

Report Title:	Heathrow: Royal Borough Position & Ongoing Engagement
Contains Confidential or Exempt Information?	<b>YES - Appendix A – Part II - Not for publication by virtue of paragraph 5 of Part 1 of Schedule 12A of the Local Government Act 1972.</b>
Member reporting:	Councillor Johnson, Lead Member Infrastructure, Transport Policy and Housing
Meeting and Date:	Council - 25 June 2019
Responsible Officer(s):	Andy Jeffs, Executive Director; Russell O’Keefe, Executive Director; David Scott, Head of Communities, Enforcement & Partnerships Jenifer Jackson, Head of Planning
Wards affected:	All

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## REPORT SUMMARY

1. Following the rejection by the High Court of the judicial review (JR) brought by the Royal Borough in partnership with the London Boroughs of Hillingdon, Richmond, Wandsworth, Hammersmith & Fulham, Greenpeace and the Mayor of London; the Council is now in a position where it must decide on both its strategic and legal direction in relation to Heathrow Airport.
2. This report sets out: the merits (protecting our legal position ahead of the upcoming planning process) and risks (circa £75,000 of further legal spending) of appealing the High Court’s decision; and details a recommended method of engaging with the planning process - to deliver the best outcome for residents, should the legal process ultimately fail.
3. Irrespective of legal action, the Royal Borough is committed to achieving the best outcome for residents in whatever planning process may follow. The formation of the Infrastructure Delivery Group is therefore proposed; to act as the strategic decision making body for the Royal Borough in all matters relating to Aviation – complementing the consultative role of the existing Aviation Forum.

## 1. DETAILS OF RECOMMENDATION(S)

**RECOMMENDATION: That Council notes the report and:**

- i) **Agree:**
  - a) **to continue legal proceedings, by way of an appeal to the outcome of the Judicial Review in March 2019**
- OR**
- b) **to withdraw now and reserve the right to challenge the outcome (if required) of the subsequent DCO process**

- ii) **Approve the appointment of members and officers to the Infrastructure Delivery Group, as previously agreed at Cabinet on 28<sup>th</sup> June 2018. This group, when commissioned, to operate as the appropriate governance structure for strategic aviation decision making; informing the Aviation Forum as required.**
- iii) **Endorse the ongoing commitment of the Royal Borough to the Heathrow Strategic Planning Group (HSPG) as well as engaging Heathrow directly on its proposals through bilateral officer discussions and delegate authority to the Executive Director and Head of Communities Enforcement & Partnerships and Head of Planning to finalise and submit responses to Heathrow Airport Limited by 13<sup>th</sup> September 2019 in relation to planning proposals for expansion at Heathrow Airport.**

## **2. REASON(S) FOR RECOMMENDATION(S) AND OPTIONS CONSIDERED**

### **Background**

- 2.1 Members will be aware that following the review by the Airports Commission in 2015, on 26<sup>th</sup> June 2018 the Secretary of State for Transport designated an Airports National Policy Statement (ANPS) as the primary policy framework for expansion at Heathrow Airport and primary basis for decision making on any development consent application for a new north-west runway.
- 2.2 This new runway would see the airport deliver at least 740,000 aircraft movements per year (above the current 480,000) and would see new communities affected by aircraft noise, as well as increasing noise exposure for existing communities. Congestion is also predicted to increase upon local roads as a result of three runway operations.
- 2.3 This ANPS followed a raft of consultation documents and community events, responded to by the Royal Borough following consultation with both the Aviation Forum and residents directly by way of independent polling in 2015 and 2016; determining a net opposition to expansion at Heathrow and strong support to Gatwick, as the more suitable site explored by the Airports Commission.
- 2.4 The Borough has since adopted the position that the airport can get better (through reducing noise exposure, stopping night flights and enabling full alternation), without getting bigger. This is a position reflected in testimony delivered to the House of Common's Transport Select Committee and Environmental Audit Committee.
- 2.5 In October 2016 cabinet voted to approve joining a partnership comprised of the London Boroughs of Hillingdon, Richmond, Wandsworth, Hammersmith & Fulham, Greenpeace and the Mayor of London ("the Partnership"), to undertake a judicial review, designed to hold government to account and ensure residential amenity could be protected.

## **Judicial Review (JR)**

- 2.6 The JR was heard in the High Court in March 2019 with the Partnership principally challenging the Secretary of State's (SoS) decision - to declare Heathrow as their preferred option by way of ANPS.
- 2.7 The main points of challenge centred around: environmental assessments not being undertaken (impacting on a host of issues – chiefly noise), air quality tests not being met, improper consultation with residents and proper comparison with other schemes (ie: Gatwick) not being undertaken.
- 2.8 These arguments, whilst heard, were determined not to be unlawful in the eyes of the court – with the judges stating that such matters could be reserved for within the Development Consent Order (DCO) planning process.
- 2.9 Upon receiving the verdict by the High Court, the Royal Borough together with partners made an application to the courts for permission to appeal this decision. This action did not commit the Royal Borough to making a full appeal, but reserved the right to make one, dependent on the will of Council members.
- 2.10 The Council's commissioned legal representatives have set out advice on the interrelationship between the Partnership's appeal, the DCO Stage and the potential for a review of an NPS. This Advice is set out at Appendix A.
- 2.11 Pursuing this course of action carries significant potential exposure of a further circa £75,000 in legal expense.
- 2.12 However, in balance, such an approach may well strengthen the Partnership's position at the time of the DCO application and would continue to serve as a mechanism by which the Royal Borough could fight to protect residential amenity.
- 2.13 Owing to this inherent risk, this report recommends that elected members decide whether to pursue the current legal direction of travel further, or whether to withdraw now and reserve the right to challenge the outcome (if required) of the subsequent DCO process.

## **Planning Considerations (DCO Process)**

- 2.14 Heathrow Airport launched its second phase of consultation into expansion on 18<sup>th</sup> June ([www.heathrowexpansion.com](http://www.heathrowexpansion.com)), ahead of its formal DCO submission timetabled for next year. This would facilitate a predicted construction start date within 2021, to enable third runway operations by 2026.
- 2.15 This process sits alongside a parallel consultative process into airspace change (via the Civil Aviation Authority); with flightpath options being consulted upon in 2022 and not within the ANPS or DCO process (as contested within our original legal challenge).
- 2.16 To facilitate the Royal Borough's engagement within this planning process; in June 2018 the Royal Borough became full members of the Heathrow Strategic Planning Group (HSPG) in partnership with representatives from (amongst

others): Hounslow, Ealing, Spelthorne, Runnymede, South Bucks, Slough and Thames Valley LEP.

- 2.17 The HSPG is attended by both members and officers and is designed to both inform and influence the eventual formal DCO application made by Heathrow Airport to the secretary of state for their consideration.
- 2.18 Officers from the Royal Borough are already undertaking an active role in a number of key HSPG working groups, including: noise envelope design (how noise is to be addressed), air quality scrutiny, transport design and other community mitigations. Alongside our work with HSPG, this report recommends that the Royal Borough enter into bilateral officer discussions with Heathrow Airport. This approach has been adopted by the majority of the authorities most affected by the expansion proposals. It would support the approach of achieving the best possible outcome for residents irrespective of the outcome of the expansion and airspace change process.
- 2.19 Over the coming two years, a large number of key consultations will be published by the airport, requiring response by the Royal Borough. The statutory consultation on Heathrow’s plans for expansion started on Tuesday 18th June and ends on Friday 13th September. This will include a large number of documents setting out details of the future layout of the airport as well as how the three-runway airport would operate, a preliminary assessment of the likely impacts of expansion and plans to manage the impacts.
- 2.20 To facilitate this process, this report recommends that a cross section of members and officers be appointed to the previously approved Infrastructure Delivery Group; to act as the strategic decision making body for the Royal Borough in all matters relating to aviation, ahead of the DCO consultation submission required in 2020. This would be supported by a cross-functional Heathrow Working Group, made up of officers who have been working through HSPG to date.
- 2.21 This group is recommended to complement the Aviation Forum, who would remain as the principal vehicle for community engagement and consultation.

## Options

**Table 1: Options arising from this report**

Option	Comments
To decide on whether or not to pursue or withdraw from the current course of legal action <b>This is the recommended option</b>	To allow for an updated policy position to be formed, based upon the current status of the aviation debate, following the last review by cabinet in October 2016.
Continue with existing legal pathway without an updated decision	This option is not recommended, due to the potential exposure associated. A current decision, made upon consideration of cost-benefits will confirm the direction of travel desired by council.

<b>Option</b>	<b>Comments</b>
Do nothing / withdraw from the local authority legal partnership for the purposes of any appeal proceedings.	This action carries with it monetary, legal and political risk and should not be undertaken without an informed decision by members.
To appoint officers and members to an Infrastructure Delivery Group <b>This is the recommended option</b>	A formal decision making group would allow for cross-portfolio decisions to be made in an efficient and fully considered manner, briefing the Aviation Forum as required.
To proceed with DCO related consultation without a formal decision making group.	This option is not recommended due to the volume and significant impacts this development will have upon residents within the Royal Borough.

### 3. KEY IMPLICATIONS

3.1 Detailed within Table 2 below:

**Table 2: Key Implications**

<b>Outcome</b>	<b>Unmet</b>	<b>Met</b>	<b>Exceeded</b>	<b>Significantly Exceeded</b>	<b>Date of delivery</b>
Legal outcome results in the ANPS meeting resident expectation and the legal tests set out within previous JR proceedings	Legal outcome is not consistent with RBWM resident views or legal position	Legal outcome is consistent with RBWM resident views	Government decides not to pursue further expansion at Heathrow any longer and makes a binding statement on future such proposals.	Government decides not to pursue further expansion at Heathrow and further recommends that further environmental controls for existing operations.	31 December 2020
DCO outcome reflects the views expressed by RBWM residents	DCO outcome is not consistent with RBWM resident views	DCO outcome is consistent with RBWM resident views	DCO outcome consistent with RBWM resident views and incorporates suggested potential mitigation measures	DCO outcome consistent with RBWM resident views, incorporates mitigation measures and community asset improvements	31 December 2021

#### 4. FINANCIAL DETAILS / VALUE FOR MONEY

- 4.1 Following the cabinet decision in October 2016 a total of £100,000 potential exposure was approved for the JR legal process. This is now exhausted following the verdict handed down by the High Court.
- 4.2 Should members decide to continue the existing legal avenue and choose to join partners in appealing the decision handed down, an RBWM legal spend of circa £50,000 would need to be appointed as new budget. A further £25,000 of new budget should also be reserved for subsequent adverse exposure, to account for the outcome of any appeal not proving successful; due mainly to the potential for costs to be awarded against us.

**Table 3: Financial Impact of report's recommendations**

<b>REVENUE COSTS</b>	<b>2019/20</b>	<b>2020/21</b>	<b>2021/22</b>
Additional total	<b>£75,000</b>	£0	£0
Reduction	<b>£0</b>	£0	£0
Net Impact	<b>£75,000</b>	£0	£0

<b>CAPITAL COSTS</b>	<b>2019/20</b>	<b>2020/21</b>	<b>2021/22</b>
Additional total	£0	£0	£0
Reduction	£0	£0	£0
Net Impact	£0	£0	£0

#### 5. LEGAL IMPLICATIONS

- 5.1 Section 222 of the Local Government Act 1972, provides power for a local authority to prosecute or defend or appear in legal proceedings where the local authority consider it expedient for the promotion or protection of the interests of the inhabitants of their area.
- 5.2 The use of specialist legal advisors will ensure that the council is fully aware of potential risks and liabilities in advance of making any significant decisions; in particular whether or not to pursue a future challenge regarding the ANPS process or DCO outcome.
- 5.3 A specific report will be submitted to members of the recommended Infrastructure Delivery Group, should the need to consider a DCO consultation in further detail arise.

#### 6. RISK MANAGEMENT

**Table 4: Impact of risk and mitigation**

<b>Risks</b>	<b>Uncontrolled risk</b>	<b>Controls</b>	<b>Controlled risk</b>
Resultant DCO does not adequately	High	Detailed consultation response developed through the Infrastructure	Medium

<b>Risks</b>	<b>Uncontrolled risk</b>	<b>Controls</b>	<b>Controlled risk</b>
consider the impact of an expanded Heathrow on residents of the Royal Borough.		Delivery Group is submitted to SoS before the published deadline.	

## **7. POTENTIAL IMPACTS**

- 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. CONSULTATION**

- 8.1 Prior consideration and approval of the use of a JR taken by cabinet on 13<sup>th</sup> October 2016.

## **9. TIMETABLE FOR IMPLEMENTATION**

- 9.1 Implementation date if not called in: Immediately.

## **10. APPENDICES**

- 10.1 There is one Appendix to this Report:
- Appendix A - Advice on the interrelationship between the Boroughs' Appeal, the DCO Stage and the potential for a review of an NPS. **Not for publication by virtue of paragraph 5 of Part 1 of Schedule 12A of the Local Government Act 1972**
- 10.2 Full details of the Heathrow expansion proposals can be reviewed at [www.heathrowexpansion.com](http://www.heathrowexpansion.com)

## **11. BACKGROUND DOCUMENTS**

- 11.1 This report is not supported by background documents.

## **12. CONSULTATION (MANDATORY)**

<b>Name of consultee</b>	<b>Post held</b>	<b>Date sent</b>	<b>Date returned</b>
ClIr Dudley	Leader of the Council	17/06/19	17/06/19 & 21/6/19

<b>Name of consultee</b>	<b>Post held</b>	<b>Date sent</b>	<b>Date returned</b>
Cllr Johnson	Lead Member for Infrastructure, Transport Policy and Housing	17/06/19	21/06/19
Cllr Cannon	Lead Member for Public Protection	17/06/19	
Cllr Hilton	Lead Member for Finance and Ascot	17/06/19	
Cllr Shelim	HR, Legal & IT	17/06/19	
Cllr Bowden	Chairman of the Aviation Forum	17/06/19	17/06/19
Duncan Sharkey	Managing Director	17/06/19	21/06/19
Russell O'Keefe	Executive Director	17/06/19	
Andy Jeffs	Executive Director	17/06/19	21/06/19
Rob Stubbs	Section 151 Officer	17/06/19	21/06/19
Elaine Browne	Interim Head of Law and Governance	17/06/19	17/06/19
Nikki Craig	Head of HR and Corporate Projects	17/06/19	17/06/19
Louisa Dean	Communications	17/06/19	
Kevin McDaniel	Director of Children's Services	17/06/19	
Hilary Hall	Deputy Director of Commissioning and Strategy and Interim DASS	17/06/19	17/06/19