

FUNDING CONTRIBUTION FOR PLANNING FUNCTIONS ASSOCIATED WITH HEATHROW AIRPORT

Cabinet Member	Councillor Keith Burrows
Cabinet Portfolio	Planning and Transportation
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Papers with report	None

HEADLINE INFORMATION

Purpose of report	<p>This report considers the offer of a funding contribution from British Airports Authority (BAA), the operator of Heathrow Airport, to the Council to assist in meeting the Council's reasonable and justifiable costs for planning related work associated with Heathrow Airport. The funding is offered in accordance with the provisions of Section 93 of the Local Government Act 2003 and Section 139 of the Local Government Act 1972.</p> <p>It is recommended that the offer of funding be accepted.</p> <p>It must be emphasised that accepting this gift funding is without prejudice to the Council's continued opposition to the third runway and contention that the Government support for it is unlawful.</p>
Contribution to our plans and strategies	The recommendations will assist the planning process to realise the objectives of the Sustainable Community Strategy.
Financial Cost	<p>The funding contribution comprises £260,000 for the 2009/10 financial year. There is provision for additional funding to be secured if needed for any other major projects. It represents an extension of the previous financial contribution of £700,000 for the previous 3 years.</p> <p>The funding will assist with planning related costs generated by Heathrow including provision of pre-application advice, planning applications, enforcement and policy development.</p>
Relevant Policy Overview Committee	Residents' and Environmental Services
Ward(s) affected	Heathrow Villages directly, but also Borough-wide and beyond.

RECOMMENDATION

That Cabinet:

- 1. Accepts the offer of a funding contribution from BAA in accordance with the provisions of Section 93 of the Local Government Act 2003 and Section 139 of the Local Government Act 1972.**
- 2. Agrees that the offer be accepted on the basis that it is without prejudice to the Council's continued opposition to the third runway and contention that the Government support for it is unlawful.**

INFORMATION

Reasons for recommendation

Historically, airport planning proposals often impose large costs on the Council as they commonly involve developments that are major, complex, and require specialist knowledge. Often, work associated with proposals takes place over a number of years and requires multi agency working. The Government's decision on the third runway in January this year, stands until it is quashed by the Courts. This means that Officers will have to undertake certain statutory obligations that are an inevitable consequence track changes of this decision. This includes the having a third runway option within our core strategy. It could also include fulfilling our statutory responsibilities and representing the interests of residents in relation to any development consent order procedure initiated by BAA for the third runway under the Planning Act 2008.

For many of its development proposals BAA does not make planning applications or pay planning application fees. Many development proposals at the airport are instead subject to a statutory consultation procedure under Part 18 of the Town and Country Planning (General Permitted Development) Order 1995. These consultations impose costs on the Council comparable to those of processing standard planning applications, but for which no fee is applicable. BAA also benefits from regular pre-application discussions for which they would otherwise be charged for by the Council.

There have been two previous funding contributions received from BAA. A contribution of £1.8m over 4 years in 2002 was received to deal with planning matters relating to the Terminal 5 decision following the decision of the Secretary of State. This was extended for another three years in 2006, with a further £700,000 in contributions. The scope of the funding was also broadened to enable its use for dealing with Heathrow related planning matters.

It is proposed that this funding contribution be extended for a further year. An offer of £260,000 has been received. Any work associated with the legal challenge would be excluded from any funding contribution. In addition, any funding contribution accepted, would be without prejudice to the Council's opposition to the third runway and contention that the Government support for it is unlawful.

Alternative options considered / risk management

- I. Refuse the gift from BAA. This would not be in the best interests of the local communities or the Council.

- II. Request changes to the proposed gift from BAA. BAA is unlikely to increase their offer. However, there is an opportunity to seek additional funding should it be required.

Comments of Policy Overview Committee(s)

None at this stage.

Supporting Information

1. On 8 January 2002 Policy Committee accepted the offer of a financial gift from BAA of £600,000 per annum to be paid to the Council by equal quarterly instalments, such sum to be reviewed and amended as necessary after each 6-month period, for each of the next 3 years.
2. This funding was used to finance the work of the Aviation/Terminal 5 Planning Team which at one stage employed 4 full time planning officers, plus associated Environmental Protection Unit officers, and made use of specialist external planning consultants in the fields of: surface access; urban design, landscaping and minerals. As planning work on T5 declined over time, the original gift funding continued to finance the work of the Aviation/T5 Team. BAA confirmed by letter dated 24 February 2004 that any residual funds could be used for all airport planning work with the exception of any work involved with the third runway.
3. The original funding was received by way of a gift under Section 139 of the Local Government Act 1972 so that the Council was not burdened with the costs of dealing with the extensive planning workload stemming from the approval of Terminal 5 on 20 November 2001. An external legal opinion from counsel confirmed the lawfulness of accepting the gift.
4. On 9 March 2006, Cabinet agreed to extend this financial contribution towards planning related costs at from BAA for the following three financial years. BAA committed £200,000 for the 2006/07 financial year and £250,000 for the following two years. This contribution was towards planning costs that the airport imposes on LBH, with the exception of any costs associated with opposition to the proposed third runway or other potential aviation capacity increases. This funding has now run out.
5. Since the original contribution was accepted, section 93 of the Local Government Act 2003 clarified that local planning authorities can now charge for discretionary services such as pre-application planning advice. This contribution also covers consultations on airport related development, under Part 18 of the Town and Country Planning (General Permitted Development) Order 1995 (As Amended) for which no fee income is received.
6. In addition, the Government's decision on the third runway in January this year, stands until it is quashed by the Courts. This means that Officers will have to undertake certain statutory obligations that are an inevitable consequence of this decision. This includes the having a third runway option within our core strategy. Although within this document the Council can make clear its total opposition to this option. It could also include fulfilling our statutory responsibilities and representing the interests of residents in relation to any development consent order procedure initiated by BAA for the third runway under the Planning Act 2008.
7. The funding contribution that is received is strictly ring-fenced to ensure that it is spent in accordance with the terms of the gift. Three signatures, including that of the Corporate

Director of Planning & Community Services and the Chief Executive, are required to authorise all but minor expenditure. A budget report, including all expenditure, is prepared and provided to BAA annually. Two separate officer signatures are required prior to determination of any planning proposal dealt with by the Aviation/T5 Team under delegated powers. The Central & South Planning Committee in accordance with the Council's Scheme of Delegations considers all major proposals.

Offer to Extend Funding Contribution

8. BAA has offered to extend this contribution for the 2009/10 financial year. A total of £260,000 has been offered. In addition to dealing with planning applications and associated work, this contribution will also be used for policy development in relation to Heathrow to meet its statutory obligations in relation to the Planning and Compulsory Purchase Act 2004 in preparing a core strategy, including alternative options at Heathrow. It may also be used in fulfilling our statutory responsibilities in relation to any development consent order procedure initiated by BAA for the third runway under the Planning Act 2008.
9. This includes agreeing a consultation strategy and input into the consultation process as well as preparing a local impacts report on proposals.
10. This funding contribution would specifically exclude work on the legal challenge. Furthermore it would only be accepted the basis that it is without prejudice to the Council's continued opposition to the third runway and contention that the Government support for it is unlawful, and cannot fetter or restrict the Council's freedom of action and discharge of its statutory functions

Financial Implications

The offer of £260,000 gift funding from BAA will contribute to the costs generated by Heathrow including planning applications, enforcement and policy development. It is prudent to accept the gift, which will enable the Council to fulfil its statutory planning functions as they relate to Heathrow Airport. It will ensure that the costs associated with Heathrow are funded by the airport operator and not from limited Council resources.

This gift funding would be accepted on the basis that it would not prejudice the Council's continued opposition to the third runway. To this end, the cost of the legal challenge is specifically excluded from this gift funding contribution.

EFFECT ON RESIDENTS, SERVICE USERS AND COMMUNITIES

What will be the effect of the recommendation?

The Council has previously accepted gift funding in relation to various planning delivery agreements, and planning initiatives, including the discharge of its functions in producing the RAF Uxbridge Supplementary Planning Document (SPD), providing detailed planning advice and processing applications for RAF Uxbridge and RAF West Ruislip.

The alternative, to refuse the gift funding, would involve meeting the costs of Heathrow related work through the existing planning budget. Given the current constraints on the planning budget and the competing priorities of other workstreams, it would be likely to impact the Council's delivery of its planning services across the board

The extension of the funding contribution from BAA for the 2009/10 financial year would enable Council Officers to continue to deal with matters arising from Heathrow Airport without placing unnecessary burden on Hillingdon residents. The third runway decision made by the Secretary of State places certain statutory obligations on the local planning authority, in relation to policy development and also in relation to the promotion of any scheme.

Such an approach is consistent with the latest guidance from government, and is in the best interests of achieving Councils objectives, as set out in the Sustainable Community Strategy.

Consultation Carried Out or Required

None

CORPORATE IMPLICATIONS

Corporate Finance

The financial implications above properly reflect the direct resource implications for the planning service, including dealing with consultations under Part 18 of the General Permitted Development Order, in providing pre-application advice, planning applications, enforcement and policy development. The funding proposed will contribute to the costs of Heathrow related planning work. It will, where and if appropriate, be used to ensure there is no financial burden on the Council in fulfilling its statutory responsibilities as a result of the Secretary of State's decision on the third runway.

Legal

Section 93 of the Local Government Act 2003 provides a general power to local authorities to charge for discretionary services. Discretionary Services are those services that an authority has the power, but is not obliged, to provide. Through the power to recover via a charge the costs to an authority of providing a service, the government aims to encourage authorities to provide more wide ranging and new and innovative services for their communities. The Council may utilise this power if:

- the Council already has the power to provide the service, but is not mandated or has a duty to provide;
- the recipient of the discretionary service has agreed to its provision and to pay for it;

Charges may be set differentially, so that different people are charged different amounts. The Council is not required to charge for discretionary services. They may provide them for free if they have the resources to do so. However, by virtue of Section 93 (4) there are limitations to the cost of recovery in that for "each kind of service" the income from charges for that service does not exceed the costs of provision. Each Council can decide the methodology they wish to adopt for assessing the costs.

In planning terms, the effect of the above legislation is that the Council can provide extensions to statutory services including a range of advisory services linked to planning and development control. These are not a statutory requirement, but can make an important contribution to the operation of the statutory services. The Council are entitled to receive income for provision of the discretionary services so long as it does not exceed the cost of providing the service. To conform to government guidance a framework ought to be negotiated by officers and properly formalised. In terms of member involvement, Members and officer should have regard to the helpful guidance on Members pre-application involvement set out in the Department of

Communities and Local Government “Member Involvement in Planning Decisions”, published in January 2007.

In relation to the provision of gift funding for the discharge of statutory functions and policy development, the relevant statutory power is Section 139 of the Local Government Act 1972. This provides that “a local authority may accept, hold and administer for the purpose of discharging any of their functions, gifts of property, whether real or personal, made for that purpose.”

- The ordinary meaning of a gift is a voluntary transfer of property without consideration. The offer from BAA does not suggest that the Council is to be obliged to do anything in consideration of any payment. Furthermore, any gift made and accepted under Section 139 must be one which is intended to enable the Council to discharge its functions.
- A gift may be made notwithstanding the fact that the donor expects its use by the donee to bring him benefits. Therefore the fact that BAA would for example, have an interest in ensuring that its submissions are dealt with in a timely manner, would not mean that the payments could not be accepted as gift.

The reality, however, is that the Council would not be providing any advice and assistance solely for the benefit of BAA. The funds will be expended for development in the public interest and in the interests of the proper planning of the area. From the Council’s point of view, BAA is not the beneficiary of the activities associated with the gift funding, nor is the object to provide BAA with any advice or services extraordinary to this particular project. Instead the beneficiaries of the planning process should be the existing residents of the borough, particularly those within close proximity of the site.

The perception of the public is a matter for the Council to consider if it accepts the payments. The Council must maintain its independence from BAA and its impartiality as a local planning authority with respect to any application or other matter involving BAA. The Council should ensure that legitimate doubts do not arise about such matters. The Council may also be concerned about any widespread impression which might arise, however unfounded.

One way of addressing this difficulty is to ensure that BAA’s proposals are fully reported, and that the community is engaged through the planning process, both at pre-application stage, and after the submission of planning applications. Transparency and accountability will be essential if any payment is to be accepted.

BACKGROUND PAPERS

NIL