

**Further Report of the Independent  
Consultation Adviser to the  
Secretary of State for Transport**

**Further Consultation on the revised  
draft Airports National Policy  
Statement**

**June 2018**

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# Chapter 1

## Introduction

1. On 7<sup>th</sup> September 2017 the Secretary of State for Transport published my Interim Report on the consultation on the draft Airports National Policy Statement (“the draft NPS”). The Interim Report is available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/650116/independent-consultation-adviser-draft-airports-national-policy-statement.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/650116/independent-consultation-adviser-draft-airports-national-policy-statement.pdf). The consultation on the draft NPS ran for 16 weeks from 2<sup>nd</sup> February – 25<sup>th</sup> May 2017. As explained in the Interim Report (see paragraphs 66-70 and 77) the effect of the “Purdah” period that preceded the General Election on 8<sup>th</sup> June meant that there was “unfinished business” when the consultation closed on 25<sup>th</sup> May.
2. In paragraph 78 of the Interim Report I said; ***“While it will be for the new Government to decide how to proceed, I should make it clear that if best practice is to be adhered to, it will be necessary to re-open the consultation in order to deal fairly with the unfinished business; and it will be necessary to re-open the consultation for a period which is sufficiently long both to make up for some loss of time (particularly for local authorities) during the “Purdah” period, and to enable consultees to have a fair opportunity to consider the implications of the final modified Air Quality plan and the final passenger demand forecasts. My provisional view is that this period would need to be not less than 8 weeks, excluding main school holiday periods”.***
3. In his statement on 7<sup>th</sup> September the Secretary of State confirmed that there was a need to conduct a short period of further consultation to allow updated evidence, including the Government’s revised aviation demand forecasts and its final Air Quality Plan (which had been published on 26<sup>th</sup> July), to be taken into account. The Secretary of State also said that he had asked me to provide independent oversight of the further consultation process.
4. On 24<sup>th</sup> October the Secretary of State published the Government’s updated aviation demand forecasts, and announced the start of a short period of further consultation on a revised draft Airports National Policy Statement (“the revised draft NPS”) to allow the public to consider the updated forecasts and other new evidence which was unavailable at the time of the earlier consultation, including the new national Air Quality Plan. The further consultation would run for 8 weeks until 19<sup>th</sup> December 2017. This is my report on the further consultation on the revised draft NPS.

## Chapter 2

### Pre-Consultation Period

5. Prior to the start of the further consultation I had a number of meetings with Departmental officials in which they explained the Department's proposals for the conduct of the further consultation. The issues discussed included the arrangements for publicising the further consultation, the contents of the Consultation Document, including the Consultation Question(s) and the timing and length of the further consultation. During this period I also met the Department's new Permanent Secretary, Bernadette Kelly, and the then Aviation Minister, Lord Callanan. The principal focus of the further consultation would be upon the implications of the new information for the Government's policies as set out in the draft NPS; a somewhat narrower focus than the previous consultation. I therefore endorsed the Department's view that it would not be necessary to hold any further local or regional consultation events. I stressed the importance of the Department notifying all those consultees who had responded to the earlier consultation (where addresses had been provided) of the further consultation. I felt that the Department's proposals to place two rounds of press advertisements in the London Evening Standard, City AM and Metro; to send press releases to national, regional and trade publications; to undertake local Facebook advertising; to place editorial copy in key local newspapers; to publicise through the DfT Twitter channel; and to provide material (including a poster and digital content) to the relevant local authorities that they could utilise through their channels to alert residents to the further consultation; would be sufficient to effectively publicise the further consultation.
  
6. In my discussions with officials I stressed the importance of telling consultees not simply what the new evidence was, but also what conclusions the Government had drawn from that new evidence; had the new evidence caused the Government to make any (and if so, what) changes to the policies in the draft NPS? It was therefore important that the new Consultation Document should summarise the amendments to the draft NPS and Appraisal of Sustainability (AoS). Provided the principal amendments were highlighted in this way, I felt that it was sensible to incorporate the amended policies and sustainability appraisal into a revised draft NPS and revised AoS. While the new Consultation Document would summarise the principal amendments, it was recognised that there would also be a need to identify all of the individual, detailed changes. Initially the Department thought that this could best be achieved by providing 'tracked' versions of the amendments. Subsequently it was decided that

Change Logs in tabular form were the better course. I agreed: a cat's cradle would have been a model of clarity compared with a tracked version of all the amendments.

7. We discussed the form of the Consultation Question(s). I felt that it was important that any question(s) should be open-ended, so that they could be equally well answered by those who had, and those who had not responded to the earlier consultation. In the case of the former, the new Consultation Document should make it clear that they did not need to repeat points that they had already made in response to the earlier consultation, as these were being considered by the Department. I approved the Consultation Document, including the Consultation Question, and the terms of the notice of the further consultation that was sent to those consultees who had responded to the earlier consultation.
8. When considering the length of the further consultation I needed to know whether the new information was likely to lead to changes of substance in the policies in the revised draft NPS. While I did not see the revised draft NPS until it was published on 24<sup>th</sup> October, I was told that it was not anticipated that the new information would lead to any substantial changes in the Government's policies. Upon this premise, and upon the basis that the new Consultation Document would explain the principal amendments to the policies in the revised draft NPS, I was satisfied that an 8 week consultation period would be sufficient. I also supported the Department's wish to conclude the 8 week period before Christmas 2017, if possible.
9. As with the previous consultation (see paragraph 30 of the Interim Report) I was not asked to deal with the Department's consultations with the local authorities referred to in Section 8 of the 2008 Planning Act, although I was told that the Department was engaging with the relevant authorities.

## Chapter 3

### Consultation Period

#### Preliminary

10. On 2<sup>nd</sup> November I was notified by officials that the Department had identified a number of minor factual errors and inconsistencies in the Change Logs for the AoS and some of the associated documents, and that it was completing a quality assurance exercise in respect of the Change Logs for the rest of the associated documents. A correction to the NPS Change Log had been made on 25<sup>th</sup> October. In total 38 documents were corrected online on 10<sup>th</sup> November, including the AoS and most of its Appendices and associated assessments. I was told by the Department that none of the corrections was material; the changes were due to typographical, transpositional and formatting errors. As far as I could ascertain from looking at a sample of the corrections (I could not examine them all, much less attempt to assess their significance) that seemed to be correct. I said that on this premise I did not consider that there was a need to extend the consultation period because of the corrections; but that if any consultee claimed that a correction was material, and had prejudiced their ability to respond to the consultation within the 8 week period, then the claim should be carefully considered by the Department, and referred to me if the Department was not minded to accede to it.

#### Number of Complaints

11. Compared with the previous consultations on the draft NPS my postbag (electronic and paper) was much reduced, and only a very small number of correspondents complained about the consultation process. One correspondent clearly suffered from “consultation fatigue” and wanted to know when the consultation process would end. Other correspondents were simply seeking information – how to obtain documents (online references/the documents themselves were provided); how to respond to the consultation (explanation provided); how would the Department be responding to the points made by consultees in the two consultations (he was referred to paragraph 2.8 of the Consultation Document). More than half of the representations to me were, in substance, criticisms of/comments upon the merits of the policies contained in the revised draft NPS. These representations were dealt with in the manner described in paragraph 60 of my Interim Report.

## Publicity

12. I received one representation from a local MP and two further representations that the publicity for the further consultation had been inadequate. I did not accept this criticism. The proposed arrangements for publicity, summarised in paragraph 6 (above), were put into effect by the Department, over 65,000 persons who had responded to the February consultation were notified by email/letter of the further consultation. In addition to advertisements in the London Evening Standard, City AM and Metro on 30<sup>th</sup> October, the Department contacted 100 journalists and 320 key stakeholders on the day of the consultation launch. The Department shared its press release, poster and digital toolkit with 30 local authorities, and offered them articles for their websites and newsletters. By the end of December the Department's Facebook advertising had reached some 60,000 people.
13. During the three days following the launch of the October consultation over 15,000 e-mails and 50,000 letters were sent to respondents who had responded to the first consultation and for whom contact details were available. E-mails were sent from a "no-reply" address; 796 letters were returned, either because the recipient was unknown, had moved, or the address was incomplete. This amounts to only 1.5% of the total letters sent.
14. Because I had received very few representations I wrote to the Department on 4<sup>th</sup> December asking what level of response it had received to the further consultation, and suggested that the Department should consider whether any further publicity was required to let people know that the further consultation period was due to end on 19<sup>th</sup> December. In reply, I was told that, as at 7<sup>th</sup> December the Department had received around 5,600 responses, and as with previous consultations it expected the number of responses to peak over the last two weeks of the consultation. The Department described the steps taken to publicise the start of the consultation (see paragraph 13 above), and said that, as planned, a second set of advertisements in the London Evening Standard, City AM and Metro had been published on 5<sup>th</sup> December to highlight the fact that the further consultation was closing in two weeks' time. In addition, reminders had been sent by email to 167 users who had registered online for the further consultation but had not yet responded. I was also told that in the final weeks of the further consultation the Department would be using its online channels to alert users that there was 'one week to go'. The Transport Select Committee began its scrutiny of the revised draft NPS with a hearing on 4<sup>th</sup> December. Taking all of these factors into account, I am satisfied that there was sufficient publicity for the further consultation.

## Flight Paths

15. One correspondent contended that detailed flight path information should be made available, and the consultation should be extended for a period after publication of this information. In my reply I referred to paragraph 5.49 of the revised draft NPS, and said that my view remained as set out in paragraph 48 of my Interim Report. Another correspondent who raised this as a subsidiary issue received a reply to the same effect.

## Length of Consultation

16. There was only one potentially significant criticism of the consultation process. I received representations from two environmental groups and a local MP that the 8 week consultation period was too short, and should be extended to 16 weeks, “at least 16 weeks”, or “a few weeks into the New Year”. These three correspondents argued that the volume of new material was so great that a well-informed response was not possible within 8 weeks, particularly for small/voluntary organisations. I did not accept that there was a case for a general extension to the 8 week period. I explained my reasons in a letter to one of these consultees, as follows:

***“As a matter of first impression it does seem to me that extending the consultation to “at least 16 weeks” would be excessive and that if an extension is to be granted then a shorter period would be appropriate. While it is essential that the further consultation gives consultees a fair opportunity of considering the implications of the new information, it is important not to lose sight of the fact that it is very much in the public interest that the consultation process which was unavoidably delayed because of the General Election, should be concluded so that Parliament can form a view one way or the other on the revised draft NPS. It is now over a year since the Government announced on 25 October 2016 that a new North-West Runway at Heathrow airport was its preferred scheme, which would be included in a draft NPS and would be the subject of consultation under the 2008 Planning Act. In my view it is highly desirable that the prolonged uncertainty should be resolved, consistently with a fair process as soon as possible for the benefit of all interested parties, not least those whose homes in the “Heathrow villages” are blighted by the proposals in the revised draft NPS. I have already received one representation from a consultee complaining about the delays and asking when the consultation will end.***

***I accept that if one simply counts the number of new documents/pages the extent of the new documentation appears formidable but the reality is rather different. Although comments are invited on the other documents, the statutory consultation is***

***primarily into the policies contained in the revised draft NPS. The Change Log lists a very large number of changes, but the explanation of the changes in Chapter 3 of the Consultation Document makes it clear, in my view, that there are very few, if any, changes of substance in the policies in the revised draft NPS. I realise that consultees may well argue that the new information should have led to significant changes in the Government's policy but the fact remains that the policies in the revised draft NPS remain substantially unchanged. Similarly while there have been many detailed amendments to the Appraisal of Sustainability (AoS) to reflect the new Passenger Demand forecasts, the overall sustainability assessment is, rightly or wrongly, largely the same.***

***For these reasons I am not persuaded at this stage that it is appropriate to recommend a general extension to the 8 week period but if there is cogent information which demonstrates that the 8 week period will cause real practical difficulties for consultees, then I would be prepared to consider whether I should recommend that the Department should agree to an extension".***

#### **Other Correspondence**

17. I was copied into an exchange of correspondence between a firm of solicitors and the Department. The solicitors, who were representing a number of local authorities, said in a letter to the Department dated 3<sup>rd</sup> November that in view of the importance of the issues, the volume of new material that needed to be considered, and the need for the local authorities' responses to be approved through their internal democratic processes, consultees should be given until the end of January 2018 to provide a response to the further consultation. This request for an extension of the consultation period was refused by the Department in a letter dated 9<sup>th</sup> November.
18. While I was not persuaded that there was a case for a general extension of the consultation period until the end of January 2018 (see paragraph 16 above), I felt that in this particular case there might well be some force in the local authorities' argument that because of the need to comply with their internal democratic arrangements their officers' reports would have to be prepared well in advance of the closing date for the further consultation on 19<sup>th</sup> December. As a general rule, this argument would not justify granting an extension to a consultation period. While local authorities, unlike other consultees, do have to comply with various procedural requirements, they are also able to deploy greater resources to enable them to comply with these requirements within the same timescale as other consultees.

19. I felt that it would be worth exploring whether a more flexible approach might be possible in this particular case because of the importance of the Heathrow issue to the local authorities, and the fact that in the previous consultation the Department had on occasion been prepared to go beyond the call of duty (see eg. paragraph 27 of the interim report). I know that there are a number of legal issues between the solicitors and the Department. For the avoidance of doubt I should make it clear that I was not concerned with whether the Department was under any legal obligation to extend the period of consultation for the local authorities (as with the consultation on the draft NPS, I was not asked to provide the Department with any legal advice).

20. Having had their request for an extension of time refused, I expected the solicitors to make a complaint to me. When they did not, I wrote to the Department on 17<sup>th</sup> November, as follows:

***“As you know, I’ve been copied in to the recent correspondence between [solicitors] and yourself. Although [solicitors] have not raised the question of an extension to the consultation period with me, I do have some sympathy with their point that because of the necessary democratic procedures, the local authorities they represent will have to prepare their responses some time before the end of the consultation on 19<sup>th</sup> December.***

***It may help you to know that if [solicitors] do write to me, I would be minded to explore what extension of time into January would enable the Council’s officers to utilise more of the eight weeks’ consultation period to prepare their responses for members’ approval.***

***At present there is insufficient information in [solicitors] letter to enable me to form a view as to whether an extension to 31<sup>st</sup> January 2018, as they requested, would be of any practical assistance to their clients.***

***I would wish to understand for example how the Councils might re-arrange their meeting cycles in order to take advantage of any extended period into January 2018.***

***For the reasons set out in my letter to the [consultee referred to in paragraph 16 above], I am still of the view that a general extension to the consultation period is not necessary, but that as I said in my response, if any consultee identifies a particular difficulty in complying with the 19<sup>th</sup> December deadline then the Department should consider the position of that consultee”.***

21. I sent a copy of my letter to the Department to the solicitors on 27<sup>th</sup> November. They replied on the 5<sup>th</sup> December that given the refusal to grant extra time, and the tight timescale, their clients had had to

prepare a response to the further consultation for approval by their relevant committees by 4<sup>th</sup> December. In practice, that meant that they had only 6 weeks in which to prepare their response. They said that if an extension of time had been granted until the end of January, the Councils' officers would have been able to utilise the full 8 weeks to prepare the response before putting it before members for their approval in the January 2018 meetings cycle.

22. I discussed this matter with Caroline Low, Director for Airport Expansion, on 7<sup>th</sup> December and she said that she would consider further the situation of [solicitors'] clients. She wrote to me on 15<sup>th</sup> December explaining why she was not minded to depart from her earlier decision;

***“In their reply to you [solicitors] confirmed that their clients have prepared a response to be considered by their relevant committees in order to respond to the consultation by 19 December 2017. Given this, and that they have not provided any further information to the Department as to the need for and benefits of an extension, I am not minded to depart from my earlier decision”.***

23. Since by that stage of the further consultation, indeed by the date of our telephone conversation on 7<sup>th</sup> December, the local authorities' deadline for submissions to their committees for approval had passed, her response was readily understandable. I did not handle this issue as well as I should have done. I should have taken the initiative at an earlier stage and not waited (as it turned out, in vain) for the solicitors to complain to me or for a reaction from the Department to my letter of 17<sup>th</sup> November. I fear that the “Chinese Walls” between my secretariat and the Department were too effective, and my hope that the possibility of a more flexible approach might be explored by the Department was not realised.

### **Other Matters**

24. Three correspondents complained that the Secretary of State's Foreword to the Consultation Document extolling the merits of the proposed new runway at Heathrow gave the impression that the final decision was a “done deal”, a “fait accompli”, or was “biased”. In my replies I said that the Secretary of State's Foreword unsurprisingly reflected the Government's policies, but the Consultation Document had to be read as a whole, and if that was done it was clear that the policies in the revised draft NPS were subject to both the Department's consideration of the two consultations and the approval of Parliament: see paragraph 2.8 of the Consultation Document for the revised draft NPS

25. One correspondent was concerned that the further consultation had taken place before the publication of the results of the July 2017 consultation on the Aviation Strategy and concurrently with the consultation on the new draft London Plan. I replied that while the timing of the further consultation was a matter for the Department my own view for what it was worth was that there should be no further delay in concluding the further consultation and allowing Parliament to reach a decision one way or the other on the policies in the revised draft NPS.

## Chapter 4

### Conclusions

26. By the end of the further consultation the Department had received some 11,000 responses of which around 8,300 were from one campaign. I received only a handful of complaints about the consultation process. Although I received three complaints about the Secretary of State's Foreword to the Consultation Document (see paragraph 24 above), it is noteworthy that no complaints were made to me about the clarity of the Consultation Document or the Change Logs. There were only three, in my view unjustified, complaints about the publicity arrangements for the further consultation (see paragraphs 12 and 13 above). Three consultees contended that the consultation period should be extended. I did not accept that there was a case for a general extension (see paragraph 16 above); and apart from the position of the local authorities discussed in paragraphs 17-23 (above), I did not receive any information which demonstrated that the 8 week period would cause any real practical difficulties for consultees.
27. With one exception, where I should have promptly sought to persuade the Department to consider whether a more flexible approach might be preferable (see paragraph 23 above), I am satisfied that the further consultation was carried out to a high standard.