Heathrow Legal Challenge Fails

Legal challenge. Late last year, Hillingdon, Richmond, Wandsworth and Windsor and Maidenhead councils, together with Greenpeace and a resident of Hillingdon, served legal papers on the government for unlawfully supporting the expansion of Heathrow. The claimants argued that the government had failed to recognise the project’s unlawful air quality impacts and that the consultation held to make the decision was fundamentally flawed. Therefore, the expansion of the airport cannot go ahead. The legal challenge also sought to hold government to the promise that a third runway would never be built. The councils argued their residents had a “legitimate expectation” the project would not be approved. They identified 19 “broken promises” made by David Cameron, Theresa May and other political figures to scrap the third runway. Former Richmond Park MP Zac Goldsmith has been appointed as a spokesman and organiser for the four-council anti-Heathrow expansion campaign. Sadiq Khan directed TfL to support the challenge.

No jurisdiction verdict. On 30 January, Mr Justice Cranston ruled the court had no jurisdiction to hear the claim. Lawyers for the secretary of state had argued that the judicial review should not be heard until after the consultation on the government’s National Policy Statement (NPS) on aviation. The judge agreed and said: “Once the secretary of state adopts and publishes an NPS the court will have jurisdiction to entertain the challenges the claimants advance. For the present this claim must be struck out.”

Reaction. Ravi Govindia, leader of Wandsworth council said the government should drop its support for the third runway: “The country is now going to waste more time developing a scheme that will never pass a simple legal test on air quality. Nothing is going to change between now and 2018 to make this scheme any less polluting so they should face this challenge now or abandon the third runway.”

Ray Puddifoot, leader of Hillingdon Council agreed: “People right across London have repeatedly voiced their opposition to any expansion at Heathrow. Today’s ruling is not the end of Heathrow’s problems, it is just the first step in what will be a losing battle for them and the government, neither of which can get around the problem of unlawful air quality impacts, let alone all of the other issues it faces.”

Confronting climate change. The government published its health impact assessment of the three shortlisted options. The assessment says that a new runway will increase health inequalities, including for vulnerable groups and children. A project level health impact assessment will be required before the scheme is approved.

The Heathrow proposal

Consultations. Following the high court ruling, the government published the national policy statement on aviation – a document that has been described as “long awaited” for the last few years. At the same time, ministers published a second consultation on reforming policy on the design and use of UK airspace. Both consultations end on 25 May. The Civil Aviation Authority has launched its own consultation on regulating an expanded Heathrow and ensuring the development is value for money.

Planning permission. The consultation document confirms that an Airports NPS, and a development consent application under the Planning Act 2008, is the most appropriate way deliver a new northwest runway at Heathrow Airport. The application will be for full planning consent but the different components of the scheme might be brought forward for permission in phases.

Sustainability. The government’s sustainability appraisal of Sustainability shows that, subject to mitigation, “whilst there will be inevitable harm caused by a new [runway] in relation to some topics, the need for such a scheme, the obligation to mitigate such harm as far as possible, and the benefits that such a scheme will deliver, outweigh such harm.”

Health. The government published its health impact assessment of the three shortlisted options. The assessment shows that a new runway will increase health inequalities, including for vulnerable groups and children. A project level health impact assessment will be required before the scheme is approved.

Compensation. Heathrow Airport will be expected to provide up to £2.6 billion to communities affected by the expansion including noise insulation for homes and schools, improvements to public facilities and other measures. It will establish a community compensation fund and a community engagement board.

Transport. The NPS requires that landslide airport-related traffic will be no greater than today. It notes that increased emissions from air transport movements (both international and domestic) because of increased demand will have the largest impact on climate change. This must be mitigated. Half of passengers must travel to the airport by public transport.

Regional routes. Heathrow currently serves eight regional airports. The DfT said it wants Belfast International, Liverpool, Newquay, Humberside, Prestwick and Durham Tees Valley airports served by 2030.
Design. The NPS says “the applicant should include design as an integral consideration from the outset of a proposal.” It continues: “Visual appearance should be an important factor in considering the scheme design as well as functionality, fitness for purpose, sustainability and cost.”

Noise. The government says it takes the issue of noise “very seriously”. It says it wants “to strike a fair balance between the negative impacts of noise (on health, amenity, quality of life and productivity) and the positive economic impacts of flights.” Measures will be required to mitigate the impacts of noise, including legally binding noise targets and periods of predictable respite. Ministers are insisting on a six and a half hour ban on scheduled night flights. The government will establish an Independent Commission on Civil Aviation Noise. The function of ICCAN will be to:

- Advise on airspace change, providing assurance that noise has been considered and mitigated where possible.
- Advise on planning decisions and ongoing noise management.
- Promote and publish best practice guidance.
- Review or commission research to present new evidence.
- Monitor noise measurements and how these are reported, to build trust and improve transparency and credibility.

Noise control. The government is proposing that noise controls at the designated airports – Heathrow, Gatwick and Stansted – such as departure noise limits, continuous descent approaches and noise-preferential routes will become the responsibility of the airports. Operating restrictions, such as the number of flights, will still be set by the government.

Air quality. Chris Grayling told the Commons: “I am clear that the environmental impact of expansion must be minimised. Industry leading measures will be required to mitigate air quality impacts and Heathrow Airport will be required to demonstrate that the scheme can be delivered within legal air quality obligations.”

Airspace. The government says the UK airspace system is inefficient. This means passengers face longer journeys and delays as airspace becomes more congested, leading to more emissions and noise. It says airspace operators must prepare different options for airspace changes and consult communities. The government aims “to limit and, where possible, reduce the number of people in the UK significantly affected by aircraft noise, as part of a policy of sharing benefits of noise reduction between industry and communities in support of sustainable development.”

Green belt. The NPS reiterates national policy on the green belt and metropolitan open land, saying it should not be developed except in “exceptional circumstances”. It says the secretary of state will attach substantial weight to the harm to the green belt and “the secretary of state may require the provision of replacement green belt land, which should be secured by the applicant.” The government also wants any other open space to be substituted.

**Planning and Environmental News from CPRE South East**

**CPR reaction.** Tom Fyans, director of campaigns at CPRE said: “As well as increasing carbon emissions, wrecking tranquillity under new flight paths and adding to dangerous levels of air pollution, a third runway at Heathrow will entrench the north-south economic divide and create extra housing pressure in the already overheated South East.

“Feelings around a third runway are at boiling point. The government must drop its mantra of economic growth and heed the environmental warnings that matter so much more over the long run – both to our countryside and to people’s health. There is still time to invest in alternative and sustainable travel options that pursue a better and healthier future.”

**Other reaction.** Sarah Olney, Liberal Democrat MP for Richmond, accused the Government of being so desperate to reassure businesses about its Brexit plans that it is “willing to steamroller over those communities opposed to Heathrow expansion”. Labour’s transport spokesman, Andy McDonald, said progress was “welcome after years of dither and delay” but questioned whether air quality mitigation measures would be sufficient. The Unite union also welcomed the move. John Stewart, chair of HACAN said: “The stark fact remains that a third runway will mean almost a quarter of a million extra planes using Heathrow each year. That will turn countless lives upside down.”

ClientEarth said: “It seems they are still clinging to the idea that Heathrow can meet air-quality standards in an area already blighted by illegal air pollution. This would be a huge undertaking.” The Aviation Environment Federation said: “These proposals tinker at the edges in terms of how noise is measured, communicated and spread out, and the government still maintains that we will somehow have London’s air quality crisis resolved before a new runway makes it worse again.”

Friends of the Earth said: “It’s simply pie in the sky to think we can build a third runway at Heathrow while keeping UK targets for slashing emissions. These short-sighted plans will also add to London’s pollution crisis.”

**Heathrow Roundup**

**Noise.** The government has published proposals for changes to the night flights regime for Heathrow, Gatwick and Stansted. It claims night noise at the airports will be cut. The plans for lower quotas for night flights will make no practical difference at Heathrow and Gatwick as the airports are already below the proposed quota.
Noise... Stansted will see an increase in permitted night flights. The Aviation Environment Federation said: “We are particularly concerned that the government appears unwilling to prioritise action to protect public health over the incessant demand for growth from the aviation industry.” Hacan said the proposed changes would make “little difference” 📰. The Department for Transport has published noise contours for the three airports 📌.

Cranford agreement. The DfT also confirmed that it is ending the 60-year old agreement that reduces flights over Cranford, immediately east of the airport, at the expense of Colnbrook and other settlements west of the airport. The plans involve erecting a noise barrier partly in the green belt 🌳.

Emissions. Transport secretary Chris Grayling has suggested that the government will ignore advice from the Committee on Climate Change on dealing with aviation emissions. Committee chair, Lord Debden has warned that other sectors of the economy will need to cut emissions by 85% to meet the UK’s carbon reduction targets if a third runway goes ahead 📊. Transport Minister John Hayes said the government does not accept TfL’s potential costs for surface access provision 📊.

Costs and benefits. The chair of the treasury select committee has questioned the “rarely used” financial model used by the government to show that Heathrow expansion will deliver a net benefit 📊. Transport Minister John Hayes said the government does not accept TfL’s potential costs for surface access provision for a third runway at Heathrow Airport. The estimate of £18bn was produced during Boris Johnson’s tenure 📊.

Transport. Val Shawcross, deputy mayor for transport, said Heathrow expansion risked ‘log-jamming’ west London transport links. She warned that proposed Crossrail links and a planned upgrade to the Piccadilly line would not be enough to ensure a smooth flow of traffic to an expanded Heathrow airport as they were designed before a third runway was agreed 📊.

Opinion. A poll for Hounslow council of 1,207 residents, found 44% support a third runway, which includes 18% who strongly support it. The survey found 20% oppose expansion, of which 21% who strongly oppose it 📊. A new campaign group, h&fnothirdrunway, has been set up to fight plans for expansion 📌.

Planning and Environmental White Paper

Imminent publication. The government’s white paper on housing and planning is due to be published on Monday 6 February, or Tuesday according to media reports.

Media. The Sun claims the government will allow houses to be extended as high as the existing tallest property on their block without special planning permission or concern for right for light. It claims councils will be encouraged to build on the green belt once brownfield sites have been developed 📌. The Financial Times gives a slightly different perspective. It says the white paper “is expected to emphasise the importance of building on brownfield sites but could also see the government authorising some building on the green belt if the land is lost to other safeguarded sites” 📊. The Times adds that car parks may be moved underground to free up more space 📌.

Brexit

White paper. The government has published a white paper on Brexit 📌. It mentions rural matters just once but pledges to continue environmental protection: “Leaving the EU offers the UK a significant opportunity to design new, better and more efficient policies for delivering sustainable and productive farming, land management and rural communities. This will enable us to deliver our vision for a world-leading food and farming industry and a cleaner, healthier environment, benefiting people and the economy.”

“The government is committed to ensuring we become the first generation to leave the environment in a better state than we found it. We will use the Great Repeal Bill to bring the current framework of environmental regulation into UK and devolved law. The UK’s climate action will continue to be underpinned by our climate targets as set out in the Climate Change Act 2008 and through our system of five-yearly carbon budgets, which in turn support our international work to drive climate ambition. We want to take this opportunity to develop over time a comprehensive approach to improving our environment in a way that is fit for our specific needs.”

Further details are expected to be set out in two green papers, one on the environment and another on food and farming 🌿.

Reaction. Friends of the Earth said: “The commitment to bring current environmental regulation into UK and devolved law is welcome but, as always, the devil will be in the detail” 📌. Heathrow said the NPS is “a pivotal point in unlocking progress on delivering a bigger, better and more affordable Heathrow” 📌.

Brexit roundup. Liberal Democrat environment spokesperson Kate Parminter said leaving the European Union and reaching a trade deal with President Trump would pose a serious threat to our natural environment, food quality and public health 🌾. A draft resolution to the European parliament says the UK should not be allowed to damage the wider European environment by unilaterally weakening its commitments to reducing pollution emissions and protecting wildlife. MEPs warn they would vote down any Brexit deal unless the UK promised to maintain current environmental protection levels 🌾.