



Press release from Heathrow Hub, Extended Runway scheme

Heathrow Hub hearing starts tomorrow in The Court of Appeal; our plan can get Boris Johnson out of the hole dug for him by the Department for Transport

16 October 2019 – The Court of Appeal will tomorrow commence its hearing of an appeal by Heathrow Hub, the independent proposal for expanding Heathrow Airport via an extension to the existing Northern Runway.

Jock Lowe, Director, Heathrow Hub said: “Instead of fighting Heathrow Airport’s corner in the courts, Prime Minister Boris Johnson and Secretary of State Grant Shapps should admit that the Government bungled the decision-making process for expansion at the airport.

“We continue to argue the case for our extended runway proposal, which is cheaper, simpler, greener and quieter than the ludicrously complicated 3rd Runway. Furthermore, our scheme can be phased, only releasing new capacity once noise and emissions targets have been met, with the approval of the government and the regulator.

“It is the common-sense option, which among other things, can get Mr Johnson out of the hole dug for him by the Department for Transport.”

The case is being heard alongside appeals by other parties opposed to the 3rd Runway, but Heathrow Hub’s grounds are different and relate to the flawed competition run by the Department for Transport (see below).

The case starts amid growing concerns about the Government’s support for Heathrow Airport Ltd’s plans for a new North West Runway (“the 3rd Runway”). The Airport’s latest consultation has revealed a completely different scheme to the one approved in the ANPS; it has admitted its original plans for moving the M25 are undeliverable; and the costs continue to balloon as a result of increased land acquisition and relocation costs. Both IAG and the Civil Aviation Authority (“CAA”) have voiced concerns over the increasing costs, which Heathrow Hub estimates could reach as much as £61bn by 2050.

Separately, Heathrow Hub’s lawyers, DAC Beachcroft, have written to the Secretary of State for Transport, Grant Shapps, to demand he conducts an urgent Section 6 review of the 3rd runway, given the significant changes in circumstances, which suggest that the ANPS is out of date. The changes in circumstances refer firstly to the rapidly rising costs (including the CAA disclosing that



HAL's pre-planning costs alone have tripled to £2.9bn) and the passing into law of a UK net zero carbon emissions target by 2050.

Specifically, Heathrow Hub is appealing the High Court Judgement handed down on the 1st May 2019, which refused to quash the Government's decision to support Heathrow Airport Ltd's North West Runway by designating the Airports National Policy Statement ("ANPS") passed by Parliament.

In its decision to grant Heathrow Hub the right to appeal, the Court noted the, "considerable importance of the issue raised," and "accepted the applicants' grounds of appeal are properly arguable."

Heathrow Hub's appeal is based on the following grounds:

- 1. Distortion of competition – request in August 2016 by the Secretary of State to Heathrow Hub to obtain 'a guarantee' from Heathrow Airport Ltd that it would build the extended runway**

The 1st May High Court Judgement ignored the legal position, that a distortion of competition had already arisen prior to the Secretary of State Chris Grayling's initial decision to give preference to the North West Runway scheme announced to Parliament in October 2016. It is Heathrow Hub's contention that the existing market structure was already distorted in favour of Heathrow Airport Ltd by, "one competitor being potentially able to affect a competitor's offering in the market." Furthermore, Article 106(1) of the Treaty of the Functioning of the European Union (TFEU) requires the State to guarantee equality of opportunity. Asking one competitor to guarantee or assure it would implement a competing scheme constitutes an infringement of the Article 106(1) TFEU.

- 2. The reasoning of the Secretary of State**

The Court failed to take into account the unlawfulness of the Secretary of State's reason for his decision and instead sought to substitute the reason with its own reason. The Secretary of State repeatedly referred in his evidence to the fact that he had had regard for the lack of a guarantee from Heathrow Airport Ltd as part of his decision-making process. The Court chose to ignore this, found that the guarantee was not a factor at all and then re-characterised it as regard for the "objective merits of the scheme," as opposed to recognising the repeated admissions by the Secretary of State regarding the importance of the lack of a guarantee as a factor.



3. **Parliamentary Privilege**

The Court deprived Heathrow Hub of its ability to rely on evidence that was central to its case by declining to make a finding on the admissibility of its evidence under Article 9 of the Bill of Rights. This error was then compounded by the fact that the court did have regard to the disputed material, but in a partial manner that prejudiced Heathrow Hub. The Secretary of State twice expressed to Parliament his consideration of the lack of a guarantee and its importance, yet the Court found that the Minister “did not mean what he said,” thereby questioning the truthfulness of what the Minister said in Parliament.

4. **Legitimate expectation**

The Court erred in finding that Heathrow Hub had no legitimate expectation that the Secretary of State would not reject the Extended Runway scheme relying (solely or in part) on Heathrow Airport Ltd's failure to give a guarantee that it would implement the Extended Runway scheme if the Secretary of State found it to be the most suitable scheme; and that the Secretary of State could resile from any such expectation. The Court did not set out the legal test of overriding public interest or acknowledge that the burden of discharging it lay with the Secretary of State. Furthermore, it did not allow Heathrow Hub to address the Court on this matter resulting in a clear error of law. The role of the Court in a judicial review is to review the exercise of discretion by the decision-maker, not to exercise the discretion itself.

Heathrow Hub’s legal advisers are DAC Beachcroft LLP, Martin Kingston QC and Satnam Choongh of No 5 Chambers and Robert O’Donoghue QC and Emma Mockford of Brick Court Chambers.

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Notes to editors



Heathrow Hub is an independent proposal for additional capacity at Heathrow, by extending the existing northern runway westwards away from London, negating the need to build a third runway. Planes would land at one end and take off at the other. The scheme is cheaper, quicker and simpler. It also destroys fewer houses and was deemed viable by the Airports Commission. For more information and images, please visit: www.heathrowhub.com

Heathrow Hub's proposal to extend the Northern Runway has been independently costed at £4.7 billion for its first phase.