

# **Airports Commission Discussion Paper 07**

## **Delivery of new runway capacity**

### **SUBMISSION BY THE RICHMOND HEATHROW CAMPAIGN**

**August 2014**

This submission is the response from the Richmond Heathrow Campaign (RHC) to the Airports Commission's *Discussion Paper 07: Delivery of new runway capacity*. We do not consider that the contents of this submission are confidential and we have no objections to its publication.

The Richmond Heathrow Campaign represents three amenity groups in the London Borough of Richmond upon Thames: The Richmond Society, The Friends of Richmond Green, and the Kew Society, which together have over 2000 members.

The members of our amenity groups are adversely affected by noise from Heathrow Airport's flight paths, particularly at night. We favour a ban on air traffic at night at Heathrow. We are opposed to the introduction of mixed mode and to the development of additional runways at Heathrow.

We nevertheless recognise the importance of air transport; and the need to make provision for handling additional air passengers. We therefore wish to make a positive contribution to the Airport Commission's work.

#### **Legal and Planning Issues (Chapter 2)**

*Planning Act 2008, Hybrid Bills, Other Routes*

We appreciate the summary of legal and planning issues in the Discussion Paper. We make the following points:

1. We believe the process adopted by the Planning Act 2008, as amended by the Localism Act 2011, is preferable to a Hybrid Bill, because the former appears to provide for more consultation and involvement of local communities. However, we are concerned that planning law has moved in recent years noticeably in favour of the developer at the possible expense of those affected. We can appreciate the benefits of a more efficient planning process but are concerned the bias may be taken too far.
2. We believe the National Planning Policy Framework issued by the Department of Communities and Local Government (March 2012) should be taken into account and particularly the following:
  - a. "Encouragement should be given to solutions which support reduction in greenhouse emissions and reduce congestion" (para. 30),
  - b. "Planning policies and decisions should aim to:
    - i. Avoid noise from giving rise to significant adverse impacts on health and quality of life...
    - ii. Mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions." (para. 123)
3. As widely recognised, many promises made by the aviation industry and politicians on the subject of Heathrow expansion and environmental impact have been broken in the past - resulting in the harmful effect of increased noise and air pollution being imposed upon local communities. Whatever residual trust there now is between communities and the aviation industry, it cannot be relied upon given the history, and it needs to be backed up with legally binding permissions and enforcement of environmental and other conditions. Penalties need to be proportionate to the significantly negative impact on the environment of breaches of legislation and legally binding agreements.
4. The Government needs to take more seriously the rulings of the WHO and EU on noise and air pollution and it needs to do so before any decision is made on airport expansion. The

Government should formulate plans to meet the current statutory obligations that currently it is failing to meet - for example, non-compliance with EU air pollution and WHO noise targets. How can new plans have credence if current obligations are so routinely ignored by the Government?

5. Improvements to other unacceptable outcomes need to be implemented by the state, and before a decision on expansion is taken – for example surface access congestion. This is needed both to demonstrate previous promises can and will be honoured and to start any expansion from a clean sheet. Where outstanding promises, such as Heathrow’s annual 480,000 ATM cap, are recommended for change then the community need to be compensated for a “breach of contract” or change to an agreement not necessarily in financial terms but, for example, in greater reduction of future noise levels. The past promises cannot just be ignored and handed up gratis by the community – not least because it would demonstrate at the outset that any further promises are worthless. For the record RHC opposes any increase in the current ATM cap at Heathrow.
6. A particular issue that requires binding commitments concerns a fourth runway at Heathrow, which under no circumstance should be allowed. If any decision on a third runway at Heathrow fails to rule out a fourth runway in the strongest legal terms then it is essential the full consequences of a fourth runway be included as part of the third runway proposal and appraisal. The possibility of a fourth runway cannot be left hanging in the air. During the lengthy T5 public inquiry repeated commitments were given that a fifth terminal would not lead to a 3<sup>rd</sup> runway, yet within 12 months of the Secretary of State’s decision on T5 the government reversed its decision on a 3<sup>rd</sup> runway.
7. Where legally binding terms and conditions cannot be agreed between participants in aviation and the community then permissions should be curtailed or with-held so as not to expose local communities unfairly.
8. Those communities newly affected by noise should have the right to redress through civil action and/or through their council’s environmental provision and not have the rights on this matter waived as they have been by successive aviation Acts since 1922 when aviation was on a wholly different scale to the present. There has been colossal financial risk free benefit to the aviation sector on account of this restriction and the cost needs to be brought into the equation going forward.
9. The detailed parameters where legally binding commitments from airports and airlines are needed should be identified and formal commitments should be part of any recommendation by the Airports Commission (“the Commission”). Some of the assumptions included in the airport proposals can be controlled by the promoter while others are not within their control. We are concerned that all assumptions used for the decision are adhered to where control is available and that where not it is legally beholden on the promoter to take steps to minimise, mitigate and remedy the risks so that the community and other third parties are not the unwitting safety net. We refer to noise outcomes, for example. We would like to see a formal risk matrix accompany any recommendation by the Commission in which the environmental risks are identified, the impact of each one assessed, the control steps identified and the residual risk evaluated together with an allocation of responsibilities for the risk management.
10. As set out in the Discussion Paper, an airport promoter can develop a Nationally Significant Infrastructure Proposal (NSIP) within the National Policy Statement framework and submit the proposal to the Planning Inspectorate who then must within nine months make a recommendation to the relevant Secretary of State. The Secretary of State must then within three months decide whether or not to grant a Development Consent Order (DCO). However, it is not clear to us from the Discussion Paper what happens if more than one promoter seeks a DCO for the same airport (e.g. Heathrow) or more than one airport (e.g. Heathrow and Gatwick). Our understanding of the planning process leads us to believe that a choice by the Inspector and in turn the Secretary of State is not required and indeed a choice could be challenged on planning and anti-competitive grounds. This leaves open the very real possibility of several applications irrespective of the Commission’s recommendations.

11. In their recent submission to the Commission on Noise and flight paths HAL have seemingly sought to plan flight paths over less densely populated areas including open spaces and parks. Kew Gardens is a World Heritage Site and the Government has signed up to various concordats regarding such sites and we expect these to be complied with. The concordats not only relate to people but the fabric of buildings and the potential damage from aircraft induced vibration.
12. We note the National Policy Statement requires the Government to take account of Government Policy on mitigating and adapting to climate change. As discussed in our recent response to Discussion Paper 06, we do not believe the consequences for other airports in the southeast and the regions and non-aviation sectors of the economy have been examined sufficiently for the Commission to conclude that the climate change statutory requirement will be met without undue harm. We believe this examination needs to be completed before any recommendation is made by the Commission.

We have commented above on a number of legal issues and we would like to stress the importance, in our view, of the issues being resolved before the Commission makes its recommendations in the middle of 2015 or in other cases at least before the Government makes any decisions.

### **Local Communities (Chapter 3)**

#### *Engagement with local communities, Mitigation, Compensation*

We support engagement between parties involved with airport issues.

But an important point is firstly to banish the many myths that exist in promoting Heathrow. These include myths around the loss of jobs if Heathrow does not build another runway, the historic trends and achievements in noise reduction and the improvements in surface access and related congestion and pollution as well as numerous economic claims. That is not to say there cannot be more than one view on an issue but much of the debate on Heathrow in the past has not been based on evidence and has been biased. The playing field firstly needs to be levelled on a number of issues if there is to be meaningful dialogue going forward. We appreciate the Commission's work is aimed at achieving this but we are concerned that some areas such as noise, air pollution, surface access and climate change will not be sufficiently advanced at the time of the Commission's recommendation or the Government decision.

We are especially concerned with the reliance on HAL public consultations and we see reference in the Discussion Paper (para 3.3) to public consultations in 2014. We have issues with the sampling and nature of some of the questions in HAL's consultations. The results are used repeatedly to promote a particular line of thinking by HAL. The fact there has been a public consultation does not in itself give proof of the validity or independence of the conclusions – but this point is too frequently lost in the debate.

Engagement at group sessions can be beneficial but also it is difficult for people attending to be representative of such a large diverse population under Heathrow's flight paths. Agreeing a change in flight paths may help one group but at the expense of another. Wide representation of the population's various views is important but should not be used by the aviation industry to divide the opposition.

Mitigation can of course help but it is nowhere near sufficient to deal fully with the problem of aircraft noise indoors. Also, people like to spend time outdoors and double glazing does not help. In fact HAL are talking about flight paths being directed over quiet parks to avoid populated areas. But this is not of benefit to the many people who visit parks and open spaces, such as Kew Gardens, in order to relax.

We doubt compensation generally is sufficient to compensate for the suffering from noise. A scheme for purchase of houses, etc. is to be welcomed but can only apply to those most heavily impacted.

Control of population density, other than very near the airport, is by and large not a tool that is effective or even desirable given the housing pressure on London over the foreseeable future. It has not been particularly successful in the past. The argument that people buying homes exposed to noise have no case in seeking noise reduction does not stand credibility; people very probably do not have anywhere else to live in the already densely populated areas west of central London.

## **Role of the State (Chapter 4)**

### *Funding, Economic Regulation, Safety and Security Regulation, Administration*

We examine the administration, funding and economic regulation of surface access and then the airports and then focus on state aid. We use the terms surface access project, airport project and combined project.

#### **Surface access projects**

RHC has made the point in previous responses to the Commission that the subject of airport surface access is vitally important in terms of the potential hindrance to efficient and effective use of airports but also the opportunity it provides to enhance passenger travel and freight logistics. This is especially so in relation to making best use of the capacity of the five main airports in the southeast (six, if Southend is included) where we would like to see people in the combined catchment areas being largely indifferent as to which airport they use. Even without any new runways passenger growth is expected and requires additional surface access capacity. This objective we believe stands whether one favours the hub or dispersed airport model. We suggest a major surface access scheme would deliver substantial benefits and confirm London as the world's leading aviation hub over the longer term.

We believe that in addition to the aviation need there is a wider transport objective needed for the southeast both to improve existing non-airport related transport but also to cater for change and growth of London. Any project established to achieve this wider objective would be substantial in terms of spatial coverage, its timescale and cost, although it could be taken forward in segments.

It is within this wider transport project that individual airport surface access projects we believe should fit for all the southeast airports and not just in respect of one airport that might be expanded with an additional runway. We suggest that surface access service objectives should be chosen so as to optimise the larger scheme of things rather than individual airports (global rather than satellite objectives). It follows that the service level objectives for each surface access project need not be the same and that to compare airport projects on a like-for-like service basis could lead to less than optimal conclusions within the overall objectives.

However, in the first instance comparison of the like-for-like surface access projects for each of the airport contenders and indeed each of the southeast airports we agree is desirable. But in addition to the point about global and satellite optimisation made above there is a second iteration needed to produce a deliverable business case for each airport. In a constrained financial model, which is likely to be the situation, there will be trade-offs between a whole range of factors including surface access and the airport projects. For example, it might be preferable to spend money airside to reduce passenger travel times rather than to spend the money on surface access service levels. Optimisation of the combined airport and its surface access project for each airport is unlikely to result in the surface access projects for each of the airports being comparable on a like-for-like basis. We suggest the Commission's appraisal should compare the optimum combined airport and surface access projects for each airport and not to force the model to include surface access projects on a like-for-like basis.

The following table has been taken from the *"Inner Thames Estuary Feasibility Study – May 2014 page 53"* submitted to the Commission by the Mayor of London.

	Inner Thames Estuary Airport	Heathrow NW runway	Heathrow Hub	Gatwick second runway
Airport cost (£bn, 2013 prices, AC figures excl. risk and OB)	18-25	7-9	6-8	5-7
Surface Access Infrastructure Cost (£bn, 2013 prices, TfL figures incl. risk and OB)	Low	2.5	2.1	0.4
	Intermediate	6.8	4.6	2.9
	Capable	10.9	7.0	11.6
	Optimal	19.1	17.6	12.4

We provide the table without prejudice to illustrate (a) the relatively large cost of surface access infrastructure projects compared to the airport projects which emphasises the importance of surface access and (b) the great range of feasible surface access projects for each airport, largely dependent on service levels provided, which variability could have a large impact on combined project optimisation.

The airport projects are promoted by private commercial companies and we understand are being appraised by the Commission rather than the Commission preparing the projects and then appraising them – the latter approach we would not support.

However, there are a number of issues with the surface access decision process including the Commission's process which are not clear: who is promoting the wider transport proposals and the airport specific surface access proposals; what is the timing of the surface access proposals and decisions; to what extent are the airport and surface access projects discrete projects and to what extent do they overlap with each other and a wider transport scheme.

We believe it essential that decisions on the airport expansion and surface access be made in conjunction and in parallel with each other and that there is no deferral of the surface access decisions until after the airport decisions; we understand from the Discussion Paper (para 4.2) that the Commission favours deferral. Also, there need to be clear lines drawn between the various projects in terms of promotion, management and funding even though the projects may be interdependent; the projects need to be ring-fenced. The promoters need to be independent of the project appraisals, meaning that in the absence of promoters being formally identified for the surface access projects, the Commission should not be required to prepare the project proposals and then appraise them – a process we would not support. We urge the Commission to clarify the situation and apply whatever remedies are necessary to the decision process.

We are not in a position to suggest how the various projects can be incorporated into a wider transport plan. There needs to be a line drawn between the state and private promoters. Here we are talking about ultimate responsibility and funding of a project. For example the state might take ultimate responsibility for a transport project but sub-contract to a private group or mixed private/public partnership for delivery. Also, the state will usually have a regulatory role whether or not the transport project is a public or private project.

1. At one end of the spectrum, taking a competitive/market based approach, which we tend to support, the private airport promoters could seek to buy into a share of the larger transport project. Their contribution financially might be on the basis of the marginal cost of the marginal capacity needed for a particular airport. This capacity might be for additional throughput or improved service or both. There would need to be common terms of engagement for each of the airports in respect of the service levels but the service need not be uniform throughout the southeast and could be established on sound economic and social bases independently for each airport. There would need to be a sharing of the risks between participants. The projects could be carried forward in stages as capacity thresholds are reached. In this scenario the funds required from the airports are likely to be relatively high and with no state aid but might be discounted on the grounds that an airport, though commercial, provides some public benefit.
2. At the other end of the spectrum, the state might contribute to all the incremental costs of an airport's surface access requirement but it would be necessary to avoid benefitting the commercial sponsors' rate of return from the airport and/or distorting competition. We discuss state aid below.

The public might also share in the costs and benefits of the transport projects. For example, they might contribute to the costs directly or through taxes - for example, congestion charges and parking charges. Indirectly the public contribute through ticket prices that reflect airport aeronautical charges which in turn may reflect the economics of the surface access. The public's behaviour is crucial in terms of their choice of transport mode. This has an impact on the costs but also the environment – air quality, noise and impact of traffic congestion on peoples' lives. Charges and taxes used to influence this behaviour need not be neutral and funds raised could contribute to the surface access projects.

We seek further clarification on the surface access projects by reference to the Commission's Appraisal Framework (April 2014) – Surface Access section 4:

- a) what will be the basis for the provision of transport infrastructure to meet the additional transport demands;
- b) what will be the assessment period, design year and how will the surface access implications be assessed;
- c) how will congestion be assessed;

- d) will different levels of service be assessed?; if so what will they be?; if not what will be the target level of service?
- e) para 4.17; what criteria will be used to assess whether a surface access strategy is viable, deliverable and supports the Commission's objectives;
- f) para 4.22; what criteria will be used to determine that the surface transport strategy has been optimised.

### **Airport projects**

Heathrow and Gatwick, the two short-listed airports, are both privately owned commercial ventures. The state's role is through regulation so as to control excessive economic or commercial dominance. We cannot see how state aid could be justified for the runway projects promoted by private organisations but we discuss this below under the heading of state aid.

Regulation is helpfully summarised in the Discussion Paper. A report prepared for the Commission's Interim Report prepared by KPMG and titled "*High-level Commercial & Financial Assessment of Selected Potential Schemes - 10 December 2013*" provides relevant information on the commercial and financial viability of the two Heathrow projects and one Gatwick project. Without substantial state aid and significant increases in regulated aeronautical charges at the start followed by subsequent real growth in the charges of 2.5% per annum, all the projects face very considerable financing challenges. These arise not just in terms of the debt/equity ratios, risk and rates of return but the sheer size of the funding required in the face of world-wide capacity limits for such funding. We cannot see either the airlines or the Regulator and ultimately the passengers accepting the levels of aeronautical charges foreseen if the projects are to be viable without state aid.

### **State Aid**

State or public funding of surface access is potentially problematic. There is the difficulty of defining any airport specific surface access project within a wider transport scheme so that the capital and operating costs and revenues can be allocated and apportioned and related to the various funding streams and in effect ring-fenced from the airport project. Also, as pointed out in the previous table, the surface access projects for Heathrow range from capital costs of £2.1bn to £17.6bn, presumably varying with service level, and they are likely to require increasing amounts of state aid at the higher levels.

There is the question of EU rules on state aid. In para 2.3.2 KMPG say "All such government support measures raise material value for money questions. Put simply, if the only way to attract the required private capital is to subsidise the proposed scheme to a large extent and/or to de-risk the project such that substantial risk and liability remains with the taxpayer, then is such support justified?" This is a question of Value for Money.

Our understanding is that the EU rules on state aid would require all airport competitors to avail of similar state aid if it is to be allowed. Otherwise competition is distorted. We take this to include all the airports in all the EU member states. This test seems unlikely to be met.

If the state were to fund the surface access, as in the second scenario described above, the surface access to a privately owned airport must surely benefit the private owners and thereby contravene EU rules on state aid.

The KMPG report was not based on the more current Heathrow figures but we calculate from the report that including an assumed £2.9bn capital cost for surface access the total combined project cost of HAL's northwest proposal would be £21.6bn of which at least £7bn would need to be state aid to enable commercial funders to provide the equity and debt needed. Even if state aid could be justified for the £2.9bn surface access project then the balance of state aid would have to be attributed to the airport project but it seems extremely unlikely the EU rules would be complied with under these circumstances. On the face of it, the Heathrow projects are not commercially or financially viable propositions. We appreciate that updated proposals submitted by HAL to the Commission in 2014 may be financially more attractive but we still doubt the financial viability of a 3<sup>rd</sup> runway let alone one with enhanced surface access identified in the earlier table.

We take this opportunity of raising the issue of APD and taxation more generally. Proposal One of our long-term proposals to the Commission in July 2013 sought fairer taxation that removed market distortions

with a consequential impact on demand generally but also specifically international transfers which arise mainly at Heathrow. The existing under taxation of aviation, as was discussed in our Proposal, is in effect a public subsidy. We cannot see how the Treasury can justify additional public funding of aviation, especially for new runways where international routes will comprise the main use and 85% of the capacity on such routes will be used by UK resident leisure travellers who are likely to be the better off and who generate a sizable balance of payments deficit when travelling overseas.

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