside Road) Compulsory Purchase Order 2020
Order Land	Land included within the Order for compulsory acquisition
Order Map	Map referred to in the Bristol Airport Limited (Land at A38 and Downside Road) Compulsory Purchase Order 2020
RSA	Road Safety Audit
S106	Section 106 of the Town and Country Planning Act 1990
The Trust	The Trustees of the Sir J V Wills Will Trust
UU	Unilateral Undertaking

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Land at A38 and Downside Road,**

- The Compulsory Purchase Order was made under section 59 of the Airports Act 1986 and the Acquisition of Land Act 1981 by Bristol Airport Limited on 15 September 2020.
- The purposes of the Order are to support Bristol Airport Limited's planned increase in the permitted passenger cap at Bristol Airport from 10 million passengers per annum to 12 million passengers per annum.
- When the Inquiry opened there were three objections outstanding and 29 non-qualifying additional objections. The objection by North Somerset Council was withdrawn at the Inquiry.<sup>1</sup> A late objection was lodged, and subsequently withdrawn.<sup>2</sup>

**Summary of Recommendation: The Order be confirmed without modification.**

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**Procedural matters and statutory formalities**

1. The Order stems from a development related to the increase in the permitted passenger cap at Bristol Airport (BA) from 10 million passengers per annum (mppa) to 12 mppa. This was the subject of a separate appeal against the refusal of planning permission by North Somerset Council (NSC).
2. The Planning Inquiry<sup>3</sup> was opened on 20 July 2021, along with the Compulsory Purchase Order (CPO) Inquiry due to the interrelationship between them. The evidence for the CPO Inquiry was programmed to start following the close of the Planning Inquiry. The main CPO Inquiry, in terms of the opening statement and evidence took place for one day on 12 October 2021.
3. The related Planning Appeal was allowed on 2 February 2022, subject to conditions. A copy of that decision is appended to this report (Annex A). This decision is currently subject to a High Court challenge.
4. A number of objections to the CPO argued prematurity in that, at the time of the objection, there was no planning permission for the development. This will be dealt with below.
5. At the opening of the CPO Inquiry it was confirmed by NSC that all the statutory formalities had been properly complied with. (Statutory Formalities Certificate<sup>4</sup>.) No points were taken to the contrary.
6. Joint site visits for the Planning and CPO were carried out on 22 July, 25-26 August and 13 October. These were unaccompanied visits other than the accompanied visit to BA itself on 26 August.

**The Order Lands and their surroundings**

7. A detailed description of the BA site and surroundings is given in the planning appeal decision in annex A but, in brief, BA is located on the western side of the A38, around 11km south-west from Bristol city centre, with the A370 Bristol to Weston-Super-Mare Road 4km to the north and the M5 Motorway 11km to the

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<sup>1</sup> CPO-AD-05

<sup>2</sup> CPO48 & CPO-AD-06

<sup>3</sup> Appeal reference APP/D0121/W/20/3259234

<sup>4</sup> CPO-AD-07

- west. BA covers an area of around 196 hectares, positioned on a ridge of high ground called Broadfield Down and is located within the Parish of Wrington.
8. From the A38, two roundabouts provide access to BA, with the northern roundabout providing access to the main terminal (including from public transport facilities), drop-off and collection points, hotel and operational facilities and short-and long stay parking areas. The southern roundabout provides access to the long stay 'Silver Zone' car park, the BAs main administrative building, staff parking, taxi waiting area, car rental, as well as aircraft hangers, maintenance areas, the fire station, flying centres and a helicopter unit.
  9. The land included in the CPO is shown edged red and coloured pink on the Order Map.<sup>5</sup> This is located to the north of the northern A38 roundabout and comprises land adjacent to the A38 carriageway, and along Downside Road, which runs parallel to the northern boundary of the airport and contains properties along both sides. The Order land comprises 22 separate plots which together would amount to around 9,293 square metres.
  10. None of the land includes any buildings, other than a mobile home within parts of plots 12 and 13.

### **Planning Policy**

11. Much of the planning policy background relates to the airport development underpinning and necessitating the CPO, rather than to the CPO itself. However it is important to understand the wider policy context as well as policies specifically addressing the CPO.
12. The development plan for the area includes the North Somerset Core Strategy (adopted January 2017) (CS)<sup>6</sup>, the Sites and Policies Plan Part 1: Development Management Policies (adopted July 2016) (DMP)<sup>7</sup> and the Sites and Policies Development Plan Part 2: Site Allocations Plan (adopted April 2018).
13. Relevant to the CPO are CS Policy CS23 and DMP Policy DM50, both of which are airport specific policies. Policy CS23 states that "*proposals for the development of Bristol Airport will be required to demonstrate the satisfactory resolution of environmental issues, including the impact of growth on surrounding communities and surface access infrastructure.*"
14. Policy DM50 permits development at BA provided that (amongst other things) environmental impacts such as emissions are minimised, and there is no unacceptable noise impact; it is suitably sited, designed and landscaped so as not to harm the surrounding landscape; and appropriate provision is made for surface access to the airport, including highway improvements and/or traffic management schemes to mitigate the adverse impact of airport traffic on local communities, together with improvements to public transport services.

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<sup>5</sup> CPO02

<sup>6</sup> Planning Appeal CD 5.06 [https://gat04-live-1517c8a4486c41609369c68f30c8-aa81074.divio-media.org/filer\\_public/e2/9b/e29b84eb-d935-4038-834e-0076588c73e6/cd56 - core strategy.pdf](https://gat04-live-1517c8a4486c41609369c68f30c8-aa81074.divio-media.org/filer_public/e2/9b/e29b84eb-d935-4038-834e-0076588c73e6/cd56 - core strategy.pdf)

<sup>7</sup> Planning Appeal CD 5.04 [https://gat04-live-1517c8a4486c41609369c68f30c8-aa81074.divio-media.org/filer\\_public/52/3a/523a440a-f314-42c0-821c-b7e065029aad/cd54 -sites and policies plan part 1 february 2015 1.pdf](https://gat04-live-1517c8a4486c41609369c68f30c8-aa81074.divio-media.org/filer_public/52/3a/523a440a-f314-42c0-821c-b7e065029aad/cd54 -sites and policies plan part 1 february 2015 1.pdf)

15. In addition, broad transport matters are covered by CS Policies CS10 and CS11 which encourage improvement and integrated transport networks and allow for a wide choice of modes of transport, and the provision of adequate parking. DMP Policies DM20, DM24, DM26, and DM27, also deal with transport matters through safeguarding land for major transport schemes (including the A38 South Bristol Link), protection of highway safety, requirement of travel plans for major development schemes and bus accessibility. Policies DM30 and DM31 relate to off-airport car parking and air safety.
16. The National Planning Policy Framework (NPPF) at paragraph 81 states that significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. Paragraph 104 requires that transport issues should be considered from an early stage so that potential impacts can be addressed and so that the environmental impacts of traffic and transport infrastructure can be identified, assessed and taken into account, including appropriate opportunities for avoiding or mitigating adverse effects and for net environmental gains.
17. At paragraph 106(e) the NPPF states that planning policies should: *"provide for any large-scale transport facilities that need to be located in the area, and the infrastructure and wider development required to support their operation, expansion and contribution to the wider economy."* At Paragraph 106(f) it goes on to say that planning policies should *"recognise the importance of maintaining a national network of general aviation airfields, and their need to adapt and change over time – taking into account their economic value in serving business, leisure...and the Government's General Aviation Strategy."*
18. Paragraph 110 seeks to ensure that appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location, safe and suitable access to the site can be achieved for all users and any significant impacts from the development on the transport network (in terms of highway safety), can be cost effectively mitigated to an acceptable degree. Paragraph 111 advises that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
19. National Aviation Policy is set out in the Aviation Policy Framework (March 2013) (APF) and Beyond the Horizon – the future of UK aviation: Making Best Use of existing runways (June 2018) (MBU).
20. A key priority of the APF is to make better use of existing runway capacity at all UK airports and it expressly acknowledges the vital role of BA in the economic success of the South-West region. Support is given to growth which maintains a balance between the benefits of aviation and its environmental costs. MBU provides a policy statement dealing with airports beyond Heathrow making best use of their existing runways, taking into account economic and environmental considerations.
21. Published in March 2021, 'Build Back Better: our plan for growth' seeks to build on three core pillars of growth (infrastructure, skills and innovation), as part of the recovery from the Covid 19 pandemic and following the departure of the UK

from the European Union (EU). It seeks to 'level up' the whole of Britain, support the transition to net zero and support a global Britain

22. A comprehensive policy background is set out in detail in the planning appeal decision.

### **Planning History**

23. BA is the main airport for the south-west of England. Planning permission was granted in 1995 for a replacement passenger terminal and re-routing part of the A38 next to the airport. At that time BA handled 2.1 mppa. This increased to 3.9 mppa by 2003 and 6.3 mppa by 2008. In 2011, BAL obtained planning permission from NSC for a major expansion of BA to accommodate 10 mppa. By 2019 BA handled 8.9 million passengers making it the ninth busiest airport in the UK and the third largest regional airport in England.

24. An outline planning application for the increase the operational capacity of BA from its current cap of 10 mppa up to 12 mppa was submitted to NCS in 2018 and refused by notice dated 19 March 2020. It comprises the following elements:

- Extensions to the terminal building on its west and southern sides and canopies over the forecourt of the main terminal building;
  - Erection of a new east walkway and pier with vertical circulation cores, pre-board zones and a 5m high acoustic timber fence;
  - Construction of a new service yard directly north of the western walkway;
  - In relation to parking demand the proposal includes 1) the erection of a further MSCP providing approximately 2,150 spaces (referred to as 'MSCP3'), 2) year-round use of the existing Silver Zone car park extension ("Cogloop 1") and 3) a further extension to the Silver Zone car park to provide approximately 2,700 spaces ("Cogloop 2");
  - Surface access improvements including enhancements to the A38 extending northwards from the main airport access roundabout to circa 130m beyond West Lane (including sections of Downside Road and West Lane) and an improved internal road system with gyratory and internal surface car parking;
  - Enhancements to airside infrastructure including construction of a new eastern taxiway link and taxiway widening (and fillets) to the southern edge of Taxiway GOLF; and
  - Operational changes including a cap of 4,000 night flights between the hours of 23:30 and 06:00 over two consecutive seasons (a 12 month period) (merging the current night movement limit of 3,000 in summer and 1,000 in winter) and revisions to the use of aircraft stand numbers 38 and 39.
25. As previously referenced, a Public Inquiry was held between 20 July – 8 October 2021 by a Panel of three Inspectors. A number of main issues were considered as part of the appeal, including the effects of the proposed development upon greenhouse gas emissions/climate change, noise and air pollution effects, on sustainable transport objectives, the highway network, highway safety and

- parking provision and Green Belt matters. Also assessed was need and forecasting as part of establishing an appropriate baseline as part of the Environmental Impact Assessment (EIA) and socio-economic effects, and the overall planning balance and very special circumstances.
26. The planning application was approved on appeal on 2 February 2022. To summarise, the Panel found a demonstrable need for the proposed development and that, flowing from this, the socio-economic benefits of the scheme would weigh substantially in its favour.
27. As part of the assessment into highways effects, the A38 improvement works were analysed by the Panel and its conclusion was that the development would not give rise to an unacceptable effect on highway safety nor any severe residual cumulative impacts on the road network. Other environmental effects in relation to climate change and air quality, as well as character and appearance and biodiversity were found to be neutral in the balance. Overall, the Panel considered that the benefits arising from the proposed development were such that they would clearly outweigh identified harm to the Green Belt and related to noise.
28. A number of conditions are attached to the permission, including condition 5 which restricts the total passenger throughput to 12mppa. Condition 12 also requires an application to be made to the Secretary of State to designate Bristol Airport as a fully coordinated airport (as defined in regulation 2 of the Airports Slot Allocation Regulations 2006) on exceedance of 10mppa. Condition 13 also restricts the number of Air Transport Movements per annum to 85,990, due to noise effects. A Construction Environmental Management Plan (CEMP) is also conditioned for each phase and component of development, and makes provision for construction traffic management plan.
29. There are a number of highway conditions imposed; condition 6 requires submission of a Parking Demand and Capacity Report including condition 19 which relates to the highway improvements to the A38 and Downside Road, including a timetable for the implementation of the works. These were found to be reasonable and necessary to make the development acceptable in planning terms.
30. Biodiversity is also considered in the decision in respect of effects upon the North Somerset and Mendip Bats Special Area of Conservation and conditions are imposed securing a Biodiversity Construction Management Plan and Biodiversity Mitigation Management Plan (Conditions 23-26). Lighting would also be controlled by these conditions.
31. The permission is also accompanied by two deeds under Section 106 of the Town and Country Planning Act; a bilateral agreement, dated 27 October 2021 (the main s106)<sup>8</sup>, and a Unilateral Undertaking (UU), also dated 27 October 2021.<sup>9</sup>

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<sup>8</sup> Planning appeal INQ/117 [https://gat04-live-1517c8a4486c41609369c68f30c8-aa81074.divio-media.org/filer\\_public/4e/59/4e59c3a2-801a-4050-97bf-b57d55ba4b19/117\\_agreement\\_1702562811\\_completed\\_section\\_106\\_agreement\\_relatig\\_to\\_bristol\\_airport\\_27\\_october\\_2021\\_1.pdf](https://gat04-live-1517c8a4486c41609369c68f30c8-aa81074.divio-media.org/filer_public/4e/59/4e59c3a2-801a-4050-97bf-b57d55ba4b19/117_agreement_1702562811_completed_section_106_agreement_relatig_to_bristol_airport_27_october_2021_1.pdf)

<sup>9</sup> Planning appeal INQ/118 [https://gat04-live-1517c8a4486c41609369c68f30c8-aa81074.divio-media.org/filer\\_public/1c/bb/1cbbfb2a-a51b-4711-a761-](https://gat04-live-1517c8a4486c41609369c68f30c8-aa81074.divio-media.org/filer_public/1c/bb/1cbbfb2a-a51b-4711-a761-)



- The main S106 agreement includes five schedules. The first deals with the 10mppa permission, the second with transport and travel, the third with the A38 highway works, the fourth with environmental matters such as air quality, noise and the Skills and Employment Plan and the fifth with contributions to NSC.
32. Schedule 3 includes detailed obligations relating to the timescale of delivery of the Highway works, depending on who is to undertake the works, to be agreed between BAL and NSC. Should BAL undertake the works there is an obligation that the works would be completed before the 10mppa trigger date (which is defined in the agreement) and where NSC undertakes the works, BAL is to pay the contribution in accordance with the payment schedule as well as the transfer of highway land and offer a licence.
33. Specifically, paragraph 9 in schedule 3 to the s106 Obligation states:
- "Both parties will use reasonable endeavours to agree who will undertake the A38 Highways Works no later than 31 July 2022. In the event that the Council has not communicated its decision in writing to the Owner on whether it wishes to deliver the A38 Highways Works by 31 July 2022 then the Owner will have the option to deliver the A38 Highways Works."*
34. In the event BAL undertake the works, paragraph 10 of schedule 3 provides that:
- "In the event that the Owner undertakes the A38 Highways Works in accordance with paragraph 9 or paragraph 12 and subject to there not being any delays in programme due to Force Majeure Events the Owner covenants to complete the A38 Highways Works before the 10mppa Trigger Date."*
35. The 10mppa trigger date is defined in the agreement as:
- "The date on which the latest monitoring report provided by the Owner to the Council in accordance with the 12mppa Planning Permission shows that the terminal throughput first exceeds 10 million passengers over a twelve month period."*
36. If NSC undertakes the Highway Works then paragraph 11 of Schedule 3 provides as follows:
- "In the event that the Council undertakes the A38 Highways Works in accordance with paragraph 10 above the Owner covenants to pay to the Council the Owner's Contribution in accordance with the Payment Schedule and the Owner shall offer to transfer to the Council on reasonable terms at nil cost (including the Council's reasonable legal costs incurred in the negotiation, preparation and completion of any such transfer) the Highways Land and offer a licence in accordance with the provisions of paragraph 14 below to the Council for the A38 Highways Works Land."*
37. The UU contains two schedules, the first dealing with transport and travel and the second in respect of noise. The obligations in schedule 1 deal with an airport surface access strategy, new public transport services and parking.

38. A High Court Challenge has been lodged by a Rule 6 party against that decision. Grounds relate to climate change and biodiversity. No grounds have been lodged in respect of highways matters.

### **The Scheme**

39. In order to facilitate the 2mppa increase in the permitted passenger cap at BA from 10mppa to 12mppa, significant improvements to the A38 between the main airport access road (the northern roundabout) and West Lane are necessary. This was demonstrated by the Transport Assessment and the revised Transport Assessment Addendum, which took into account updated passenger forecasts following the Covid-19 pandemic.
40. The design of the scheme has undergone various iterations since the application was first submitted and has been subject to a Stage 1 Road Safety Audit (RSA), RSA Designer's Response and a Walking, Cycling and Horse-Riding Assessment and Review.
41. The key elements of the highway aspects of the Scheme which underpins the CPO comprises:
- i) The main carriageway between the northernmost airport roundabout and West Lane will be increased in width to allow two through lanes to be provided on each carriageway.
  - ii) The widening will be mainly undertaken on the western side of the road providing an overall width of 16m. The existence of level changes, Felton Common and residential properties prevent the carriageway works taking place on the eastern side.
  - iii) The improvements taper back to join the existing carriageway width some 130m beyond West Lane.
  - iv) A further dedicated lane will be provided for northbound traffic turning left into Downside Road, along with a right turn lane into West Lane. The centre of the carriageway will be hatched or have traffic islands in order to separate traffic flows.
  - v) Downside Road will be widened to two lanes for 80m prior to the junction with the A38 and a new access provided into the Airport Tavern car park from Downside Road to replace the current access from the A38 which currently does not meet highway standards.
42. The A38/Downside Road junction will remain controlled by traffic signals but will be linked to new signals controlling the west lane junction. These will be monitored and will adjust timings to enhance traffic flow and reduce queuing. Users of West Lane would be able to turn left only and the 'no right turn' restrictions into Downside Road would remain, with vehicles using the northern Airport roundabout to double back.
43. In terms of public transport and pedestrian and cycle access, improvements comprise:
- i) The existing footway/cycle track will remain to the eastern side of the A38 with a new footway provided north of the West Lane junction.
  - ii) Enhanced footway/cycle track on western side of A38 between the Airport and Downside Road.

- iii) New footway provided to the section north of Downside Road, tying into the existing footway north of West Lane.
  - iv) Pedestrian and cycle facilities within the Downside Road junction, including drop kerbs.
  - v) A pedestrian crossing within the West Lane signals, including dropped kerbs.
  - vi) Access to public footpath along the northern boundary of land at the Airport Tavern towards Lulsgate Bottom will be maintained.
  - vii) Existing bus stops maintained, but adjusted for the new carriageway alignment.
44. Surface water drainage will be enhanced to accommodate the effects of the widened carriageway. All traffic signs, signals and markings will be applied according to relevant highway standards and the area will continue to have street lighting, in line with NSC's standards and local operations, including dimming at night.
45. The table below summarises a description of the plots and the proposed use of each plot, including during and after construction:

<b>Plot no.</b>	<b>Plot description and present use of Order Land</b>	<b>Proposed Use of Order Land</b>
1	The western portion of woodland and former quarry (south of Downside Road and west of Bridgwater Road, A38)	Provide additional space for contractor to construct new road / footway. Continued use as a bat habitat through reinforcement works as part of the Integrated/Embedded Landscape, Visual and Ecology Mitigation Masterplan. Safe working space around old quarry workings.
2	Woodland and former quarry (south of Downside Road and west of Bridgwater Road, A38) fronting the highways AC_166166470_5 5 Plot Description and present use of Order Land	Construction of new carriageway. Construction of new footway and cycle track. Erection of street lighting and traffic signals. Construction of new surface water soak-away. Diversion of buried statutory services. Soft landscaping following conclusion of construction works.
3	Hardstanding between A38 highway and Airport Tavern building, hedgerow and shrubbery within field to the north of the Airport Tavern	Construction of new carriageway. Diversion of buried statutory services. Construction of new public footway and pedestrian access (both steps and ramp) to The Airport Tavern. Construction of structural retaining wall. Erection of street lighting, traffic signals and bus shelter. Relocation of post box.
4	Enclosed parking area adjacent to Downside	Creation of new junction and vehicular entrance into the Airport Tavern from Downside Road.

	Road and hedgerow (Airport Tavern)	Re-grading of the parking area to accommodate change in level between existing parking area and Downside Road. New white lining within property. Amendments to existing surface water drainage system (private drainage for property).
5	Field, hedgerow and shrubbery (Airport Tavern) and public footpath (LA2/37/10/X)	Foundations for retaining wall. Landscaping and associated earthworks. Works to existing highway surface water soak away and connections.
6	Field, hedgerow and shrubbery (Airport Tavern) and public footpath (LA2/37/10/X)	Provide additional construction space for contractor to safely construct new road / footway / retaining wall. Undertake changes to existing surface water soak away.
7	Footway (north eastern corner Downside Road)	Construction of new carriageway and footway. Diversion of buried statutory services.
8	Hardstanding between A38 highway and Airport Tavern building	Construction of new carriageway and footway. Diversion of buried statutory services.
9	Hardstanding between A38 highway and Airport Tavern building, hedgerow and shrubbery within field to the north of the Airport Tavern	Construction of new carriageway and footway. Diversion of buried statutory services.
10	Hedgerow (land south of Oakwood House) and public footpath (LA2/37/10/X)	Construction of new carriageway Construction of new footway. Diversion of buried statutory services. Erection of street lighting. Provision of new public footpath stile.
11	Hedgerow (land south of Oakwood House) and public footpath (LA2/37/10/X)	Provide additional construction space for contractor to construct new carriageway / footway. Re-grading of earth embankment. Creation of new steps for public right of way.
12	Caravan, garden and hedgerow (land south of Oakwood House) and public footpath (LA2/37/10/X)	Construction of new carriageway. Construction of new footway. Diversion of buried statutory services. Erection of street lighting and traffic signals.
13	Caravan, garden and hedgerow (land south of Oakwood House) and public footpath (LA2/37/10/X)	Provide additional space for contractor to safely construct new road / footway. Re-grading of earth embankment. New fencing as boundary treatment.
14	Garden and hedgerow (Oakwood House)	Diversion of buried statutory services. Construction of new carriageway. Construction of new footway. Erection of street lighting and traffic signals. Re-provision of stone wall.

15	Garden and hedgerow (Oakwood House)	Provide additional space for contractor to safely construct new road / footway. Re-grading of earth embankment. Re-provision of shrubbery.
16	Grassed verge footway and shrubbery (north west of Felton Village Hall and east of Bridgwater Road, A38)	Construction of new carriageway. Construction of new footway. Diversion of buried statutory services. Erection of street lighting.
17	Grassed verge and footway (north west of Felton Village Hall and east of Bridgwater Road, A38)	Provide additional construction space for contractor to safely construct new road / footway. Provide additional space for service diversions.
18	Grassed verge footway and shrubbery (west of Felton Village Hall and east of Bridgwater Road A38)	Construction of new carriageway. Construction of new footway. Diversion of buried statutory services. Erection of street lighting.
19	Grassed verge footway and shrubbery (west of Felton Village Hall and east of Bridgwater Road, A38)	Construction of new carriageway.
20	Grassed verge footway and shrubbery (south west of Felton Village Hall and east of Bridgwater Road, A38)	Construction of new carriageway. Construction of new footway. Diversion of buried statutory services. Erection of street lighting and traffic signals.
21	Common land comprising grassed verge and footway on the corner of Bridgwater Road A38 and West Lane	Construction of new footway. Diversion of buried statutory services. Construction of new carriageway. Erection of street lighting.
22	Carriageway (east of Bridgwater Road, A38 leading to Lilac Cottages) and verge (east of Bridgwater Road, A38)	Provide additional space for contractor to safely construct new carriageway / footway. Provide additional space for service diversions. Upgrading of street lighting, existing traffic signals and related equipment.

46. Not included in the Order are properties known as High Lands and Greenacre as BAL have already acquired these. Parts of the gardens to these properties are included as part of the works.

47. It should be noted that the scheme is very similar to that being promoted by NSC as part of its wider A38 Major Road Network Investment Programme.

## **The case for the Acquiring Authority**

48. The case for BAL is set out in the CPO Opening Submissions<sup>10</sup> and in the evidence to the Inquiry.
49. The planning application includes a number of new infrastructure components onsite and offsite to support the proposed increases in flights and passengers and to ensure safe and efficient passenger movements to and around the Airport. Highway works to the A38 and Downside Road are required to accommodate additional traffic generated by the additional 2mppa. BAL is seeking to acquire the land required for the Highway Works that it has not been able to secure by way of private treaty.

### *Need/Benefits*

50. The need for and benefits of the overall Scheme were considered at length during the planning Inquiry. In summary the overall Scheme will:
- a. accommodate forecast passenger demand in order to meet the Government's national aviation policy of making best use of existing facilities and wider economic objectives and clawback the historic leakage of passengers from London's airports;
  - b. deliver substantial social and economic benefits, supporting national, regional and subregional economic growth and recovery from the Covid-19 pandemic. This aligns with the West of England Industrial Strategy and the North Somerset Economic Plan;
  - c. help meet the UK's global ambitions for increased international connectivity and trade following the UK's departure from the EU; and
  - d. ensure adverse impacts on the environment and local communities are minimised and secure, where possible, enhancements.
51. The wider need for and benefits of the Scheme cannot be delivered without the Highway Works. Thus the need for and benefits of the Scheme form part of the compelling case in the public interest for the compulsory acquisition of the land required for the Highway Works.
52. The Highway works also bring their own benefits as outlined below:
- a. A major improvement over the 'do nothing' scenario as a result of the additional capacity to accommodate a further 2 mppa and relieve significant congestion that would arise in the absence of the Scheme and Development, in accordance with the NPPF and CS Policy CS10;
  - b. Better facilities for pedestrians and cyclists, which would improve accessibility and safety to local residents by sustainable modes;
  - c. Improvements at the A38/Downside Road junction as a result of the proposed new access arrangements to the Airport Tavern;
  - d. A scheme that accords with the A38 Major Route Network corridor upgrade proposals outlined in the Joint Local Transport Plan;

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<sup>10</sup> CPO-AD-08

- e. Substantially reduced delays for all road users and improved journey time reliability for public transport services; and
- f. A scheme in balance with the wider BAL proposed environmental enhancements, including public transport improvements and traffic management proposals, that will form part of the Air Surface Access Strategy.

53. The grant of planning permission is a material consideration in the determination of whether the Order should be confirmed.

#### *Timescales*

54. The timescales for delivery are as those set out in the main s106 Agreement before the 10mppa trigger date. Without the use of compulsory purchase powers, there is no guarantee that the acquisition of all interests through private treaty could be achieved within the timescales envisaged for the Highway Works, and in turn the expansion of the Airport, to proceed.

#### *Funding*

55. In terms of funding, financial approval was obtained in September 2018 from the BAL Board for funding to proceed with the acquisition of necessary land for the Highway Works. The acquisition of properties of Greenacre and High Lands has been achieved by agreement and approved by the Board and BAL has sought to acquire the remaining interest in accordance with that approval. The detailed financial sums are commercially sensitive.

56. The funding for the highway works will be confirmed once the Order powers are achieved. However, BAL has a strong track record of capital investments, with a total spend of £20.3m in 2018 and £46.6m in 2019. The final costs will be settled as part of the tender process but BAL is confident it has the capital resources to fund them. BAL anticipates funding the construction of the Highway Works as part of its operational costs, with the costs of the wider development being funded through equity and/or debt finance. The cost of the Highway Works (including land acquisition) is relatively low when considered in the context of the wider costs of the airport development.

#### *Other considerations affecting the Order Land*

57. Some of the land is only required for construction purposes for example working space to allow the highways works to be constructed. Some of the land may also need to be subject to permanent new rights, for example for drainage rights or diverted services. However, compulsory purchase powers do not allow for the temporary acquisition of land. In addition, as the scheme would be in connection with off-airport highway mitigation works, rather than rights to construct new airport infrastructure, there is no mechanism in the Aviation Act to request an additional CPO from the Secretary of State to acquire permanent new rights for temporary construction areas.

58. The Order land therefore must be acquired permanently, however it is the clear intention of BAL that land only needed temporarily will be offered back to the original landowners, subject to BAL retaining any necessary rights relating to diverted services, drainage etc and subject to other terms being agreed,

- including compensation. The Order land falling within this category is plots 4, 6, 11, 13, 15, 17 and 22.
59. BAL will also rely on section 203 of the Housing and Planning Act 2016 to enable the works to be carried out without the beneficiaries of rights being able to obtain an injunction against BAL, or its successors. Instead, beneficiaries will have a right to claim compensation.
60. BAL is seeking to compulsorily acquire land belonging to NSC (plots 5,6,7,10,11,12,13 and 22). However, as BAL is deemed to be a statutory undertaker under section 57A of the Airports Act, section 17 of the Acquisition of Land Act 1981, the order would not be subject to a special parliamentary procedure.
61. Negotiations to acquire the necessary land have been ongoing for some time since before the application was submitted. BAL has also appointed CBRE to support it in the promotion of the Order, including engaging with affected parties in an attempt to acquire all interests in advance of the use of compulsory purchase powers. BAL and CBRE have been in contact with all parties with a confirmed and identifiable interest from whom permanent acquisition is required and offers have been made.

#### *Human Rights and Equalities Acts*

62. BAL considered the impact on human rights of those affected by the Highway Works before deciding to proceed with the making of the Order, and carried out an assessment of the interference with individuals' rights and, having regard to the purpose and benefits of the Scheme.
63. With regard to Article 8 of the Human Rights Act (HRA), there is a legal basis for making the Order under Section 59 of the Airports Act and the Order pursues a legitimate aim to facilitate the delivery of the Scheme, which will bring socio-economic benefits. The interference with the protected rights of the individuals are in accordance with the law and necessary in a democratic society in the interests of the economic well-being of the country.
64. With regard to Article 1 Protocol 1 (A1P1), it is considered that the interference with individuals' properties is in the public interest and subject to the conditions provided for by law; in particular, the interference with A1P1 rights is justified by the advantages accruing to the public by proceeding with the development particularly taking into account the fact that there is a legal right to compensation for property acquired under the Order.
65. With regard to Article 6, the compulsory purchase process offers the opportunity for those affected by the Order to make representation on the Order and to be heard by an Inspector appointed on behalf of the Secretary of State to consider the case for compulsory acquisition, either through written representations or through a public inquiry. BAL considers that the right to a fair hearing is met through the compulsory purchase process.
66. In addition to the HRA, the Acquiring Authority is required to comply with the Equalities Act 2010. The Company has considered the impacts on those that would be affected by the land acquisition. There are no known negative impacts arising from the Highway Works on anybody with protected characteristics. The Highway Works will deliver much improved segregated access for pedestrians



and cyclists and provide Disability Act compliant access to the Airport Tavern via a ramp (in addition to steps).

#### *Statutory and non-qualifying Objectors*

67. The response of the Acquiring Authority to the statutory objections from Hawthorne Leisure (Mantle) Limited, Sir J V Wills Will Trust and some non-qualifying objectors is set out below after a summary of the objection.

#### *Other Parties*

##### *Plots 10-15*

68. Discussions have taken place with Mr Antony Nicholas Gould, lessee Mr Christopher Shaun Williams, and another occupier, Vicky Hasell. This relates to plots 10-15 where 369 sqm would be acquired, of which 106sqm is required permanently. The land currently relates to Oakwood House, which includes a residential dwelling which is a House in Multiple Occupation and a detached static caravan. It is understood that the land is used as the administration point for an airport parking operation in conjunction with other land in the area. Certificates of Lawfulness have been sought for its use.<sup>11</sup>
69. Mr Williams, as lessee, has had interest under a series of tenancies since 2010, and the latest lease is dated 24 July 2021. Vicky Hasell is listed in the CPO schedule but it is not clear as to what interests she holds.
70. In the light of the above, clarification on the extent of interests of the various parties in the land to be acquired have been ongoing and as it has not been possible to fully understand these, it has not been possible to progress a private treaty.

##### *Plots 9, 16-21*

71. Plots 9,16,17,18,19,20 and 21 are listed as being owned by Highways England (now National Highways). However, the A38 was de-trunked as part of the Exeter-Leeds Trunk Road (Sidcot Lane (A371) Winscombe to Bristol City Boundary, Bedminster Down) (Detrunking) Order 1977<sup>12</sup> but no formal land transfer took place and the title deed has not been updated to show ownership by NSC, as highway authority. National Highways consider that the land has been transferred to NSC and it is just the administrative task of updating the title that is outstanding, however NSC do not consider that the land has been transferred to them.
72. The land is not considered as special category land, however the Order is essential for these plots to allow acquisition of the necessary interests by BAL to provide certainty of ownership to allow the Highway Works to proceed.
73. The rights over Plot 21 are uncertain. This is an area of 31sqm and is needed for widening/drainage of the existing highway. Plot 21 falls within and on the

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<sup>11</sup> 20/P/0910/LDE for the parking of vehicles which are not incidental to the lawful use of the site and as an airport parking transport point, submitted on 22 April 2020 and 21/P/1448/LDE for the change of use of land from garden land used incidentally to Oakwood House to use as a residential caravan site with associated garden land, submitted on 14 May 2021.

<sup>12</sup> CP007

western boundary of Felton Common Land area, however there is uncertainty as to whether this is Common Land given its location to the west of an existing cattle grid on West Lane, which separates the land from the rest of Felton Common and its ownership by National Highways and it may be an error in the mapping.

74. Due to the size of the plot being less than 50 square yards, and the proximity of the plot to the highway and the remainder of the common, the giving of exchange land is unnecessary. As a result, it is not considered that the Order should be subject to special parliamentary procedure.
75. BAL has, however, taken a precautionary approach of seeking certification from the Secretary of State for Environment, Food & Rural Affairs under section 19(1) of the Acquisition of Land Act 1981. The Order also seeks to discharge plot 21 from all rights, trusts and incidents under section 19(3) of the Acquisition of Land Act 1981, on a precautionary basis given the uncertainty over rights of plot 21. Based on updated information supplied by the Council, as the Commons Registration Authority, a revised list of the rights has been provided has been shared with the Secretary of State for Environment, Food & Rural Affairs. BAL has also sought additional documentation from NSC from the Felton Commons Register.
76. In response to the request, the Secretary of State has notified his intention to issue the requested certificate and this was advertised accordingly. No objections or representations were received and the Commons casework team confirmed on 2 March 2021 that the section 19 certificate can be issued if the decision is taken by this Secretary of State to confirm the Order.<sup>13</sup>

#### *Plot 22*

77. Plot 22 incorporates land owned by residential dwellings, accessed via a private road from the A38 and a hotel and car hire facility called The Old Forge, which fronts the A38.<sup>14</sup> The scheme involves the acquisition of 222sqm of land, part of which includes a stone retaining wall. The land is required for construction purposes only, i.e. temporarily. Access will be maintained to the residential dwellings and businesses during the construction work and following the completion of works there will be little or no impact on the land interests of those owners. No objections have been lodged by these owners.
78. A summary note has been produced that summarises the up-to-date position on a plot-by-plot basis.<sup>15</sup>

#### *Conclusions*

79. Overall BAL submits that:

- a. there is a compelling case in the public interest that the Secretary of State should confirm the Order;

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<sup>13</sup> CP012

<sup>14</sup> 1A Lilac Cottages owned by Deborah and Richard Lindsay, 1 Lilac Cottages, owned by Joanne Margaret Limb and Old Forge, a hotel a car hire facility owned by Gregory Les Wedlake.

<sup>15</sup> CPO-AD-09

- b. it has justified the extent of the Order Land and the powers that it seeks to exercise to acquire that land;
- c. BAL has observed the CPO Guidance;
- d. it has genuinely sought to acquire the Order Land by agreement where possible; and
- e. the objections of affected persons do not lead to the conclusion that the Order should not be confirmed and / or that any plot should be excluded from the Order.

80. In all the circumstances, BAL asks that the Order should be confirmed.

### **The Objection by Hawthorne Leisure (Mantle) Ltd (Plots 3, 4, 5, 6, 7 & 8)**

#### *The Case for the Objector*

81. The use of the land following compulsory purchase would consist of the construction of a new carriageway and a new public footway and pedestrian access to the Airport Tavern, the creation of a new junction and vehicular entrance into the Airport Tavern from Downside Road and re-grading of the parking area to accommodate the change in level between the existing parking area and Downside Road.
82. Without prejudice to the general objections to the Order, it is queried whether the Order has been promoted under the correct statutory powers given its subject matter (highway works) and the necessity of the highway works in connection with the operation of the airport in the current climate.
83. Hawthorne Leisure (Mantle) Limited (Hawthorne Leisure) object on the following grounds:
- a. The absence of a compelling case in the public interest;
  - b. The absence of an implementable scheme or realistic timetable for delivery;
  - c. Absence of funding/financial viability;
  - d. Failure to use reasonable endeavours to negotiate by private treaty;
  - e. The residual land left following compulsory acquisition of the Order land will be commercially unviable;
  - f. Failure to consider alternatives to compulsory purchase/the making of the Order; and
  - g. Prematurity.

#### Public Interest

84. As set out in Government Guidance, a CPO should only be made where there is a compelling case in the public interest and where the purposes for which it is made justify interference with the human rights of those with an interest in the land affected.

85. The Statement of Reasons by BAL does not disclose a compelling case in the public interest for the exercise of compulsory purchase powers against our property. Specifically:
- BAL, while acknowledging the Covid-19 pandemic, is unduly optimistic as to the speed with which passenger confidence will return to pre-pandemic levels.
  - It seems highly improbable that passenger demand will reach the 10mppa cap next year or that it would grow by a further 20% in the following 5 years (i.e. to 12mppa by 2025).
  - If BA was to follow International Air Transport Association (IATA) projections referred to in the Statement of Reasons it seems most likely that passenger numbers will not return to pre-pandemic levels (<9mppa) until 2025, which would suggest that the previously forecast growth to 12mppa would not be achieved until the early 2030s. The compulsory acquisition of land now to facilitate passenger numbers that may not be achieved for more than 10 years appears to fall far short of demonstrating a compelling case in the public interest to acquire the Property at this stage.
  - It is also instructive that other airport operators, including Heathrow Airport Limited, have scaled back their expansion plans in the current climate.

#### Implementable Scheme/Realistic Timetable

86. BAL does not currently have an implementable planning permission which would necessitate or justify the use of compulsory purchase powers. Given the impact of Covid-19 it would appear to be likely that many of the assumptions upon which the planning permission was predicted will need to be reviewed and potentially reassessed. The information currently available to justify the Order is not sufficient to show that the Order would deliver an implementable scheme neither does it show when the works will be carried out.
87. In addition, if the Order is confirmed now the Property may not be acquired immediately and will be blighted until a decision is made to implement the Order (potentially up to 5 years from now). Making the order is premature at this stage.

#### Funding/Financial Viability

88. BALs Statement of Reasons is scant on detail regarding the funding of the scheme that justifies the Order. Only funds to proceed with the acquisition of land for highways works is committed, there is no information regarding the funding of the highway works themselves or for the remaining infrastructure works now being promoted.
89. No evidence is provided of the market appetite to fund airport related infrastructure at the present time. Nor is there any evidence of the return on investment that might be achieved by an investor in airport infrastructure given the significant uncertainty around passenger numbers and growth. As already noted, it is instructive that other airport operators, including Heathrow Airport Limited, have scaled back their expansion plans.
90. The net assets of the Ontario Teacher's Pension Plan, while impressive in themselves, do not demonstrate that funds have been secured for and allocated

to the infrastructure works at BA or why the pension fund would regard a commitment to such works at this stage as being likely to deliver an acceptable return to their investors and pensioners.

#### Failure to Negotiate

91. BAL professes to have sought to negotiate the acquisition of the Property by private treaty. However as of 15 October 2020, the evidence of such negotiations is extremely weak and no evidence has been provided of the nature of the correspondence, the steps taken to establish whether the parties contacted were authorised to represent Hawthorne Leisure, the terms offered, or the responses received. CBRE, as agents, may just have sent a copy of the Order, and the evidence of attempts to negotiate with Hawthorne Leisure is woefully inadequate.
92. It is difficult to understand how BAL's Board members could have reasonably concluded that adequate efforts had been made to negotiate a private treaty acquisition when authorising it. Given the failing to take reasonable steps to negotiate the order, it is not justified and is premature at this stage.
93. As of 29 June 2021, Hawthorne Leisure has been in negotiations with BAL regarding a possible private treaty arrangement for the acquisition of the Property. These negotiations are ongoing. To the extent terms are not agreed/its objection is not resolved, Hawthorne Leisure will rely on its original objection letter of 15 October 2020.

#### Residual Land

94. The Order proposes to acquire the frontage on two sides of the Airport Tavern. This is in a key location and in the absence of compulsory acquisition would have had significant re-development potential. The land that would be required would make the remaining land less commercially viable, both in its current use and in relation to its development potential.

#### Alternatives

95. BAL asserts that the purpose for which the Order is sought cannot be achieved by any other means in a realistic timescale without the Order being confirmed. However there is no objective assessment of the alternatives considered to justify this.
96. Paragraph 7 of the Statement of Reasons states:  
*"Since [the Acquiring Authority] is not authorised to acquire new rights over land to use as construction areas for the off-airport highway works, and nor is it able to take temporary possession powers over such land, it must acquire the Order Land permanently, even on plots where the [Acquiring Authority] does not propose to undertake permanent highway works"*. This includes plots 4 and 6.
97. BAL appears to accept that it is unnecessary to permanently acquire the entirety of the Property comprised in the Order, but because of the statutory power selected is required to acquire a greater interest than it needs. In common with many aspects of the scheme, the use of the Order is misconceived.

### Prematurity

98. Overall, the Order is premature. There is no compelling case in the public interest to acquire the Property, in particular:

- There is considerable uncertainty that passenger numbers will ever reach the figures projected when the underlying scheme was first conceived prior to the submission of the planning application in 2018 and that the ongoing Covid-19 pandemic should lead to the previous justification for the Order being carefully re-considered;
- There is no detailed scheme with planning permission that justifies the compulsory acquisition of all or any of the Airport Tavern;
- BAL has failed to take reasonable steps to assemble the land required for the highway works by private treaty;
- There must be considerable doubt that investment in airport related infrastructure is financially viable in the current climate; and
- BAL has failed to consider alternatives to the use of compulsory purchase powers.

### Conclusion

99. For the reasons given above Hawthorne Leisure consider that the making of the Order is misconceived and/or premature and that it should not be confirmed by the Secretary of State.

#### *The Response by the Acquiring Authority*

100. Hawthorne Leisure (Mantle) Limited is the freehold owner of the property known as the Airport Tavern. It is understood that the Airport Tavern was acquired in 2015 as part of a larger portfolio of pubs by NewRiver REIT and they are the ultimate parent company owner of the subject land. The land holding is let on a 20-year lease from 6 January 2004 with the permitted use as a public house. The lessee, Mr Lane, is not an objector to the CPO (as this was withdrawn).

101. The scheme requires the acquisition of around 2,582sqm of land, being plots 3-8, partly for highway improvements and part to facilitate construction. Only plots 3,5,7 & 8 (928sqm), are required permanently. The land includes part of the car park and land to the frontage of the Airport Tavern. A new access is proposed to be constructed to the Public House from Downside Road.

102. Part of the objection is that residual land after the CPO would be commercially unviable. However, given assurances over access, there should be no reason why the business cannot continue to trade following the completion of the works and operation of the scheme. The retained land includes the totality of the public house with an improved access.

103. BAL has also confirmed that any land not required permanently for the scheme will be offered back to the landowner, subject to any rights and restrictive covenants for the operation and maintenance of the scheme and the agreement of terms as to compensation. Engagement has been maintained over a regular

period and details have been re-sent to the new primary point of contact for Hawthorn Leisure.

104. BAL will continue with reasonable efforts to acquire the required land by agreement, however it requires the certainty of land assembly afforded by the Order should negotiations remain outstanding and needs to progress the Order in respect of Plots 3-8.

### **The Objection by The Trustees of the Sir J V Wills Will Trust (Plots 1&2)**

#### *The Case for the Objector*

105. The case for Sir J V Wills Will Trust (the Trust) is summarised as:
- a. Not all of the land in the ownership of the Trust is needed for the scheme.
  - b. The attempts made to acquire the land by Private Treaty are inadequate.
  - c. The impacts from Covid-19.
  - d. The proposed scheme is not in the public interest.
  - e. NSC Planning Committee has refused the planning application for the proposed scheme, which is now subject to appeal.

#### Need

106. Only Plot 2 is required for the highway improvements, yet the CPO is being requested for Plot 1 also. The details of proposed usage as set out in the statement of reasons are not sufficient to justify the owners being deprived of their freehold interests.
107. Even if the CPO is approved, the land at plot 1 should be excluded from the order. A temporary agreement could be reached with the Trust for the use of the land for storage space during construction and to ensure safe working space around the quarry without the need to acquire the land.
108. In addition, bats are a protected species and it is difficult to know what difference would be made under the ownership of BAL, as opposed to the Trust and an arrangement could be made with the Trust for its continued maintenance.

#### Inadequate acquisition attempts

109. The approaches made by BAL to acquire the land have been inconsistent. Offers have been made and then withdrawn with lower offers made in their place. For example offers of over £200,000 were made in 2018 and reduced to £40,000 in 2020.
110. Evidence supplied to support a higher land value of more than double the offers has been disregarded. The area of land to be acquired has altered over the course of negotiations without warning or justification and BAL has changed the agents negotiating on their behalf which has led to duplicated and protracted discussions in having to clarify ownership and Trustees all over again.
111. There was a last minute attempt to remove the Trust from the CPO hearing process by offering a Lands Tribunal Contract on 25 May 2021 at minimal land value. The offer of a contract has been rejected by the Trust as the minimum

price is way below our opinion of market value so there is clearly no benefit in encumbering the freehold interest with a conditional contract.

112. All of these factors have frustrated ability to reach agreement.

#### Covid-19

113. The revised air traffic forecast suggests that passenger numbers will increase to 12mppa within the same timescale as predicted before the pandemic. This is an interesting conclusion bearing in mind the significant drop in travel during Covid-19 and the fact that we have not had a pandemic such as this before in order to model predictions. The forecast does not account for the following:

- a. Lack of public confidence in travelling abroad.
- b. Future restrictions on travel caused by variants of the virus.
- c. Changes in ways of working, allowing far more people to work from home utilising virtual communication and reducing the need to travel which is a significant factor at BA.
- d. Business travel through Bristol to EU countries has dropped sharply since Brexit.

114. The core case in the forecast confirms that passenger numbers are unlikely to reach 10mppa until 2024 and 12mppa until 2030, which is a significant delay on the previous forecast. This contradicts other predictions<sup>16</sup> which show that international traffic is expected to return to pre-pandemic levels by 2024 which in the case of Bristol would be 8.9mppa. Most recent IATA projections in April 2021 also show muted growth in Western Europe. Application of this analysis shows that BA would not reach 10mppa until 2030.

115. Expansion has been considerably below the 10mppa projections previously claimed by BAL; the capacity of the airport in 2009 was 7.3mppa when planning consent was sought to increase capacity to 10mpaa, which was forecast then to be by 2019. In fact, in 2019 the airport was only 8.9mppa despite a period of considerable economic growth and before any Covid effects.

116. Given that BAL state that the highways works are not required until a capacity of 10mppa is reached, the CPO application and the proposed expansion are premature. For a CPO to be approved, the acquiring authority must prove the need for the scheme to go ahead and also the likelihood that the scheme will proceed without delay. That is clearly not the case with the substantial drop in passenger traffic with no guarantee of those numbers recovering at pre Covid-19 levels in the foreseeable future, let alone increasing at a level at which the works are required to accommodate expansion. It is noteworthy that Birmingham Airport recognised the implications of this early in the pandemic and has indefinitely paused its £500million expansion.

#### Public Interest

117. The proposed scheme is not in the public interest for the following reasons:

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<sup>16</sup> Made by the IATA and The Airports Council International (ACI)



a. Employment

Increasing passenger numbers as proposed will not increase the number of jobs by 20% due to improved technologies and the efficiencies of working across the airport. Any long term job creation will be minimal and not likely to be in the skilled sectors the area needs. The airport is already able to expand from 9mppa to 10mppa so can already enable the creation of more jobs. Employment figures are down from pre Covid-19 levels.

b. Traffic/Highways

Public highway improvement is already needed along the A38 corridor and surrounding routes to deal with existing vehicle movements, particularly at peak times.

The improvements proposed under the CPO do not adequately address accommodating further passengers so this proposal needs to give greater consideration as to how to address the additional vehicle movements this would generate, particularly at peak times.

The majority of visitors are by the private car due to a lack of public transport. The further provision of public transport has not been suitably addressed. Proper attention to this would reduce the need for the extent of highways works and potentially remove the need to acquire the Trust's land.

c. Environment

Noise and air quality impacts generated by the expansion would have a significant adverse impact upon the health and wellbeing of local residents. In addition, the increase in greenhouse gas emissions generated by the proposal would exacerbate climate change and be in contravention with legal duties to reduce carbon emissions. Due to lack of public transport provision, the use of private car by increased passengers will only add to the pollution. Pollution levels during the pandemic were reduced by 25% compared with a 5 year average, one of the largest reductions in the UK. Therefore, the wider impact on the environment outweighs the narrower benefits of the expansion.

Refusal of Planning Permission by North Somerset Council

118. Until a scheme has been granted planning consent, the acquisition of land should not be authorised. NSC found conflict with a number of policies in the development plan. The scheme is subject to appeal which is being held at the same time as the CPO hearing so unless the planning decision has been overturned at appeal, there are still no grounds for issuing a CPO.

Conclusion

119. Overall, for the reason stated above, the CPO application cannot be justified.

*The Response by the Acquiring Authority*

120. Plots 1 & 2 extend to around 4,996 sqm of land for scheme construction and environmental mitigation. The land is currently vacant and not currently put to any identified use by the owner.

121. A number of offers have been made by, or on behalf of, BAL to the Trustees of the Sir J V Wills Will Trust, and as would be expected in commercial negotiations, these offers have evolved over time as further information has come to light.
122. BAL continues to seek to acquire the necessary interests by agreement. An offer to enter into a contract guaranteeing a minimum payment of compensation, and subject to any increased sum awarded by the Upper Tribunal of the Lands Chamber in the event that compensation cannot be agreed was made and remains open for acceptance.
123. Any land not required permanently for the scheme will be offered back to the owner, subject to any rights and restrictive covenants for the operation and maintenance of the scheme.
124. Although BAL will continue with reasonable efforts to acquire the required land by agreement, it requires the certainty of land assembly afforded by the Order should negotiations remain outstanding and, therefore, needs to progress the Order in respect of Plots 1 and 2.

### **Non-Qualifying Objectors**

#### *Summary of the Case of the Objectors*

125. A range of local residents and other objectors who are not landowners have also raised concerns about the CPO.<sup>17</sup>
126. These relate to the following topics:
- a. Prematurity of the Order:
    - The planning application was refused by Members for a number of reasons and considered to conflict with development plan policy. The planning appeal has not yet been determined.
    - The Order is also premature due to Covid-19 impacts.
  - b. Environmental impacts relating to:
    - Climate Change.
    - Green Belt.
    - Habitats.
    - Pollution and health effects – air and noise.
    - Lighting.
    - Area of Outstanding Natural Beauty (AONB).
  - c. Traffic impacts relating to:
    - Increased traffic flows.
    - Illegal parking and roadside parking.
    - Airport Tavern proposed exit being dangerous.
  - d. Impacts on local residents regarding access, including physical effects on their homes and access to public transport; and

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<sup>17</sup> References CPO18 OBJ 03-32. These include from Parish Councils Airport Association (who were a Rule 6 Party at the Planning Inquiry) and campaign groups Stop Bristol Airport Expansion and Sustainable Clevedon. Blackwell, Cleeve, Chew Magna, and Congresbury Parish Council's also submitted objections as well as a number of other local residents and interested parties.

e. Impacts on Felton Hill common land.

*The Response by the Acquiring Authority*

127. The majority of the non-statutory objections to the Order can be grouped into categories relating to prematurity (due to the application not being determined and Covid-19 impacts), environmental impacts, the Scheme being contrary to planning policy; impacts on common land; traffic impacts of the Scheme; and impacts on local residents regarding access.
128. Many of these general objections are, in effect, objections to the planning appeal and have been dealt with during the 9-week planning Inquiry.

## **Inspectors' conclusions**

The numbers in square brackets [] refer to earlier paragraph numbers.

129. The relevant government policy is Guidance on Compulsory Purchase Process published in July 2019 (the CPO Guidance).<sup>18</sup> Matters which should be addressed include:

- There should be a clear idea of how the Acquiring Authority intends to use the land and that the necessary resources are likely to be available to achieve that end within a reasonable timescale.
- There must be a reasonable prospect of the scheme proceeding and it should not be likely to be blocked by impediments to implementation.
- Authorities should seek to acquire interests by negotiation where practicable. A compulsory purchase order is intended as a last resort in the event that attempts to acquire by agreement fail.
- There must be a compelling case in the public interest to justify the compulsory acquisition.

130. The conclusions of this report are framed around these considerations, including consideration of the arguments made by objectors.

### *Use of Land/Resources/Timescales*

131. The plot-by-plot analysis gives a clear indication of how BAL intends to use the land [45], including noting where the land needed is permanent or temporary to accommodate construction. As considered as part of the planning appeal decision, the options, design considerations and construction requirements have all been carefully considered and worked up. It is also noted that the scheme is essentially very similar to that being promoted by NSC [47].

132. A mechanism for offering back land which is only required temporarily is also in place [57-58]. This was criticised by Hawthorne Leisure [97] however it is clear that the statutory powers would not extend to allowing only temporary acquisition. The offering back of relevant plots is thus a reasonable approach and demonstrates that BAL is not seeking to acquire a greater interest than it needs.

133. Plots 3,4,8 and 9 would incorporate the frontage to the Airport Tavern [94], however a new access to this property would be created. The Panel saw that the current access arrangements are currently substandard and the works as part of the Order would improve that. Moreover, there is no detailed evidence why Hawthorne Leisure consider the acquisition of these plots would make the business less viable, nor is any information relating to redevelopment potential provided.

134. In respect of Plot 1, this would be permanently acquired. While part of the works would be temporary only, the continued use of the land as a bat habitat and its ongoing future management as such mean that its permanent acquisition would be justified as these form a necessary part of the wider development

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<sup>18</sup> CPO13

- scheme, in accordance with the Integrated / embedded Landscape, Visual and Ecology Mitigation Masterplan (Wood Consultants) (August 2019) and Chapter 11 of the 'Environmental Statement' to the planning application [30].
135. In addition, the Trust do not expand upon what specific legislative means they consider could be used to secure the temporary use of the land during construction or to ensure the continued maintenance of the bat habitat [106-108]. As referenced above, there is no statutory mechanism to achieve temporary acquisition.
136. It is also important that BAL must be able to finance the cost of the scheme (including the compensation to the owner) and the compulsory purchase order process from their own resources.
137. To this end, BAL has sought financial approval from its Board to proceed with the necessary acquisition [55]. The figures for the financial approval are commercially sensitive, however BAL has proceeded with the purchase of Greenacre and High Lands [46] which demonstrates that resources are available for compensation following acquisition.
138. While the wider Airport scheme would not be independently financially viable, relying on funding through equity and/or debt finance, and the funding for the highway works would be settled as part of a tender process, this will be drawn from BAL's ongoing operational costs. It is notable that the overall costs would proportionally be very low in comparison to the wider scheme. BAL's recent investment in the Airport also demonstrates its ability to secure funding [56].
139. While planning permission was sought in 2018 and compulsory purchase was initially considered at that time, the Order was formally made in September 2020 and accordingly, the evidence presented in terms of financial information was given during the Covid-19 pandemic. It is reasonable to assume that the financial effects of this were factored in at that time when considering the funding of the Order.
140. The timescales for the works are set by the signed s106 Planning Obligation. The timing is dependent upon who undertakes the works – BAL or NSC. The trigger is the point at which passenger numbers reach 10mppa but the obligations provides that parties agree the scope and costs of preparatory land within 2 months of the Order. Highways works are also secured by a condition in the planning permission which would set an agreed timetable [29]. The Planning Obligation also provides for funding in the event NSC undertakes the works [36].
141. In light of the clear legal and conditional provisions relating to timescales, there would be no unnecessary long-term blight of affected lands.
142. Overall, there is a clear idea of how BAL intends to use the land and that the necessary resources are likely to be available to achieve that end within a reasonable timescale.

### *Impediments*

143. At the time the objections were being made to the Order, many of those received from the Statutory and non-Statutory Objectors related to a lack of

planning permission. Indeed, BAL acknowledged that this would be a material consideration of the Order being confirmed [53].

144. Planning permission was subsequently granted on appeal [3] and was assessed under section 38(6) of the Planning and Compulsory Purchase Act 2004, which requires that the planning application should be determined in accordance with the development plan for the area, unless material considerations indicate otherwise. While this is subject to legal challenge, the permission remains extant. Accordingly, there is no legal impediment to implementation in this regard.
145. Ownership matters have also been relatively complex with the issue of de-trunked land not being formally transferred to NSC as Highways Authority and a debate as to who is legally responsible for plots 9, 16-21. While the Council does not now object to the Order, this is a legal matter which that can be ironed out by the Order [71-72].
146. Plot 21 and Felton Common is another such complex area. Using the relevant powers and adopting a precautionary approach in seeking certification, BAL have sought to address legal issues arising from the Order to implementation, [73-76].
147. Overall, there would be a reasonable prospect of the scheme proceeding and it would not be likely to be blocked by impediments to implementation.

#### *Negotiation*

148. BAL have clearly demonstrated their commitment to seeking to acquire all interests by agreement. Negotiations to acquire the land required for the Highway Works including the Order Land have been ongoing for some time since before the application was submitted and it is noted that Greenacre and High Lands have already been acquired [46]. The appointment of CBRE to support its efforts is also demonstrative in this regard [61].
149. In terms of the Statutory Objectors, while Hawthorne Leisure maintain their objection in respect of an alleged failure to negotiate in their original representation, they confirm that they have been in ongoing negotiations with BAL regarding a possible private treaty arrangement for the acquisition of the property [93].
150. While there are concerns raised by the Trust in respect of the sums involved, it is clear that approaches have been made by BAL. The offer of a Lands Tribunal contract in May 2021 was criticised and was alleged to be too late [111]. However, the Lands Tribunal is the correct body to deal with disputes about valuations of compulsorily purchased land and it is correct to seek to negotiate directly with the relevant parties. By its very nature, the offer of a Tribunal as arbitration should be later on in the process. The CPO Guidance also refers to offering to alleviate concerns about future compensation entitlement by entering into agreements about the minimum level of compensation which would be payable if the acquisition goes ahead (not excluding the claimant's future right to refer the matter to the Upper Tribunal (Lands Chamber)) and as such BAL cannot be criticised for their approach. The Lands Tribunal is the correct authority to assess any evidence in respect of values.
151. Overall, meaningful attempts at negotiation have been pursued where practicable. The CPO is being promoted as the last resort.

### *Public Interest*

152. Compulsory purchase powers should only be used where there is a compelling case in the public interest. As discussed above, the Panel are satisfied that there is a clear idea of how BAL intends to use the land which it is proposing to acquire and can show that all the necessary resources are likely to be available to achieve that end within a reasonable time-scale. These matters form a positive part of the public interest considerations, in accordance with the CPO Guidance.<sup>19</sup>
153. There is a demonstrable need for the scheme. Put simply, works to the A38 and Downside Road are required to accommodate the additional traffic generated by the additional 2mppa which has been consented at appeal. The substantive planning considerations in respect of the benefits were considered as part of the planning inquiry and set out in detail in the appeal decision (annex A).
154. The planning decision includes matters relating to forecasting, which were updated for the Inquiry in light of the ongoing Covid-19 pandemic and the implications of this on the aviation industry. Those forecasts were found to be robust and the fundamental drivers of long-term growth were considered likely to remain strong.
155. Socio-economic benefits were also analysed and assessed in that decision and it was concluded that the development would deliver substantial social and economic benefits, supporting national, regional and sub-regional economic growth. It was also concluded that the development would conform with the Government's levelling up agenda and assist in the recovery from the Covid-19 pandemic.
156. Specific consideration was given by the Panel in the appeal decision in respect of surface access matters and the need for the A38 Highways Works. It was considered that these were necessary and would also give pedestrian and cycle improvements along the A38. It is accepted that the road network is at capacity, but it was found that the works would address this and the resultant increases from the airport expansion. Consideration was also given to accessibility to public transport and traffic flows. Overall, no conflict was found in respect of surface access matters with the development plan.
157. The planning appeal decision also considered other effects, including those related to climate change, air quality, noise, green belt, biodiversity, character and appearance, the AONB, and health. Lighting was also subject to control via planning condition.
158. Prematurity was also considered in the decision in relation to government policy. In terms of the Order, prematurity is also a concern raised by both Statutory and Non-Statutory Objectors, however as Planning Permission has been granted, and as the forecasting assessment were found to be robust (even with Covid-19 effects), there can be no doubt that the granting of the Order would not be premature.

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<sup>19</sup> Page 12

159. The provisions of Article 1 of the First Protocol to the European Convention on Human Rights (ECHR), as incorporated by the Human Rights Act 1998, is clearly engaged. In this case the interference is justified by a legitimate aim, namely the public interest, and the action is necessary and proportionate related to the airport expansion and its socio-economic benefits. Strictly speaking, Article 8 of the ECHR is not engaged as the Order Lands do not include a home nor would there be an adverse effect on family life but, even if it were to apply, for the same reasons the interference would be justified. In respect of Article 6, the CPO has been dealt with at Public Inquiry and written representations made have been fully considered [62-65].
160. Section 149 of The Equalities Act 2010 established the Public Sector Equality Duty (PSED) which is to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. This was considered as part of the planning appeal decision. In addition, related to the Highway Works themselves, there would be no known negative impacts on those who may have a protected characteristic [66].
161. Overall, there is a strong and compelling case in the public interest for the Highways Works.

*Other matters raised by the Objectors*

162. Other matters raised by the objectors, but not dealt with above relate to illegal and roadside parking. While the Panel saw areas of open land used for parking, the planning status of such areas was unknown. In any case, such matters could be dealt with via separate enforcement measures and would not be affected by the CPO. Condition 6 on the planning decision also requires the submission of an annual Parking Demand and Capacity Report which would also include a review of off-site capacity. This would therefore be a matter which would be subject to monitoring in conjunction with NSC [29].
163. Matters relating to public transport would be dealt with by the planning conditions in place including the submission of a CEMP [28].

*Overall Conclusion*

164. The CPO is soundly made, there is a clear need and use, it is resourced and would be implemented within a reasonable timetable. There is a reasonable prospect that the scheme will proceed.
165. Compulsory purchase should only be used as a last resort but, in this case, the action is fully justified and there is a compelling case in the public interest.

**Recommendation**

166. We recommend that the Bristol Airport Limited (Land at A38 and Downside Road) Compulsory Purchase Order 2020 be confirmed without modification.

*P. J. G. Ware*  
Lead Inspector

*C. Searson*  
Inspector

*D. M. Young*  
Inspector



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## APPEARANCES

### BRISTOL AIRPORT LIMITED

Michael Humphries QC and Daisy Noble of Counsel, instructed by Womble Bond Dickinson

They called:

Henry Church MRICS	Senior Director, CBRE Ltd
Scott Witchalls MSc CMILT MIHT MTPS	Director, Stantec UK

### CORE DOCUMENTS

These are available at: <https://gateleyhamer-pi.com/en-gb/bristol-airport/library-documents/cpo-core-documents/>

CP001	The Bristol Airport Limited (Land at A38 And Downside Road) Compulsory Purchase Order 2020 - 15 September 2020
CP002	Signed A38 Bristol CPO Map - 15 September 2020
CP003	Bristol Airport Limited's CPO Statement of Reasons - September 2020
CP004	Bristol Airport Limited's CPO Statement of Case - March 2021
CP007	Schedule to the London Gazette referring to the Exeter-Leeds Trunk Road (Sidcot Lane (A371) Winscombe to Bristol City Boundary, Bedminster Down) (Detrunking) Order 1977 - 24 March 1977
CP010	Section 19 Application - 28 September 2020
CP011	Section 19 press notices - 8 December 2020 and 15 December 2020
CP012	Emails dated 18 January 2021 and 2 March 2021 from PINS
CP013	Ministry of Housing, Communities & Local Government's Guidance on Compulsory Purchase process and The Crichel Down Rules - July 2019
CPO16	OBJ 01 objection letter from Hawthorn Leisure (Mantle) Limited
CPO17	OBJ 02 objection letter from The Trustees of the Sir J V Wills Will Trust
CPO18	OBJ 03 objection letter from Tracy Harding
CPO19	OBJ 04 objection letter from North Somerset Council - withdrawn
CPO20	OBJ 05 objection letter from Congresbury Parish Council
CPO21	OBJ 06 objection letter from Parish Councils Airport Association
CPO22	OBJ 07 objection letter from Chew Magna Parish Council
CPO23	OBJ 08 objection letter from Backwell Parish Council
CPO24	OBJ 09 objection letter from Sir John and Lady Beringer
CPO25	OBJ 10 objection letter from Tim Hollins
CPO26	OBJ 11 objection letter from Colin and Christine Turton
CPO27	OBJ 12 objection letter from Elizabeth Porter
CPO28	OBJ 13 objection letter from Iwona Judkowska
CPO29	OBJ 14 objection letter from Andy Connell
CPO30	OBJ 15 objection letter from Jill Jones
CPO31	OBJ 16 objection letter from Kate Bird
CPO32	OBJ 17 objection letter from Yvonne Kempster
CPO33	OBJ 18 objection letter from Rosa Richards
CPO34	OBJ 19 objection letter from Sustainable Clevedon
CPO35	OBJ 20 objection letter from Stop Bristol Airport Expansion
CPO36	OBJ 21 objection letter from M F Hutchison

CPO37	OBJ 22 objection letter from Cleve Parish Council
CPO38	OBJ 23 objection letter from Jonathan Hoey
CPO39	OBJ 24 objection letter from T Gould
CPO40	OBJ 25 objection letter from Heather Fuller
CPO41	OBJ 26 objection letter from Trevor Mitchell
CPO42	OBJ 27 objection letter from Nicky Connell
CPO43	OBJ 28 objection letter from Nicholas and Jill Higgins
CPO44	OBJ 29 objection letter from David Bignell
CPO45	OBJ 30 objection letter from Gilly Riddington
CPO46	OBJ 31 objection letter from J A T Pays
CPO47	OBJ 32 objection letter from Torin Menzies
CPO48	OBJ 33 objection letter from Sutherland Property and Legal Services on behalf of Mr Lane - withdrawn

## PROOFS OF EVIDENCE

These are available at: <https://gateleyhamer-pi.com/en-gb/bristol-airport/library-documents/cpo-proofs-evidence/>

BAL/W4/3	Scott Witchalls Summary Proof of Evidence
BAL/W4/4	Scott Witchalls Proof of Evidence
BAL/W9/1	Henry Church Summary Proof of Evidence
BAL/W9/2	Henry Church Proof of Evidence
BAL/W9/3	Henry Church Supplementary Proof of Evidence

## ADDITIONAL CPO DOCUMENTS

These are available at: <https://gateleyhamer-pi.com/en-gb/bristol-airport/library-documents/additional-cpo-documents/>

CPO-AD-01	Hawthorne Leisure (Mantle) Ltd, updated 29 June 2021
CPO-AD-02	Trustees of the Sir J V Wills Will Trust, Statement of Case
CPO-AD-03	NSC letter to BAL regarding Evidence submitted by Mr Lansdown, dated 16 September 2021
CPO-AD-04	Trustees of the Sir J V Wills Will Trust response to Supplementary Evidence of Henry Church, dated 27 September 2021
CPO-AD-05	NSC confirmation of withdrawal of Objection, dated 11 October 2021
CPO-AD-06	Email dated 11 October 2021 to confirm withdrawal of OBJ/33 Mr Lane
CPO-AD-07	Statutory Formalities Certificate
CPO-AD-08	BAL Opening Statement
CPO-AD-09	Plots Summary Schedule

## **Annex A – s78 decision**