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Rt Hon Grant Shapps MP
Secretary of State for Transport
Great Minster House
33 Horseferry Road
London SW1P 4DR
By email to: Grant.Shapps@dft.gov.uk

Our Ref: HIL00117

16 October 2019

Dear Sir,

Request for Review of the Airports National Policy Statement: Aviation Capacity in South-East England designated in June 2018

1. Introduction

We are instructed by the London Boroughs of Hillingdon, Richmond, Wandsworth and Hammersmith and Fulham, the Royal Borough of Windsor and Maidenhead and Greenpeace to request an urgent review of the Airports National Policy Statement ("ANPS") under section 6 of the Planning Act 2008.

The Secretary of State has made it clear that the ANPS was designated in accordance with the legal obligations and evidence existing in June 2018.

Since June 2018 circumstances have changed, most obviously in relation to the danger from climate change which is now recognised to be a full-blown national and international emergency requiring urgent action. This development alone requires a full review of the ANPS.

It is also the case that since June 2018, the true picture of the significant harm that would be caused by an expanded Heathrow has become clearer – particularly in the course of Heathrow Airport Limited's pre-application statutory consultation (pursuant to the Planning Act 2008) that ran from 18 June to 13 September 2019. Hillingdon Borough Council has set out the relevant details in its consultation response dated 13 September 2019, a copy of which is annexed to this letter, together with a summary of the key points in that response. Significant changes also satisfy the requirements of section 6 – summarised below - and cannot be adequately, fairly or fully addressed in any DCO application.

In our view the case for a full review under section 6(3) is now so compelling that it would be unlawful to decide not to carry it out.

This request for a review is made without prejudice to the appellants' case, shortly to be heard in the Court of Appeal, that designation of the ANPS was unlawful in June 2018 and it should therefore be quashed.

2. The 2018 Airports National Policy Statement

The 2018 ANPS decided, inter alia:

"2.32 Having reviewed the work of the Airports Commission and considered the evidence put forward on the issue of airport capacity, the Government believes that there is clear and strong evidence that there is a need to increase capacity in the South East of England by 2030 by constructing one new runway. The Government also agrees with the Airports Commission that this can be delivered within the UK's obligations under the Climate Change Act 2008. The Government considers that following the country's decision to leave the European Union the country will increasingly look beyond Europe to the rest of the world, and so the importance of maintaining the UK's hub status, and in that context long haul connectivity in particular, has only increased."

3. Section 6 Planning Act 2008

Under the Planning Act the Secretary of State must review each national policy statement whenever the Secretary of State thinks it appropriate to do so.

In deciding when to review a national policy statement the Secretary of State must, under section 6(3), consider whether—

- (a) since the time when the statement was first published or (if later) last reviewed, there has been a significant change in any circumstances on the basis of which any of the policy set out in the statement was decided,*
- (b) the change was not anticipated at that time, and*
- (c) if the change had been anticipated at that time, any of the policy set out in the statement would have been materially different.*

4. Climate Change Act 2008

Under the Climate Change Act the Secretary of State has a duty to ensure that the net UK carbon budget is lower than the 1990 baseline.

The duty is met, in part, by setting targets for a reduction of carbon and greenhouse gas emissions compared to 1990 levels.

When the ANPS was designated that target was 80%. The ANPS specifically refers to the 80% target when considering carbon emissions associated with the proposed NWR Scheme:

5.71 The UK's obligations on greenhouse gas emissions are set under the 2008 Climate Change Act. Under this framework, the UK has a 2050 target to reduce its greenhouse gas emissions by at least 80% on 1990 levels, and has a series of five year carbon budgets on the way to 2050.

The target was amended by the Climate Change Act 2008 (2050 Target Amendment Order) which came into force on 27 June 2019 – a year after the designation of the ANPS.

The amendments changed the target from a minimum of 80% to a minimum of 100% i.e. to "at least 100% lower than the 1990 baseline" - that is to a target of net zero.

Under the terms of section 2 of the Climate Change Act the power to amend may be exercised only if it appears to the Secretary of State "that there have been **significant developments in (i) scientific knowledge about climate change or (ii) European or international law or policy that make it appropriate to do so**". To justify amendment the developments in scientific knowledge about climate change must, have taken place "since the evidential basis for the previous exercise was established".

The preamble to the Climate Change Act 2008 (2050 Target Amendment) Order 2019 which introduced the amendment therefore states that:

*The Secretary of State considers that since the Act was passed, **there have been significant developments in scientific knowledge about climate change that make it appropriate to amend the percentage specified in section 1(1) of the Act.***

(emphasis added)

The Climate Change Act 2008 (2050 Target Amendment) Order 2019 was passed under the affirmative resolution procedure. It is clear that Parliament, by approving the Secretary of State's draft Order, accepted that there had been significant developments in scientific knowledge about climate change which made it appropriate to amend the target in section 1(1) of the Climate Change Act 2008:

The same reasoning applies to the need for a review under the Planning Act 2008.

If there are significant changes in evidence (such as scientific knowledge) and/or policy which the Secretary of State (and Parliament) believes justify an amendment to the targets in the Climate Change Act, then those changes are relevant to a review of an NPS which decides a need for expansion in aviation, not least because aviation is one of the most energy and carbon intensive forms of transport.

Further, increasing the target to 100%, reducing the allowable level of emissions from about 120 million tonnes of CO₂ to zero is clearly a material and significant difference that should be reflected in the policy within the ANPS. This clearly impacts the assessment of, *inter alia*, carbon emissions in the ANPS.

5. The Secretary of State's position on review

We understand the Secretary of State's position in relation to a review is as set out in his 30 August 2019 skeleton argument in the Court of Appeal (in the appeal by Plan B. Earth). The Secretary of state said:

"23. ... neither the May 2019 CCC Report nor the Amended 2050 Target were available to the SST to consider when deciding whether to designate the ANPS.

...

24. ... It has from the outset been the SST's case that s. 6 of the PA 2008 provides a mechanism by which future changes in climate change obligations, policy or science can be dealt with ... On 2 May 2019, Plan B itself made a request for a review of the ANPS in light of the May 2019 CCC Report. That request is being considered and the SST will take into account not only the May 2019 CCC Report and the Government response (i.e. the Amended 2050 target) but also - if available - further anticipated advice from the CCC specifically addressing

aviation emissions. The matters to be addressed when considering whether to review the ANPS under s. 6 of the PA 2008 will thus encompass the Paris Agreement (since that is the subject of the May 2019 CCC Report) and relate to the same substantive issues raised by Plan B in this appeal. Moreover, the Government intends to publish the Aviation Strategy White Paper. This has already been the subject of consultation and will replace the APF. It will set the wider framework for aviation policy, including on climate change."

6. The advice from the Committee on Climate Change

The advice anticipated by the Secretary of State in his skeleton argument has now been produced.

On September 24th 2019 the CCC provided to you, by letter, its recommended policy approach for aviation. It summarised the recommendations as follows:

- 1. "Addressing international aviation and shipping (IAS) emissions is strategically important. The primary policy approach to reducing IAS emissions should be international. Formal inclusion of IAS emissions in the UK net-zero target would complement agreed international policies and should not be interpreted as a unilateral UK approach to reducing emissions in these sectors.*
- 2. The planning assumption for international aviation and shipping should be to achieve net-zero emissions by 2050. This should be reflected in the Government's forthcoming Aviation Strategy and as their Clean Maritime Plan is taken forward. It means reducing actual emissions in these sectors and is likely to require some use of greenhouse gas removals (GGRs) to offset remaining emissions.*
- 3. The Government can take steps towards enabling international aviation and shipping to reach net-zero emissions in the UK and internationally by establishing a new market for GGRs. Such a strategy could create a significant new global export opportunity for the UK in greenhouse gas removal technology and expertise."*

In further detail the letter clarifies its advice as follows:

Managing demand. Measures should be put in place to limit growth in demand to at most 25% above current levels by 2050. These could include carbon pricing, a frequent flyer levy, fiscal measures to ensure aviation is not undertaxed compared to other transport sectors (e.g. fuel duty, VAT), reforms to Air Passenger Duty, or management of airport capacity. Research commissioned by the Department for Transport concludes that UK demand management policies in aviation are unlikely to lead to carbon leakage in aggregate.

Airport capacity. The Government should assess its airport capacity strategy in the context of net zero. Specifically, investments will need to be demonstrated to make economic sense in a net-zero world and the transition towards it. Current planned additional airport capacity in London, including the third runway at Heathrow, is likely to leave at most very limited room for growth at non-London airports."

(Emphasis added)

The ANPS was decided on the basis that international aviation would have to meet the CCC's planning assumption, as pre-dated the change of the law, of 37.5 MtCO₂ in 2050 (see e.g. ANPS para 5.75). The CCC's planning assumption for net-zero is now that "*the IAS sectors should ... achieve net-zero emissions by 2050*" and this "*will require reducing IAS emissions as far as possible.*" In this context, the CCC advice is that emissions from aviation can be reduced to 30.0 MtCO₂ (i.e. this represents a 20% reduction in the planning assumption).

With expansion at Heathrow, the Government's modelling shows that emissions from aviation will rise, before falling to 37.5MtCO₂ in 2050. The planning assumption is now out-dated. It is clear that expansion at Heathrow is not, on the evidence justifying the ANPS, compatible with the change in circumstances.

The change in circumstances relating to climate change clearly affects the evidence upon which the ANPS was based, including (but not limited to) demand, growth, economics, environmental harm and ultimately the need for expansion. Further, the CCC's advice that "*current planned additional airport capacity in London, including the third runway at Heathrow, is likely to leave at most very limited room for growth at non-London airports*" reopens the need for a 3rd runway at Heathrow if, as seems now to be the case, this is at the cost of growth at non-London airports around the UK.

7. Further significant changes in circumstances

The recognition of, and scientific knowledge relating to, a climate emergency is not the only significant change in circumstances which should be considered under section 6 of the Planning Act.

These changes can be broadly divided into non-Heathrow specific changes, and Heathrow specific changes, some of which are also relevant to climate change.

8. Non-Heathrow specific changes

The ANPS identified Heathrow as the preferred location for additional capacity. However, the ANPS recognises that it is Government policy¹ to allow for increased aviation capacity through the intensification of use of existing runways:

"1.39 Having analysed the responses, the Government has confirmed that it is supportive of airports beyond Heathrow making best use of their existing runways. However, we recognise that the development of airports can have positive and negative impacts, including on noise levels. We consider that any proposals should be judged on their individual merits by the relevant planning authority, taking careful account of all relevant considerations, particularly economic and environmental impacts."

No details of the projects that were anticipated to come forward were presented. The ANPS was accompanied by a Strategic Environmental Assessment ("SEA") which required a cumulative assessment of the impacts of Heathrow Expansion with other plans and programmes. In terms of Aviation, the SEA did not identify any likely significant effects of Heathrow expansion in cumulation with other airport expansion proposals - this is because it did not clearly assess combined impacts across multiple projects.

¹ Contained in policy paper "Aviation strategy: making best use of existing runways".

Whilst expansion at Gatwick was considered in the SEA, it was only considered as an alternative to expansion at Heathrow. The ANPS concluded in favour of Heathrow; on the face of it, there would be little to assess cumulatively i.e. yes to Heathrow, no to Gatwick. However, since publication of the ANPS, Gatwick has confirmed that they can and will rely on the Government's policy of making best use of existing runways outlined above to justify the use of its emergency runway as a second runway in order to increase the capacity of the airport.² The proposals are currently being prepared to be submitted for Development Consent as a nationally significant infrastructure project. The proposals are significant. They would result in approximately 60,000-75,000 more air traffic movements (ATMS) per annum with most of these being delivered early.

In addition, we are aware of expansion proposals at Luton Airport for a further 100,000 ATMS (approx). Again, these are not inconsequential on their own; when combined with Gatwick they give a total of 160,000-175,000 compared with an additional 260,000 planned at Heathrow under the ANPS. The SEA accompanying the ANPS only appeared to assess the Heathrow expansion figure. These are significant changes, which (at least in terms of the impact on climate change) were not, and probably could not have been, anticipated at the time of the ANPS. In any event, such expansion is not compatible with the CCC's advice set out above and will also have considerable environmental impacts which have not been considered in the ANPS. An appraisal by Sky News suggests that the combined expansion at all airports across UK would increase passenger demand by 67% in next 10-20 years, clearly incompatible with the CCC advice of 'at most 25%' by 2050.³

Further, the recent proposals at Gatwick and Luton, impact the Airspace Modernisation Strategy in a way not considered by the ANPS.

The ability to deliver the ANPS is predicated on how airspace slots into place through the airspace change process; the more planes in the sky, the greater the constraints each airport has in accommodating flightpaths and managing noise impacts.

The emerging expansion plans (not envisaged in the ANPS) together with the Airspace Modernisation Strategy (developing after the ANPS) have the potential to influence two factors:

- the ability to manage flight paths to reduce noise impacts. Given the extent of impacts already identified with Heathrow expansion this has serious ramifications for the primary form of mitigation, i.e. avoidance of harm.
- the cumulative impacts of overflights from different airports. For example, Luton Airport operators have identified that residents in Hillingdon could be impacted by their expansion proposals which would then be in combination with Heathrow expansion - these were not assessed in the ANPS. Impacts from additional flights at Gatwick together with Heathrow would also be felt across a wide area of London. These are likely significant effects not adequately assessed in the ANPS.

The proposed expansion will also impact transportation networks in ways not anticipated in the ANPS.

² See <https://www.gatwickairport.com/globalassets/business--community/growing-gatwick/master-plan-2019/gatwick-master-plan-2019.pdf>

³ <https://news.sky.com/story/uk-airport-expansion-plans-make-2050-climate-change-target-unlikely-11836533>

The SEA accompanying the ANPS identified a number of likely significant effects on the road network as a consequence of Heathrow Expansion alone. It did not assess the implications of an expanded Gatwick in addition to expansion at Heathrow. Both airports are served by the M25 sharing the same westward road links and both airports rely on the rail networks into and out of London. This additional transport impact also infects the assessment of air quality in the ANPS; there will inevitably be more traffic in central London as a result of expansion at Gatwick, Luton and Heathrow than anticipated in the ANPS.

The cumulative impact of all these proposals has significant implications for delivering increased aviation capacity within responsible and effective environmental limits, which were neither considered nor addressed when the APNS was designated.

9. Heathrow-specific changes

The ANPS decided that:

"1.29 The overall conclusions of the Appraisal of Sustainability show that (provided any scheme remains within the parameters and boundaries in this policy), whilst there will be inevitable harm caused by a new Northwest Runway at Heathrow Airport 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. However, this is subject to the assessment of the effects of the preferred scheme, identification of suitable mitigation, and measures to secure and deliver the relevant mitigation."

(our emphasis)

It is now clear that the Heathrow Scheme proposed by HAL does not fit within the parameters and boundaries in the policy and that further schemes – for example proposed by Arora – are also being pursued.

The true Heathrow Scheme has now been revealed in the recent consultation. For the first time, there is a reliable picture of the very significant harm which an expanded Heathrow would cause. The disbenefits of expansion are now clearer and they easily outweigh the perceived benefits which, it is also now clear, were grossly exaggerated in the first place. The changes are briefly summarised in the following points (for more detail see Hillingdon's consultation response of 13 September 2019):

1. The proposed 4 year construction programme is simply not achievable.
2. HAL's Early Growth proposal means that, starting in 2022, the number of flights would increase by 25,000 from the current capped 480,000 a year to 505,000 a year by 2025, with consequential noise and air pollution harm.
3. There will be a significant hitherto undisclosed impact on the future of land use in Hillingdon over a number of decades.
4. HAL's approach to socio-economic impacts is inconsistent, unclear and contradictory but it is already clear that the projected benefits of the scheme are no-where near those predicted at the time of consultation on and designation the ANPS. For example, the ANPS emphasised the projected local benefits and said over 114,000 new local job opportunities would be created. The consultation has produced a significantly reduced figure of circa 60,000 nationwide. The promise

of jobs was central to support for the ANPS in and outside parliament and now it is clear the figures were inflated by nearly 100% there should be a full review.

We believe the review should be carried out as a matter of urgency. Although it is some time off before Heathrow could be built, the decisions in the ANPS are blighting the activities and lives of the Boroughs and their residents. They are costly for all involved and if, as now seems all but certain, the effects on climate change, air pollution and noise are so damaging that the runway cannot be built or, if built, cannot be operated then the sooner that is faced the better.

Conclusion

Evidently there has been a fundamental shift in policy direction on climate change since the publication of the ANPS.

The climate crisis, now widely acknowledged across the UK by the Government and individual Councils, necessitates a need for responsible decision making on major policy interventions impacting climate change.

The ANPS predates the change in policy, and it is essential that the ANPS is subjected to a robust review that adequately addresses how, or even if, the expanded aviation capacity approved by the ANPS can be delivered consistently with the new policy, and fairly across the UK.

The proposed increases in ATMS in the South East proposed, or at least anticipated in the ANPS, and the true plans for massive expansion at Heathrow as recently disclosed, show that there are unanticipated impacts not only on our climate, but also in relation to noise, air quality and related environmental issues. These matters must also be addressed in any review.

In light of the extracts from the SST's skeleton argument set out above, the clear need for a review under the Planning Act may be relevant to any question of relief in the Court of Appeal proceedings and we therefore reserve the right to bring this letter to the attention of the court, if necessary.

Yours faithfully



Harrison Grant