

HEATHROW EXPANSION - RESPONSE TO HEATHROW AIRPORT LIMITED'S AIRPORT EXPANSION STATUTORY CONSULTATION

Cabinet Member	Councillor Ray Puddifoot MBE
Cabinet Portfolio(s)	Leader of the Council
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Papers with report	Appendix 1 - Response from the London Borough of Hillingdon to Heathrow Airport Limited's Statutory Consultation. Hard copies of this will be circulated to Cabinet and Executive Scrutiny Committee, with a reference copy in Group Offices.

HEADLINES

Summary	This report sets out details of the Council's response to Heathrow Airport Limited's June 2019 Airport Expansion Statutory Consultation.
Putting our Residents First	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.
Financial Cost	None directly arising from this report.
Relevant Policy Overview Committee	Residents, Education and Environmental Services
Relevant Ward(s)	All wards

RECOMMENDATIONS

That Cabinet:

1. Notes the contents of the report.
2. Endorses the Council's response dated 13 September 2019 to Heathrow Airport Limited's June 2019 Airport Expansion Statutory Consultation.

- 3. Reaffirms the Council's commitment, working either alone, or in conjunction with partner authorities and others, to take all necessary action, including pursuing appeals to the appellate courts in relation to the current legal challenge, and commencing further separate legal challenges, if appropriate, to oppose the Government's proposals to expand Heathrow Airport and it confirms that the existing delegated authority to the Deputy Chief Executive and the 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.**

Reasons for recommendation

Heathrow expansion will have a devastating impact on the Borough and its local communities. It is important that the Council responds robustly to Heathrow Airport Limited's [HAL] expansion proposals for the purpose of not only pointing out the very significant flaws in its statutory consultation but also to evidence this to the Courts should it prove necessary to do so in the event that a future legal challenge is pursued by the Council in relation to the Development Consent Order [DCO] process.

Alternative options considered / risk management

The Council could decide not to respond to this consultation. However, this is not considered to be a feasible option due to the highly unsatisfactory nature of the consultation and also the very significant adverse impacts HAL's proposals have on the Borough and its residents.

Policy Overview Committee comments

None at this stage.

SUPPORTING INFORMATION

Background

The Airports National Policy Statement [ANPS]

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 [NWR] at Heathrow Airport. This was in accordance with the Airport Commission's recommendation.

2. The previous Government decided that a National Policy Statement 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. The current Government undertook two public consultations, the first in February 2017 and the second in October 2017, in accordance with the requirements of the Planning Act 2008. Consultees were asked for their views on the draft ANPS which the Government had produced. There were a total number of 72,239 responses to the February 2017 consultation and 11,028 responses to the October 2017 consultation.

4. The Council made robust responses to both sets of consultations, which were formally approved by Cabinet.

5. On 5 June 2018, the then Secretary of State for Transport [SST] laid the final proposed ANPS before Parliament, together with a set of supporting documentation, in readiness for an impending vote in the House of Commons.

6. The vote in relation to the proposed ANPS took place on 25 June 2018. MPs voted in favour of the ANPS by 415 votes to 119, a majority of 296 with support from across the House.

7. On 26 June 2018, the SST designated the ANPS under section 5 of the Planning Act 2008. It sets the policy framework for Heathrow expansion. On the same day, the Department for Transport published:

- A post adoption statement titled, "*The Airports National Policy Statement: Post Adoption Statement*" setting out how environmental considerations and consultation responses were integrated into the final ANPS; and
- A relationship framework document, setting out how the Department for Transport and Heathrow Airport Limited [HAL] would work together to achieve additional airport capacity through airport expansion, necessary airspace modernisation and related matters.

The Legal Challenges

8. There is a strict six week time limit, which ran from the date of the designation of the ANPS [26 June 2018], to issue judicial review proceedings. The Council, acting with a consortium of other local authorities, Greenpeace and the Mayor of London commenced such proceedings in August 2019, arguing that the ANPS was unlawful and should therefore be quashed. There were four other judicial review claims which were all heard by the Divisional Court [a High Court Judge sitting with a Court of Appeal Judge] between 11 - 22 March 2019.

9. Unfortunately, all the judicial review claims were dismissed by the Divisional Court but all the parties [with the exception of one litigant in person] requested permission to appeal directly to the Court of Appeal which was granted. All the appeals will be heard by a three Judge Court of Appeal which will sit for a total of six days between 17 - 25 October 2019.

10. The Council is pursuing two specific grounds of appeal; Habitats and Strategic Environmental Assessment [SEA]. With regard to the Habitats ground, the Council, in simple terms, will be arguing that Gatwick was unlawfully ruled out as a proper alternative to Heathrow under the Habitats Directive but not under the SEA Directive. The Habitats Directive provides for a scheme of strict protection for European protected species.

11. As far as the SEA ground is concerned, the Council will argue that the Government failed to consult properly on noise by excluding those people who will be significantly affected. It was not possible to assess the noise impact for communities based on actual flight paths as these were not known. A further argument which will be pursued is that the Government failed to consider the effect of expansion on local plans and local environment strategies such as the Hillingdon Local Plan and the London Environment Strategy.

12. The Council will, once again, be asking the Court to quash the ANPS.

The DCO Process

13. The ANPS is not an end process in itself, as it does not confer a consent to either construct or operate any development. Instead, it sets a series of policy tests that must be met in order for development consent to be obtained. If they are not met, then depending on the nature of the test contained in the ANPS, development consent may be legitimately refused.

14. It is for a private developer to make an application for development consent to the Planning Inspectorate, which acts on behalf of the SST, under the Planning Act 2008. Development consent is another name for planning permission and it is required for Nationally Significant Infrastructure Projects such as Heathrow expansion. The Council is of course the relevant planning authority.

15. Although HAL is the Government's preferred developer, any prospective developer can make an application. Indeed, the Arora Group intends to submit its own DCO application for all parts of the NWR Scheme, other than the actual runway itself. It is known as the 'Heathrow West Scheme' and it would compete with some elements of HAL's Scheme but it would also have its own unique features. Essentially, the Arora Group's Scheme would rely upon HAL delivering and operating the third runway, together with all the associated infrastructure, and the Arora Group's focus will be on redesigning Terminal 5.

16. The Arora Group has publicly stated that it intends to submit a DCO application in September 2020. Given that HAL is also intending to submit its own DCO application in 2020, this will have the effect of significantly increasing the overall complexity of the DCO process, as two competing applications will effectively have to be considered alongside each other. This is unprecedented and runs contrary to the whole purpose of the DCO process which is intended to speed up the determination of major infrastructure projects through an expedited decision making route.

17. To add further to the complexity, proposals have also emerged to expand Luton Airport to allow for an increase in passenger numbers and more significantly, Gatwick intends to change the use of its existing emergency runway to a permanent one which effectively means that there will be a second runway. This has a number of significant possible ramifications such as increased congestion on both the road and public transport network, an increased inability to meet climate change targets and a further worsening of air quality and noise levels. Moreover, further pressure will be brought to bear on airspace which is already congested and this in itself will require high level intervention from the Civil Aviation Authority (CAA) and in all likelihood will result in an entirely new approach to airspace management.

18. When taken together, the possible expansion of three major airports in the South East would have the cumulative effect of constraining flight paths for the different airports which means that more residents and communities would experience new and additional noise impacts which would negate the scope for introducing primary form mitigation through, for example, varying flight paths. This will have significant implications for Hillingdon and its inhabitants.

HAL's Non-Statutory Consultations

19. HAL has previously undertaken two consultations, both of which are non-statutory in nature. The first, 'Airport Expansion Consultation One and Airspace Principles' ran from January to March 2018 in which HAL sought views on its emerging proposals in terms of what the expanded airport could look like, how it might operate, and how HAL might best mitigate against the potential impacts, including proposals for compensation and noise insulation. The Council did not respond to this consultation.

20. The second, 'Heathrow Airspace and Future Operations Consultation', ran from January to March 2019. HAL consulted on its future operations and airspace changes for an expanded Heathrow. It presented airspace design envelopes [the geographic areas where flight paths could be positioned in future] and asked for comments on any local factors which HAL should consider when designing new flight paths to and from Heathrow. HAL also asked for comments about the ways in which it could operate the runways for an expanded Heathrow, including how it could provide breaks from aircraft noise, and how it should manage night flights in the future.

21. The Council did respond robustly to this particular consultation and its response was endorsed by Cabinet at its meeting on 14 March 2019.

HAL's Statutory Consultation

22. The DCO process places great importance on engagement with stakeholders and residents. A prospective developer has to comply with certain pre-application steps under the Planning Act 2008 and these include statutory consultation.

23. HAL therefore launched 'The Airport Expansion Consultation' which ran from 18 June to 13 September 2019 and which, in general terms, requests comments and feedback on its proposals for the future layout of the airport, including the new runway and other airport infrastructure such as terminals and road access.

24. More specifically, the Consultation seeks views in relation to HAL's proposals and approach in relation to the following four areas:

(i.) The Preferred Masterplan for expansion and how the airports growth will be phased to achieve it;

(ii.) Plans to operate the future airport: how the future three runway airport will be created, including important elements such as night flights and alternation, as well as how potential additional flights before the new runway opens could be operated on the existing two runways;

(iii.) The assessment of effects of the airport's growth; its preliminary assessment of the likely effects of expansion on the environment and local communities;

(iv.) Plans to manage the effects of expansion; its proposals for managing the effects of expansion and in particular, its proposed mitigation.

25. HAL formally consulted a number of interested parties including landowners, local communities, local authorities and other statutory consultees such as Natural England, Historic England and the Environment Agency. The CAA was also consulted. HAL says that this statutory consultation builds on its two previous non-statutory public consultations.

26. HAL issued a total number of 148 documents, running to thousands of pages, which have been arranged under the following headings:

- Overview and Summary;
- Construction;
- Environment;
- Local communities;
- Transport;
- Mitigation and Compensation;
- Preferred Masterplan;
- Runway Operations;
- Property Policies.

27. Each document in itself is voluminous; for example, the Environment Chapter includes an Environmental Report which consists of 3 volumes. Volume 3 alone contains 20 separate appendices consisting of 5,650 pages.

28. The way in which HAL has produced the consultation documentation is far from being user friendly and officers have found it very difficult to navigate their way through it.

The Council's Response to the Consultation

29. The Council submitted its response, which runs to exactly 250 pages, to HAL on 13 September 2019, the date when the consultation closed. It is an extremely robust response and it needed to be as Hillingdon is most affected by the expansion proposals, it is the relevant local planning authority and it may also need to produce the response for the scrutiny of a Court in the event that the Council decides to bring a future legal challenge in relation to the DCO process.

30. The full consultation response is attached as Appendix 1 to the report. It is broken down into 21 separate chapters which can be summarised as:

- The Council's Position on Expansion;
- Executive Summary;
- General Comments;
- Early Growth - 25,000 Extra Flights;
- Accommodating Heathrow Expansion in Hillingdon;

- Community Impacts;
- Community Impacts - Schools;
- Surface Access and Highways;
- Air Quality;
- Noise;
- Biodiversity;
- Heritage;
- Water Environment;
- Socio Economics;
- Land Contamination;
- Landscape;
- Equality Impact Assessment;
- Health Assessment;
- Habitats Assessment;
- Compensation and Compulsory Acquisition;
- Additional Topics

31. The Leader of the Council has approved the response and Cabinet is now being asked to endorse it.

32. It is simply not possible to fully capture the Council's response in the report but the key points can be summarised as follows:

(i). In spite of the sheer volume of documents produced by HAL as part of the consultation, vital and important information is missing across the whole range of topic areas. This has significantly impaired the Council's ability to respond effectively and it has served to undermine the entire consultation process and expose it as disingenuous and lacking credibility.

(ii). For the first time, a true picture has emerged of the very significant harm which an expanded Heathrow will cause. The disbenefits of expansion are now clearer and they easily outweigh the perceived benefits which were grossly exaggerated in the first place.

(iii). HAL is proceeding with its expansion plans, irrespective of the ongoing legal challenge which is ultimately asking the Courts to quash the ANPS. The DCO process should therefore be halted now or HAL, as a minimum, should allow for an independent review of its proposed scheme to be undertaken immediately.

(iv). The proposed 4 year construction programme is simply not achievable and an honest and realistic phasing plan and timetable needs to be issued by HAL.

(v). HAL's criticisms of the Council's lack of engagement with it are misconceived and amount to nothing more than a smokescreen for HAL's own shortcomings in the way in which it has approached and handled this consultation.

(vi). HAL's Early Growth proposal means that, starting in 2022, the number of flights would increase by 25,000 from the current capped 480,000 a year to 505,000 a year by 2025. This will

bring more noise to many thousands of people who will be newly exposed and it will also result in increases in air pollution levels.

(vii). There will be a significant impact on the future of land use in Hillingdon over a number of decades. There has been frustratingly little evidence and detail provided in relation to areas of Green Belt, Open Space and Best Most Versatile agricultural land whilst in other areas the evidence presented by HAL suggests that there will be a departure from the information presented in the development of the ANPS in relation to the creation of new jobs and the need for new homes.

(viii). Expansion will result in the loss of 739 homes in Longford, Harmondsworth and Sipson.

(ix). Harmondsworth Primary School will be demolished but there will also be a substantial impact on two other schools, Heathrow Primary and William Byrd Primary. Expansion will also have a damaging impact on five more primary schools and one secondary school in the borough.

(x). Important information in relation to the traffic modelling process has been withheld from the Council. This means that the surface access impacts of the scheme cannot be interrogated and the likely impacts and specific locations of concern cannot be identified.

(xi). The consultation documentation has not demonstrated compliance with air quality limits and air pollution will worsen for a substantial number of people, both in the construction and operation phases, over a prolonged period of time.

(xii). In the absence of information on detailed flight-paths, there can be no certainty as to the impacts of noise in regards to who will be impacted, the extent of the noise, the frequency of the over-flights and the duration of the daily exposure. HAL has appointed its own body, the 'Noise Expert Review Group' but the Council has no trust in it and it is therefore imperative that a fully functioning independent body is in place to assess and provide proper advice on the true noise impacts associated with an expanded airport.

(xiii). The biodiversity impacts and subsequent assessment of impacts can only be determined following the completion and disclosure of a full suite of survey work. Absent this information, the DCO proposal, at this stage, cannot be properly interrogated with regard to biodiversity but it is obvious to the Council that it will, in any event, have a devastating impact.

(xiv). The direct impacts of the DCO proposal on the heritage assets in Hillingdon are wholly unacceptable. Longford, followed by Harmondsworth and Sipson, will be the most effected with Harlington and Cranford impacted to a lesser degree. These villages will be altered forever and the viability of their listed buildings thrown permanently into doubt by the drastic change to their settings.

(xv). The Council is the Lead Local Flood Authority for most of the area the expansion project will cover. The DCO project will permanently remove significant lengths of watercourse within the Colne Valley but the assessment undertaken by HAL provides insufficient information on the consequences of this action, and it also fails to demonstrate that appropriate monitoring and mitigation will be in place. Furthermore, HAL has failed to apply the correct flood risk and drainage

methodologies and therefore it has fundamentally disengaged with the important objective of avoiding areas at risk of flooding.

(xvi). HAL's approach to socio-economic impacts is inconsistent, unclear and contradictory. For example, the ANPS emphasised the local benefits with over 114,000 new local job opportunities created. This consultation has produced a significantly reduced figure of circa 60,000 nationwide.

(xvii). It is anticipated that many environmental issues associated with land contamination will be encountered during the course of developing a new runway and associated infrastructure. The Council will need to be fully satisfied, applying a precautionary approach, that human health is not put at risk. The confusing cross referencing of details provided within the consultation documentation prevents effective scrutiny, whilst the non disclosure of vitally important desk top information and early investigative work removes scrutiny altogether.

(xviii). The landscape will be altered to the extent there will be limited, or potentially, no discernible borders, between urban areas and the DCO project will remove the West London green lung that separates it from Surrey, Berkshire and Buckinghamshire.

(xix). HAL has undertaken an Equalities Initial Findings exercise. The Council questions the robustness of the evidence base for the findings and wants to know what further steps HAL is seeking to take for the purpose of engaging with people with protected characteristics, and in particular those from BAME communities, who are both disproportionately and differentially affected by the expansion proposals.

(xx). Health is inextricably linked with noise and air quality. The proposed expansion has the potential to inflict a very significant deterioration in the health of the local population. However, the precise impacts on health cannot yet be quantified; this is due firstly, to the lack of information in the voluminous and inaccessible format of the consultation documentation and secondly, because insufficient consideration has been given to the importance of protecting Hillingdon's natural environment and biodiversity.

(xxi). The consultation material does not contain an "appropriate assessment", as defined by the Habitats Regulations, but provides a further screening report that confirms that expansion will have a likely significant effect on European Designated Conservation Sites. Furthermore, there appears to have been no assessment of alternative scheme designs in reaching the conclusion that the one presented is the only option available. This approach of settling on the design of the scheme prior to understanding the impacts is not compliant with the law.

(xxii). The then SST, at the time of his announcement in October 2016 that the Government would be proceeding with the NWR option, promised a set of "world class compensation measures". The proposals for mitigation and compensation, as set out in the consultation documentation, are at best vague and ambiguous in a number of respects and there is no indication to suggest that this promise will be honoured.

Next Steps

33. HAL is required to compile a report explaining what consultation it has carried out to inform development of the DCO project. The report must also explain how HAL has taken into account the feedback it has received from its pre-application consultation and engagement and how this feedback has helped to shape and develop the project. The consultation report, as it is known, will be submitted to the Planning Inspectorate together with HAL's application for a DCO, and a suite of other prescribed documents.

34. Once the application has been made, the SST has 28 days to consider whether or not to accept it. To do so, he must be satisfied that the application is of a satisfactory standard and that HAL has fully complied with the pre-application procedure. In particular, the SST must have regard to the consultation report and the adequacy of consultation responses received from local authority consultees.

35. If the application is accepted, the SST must invite relevant local authorities [which would of course include the Council] to submit a local impact report, which will give details of the likely impact of the proposed development on the authority's area.

36. Following acceptance of the application, the SST must decide how the application should be examined; by a single examining inspector or a panel of between three and five inspectors who are all specialist planning inspectors.

37. The examination in public process is similar in nature to the one which was recently conducted in relation to the London Plan.

38. The examination must be completed within six months of the preliminary meeting. The examining authority's report must be prepared and submitted to the SST within three months of the completion of the examination. The SST must then decide whether to issue a DCO within three months of receiving the report. HAL anticipate that this decision will be made in 2021 although, as previously indicated, the SST will have to contend with the unprecedented position of having to also make a decision in relation to the Arora Group's DCO application which could have an impact on the timetable.

39. If the SST decides to grant development consent in relation to Heathrow expansion, then, subject to his approval, a final airspace change submission would be submitted to the CAA following consultation. This consultation is programmed to take place in 2022 and it would seek views in relation to the airspace change required for a three runway Heathrow, including the routes.

40. Finally, it is anticipated that the CAA decision on airspace change would be made in 2023 although it is of course possible that there may be some slippage in this timetable.

Financial Implications

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

RESIDENT BENEFIT & CONSULTATION

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

Proposed Heathrow expansion, together with Phase One of the HS2 scheme, are the most significant and devastating set of Government proposals facing the Council and its residents and communities. Cabinet approval of the recommendations 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 MTFF process and currently stands at £897k, with a recommendation to allocate £52k of this sum being considered as part of the Month 4 Budget Monitoring report elsewhere on the agenda for this Cabinet meeting.

Legal

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

BACKGROUND PAPERS

Nil