

DECISION BY THE SECRETARY OF STATE FOR THE DEPARTMENT OF TRANSPORT,  
LOCAL GOVERNMENT AND THE REGIONS (DTLR) TO APPROVE THE HEATHROW  
TERMINAL 5 AND ASSOCIATED PLANNING APPLICATIONS

REPORTING MEMBER: COUNCILLOR WILSON

CABINET 28 FEBRUARY 2002

1. **PURPOSE OF REPORT**

This report seeks to summarise the findings of the Terminal 5 Inquiry and the Government's decision to approve the BAA's planning application for the development at Heathrow Airport.

2. **MEMBER'S RECOMMENDATION:** That the information contained within the report and the associated comments regarding the Terminal 5 decision be noted and endorsed and a letter be sent to the Secretary of State seeking assurances that (a) the conditions attached to the consent for the Fifth Terminal are strictly applied and enforced; and (b) the Inspector's recommendations relating to night flight restrictions and no third runway at Heathrow be endorsed within the forthcoming Aviation White Paper and any appropriate legislation

3. **SUPPORTING INFORMATION**

3.1 Wards Affected

All wards within the Borough are likely to be affected by the Terminal 5 decision.

3.2 Relevant Matters Upon Which Decision is Based

The decision is based on the recommendations of the T5 Inspector to the Secretary of State in December 2000 and the subsequent announcement on 20 November 2001 by Stephen Byers MP granting consent for the proposed development, subject to a number of planning conditions.

3.3 Relevant National/Regional Guidance

Given the extensive and wide ranging issues covered by the T5 proposal, Members are referred to the vast range of national, regional and local policies, guidance and strategies referenced throughout the Inspector's Report.

3.4 Relevant Council Policies/Strategies

RBWM Local Plan; Berkshire Structure Plan Review 2000-2016 Deposit Draft; Sustainable Development Strategy: '*A Better Quality of Life*'; Local Transport Plan; Housing Strategy 2002-2006; the Community Plan; Environmental Protection service strategy.

3.5 Options Available – not relevant

3.6 Reasons Supporting Recommendation

- 3.6.1 BAA submitted some 18 planning applications in connection with the development of a fifth terminal and related infra-structure proposals at Heathrow Airport in February 1993. The

Secretary of State called in the application and appointed Roy Vandermeer Q.C. as the Inspector for the Public Inquiry which opened in May 1995.

3.6.2 12 local authorities, including the Royal Borough, who opposed the application joined as a consortium (LAHT5) in order to share the financial, technical, legal and administrative burdens and to avoid duplication of effort. The London Borough of Hillingdon, the local planning authority, together with Spelthorne Borough Council were also party to joint working with the LAHT5 Consortium.

3.6.3 The Inquiry considered the application under 11 topic headings that included:

1. The Need for Terminal 5
2. Development Pressures and Socio-economic impacts
3. Development Plan Policies and Land Use Considerations
4. Surface Access
5. Noise
6. Air Quality
7. Public Safety
8. The Fuel Farm
9. Construction
10. Associated Applications
11. Conditions

3.6.4 The Inquiry, which sat for 525 days between May 1995 and March 1999, heard evidence from 734 witnesses, including 12 MP's and 5 MEP's. In addition, over 300 members of the public gave evidence at separate evening sessions. Over 26,000 individuals and organisations recorded their objections to T5 whilst 1,500 letters were received supporting the proposal with a further 35,000 names on a petition submitted by BAA/BA in favour of the development. The Inspector submitted his report and recommendations to the SoS in December 2000. It is also likely that the T5 Inquiry process and decision will herald a step change in future development control procedures and associated policy formulation.

3.7 The Royal Borough's Role

The Royal Borough was a key member of the LAHT5 group in opposition to the development and indeed led on the Topic 5, noise element of the Inquiry. It was also instrumental in planning and presenting some of the strategic and local evidence on air noise, on behalf of Borough residents and the wider Consortium.

3.7.1 Berkshire County Council, who at that time were the strategic planning and highway authority gave evidence under Topic 3 (Development Plan and Land Use Considerations) and Topic 4 (Surface Access). Throughout the Inquiry the Borough supported the evidence fronted by other LAHT5 member authorities. The direct cost to the Borough of participating in the Terminal 5 Inquiry over such a protracted period is estimated at £350,000 plus officer time.

3.8 The Terminal 5 Decision

3.8.1 The decision letter and documentation in relation to the Terminal 5 announcement runs to over 800 pages with each topic dealt with separately.

3.8.2 The following is a brief summary of the key points of interest to the Royal Borough's case arising out of the announcement by the Secretary of State, Stephen Byers, on the 20 November 2001.

### 3.9 Summary

- The Terminal 5 Planning Application, together with all of the other associated planning applications were granted consent. These include the satellite terminals, railway stations, the maintenance base, the M25 spur road and the Heathrow Express and Piccadilly Line extensions.
- The application to widen the M4 motorway was not approved, but the Inspector recommended that the Highways Agency should improve Junctions 3 and 4 and that the whole corridor should be reconsidered within the London to Reading multi-modal study.
- The Inspector recommended that planning permission should not be granted for a third runway at Heathrow. However, the Secretary of State subsequently did not impose this as a condition but committed to including the inspector's recommendations within the forthcoming aviation white paper.
- A cap has been imposed on the number of flights, solely to help mitigate noise levels upon local communities residing around the Heathrow complex. The limit imposed has been set at 480,000 air transport movements a year. This represents an increase of about 20,000 more movements per year. However, the Inspector still anticipated a significant increase in passengers (rising from the current level of 60 million passengers per year (mppa) to around 95mppa) that could have implications for surface access.
- Parking restrictions have been imposed limiting the development to 42,000 car parking spaces for the airport as a whole. (BAA had asked for 48,000 spaces). A limit of not more than 17,500 spaces has been designated for airport workers.
- Land-side retail space has been restricted to 7,300m<sup>2</sup> with a restriction on the size of individual retail premises.
- Prior to the T5 opening, both the Heathrow Express and Piccadilly Line must be extended. 'Encouragement' is also given to connecting the Heathrow Express through St. Pancras Station, whilst the use of Heathrow Express has been capped to 12.9 million passengers per year.
- In terms of the conditions attached to the approval the Inspector has endorsed those conditions offered by BAA as detailed in Document Reference BAA404R (dated 16.3.99) subject to some 25 additional or amended recommendations by the Inspector. A number of key conditions sought by the local authority consortium were not attached to the consent. For example, conditions relating to noise insulation schemes, Blight schemes, operational controls and the control of night flights. A full list of the conditions imposed is available in the Member's Room.

3.9.1 A more detailed synopsis incorporating a number of statements made by the Inspector is attached as Appendix 1.

## 4. IMPLICATIONS

### 4.1 Financial, Contribution to the Council's Strategies and Crime and Disorder Reduction

None arising directly out of this report.

## 4.2 Legal

It would appear that a number of local authorities that opposed T5 are disappointed with the SoS's decision to grant consent for the development. There was little support for contesting the Terminal 5 decision either by the local planning authority (London Borough of Hillingdon) or any of the local authorities involved with the Terminal 5 Inquiry. The cost of mounting a legal challenge would have been considerable with no guarantees of a successful outcome. Local authorities do need to remain vigilant over emerging proposals that are likely to relate to issues such as revised night flight regimes, changes to the current operational constraints, e.g. runway alternation, westerly preference, segregated mode and the Cranford Agreement and more recently, the consideration of a third runway serving Heathrow Airport. These issues are likely to be the subject of further consultation and review over the coming months as the government formulates its revised national aviation policy.

## 4.3 Planning

The T5 decision is likely to have far reaching impacts in respect of regional and local land use policies, strategic transport and aviation policies and economic strategies for the region.

## 4.4 Sustainable Development

The Borough has always maintained that approval of the proposed T5 development would lead to a detrimental impact upon the quality of life of local communities. In particular, increased noise during the day and night, surface access problems and congestion, deterioration in local air quality, pressures on the Green Belt etc. The Inspector vindicates this view by recommending that consent for the development should only be granted subject to tough restrictions being imposed. Clearly, in coming to his recommendation to approve the development, the Inspector was of the view that, on balance, the economic and social benefits of the T5 development outweighed the inevitable adverse environmental consequences.

## 4.5 Human Rights

There are a number of issues within the Terminal 5 decision that may have Human Rights implications. Of particular note is: Article 8 - Right to Respect Private and Family Life and the First Protocol, Article 1 – Peaceful Enjoyment of Possession. These are subject to restrictions in accordance with the Law and are necessary in a democratic society in the interests of public safety, the economic well-being of the country, the protocols of health or morals, or for the protection of the right and freedoms of others.

An owner/occupier of land adjacent to the Terminal 5 development, or any person who as a consequence of the development is affected adversely by its operation, could be deemed a 'victim' under the Act.

A significant and associated issue with the T5 approval is the recent European Court of Human Rights decision in relation to night flights where it was ruled that night flights infringed a person's basic right to sleep and was held to be a breach of Article 8. Interestingly, the Government has recently announced that it has appealed against the earlier ECHR decision and, clearly, the council will need to have regard to any subsequent decisions. Despite strong recommendations by the Inspector for tougher night restrictions the SoS did not elect to impose any restrictions on night flights at the current time.

## 5. CONSULTATION

No consultation has been carried out in respect of the actual decision by the SoS to approve T5. The Borough has however carried out extensive community consultation on the issues of aircraft noise and night flights in recent years and, more recently, by the Borough-wide survey in 2001. The Environmental Health service also continues to monitor the response of the local community with respect to the impacts of aircraft noise.

Background Papers: The Heathrow Terminal 5 and Associated Public Inquiry's Report by Roy Vandemeer QC; Decision letter from DTLR dated 20 November 2001; 'Applications, Schemes And Orders Relating To A Proposed 5<sup>th</sup> Terminal at Heathrow Airport'.

## APPENDIX 1

### **Synopsis Of The Inspector's Comments In Relation To Terminal 5**

#### Development Pressures

The SoS accepted the Inspector's conclusions on this issue.

The overall conclusion of Inspector was that he found no reason to conclude T5 will harm the local or regional labour market and that the housing demands from the jobs generated by T5 would not lead to any significant breaches of Green Belt or other environmental constraints. In the Inspector's view there can be no question that T5 would be in conflict with guidance in RPG3 and RPG9. However, the Inspector did accept the need for safeguards to ensure the best possible use is made of resources on the airport to accommodate airport related development.

#### Employment Forecasts

On the whole the Inspector found the arguments produced by BAA on this issue more convincing than LAHT5. In particular, the Inspector supported BAA on various aspects of the employment forecasts evidence:

- Cargo forecasts (2m tonnes pa instead of 2.8m) that influence employment in such sectors as air freight forwarding.
- Productivity assumptions for on-airport employment.
- Direct off-airport and indirect employment.

As a result and using his conclusions on the passenger throughput of Heathrow with T5 (90 mppa), the Inspector concluded that the effect of T5 would be to provide 16,000 more jobs related to Heathrow in a defined Study Area<sup>1</sup>. This is less than 1.2% of BAA's lower estimated labour supply in 2016. In contrast, LAHT5 forecast that T5 would generate 42,000 additional jobs at Heathrow.

#### Housing Forecasts

Given that the Inspector largely accepted BAA's employment forecasts he considered that LAHT5's evidence on housing development pressure (based on a forecast of 42,000 additional jobs) is unjustified. Furthermore, the Inspector doubted the validity of the LAHT5 method of translating the additional employment into a requirement for houses in addition to provisions in development plans. The Inspector considered that many of the T5 job opportunities would in practice be absorbed by the existing labour force. Even though the rolling forward of existing development plans may well entail a legitimate review of Green Belt and other constraints the Inspector did not believe that this would be necessary to meet any development pressure resulting from T5.

Notwithstanding these doubts about the LAHT5 methodology, the Inspector concluded that applying it to his T5 employment forecast generates a requirement for

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<sup>1</sup> This based on an agreed study area of 18 local authorities around Heathrow. (Unfortunately a map of the study area has not been included in the set of documents.)

no more than 7,500 dwellings spread over the Study Area with an existing stock of over 1m dwellings and over a long period up to 2016.

### Airport Related Development (ARD)

The Inspector's preference for a forecast cargo throughput of 2.0m tonnes led him to conclude that LAHT5 and others using 2.8m tonnes have significantly over-estimated the demand for cargo based ARD, the main area of difference. He therefore concluded that T5 should not generate development pressure around the airport which the authorities would find difficult to accommodate. However, he also placed significant weight on the need to ensure adequate land on the airport is safeguarded for airport related uses (the subject of condition A79).

All the Inspector's recommendations on this subject were accepted by the Secretary of State.

The following paragraphs are based on extracts from the Inspector's Report setting out the reasons for his decisions in relation to Surface Access, Noise, Air Quality and Public Safety Topics.

### Surface Access

The Inspector did not consider that there would be a material objection to Terminal 5 in terms of surface access if the additional measures related to public transport and car parking that he proposed were required of BAA.

The provision for public transport should be improved as a matter of principle, with the Piccadilly Line as well as the Heathrow Express extended to Terminal 5 and the St Pancras service implemented. Gateway stations should be provided to the north and south and provision should be made available for further extensions to rail services.

The Inspector considered that it would not be appropriate to insist that such services are in place before Terminal 5 opens.

The Inspector found that 'overall the provision of Terminal 5 would provide a major stimulus to bring public transport at Heathrow up to the standards already enjoyed at other major European airports. However, if this opportunity is to be seized, steps will have to be taken to ensure that investment is not inhibited by inappropriate financial controls imposed by the Government'.

Further, 'while all of these provisions are essential if Heathrow is to meet the objectives of current transport policies in general as well as those related particularly to airports, they would also ease the problems on the roads. Bearing in mind that these problems would inevitably be greatest in the peak hours, employees should be encouraged to make greater use of public transport. The extra provisions I have just set out would play a part in this but I believe that a reduction in the provision of car parking for employees would also be essential. No more than 17,500 car parking spaces should be provided for those working at the airport and the total provision should not exceed 42,000 spaces'.

The Inspector concluded the road network could cater for Heathrow with Terminal 5 and the direct link to the M25 proposed by BAA and the Highways Agency the

Inspector believed would be ‘essential and consistent with national policy for access to airports’.

On the other hand, the inspector recommended the M4 should not be widened since it is no longer Government policy to provide sufficient road capacity simply to meet the predicted demand and time should be given for its new policies to work before the M4 is widened. The success of the additional public transport links to central London and restrictions on car parking for employees would play their part in reducing the need for the M4 widening. The inspector further recommended that the improvements to the M4 should be limited to Junctions 3 and 4.

## Noise

The LAHT5 and the London Borough of Hillingdon’s evidence on the adverse impact of increased aircraft noise appear to have been accepted by the Inspector. Reproduced below is an extract from the Inspector’s Report.

‘There can be no doubt that aircraft using Heathrow cause substantial disturbance and annoyance over a very wide area. Although the area enclosed by the LAeq 16hour 57 dB(A) contour has reduced, this is only part of the story. The very great increase in the number of aircraft has made the noise climate worse for many, particularly in the early morning. Although BAA claims that the noise climate will continue to improve, much of this would be due to the phasing out of Concorde. In any event, Terminal 5 would significantly reduce the extent of this improvement and would result in even more aircraft movements. I have grave doubts as to the validity of using the potential benefits of phasing out Concorde as a justification for permitting Terminal 5. Indeed I have come to the firm view that the proposed new terminal would cause substantial harm in noise terms. It would reduce the improvement in the noise climate as measured by the 57 dB(A) LAeq 16hour contour. It would also increase the impact on local residents by increasing the number of aircraft landing particularly just before and just after 06.00 hours.’

‘While the benefits of Terminal 5 would have to be very considerable to outweigh its impact in terms of noise, I do not consider that impact to be so great as to rule it out entirely. Terminal 5 should however be approved only if it is subjected to clear and specific controls that would prevent any increase in the noise impact over and above that which I have taken into account. It is also essential that these are measures in which the public and the local authorities can have faith. The total number of aircraft movements at Heathrow must be strictly controlled and a realistic contour cap imposed together with effective controls on movements at night. I appreciate that stricter controls on night flights would not meet the aspirations of many who believe that the only solution is to ban all night flights except for emergencies. I do not believe that this is a realistic approach, at least in the short term. In my view, a progressive improvement in the night noise climate could be achieved through the existing system while working towards the long term objective of removing the need for night flights.’

**‘Unless the controls that I have proposed are imposed the impact of Terminal 5 would soon exceed that on which I have based my judgement. It would rapidly become wholly unacceptable whatever benefits it might bring’.**



## Air Quality

‘The position in relation to air quality has similarities to that concerning aircraft noise in that Terminal 5 would reduce the potential improvements that would otherwise occur. It would result in increased concentrations of pollutants around Heathrow as compared with the levels that would occur if it were not built. Although pollution would be less in 2016 even with Terminal 5 than it is now, the fact that it would reduce the potential improvement must count against Terminal 5. The weight attached to this factor should reflect the importance attached by the Government to achieving better air quality in accordance with the National Air Quality Strategy. Terminal 5 would also cause a small increase in the risk to human health as a result of increased air pollution. In these circumstances the impact it would have on air quality represents a material objection to the proposed development’.

## Public Safety

‘Terminal 5 would also result in a significant increase in the risk to public safety when measured in terms of individual risk. This would be the result of a combination of the increased number of aircraft movements and the increased size of aircraft likely to operate with Terminal 5 in place. In spite of the fact that public policy would ensure that there would not be an increase in the number of people exposed to an intolerable risk, the fact that more people would be exposed to a material risk represents a real and substantial objection to Terminal 5. While it would not be possible to fully overcome this objection, steps should be taken to limit its scope. The number of aircraft movements should be limited and measures considered to restrict the number of landings that involve flying over the heavily developed areas of London, particularly those parts of west London that are over-flown on final approach’.

‘Apart from the individual risk, Terminal 5 would increase the risk of a major air crash involving many casualties on the ground which would raise questions about the future role of Heathrow. From this, and other public safety points of view, development at either Gatwick or Stansted would be preferable to that at Heathrow, since the approaches to both do not pass over extensive built-up areas. Again this must weigh against Terminal 5’.

## Conclusion

In making his recommendation to the Secretary of State the Inspector concluded:

‘In essence the decision on Terminal 5 comes down to a balance between its benefits to the national and local economy and to the travelling public as opposed to its environmental impacts. I have come to the clear conclusion that the benefits would substantially outweigh those impacts as long as its effects are properly controlled. In reaching this conclusion, I have taken into account all of the harm identified at various points throughout the report, including breaches of policy, that Terminal 5 as well as its associated developments (including Iver South) would cause.

On the same basis, I am also satisfied that very special circumstances do exist to justify the development of Terminal 5 in the Green Belt. I have also considered each of the other applications and orders before me individually and conclude that, with the exception of the widening of the M4, in each case their benefits outweigh the harm they would cause. Where they involve inappropriate development in the Green Belt I also conclude that, assuming Terminal 5 is permitted, very special circumstances would exist to justify their approval. In the event that Terminal 5 is not permitted, permission should not be granted for any of the other proposals, apart from the downstream enhancements of the Twin Rivers.

In the absence of effective controls the picture would be different and the balance in respect of Terminal 5 would become much more difficult. In this respect, I place particular weight on limiting the number of aircraft movements to 480,000 atms, the imposition of a LAeq 16hour 57 dB(A) contour cap of 145 km<sup>2</sup> and the introduction of stricter controls on movements at night particularly early morning arrivals. If these controls were not imposed the balance would, in my view, tilt against Terminal 5. While I recognise that all controls on operations at Heathrow, as at any airport, must be open to review if circumstances change dramatically, the imposition of the conditions I propose would provide a clear baseline against which the impact of such changes could be judged. The absence of a clear baseline caused great public concern in this Inquiry.

The benefits of Terminal 5 reflect my view that neither Gatwick nor Stansted could meet the national need for a truly competitive international airport serving London, at least in any timescale relevant to the need for this proposal. At the same time Terminal 5 would enhance the attractions of Heathrow still more and could make it more difficult to resist future proposals for development there. Nevertheless, I agree with BAA that the evidence placed before me demonstrates that a third main runway at Heathrow would have such severe and widespread impacts on the environment as to be totally unacceptable. However, I place only limited reliance on BAA's request that the Secretary of State should rule out the prospect of an additional runway. I place more weight on the Government's commitment to undertake a review of national aviation policy after deciding the fate of Terminal 5. Although granting permission for Terminal 5 would not meet the demand for air travel up to 2016, I believe that it would provide sufficient breathing space for long term policies to be established as a result of the Government's planned review.

**I therefore, recommend that Terminal 5 should be permitted subject to strict Conditions'.**