

Consultation Response on Draft Airports National Policy Statement

On behalf of:

London Borough of Hillingdon

London Borough of Richmond

London Borough of Wandsworth

Royal Borough of Windsor and Maidenhead

25 May 2017



Contents

1.	Foreword	1
2.	Summary	3
3.	Question 1	5
4.	Question 2	7
5.	Question 3	25
6.	Question 4	33
7.	Question 5	37
8.	Question 6	51
9.	Question 7	53
10.	Question 8	65
11.	Statement of Facts and Grounds, dated 8 December 2016 setting out the law on air quality and other background	73
12.	Witness Statement of Cllr Ray Puddifoot MBE, dated 8 December 2016, setting out the history of Heathrow and other relevant background.....	117
13.	Expert evidence of Claire Holman including appendices, dated 6 December 2016. This evidence relates to the period up to 6 December 2016. The four Boroughs intend to submit further expert evidence on air quality following the Government's publication of the new draft Air Quality Plan	159

Foreword

High Court challenge

On 30 January 2017, the High Court decided it did not have jurisdiction to hear a judicial review, brought by claimants including the London Boroughs of Hillingdon, Richmond and Wandsworth, and the Royal Borough of Windsor and Maidenhead ("the Boroughs"), of the Government's decision to favour airport expansion at Heathrow.

The claimants argued that the proposal involved a flawed approach to air quality and that the decision was contrary to their legitimate expectations because the Government made repeated promises over a number of years that there would be no third runway at Heathrow and that the Government should have consulted with the Boroughs before making its decision.

The application was refused on the basis that the 2008 Act precludes a judicial review claim before the NPS has been published and adopted by Government. However, Mr Justice Cranston said that *"once the Secretary of State adopts and publishes an NPS the court will have jurisdiction to entertain the challenges the claimants advance."*

The Boroughs maintain that it was unlawful to decide in favour of Heathrow in October 2016 and that the basis of the draft NPS and the consultation is unlawful.

However, the Boroughs are responding as fully as possible to the consultation **without prejudice** to their claim that the October 2016 decision was unlawful and everything that has followed since is unlawful and they fully reserve their right to refer the matter back to the High Court once the Secretary of State has adopted and published a National Policy Statement.

Summary

The responses to the various questions posed in the consultation inevitably involve a degree of overlap and repetition. Where possible, we have cross-referred. The main points the Boroughs are making are:

1. The Government should not have preferred Heathrow in breach of their earlier promises.¹
2. The Government's approach to air quality is wrong in law and fact.²
3. The consultation is flawed and does not provide essential information such as:
 - Flight paths;
 - The new Air Quality Plan;
 - The updated passenger demand forecasts;
 - The financial reports referred to in the draft NPS and other technical reports referred to in the Appraisal of Sustainability;
 - Full information about alternatives; in particular, Gatwick;
 - An assessment of mitigation; and
 - A Health Impact Assessment.³
4. The consultation has been unfair because:
 - Ministers have indicated that their minds were made up.⁴
 - The consultation was presented in a biased way. This complaint includes the promotional literature.
 - Consultees were not given a comparative assessment of the shortlisted schemes nor adequate reasoning for the Government's choice of Heathrow.
 - The Government has refused to give consultees extra time to consider the new draft Air Quality Plan or to cure problems caused by the calling of a general election during the consultation period.
5. There is no evidence for rejecting Gatwick because:
 - The Government's case on economics is flawed;
 - The Government's assessment of the benefits of Heathrow is flawed including the adoption of a business case which ignores the advice of the Climate Change Committee.
 - There is an inadequate and unlawful assessment under the Habitats Directive.
6. The principles or requirements in the draft NPS are ineffective to secure an airport that would operate and be operable within the necessary environmental limits.
7. The Appraisal of Sustainability does not conform with the requirements of the Planning Act 2008 nor The Environmental Assessment of Plans and Programmes Regulations 2004 ("the SEA Regulations").
8. Expansion of Heathrow is inconsistent with the principle of sustainable development. Economic benefit is unproven and environmental damage is overwhelming.

¹ Statement of Facts and Grounds, paras 111-132; and Witness Statement of Councillor Puddifoot dated 8 December 2016, paras 7-124

² Statement of Facts and Grounds, paras 70-110; Expert Evidence of Claire Holman and paras 5.16-5.31 below

³ i.e. a health assessment that includes an assessment of mitigation.

⁴ Statement of Facts and Grounds, para 62

1. Question 1: *The Government believes there is the need for additional airport capacity in the South East of England by 2030. Please tell us your views.*

- 1.1. The Boroughs note that in 2015 the Government accepted that there was a case for additional airport capacity in the South East by 2030, and this is not challenged for the purposes of this consultation. However, the Boroughs seek confirmation that any such assessment of need is based on an up-to-date and transparent analysis of the latest data, including passenger forecasts.
- 1.2. The Boroughs strongly believe that any such additional capacity which is needed cannot be met by expanding London Heathrow.
- 1.3. For the reasons set out in this consultation response there is no evidence that an expanded Heathrow can be constructed and operated without displacing thousands of people and their communities, causing unacceptable noise for hundreds of thousands of people, breaching legal limits on air quality and reversing any improvements in air quality for people around Heathrow and in Greater London as a whole. This in turn would affect the health and life expectancy of a large population.
- 1.4. When the Government decided, in December 2015, that there was a need for additional airport capacity in the South East it also decided that Gatwick was a viable option. The Boroughs continue to believe, on the evidence, that Gatwick is the only option which can be delivered consistently within environmental constraints.
- 1.5. The draft NPS and accompanying consultation documents consistently confuse/conflate expansion in the South East with expansion at Heathrow. This is confusing for consultees and has resulted in a draft NPS which is not fit for purpose. It is a confusion between a policy for airports which is the proper subject for an Airports NPS with one particular application for development consent by one particular applicant. This is addressed further in relation to the Appraisal of Sustainability ("AoS") in question 7.

Choosing Heathrow will always end in failure

- 1.6. If the Government is satisfied that there is a need for air capacity in the South East then, history shows, that need cannot be met by a new runway at Heathrow.
- 1.7. This is because Heathrow – as was acknowledged as far back as 1963⁵ – is in an area too densely populated to justify the impacts of noise (and now air pollution) on the population:
- 1.8. Heathrow already exposes more people to noise than Frankfurt, Paris, Brussels, Amsterdam, Madrid, Rome & Munich combined⁶.
- 1.9. The need for additional airport capacity was identified by the then Government in 2003. But the Government made the same mistake of preferring Heathrow as its solution to the capacity

⁵ Committee on the Problem of Noise, 'The Wilson Committee', 1963

⁶ AC Discussion paper 05: Aviation Noise, Table 2.2

problem – provided that it could meet environmental conditions on noise, air quality and surface access. It could not meet those conditions and following a successful court case, brought by the Boroughs and others, in 2010, the Government promised no third runway at Heathrow.

- 1.10. Heathrow is simply in the wrong location for an additional runway or any other expansion and all that goes with it; it would impose a further environmental burden on the surrounding communities and population which already suffer from the effect of noise and air pollution.
- 1.11. If there is a need for additional capacity in the South East then the Government should pursue other viable alternatives.

2. Question 2: Please give us your views on how best to address the issue of airport capacity in the South East of England by 2030. This could be through the Heathrow Northwest Runway scheme (the Government's preferred scheme), the Gatwick Second Runway scheme, the Heathrow Extended Northern Runway scheme, or any other scheme.

- 2.1. For the reasons advanced in their High Court claim (the legal argument and evidence for which are submitted with and included as part of this consultation response) the last Government was wrong to choose Heathrow as its preferred location for additional airport capacity.
- 2.2. In correspondence, the Boroughs were reassured by the Government that, despite the Government's preference, the consultation on the draft NPS would nonetheless consider Gatwick as an alternative.
- 2.3. However, the draft NPS, the consultation documents, the accompanying leaflets, the consultation events and all the accompanying documents do not deal with Gatwick as a serious alternative.
- 2.4. The Government has not provided the necessary material for consultees to be able to make a fair comparison between Heathrow and Gatwick as a location for a new runway and it is unclear what is meant by "any other scheme".
- 2.5. The economic evidence on which the Government has based its comparison of the Heathrow and Gatwick schemes and favoured Heathrow is flawed, inadequate or incomplete as set out below.
- 2.6. On the other hand, the information that is contained in the AoS shows that Heathrow is much more damaging than Gatwick.

Comparative Assessment

- 2.7. At the heart of the failure properly to consider Gatwick is the lack of a clear comparative assessment between the schemes.
- 2.8. The AoS has broadly three options. As is to be expected, it has found significant environmental flaws with all three. But there is no proper comparison and thus no rationale for preferring Heathrow.
- 2.9. The AoS provides no methodology for its assessment and the commentary does not help.
- 2.10. There is no clear and transparent understanding of the comparison exercise.
- 2.11. For example, the Heathrow Northwest Runway ("Heathrow NWR") (preferred option) will result in the destruction of five times as many homes as Gatwick yet the AoS concludes:

Each scheme will result in the relocation of housing, which may have a negative effect on community viability.⁷

⁷ AoS, Appendix A-1 Community, para 1.12.1

- 2.12. This does not reflect a true comparison of the damage caused by the schemes and suggests, wrongly, that the damage for each scheme will be equivalent.
- 2.13. Comparative assessments are very common in planning terms where two or more competing developments vie for one approval.
- 2.14. The Boroughs have constructed Table 1 below which provides a comparison of the schemes using the information presented in the AoS:

Table 1

Topic	Heathrow ENR	Heathrow NW	Gatwick
Socio Economic			
Homes Lost	407	1072	205
Homes Required (total)	60,600	Up to 70,800	9,300 - 18400
Homes Required (annual)	400 per authority	500 per authority	130 per authority
Strategic Sites Impacted	Several	Several	None Identified
Economic benefits	£51.7bn	£61.1bn	£53.7bn
Economic Benefits/annum	£0.86bn	£1.02bn	£0.90bn
Government Revenue	1.5bn	1.8bn	2.5bn
Jobs in 2030	37,830 - 76,650	37,740 - 76,650	5,290 - 12,500
Jobs in 2050	32,750 - 65,610	29,100 - 78,360	18,700 - 44,190
Noise			
Noise Impacts 57dB (total)	262,700	257,800	6,500
Noise Impacts 57dB (increase)	41,800	36,900	4,200
Noise Impacts 54dB (2040)	500,000	500,000	22,500 (approx.)
Noise Sensitive Buildings	102	90	1
Noise at Schools 54dB (total)	Not provided	322	28

Pupils Impact		Not provided	1,803,200*	156,800*
Lost Healthy Years	Low	13,798	9,005	3,486
	Mid	20,334	15,105	5,810
	High	126,360	114,741	23,239
Landscape and Biodiversity				
Major Landscape Effects (no. of sites)		6	5	1
European Protected Sites		7	7	3
Historic Environment - Total Loss of Designated Assets				
Grade 1 Buildings		0	1	0
Grade 2 Buildings		7	22	22
Scheduled Ancient Monument		0	3	0
Conservation Areas			2	
<i>Historic Environment - Impact on Designated Assets</i>				
Buildings (all grades)		183	208	159
Scheduled Ancient Monument		3	0	4
Conservation Areas		11	10	7
<i>Historic Environment - Non Designated Assets</i>				
Non-Designated Lost		74	167	35
Non-Designated Impacted		79	90	20
<i>Historic Environment impacted by N70 Noise Contour (reduction in tranquillity and enjoyability)</i>				

Conservation Areas	21	18	2
Scheduled Ancient Monuments	8	8	2
Grade 1	41	62	8
Grade 2*	102	140	24
Grade 2	1229	1710	256
World Heritage Site	1	1	0
Registered Parks and Gardens	9	15	0
Water Environment			
Water Framework Directive Compatibility (Culverting)	No - 12km	No - 3km	Yes - 0km
Air Quality			
Air Quality Impacts (population impacted by increased pollution)	100,392	121,377	51,328
<i>* Pupil numbers based on average of 80 leavers per school per year for 60 years (with a school total of 800 pupils)</i>			

Individual Topics - Housing

2.15. The AoS highlights two significant problems with the expansion proposals. Firstly, it provides information on the number of houses directly lost to expansion and includes an allowance for those lost to secure surface access measures. Secondly, it provides information on the likely number of houses required as a result of the alleged growth.

Houses Directly Lost

2.16. The preferred option will result in the direct loss of over 1000 homes. To put this into context, Hillingdon's annual target for new housing is 1600 per annum. The loss is extreme and is made worse by the lack of a plan to ensure that the homes directly lost as a result of the preferred scheme will be reprovided. There is also no assessment of how this loss relates to Hillingdon's annual targets.

2.17. Gatwick by contrast will result in just 205 homes directly lost. The ability for reprovision is clearly simpler and less disruptive.

New Homes Required

2.18. There is a paucity of information on the methodology for the number of homes likely to be needed to support expansion. However, using the assumptions in the AoS, there is clearly a stark contrast between the Gatwick and Heathrow NWR options.

2.19. Heathrow NWR will require up to 70,800 or up to 500 per year per authority. Gatwick will require up to 18,400 or 130 per year per authority. There is a large amount of missing information to understand the implications of this. For example, there is no definition of the geographical spread, or the number (or identity) of authorities involved. Instead, there is simply a passing reference to impacts and a conclusion for which there is no evidence: i.e. that it is the same for all the schemes:

Impacts on housing demand will affect local authorities across London and the South East, although overall the demand will spread and is low in comparison to existing planned housing.⁸

2.20. There is no evidence for the conclusion that accommodating up to 70,800 for Heathrow expansion will have a similar impact to accommodating up to 18,400 for Gatwick expansion. The housing markets are entirely different, the capacity to accommodate growth is not likely to be the same and the impact on infrastructure is likely to be starkly different.

2.21. In any event, the Boroughs have concerns about delivering their own housing targets as the infrastructure is already stretched with creaking demands on much needed facilities, for example open space. Suggesting that 70,800 new homes will need to be delivered in the 5 years from the opening of the airport is not a major concern demonstrates a lack of understanding of the existing housing markets and huge ramifications for authorities trying to accommodate them. It is not consistent with the Borough's local plans.

2.22. It is also extremely unlikely that housing required for Heathrow expansion will be allocated across the 'south east' in an even manner as the AoS implies. It is unlikely that areas in Kent will experience similar levels of growth to Hillingdon for example. In reality, the majority of new housing will be needed in the already densely populated areas in the immediate vicinity of Heathrow. The AoS has not assessed whether this need can be accommodated in the areas surrounding Heathrow.

Individual Topics – Health

2.23. It is not possible to undertake a robust appraisal of the health impacts of the scheme due to the absence of a health impact assessment. The approach to understanding the health impacts of the various schemes suggests either a disregard for the subject matter or a rushed and

⁸ AoS, Appendix A-1 Community, Page 31, Question 2 Table, section entitled "Magnitude and Spatial Extent, incl. Transboundary"

imprecise appraisal. Either way, it is not possible to reach a sound decision that Heathrow is an appropriate option, based on the information provided.

2.24. Notwithstanding the above, it is possible to undertake some form of a comparison of the schemes. This comparison must be heavily caveated as the impacts at Heathrow are either underreported or ignored in their entirety. A critical analysis has been included in our answer to Question 8. A fully reasoned, evidence-based, comparison should have been carried out by or on behalf of Government before the consultation, but was not. It should not have been left to consultees to try and assemble comparative information.

Disability Adjusted Life Years (DALY)

2.25. The AoS concludes that Heathrow expansion could result in lost healthy years of 114,741 compared to Gatwick's 23,329 at the upper scale of impacts over 60 years. Even for the "low" and "mid" figures the lost healthy years impact is three times worse for Heathrow than for Gatwick.

2.26. But the approach of the AoS is inadequate and it is likely that this is an underestimate of the detrimental impact of Heathrow expansion.

2.27. The total population impacted in 2050 by noise at 57dB LAeq 16hr is 6500 for Gatwick compared to 257,800 for Heathrow. As discussed below this "trigger level" for the onset of community annoyance is out of date and the comparative assessment should be done using the results of the sensitivity test for 54dB LAeq 16hr. The sensitivity test concludes Heathrow impacts 500,000 people compared with just 22,500 for Gatwick.

2.28. The noise impacts are summarised in the Health Impact Analysis thus:

Noise impacts arising from LGW-2R were predicted to be of a lower magnitude and affect a smaller population, than either of the unmitigated Heathrow shortlisted schemes.⁹

2.29. Despite this clear conclusion, the ratio of DALYs to impacted populations does not tally. At the lower end of the scale, it is said that Gatwick will result in an additional loss of 3,486 DALYs compared with Heathrow's 9,005. This is despite the fact that the number of people affected by noise at Heathrow is predicted to be 257,800 compared with just 6,500 affected by for Gatwick. The explanation for the disparity in the figures is absent.

2.30. Furthermore, whilst the total population impacted by noise is provided, the total amount of DALYs is not. This is a significant omission. The total amount of DALYs from noise impacts (i.e. what is expected as a consequence of existing operations in combination with those expected from expansion) is essential to understanding whether it is appropriate to advance the Heathrow option.

⁹ Health Impact Analysis, para 1.2.5

Lack of Cumulative Assessment

2.31. The Health Impact Analysis does not quantify the impacts from Air Quality, nor does it provide a cumulative assessment with other topics. It is known from the assessments that there will be health impacts from:

- Losing houses and communities
- Air noise
- Ground noise
- Worsening air quality
- Loss of open space
- Loss of community facilities

2.32. These are not all going to be experienced in isolation. In many instances, these different impacts will affect the same people and communities. Yet this is not assessed.

No Assessment of Health Care Facilities

2.33. As set out in the Boroughs' critique on the Health Impact Analysis (see question 8 at paras 8.12-8.21) another concern is the likely impact on health from the subsequent pressure on health care facilities associated with the expected growth.

2.34. The consultation and draft NPS present Heathrow as being a magnet for growth which will provide regeneration to deprived areas that a two-runway airport could not do. However, there is no evidence for this and no plan in place to accommodate this growth. The existing community facilities are already under strain, and this includes the health care facilities.

2.35. But supposing the growth were to materialise then, without the proper plans and safeguards in place, these services could become saturated. This would have a further negative impact on existing residents and communities but is not reflected in the Health Impact Analysis.

Individual Topics - Biodiversity

2.36. Heathrow expansion will result in a larger land take and greater impacts on nature sites, including European designated areas, than Gatwick.

2.37. This has broadly been set out in the assessment although it has been under-reported as a consequence of proposed mitigation that has not yet been identified in the NPS.

2.38. What has not been reported at all is the impact the airport has on other aspirations of the planning system for new development.

2.39. Airport operations place huge restrictions on what can be delivered as part of planning applications. This is largely on the grounds of safety. For example, there is active management of natural areas to reduce their attractiveness to birds in case of bird strike to aircraft.

Expansion of Heathrow will result in further restrictions on areas that cannot afford to have restrictions placed on them.

Summary Table of Schemes against Objectives

2.40. A true comparison exercise would identify the performance of the schemes against the objectives of the AoS and ultimately what the draft NPS is trying to achieve. The following tables are based on an appraisal of the evidence provided in the AoS. They use the same methodology as set out in the AoS and utilise the same subjective appraisal. The tables below show a more accurate representation of the shortlisted options for airport expansion perform against the objectives set out in the AoS. Notably, this exercise has not been undertaken by the authors of the AoS.

Table 2 - Performance of the shortlisted options against the objectives of the AoS

	Objective	LHR-ENR	LHR-NWR	GTW
1	To avoid or minimise negative effects on community viability, including housing, facilities and indirect effects	XXX	XXX	X
2	To avoid or minimise disproportionate impacts on any social group	XX	XX	X
3	To maintain and where possible improve the quality of life for local residents	XXX	XXX	X
4	To maximise economic benefits and to support the competitiveness of the UK economy	✓✓✓	✓✓✓	✓✓✓
5	To promote employment and economic growth in the local area and surrounding region	✓✓✓	✓✓✓	✓✓
6	To minimise and where possible reduce noise impacts on human receptors	XXX	XXX	X
7	To protect and enhance designated sites for nature conservation	XXX	XXX	X
8	To conserve and enhance undesignated habitats, species, valuable ecological networks and ecosystem functionality	XXX	XXX	XXX

9	To minimise loss of undeveloped soils and of best and most versatile agricultural land, and protect soil against erosion, contamination and degradation	XX	XX	XX
10	To protect the quality of surface and ground waters, and use water resources sustainably	XXX	XXX	X
11	To minimise flood risk and ensure resilience to climate change	X	X	X
12	To improve air quality and reduce emissions consistent with EU national and local standards and requirements	XXX	XXX	X
13	To minimise carbon emissions in airport construction and operation	XXX	XXX	X
14	To minimise consumption of natural particularly virgin non-renewable resources	X	X	X
15	To minimise the generation of waste in accordance with the principals of the resource efficiency hierarchy	X	XXX	X
16	Conserve and where appropriate enhance heritage assets and the wider historic environment including buildings, structures, landscapes, townscapes and archaeological remains	XXX	XXX	X
17	To promote the protection and improvement of landscapes, townscapes, waterscapes and the visual resource, including areas of tranquillity and dark skies	XXX	XXX	X
	High Incompatibility / Compatibility with objective	XXX / ✓✓✓		
	Moderate Incompatibility / Compatibility with objective	XX / ✓✓		
	Low Incompatibility / Compatibility with objective	X / ✓		

Table 3 - Performance of Gatwick compared with Heathrow NWR (LHR-NWR)

		GTW
1	To avoid or minimise negative effects on community viability, including housing, facilities and indirect effects	✓✓✓

2	To avoid or minimise disproportionate impacts on any social group	✓✓
3	To maintain and where possible improve the quality of life for local residents	✓✓✓
4	To maximise economic benefits and to support the competitiveness of the UK economy	X
5	To promote employment and economic growth in the local area and surrounding region	X
6	To minimise and where possible reduce noise impacts on human receptors	✓✓✓
7	To protect and enhance designated sites for nature conservation	✓✓✓
8	To conserve and enhance undesignated habitats, species, valuable ecological networks and ecosystem functionality	✓✓
0	To minimise loss of undeveloped soils and of best and most versatile agricultural land, and protect soil against erosion, contamination and degradation	✓✓
10	To protect the quality of surface and ground waters, and use water resources sustainably	✓✓
11	To minimise flood risk and ensure resilience to climate change	✓✓✓
12	To improve air quality and reduce emissions consistent with EU national and local standards and requirements	✓✓
13	To minimise carbon emissions in airport construction and operation	✓✓
14	To minimise consumption of natural particularly virgin non-renewable resources	✓✓
15	To minimise the generation of waste in accordance with the principals of the resource efficiency hierarchy	✓✓✓

16	Conserve and where appropriate enhance heritage assets and the wider historic environment including buildings, structures, landscapes, townscapes and archaeological remains	✓✓✓
17	To promote the protection and improvement of landscapes, townscapes, waterscapes and the visual resource, including areas of tranquillity and dark skies	✓✓✓
✓✓✓	XXX	High Positive / Negative difference
✓✓	XX	Moderate Positive / Negative difference
✓	X	Low Positive / Negative difference

2.41. Despite some obscure reporting as discussed above, there is no hiding from the fact that Gatwick represents a far less harmful scheme and unlike Heathrow NWR, is far more compatible with the statutory objective of sustainable development.

Comparison of Benefit

2.42. Even in terms of economic benefit alone, the evidence does not support the choice of Heathrow NWR. As detailed in paragraphs 2.50-2.83 below, the economic case for Heathrow has not been made out.

2.43. Nothing in the AoS presents a reasoned, evidence-based justification for supporting Heathrow NWR.

No rationale for the dismissal of Gatwick

2.44. The Airports Commission ("AC") said that Gatwick was a viable solution to the problem of aviation capacity in the South East.

2.45. In December 2015, the then Government agreed that Gatwick was a viable solution:

Heathrow Airport Ltd's scheme was recommended by the Airports Commission, but all 3 schemes were deemed viable. We are continuing to consider all 3 schemes.¹⁰

2.46. The last Government's consideration did not involve consultation with the public or the Boroughs who could have, directly or through their access to experts, provided valuable information to inform their decision.

¹⁰ <https://www.gov.uk/government/speeches/aviation-capacity>

2.47. When it made its decision to support Heathrow NWR on 25 October 2016, the Government published its further work, including:

- an Air Quality Re-Appraisal which, a High Court decision later confirmed,¹¹ was based on flawed data and an incorrect legal approach
- an acknowledgement that more work was still to be done on aviation demand forecasts which could have implications for the future airline business models;¹²
- a downgrading of the economic benefits of Heathrow as assessed by the AC, acknowledging that in terms of Net Present Values (“NPV”) the three options were now broadly similar.

2.48. However, in the draft NPS, Gatwick, instead of a being presented as a viable option, has been unaccountably (i.e. without evidence or justification) been described as “*a threat to UKs global aviation hub status.*”¹³

2.49. No evidence has been provided to back up this assertion, which undermines the fairness of this consultation and its consideration of alternatives.

No rationale for choosing Heathrow

2.50. The harm the Heathrow proposal brings is substantial, unacceptable and unlawful.

2.51. The Government reasons that the economic benefits of a 3rd runway at Heathrow outweigh the environmental harm, but the reasoning and evidence for that benefit is flawed.

2.52. Both the assessment of economic benefit and the flawed assessment of harm unjustifiably favour Heathrow rather than Gatwick.

2.53. The documents do acknowledge that the NPV of the three schemes now show very little difference. But the assessment of NPV is flawed in a way that favours Heathrow.

2.54. In its assessment of the NPV of the Heathrow and Gatwick schemes, the AC included the benefits that accrue to overseas passengers who are transferring through the UK. In other words, the benefits of international-to-international transfer passengers who use UK airports purely for connections are included in the estimated benefits of the schemes. This approach, which is unorthodox, affects the relative benefits of the Heathrow and Gatwick schemes because the proportion of international-to-international passengers is much lower at Gatwick.

2.55. By contrast the Department for Transport’s (“DfT”) appraisal guidance (“WebTAG”) states that “*all passengers, whether UK or non-UK residents, should normally be treated the same in the appraisal of aviation interventions*”¹⁴ and that “*there are a number of reasons why we might want to take into account benefits to non-UK residents.*”¹⁵ However, it goes on to say “*an*

¹¹ *ClientEarth v Secretary of State for the Environment, Food and Rural Affairs* [2016] EWHC 2740 (Admin)

¹² This work may have been done but it has not been made public. See question 1 above.

¹³ Draft NPS, para 3.18

¹⁴ DfT, Transport Analysis Guidance, January 2014, para 3.2.5

¹⁵ *ibid*

*exception is made for international interliners who simply change planes at a UK airport. Cost and time savings to these passengers **are not counted as benefits to the UK.***¹⁶ (our emphasis)

- 2.56. The approach taken by the AC and the DfT is not consistent with the guidance.
- 2.57. The AC suggests that it is appropriate to include the benefits to international-to-international transfer passengers, as these passengers support the “*delivery of dense route network for UK travellers*”.¹⁷ However, this is already reflected in the traffic forecasts on which the AC analysis is based, so effectively there has been “double-counting” in favour of Heathrow.
- 2.58. The DfT’s Further Review and Sensitivities Report notes that “*the AC’s analysis of the impacts of airport expansion differs from WebTAG and the Treasury’s Green Book.*”¹⁸
- 2.59. It argues a justification for departing from its usual practice – i.e. that if benefits to these passengers were removed then costs would also have to be removed, that that is difficult and that it follows that a UK only NPV would be subject to a high degree of uncertainty. The DfT has, however, conducted a sensitivity analysis which includes an NPV for UK residents only. But this sensitivity analysis is inadequate because, as well as excluding international-to-international passengers it excludes benefits to **any** foreign passengers who are travelling to and from the UK and it excludes costs to foreign airlines. The sensitivity test should have tested the sensitivity of the results to the inclusion of international-to-international passengers **only**. This has not been done and so the assessment of NPV has not been carried out according to the DfT’s own guidance.

Delivery Risk

- 2.60. The AC decision does not fully account for potential costs and/or lower benefits relating to the risk and uncertainty surrounding the delivery of a 3rd runway at Heathrow. The potential costs and uncertainty have an impact on the economic benefits of the scheme.
- 2.61. The DfT has failed to consider sufficiently or at all key delivery risks associated with the Heathrow scheme. These include the ability to meet problems which we address further in our response – namely:
- environmental limits, such air quality limits and noise thresholds;
 - the required modal shift to public transport which is required in order to have any hope of meeting environmental targets;
 - risks associated with key rail schemes;
 - risks associated with land acquisition.
- 2.62. The failure to evaluate these risks means, because they are greater at Heathrow than at Gatwick, the DfT analysis unjustifiably favours Heathrow.

¹⁶ DfT, Transport Analysis Guidance, January 2014, para 3.2.6

¹⁷ AC Final Report, para 7.46

¹⁸ DfT, Further Review and Sensitivities Report, October 2016, para 3.5

Modal Shift required to meet environmental targets

- 2.63. The draft NPS states that without effective mitigation, expansion is likely to increase congestion on existing routes and have environmental impacts such as increased noise and emissions.¹⁹ The consultation goes on to states it expects Heathrow Airport to deliver on its public pledges including a public transport mode share of at least 50% by 2030, at least 55% by 2040 for passengers and a 35% reduction from the current baseline of staff car trips by 2030 with a reduction of 50% by 2040.²⁰
- 2.64. There is no evidence to suggest that this modal shift can be achieved. Reliance on publicised pledges by a commercial operator (here Heathrow Airport Ltd) is misplaced. The assumed modal shift is not evidence-based at all, but based on a hope and a prayer. A failure to achieve the forecast modal share would mean that the environmental targets of the Heathrow scheme cannot be met.
- 2.65. There is no proper analysis of the deliverability of the shift in modal share.
- 2.66. The Boroughs refer to the evidence provided by Transport for London which is detailed in the response to Question 4 at paras 4.14-4.24.

Deliverability: delivery of key rail schemes

- 2.67. Heathrow's public mode share target relies on the construction of two key rail schemes to connect Heathrow to the rail network:
- Western Rail access to Heathrow providing a west-facing connection the Great Western Main Line;
 - Southern Rail Access to improve connectivity to South London, Surrey, Hampshire and the South Coast. This scheme was not included in the base-case considered by the AC.
- 2.68. Any delay in the construction of these schemes is likely to delay the delivery of a 3rd runway at Heathrow. The last such scheme at Heathrow – the Heathrow Express – was delayed and cost almost twice as much as the original budget estimates.

Delivery of key road schemes

- 2.69. The section of the M25 that would be crossed by a 3rd runway at Heathrow is one of the busiest sections of road in the UK. Originally Heathrow was going to place this section of the M25 in a 600m tunnel below the runway. Now there are plans for the runway to be placed on a bridge over the motorway.

¹⁹ Draft NPS, para 5.6

²⁰ Draft NPS, para 5.16

- 2.70. There is no precedent for the kind of structure which would be needed to withstand the impact of large planes landing.
- 2.71. Furthermore, either construction would lead to significant disruptions to the M25 and local roads which would in turn cause impacts on the national and local economy. The DfT does not consider these impacts sufficiently.
- 2.72. And this kind of structure and operation would have obvious impacts on safety and safety zones, which would need assessing.

Land acquisition

- 2.73. The Heathrow scheme entails significant land acquisition. As well as residential properties, key affected properties include:
- BA headquarters. They would need to be moved before demolition. (It would appear that Heathrow and/or the Government failed to consult with BA about the proposed demolition, which took their Chief Executive by surprise.²¹)
 - Lakeside EFW Plant. This plant, which serves a large area in the west of London, is on the proposed Heathrow site and would have to be replaced and/or alternative provision secured. However, there is no provision or plan for this in the AC documents.
- 2.74. Problems and delays in land acquisition have not been included in the economic assessment of delivery risks.
- 2.75. This unjustifiably favours the Heathrow as opposed to the Gatwick scheme.

Heathrow or Gatwick – making the decision

- 2.76. “WebTAG” sets out principles that should be applied to all costs and benefits that are monetised in cost–benefit analysis. The benefit–cost ratio is considered as an appropriate cost–benefit metric.

Results should be presented in the appropriate cost-benefit analysis metrics, normally a Benefit-Cost Ratio (BCR); [...]

The benefit-cost ratio (BCR) is given by PVB / PVC and so indicates how much benefit is obtained for each unit of cost, with a BCR greater than 1 indicating that the benefits outweigh the costs. [...]

As the BCR is used to inform value for money assessments of transport schemes, the PVC should reflect the public budget available to fund transport schemes, referred to as the 'Broad Transport Budget'. The PVC should only comprise Public

²¹ <https://www.theguardian.com/travel/2016/nov/22/ba-boss-shocked-to-find-out-that-third-heathrow-runway-will-raze-his-hq>

²² Present value of costs (PVC) and present value of benefits (PVB).

Accounts impacts (i.e. costs borne by public bodies) that directly affect the budget available for transport.²³

2.77. The HM Treasury Green Book also points to using benefit–cost ratio as a measure:

If there is a budget ceiling, then the combination of proposals should be chosen that maximises the value of benefits. The ratio of the net present value to the expenditure falling within the constraint can be a useful guide to developing the best combination of proposals.²⁴

2.78. However, neither the AC, which states that it “has where possible used general guidelines on evaluating proposals set out in HM Treasury’s Green Book and followed the general principles of standard transport appraisal set out in the Department for Transport’s (DfT) transport appraisal guidance (WebTAG)”²⁵, nor the DfT has considered the benefit–cost ratio in their analysis.

2.79. In particular, in assessing the economic impact of the expansion at Heathrow and Gatwick, the AC considered two measures of the net impact—the net social benefit (which excludes scheme and surface access costs) and the NPV. The benefit–cost ratio has not been calculated on the basis that the expansion will be largely privately funded.

The overall scale of net social benefits delivered by each scheme is most relevant to the consideration of whether a National Policy Statement or Hybrid Bill should be passed through parliament, given that a large proportion of the cost will be funded privately rather than by the public purse. [...]

This contrasts with publicly-funded projects for which a benefit-cost ratio is more relevant to allow government to prioritise public expenditure based on the comparative value for money of different projects.²⁶

2.80. In its further assessment, the DfT also relied on its measures of the net social benefit and NPV, and looked at the scheme’s net public value (which excludes the airline profit loss but includes surface access costs).²⁷

2.81. Thus, it does not appear from the AC and DfT reports that the benefit–cost ratio, as per “WebTAG” guidelines, has been calculated. Given that the cost to the DfT is estimated to be higher for Heathrow than for Gatwick (due to the cost of improving surface access), the benefit–cost ratio for the Heathrow project is lower than for Gatwick.

2.82. Table 4 (Oxera’s table 4.1) below shows the benefit–cost ratios for the schemes calculated using the DfT’s numbers. The ratio is calculated under two approaches: 1) where scheme and surface access costs are included in the denominator; 2) where only surface access costs (i.e. a proxy of the publicly funded costs) are included in the denominator while the scheme costs are subtracted from the net social benefit in the numerator. Under both approaches, the benefit–cost ratio of the Gatwick scheme is higher than that of the Heathrow scheme.

²³ DfT (2014), ‘TAG UNIT A1.1 Cost-Benefit Analysis’, January, pp. 2, 7 and 8

²⁴ HM Treasury (2003), ‘The Green Book Appraisal and Evaluation in Central Government’, p. 37

²⁵ AC, ‘Business Case and Sustainability Assessment – Heathrow Airport Northwest Runway’, July, p.50

²⁶ AC: Final Report, paras 7.46–7.47

²⁷ Further Review and Sensitivities Report: Airport Capacity in the South East’, p. 39, Table 7.1

Table 4

Table 4.1 Scheme benefit–cost ratios

	Gatwick Second Runway	Heathrow Runway	Northwest Runway
Net social benefit, £bn (A)	10.1–11.4	18.6–20.4	
Scheme cost, £bn (B)	6.4–6.3	14.9–12.9	
Surface access costs, £bn (C)	0.6	3.4–1.4	
Benefit–cost ratio (D=A/(B+C))	1.44–1.65	1.02–1.43	
Benefit–cost ratio (E=(A-B)/(C))	6.17–8.50	1.09–5.36	

Source: Oxera using Department for Transport (2016), 'Further Review and Sensitivities Report: Airport Capacity in the South East', October, p. 39, Table 7.1.

2.83. Given that this result is contrary to the outputs of the analysis based on NPV, it is relevant to present this and to explain how this has been taken into account in the appraisal.

Passenger forecasts

2.84. In its consultation document the Government said that it would publish, during the consultation, its new passenger forecasts. It has not.

2.85. The passenger forecasts have a bearing on the relative advantages of Heathrow and Gatwick.

2.86. The Government should not press on with the draft NPS without publishing and consulting on the updated passenger forecasts.

Heathrow is not the answer

2.87. As discussed, the evidence suggests that Heathrow has the highest risk of non-delivery of the alleged economic benefits²⁸, yet causes the most environmental and health-related damage. There is no costing provided for proven effective mitigation measures.

2.88. Heathrow expansion would impact on the Quality of Life of hundreds of thousands of people, on communities already more deprived and disadvantaged than average and make inequalities

²⁸ Further Review and Sensitivities Report, Table 7.3, page 44

worse, affect the health and education of substantial numbers of children and destroy more property and communities than expansion at Gatwick.

2.89. The Boroughs have consistently asked for a proper Health Impact Assessment to be undertaken prior to any decision on a location for aviation expansion. A full Health Impact Assessment has not been carried out and the consultation documentation is confusing and inconsistent.

2.90. A proper Health Impact Assessment would assess the schemes with mitigation.

2.91. What the Government has done is a Health Impact Analysis which, the consultation on the draft NPS states;

"...assesses the positive and negative impacts of airport expansion on health and recommends options for mitigating adverse effects".²⁹

2.92. Yet no health mitigation measures are included or costed in the Health Impact Analysis. The draft NPS document refers to a Health Impact Assessment, which it is not, and clearly states health mitigations are to be proposed via a further project level health impact assessment.

2.93. What is identified in the Health Impact Analysis is that the Heathrow scheme has a much greater detrimental impact upon health than the Gatwick scheme, affecting several thousand residents and other sensitive receptors affected by poor air quality, resulting in a reversal of any baseline improvements and having major adverse health effects on children, young people and people living with long-term health conditions who may be susceptible to major adverse health impacts. The scheme would further increase inequalities between a number of vulnerable groups and the general population.

2.94. Not to have assessed the full extent of the detrimental health impacts and then not to identify how, if it is even possible, these can be addressed is a serious failure in the consultation process.

2.95. The evidence that is presented shows Gatwick to be the less damaging choice.

2.96. The Government is urged to base its decision on updated information and a full comparison of the Heathrow and Gatwick schemes.

2.97. A realistic comparison of the detrimental effects of each scheme can only lead to the rejection of a third runway at Heathrow and the incoming Government is urged to take a fresh look at the evidence before reaching its decision.

²⁹ Consultation on Draft Airports National Policy Statement, page 8

3. **Question 3: *The Secretary of State will use a range of assessment principles when considering any application for a Northwest Runway at Heathrow Airport. Please tell us your views.***

3.1. We note that, while the first two consultation questions are apparently open and suggest that the Government is consulting with an open mind about whether or not an aviation NPS should favour Heathrow, this question presents only a range of assessment principles for considering an application for the Heathrow NWR scheme.

3.2. This contradicts the assertion at paragraph 4.12 of the consultation document:

"While the Government has confirmed publicly, based on the evidence set out below, that it prefers the Heathrow Northwest Runway scheme, it is consulting in a full and fair way with an open mind."

3.3. A full, fair and open minded approach and consultation would consider assessment principles independently of any particular scheme.

No Reference to Sustainable Development

3.4. Section 10 of the Planning Act 2008 provides:

The Secretary of State must, in exercising those functions [designating a NPS], do so with the objective of contributing to the achievement of sustainable development.

3.5. Sustainable development is clearly defined in the NPPF:

There are three dimensions to sustainable development: economic, social and environmental.³⁰

These roles should not be undertaken in isolation, because they are mutually dependent.³¹

3.6. Further details of what is defined as 'sustainable development' are included in paragraphs 6-10 of the NPPF.

3.7. Giving preference to Heathrow solely on its supposed economic performance is contrary to the principle of sustainable development. The AoS clearly concludes that the negative impacts at Heathrow Airport are greater than the other airports. The more specific analysis above shows how Heathrow scores far more unfavourably in every area when compared to Gatwick. In terms of economics, even according to the Government's flawed methodology (outlined above) the figures are fairly close, with Heathrow Airport expected to provide £1.02bn economic benefits a year compared to Gatwick's £0.90bn. In contrast, Gatwick is vastly less damaging in terms of environmental, health and social impacts.

³⁰ NPPF, para 7

³¹ NPPF, para 8

3.8. Worryingly, the draft NPS does not secure the mitigation required to offset the harm of expansion at Heathrow. Consequently, the conclusion reached is that Heathrow is preferred despite:

- being far more damaging to human health;
- being far more environmentally damaging;
- not reaching conclusions or securing necessary mitigation;
- not fully understanding all the impacts;
- using outdated noise research to underestimate the noise impacts; and
- having negligible economic benefits when compared to Gatwick.

3.9. The draft NPS, as drafted, cannot lawfully be designated consistently with the Secretary of State's duties in relation to Sustainable Development.

Lack of Specific Assessment Requirements

3.10. Consideration of principles is meaningless without including assessment requirements; i.e. how the examining authority and Secretary of State should assess the proposal. This part of the NPS is particularly ill considered and provides no certainty for the affected communities.

3.11. In some instances, for example Environmental Impact Assessment and Habitats Regulations Assessment, the requirements simply repeat legislative obligations. Little thought has gone into the topics where there are no already existing legislative obligations. There is a lot of text padding out these requirements but there is very little substance.

Example 1 – Equalities

3.12. There are four paragraphs detailing the work that has gone on prior to concluding:

For any application to be considered compliant with the Airports NPS it must be accompanied by a project level equalities impact assessment examining the potential impact of that project on groups of people with protected characteristics.³²

3.13. There is no methodology as to what this impact assessment needs to follow, no definitive framework it must follow, no clarity about benchmarks or baseline information, no understanding about source data or what of the many approaches to Equalities Impact Assessment should be followed.

3.14. The Government has not properly applied its equality duties before publishing the draft NPS and consultation.

³² Draft NPS, para 4.27

Example 2 – Costs

3.15. Unlike the other sub sections in this chapter, there is no lengthy preamble. The draft NPS simply concludes:

*The applicant should demonstrate in its application that its scheme is cost-efficient and sustainable, and seeks to minimise costs to airlines, passengers and freight owners over its lifetime.*³³

3.16. This looks like an afterthought. In the space of one sentence it manages to utilise 4 non-definitive requirements. There is no methodology for determining 'cost efficient'; no clarity about what is meant by 'sustainable'; nor is there any clarity of what 'seeks to minimise' means. It could mean very little.

Example 3 – Economy

3.17. It is clear that any application for Heathrow expansion will have a net harmful effect on the environment. Throughout the process there will be a substantial demand for mitigation which will invariably impact on the overall cost of the scheme. This is more likely given the dearth of assessment for this draft NPS.

3.18. Countering the requests for mitigation, will be an applicant's attempt to balance these costs against the economic benefits of the scheme. There is a broad requirement for an examining officer to consider:

*Its potential benefits, including the facilitation of economic development (including job creation) and environmental improvement, and any long term or wider benefits.*³⁴

3.19. However, there is no specific economic impact assessment required. This draft NPS has been assessed in a policy vacuum. As set out above, there are soon to be announcements on airspace, noise, air quality³⁵ and a new aviation strategy. At the detailed design stage, the applicant will be expected to properly identify and cost the mitigation measures based on those new policies and more evidence, e.g. flight paths, ground investigations, onset of community annoyance.

3.20. As well as determining the detailed environmental impacts, these investigations will allow for a more detailed appraisal of the economic case. It is therefore expected that an updated economic assessment will be undertaken.

3.21. The requirements set out in this chapter do not define the framework for this assessment. The DfT has already altered its standard approach to economic appraisal to justify Heathrow

³³ Draft NPS, para 4.36

³⁴ Draft NPS, para 4.4

³⁵ A draft Air Quality Plan was published for consultation on 5 May 2017. The consultation closes on 15 June 2017.

expansion and the benefits in comparison to Gatwick are marginal if at all. It should at least set out how it envisages a future inspector would carry out an economic assessment.

No strategic land use vision

- 3.22. As set out in response to question 7, the AoS does not comply with the minimum requirements of the relevant regulations. There is no strategic understanding of the consequences of Heathrow expansion on a range of other local and regional plans. These failures generate significant uncertainty about the final cost of Heathrow when all impacts have been taken into account.
- 3.23. The failure to properly consider all the negative impacts of Heathrow also means that the draft NPS fails to set a suitable strategic framework for securing its delivery.
- 3.24. For example, as mentioned above, it is known that the Lakeside EFW Plant would close. The draft NPS acknowledges this, but also accepts that no solution is yet in place. The draft NPS does not secure the relocation or replacement of this important facility that the Boroughs and others in the West London Waste Authority partnership utilise for managing their waste. Without it, there may be difficulties in the Boroughs' ability to effectively manage waste.
- 3.25. Another example, is that the draft masterplan shows the areas for open space it requires but these are not 'allocated' within the draft NPS and therefore not secured as the draft NPS and accompanying documents have not given consideration to a red line boundary. Consequently, it is obvious that Heathrow expansion requires changes to land use designation in the wider area, but none of this has been assessed or secured.
- 3.26. This would cause a policy vacuum were a development consent order advanced. Land outside that referenced in the draft NPS would be needed to deliver mitigation or to offset harm. This additional land would not be protected by the draft NPS and therefore alternative land use policies will apply.
- 3.27. Furthermore, there is no security that existing land use plans can accommodate growth. It is not appropriate to expect Local Authorities to go to great lengths to change their plans in a short space of time to accommodate a private business. This undermines democratic planning and the good governance at the heart of the principle of sustainable development.
- 3.28. However, securing the necessary land uses and requirements to accommodate growth would require a fundamentally different draft NPS accompanied by a more robust economic appraisal.

Open Space Strategy

- 3.29. A future scheme would need to ensure that there is sufficient open space not just for the growth proposed, but for those communities who are left behind with a third runway to contend with. This should be carried out at the draft NPS stage.

Strategic Housing Assessment and Land Allocation

- 3.30. Airport expansion will trigger growth not previously identified nor planned for. Heathrow expansion has not been planned for strategically and, without the necessary plans in place, it will saddle the Boroughs (particularly Hillingdon and the Royal Borough of Windsor and Maidenhead) with unmanageable levels of growth.
- 3.31. All the development and effects necessarily linked to the draft NPS should be included and assessed, including with a Strategic Environmental Assessment ("SEA").

Waste Strategy

- 3.32. The draft NPS recognises that the Lakeside EFW Plant will be lost. It does not identify an alternative. It does not assess the consequences.
- 3.33. These should be included and assessed as part of the draft NPS.

Other Missing Principles or Requirements

Energy Assessment

- 3.34. All major development in London has to be accompanied by an energy strategy that shows a reduction in CO₂ from a baseline position. The Boroughs would have expected the DfT to have a positive vision for expansion that requires them to demonstrate carbon reductions, ideally through the use of heat networks, that provides low cost energy to the surrounding communities and businesses.

Heathrow's promises

- 3.35. Given that the draft NPS is clearly moulded around one developer's proposals and promise, we are concerned that there is no proposed assessment principle which would ensure that a Heathrow scheme conformed to and delivered the benefits which the Government has used to justify its preference.
- 3.36. Without prejudice to its argument that an NPS could not rationally favour expansion at Heathrow, examples of these promised benefits, which could (in theory) be translated into principles or requirements are:

More domestic routes

- 3.37. This is termed a key fact by the Government in its choice to support Heathrow and is prominent in the public consultation material. Yet the Government is proposing nothing to ensure delivery. The draft NPS says:

"The Government recognises that air routes are in the first instance a commercial decision for airlines and are not in the gift of an airport operator. But the Government is determined that these new routes will be secured, and will hold Heathrow Airport to account on this. The Government requires Heathrow Airport to demonstrate it has worked constructively with its airline customers to protect and strengthen existing domestic routes, and to develop new domestic connections, including to regions currently unserved."³⁶

- 3.38. The second sentence is a *non sequitur*, and nothing more than a political puff. But in any event, the assessment principles should, therefore, include a requirement that Heathrow "demonstrate" how additional domestic connections will be secured.

No more airport related traffic on the roads

- 3.39. This is a key promise which the Government have stated they will hold Heathrow Airport to in terms of delivery. But this promise is not translated into the text of the draft NPS. Surface access planning requirements within the draft NPS do not include the delivery of this promise. If the NPS is to be consistent with the Government's rationale for it then the assessment principles would include a principle which would ensure that the airport operator pays for and delivers the promise of no more airport related traffic.³⁷

Reduction of fares for passengers and no increase in airport charges

- 3.40. Costs are included in the assessment principles with a requirement for the proposed applicant to seek to minimise costs to airlines, passengers and freight owners over its lifetime. Key documents relating to financeability have not been made public - yet reducing fares for passengers and keeping airport charges level are described by the Government as key reasons for their support for Heathrow.
- 3.41. The documents should have been made available as part of this consultation.
- 3.42. In any event, if the draft NPS is consistent with the Government's rationale then the assessment principles would include an assessment of the financeability of the Heathrow proposal and a requirement that Heathrow "demonstrate" how the key deliverables of reduced passenger fares and no increase in airport charges would be achieved.

"World class" package of mitigation measures

- 3.43. The Government describes the Heathrow scheme as having a significant focus on communities and the environment with a world class package of measures. It is unclear what "world class" is meant to mean. Given the scale of destruction and the numbers of people who will be exposed to aircraft noise and increased pollution with the Heathrow proposal, the assessment principles should include an assessment by Heathrow Airport detailing how they have ensured the compensation and mitigation measures offered are effective in addressing the harm

³⁶ Draft NPS, para 3.33

³⁷ See further explanation at paras 4.14-4.22 below

caused, how they will be funded with a timescale for delivery and an assessment as to why these are deemed as world class. If this cannot be assured as a fundamental principle then the Government should reassess the basis of their decision-making process.

Public safety

- 3.44. There is currently no comprehensive policy against which the risk to public safety associated with expansion can be assessed. Given the increased risk to public safety associated with airport expansion, the assessment principles should set criteria against which to assess the risk to public safety caused by expansion. Any assessment of the risk to public safety should include an assessment of (i) how many homes are likely to be affected, (ii) which areas are likely to be affected and (iii) the planning requirements associated with being in a public safety zone.
- 3.45. Current policy is that there should be no increase in the number of people living, working or gathering in Public Safety Zones. The map provided with the consultation document is inadequate. For consultation purposes, at a minimum there should be a map showing the potential public safety zone, and the potential numbers of people living, working or gathering in the proposed public safety zone. For the avoidance of doubt, this includes everyone on the relevant section of the M25.

4. Question 4: *The Government has set out its approach to surface access for a Heathrow Northwest Runway scheme. Please tell us your views.*

- 4.1. The issue of surface access – which includes access by underground – and the environmental effects of that access are at the heart of the problem of locating a new runway in a densely populated area.
- 4.2. An airport causes pollution not only through use of aircraft and on-site operations, but also through the pollution caused by all those working at or trying to use the airport. That pollution has an effect not only in the immediate area but on London generally and even country wide.
- 4.3. Previous attempts to expand Heathrow have foundered on the inability to provide adequate and non-polluting access. In 2010, when the then Government was challenged for its support for Heathrow expansion, the Court ruled against it in part because of the inadequacy of the proposed surface access provision.³⁸ The provision allowed for in this draft NPS is similarly inadequate. Inadequate non-polluting surface access and non-polluting public transport will inevitably mean either that the airport indirectly causes illegal and harmful levels of pollution, or that the airport cannot lawfully operate.
- 4.4. The AC suggested a number of measures to attempt to provide the sustainable delivery, in terms of surface access, of the Heathrow Northwest Runway option. The responsible transport authority, Transport for London, judged these measures to be inadequate and said more provision would be required. In spite of this, the draft NPS waters down the measures which the AC thought were essential.
- 4.5. There is no longer a requirement to widen the M4; additional rail schemes the AC thought would be in place and necessary, such as Western Rail Access and Southern Rail Access, are now simply considered desirable not essential; and the whole surface access delivery of a complete new runway is being left to schemes already planned for dealing with background growth such as Crossrail (the Elizabeth line), including its connection to HS2 and the Piccadilly upgrade. The Boroughs note the current attempt by Heathrow to impose a substantial charge on the public purse before Crossrail trains are allowed to use its rails.³⁹
- 4.6. It is not known how far this is an attempt by the Government to relieve Heathrow of its obligations to pay for transport. State Aid and anti-competition rules mean that Heathrow must pay itself for any improvements which are necessary for their expanded operations. It may be that they have baulked at paying for the transport which was envisaged as necessary and the Government has co-operated by reducing the new access to government schemes already planned and to be paid for by the taxpayer.
- 4.7. Certainly, a key question which must be resolved in order for the public to be properly informed about the costs of Heathrow is how much the taxpayer is expected to pay and how much is Heathrow's responsibility. The EAC have recommended that an outline of costs,

³⁸ *R (Hillingdon LBC) v Secretary of State for Transport* [2010] EWHC 626 (Admin)

³⁹ <http://www.bbc.co.uk/news/uk-england-london-40000763>

responsibilities and accountabilities should be published⁴⁰ but the Government has chosen to ignore this recommendation.

- 4.8. The Government is promoting the draft NPS on the basis of a pledge from Heathrow that there will be no more airport related traffic, even with expansion. It is not clear what this means, nor how it will be enforced. Does it mean no more freight? If so, how will any new freight reach or leave Heathrow? What is the basis for saying there will be no more related traffic? How, and by who, is a pledge to be monitored and enforced?
- 4.9. In the draft NPS there is a commitment to a statement that Heathrow will “strive towards” no more traffic. How is their striving to be assessed, measured and enforced, and by whom? It is important, because simply striving is unlikely to have any effect on illegal and deathly levels of air pollution around Heathrow. The Environmental Audit Committee (“EAC”) have recommended that this pledge should be clarified in terms of how it is to be delivered and monitored, and the consequences of the pledge not being met, especially in terms of air quality.⁴¹ The Government have chosen to ignore this recommendation.
- 4.10. It is common ground that, without effective mitigation, Heathrow expansion will increase traffic congestion and have detrimental environmental impacts throughout the surrounding areas in terms of pollution, yet the Government has failed to provide or demonstrate:
- a clearly identified, costed surface access strategy that is capable of delivering its preferred option for expansion;
 - that the surface access provision and commitments it expects Heathrow Airport to meet are stringent enough in terms of alleviating congestion and are effective enough in terms of keeping increases in pollution to within lawful limits;
 - any evidence as to the associated costs to taxpayers and of the impact of implementation of any further measures, such as a congestion or access charge, that may be required;
 - any evidence of the costs to Heathrow, and how such costs will be met.
- 4.11. Without the identification of the true costs, the economic analysis is fatally flawed. Without the identification that the pledges and promises can be delivered, the delivery of lawful air quality is compromised. The draft NPS will fail and the runway will not be delivered.
- 4.12. Road traffic and air pollution are intrinsically linked. Given that consent will not be given if legal air quality requirements are not met, the fact that the draft NPS states development consent will not be withheld on surface access grounds is inconsistent and is irrational.
- 4.13. The surface access proposals for Gatwick are more achievable, less disruptive to the rest of the transport network and will be paid for in their entirety by Gatwick, not the taxpayer.

⁴⁰ EAC, The Airports Commission Report: Carbon Emissions, Air Quality and Noise HC389, November 2015 Report, para 61 and EAC, The Airports Commission Report Follow-up: Carbon Emissions, Air Quality and Noise HC840, February 2017, paras 44-45

⁴¹ *Ibid*

The unplugged gap

- 4.14. The draft NPS states Heathrow has committed to ensuring its landside airport-related traffic is no greater than today, and that the airport will be expected to achieve a public transport mode share of at least 50% by 2030, and at least 55% by 2040 for passengers, for staff a 25% reduction from current baseline of staff trips by 2030 and reduction of 50% by 2040 (from 2017 levels).⁴² However, the consultation does not include any analysis of the deliverability of the shift in modal share or whether the targets set actually achieve the aim of no more airport-related traffic. Without a proper assessment, the self-set targets Heathrow has pledged are meaningless. The Government has simply taken the words of Heathrow Airport without any evidence to show whether the pledges and commitments are effective or achievable.
- 4.15. A failure to deliver the appropriate modal share would mean that the environmental targets of the Heathrow scheme cannot be met. Non-delivery will impact on the ability of the proposal to deliver reductions in pollution which will need to be achieved to ensure compliance with legal requirements.

Modal Shift required to meet environmental targets

- 4.16. The Boroughs have shared their concerns over the lack of any evidence behind these pledges with the Mayor of London and Transport for London. If these pledges are not delivered, the consequence will be additional traffic on what are already parts of the most congested road network in the UK, along with the associated increase in pollution plus over-crowded and insufficient public transport.
- 4.17. Transport for London has developed a specific airport mode choice model and has tested future scenarios with an expanded Heathrow. The results of this work have been shared with the Boroughs and the conclusions have highlighted that the Boroughs' are correct to be concerned about the Heathrow pledges. These are nothing more than unsubstantiated words based upon little or no analysis of what they would deliver in terms of the aim of no more airport related traffic.
- 4.18. Instead of the suggestion in the wording of the draft NPS that the applicant "*should consider measures and incentives which could help to manage demand by car users*"⁴³, from the TfL analysis it is clear it will be essential for Heathrow expansion to be accompanied by a substantial access charge. Highlights from the TfL analysis are given below.
- 4.19. To achieve the pledge of no more airport related road traffic will require a modal shift, for passengers and staff combined, closer to 65%. This is unprecedented. This would entail around 170,000 additional public transport trips each day i.e. an increase of around 200%.
- 4.20. With committed schemes including Crossrail (the Elizabeth line) and the Piccadilly line upgrade, and those assumed but not committed nor funded (Western Rail Access, Southern

⁴² Draft NPS para 5.16

⁴³ Draft NPS, para 5.17

Rail Access) TfL forecast that a combined mode share for public transport (including cycling and walking) could be expected to be around 47%, up from a current combined baseline of around 39%. This would leave around 71,000 extra daily passenger and staff highway trips, with the ensuing significant detrimental impacts on road and congestion and air quality.

- 4.21. If the aspiration of no increase in passenger and staff highways trips is to be met, initial results indicate that it will require Heathrow Airport to introduce a sizeable road access charge, at least as high as £40 per passenger car/taxi journey as identified by the AC, plus the provision of significant public transport infrastructure. This includes delivery of Western Rail Access and a version of Southern Rail Access, which can offer both capacity and connectivity, as well as bus and cycle priority measures in key corridors.
- 4.22. What the TfL evidence demonstrates is that the Heathrow pledges and commitments are meaningless and not based on their effectiveness in achieving delivery of the runway with no more airport related traffic on the roads. Non-delivery will impact on the ability of the proposal to deliver reductions in pollution which will need to be achieved to ensure compliance with legal requirements. The Heathrow proposal will ultimately fail.

Deliverability: delivery of key rail schemes

- 4.23. As discussed above, Heathrow's public mode share target relies on the funding and construction of two key rail schemes to connect Heathrow to the rail network:
- Western Rail access to Heathrow providing a west-facing connection the Great Western Main Line;
 - Southern Rail Access to improve connectivity to South London, Surrey, Hampshire and the South Coast. This scheme was not included in the base-case considered by the AC.
- 4.24. Any delay in the construction of these schemes is likely to delay the delivery of a 3rd runway at Heathrow. The last such scheme at Heathrow – the Heathrow express – was delayed and cost almost twice as much as the original budget estimates. Even when built and operated, it is the most expensive mile by mile rail journey in the UK.⁴⁴

⁴⁴ <http://www.independent.co.uk/travel/news-and-advice/train-fare-increase-is-this-britain-s-most-expensive-long-distance-ticket-in-price-per-mile-a6760431.html>

5. Question 5: *The draft Airports National Policy Statement sets out a package of supporting measures to mitigate negative impacts of a Heathrow Northwest Runway scheme. Please tell us your views. Are there any other supporting measures that should be set out?*

Supporting measures not secured via the NPS process

- 5.1. The AC's recommendation of the Heathrow NWR scheme included recommendations for essential mitigation. The draft NPS significantly departs from the vital safeguards for local communities suffering from expansion recommended by the AC. The safeguards now proposed are either meaningless and incapable of enforcement or not secured through the draft NPS and the development consent process. This includes such vital and widely publicised measures as a night flight ban and the formation of an independent aviation noise regulator. In the draft NPS the Government says only that it *expects* a night ban to be implemented,⁴⁵ but there is no proposal to ensure this will happen. A ban on night flights was a prominent proposal in the leaflet advertising the public consultation on the draft NPS. If it is not a meaningful part of the NPS then on that ground alone the last Government's consultation material was misleading.
- 5.2. The new Government is reminded that an NPS forms part of the planning process and that the principle of sustainable development includes good governance. It is of great concern if public support for the Heathrow scheme is achieved through the Government falsely representing that a ban on night flights is part of the proposed Airports NPS.

Supporting measures not in Heathrow's control

- 5.3. The draft NPS should not be approved unless there is certainty that the "supporting measures" can be delivered. This includes, for example, sufficient surface access infrastructure to deliver the pledges of no more airport related traffic, the promised domestic connections and compliance with air quality limits.
- 5.4. For example, as detailed in question 4 above, the evidence provided by TfL shows that the Heathrow self-set targets quoted are far too low to achieve the key pledge of no more airport related road traffic with expansion. This has significant implications for the business case and deliverability of the Heathrow proposal. Given the key relationship between reducing pollution and achieving a reduction in road traffic, it is inconsistent, unacceptable and unlawful for the draft NPS to provide that development consent will not be withheld on surface access grounds.
- 5.5. The evidence from TfL, as detailed in Question 4, is that it is highly likely that the proposed surface access infrastructure will be inadequate to meet Heathrow's pledges. Therefore, the draft NPS should be worded to state unequivocally that consent will be refused if this issue is not fully addressed, costed and secured.

⁴⁵ Draft NPS, 5.61

- 5.6. As the infrastructure would be required to enable to meet Heathrow's pledges, the costs should be borne by Heathrow and not the taxpayer. This would be essential to avoid infringing the rules on State Aid and stated government policy.
- 5.7. Additionally, the promised additional domestic air routes cannot be guaranteed. The Consultation Statement on the draft NPS recognises that "*air routes are in the first instance a commercial decision for airlines and are not in the gift of an airport operator*"⁴⁶. There is no way to guarantee that additional domestic connections will be commercially viable. It is impossible to respond meaningfully to this pledge in the absence of the Government's updated passenger demand figures. If new routes are not commercially viable, there has been no consideration of how these routes would be secured, including whether the state would have to subsidise these routes. There is evidence to suggest that the airlines will not provide the routes without public subsidy.⁴⁷
- 5.8. More detailed information on specific issues is detailed below.

Air quality supporting measures

- 5.9. The Government acknowledges that air quality is a very serious public health issue. The Foreword to this Consultation states:

*"Poor air quality is a national health issue which this Government takes very seriously."*⁴⁸

- 5.10. Yet there are no specific air quality supporting measures. This is clear from the documentation which refers to the need for a "*range of mitigation measures*" which is likely to be "*extensive*",⁴⁹ and that they will be "*subject to consultation with local communities to ensure the most effective measures are taken forward*"⁵⁰. Without any detail, it is not possible to understand what the implications of this are.
- 5.11. No suitable package of policy and mitigation has been presented or, assessed or costed, no assessment has been made as to how this issue can be monitored and mitigation measures enforced to ensure the air pollution levels are reduced and then maintained within legal limits and consistent with improving public health.⁵¹
- 5.12. No evidence has been provided to ensure that future air pollution levels will be rendered low enough to allow expansion to take place consistently with legal limits and improving public health; no enforceable conditions have been presented which have been demonstrated as

⁴⁶ Draft NPS, para 3.33

⁴⁷ House of Commons Library, Briefing Paper Number CBP1136, 24 April 2017; pages 66-68, section 8.2

⁴⁸ Consultation on Draft Airports National Policy Statement, Page 6, heading "Environmental Impacts"

⁴⁹ Draft NPS para 5.36

⁵⁰ *Ibid*

⁵¹ Further details of specific impacts and to illustrate the point at a local level can be found in the London Borough of Hillingdon's response.

being effective in doing so. Analysis undertaken by TfL indicates that the targets are insufficient to achieve this aim, more detail is given in the response to Question 4.

5.13. "Pledges" such as no more airport-related traffic on the roads and at least 55% of passengers using public transport to access the airport by 2040,⁵² are self-set targets by Heathrow Airport which have not been evaluated in terms of costs, feasibility or efficacy in reducing pollution to within the legal requirements.

5.14. There is no mechanism proposed for holding Heathrow to its pledges. There is nothing to ensure the outcome. There is no proposal for measuring whether or not Heathrow is "striving" to achieve its pledges. It is simply not good enough to suggest that all that is needed is that:

Heathrow Airport should continue to strive to meet its public pledge to have landside airport-related traffic no greater than today.⁵³

5.15. The Government's assertion that Heathrow can be delivered within air quality limits depends on the belief that an expanded Heathrow will produce no more traffic on the roads and that there will be no other increase in air pollution. Analysis by TfL indicates the targets set will not achieve this. In addition, a stipulation that the current operator should simply strive to achieve its public pledge does not secure the achievement of legal air quality around Heathrow. Put shortly, a requirement for a promoter to "strive" (or "try hard") is useless, and has no place in the consideration of a proposal such as an additional runway at Heathrow.

Wrong approach to air quality

Heathrow Airport will need to undertake an assessment of its project, to be included as part of its environmental statement, demonstrating to the SoS that the construction and operation of the new capacity will not affect the UK's ability to comply with legal air quality requirements. Failure to demonstrate this will result in refusal of development consent.⁵⁴

5.16. The evidence is that an expanded Heathrow cannot comply with AQ limits.

5.17. Any assessment of the air quality impacts (including any necessary mitigation measures) must be based upon the correct legal test for compliance and an assessment of the most up to date data.

5.18. We refer to the Boroughs' (and others) claim (attached)⁵⁵ for an account of the correct legal test for compliance with air quality legislation⁵⁶. Correct interpretation of the law means that air quality limits must not be breached anywhere. The AC made a mistake as to the correct

⁵² Draft NPS, para 5.16

⁵³ Draft NPS, para 5.37

⁵⁴ Draft NPS, para 6.23

⁵⁵ Statement of Facts and Grounds at paras 70-110 and Expert Evidence of Claire Holman dated 6 December 2016

⁵⁶ Directive 2008/50/EC on ambient air quality and cleaner air for Europe and The Air Quality Standards Regulations 2010

legal test, as set out in our claim document, and that mistake has been adopted and repeated by the Government in the draft NPS.

- 5.19. As set out in the expert report which was included as part of the Boroughs' claim (attached)⁵⁷, as at 25 October 2016, the Government's support for Heathrow as the preferred location for expansion in the South East was based upon not only the incorrect legal test but also flawed by its reliance on out of date data.
- 5.20. With the draft NPS, the Government published an Updated Air Quality Re-Analysis Report ("the Updated Re-Analysis"). It maintains the mistaken legal approach and in any event has been overtaken by events since there is now to be a new Air Quality Plan. The Updated Re-Analysis are summarised below.

Updated Air Quality Re-Analysis Report

- 5.21. The Updated Re-Analysis uses the same methodology as the Air Quality Re-Analysis Report, released in October 2016 at the time of the Government's decision to support Heathrow NWR as its preferred option. The Updated Re-Analysis incorporates the most recent COPERT emissions factors, but it maintains the wrong test for compliance identified in our legal claim.
- 5.22. The Updated Re-Analysis concludes that in 2025 exceedances of the EU limit value are widespread throughout Greater London.⁵⁸ On this basis, by 2025, the Government's task will still be to reduce air pollution. Airport expansion at Heathrow would increase air pollution. For example, the Updated Re-Analysis shows that air pollution associated with the airport impacts on the A312 resulting in worsened exceedances of the limit value.⁵⁹
- 5.23. The roads likely to be affected by airport-related traffic whether through expansion or otherwise (e.g. A40) include some that have the highest projected future year exceedances in central London without expansion.⁶⁰ Any impact on these road links would be unlawful.
- 5.24. The Updated Re-Analysis suggests that in 2030 the Heathrow NWR scheme with the 2015 Plan measures and opening in 2030 does not affect the compliance status of the Greater London zone.⁶¹
- 5.25. First, the 2015 Air Quality Plan is unlawful. Second, the report notes that there is uncertainty about this conclusion and there is a risk that the Heathrow NWR scheme will delay compliance with the limit value. If the correct legal test is applied, this would be unlawful whether Heathrow is the worst culprit in the Zone or not. The likelihood of an impact increases the earlier the assumed opening year of the chosen scheme.⁶²
- 5.26. The impact of the pledges made by the airport operator (in terms of increasing public transport share to the airport and no more airport related traffic on the roads than today) have not

⁵⁷ Expert Evidence of Claire Holman dated 6 December 2016

⁵⁸ Updated Re-Analysis, para 5.3.4

⁵⁹ Updated Re-Analysis, para 5.3.5

⁶⁰ Updated Re-Analysis, para 6.3.8

⁶¹ Updated Re-Analysis, para 6.3.2

⁶² Updated Re-Analysis, para 6.3.3

been evaluated. The TfL evidence indicates these pledges will be ineffective in delivering an increase in public transport's modal share.

- 5.27. The Updated Re-Analysis notes that in 2030, with the 2015 Air Quality Plan measures and the full and effective implementation of Real Driving Emissions testing ("RDE") (Stage 11), the Heathrow NWR scheme would be unlikely to impact on the compliance of the Greater London zone.⁶³ This is another demonstration of the application of the wrong legal test. In any case, this scenario is described in the Updated Re-Analysis as a best case scenario⁶⁴ as it assumes that the RDE legislation is fully effective. This would require the implementation of European RDE legislation and action by manufacturers to develop RDE compliant diesel vehicles⁶⁵. It takes no account of whether or not European RDE legislation will even exist when the UK leaves the EU.

The draft NPS

- 5.28. The draft NPS states that the applicant must demonstrate that the construction and operation of the Heathrow NWR will not affect the UK's ability to comply with legal requirements and failure to do so will result in refusal of the development consent order⁶⁶. It is unclear how Heathrow can control the implementation of the RDE legislation. In addition, the effectiveness of the legislation is unlikely to be known until the early 2020s, i.e. likely to be after the issuing of the development consent order. In any case, as set out in our claim⁶⁷, the Government has adopted the wrong test for compliance.

New Air Quality Plan

- 5.29. The Government published its revised draft Air Quality Plan for consultation on 5 May 2017. The Air Quality Plan will be crucial to determining whether or not Heathrow can be expanded to meet any need which complies with legal Air Quality limits and protects the health of the affected population. The Boroughs have not had sufficient time to analyse the draft Air Quality Plan and its implications for the future expansion of Heathrow, nor obtain expert evidence. The Boroughs requested additional time to respond to this consultation, in light of delayed publication of the draft Air Quality Plan, but the Government refused this request.⁶⁸ The Boroughs are therefore submitting this response without the benefit of additional expert evidence but will be preparing additional expert evidence which will be submitted once it is available and has been approved through the Boroughs' democratic processes. The Boroughs request that the new Government, if it decides to pursue the draft NPS, take this supplementary response into account.
- 5.30. In the interim, the Boroughs note that the draft Air Quality Plan does not provide for expansion at Heathrow. However, it suggests that Greater London will not comply with AQ limits in

⁶³ Updated Air Quality Re-Analysis Report, para 6.3.12

⁶⁴ Updated Air Quality Re-Analysis Report, para 4.2.3

⁶⁵ *ibid*

⁶⁶ Draft NPS, para 5.31

⁶⁷ Statement of Facts and Grounds

⁶⁸ Letter from Harrison Grant to DfT dated 8 May 2017 and DfT's response dated 12 May 2017

2030.⁶⁹ As such, there is no evidence that expansion at Heathrow can comply with legal limits on air quality.

Conclusion

5.31. As there is no current evidence that the condition can be met, the Heathrow scheme option should be rejected now.

Noise supporting measures

It is tough on noise⁷⁰

5.32. Adverse noise impacts are known to have significant health impacts that can lead to a loss of healthy years, cognitive impairment for children, and premature deaths. Aviation noise in particular is acknowledged to be more annoying and harmful than other traffic related sources. The NPS should therefore go further than the current policies for assessing noise associated with new development.

5.33. However, the draft NPS sets no specific supporting measures to ensure that appropriate noise mitigation will be delivered, does not assess the level of mitigation required, does not assess what mitigation measures are required in order to achieve the required level of mitigation and does not assess the costs of any such measures. Instead, the draft NPS leaves the consideration of mitigation measures to a later date:

The Secretary of State will consider whether the mitigation measures put forward by the applicant following consultation are acceptable. The noise mitigation measures should ensure that the number of people significantly affected by aircraft noise is limited and, where possible, reduced.⁷¹

5.34. The only mitigation measures relating to noise are the public pledges by Heathrow found in the Community Compensation chapter of the draft NPS but which are not secured by the draft NPS:

In addition to statutory requirements, Heathrow Airport has publicly committed to a community compensation package comprising a number of more generous offers:

- *Following a third party assessment, to provide full acoustic insulation for residential property within the full 60dB LAeq noise contour of an expanded airport;*
- *Following a third party assessment, to provide a contribution of up to £3,000 for acoustic insulation for residential properties within the full*

⁶⁹ DEFRA, Draft UK Air Quality Plan for tackling nitrogen dioxide, May 2017 (consultation document), Annex L, Table 1

⁷⁰ Airports the Government's View, Summary document.

⁷¹ Draft NPS, para 5.57

*single mode easterly and westerly 57dB LAeq (16hr) or the full 55dB Lden noise contours of an expanded airport, whichever is the bigger;*⁷²

- 5.35. None of these measures (nor any other measures that may be proposed) have been assessed by the AoS. It is not therefore known whether they would offset the noise impacts. The suggested acoustic insulation will, in any event, be irrelevant to any outside noise impact (see below at paragraphs 5.69-5.70).
- 5.36. Despite this, the draft NPS seeks primacy over all other noise policies which apply to development more generally:

*However, the Airports NPS must be used as the primary policy on noise when considering the Heathrow Northwest Runway scheme, and has primacy over other wider noise policy sources.*⁷³

Unable to assess the community impact

- 5.37. The Government's assertion that the draft NPS is "tough on noise" is impossible for consultees to assess and therefore impossible for the Government to justify.
- 5.38. No flightpaths were provided in the draft NPS or as part of the consultation material. To know where the noise will impact, it is necessary to know where the aircraft will be. Consultees have not been provided with the information to allow them to understand how they will be individually impacted by the serious problem of air craft noise.
- 5.39. The third runway will mean around a 50% increase in air transport movements within the London airspace – the Boroughs can estimate that thousands more people will be impacted by aircraft noise to a significant degree. For those newly overflown, the Government has no assessment framework for determining the impact and evaluating the harm this will cause.
- 5.40. The Government has no policy on how this huge increase in flight numbers is to be accommodated in terms of the utilisation of the airspace around Heathrow. There is no Government policy as to whether future flights should be concentrated along a single flight path or the noise burden be spread by the use of multiple concentrated routes. This has proved highly controversial at all locations where new concentrated routes have been introduced or dispersed routes have been trialled. It is not good enough for the Government to simply kick this issue into the long grass and hope it can be dealt with as a separate matter under its air space modernisation for which it currently has no published firm timetable in terms of delivery.

Outdated noise metrics

- 5.41. As the expansion of Heathrow has been set under the soon to be out-dated Aviation Policy Framework, the draft NPS (and the AoS) uses the average mode 57decibel contour (57dB) to define the onset of significant community annoyance. Recent evidence from the Government's

⁷² Draft NPS, para 5.234

⁷³ Draft NPS, para 5.66

own research (SoNA14⁷⁴, released as part of the parallel consultation on Airspace Change), confirms that people are now annoyed at lower levels of noise than they were 35+ years ago; at 54dB LAeq 16hr rather than 57dB LAeq 16hr. The results of SoNA 14 align quite well with the findings of the 2007 ANASE study which the then Government decided to discredit.

- 5.42. Whilst the sensitivity test uses a noise metric of 54dB LAeq 16hr, this only relates to specific impacts on people and schools. No other impacts are assessed at this lower threshold, for instance economic impacts. This assessment should be done to understand properly the noise impacts.
- 5.43. In addition, the Government are suggesting in its concurrent air space modernisation consultation that a level of 51dB (average mode contour) should be used as the lowest observable effect level for aviation noise.⁷⁵ Consultees are unable to assess whether supporting measures are in any way effective when the very basis of the noise metrics is out of kilter with the latest evidence. It is wholly unfair on consultees to expect a response when flight paths (even likely flightpaths⁷⁶) are not revealed, and out-dated (and therefore useless) decibel contours are relied on.

Unable to assess if the harm is being addressed

- 5.44. No documents have been provided in support of how the Government has calculated its noise benefits and harm using the "WebTAG" spreadsheet tool. There is currently no way for consultees to understand what weight the Government has placed on noise harm when assessing the three potentially viable options for airport expansion. Without understanding the basis for the calculation of harm there is no methodology for assessing whether the noise supporting measures are in any way effective.

Suggested noise mitigation measures

- 5.45. The draft NPS, para 5.57 states noise mitigation measures should ensure that the number of people significantly affected by aircraft noise is limited and where possible reduced. Given the evidence below, it is clear this principle cannot be met.

(i) Establishment of a noise envelope

- 5.46. No specific proposals for a noise envelope have been put forward. The current airport is limited by an Air Transport Movements ("ATM") cap which acts as a noise envelope of sorts and creates a form of barrier to control environmental harm. This was imposed as a planning condition as part of the Terminal 5 Planning Inquiry. Given this was set as a condition to

⁷⁴ CAA, Survey of noise attitudes 2014: Aircraft, CAP 1506

⁷⁵ Airspace change consultation

⁷⁶ Indicative flightpaths were produced during the AC consultation but were not reproduced in the draft NPS. These indicative flightpaths are not adequate to inform consultees on whether or not they would be affected.

ensure no further environmental damage was caused, it is difficult to assess what value local communities can give to a new noise envelope which exceeds the last one.

- 5.47. Given that there are no details for the noise envelope, there is no information about how this would operate in practice and what levels of noise improvements could be gained for the local communities. Community experience with night time restrictions for Heathrow, Gatwick and Stansted shows that, in fact, the noise envelope in these cases has been set deliberately with plenty of headroom and thus simply permits business as usual.
- 5.48. The AC suggested that a noise envelope could be set to ensure the total number of people affected by noise would be no higher than today. This is not an acceptable objective for communities who require an improvement on the current unacceptable levels of noise, and a reduction of the impact of noise, not its indefinite perpetuation. The Boroughs believe any new airport policy or NPS should be ambitious for improving the quality of peoples' lives – not simply maintaining already intolerable noise nuisance.
- 5.49. It should be noted that the draft NPS suggests that the setting of the noise envelope could be shaped by the expert advice of an independent third party, for example the Independent Commission on Civil Aviation Noise ("ICCAN").⁷⁷ Yet despite the clear recommendations of the AC for an independent aviation regulator, this proposal has now been watered down. Instead Government is proposing, via a separate consultation process, the Airspace Change consultation, an ICCAN. ICCAN itself is to be part of the Civil Aviation Authority ("CAA") and, as such, will have to operate within the advice and instructions that it is given by Government. In reality ICCAN, as proposed, will have no teeth and without powers of enforcement will be unable to exercise effective leadership or demonstrate impartiality to the communities affected.

(ii) Respite

- 5.50. There are a number of elements which need to be taken into account in any discussions over the attempted provision of any respite, i.e. an absence of noise, in the context of Heathrow.

(iii) Predictability

- 5.51. This can only be guaranteed if spare capacity is to be mandated. Currently the Government has no proposals for ensuring spare capacity is retained. Without spare capacity to ensure resilience the claim to be able to provide predictable respite is hollow. This is already clear from current operations at Heathrow where the airport has deliberately chosen to operate at capacity levels which provide no operational resilience. As the airport approaches capacity, any delays have knock on consequences for airport performance and issues such as respite are immediately sacrificed.

⁷⁷ Draft NPS, para 5.59

(iv) Realistic Modelling

- 5.52. It is envisaged by the work done by Heathrow, and accepted by the AC, that respite may be possible with the use of multiple flight paths. This is against current Government aviation policy, under which the expansion of Heathrow has been supported, and may not be feasible within an intensively used airspace such as that around Heathrow.
- 5.53. The respite that the Secretary of State refers to as "*something local communities value*" is already acknowledged as being reduced in terms of the hours of relative peace that communities currently experience from overflying aircraft.⁷⁸ Airport expansion with 50% more flights and less respite can hardly be described as a world class mitigation measure in terms of a supporting measure for reducing noise.
- 5.54. The Government's view that reduced guaranteed respite is acceptable has not been subject to any assessment. No evidence has been presented to demonstrate and confirm that predicted periods of respites for a shorter part of the day are, either as a noise reduction measure or a tangible health benefit, in any terms more acceptable than a day with 8 hours respite albeit that may be subject to occasional interruption.
- 5.55. The AC analysis demonstrated that the adoption of the proposed respite option for a third runway would result in more people being newly overflowed than would be the case with other options explored. The Government has not undertaken any assessment as to the health and quality of life effects of the substantial number of communities newly overflowed.
- 5.56. The introduction of less respite is contrary to the Government's statement at para 5.57 of the draft NPS. In terms of para 5.67 of the draft NPS this means that development consent should not be granted, and since the draft NPS is location specific it should not be designated.

(v) Night Flight Ban (on scheduled night flights) for 6 and half hours between 11.00pm and 07.00am

- 5.57. A night period flight curfew is supported due to the detrimental health impacts caused by sleep disturbance and the proposed ban should be for the full eight-hour night period as supported in the AC's report 'Health Effects of Noise', which demonstrated a dramatic reduction in monetised ill health effects around Heathrow from the introduction of a full night ban (23:00 – 07:00).⁷⁹
- 5.58. To adopt an eight-hour night curfew would bring quantifiable health benefits and improved quality of life to several thousands of people, in particular the elderly, shift workers, children and those with poor health who are all thought to be at risk from sleep disturbance by noise.⁸⁰
- 5.59. The communities around Heathrow are already significantly impacted by flights in the night period. The AC suggested the hours of 11.30pm to 6am for a night ban, Heathrow Airport has now suggested 11.00pm to 05.30am. In real terms, as discussed above, neither are sufficient.

⁷⁸ Draft NPS, para 5.60

⁷⁹ AC, 'Health Effects of Noise', Table 14.1, monetised sleep disturbance

⁸⁰ AC, 'Health Effects of Noise' page 5, para 2.2

A full eight-hour ban would represent a balanced approach in terms of allowing a substantial population to obtain a good night's sleep for the sacrifice of a few early morning scheduled arrivals. Not adopting this would be to knowingly compromise the health and quality of life of the local communities.

- 5.60. However, as discussed previously, there is no provision within the draft NPS which secures this important noise supporting measure, despite the fact that this was how the draft NPS was promoted by Government. The Government has supported expansion at Heathrow with no demonstration as to how it will secure and deliver key noise improvements.

Carbon emissions supporting measures

- 5.61. The Committee on Climate Change ("CCC") has published a letter setting out its concerns about how the DfT has presented the implications for greenhouse-gas emissions in its Further review and Sensitivities report.⁸¹ Existing UK legislation commits the Government to cutting CO₂ levels by 80% of 1990 levels by 2050. To meet this target, the planning assumption for emissions from aviation is that they would need to be at the same level in 2050 as they were in 2005 (without the use of international credits).
- 5.62. The DfT's business case puts forward a central case that has emissions in 2050 that are approximately 15% higher than the planning assumption. The CCC notes that it is not possible to assess whether the investment makes sense when emissions conform to the planning assumption. The CCC also notes that if emissions from aviation are now expected to be higher than 2005 levels then there would need to be higher reductions in other sectors and it is not clear that this is deliverable.
- 5.63. The Government has therefore failed to demonstrate that the Heathrow scheme is deliverable and economic consistently with meeting emissions target.

Compensation for local communities

- 5.64. Published on the day of the announcement of the Heathrow preferred location, "Airports: the Government View, Summary Document, October 2016" listed a number of community measures under the heading:

How we will protect local communities and the environment.

Up to £2.6 billion of noise mitigation and community compensation which would give Heathrow a world class package of measures for environmental and community mitigation.⁸²

- 5.65. Yet the draft NPS does not include any assessment as to whether any of the measures will compensate the communities for their loss of their family homes and network of communities, no assessment of whether the mitigation suggested is in anyway effective or can be delivered,

⁸¹ Available at <https://www.theccc.org.uk/wp-content/uploads/2016/11/CCC-letter-to-Rt-Hon-Greg-Clark-on-UK-airport-expansion-November-2016.pdf>

⁸² "Airports: the Government View, Summary Document, October 2016, page 10

no explanation as to the basis upon which the assurances can be relied on or enforced when government promises have been broken every step of the way in relation to the future of Heathrow. No assessment has been made to demonstrate that the compensation or mitigation provided outweighs the harm caused. Some of the community compensation proposals are simply "promises" or "pledges" given by Heathrow Airport Ltd. It is important to note that these are simply promises and are not secured by the draft NPS. Without this it makes them meaningless and unenforceable.

Inadequate compensation/mitigation

Property compensation

- 5.66. The reality is that communities will be destroyed. This is not just the loss of 1,000 buildings; it is the erasure of whole communities and their networks of family and friends. Nowhere has been identified for these communities to relocate to; a 25% uplift on top of the standard compulsory purchase has not been tested or assessed in relation to the need to find suitable alternative housing. This problem has been raised by the Boroughs at every stage of the examination of expansion at Heathrow and it has never been addressed, demonstrating breath-taking contempt for the people and communities to whom the Government promised security from development. This is highlighted in the statement of Councillor Puddifoot submitted as part of our claim⁸³ and submitted as part of this consultation response.
- 5.67. The properties that will be lost in the Heathrow Villages are generally good quality family houses with gardens and such properties are likely to be difficult to find within the locality at a comparable price. There is no evidence to show that an uplift of 25% will provide sufficient net capital for those who have lost their homes to buy comparable properties within the locality. This aspect has never been afforded any detailed scrutiny by either Heathrow Airport or the AC or now by the Government.
- 5.68. The resulting impacts on local communities, including the destruction and loss of community cohesion, have not been adequately appraised. No independent expert evaluation has been made as to the levels of compensation required to ensure the people are adequately compensated and will be able to find acceptable places to live in an area of their choice.

Provision of noise insulation

- 5.69. Noise insulation cannot mitigate the detrimental health impacts and the impacts on children's learning that this expansion would bring to thousands. Insulation does not provide the answer to the destruction of peace in open spaces, the enjoyment of gardens and parks, the school playgrounds (where currently children have to sit in outdoor "igloos" to attempt to escape the constant noise). Much of what is proposed would take 20 years to materialise – more than the length of a childhood.

⁸³ Witness statement of Councillor Puddifoot dated 8 December 2016, paras 132-138 and 144-152

5.70. Further, now the Government has now released new data in regards to community response to noise, which demonstrates that harm is caused at lower noise exposure levels than those set by the current, soon to be out-dated, Government policy under which the decision to favour Heathrow NWR has been taken, it is difficult to see how the proposed compensation package (whatever that may be) is even adequate let alone "world class" given the data on which it is based is now out of date.

Community compensation fund

5.71. The figure suggested by the AC of £50m in terms of a community fund was simply based upon a 50p per passenger noise levy on the grounds that this was a charge which should not place an unaffordable burden on passengers or freight users of a particular airport. This is not a comprehensive assessment of the harm caused, the associated costs identified and the compensation and mitigations accordingly paid. The amount of funding to be sought for community compensation should be based on the mitigation required to address the harm due to airport expansion, which still needs to be evaluated.

5.72. Whilst the promise to provide a community compensation fund is welcome, it is meaningless without any evidence to support the principle that the funds raised will mitigate the harm caused across the substantial area impacted by the expansion of Heathrow. It has not been identified in the draft NPS on what grounds the Government intends to assess its own commitment to the development of a community compensation fund proportionate to the environmental harm caused by expansion of the airport.

Ruling out a fourth runway - loss of trust

5.73. In 2010, the communities around Heathrow were given a cast iron promise that there would never be an expansion at Heathrow. The environmental damage remains with this proposal, in fact the runway is now longer, capable of supporting the largest aircraft and the land take is more substantial.

5.74. The loss of trust in Government in the local communities is serious and unquantifiable. There is no comfort in the supposed ruling out of a fourth runway given that there has already been a ruling out of a third runway in policy terms (no ifs no buts) and this has now been completely overturned.

6. **Question 6: *The Government has set out a number of planning requirements that a Heathrow Northwest Runway scheme must meet in order to operate. Please tell us your views. Are there any other requirements the Government should set out?***

- 6.1. The NPS may impose planning requirements in relation to a development consent if they are necessary, relevant to planning, relevant to the development to be consented, enforceable, precise, and reasonable in all other respects.⁸⁴
- 6.2. The AC published a series of conditions that it viewed as essential if the Heathrow Northwest runway were to be supported. These conditions have been downgraded or ignored.
- 6.3. The planning requirements within the draft NPS are weak and secure nothing. The AC recommendation that Heathrow should be legally bound to deliver on promises it makes with independent monitoring of performance against these commitments is totally missing, there are no legal limits set for performance on noise, the planning requirements in the draft NPS are weak and give no comfort that any community protection can be secured. Examples are given below.

Noise

- 6.4. The AC envisioned the creation of an independent aviation noise authority with full statutory duties including consultee status in terms of advice on flightpaths, operating procedures and compensation and acting as mediator in disputes. This has been watered down to be an offshoot of the CAA and will not be secured through the Airports NPS process. This will not re-build the community trust the AC recognised as severely damaged.
- 6.5. Proposed measures that could be considered in terms of mitigation noise are referred to, but none of them have been assessed in terms of their effectiveness, all the communities know for certain is to expect a reduction in the hours they currently receive respite from aircraft noise, none of the specific mitigations are secured in the decision-making requirements of the draft NPS.
- 6.6. The Government states they expect a ban on scheduled night flights for six and a half hours, the duration is not specified and currently the centre of a dispute between the AC suggested times and the commercial interests and demands of the aviation industry. The communities and the health benefits of gaining a full night's sleep are completely forgotten. The ban on night flights will not be secured through the draft NPS.
- 6.7. Specific noise insulation criteria and property compensation are referred to in the text, but no timescales are given for the implementation of the schemes and the criteria are not tied into the decision-making requirements of the draft NPS.
- 6.8. The vision of the AC for a new Community Engagement Board with real influence over airport operations and the spending of compensation under an independent chair has been watered down to the point of non-existence. The draft NPS decision making requirements secure nothing apart from a requirement for the proposed applicant to engage constructively. There

⁸⁴ NPPF, para 206

are no measures that could be effectively applied to be able to monitor that this requirement has been successfully undertaken. It is meaningless.

Air quality

- 6.9. Given the Government's attempts throughout the draft NPS to state that air quality compliance will be met, in direct contrast to the Government's own technical documentation stating the contrary, there is no confidence that the draft NPS will actually ensure the process secures air quality compliance.
- 6.10. Key pledges which have implications for reducing air pollution such as no more airport-related road traffic than today are watered down to a meaningless; "*Heathrow should strive to meet its public pledge to have landside airport related traffic no greater than today*". The requirement to ensure such pledges were evaluated and monitored was a clear recommendation of the EAC.⁸⁵
- 6.11. Whilst stating that a failure to demonstrate the expansion does not affect the UK's ability to comply with legal requirements will result in refusal of development consent, these words are not repeated within the decision-making requirements in the draft NPS.

Surface access

- 6.12. Securing sufficient infrastructure and the implementation of relevant mitigation measures to ensure the pledge of no more airport related road traffic with expansion, is key to working towards securing pollution reductions. Promises on achieving a greater proportion of journeys by public transport by passengers and staff are referred to but the targets are not repeated in the decision-making requirements, instead the requirements for surface access secure nothing.
- 6.13. There is no definition on costs to the taxpayer just a clear statement that development consent will not be withheld on surface access grounds.⁸⁶ There is no basis for this statement, it is unclear why it has been included. As the Government has not provided any assessment of how the pledge of no more road traffic will be addressed, monitored or enforced this statement gives little confidence that Heathrow would be held to account, or any failure effectively penalised.

⁸⁵ EAC, "The Airports Commission Report Follow-up: Carbon Emissions, Air Quality and Noise", February 2017, paras 44-45

⁸⁶ Draft NPS, para 5.21

7. Question 7: *The Appraisal of Sustainability sets out the Government's assessment of the Heathrow Northwest Runway scheme, and considers alternatives. Please tell us your views.*

General

- 7.1. The draft NPS needs to be accompanied by a SEA. The requirements of SEA are well established through regulations, the parent EU directive and case law.
- 7.2. A properly conducted SEA requires decision makers to consider environmental outcomes before reaching any decision and not simply to pursue economic improvements at all costs.
- 7.3. This AoS does not conform to the SEA Regulations. There are two distinct failures:
 - A failure to consider relevant plans, policies and programmes
 - A failure of the AoS and NPS to properly set out the measures to offset significant effects

What is being Assessed?

- 7.4. This AoS does not appear to assess the draft NPS. There is a disconnect between what the AoS is assessing and the contents of the draft NPS. Thus, the AoS considers a red line boundary not identified in the draft NPS, mitigation put forward by 'applicants' for schemes is not specified in the draft NPS and the AoS considers recommendations by the AC which form no part of the draft NPS. The AoS considers material that is not in the draft NPS.

Strategic Environmental Assessment - Failure to Consider Other Plans and Programmes

- 7.5. The draft NPS purports to be a high-level document. However, the accompanying AoS clearly appraises a particular scheme presented by Heathrow Airport or the AC. Heathrow Airport has presented a specific masterplan which shows what land take is likely to be required for airport expansion.
- 7.6. In turn the draft NPS alludes to and has tentative support for the masterplan along with the unenforceable public commitments made by Heathrow Airport for the mitigation measures to be delivered as part of their proposals.
- 7.7. The illustrative masterplan demonstrates that there will be definite and unavoidable direct impacts on existing land uses and allocations already defined in other plans and programmes at a local level. Airport expansion will result in a new development in the London Borough of Hillingdon, crossing differing authority boundaries and will require land take not set aside or safeguarded. However, the AoS appears to ignore the wider implications of airport expansion at a local level.

7.8. The draft NPS is clearly not simply a high-level document providing a range of options for implementation to be determined at a later date. The draft NPS defines a distinct proposal of which there are clear and known consequences.

7.9. Schedule 1 of the SEA Regulations state what is required to determine the significant effects of a plan or programme which requires regard to be had to:

the degree to which the plan or programme influences other plans and programmes including those in a hierarchy⁸⁷

7.10. The AoS has only considered plans, programmes or policies set at national level or above and there is no regard for local or regional plans and programmes, themselves subject to SEA due to their likely significant effects. Consequently, the draft NPS puts in place a development framework which has serious implications for other plans and programmes and as a result all those implications should be part of the environmental assessment.

7.11. An example is the draft NPS where it states:

During any pre-application discussions with the applicant, the local planning authority should identify any concerns it has about the impacts of the application on land use, having regard to the development plan and relevant applications and including, where relevant, whether it agrees with any independent assessment that the land is surplus to requirements.⁸⁸

7.12. This is wrong. As a matter of law, the AoS for the draft NPS is required to determine the implications for land use and provide solutions where it identifies problems. It is not for a local authority later on to make good on this omission.

7.13. This is illustrative of a fundamental failure to grasp the purpose of an appraisal of sustainability, which is to appraise the plan and its effects so that informed decisions can be taken.

Example 1 - West London Waste Plan

7.14. The preferred option will result in the demolition and loss of the Lakeside EFW Plant in Colnbrook, Slough. The Lakeside EFW Plant provides a sustainable waste management process for a number of bodies and organisations. The Lakeside EFW Plant:

- currently processes 450,000 tonnes a year of non-recyclable household and commercial waste from local businesses - including some 45,000 tonnes from Heathrow itself in 2016 - and a number of local authorities including Slough, Reading, Wokingham, Bracknell and the West London Waste Authority.
- incorporates a specialised high temperature incinerator, one of only four in the UK, which treats waste from 17 NHS Trusts, listed in Appendix 2, 500 GP surgeries and other medical establishments across London and the Home Counties

⁸⁷ SEA Regulations, Schedule 1, para 1(a)

⁸⁸ Draft NPS, para 5.112

- generates 37MW of sustainable power – enough to provide electricity to 56,000 homes (a town the size of Slough) – and has the capacity to deal with the local volume of non-recyclable waste.

7.15. Amongst the Authorities cited is the West London Waste Authority which Hillingdon and Richmond are part of. There is a statutory duty for the waste authorities to divert waste away from landfill and the Lakeside Plan helps the Waste Authority, and Hillingdon and Richmond to achieve this. The plan states:

In addition the WLWA has a contract to supply a minimum annual tonnage of 25,000 tonnes to Lakeside EfW plant until 2014/15 when the tonnage increases to 45,000 tonnes. The following year (2015/16) the tonnage increases to 90,000 tonnes and remains at that level until the final year of the contract in 2034/5.⁸⁹

7.16. Clearly the Lakeside EFW Plant plays a huge role in sustainable waste management, waste planning and the production of electricity.

7.17. Yet, despite the implied 'high level' nature of the draft NPS, its decision to support a preferred option at Heathrow will see the Lakeside EFW Plant demolished. There is a very detailed and harmful consequence as a result of the 'high level' policy. The AoS Resources and Waste appraisal states:

*The proposed LHR-NWR scheme will involve the demolition and **potential** re-provisioning of the Lakeside EfW Plant.⁹⁰*

7.18. The AoS recognises in very broad terms the impacts of the facility:

There are also potential planning and business continuity issues for waste authorities to be considered in the re-provisioning of the EfW Plant; for example, increased transportation costs and alternative routing for some authorities' waste could be required.⁹¹

7.19. The recognition of the harm results in the following conclusion:

In combination, the demolition and re-provisioning of the plant would likely greatly exacerbate the negative environmental, social and economic impacts from waste associated with the LHR-NWR scheme.⁹²

7.20. Having highlighted a problem, the AoS makes no attempt to assess the wider impacts, nor identify where a 'potential' alternative location could be. Nor does the AoS assess the implications for regional waste planning or the ramifications for the loss. Instead, a further assessment is excused:

The AoS assessment has been limited by the lack of:

...

⁸⁹ West London Waste Plan, July 2015, 4.2.10

⁹⁰ AoS, Appendix A-10 Resources and Waste, para 10.9.11

⁹¹ AoS, Appendix A-10 Resources and Waste, para 10.9.14

⁹² AoS, Appendix A-10 Resources and Waste, para 10.9.13

- *details on the impacts associated with, and feasibility of, the AC and the promoter's proposal to re-provision the existing Lakeside EFW facility.*⁹³

- 7.21. The failure to assess the implications of the loss of the Lakeside EFW Plant cannot justifiably be written off because of a lack of effort. This is simply unacceptable, and the affected Boroughs would want reassurance that the full impacts, including costs, are fully mitigated without impact on local tax payers. The implications for the loss of the facility have far reaching connotations.
- 7.22. The SEA Regulations require impacts on other plans and programmes to be assessed. The loss of the facility will have likely significant consequences for a range of bodies and environmental matters, and any like for like re-provision will be a schedule 1 development under the EIA Regulations and also likely to have significant environmental effects.
- 7.23. The decision to adopt the NPS without assessing the impacts is in direct conflict with the SEA Regulations and the Government procedures laid down to every other planning authority which sets a framework for development.

Example 2 - Open Space Strategy

- 7.24. The indicative Masterplan annexed to the draft NPS shows a change in land use north of the existing airport. The indicative masterplan is not secured as part of the draft NPS and the mitigation therefore remains unknown. Regardless of the indicative masterplan, there are likely significant effects relating to open space provision for thousands of people arising from the preferred option that are unavoidable and should be assessed.
- 7.25. It is recognised that in the south of Hillingdon, there is a deficiency of unrestricted open space. Open space is categorised in to range of scales with Metropolitan and District levels spaces being of more than local importance. District open spaces should be within 1.2km of houses and Metropolitan 3.2km of houses. Hillingdon's open space strategy acknowledges deficiencies:

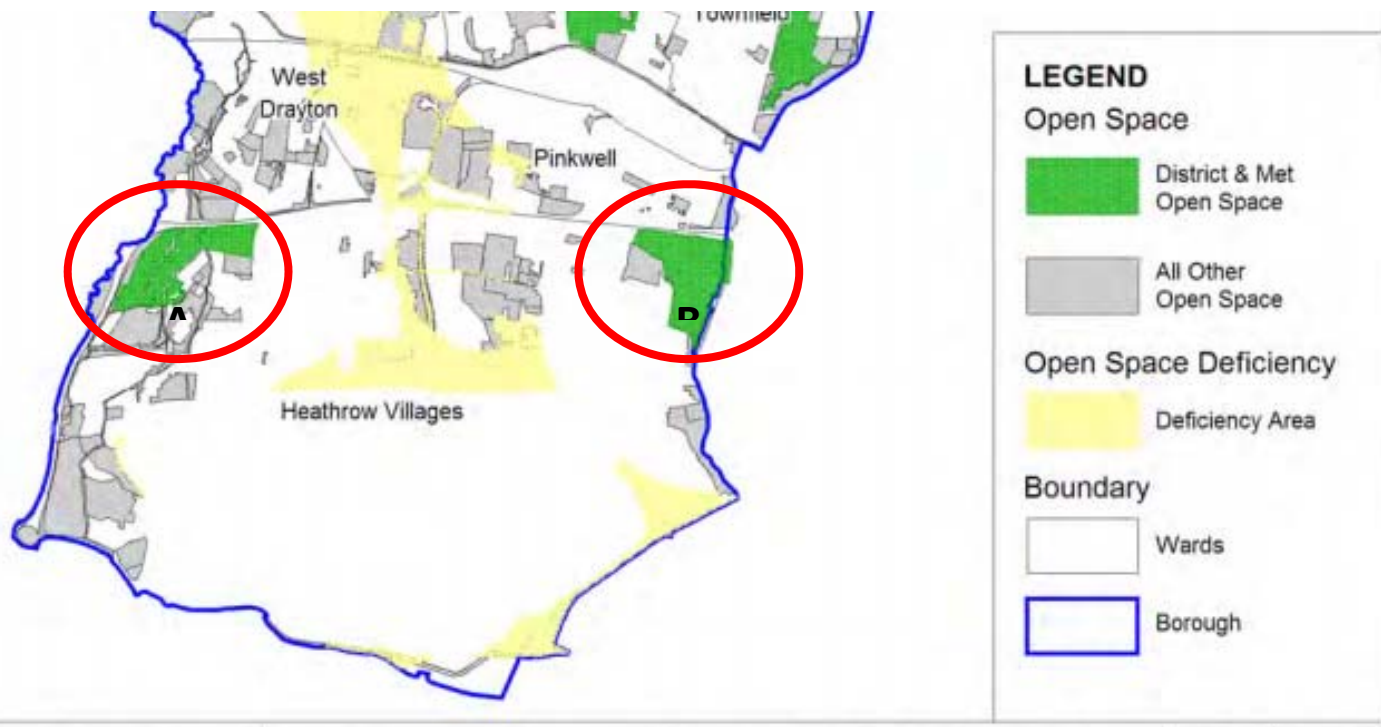
The main areas of deficiency in access to District (and higher) level spaces located in an band running from Uxbridge South and Brunel Wards south into Yiewsley, West Drayton and Heathrow Villages (wards) with a "spur" running into Barnhill and Charville Wards.

*A large section of central and southern Hillingdon including the Wards of Brunel, Yiewsley, West Drayton, Pinkwell, Botwell, Charville and parts of Townfield, Yeading, Barnhill, Hillingdon East, South Ruislip and Hillingdon Villages have no access to Metropolitan level spaces.*⁹⁴

⁹³ AoS, Appendix A-10 Resources and Waste, page 24, Question 30 table, section on "Assumptions and Limitations"

⁹⁴ London Borough of Hillingdon, Open Space Strategy 2011-2026; section 4.2.1, under heading "All Open Space"

7.26. The map below shows the deficiency in open space:



7.27. The two parks highlighted, Prospect Park (A) and Cranford Park (B) represent the limited offering for the communities immediately north of the runway.

7.28. The preferred expansion option will dissect Prospect Park (A) and at least halve its provision. Cranford Park (B) will be at the end of an operational runway and its use will be significantly devalued or negated entirely.

7.29. The loss of these two parks will have likely significant effects:

- (i) The loss of useable open space will dramatically increase the area of deficiency and will result in thousands of people with less or no access. This will have a significant detriment to the quality of life.
- (ii) The NPS will clearly have a negative impact on the ability of Hillingdon to deliver its open space plans and therefore is contrary to the Hillingdon's Local Plan, adopted and emerging.

7.30. The draft NPS does not identify any replacement open space for the affected population. The amenity loss will therefore be significant, permanent and uncompensated by HAL. The draft NPS has been made without regard to the Boroughs' duty to provide open space for their residents.

7.31. The poor assessment is made worse by an entirely irresponsible approach to some mitigation. The AoS acknowledges:

The loss of the War Memorial Recreation Ground in Sipson, will lead to a negative impact on QOL [quality of life] during construction. Though, reprovision to an

area to be agreed in consultation with local residents and stakeholders will result in a positive impact on QOL.⁹⁵

- 7.32. No solution has been identified. The remaining properties in Sipson and Harmondsworth will be at the end of a runway. No useable open space could be reasonably expected. The reliance on as yet unidentified and unassessed mitigation is contrary to planning proposals and would be widely condemned in the development of any other plans or programmes.
- 7.33. The relationship with Hillingdon's plans and programmes will likely be significant and require assessing before it could be concluded that the draft NPS is supporting a proposal that can be delivered.

Example 3 - Housing Allocations

Hillingdon

- 7.34. Hillingdon's recently completed Housing Market Assessment indicates an overall housing need of 36,800 units over the 22-year period 2014 - 2036. This equates to the delivery of just over 1,600 new homes per year. Assessing the additional needs resulting from airport expansion is a difficult task and would need an updated Housing Market Assessment and infrastructure needs assessment.

- 7.35. The AoS provides a broad commentary about the impacts on housing:

The potential for additional demand for housing and other community infrastructure may be associated directly with employees of the airport, but also from increased housing demand associated with economic activity stimulated by the development and operation of the airport.⁹⁶

- 7.36. There is no detailed appraisal provided, however, it is clear there will be direct unavoidable impacts given knowledge of the location for the preferred option. It is therefore essential to understand the implications in far more detail than set out in the AoS.
- 7.37. In order to assess these at this stage, it is necessary to make some assumptions around the population increase, resulting from in-migration to fill new jobs. As an example, Hillingdon could assume that 66% (46,000) of the alleged 70,000 new posts would be filled through in migration and one third of these new employees (15,000 individuals) might choose to live in Hillingdon.
- 7.38. Given the shortage of exiting housing stock, it's reasonable to assume that 15,000 new homes would be required to meet this need. This is in addition to those homes already destroyed by the runway construction, estimated at 1072.
- 7.39. The ability to accommodate this level of additional growth would conflict with the aims of the Hillingdon's local plan. It is extremely likely that Hillingdon would struggle to meet the additional need given it is a growth not planned for. This has implications for education,

⁹⁵ AoS, Appendix A-2 Quality of Life, Table 2.7, page 43, section on "Housing and Community"

⁹⁶ AoS, Appendix A-1 Community, para 1.9.5

health, transportation and many other statutory functions of the Council. In part, this is recognised in the AoS:

Undeveloped land in the areas surrounding Heathrow is highly constrained by the London Green Belt and other designations. Increases in noise effects may act as an additional constraint to current housing allocations or to future housing proposals, restricting the ability of the affected local authorities to meet housing delivery targets.⁹⁷

and

As is indicated, it is anticipated that the scale of housing required will increase pressures on current local authority plans.⁹⁸

7.40. The failure to properly assess the relationship with the Local Plan and its supporting evidence base would result in likely significant effects. The NPS is putting in place a development framework that fundamentally alters the existing approaches to planning set out in the Local Plan.

Royal Borough of Windsor and Maidenhead

7.41. The emerging Royal Borough of Windsor and Maidenhead Local Plan is accompanied by a Housing Market Assessment which indicates an overall housing need of in excess of 14,000 units in the 25-year period 2018-2033. This equates to a delivery of at least 560 homes per year. However, based on current projections, it is estimated that only 350 additional homes will be delivered each year. There is therefore already a deficit in the Borough's housing supply.

7.42. The AC estimated that at the upper end, 70,400 homes would be required to support expansion at Heathrow. This additional need for housing is 'on top' of any objectively assessed need for housing in the surrounding areas' Local Plans. In addition, around 10,000 people will be displaced by the expansion and will require rehousing. This additional demand will place even greater pressure on the areas accommodating this demand.

7.43. In addition, there will inevitably be increased pressure on required for infrastructure and services to support the additional housing need, including schools and health facilities.

7.44. Expansion at Heathrow will also create significant demands on the need for land to accommodate commercial and infrastructure requirements; notably including infrastructure such as road widening, tunnelling, road re-routing & parking. However, it is not clear how much land will be required to meet this demand as the requirements for the proposed airport expansion and anticipated associated growth are not fully documented, assessed or considered.

⁹⁷ AoS, Appendix A-1 Community, para 1.9.25

⁹⁸ AoS, Appendix A-1 Community, page 31, Question 2 table, section on "Magnitude and Spatial Extent, incl. Transboundary"

7.45. As will be clear, expansion at Heathrow will place significant pressure on the available land in and around the airport. In particular, in order to meet this additional need, it is likely that RBWM and others will have to release land from the Green Belt. There has been no assessment of how expansion of Heathrow will impact upon the surrounding boroughs' ability to comply to provide for their objectively assessed housing need in compliance with their local plans nor of the impact upon the surrounding boroughs' spatial strategies.

Example 4 - Supporting Growth

7.46. More general than the housing example above is the question around how the alleged growth triggered by the draft NPS can be accommodated.

7.47. The AoS states:

There is a potentially negative secondary impact of the Northwest Runway generating demand for an additional 4400 homes per year to be constructed. Provision of additional housing is likely to require support by the provision of additional community facilities, including schools, health centres, primary care centres, and additional parks and open spaces. Assuming these additional facilities are sufficient to provide for the additional households, they are likely to have a neutral impact on the QoL [Quality of Life].⁹⁹

7.48. This is a hugely irresponsible approach. Nowhere in the SEA Regulations does it allow for assumptions to be made about managing significant environmental effects.

7.49. It is not clear how the Local Planning Authorities will be able to deliver the necessary housing, what impacts this will have on open space and other amenities. It is not clear how lost business and hotel uses will be reprovided for, let alone find capacity within the existing infrastructure for the additional growth.

7.50. The current development plans for Hillingdon do not allow for Heathrow expansion and there is nothing to suggest that there is anywhere near enough capacity within the communities and environment to accommodate an already highly saturated area.

7.51. The draft NPS is inward looking, myopic and only interested in Heathrow airport. There is no consideration of its relationship with other plans and programmes, and no thought as to the highly destructive planning framework that will be felt across the whole of Hillingdon.

No Assessment of the NPS

7.52. The AoS is required by regulation. It is an assessment of the likely environmental effects of a plan or programme. The SEA Regulations require that:

The report shall identify, describe and evaluate the likely significant effects on the environment of —

⁹⁹ AoS, Appendix A-2 Quality of Life, para 1.9.9

(a) implementing the plan or programme;¹⁰⁰

7.53. The AoS should be directly related to the draft NPS and its policy aims, and the type of development that will most likely be delivered as a consequence.

7.54. Schedule 2 of the SEA Regulations provides a further requirement for the environmental report to include:

The measures envisaged to prevent, reduce and as fully as possible offset any significant adverse effects on the environment of implementing the plan or programme.¹⁰¹

7.55. It has been set out elsewhere that there is a muddled relationship between the draft NPS, the AC and the promoter's submissions.

7.56. The AoS falls into the same trap of what to assess. The draft NPS purports to be a high-level document that broadly secures a specific location for a development. As a consequence, there will be obvious, immediate and unavoidable effects that require assessing.

7.57. Separately the promoter has presented an illustrative scheme of what a future development may look like. Importantly this illustrative scheme, although alluded to in the draft NPS, is not formally secured. Essentially, the draft NPS is disconnected from the illustrative scheme, does not require the mitigation presented as part of this scheme, and provides no statutory weight to it. Yet the AoS, in response to the requirements of the SEA Regulations to include the measures to prevent, reduce or offset any significant adverse effects has assessed the illustrative scheme not the draft NPS.

7.58. Example 1 - the Landscape chapter of the AoS states:

This assessment has taken into account the following landscape mitigation proposed by each promoter.¹⁰²

...

... The Illustrative Masterplan combines proposals to mitigate the effects of the proposed development on all water, biodiversity, landscape and recreational features, and the proposals to redevelop the Colne Valley Regional Park.¹⁰³

7.59. Example 2 - the Biodiversity chapter conclusions on mitigation include:

Parcels of land totalling an area of 217ha have been identified by the applicant (assumed to be promoter) as possible compensation sites.¹⁰⁴

An additional requirement for 248.8ha of compensatory habitat which is greater (by 63ha) than the Applicant's recommendation of 217ha, was recommended by

¹⁰⁰ SEA Regulations, Regulation 12(2)

¹⁰¹ SEA Regulations, Schedule 2, para 7

¹⁰² AoS, Appendix A-12 Landscape, para 12.7.1

¹⁰³ AoS, Appendix A-12 Landscape, para 12.7.7

¹⁰⁴ AoS, Appendix A-5 Biodiversity, para 5.7.13

the Airports Commission due to inclusion of surface access impacts and precautionary allowances for potential indirect effects and protected species.¹⁰⁵

- 7.60. These examples highlight mitigation proposals that are entirely absent from the draft NPS. Instead the draft NPS reverts to bland and extremely high-level policy suggestions that do not effectively reflect the level of impact predicted in the AoS; a level of impact that is likely to have significant effects as a consequence of any proposal for a north-west runway at Heathrow.
- 7.61. The AoS should be asking the question of whether the high-level policy requirements in the draft NPS are sufficient to reduce, prevent or offset the likely significant effects. It should not be considering proposals put forward that do not form part of the draft NPS.
- 7.62. Ultimately, the AoS is clearly in breach of the requirements of the SEA Regulations. It is supposed to assess the measures envisaged by the plan or programme under consideration, not suggestions by a third party. Assessing either the AC recommendations, or those put forward by the promoter is to ignore what is failing to be secured in the actual NPS.

Failure to Define Mitigation

- 7.63. The AoS is fundamentally flawed because it doesn't actually assess the draft NPS, it considers indicative schemes presented in another forum. Regardless of that, the AoS still fails to comply with the requirements of the SEA Regulations and does not describe:

The measures envisaged to prevent, reduce and as fully as possible offset any significant adverse effects on the environment of implementing the plan or programme.¹⁰⁶

- 7.64. The AoS provides no comfort that there will be solutions in place to address a range of extremely harmful impacts being advanced in the draft NPS.

Example 1 - Air Quality

- 7.65. The AoS concludes that the three schemes will have likely significant effects on air quality. It does not provide any mitigation to these effects:

... the AC's assessment included consideration of the potential impacts of additional mitigations, proposed by the promoters for the schemes and/or the AC. These mitigations were not formally included in the assessment but an indication (qualitative or semi-quantitative as appropriate) was given of the potential for the mitigation to reduce negative impacts of the scheme on pollutant emissions...¹⁰⁷

- 7.66. The AoS then goes on to present (in Appendix A-8, para 8.10.1) a range of possible mitigation measures that were not reflected in the assessment and then concludes:

¹⁰⁵ AoS, Appendix A-5 Biodiversity, para 5.11.45

¹⁰⁶ SEA Regulations, Schedule 2, para 7

¹⁰⁷ AoS, Appendix A-8 Air Quality, para 8.8.2

These mitigation measures have the potential, to varying degrees, to reduce overall emissions of air pollutants with the schemes, and to reduce the impacts of those emissions on pollutant concentrations.¹⁰⁸

7.67. The AoS does not assess these measures, provides no details on how they would impact air quality, or whether they are sufficient to remove the significant effects. The AoS instead falls back on previous work undertaken by the AC which is not reflected in the draft NPS and which forms no part of the consultation. Even still, the evidence points to residual effects even accounting for the wildly optimistic assumptions on future air quality emissions.

Example 2 - Resources and Waste

7.68. The resources and waste chapter states in relation to the Lakeside EFW Plant:

The AoS assessment has been limited by the lack of:

...

- *details on the impacts associated with, and feasibility of, the AC and the promoter's proposal to re-provision the existing Lakeside EFW facility.¹⁰⁹*

7.69. This example highlights a lack of understanding of the normal planning processes required of Local Authorities. In most instances, land allocations are made in Local Plans without recourse to details from a promoter. The AoS should not immediately assess a specific re-provision for an alternative site.

7.70. In the first instance the AoS should consider the implications of losing the Lakeside EFW Plant. In assessing mitigation measures it should then consider the options, closure or local re-provision. The draft NPS should then detail the necessary policy. Simply ignoring the problem is avoiding a proper assessment.

Example 3 - European sites

7.71. The preferred scheme will have likely significant effects on several European conservation sites. These are sites that should be afforded extreme levels of protection. However, despite identifying effects, there is no attempt to consider what mitigation measures are necessary to offset them:

It is considered likely that a number of potential adverse effects described above will be able to be ruled out through detailed design. However, at this plan stage it is not possible to exclude the possibility of adverse effects give that more detailed project design information, and detailed proposals for mitigation, is not presently available.¹¹⁰

¹⁰⁸ AoS, Appendix A-8 Air Quality, para 8.10.2

¹⁰⁹ AoS, Appendix A-10 Resources and Waste, page 24, Question 30 table, section on "Assumptions and Limitations"

¹¹⁰ Habitats Regulation Assessment, Appendix B, Appropriate Assessment of Short List Alternatives, para 4.8.1

7.72. The air quality assessment concludes:

However, the risks related to compliance with EU Directive limit values, and to a degree, with increased NOx concentrations and nitrogen deposition over sites designated for nature conservation outwith the immediate vicinity of the schemes, are unlikely to be significantly reduced by the mitigation proposed by the AC.¹¹¹

7.73. There has been no attempt to describe the measures required to offset the likely significant effects. This is in clear breach of the requirements of the AoS.

Failure Properly to Consider the Cumulative Impacts

7.74. The AoS also fails to properly identify the cumulative impacts in particular relating to the quality of life and health of thousands of people.

7.75. The AoS acknowledges significant effects resulting from noise impacts (although underplays these through the incorrect use of the onset of community annoyance). It also recognises effects related to poor air quality.

7.76. The AoS fails to recognise the likely significant effects from the loss of open space and impacts this would have on the quality of life. Elsewhere it fails to give sufficient weight to the vulnerability of the communities around the airport.

7.77. Combined, these impacts are likely to be far more damaging than considered; noise, air quality and loss of access to open space do not occur in isolation. The combination of effects is likely to be far more significant than measured in isolation as presented in the AoS.

7.78. As a consequence, the AoS is misrepresenting the likely significant effects of the preferred option. This has significant consequences for an appraisal of alternative options.

¹¹¹ AoS, Appendix A-8 Air Quality, para 8.10.4

8. Question 8: Do you have any additional comments on the draft Airports National Policy Statement or other supporting documents?

- 8.1. The four boroughs and their residents were firmly promised that there would be no 3rd runway. The promise is not even mentioned in the consultation and the accompanying documents and it should be. It is relevant for a number of reasons, not least because the Government is promoting Heathrow on the basis of further assurances and promises which need to be set in the context of its failure to honour past promises. The statement of Councillor Pudiffoot sets out the relevant history, including the promises made by and in relation to Heathrow which have been broken.¹¹²
- 8.2. The Government has stated many times that Heathrow can operate within air quality limits, but there is no evidence to support this. On the contrary, the new draft Air Quality Plan suggest that in 2030 the area around Heathrow will still be in breach of legal Air Quality Limits even without expansion.
- 8.3. The Government's decision of 25 October 2016 to favour Heathrow was based upon further technical work undertaken. The Government had announced in December 2015 that this work would be undertaken and the Boroughs made repeated requests during 2016 to be consulted upon this further work. However, the Government did not publicly consult on this further work and did not discuss it with the Boroughs. By contrast, during the same period the Government was in close and frequent contact with Heathrow. Although they have refused to disclose the contents, the DfT has recently stated (in a response to a request from the Boroughs)¹¹³ that they have 49 documents relating to meetings between the Government and Heathrow Airport Ltd held during the period from January to October 2016 when they refused to consult with the Boroughs. The Government has said that for some of the meetings there was more than one document but has refused to give further detail. In addition, the Government has said, in answer to a request for correspondence between the Government and Heathrow relating to expansion during the same period, that to comply with this request would be unreasonably time consuming. They would need to review relevant documents held by teams in various directorates such as Airport capacity, Aviation, Roads and Rail. They say that "*in airport capacity only there could potentially still be a large amount of material*". In essence, the request is refused because there is too much information about the meetings and correspondence about expansion held with Heathrow. It was after these meetings that the Government decision in favour of Heathrow was made. This may help to explain why the draft NPS and accompanying documents confuse a proposal for airport expansion at Heathrow with government policy on airport expansion in the South East. It may explain why the draft NPS and accompanying documents failed to take into account the experience of Local Planning Authorities including the Boroughs and give insufficient weight to the harm which would be caused by Heathrow's proposal.
- 8.4. The Boroughs requested copies of the Government Risk register in relation to Heathrow. This is a document which would indicate the Government's assessment of the deliverability risks around Heathrow. The Government has said "*this will be a manageable search*" but has also

¹¹² Witness statement of Councillor Puddifoot dated 8 December 2016, paras 7-124

¹¹³ Letter from DfT to Harrison Grant dated 16 May 2017

refused the request without giving reasons. The Boroughs invite the Government to make their assessment of the deliverability of Heathrow public.

- 8.5. The Boroughs requested the reports referred to in para. 4.36 of the consultation document where it says, "*independent financial advisers have undertaken further work for the Government, and agree that all three schemes are financeable without Government support.*" The Government has said that it will be a "*manageable search*" but has refused the request on the basis that it is unreasonable. The Government ought to disclose the reports and allow consultees to comment on them.
- 8.6. The Government consultation document said that further material would be published during the consultation period, but the Boroughs believe none has.
- 8.7. The Government has said that restrictions on publicity during the period of the general election campaign has prevented it from publishing the passenger forecasts, delayed publication of the draft Air Quality Plan but, on the other hand, it has refused to delay the close of the consultation to allow time for the proper consideration of these documents which are central to the questions asked in their consultation. This approach is unfair. If the new Government proceeds with the draft NPS proposal then the consultation should be reopened, and consultees provided with the missing, or withheld, information including that listed below.
- 8.8. The Boroughs believe that the Government has not provided the public with full information in particular:
 - **Updated passenger demand figures** – the updated passenger demand figures form a central part of the Government's case on the need for expansion, in particular the need for a hub airport.
 - **Flightpaths** – in order to understand whether they will be impacted by the expansion at Heathrow, the public need to know where the planes will fly and whether they will be overflown. The Boroughs requested details of the flightpaths on 16 March 2017. On 12 April 2017, the Government referred to indicative flightpaths produced by the AC and said that "*should the Government decide to proceed with a scheme for Heathrow, the airport will put forward detailed flight proposals for consultation with local communities.*"¹¹⁴ In the Boroughs' view indicative flight paths must be part of the draft NPS and consultation, otherwise there can be no informed response.
 - **Technical reports referred to in the draft NPS and supporting documents but which have not been published** – the draft NPS and the supporting documents refer to a number of technical reports which informed the Government's decision to support expansion at Heathrow and which support the Government's assessment of the impacts of the proposed expansion. However, these documents were not published alongside the draft NPS. The Boroughs requested copies of these documents on 16 March 2017 and 13 April 2017. The Government has refused to respond to this request for information.

¹¹⁴ Letter from DfT to Harrison Grant dated 12 April 2017

Consultation leaflet

8.9. The DfT leaflet sent to members of the public to encourage them to engage in the public consultation did not present a fair and balanced picture of the issues upon which there was to be consultation. In particular:

- It included the perceived benefits of the Heathrow NWR scheme but not any of the serious environmental disadvantages of a third runway, nor the fact that it would result in the loss of homes, business and communities.
- It advertised public pledges and proposals on behalf of Heathrow Airport Ltd. which do are not required by the draft NPS.
- It states categorically that "*expansion can be delivered within existing air quality requirements*" although the Government did not have the evidence to support this assertion and knew that this assertion is contested.
- It did not provide any information about the benefits of the rival schemes at Heathrow and Gatwick despite the Government inviting consultees to comment on how best to address airport capacity in the South East in Question 2 of the consultation.
- It did not draw attention to the fact that large numbers of people in London and the South East may be affected by aircraft noise for the first time; information which is essential to inform people why it is important to respond to the consultation.

8.10. The Boroughs should have been consulted about the leaflets, which were part of the publicity for the consultation. The Government has confirmed that it consulted no-one on the contents of the leaflets but they were obviously informed by their close collaboration with Heathrow over a particular proposal. That may explain why the leaflets appear to promote a proposal on behalf of a particular company rather than an objective policy on a matter of public interest.

Consultation Events

8.11. The public consultation events were biased and promotional of Heathrow. There was insufficient information to allow members of the public to understand the impacts upon them and no proper information on the alternatives to allow an informed response to the consultation (in particular Question 3). For example, as noted above, the information in relation to flightpaths and the potential for members of the public to be overflown (including for the first time) is indicative and cannot inform members of the public of the likely impacts of the draft NPS on them.

Health

Impacts on health not quantified

- 8.12. The Government has published a comparative health impact analysis with the draft NPS, referred to above. While the analysis uses an assessment scale (section 3.5), it is insufficient to fully appreciate the potential impact of these schemes especially given this is a comparative study. For example, one area we would expect to be quantified is the number of extra acute episodes of diseases such as asthma, heart failure and COPD from changes in air quality. We would expect greater emphasis on quantitative estimation of specific health impacts. While we acknowledge that there are challenges in estimating such specific health impacts, models do exist from studies and other HIAs have been carried out that have estimated these.¹¹⁵
- 8.13. Not quantifying health impacts makes it hard to evaluate the impacts of the draft NPS and the adequacy of any proposed mitigation.
- 8.14. Studies have shown it is not just the most vulnerable that will be negatively affected by such a proposed scheme. While the rest of the population will be relatively less affected they will have the largest magnitude of impact by virtue of their larger number.¹¹⁶
- 8.15. The indirect impact on health services has not been identified. Given the current strain on the health service, any impact that increases demand for health services will negatively impact on resources that would have otherwise been dedicated to other health needs. Given the greater baseline health need around Heathrow compared to Gatwick, this opportunity cost is potentially greater in the Heathrow area.
- 8.16. The health impact of air quality is not characterised by a threshold effect so any increase in air pollution will have an impact on risk even though it may be below control limits. Studies have shown that even very modest increases in air pollution have a measurable effect on respiratory illness.¹¹⁷ Furthermore peaks in air pollution rather than just average levels are important for certain impacts such as acute exacerbations of respiratory disease.¹¹⁸ This estimated impact is masked by only considering average estimates.

Traffic Congestion

- 8.17. Traffic congestion and stress on road network is unclear from the analysis. For the Heathrow scheme, the AC estimated that even with mitigation there will be an extra 6 million car

¹¹⁵ Wolfram Schlenker, W. Reed Walker; *Airports, Air Pollution, and Contemporaneous Health*. *Rev Econ Stud* 2016; 83 (2): 768-809 and Van Brusselen D *et al.* (2016) *Health Impact Assessment of a Predicted Air Quality Change by Moving Traffic from an Urban Ring Road into a Tunnel*. The Case of Antwerp, Belgium. *PLoS ONE* 11(5): e0154052.

¹¹⁶ Wolfram Schlenker, W. Reed Walker; *Airports, Air Pollution, and Contemporaneous Health*. *Rev Econ Stud* 2016; 83 (2): 768-809

¹¹⁷ *ibid* and Rice MB *et al*; *Lifetime Exposure to Ambient Pollution and Lung Function in Children*. *Am J Respir Crit Care Med*. 2016 Apr 15;193(8):881-8

¹¹⁸ Lyndsey A. Darrow *et al.* *The use of alternative pollutant metrics in time-series studies of ambient air pollution and respiratory emergency department visits*. *J Expo Sci Environ Epidemiol*. 2011 Jan-Feb; 21(1): 10–19.

journeys annually which will have a major impact on congestion given the already stressed road network.¹¹⁹ This does not seem to have been acknowledged or incorporated in the analysis, but forgotten or ignored.

Impact on social cohesion

8.18. Dispersal of communities: Even if regeneration takes place in the areas affected, it is highly unlikely to preserve the integrity of communities around Heathrow. These communities have been established for generations and will more likely be dispersed by the airport expansion, losing those valuable social networks and increasing the risk of social isolation. This loss of social capital will result in individuals and families that are more vulnerable to ill health.¹²⁰

8.19. Relocation itself has an impact on long-term health especially amongst young children.¹²¹

Impacts of Employment

8.20. Beneficial impacts of employment are unclear and may be limited as:

- A large portion of jobs will be temporary as they are linked to the construction rather than operational phase of the project.
- It is unclear how many residents will be eligible for work as the skill needs are unclear at this stage.
- There is no guarantee that local residents will be the ones benefitting from employment opportunities in the absence of schemes prioritising those from the area.

Deprived Communities

8.21. While the analysis acknowledges the disproportionate impact of the expansion scheme on the more vulnerable and deprived communities, there is no explicit acknowledgement that they will almost exclusively impact a specific cohort of the population in a cumulative manner resulting in a significant widening of health inequalities between them and other populations. Furthermore, this will be exacerbated by the fact that the potential benefits of employment are likely to be limited in this population as higher paid and more permanent roles are unlikely to be secured by this population.

¹¹⁹ AC Final Report

¹²⁰ Uphoff EP, Pickett KE, Cabieses B, Small N, Wright J; *A systematic review of the relationships between social capital and socioeconomic inequalities in health: a contribution to understanding the psychosocial pathway of health inequalities*. Int J Equity Health. 2013 Jul 19;12:54 and Gordeev V, Egan M. *Social cohesion, neighbourhood resilience, and health: evidence from New Deal for Communities programme*. The Lancet, Volume 386, Special Issue, S39, 13 November 2015

¹²¹ Rumbold R *et al.* *The effects of house moves during early childhood on child mental health at age 9 years*, BMC Public Health 2012;12:583 and Dong M *et al.* *Childhood Residential Mobility and Multiple Health Risks During Adolescence and Adulthood: The Hidden Role of Adverse Childhood Experiences*. Arch Pediatr Adolesc Med. 2005;159:1104-1110

Habitats

Habitats Directive

- 8.22. The draft NPS has assessed three projects, each of which is deemed to have a likely significant effect on European protected sites. As a consequence there is a legal obligation under the Habitats Directive (transposed as The Conservation of Habitats and Species Regulations) to undertake an Appropriate Assessment.
- 8.23. The Boroughs do not consider that the Appropriate Assessment accompanying the draft NPS in any way meets the minimum requirements of the Regulations. Consequently, the draft NPS falls short of the legal obligations imposed on it.
- 8.24. The Appropriate Assessment concludes that expansion of Gatwick is not a viable alternative due to impacts on a European Site that is home to a priority habitat. The Boroughs are unconvinced about the statement that a Priority Habitat would be impacted and notes the lack of supporting evidence. Regardless of that unsupported statement, the Appropriate Assessment concludes:

Accordingly, given the potential for adverse effects to priority habitats at LGW-2R, opinion from the European Commission would be necessary with regard to other IROPI; in the absence of such an opinion being obtained it is not possible to conclude LGW-2R is a reasonable alternative.

- 8.25. The Boroughs do not consider it appropriate to rule out Gatwick as a reasonable alternative purely because no attempt has yet been made to contact the European Commission and seek the necessary opinion.
- 8.26. In any event, the Boroughs do not consider that any of the derogation tests to allow for harm to European Sites have been met in relation to the Heathrow runways. For example, the Appropriate Assessment makes no attempt to identify mitigation for the likely significant effects. The derogation test asks:

Can adequate compensation be guaranteed? - *Is the competent authority satisfied that the applicant can and will undertake suitable compensation measures to ensure the overall coherence of the network of European sites?*

- 8.27. The guidance on derogation offers a yes/no choice to the question. If no:

Authorisation [of the plan or programme] must not be granted

- 8.28. The draft NPS identifies no such mitigation. There is no guarantee that the harm caused by Heathrow expansion could be rectified and the conservation of the 7 sites can be maintained. It follows that authorisation for Heathrow expansion must not be granted.
- 8.29. The concerns are exacerbated because Local Planning Authorities must take into account the effects of the draft NPS on the European Sites when developing their own plans. However, it is not possible to reach a conclusion on how these plans, such as Development Plans, could adequately consider cumulative effects and in turn cumulative mitigation if the draft NPS provides no clear information. Ultimately, how can it be possible for a Development Plan to accommodate the necessary mitigation for Heathrow expansion if it has not been set out?

8.30. This places Land Use planning for a number of authorities, including the Boroughs, in an extremely difficult position and reaffirms the stance that the draft NPS cannot be considered in isolation and away from the wider land use planning framework.

IN THE HIGH COURT OF JUSTICE

CO/ /2016

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

IN THE MATTER OF AN APPLICATION FOR PERMISSION TO APPLY FOR JUDICIAL
REVIEW

B E T W E E N

THE QUEEN

on the application of

- (1) LONDON BOROUGH OF HILLINGDON
- (2) LONDON BOROUGH OF WANDSWORTH
- (3) LONDON BOROUGH OF RICHMOND UPON THAMES
- (4) ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD
- (5) GREENPEACE LIMITED
- (6) CHRISTINE TAYLOR

-AND-

CLAIMANTS

THE SECRETARY OF STATE FOR TRANSPORT

DEFENDANT

-AND-

- (1) DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS
- (2) HEATHROW AIRPORT HOLDINGS LIMITED
- (3) GATWICK AIRPORT LIMITED
- (4) TRANSPORT FOR LONDON
- (5) THE MAYOR OF LONDON

INTERESTED PARTIES

CLAIMANTS' GROUNDS

A. INTRODUCTION

1. This challenge concerns the legality of the Government's failure to rule out expansion at Heathrow Airport (by way of a third runway). The failure is embodied in the Defendant's decision, announced on 25 October 2016, to select the third runway at Heathrow Airport ("the north west runway" or "NWR") as its preferred location for an additional runway in the South East ("the Decision") [CB2/301-330]. The Claimants seek a quashing of the Decision and declaratory relief.

2. The Decision will be embodied in a draft National Policy Statement ("NPS") published pursuant to part 2 of the Planning Act 2008 ("the Planning Act") and the government's present intention is that the draft NPS will be consulted upon in early 2017. It is the Claimants' case that the Decision is unlawful. Furthermore the Claimants do not accept the Defendant's contention that the court has no jurisdiction under s.13 Planning Act 2008 (which precludes challenges to the NPS process until after it has concluded). The Decision challenged both precedes and is separate from the NPS process and therefore the ouster clause in s.13 Planning Act 2008 is not engaged. In any event the errors identified in paragraphs 3(1) and (2) below are "showstoppers" as contemplated by Carnwath LJ (as he then was) in *R (on the application of Hillingdon and others) v Secretary of State for Transport* [2010] EWHC 626 ("Hillingdon") and are so fundamental that the whole process should be abandoned. It would be a waste of public resources for the Defendant to go through a lengthy and expensive NPS consultation on the basis of material errors of law which, once corrected, have the result that the NWR cannot lawfully proceed.

3. In short, the Claimants confine their challenge to the following 2 points:
 - 1) *Air quality* - The Defendant has misdirected himself on the question of whether the NWR complies with the EU Ambient Air Quality Directive 2008/50/EC ("the Directive"). The Defendant erred in law as to the Directive's requirements and wrongly concluded that the NWR can be delivered in compliance with the Directive. He has also acted in a manner which is inconsistent with the decision in *R (on the application of ClientEarth) v Secretary of State for the Environment, Food and Rural Affairs* [2016] EWHC 2740 ("*ClientEarth No2*") and the Government's duty set out in article 23 of the Directive to remedy the ongoing and admitted breach of Nitrogen Dioxide ("NO₂") limit values as soon as possible because the Decision pre-empts the formulation of the Government's new Air Quality Plan.

- 2) *Broken promises* - The Government made clear, unequivocal and repeated promises over a number of years that there would be no third runway at Heathrow. By ruling Heathrow in (and elevating it to the status of a preferred option), the Government has broken its promises, departed from established policy and frustrated the Claimants' legitimate expectations. The Claimants have told the Defendant repeatedly since September 2015 that he must consider their legitimate expectations and, if he wishes to depart from them, he must (1) consult them in advance, *before* ruling in a third runway at Heathrow; and (2) do so in a way which is lawful and proportionate. He has not done so.
4. For the avoidance of doubt, the limitation of the Claimants' grounds in this application for permission to the two set out above, is not to be taken as in any way an abandonment or limitation of the other areas of complaint identified by the Claimants in pre-action correspondence in relation to areas such as climate change, equalities, noise pollution, and the economic case for the development of Heathrow NWR. The Claimants' reserve the right to continue to raise these matters in the context of any aviation NPS consultation and, to the extent necessary in any further challenge which it may prove necessary to bring in relation to expansion at Heathrow.

B. THE CLAIMANTS

5. The 1st – 4th Claimants are local authorities in the area surrounding Heathrow Airport (“the Boroughs”). Their residents stand to be the worst affected by any expansion of airport activities (especially as regards air quality and noise). The 5th Claimant is an environmental protection organisation with a particular interest in climate change and air quality. The 6th Claimant is a local resident of the London Borough of Hillingdon and is directly affected by the Decision. The Claimants (apart from the 6th Claimant) were Claimants in the successful challenge to the Government's previous decision to favour a third runway at Heathrow in *Hillingdon*.
6. As set out in detail below, the Government promised that there would be no third runway at Heathrow. The Boroughs relied on this promise and made decisions on the basis that there would be no third runway. The 6th Claimant has planned her life over the last six years around the assurance that there would be no third runway. As a result of the Decision, she will now suffer years of blight and uncertainty while the planning process takes its course and will ultimately have to face the Hobson's choice of living next to an expanded airport, or leaving the area and community she has lived in her whole life.

C. THE COURT'S JURISDICTION

(1) The Issue

7. Pursuant to the requirements of the Pre-Action Protocol for Judicial Review, the Claimants wrote to the Defendant on 17 November 2016 setting out their proposed grounds of challenge [CB6/2087-2120]. The Defendant responded to this letter on 1 December 2016 [CB6/2143-2148]. The letter did not deal with the merits of the points raised by the Claimants but instead sought to argue that the court does not have jurisdiction to hear a claim at this stage. The Defendant avers that he has started the NPS process and therefore, by virtue of s.13 Planning Act 2008, the Decision cannot be challenged and the Claimants must wait until after the NPS is designated.

8. Section 13 Planning Act provides that:

“13 Legal challenges relating to national policy statements

(1) A court may entertain proceedings for questioning a national policy statement or anything done, or omitted to be done, by the Secretary of State in the course of preparing such a statement only if—

- (a) the proceedings are brought by a claim for judicial review, and
- (b) the claim form is filed before the end of the period of 6 weeks beginning with the day after
 - (i) the day on which the statement is designated as a national policy statement for the purposes of this Act, or
 - (ii) (if later) the day on which the statement is published.”

(emphasis supplied)

9. The Defendant's position is wrong. The Decision is not caught by s.13 Planning Act because it is not something done “*in the course of preparing* [an NPS]”. It is a precursor to the NPS process and the court has jurisdiction to hear this claim.

(2) The NPS Procedure

10. Section 5 of the Planning Act empowers the Secretary of State to create national policy on specified descriptions of development and to record the policy in an NPS. The process for designating an NPS is as follows.

11. The Secretary of State will produce a draft NPS. A draft NPS must be subject to (1) an appraisal of sustainability (see s.5(3) Planning Act); (2) public consultation and publicity and (3) Parliamentary approval (see s. 5(4) Planning Act).

12. The terms of the draft NPS are governed by s.5(5) Planning Act:

“(5) The policy set out in a national policy statement may in particular—

(a) set out, in relation to a specified description of development, the amount, type or size of development of that description which is appropriate nationally or for a specified area;

(b) set out criteria to be applied in deciding whether a location is suitable (or potentially suitable) for a specified description of development;

(c) set out the relative weight to be given to specified criteria;

(d) identify one or more locations as suitable (or potentially suitable) or unsuitable for a specified description of development;

(e) identify one or more statutory undertakers as appropriate persons to carry out a specified description of development;

(f) set out circumstances in which it is appropriate for a specified type of action to be taken to mitigate the impact of a specified description of development.

(6) If a national policy statement sets out policy in relation to a particular description of development, the statement must set out criteria to be taken into account in the design of that description of development.

(7) A national policy statement must give reasons for the policy set out in the statement.

(8) The reasons must (in particular) include an explanation of how the policy set out in the statement takes account of Government policy relating to the mitigation of, and adaptation to, climate change.”

13. The consultation and publicity requirements are set out in s. 7 of the Planning Act, which provides that:

“7(1) This section sets out the consultation and publicity requirements referred to in sections 5(4) and 6(7).

(2) The Secretary of State must carry out such consultation, and arrange for such publicity, as the Secretary of State thinks appropriate in relation to the proposal. This is subject to subsections (4) and (5).

(3) In this section “the proposal” means—

(a) the statement that the Secretary of State proposes to designate as a national policy statement for the purposes of this Act, or

(b) (as the case may be) the proposed amendment.

(4) The Secretary of State must consult such persons, and such descriptions of persons, as may be prescribed.

(5) If the policy set out in the proposal identifies one or more locations as suitable (or potentially suitable) for a specified description of development, the Secretary of State must ensure that appropriate steps are taken to publicise the proposal.

(6) The Secretary of State must have regard to the responses to the consultation and publicity in deciding whether to proceed with the proposal.”

14. Consultation is mandatory (see s.7(1)), however the Secretary of State has discretion as to the scope of consultation (see s.7(2)). The Claimants’ case is that in the context of the Decision, there must be the fullest possible public consultation (see Ground 2 below). The Planning Act makes provision for the Secretary of State to specify in regulations certain persons who must be consulted. There are no regulations currently in force.
15. The Secretary of State then makes a proposal to Parliament to designate the NPS (the “Parliamentary Requirements”). The proposal is laid before Parliament and the Secretary of State will specify a period during which either House of Parliament may make a resolution or a committee of either House of Parliament may make a recommendation with regard to the proposal (“the Relevant Period”) (see s.5(3)-(4)). If, during the Relevant Period, a resolution or recommendation is made, the Secretary of State must lay a statement before Parliament setting out his response (see s.9(4)). Neither House of Parliament has power to amend the draft NPS. If the Secretary of State wishes to amend the draft NPS following the Parliamentary stage, he must comply with the Parliamentary requirements again. At the end of the Relevant Period, the Secretary of State lays the draft NPS before Parliament (see s.9(8)).
16. The Secretary of State must, according to section 10 of the Planning Act, exercise his power to create an NPS with the objective of contributing to the achievement of sustainable development and having regard to (inter alia) the desirability of mitigating, and adapting to, climate change.
17. The NWR would be a nationally significant infrastructure project (as defined in s.14 Planning Act). This means that planning permission is determined by the Secretary of State under the Development Consent Order (“DCO”) procedure. Where there is an extant NPS, a DCO application will be determined in accordance with the NPS (see s.104(3) Planning Act). As set out above, the NPS may specify the size of development, appropriate locations, the weight to be given to certain factors and circumstances where mitigation is required. The effect of the NPS is to preclude further debate and consideration of these matters:

“Matters that may be disregarded when deciding application

“106 (1) In deciding an application for an order granting development consent, the decision-maker may disregard representations if the decision-maker considers that the representations—

(a)...

(b) relate to the merits of policy set out in a national policy statement, or

(c) ...

(2) In this section “representation” includes evidence.”

(3) The Ouster Clause in s.13

18. Section 13 of the Planning Act is a form of ouster clause. It seeks to prescribe both the time at which a judicial review challenge may be made and the period of time a Claimant has to bring a challenge. If the Decision falls within the ambit of s.13 (which the Claimants do not accept), the effect is to remove their right of access to the courts until after the NPS has been designated.

Case Law

19. The Court will not readily accept legislative provisions which seek to remove citizens’ access to the courts and the power of the courts to review administrative decisions (see *Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 147 at 170C-D and *R (G) v Immigration Appeal Tribunal* [2005] 1 WLR 1445 at [12]-[13]). As a result, an ouster clause should be strictly construed, in a manner which preserves the ordinary jurisdiction of the Court (*Anisminic* at 170C-D).

20. An ouster clause which prohibits judicial review of a specified act or decision does not apply to antecedent steps or decisions (see *R v Wiltshire CC ex p Nettlecombe Ltd* [1998] JPL 707 *per* Dyson J (as he then was at [712]-[713])). In the planning context, acts preparatory to the creation of a Development Plan document have been held to fall outside the s.113(2) Planning and Compulsory Purchase Act 2004, which provides for a limited right of challenge to (inter alia) local development plans (see *Manydown Co Ltd v Basingstoke and Deane BC* [2012] EWHC 977).

21. The specific provisions of the Planning Act were considered in *Hillingdon*. The Planning Act came into force after the claim was issued, but before the claim was heard. After the claim form was issued, Carnwath LJ considered the provisions of the Planning Act and held that:

“41. This new statutory framework on its face offers a comprehensive framework laid down by Parliament, within which all the wider policy aspects of a major proposal

such as the third runway are to be publicised and debated, and confirmed by Parliament, as the background to consideration of the more site-specific issues at the detailed planning stage. As applied to the present proposal, it would mean that, subject to section 12, even those issues which have been subject to policy decisions in 2003 or 2009, are still open to debate, inside and outside Parliament, before a final decision can be taken. Within that context, it might have been thought that legal arguments at this stage about deficiencies in the process leading to the 2009 Decision are premature, since they may be made good as part of the statutory process, and, if not, that will be the time to seek the aid of the court.”

22. Carnwath LJ envisaged a category of challenges which could proceed at an earlier stage, and which would not be premature – so-called “show stoppers”:

“69...any grounds of challenge at this stage need to be seen in the context, not of an individual decision or act, but of a continuing process towards the eventual goal of statutory authorisation. A flaw in the consultation process should not be fatal if it can be put right at a later stage. There must be something not just “clearly and radically wrong”, but also such as to require the intervention of the court at this stage. Similarly, failure to take account of material considerations is unlikely to justify intervention by the court if it can be remedied at a later stage. It would be different if the failure related to what I described in argument as a “show-stopper”: that is a policy or factual consideration which makes the proposal so obviously unacceptable that the only rational course would be to abort it altogether without further ado.”

(emphasis supplied)

23. Carnwath LJ’s reasoning was in the context of his conclusion that the Planning Act was a “comprehensive framework.” Notwithstanding the provisions of s.13, he contemplated that a challenge could be brought at an earlier stage in the event that the Claimant identifies a “show stopper.” A show-stopper is not confined, the Claimants submit, to a policy or factual considerations, but must include issues of law (such as those raised in this application).

Submissions: the Court has jurisdiction to hear this claim

24. The Court has jurisdiction to hear this claim for the following reasons:
- 1) The Decision is not caught by s.13 because it is an act antecedent to the preparation of a national policy statement.
 - 2) S.13 does not engage with the Claimants' complaint that there should have been a further public consultation, and not merely negotiations with Heathrow, after the report of House of Commons Environmental Audit Committee, and the decision to carry out more work on environmental issues.

- 3) S.13 does not preclude challenges on the basis of “show-stoppers”.
- 4) It is consistent with the principles of good administration and the UK’s obligations under the Aarhus Convention to adopt a narrow construction of s.13.
25. The Defendant’s arguments on ouster are contained in his response to the Claimants’ Pre-Action Protocol letter dated 1 December 2016 [CB6/2144]:

“1. In so far as you seek to challenge the decision of 25 October 2016, the Court has at this time no jurisdiction to hear such a claim because of the preclusive provision contained in s.13 of the 2008 Act.

...

5. In December 2015, in the then Secretary of State’s oral statement to Parliament on Airport Capacity he made clear that “[w]e will begin work straight away on preparing the building blocks for an airports national policy statement. In line with the Planning Act 2008. That is what has happened since.”

26. This is a quotation from a much longer statement by the Secretary of State made to Parliament on 14 December 2015 [CB8/4436-4437]:

“...in September 2012 Sir Howard Davies was asked to lead a commission into the issue. Its final report was published less than 6 months ago. It made a strong case for expansion in the south-east. We have considered that evidence. The government accepts the case for expansion. And the government accepts the Airports Commission’s shortlist of options for expansion. We will begin work straight away on preparing the building blocks for an airports national policy statement. In line with the Planning Act 2008. Putting this new framework in place will be essential groundwork for implementing the decisions we take on capacity, wherever new capacity is to be built. And that is the issue I want to turn to now. Sir Howard Davies and his team produced a powerful report. Heathrow Airport Ltd’s scheme was recommended by the Airports Commission, but all 3 schemes were deemed viable. We are continuing to consider all 3 schemes. And we want to see action. But we must get the next steps right. Both for those keen to push ahead with expansion, and for those who will be affected by it. So we will undertake a package of further work.”

27. This is not a statement that the NPS process has begun. It is a statement that further work would be needed before the government could come to a decision on its preferred location for an additional runway, which would then be consulted upon in a draft NPS. It is at most a

statement that work will begin on "building blocks" later (but not yet) to be deployed in the preparation of an "airports national policy statement".

28. The Defendant gave no further detail in his letter about any work which has allegedly been carried out in preparation for a draft NPS. As a matter of fact, it cannot be right that the NPS process commenced in December 2015. Immediately before the Decision, there was no draft NPS which could be subject to an appraisal of sustainability or consultation because the Government's position is that it had not yet decided upon its preferred option. The Defendant made this very clear to the Claimants in a letter dated 14 October 2016 [CB6/2071-2072] where he said:

"You appear to allege that any decision by the Secretary of State that favoured expansion at Heathrow prior to the designation of a National Policy Statement ("NPS") would be unlawful because it pre-empted the NPS process: para. 6. You also argue that any such decision would "preclude" a full public consultation as part of the NPS process and would mean that any consultation after such a decision would not be at a formative stage: para. 15.

There is no substance to these arguments. They are misconceived. They are also premature.

The decision which you seek to challenge has not yet been taken. Your challenge is therefore premature since you do not know what the outcome of that process will be. There is no justification for seeking to challenge in advance of a decision which, depending on the outcome, your clients may ultimately not wish to challenge."

29. On 24 October 2016, in reply to a letter from the Claimants of the same date, the Defendant described the status of the Decision (which was taken the next day) as:

"...the decision which is to be taken will be a decision that the Government has selected a particular scheme as its preferred option in order to meet the need for airport expansion in the South East, so that a draft National Policy Statement (NPS) and other related documents providing support for that scheme can be prepared, published and consulted on by the Government in accordance with the procedures laid down in the Planning Act 2008 ("the 2008 Act")

The statement of preference is a preliminary stage in the preparation of an airports NPS..." (original emphasis) [CB6/2077]

30. The Claimants took from this letter that the Decision was not an act within the NPS process, but some prior stage. It is telling that the Defendant did not rely on s.13 Planning Act in his letter of 14 October 2016 or 24 October 2016.

31. In any event, it is not for the Secretary of State to decide when the NPS process, as a matter of law, has commenced. The question of when s.13 is engaged is a question for the court.

Section 13 applies to: “a national policy statement or anything done, or omitted to be done, by the Secretary of State in the course of preparing such a statement.” The term “in the course of preparing” should be construed against the statute as a whole, in context and, because it is an ouster clause, narrowly.

32. The Planning Act is a comprehensive framework. There is a clear statutory process for designation, starting with the appraisal of sustainability. This appraisal applies to “the policy” which the Secretary of State proposes to set out in an NPS (see s.5(3)). The Act therefore presupposes that there is a policy in existence before the statutory NPS process can begin. The Planning Act then lays down a number of stages that must occur in respect of “the policy” before the NPS can be designated: consultation and parliamentary scrutiny. On a proper construction, therefore, where s.13 refers to preparatory acts, it is referring to the acts prescribed by statute. At the time of the Decision, none of these acts had been done, nor could they have because until the Decision there was no “policy” to set out in a draft NPS.
33. The Defendant’s argument gives the ouster clause a very wide-reaching ambit. It suggests that all of the work he has carried out in the 11 months, if not earlier, before the Decision is caught by s.13. That would bring a significant number of antecedent decisions inside the scope of s.13. This is clearly contrary to established principles of statutory construction which apply to ouster clauses.
34. The analysis above is plainly consistent with principles of good administration. As explained in Ground 1, the Defendant’s conclusions on air quality are based on an error of law. Had the Defendant applied the correct legal test, he could not have concluded that the NWR could meet EU limit values for NO₂. The Defendant has said that the NWR should not proceed if it cannot comply with EU limit values for NO₂. The inevitable conclusion of the NPS process will therefore be that the NWR cannot proceed. It is a waste of time and significant public resources to proceed with a consultation where the preferred option for consideration cannot lawfully proceed. This cannot have been the intention of Parliament. Furthermore, to embark on such a course serves only to extend further the uncertainty and blight which afflicts the Boroughs’ residents and their property whilst a final decision on airport expansion is reached.
35. Further, and in any event, Carnwath LJ in *Hillingdon* recognised that a challenge may be brought against a decision subject to the Planning Act if it is a “show-stopper”: a policy or factual consideration which means the proposal should be abandoned altogether. The grounds of challenge are showstoppers:

- 1) The Defendant has committed an error of law on the issue of Air Quality. The Defendant has not demonstrated that the NWR can be delivered lawfully (i.e. within EU limit values). The Claimants' case is that on the information available, the NWR does not comply with the Directive. The result is that the NWR should be ruled out now.
 - 2) The Defendant has failed to address the Claimants' legitimate expectations. He did not consult with them before changing his policy, nor has he identified any compelling reason for departing from the Claimants' legitimate expectations. This is not an error which can be corrected in the course of a future airports NPS consultation.
36. Finally, a broad construction of s.13 which precludes judicial review of the Decision at this stage would be inconsistent with the Government's obligations to ensure access to the courts in cases relating to the environment under article 9 of the Aarhus Convention, which provides that:

“Each Party shall, within the framework of its national legislation, ensure that members of the public concerned

(a) Having a sufficient interest

or, alternatively,

(b) Maintaining impairment of a right,

where the administrative procedural law of a Party requires this as a precondition, have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6 and, where so provided for under national law and without prejudice to paragraph 3 below, of other relevant provisions of this Convention.

...

3. In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.

4. In addition and without prejudice to paragraph 1 above, the procedures referred to in paragraphs 1, 2 and 3 above shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive. Decisions under this article shall be given or recorded in writing. Decisions of courts, and whenever possible of other bodies, shall be publicly accessible.”

37. Article 6 of the Aarhus Convention applies to “*activities with respect to decisions on whether to permit proposed activities listed in annex I*”, which includes construction of airports with a runway length of 2100m or more and also to “*decisions on proposed activities...which may have a significant effect on the environment.*” Article 6 applies to the Decision, either by virtue of the fact that it relates to airport construction or because the NWR may have a significant effect on the environment. Article 9 therefore applies to the Decision.
38. The Aarhus Convention is a legally binding treaty and can be used as an aid to the construction of English law (see *Morgan v Hinton Organics* [2009] EWCA Civ 107 at [22]). It is submitted that in this case the Court ought to have regard to Article 9 of the Aarhus convention and this is yet another reason why s.13 of the Planning Act should be construed narrowly. The environmental impact of the NWR is at the heart of this claim. A broad construction of s.13 prevents the Claimants’ timely access to the courts in circumstances where there is a clear legal error in the Decision.
39. In light of the above, s.13 ought to be construed narrowly, the NPS process has not yet begun and therefore the Court has jurisdiction to hear the claim.

D. THE HISTORY OF THE HEATHROW THIRD RUNWAY AND THE CLAIMANTS’ LEGITIMATE EXPECTATIONS

(4) The Hillingdon Challenge

40. Development and expansion at Heathrow Airport has a long history, as explained in the witness statement of Councillor Raymond Puddifoot [CB3/403-433]. This particular chapter starts with the case of *Hillingdon*, where the 1st to 5th Claimants (and others) challenged the Government’s 2009 decision to confirm policy support for a third runway at Heathrow.
41. In 2003, the Government published the White Paper “The Future of Air Transport” which proposed a new runway at Heathrow. The Government’s support was expressly conditional on the scheme demonstrating compliance with air quality limits, that it would not result in a deterioration of the noise climate and that there would be measures to improve public transport access. The proposal was subject to public consultation in 2007. On 15 January 2009, the Secretary of State announced to the House of Commons that all three conditions (air quality, noise, surface access) could be met. The decision paper: “Adding Capacity at Heathrow: Decisions Following Consultation” was published at the same time and states that the decision supporting expansion had been made in the 2003 White Paper and had not formed part of the consultation.

42. The 1st to 5th Claimants challenged the 2009 Decision on the basis that the consultation process had been unfair, that the Defendant's conclusions on surface access, noise and climate change were irrational and that the Defendant had failed to give proper reasons for the decision. The 1st to 5th Claimants were successful and secured an undertaking from the Government that it would not proceed to draft an Aviation National Policy Statement which supported a third runway at Heathrow without further public consultation.

43. Shortly after *Hillingdon* was decided, the Government cancelled the third runway. The Claimants reasonably believed that this was the end of proposals to expand at Heathrow because the Government made a number of clear and unequivocal promises to that effect¹:

- 1) On 19th October 2009, in his position as leader of Her Majesty's Opposition, Mr Cameron made a personal pledge in a public speech in Richmond that there would be no third runway at Heathrow [CB8/3611-3612]:

"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)

- 2) 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."* [CB8/3619]
- 3) The cancellation of the third runway was endorsed by the then Prime Minister on 20th May 2010 [CB8/3621].
- 4) In a Written Ministerial Statement by Theresa Villiers, MP (the Minister of State for Transport) on 7th September 2010: *"The Government have made its position clear in rejecting the case for a third runway."* [CB8/3611-3612]
- 5) 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";

¹ The list of broken promises presented here is not exhaustive. The witness statement of Councillor Puddifoot includes others.

"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) [CB8/3642]

- 6) 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. [CB8/3625]
- 7) 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) [CB8/3651-3660], as did the accompanying Ministerial Statement [CB8/3649]:

"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."

- 8) On 31st 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."* [CB8/3672]
- 9) In Chancellor George Osborne's Autumn Statement on 29th 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."* [CB8/3695]

- 10) Theresa Villiers MP stated to the Transport Times Conference on 17th April 2012 [CB8/3698]:

"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"

- 11) In a Written Ministerial Statement dated 15th May 2012 by Theresa Villiers MP on Operational Freedoms [CB8/3703]:

"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".

44. The Claimants relied upon these repeated clear promises. The Boroughs have made decisions on the basis that there would be no third runway at Heathrow, for example in the formulation and adoption of their Development Plans. The 6th Claimant has planned her life over the last 6 years around the Government's promises. She reasonably believed that the Government meant what it said and that there would be no third runway at Heathrow. As a result, she made plans to live her life in the Heathrow Villages (see Christine Taylor's witness statement [CB3/547-561]).

E. THE CURRENT PROPOSAL FOR A THIRD RUNWAY AT HEATHROW

(1) The Airports Commission

45. In late 2012, the Government set up an Airports Commission and asked it to make recommendations which would allow the UK to maintain its position as an aviation hub. The Decision was based in large part on the work of the Airports Commission and a package of further work carried out from December 2015.

46. The Airports Commission considered 50 different proposals for delivering additional airport capacity in the South East of England by 2030. From these proposals, a shortlist of three were selected for more detailed consideration. They were: the NWR, a westerly extension of the northern runway at Heathrow and a new runway at Gatwick Airport. The Final Report of the Airports Commission is dated July 2015 (“the AC Report”) [CB/7/3207-3550]. In the AC Report, the Commission concludes (in part):

- 1) All three schemes are a credible option for expansion;
- 2) The NWR, in combination with a significant package of measures to address its environmental and community impacts, presented the strongest case;
- 3) A number of measures should be taken to address the impacts of the NWR, including, but not limited to:
 - a. A major shift in mode-share for those working and arriving at the airport should be incentivised and a congestion or access charge considered.
 - b. Additional operations at an expanded Heathrow must be contingent on acceptable performance on air quality. New capacity should only be released when it is clear that air quality at sites around the airport will not delay compliance with EU limits.
 - c. A fourth runway should be firmly ruled out.
- 4) Overall, and taking into account the measures set out above and in the AC Report, the Airports Commission considered that the environmental impact of expansion at Heathrow did not outweigh the national and local benefits of the NWR scheme.

(2) The Package of Further Work

47. As noted above, the Airports Commission Report was published on 1 July 2015.

48. On 14 September 2015 the leaders of the Boroughs wrote to the Prime Minister to raise concerns about the AC Report and to ask him not to follow the Airports Commission’s recommendation [CB/7/2005-2010]. The letter explained that the Government should not depart from its clear promises that there would be no third runway and that there were clear

flaws in the Airports Commission's assessments and approach to environmental issues, including air quality and noise. The letter was acknowledged on 13 October 2015 but no substantive reply has ever been received [CB/7/2011].

49. On 26 November 2015 the House of Commons *Environmental Audit Committee* produced its own report on the Airports Commission Report [CB/8/4307-4345]. 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.” [CB8/4316, Report para 22]

50. On the issue of air quality, the Committee's recommendations were that:

“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.” [CB8/4321-4322, Report para 43]

And

“...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.” [CB8/4322, Report para 47]

51. On 10 December 2015, contrary to the Prime Minister's timing guarantee², and in light of the Committee's recommendations, the Secretary of State for Transport announced that 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

²That the decision would be made by the end of 2015 - House of Commons 1 July 2015, Col. 1473.

work”, which it anticipated would conclude in summer 2016. The Secretary of State said (emphasis added):

“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.” [CB8/4437]

52. Shortly thereafter, in January 2016, the Defendant indicated that further work was also to be carried out on the economic analysis.
53. On 9 February 2016, the Claimants (through their solicitors) wrote again to the Prime Minister to raise concerns with the Airports Commission’s analysis [CB6/2021-2034]. The Boroughs reminded the Prime Minister of the promises he had personally made that there would be no third runway at Heathrow, and invited him to rule out expansion at Heathrow without delay. As an alternative, the Boroughs sought an assurance from the Prime Minister that they would be consulted on the package of further work which the Secretary of State for Transport had announced in December 2015. The Claimants wrote to the Defendant repeating their requests on 24 March 2016 [CB6/2037-2038], 8 July 2016 [CB6/2043-2045], 30 September 2016 [CB6/2053-2057] and 12 October 2016 [CB6/2059-2065]. Some of these letters were acknowledged but no substantive response to the points raised has ever been received, including by way of pre-action correspondence.
54. The need for openness and transparency was not only reflected in the Claimants’ correspondence with the Defendant. On 22nd December, 2015, for example, the Mayor of London wrote to the Secretary of State (inter alia) in the following terms:

“Secondly, I believe it is critical that work to be undertaken over the next six months is carried out in an open and transparent manner if this is to gain the confidence of all sides. To this end the Government may wish to consider establishing a joint taskforce, or a set of joint taskforces, that cover each of the main subject areas...” [CB8/4451]

55. The Secretary of State replied to the Mayor's letter on 20th January, 2016 and to this point thus:

“Regarding your second point, I do think it would be helpful for our teams to develop a better understanding of the surface transport challenges posed by all three shortlisted schemes.” [CB8/4453-4454]

However, the Secretary of State did not engage in the process of consultation with the Claimants (or the public more generally) which would have equipped him with a better understanding of surface transport challenges, or for that matter of other issues such as air quality.

56. On 30 June 2016 in oral answers to questions in the House of Commons, the Defendant 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 [CB8/4603]. At that time, he said that a further analysis of air quality would be published “soon”, but did not say when this would be [CB8/4603].

57. On 12 October 2016 the Claimants wrote a Pre-Action Protocol letter to the Defendant inviting him to publish the package of work and commit to public consultation in advance of making any decision which favoured Heathrow [CB6/2059-2065]. The Defendant responded to this letter and said that no decision had yet been made [CB6/2071-2072]. The letter went on to say that the Claimants could raise any issues through the National Policy Statement (“NPS”) consultation process. As set out at paragraph 30 above, the Defendant did not raise the point he now raises, which is that the court does not have jurisdiction to entertain a challenge, by virtue of s.13 Planning Act.

58. On 20 October 2016, the Defendant wrote to the 5th Claimant indicating (inter alia) that he would not be reaching a decision on his preferred scheme for a few weeks so that proper consideration could be given to the Package of Further Work:

“On 14 December 2015, the Government formally announced that it accepted the case for additional runway capacity in the South-East and agreed with the Airports Commission's shortlist of three options. The Government also set out a further package of work, including on air quality impacts, to be completed by the summer.

In the coming weeks the Government will carefully consider the additional work alongside the Airports Commission's comprehensive evidence before reaching a view of its preferred scheme.” [CB6/2073-2074]

59. However, less than a week after this statement, on 25 October 2016, the Defendant made the Decision announcing the Government's support for the NWR and that the NWR would now "be taken forward in the form of a draft 'National Policy Statement' (NPS) for consultation."
[CB2/301]

60. In his announcement to Parliament, the Defendant said:

We believe that the expansion of Heathrow airport and the north-west runway scheme, in combination with a significant package of supporting measures on the scale recommended by the Airports Commission, offers the greatest benefit to passengers and business, and will help us to deliver the broadest possible benefit to the whole United Kingdom...It can be delivered within carbon and air quality limits and, crucially, it comes with world-leading measures to limit the impacts on those living nearby.

...

I want to be clear that expansion will not be at any cost to local people, to passengers or to industry. We have to make three assurances. The first is about making Heathrow a better neighbour. We must tackle air quality and noise, and meet our obligations on carbon both during and after construction. Air quality is a significant national health issue that the Government take immensely seriously. That was why we undertook further work, which confirms the commission's original conclusion that a new runway at Heathrow is deliverable within air quality limits. We remain committed to ensuring that that remains the case. The airport has already committed to industry-leading measures to mitigate air quality impacts. Furthermore, the Government will grant development consent only if we remain satisfied that a new runway will not impact on the UK's compliance with its air quality obligations.
[CB2/305-306]

(emphasis added)

61. In his written statement released on the Department for Transport website the Defendant also stated (emphasis added):

Following the clear recommendation of the Airports Commission the government conducted more work on the environmental impact. That work is now complete and confirms that a new runway at Heathrow is deliverable within air quality limits, if necessary mitigation measures are put in place, in line with the 'National air quality plan', published in December 2015.

The UK has already achieved significant improvements in air quality across a range of pollutants. Emissions of nitrogen oxides in the UK fell by 41% between 2005 and 2014. Heathrow's scheme includes plans for improved public transport links and for an ultralow emissions zone for all airport vehicles by 2025. The government will make meeting air quality legal requirements a condition of planning approval.
[CB2/302]

(emphasis added)

62. Following his statement to Parliament, in answers to oral questions, the Defendant described the effect of his decision as:

*“The Government decided very clearly today on their recommendation, which will have to be validated in the statutory process. It must be voted on and confirmed by the House, and that is what will happen. However, we are not entering the process with a view to changing our minds.”*³ [CB6/314]

63. It is clear from the Secretary of State’s announcement that the Government’s support for expansion at Heathrow was given on the basis of, inter alia, the third runway being delivered in compliance with the air quality limits contained in the Directive.

64. At the same time as the Decision, the Defendant published a number of “background reports” and technical documents which had not previously been in the public domain, and not previously disclosed to the Boroughs. These were:

1) Briefing documents:

- a. *“Heathrow Airport expansion: around the UK”*
- b. *“Heathrow Airport expansion: connectivity”*
- c. *“Heathrow Airport expansion: economic benefits”*
- d. *“Heathrow Airport expansion: environment and local impacts”*

2) Technical reports:

- a. *“Airport expansion: DfT review of the Airports Commission final report”*
- b. *“Airport expansion: further analysis of air quality data”*
- c. *“Airport expansion: further review and sensitivities report”*
- d. *“Airport expansion: global comparison of airport mitigation measures”*
- e. *“Heathrow Airport Limited: statement of principles.”*

65. Following the announcement of the Decision, the Defendant has made a number of further statements about the third runway. On 26 October 2016 during an episode of the Today Programme on BBC Radio 4, the Defendant said that instead of creating a tunnel for the M25 under the new runway, the new runway could be built on a ramp over the M25.

³ The Claimants reasonably believed this statement to mean that the Defendant had closed his mind to the Claimants’ objections and that the consultation would not include the possibility that the NWR would be rejected. To that end, the Claimants’ Pre-Action Protocol letter included a ground of predetermination. However, in his response to the Pre-Action Protocol Letter the Defendant has confirmed that the consultation process will be carried out with an open mind and that the Claimants’ responses will be the subject of conscientious consideration.

66. On 17 November 2016 the Claimants wrote a Pre-Action Protocol letter to the Defendant, setting out their proposed grounds of challenge to his Decision [CB6/2087-2120]. At that stage, the Claimants reasonably believed that the effect of the Decision was that Gatwick had been ruled out of consideration. On this basis they argued that the Defendant had:

- 1) Failed to consult in advance of the Decision and further had predetermined the outcome of the NPS consultation process, because the Claimants had lost their opportunity to meaningfully argue for Gatwick;
- 2) Erred in law on the issue of Air Quality;
- 3) Breached the Claimants' legitimate expectations that there would be no third runway;
- 4) Failed to comply with s.149 Equality Act 2010; and
- 5) Reached irrational conclusions on noise and economics.

67. On 8 November 2016 the Defendant wrote to the chair of the House of Commons Environmental Audit Committee to explain the Government's position on climate change, air quality and noise in advance of giving evidence to the Committee on 30 November 2016. On the issue of air quality, the letter states:

“As announced in December 2015, we accepted the EAC’s recommendation to test the Airports Commission’s analysis against the government’s Air Quality Plan which was published on 17 December 2015.

This work was published alongside the government’s announcement of its preferred scheme and confirmed the AC’s conclusion that a new runway can be delivered without impacting the UK’s compliance with air quality limit values for nitrogen dioxide.

Since this work was carried out, new international evidence on vehicle emissions forecast has been released. Further work is needed to understand the implications of this evidence, but our initial assessment suggests that revised forecasts would be likely to be within the range of scenarios already considered by our re-analysis.”
[CB8/4683-4684]

By this time, the Defendant was aware of the judgment in *ClientEarth No2*, which had been handed down on 2 November 2016. He did not mention the judgment or the fact that the 2015 AQP would need to be replaced.

68. On 30 November 2016, the Secretary of State gave evidence to the Environmental Audit Committee. He was accompanied by Caroline Low, Director of Airport Capacity at the Department for Transport [CB8/4697-4734].

GROUND

69. In this claim, as in judicial review generally, there are inevitable overlaps between the grounds of challenge and it is not intended that those advanced by the Claimants should be regarded as exclusionary or “watertight” to adopt the word used by Lord Irvine of Lairg in *Boddington v British Transport Police* [1999] 2 AC 143 at 152E:

“Categorisation of types of challenge assists in an orderly exposition of the principles underlying our developing public law. But these are not watertight compartments because the various grounds for judicial review run together.”

F. GROUND 1: AIR QUALITY (BREACH OF DIRECTIVE)

(1) Introduction

70. Air quality is a significant and pressing issue. The World Health Organization has described air pollution as a “health emergency.” The EU’s European Environment Agency considers air pollution to be the single largest environmental health risk in Europe.
71. It is not in dispute that the NWR will contribute to NO₂ concentrations within London both during the construction phase and once the runway is open. Further, the Defendant has accepted that the NWR should only proceed if it complies with the requirements of the Directive. As set out above at paragraph 60 above, the Defendant made it clear that the Decision was made on the basis that the NWR complied with the Directive.
72. The conclusion that a new runway at Heathrow is deliverable within air quality limits is fundamental to the Decision. In arriving at this conclusion, the Defendant committed an error of law. The result is that the Defendant has given the green light to a proposal which, as explained further below and in the witness statement of Dr Claire Holman [CB5/1001-1030], does not comply with the requirements of the Directive. The Defendant refused to carry out a public consultation on his most recent air quality analysis (see Ground 2 below). He is now

proposing to commence a lengthy and expensive public consultation process where, on a proper construction of the requirements of the Directive, the inevitable result will be that the NWR cannot lawfully proceed.

(2) Legal Framework

73. Air Quality in the UK is governed by the Directive, which has in turn been transposed into UK law through the Air Quality Standards Regulations 2010. The aim of the Directive is to “*reduce pollution to levels which minimise harmful effects on human health, paying particular attention to sensitive populations, and the environment as a whole...*” (see 1st Recital to the Directive).

74. The recitals to the Directive set out, inter alia, that:

“(2) In order to protect human health and the environment as a whole, it is particularly important to combat emissions of pollutants at source and to identify and implement the most effective emission reduction measures at local, national and Community level. Therefore, emissions of harmful air pollutants should be avoided, prevented or reduced and appropriate objectives set for ambient air quality taking into account relevant World Health Organisation standards, guidelines and programmes.”

“(9) Air quality status should be maintained where it is already good, or improved. Where the objectives for ambient air quality laid down in this Directive are not met, Member States should take action in order to comply with the limit values and critical levels, and where possible, to attain the target values and long-term objectives.”

75. Article 1 describes the subject matter of the Directive, which includes laying down measures to maintain air quality where it is good and improve it in other cases.

76. Article 2 contains the definitions, including “ambient air” which is defined as:

“outdoor air in the troposphere, excluding workplaces as defined by Directive 89/65/EEC where provisions concerning health and safety at work apply and to which members of the public do not have regular access.”

The obligations in the Directive relating to ambient air therefore apply everywhere, except in those locations specified in article 2.

77. The Directive creates a standard procedure and method for assessing concentrations of pollutants in the air (see articles 3-8). Member States' territories are divided up into zones or agglomerations reflecting population density for the purposes of assessment. The Directive requires Member States to assess air quality, which is carried out through a combination of measurements at designated locations and modelling. The NWR is located in the Greater London Agglomeration Zone.
78. To achieve the aim of reducing harmful pollution, the Directive sets limit values for pollutants, including nitrogen dioxide (NO₂). These are contained in Annex II where there are two limit values for NO₂:
- 1) An hourly limit value: the mean concentration of NO₂ cannot exceed 200 micrograms per cubic metre (µg/m³) for more than 18 hours in any calendar year;
 - 2) An annual mean limit value: concentrations of NO₂ cannot exceed 40 µg/m³ over a calendar year.
79. Article 12 of the Directive provides:

“Requirements where levels are lower than the limit values

In zones and agglomerations where the levels of sulphur dioxide, nitrogen dioxide, PM₁₀, PM_{2.5}, lead, benzene and carbon monoxide in ambient air are below the respective limit values specified in Annexes XI and XIV, Member States shall maintain the levels of those pollutants below the limit values and shall endeavour to preserve the best ambient air quality, compatible with sustainable development.”

(emphasis added)

80. Article 13 requires Member States to comply with limit values by a certain deadline. This obligation applies “*throughout* [the Member States’] *zones and agglomerations*.” In the case of NO₂ the deadline was 1 January 2010. Where there is a breach of limit values in a zone or agglomeration after the deadline has passed, the Member State is obliged to put in place an air quality plan in order to achieve the limit value in a way that keeps the exceedance period as short as possible (see article 23).

81. Article 23 provides for Member States to produce air quality plans in order to achieve limit values. Where the deadline for compliance with limit values has already passed, the air quality plan must: “*set out appropriate measures, so that the exceedance period can be kept as short as possible.*”
82. The Government has admitted that it has been in persistent breach of limit values for NO₂. In *R (on the application of ClientEarth) v Secretary of State for the Environment, Food and Rural Affairs* [2015] UKSC 28 (“*ClientEarth No1*”), the Claimant successfully challenged the Government’s failure to produce a compliant air quality plan pursuant to the Directive. The Government was ordered to produce an air quality plan no later than 31 December 2015.
83. The Government produced its plan (“the 2015 AQP”) in December 2015 [CB5/1259-1330]. The 2015 AQP included measures to achieve limit values in Greater London, which was predicted to achieve compliance with limit values in 2025. The 2015 AQP made no mention of expansion at Heathrow. This is the plan relied on by the Defendant in his statement explaining the Decision (see underlined part of excerpt from the Defendant’s statements at paras 51, 60 and 61 above).
84. The 2015 AQP is based upon assumptions about nitrogen oxides (NO_x)⁴ emissions from diesel vehicles. These assumptions are based on emissions factors produced by a computer programme known as COPERT.⁵ In broad terms, the COPERT factors estimate NO_x emissions from diesel cars and vans in real world driving conditions.⁶ The Government uses COPERT factors in its modelling to predict future NO₂ concentrations. As is explained in Dr Holman’s statement, updated COPERT factors were published on 30 September 2016 which show, among other things, light duty Euro 6⁷ diesel vehicles (cars and vans) emit significantly more NO_x than the 2015 AQP assumed.
85. The 2015 AQP was challenged in *ClientEarth No2* on the basis that it did not comply with the requirements of the Directive, in particular the obligation to achieve compliance with limit

⁴ Emissions from combustion sources (e.g. power stations, diesel road vehicles) are mainly in the form of nitrogen monoxide (NO), which is rapidly converted to NO₂ in the air. The term “nitrogen oxides” or “NO_x”, comprises both NO and NO₂

⁵ Computer Programme to Calculate Emissions from Road Transport

⁶ This is because ‘type approval’ emissions tests (i.e. Euro standards) do not presently reflect emissions in real-world driving conditions.

⁷ See Dr Holman’s Statement at ** to **

values in the shortest possible time. The challenge was successful. Garnham J, in a judgment which post-dates the Decision by a little over a week,⁸ found that:

- 1) Article 23 of the Directive requires the Member State to adopt a plan to achieve limit values in the shortest possible time. In so doing, the Member State's discretion is heavily circumscribed. The Member State can determine the measures it is to adopt, but it must select measures which will be effective (see [49]).
- 2) The Member State is not permitted to have regard to cost when fixing the target date for compliance or in determining the route by which it will achieve compliance. The determining question is the efficacy of the measures, not their cost (see [50]).
- 3) The Secretary of State is required to choose the route which achieves compliance as soon as possible and "*choose a route to that objective which reduces exposure as quickly as possible*" (see [52]). The Secretary of State is also required to choose "*measures which maximise the prospect of achieving the target*", meaning that "*meeting value limits is not just possible, but likely*" (see [53]).
- 4) The Secretary of State erred in law by fixing dates for compliance (2020 in general and 2025 for Greater London) which were not the soonest possible date for compliance. The dates had been selected for administrative convenience and the Secretary of State had deprived herself of the opportunity to discover what was necessary to achieve compliance by an earlier date and whether a faster route to compliance could be devised (see [73]).
- 5) Defra knew that it had adopted an optimistic forecast of emissions in their modelling:

"It seems to me plain that by the time the plan was introduced the assumptions underlying the Secretary of State's assessment of the extent of likely future non-compliance had already been shown to be markedly optimistic. In my judgement, the AQP did not identify measures which would ensure that the exceedance period would be kept as short as possible; instead it identified measures which, if very optimistic forecasts happened to be proved right and emerging data happened to be wrong, might achieve compliance. To adopt a plan based on such assumptions was to breach both the Directive and the Regulations." [86]

(emphasis added)

⁸ The Defendant must have been aware, or should have been aware, of the existence of this challenge, but nevertheless made the Decision before awaiting the outcome.

86. Garnham J made a declaration that the 2015 AQP does not comply with the requirements of the Directive. He ordered the Government to create a new draft AQP for public consultation by no later than 24 April 2017 and for the final plan to be published and submitted to the European Commission by no later than 31 July 2017. The 2015 AQP will remain in force until replaced by the new AQP.

(3) The Airports Commission's Analysis

87. As set out above, Heathrow is in the Greater London Agglomeration Zone. It is the worst area in the UK for NO₂ concentrations. The Airports Commission Report states that, with a mitigated NWR in 2030 the highest concentration in Greater London would be along the Marylebone Road, and would be 48.6µg.m-3⁹. More recent analysis carried out by the Government shows that in 2025 the highest concentration in the Greater London Zone will be 59.8µg.m-3.¹⁰ Closer to Heathrow Airport, the A4 Bath Road was measured in 2013 as having concentrations of 44.5 µg.m-3¹¹. In the 2015 AQP the Bath Road is predicted to have concentrations of 40µg/m³ in 2025. In light of Garnham J's conclusions on Defra's approach to the 2015 AQP, this is likely to be an underestimate (see also Dr Holman's Statement at paras 35-55 [CB5/1009-1013]).

88. The Government's assessment of the air quality impact of the NWR is contained in three separate documents:

- 1) A technical report by engineers Jacobs UK Ltd dated May 2015 produced for the Airports Commission ("the Jacobs Report") [CB7/3001-3206];
- 2) The AC Report [CB7/3207-3550];
- 3) A "re-analysis" of the AC Report carried out by WSP Parsons Brinckerhoff dated 12 October 2016 [CB7/3551-3610].

89. Briefly, the AC Report, which was based on the Jacobs Report, concludes that the NWR can be delivered in compliance with the Directive. Its analysis of the issue was as follows:

⁹ See Airports Commission Report at 9.81 – 9.87 [CB7/3401-3403]

¹⁰ See WSP Report sensitivity analysis table 5-3 [CB7/3598]. The Claimants' case is that the sensitivity analysis is the more accurate picture of emissions in 2025, although it is still an underestimate.

¹¹ Table 2.5 of RICARDO-AEA 2014 Air Quality Progress report for Slough Borough Council

“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.”

(paragraph 9.81 of the AC Report [CB7/3401])

90. This conclusion (which the Claimants’ say is based upon an error of law) was clearly central, or at least material, to the Commission’s recommendation on air quality. At paragraph 9.93, for example, the Commission stated that it *“places limited weight on suggestions that air quality represents a significant obstacle to the delivery of expansion at Heathrow.”* [CB7/3405]

91. Although the AC Report concluded that there would be no breach of the Directive (which was wrong for the reasons set out below), it identified that there would be a deterioration in air quality in the local area:

“Even with additional runway capacity in place, none of the air quality receptors around Heathrow which would have implications for human health, such as at schools or residential buildings, are forecast to exceed air quality limits in 2030, and although without mitigation up to 47,000 homes around Heathrow would experience a worsening of NO₂ levels, compared to just over 20,000 around Gatwick, the number of properties moving into the ‘at risk’ category is very small.”¹²

[CB7/3235]

92. As noted above, the AC’s conclusion that there would be no breach of the Directive was criticised by the Environmental Audit Committee:

“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.”

(Emphasis in original)

[CB8/4321-4322, Report para 43]

¹² The “at risk” category was considered to be >32µg/m³ of NO₂

(4) Errors in the Defendant's approach

Error of Law

93. The Defendant accepted that more work needed to be done on air quality in December 2015. This was because the AC Report had been published before the AQP 2015 had been adopted and there was therefore a need to assess the proposed options against its requirements. As set out above, the Defendant did not consult on this further work.
94. The further work on air quality is contained in a report by WSP Parsons Brinckerhoff dated 12 October 2016 ("the WSP Report"). It carries out an assessment of the three schemes against the 2015 AQP and in so doing it uses the assumptions about NO₂ concentrations that were used in the 2015 AQP and which Garnham J found to be overly optimistic. The WSP Report is said to "confirm" the conclusion of the AC Report that the NWR can be delivered in accordance with the Directive. The WSP Report is not peer reviewed.
95. The main body of the WSP Report only contains a summary of its findings and, as explained by Dr Holman in her statement it does not present a complete picture for all affected road links. The summary information in the WSP Report shows that:
- (1) On the basis of the optimistic emissions assumptions in the 2015 AQP, if the 2015 AQP measures are fully implemented and the NWR is opened in 2030, all links will be below the limit value (see 5.2.6, [CB7/3593]. If the NWR is opened in 2025 the airport's contribution to exceedances is "*imperceptible*" (5.3.4, [CB7/3595]).
 - (2) On the basis of the sensitivity analysis (which assumes that Euro 6 diesel light vehicles are five times more polluting than emissions standards), the NWR results in an increase in concentrations on roads which exceed the limit value. The NWR also gives rise to a new exceedance of limit values on the Bath Road (5.4.6, [CB7/3597]).
96. In light of the decision of Garnham J, the Claimants' case is that the sensitivity analysis is a more accurate assessment of NO₂ concentrations. However, as set out below and in Dr Holman's statement, the sensitivity analysis may well be an underestimate of the true picture.
97. The WSP Report contains a short foreword which explains that, in light of the newly published COPERT emissions factors, it has carried out a qualitative review of the potential implications of the update for its conclusions. On the basis of the qualitative review, the WSP Report concludes that:

“Heathrow Northwest Runway is at risk of worsening exceedances of limit values alongside some roads within Greater London, but this would be unlikely to affect the overall zone compliance. However, the overall risk has increased compared to the WSP Parsons Brinckerhoff Re-analysis Study.” [CB7/3558]

98. The reference to the “compliance status” and “overall zone compliance” are references to the same erroneous test applied by the AC Report, namely that provided the NWR does not delay compliance with the Directive because there is an area in London where NO₂ levels are higher, there is no breach. On the basis of the WSP Report, the Defendant announced as part of the Decision that the NWR complied with the Directive. It is clear from this statement that Government has adopted the test used by WSP and the AC Report.
99. The test applied by the Defendant is wrong in law. The clear requirement of the Directive is that limit values apply throughout each zone and that breaches of limit values should be corrected in the shortest possible time. This has been confirmed by the decision in *ClientEarth No2*. Further, Garnham J held that in seeking to remedy breaches of limit values the Government must choose the path which reduces exposure in the shortest possible time. It is wholly inconsistent with the clear words of the Directive and the decision in *ClientEarth No2* to propose development at Heathrow which carries the risk, according to the Government's own expert advisers, of worsening exceedances of limit values.
100. Further, the Defendant’s construction of the Directive is inconsistent with the clear object and purpose of the Directive, which is to protect human health. It cannot be right that pollution can be permitted to get worse, bringing with it demonstrable health impacts, simply because NO₂ concentrations are worse elsewhere in the same zone.
101. Moreover, read as a whole, the Directive makes it clear that good air quality should be maintained in circumstances where limit values have not been breached (see Article 12 at para 79 above)
102. The correct test is therefore:
- 1) Where development would cause breach of limit values in the locality of the development, that development cannot lawfully proceed.

- 2) Where development would make an existing breach worse, or delay compliance with limit values throughout the zone, the development cannot lawfully proceed.
103. Had the Defendant applied the correct test, he could not have concluded that the NWR can comply with the Directive. This is because his own evidence demonstrates that the NWR will give rise to breaches of limit values in the locality (see above at paragraph 95 and 96 above). The evidence from the AC Report also clearly demonstrates that good air quality will not be maintained and that local residents will suffer deterioration in air quality.
104. In addition to the failure to use the most up to date information, and the application of the wrong legal test, the AC Report and WSP Report contain errors and omissions in approach, the result of which is that NO₂ concentrations are likely to have been underestimated. This further demonstrates that the Defendant was wrong to conclude that the NWR can comply with limit values in 2025 (which is the proposed date for the runway opening). As set out further in the statement of Dr Claire Holman:
- 1) The WSP Report is based upon outdated emissions data. On the basis of the most up to date COPERT emissions factors, the NWR is likely to cause or contribute to exceedances of limit values on roads around the airport. This can be seen in the foreword to the WSP Report and its sensitivity analysis. As explained by Dr Holman, even the sensitivity analysis is likely to be an underestimate of the true picture. As a result, the baseline concentrations of NO₂ and the impact of the NWR are likely to have been underestimated.
 - 2) The WSP Report considered the scenario of the NWR opening in 2025. In so doing it adjusted the assumptions of road traffic impacts in the Jacobs Report to 2025 but did not update the impact of aircraft emissions or airport mobile machinery, which are likely to be higher in 2025. The result is that the impact of the NWR in 2025 has been underestimated. The omission is material because in 2025 the Bath Road is only 1-2 µg/m³ below the limit value.
 - 3) The Defendant, and the WSP Report, rely on mitigation measures to achieve compliance with limit values. A number of mitigation measures were included in the Jacobs Report modelling and therefore any further reliance on the same measures to further reduce NO₂ concentrations is double-counting.

- 4) The efficacy of the mitigation measures is uncertain. Some mitigation measures proposed, such as a congestion charging zone around the airport, could be beyond the airport's control. Airport-based mitigation measures will not have an impact in Inner and Central London, even though the NWR will contribute to NO₂ concentrations in this area. Notwithstanding all of this, the Jacobs Report ascribed an impact from mitigation of between 2.4 to 3.6 µg/m³ on the Bath Road¹³. If mitigation measures are not implemented, or are less effective, this may have a material impact on compliance with the Directive.
105. The Defendant should have ensured compliance with the requirements of the Directive *before* making the Decision. On the Government's own evidence, once the error of law is corrected, the NWR does not comply with the Directive. The practical effect of this is that the Defendant will commence a lengthy and expensive public consultation process which may need to be abandoned or where the inevitable result will be that the NWR cannot proceed.
106. The Defendant has sought to preserve the NWR by stating that there will be a planning condition that it cannot proceed until compliance with the Directive has been demonstrated. It is not appropriate, or fair to the local population including the Claimants, to defer consideration of the air quality impact until the planning stage because this may bring about a situation where the NWR, after a process involving enormous public expense, delay and uncertainty, can be granted planning consent, but never built. In an ordinary planning application for EIA development, it is unlawful to defer by way of condition a matter as fundamental as air quality is in this context (see e.g. *Hereford Waste Watchers Ltd v Hereford Council* [2005] EWHC 191 (Admin)). It is wholly unreasonable for the Defendant to seek to rely on his proposed planning condition in circumstances where such a condition (1) would be unlawful if imposed at the planning permission stage, and (2) could not in any event be complied with.

Pre-Emption of AQP Process

107. The Decision pre-empts the development of the new AQP not expected to be completed before July 2017. In his recent oral evidence to the EAC, the Defendant accepted that further work is required on Air Quality now that the updated COPERT data shows that diesel cars (and other vehicles) are more polluting than the AC Report or WSP Report allowed for. It

¹³ The benefits of an ultra-low emissions zone around Heathrow have been doubled, without explanation, in the Jacobs Report.

appears that he intends to complete this work before Defra has published its draft AQP, which Garnham J ordered must be by 24 April 2017.

108. A lawful AQP must comply with article 23 of the Directive, which requires the government to adopt measures which remedy breaches of limit values in the shortest possible time. Following the decisions in *ClientEarth No 1* and *ClientEarth No 2*, this requires adoption of measures which make compliance with limit values likely and which reduce exposure as quickly as possible.
109. There has been no explanation from Government as to how the NPS process will interact with the AQP process. Before the EAC, the Defendant's evidence was that the two processes are separate (**[CB8/4702]**). This was tempered somewhat by the statement from the Director of Aviation who said that Heathrow would go first and would, she thought, be factored in to Defra's AQP as "planned infrastructure" **[CB8/4702-4703, Q17]**. This approach is inconsistent with the Directive, and unlawful, for the following reasons:
- 1) The Government is under an obligation to achieve compliance with limit values in the shortest possible time. The Government has been in breach of the Directive for nearly 7 years. Its previous AQP did not address expansion at Heathrow and sought to achieve compliance in London by 2025. The Government's own evidence is that, using the more realistic sensitivity analysis, the NWR contributes to worsening exceedances of limit values (see paragraph 95, 96 and 97 above). The Decision therefore runs contrary to the Government's duty to achieve compliance in the shortest possible time and to reduce exposure in the shortest possible time.
 - 2) The Defendant is now proposing that Heathrow should be considered as part of "planned infrastructure" in the AQP. This puts the cart before the horse. The correct approach would be for the Government to assess how quickly it can comply with limit values, produce a compliant AQP and then assess the proposed NWR against its final plan. It is entirely contrary to the objects of the Directive for the Defendant to take advantage of the fact that a new AQP is being developed to advance a project which will have a negative effect on air quality.
 - 3) In any event, the NWR cannot be "planned infrastructure" in the AQP because no final decision has been made. In his letter of 1 December 2016, the Defendant said that the NPS process would include assessment of reasonable alternatives, namely

Gatwick, and that there would be conscientious consideration of consultation responses. The Defendant cannot pre-empt the outcome of the consultation process and ask Defra to treat the NWR as having been decided for the purposes of the AQP.

110. The Government has only itself to blame for this air quality procedural mess. It has been clearly warned by the Environmental Audit Committee that there was a legal error in relation to the Directive, and it was well aware of the impending decision in *ClientEarth No 2* which may call into question the 2015 AQP.

G. GROUND 2 : BROKEN PROMISES (LEGITIMATE EXPECTATION)

Legal Principles

111. The legal principles relating to legitimate expectation are well known. The Claimants rely on two distinct, but related, doctrines: the procedural requirement to consult where there is a change in policy and substantive legitimate expectation.

112. The test was explained by Lord Hoffman in *R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs (No 2)* [2009] AC 453 at [60] (cited with approval by Lord Carnwath JSC in *United Policyholders Group v Attorney General of Trinidad and Tobago* [2016] 1 WLR 3383):

“It is clear that in a case such as the present, a claim to a legitimate expectation can be based only upon a promise which is ‘clear, unambiguous and devoid of relevant qualification’: see Bingham LJ in R v Inland Revenue Comrs, Ex p MFK Underwriting Agents Ltd [1990] 1 WLR 1545 , 1569. It is not essential that the applicant should have relied upon the promise to his detriment, although this is a relevant consideration in deciding whether the adoption of a policy in conflict with the promise would be an abuse of power and such a change of policy may be justified in the public interest, particularly in the area of what Laws LJ called ‘the macro-political field’: see R v Secretary of State for Education and Employment, Ex p Begbie [2000] 1 WLR 1115, 1131.”

113. In *United Policyholders* Lord Neuberger of Abbotsbury PSC described the doctrine as:

“In the broadest of terms, the principle of legitimate expectation is based on the proposition that, where a public body states that it will do (or not do) something, a person who has reasonably relied on the statement should, in the absence of good reasons, be entitled to rely on the statement and enforce it through the courts.” at [37].

114. In the same case, Lord Carnwath JSC described the doctrine of substantive legitimate expectation as reflecting:

“...a basic rule of law and human conduct that promises relied on by others should be kept. This applies in public law as in private law, unless the authority can show good policy reasons in the public interest for departing from their promise.” [118]

115. He went on to describe the test in the following terms:

“In summary, the trend of modern authority, judicial and academic, favours a narrow interpretation of the Coughlan principle, which can be simply stated. Where a promise or representation, which is “clear, unambiguous and devoid of relevant qualification”, has been given to an identifiable defined person or group by a public authority for its own purposes, either in return for action by the person or group, or on the basis of which the person or group has acted to its detriment, the court will require it to be honoured, unless the authority is able to show good reasons, judged by the court to be proportionate, to resile from it. In judging proportionality the court will take into account any conflict with wider policy issues, particularly those of a “macro-economic” or “macro-political” kind.” [121]

(see also *R v North and East Devon Health Authority, Ex p Coughlan* [2001] QB 213; *Bhatt Murphy v Independent Assessor* [2008] EWCA Civ 755, and *Solar Century Holdings v Secretary of State for Energy and Climate Change* [2016] EWCA Civ 117)

116. Related to this is the procedural aspect of legitimate expectation. In circumstances where a public authority deprives a person of an existing benefit or advantage (which includes a promise that a particular policy will continue), fairness requires that those affected are consulted in advance of the decision: (see *R(Moseley) v Haringey LBC* [2014] UKSC 56 at [26], *Bhatt Murphy v Independent Assessor* [2008] EWCA Civ 755 at [49] and *R (Dudley MBC) v Secretary of State for Communities and Local Government* [2012] EWHC 1729 at [56]-[69]).

117. It is for the Claimants to establish the legitimate expectation. Once established, the burden shifts to the Defendant to justify why it should not be honoured.

Substantive Legitimate Expectation

118. The Government made repeated promises that there would not be a third runway at Heathrow (see paragraph 43 above). Those promises were clear and unequivocal and give rise to a legitimate expectation.

119. 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 reasonably believed that Mr Cameron's promise in 2009, and the subsequent promises of the Government, had finally laid the matter to rest.

120. In light of these clear and unequivocal promises by the Government, the residents of the Boroughs (particularly those of Hillingdon) planned their lives on the basis that there would be no third runway at Heathrow.
121. In particular, the proposed Claimant Christine Taylor who is a resident of the Heathrow Villages, reasonably relied on the government's promises that there would be no third runway. In 2010/2011 she made plans to make improvements to her mother's property, which is in Sipson. She submitted an application for building regulations consent, which was granted. However, under the renewed threat of expansion, her mother does not wish to go to the expense and upheaval of renovating her home when she may not be able to live there if the NWR goes ahead [CB3/554].
122. The Boroughs, in discharge of their public obligations, also made decisions on the basis that there would be no Heathrow, as set out in the Witness Statements of Councillor Raymond Puddifott, Councillor Lord True and Councillor Govindia [CB3/438-456].
123. For the Government to go back on these promises, without justification for its change in stance, would be so unfair as to be unlawful. The Claimants have raised this point with the Defendant on many occasions since September 2015. The Decision makes no reference to the Claimants' legitimate expectation and nor has the Defendant purported to give any compelling reasons which would justify frustrating it.
124. The only purported justification for a change in policy is that set out by the Airports Commission when seeking to distinguish the 2009 third runway proposals from the proposals which it was considering (see Final Report at 5.9 [CB7/3306]). But this exercise only serves to demonstrate the *increased* impact of air quality and noise on the surrounding communities that the current proposals entail and therefore undermines, rather than supports, any possible justification for defeating the Claimants' legitimate expectation. For example, in the scheme considered by the Airports Commission, and now supported by the Government:
- 1) The runway is longer than the 2009/2010 proposal by 1,300m and suitable for use by all aircraft (the 2009/2010 proposal was not suitable for the largest 4 engine wide body aircraft.);
 - 2) The number of Air Transport Movements (ATMs) predicted is higher by some 38,000. Heathrow has also proposed an additional 25,000 ATMs during the construction period from 2020-2025;

- 3) The land-take proposed is more extensive and more people are predicted to be affected by noise.
 - 4) The NWR scheme does not comply with the Directive.
125. It is wholly irrational, unfair and disproportionate to attempt to justify such a policy change on the basis that the impact on the local communities will be *more severe and more damaging*, than the earlier rejected proposal.
 126. Further, and in any event, this change of policy must be seen in its ECHR context. Any decision 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]). Where ECHR rights are engaged, the intensity of review by the Court is high and the Court must make its own assessment of proportionality: *R (A) v Chief Constable of Kent Constabulary* [2013] EWCA Civ 1706 at [36]-[39] and [79]).
 127. Expansion at Heathrow will clearly interfere with the article 8 ECHR rights of those who live close by, both in terms of increased noise and pollution (see *Hatton v United Kingdom* (2003) 37 EHRR 28, and at *Allen v United Kingdom* No. 5591/07 (6th October 2009) at [47]) and because they have planned their lives around a promise that there would be no third runway. This is particularly so for the residents of Hillingdon, including the 6th Claimant, who have moved into the area, spent money refurbishing their homes, made plans for their retirement and built up communities relying on the promises that they were safe from a third runway [**CB/3/547-568, CB4/901-918**]. The blight caused to the homes and businesses of these residents also engages their property rights under article 1 of protocol 1 ECHR.
 128. The Decision has already had a real and detrimental effect on these residents and their communities: they are now unable to plan their future, cannot sell their homes or businesses (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. Even an allegedly generous compensation package can only cover the value of a home (and selling and moving costs). It cannot address loss of community. In the absence of any overriding considerations or rational

justification, the decision to prefer the NWR amounts to a disproportionate interference with these residents' ECHR rights.

Procedural Legitimate Expectations

129. The Government had a duty to consult on the principle of departing from its promises that there would be no third runway.
130. The effect of the Decision is to rule in a third runway at Heathrow as the preferred option for an NPS. This is a clear change in the Government's policy. The Claimants wrote to the Defendant on a number of occasions asking the Defendant to rule out Heathrow or to consult them in advance of any decision which favoured Heathrow. The Defendant ignored the Claimants' requests (although he did engage with the promoters before the Decision was made). Latterly, the Defendant has sought to rely on the NPS consultation in asserting that the Claimants will yet have an opportunity to express their views before the NPS is designated authorising Heathrow expansion. But by that stage it will be too late. The Defendant has already departed from the promise that there will be no third runway at Heathrow because he has failed to rule Heathrow out of consideration. If the Claimants had been consulted *before* the Decision was made, during the period when further work was being carried out they (particularly the Boroughs and the 5th Claimant), would have taken legal advice, and commissioned independent experts to address any expert issues arising.
131. The Defendant's approach has resulted in unfairness to the Claimants. Their legitimate expectations have been ignored in the Decision. They, and the Boroughs' residents, now face a prolonged period of blight and uncertainty as the NPS process runs its course. The NWR, if implemented, will deprive many local residents of their homes and businesses.
132. The effect of the Decision is to frustrate the Claimants' legitimate expectation. The Defendant did not mention the Claimants' legitimate expectation in the announcement of the Decision, or in the technical information published on the same day. He has failed to give any fair or proportionate justification for a change in policy.

H. Aarhus Costs Protection

133. The Claimant contends that this claim falls within the meaning of CPR 45.41 and within the definition of an "Aarhus Convention claim" (see e.g. *Venn v Secretary of State for*

Communities and Local Government [2013] EWHC 3546 (Admin), upheld by the Court of Appeal ([2014] EWCA Civ 1539)), given that this matter concerns issues of an environmental nature and therefore the Claimant is entitled to Aarhus costs protection. The Defendant has accepted that CPR r45.41 applies to this litigation. The Claimants agree that there should be an overall cap of £35,000 in relation to the recovery of costs against the Defendant. In relation to the cap on costs recovery against the Claimants, the Defendant submits that this should be £10,000 for each of the first five Claimants, and £5,000, for the sixth Claimant - a total of £55,000. The Claimants disagree. It is a matter for the court to assess whether individual caps should apply or whether claimants should be treated as a single party *R (Harris and Harris) v Broads Authority* [2016] EWHC 799 (Admin). The Claimants submit that they should be treated as a single party, with a total cap therefore of £10,000. It is wrong in principle, for the purposes of costs assessment subject to Aarhus to separate out local authorities, such as the Boroughs, so as to enhance central government's costs recovery.

I. OTHER APPLICATIONS

134. As set out in section 8 of the Claim Form, the Claimants are making the following applications:

- 1) Expedition/a rolled-up hearing;
- 2) Permission to rely on expert evidence pursuant to CPR r35.4(1)
- 3) Disclosure

Expedition/rolled-up hearing

135. The Defendant has indicated that he proposes to commence consultation on a draft NPS in early 2017. He has not given a clear timetable but representatives from the Department for Transport have told the London Borough of Richmond that the consultation will be “before Easter 2017”. It is clearly important to all parties that the issues in this claim are resolved before any consultation begins. In the ordinary course of matters, it is unlikely that there would be a final hearing in the first part of 2017. Therefore, the Claimants seek directions for a rolled up hearing as soon as possible and in any event before the draft NPS consultation.

Expert Evidence

136. The Claimants seek permission to rely on the report of Dr Claire Holman pursuant to CPR r35.4(1). Dr Holman’s report is necessary to explain the error of law alleged in Ground 1 and why the error has a material effect on the Decision. Her report addresses technical matters which will assist the Court in understanding the Directive and the errors made by the Defendant.

Disclosure

137. In the Pre-Action Protocol letter, the Claimants sought disclosure of documents from the Defendant. The Defendant has refused to provide these documents on the basis that the court has no jurisdiction to hear the claim. As set out above in section C, the court does have jurisdiction to hear the claim. The Claimants therefore make an application for disclosure of the documents listed in Appendix 1 to the Grounds. The list has been refined to reflect the fact that the Claimants are only pursuing some of the Grounds foreshadowed in the Pre Action Protocol letter at this stage.
138. The documents are necessary in order to deal fairly and justly with the case. The data supporting the Defendant's analysis of air quality are not in the public domain. The WSP Report has only provided a summary of this data. Further, the Defendant knew in advance of the *ClientEarth No2* judgment that the 2015 AQP presented an optimistic picture of emissions and that the revised COPERT factors were more pessimistic than the emissions modelled in the 2015 AQP. Disclosure is therefore required so that the Claimants can understand the reasons why the Defendant concluded that the NWR can be delivered in compliance with the Directive.

J. CONCLUSION

139. For the reasons set out above the Decision is unlawful.

K. REMEDY

140. The Claimants therefore seek:
- 1) A declaration as to the proper legal test to be applied under the Directive (see paragraph 102 above)
 - 2) An order quashing the Decision
 - 3) Costs, subject to CPR r.45.41, including those associated with being required to commence the proposed proceedings in reliance on *M v Croydon LBC* [2012] a WLR 2607.
 - 4) Such other or further relief as appropriate.

NIGEL PLEMING QC
RICHARD WALD
ROSE GROGAN

39 ESSEX CHAMBERS
8 DECEMBER 2016

Details of information sought

1. The NO₂ projections with the 2015 AQP measures for 2020, 2025 and 2030 for the Greater London zone.
2. The sensitivity test NO₂ projections for 2020 for the Greater London zone.
3. The results from the Streamlined-PCM model for Greater London based on the new COPERT emission factors.
4. The results from the full PCM model for Greater London based on the new COPERT emission factors.
5. The PCM model itself.
6. The results of Scenarios 4A to 4F as defined in the WSP report.
7. Any quantification behind the re-analysis which are summarised in the Foreword to the WSP report.
8. Any correspondence between DfT, Defra and other Government departments, internal memos, presentations regarding the re-analysis including:
 - a. Instructions to WSP/Parsons Brinkerhoff;
 - b. The use of COPERT v 4.10, v 4.11 and the 30th September emission factors (COPERT v 4.11.4 / COPERT v 5.0) in the modelling of the AQP and the impact of expansion of Heathrow.
 - c. The ERMES meeting in Lyon in May 2016 (attended by representatives both DfT and Defra).
 - d. Defra's PCM and streamlined-PCM modelling air quality using the new COPERT emission factors.
9. Minutes of and correspondence relating to meetings between the government and the promoters of the NWR between the publication of the Airports Commission Report in July 2015 and the Decision.
10. Any documents including minutes and correspondence relating to the decision (and its timing) to select the NWR as the Government's preferred option for airport expansion in the South East of England.

Claim No.:

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

BETWEEN:

R (o.a.o. HILLINGDON LONDON BOROUGH COUNCIL and OTHERS)

Claimants

- and -

SECRETARY OF STATE FOR TRANSPORT

Defendant

FIRST STATEMENT OF COUNCILLOR RAYMOND PUDDIFOOT MBE

I, RAYMOND PUDDIFOOT MBE, Councillor and Leader of Hillingdon London Borough Council, Civic Centre, Uxbridge, Middlesex UB8 1UW **WILL SAY AS FOLLOWS:**

1. I have been a Councillor at Hillingdon London Borough Council ("Hillingdon") since 1998. In July 2000, I was elected as Leader of Hillingdon. Under the terms of Hillingdon's Constitution, I am responsible for and make all necessary decisions in pursuit of Hillingdon's policy on Heathrow expansion. I am authorised to make this statement on behalf of Hillingdon and on behalf of the other local authority claimants – namely the London Boroughs of Richmond upon Thames and Wandsworth and the Royal Borough of Windsor and Maidenhead (collectively "the Local Authority Claimants").

2. There is now produced and shown to me a paginated bundle of documents marked "Claim Bundle" to which I will refer in the following terms [CB/Tab/Page].
3. The facts and matters referred to in this statement are either within my knowledge, or are based on information given to me as explained below.

Background

4. The issue of possible Heathrow expansion has arisen a number of times whilst I have been the Leader at Hillingdon. Support for such expansion is often seen as support for a commercially attractive proposition. However, such support has ignored the fact that Heathrow is in the wrong place and any expansion is not compatible with the interests of the local community, London as a whole, or the environment.
5. It is an inescapable fact that Heathrow is located in a densely populated area and as a result causes significant pollution and blight to the many residents and businesses who are affected by it. The history of Heathrow expansion has shown that it has been consistently recognised that Heathrow's scope for expansion should therefore be limited. However, each time the proposed expansion has been approved and statements and promises are made which amount to a present intention to make that particular expansion the last.
6. I believe we have now reached a point when there cannot be further expansion because of the impossibility of achieving environmental limits and it is my view that planning permission cannot be granted. Yet, there have been a number of threats of expansion over the years which have been detrimental in their own right: the threat of expansion causes blight and uncertainty which affects peoples' lives and destroys communities. In the circumstances, I firmly believe that the only fair course of action is for the Government to rule out further expansion at Heathrow once and for all.

History

Controls on the number of Air Traffic Movements and the expansion of Heathrow

7. In the 1978 White Paper on Airports Policy, the Government proposed a “step by step approach” to London’s system of Airports which, amongst other things:
 - Ruled out development of the proposed Thames Estuary Airport at Maplin Sands;
 - Accepted people had a right to expect that there should be limits on the development of airports, including a limit on the numbers of terminals at existing London airports;
 - Undertook to limit the number of terminals at Heathrow to four and at Gatwick to two;
 - Acknowledged that there was no objection to increasing the number of passenger movements to 4 million passenger movements per annum (mppa) at Stanstead. Although, it was acknowledged that an increase to 16 mppa would raise wider issues, including major changes in planning policies. The Government therefore undertook that major expansion at Stansted would be only one of the options to be examined to meet longer term demand in the London area.
8. This was interpreted as the Government giving a green light for further development at Stansted, Heathrow, Gatwick and Prestwick.
9. In 1980, following the Heathrow Terminal 4 Planning Inquiry, the Inspector, Mr. Ian Glidewell, made the following recommendations for limits on the operation of Heathrow:
 - A limit of 260,000 annual Air Transport Movements (‘ATMs’) should be imposed “and periodically reconsidered” downward;
 - Total passenger movements were not to exceed 38 Million per annum;
 - No change to the policy on runway alternation; and
 - No addition to the numbers of night flights between 23:00 to 07:00.

10. The Government accepted these recommendations, but imposed a higher limit on ATMs of 275,000.

11. The Inspector also commented on the Government's White Paper on Airports Policy in relation to the potential for a fifth terminal at Heathrow:

"4.1.17 I regard the clear statement of Government policy in the White Paper that there will not be a terminal five as being as categorical a statement of Government policy as one is ever likely to come across. But I also take the view that no Government can ever say that it, or some successive Government, will not adopt a different policy at some unknown period in the future. Therefore my tentative approach is that this is a commitment that is put so categorically that there would have to be very strong, compelling reasons for any later Government to adopt a different policy. But one must have at the back of one's mind that there is such possibility, however remote."

12. The Government subsequently undertook that there would be no further major expansion at Heathrow in the future:

"The Government concludes that the idea of a Fifth Terminal at Heathrow and a second runway at Gatwick should not be pursued. This effectively limits expansion at these airports."

Aviation Minister, Lord Trefargne, the House of Lords, 14th February 1980.

13. This is one of the first promises that was made that there would be no further expansion of Heathrow.

1983 Airports Inquiries

14. Nevertheless, an initial application was made for planning permission to construct a fifth Terminal at Heathrow. This application was made by a district council in response to the British Airways Authority's ('BAA') application to increase capacity at Stansted; BAA having been opposed to a fifth terminal at Heathrow at the time.

15. A public inquiry was held into these applications in 1983. The application was rejected by the Inspector, Mr Graham Eyre. In refusing the application, however, the Inspector commented that he believed that there was potential for the land occupied by the 'Perry Oaks Sludge Works' to be used to construct a 5th Terminal at some future date.

16. In response to evidence from BAA that the maximum level of ATMs per annum at Heathrow (assuming there were only 2 runways and 4 terminals) would be 300,000, the Inspector also recommended that the limit of 275,000 annual ATMs should be lifted. He made this recommendation on the basis that the additional 25,000 movements would have "no perceptible effect on the noise climate around Heathrow". In not imposing a new annual ATMs cap as a noise control measure, all planning controls over noise were removed. This left the door open for further expansion at Heathrow.

17. The Inspector also recommended that the practice of running night flights over Heathrow should be abandoned:

"42.9.50 Night movements are few in number but constitute a particular curse. In the period 1982/83 there was an average of 12 flights per night.... Notwithstanding the low figures, I have no doubt that thousands of people were disturbed on several occasions each night. I do not believe that such operational advantages as night quotas justify the effect on a large number of people in the Heathrow area. Bans operate at other important airports and a total ban at Heathrow would truly mitigate a major nuisance."

18. Shortly after the conclusion of the 1983 applications, the Government produced a new Air Transport White Paper which accepted the Inspector's recommendations to rescind the commitment to limit the number of ATMs:

"5.13 The Government is persuaded by Mr Eyre's conclusions that the restriction of movements at Heathrow to 275,000 ATMs a year would make no perceptible difference to the noise climate in areas around the airport.

5.14 The Government fully understands the reliance that had been placed by local residents on the proposed ATM limit as a means of controlling aircraft noise and is aware that its decision is not in line with its earlier commitment. However, after careful consideration of the evidence and the Inspector's advice, the Government believes that other, more effective ways of limiting the disturbance from noise should be pursued. These are discussed in paragraph 5, 18 and in Section 8."

19. The 'more effective ways' referred to included: noise monitoring, noise insulation grants, and the acquisition by BAA of "noise-blighted properties". This signalled a departure from the Government's promise that people had a right to expect that

there should be limits on the development of airports, including a limit on the numbers of terminals at existing London airports.

20. The Government, however, rejected the Inspector's other recommendation to abolish the practice of allowing night flights at Heathrow.

Runway Capacity to Serve the South East of England Study

21. In 1989 the Civil Aviation Authority published a report which identified the need for another runway to meet the growing demand for air travel to/from the South East of England. Heathrow was identified as one of a number of possible locations for such a runway.

22. A Government Working Party was established on Runway Capacity to Serve the South East ('RUCATSE'). RUCATSE reported in 1993. The report considered in detail the possible options for further runways; including a runway at Heathrow between A4 and M4. The main findings of the report were that an additional runway would be needed in the South East by 2005, but no preferred option was identified.

23. In response to the report, BAA publicly rejected any notion that additional runway capacity was required at Heathrow:

"We must stress that this company is not planning or proposing to build a third runway at Heathrow. The airport requires extra terminal capacity, rather than runway capacity." (Uxbridge Informer 25/3/1994).

24. In response to the report, the then Secretary of State for Transport, Dr Brian Mawhinney, also announced on 2 February 1995 that the Government rejected proposed new runways for Gatwick and Heathrow.

"... I am clear that BAA should not consider the options studied in RUCATSE for a third runway at Heathrow or for a second runway at Gatwick."

25. The Government subsequently invited BAA to examine whether there were options for runway development which had lesser environmental impacts, such as a close parallel runway at Gatwick or ending the practice of using one runway for take-off and the other for landing at Heathrow. The CAA was then asked to co-ordinate

further studies to look at the scope for increasing the use of Heathrow's existing runways, taking into account potential capacity gains and environment impact. This again signalled a departure from the earlier commitment to limit the expansion of Heathrow.

May 1995 – March 1999 Heathrow Terminal 5 Application

26. In 1995, BAA made an application for planning permission to develop Terminal 5 at Heathrow. As part of the application, BAA made numerous statements in the press denying that Terminal 5 would lead to a third runway.

27. For instance, on 16 May 1995, Sir John Egan, BAA's Chief Executive, told residents in an open letter that "T5 does not call for a third runway".

28. However, contrary to their public position, during the Terminal 5 Inquiry BAA did not rule out the potential for a third runway. Michael Maine, BAA's Technical director said:

"We could not rule out the option of considering Heathrow when another runway is required...We could not give a guarantee about seeking further expansion."

29. The Inspector, Roy Vandermeer QC, during the cross examination of Alison Munroe, a Department of Transport witness, in November 1995, remarked:

"I am not sure that we have received evidence of that nature [ruling out more runways]...it does not hit you forcibly that it (ruling out more runways) is said with total certainty."

30. As the Inquiry progressed, BAA continued to maintain its public position that runway capacity was not an issue at Heathrow. In a public newsletter published in May 1997, BAA suggested that the inquiry proceedings had put to rest concerns that Terminal 5 was a 'Trojan horse' for a 3rd runway:

"...some legitimate fears have been put to rest. We now know for example that there will be no third runway at Heathrow - a widespread concern before the inquiry started."

31. This position was reiterated by BAA on 12 October 1997 in a press release:

"The problem at Heathrow is not the lack of runway capacity but shortage of terminal space...The inevitable overcrowding until T5 is built is likely to cause...problems..."

1998 - A New Deal for Transport

32. In 1998, the Government published a transport White Paper – A New Deal for Transport. In regard to airports the White Paper made the following policy statement:

"As recommended by the Transport Select Committee in May 1996, we will prepare a UK airports policy looking some 30 years ahead. This will develop the application to UK airports of the policies set out in this White Paper - of sustainable development, integration with surface transport and contribution to regional growth.

It will provide the framework within which those concerned can plan for the future with greater certainty.

We will consult widely in preparing the new policy and will take account of the Inspector's report on the Heathrow Terminal 5 inquiry."

33. However, as part of this White Paper, the Government announced the widening of the M25 at the location for the connection to the proposed spur road to Terminal 5. In effect, as noted in the Daily Express on 1 August 1998, the Government had announced its decision to grant planning permission for Terminal 5 signalling that the government was departing from its position in 1980 that there would be no further terminals at Heathrow:

"The only sour note [in the Roads Review] lies in the decision to approve the widening of the M25 between Junctions 12 and 15. All other such plans have been scrapped. But the Government has decided that with Terminal 5 at Heathrow due to open in future, the M25 needs this extra space."

1999 Runway 3 Denials

34. Meanwhile, BAA continued to publicly state that there was no desire to construct a third runway at Heathrow. In a press conference on 12 March 1999, BAA stated that an "additional runway [had been] ruled out forever whether T5 is approved or not".

35. Sir John Egan, CEO of BAA, reiterated this promise in an open letter to residents on 24 March 1999:

"No 'third' runway

Heathrow has two major runways, with a cross runway only used occasionally (for instance, to allow some types of aircraft to land safely in high cross winds). In my 1995 letter, we promised that 'T5 does not call for a third runway'. We have since repeated that we do not want, nor shall we seek an additional runway. I can now report that we went even further at the inquiry and called on the inspector to recommend that, subject to permission being given for T5, an additional Heathrow runway should be ruled out forever. We said:

"It is the company's view that the local communities around Heathrow should be given assurances. BAA would urge the Government to rule out any additional runway at Heathrow, and BAA would support a recommendation by the inquiry inspector in his report that the government should rule it out. Indeed, BAA invites the inspector to make such a recommendation."

Our position could not be clear, not could it be more formally placed upon the record: **T5 will not lead to a 'third' runway."**

(Emphasis in the original)

36. British Airways, prior to the Government's decision on Terminal 5 but after the Inspector's report had been sent to Government, made their position known that both a third runway and a fifth terminal were essential in a speech to a business conference on 4 January 2001 (reported in the Daily Mail on 5 January 2001):

"Mr Eddington [the then Chief Executive of British Airways] insisted that it was essential that Heathrow had a third runway as well as a fifth terminal."

37. Shortly after this, Mr Eddington is reported in the Ealing Times on 1 February 2001 to have given contradictory assurances to local residents that ""BA is not pushing for a third runway at Heathrow...".

Government promise of new noise research - new study on aircraft noise and annoyance

38. On 8 May 2001, the Aviation Minister, Robert Ainsworth, announced that the Government was commissioning a major new study on aircraft noise and disturbance; the Aircraft Noise and Annoyance ('ANASE') study:

“My Department is to carry out a major study to reassess attitudes to aircraft noise. This new study underlines the Government's commitment to underpin our policy on aircraft noise by substantial research that commands the widest possible confidence.

Our current understanding of the relationship between annoyance and aircraft noise over 24 hours is based primarily on research that was carried out in the 1980s, in particular the Aircraft Noise Index Study published in 1985. That was based on the largest survey yet carried out of public attitudes to aircraft noise and eventually led the Government of the day to adopt the Leq (equivalent continuous noise) index for daytime noise contours.

The conclusions have been broadly confirmed by other studies here and abroad, and we have no reason to doubt their validity. But in the light of our commitment to develop a new air transport policy, of changes to traffic patterns since then, and the general reduction in noise levels of individual aircraft, it is now timely to commission a fresh study.

We want the aviation industry to meet the external costs it imposes. This new study will give us more information on the value people give to relief from noise, and to focus our policies from a broader range of evidence.

In deciding to commission this further research, I have considered the findings of three recent Government sponsored studies on sleep disturbance, and the advice of independent experts. I am grateful to those who sat on the steering and technical working groups for their help in shaping those studies. I have concluded that a new full-scale objective sleep study would be unlikely to add significantly to our understanding; and that the way forward is through concentrating instead on further research into subjective responses to annoyance by night and by day.

I am placing copies of the three reports (*Adverse Effects of Night-Time Aircraft Noise*, *Aircraft Noise and Sleep-UK Trial Methodology Study*, and *Perceptions of Aircraft Noise Sleep and Health*) in the House Library. These have been published by the former Department of Operational Research and Analysis (DORA) of National Air Traffic Services Ltd., and by the Institute of Sound and Vibration Research Consultancy Services and Department of Social Statistics at the University of Southampton, respectively. Further information on Government sponsored research into aircraft noise and sleep will shortly be available on the Aviation section of my Department's website.

Invitations to tender for the new study will be issued shortly. We shall ensure that both environmental and aviation interests can contribute to the oversight of the project. It will last three years, with pilot results planned to be available next year to feed into our White Paper on air transport.”

39. The ANASE study took place between December 2001 and February 2007 and examined reported annoyance from residents at 56 survey sites in the vicinity of 9 airports. The survey sites were located at positions exposed to levels of aircraft noise between 36 dB(A)-68 dB(A) $L_{Aeq,16h}$. Social survey questionnaires were used to elicit socio-economic data on respondents as well as information on their perception, especially annoyance, with respect to aircraft noise.
40. In his decision letter on Terminal 5, the Secretary of State noted that the ANASE study was being carried out and that the Government would likely use the results to inform future considerations of noise from Heathrow:
- "It is envisaged that the results of this study will help to show whether the L_{eq} index does in fact have the weaknesses suggested by the Inspector. The results would also inform any future consideration of the ATM condition."
41. This indicated that the Government would base future conditions that would be imposed on Heathrow on the latest possible evidence.

Terminal 5 Decision

42. On 20 November 2001, the Secretary of State for Transport, Local Government and the Regions announced his decision to Parliament on Terminal 5 and released the inspector's report.
43. In relation to the prospect of a third runway at Heathrow, the Inspector said "a third runway could have unacceptable environmental consequences". The Inspector therefore recommended a cap on annual ATMs of 480,000 in order to prevent the need for a third runway.
44. In his statement to Parliament, the Secretary of State confirmed that the Government had accepted the inspector's recommendation to cap annual ATMs to 480,000. This represented an increase of 205,000 annual ATMs when compared to the original cap of 275,000 imposed in 1980. However, despite the position of BAA, he refused to rule out the possibility of a third runway in response to numerous questions from MPs contrary to all previous assurances. For instance, in response to a request from Dr Jenny Tonge MP for assurances that if there is a third runway in

the south-east of England, it would not be located at Heathrow, the Secretary of State said:

“The third runway will be considered in the context of both the south-east of England study and the aviation White Paper, which we shall publish next year.”

45. Contrary to BAA’s public position during the Terminal 5 inquiry, six months after Terminal 5 was granted development consent, lobbying started for further expansion of Heathrow. For instance, Roger Maskell of the Amicus trade union, speaking on BBC London breakfast radio news on 16 April 2002 said “Airport infrastructure will require new development. T5 was just the beginning.”

South East and East of England regional air services Consultation

46. In July 2002, the Government published a consultation paper entitled “Future Development of Air Transport in the United Kingdom”.
47. The paper proposed a number of options for increasing airport capacity in the south east to meet the government’s demand forecast including a new “short” parallel runway for Heathrow.
48. The paper was published alongside 65 technical reports which had been produced as part of the South East and East of England regional air services (‘SERAS’) study, or which had otherwise informed the consultation paper.
49. In relation to Heathrow, the consultation paper proposed:
 - A new 2000m long runway would be built to the north of the existing airport (Figure 7B)
 - The new runway would be half the length of the existing runways, and could only be used by smaller narrow-body planes.
 - The new runway would be used both for landings and take-offs throughout the day.
 - The existing runways would continue to operate in segregated mode with alternation.

- Over time, it might be possible to achieve more intensive use of the existing runways through advances in air traffic control technology and/or by introducing mixed mode operation on those runways.
- Such developments could increase Heathrow's total capacity in this option from 116mppa to about 128mppa, assuming the construction of additional terminals and other facilities.
- An increase in annual ATMs to 655,000 with no limit to be imposed.

50. The main consultation document stated:

"7.29 Another runway at Heathrow could not be considered unless the government could be confident that levels of all relevant pollutants could be consistently contained within EU limits."

51. This was therefore a promise that Heathrow would not be acceptable unless it could overcome the environmental challenges that expansion posed.

Transport White Paper "The Future of Air Transport (ATWP), 2003"

52. In 2003, following the conclusion of the SERAS consultation, the Government published a White Paper on 'The Future of Air Transport'. This confirmed that the government was supporting proposals for a third runway at Heathrow and departed from the promises given during the Terminal 5 inquiry. The White Paper:

- set out the Government's aviation policy until 2030;
- forecasted a near trebling in the number of passengers using UK airports on a 2002 base year;
- claimed that up to 5 new runways were required in England;
- supported "full use" made of the existing runways at virtually all the airports in the country;
- committed the Government to reporting back on progress in 2006.

53. The White Paper was produced prior to the conclusion of the ANASE noise study which was intended to inform such policy. This was noted by the Transport Select Committee Report:

"We are disappointed by the lack of research to inform our inquiry over matters such as the trade-off between reduced levels of noise from individual aircraft versus the increased numbers of flights. The Government must invest more to determine acceptable local environmental noise limits."

54. In response, the Government set up a working group to define the methodology for assessment and then use the assessments to ascertain to what extent the environmental limits on noise and air quality could be met in the future with further expansion at Heathrow. (Project for the sustainable development of Heathrow - PSDH).

Air Transport White Paper Progress Report

55. In 2006 the Government published a Progress Report on the Air Transport White Paper. This confirmed:

- The economic benefits of expansion at Heathrow had to be weighed against environmental disadvantages - both climate change emissions and the local impacts on noise and air quality.
- The Government continued to support the development of a third runway at Heathrow so that the benefits of expansion might be realised. This was conditional on being confident that the strict environmental conditions set in the White Paper could be met.
- The Government was committed to ensuring that the noise climate at Heathrow would not deteriorate and that there would be no net increase in the size of the area of the 57 dBA Leq noise contour beyond its 2002 position which was 127 km².
- Any future development at Heathrow would have to comply with EU air quality limits by 2010. It was acknowledged that this would require measures to reduce emissions from aviation and other sources, including road traffic.
- Improved public transport access would be provided with the development of a third runway.

56. Again, this amounted to a promise that any expansion at Heathrow would be conditional on meeting environmental and other challenges including surface access.

57. It is of course notable that the air quality limits have not been complied with even now and even without expansion at Heathrow.

Adding Capacity at Heathrow consultation, Nov 2007

58. In November 2007, the Government published a consultation paper entitled 'Adding Capacity at Heathrow'. The Government sought responses on proposals including:

- Increasing the length of the third runway at Heathrow by 25 percent. The rationale behind the increase in length was to allow short-haul and long-haul take-off/landing from the third runway to allow for a balanced use of aircraft across the three runways.
- Initially constraining the use of the third runway to ensure future noise limits could be met within the delivery timescale of 2015-2020. The supporting Noise Report (ERCD 0705) confirmed that the "compliant" fleet mix for 2030 comprised of new twin engined "Green" Wide Bodied Jet (in place of 4 engined B747) which were "virtual" and not in the design portfolios of either Boeing or Airbus.
- A promise that one of the key conditions for developing a third runway at Heathrow was ensuring that there could be confidence that EU air quality limits could be met.

59. This reneged on the commitment in the ATWP to allow only short-haul aircraft to use the new 3rd runway.

60. The consultation was published within days of the publication of the ANASE study. The consultation accepted that parts of the ANASE study were robust. The study concluded that people have become more sensitive to aircraft noise at all levels of exposure; the peer review report indicated that significant community annoyance can start as low as 50dB rather than 57dB.

61. However, the Government declared the ANASE study to be defective and that it should not be used to inform policy. The promise to base future decisions on airport expansion on the latest noise evidence was therefore broken.

Adding capacity at Heathrow: decisions following consultation

62. In January 2009, upon conclusion of the consultation, the Government announced that it would give policy support to a third runway at Heathrow. It was announced that following consultation, the Government was satisfied that key environmental tests could be met and that criticisms raised in the consultation could be answered:

"53. The Secretary of State also noted that the Department's modelling had shown that, even on conservative assumptions, the progressive reduction in emissions under current and planned EU vehicle standards should ensure that the UK would be compliant around Heathrow by 2020. For example, no NO₂ exceedences were identified at residential properties in 2020 even if a third runway were operating fully at around 702,000 ATMs. In practice, however, it is expected that ATMs will need to be constrained to around 605,000 ATMs in order to ensure

compliance with the noise contour test. On this basis, the Secretary of State is satisfied that the evidence presented in the consultation document and the assumptions on which it is based, remain sound. In addition, latest Euro standards for NOX for new vehicles are significantly tighter than was assumed at the time of the consultation, further reducing any risk of exceedences.

54. The Secretary of State noted critical views on the Government's decision to continue to use the 57dBA noise contour as the benchmark for assessing noise impacts at Heathrow, despite the fact that the 'ANASE' research project commissioned by the Department had concluded that 'there is no identifiable threshold at which noise becomes a serious problem'. The consultation document itself explained in clear terms why the Department had done this, noting that there was 'no evidence in ANASE for increasing or reducing the 57dBA limit', and that the research 'did not give us the robust figures on which it would be safe to change policy'.

55. Whilst the Secretary of State noted the opinions expressed in some consultation responses that the basis for the noise condition was no longer valid, he also noted that sensitivity analysis demonstrated that even if the 54dBA contour were adopted as the critical test instead of 57dBA, the size of the contour would be no larger in future for a third runway than it was in 2002. On this basis, the Secretary of State is satisfied that the test specified in the ATWP remains appropriate and that the analysis of noise impacts at Heathrow set out in the consultation document is robust.

56. On surface access, some questioned the absence of specific proposals particularly to address road congestion. The Department is clear that a detailed surface access strategy is not a prerequisite for a policy decision and would be a matter for the airport operator as part of a planning application in due course. The Department's analysis focused at a higher level on the capacity of the rail system to carry the extra airport users. Improvements are already in prospect with enhanced Piccadilly Line services from 2014 and Crossrail from 2017. The Secretary of State is satisfied with the Department's analysis that by 2020 there should be more than enough public transport capacity to meet peak hour demand for Heathrow. He welcomes the collaborative approach being followed by BAA in developing the AirTrack project and encourages all interested parties to participate in the consultation and the Transport and Works Act process, with a view to seeing that scheme implemented ahead of a third runway."

63. Nevertheless, the Secretary of State decided that safeguards should be put in place, including limiting the number of annual ATMs to 605,000 until 2020; representing a 330,000 rise from the original cap:

"61 The Secretary of State is clear, however, that support for any expansion at Heathrow airport must be accompanied by a firm commitment to ensure that the strict local environmental conditions

that have been set will not be exceeded. This has always been the Government's aim and it now intends to provide clear assurance that this outcome will be delivered.

62. There will be a legally binding process to ensure that, if planning permission is given for expansion above the present planning cap of 480,000 ATMs, additional flights will be allowed only if regular independent assessments confirm that this progressive expansion can be done without breaching noise and air quality limits.

63. The Secretary of State intends to consult on the detail of the process, but currently envisages that it will have the following elements. First, it will be a precondition for releasing new capacity that air quality and noise limits are already being met. Air quality limits are already statutory. We will also ensure the noise limit is given legal force.

...

65. Irrespective of development of Heathrow airport, action needs to be taken in the short term to meet the NO₂ limit values around Heathrow and in other major urban areas around the UK by the relevant timescales provided for in the EU Directive. Generally, the main cause of the compliance problem is surface transport but around Heathrow the airport is also a significant contributor. The UK will need to provide to the European Commission by 2010 evidence that compliance will be achieved across the country by 2015 at the latest. This presents a significant challenge but the Secretary of State is committed to supporting the actions necessary to achieve it.

66. The Secretary of State intends that additional capacity at the airport should, following consultation, be subject to a new 'green slot' approach, to incentivise the use at Heathrow of the most modern aircraft, with further benefits for air quality and noise.

67. In addition, the Secretary of State considers it would be prudent initially to constrain additional capacity to a maximum of 605,000 ATMs, which the modelling suggests would satisfy both the noise and air quality tests in 2020. He proposes that there should be a review in 2020 which would take account of developments such as the operation of the compliance mechanism for noise and air quality detailed above, progress with public transport access, the levels of resilience being achieved at the airport and advice from the Climate Change Committee on progress towards the UK's carbon reduction targets. Any increase beyond 605,000 ATMs should depend on the outcome of that review and would be subject to applicable planning requirements at that time."

64. Again, it is worth noting that in spite of the commitments given to improving air quality, the UK is still in breach.

65. The Local Authority Claimants challenged by way of judicial review the Government's decision to give policy support to a third runway at Heathrow. The challenge was successful partly on the basis that the Government had failed to properly consider surface access provision. The same situation exists today. TfL have criticised the lack of proper surface access provision for an expanded airport.
66. No work was ever done on this issue, despite the recognition that the current situation needed to be addressed even without expansion. Had this decision for a third runway been supported the runway would have been built yet potentially would have not been able to be used. This condition has not been proved to be workable in reality, yet this has been repeated by the Airports Commission and the Environmental Audit Committee. None of the above work has been addressed.
67. The Government's confidence in improvements to road traffic air quality emissions was also misplaced. No action was taken to ensure that the air quality around Heathrow was compliant with the Air Quality Directive limit values by 2010.
68. It is now obvious from the recent quashing of the 2015 Air Quality Plan that the modelling used to assess the expansion at Heathrow in this consultation, and which led to support for the decision to expand, was over optimistic. It relied heavily upon reductions in road vehicle emissions that have not occurred in reality. Under the 'optimistic' 2015 Air Quality Plan the area around the current two runway Heathrow is not expected to be compliant until 2020-2025.

Heathrow Judicial Review Judgement

69. R (London Borough of Hillingdon & Ors v Secretary of State for Transport) confirmed that the Government approach in regards to public transport provision was flawed. No account had been taken of the congestion caused as Heathrow passengers and luggage take up the room on the train lines. The successful judicial review also cast serious doubt on whether sufficient importance had been given to climate change. The same situation exists today. TfL have criticised the lack of proper surface access provision for an expanded airport. Without proper surface access Air Quality limits cannot be met.

Third runway to be abandoned

70. The Conservative Party, as part of their election campaign, promised to abandon plans to expand Heathrow by developing a third runway. This announcement was welcomed by the local authority claimants as recognition that Heathrow could not be expanded.

71. In her Westminster Report, Summer 2009 Annual Report, Prime Minister Theresa May is quoted as pledging to fight the third runway at Heathrow **[CB8/4655-4658]**:

"The Government has approved the third runway, and I am concerned that they will now push ahead and allow an increase in night flights from Heathrow. This would be a major blow to local residents. We have already seen the leaked plans from BAA for a 30% increase in night flights, and the Government have been less than clear about their plans once the current arrangements end in 2012. I will continue to press them to rule out more night flights and will fight to stop the third runway."

72. On 21 October 2009, David Cameron gave a speech to a crowd in Christ's School in which he declared the Conservative Party's position against the possibility of expansion of Heathrow (reported in Richmond and Twickenham Times) **[CB8/3613-3620]**:

"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, BAA is backing off already."

73. In May 2010, the newly formed Coalition Government set out their programme for Government. This included a pledge under the heading "Energy and Climate Change" to cancel plans for the third runway **[CB8/3619]**:

- "We will cancel the third runway at Heathrow."

74. Again, in a written ministerial statement on 7 September 2010, Theresa Villiers, the Minister of State of Transport reaffirmed the Government's commitment not to develop a third runway at Heathrow **[CB8/3623]**:

“In January 2009, the previous Government announced their decisions relating to the future of Heathrow Airport. In addition to supporting the construction of a third runway, a number of additional decisions were taken relating to operations at the airport.

This Government have already made their position clear in rejecting the case for a third runway, and opposing new runways at London's other main airports-Gatwick and Stansted....”

75. In March 2011, the Government published a scoping paper on developing a sustainable framework for UK aviation. The Secretary of State for Transport in his ministerial forward reaffirmed the Government’s position to rule out the development of a third runway at Heathrow **[CB8/3634-3635]**:

“When this Coalition set out its programme for government last May, we promised great change and real progress. In aviation, we began straight away by cancelling the third runway at Heathrow and making clear our opposition to additional runways at Gatwick and Stansted. The DfT Business Plan makes promoting sustainable aviation one of our five structural reform priorities, with a specific objective to adopt a sustainable framework for aviation in the UK by 2013.

There is an urgent need for a genuinely sustainable framework to guide the aviation industry in planning its investment and technological development in the short, medium and long term. The previous government's 2003 White Paper, The Future of Air Transport, is fundamentally out of date, because it fails to give sufficient weight to the challenge of climate change. In maintaining its support for new runways – in particular 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. It failed to adapt its policies to the fact that climate change has become one of the gravest threats we face.

The Coalition believes that a modern transport infrastructure – which emphatically includes aviation - is essential for a dynamic economy as well as to improve our well-being and quality of life. But we also believe that transport needs to be greener and more sustainable, with tougher emissions standards and more sustainable technologies. To do that, we must succeed, where the previous government failed, in striking that balance in our framework for aviation. We are not anti-aviation – we are anti-carbon. As we tackle one of the largest budget deficits facing any of the G20 countries, we are firmly focused on the benefits aviation can bring, particularly in terms of economic growth. But we are not prepared to support growth at any price.”

76. The scoping document explained the rationale behind this decision **[CB8/3642]**:

“4.1 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, to oppose plans for further

runway expansion at Gatwick and Stansted, and to rule out mixed mode operations at Heathrow.”

South East Airports Task Force (2010/2011)

77. On 15 June 2010, the then Secretary of State for Transport, Phillip Hammond MP, announced in a written statement to Parliament that the Coalition Government was forming a South East Airports Taskforce to explore options for improving the operation of airports in the South East **[CB8/3623]**:

“The government believes that aviation makes a vital contribution to the economy of this country and to the lives of our citizens. The aviation sector contributes some £11 billion to GDP and directly employs some 200,000 people. Its true economic value is much greater than this when we consider the importance of air travel to the global economy and to UK competitiveness. But we cannot simply allow growth to continue at the levels it has in the past. Doing so risks unacceptable consequences in terms of noise and local air quality, quite apart from the global impacts in terms of CO2 emissions.

We need to start a new chapter in aviation policy - one that promotes a competitive aviation industry, supporting UK economic growth, whilst recognising the need for restraint. We have already begun that by making clear our opposition to adding yet more runways at Heathrow, Stansted or Gatwick. Instead, we must explore different ways in which to improve the efficiency of these key components of our national transport infrastructure.”

78. The taskforce was comprised of airport, airline, environmental and consumer representatives and was established to explore how to improve performance and deliver a better passenger experience by making the best use of existing capacity. This confirmed that it was the Coalition Government's policy not to support new runways at Heathrow, Stansted and Gatwick airports.
79. In the first meeting of the taskforce, the Minister for Transport, Theresa Villiers MP, “noted the importance of aviation to the UK economy and stressed that the Government was not anti-aviation but believed the environmental impacts of additional runways at Gatwick, Heathrow and Stansted were too high a price to pay” **[CB8/3625]**.
80. SEAT published their report in July 2011, and made a number of recommendations to address punctuality, delay and resilience issues at Heathrow, Gatwick and Stansted without the need to construct additional runways **[CB8/3657]**:
- A set of *operational freedoms* to allow certain tactical measures to be applied to anticipate, prevent and mitigate disruption and to facilitate recovery. The tactical measures could include, for example, use of temporary departure routes and occasional desegregation of runway operation; but would be subject to

safeguards to confine their use to certain defined and limited situations, and an assessment of their environmental impact.

- A *performance charter* for each airport to motivate stakeholders to take decisions based on the best interests of the whole airport system rather than being driven principally by their own individual commercial interest. The charter would set out the level of service that airline customers and their passengers should expect to receive.
- A set of *policy guidelines* to optimise the utilisation of runway resource at each airport.

81. A phased trial of the operational freedoms at Heathrow was proposed to better understand their costs, benefits and impacts; the results of which were to "*form the basis for a consultation with local communities which will in due course inform Ministers in deciding whether an operational freedoms regime should be adopted at Heathrow.*" [CB8/3658].

82. The Minister of State for Transport, Theresa Villiers MP, in a written ministerial statement to Parliament explained the conclusions of the report. In particular, she noted that the conclusions and recommendations were consistent with current Government policy in relation to Heathrow to cap the number of annual ATMs [CB8/3649]:

"I would draw particular attention to the chapter on improving punctuality, tackling delay and strengthening resilience. The focus of this chapter is on Heathrow, which is the UK's biggest, busiest and most capacity constrained airport. The main recommendation is that the scope for establishing a set of operational freedoms at Heathrow should be explored. These would enable the greater use of tactical measures in defined and limited circumstances to prevent or mitigate disruption and to facilitate recovery. 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."

83. She also announced a trial of the operational freedoms proposed by the report [CB8/3649]:

"Before any commitment is made to implementing such operational freedoms, better evidence is needed of the potential benefits and impacts. I am therefore announcing a phased trial of operational freedoms at Heathrow. The trial will provide firm evidence on the benefits and impacts of these measures and will provide a basis for consultation with local communities before a decision is taken on whether the proposed additional operational freedoms should be adopted on a permanent basis and what safeguards should apply in relation to their use."

84. Following the conclusion of the trial of the proposed 'operational freedoms at Heathrow, Theresa Villiers confirmed in a written ministerial statement on 15 May 2012, that the Government was committed to runway alternation at Heathrow **[CB8/3703]**:

"My statement of 14 July 2011, announced a phased trial of operational freedoms at Heathrow airport to gather evidence in relation to the greater use of tactical measures, in defined and limited circumstances, to prevent or mitigate disruption and to facilitate recovery. The trial is run by BAA, the airport operator, with oversight provided by the Civil Aviation Authority (CAA), the independent aviation regulator.

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."

Response to CCC

85. In August 2011, in response to the Committee on Climate Change's Report on Reducing CO2 Emissions from UK Aviation to 2050, the Government again confirmed its policy not to develop additional runways in the South East of England **[CB8/3667]**:

"1.4 In May 2010 the Coalition set out its Programme for Government and in doing so ruled out additional runways at Heathrow, Gatwick and Stansted. This Government believes that any growth in aviation has to be sustainable, and that in order to grow the industry needs to create headroom by reducing its environmental impact. We expect that the necessary headroom can be achieved through a combination of technology, better systems, operating procedures and behaviours. By taking a leading role in promoting the necessary changes, we believe that UK businesses can gain an edge in a competitive world market and are supporting the industry's existing efforts to invest in new technologies through the work of the National Aerospace Technology Strategy."

Other statements

86. On 31 October 2011, Justine Greening MP addressed the Airport Operator Association, confirming that a decision to develop a third runway at Heathrow was no longer a possibility **[CB8/3672-3673]**:

"... [T]he political reality is that the runway decision has been made, it is done."

87. In the 2011 National Infrastructure Plan, the Treasury confirmed that the Government's policy on the expansion of aviation capacity did not include a third runway at Heathrow **[CB8/3695]**:

"3.54 To improve connectivity at an international level, the Government will:

- develop a long term aviation strategy which will set out how we intend to address the UK's airport capacity challenges, while ensuring aviation plays its part in delivering environmental goals and protecting the quality of life of local communities. The Government will publish a consultation on this strategy in March 2012. This will explore all the options for maintaining the UK's aviation hub status, with the exception of a third runway at Heathrow. This will explore all the options for maintaining the UK's aviation hub status, with the exception of a third runway at Heathrow."

88. Theresa Villiers, in a speech to the Transport Times Conference on 17 April 2012 confirmed the commitment in the Autumn Statement not to develop a third runway at Heathrow **[CB8/3698]**:

"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.

One of its very first acts as a government was to confirm this.

...

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..."

89. It therefore appeared that the government had accepted the long held beliefs of the Local Authority Claimants that expansion at Heathrow was not possible politically or environmentally.

Draft Aviation Policy Framework consultation, July 2012

90. In July 2012, following the scoping study consultation in 2011, the Government published a consultation on a Draft Aviation Policy Framework. The Government reaffirmed its policy was to cancel plans for the development of a third runway at

Heathrow. However, the consultation included a Call for Evidence on future aviation connectivity to be carried out later in the year [CB8/3708-3709]. This was seen by many to be the start of Heathrow expansion becoming a possibility again.

“As the Coalition Agreement promised, the Government has cancelled plans for a third runway at Heathrow, but, as our National Infrastructure Plan last year made clear, one of our top priorities is to maintain the UK’s aviation hub status. We therefore intend to issue a Call for Evidence on maintaining the UK’s international aviation connectivity later this year. Over the decades, successive governments have failed to find a sustainable solution because they have not been ambitious enough or sought consensus on what the UK needs in the long term. By starting to consult on this framework first, we are encouraging stakeholders to consider the ‘big picture’ before putting forward any proposals for new capacity.

It is clear that any solution will have to be genuinely sustainable. It would need to fit within the high-level policies set out in the Government’s strategic aviation policy framework, which is the subject of this consultation document. We are seeking views on our overall policy and on specific proposals that could support the delivery of that policy.”

91. This opened the door for potential future expansion at Heathrow despite the commitment of the government to abandon such plans. But I remained confident that Heathrow expansion could not and would not happen.

Change of Transport Minister and announcement of the Airports Commission

92. On 4 September 2012 the Prime Minister undertook a Cabinet re-shuffle. As part of this process, Justine Greening MP, a vocal no third runway supporter, was replaced as Transport Secretary by Patrick McLoughlin MP. This move was interpreted by the press as a signal that the possibility that Heathrow expansion was back on the political agenda. The then Mayor of London, Boris Johnson, commented that the reshuffle showed the government wanted to "ditch its promises and send yet more planes over central London" and that "There can be only one reason to move her - and that is to expand Heathrow Airport" [CB8/3711-3712].
93. On 7 September 2012 the new Secretary of State for Transport, Patrick McLoughlin, in a written statement to Parliament announced that he had asked Sir Howard Davies, the former chairman of the Financial Services Authority, to chair an independent commission tasked with identifying and recommending to government options for maintaining this country’s status as an international hub for aviation. In particular, the Commission would [CB8/3713-3714]:
 - examine the scale and timing of any requirement for additional capacity to maintain the UK’s position as Europe’s most important aviation hub

- identify and evaluate how any need for additional capacity should be met in the short, medium and long term
94. It was announced that the Airports Commission would publish an interim report by the end of 2013 setting out [CB8/3714]:
- its assessment of the evidence on the nature, scale and timing of the steps needed to maintain the UK's global hub status; and
 - its recommendation(s) for immediate actions to improve the use of existing runway capacity in the following five years – consistent with credible long term options.
95. Under its terms of reference, the Airports Commission was required to "*engage with a range of stakeholders, including with local and devolved government as well as the opposition, to build consensus in support of its approach and recommendations.*" [CB8/3715]

Aviation Policy Framework, March 2013

96. In March 2013, the Government published its Aviation Policy Framework [CB8/3717-3802]. The Government set out their long term aviation policy in the Framework, highlighting as one of the key objectives the importance of ensuring that the UK remained one of the best connected countries in the world and how this would be achieved [CB8/3725-3726]:

"9. One of our main objectives is to ensure that the UK's air links continue to make it one of the best connected countries in the world. This includes increasing our links to emerging markets so that the UK can compete successfully for economic growth opportunities. To achieve this objective, we believe that it is essential both to maintain the UK's aviation hub capability and develop links from airports which provide point-to-point services (i.e. carrying few or no transfer passengers). This should be done in a balanced way, consistent with the high-level policies set out in this document and acknowledging Government's commitment to economic growth."

(emphasis in original)

97. The Government further noted the capacity challenge that would be faced at all major airports in the South East of England and that a decision on how best to meet that challenge would need to be rooted in robust evidence [CB8/3726]:

"11. In the medium and long term beyond 2020 we recognise that there will be a capacity challenge at all of the biggest airports in the South East of England. There is broad consensus on the importance of maintaining the UK's excellent connectivity over the long term, but currently no consensus on how best to do this. A robust and generally

agreed evidence base is needed before a decision can be made on the scale and timing of any requirement for additional capacity to maintain the UK's position as Europe's most important aviation hub. This is why Government established the Airports Commission in 2012."

98. No mention was made of the Government's commitment to cancelling plans for a third runway at Heathrow.

Airports Commission Interim Report, December 2013

99. On 17 December 2013, the Airports Commission published its Interim Report. The Commission's interim conclusions were that there was a "clear case for one net additional runway in London and the South East, to come into operation by 2030" [CB8/3816] and that according to their forecasts, there was "likely to be a demand case for a second additional runway in operation by 2050 or ... earlier" [CB8/3817].
100. The Commission identified two existing airports as credible locations for an additional runway, Gatwick and Heathrow. It therefore stated that it would take forward, for further detailed study proposals, proposals for a new runway at Gatwick and two alternative proposals for additional runway capacity at Heathrow. The two proposals for Heathrow were (a) Heathrow Airport Ltd's proposal for one new 3,500m runway constructed to the north west of the current site and (b) Heathrow Hub Ltd's proposal to extend the existing northern runway to a length of at least 6,000m to allow the extended runway to operate as two independent runways [CB8/4238-4239].
101. In my view the interim report gave scant regard to the serious health implications of expansion at Heathrow.

Government promise a decision will be made

102. In a speech at the Confederation of British Industry's 2015 annual dinner in May 2015 the then Chancellor stated [CB8/4039]:

"And when we get Howard Davies' report on a new runway in the South East, we're going to take the decision and get it built."

1 July 2015, Final Report published

103. The Airports Commission published their final report on 1 July 2015 [CB7/3207-3550].

104. The same day, the then Secretary of State for Transport, Patrick McLoughlin MP, made an oral statement to Parliament confirming Government would review the work of the Airports Commission and described the Government's next steps following publication of the Commission's final report [CB8/4041-4042]. In setting out the Government's next steps he reiterated that the Government would make a decision without delay:

"Let me turn to the Government's response. There are a number of things that we must do now in order to make progress. First, we must study the substantial and innovative evidence base that the commission has produced. Secondly, we must decide on the best way of achieving planning consents quickly and fairly if expansion is to go ahead. Thirdly, we will come back to Parliament in the autumn to provide a clear direction on the Government's plans.

This is a vital moment for the future of our aviation industry. Our aviation sector has been at the heart of our economic success and quality of life. All those with an interest in this important question are expecting us to act decisively. This is a clear and reasoned report which is based on evidence, and it deserves respect and consideration, and we must act."

105. That day, during Prime Minister's Questions in response to a question by the Acting Leader of the Labour Party requesting assurances that there would be no delay in approving Heathrow, the then Prime Minister guaranteed that a decision would be made by the end of 2015:

"... I think that there is a lot of common ground across almost all parts of the House that there is the need for additional airport capacity in the south-east of England, not least to maintain this country's competitiveness, but it is important that we now study this very detailed report. I am very clear about the legal position; if we say anything now before studying the report, we could actually endanger whatever decision is made. The guarantee that I can give the right hon. and learned Lady is that a decision will be made by the end of the year.¹"

106. The London Boroughs of Hillingdon, Wandsworth and Richmond carefully considered the Airports Commission's final report over the following months. Having considered the report, the Leaders of Richmond and Wandsworth and I wrote to the Prime Minister on 14 September 2015 [CB6/2005-2010]. We made it very clear that we did not accept the conclusion that the proposal for a new northwest runway at Heathrow Airport was the correct answer to the apparent deficiencies in the UK's airport capacity. We also highlighted that our local authorities were not persuaded by the Airports Commission's approach and assessments. We therefore strongly

¹ <http://www.publications.parliament.uk/pa/cm201516/cmhansrd/cm150701/debtext/150701-0001.htm>

rejected the recommendation for a third runway at Heathrow on environmental, health and community impact grounds. We relied on ten specific arguments in support of our opposition to the Commission's findings.

107. The then Prime Minister acknowledged our letter on 13 October 2015 but did not respond to our concerns substantively. He merely said that the Government would be carefully considering the detailed analysis produced by the Airports Commission prior to taking a decision **[CB6/2011-2012]**.

108. Towards the end of 2015, it was reported that the decision was being delayed. On 11 November 2015, the Evening Standard reported that the Cabinet decision on Heathrow's third runway was slipping behind schedule but that a decision was still due before the end of the year. The report stated "*insiders say the choice over whether to expand Heathrow or Gatwick is now unlikely to be made clear to Parliament this month, as originally promised. No 10 stressed Mr Cameron's commitment was for a decision before the end of 2015*" **[CB8/4303-4306]**.

109. On 26 November 2015 the House of Commons Environmental Audit Committee produced its own report on the Airports Commission Report **[CB8/4307-4345]**. Its overall conclusion was that:

"22. 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."

110. Following a request by the Department for Transport to the Local Authority Claimants to discuss the remit and membership of a Community Engagement Board as part of a pre-consultation policy development process, the Local Authority Claimants' solicitors, Harrison Grant solicitors, wrote to the Department for Transport on 1 December 2015 **[CB6/2019-2020]**. They reiterated the Local Authority Claimants' position that the government could not lawfully take a decision

to favour Heathrow and that the government should pursue any aviation development through the NPS procedure set out in the Planning Act 2008.

111. However, on 10 December 2015, the Government announced that whilst it agreed with the Airports Commission that the south-east needed more runway capacity by 2030, its decision on the location of the proposed expansion of Heathrow would be delayed until further work had been done in relation to the environmental impacts (in particular in relation to Air Quality) on the three shortlisted options **[CB8/4383-4384]**.
112. No timeframe was given for the work. The Secretary of State merely stated that "*At the first opportunity I will make a statement to the House to make clear our plans.*" **[CB8/4384]**.
113. The Secretary of State for Transport, in an oral statement to Parliament on 14 December 2015 **[CB8/4436-4437]**, confirmed that the Government was still considering the three options shortlisted by the Airports Commission but that the Government was keen to take a decision which was right both for those keen to push forward with expansion and those that would be affected by it. Therefore, the Government accepted a recommendation by the Environmental Audit Committee and committed to undertaking a "package of further work" to address the issues of air quality, noise, carbon emissions and managing the other impacts on local communities. This package of further work was expected to be completed by summer 2016 to ensure that the timetable for airport capacity expansion recommended by the Airports Commission would be met.
114. In response to oral questions, the Secretary of State confirmed that the Government would make a decision in summer 2016 and that they would accept the findings of the package of further work to avoid any further delay **[CB8/4440]**.
115. I was reasonably confident that the results of this further work would show that the economic and environmental case for expansion at Heathrow would never stack up; in particular in relation to air quality. I believed that this, in conjunction with the Government's unequivocal promises that there would be no third runway, presented an insurmountable challenge to expansion at Heathrow. Whilst, I am of course aware that politicians can change their minds if they have compelling reasons to do

so, I believed that because of the challenges faced by developing Heathrow and the viability of expanding Gatwick without the environmental and other costs, in this instance the only decision that the Government could make would be to rule out further expansion at Heathrow. I therefore, as Leader of Hillingdon, directed my Council to continue to conduct its business on the basis that there would be no further expansion at Heathrow.

116. On 9 February 2016, Harrison Grant wrote to the Prime Minister **[CB6/2021-2034]** to set out the Local Authority Claimants' detailed concerns about (i) the impact that the delay to a decision would have on local residents of the boroughs, (ii) the promises and assurances that had been given to the Local Authority Claimants and their residents that gave rise to a legitimate expectation that there would be no further expansion at Heathrow, (iii) the legal flaws in the Airports Commission's conclusions on air quality (including mitigation measures), (iv) the flaws in the Airports Commissions conclusions on noise (including mitigation measures), and (v) the need for further consultation to be undertaken prior to taking a decision on the preferred location for airport expansion. The Local Authority Claimants requested that the Government either rule out further expansion at Heathrow without delay or that the Government give assurances that they would consult on the further package of work being undertaken.
117. The Minister for Aviation, Robert Goodwill MP, acknowledged this letter on 16 March 2016 **[CB6/2035]** but stated that he could not reply substantively. He merely advised that the Government would be undertaking a package of further work which was due to be concluded over the summer but that they were not seeking further views or evidence at this stage.
118. Harrison Grant wrote in reply to the Robert Goodwill letter on 24 March 2016 **[CB6/2037]** seeking a substantive response to their letter of 9 February 2016. They again requested that the Government commit to undertaking full consultation on the further package of work. In the alternative, Harrison Grant requested express confirmation that the Government would not be undertaking any further consultation with any affected parties. No reply was received to this letter.
119. On 30 June 2016, following the EU Referendum, the Secretary of State for Transport announced in a debate on Airport Capacity in Parliament that the Government was

again postponing its decision on airport capacity to at least October 2016. He did however note that further work done on air quality would be published soon **[CB8/4603-4606]**:

"I had hoped that we would be able to announce a decision on airport capacity this summer. Clearly, any announcement on airport capacity would have to be made when the House was in session. Being realistic, given recent events, I cannot now foresee that there will be an announcement until at least October. We aim to publish the further analysis on air quality soon. Separately, promoters have announced undertakings that would increase the compensation available for residents living near the airports and the connectivity between other UK airports. The Government are fully committed to delivering the important infrastructure projects that they have set out, including the delivery of runway capacity on the timetable set out by the Davies report."

120. The Secretary of State also said:

"The simple fact is that whichever option we choose will impact on people's lives. It is therefore right to make sure we do all the preparatory work on air quality and the other issues."

121. Following this announcement, Harrison Grant wrote to Robert Goodwill MP on 8 July 2016 to once again request that the Government commit to public consultation on the further package of work **[CB6/2043-2045]**. They also requested confirmation of when the further air quality analysis, referred to by the Secretary of State for Transport on 30 June 2016, would be published.

122. The Department for Transport acknowledged this letter on 1 August 2016 but did not reply substantively **[CB6/2051]**. The Department advised that the further work was a continuation of the Government's consideration of the Airports Commission's final report and that the Government had been "engaging with the three shortlisted scheme promoters to seek further assurances and clarity on their proposals". This confirmed that the Government was actively choosing not to consult opponents to airport expansion.

123. Harrison Grant wrote to the Department for Transport again on 30 September 2016 **[CB6/2053-2058]**. They reiterated that the Local Authority Claimants had a legitimate expectation that there would be no further expansion at Heathrow and that further information and consultation was required in relation to the issues of air

quality, noise and mitigation, and economics in order to take a lawful decision. No response was received to this letter.

124. The package of further work on air quality was not published prior to a decision being taken to put forward the north west runway at Heathrow as the Government's preferred option on 25 October 2016 [CB2/301-330]. This is despite numerous requests by the local authority claimants to be consulted.

Hillingdon's concerns with expansion

125. Hillingdon is acutely affected by Heathrow. Heathrow expansion amounts to the construction of a new terminal and third runway facilities which would be approximately the size of Gatwick Airport on land in the borough, presenting an unprecedented environmental and social threat.

126. The Borough Council and an overwhelming majority of its residents are opposed to Heathrow expansion. In 2013, Hillingdon held its first ever referendum which was on the issue of Heathrow expansion. Everyone on Hillingdon's electoral roll was sent a ballot paper and was asked to vote on two specific questions:

- Should a third runway be built at Heathrow? Yes/No
- Are you in favour of more flights into and out of Heathrow? Yes/No

127. Of the 205,634 residents balloted, 81,050 responded to the referendum representing a voter turnout of 39.41%. Of those who voted, 66% did not think that a third runway should be built at Heathrow and 66.3% were not in favour of more flights into and out of Heathrow [CB8/3803-3804]. Hillingdon had always been clear that it was opposed to further expansion at Heathrow and this referendum showed that the majority of Hillingdon's residents agreed with its policy position.

128. I refer to Lord True's statement, which I have read, and know that Richmond too carried out a referendum of the subject of Heathrow expansion. The result was also overwhelmingly to reject expansion. There was a 43% turnout (59,466 people) who voted. 80% said No to a third runway and 82% said No to more flights in and out of Heathrow.

129. At the time, I issued a statement calling on the then Prime Minister to respect the emphatic results of the referendum and to follow through with his promise that there would be no third runway at Heathrow. The people of Hillingdon had sent a clear message to the Prime Minister and Government.
130. I do not believe that the residents' feelings about expansion at Heathrow have changed since the 2013 referendum. If a new referendum was to be held in 2016, I expect that the result would be just as emphatic, if not more so.
131. Hillingdon and its residents are opposed to expansion of a third runway at Heathrow for a number of reasons.
132. Hundreds of homes would need to be demolished and thousands would be severely affected by the resulting noise and pollution caused by Heathrow expansion. Whole villages, communities, schools, parks and historic buildings would either be demolished or condemned to blight and disruption. Expanding Heathrow would mean the loss of 1,072 homes, the demolition of all of Longford Village as well as parts of Harmondsworth and other nearby villages. In addition, 3,750 homes would be affected by blight.
133. There would also be a loss of 431 hectares of green belt land and the loss of 61 hectares of recreation or public open space. This loss would be very widely felt: green belt land is highly valued in the urban environment around Heathrow to control urban sprawl and to maintain largely undeveloped land between urban areas.
134. Heathrow expansion will also lead to the loss of valuable listed buildings. This impact would be concentrated in the Conservation Areas in the village of Longford and Harmondsworth.
135. Furthermore, the full wider impacts of demolition and construction that would have to be borne by local communities have been underestimated. For example, the displacement of traffic from the strategic roads to local roads during the long construction period will bring gridlock to local areas.

136. Hillingdon's surface road network and public transport would be put under considerable strain given the volume of additional people movements associated with expansion. Public transport to Heathrow is already very congested and the Airports Commission has acknowledged that many key road and rail links in the Heathrow region are expected to be close to capacity by 2030. Transport for London has stated that the Commission has assumed that the runway can serve 148 million passengers per annum at full utilisation but for the purposes of surface access, it only looks at the 2030 scenario with partial utilisation at 125.2 million passengers per annum.
137. The Commission has not only underestimated the impacts on public transport and roads when a third runway is operational but it has also underestimated the demand for surface transport infrastructure by not taking proper account of the growth in traffic and freight movements on the strategic and local roads which will arise from new businesses and jobs and the further catalytic jobs and housing growth arising from airport expansion.
138. Hillingdon is deeply concerned about the effect of expansion on the health and well-being of its residents, in particular older people and school children, as set out in the Council's response to the Airports Commission's consultation. Hillingdon and its residents will also be affected by air pollution which currently exceeds statutory levels around the airport and is an acute problem which remains unsolved. In addition, Hillingdon is tasked with improving air quality in the area but is unable to take the necessary measures against the airport, a major source of NO₂ emissions.
139. Hillingdon also believes that the Department for Transport has not fairly consulted on or considered these considerable impacts as part of their decision-making process.
140. Hillingdon's planning role is particularly affected by the decision. There is a statutory requirement, under Section 15 of the Planning and Compulsory Purchase Act 2004, as amended by the Localism Act 2011, on Hillingdon to prepare a Local Development Scheme. It is essentially a project plan which identifies the documents which need to be prepared together with an indicative timetable for preparation, including milestones to be achieved. The Scheme must be made publicly available

and kept up to date. This enables members of the public and stakeholders to find out about planning policies in their area, the status of those policies and the details of, and timescales for, the production of all relevant documents.

141. A key element of the Local Development Scheme for Hillingdon is the Local Plan Part 1: Strategic Policies which it adopted in November 2012. Hillingdon has consulted upon, and is currently preparing for, a submission to Examination in Public in relation to the Local Plan Part 2.

142. It is important to note that neither the Local Plan Part 1 nor the draft Local Plan Part 2 refer to possible Heathrow expansion. Therefore Hillingdon's planning policy is not predicated on such expansion. In the circumstances, the potential for a third runway at Heathrow is not, and has not historically been, a material planning consideration in Hillingdon's development consent process and therefore there has not been any planning blight in this respect.

143. In the event that the Government issues a National Policy Statement, Hillingdon would be forced to review its Local Plans accordingly.

The Airports Commission

144. The Local Authority Claimants participated fully in the consultations run by the Airports Commission by submitting carefully reasoned objections to expansion at Heathrow at every available opportunity. We responded to this consultation because we, as politicians, understood that the promise of "no 3rd runway" is not absolute but can be over-ruled if there is overwhelming justification. So we understood the need to look at a third runway. We were, however, confident that provided we did our bit, the Government could not back a third runway at Heathrow if they genuinely and openly looked at the environmental and other evidence.

145. However, the Local Authority Claimants having engaged in the consultation were of the firm view that the consultations were inadequate, incomplete and therefore unfair. For example, on the important issue of noise, full and proper consultation was impossible without detailed information about flight paths which was not given. Again, I feel that wholly inadequate consideration was given to the health and

wellbeing of Hillingdon residents. Furthermore, a key limiting condition, which relates to air quality, was based on an incorrect understanding of the law.

146. Additionally, the terms of reference provided that the Airports Commission should seek to engage with a range of stakeholders including with local and devolved government (including the opposition) and local residents. The Local Authority Claimants contend that the Airports Commission contravened these terms of reference. The Airports Commission only allowed for a 3 week consultation period and it at no point built consensus in support of its approach or recommendations.
147. The Airports Commission's final report was issued on 1 July 2015, recommending as the preferred option the expansion of a northwest runway at Heathrow. As set out above, having considered the report, the Leaders of Richmond and Wandsworth and I wrote to the Prime Minister on 14 September 2015. We made it very clear that we did not accept the conclusion that the proposal for a new northwest runway at Heathrow Airport was the correct answer to the apparent deficiencies in the UK's airport capacity. We also highlighted that our local authorities were not persuaded by the Airports Commission's approach and assessments. We therefore strongly rejected the recommendation for a third runway at Heathrow on environmental, health and community impact grounds. We relied on ten specific arguments in support of our opposition to the Commission's findings.
148. The then Prime Minister responded on 13 October 2015 to say that the Government would be carefully considering the detailed analysis produced by the Airports Commission prior to taking a decision. The Government undertook this review and announced on 10 December 2015 that it would be undertaking a package of further work on the issues of air quality, noise, carbon emissions, and other impacts on local communities.
149. As set out above, the Local Authority Claimants made numerous requests to be consulted on the further package of work that the Government said that they were undertaking on 10 December 2015. However, no substantive response was ever received to these requests. We had no opportunity to comment on the package of work that was carried out in secret and only disclosed by the Government on the same day as the Decision.

150. I believe that Hillingdon should have been consulted on the latest Decision at the point when the proposal was still at a formative stage so that our response could have influenced the result. Had Hillingdon responded, it would have emphasised all the points which were spelt out in the Leaders' letter to the Prime Minister referred to above. It would also have made it clear that, based on the unequivocal promises which I have set out above, Hillingdon had a legitimate expectation that there would be no recommendation that Heathrow should be expanded.

Health Impacts

151. The Airports Commission has failed to carry out a proper assessment of the health impacts of Heathrow expansion and to identify the potential mitigation measures that may be required, such as increased funding for hospitals and other health care facilities - or health monitoring throughout the area to identify cardiovascular risk factors in the exposed populations so that preventative measures can be taken to avoid more serious cardiovascular disease progression.

152. Instead, the Commission has emphasised the positive benefits to health that employment afforded by a new runway can bring and it wrongly assumes that this can balance out the negative impacts arising from noise disturbance and poor air quality. The Commission's leisure travel analysis is largely irrelevant in terms of health as its assumption that all the people who suffer the detrimental health impacts will be sufficiently wealthy to fly and gain the higher levels of life satisfaction is wrong. Furthermore, Heathrow's mitigation proposals for health impacts are also wholly inadequate - for example, it proposes large green spaces where people can exercise and be active, without recognising that these open spaces already exist, and that some would be lost as a direct consequence of expansion.

Reliance on promises

153. Hillingdon has placed considerable reliance on the 'no ifs no buts' promise of no third runway. It has conducted its business, across the whole range of its statutory and discretionary services, on the basis that there would not be any expansion at Heathrow.

154. For example, the Local Plan Part I and the emerging Local Plan Part 2 do not refer in any way to the third runway proposal. There is also no reference to the proposal on planning searches. Planning applications falling within the Heathrow Villages ward being dealt with in exactly the same way as in other borough wards. Where relevant, Section 106 contributions are sought and used towards the funding of local improvements such as enhancements to public transport, landscaping, and the public realm amongst other things.

155. The Heathrow Villages ward has been supported, both financially and otherwise, by Hillingdon in exactly the same way as other wards in the borough. Hillingdon has continued to fund improvements in the Ward including:

- bus stop improvements throughout the Heathrow Villages;
- traffic management improvements on Hatch Lane and Sipson Road;
- constructing a cycle path between West Drayton station and the airport;
- enhancements to Cranford Park;
- a Harlington Village restoration funding bid;
- providing neighbourhood plan community funding; and
- funding the trial of a Heathrow Villages 'shoppa' bus which is a door to door community bus to Uxbridge.

156. There are individual ward allocation budgets for the implementation of community projects. For the Heathrow Villages ward, funding has also been allocated to a wide range of local projects including:

In 2009/10:

- QPR FC held after school sessions at primary schools across the ward;
- Three raised flower beds were installed at Heathrow Special Needs Farm;
- Equipment including a screen and projector was purchased for Harmondsworth Great Barn to make talks and presentations more interesting for visitors ;
- New camping equipment was purchased for first Harmondsworth and first Harlington Scouts;

- More than 50 pupils at the primary schools in the ward have benefited from flower arranging art classes delivered by the Harmondsworth Flower Guild.

In 2012 grant funding was given to:

- the Friends of the Great Barn at Harmondsworth for their Jubilee Celebrations
- purchase new play equipment for the after school and holiday clubs at the Com Cafe
- Harmondsworth FC to purchase football equipment
- Harlington Hospice to run a community event
- Harmondsworth Primary School for new resources for reception and nursery classes
- William Byrd Primary School for new sports equipment.

In 2013 grant funding was given to:

- Harlington Baptist Church Youth Club
- Heathrow Football Club for a new club kit

In 2014 grant funding was given to:

- the friends of the Great Barn in Harmondsworth towards the World War One commemoration event proposed for 22 June 2014
- to the football community project within Harlington towards more football kit and equipment

In 2015 a grant was made to the Friends of the Great Barn in Harmondsworth to progress their planning application for a storage shed.

157. Heathrow villages ward was treated no differently to any of the other wards in Hillingdon on the basis of the promise that there would be no 3rd runway at Heathrow. It would have been a pointless waste to spend public money on projects with no future.

158. Local residents have also placed reliance on the promise that there would be no 3rd runway. Some of them have provided statements to the council to that effect. **[CB/4/901-910]**

STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true.

Signed: 

Dated: 8/12/16

**IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT**

Claim No:

THE QUEEN

on the application of

- (1) THE LONDON BOROUGH OF HILLINGDON**
- (2) THE LONDON BOROUGH OF WANDSWORTH**
- (3) THE LONDON BOROUGH OF RICHMOND UPON THAMES**
- (4) THE ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD**
- (5) GREENPEACE LIMITED**
- (6) CHRISTINE TAYLOR**

Claimants

-and-

SECRETARY OF STATE FOR TRANSPORT

Defendant

-and-

- (1) HEATHROW AIRPORT HOLDINGS LIMITED**
- (2) GATWICK AIRPORT LIMITED**
- (3) DEPARTMENT OF ENVIRONMENT, FOOD AND RURAL AFFAIRS**
- (4) TRANSPORT FOR LONDON**
- (5) THE MAYOR OF LONDON**

Interested Parties

STATEMENT OF DR CLAIRE D HOLMAN

I, Claire D Holman, of Brook Cottage Consultants Ltd., Brook Cottage, Elberton, Bristol, BS35 4AQ say as follows:

I. Introduction

1. I have worked on air quality management for over 30 years and am currently the Chair of the Institute of Air Quality Management (IAQM), the professional body representing air quality practitioners in the UK, although I make this statement in my personal capacity.
2. I have a Bachelor of Science degree in Molecular Science (chemistry) and a Doctorate for research into air pollution. My professional qualifications include being a Chartered Scientist and Chartered Environmentalist and a Fellow of both the IAQM and the Institution of Environmental Sciences. A copy of my CV is attached to this statement at **Appendix 1**.
3. I have a special interest in the impact of road transport on air quality, and have closely followed the development of vehicle emission legislation and its impact on emissions and air quality over several decades. I was, for example, a member of the Quality of Urban Air Review Group, established by the UK Department for the Environment, and contributed to its 1993 report on '*Diesel Vehicle Emissions and Urban Air Quality*'. I attended the European Commission's Motor Vehicle Emission Group for over a decade, and I have undertaken technology assessments to inform the Commission's development of legislative proposals, including assessments on the feasibility of new vehicle pollution abatement technology and type approval test procedures.
4. I have undertaken a large number of air quality assessments to accompany planning applications, and been an expert witness at planning inquiries and public hearings. As such I have experience in drafting planning conditions related to air quality.
5. Insofar as the contents of this statement are within my own knowledge they are true, otherwise they are true to best of my knowledge, information and belief. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.
6. My statement has been prepared as a result of the Government's decision, announced on 25 October 2016, to support a new runway at Heathrow Airport ("the NWR") ("the Decision"), and to assist the Court on the Claimants' first ground of challenge: that the Secretary of State erred in law in concluding that Heathrow could be delivered in compliance with binding EU Air Quality limits for Nitrogen Dioxide (NO₂) concentrations. In this statement I explain that, applying the legal test which the Claimants argue is correct, the Government's analysis of air

quality at an expanded Heathrow does not demonstrate that the NWR can comply with EU Air Quality limits.

7. I am instructed that the Airports Commission Report's conclusion that the NWR could be delivered in compliance with the Directive was based upon an error of law. The Airports Commission concluded that there would be no breach of the Directive provided that any worsening in air quality caused by the NWR did not cause a delay to achieving compliance with legal limit values for NO₂ concentrations. As I explain below, this reasoning was repeated in the Government's re-analysis of the Airports Commission Report carried out by WSP Parsons Brinckerhoff in October 2016. I am instructed that the correct test is that there is a breach of the Directive where (1) the overall compliance of the zone is delayed; (2) the NWR makes local exceedances of limit values worse; and (3) the NWR does not maintain good air quality below limit values. On the basis of the information in the public domain (the Airports Commission Report and the WSP Report), the Government cannot demonstrate that NWR satisfies this legal test.
8. My statement covers the following:
 - a. Background, Key Concepts, Diesel Vehicle Emissions
 - b. The Government's Approach to Compliance with the Ambient Air Quality Directive (2008/50/EC) ("the Directive")
 - c. My criticisms of the publicly available information from the Airports Commission and the Department for Transport ("DfT") on the potential air quality impacts of the third runway at Heathrow Airport
 - d. Uncertainties in the modelling and the need for a precautionary approach
 - e. Conclusions.
9. In his announcement of the Decision the Secretary of State for Transport stated:

"Following the clear recommendation of the Airports Commission the government conducted more work on the environmental impact. That work is now complete and confirms that a new runway at Heathrow is deliverable within air quality limits, if necessary mitigation measures are put in place, in line with the 'National air quality plan', published in December 2015." [CB/2/301-304]
10. The National air quality plan referred to is the UK's most recent plan: *Improving air quality in the UK: Tackling nitrogen dioxide in our towns and cities*. It consists of a large number of

documents. Where reference is made to “the AQP” this is to all the documents that form part of the AQP and were published together by the Defra on 17 December 2015, where necessary I refer to the specific documents by name, such as the AQP Technical Report.

11. A week after the Decision, the AQP was found to be unlawful in that it did not comply with the requirements of the Directive (see *ClientEarth v Secretary of State for Environment, Food and Rural Affairs (No 2) [2016] EWHC 2720 (Admin)* (“ClientEarth No 2”). Mr Justice Garnham found that the AQP did not seek to achieve compliance with NO₂ limits in the shortest possible time, as required by the Directive, and that the AQP was based upon optimistic assumptions about emissions. He has ordered a modified plan to be produced in draft form by 24 April 2016 and in final form by 31 July 2017.
12. I was engaged by ClientEarth to give evidence in ClientEarth No 2. I provided three witness statements and some of the passages in those witness statements are repeated here.
13. In summary, my conclusions are:
 - a. The Government’s additional work on the air quality impact of the expansion of Heathrow Airport relied, to a large extent, on the modelling undertaken for the AQP. Therefore there remains very significant uncertainty regarding the reliability of the Government’s conclusion that a new runway is deliverable within air quality limits
 - b. The Government was aware that its emissions assumptions were likely to be unreliable, and overly optimistic many months before the decision in *ClientEarth No2* and the publication of updated emissions factors (which show diesel light vehicles to be more polluting than the AQP assumed) on 30 September 2016. The Government’s consultants carried out a quick qualitative analysis to determine the effects of this new data, but in my opinion it is inadequate. A full analysis is required, which according to Defra will take many months to complete. Therefore, at the time of the announcement on 25 October 2016 the Government’s analysis provided no certainty that the NWR can be delivered within air quality limits
 - c. Whilst air quality is likely to improve in the future there remains too much uncertainty at the present time. Current levels of air pollution around the airport, and specifically on the A4 Bath Road to the north of the existing airport boundary are well in excess of the limit value for NO₂. By 2025 the airport operations are predicted in the current AQP to be responsible for more than half the pollution on Bath Road; that is without the expansion of the airport

- d. Bringing forward the date of operation of the new airport capacity from 2030 increases the likelihood that the limit value will be exceeded on Bath Road
- e. The Airport Commission's air quality assessment considered the impact of the NWR at a much wider range of locations than the Government's recent air quality report. It concluded that over 47,000 properties would experience deterioration in air quality as a result of the airport expansion, some a very significant deterioration. The Government's re-analysis omitted any consideration of these impacts even though a large number of people will be exposed to higher NO₂ levels as a result of the NWR
- f. Inadequate consideration appears to have been given to the health impacts of public exposure to the additional air pollution resulting from the expansion of the airport. In particular, no analysis of the distributional impacts on different parts of our society has been undertaken
- g. In my view the Secretary of State's announcement was too early given the current uncertainty regarding future air quality. Until modelling using more realistic assumptions has been undertaken the Government could not reasonably conclude that the runway and associated infrastructure can be operated within air quality limits. Given the complexity of estimating the impact of vehicle emissions on air quality it is simply not possible to know at the present time.

II. Background

Key Concepts

- 14. NO₂ is a harmful gas produced by the combustion of fuel at high temperatures in the presence of oxygen.
- 15. Human exposure to NO₂ is associated with a range of health impacts, including premature death and hospital admissions. The AQP refers to an estimated 23,500 premature deaths per year caused by exposure to NO₂ and according to a recent analysis by the European Environment Agency, the UK has the second highest number of premature deaths due to exposure to NO₂ in Europe (**Appendix 2, Table 10.1, page 60**).
- 16. Pregnant women, infants and children are particularly susceptible to the health effects of exposure air pollution. Gestation, infancy and early childhood are vulnerable periods because the young body is growing rapidly. The developing heart, lung, brain, hormone systems and immunity can all be harmed by pollution. These effects may last a lifetime, but may take years

or even decades to become apparent. There is clear evidence that early exposure can damage the lungs, and increase the risk of lung infections that may be fatal. (**Appendix 3**).

17. Recent scientific evidence collated by the World Health Organization has shown that substantial health effects, including premature death and hospital admissions, are associated with exposure to NO₂ at or even below the annual mean limit value (see below).¹
18. In the UK, air quality is regulated by a combination of purely domestic legislation (Part IV of the Environment Act 1995, which lays down a system known as “Local Air Quality Management”) and EU-wide rules (the Ambient Air Quality Directive 2008/50EC (“the Directive”), transposed into UK legislation by the Air Quality Standards Regulations 2010). The UK objectives used by local authorities when undertaking their Local Air Quality Management duties are set out in the Air Quality (England) Regulations 2000 and the Air Quality (Amendment) (England) Regulations 2002. For NO₂ these objectives are numerically the same as the “limit values” in the Directive (see below). These are not mandatory.
19. The Directive includes two mandatory limit values for NO₂. These are an annual mean concentration of 40 micrograms per cubic metre of air (40 µg/m³) and a one hour mean concentration of 200 µg/m³ which is permitted to be exceeded 18 times in a year. The annual mean limit value is widely exceeded in the United Kingdom, but in most locations the one hour limit value is achieved. The limit values were to be achieved by 1 January 2010; over six years ago.
20. There are widespread breaches of the NO₂ limit value in the UK. The problem is particularly severe in London, where the maximum modelled concentration identified in the AQP for 2013 was 126 µg/m³, i.e. over three times the limit value. Given the scale of the problem, a step-change, rather than incremental change, is required in order to achieve the limit values and protect human health.
21. While the Directive sets limit values on concentrations of NO₂, emissions from combustion sources (e.g. power stations, diesel road vehicles) are mainly in the form of nitrogen monoxide (NO), which is rapidly converted to NO₂ in the air. Thus, when discussing emissions I use the term “nitrogen oxides” or “NO_x”, which comprises both NO and NO₂.

Diesel vehicle emissions

22. The breaches of the NO₂ limits are overwhelmingly caused by road transport and in particular diesel vehicles.² However in some locations aircraft and airport operations make a significant

¹ World Health Organization. Review of evidence on health aspects of air pollution – REVIHAAP Project. 2013. See **Appendix 4**.

contribution to NOx concentrations. Data from the Mayor of London for the London Borough of Hillingdon shows that 47% of the NOx emissions in 2013 came from aviation. It also shows the significant contribution of the airport to other pollutants (**Appendix 6**).

23. The UK has seen a rapid shift towards diesel vehicles in the last 15 years, partly due to EU and UK climate change policy, which has promoted vehicles with lower CO₂ emissions.³ Historically, diesel vehicles emitted less CO₂ than their petrol equivalents but emitted far more of the other pollutants which are harmful to human health, including NOx.
24. EU regulations have set progressively more stringent emissions limits (known as “Euro standards”) for NOx and other harmful (non CO₂) pollutants, which apply to first registration of new vehicles. The Euro standards are numbered from 1-6 for light duty vehicles such as cars, taxis and vans, and I-VI for heavy duty vehicles such as buses, coaches and heavy goods vehicles (HGVs). The Euro standards have failed over a period of twenty years to deliver reductions in NOx emissions from diesel vehicles under real-world driving conditions. By contrast, they have been effective in reducing NOx emissions from petrol vehicles.⁴
25. Evidence from past Defra PCM modelled predictions, shows how optimistic past projections have proved to be and how air quality modelling has consistently under-predicted concentrations in the most polluted locations. (**Appendix 9**)
26. The failure of the Euro standards for diesel vehicles is largely due to the fact that they are tested under laboratory conditions, which do not replicate normal driving conditions. Consequently, vehicles meet the emission limit in the laboratory, but exceed it, often by very large margins, when driven on the roads.
27. To address this problem, the latest Euro 6 standards will introduce “real-world driving emissions” (“RDE”) tests, whereby vehicles are subjected to more realistic tests which measure exhaust emissions while the vehicle is driving on the road, to supplement laboratory tests. In theory, this should result in a closer match between real-world emissions and the legal emission limits. We will not know how well they will perform in reality until these vehicles exist and their durability has been proven.
28. The Euro VI standard for heavy duty vehicles became mandatory for new models in January 2013 and for all new vehicle registrations in January 2014. The standard introduced an RDE requirement from the outset. In general, this has delivered significant real-world emissions

² See **Appendix 5**, page 2, paragraph 7 .

³ See **Appendix 7** page 19.

⁴ See **Appendix 8**, p52, figure 6.1

reductions, although there is a high degree of variability between different vehicles and there remains concern regarding the efficacy of the pollution abatement device in congested traffic.

29. The Euro 6 standard for cars and small vans was introduced slightly later. It became mandatory for new models from September 2014 and for all new vehicles from September 2015. For medium and large vans the new standards were introduced one year later. However, emission limits for all these light duty vehicles are currently based purely on laboratory testing. Various real-world tests carried out on Euro 6 cars have shown that they exceed the emission limit by a very large margin. For example a Department of Transport study⁵ commissioned after Volkswagen admitted to using defeat devices in the United States found that emissions from Euro 6 diesel cars are more than 6 times the 80 mg/km limit value on average. To address this problem a more stringent standard using RDE testing is to be introduced into the European legislation in stages between 2017 and 2021.
30. To give vehicle manufacturers time to adjust to the new standard, the regulations which introduce RDE will allow for a margin of error, known as a “conformity factor”. These conformity factors will be introduced in two stages. In stage 1 for Euro 6c vehicles, a conformity factor of 2.1 times the limit value will apply to new vehicle models from September 2017 and all new vehicles from September 2019. Stage 2 (Euro 6d vehicles) will apply a stricter conformity factor of 1.5 for new models from January 2020 and for all new vehicles from January 2021.
31. As a result, diesel cars sold between 2017 and 2021 will be able to emit double the Euro 6 emission limit for NO_x. Even in 2021 and beyond, new diesel cars will be allowed to be sold which emit 50% more than the emissions limit. Consequently, NO_x emissions from diesel cars will continue to be high for the foreseeable future.
32. The first compliant vehicles reaching the market are likely to be premium models in which the manufacturers may install more expensive abatement systems that may not be used in the majority of Euro 6c/6d vehicles. Therefore, until mass market vehicles meeting these new standards are available, which may not be until 2019, there will remain uncertainty as to their real emissions for some years.
33. The protocol for calculating average emissions from the new RDE test allows manufacturers to remove some of the high NO_x data. The impact of this on air quality is currently unknown and difficult to forecast.

⁵ Department for Transport, 2016, Vehicle Emissions Testing Programme. <https://www.gov.uk/government/publications/vehicle-emissions-testing-programme-conclusions> (last accessed 22 April 2016).

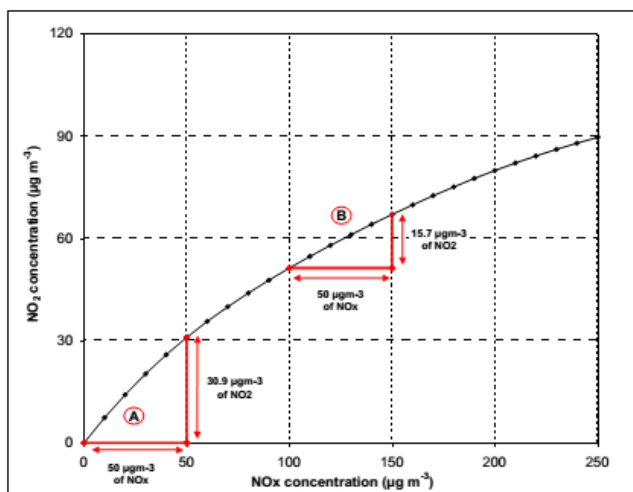
34. There is a long history of the Government relying on the next Euro standard to solve the NO₂ problem. By the time it is clear that emissions are worse than expected, several years have passed with no additional action to reduce emissions. By that time a new Euro standard is on the horizon which again is perceived to be the solution.

III. Defra's modelling for the Air Quality Plan

35. Historical compliance with the Directive is assessed in the UK using a combination of modelling and measurements. As it is not possible to measure future concentrations, modelling is the sole tool used to assess future compliance with the Directive and to develop the AQP.
36. The Department for Environment, Food and Rural Affairs ("Defra") is the Competent Authority for ensuring compliance with the Directive. There is a view, expressed in the Airport Commission's air quality assessment (**Section 3.1.1 page 19, Jacobs Report**) [CB/7/3023] that only Defra can determine where there is, or is not, compliance with the Directive. The model used by Defra is not in the public domain and hence not available for non-Governmental organisations to use.
37. Defra's consultants, Ricardo Energy & Environment ("Ricardo"), use their Pollution Climate Mapping ("PCM") model to estimate "background" concentrations and the "roadside increment". The former is essentially an average concentration across a 1 km x 1 km grid taking into account the various emission sources that may affect air quality in each grid square. Superimposed on this grid is the major road network. The "roadside increment" is an estimate of the contribution from the major road to concentrations 4 metres from the kerb.
38. The PCM is a national model which is unable to include detailed local information that influences air quality.
39. The PCM model is actually a series of models that estimate the contribution to NO_x concentrations from a diverse range of sources. Some sources, such as large point sources (e.g. power stations) are modelled in some detail whilst others such as small industry are modelled in a more general manner without accounting for local circumstances (such as the specific height of emissions from individual facilities). It also includes an estimate of 'rural' NO_x taken from measurements.
40. All the individual NO_x contributions are added together to provide an estimate of the total NO_x concentration. This estimate of the ambient NO_x concentration is then converted to NO₂.
41. There is a non-linear relationship between NO_x and NO₂ as illustrated in the figure below from the AQP Technical Report (**Appendix 8, page 15**). It shows that increasing NO_x from 0 to 50

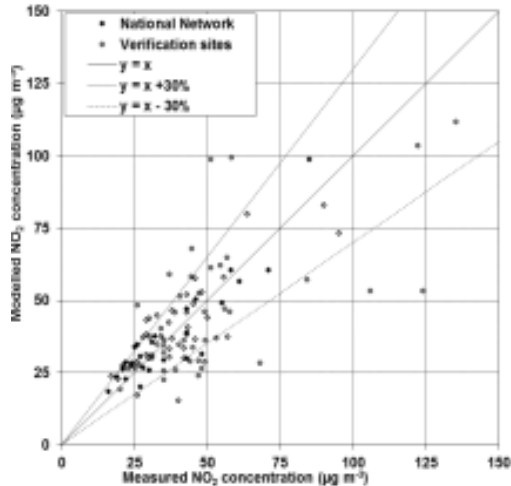
$\mu\text{g}/\text{m}^3$ will increase NO_2 by about $31 \mu\text{g}/\text{m}^3$, but the same increase in NO_x from 50 to $100 \mu\text{g}/\text{m}^3$ will increase NO_2 by much less (about $16 \mu\text{g}/\text{m}^3$ in this example). Therefore when modelling NO_2 concentrations it is good practice to model the total NO_x concentration and then convert it to NO_2 . Simply adding NO_2 concentrations estimated from different emission sources leads to errors.

Figure 2.3. Relationship between NO_x and NO_2 concentrations for a hypothetical site using realistic variables



42. The PCM model results are then compared to measured data for the reference year (2013 for the AQP) and the results adjusted to provide the best fit to the data. Annex 1 of the Directive has data quality objectives which require the modelled data to be within 30% of the true data.
43. The next figure shows a comparison of modelled and measured roadside NO_2 levels from the AQP Technical Report (**Appendix 8, page 8**). This shows that in some locations there is a very significant difference between the modelled and generally more accurate measured NO_2 levels.

Figure B.7 - Verification of roadside annual mean NO₂ model 2013 – PCM-RKM



44. A key input to the PCM model is emissions. These are calculated from a measure of ‘activity’ multiplied by an ‘emissions factor’. For road transport the relevant measure of activity is vehicle kilometres and the emission factor is given in grams per kilometre (g/km). Multiplying these together give an estimate of grams of NOx emission. In reality it is more complex and the calculations include a number of other factors such as vehicle speed and the additional emissions during cold starts.
45. The PCM model for the 2013 reference year was based on an estimate of 2012 emissions from the National Atmospheric Emissions Inventory (NAEI). The emissions from all sources were projected forward by one year to produce 2013 emissions data. This is because 2012 was the most recent year for which emissions estimates were available when the PCM baseline modelling was carried out.
46. The NAEI uses vehicle emission factors from the Computer Programme to Calculate Emissions from Road Transport, known as COPERT. COPERT was designed for use in emission inventories, that is estimates of historic emissions and not for forecasting future emissions. COPERT is updated from time to time as new data becomes available.
47. The 2012 NAEI used COPERT version 4.10. However the AQP used COPERT version 4.11 (released in September 2014). The AQP Technical Report (**Appendix 8, page 10**)

acknowledged the uncertainty of these emissions factors “*However, there are still uncertainties in emissions estimates for some current vehicle types and Euro standards*”.

48. At the time the AQP was being developed there was evidence that the real world emissions from Euro 6 diesel light duty vehicles are higher than in COPERT version 4.11. This was central to the *ClientEarth No 2* successful challenge to the AQP and Garnham J’s conclusion that the model was overly optimistic. This issue is discussed in the next section.
49. The PCM projections of future NO₂ levels in 2020, 2025 and 2030 are based on emission projections for each source category. Emission projections are, as with emission inventories, a function of activity data combined with an emission factor. However, with projections a number of elements that make up the activity data and emission factors cannot be measured or counted and have to be estimated or modelled using assumptions about future activities including behavioural or economic impacts and future emission factors.
50. Emission projections are inherently much less certain than historic emission inventories since they require additional assumptions about future growth in activity (for example transport and population) and technology uptake (for example the proportion of different types of vehicles in the future fleet).
51. It is good practice when projecting emissions into the future to use several different scenarios based on different combinations of assumptions. These assumptions relate to changes in activity levels (for example, economic growth) as well as the impacts of new technologies, techniques and practices.
52. Emission projections are always based on hypothetical expectations of future events. The sensitivities of the results need to be understood and sensitivity analysis is used to evaluate how important different assumptions are to the output of a model.
53. The AQP Technical Report acknowledges the uncertainty of emission forecasts for diesel cars and included the results of one sensitivity analysis. This shows that if the emissions of Euro 6 diesel cars turn out to be higher than assumed in the modelling, the number of zones exceeding the NO₂ limit value in 2020 would increase from eight to 30 (out of a total of 43). (**Appendix 8, Table 6.1, page 54**)
54. In London the length of roads exceeding the limit value increases by 40% from 258 km in the AQP baseline to 419 km in the sensitivity analysis. At Bath Road the NO₂ levels are predicted to just meet the limit value (i.e. 40 µg/m³) in the AQP baseline but are significantly above the limit value (57.0 µg/m³) in the sensitivity analysis.

55. For this sensitivity analysis, Defra assumed that real-world Euro 6 diesel car emissions were five times higher than the emission limit. A Department for Transport (“DfT) study undertaken in the wake of Volkswagen admitting to using defeat devices in the United States shows that on average emissions from these vehicles are more than six times the limit (**Appendix 10, paragraph 5.24, page 23**). Therefore, it is likely that even the AQP sensitivity test underestimates future NO₂ concentrations.

COPERT

56. The Table below provides a summary of the Euro 6 diesel car NO_x emissions in the three most recent versions of COPERT, and its impact on the number of zones in breach of the Directive’s limit value.
57. The “conformity factor” in the table is the ratio of the COPERT emission factor at 33.6 kilometres per hour (kph) to the emission limit, which is the average speed of the Euro standard laboratory test. The higher the factor the greater the divergence between the limit and the real world emissions.

Table 1: COPERT Euro 6 Diesel Car Emission Factors

COPERT Version	Date Issued	Euro 6 Diesel car conformity factor	Number of zones exceeding NO₂ limit in 2020	Comments
4.10	Nov 2012	3.6	28	Estimate released by Defra in July 2014, Version used in the Airports Commission air quality assessment.
4.11	Sept 2014	2.8	8	Used in 2015 AQP
4.11.4 & 5.0	Sept/ Oct 2016	6.25 – 2.5*	unknown	Impact to be assessed by Defra
* Conformity factors depend on when the vehicle was manufactured Up to 2016 models = 6.25 2017-2019 models = 5.0 Post-2020 models = 2.5				

58. The RDE tests will be introduced between 2017 and 2021 with a “conformity factor” initially of 2.1 and then later 1.5. The table shows that the vehicle emission experts behind the most recent version of COPERT believe that the real world emissions of these vehicles will remain higher than the legislative limits.

59. DfT was aware that COPERT was to be updated and that the emission factors for Euro 6 light diesel vehicles modelled in the AQP were too low. Representatives from the department and Defra attended the May 2016 ERMES plenary meeting where this data was presented and the planned launch of a new version of COPERT in September 2016 was announced.

Greater London Authority Modelling

60. King’s College London model air quality across London for the Greater London Authority (“GLA”). This model is more detailed than the PCM model as it uses a 20 metre by 20 metre grid including roads. This results in higher estimated concentrations in places than the PCM model which used a 1 km by 1 km grid with the major roads superimposed. Both models use COPERT version 4.11 emission factors and therefore these concentration under-estimate future concentrations.
61. The Table below compares the results of the two models for the retained section of the Bath Road (PCM model) and a 20m by 20m grid (GLA) in the centre of the relevant road link, which includes some of the carriageway. It assumes that the AQP measures are not implemented.
62. The Table shows that the GLA modelling forecasts a continuing breach of the NO₂ limit until at least 2025, while the PCM model shows a breach only in 2013 in the AQP without measures.

Table 2: Comparison of the PCM and GLA Models

Model	Road Link ID/Grid Reference	Annual Mean NO ₂ concentration (µg/m ³)			
		2013	2020	2025	2030
PCM model (2015 plan (without measures))	Bath Road (16112)	54	40	37	36
GLA (LAEI 2013)	508260,176920	60	51	43	31

63. As both models were calibrated using 2013 measured data the divergence (expressed as the percent of the PCM model NO₂ level, not the absolute differences) between the models should be less in the reference year than in the future years. The different structure of the models may account for a few µg/m³, but not all of it.
64. The main reason for the divergence in the future forecasts is likely to be the difference in the assumed fleet turnover. That is, the PCM model assumes more Euro VI/6 vehicles at an earlier date than the GLA modelling. This illustrates the sensitivity of the model to fleet turnover assumptions, and is another illustration of the uncertainty in forecasts of future air quality.

IV Government's analysis of the air quality impact of Heathrow expansion

Airports Commission ("AC") Air Quality Assessment

65. The AC announced on 1 July 2015 that its preferred option for increased airport capacity was the NWR. It stated that “[This] *combined with a significant package of measures to address its environmental and community impacts, presents the strongest case and offers the greatest strategic and economic benefit*” [CB/8/4065-4066]
66. The AC's recommendations included a legal commitment that new capacity will only be released when it is clear that compliance with EU limits will not be delayed [CB/7/3219].
67. The AC's air quality assessment (the “Jacobs Report”) was published in May 2015 [CB/7/3001-3206]. This concluded that with the NWR NO₂ levels close to the retained section of the Bath Road, to the north of the current northern runway, would breach the limit value in 2030, would worsen air quality and delay compliance with the limit value.
68. The Jacobs Report considered a range of mitigation measures but highlighted the significant uncertainty regarding the efficacy of several of the measures proposed by the scheme's promoter. These measures are discussed in section IV.
69. The air quality assessment used different approaches to assessing compliance with the EU limit values and the national air quality objectives, even though both the limit and the objective is 40 µg/m³.
70. To determine compliance with the EU limit values the assessment used Defra data from the PCM model for 2009 and 2030 because:
- “Compliance with the Regulations is a national obligation rather than a local one; in the UK only monitoring and modelling carried out by the UK Government meets the data quality objectives that are required to assess compliance with the Limit Values” (Section 2.2.1 page 12-13, Jacobs Report) [CB/7/3016-3017]*
71. The Regulations referred to are the Air Quality Standards Regulations 2010 not the Air Quality (England) Regulations 2000. The Jacobs Report notes that there are differences between the modelling and monitoring carried out to assess compliance with the EU limit values and the air quality objectives and there are many locations where the national compliance with the limit values and local compliance with the objectives are not in agreement.
72. The assessment of the impact of the NWR scheme on compliance with the Directive identified three road links in 2030 where the unmitigated NWR scheme would increase NO₂ levels where

there was already predicted to be an exceedance of the limit value. The greatest impact was predicted to be along the Bath Road (where concentrations were predicted to increase by 1.3 $\mu\text{g}/\text{m}^3$). Smaller increases were predicted along the A4 closer to central London (junction of Fulham Palace Road to Earls Court Road) and along the A40 Western Avenue (junction of Hanger Lane to east of Wood Lane, White City).

73. The assessment concluded that the NWR scheme would not cause any new exceedances of the limit value or the air quality objective for NO_2 . However, the change associated with the NWR would:

“...cause the Bath Road (A4) sector PCM road links to have a marginally higher concentration in 2030 (48.7 $\mu\text{g}/\text{m}^3$) than the Maximum PCM Predicted Concentration in the Greater London agglomeration (which is 48.6 $\mu\text{g}/\text{m}^3$) and occurs at Marylebone Road. The unmitigated Heathrow NWR Scheme would thus delay Defra’s predicted date for achieving compliance with the Limit Value” (Section 5.7, 2nd bullet, page 79-80, Jacobs Report).[CB/7/3083-3084]

74. The main AC final report states (paragraphs 9.84-9.87) states that:

“The results do not in themselves rule out either Heathrow scheme being deliverable within the legal framework. There are mitigating actions which could be taken to reduce both background road emissions and those emissions arising from airport activities...”

“Overall, the mitigating actions that the Commission has been able to quantify show a total potential reduction in the change in NO_2 concentrations at the Bath Road PCM exceedance area...”

“....Such a reduction would ensure that the NO_2 concentrations on the Bath Road for the Heathrow Airport Northwest Runway scheme would be substantially below levels on the Marylebone Road, meaning that the scheme would not be delaying compliance with the Directive.” (paragraph 9.86 and 9.87).[CB/7/3403]

75. However the Jacob’s report only considered mitigation measures on the Bath Road, no consideration was given to mitigating the NWR impacts in other locations where the proposed runway was predicted to cause an increase in NO_2 levels. In addition, even with the quantified mitigation measures, NO_2 levels were predicted to remain above the limit value (Section 5.7.1 Table 5.16 page 81 Jacobs Report). [CB/7/3084-3085]

76. Paragraph 9.81 of the AC final report states that :

“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.” [CB/7/3402]

77. I am advised that the Claimants’ case is that this is not the correct interpretation of the Directive.
78. In addition the potential impacts of the NWR mitigation measures are yet to be proven to be effective as discussed in section IV.
79. The Jacobs Report undertook separate and more detailed modelling to assess the impact on compliance with the non-mandatory air quality objectives for the protection of human health and vegetation and critical loads for the protection of ecosystems. In terms of health the modelling showed that the NWR would increase NO₂ concentrations at over 47,000 properties. Over 3,000 properties would experience increases of 5%-26% of the objective value (that is between 2 to 10 µg/m³). However at all locations modelled the air quality objective of 40 µg/m³ was forecast to be achieved in 2030. There were estimated to be 14 at risk properties, that is with NO₂ levels greater than 32 µg/m³, that would experience an increase in pollution. **(Table 5.6, page 65, Jacobs Report) [CB/7/3069]**
80. As noted above (my paragraph 44) emissions are dependent on the level of activity as well as the emission factor. The Jacobs Report emissions estimates are based on a forecast of future aviation demand. This was used to assess 2030 activity at the airport (such as numbers and types of planes and ground support vehicles and their movements around the airport). This data was used to model the impact of the airport emissions on local air quality. Likewise the forecast of future aviation demand fed into the assessment of the increase in road traffic on individual roads beyond the airport, which was also used to estimate the impact on local air quality. These separate impacts were added together to provide the total impact. I understand that the Jacobs Report used the worst case demand forecast for 2030 from the AC’s air traffic demand model.
81. Two future road traffic scenarios were considered, one representing the traffic conditions without the airport expansion but including other committed developments. The second

scenario also included the traffic from the proposed airport scheme. The Jacobs report is not transparent regarding the main assumptions used in the traffic modelling.

82. I understand that the surface access strategy assumed a large number of improvements to the rail infrastructure in its Core Baseline. Of most relevance to Heathrow are the assumptions that Cross Rail, an upgrade of the Piccadilly underground line and a Western rail link to Reading will be delivered. The first two schemes are designed to meet future demand for transport without the airport expansion, and the latter is not committed or funded. In addition, the Airports Commission stated that a Southern Rail Access link is required to support expansion of Heathrow airport, yet this is also not committed or funded. Forecasting future road traffic 15 years or more ahead on individual roads has significant uncertainties associated with it. Even when further details of the scheme are known significant uncertainties will remain. Accurately forecasting future transport demand is as difficult as any other type of forecasting of the future and depends on a large number of assumptions.
83. Furthermore, there are a number of omissions and uncertainties in the AC's air quality analysis, with the consequence that air quality impact of the NWR may have been under-estimated.
84. First, we now know that the AC underestimated the emissions factors. The AC's analysis of air quality was based on COPERT 4.10, which has a conformity factor of 3.6 for Euro 6 cars. The most up to date COPERT emissions factors have a conformity factor of 6.5, decreasing to 2.5 only for new models post-2020. This means that both background concentrations and the impact of the NWR have been under-estimated.
85. Second, the impact of new roads included in the NWR submissions were modelled but as their precise route is unknown the predicted concentrations "*can only be indicative, and should be treated with caution*" (**Section 3.7.2, p31 "Jacobs Report"**) [CB/7/3035]. As concentrations decline with distance from roads, the impact at some locations may have been under-estimated.
86. Third, there must be uncertainty regarding the availability of sufficient public transport capacity to meet the significant demand associated with a 50% expansion in Heathrow's capacity, as the planned upgrades are designed to meet existing forecast demand, not expansion of the airport.
87. Fourth, the modelling assumed that the M25 motorway would run in a tunnel beneath the new runway. The Secretary of State suggested in a radio interview after his announcement in October that the runway may be built over the M25 as a cheaper and quicker option. The impact on any congestion caused by either of these options has not been subject to any air quality assessment. Neither has the impact of the construction traffic been assessed.

88. A qualitative assessment of the construction impacts was undertaken that concluded that given that there are nearly 1,000 sensitive receptors less than 100 metres from the NWR scheme boundary the construction would be classified as high risk, but that this risk could be mitigated. I agree that provided there are appropriate controls in place, the potential dust impacts of the construction of the NWR scheme can be mitigated. My greatest concern relates to the impacts of emissions from traffic and non road mobile machinery associated with the construction works, which have not been assessed.
89. The construction impacts will occur earlier than the first operation of the new runway, when NO₂ levels will be higher, and there will be less ‘headroom’ for increases in levels.

Department for Transport’s Re-analysis

90. DfT commissioned WSP Parsons Brinkerhoff to undertake a re-analysis of the Jacob Report to take account of the PCM modelling for the AQP (the “WSP Report”) [CB/7/3351-3610]. The WSP report is dated 12 October 2016.
91. The WSP Report’s stated purpose was to assess the implications of the AQP and PCM model for the AC’s analysis. WSP did not undertake any additional modelling of the impact of the NWR. Instead it took the predicted NO₂ concentrations from the PCM model used in the AQP and added the Jacobs Report estimated NO₂ impacts of the NWR. As I explained above, due to the non-linear relationship between NO_x and NO₂ concentrations (see my paragraph 41) this approach is unreliable. This and other non-linearities, are acknowledged in the WSP Report **(Section 4.3.2, page 31 WSP report) [CB/7/3587]**
92. The WSP Report only provides summaries of its findings. Tables (5-1 [CB/7/3594], 5-2 [CB/7/3596], and 5-3 [CB/7/3598]) provide data for the critical road link, that is, the link that determines compliance with the Directive, which varies between scenarios. Graph 6-2 [CB/7/3605] provides graphical information for the Bath Road (16112), the maximum in the zone (which also varies depending on the scenario) and the maximum with the NWR for each scenario or group of scenarios.
93. It concludes that, on the basis of the PCM Model and assuming the AQP is fully implemented and the NWR is opened in 2030 (WSP Scenario 1A), the overall “compliance status” of the Greater London Urban Area is not affected. The NWR would not result in an exceedance of the limit value and will therefore not delay the achievement of limit value within the Greater London Zone. If the measures in the AQP are not implemented (WSP Scenario 1B) the NWR would cause an exceedance of the limit value on the A4206 (between the Bishop’s Bridge Road roundabout and Edgware Road, in central London) and an increase in the length of non-

compliant road links. The impact of the NWR was assumed to be as modelled in the Jacobs Report.

94. If the NWR was opened in 2025 (WSP Scenarios 2A, 2B and 2C), the WSP Report concludes that the “compliance status” would remain the same as in 2030. With the AQP fully implemented (Scenario 2A) the NWR would not affect the compliance status of the Greater London on Zone. Without the AQP measures (Scenarios 2B and 2C) NO₂ levels would increase along the same section of the A4206 and the length of non-compliant road links would increase. The predicted NO₂ levels with Scenario 2C, in which the road transport element of the NWR impact is adjusted from 2030 to 2025, is very similar to Scenario 2B.
95. The WSP Report also considered the AQP’s sensitivity analysis (WSP Scenarios 3A, 3B and 3C), which assumes that real world emissions from Euro 6 cars are five times the emission limit. The detailed results of this sensitivity test are not in the public domain but were made available to WSP for their analysis. On the basis of the sensitivity test, the WSP Report concludes NO₂ levels would be significantly above the limit value in 2025 and increase by about 10 µg/m³ on the critical road link (A4206) compared to the Scenario 2B which assumes the AQP estimate without the measures,. WSP concluded that there is a risk that the NWR worsens exceedances of the limit value alongside some roads but that this would not affect the overall zone compliance, because there are road links within Greater London where NO₂ levels are higher than the A4206.
96. It should be noted that the sensitivity test was modelled using a simplified version of the PCM model and therefore the results are less robust than data derived from the full PCM. As the sensitivity analysis only estimated NO₂ levels concentrations in 2020 WSP had to adjust these estimates to 2025. The use of the simplified version of the PCM modelled together with the use of WPS’s adjustment factors adds uncertainty to the report’s conclusions.
97. In my opinion, the main flaw in WSP’s analysis is that it is based on the PCM Model. As I have explained above, the predicted NO₂ concentrations in the PCM model are an underestimate. The PCM Model is based on an old version of COPERT which was shown in *ClientEarth No 2* to be overly optimistic. The main part of the WSP Report therefore provides no confidence that the NRW scheme can be delivered “within air quality limits”. The PCM sensitivity test is likely to be a better estimate of the air quality picture in 2025 (although in my opinion it is still optimistic). It shows the NWR contributing to an increase in exceedances over the limit value. I am advised that the Claimants’ argument is that this would be a breach of the Directive.

98. The new COPERT emission factors for Euro 6 vehicles are more complex than assumed in the sensitivity test. As my Table 1 shows, the NO_x emissions from Euro 6 diesel cars are forecast to decline over time to take account of the RDE requirement post 2020. Additionally, early Euro 6 cars will have higher emissions than assumed in the sensitivity test. There are also new emission factors for Euro 6 diesel vans. I believe that the net result is likely to be higher NO₂ levels than forecast in the AQP sensitivity test for 2020, but it is difficult to judge the impact further ahead in the absence of modelling.
99. It should be noted that whilst there have now been a significant number of real world emissions measurements for Euro 6 diesel cars there have been few for vans. Therefore I consider that there is a high likelihood that the emission factors for these vehicles will be revised in the next update of COPERT.
100. Due to these complexities is impossible to have any certainty as to the likely concentrations in 2025 or 2030 until the new emissions factors have been incorporated into a new PCM model. According to Defra this will take many months and will not be completed until spring 2017, and the new plan will not be available until July 2017.
101. The Foreword to the WSP Report contains an “*initial qualitative review of the potential implications*” of the updated COPERT emission factors. It concludes that the NWR is at “*risk of worsening exceedances of the limit values alongside some roads, but that this would be unlikely to affect the overall zone compliance*”. It acknowledges that the overall risk has increased compared to its main re-analysis (**2nd bullet, page 2 WSP Report**) [CB/7/3558]
102. The Forward states that the study demonstrated that only a modest increases in vehicle emissions would increase the risk of NWR impacting on limit value compliance. It concludes that “*risks remain*” that the NWR “*could impact on EU limit value compliance*” (**page 2, WSP Report**) [CB/7/3558]
103. WSP argue that their use of the AQP sensitivity test was “*conservative*” and therefore it is likely it would “*over-estimate any revisions to the baseline projections made using the updated COPERT factors*”. I do not agree. The AQP sensitivity analysis only considered Euro 6 diesel cars whereas the updated COPERT has also increased the emission factors for Euro 5 and Euro 6 vans, and provides different emission factors for different sizes of van. Given this complexity it is difficult assess the impact of the new emission factors qualitatively. In my opinion, until the full PCM model has been re-run with the new emission factors there remains very significant uncertainty.
104. There are a number of other shortcomings in the WSP Report:

- a. It only considered compliance with the EU limit values; there was no assessment of compliance with the air quality objectives, and therefore there was no assessment of the impact on receptors close to new roads or the new runway. The AC analysis carried out this assessment. The WSP Report does not explain why this analysis has not been updated
- b. The WSP re-analysis also considered what the impacts might be if operation of the NRW scheme was brought forward from 2030, as assumed in the Jacobs Report, to 2025. Generic adjustments to the Jacobs Report estimates of the road traffic impacts were made to account for the higher emissions from the vehicle fleet in 2025 compared to 2030. No account, however, was taken of the likely higher emissions from the aircraft and the airport mobile machinery in 2025 compared to 2030. This is particularly important for Bath Road as airport activities make a significant contribution to the NO_x concentrations (54% in 2025 according to the AQP baseline). The net result is that WSP is likely to have underestimated the impact of the NWR in 2025, and if this had been taken into account Bath Road may have been predicted to be non-compliant in 2025 (on WSP's analysis, the Bath Road appears to have concentrations close to the limit value in 2025 (c.38 or 39 µg/m³))
- c. The WSP Report is not transparent as does not provide data for all the relevant road links for all the scenarios, hindering independent interpretation of the results
- d. The WSP Report concluded that the combination of measures set out in the 2015 AQP and the effective implementation of RDE has the potential to reduce, or even remove, the risk of Heathrow expansion impact on the UK's compliance with EU limit values. No evidence is provided to justify this conclusion, and as noted above (my paragraph 32) it will be many years before we can know the true effect of the RDE requirement.

IV. Mitigation

105. The Jacobs Report discusses the potential for mitigation of the impacts of the NWR scheme. A number of the measures set out by Heathrow were included in the modelling and therefore cannot be off-set against the predicted impacts. These were:
- a. Minimising the distance that aircraft taxi between stands and runways
 - b. Increasing the glide slope to reduce the impact of aircraft emissions at ground level
 - c. Full compliance with the Managing Directors' Instruction on maximum auxiliary power unit run-times

- d. Improving the infrastructure for Ultra Low Emission Vehicles (ULEVs) within the airport. The assessment assumed that the vast majority of ground service equipment would be Euro 6/VI by 2030. It was assumed that all non road mobile machinery (NRMM) comply with Stage IIIA emissions (mandated from the end of 2005-2010 depending on the type of engine).

106. Measures that were not modelled were:

- a. One of the main potential measures to mitigate the impacts of additional road traffic is to increase public transport access to the airport. The stated aim is to ensure total passenger road vehicle trips to and from the expanded airport do not increase relative to the baseline. The Jacobs Report comments “...it is not clear whether this is deliverable” (**Section 5.6.3, Measure 1, page 73, Jacobs Report**) [CB/7/3077]. I understand there is no information available on the proportions of airport and non-airport traffic on the local roads and therefore the impact of this measure could not be modelled. The Jacob Report states that “*apportionment of surface access emissions into airport and non airport related traffic categories was not possible, therefore it has not been possible to attribute the proportion of impacts caused by changes in traffic emissions related to airport-related surface access*”(Appendix C4, page 151, Jacobs Report) [CB/7/3155]
- b. The introduction of an airport congestion charge for all passenger vehicles travelling to the airport could have a significant impact on traffic. Depending on the scale of the charge imposed and the extent of the scheme (whether it targets passengers, employees and/or taxis) the Jacobs Report states that it is possible that traffic with the NWR scheme *could* be reduced to 2013 levels. However as traffic on the Bath Road is estimated to be lower with the scheme than without it in 2030 (because part of the Bath Road will be closed) no analysis of the potential impact was undertaken

107. Measures that were modelled were:

- a. A NO_x emission charging scheme to encourage airlines to use aircraft with low NO_x emissions. A scheme has been in operation at Heathrow Airport since 2004 and the Jacobs Report commented that “*There is no clear evidence that this measure has influenced airlines to select airframe/engine combinations with lower NO_x emissions when the other economic and environmental factors are also taken into consideration*” (**Section 5.6.3 Measure 3, page 73-74, Jacobs Report**) [CB/7/3077-3078]. Despite this lack of evidence of its efficacy the impact of this measure was estimated to reduce NO₂ levels by almost 1 µg/m³

- b. A sensitivity analysis was undertaken of the effect of reducing delays in aircraft leaving the stand and the runways by an average of 2.5 minutes. It was estimated that this could reduce overall airport emissions 1.2%, however it was concluded that “*the feasibility if such a reduction in delay times is highly uncertain*”(Section 5.6.3 Measure 5, page 76, Jacobs Report) [CB/7/3080]
 - c. Installing fixed electrical ground power and pre-conditioned air to all future aircraft stands would enable the auxiliary power units to be switched off. The Jacobs report concluded that approximately 90% reduction in NO_x emission from this source could be achievable, but only with stringent and well enforced restrictions on the use of the auxiliary power units at all stands. This was predicted to reduce NO₂ levels on the Bath Road by 0.6 µg/m³
 - d. Replacing diesel ground support equipment with electric versions would reduce NO_x emissions but the Jacobs Report commented that “*it is not possible to forecast the uptake of ULEVs by airside operators or visitors* (Section 5.6.3. Measure 7, page 77, Jacobs Report) [CB/7/3081]
 - e. The Jacobs Report also considered the implementation of an ultra-low emission zone (ULEZ) on the public highway around the airport. At the time of the Jacobs Report Heathrow had not proposed a ULEZ. However, I understand that this is one of the mitigation measures that the Government believes may be implemented. As there is no proposed scheme the Jacobs Report undertook a sensitivity analysis using a “*nominal scenario to indicate the potential impact of a ULEZ*” (Section 5.6.4, page 79, Jacobs Report) [CB/7/3083]. It concluded that the implementation of an ULEZ could reduce NO₂ levels by 0.2 µg/m³ or 0.8 µg/m³ depending on the assumption on the number of zero emission vehicles (i.e. electric vehicles) (page 79, Jacobs Report) [CB/7/3083]. However in Table 5.15, which summarises the mitigation measures for the NWR scheme, the benefits of an ULEZ are doubled (0.4 µg/m³ or 1.6 µg/m³) with no explanation (Table 5.16 page 82, Jacobs Report) [CB/7/3086]. As this is potentially the single largest component of the mitigation measures clarity is needed as to which figures are correct. In addition, there is significant uncertainty as to the potential benefits of an ULEZ as both scenarios modelled were completely hypothetical
108. In total the combined impact of all the measures was estimated to reduce NO₂ levels by 2.4 to 3.6 µg/m³ on the Bath Road (these values include the potential error noted in my paragraph above), with the largest contributions coming from an ULEZ on the public highway and a NO_x emission charging scheme. There is a lack of evidence of the efficacy of NO_x charging, and the implementation of an ULEZ is not under the control of the airport. Together these two

measures were estimated to reduce concentrations by up to 2.4 µg/m³ at Bath Road. If these are ineffective or undeliverable there must be real doubts whether the impacts of the NWR Scheme can be fully mitigated to ensure air quality limits are achieved on the Bath Road.

109. Both the Jacobs Report and the WSP Report shows that the NWR scheme will increase NO₂ levels where the limit value is already exceeded in several locations in addition to the Bath Road. It is not clear from the text of the WSP Report, however I believe the road links to be along the A4206 Bishop's Bridge Road (between the Bishop's Bridge Road roundabout and Edgware Road, in central London) and A40 Western Avenue (junction of Hanger Lane to east of Wood Lane, White City). At these road links airport-based mitigation measures, that is those over which the airport operators have control, will have little if any impact.
110. The Government has placed reliance on mitigation measures which it believes will ensure that the NWR complies with air quality limits. This is despite the WSP Report providing no detail of the impact of measures because "*it is not possible to undertake a full link by link assessment of the impacts of potential mitigation measures*" (**paragraph 5.5.4 WSP Report**) [CB/7/3599]. No evidence has been provided of the benefit of mitigation measures at locations away from the immediate vicinity of the airport. As discussed above, even near to the airport there is significant uncertainty regarding the benefits.
111. Neither report has looked at how the mitigation measures may be secured as part of any planning consent. Measures such as a congestion charge and an ultra-low emission zone which includes cars would require the support of the Mayor of London.

IV Conclusions

112. There are, in my professional opinion, a number of errors in the Government approach to the assessment of whether the NWR scheme can be delivered within air quality limits, namely:
 - a. The decision to support the NRW option has been taken before the necessary information on future air quality is available. No robust analysis has been undertaken using the best available information of the emissions from Euro 6 diesel light duty vehicles. Until more robust modelling is undertaken, using the new COPERT emission factors for Euro 6 light duty diesel vehicles it is not possible to predict the likely NO_x concentrations and whether the NWR would be compliant with the Directive
 - b. Government knew that COPERT 4.11 underestimates the impact of Euro 6 vehicles yet did not factor this in the PCM Modelling or the main body of the WSP re-analysis. Over 50% of the car fleet in 2025 will be Euro 6 vehicles registered prior 2020 and therefore

under-estimating their impact by almost 100% will have a material impact on future NO₂ levels

- c. The *ClientEarth No2* decision means that new modelling is required and a new air quality plan. Therefore the WSP Report, that made use of the AQP modelling, including the impact of the plan measures, has been superseded by *ClientEarth No 2* judgment
- d. The WSP Report undertook only a quick qualitative assessment of the impact of the new COPERT emission factors issued in September 2016. The results of this quick analysis show that the NO_x concentrations are likely to be higher than estimated in the AC's Jacobs Report and, in my view, the PCM Model used for the AQP
- e. In any case, the WSP Report identified a deterioration in air quality in 2025 at locations where the limit value is already exceeded and where airport mitigation measures will not be effective. The new emissions data is likely to identify greater impacts of the NWR, more breaches of the limit value over more road links, and by a larger degree
- f. Insufficient analysis has been undertaken of the efficacy of the mitigation measures to be confident that the NRW can be delivered within air quality limits
- g. The WSP Report also contains a number of important omissions:
 - i. It failed to adjust the impact of the airport operations to 2025
 - ii. It did not explicitly assess the air quality impact of the new runway and roads against the air quality objectives. As a consequence it did not consider the impact on the more than 47,000 properties identified by the Jacobs Report as likely to experience a deterioration in air quality with the NWR scheme, and therefore did not fully consider the health effects of exposure to NO₂ levels
 - iii. It did not consider the construction impacts, specifically the impact of the construction traffic, non-road mobile machinery and the potentially significant impact on congestion in west London of closing the M25 motorway
 - iv. The WSP report was not a full re-analysis of the AC's Jacobs Report. It only considered the impact of the NWR a small number of locations. The Jacobs Report considered a greater number of locations, based on whether there was likely to be an impact on human health or the environment and identified where NO₂ levels would be above 32 µg/m³ within the study area. The WSP Report did not update this analysis and it does not refer to health receptors

- h. It is unlikely that the measures over which the airport operators have control will be able to fully mitigate the additional NO₂ levels caused by the airport expansion in all locations.

DECLARATION

I Dr Claire Holman DECLARE THAT:

1 I understand that my duty in providing written reports and giving evidence is to help the Court, and that this duty overrides any obligation to the party by whom I am engaged or the person who has paid or is liable to pay me. I confirm that I have complied and will continue to comply with my duty.

2 I confirm that I have not entered into any arrangement where the amount or payment of my fees is in any way dependent on the outcome of the case.

3 I know of no conflict of interest of any kind, other than any which I have disclosed in my report.

4 I do not consider that any interest which I have disclosed affects my suitability as an expert witness on any issues on which I have given evidence.

5 I will advise the party by whom I am instructed if, between the date of my report and the hearing, there is any change in circumstances which affect my answers to points 3 and 4 above.

6 I have shown the sources of all information I have used.

7 I have exercised reasonable care and skill in order to be accurate and complete in preparing this report.

8 I have endeavoured to include in my report those matters, of which I have knowledge or of which I have been made aware, that might adversely affect the validity of my opinion. I have clearly stated any qualifications to my opinion.

9 I have not, without forming an independent view, included or excluded anything which has been suggested to me by others, including my instructing lawyers.

10 I will notify those instructing me immediately and confirm in writing if, for any reason, my existing report requires any correction or qualification.

11 I understand that;

11.1 my report will form the evidence to be given under oath or affirmation

11.2 questions may be put to me in writing for the purposes of clarifying my report and that my answers shall be treated as part of my report and covered by my statement of truth

11.3 the court may at any stage direct a discussion to take place between experts for the purpose of identifying and discussing the expert issues in the proceedings, where possible reaching an agreed opinion on those issues and identifying what action, if any, may be taken to resolve any of the outstanding issues between the parties

11.4 the court may direct that following a discussion between the experts that a statement should be prepared showing those issues which are agreed, and those issues which are not agreed, together with a summary of the reasons for disagreeing

11.5 I may be required to attend court to be cross-examined on my report by a cross-examiner assisted by an expert

11.6 I am likely to be the subject of public adverse criticism by the judge if the Court concludes that I have not taken reasonable care in trying to meet the standards set out above.

12 I have read Part 35 of the Civil Procedure Rules and the accompanying practice direction and have complied with their requirements.

STATEMENT OF TRUTH

I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

Signed.....Clare O Holmer.....

6 December 2016

**IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT**

Claim No:

THE QUEEN

on the application of

- (1) THE LONDON BOROUGH OF HILLINGDON**
- (2) THE LONDON BOROUGH OF WANDSWORTH**
- (3) THE LONDON BOROUGH OF RICHMOND UPON THAMES**
- (4) THE ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD**
- (5) GREENPEACE LIMITED**
- (6) CHRISTINE TAYLOR**

Claimants

-and-

SECRETARY OF STATE FOR TRANSPORT

Defendant

-and-

- (1) HEATHROW AIRPORT HOLDINGS LIMITED**
- (2) GATWICK AIRPORT LIMITED**
- (3) DEPARTMENT OF ENVIRONMENT, FOOD AND RURAL AFFAIRS**
- (4) TRANSPORT FOR LONDON**
- (5) THE MAYOR OF LONDON**

Interested Parties

APPENDICES TO THE STATEMENT OF DR CLAIRE D HOLMAN

- 1. CV of Dr Claire D Holman
- 2. European Environment Agency, 2016, Air Quality In Europe – 2016 Report.

3. Royal College of Physicians, 2016, Every Breath We Take: The Lifelong Impact of Air Pollution. Report of a working party.
4. European Commission, 2013, Press Release, Environment: Newly found health effects of air pollution call for stronger EU air policies.
5. Defra, 2015, Improving air quality in the UK: Tackling nitrogen dioxide in our towns and cities, UK overview document (referred to as the Plan).
6. Mayor of London, 2014, London Atmospheric Emissions Inventory - Hillingdon
7. Mayor of London/ Transport for London, 2014, Transport Emissions Roadmap, Cleaner transport for a cleaner London (footnote 4).
8. Defra, 2015, Improving air quality in the UK: Tackling nitrogen dioxide in our towns and cities, Technical Report.
9. Gatwick Airport Limited, 2016, A Second Runway for Gatwick, Air Quality Projections in the London Air Quality Plan.
10. Department for Transport, 2016, Vehicle Emissions Testing Programme.