

## RATIFICATION OF OBJECTION TO TRANSPORT AND WORKS ACT ORDER FOR AIRTRACK

<b>Cabinet Member</b>	Councillor Burrows
<b>Cabinet Portfolio</b>	Planning and Transportation
<b>Officer Contact</b>	Aileen Carlisle
<b>Purpose of report</b>	This report seeks the ratification of the Central and South Planning Committee's Decision to object to the proposed Airtrack Scheme being promoted by BAA on the grounds of the principle of development and on green belt grounds. Under the Transport and Works Act 1992, this decision is required to be ratified by Full Council.
<b>Contribution to our plans and strategies</b>	Community Strategy Local Development Framework
<b>Financial Cost</b>	There are unlikely to be any financial costs unless the issues raised in the Report cannot be resolved through negotiation prior to the public inquiry in late Spring 2010. If the reasons for objection cannot be resolved, it is likely to cost between £10k and £35k to put forward our case at the Inquiry. These costs if they were to arise would be covered by the contingency for planning inquiries.
<b>Relevant Policy Overview Committee</b>	Residents' and Environmental Services Policy Overview Committee
<b>Ward(s) affected</b>	Heathrow Villages

### RECOMMENDATIONS: That

1. in accordance with section 239 of the Local Government Act, the Council resolves
  - (a) to oppose the draft Order promoted pursuant to the Transport and Works Act 1992 (the draft Order) by Heathrow Airport Limited submitted to the Secretary of State for Transport on 24 July 2009 and known as the Heathrow Airtrack Order (and any other application or Order made to the Secretary of State under related legislation in connection with the promotion of such Order);
  - (b) to delegate to the Council's Central and South Planning Committee the passing of such resolutions as may be necessary or expedient in connection with the Council's opposition to such Order; and
  - (c) to ratify adopt and endorse the resolutions, and recommendations made by the Central and South Planning Committee to object to the Transport and

**Works Act Order for Heathrow Airtrack Order under the Transport and Works Act 1992 made by it at its Committee meeting on 15 September 2009**

- (d) that the Director of Planning and Community Services may conduct the day to day opposition to such Order as may be necessary or expedient in connection with the opposition to such Order (including the withdrawal of opposition to such Order) subject to the direction of the Central and South Planning Committee, and subject to any further resolutions made by the Central and South Planning Committee as may be necessary or expedient in connection with the opposition to such Order.**

- 2. the progress that has been made to date in resolving the issues raised in the report to the Central and South Committee be noted.**

## **INFORMATION**

### **Reasons for recommendations**

### **Alternative options considered**

- I. Agree with the recommendation of the Central and South Planning Committee to object to the Proposed Scheme on the grounds of the principle of the development and green belt issues.
- II. Overturn the recommendation of the Central and South Planning Committee to object to the Proposed Scheme and support it

### **Comments of Policy Overview Committee(s)**

The Residents and Environmental Services Policy Overview Committee have not commented on the report.

### **Supporting Information**

1. BAA is promoting the Airtrack Scheme through the Transport and Works Act 1992. A consultation on the proposed Transport and Works Act Order took place between 24 July and 18 September 2009.
2. The proposed Scheme would connect Heathrow Airport to the south and south west of London and the surrounding regions. Services would operate to Reading, Guildford and London Waterloo and would be in addition to those already operating on these lines. At the same time, some Heathrow Express services would be extended through Heathrow Terminal 5 to Staines. The proposed scheme would also safeguard a potential route to the north.
3. The proposed Scheme includes:
  - A new connection at Staines linking the two existing railway lines there and providing a link from Heathrow to Reading and Guildford
  - A new station at Staines High Street
  - A new 4km length of track across Staines and Stanwell Moors, linking the Windsor line at Staines with Terminal 5 at Heathrow

- Fitting out the AirTrack platforms at Terminal 5, which were safeguarded for development to the west as part of the Terminal 5 planning permission.
4. It is anticipated that the scheme will achieve between 1-2% modal shift in public transport use at Heathrow. However, the business case for the scheme is yet to be finalised.
  5. The scheme within Hillingdon would involve the construction of a tunnel from Bedfont Court to the south west under the Colne River and Airport Way, and to the east under the A3044 on green belt land. While the land would be restored upon completion of this tunneling work, there would be a number of substantial permanent structures including intervention and escape buildings and shafts up to eight metres in height and an access road that would be retained. These permanent physical structures would adversely impact upon the visual amenity value and openness of the Green Belt.
  6. During construction, there will be a worksite in the vicinity of Bedfont Court. The scale of activity is unclear but would be subject to a Construction Strategy agreed with the local planning authority prior to the commencement of works.

### **Objection to Proposed Scheme**

7. Whilst, in principle, public transport schemes such as Airtrack are welcomed, the Council finds itself in a difficult position. It was consulted on a proposal for a scheme which was supported by the Secretary of State in making his decision on the third runway. This is a decision that the Council contends is irrational and unlawful and is the subject of a separate legal challenge.
8. As a result of this and concerns about impact of the development on the Green Belt, the Central and South Planning Committee agreed the recommendations to object to the scheme on the grounds that:
  - (a) Insufficient evidence has been provided to justify the special circumstances that exist to justify development in the Green Belt
  - (b) Clarification is required that the proposed development is required for the existing two runway, 5 terminal airport and is not for the purpose of supporting the third runway development.
9. Because this is an objection to the proposal under the Transport and Works Act 1992, the recommendation of the Central and South Planning Committee has to be ratified by Full Council under Section 239 of the Local Government Act 1972. A holding objection has been sent to the Department for Transport, which is responsible for dealing with Orders such as this, pending the resolution of full Council to ratify the Central and South Planning Committee recommendation.

### **Progress Made to Address Reasons for Objection**

10. A Public Inquiry will take place to hear objections to the Order in late Spring 2010. The Council will want to take its case to this Inquiry unless the issues raised in the report can be resolved. At this stage, Officers are hopeful that this will be the case.

11. The consultants for the promoters of the Scheme have contact Council Officers and initiated discussions in relation to the Council's objections to the Scheme.
12. A letter has been received by the Corporate Director of Planning and Community Services from Heathrow Airport Limited confirming that:  
*The Airtrack Project is included within the airport's Capital Investment Plan for a two runway, 5 terminal airport. It has always been HAL's intention to promote and implement this project irrespective of the government's decision on airport expansion.*
13. The consultants have also confirmed that the case for allowing for development in the Green Belt needs to be strengthened. The business case for the proposal will be put forward along with the Applicants Statement of Case. If this matter is resolved to the satisfaction of Officers through the provision of this information, the other matters raised can be addressed through conditions and any related section 106 agreement.

### **Financial Implications**

As noted in the previous section, progress is being made through negotiations with the applicant's consultants towards overcoming the reasons for objection set out in the Report to the Central and South Planning Committee. If these matters cannot be satisfactorily resolved, then the Council will have the opportunity to put its case forward at the Public Inquiry towards the end of Spring. Bearing in mind that legal and expert advice is likely to be required, it is anticipated that the costs of the Inquiry will be between £10k and £25k. These costs if they were to arise would be covered by the contingency for planning inquiries.

### **EFFECT ON RESIDENTS, SERVICE USERS & COMMUNITIES**

#### **What will be the effect of the recommendation?**

There will be no long term impact on residents, however, there will be impacts on residents in Spout Lane North and potentially Longford residents during construction. As with Terminal 5, it is anticipated that these impacts will be addressed through the Code of Construction Practice that will be approved by Council Planning Officers prior to the commencement of construction.

#### **Consultation Carried Out or Required**

None required

### **CORPORATE IMPLICATIONS**

#### **Corporate Finance**

A corporate finance officer has reviewed this report and is satisfied that the financial implications above set out in full the resource implications for the Council arising from the decisions recommended in the report.

## Legal

When making their decision, Members must have regard to all relevant planning legislation, regulations, guidance, circulars and Council policies that are identified in this report. This will enable them to make an informed decision in respect of an application.

Under the provisions of the Transport and Works Act, the Council has power to promote or power to oppose Bills in Parliament, and also has power to apply for, or as the case may be power to object to this order proposed under the Transport and Works Act 1992. However, that power is conditional on compliance with the requirements of section 239 of the Local Government Act 1972.

The Act requires the Council to resolve to oppose the order in full Council passed by a majority of the whole number of the members of the authority at a meeting of the authority held after the requisite notice of the meeting and of its purpose has been given by advertisement in one or more local newspapers circulating in the area of the authority, such notice being given in addition to the ordinary notice required to be given for the convening of a meeting of the authority. The notice must give 10 clear days notice of the Council meeting where the resolution is to oppose the order. At the date of this report arrangements have been made to publish the advertisements on 16 December 2009 which is more than ten clear days from the date of the Council meeting.

In addition, Members should note that the Human Rights Act 1998 (HRA 1998) makes it unlawful for the Council to act incompatibly with Convention rights. Decisions by the Committee must take account of the HRA 1998. Therefore, Members need to be aware of the fact that the HRA 1998 makes the European Convention on Human Rights (the Convention) directly applicable to the actions of public bodies in England and Wales. The specific parts of the Convention relevant to planning matters are Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

Article 6 deals with procedural fairness. If normal committee procedures are followed, it is unlikely that this article will be breached.

Article 1 of the First Protocol and Article 8 are not absolute rights and infringements of these rights protected under these are allowed in certain defined circumstances, for example where required by law. However any infringement must be proportionate, which means it must achieve a fair balance between the public interest and the private interest infringed and must not go beyond what is needed to achieve its objective.

Article 14 states that the rights under the Convention shall be secured without discrimination on grounds of 'sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status'.

BACKGROUND PAPERS: Report to the Central and South Planning Committee on the Proposed Heathrow Airtrack Order (Consultation under Sections 1 and 5 of the Transport and Works Act Order)