

# HEATHROW EXPANSION AND AIR QUALITY GOVERNMENT CONSULTATIONS

<b>Cabinet Member</b>	Councillor Ray Puddifoot MBE
<b>Cabinet Portfolio</b>	Leader of the Council
<b>Officer Contact(s)</b>	Raj Alagh, Chief Executives Office
<b>Papers with report</b>	<p><b>Copies of the appendices are available separately to this main agenda to Cabinet Members and Executive Scrutiny Committee. Copies will be available in Group Offices, for public inspection and on the Council's website:</b></p> <p>Appendix 1: Joint response from the London Boroughs of Hillingdon, Richmond, Wandsworth and the Royal Borough of Windsor and Maidenhead to the previous Government's consultation on the Draft Airports NPS.</p> <p>Appendix 2: London Borough of Hillingdon's individual response to the previous Government's consultation on the Draft Airports NPS.</p> <p>Appendix 3: Joint response from the London Boroughs of Hillingdon, Richmond, Wandsworth and the Royal Borough of Windsor and Maidenhead to the previous Government's consultation on UK Airspace Policy.</p> <p>Appendix 4: Joint response from the London Boroughs of Hillingdon, Richmond, Wandsworth and the Royal Borough of Windsor and Maidenhead to the previous Government's consultation on Tackling Nitrogen Dioxide in our Towns and Cities.</p>

## HEADLINE INFORMATION

<b>Summary</b>	<p>This report sets out details of the Council's joint and individual responses to three separate consultation exercises which the previous Government initiated and Cabinet's endorsement is being sought to the responses which have already been submitted.</p> <p>Cabinet is also being asked to affirm the Council's commitment to taking whatever action it considers appropriate to oppose Heathrow expansion.</p>
<b>Putting our Residents First</b>	<p>The report meets the Council's objectives of our people and our natural and built environment. It also helps to demonstrate that the Council is doing all that it can to protect its residents from proposed Heathrow expansion.</p>
<b>Financial Cost</b>	<p>None directly arising from this report.</p>
<b>Relevant Policy Overview Committee</b>	<p>Residents' &amp; Environmental Services Policy Overview Committee</p>
<b>Ward(s) affected</b>	<p>All wards.</p>

## **RECOMMENDATIONS**

### **That Cabinet:**

- 1. Notes the contents of the report.**
- 2. Endorses the joint response that has been submitted by the London Boroughs of Hillingdon, Richmond, Wandsworth and the Royal Borough of Windsor and Maidenhead in relation to the previous Government's consultation on the Draft Airports National Policy Statement as set out in Appendix 1.**
- 3. Endorses this Council's individual response that has been submitted in relation to the previous Government's consultation on the Draft Airports National Policy Statement as set out in Appendix 2.**
- 4. Endorses the joint response that has been submitted by the London Boroughs of Hillingdon, Richmond, Wandsworth and the Royal Borough of Windsor and Maidenhead in relation to the previous Government's consultation on UK Airspace Policy as set out in Appendix 3.**
- 5. Endorses the joint response that has been submitted by the London Boroughs of Hillingdon, Richmond, Wandsworth and the Royal Borough of Windsor and Maidenhead in relation to the previous Government's consultation on Tackling Nitrogen Dioxide in our Towns and Cities as set out in Appendix 4.**
- 6. Affirms this Council's commitment, working either alone, or in conjunction with its partner authorities and others, to take all necessary action, including the commencement of further legal challenges, to oppose the Government's proposals to expand Heathrow Airport and it agrees that delegated authority be given to the Deputy Chief Executive and Director of Residents Services and the Borough Solicitor to formally implement any actions directed by the Leader of the Council.**

### **Reasons for recommendation**

Heathrow expansion will have a devastating impact on the Borough and its local communities. By responding to the previous Government's consultations, both jointly and individually, the Council is ensuring that its robust representations as to why Heathrow expansion should not go ahead are formally made and if necessary, can be produced before a Court should a further legal challenge against the Government be commenced in the future.

The Council, in conjunction with its partners, will be considering whether to issue judicial review proceedings at the end of the current National Policy Statement process.

### **Alternative options considered / risk management**

The Council could decide not to respond to the various consultations. However, this is not considered to be a feasible alternative due to the very significant impacts that Heathrow expansion would have on the Borough and its residents.

### **Policy Overview Committee comments**

None at this stage.

---

## **INFORMATION**

### **Background**

#### **The Airports Commission**

1. In May 2010, the newly formed Coalition Government made a pledge to cancel plans for a third runway at Heathrow Airport. This pledge was made on the back of David Cameron's "no ifs, no buts" promise in October 2009 that the third runway at Heathrow would not be going ahead.

2. In spite of these unequivocal promises, the Coalition Government proceeded to establish an independent Airports Commission ["the Commission"], led by Sir Howard Davies, in September 2012. The remit of the Commission was twofold:

- To produce an Interim Report, setting out the nature, scale and timing of steps needed to maintain the UK's global status together with recommendations for making better use of the UK's existing runway capacity over the next five years; and
- To produce a Final Report, setting out recommendations on how to meet any need for additional airport capacity in the longer term.

3. The Commission delivered its recommendations to Government in its Interim Report in December 2013. It concluded that there was a need for one additional runway to be in operation in the South East of England by 2030. It also set in train a period of further consultation on three shortlisted schemes [Gatwick Second Runway scheme, Heathrow Northwest Runway scheme, and Heathrow Extended Northern Runway scheme], as well as the option of a new airport in the inner Thames Estuary. However, in September 2014, the Commission decided that this particular option did not perform sufficiently well to warrant consideration alongside the three schemes that it had decided to shortlist.

4. The Council submitted a number of important documents to the Commission in relation to its calls for evidence on noise, utilisation of existing capacity and delivering new runway capacity. The Council also responded robustly to the Commission's consultation on its appraisal of its short-listed airport expansion, by making it very clear that it was firmly opposed to Heathrow expansion in any form.

5. In its Final Report in July 2015, the Commission concluded that a proposed Northwest Runway at Heathrow presented the strongest case for expansion and would offer the greatest strategic and economic benefits to the UK. The Commission also made it clear that expansion would have to involve a significant package of supporting measures to address the environmental and community impacts of the new runway.

#### **The 25 October 2016 Announcement**

6. The previous Government reviewed the Commission's work and the various representations which it had received on the issue of airport capacity and it concluded that its evidence base on the case for expansion at Heathrow and its use of this evidence was both sound. The previous Government therefore announced that its preferred scheme to meet the need for new airport capacity in the South East of England was a Northwest Runway at Heathrow, with the other shortlisted schemes not representing true and credible alternatives to it. In identifying the preferred scheme, a wide range of factors were apparently taken into account including

international connectivity and strategic benefits, surface access links, financeability, deliverability and local environmental impacts.

## **The Legal Challenge**

7. The October 2016 announcement was as shocking as it was unwelcome. The Leader of the Council therefore authorised the Council, as part of a consortium of local authorities and others [collectively known as "the claimants"], to commence judicial review proceedings in the High Court, to challenge the previous Government's decision to favour airport expansion Heathrow. The other authorities were the London Boroughs of Richmond and Wandsworth and the Royal Borough of Windsor and Maidenhead. The proceedings were issued in the High Court in December 2016.

8. There were two principal grounds on which the judicial review proceedings were based. Firstly, that there was a manifestly unlawful approach on the part of the previous Government to the issue of air quality. Secondly, that the announcement was contrary to the claimants' legitimate expectations because Governments had made repeated promises over a number of years that there would be no third runway at Heathrow and these promises had been relied upon by the claimants in good faith.

9. The judicial review was refused by the High Court in January 2017 on the basis that the Planning Act 2008 precludes a judicial review claim being brought before a National Policy Statement ["NPS"] has been published and designated by the Government. However, the High Court Judge hearing the case made it very clear in his judgment that once the Secretary of State had designated and published a NPS, the High Court would have full jurisdiction to entertain the challenges that the claimants had advanced.

10. The reality of the High Court's decision is that the judicial review challenge has effectively been suspended and there will be no jurisdictional bar, under the Planning Act 2008 or otherwise, to bringing a further such challenge by the claimants at the end of the current NPS process.

## **The Draft Airports NPS**

11. The previous Government decided that a NPS is the most appropriate mechanism for putting into place the necessary planning framework for a new runway at Heathrow on the basis that it falls within the category of a nationally significant infrastructure project within the meaning of the Planning Act 2008. An alternative approach would have been to use the Hybrid Bill process which was favoured for the development of Phase One of the HS2 scheme.

12. The draft Airports NPS provides the primary basis for decision making on development consent applications for a Northwest Runway at Heathrow by setting out relevant planning policy, and it will also be an important and relevant consideration in respect of applications for new runway capacity and other airport infrastructure in London and the South East of England.

13. The draft Airports NPS sets out:

- The Government's policy on the need for new airport capacity in the South East of England;
- The Government's preferred location and scheme to deliver new capacity; and
- Particular considerations relevant to a development consent application to which the draft Airport NPS relates.

14. The Secretary of State will use the Airports NPS, if adopted, as the primary basis for making decisions on any development consent application for a new Northwest Runway at Heathrow. The NPS is intended to have effect in relation to the Government's proposed scheme of having a runway of at least 3,500m and enabling at least 260,000 additional air transport movements per annum. It is also intended to have effect in relation to terminal infrastructure associated with the proposed new runway and the reconfiguration of the central terminal area at Heathrow.

15. Unlike the regime for the granting of planning permission under the Town and Country Planning Act 1990, there is no provision in the Planning Act 1990 for the making of an 'outline' application for development consent, followed by 'reserved' matters' approval. This does not mean, however, that development cannot be phased, so that particular parts are brought forward at different times, or that the details of a proposal cannot be reserved for determination later.

16. The Airports NPS is intended to cover development that is required by 2030 as well as other development required to support it. It will remain in place until it is withdrawn, amended or replaced. It will be reviewed in accordance with the Planning Act 2008 when the Secretary of State considers it appropriate to do so. When considering whether to review the Airports NPS, the Secretary of State will look at whether there has been a significant change in any circumstances on which the policy was based and whether such change was anticipated when the Airports NPS was designated.

### **Government Consultations**

17. Section 7 of the Planning Act 2008 imposes an obligation on the Secretary of State to carry out such consultation, and arrange for such publicity, as he thinks appropriate in relation to his proposal to designate an Airports NPS. The Secretary of State is also required to publicise the proposal on the basis that he has identified a Northwest Runway at Heathrow as his preferred scheme for development. Finally, the Secretary of State must have regard to the responses to the consultation and publicity in deciding whether to proceed with the proposal.

18. The Secretary of State published a Draft Airports NPS on 2 February 2017 headed, 'New runway capacity and infrastructure at airports in the South East of England'. This is the first of three Government consultations which are the subject of this report. The following documents have accompanied the draft NPS consultation document:

- Equalities Impact Assessment
- Health Impact Assessment
- Additional Air Quality Assessment
- Carbon Policy Assessment
- Habitats Assessment

19. Section 10 of the Planning Act 2008 requires the Secretary of State, in exercising his functions in relation to a NPS, to do so with the objective of contributing to the achievement of sustainable development. Therefore, an Appraisal of Sustainability has been included in the package of consultation documents. The previous Government has placed great importance on the Appraisal of Sustainability on the basis that it accepts that the Northwest runway preferred scheme will cause the greatest negative impact on local communities, but it is considered that it can be mitigated by measures identified in the Appraisal of Sustainability. Examples of these measures are the reduction of noise, compliance with air quality limits, demonstration of how carbon targets can be met and an extensive and appropriate compensation package to be put into place for affected parties.

20. The Secretary of State also published a UK Airspace Policy consultation document on 2 February 2017. This is the second Government consultation. The following documents have accompanied this consultation document:

- Upgrading UK Airspace: Strategic Rationale
- Guidance Document
- Survey Attitudes including a Peer Review document

21. Both the Draft Airports NPS and the UK Airspace Policy consultations closed on 25 May 2017.

22. The 2015 Air Quality Plan was quashed by the High Court in November 2016 following a successful legal challenge brought by Client Earth No.2 against the previous Government. The High Court has ordered that a final new Air Quality Plan is published by no later than 31 July 2017 with the objective of reducing exposure to nitrogen dioxide as quickly as possible.

23. It follows that a draft Air Quality Plan has to be published and be subject to a public consultation exercise before it can be finalised. Therefore, a third consultation document was published by the previous Government on 5 May 2017, with the consultation closing on 15 June 2017. It is headed 'Tackling nitrogen dioxide in our towns and cities'. The following documents have accompanied the consultation document:

- A draft UK Air Quality Plan for tackling nitrogen dioxide
- A draft Technical Report including modelling techniques and assumptions

### **Consultation Responses on Draft Airports NPS**

24. Given that the previous Government's proposal to introduce a Northwest Runway at Heathrow significantly affects not only Hillingdon but also the boroughs of Richmond, Wandsworth and Windsor and Maidenhead, it was agreed that a joint response from the four local authorities should be sent ("the four borough response"). This approach was also consistent with the fact that all four local authorities were claimants in the judicial review proceedings which have been suspended by the High Court and they will also be involved in any potential further legal challenge which will be given full consideration at the end of the Airports NPS process.

25. This Council and its residents are the most affected by the Government's proposal to expand Heathrow and it is also the relevant local planning authority for the purpose of the Airports NPS. For these reasons, the Council also submitted its own individual response to the consultation.

#### The four borough response

26. The actual response document extends to 71 pages and is attached as Appendix 1 to the report. The document was sent out on 25 May 2017 and it was accompanied by a number of legal documents which were used in the December 2016 judicial review proceedings, including a robust written witness statement from the Leader of this Council.

27. Eight specific questions were posed by the previous Government as part of the consultation exercise, They are wide ranging in nature and cover such issues as whether there is the need for additional airport capacity in the South East of England, and how best to address it, whether the mitigation measures are sufficient and whether there any supporting measures which should

be considered, and ascertaining consultees' views in relation to the Appraisal of Sustainability.

28. The introductory comments in the response make it clear that the four boroughs are responding as fully as possible to the consultation without prejudice to their claim that the previous Government's 25 October 2016 decision was unlawful and everything that has followed since is also unlawful and therefore they fully reserve their right to refer the matter back to the High Court once the Secretary of State has adopted and published a NPS.

29. The key issues outlined in the response are summarised as follows:

- I. The Government should not have reneged on previous promises made that there would be no Heathrow expansion.
  - II. The Government's approach to the very important issue of air quality is palpably wrong in both fact and law.
  - III. The consultation is flawed on the basis that it does not provide essential information on a number of important matters such as:
    - Flight paths;
    - The new Air Quality Plan;
    - Updated passenger demand forecasts;
    - The financial reports and information referred to in the draft Airports NPS;
    - Full and proper information about alternatives and in particular Gatwick;
    - An assessment of mitigation; and
    - A Health Impact Assessment.
  - IV. The consultation is unfair on the basis that:
    - Ministers have indicated that their minds were made up.
    - The consultation documentation, including the promotional literature, has been presented in a biased way.
    - Consultees were not given a comparative assessment of the shortlisted schemes nor adequate reasoning for the Government's choice of Heathrow.
    - The Government has refused to give consultees extra time to consider the new draft Air Quality Plan.
    - No regard or consideration has been given to the problems associated with calling a general election during the consultation period.
  - V. There is no evidence for rejecting Gatwick because:
    - The Government's case on economics is flawed;
    - The Government's assessment of the benefits of Heathrow expansion is flawed including the adoption of a business case which ignores the advice of the Climate Change Committee;
    - There is an inadequate and unlawful assessment under the Habitats Directive.
  - VI. The principles or requirements in the draft Airports NPS are ineffective to secure an airport that would operate and be operable within the necessary environmental limits.
  - VII. The Appraisal of Sustainability does not conform with the requirements of both primary and secondary legislation.
-

VIII. Expansion of Heathrow is inconsistent with the principle of sustainable development. Any perceived economic benefits are unproven and the environmental damage which will occur is overwhelming.

30. As with all four consultation responses set out in this report, the Leader of this Council has approved them under his delegated powers and the external legal team, which the four boroughs have retained for the judicial review proceedings, has also approved them.

#### The Council's response

31. The response document dated 25 May 2017 is 31 pages long and is attached as Appendix 2 to the report. There is unavoidably a significant degree of overlap with the comments made in the four borough response and it has therefore been made clear in the introductory remarks that the Council fully relies upon, and endorses everything, that has been said in this response. The Council has also made it known that it considers that the 25 October 2016 decision and everything that has followed since is unlawful and that it reserves its right, in conjunction with the other claimants, to refer the matter back to the High Court once the Secretary of State has adopted and published a NPS.

32. The Council has not addressed the eight specific questions set out in the draft Airports NPS consultation document on the basis that they have already been fully answered in the four borough response. Instead, the Council has highlighted and expanded upon those areas which give it, and its residents', greatest cause for concern and it has set them out in general terms.

33. The key issues outlined in the Council's response are summarised as follows:

- I. In 2013, the Council held its first ever referendum which was on the subject of Heathrow expansion. Of those who voted, 66% did not think that a third runway should be built at Heathrow and 66.3% were not in favour of more flights into and out of Heathrow. There is nothing to suggest that Hillingdon residents' feelings about Heathrow expansion have changed since the referendum. If a new referendum was to be held in 2017, it is expected that the result would be just as emphatic if not more so.
- II. It is anticipated that 783 homes will be directly lost to expansion with a further 289 homes highlighted to be lost to accommodate a surface access scheme. In addition, it is expected that a further 3,750 homes will be affected by blight.
- III. Compensation to affected households only becomes payable once planning consent for Heathrow expansion has been given. There is absolutely no certainty as to when such consent will be forthcoming, leaving a very significant number of Hillingdon residents in limbo.
- IV. Community facilities will be devastated. For example, many households and individuals will have to contend with living in the vicinity of an expanded Heathrow and schools in Harmondsworth, Longford and Sipson will either be lost or subject to noise impacts that will adversely affect the cognitive learning ability of children.
- V. Many people living in Hillingdon rely upon businesses that will be lost as a direct consequence of Heathrow expansion and therefore they face the prospect of losing their jobs. In time, an expanded Heathrow may generate new jobs, but there will be several years of uncertainty until a third runway becomes operational.

- VI. Apart from the direct and indirect impacts arising from construction and operation of the airport, the south of Hillingdon will have to accommodate potential unparalleled levels of growth. The Council has a statutory duty to plan for growth in a sustainable, efficient and fair manner giving equal regard to the economy, environment and people. The Airports NPS, if adopted, will very significantly undermine this duty. For instance, the impacts of growth will mean the loss of highly valued open space in Hillingdon with significant constraints imposed on other parts so as to render them less attractive to residents and visitors.
- VII. The draft Airports NPS does not provide any adequate assessment of mitigation measures. If mitigation cannot be delivered, there will be an unbearable burden imposed on the local road network in and around Hillingdon. There will be huge increases in the level of congestion and road traffic resulting in grid lock to local areas.
- VIII. The HS2 Hybrid Bill was enacted in February 2017 and Hillingdon is now being asked to accommodate two huge national infrastructure projects, each responsible for irreparable damage to land in Hillingdon and each devastating for local communities. There are direct cumulative impacts arising from the two projects as there is a real possibility that the respective constructions works associated with them will overlap and this will, for example, have very significant impacts on, inter alia, noise levels and air quality. It is most disappointing that HS2 was not even mentioned in the draft Airports NPS.
- IX. Expansion at Heathrow will greatly exacerbate the adverse impacts on air quality for Hillingdon communities and individuals who are already disadvantaged by poor air pollution.
- X. There is a glaring absence of any assessment by the previous Government of the heightened noise impacts which will arise from Heathrow expansion. Communities in Sipson and Harlington will be faced with relentless noise from aircraft at low altitudes where they will be either departing or taking off.
- XI. The villages of Longford and Harmondsworth have a rich heritage and are home to many listed structures and assets which will be lost forever as a direct consequence of Heathrow expansion.
- XII. The draft Airports NPS make no reference whatsoever to the poor quality of land below the area identified for a new runway which will require remediation. The cost of clearing up hundreds of hectares of contaminated material, whilst providing safeguards to important groundwater, will be extraordinarily high but no account appears to have been taken of this.
- XIII. The Council has set out its concerns that any mitigation, such as Prospect Park, which is designed to offset Terminal 5 harm, should not simply be relocated.
- XIV. The draft Airports NPS has made inadequate provision for potential impacts on the continued operation of RAF Northolt. For example, the indicative flight paths previously set out for Heathrow expansion cross directly across RAF Northolt's immediate airspace.
- XV. The Council's role as local planning authority is affected by the decision to expand Heathrow insofar as its current planning policy is not predicated on Heathrow expansion and it does not consider the implications of accommodating resultant growth. The draft Airports NPS ignores the Council's long standing, publically developed and

democratically adopted local plans and instead, it is effectively forcing a proposal on the Council and its residents without any regard to the existing planning framework.

## **Consultation Response on UK Airspace Policy**

34. The previous Government has initiated this particular consultation on the basis that airspace arrangements, which are now nearly fifty years old, are in need of modernisation. The consultation is therefore designed to ensure that the correct formula is in place to facilitate the modernisation agenda which it is said will deliver benefits to passengers, the economy and local communities alike.

35. Consultees' views have been sought in relation to the following matters:

- Airspace change compensation proposals
- Proposals for the assessment of noise, including impacts on health and quality of life
- The establishment of an Independent Commission on Civil Aviation Noise
- Proposals for ongoing noise management around airports

36. The Council decided not to submit its own individual response in relation to this consultation exercise. It has instead signed up to a joint borough response with its established partner authorities; Richmond, Wandsworth and Windsor and Maidenhead. A copy of this response is attached as Appendix 3 to the report.

37. UK Airspace Policy is a highly technical area and as with the draft Airports NPS consultation, the previous Government has set out a number of questions upon which it is seeking consultees' views. However, the essence of the four borough response is best captured in the covering letter from the four Leaders dated 25 May 2017. The most significant points made are summarised as follows.

- I. The UK airspace modernisation programme is being rushed by the Government in order to support its proposal to expand Heathrow. Putting proper transparent processes in place with regard to future changes to flight paths, the metrics used to inform the impact of these changes and the acceptability of changes for local communities should all be finalised before the issue of Heathrow expansion is taken forward.
- II. The consultation is incomplete and inadequate. It palpably fails to explain the impacts that are likely to be felt for 20 miles or more around Heathrow once a third runway is in place.
- III. Virtually all "Airspace Modernisation" changes using Precision Based Navigation Technology in the UK have to date resulted in unprecedented levels of adverse reaction from communities who find themselves newly overflowed as well as those who have found themselves condemned to living in a "noise sewer" as a result of concentrated flight paths with no respite.
- IV. Following on from this, the use of dispersed flight paths across London to serve an expanded Heathrow will mean that at least 100,000 people will be newly overflowed for the first time and they will be impacted by noise to a significant degree. The Government has not yet developed a suitable set of noise metrics that can accurately predict community response to the changes in the local sound environment that will occur. The use of a single average noise metric as currently adopted by the Government

understates the position as a "daily average" which would include the times of the day or night when aircraft are flying using another route.

- V. The Airspace change compensation proposals are wholly inadequate. For example, the increased noise insulation measures would only apply to those properties in close proximity to Heathrow and would provide no benefit whatsoever for people who wish to exercise their basic human rights of being able to open their windows. Furthermore, the proposal to encourage Airspace change sponsors to offer compensation on a voluntary basis is not good enough and amounts to an abrogation of responsibility. The polluter pays principle should firmly apply here.
- VI. The proposal to introduce an Independent Commission on Civil Aviation Noise ["ICCAN"] is disappointing as it will be an arm of the Civil Aviation Authority and as such, it will have to operate within the confines of advice and instructions given to it by the Government. Therefore, it will not be truly independent. ICCAN will have no teeth and in the absence of having any powers of enforcement, it will be unable to exercise effective leadership or demonstrate impartiality to the communities affected. It also appears that the Government does not envisage a long term role for ICCAN, possibly not beyond a single 5-year term, which is insufficient as the Government has already been working on the issue of Airspace modernisation for a period of six years.

### **Consultation Response on Tackling Nitrogen Dioxide in our Towns and Cities**

38. This is a six week consultation which ran from 5 May to 15 June 2017. Unlike the other two consultations set out in the report, which have been initiated by the Department for Transport, this particular consultation has been produced by the Department for Environment, Food and Rural Affairs. The consultation documentation makes it clear that:

- poor air quality is the largest environmental risk to public health in the UK;
- it is known to have more severe effects on vulnerable groups, for example children and the elderly;
- studies indicate that the most deprived areas bear a disproportionate share of poor air quality.

39. Eight specific questions have been posed in the consultation document. On the basis that poor air quality is a London-wide problem, it has been agreed that the preferred approach is to submit a four borough response and therefore the Council has once again worked closely with its partner authorities [Richmond, Wandsworth and Windsor and Maidenhead] to finalise it. Air quality was one of the two grounds of challenge in the December 2016 judicial review proceedings. On the advice of the external legal team, only three of the eight questions set out in the consultation document have been addressed in the four borough response.

40. A copy of the four borough response is attached as Appendix 4 to the report. The three questions which have been answered are set out in full with a summary of the responses appearing directly beneath them.

- 1. How satisfied are you that the proposed measures set out in this consultation will address the problem of nitrogen dioxide as quickly as possible?*

The consultation is flawed in terms of its evidence-base as it is premised upon preliminary modelling. The results presented in the consultation document are also preliminary, with the full air quality model and final results only being available at the time of the publication of the final plan. The UK is divided into a number of air quality assessment zones and there are no

individual zone plans for consultees to comment upon. The number of local authorities who will be formally and legally required to develop and implement comprehensive Clean Air Zones will not be known until the final Air Quality Plan is published in July 2017. This is a totally unacceptable approach and the four boroughs reserve their right to fully respond when all appropriate information is available.

In terms of Heathrow itself, the draft Air Quality Plan's predictions are all based upon the operation of the airport as it is currently configured and constrained i.e. two runways with a limit on car parking spaces and a cap on the number of flights. If the Government's objective to meet air quality limits as soon as possible is to be achieved, the final plan should include a measure to review the current operational restrictions on the airport and secure air quality reductions by further reducing the car parking numbers and or the number of flights. Without this in place, the draft plan takes the communities living near the airport no further forward in terms of the Government's aspiration to improve air quality as soon as possible.

*II. How best can Governments work with local communities to monitor local interventions and evaluate their impact?*

*The Government and the devolved administrations are committed to an evidence-based approach to policy delivery and will closely monitor the implementation of the plan and evaluate the progress on delivering its objective.*

An evidence-based approach to policy delivery is supported. It is hoped that this is a serious commitment given that the previous Government's track record on evaluating the impact of its decisions, in terms of air quality, is poor. In October 2016, the previous Government supported expansion at Heathrow in the full knowledge that the air quality assessments, on which their decision had been based, were flawed and overly optimistic and also that its approach to achieving compliance with the Air Quality Directive was legally flawed.

*III. Do you have any other comments on the draft UK Air Quality Plan for tackling nitrogen dioxide?*

The draft Air Quality Plan makes absolutely no reference at all to the support of the previous Government for Heathrow expansion. Furthermore, it is of concern that no reference is made to the recent consultation exercise on the draft Airports NPS. This is a serious omission. By supporting expansion at Heathrow, the previous Government effectively supported the addition, in London, of the equivalent of another airport the size of Gatwick. In spite of this, the issue of Heathrow expansion is given no consideration whatsoever in the draft Air Quality Plan. It remains the case that there has been no demonstration, in either the draft NPS or the draft Air Quality Plan, that Heathrow expansion can be taken forward and air quality limits will be lawfully met and public health is improved.

Finally, the previous Government states in the consultation document that "tackling poor air quality in all its form is a priority for government". In order to achieve this, the final Air Quality Plan must include an unequivocal commitment to cancel support for Heathrow expansion once and for all.

## **Next Steps**

41. Now that a new Government is in place, it will need to fully consider all the responses which have been submitted by consultees in relation to the three consultation exercises before deciding what further action it should take. A common law duty is imposed upon the Government to take the product of consultation conscientiously into account before making a

decision. In the case of the draft Airports NPS consultation, the Government is also fully bound by its statutory duty contained in section 7 of the Planning Act 2008 to have regard to the responses to the consultation and publicity in deciding whether to proceed with the NPS proposal. Should the Government breach either or both of these duties, it will be exposing itself to a risk of a judicial review challenge. It should be noted that the previous Secretary of State appointed a former Lord Justice of Appeal, Sir Jeremy Sullivan, to oversee the draft Airports NPS consultation.

42. Under section 5 of the Planning Act 2008, the Secretary of State may designate a statement as a NPS. However, before he can do this, the Secretary of State must, in addition to fulfilling the consultation and publicity requirements, also arrange for a NPS to be laid before Parliament. Either House of Parliament is entitled to make a resolution in relation to the proposal to make a NPS or a committee of either House may make recommendations with regard to the proposal. The Secretary of State must lay before Parliament a statement setting out his response to the resolution or recommendations and it is only once he fully complied with this procedure can he then proceed to designate a NPS.

### **Financial Implications**

There are no direct financial implications arising from the recommendations contained in the report.

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

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

Proposed Heathrow expansion, together with Phase One of the HS2 scheme, are the most significant and devastating Government development proposals facing the Council and its residents. Cabinet approval of the recommendations is an important part of the process in terms of the Council's continued opposition to Heathrow expansion.

## **CORPORATE IMPLICATIONS**

### **Corporate Finance**

There are no direct financial implications arising from the report. However, the Council has established a contingency fund for opposing expansion at Heathrow. This is reviewed annually as part of the MTFF process but stands at £200k for 2017/18.

### **Legal**

The Borough Solicitor is the author of the report and all necessary legal implications are therefore contained in the body of the report.

## **BACKGROUND PAPERS**

NIL