

# HEATHROW EXPANSION AND RESPONSES AND SUBMISSIONS TO GOVERNMENT CONSULTATION AND PARLIAMENTARY COMMITTEES' CALLS FOR EVIDENCE

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<b>Cabinet Portfolio</b>	Leader of the Council
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<b>Papers with report</b>	<p><b>Appendix 1</b> - Joint response from the London Boroughs of Hillingdon, Richmond, Wandsworth and the Royal Borough of Windsor and Maidenhead to the Government's consultation on the Revised Draft Airports NPS</p> <p><b>Appendix 2</b> - Joint submission from the London Boroughs of Hillingdon, Richmond, Wandsworth and the Royal Borough of Windsor and Maidenhead to the Joint Parliamentary Committee's Inquiry into Air Quality</p> <p><b>Appendix 3</b> - Joint submission from the London Boroughs of Hillingdon, Richmond, Wandsworth and the Royal Borough of Windsor and Maidenhead to the Transport Select Committee's Inquiry on the Draft Airports NPS [March 2017]</p> <p><b>Appendix 4</b> - Joint submission from the London Boroughs of Hillingdon, Richmond, Wandsworth and the Royal Borough of Windsor and Maidenhead to the Transport Select Committee's Inquiry on the Revised Draft Airports NPS [November 2017]</p>

## HEADLINES

<b>Summary</b>	This report sets out details of the Council's joint responses and submissions to the Government's October 2017 Consultation and Parliamentary Select Committees' calls for evidence. It seeks Cabinet's approval and endorsement as necessary. Cabinet is also being asked to reaffirm the Council's commitment to take whatever action it considers appropriate to oppose Heathrow expansion.
<b>Putting our Residents First</b>	This report meets the Council's objectives of our people and our natural built environment. It also helps to demonstrate that the Council is doing all that it can to protect its residents from proposed Heathrow expansion.
<b>Financial Cost</b>	None directly arising from this report.
<b>Relevant Policy Overview Committee</b>	Residents' & Environmental Services
<b>Relevant Ward(s)</b>	All Wards

## RECOMMENDATION

### That Cabinet:

1. Notes the contents of the report.
2. Approves the joint response that is to be submitted by the London Boroughs of Hillingdon, Richmond, Wandsworth and the Royal Borough of Windsor and Maidenhead in relation to the Government's October 2017 consultation on the Revised Draft Airports National Policy Statement as set out in Appendix 1.
3. Endorses the joint submission dated November 2017 from the London Boroughs of Hillingdon, Richmond, Wandsworth and the Royal Borough of Windsor and Maidenhead to the Joint Parliamentary Committee's Inquiry into Air Quality as set out in Appendix 2.
4. Notes the joint submission dated March 2017 from the London Boroughs of Hillingdon, Richmond, Wandsworth and the Royal Borough of Windsor and Maidenhead to the Transport Select Committee's Inquiry on the Draft Airports NPS as set out in Appendix 3.
5. Endorses the joint submission dated November 2017 from the London Boroughs of Hillingdon, Richmond, Wandsworth and the Royal Borough of Windsor and Maidenhead to the Transport Select Committee's Inquiry on the Revised Draft Airports National Policy Statement as set out in Appendix 4.
6. Reaffirms this Council's commitment, working either alone, or in conjunction with 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 confirms that the existing delegated authority to the Deputy Chief Executive and Corporate Director of Residents Services and the Borough Solicitor to formally implement any actions directed by the Leader of the Council is to remain in place.
7. Requests that the Chairman of the Executive Scrutiny Chairman waives the scrutiny call-in period so that any decisions take immediate effect. This will ensure that the four Boroughs' response to the Revised Draft Airports National Policy Consultation can be submitted to the Department for Transport before the consultation deadline of 19 December 2017.

## Reasons for recommendation

Heathrow expansion will have a devastating impact on the Borough and its local communities. By responding jointly to the Government's latest consultation and the Parliamentary Committees' calls for evidence, 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 of Law 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 consultation, however, this is not considered to be a feasible option due to the very significant impacts that an expanded Heathrow will have on the Borough and its residents.

## Policy Overview Committee comments

None at this stage.

# SUPPORTING INFORMATION

## Background

### The Draft Airports NPS

1. On 25 October 2016, the previous Government endorsed the Airport Commission's conclusion, as set out in its Final Report dated July 2015, that the case for airport expansion in the South East of England had been properly made out and it therefore announced that its preferred scheme to meet the need for new airport capacity was a Northwest Runway at Heathrow Airport. This was in accordance with the Airport Commission's recommendation.

2. The previous Government decided that a National Policy Statement [NPS] was 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.

3. If a NPS is adopted, it will be used as the primary basis for making decisions on any development consent application for a new Northwest Runway at Heathrow. The Airports NPS is intended to cover development that is required by 2030 and 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.

4. The Secretary of State is required by law to publish a draft Airports NPS. He did so on 2 February 2017 and it was headed, 'New runway capacity and infrastructure at airports in the South East of England'. It set out his proposal and included:

- 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.

5. 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.

### **The February 2017 Consultations**

7. At the time of issuing the draft Airports NPS, the Secretary of State commenced a consultation in relation to it which closed on 25 May 2017 the consultation documents included:

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

8. Given that the previous Government's proposal to introduce a Northwest Runway at Heathrow significantly affected not only Hillingdon but also the boroughs of Richmond, Wandsworth and Windsor and Maidenhead ["the four Boroughs"], it was agreed that a joint response from the local authorities should be sent, Furthermore, on the basis that 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, the Council also submitted its own individual response to the consultation.

9. The Secretary of State also took the opportunity to publish a UK Airspace Policy consultation document at the same time. This particular consultation was issued on the basis that airspace arrangements, which are nearly fifty years old, are in need of modernisation. The consultation also closed on 25 May 2017. This Council did not submit its own individual response to this consultation and instead signed up to a four Borough response.

10. All three consultation responses were approved by the Leader of the Council under his delegated powers and they were endorsed by Cabinet at its meeting on 22 June 2017.

## The May 2017 Consultation

11. The 2015 National 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 Government, therefore, ordered a final new Air Quality Plan to be published but this first had to be subject to a public consultation exercise. Therefore, a third consultation document headed 'Tackling nitrogen dioxide in our town and cities' was published by the previous Government on 5 May 2017, with the consultation closing on 15 June 2017.

12. Once again, this Council signed up to a four borough response and as with the other two consultation exercises referred to above, the Leader of the Council approved the response pursuant to his delegated powers and it was subsequently endorsed by Cabinet at its meeting on 22 June 2017.

## The Revised Draft Airports NPS and Consultation

13. On 24 October 2017, the Secretary of State issued a revised draft Airports NPS which required yet a further public consultation exercise to be undertaken. He states that this further period of consultation is designed to give people the chance to consider updated evidence which was unavailable when the February 2017 consultation was launched. It includes some revisions to long term aviation forecasts which take the latest GDP figures into account and it also concerns the new National Air Quality Plan which was published in July 2017.

14. The overarching consultation document lists the reports published for consultation as:

- Draft Revised Airports National Policy Statement and Change Log
- Appraisal of Sustainability and Change Log
- Appraisal of Sustainability Scoping Report
- Appraisal of Sustainability Non-Technical Summary and Change Log
- Health Impact Analysis and Change Log
- Habitats Regulations Assessment and Change Log
- Equality Impact Assessment and Change Log

15. There are also a series of documents described as 'published for information' which include:

- 2017 Plan Update to Air Quality Re-Analysis
- Updated Appraisal Report
- UK Aviation Forecasts 2017
- Carbon Abatement in UK Aviation
- Summary of consultation responses to the draft Airports NPS
- Government response to consultation on UK Airspace Policy

16. The consultation document refers to the various amendments that have occurred in relation to the draft Airports NPS and Appraisal of Sustainability. They can essentially be broken down into the following three categories:

- changes to the draft Airports NPS arising from analysis of the 2017 Air Quality Plan and or from the updates to the passenger demand forecasts.

- changes made as a result of a change in Government policy since publication of the draft Airports NPS in February or following consideration of responses to the February consultation.
- drafting changes to the draft Airports NPS in order to clarify intention.

17. The summary set out in the consultation document states that the new data and changes made to the draft Airports NPS do not change the views expressed by the Government in the February consultation, namely that there is a need for additional airport capacity in the South East of England by 2030 and the Government's preferred scheme for meeting that need is the Heathrow Northwest Runway scheme.

18. The consultation document concludes by stating that the Northwest Runway scheme is best placed to maximise the monetised economic benefits that the provision of additional airport capacity could deliver in the short term, although this scheme is likely to do so with the greatest negative impact on local communities, if left unmitigated. In response, the Government will ensure that airport expansion is accompanied by a world class package of measures to mitigate the impact of expansion on the environment and affected communities. In addition, the document confirms that the scheme is able to be delivered without impacting the UK's compliance with legal air quality limits.

19. Interestingly, there is only one question posed in the consultation document which is:

*'Do you have any comments on the revised draft Airports NPS or any of the documents set out in the table on pages 7 and 8?'*

The document goes on to state that if a response was given to the first consultation, the points do not need to be repeated as they are being considered in full. It asks consultees to note that the DfT may not be able to cross refer to earlier responses because of the large numbers involved.

### **Inadequacy of the October 2017 Consultation**

20. The consultation closes on 19 December 2017. On 3 November 2017, the external solicitors acting for the four Boroughs, Harrison Grant, wrote to the DfT requesting extra time in which to respond to the consultation. It was submitted that a period of 8 weeks to respond effectively means 6 weeks given that local authorities have timetables to adhere to so as to ensure that decisions and responses made are done so in an open democratic way. Therefore, extra time is needed in order to allow the four Boroughs to obtain advice where necessary to inform its response and also to allow the necessary democratic approval process to take effect.

21. On 8 November 2017, the DfT replied to Harrison Grant, refusing to grant extra time. The four Boroughs have therefore been forced to prepare a response to the consultation on the basis that there has been insufficient time to give a thorough analysis of the wealth of new information which has been provided by the Government.

22. The response has also been prepared without prejudice to the belief of the four Boroughs that the decision makers' mind has already effectively been made up. On 17 July 2017, the Secretary of State made a clear and unequivocal public statement to the effect that provided Parliament agreed, Heathrow expansion would definitely be going ahead.

23. It is a fundamental public law principle that in order for a consultation to be lawful, it must be approached with an open mind. The four Boroughs believe that, had the Government's approach been genuinely open minded, and the evidence considered, then expansion at Heathrow would have already been rejected not only on the grounds of air pollution and excessive noise, which are obvious and overwhelming reasons against a third runway at Heathrow, but also because new evidence suggests that Heathrow (i) fails to deliver any economic advantage over Gatwick, (ii) it would need Government subsidy either of essential transport access and or subsidised flights and (iii) it will not [contrary to Government assurances], operate with less noise than Heathrow does today.

24. It should be noted that a total number of 72,239 responses were made to the February draft Airports NPS consultation. The revised draft Airports NPS has been extensively rewritten but it is not at all clear to what extent the Government has taken these consultation responses into account, or what the reasons for the changes otherwise are.

### **Consultation Response on Revised Draft Airports NPS**

25. Given that passenger demand forecasts and air quality are issues common to the four Boroughs, it has been decided to submit a joint response and on this occasion, the Council will not be submitting its own individual response as it will not add anything.

26. The response document is attached as Appendix 1 to the report. The overriding concern is that it appears that the Government remains in favour of a third runway at Heathrow but the evidence is even weaker and the rationale is now different. This is consistent with the fear that the Government has already made up its mind that there should be a third runway at Heathrow come what may and regardless of the facts and consequences.

27. The key issues set out in the response are:

- I. Heathrow expansion delivers fewer economic benefits than Gatwick expansion.
- II. Heathrow expansion cannot be delivered without unacceptable air pollution and noise.
- III. Although the Government's rationale now depends on Heathrow's ability to operate as a hub airport, the facts are that it would at the most, deliver benefits of an airport hub model for only two years after expansion.
- IV. Within two years, Heathrow will again be at capacity. If this is so then the evidence suggests that, once at capacity, Heathrow will essentially become a point to point airport and not a hub, airlines will prioritise more profitable routes and passenger fares will increase.
- V. Heathrow expansion will deliver fewer domestic connections than Gatwick expansion.
- VI. Heathrow expansion has the highest environmental dis-benefits.
- VII. There are no proven, costed mitigation plans to address the environmental harm.
- VIII. Heathrow expansion will not meet air quality requirements but an expanded Gatwick can.

IX. The new information demonstrates that Heathrow expansion cannot be delivered under the Government's [and Airport Commission's] claims that there would be less noise with expansion in [2030] than there is today.

X. No consideration has been given to deliverability in terms of timescales and appropriate funding for surface access infrastructure, including for the new revised opening year [2026] or at capacity year [2028].

XI. The NPS and the subsequent DCO process will only be informed by "indicative" flightpaths. The Government plans that communities will not know when, and for how long and how much noise they will experience until after the decision to approve a third runway has been set in stone. This approach is both unfair and unlawful. It amounts to an attempt to avoid legitimate opposition to placing a huge airport in the most densely populated area of the UK until it is too late.

XII. Gatwick expansion can be delivered with greater benefits, is cheaper and, unlike Heathrow, it would require no taxpayer funding, and it would deliver greater domestic connectivity and with far reduced environmental harm.

XIII. It is welcome that the revised draft NPS now includes more information about noise from the Survey of Noise Attitudes. That information now shows that the noise impact of an expanded Heathrow is more than a 50% rise in those affected, compared to today. This is in contrast to the Government's earlier assertion that an expanded Heathrow in 2030 would be quieter than today and is enough reason on its own, for Government to reject expansion at Heathrow.

XIV. We note that the evidence in the Appraisal of Sustainability (that the economic benefits of Gatwick and Heathrow are about the same, but the environmental and other detriment of Heathrow is much greater) does not support the conclusion in favour of Heathrow expansion.

### **Joint Parliamentary Committee Inquiry into Air Quality**

28. On 20 March 2017, during the tenure of the previous Government, MPs from four separate Parliamentary Committees [Environmental Audit Committee, Environment Food and Rural Affairs Committee, Health Committee and Transport Committee] came together to launch a Joint Inquiry into Air Quality.

29. The terms of reference and the questions set were:

- How effectively do Government policies take into account the health and environmental impacts of poor air quality?
- Do these plans set out effective and proportionate measures to achieve necessary emission reductions as quickly as possible?
- Are other nations or cities taking more effective action that the UK can learn from?
- Is there enough cross-government collaboration to set in place the right fiscal and policy incentives?



- How can those charged with delivering national plans at local level be best supported and challenged?

30. The original deadline for submissions to the above questions was 12 May 2017. However, the announcement of a General Election effectively postponed the work of the Joint Parliamentary Committee.

31. The Joint Parliamentary Committee was relaunched by the current Government on 9 October 2017. The remit of the Committee and the questions set remained the same as previously but this time the focus was on the following single question:

*'How effectively do Government policies take into account the health and environmental impacts of poor air quality?'*

32. The deadline for submissions was 9 November 2017. The four Boroughs made a submission before this deadline which the Leader of the Council approved under his delegated powers. A copy of the submission is attached as Appendix 2 to the report.

33. The key issues set out in the submission are:

I. Current operations at Heathrow contribute to air pollution which exceeds lawful limits.

II. The only action proposed or relied upon by Government in relation to reducing the impact of its aviation transport policy around London is independent of, and does not consider, the impact of operations at Heathrow.

III. The assumptions in the 2017 Air Quality Plan are over optimistic.

IV. Even on the basis of the Government's assumptions, if Heathrow is expanded, air quality in London will continue to exceed legal limits and contribute towards thousands of premature deaths up to 2030 and beyond. The earlier an expanded Heathrow airport is operational, the more serious will be the health effects.

V. If the effects of air pollution caused by the construction of a third runway are taken into account [which they are not currently], then the effect on health and mortality of expanding Heathrow is even worse.

### **Transport Select Committee's Inquiry on the draft Airports NPS and revised draft Airports NPS**

34. The Transport Select Committee's predecessor in the last Parliament started an inquiry into the Government's proposal for the draft NPS. It called for submissions in relation to a number of issues concerning the draft Airports NPS, with a deadline of 24 March 2017 imposed.

35. The four Boroughs submitted a joint response before this deadline in which they expressed their very significant concerns about not only the actual draft Airports NPS itself but also the timing

of the February public consultation and Parliamentary scrutiny of the draft NPS. A copy of the four borough response is attached as Appendix 3 to the report.

36. On 1 November 2017, the Select Committee re-opened its Inquiry in the current Parliament and it requested additional submissions, based upon the latest October 2017, consultation on:

- *whether the revised passenger demand forecasts and air quality assessments have been satisfactorily completed and are represented accurately in the final version of the NPS and Appraisal of Sustainability.*
- *whether any other changes to the NPS based on clarity intention and or Government policy since February 2017 are suitable.*

37. The deadline for submissions was set at 30 November 2017 and in spite of this short timescale, the four Boroughs submitted a joint submission before the deadline expired. The response was approved by the Leader of the Council under his delegated powers and it is attached as Appendix 4 to the report.

38. The key issues set out in the submission are:

I. The new evidence and the consultation process does not change the four Boroughs' position, as set out in its first submission to the Select Committee, and also in its response to the Government consultation on the draft Airports NPS in May 2017.

II. The four Boroughs agree that there is a need for additional airport capacity in the South-East, but that the realistic solution is to expand at Gatwick. The updated and revised evidence produced alongside the revised Airports NPS demonstrates that the Government's case for Heathrow is even less robust than before and the one for expansion at Gatwick has strengthened. In the circumstances, the Select Committee is urged to scrutinise the following evidence:

- The total economic benefits are now shown to be higher for the Gatwick expansion proposal than for Heathrow. Gatwick will, with and without expansion, provide more domestic connections in the UK than Heathrow expansion will ever achieve.
- New evidence on passenger numbers suggests that new capacity is needed in a shorter timescale. However, on the Government's own evidence, the shorter the timescale, the more likely it is that air pollution will be caused. Heathrow cannot be expanded quickly and lawfully, if capacity is needed soon, then that is an argument for choosing Gatwick.
- The evidence shows that DfT's statements that Heathrow, with a third runway, would be quieter in 2030 than today are wrong. To the contrary, the evidence now shows that more people would be affected by more noise. The four Boroughs' experience is that people find Heathrow's current operations unacceptable, and the evidence shows that tolerance to noise is decreasing. This is clear evidence of an insurmountable obstacle to Heathrow expansion.
- The evidence does not, and cannot, show that an expanded Heathrow can comply with European air pollution limits. The Government has promised, post-Brexit, it will still adhere to those limits. Since public tolerance of dirty air is diminishing, and awareness of its health

effects is increasing, it is inconceivable that Londoners and others would tolerate an increase in air pollution.

- Related to air pollution is the fact that there is no further clarity on the provision of surface access, and that although the documents have produced an argument in favour of Heathrow expansion based on its ability to handle more freight, there appears to be no provision for that freight in the air quality re-appraisal.

## Next Steps

39. There is no conclusive evidence that the Government has fully considered all the consultation responses to the February 2017 consultation yet it has embarked on a further consultation exercise, presumably on the basis that it is aware that the earlier consultation was inadequate and flawed.

40. A common law duty is imposed on the Government to take the product of consultation conscientiously into account before making a decision. Furthermore, section 7 of the Planning Act 2008 requires the Government 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. Indeed, it appears that the Secretary of State's ill-advised 'minds made up' public statement has already exposed the Government to this risk.

41. In terms of the two Parliamentary Committees, the Joint Parliamentary Committee's Inquiry into Air Quality is generic in nature and is not specifically related to the revised draft Airports NPS. Notwithstanding this, the four Boroughs' written submission to the Committee focuses on the air quality issues arising from Heathrow expansion. The Inquiry is expected to be a short one and the Committee will report its findings and make recommendations directly to the Government. It will then be a matter for the Government to decide whether it accepts them.

42. With regard to the Transport Select Committee whose inquiry is NPS specific, it is a distinct possibility that the four Boroughs will be required, through a nominated representative, to provide oral evidence to the Committee in 2018 in addition to the written submission it has already sent. The Select Committee has already heard oral evidence from other parties. As with the Joint Parliamentary Committee, the Select Committee will write a report, setting out its findings and recommendations and it will send them directly to the Government. This is a similar process to the one followed by the HS2 Select Committees in both Houses of Parliament.

43. 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 has fully complied with this procedure can he then proceed to designate a NPS.

44. It is clear that the timetable for designating a NPS has significantly slipped and it is not clear at what point it will be laid before Parliament. The four Boroughs will have a strict six week window in which to issue judicial review proceedings in the High Court from the date when a NPS is designated but they are already preparing the necessary groundwork for this. On this occasion, there will be no jurisdictional bar to the High Court hearing a legal challenge.

### **Financial Implications**

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

## **RESIDENT BENEFIT & CONSULTATION**

### **The benefit or impact upon residents, service users and communities?**

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 recommendation is an important part of the process in terms of the Council's continued opposition to Heathrow expansion.

## **CORPORATE CONSIDERATIONS**

### **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 MTFE process but stands at £200k for 2017/2018 and 2018/2019.

### **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