

Report for: ACTION



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| Contains Confidential or Exempt Information | No - Part I Yes Part II - Appendix C - Not for publication by virtue of paragraph 5 of Part 1 of Schedule 12A of the Local Government Act 1972 |
| Title | Heathrow Airport expansion – legal challenge |
| Responsible Officer(s) | Alison Alexander, Managing Director & Strategic Director Adults, Children and Heath Services |
| Contact officer, job title and phone number | Simon Fletcher, Strategic Director Operations and Customer Services |
| Member reporting | Cllr Cox Lead Member Environmental Services & Parking |
| For Consideration By | Cabinet Prioritisation Sub Committee |
| Date to be Considered | 13 October 2016 |
| Implementation Date if Not Called In | Immediately |
| Affected Wards | All |
| Key Words | Airports Commission, Heathrow expansion, legal challenge |

REPORT SUMMARY

The Government is about to announce its decision regarding the expansion of runway capacity in South East England. This report sets out the background and proposed next steps for the Royal Borough in response to that announcement.

It seeks approval for the Royal Borough to work in Partnership with 2M partners: London Borough of Hillingdon, Richmond and Wandsworth to develop a response. The position of 2M, prior to the announcement, has been to oppose the building of a third runway at Heathrow Airport and the report explores the possibility for seeking judicial review – should the government decision be to build one.

If recommendations are adopted, how will residents benefit?

| | |
|---|--|
| Benefits to residents and reasons why they will benefit. | Dates by which they can expect to notice a difference. |
| The long held position of the council is to protect the environment of the Borough for the residents and in this respect to minimise the degree of noise population on the residents. Residents will benefit if the challenge by 2M of | The timeline of a legal challenge will be clarified – which will inform when residents could notice a difference. . . |

the Government's decision is successful.

1. DETAILS OF RECOMMENDATIONS

RECOMMENDATION: That Cabinet:

- i) Delegates authority to the Leader of the Council and Managing Director in consultation with an internal 'Heathrow/JR working group', chaired by the Leader and including Lead Member for Environmental Services & Parking, Principal Member for Human Resources and Legal, Chairman of the Aviation Forum, Managing Director, Strategic Director of Operations & Customer Services, to build a robust Judicial Review case against any decision made by Government to expand Heathrow Airport and to give instructions for the issue of legal proceedings if appropriate.
- ii) Approves (if required) sharing of the Royal Borough's position to the Aviation Forum, scheduled for 3rd November 2016.

2. REASON FOR RECOMMENDATION AND OPTIONS CONSIDERED

- 2.1. Members will be aware of the Royal Borough's response to the Airports Commission (AC) in February 2015 and correspondence sent to government concerning the legality of any potential decision on any expansion of runway capacity in the South East of England. The Royal Borough's response to date has been undertaken in partnership with the London Boroughs of Hillingdon, Richmond and Wandsworth, the 2M Group.
- 2.2. The Borough undertook a survey of residents in January 2015 on airport expansion. In light of the recent change in the national political landscape, and the time that has elapsed since the first resident poll the Council undertook a second resident survey, July 2016, to gauge current Borough-wide opinion on airport expansion. The results obtained, see Appendix A reaffirmed and demonstrated a similar position to those obtained in 2015, with a net 4%-6% opposition to expansion at Heathrow. Residents reiterated their support (net 37%) for Gatwick as the better expansion mechanism before the commission.
- 2.3. The Leader of the Council, supported by Cabinet, in response to the resident poll results, reaffirmed the Borough's opposition to any expansion – stating that this resident mandate was clear and that the Royal Borough continues to believe that Heathrow should be "better not bigger". This position is made in conjunction with fellow 2M Council Leaders: Cllr Raymond Puddifoot (Hillingdon), Lord True (Richmond), Cllr Ravi Govindia (Wandsworth).
- 2.4. The resident mandate aligns with the administrations manifesto commitments to:
 - "maintain its lobby against Heathrow expansion" and

- “Continue the campaign against Heathrow expansion and to protect Windsor from night flights and more aeroplanes”
- 2.5. Cabinet and full Council have considered the impacts of Heathrow Airport on numerous occasions. Most recently Council unanimously supported a motion “*to wholeheartedly endorse and publicise the letter of the RBWM Lead Member for Planning to the Prime Minister and Minister for Housing and Planning which opposed an additional runway at Heathrow and emphasises that this would negate a previous Government decision regarding an airport monopoly*”, see Appendix B.

Current legal position

- 2.6 In December 2015, Members approved the Royal Borough joining 2M colleagues and the collective appointment of Kate Harrison, Harrison Grant as a specialist legal representative for the group. In January 2016, 2M met with Counsel to understand the legal principles by which 2M could challenge the Government’s potential decision.
- 2.7 Harrison Grant has written a number of letters to the Government to set out the Council’s objections to expansion at Heathrow, see Appendix B. Essentially, the argument is that expansion at Heathrow should be ruled out once and for all because that is what was promised by David Cameron and because Heathrow expansion would have unacceptable environmental impact.
- 2.8 Furthermore, through the correspondence, the 2M partners have requested that any further information arising from the work already set out by the AC, be properly explained and consulted upon. The Department of Transport has so far failed to answer 2M requests for an undertaking, that further consultation on all aspects of the ‘further package of work’ reported will take place.
- 2.9 Given that Government’s decision on future runway expansion is imminent, preparation for a JR launch is now pertinent, subject to further legal advice from Counsel.
- 2.10 A robust communications strategy will support action implemented by the Council and 2M partners. This will utilise social media, online correspondence and more traditional communication channels as appropriate.

| Option | Comments |
|--|---|
| Partner with 2M authorities, secure legal opinion on JR process, and, if required, authorise instigation of JR. This option is recommended. | This option is in line with the Council’s position on expansion of Heathrow to date, and the mandate of residents reaffirmed through a residents’ survey in July 2016 and legal advice received from Counsel. |
| Should Heathrow Airport be chosen for expansion, accept the Government’s decision and drop the proposal of legal challenge. This option is not | This is not recommended because it ignores the strength of feeling of residents of the Royal Borough, and the clear principles and arguments set out by Counsel. |

| Option recommended. | Comments |
|---------------------|----------|
|---------------------|----------|

3. KEY IMPLICATIONS

| Defined Outcomes | Unmet | Met | Exceeded | Significantly Exceeded | Date they should be delivered by |
|---|-----------------|--|---|--|----------------------------------|
| JR undertaken is successful and a verdict made that the Government's decision is not legal. | JR Unsuccessful | JR Successful, with the government needing to make a decision on how it takes Aviation Policy forward. | JR Successful, with the government abandoning outright further potential expansion at the airport | JR Successful, with the government abandoning future expansion at Heathrow & making further assertions that the airport needs to 'get better, without getting bigger'. | Nov 2017 |

4. FINANCIAL DETAILS

Financial impact on the budget

- 4.1. The JR instigated by the Council in respect of Shurlock Road has been used to estimate the potential costs expected should a similar process be instigated for this matter. Total costs for Shurlock Road were £50k comprising £30k Counsel fees and £20k Shared Legal Services fees.
- 4.2. Cabinet approved a £10k revenue budget at its meeting of 30 June 2016 for the provision of legal advice and initial preparation of legal documentation for the Heathrow expansion challenge. Cabinet also made provision for £20k revenue that would be assigned should a JR become necessary. This paper seeks budget provision for the balance of £50k referred to in 4.1 above and includes the £20k referred to in the June 2016 paper.

| | 2016/17 | 2017/18 | 2018/19 |
|-----------|---------|---------|---------|
| Addition | £0 | £40k | £0 |
| Reduction | £0 | £0 | £0 |

- 4.3. Capital funding is not being sought.

| | 2016/17 | 2017/18 | 2018/19 |
|-----------|---------|---------|---------|
| Addition | £0 | £0 | £0 |
| Reduction | £0 | £0 | £0 |

5. LEGAL IMPLICATIONS

- 5.1 Sub Prioritisation Committee would be making a decision on behalf of Cabinet. Cabinet is able to carry out all functions which are not the responsibility of any other part of the Authority, whether by law or under the constitution. (Part 3 A A1.1 The Role of Cabinet).

6. VALUE FOR MONEY

- 6.1 Efficient use of the Council's available funds is essential. However, use of Council funding in this way, where there is a clear resident mandate, significant potential impact on the quality of life of Royal Borough residents and strong grounds to challenge the Government's decision making process in this issue, satisfies the value for money test.

7. SUSTAINABILITY IMPACT APPRAISAL

- 7.1 The issue of expansion at Heathrow raises a number of sustainability issues. Particularly those relating to improving the quality of life and seeking to strike the correct balance between the societal interests of various community groups located around Heathrow Airport and the economic and environmental issues associated with further expansion.

8. RISK MANAGEMENT

| Risk | Uncontrolled Risk | Controls | Controlled Risk |
|--|-------------------|---|-----------------|
| Runway expansion at Heathrow will lead to impacts from aircraft movements and the operation of the airport being exacerbated and experienced by parts of the Borough currently unaffected. | High | Commencing a Judicial Review as part of the 2M partnership will enable the Council to challenge the Government's assessment of these impacts. Future expansion at Heathrow may be avoided if the JR is successfully upheld. | Medium |
| Potential financial risk of losing a JR is estimated to be circa. £200k. | High | Instigating JR in partnership with other 2M authorities will reduce this impact. The Council has been accepted onto the 2M legal grouping on an equal footing with a maximum financial exposure of circa. £30k | Medium |

9. LINKS TO STRATEGIC OBJECTIVES

- 9.1 **Residents First** – The Council will seek to protect residents from the potential adverse environmental impacts e.g. air quality, aircraft noise, and transportation impacts e.g. increased congestion and the increased pressure and demand on infrastructure e.g. additional housing, schools etc. that the expansion of Heathrow Airport could have.
- 9.2 **Delivering Together** – The Council recognises that it is one of a number of areas affected by any decision to expand Heathrow Airport. It is therefore prudent that the Council works in alliance with these like minded authorities. It is hoped that this will provide strength in voice and representation so as to increase as far as possible a positive outcome for Borough residents.

10. EQUALITIES, HUMAN RIGHTS AND COMMUNITY COHESION

- 10.1. As set out in paragraph 2.7 above, Human Rights: Impact associated with residents & businesses making conclusions and 'living decisions' based on these expectations – are one of the arguments upon which a challenge to the Government's decision on airport expansion will be based.

11. STAFFING/WORKFORCE AND ACCOMMODATION IMPLICATIONS

- 11.1. None.

12. PROPERTY AND ASSETS

- 12.1. None.

13. ANY OTHER IMPLICATIONS

- 13.1. N/A

14. CONSULTATION

- 14.1. This report and the decision will be considered at the Aviation Forum on 2nd November.

15. TIMETABLE FOR IMPLEMENTATION

| | |
|--------------|--|
| October 2016 | Cabinet decision |
| October 2016 | Meeting (together with 2M partners) with Nigel Pleming QC to set out a 2M response and JR timeline should Heathrow be chosen as the expansion site. Formation of RBWM / Heathrow JR working group |
| TBC | JR Launch (following advice from QC) |

16. APPENDICES

APPENDIX A: Headline data from IPSOS MORI resident poll

APPENDIX B: 2M Letters/Legal Correspondence

APPENDIX C: PART II - CONFIDENTIAL

17. BACKGROUND INFORMATION

Cabinet Report - 30 June 2016 – Heathrow Expansion – Legal Challenge

18. CONSULTATION (MANDATORY)

| Name of consultee | Post held and Department | Date sent | Date received | See comments: |
|-------------------|---|-----------|---------------|---------------|
| Internal | | | | |
| Cllr Cox | Cabinet Member for Environmental Services (including Parking) | 10/10/16 | | |
| Cllr Targowska | Principal Member for HR and Legal | 10/10/16 | | |
| Cllr Bowden | Chair, Aviation Forum | 10/10/16 | | |
| Cllr Lyn Jones | Leader of the Opposition | 10/10/16 | 10/10/16 | |
| Simon Fletcher | Strategic Director of Operations | 9/10/16 | | |
| Alison Alexander | Managing Director/ Strategic Director Adults, Children and Health | 9/10/16 | 9/10/16 | Throughout |
| Russell O'Keefe | Strategic Director Corporate and Community Services | 9/10/16 | | |
| Mark Lampard | Finance Partner | 10/10/16 | | |

REPORT HISTORY

| Decision type: | Urgency item? | |
|-----------------|--|------------------|
| For information | YES. An urgent decision is required owing to the short timescales associated with launching JR. This is particularly prevalent owing to the joint nature of the legal action with 2M partners. | |
| Report author | Job title | Full contact no: |
| Simon Fletcher | Strategic Director of Operations and Customer Services | 01628 |

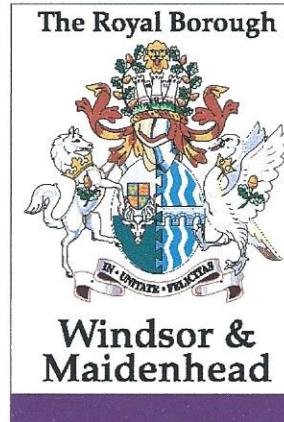
Appendix A: Headline data from IPSOS MORI resident poll

| | | THE ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD | 2015 | 2016 |
|--|--|---|------------|------|
| Q1. | | Base size: all respondents | 1014 | 1004 |
| To what extent do you support or oppose the option for a new runway to the North West of Heathrow Airport? | | | | |
| Strongly support | | 14% | 18% | |
| Tend to support | | 17% | 16% | |
| No feelings either way | | 27% | 25% | |
| Tend to oppose | | 12% | 12% | |
| Strongly oppose | | 26% | 26% | |
| Don't know | | 4% | 3% | |
| Support | | 31% | 34% | |
| Oppose | | 38% | 38% | |
| Net support | | -8% | -4% | |
| | | | | |
| Q2. | | Base size: all respondents | 1014 | 1004 |
| To what extent do you support or oppose the option to provide a new runway at Heathrow Airport by extending the existing northern runway to the west? | | | | |
| Strongly support | | 13% | 14% | |
| Tend to support | | 17% | 18% | |
| No feelings either way | | 26% | 26% | |
| Tend to oppose | | 11% | 12% | |
| Strongly oppose | | 28% | 26% | |
| Don't know | | 5% | 4% | |
| Support | | 30% | 32% | |
| Oppose | | 38% | 38% | |
| Net support | | -8% | -6% | |
| | | | | |
| Q3. | | Base size: all respondents | 1014 | 1004 |
| And to what extent do you support or oppose the building of a new runway at Gatwick Airport? | | | | |
| Strongly support | | 27% | 28% | |
| Tend to support | | 23% | 22% | |
| No feelings either way | | 32% | 34% | |
| Tend to oppose | | 7% | 6% | |
| Strongly oppose | | 8% | 7% | |
| Don't know | | 3% | 3% | |
| Support | | 50% | 50% | |
| Oppose | | 14% | 13% | |
| Net support | | 35% | 37% | |
| | | | | |
| Q4. | | Base size: all respondents | 1014 | 1004 |
| In your opinion, should the number of flights at Heathrow Airport be increased, reduced, or remain the same as they are currently? | | | | |
| The number of flights should be increased | | 21% | 26% | |
| The number of flights should remain as they are | | 58% | 56% | |
| The number of flights should be reduced | | 13% | 11% | |
| Don't know | | 8% | 7% | |

| | Base size: all respondents | 1014 | 1004 |
|------------------|---|-------------|-------------|
| Q5. | And in your opinion, should the number of night flights at Heathrow Airport be increased, reduced, or remain the same as they are currently? By night flights, I mean flights between the hours of 11.30pm and 6.30am. | | |
| | The number of night flights should be increased | 10% | 8% |
| | The number of night flights should remain as they are | 57% | 62% |
| | The number of night flights should be reduced | 28% | 26% |
| | Don't know | 5% | 4% |
| | Base size: all respondents | 1014 | 1004 |
| QAGE. | Age | | |
| | 18-24 | 8% | 8% |
| | 25-34 | 16% | 15% |
| | 35-44 | 16% | 14% |
| | 45-54 | 22% | 23% |
| | 55-64 | 13% | 14% |
| | 65+ | 25% | 24% |
| | Refused | 0% | 2% |
| | 18-34 | 24% | 23% |
| | Base size: all respondents | 1014 | 1004 |
| QGENDER. | Gender | | |
| | Male | 49% | 49% |
| | Female | 51% | 51% |
| | Base size: all respondents | 1014 | 1004 |
| QWORK. | Working status | | |
| | Working - Full-time (30+ hrs/wk) | 48% | 48% |
| | Working - Part-time (8-29 hrs/wk) | 13% | 13% |
| | Working - (under 8 hrs/wk) | 1% | 1% |
| | Housewife/husband | 4% | 4% |
| | Retired | 25% | 26% |
| | Registered unemployed | 2% | 1% |
| | Unemployed but not registered | 2% | 2% |
| | Permanently sick/disabled | 1% | * |
| | On a training scheme | - | - |
| | Voluntary work | * | - |
| | Student | 4% | 4% |
| | Other | 1% | 1% |
| | Refused | - | - |
| | Working | 62% | 62% |
| | Not working | 38% | 38% |
| | Base size: all respondents | 1014 | 1004 |
| QTENURE. | Can you tell me which of these best describes the ownership of your home? | | |
| | Being bought on a mortgage | 36% | 40% |
| | Owned outright | 40% | 41% |
| | Rented (private) | 9% | 9% |
| | Rented (Local Authority/Council) | 3% | 2% |
| | Rented (Housing association/Trust) | 5% | 5% |
| | Other | 2% | 1% |
| | Prefer not to say | 3% | 2% |
| | Don't know | 2% | 1% |
| | Owner occupiers | 77% | 81% |
| | Social tenants | 8% | 7% |
| | Base size: all respondents | 1014 | 1004 |
| QAIRPORT. | Which, if any, of the following applies to you? | | |

| | | | |
|------------------------|--|-------------|-------------|
| | I work at Heathrow Airport | 2% | 2% |
| | A member of my family works at Heathrow Airport | 5% | 6% |
| | My job is dependent on Heathrow Airport | 4% | 3% |
| | A member of my family's job is dependent on Heathrow Airport | 6% | 4% |
| | None of these | 88% | 88% |
| | Don't know | * | * |
| | I/relative work at Heathrow/work depends on it | 12% | 12% |
| QAIRPORT USAGE | Base size: all respondents | 1014 | 1004 |
| | Have you used Heathrow Airport for either work or leisure flights in the past five years? | | |
| | Yes, more than once a year | 43% | 42% |
| | Yes, but only about once a year or less | 37% | 34% |
| | No, not at all | 19% | 23% |
| | Don't know/can't remember | 1% | 1% |
| | Used Heathrow Airport within the past 5 years | 80% | 76% |
| | Base size: all respondents | 1014 | 1004 |
| | | | |
| AREA FLOWN OVER. | Area overflown (excluding flight trail areas) | 33% | 37% |
| | Area not overflown | 47% | 54% |
| | Flight trial area | 11% | 10% |
| | Unknown (no postcode provided) | 9% | 0% |
| | Area overflown/flight trial area | 43% | 46% |
| | | | |
| | | | |
| | | | |
| | | | |

Councillor Derek Wilson
Lead member for Planning
 Royal Borough of Windsor and
 Maidenhead
 Town Hall
 St Ives Road
 Maidenhead
 Berkshire SL6 1RF



Brandon Lewis MP
 Minister of Housing and Planning
 House of Commons
 London
 SW1A 0AA

15th June 2016

Dear Mr Lewis,

I am writing to you on behalf of my colleagues and residents of the Royal Borough of Windsor and Maidenhead to express the serious concerns and consequences of the potential expansion of Heathrow on the local community, as we develop our new Borough Local Plan for submission at the end of September 2016.

I have been liaising with Cllr Malcolm Beer, who has represented the Royal Borough on the Heathrow Airport Consultative Committee for 17 years, Local Authorities Aircraft Noise Council (LAANC) and the Aviation Forum for many years and has contributed to the information provided in this correspondence.

As you already know that we are one of four Councils that are opposed to the building of a third runway at Heathrow Airport, the other three being Wandsworth, Hillingdon and Richmond. This will place additional pressure upon local infrastructure requirements and this should be taken into account when this matter is considered in the Summer 2016.

The whole sub region around Heathrow has been extensively developed since World War 2 and as such, any further increase in activity following the proposed increase of flights by 54% of larger aircraft carrying far more passengers and cargo could not be sustained. The increases in employment both within Heathrow and outside will give rise to increased population within the surrounding areas and the increased demand for additional Housing. In addition there will need to be improved road and rail services to meet any future growth.

The Initial Commission Report advised both Central Government and Local Councils that they would have to meet the cost of 24 more schools, health service provision and other infrastructure requirements. As Heathrow has expanded since the 1950s the whole of West London and Thames Valley sub region has expanded to meet that demand, which has now resulted in the area being far too congested and scarcity of deliverable land placing additional pressure to meet the potential Housing growth that will be required.

As you will recall, the Aviation Commission's terms of reference for their work was to investigate whether another runway would be needed in the South East England by 2030 and if that should be at Heathrow or Gatwick. That report cost £24M and had great difficulty in assessing this subject, with their Final Recommendations Report July 2015 being totally different to their Interim Report November 2014. The totally disproportionate volume of economic growth forecasts in comparison to the negligible evidence of analysis of housing and infrastructure cast very serious doubts over the validity of the Commission's work and their conclusions.

Local Government and Non-Government Organisations (NGOs) presented criticism based upon the Commission's findings with regard to air pollution and noise objections. This matter was then investigated by an Environmental Select Committee, which should also have considered the impacts on Housing delivery for any future growth of Heathrow.

Understandably, Heathrow Airport Ltd are trying to convince on commercial viability to fulfil their pledge to provide 10,000 apprenticeships and create an additional 180,000 new jobs. This is all very laudable, but does not take into account where the increase of workforce is likely to live.

In 2014 the Commission anticipated a demand of between 29,800 and 70,400 additional houses for up to 112,400 more employees to be spread amongst the 14 nearest Local Authorities (Buckinghamshire, Berkshire, Surrey, & London) in the 10 years prior to the opening of the third runway in 2030. This suggests that each authority will need to provide 500 dwellings per annum to meet 5,000 dwellings over the ten year period. This growth is expected to extend as far as Reading, Newbury and Oxfordshire. The Commission also refers to the release of Green Belt land for housing. This is clearly in contradiction to the protection of openness and goes against the National Planning Policy Framework.

The level of housing required to meet the Commission's employment forecasts has not been properly assessed, against the infrastructure that will be required to cope with that level of activity by our statutory undertakers, especially the sewage treatment companies which are already overstressed. In the case of RBWM 83% is Green Belt and in addition the Royal Borough has Crown estate land, SSSI, Thames Basin Special Protection Area and the functional Floodplain as constraints on development.

We have been working with neighbouring local authorities under our 'duty to co-operate' to look at available land to meet our current Objectively Assessed Need figure for future Housing growth. We are not alone in trying to achieve this figure as we continue the process of developing the Borough Local Plan for submission. This figure is part of our Strategic Housing Market Assessment that has been prepared by West Berkshire, on behalf of all six Berkshire Unitary Authorities and South Bucks District Council.

The Objectively Assessed Need (OAN) figures for Berkshire and South Bucks cover a 15 year period as follows:

| | |
|-----------------------------|--|
| Slough Unitary Authority | 927 dpa x 15 = 13,905 (+ 5,000) = 18,905 |
| Wokingham Unitary Authority | 856 dpa x 15 = 12,840 |
| RBWM Unitary Authority | 712 dpa x 15 = 10,680 (+ 5,000) = 15,680 |
| Reading Unitary Authority | 699 dpa x 15 = 10,485 |

| | |
|------------------------------------|---|
| West Berkshire Unitary Authority | 665 dpa x 15 = 9,975 |
| Bracknell Forest Unitary Authority | 635 dpa x 15 = 9,525 (+ 5,000) = 14,525 |
| South Bucks District Council | 376 dpa x 15 = 5,640 (+ 5,000) = 10,640 |

The figures shown in brackets are based upon the Airport Commission's initial annual need for a third runway in 10 years.

East Berkshire authorities identified within the Strategic Housing Market Area, include Slough, South Bucks and the Royal Borough of Windsor and Maidenhead are all constrained by the Metropolitan Green Belt to stop urban sprawl and uphold the Green Belt policy within the National Planning Policy Framework Paragraph 79.

The 54% increase in the number of flights will require new airspace and few communities will escape from being overflowed under these third runway proposals. Furthermore those who fill the additional jobs will either need somewhere to live nearby or will exacerbate the road congestion with even more traffic movements. This will also add additional pressure on public transport infrastructure around Heathrow. Any increase in population will increase demand to meet that need. Crossrail will assist in meeting that demand, but will it be enough for future growth by 2030?

It should also be noted that Heathrow does not necessarily need more flights, as the highest ever average take up of seating capacity across all flights equates to 75%, which is probably due to multiple flights (26 daily flights to Paris and New York) to the same destination. If the 25% vacant seat capacity was reduced the current number of flights would not need to be increased.

We are convinced that Gatwick should be the only Airport expanded with an additional runway and not Heathrow, as not enough consideration has been given to the constraints of delivering the additional Housing stock and all forms of Infrastructure in Heathrow's 14 neighbouring authority areas. Gatwick also has the space to provide the additional runway and relevant facilities which would be fit for the 21st Century.

Please do not hesitate to contact me on 0778 975 5995 or Cllr Malcolm Beer on 01753 862976, if you would like to discuss or seek further information.

Yours Sincerely,



Cllr Derek Wilson
Lead member for Planning

HARRISON
SOLICITORS | GRANT

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The Rt Hon David Cameron, MP,
The Prime Minister
10 Downing Street
London SW1A 2AA

And to the Treasury Solicitor
One Kemble Street
London
WC2B 4TS

Our Ref: HIL0018

9th February 2016

Dear Prime Minister,

Re: Airports Commission Final Report and Decision of the Government on 10 December 2015 accepting the case for expansion and the Airports Commission's shortlist of options.

Introduction

1. We act for the London Boroughs of Hillingdon, Wandsworth, Richmond, and the Royal Borough of Windsor and Maidenhead ("the Boroughs"). As you are aware, the residents of the Boroughs stand to be the worst affected by further expansion at Heathrow.
2. On the 14 September 2015 the Leaders of the London Boroughs wrote to you to raise their concerns about the Airports Commission Final Report and to urge you not to follow its recommendation that there was a need for a new runway in the South East by 2030 and that the "best answer" was to expand Heathrow's runway capacity.
3. That letter strongly rejected the recommendation of the Airports Commission. The letter explained that there were clear flaws in the Airports Commission's assessments and approach to environmental issues, including air quality and noise. And the letter reminded you that you personally and then your coalition Government, had unequivocally ruled out expansion at LHR.

4. The letter was acknowledged by you on 13 October 2015 but there has been no substantive reply. For ease of reference copies of the 14 September 2015 letter, and your brief reply, are attached to this letter.
5. Our clients' concerns have only increased since their letter of 14 September 2015. We are writing now to urge you to immediately rule out expansion at Heathrow. The conclusion that Heathrow is a viable option is unlawful: it is in breach of our clients' legitimate expectation that there would be no third runway at Heathrow, the Airports Commission's recommendations were based on a flawed assessment of the impacts on air quality and noise, and there has been no adequate or fair consultation. On this basis, there is no reason for you to delay any longer a decision which rules out Heathrow any longer.

Developments since September 2015

6. Since the letter was written, on 26 November 2015, the House of Commons Environmental Audit Committee produced its own report on the Airports Commission Report. The Committee heard evidence on the issues of air quality, noise and carbon emissions. Its overall conclusion was that:

"The Government should not approve Heathrow expansion until Heathrow Ltd. can demonstrate that it accepts and will comply with the Airports Commission conditions, including a night flight ban, that it is committed to covering the costs of surface transport improvements; that it is possible to reconcile Heathrow expansion with legal air pollution limits, and that an expanded Heathrow would be less noisy than a two runway Heathrow. In each case – climate change, air quality and noise – it needs to set out concrete proposals for mitigation alongside clear responsibilities and milestones against which performance can be measured." (paragraph 22)

7. On the issue of air quality, the Committee's recommendation (with our emphasis added) was that:

"...before the Government makes its decision, it will need to demonstrate that its revised air quality strategy can deliver compliance with legal pollution limits within the timescales agreed in the finalised plan to be approved by the European Commission. It will also need to show that this can be maintained even when the expanded airport is operating at full capacity. Heathrow's existing air quality strategy should also be revised to meet the new targets. Failing this, Heathrow should not be allowed to expand." (paragraph 47).

8. Our clients' view is that the preconditions on noise and air quality cannot be met. The only lawful response is therefore to rule out expansion at Heathrow without any further delay.
9. In addition to the criticisms and concerns set out in the report of the Environmental Audit Committee, it is to be noted that the chairman of the Commons Treasury Committee has very recently questioned the robustness of the Commission's report.
10. In light of the above, it is not clear why the Government is persisting in its belief that Heathrow is viable, or why it has postponed making a decision which must necessarily rule out Heathrow.

Delay to a Decision Ruling out Heathrow

11. As you will recall, on 1 July 2015 you personally guaranteed that a decision would be made on the recommendations of the Commission by the end of 2015 (House of Commons 1 July 2015, Col. 1473). On 10 December 2015 the Government announced that, contrary to that promise, a decision on location would be subject to further consideration of environmental impacts and the best possible mitigation measures. The Government undertook to carry out a "*further package of work*", which is anticipated to conclude in summer 2016.
12. On 14 December 2015, in a statement to the House of Commons, the Secretary of State for Transport Mr Patrick McLoughlin stated that:

"We will therefore undertake a package of further work. First, we must deal with air quality. I want to build confidence that expansion can take place within the legal limits, so we will accept the Environmental Audit Committee's recommendation to test the commission's work against the Government's new air quality plan. Secondly, we must deal with concerns about noise. I want to get the best possible outcome on this for local residents, so we will engage further with promoters to make sure the best package of noise mitigation measures is in place. Thirdly we must deal with carbon emissions so we will look at all measures to mitigate carbon impacts and address the sustainability concerns particularly during construction. Fourthly we must manage the other impacts on local communities. I want people who stand to lose their homes to be properly compensated for the impacts of expansion, and I want local people to have the best access to the opportunities that expansion will bring, including new jobs and apprenticeships. We will therefore develop detailed community mitigation measures for each of the shortlisted options.

We expect to conclude that package of work by the summer. Critically, that means ensuring that delivery of the timetable for the additional capacity set out by Sir Howard does not alter. The commission reported that an additional runway would be required by 2030, and we intend to meet that requirement."

13. The Government has agreed that it will test the Airports Commission's work against the Government's new air quality plan. Critically, it does not appear to have accepted the Environmental Audit Committee's other recommendation on the legal test to be applied to any assessment of whether an expanded Heathrow would be lawful under the Air Quality Directive (as to which, see below). Otherwise, it appears that the Secretary of State is intending to deal with our clients' and their residents' concerns about air pollution, noise and destruction of communities by seeking to win their confidence in mitigation measures, but before the Government itself has the evidence to support a conclusion that a third runway at Heathrow is sustainable.
14. It is not yet clear to us, or to the public in general, what the "*further package of work*" entails, and what mitigation measures are proposed. No clarity has been provided since the statement by the Secretary of State for Transport to the House of Commons in December 2015. If there are further mitigation measures which could be applied in respect of noise and air quality, it is surprising that these were not before the Commission.
15. It now appears that a decision by the Government is to be delayed even longer. In an interview on LBC radio on 22 January 2016, the Secretary of State for Transport

indicated that the government no longer expected to make a final decision in the summer but instead hoped to make "some progress". Less than a week later, the Secretary of State for Transport gave a speech to the British Air Transport Association where he stated that further work was also to be done on the economic analysis. There is no good reason for any further delay and uncertainty in circumstances where the Government cannot lawfully favour Heathrow. The residents of the Boroughs have already suffered as a result of a history of broken promises that there would be no further expansion, and despite your clear promises they now suffer under the renewed threat of expansion. There is no justification for prolonging the uncertainty as regards Heathrow.

16. Our clients' overall concerns have not changed since the September 2015 letter. There is no basis for considering further expansion of Heathrow, and on our clients' behalf and in light of the continuing uncertainty we invite you to exclude that option as soon as possible. The residents represented by our clients have a legitimate expectation that further expansion will be so excluded. There is a viable option, which precludes any justification there otherwise might be for renegeing on your clear promise. In any event, there are insurmountable environmental problems associated with expansion, such that a decision by the government to support expansion at Heathrow would be irrational or otherwise unlawful. Finally, if the Government persists in maintaining expansion at Heathrow as an option, then our clients require and expect full and informed consultation relating to the package of further works (and any related matters) referred to in the December 2015 statement.
17. Before we turn to the legal arguments and the insurmountable environmental problems associated with expansion, it is again necessary to remind you that those who live close to or are affected by Heathrow and would be affected by its expansion have already been given clear and repeated assurances and promises by successive Governments, and by you, in relation to expansion at Heathrow, as set out below.

Promises and assurances given to the Boroughs and residents around Heathrow

18. Prior to 2010, the then Government supported a third runway at Heathrow, although following a challenge by our clients in *R (on the application of Hillingdon LBC) v Secretary of State for Transport* [2010] EWHC 626 it had to undertake that it would not, without further consultation and assessment, transform that support into a National Policy Statement for Airports. Furthermore, on 19 October 2009, in your position as leader of the Her Majesty's Opposition you made a personal pledge in a public speech in Richmond that there would be no third runway at Heathrow:

"The third runway at Heathrow is not going ahead, no ifs, no buts..."

"Even if Labour win the next election because of the public pressure and the Conservatives not backing it, [airport owner] BAA is backing off already."

(*"No ifs, no buts"*, Richmond and Twickenham Times, 21st October 2009)

It is to be noted that this unequivocal pledge was made by you as leader of the Conservative party, and unrelated to the subsequent Coalition government.

19. In the Coalition Government's "Our Programme for Government" dated May 2010, there was a clear and unequivocal commitment that: *"We will cancel the third runway."*

20. This promise was repeatedly made:

- a. In a Written Ministerial Statement by Theresa Villiers, MP (the Minister of State for Transport) on 7 September 2010: "*The Government have made its position clear in rejecting the case for a third runway.*"
- b. In the document "Developing a sustainable framework for UK aviation: a scoping document March 2011":

"we began straight away by cancelling the third runway at Heathrow";

"in the face of the local environmental impacts and mounting evidence of aviation's growing contribution towards climate change, the previous government got the balance wrong"

"One of our first actions was to cancel plans for a third runway at Heathrow airport"

"Aviation has significant local environmental impacts, especially on those living close to airports or under flight paths. These local concerns were a key consideration behind the Government's decision to scrap plans for a third runway at Heathrow" (para 4.1)

- c. The Government's policy not to support new runways at Heathrow, Stansted or Gatwick airports was included in the Terms of Reference of the South East Airports Task Force (2010/2011) ("SEAT"). The Government's policy was referred to in the first meeting chaired by Theresa Villiers MP, where it was recorded that the environmental impacts of additional runways at Gatwick, Heathrow and Stansted were too high a price to pay.
- d. The final SEAT report repeated the Government's commitment: "The Coalition Government has cancelled plans for a third runway at Heathrow" (SEAT final report, July 2011), as did the accompanying Ministerial Statement:

"These measures are consistent with our commitment to runway alternation at the airport and there would be no increase in the number of flights at the airport which will remain capped at current levels."

These were made on the basis of no new runways in the south east and no further increases in flights or passenger numbers at Heathrow out to 2050:

The forecasts include:

The Government's policy not to support new runways at Heathrow, Gatwick or Stansted."

- e. The Government response to the Committee on Climate Change report on reducing CO2 emissions from UK aviation to 2050, dated August 2011 referred to the Government ruling-out additional runways at Heathrow, Gatwick and Stansted.

- f. On 31 October 2011, Justine Greening (then Secretary of State for Transport) told the Airport Operator Association: "*the political reality is that the runway decision has been made, it is done.*"
- g. In Chancellor George Osborne's Autumn Statement on 29 November 2011: "*We will explore all the options for maintaining the UK's aviation hub status, with the exception of a third runway at Heathrow.*"
- h. Theresa Villiers MP stated to the Transport Times Conference on 18 April 2012

"That is why the Chancellor announced in his Autumn statement that we will explore all the options for maintaining the UK's aviation hub status, with the exception of a third runway at Heathrow"

The Coalition has always been clear that it does not support a third runway at Heathrow"

"The quality of life impact of a third runway, with up to 220,000 more flights over London every year, would be massive and there is no technological solution in sight to ensure planes become quiet enough quickly enough to make this burden in any way tolerable"

"So we need another solution"

- i. In a Written Ministerial Statement dated 15 May 2012 by Theresa Villiers MP on Operational Freedoms:

"These measures are consistent with the Government's commitment to runway alternation at Heathrow. I would also emphasise that the trial will not increase the number of flights at Heathrow which remains capped at current levels".

21. These promises were preceded by years of uncertainty over the status of a third runway at Heathrow. The residents of the Boroughs spent years living with the blight arising from this uncertainty and had thought that your promise in 2009, and the subsequent promises of your government, had finally laid the matter to rest. In light of these clear and unequivocal promises by the Government, the residents of the Boroughs (particularly the residents of Hillingdon) planned their lives on the basis that there would be no third runway at Heathrow. When you promised there would be no third runway at Heathrow, you must have expected them to do so. For the Government to go back on these promises, without justification for its change in stance, would be so unfair as to be unlawful. Further, in these circumstances, it is difficult to see how the residents and communities can have any confidence in promises of future restraint and/or mitigation of the adverse effects of expansion.

Legitimate Expectation

22. A decision to favour Heathrow is unlawful because it would frustrate the legitimate expectations of the residents of the Boroughs, arising from years of clear and repeated promises by the Government that it had ruled out a third runway at Heathrow: "no ifs, no buts." As set out further below, the residents have relied on these promises and planned their lives on the basis that there would be no further expansion at Heathrow.

23. As set out above, there is a long history of promises made by the Government that there will be no further expansion. There could be no clearer promise than the statements made by you personally and the Coalition Government between 2009 and 2012. Such clear and unequivocal statements give rise to a substantive legitimate expectation (see *Solar Century Holdings Ltd v Secretary of State for Energy and Climate Change* [2014] EWHC 3677).
24. A decision to favour a third runway at Heathrow could only be lawful where there is a sufficient overriding interest to justify departure from the Government's previous promises (see *R v North and East Devon Health Authority ex parte Coughlan*) [2001] QB 213 *per* Woolf MR at 57). Any grounds for terminating the policy must be rational (*R (Bhatt Murphy v Independent Assessor* [2008] EWCA Civ 755 *per* Laws LJ at 34). No overriding or compelling interests or grounds for the change in policy have been identified. In fact, as set out below, the recommendations of the Environmental Audit Committee demonstrate that the environmental justification for ruling out a third runway has only become stronger. In the absence of rational grounds for thwarting and frustrating the prior representations and promises, there is an abuse of power correctable by the courts.
25. It is surprising that the only possible grounds for a change in policy were set out by the Airports Commission when it sought to distinguish the third runway proposals under consideration in 2010 from the proposals which were before the Airports Commission (see Final Report at 5.9). This exercise only serves to demonstrate the *increased* impact on air quality, noise and the surrounding communities that the current proposals entail. For example, in the scheme considered by the Commission:
 - a. The runway is longer by 1,300m and suitable for use by all aircraft (the 2010 proposal was not suitable for the largest 4 engine wide body aircraft.);
 - b. The number of ATMs predicted is higher by some 38,000;
 - c. The land-take proposed is more extensive and more people are predicted to be affected by noise.
26. It is wholly irrational and unfair to attempt to justify such a policy change on the basis that the impact on the local communities will be more severe, more damaging, than the earlier rejected proposal. The absurdity of the Commission's attempt to distinguish the present proposals from the earlier, rejected, proposals was highlighted by the Boroughs in the September 2015 letter. As stated in that letter "The new proposal is the same as the last in that it will also result in unacceptable and unlawful noise, pollution and health impacts, and the destruction of a community". We assume that you will not rely in any way on this part of the Commission's reasoning.
27. Further, and in any event, this change of policy must be seen in its ECHR¹ context. No consideration has been given to the interests of the residents of the Boroughs; the people who stand to be worst affected by further expansion at Heathrow. Any decision making which leads to an interference with a person's rights under article 8 ECHR must be fair and as such afford due respect to the individual's interests (*Buckley v United Kingdom* (1997) 23 EHRR 101). The greater the interference, the more a court will require by way of justification before it is satisfied that a decision is fair (*Coughlan* at 93). Expansion at Heathrow will clearly interfere with the article 8 ECHR rights of those

¹ European Convention on Human Rights

who live close by, both in terms of increased noise and pollution and because they have planned their lives around your promise that there would be no third runway. This is particularly so for the residents of Hillingdon.

28. Attached to this letter are statements from a number of residents of the Heathrow Villages who have planned their lives on the basis of your promise. They have moved into the area, spent money refurbishing their homes, made plans for their retirement and built up communities under the promise that they were safe from a third runway. The continued uncertainty, which is grounds in itself for a breach of their rights (see *Moore v Secretary of State for Communities and Local Government* [2015] EWHC 44), has had a detrimental effect on these residents and their communities: they are now unable to plan their future, and cannot sell their homes (other than to Heathrow), and what were once close knit communities have been and will continue to be fragmented and eroded. Their individual lives are also affected by the lack of confidence of others to invest in the Heathrow villages due to the recent uncertainty of airport expansion. In the absence of any overriding considerations or rational justification, your decision to keep Heathrow under consideration as a viable option amounts to a disproportionate interference with these residents' ECHR rights.
29. Finally, there can be no justification for a policy of expansion at Heathrow that outweigh our clients' legitimate expectation or the residents' human rights in circumstances where, as here, there is an identified viable alternative.

Air Quality

30. Expansion at Heathrow is in any event unlawful on environmental grounds, and it would be irrational to base any decision on the recommendation of the Commission in circumstances where:
 - a. The Commission misdirected itself as to the legal test for compliance with the Air Quality Directive; and
 - b. The Commission based its decision upon a package of mitigation measures which were speculative and have been wholly rejected by the industry as unworkable.
31. Air Quality is a significant and pressing issue. The World Health Organisation has described air pollution as a "*health emergency*." The EU's European Environment Agency considers pollution to be the single largest environmental health risk in Europe. You have now accepted that the growing air pollution in areas of the UK has serious implications for Government policy decisions, including the question of whether there should be a third runway at Heathrow.
32. As you are no doubt aware, the UK is currently in breach of its obligations under the Air Quality Directive (2008/50/EC) ("the Directive"). In particular, the Greater London Region is in breach of the limits set out in the Directive for NO₂: it has the highest concentrations of NO₂ in the UK. At the time the Airports Commission's report was being finalised, the Greater London region was not forecast to be compliant with the Directive until 2030.
33. On 17 December 2015, the Government (pursuant to an order of the Supreme Court [2015] UKSC 28) published a Final Air Quality Plan for submission to the European Commission. The Final Air Quality Plan does not refer to the Airports Commission, or the proposal for a third runway at Heathrow whereas an earlier draft dated September 2015 stated:

"On 1 July the Airports Commission concluded that the proposal for a new Northwest runway at Heathrow was the strongest case for delivering new runway capacity in the South east and maintaining the UK's status as a global hub for aviation. The Airports Commission has undertaken considerable work on air quality and has made clear that any new capacity should only be released when it is clear that air quality around the airport will not delay compliance with EU limits. The impact on air quality and how this affects the wider compliance with EU air quality standards is something the Government is considering carefully when making its decision on additional capacity."

34. The Final Air Quality Plan, which is subject to review by the European Commission, sets out that Greater London is predicted to be at or below limit values by 2025. No analysis has yet been undertaken as to the impact of a third runway at Heathrow on this projection.
35. The Airports Commission did not assess the impact of Heathrow against the Final Air Quality Plan. The Environmental Audit Committee recommended, and the government accepted, that it is necessary for further assessment to be carried out of the impact of the shortlisted options against the measures and timetable set out in the Air Quality Plan.
36. It is critical that when carrying out this further assessment, the Government applies the correct legal tests. The Airports Commission failed to do so, and therefore to the extent that its assessment of the impact of expansion at Heathrow on air quality and the UK's compliance with the Directive remains relevant, it is irredeemably flawed.
37. The Airports Commission's approach to the legal requirements of the Directive is set out at paragraph 9.81 of the Report:

"In order for the commission to determine that a scheme can be delivered in compliance with the Air Quality Directive, it would require assurance that the scheme would not delay the date by which the sector within which the scheme was located would reach compliance with the limits set out within the Directive. In the case of the Heathrow schemes, the relevant sector is the Greater London Agglomeration area. It would therefore need to be demonstrated that, by 2030, receptors in the vicinity of the expanded airport site would not report the highest concentrations of NO₂ in the sector. Without Heathrow expansion, the Marylebone Road is expected to report the highest concentrations in 2030."

38. The Airports Commission's conclusion was that provided that expansion at Heathrow did not cause the area in the vicinity of the airport to be the most polluted area in Greater London, therefore delaying compliance with the limits in the Directive, expansion at Heathrow would be lawful. This conclusion is based on a misunderstanding of the requirements of the Directive. The error is clearly material, as at paragraph 9.93 the Commission stated that it "places limited weight on suggestions that air quality represents a significant obstacle to the delivery of expansion at Heathrow."
39. Article 12 of the Directive requires Member States to: "*endeavour to preserve the best ambient air quality, compatible with sustainable development.*" The terms of the

Directive are clear. The standard is not that pollution levels should not delay compliance with limit values, but that the best ambient air quality is preserved. Any material deterioration of the air quality would therefore be in breach of the requirements of the Directive.

40. Article 13 of the Directive states that limit values apply to member states "*throughout their zones.*" It is inconsistent with the purpose of the Directive, which is to protect human health, to interpret this as meaning that as long as pollution is higher in one part of a zone, breach of the limits in another part of the zone is not unlawful.
41. The Boroughs' position is that the correct legal test is as follows:
 - a. Where development would cause breach of the Directive in the locality of the development, that development cannot lawfully proceed;
 - b. Where development would make significantly worse an existing breach, or significantly delay compliance with limit values throughout the zone, the development cannot lawfully proceed.
42. The Environmental Audit Committee accepted that the approach by the Commission was flawed and recommended that the Government confirm that it will not follow the same approach as the Commission:

"...many of our witnesses interpreted the Commission's interpretation of the Air Quality Directive as implying that significant increases in NO₂ resulting from Heathrow expansion would be allowable because of worse performance elsewhere in London. This would make no sense in terms of protecting public health and wellbeing. The Government should make clear that this is not the position it intends to take when assessing the scheme for compliance with the Directive." (paragraph 43)
43. So far as we are aware, the Government has not provided any such confirmation. Given the critical importance of air quality and compliance with the Directive to any decision about expanding runway capacity in the southeast, the Government must clarify its position as a matter of urgency. There should then be a period of consultation on the Government's proposed approach, and the question of whether a decision in favour of Heathrow could lawfully be implemented.
44. The Commission's conclusions on Air Quality are flawed in another respect. The Committee placed reliance on the ability of Heathrow Ltd and/or the Government to arrive at mitigation measures which would ensure that air quality limits were not breached. The mitigation measures considered by the Airports Commission are entirely speculative. The Government is yet to identify what these mitigation measures might be. Further, while some mitigation measures put forward by Heathrow Ltd relate to pollution from its own operations other mitigation measures relate to pollution sources over which Heathrow Ltd has no control, for example cars on the road.
45. The public have had no opportunity to consider and comment on these alleged mitigation measures, which are clearly critical to the decision that Heathrow is a viable option. Our clients' representations on further consultation are set out below.

Noise

46. The Airports Commission's conclusions on noise cannot form the basis of a rational justification for departure from our clients' legitimate expectations or a conclusion that Heathrow is viable because they were also fundamentally flawed. Noise, like air quality, is a significant problem at Heathrow and has serious implications for health and educational attainment.
47. The Airports Commission's approach to noise was flawed because it failed to compare the noise climate with and without a new runway at Heathrow. The focus instead was on the expectation that noise will reduce over time. It is therefore impossible for the residents of the Boroughs to understand what the true impact of a new runway at Heathrow would be, compared to a world where expansion took place elsewhere. Further, in the Aviation Environment Federation Report 'Aircraft Noise and Public Health-The Evidence is Loud and Clear' January 2016 at page 12 – "*the wider question about the basis for judging whether expansion should proceed at an airport already exposing hundreds of thousands of people to noise above the maximum level recommended by WHO wasn't considered*".
48. The recommendation of the Airports Commission also contradicts Government policy on aircraft noise in the Aviation Policy Framework, which is to limit and where possible reduce the number of people in the UK significantly affected by aircraft noise. The current levels of noise due to Heathrow Ltd.'s operations are already unacceptably high. The North West Runway proposal results in over 160,000 more people being overflown to a material degree for the first time by aircraft noise. This is a clear and significant breach of the Government's own policy.
49. As with Air Quality, the Commission placed reliance on speculative and uncertain mitigation measures. One such example is the mitigation arising from the Future Airspace Strategy and the London Airspace Management Programme. Both of these programmes are delayed and will be subject to consultation. It is therefore highly speculative to rely on benefits arising from these programmes in any assessment of noise impact.
50. Another example is the inability of the Commission to give sufficient information about flight paths to inform full and intelligent consideration about the noise effects of expansion. This is yet another proposed mitigation which the public has not had sight of, and upon which they have been unable to comment.
51. The mitigation measures proposed at Heathrow are vague and unlikely to work in practice. For example, the ban on night flights is unlikely to be effective or sustainable. The Airports Commission refers to a noise envelope but it is not clear whether it would be effective. In some cases, the mitigation proposed amounts to a worsening of the current position, for example the respite proposal would provide most people with 25% respite, half of what they enjoy today.
52. Again, the Commission's flawed approach to noise has been recognised by the Environmental Audit Committee. The Government has not set out details of the further work it is to undertake on noise issues. There has also been no promise of consultation on any mitigation measures which the Government may propose.

The Lawful Decision is to Exclude Heathrow

53. For the reasons set out above, the Airports Commission's conclusions cannot form the basis of a rational, and lawful, decision that Heathrow is viable. They provide no justification for departure from our clients' legitimate expectation that there would be no third runway at Heathrow. Expansion at Heathrow should therefore be ruled out without any further delay.

Consultation

54. In the event that Heathrow remains under consideration, further consultation is required as a matter of urgency. The Government's approach to consultation on such an important issue of national infrastructure has been disappointing in the extreme. The requirements of a lawful consultation are well established. Where the government chooses to carry out consultation, such consultation must be fair:

- a. It must be at a time when proposals are at a formative stage;
- b. The proposer must give sufficient reasons to permit intelligent consideration and response;
- c. Adequate time must be given; and
- d. The product of consultation must be conscientiously taken into account in finalising any proposals.

(*Ex parte Gunning* (1985) LGR 186 per Hodgson J, endorsed by the Supreme Court in *R (on the application of Moseley) v Harringey LBC* [2014] P.T.S.R 1317 per Lord Wilson JSC at [25])

55. The content of any consultation must be sufficiently detailed to enable the public to give intelligent consideration to the proposals:

"Its obligation is to let those who have a potential interest in the subject matter know in clear terms what the proposal is and exactly why it is under positive consideration, telling them enough (which may be a good deal) to enable them to make an intelligent response. The obligation, although it may be quite onerous, goes no further than this." (R v North and East Devon Health Authority, ex parte Coughlan [2001] QB 213, per Woolf MR at [112], and see Lord Wilson in Moseley, at [25])

56. In the case of the proposed expansion of runway capacity in the southeast, the fullest possible public consultation is required (see *R (on the application of Greenpeace Ltd) v Secretary of State for Trade and Industry* [2007] EWHC 311 at [51] and in *R (on the application of London Borough of Hillingdon and others v Secretary of State for Transport and Transport for London* [2010] EWHC 626 (Admin) at [60]-[64]).

57. Our clients are seriously concerned that, to date, the Government's approach to consultation has been selective, inadequate and incomplete. The flaws in the consultation process include, but are not limited to:

- a. The Airports Commission did not undertake a consultation on the question of need for a hub airport which was addressed in its interim report, preferring instead to issue a more limited call for evidence.
- b. The recommendations of the Airports Commission and its conclusion that all three proposals on its shortlist are viable have not been consulted upon.
- c. There has been no consultation and examination of the health impacts of expansion.

- d. The mitigation measures for noise and air quality considered and relied upon by the Airports Commission have not been consulted upon, and probably could not be consulted on without detailed information about flight paths.
 - e. A decision which favours Heathrow will be a breach of established policy (the promise of no third runway and the Aviation Policy Framework). The question of whether a change in these policies is justified has never been consulted upon.
58. In *Hillingdon* the Government undertook that a decision to build a third runway at Heathrow would be subject to further consultation. Our clients therefore have an expectation that they will be consulted on the principle of a change in policy. Such consultation must take place when the proposal is still at a formative stage, so that any responses are capable of influencing the result. Our clients are seriously concerned that even if there were to be further consultation at this stage, it would be after a decision in principle to support expansion at Heathrow had been made.
59. There is a requirement for consultation as part of the National Policy Statement process, and under the Environmental Assessment of Plans and Programmes Regulations 2004 ("SEA Regulations"). Our clients, and the residents of the Boroughs, are clearly included in the category of interested members of the public that must be consulted under the SEA Regulations (see regulation 13).
60. While a full and lawful public consultation could still take place, our clients are seriously concerned that a series of decisions have been made, or will be made, which will ultimately inform the scope and content of a National Policy Statement without the necessary public consultation. Such an approach is unlawful if the failure to consult is not corrected at a later date.
61. It is of particular concern that the decision that Heathrow is viable, and therefore worthy of inclusion in an NPS, will be based on a flawed approach to legitimate expectations, air quality, noise and a package of mitigation measures which the public has had no opportunity to consider and comment upon. Such an approach is wholly unfair and would render any NPS which includes Heathrow as a suitable location unlawful.
62. If the Government proposes to rely on the Airports Commission Report, or any subsequent analysis without carrying out further consultation, this would be in breach of its obligation to consult under the SEA Regulations. It would also be contrary to the submissions made on the Government's behalf in *Hillingdon* that there would be consultation before a decision was made to favour a third runway at Heathrow. The failure to consult on the further "package of work" would also fall foul of these requirements.
63. Without prejudice to the various complaints regarding the deficiency of the consultations undertaken so far, this letter seeks an assurance from you that the public will be consulted on the proposal for the package of further work foreshadowed in the 10 December 2015 announcement. Such consultation must comply with the legal requirements for a fair consultation set out above and include a clear statement of the Government's approach to the Directive, and the legal test to be applied.

Conclusion

64. For the reasons set out above, there can be no lawful decision which favours a third runway at Heathrow, and expansion at Heathrow should finally and unequivocally be ruled out – and ruled out without further delay.
65. If you and your Government continue to consider Heathrow as a viable option, this would amount to a change in settled policy and breach of our clients' legitimate expectations. No compelling or rational justification has been given for this change in policy, and you have failed to consider the interests of the residents who will be worst affected by this decision.
66. The Commission's work on Air Quality and noise was flawed. Its conclusions on Air Quality were based upon an error of law and an irrational reliance on speculative mitigation measures. Those conclusions have in any event been superseded by the new Air Quality Plans published in December 2015.
67. The Commission's conclusions on noise were based on an erroneous comparison between Heathrow now and Heathrow in the future, as opposed to a future Heathrow with and without expansion. The mitigation measures were also speculative and uncertain.
68. In summary, our clients submit that any decision which is based on the Commission's conclusions would be irrational and unlawful, and open to challenge.
69. If there is no early decision to exclude expansion at Heathrow, we ask on behalf of the Boroughs that you commit to consultation including in relation to the further package of work which the Government is undertaking. This should include consultation on: the issue of compliance with the Directive; any further mitigation measures that are proposed in respect of air quality and noise; and any further work on the economic case for expansion. These are critical issues not only in relation to the determination of any justification for departure from the promise not to expand at Heathrow, but more generally in relation to the location of a new runway in the southeast.
70. As set out at the end of the Borough's September 2015 letter, they reserve their rights to take whatever action is in their power to protect their residents and communities from the devastating impacts of a new runway at Heathrow.
71. In light of the absence of any substantive response to that letter, we would respectfully request a full reply to this letter, including a firm and detailed commitment to the further consultation referred to above.
72. We request that you acknowledge safe receipt of this letter and reply in full within fourteen days.

Yours faithfully


Harrison Grant

H A R R I S O N

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24th March 2016

Dear Sir

Thank you for your letter of 16 March 2016, received here on 18th March and written in reply to our letter of 9th February 2016 to the Prime Minister.

Your letter does not respond to the important points we raised on behalf of our clients, the local authorities, and their residents whose lives are most affected by any Government decision about Heathrow airport.

We therefore reserve our right to raise a challenge to any final decision to support expansion at Heathrow airport including, but not limited to, the grounds set out in our letter of 9th February 2016.

In your penultimate paragraph you say "I am sure you will understand that I am not able to comment substantively at this stage on the points you raise."

On the contrary, we see no reason at all why you, or the Prime minister, should not comment on the important issues raised and why our clients, who are the local authorities with responsibilities including planning, air quality and public health around Heathrow, should not be fully involved in the decision making process. In our view anything less than full participation, in accordance with the Aarhus convention and its implementing legislation, and consistent with our clients' duties and responsibilities, would be unlawful.

We therefore repeat our request that you commit to consultation including in relation to the "package of further work which [the Government] anticipates will conclude over the summer" and that any such consultation will also include compliance with the Air Quality

Directive, environmental detriment, mitigation measures and any further work on the economic case for expansion.

Otherwise, please confirm *expressly* that the Government is not intending to engage in any further consultation with affected parties on the topics we have identified but instead intends to conduct any work and assessment in relation to airport expansion in secret. We hope that is not the case, but if so please let us know whether you will be involving Heathrow Airport and others with a commercial or other interest in airport expansion in the further work and excluding only those opposed to airport expansion.

We look forward to hearing from you.

Yours faithfully

Harrison Grant

c Government Legal Department

HARRISON

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Robert Goodwill MP
Minister of State for Transport
Great Minster House
33 Horseferry Road
London
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our ref: HIL0018
your ref: MC/157362

8th July 2016

Dear Sir

Our clients, the London Boroughs of Hillingdon, Richmond and Wandsworth and the Royal Borough of Windsor and Maidenhead

We write following our letter to the Prime Minister, copied to the Secretary of State for Transport, dated 9 February 2016, your reply to that letter dated 16 March 2016 and our letter to you dated 24 March 2016. We are writing to repeat our concern that in spite of our request to rule out Heathrow at the earliest opportunity or alternatively commit to further consultation on airport capacity, the government has not made any such commitment and has now further delayed the decision on whether to favour Heathrow or Gatwick for the location of a new runway.

When we last wrote to you, the Secretary of State for Transport had announced (on 14 December 2015) that following publication of the Airports Commission Report, a further package of work on the issues of air quality, noise, carbon emissions would be carried out with the expectation that this work would be concluded by summer 2016. Shortly thereafter, in January 2016, the Secretary of State indicated that further work was also to be carried out on the economic analysis. To date, and

notwithstanding our letters, the Government has not confirmed whether it intends to carry out any consultation on this further package of work.

On 30 June 2016 in oral answers to questions in the House of Commons, the Secretary of State for Transport said that in light of recent events, which included the results of the EU referendum, he could not foresee that a decision on airport capacity would be announced until at least October. However he also indicated that a further analysis of air quality would be published soon, although no date was given, and that the promoters had announced undertakings that would increase the compensation available for residents living near the airports and connectivity between other UK airports.

The further delay is contrary to the interests of the residents of the Boroughs who now have to live with yet more uncertainty and broken promises. As set out in our letter of 9 February 2016, there is no good reason why the government should persist in postponing a decision which must necessarily rule out Heathrow.

We remain concerned that the package of further work referred to by the Secretary of State in December 2015, January 2016 and most recently June 2016 is being carried out in secret, with no opportunity for our clients or the public to comment on the outcome or provide information which may be relevant to any final decision. In particular, our clients have not been given the opportunity to comment on either the Air Quality analysis or the promoters' undertakings despite the fact that the residents of the Boroughs will be directly affected by any expansion at Heathrow, and the accompanying deterioration in air quality and increase in noise.

Of further concern is the fact that it appears that the government has been liaising with the promoters on compensation measures without consulting our clients or the residents of the Boroughs. We expressly asked you to confirm whether you would be involving the promoters (and others) in the further work in our letter of 9 February 2016 but you did not reply to this request. It appears to us that any consultation

which has taken place recently has been selective, and has deliberately excluded those opposed to airport expansion.

We therefore repeat our request to commit to public consultation on all aspects of the further package of work as set out at paragraph 69 of our letter of 9 February 2016, including the soon to be published air quality analysis and the promoters' compensation proposals. Please also confirm when you intend to publish the further air quality analysis.

We reserve our right to raise a challenge to any final decision to support expansion at Heathrow airport including, but not limited to, the grounds set out in our letter of 9th February 2016.

Yours faithfully,



Harrison Grant

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Charlotte Moss
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KH/HIL0018
30 September 2016

Dear Madam

Re: Our clients, the London Boroughs of Hillingdon, Richmond and Wandsworth and the Royal Borough of Windsor and Maidenhead.

We write following our letter to Secretary of State for Transport, dated 8 July 2016 and your response dated 1 August 2016.¹

Our view remains that the only decision consistent with the information which has been made publicly available for consultation and the promises outlined in our previous correspondence is to rule out, without delay, further expansion at Heathrow Airport.

For the reasons set out in our previous letters, and below, there are no grounds upon which the Government can lawfully depart from our clients' legitimate expectations, and those of their residents.

Any new information or analysis which the Government believes might justify such a decision should be consulted on *in advance* of any decision. If not and consultation is carried out only after the Government has made up its mind, then a subsequent consultation will be viewed as sham.²

¹ Your letter refers to a letter from the Department of Transport dated 13 April 2016. We did not receive such a letter. Your letter of 8 July 2016 was addressed to 44 Beech Street, whereas our offices are at 45 Beech Street which may explain why your previous letter has not reached us. Please provide a copy.

² The Prime Minister will understand these concerns: see her letter in response to "Adding Capacity at Heathrow Airport"

For the avoidance of doubt, that means there should be consultation in advance of *any* Government decision to favour expansion at LHR.

Further work has been cloaked in secrecy

As set out below, despite our repeated requests for further consultation, the package of work announced in December 2015 has not been published.

Instead, the Government has carried out its further work, including work with the developers, in secrecy. As a result, our clients simply do not know when or how or on what basis a decision on the preferred scheme will be made.

We note from reports in the press that it appears that the government will proceed to make an announcement on either 11 or 18 October. The process of decision making is also shrouded in mystery. There are some reports that it will be made by a cabinet sub-committee – others that there will be a debate and free vote in Parliament. It is also not clear whether the Government plans to reach a decision on location in October, with a draft NPS to follow or whether the intention is to publish a draft NPS in October.

It is not right that our clients should be kept in the dark. Given the importance of the decision and the impact a decision to support Heathrow expansion would have on the residents of the Boroughs the lack of openness and transparency is of great concern.

Further information and consultation required

Air Quality

The Government accepted that further work needed to be done on Air Quality. The Secretary of State indicated in June that such further work would be published “soon”. It has not been. Despite our request in our letter of 8 July 2016 you have not provided the date upon which you intend to publish the further analysis.

The EU limits on NO₂ concentrations remain binding. There is nothing in the public domain to suggest that expansion at Heathrow has been assessed against the Government’s Air Quality Plan, which is in any event subject to a judicial review challenge.

Even in the absence of any EU mandated targets on air quality, it would be unlawful for the Government to favour Heathrow without first fully understanding the impact of air and noise pollution on the surrounding community. The Government is subject to the Public Sector

Equality Duty under section 149 of the Equality Act 2010 requiring it to have due regard to, among other things, eliminating discrimination and advancing equality of opportunity. The duty applies to the formulation of policy. The duty must be fulfilled before and at the time that a policy is being considered and be exercised in substance, with rigour and an open mind (*R (Bracking) v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345). The decision as to where to locate a third runway in the South East is clearly caught by this requirement.

The grave health impacts of poor air quality are well known, but there has been recent research which suggests even more severe impacts, particularly for the young and for the elderly. It is also increasingly becoming clear that the effects of noise and air pollution are disproportionately felt by those with a lower socioeconomic status. For example, in September 2016, the European Commission published a report which sets out that people of low socioeconomic status face a greater risk of heart disease, mental health problems and poor sleep and that deprived populations living in areas of pollution will experience the worst affects. A GLA report found that in London, populations living in the most deprived areas are on average currently more exposed to poor air quality than those in less deprived areas.

As we have already pointed out, the health and equalities analysis in the Airports Commission Report was wholly deficient. The impact of increased noise and air pollution on those who share a protected characteristic is dealt with in a few short paragraphs. No rigorous analysis was carried out. Instead, the approach taken by the Airports Commission was to say that full health and equality impact assessments could be carried out after a decision on location had been made and the favoured scheme was being developed. This approach is wrong in principle. The Government cannot properly decide to depart from its earlier promises, based as they were on the environmental impact of expansion, without understanding the impact the scheme would have on those who share a protected characteristic.

A decision which favours Heathrow now, without consultation and a proper analysis of the health and equality impact of locating a third runway at Heathrow, would be in breach of the public sector equality duty

Noise and Mitigation

On 29 September 2016, Heathrow announced "new radical expansion plans". These plans, it is claimed, could be implemented while the third runway was being constructed. They involve an increase in overall flight numbers by 25,000 a year, on current levels, above the current ceiling on flights. If implemented, this would mean at least two additional flights per hour and lead to intolerable and unlawful increases in air and noise pollution. It is of concern that these plans have been announced without any prior consultation with our clients and, in particular, with Hillingdon, the local planning authority.

Any expansion at Heathrow would have consequences for noise and air pollution, infrastructure, pressure on the green belt and blight affecting our clients.

Heathrow's proposed mitigation measures, which include a ban on night flights before 0530, noise insulation for homes under the flight path and noise monitoring equipment are expressed in vague terms which cannot meaningfully be assessed or considered. Any proposals for mitigation should be tested through informed public consultation before any decision is made.

Economic Case

No further analysis of the economic case has been published.

On 14 September 2016, the Chairman of the Treasury Select Committee wrote to the Secretary of State for Transport referring to a discussion on 15 August 2016 where the Secretary of State and the Chairman discussed the need for clear answers on the economic case for Heathrow and Gatwick. The letter records that for over 10 months, no answers have been forthcoming from either the Department of Transport or the Treasury. The Chairman goes on to say that:

"Failure to answer them will lead people either to conclude that this work has not been done in which case it would be unacceptable for a decision to be made without the evidence to support it -or that it has been done, and gives answers that do not necessarily support the conclusions of the Davies report."

The questions, which are attached to the letter, identify a number of significant gaps in the Airport Commission's analysis.

In our view, the further economic analysis should not only be published: it should be consulted on.

Furthermore, we note that Heathrow has now sought to reduce the costs of its scheme by about £3 billion. This, in addition to the information we provided in our letter of 8 July, calls into question the Airports Commission's conclusion that the Heathrow proposal for a third runway was economically viable. The Government does not appear to have re-visited the conclusions of the Airports Commission Report now that Heathrow has altered its proposed scheme. This is yet another reason why the Airports Commission Report cannot now be relied upon and why further public consultation is needed before a decision favouring Heathrow could be made.

Conclusion

We therefore invite you to rule out expansion at Heathrow now, without any further delay.

If there is further information which the Government believes would justify breaking the promises made to our clients and our residents, then it should be properly explained and consulted upon. The Department of Transport has so far failed to answer our requests for an undertaking that further consultation on all aspects of the further package of work will take place, but there can be no justification for this one-sided approach to a decision on airport expansion which seems to involve listening to the developers, and encouraging them to publish expansion plans, but excluding and withholding information from local authorities, residents, the general public and even parliament.

If you were to make a decision to favour expansion at Heathrow, without further informed consultation, then that decision would be in breach of our clients' legitimate expectations, your duty to consult, our clients' residents' Article 8 rights and the public sector equality duty.

Please acknowledge safe receipt of this letter and reply within 7 days.

Yours faithfully

Harrison Grant