

HCEB

Evaluation of the Airport Expansion Consultation

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1 Glossary of terms

TERM	DESCRIPTION
<i>Airport Expansion Consultation</i>	This statutory consultation ran between the 18 th June and 13 th September 2019 and follows on from the non-statutory Airport Expansion Consultation One.
<i>Airport Expansion Consultation One</i>	This non-statutory consultation ran between 17 th January and 28 th March 2018.
<i>Closed question</i>	A question with a restricted number of options from which respondents can select their chosen answer.
<i>Development Consent Order (DCO)</i>	The means of obtaining planning permission for developments categorised as Nationally Significant Infrastructure Projects (NSIP).
<i>Environmental Impact Assessment (EIA)</i>	An assessment of the potential environmental impacts of the project, required to gain development consent.
<i>Nationally Significant Infrastructure Project (NSIP)</i>	Projects for which a developer must seek development consent under the Planning Act 2008. The National Infrastructure Directorate of the Planning Inspectorate receives and examines applications for development consent.
<i>Open text question</i>	A question to which respondents can provide a written response and are not limited in what they may say.
<i>Person with an Interest in Land (PIL)</i>	A person with a land interest who meets the criteria outlined in Section 42(d) of the Planning Act 2008.
<i>Preliminary Environmental Information Report (PEIR)</i>	Presents the findings made as part of the statutory Environmental Impact Assessment (EIA) process.
<i>Preliminary Transport Information Report (PTIR)</i>	Provides information on the potential changes to the public transport networks associated with expansion of the airport, both in terms of physical changes and changes to their usage and operation.
<i>Prescribed consultee</i>	A person who meets the criteria outlined in Section 42(a) of the Planning Act 2008.
<i>Statement of Community Consultation (SoCC)</i>	Section 47 of the Planning Act 2008 requires developers to produce a Statement of Community Consultation (SOCC) in collaboration with all relevant local authorities to show how it intends to engage with affected residents in the consultation process.

2 Executive summary

This report presents a review of the Heathrow Airport Expansion Consultation against best practice for consultation to provide a set of learning points that Heathrow could apply to future consultation.

The review focuses on four key questions:

1. What is best practice for consultation relating to an NSIP?
2. To what extent did the Heathrow Airport Expansion Consultation adhere to best practice principles?
3. What models of consultation and engagement might Heathrow follow in future in order to ensure best practice?
4. How could Heathrow improve its consultation practice in future?

A summary of the findings and, where relevant, recommendations against each of these questions are discussed below.

What is best practice for consultation relating to an NSIP?

Five principles of best practice are identified in this report, drawing on the existing law and guidance for consultation and in relation to the Development Consent Order process (the planning process which is used for NSIPs):

Principle 1 – Consultees should be able to shape the proposals.

This principle establishes a requirement that there should be scope to amend or change proposals being consulted on. It should be clear that there is capacity to adjust or amend the proposals and that the promoter remains genuinely open to change and that the consultation is being undertaken at an appropriate point in the project where changes to proposals are possible.

Principle 2 – Enough information should be provided to inform consultees' views.

The information provided for a consultation should be sufficiently detailed for all consultees to understand the proposals, the rationale which underpins them, and the key factors underpinning the decision-making process.

Principle 3 – Information should be provided in a format which is clear and easy to understand.

Information provided should be as easy as possible to understand for anyone who wishes to respond to the consultation, whilst still providing consultees with sufficient information in line with Principle 2. The provision of information should recognise the differing level of technical understanding amongst the stakeholders and the public. Best practice would therefore be to include information in a range of formats and in an engaging and accessible way that caters for any and all audiences.

Principle 4 – The methods and channels used to consult should be

appropriate for all relevant audiences.

The form of consultation should consider the characteristics and related needs of those potentially affected by any decision or would be likely to respond to the consultation and their ability to access information and respond to the consultation. This includes considerations such as language and reading ability, routes to obtain information and ability to provide a response.

Principle 5 – The consultation should last an appropriate amount of time.

The Planning Act 2008, which sets out the legislative requirements for statutory consultation in relation to DCO applications, establishes a minimum period of 28 days for consultation. However, the length of time that a consultation should remain open should consider the nature and complexity of the proposals, the way in which the consultation is being delivered and the characteristics of the consultees. Consideration should also be given to the time required to notify consultees about the consultation, and the time they would need to access and understand information and develop their response.

To what extent did the Heathrow Airport Expansion Consultation adhere to best practice principles?

Heathrow's delivery has been assessed against the five best practice principles. Consideration was also given to potential alternative approaches that could be taken to consultation by Heathrow.

Principle 1 - Consultees should be able to shape the proposals.

It is too early to comment on whether the views expressed as part of the Airport Expansion Consultation have been taken into account by Heathrow in finalising their proposals. For this reason, an assessment was made of the level to which Heathrow demonstrated that they were genuinely open to considering amendments to the proposals.

Heathrow published a summary document following previous consultations that outlined how Heathrow would take the comments into account in their proposals. This suggests that Heathrow have considered the views arising from previous consultations and there is no indication that they would not do so again.

The consultation documents suggest that consultation was undertaken where there was capacity for views to influence the proposals. The consultation materials do present some indication of the alternatives considered. However, the following points were noted:

- the non-technical documents (including online information summaries) do very little to inform consultees of the alternatives which have been considered previously;
- the Preliminary Environmental Information Report (PEIR) and the Non-technical summary of the PEIR outline the original proposals and the process of evaluation and shortlisting;

- some discussion of the process of evaluating proposals and developing the preferred plans is also included in the Masterplan Scheme Development Manual and the Updated Scheme Development Report; and
- there is little reference in any of the online summaries or videos to alternative options or their consideration.

Principle 2 - Enough information should be provided to allow consultees to make informed responses.

A very large volume of information was provided by Heathrow to accompany the Airport Expansion Consultation, which was considered sufficient in most cases to address this principle by providing sufficient information for consultees to formulate an informed view.

However, some areas were felt to lack information, in spite of the overall volume of information provided. This was primarily in the assessment of impacts and in the plans to manage impacts with the outline proposals for the Community Compensation Fund particularly considered to lack detail.

Principle 3 – Information should be provided in a format which is clear and easy to understand.

Overall the consultation was considered to have addressed this principle, with information presented clearly, in ways understandable to a range of audiences, using plain English and in a number of different formats. This was considered to be particularly true of information provided online, but offline summary documents do not necessarily convey the same information in a similar way. This may mean that online and offline users find themselves in the position of having differing understandings of the proposals. It is also not clear that some information related to specific topics raised in the Feedback Form is available in a non-technical format to all consultees.

Principle 4 – The methods and channels used to consult should be appropriate for all relevant audiences.

Overall, it was felt that the consultation approach addressed this principle. The approach to consultation was good for those with access to the internet and the consultation website, but weaker for those who could not access information online. Consultation events were held however, which may mitigate this to some extent. The format of those events, based on the information available, was felt to largely meet best practice.

The consultation was promoted through a range of channels, which is in line with best practice approaches.

It did not appear that the majority of the documents were available in other languages or alternative formats, the exception being the Noise Insulation Policy document. Whilst it may not be proportionate to translate all documents into all languages or alternative formats, it was not obvious from the materials what provision was made with regard to other languages or alternative formats.

The consultation questionnaire was considered to be relatively long and used a large number of open questions, which may have prevented some respondents from responding in full. There may have been scope to consolidate questions under broader categories, and this may also have made the consultation appear more open to the suggestion of alternatives.

Whilst the collection of information to monitor the demographic profile of the respondents is in line with best practice, it was considered that there may be scope to be clearer that provision of such information will not impact upon the consideration given to the views expressed.

Principle 5 – The consultation should last an appropriate amount of time.

The consultation period was significantly longer than the 28 days which are statutorily required and longer than the consultation periods for most recent statutory consultations for NSIPs. In allowing 12 weeks for responses Heathrow have adopted best practice, allowing ample time to contact consultees and for consultees to consider all of the information available and produce their response, even when bank holidays and school holidays are taken into account.

What models of consultation and engagement might Heathrow follow in future in order to ensure best practice?

In addressing this question, the approach to engagement taken by Vienna Airport was highlighted as an exemplar of good practice in delivering a comparable proposal. It was noted that the approach used by Vienna had some elements which could be taken on by Heathrow and Heathrow Community Engagement Board (HCEB) with respect to engagement, but that the legislative context surrounding engagement for an application for development consent in the UK, within which the engagement is being delivered, would mean that a wholesale adoption of the approaches would not be practical. However, there were areas where consideration could be given to implementing similar approaches, including:

- a mediation role to bring together the various parties to encourage open discussion and a greater sense of involvement in the decision-making process for some stakeholders;
- HCEB developing their position as a trusted intermediary between stakeholders and Heathrow;
- HCEB developing their existing strategic advisory groups to take on a more active role in the decision-making process to enhance representation for communities and their involvement; and
- HCEB providing advice to Heathrow in implementing innovative engagement techniques to reinvigorate the engagement process and address the needs of communities.

How could Heathrow improve its consultation practice in future?

Our recommendations, based on the findings of our research are as follows:

Principle 1

- The tables included in the Consultation One Consultation Feedback Report should be replicated in the feedback for the Airport Expansion Consultation, along with simplified and more accessible versions of the tables to allow the majority of respondents to see how their comments have fed into the decision-making process
- The wording of consultation documents and particularly questionnaires should be given careful consideration in order to always suggest openness to amendments and avoid any suggestion of a predetermined outcome

Principle 2

- Whilst a large volume of information was provided, Heathrow should work with local authorities to understand what information they feel is required in advance of the consultation launch

Principle 3

- A reasonable volume of information is available online and in an accessible format, suggesting a good degree of transparency, but further research should be undertaken by technical experts to determine if the consultation materials fairly reflect the technical documents
- Equivalent non-technical information should be available and accessible to offline and online consultees

Principle 4

- Consideration should be given to offline consultees' means of accessing information, particularly if fees for acquiring consultation documents were applied
- Consideration should be given to foreign language speakers or those who require alternative formats, with an assessment made of how best these consultees could be provided for and any options for accessing information clearly given in a suitable manner
- The questionnaire for the consultation should be shorter and questions amalgamated where possible in order to avoid later questions not being answered
- Research should be undertaken to understand the potential audiences for this consultation and their views on any barriers to their participation

Principle 5

- The twelve-week consultation period was in line with best practice and a similar approach to assessing duration should be adopted in future consultations

Approach to engagement

- The Vienna model shows that there are lessons which could be

adopted in Heathrow's and HCEB's approach to engagement in relation to mediation, trust, facilitation and innovation

We also note that in our view the legal requirements placed on planners of NSIPs with regards to consultation do not limit or prevent new or innovative approaches to engagement, which can be undertaken alongside or, if necessary, in addition to consultation activities required by law

3 Methodology

Overview

This report, commissioned by the Heathrow Community Engagement Board (HCEB), presents an assessment of effective and best practice delivery in consultation to provide a set of learning points that Heathrow could apply to future consultation. In this report 'consultation' refers to the structured and formal process of providing information about proposals (including via consultation events) and gathering views on those proposals. We are not considering any wider engagement that Heathrow may undertake outside the specific activities relating to the Heathrow Airport Expansion Consultation.

Examining the Heathrow Airport Expansion Consultation against best practice is, in effect, an evaluation exercise. Evaluation seeks to:

- Draw evidence-based conclusions in relation to whether, and the extent to which a project or programme, achieved its stated objectives;
- Capture the learning generated during a project or programme for the purposes of improvement;
- Understand and, where possible, measure the nature and extent of change that has taken place as a result of a project or programme; and
- Generate clear and actionable findings to support current and future work.

More specifically, a review of the Heathrow Airport Expansion Consultation requires a 'process evaluation' approach. This seeks to establish whether and the extent to which Heathrow Airport delivered the Airport Expansion Consultation in line with best practice relating to consultation.

Evidence review

For this evaluation a desk-based review of existing legislation, case law, guidance and best practice was undertaken. The findings of this review formed the basis of the principles which constitute the outcomes for this evaluation. Heathrow's adherence to these principles was then assessed based on a further review of two main types of evidence:

Consultation documentation – Analysts read and examined documentation against key criteria such as clarity, accessibility, proportionality and design of the consultation. This analysis was informed by findings from an examination of case law and guidance and used to provide insights into the level to which Heathrow adhered to best practice during the Airport Expansion Consultation.

Research reports – Additional research commissioned by HCEB was

conducted alongside the research summarised in this report by other organisations including Collingwood Environmental Planning, YouGov and Britainthinks. This research is briefly outlined in the 'Research Reports' section below and the findings of this research are incorporated into the evidence base for this work where relevant.

The evaluation report will also reference views expressed by local authorities. Where responses to the Airport Expansion Consultation were published by local authorities and readily accessible to the public, their views on the consultation process were collected. These are used in this report to provide context to evidence or findings. Where the views of a local authority are outlined in this report they are clearly labelled as such and do not necessarily constitute the views of Traverse.

Limitations of an evidence review

Evidence reviews provide useful insights into information which is readily available and open to scrutiny. However, there are also limitations to the extent to which an evidence review can provide useful insights. For example, document reviews can demonstrate, the information which was provided to consultees, but they cannot account for the veracity of this information, nor whether any information has been omitted.

In some instances, research reports from other organisations can provide additional evidence which may provide insight in these areas. In others, local authority views offer some indication of issues which may be of concern to stakeholders or local communities, but these should not be taken to constitute the views of Traverse.

Where necessary this report highlights areas in which further research would help to provide a stronger evidence base, or where an evidence review cannot address certain points.

Evaluation framework

The evidence review, once undertaken, fed into an evaluation framework. This framework has then informed the analysis of the extent to which the consultation was conducted in line with best practice.

The principles which constitute the outcomes in this evaluation are derived from our analysts' review of consultation legislation, case law, guidance and best practice.

A completed version of this evaluation framework can be found in Appendix B.

Research reports

This report refers throughout to research conducted by Collingwood Environmental Planning, YouGov and Britainthinks. A brief outline of each of these reports is given below:

Collingwood Environmental Planning – This report addresses two key questions:

Question 1 – How accessible is the information on community impacts of construction to those wanting to comment on it as part of the consultation? Is it easy to find out, for example, what impact it will have on “my house” in the local area?

Question 2 – What has been considered as part of the PEIR community impacts chapter in relation to construction? How does that match up to good practice in social/community impact assessment?

YouGov’s HCEB Community Compensation Fund Research Report – This report summarises research conducted by YouGov related to the Community Compensation Fund. It focuses on young people and families in the immediate vicinity of the airport and provides an understanding of what it is they need or expect from the fund.

YouGov’s HCEB Consultation Experience Surveys – This report summarises the findings of surveys conducted with local residents to measure awareness of the consultation and the experience of taking part, as well as broader opinions about the expansion.

Britainthinks’ Hyper Local Area Research – This report summarises research conducted with local residents in ‘hyper local’ areas in the immediate vicinity of the airport. It seeks to provide an understanding of their views on the proposed airport expansion plans and how their daily lives would be impacted.

For a full list of the data which has informed this analysis, see Appendix A.

4 The questions to be examined

The table below outlines the key questions which this report will look to explore and answer.

Standards	What is best practice for consultation relating to an NSIP?
Adherence to standards	To what extent did the Heathrow Airport Expansion Consultation adhere to best practice principles?
Alternative models	Are there any elements of the engagement process undertaken by Vienna Airport that Heathrow might follow in the future?
Conclusions and recommendations	How could Heathrow improve its consultation practice in future?

5 Best practice

Key question

What is best practice for consultation relating to an NSIP?

This chapter will outline a set of best practice principles and the rationale which underpins these principles.

This chapter will seek only to outline the nature of best practice, and will not take into account limitations of budget, time or any other nature. Indeed, it is suggested that those conducting the consultation should seek to ensure that they are not limited by these factors where possible to ensure they deliver best practice. However, we do recognise that in reality these factors do impact upon the delivery of consultations and that sometimes choices must be made because of these constraints. Where possible these choices should be informed by the best practice principles outlined in this chapter.

The principles outlined in this section draw upon existing guidance for consultations, best practice examples, case law examples¹ and on the statutory requirements for NSIPs. Key sources used in the composition of these principles include the current government principles for consultation (which were published by the Cabinet Office in 2018)² and guidance on the Development Consent Order pre-application process (published by Department for Communities and Local Government in 2015)³, the Gunning principles (which arose from the 1985 Gunning vs. London Borough of Brent case)⁴ and the 1998 Aarhus Convention, where it relates to public participation⁵. In summary, our five best practice principles for consultation are:

Principle 1 – Consultees should be able to shape the proposals.

Principle 2 – Enough information should be provided to allow consultees to make informed responses.

Principle 3 – Information should be provided in a format which is clear and easy to understand.

Principle 4 – The methods and channels used to consult should be appropriate for all relevant audiences.

Principle 5 – The consultation should last an appropriate amount of time.

¹ See Grodzinski, Sam and Hetherington, Tessa, *Duty to consult: when does it arise and what does it entail?*, Thompson Reuters (2017) and *Consultation: The legal requirements*, Landmark Chambers

² Cabinet Office, *Consultation Principles* (March 2018), available at <https://www.gov.uk/government/publications/consultation-principles-guidance>

³ DCLG, *Planning Act 2008: Guidance*

⁴ R vs. Brent London Borough Council, ex parte Gunning (1985) 84 LGR 168

⁵ Andre, P., Enserink, B., Connor, D. and Croal, P., *Public Participation: International Best Practice Principles. Special Publication Series Number 4* (Fargo, USA, 2006), International Association for Impact Assessment. Available at <https://www.iaia.org/uploads/pdf/SP4.pdf>

Principle 1

Consultees should be able to shape the proposals.

The promoter must be genuinely open to change and to considering alternative proposals raised by consultees and consultation should be undertaken at a point where changes to the proposals are realistic.

This principle can sometimes appear to be in conflict with our second principle ('Enough information should be provided to inform consultees' views'). The applicant must consult early enough to ensure that consultees' views can be used to shape the proposals, but late enough that consultees are provided with sufficient information.

The Aarhus Convention

"The public should be involved early (before major decisions are made) and regularly in the IA [impact assessment] process. This builds trust among participants, gives more time for PP [public participation], improves community analysis, improves screening and scoping of the IA, increases opportunities to modify the proposal in regards to the comments and opinions gathered during the PP process, reduces the risk of rumours, and improves the public image of the proponent. It can also give the regulator more confidence in the approval decision they must make."

Andre, Enserink, Connor, and Croal, Public Participation, p.2.

Whilst a promoter can express a preference for an option, information should be provided on the options which have been discounted and, ideally, the process of option selection which has resulted in the preferred option.

Case law: Moseley vs. London Borough of Haringey (2014)

In 2013 a council tax relief scheme run by central government was replaced by a council tax relief scheme run by local authorities, and each local authority was obliged to consult on a draft version of the scheme before publishing its final version. Initially funding for this scheme was to come from central government at 90% of previous levels, leaving a shortfall.

However, after Haringey had published their consultation papers, a plan was announced to introduce a grant under specific conditions, which presented an alternative option. Haringey did not inform consultees of the availability of this grant and this was found to have been unlawful because consultees had not been provided with sufficient information which would allow them to comment on alternative options.

R (Moseley) v London Borough of Haringey [2014] UKSC 56 in Grodzinski and Hetherington, Duty to Consult and Mathew Purchase's case comments available at <http://uksblog.com/case-comment-r-moseley-v-haringey-london-borough-council-2014-uksc-56-2014-1-wlr-3947/>

A consultation cannot be a 'tick box exercise' – the outcomes of the

consultation must feed into any decision-making process and it must be demonstrable that this has taken place (in court if necessary), even if the preferred option is ultimately adopted.

Best practice would be to consult in stages, with an initial non-statutory consultation on the general form of the proposals and a subsequent statutory consultation on more detailed proposals in order to satisfy these criteria. Allowances should also be made for the possibility that previously undiscovered issues may come to the surface during the statutory consultation and a need for further targeted non-statutory consultation may arise.

Case law: Medway Council vs. Secretary of State for Transport (2002)

In a consultation paper on the future development of air transport in the UK, the government had set out a number of options, including expansion of several airports and the building of a new airport, but had specifically stated that it would not consider any option that included new runway capacity at Gatwick Airport. This option would, therefore, not feature in the resultant White Paper setting out policy in this field.

The High Court held that this was unfair. While, in due course, objectors to planning applications related to expansion at other sites could argue before a planning inspector that expansion at Gatwick was an alternative option, the exclusion of Gatwick as an option in the White Paper was likely to prove an “insurmountable hurdle” in succeeding in the argument. The government was operating the consultation in a manner that deprived individuals of their only real opportunity to present their case for expansion at Gatwick.

R (Medway Council) v Secretary of State for Transport [2002] EWHC 2516 (Admin) in Grodzinski and Hetherington, *Duty to Consult*

Principle 2

Enough information should be provided to allow consultees to make informed responses.

The information provided for a consultation should be sufficiently detailed for a ‘reasonable person’ to gather the information that they need to make a judgement on the proposals. Consultees must have a reasonable understanding of the proposals and the rationale behind them, as well as the key factors underpinning their decision-making process. Without such an understanding it will be difficult for consultees to provide a considered response to the consultation.

This is not to say that the promoter is obliged to provide all the information which it sees to consultees, but it should provide enough information for

consultees to be able to make their arguments and be aware of the basis on which decisions are being made. Government guidelines recommend that impact assessments of costs and benefits should be included in consultation materials if practical.

In relation to statutory consultation, it may also be necessary to provide information to statutory consultees and PILs outside of the consultation period if changes are made to the proposals which are not 'substantial' and therefore do not require additional consultation. If 'substantial' changes are made to the proposals, then further consultation will be necessary and all consultees should be provided with information about the changes to the proposals and any anticipated impacts.

Case law: Greenpeace vs. Secretary of State for Trade and Industry (2007)

This case relates to an application for judicial review in respect of the decision announced in "The Energy Challenge Energy Review Report 2006" to support nuclear new build as part of the United Kingdom's future electricity generating mix.

Greenpeace challenged the consultation documents as being unlawfully vague and lacking in detail regarding any proposal to build new nuclear power stations. However, Greenpeace themselves had submitted a full and detailed response on the nuclear power issue and had managed to get hold of some of the detailed reports relied on by the government, so the alleged problem did not affect their response.

The court ruled that this did not cure the unfairness or prevent Greenpeace from bringing a claim. The government had promised the "fullest possible consultation" with the entire adult population of the UK. Any interested organisation or member of the public needed to realise that the government was proposing new nuclear power stations (and the thinking behind this) if the consultation process was to be fair. Greenpeace could point to the unfairness of the consultation process in general, even if it had not affected its individual response.

Greenpeace LTD., R (on application of) v Secretary of State for Trade and Industry [2007] 311 (Admin) (15 February 2007) in Grodzinski and Hetherington, *Duty to Consult*

Principle 3

Information should be provided in a format which is clear and easy to understand.

Information provided should be as easy as possible to understand for anyone who wishes to respond to the consultation, whilst still providing consultees with sufficient information in line with Principle 2. What constitutes sufficient may vary depending on the consultee and their level of technical knowledge. Best practice would therefore be to include information in a range of formats and with different levels of depth and complexity of information, to cater for the needs of the relevant audiences.

Any information provided to consultees should be identified as being for the purposes of consultation, **should be presented in an engaging way, and should be easily accessible.**

Non-technical documents should:

- use plain English;
- minimise acronym use;
- be as short as possible (whilst still providing adequate information); and
- avoid unnecessarily complex information or provide a simplified summary of any technical information.

Questionnaires or response forms should minimise the number of questions to which consultees must respond and make these questions as clear as possible.

Principle 4

The methods and channels used to consult should be appropriate for all relevant audiences.

Ensuring that the methods and channels used to consult are appropriate involves considering not only the nature and impact of the decision, but the characteristics of those potentially affected by any decision. It is advisable to adopt a range of methodologies and advice should be sought on appropriate approaches. If necessary, the applicant should consider targeting particular groups or adapting consultation methods in order to ensure that those who might not respond to a traditional consultation have the opportunity to voice their opinion.

An exclusively online consultation would exclude those without internet access, whilst consultation materials which are only in English would exclude those who do not have strong English reading or writing skills, so **the applicant must give consideration to who will be affected by the proposals or would be likely to respond to the consultation.**

The public sector equality duty does not apply where consultations are not being conducted by public sector organisations, but it is nonetheless illustrative of best practice and should be adhered to unless there are reasonable grounds for not doing so.

The Equalities Act 2010

The public sector equality duty (as set out in section 149 of the Equalities Act 2010) requires public authorities to eliminate discrimination and advance equality of opportunity. It also sets out a number of protected characteristics to consider when ensuring that actions are taken in a fair and non-discriminatory way. A consultation must take full account of this and ensure that the form of consultation does not inadvertently create inequalities in the ability of people to take part in the consultation process.

See <https://www.legislation.gov.uk/ukpga/2010/15/section/149>

For statutory consultations, an organisation conducting a consultation should produce a Statement of Community Consultation (SoCC) which outlines how the consultation will be delivered, considering the needs of the local, affected or interested population. Advice may be sought from local authorities, or other relevant bodies to determine this and local authorities should be consulted on the SoCC.

Principle 5

The consultation should last an appropriate amount of time.

Several factors affect what might be considered to be an 'appropriate' amount of time, which include:

- the nature (including the complexity) of the proposals and the documents provided, including the volume of information presented;
- the methods and channels used to consult, reflecting the ease with which consultees can access and understand the information; and
- the characteristics of the consultees.

The promoter should also be cognisant of how the timing of the consultation could affect consultees. Consultations which are held over holiday periods may require advanced engagement with stakeholders or an extended consultation period to allow a reasonable response time.

Short consultation periods are sometimes acceptable if there have been similar previous consultations or if a decision is deemed urgent. However, short consultation periods are not usually the best option. A consultation needs to be long enough for everyone affected to hear about it, consider all the relevant information, formulate an opinion and respond in full. On multiple occasions, consultations have been successfully challenged in court due to insufficient time (taking account of public holidays) being given for participants to fully understand and respond to all the consultation material provided, which can include multiple lengthy documents.

Statutory consultations under Section 42 of the Planning Act 2008 must last for a minimum of 28 days but frequently last longer. Government guidelines

suggest the needs of stakeholders should inform the amount of time given to respond to the consultation with, for example, charities potentially needing more time than businesses.⁶

It is advisable to engage with statutory consultees and local authorities as early as possible in order to provide as much time as possible for consideration of any potential impacts. Guidance from the Department for Communities and Local Government also suggests that PILs should be actively engaged in the process by promoters, even after the application for development consent has been submitted.⁷

Case law: Halebank Parish Council vs. Halton Borough Council (2012)

Halton Borough Council granted planning permission for the creation of a development including rail storage and a distribution warehouse on land owned by Halebank Parish Council. The parish council had been given 21 days (during August) to respond to a planning application with an Environmental Statement of approximately 900 pages. They had applied for an extension but were denied.

The court ruled that the consultation had not been 'conducted fairly or effectively' and that those who disagreed with the proposal were put at a considerable disadvantage.

R (Halebank Parish Council) v Halton Borough Council [2012] EWHC 1889 in Landmark Chambers, *Consultation: The Legal Requirements*

⁶ Cabinet Office, *Consultation Principles*

⁷ DCLG, *Planning Act 2008: Guidance*

Does current legislation hinder best practice?

The best practice principles in this chapter necessarily reflect legislative requirements in some areas. Where best practice and the legislative requirements diverge, the law does not prevent best practice from being undertaken in addition to any statutory obligations, and in this respect is not a limiting factor. However, in practical terms, organisations with fixed budgets, timescales or resource may find that their ability to fully embrace best practice may be limited by the need to satisfy statutory requirements.

For example, YouGov's research has shown that most respondents to the Airport Expansion Consultation found out about it because of leaflet drops, whilst the law requires that organisations must advertise the consultation in local newspapers. The law does not prevent promotion of the consultation through leaflet drops, and so is not a limiting factor, but an organisation with a fixed budget may choose to reduce the size of the area in which they conduct a leaflet drop because they are obliged to spend money on newspaper advertising. Nonetheless, it would remain best practice to conduct both activities.

6 Adherence to best practice

Key question

To what extent did the Heathrow Airport Expansion Consultation adhere to best practice principles?

This section will examine the extent to which Heathrow has (or has not) adhered to the best practice principles outlined in Chapter 5 in conducting the Airport Expansion Consultation.

This chapter makes reference throughout to research conducted by Collingwood Environmental Planning, YouGov and Britainthinks. For full references for these reports please see Appendix A.

Overall, we have found that Heathrow conducted the Airport Expansion Consultation in line with best practice guidance and principles for consultation. However, given the lack of trust amongst local communities (as shown by Britainthinks in the Hyper Local Area Research Report) and the feeling that the Airport Expansion Consultation was unlikely to shape proposals (shown in YouGov's Consultation Experience Surveys), we have drawn attention to some areas where Heathrow could improve its transparency. We also recommend some areas in which improvements could be made in order to increase trust in the process.

It should be noted that the observations and recommendations made in this chapter are specific to the Heathrow Airport Expansion Consultation unless otherwise stated.

Principle 1

Consultees should be able to shape the proposals.

It is too early at this stage to comment on whether the views expressed as part of the Airport Expansion Consultation have been taken into account by Heathrow in finalising their proposals because the consultation has only recently closed and analysis (to the best of our knowledge) is not yet complete.

However, consideration has been given to whether there is sufficient indication that Heathrow would consider the responses as part of their decision-making process.

Following previous consultations Heathrow has published a summary of consultees' comments in a document which also outlines how Heathrow would take these comments into account in their proposals. See, for example, pages 54 to 133 of the Consultation One Consultation Feedback Document. These summaries are useful in demonstrating that the views expressed by consultees are shaping proposals and suggest that responses

to this consultation will be similarly considered. Such an approach should be adopted again for the Airport Expansion Consultation, in line with best practice. However, the summaries are also extended and very detailed so it would also be best practice to produce non-technical and accessible summaries of this information, so consultees who do not wish to read such large volumes of information can still understand how their comments have been taken into account.

The Airport Expansion Consultation has also been conducted in stages, in line with best practice. In principle this allows Heathrow to consult more broadly on concepts or less precise proposals at an earlier stage, and on more detailed or developed proposals at a later stage. This helps to ensure that consultees are able to offer their views early enough in the process that they can shape the proposals, but also be provided with enough information to offer an informed view (see Principle 2). Nonetheless, it is incumbent on Heathrow to show that they were genuinely open to implementing changes in response to the responses received in order to adhere to Principle 1.

Consideration has also been given to how information has been presented or feedback invited across the various consultation documents.

The Consultation Feedback Form

Most of the 24 open text questions begin with the phrase "Please tell us what you think about..." and invite comments on a specific aspect of the proposals. It is acceptable to frame the consultation questions in relation to the preferred option, but such phrasing may guide some respondents away from proposing alternative options (either those that have already been discounted by Heathrow or new ones that respondents may propose).

For example, Question 9 reads 'Please tell us what you think of our proposals and how we could further encourage or improve public transport access to the airport.' The use of the phrasing 'further encourage or improve' may imply that any suggested measures would be additional to the proposed plans, rather than in place of them as an alternative option. A similar consideration could be applied to other questions, such as Question 13 ('Please tell us if there are any other initiatives or proposals that we should consider in order to address the emissions from airport related traffic or airport operations?'), Question 17 ('Please tell us what you think of our proposals for maximising new jobs and training. Are there any other ways that we can maximise skills and training opportunities to benefit our local communities?') and Question 19 ('Please tell us what you think of our proposed approach to manage the future growth of the airport within environmental limits. Is there anything else we should consider as we develop the framework and its potential limits?').

The phrasing used in Question 7 ('Please tell us what you think of our preferred proposal for a ban on scheduled night flights, and/or whether you would prefer an alternative proposal.') specifically invites comments on alternative options. The question is narrowly focused on one particular aspect of the proposals however. The narrative for this question also signposts

that consultees can find information on the alternative options which have been considered in the consultation materials but does not provide a reference to a specific document or page range.

However, the specificity of the questions may be reflective of the fact that this is not the first stage of consultation – previous consultations have covered the broad proposals. It would be in line with best practice to consult on the broad ideas before then consulting on more concrete plans. However, the promoter must always remain genuinely open to amending the proposals to reflect comments if new information is presented, including potentially considering alternative options, and should be able to demonstrate that consideration has been given to the responses in the decision-making process.

This may be seen to be particularly important in this instance, given the number of people who believe that the consultation will have no impact on how expansion happens. 65% of the panel surveyed by YouGov, which was comprised of 750 people recruited from Hillingdon, Hounslow, Slough, South Bucks and Spelthorpe, expressed this view, as well as 84% of the 198 open survey respondents. As such the phrasing of the consultation questions should reflect this openness.

The Consultation Document

The Consultation Document does not contain information about previous or alternative proposals, but it does frequently request feedback on the 'preferred option'. Respondents are advised to look at information from previous consultations for detail of alternatives, or are informed that options were narrowed down through previous consultations. The implication appears to be that these are the final proposals and that only amendments to these plans would be considered, not alternative proposals.

The Preferred Masterplan

"To see how we have narrowed down options to reach our Preferred Masterplan, see the Updated Scheme Development Report."

Heathrow Airport Expansion Consultation Document, p.14

As with the Consultation Feedback Form, the exception is the discussion of night flights, which signposts that consultees can find information on the alternative options which have been considered in the consultation materials, but does not provide a reference to a specific document or page range.

Other documents

The non-technical summary of the PEIR provides an overview of the Airport Commission's original consideration of 52 proposals, which were then shortlisted down to a third runway at Heathrow, an extension of an existing runway at Heathrow and a second runway at Gatwick. It also briefly outlines the evaluation process and the justifications for various aspects of the proposals. Consultees are referred to the full PEIR for more information. In

Chapter 3 of Volume 1 there is a detailed explanation of the process by which the current proposals were arrived at. This chapter also outlines alternative designs and proposals which were considered, though this is primarily for the purpose of explaining why they were deemed unsuitable.

Some discussion of the process of evaluating proposals and developing the preferred plans is also included in the Masterplan Scheme Development Manual (Chapter 4) and the Updated Scheme Development Report, vol. 1.

There is little reference in any of the online summaries or videos to alternative options or their consideration.

Summary

Earlier stages of consultation allowed consultees to comment on broad issues and options. The Airport Expansion Consultation focuses on more specific issues. An iterative approach such as this is in line with best practice.

The consultation documents do not rule out the possibility of alternatives or the consideration of any proposal. However, non-technical documents do very little to inform consultees of the alternatives which have been considered previously. The phrasing of some of the questions in the Consultation Feedback Form may have implicitly suggested that Heathrow would only give regard to comments on their preferred plans. However, it is noted that a number of previous consultations have given consideration to alternative options, and that Heathrow's reporting on these consultations suggests that consultees' views on these alternative options were taken into account by decision makers.

Given the lack of trust amongst the local community in relation to Heathrow's handling of expansion proposals (as shown by Britainthinks in the Hyper Local Area Research Report), and the feeling that the Airport Expansion Consultation was unlikely to shape proposals (shown in YouGov's Consultation Experience Surveys), questions could have been designed in a manner which was more obviously open to consideration of different ideas.

Principle 2

Enough information should be provided to inform consultees' views.

The information provided as part of the Airport Expansion Consultation was summarised and grouped under six headings in the Document Hierarchy section of the Airport Expansion Consultation Document. This section will examine the information provided under each of these headings. It will not necessarily comment on the accessibility of the information provided, which will be covered under Principle 3 ('Consultations should be easy for everyone to understand'). It also will not comment on the merits of any proposals – it simply seeks to assess whether sufficient information has been provided for consultees to make a fully informed response.

Where relevant we have included the views of local authorities or campaign

groups who have published their responses to the consultation where they have suggested that the information provided was not sufficient. In these cases their views have been clearly labelled as such and do not necessarily reflect the views of Traverse. For example, Hounslow Council argues that a lack of information and details prevented it from providing an informed response, while Spelthorne Borough Council says the documentation contained a lack of details and strategies despite the large volume of information.

Meanwhile, YouGov found that the majority of respondents across both of their surveys (which included a 750 person panel recruited from 5 neighbouring boroughs to the airport and 198 responses to a self-selecting open survey) felt that the information provided was biased, but the majority of those on the representative panel also felt that it helped them understand more about expansion.

The preferred masterplan

Overall, there appears to be a large volume of information on the preferred masterplan. The Preferred Masterplan document and the Construction Proposals document address issues related to construction principles, timeframes (including indicative phasing proposals), methodologies, management and mitigation measures, other planned works in this area and a summary of the proposals by zone. However, there is some concern amongst local authorities that the Construction Proposals and the Code of Construction Practice are too high level and that there is not enough detail about how agreements would be monitored and enforced.

Online summaries and videos (including 'A Future Heathrow' and 'The Preferred Masterplan') convey a broad overview of the proposals.

Future operations (including night flights)

Overall, there appears to be a good level of information provided on future airport operations. In particular, the Surface Access Proposals document and the Updated Scheme Development Report provide details of proposed travel arrangements to and from Heathrow, both during and after construction, as well as aspects of travel which would be affected by Heathrow expansion (including airport travel demand, public transport constraints and impact on surrounding highways). However, Heathrow Strategic Planning Group would prefer to see more detail on future operations and night flight proposals.

Online summaries and videos (including 'Travelling to and from Heathrow', 'Night Flights' and 'Early Morning Arrivals') provide short overviews of contentious issues.

Impact assessment

The impact assessment documents appear to be highly detailed and complex. The Preliminary Environmental Information Report (PEIR), the

Preliminary Transport Information Report (PTIR) and the Equality Impact Assessment: Initial Findings document provide extensive information on the likely impacts of Heathrow's proposals. However, there is a broad view amongst local authorities that more information is needed on issues such as noise and surface access.

Hounslow Council argues that there is not enough information in the PEIR and that, although the Council would be able to comment on later information, it is concerned that feedback would not be considered as it would not be part of the formal DCO process and says that it would miss the best time to influence the design of the project. Meanwhile, the Mayor of London feels the documents contain insufficient detail on combined and cumulative impacts, whilst Spelthorne Borough Council says there is a lack of road traffic modelling data and Surrey County Council believes there is a lack of air quality modelling.

Online summaries and videos provide some insight into the potential impacts of the proposals but are necessarily not as detailed as the documentation.

Plans to manage impacts

There is a large volume of documentation providing information on Heathrow's plans to manage the impacts of the proposals, including details of compensation and mitigation measures. There appears to be detailed information on property and in particular land acquisition, compensation, and property policy more broadly.

However, some of the documents (including the Proposals for Mitigation and Compensation document and the Economic Development Framework) lack detail on future measures. In particular, details of the Community Compensation Fund are vague, and local authorities have raised concerns about this lack of detail. Meanwhile, in their HCEB Community Compensation Fund Research Report, YouGov found that the majority of people they spoke to felt that the principles for the fund were "too vague to be implemented". They said that respondents wanted clearly defined terms "to aid their own understanding but also to enable them to hold Heathrow to account".

Meanwhile, the London Assembly Environment Committee says that there was a lack of clarity in the documents on how Heathrow's scrutiny bodies would hold them to account on environmental limits, whilst Surrey County Council says there is a lack of detail on mitigation measures for the environment and health.

Response to previous feedback

The consultation feedback documents appear to provide a very high level of information on the results of the previous consultation and the way in which this has shaped the proposals. Tables such as those in the Consultation One Consultation Feedback Report (see pages 54 to 133 of Volume 1 for an example) are particularly useful for clearly demonstrating the views expressed (including which groups expressed each view) and Heathrow's response to them.

Local communities

The local communities referenced in these sections are relatively small, but this is offset by the degree to which they would be affected by the proposals. This would therefore warrant a large amount of location specific information, as those local communities would likely be most heavily affected and in different ways to other areas. There is a good volume of information provided but in places this information appears to lack detail. In some instances, this is because these documents refer to other documents for more information, but nonetheless means that there appears to be some lack of location-specific information. Collingwood Environmental Planning say that it is not clear from the information provided how many homes would be demolished or what the impact of any 'displacement' would be. They add that in some instances Heathrow provides clear information on how impacts would be managed without making it clear what those impacts would be.

Local residents might gather information from meetings in their area, although the Hyper Local Area Research conducted by Britainthinks found that highly engaged residents tended to suggest these meetings were unhelpful and they could not get answers to their questions.

Summary

A very large volume of information was provided by Heathrow to accompany the Airport Expansion Consultation, likely in the most part to be sufficient for most consultees to make an informed assessment of the proposals. However, there is some scope to consider whether the same level of detail was provided across all areas and for all consultees, reflecting on the views expressed by some local authorities. A secondary evidence review is limited in the extent to which it can assess whether this volume of information was adequate to sufficiently inform consultees' views. This is because a review of the consultation documentation can show us what information has been provided but it cannot tell us the information which would be relevant to consultees and important in informing their views.

For the reasons outlined above, this section has referenced the views of some local authorities on where they feel information provided was inadequate. However, it should be noted that where consultees feel that information provided was sufficient they may be less likely to specifically state that they believe this to be the case.

Nonetheless, in spite of the high volume of information volunteered by Heathrow, our assessment has found some areas in which it appears more information could have been provided, both in terms of the amount of information and the specificity of information. In particular in relation to the assessment of impacts and in the plans to manage impacts. Outline proposals for the Community Compensation Fund are particularly lacking in detail.

Principle 3

Information should be provided in a format which is clear and easy to understand.

This section examines the extent to which the information made available as part of the Airport Expansion Consultation (see Principle 2) and, more broadly, the consultation process itself were easy for consultees to understand. This will broadly involve examining the balance of technical and non-technical information available across the six topics outlined in Principle 2 and the Document Hierarchy in the Heathrow Airport Expansion Consultation Document (the documents which fall under each of these topics are outlined in Appendix A). This will be followed by an assessment which looks at broader topic areas which span all six of these topics and examines how this information has been presented.

It is not within the scope of this analysis to assess whether the summaries provided in the non-technical documents such as the Consultation Document reasonably reflect the technical information provided in documents such as the PEIR. It may be advisable for technical experts to conduct such an analysis in order to understand whether the more accessible documents are reflective of the more detailed documents.

The preferred masterplan

There is a large volume of information on the preferred masterplan spread through the Preferred Masterplan document, the Construction Proposals document and the Updated Scheme Development Report, some of which is very detailed. The Preferred Masterplan document and the Construction Proposals document are typically written in plain language, with any acronyms clearly defined and minimal use of technical language. They contain some complex diagrams and maps but also make use of 3D visualisations. However, the Updated Scheme Development Report totals 1090 pages across 5 documents and makes frequent use of acronyms and highly technical language.

The consultation website provides a brief summary of the preferred masterplan, written entirely in plain English with minimal technical language, as well as a 4-minute video that sets out the proposals using simple animation and plain English (via both voiceover and subtitles). These are likely to be useful for consultees, but consultees may find it more difficult to access these resources if they do not use the internet (see Principle 4 for more on accessibility).

Whilst very detailed information was made available, which some consultees may not find digestible, concise and non-technical information was made available from other sources which summarised this information to make it more accessible and aid understanding. The provision of detailed information was appropriate however to provide the opportunity for consultees (and in particular those with technical knowledge or interests) to access the detailed plans and comment.

The range of presentations of the information, from technical documents to non-technical video presentations is felt to have made the information reasonably accessible to a range of audiences. However, if some of this information or particular formats were only available online then this may have limited access for some consultees.

Future Operations (including Night Flights)

Three documents have been made publicly available that address Heathrow's future operations: 'Future Runway Operations', 'Early Growth', and 'Surface Access Proposals'. The Early Growth document is largely written in plain English but uses technical language where unavoidable as is the case with the Future Runway Operations document. Both documents make use of simple diagrams, graphs and maps throughout, and utilise tables to present large volumes of data. The same is true of the Surface Access Proposals, although this document is much longer (444 pages) and uses complex technical terminology throughout.

The consultation website provides an overview of Heathrow's future operations, including brief summaries of different aspects of these proposals. These are written in plain English, with simple diagrams used to help consultees visualise the proposals. Three short videos are also provided, addressing surface access, night flights, and early morning arrivals respectively, which use plain English and simple animations to communicate the essential information to consultees. It is not clear whether these videos could be viewed by consultees if they did not have access to the internet.

Whilst it is recognised that detailed documentation was presented, concise non-technical information has also been made available across a variety of sources that it is felt would allow the majority of consultees to meaningfully engage with these proposals.

Potential Impacts

A large amount of information on the potential impacts of the Project has been made available to consultees, in the form of the Preliminary Environmental Information Report (PEIR) and its Non-Technical Summary, the Preliminary Transport Information Report (PTIR), and the Equality Impact Assessment: Initial Findings document. The PEIR and PTIR are necessarily highly technical documents, and as such use complex language and acronyms throughout, as well as very detailed diagrams, graphs and maps. They are also very dense, with the PEIR comprising 55 chapters across three separate volumes, and the PTIR totalling 1,852 pages. It is therefore unlikely that these will be useful for most consultees.

The PEIR Non-Technical Summary and the EIA Initial Findings documents are significantly less dense and less complex in their terminology, with technical language only used when unavoidable, and large quantities of information presented in tables for ease of reference. There are no online summaries or videos directly addressing the potential impacts of the Project, with online summaries instead focusing on mitigation. The PEIR Non-Technical Summary and the EIA Initial Findings document do however condense and

communicate the relevant information in a way that should enable most consultees to understand the proposals as they relate to the airport's future operations.

Overall, detailed documentation is presented alongside relatively concise non-technical information and this would allow the majority of consultees to meaningfully engage with these proposals.

Management and Mitigation

A large number of documents have been made available to consultees concerning Heathrow's proposals for managing the impacts of the Project. The primary resource for this topic is the Proposals for Mitigation and Compensation document, a 44-page document containing a significant amount of information that is largely written in plain English but necessarily contains some technical language, as well as simplified diagrams and maps. This document is supplemented by additional documentation addressing each potential impact area (economy, environment, construction etc.) and providing very detailed outlining of the proposed mitigation measures using technical language and highly detailed diagrams, graphs and maps. Whilst such auxiliary documents are likely to be of limited value to all but the most knowledgeable of consultees, and/or those who are likely to be directly affected by the Project's acquisition of land and property, they suggest that Heathrow Airport has made efforts to be transparent and open with regard to their proposals.

There are three videos on the consultation website that relate to the management and mitigation of the Project's impacts. Like the auxiliary documents, these videos address separate topics (carbon emissions, air quality, and noise pollution) and communicate the essential information through plain English (voiceover and subtitles) and simple animation. Similarly, the online summaries "Managing the Effects of Expansion", "Property and Compensation" and "Noise Insulation" present the essential information in an easily digestible format.

Overall, while there is a huge amount of highly technical information available regarding mitigation and management, the use of videos and online summaries allows consultees to engage meaningfully with these proposals, although the online-only nature of these resources raises questions about their accessibility.

Consultation Feedback

Heathrow has provided consultees with feedback reports for the two previous stages of the consultation, showing how the proposals have changed in response to input from consultees. These documents are both comprehensive but long at 1,916 pages across 3 volumes and 554 pages respectively, but a clear effort has been made to minimise technical language except where unavoidable and any diagrams or maps have been simplified. These documents demonstrate transparency, but their length may prevent some consultees from engaging with them. These reports are accompanied by a 6-page document entitled "How do we obtain approval

to expand Heathrow" that explains the consultation process in plain English using simple flow charts. This indicates that Heathrow Airport have made efforts to make information more accessible to a range of audiences and to be transparent in providing information.

However, there are no online summaries or videos directly relating to this theme, which may have added value in presenting information in other formats which may have improved accessibility.

Local Communities

The applicant has provided 10 distinct "Heathrow Expansion and your area" documents, each targeted at one of the affected local communities. These are intended for use by residents with no pre-existing knowledge and so are written in plain English and provide very limited technical information, minimising the use of acronyms except where unavoidable. The decision to produce separate documents for each area demonstrates an awareness that the impacts of the Project will not be experienced equally by all nearby communities. This also suggests that Heathrow Airport have made efforts to tailor information to communities.

These documents are accompanied by a 5-minute video entitled "Heathrow Expansion and your Communities", which provides a general summary of those potential impacts that apply to all local communities, as well as more detailed information for communities to the north and west of the airport. This video uses animation and CGI rendered images to illustrate the proposals, and is narrated in plain English, but unlike other videos no subtitles are provided.

A number of online summaries are provided regarding local communities, breaking down the relevant information by both location and theme (air quality, construction traffic, community fund, etc.). As with other online summaries these are written in plain English and use only simple diagrams, but they contain more information than is the case with other topics. However, Collingwood Environmental Planning say that it is not clear that the non-technical information in the PEIR has been used to inform the webpages in relation to local areas.

Collingwood Environmental Planning also found that, whilst all of the impacts that are considered are in line with what would be expected, it can be hard to get specific information. They suggest that some information relevant to local communities appears to be in the health section of the PEIR rather than the Community Impacts chapter. This may be confusing for some consultees who are looking to find detailed, specific information relating to their area or their home, and may act as a barrier to consultees accessing the information that they need if it is not clear where this information should be found.

Overall, Heathrow has demonstrably attempted to ensure the information provided to local residents is clear and accessible to aid understanding of the effect of the project on local communities to support meaningful feedback. They have also provided information by area which recognises the varied requirements of local communities.

Overarching topics

For some overarching topics it is not clear that the information has been presented in a consistently accessible way across different media. Focusing on the issue of noise, for example, will show that specific questions are asked in the Airport Expansion Consultation Feedback Form on boundary designs, runway alternation, night flights, the proposed noise insulation scheme, noise envelopes and environmental limits. Runway alternation, a proposed ban on scheduled night flights and noise insulation also all have their own specific pages within the Topics area of the consultation website, where consultees can watch information videos and find out more about these issues, and there is a page on managing the effects of noise more generally which outlines several measures designed to mitigate noise. By comparison, the Consultation Document has five pages of information related to noise, but minimal information related to the topics outlined above. The extent of the information on runway alternation and night flights is a statement which says that:

“To reduce the effects of aircraft noise, we are proposing to introduce a 6.5 hour ban on scheduled night flights and are planning to rotate the use of our runways to offer predictable breaks from noise, also known as respite.” (Airport Expansion Consultation Document, p.78)

Given that there are online summaries with videos explaining both of these issues, this shows some discrepancy between how accessible information is for those with internet access and those without.

Noise is also a topic where consultees have been presented with highly complex technical information. Some attempt has been made in the Consultation Document to explain some of this technical information – information boxes outline the meaning of ‘dB(A)’ and ‘Leq’ as well as the various Adverse Affect Levels (LOAEL, SOAEL and UAEL). However, maps and narrative descriptions remain complex and it is unlikely to be clear from the summary Consultation Documents what the noise impact of expansion would be on a given consultee or exactly how this impact would be mitigated.

This analysis will not seek to suggest whether or not non-technical documents accurately summarise the information contained within the technical documents from a technical perspective.

Online information

Throughout the sections above, reference is made to relevant online summaries of information. There is mixed evidence on the ease of use of the website. Collingwood Environmental Planning say that the website was difficult to use, but YouGov say that “the website itself was generally well received, with 55% of panel respondents saying it was easy to navigate and 54% that it was clearly laid out.”

In general, we found the website reasonably easy to navigate, albeit with a large volume of information spread across many pages. The tabs at the top

of the page allowed users to easily access information on the overall plans, information specific to local communities, or information sorted by topic, as well as details of compensation proposals and consultation events. Within the topics tab, links provided access to information on 63 topics divided into eight broad themes, with each theme also having a link to a summary page. The volume of information may have been overwhelming for some users, but clear subdivision was an effective means of allowing users to access relevant information.

Summary

In general, the information which is presented in online summaries was in a format which is clear and easy to understand, written in plain English and often with videos and diagrams to illustrate the information. However, offline summary documents do not necessarily convey the same information in a similar way, and this may mean that online and offline users find themselves in the position of having differing understandings of the proposals. It is also not clear that information relating to the specific topics raised in the Feedback Form is available in a non-technical format to all consultees. Technical documents contain a far greater level of detail, but the use of jargon and acronyms means that these documents are less accessible.

Principle 4

The methods and channels used to consult should be appropriate for all relevant audiences.

There were multiple audiences who might have had an interest in responding to this consultation, ranging from local authorities and statutory organisations, through land interests, local businesses or stakeholders, to hyper-local audiences (i.e. those in the most immediate vicinity) and to the public more widely. Given the widespread interest and national significance of this project the consultation should have been made accessible to the widest possible national audience whilst appropriately taking into consideration local and stakeholder views.

Response channels

Consultees were able to respond by one of three means:

- Hard copy questionnaire
- Online response form
- Email

Hard copy questionnaires could be acquired at events or upon request by telephone or email. They could be sent by freepost and additional information or letters which did not fit the questionnaire structure could be submitted by the same means. Large text versions and alternative formats of the questionnaire were available by telephone or email request.

These three response channels provide a good range of options for

consultees with access to the internet. However, the YouGov surveys suggest mixed views as to whether the online response form was easy to use. 79% of the representative panel felt that it was, but only 31% in the open survey. An online response form is necessary in order to give respondents a range of response channels, but consideration could be given in future as to how the form could be made easier to use. The concerns of respondents to YouGov's survey may relate to the questionnaire rather than the online aspects of the form – see Principle 1 for comments on the openness of the questionnaire.

In order to understand whether these three options provide sufficient opportunity to respond for offline consultees in line with best practice, further study would be required examining the extent to which these consultees were engaged in the consultation process. Should someone without access to the internet wish to take part in the consultation, they would have had to attend an engagement event or contact Heathrow to request a copy of the form, which requires a higher level of active engagement in the process than would be required to complete an online form or send an email. Heathrow has demonstrated a willingness to involve local communities in the consultation process, as shown by its targeted publicity campaign but at this stage it is not clear that this was successful in engaging potential consultees.

Access to consultation information

Accompanying consultation information was available online to download, along with online summaries of the key issues and informational videos. Consultation information could also be viewed at 43 consultation events or at 42 document inspection locations on a reference-only basis.

Consultees wishing to acquire hard copies could request them by telephone or email, but the SoCC says that they may be charged a printing fee of up to £500 (which would apply for a 'full suite' of documents). It is unclear whether hardcopies were available from events (without a fee), an approach often taken to making consultation documentation available. Unless they were able to obtain hard copies, consultees without access to the internet would have to seek information at events and at document inspection locations which requires a greater level of engagement with the process and, as they were not able to take documents from these places, they may not have access to that information when writing their response. For these consultees, it is therefore crucial that the process of obtaining hard copies of information documents is relatively straightforward and for some it is likely that document printing fees would act as a significant barrier to providing an informed response, although this approach is in line with general consultation practice.

Consultation events were held across 43 locations on various dates throughout the consultation period with the first event two weeks after the start of the consultation and the last event two weeks before the end. This is best practice as it gives consultees time to find out about the proposals and respond following the last event. The majority of these events ran from 2pm until 8pm with the remainder running from 10am until 4pm. Running events

outside of normal working hours is in line with best practice as this would allow those who work during these times to attend events. Maximising attendance at events would help to address concerns about trust and the influence of the consultation, as YouGov's panel survey showed that those who attended events were more likely to feel they had been listened to.

Promotion of the consultation

Table 4.3 in section 3.1.10 of the SoCC provides a list of all the local and national newspapers in which the consultation was promoted. The consultation was also promoted using leaflet drops, email bulletins and social media messaging. YouGov's surveys show that offline means of promotion continue to be the most effective amongst local communities. 62% of their representative panel had heard of the consultation, with the majority finding out about it because of a leaflet through their door. 21% saw the consultation promoted in a newspaper, 19% received an email about it, whilst just 9% found out about the consultation via social media. However, amongst open survey respondents, 35% found out about the consultation via social media, matching the number who found out because of a leaflet delivered to them. Whilst this may be a factor of the different samples of the two surveys (one a panel of local people and the other a self-selecting group), this illustrates that different audiences will gather information from different sources, and as such a blend of means of promoting the consultation should be adopted in order to ensure that the maximum possible audience is reached. Nonetheless, the results of YouGov's surveys suggest that for local communities specifically the most effective means of promotion is through leafleting.

Provision of information in other languages and formats

The majority of consultation documents reviewed also did not appear to be available in languages other than English. The Noise Insulation Policy was available in Arabic, Hindi, Polish, Punjabi and Urdu, but for all of the other documents they were either only available in English or it was not obvious how translations could be obtained. Given the range of languages spoken in the area around Heathrow, London and the country more broadly, it is likely that some non-English speakers would want to be part of the consultation process. It may not necessarily be the case that it is proportionate to produce translations of the documents into a wide range of languages. However, an assessment should be undertaken to understand whether there are particular languages which it would be helpful to produce documents in, and whether failure to do so would likely prevent individuals or communities from accessing the consultation. If it is not deemed proportionate to produce translations then alternative provisions should be considered for foreign language speakers.

Similar assessment should be undertaken to understand the need for provision of information in alternative formats, such as Braille, easy read or audio versions.

Any information or notices about the availability of translations or access to

alternative provisions should be made prominently and in a range of languages and formats where applicable.

Questionnaire format

The questionnaire itself consisted of 24 open text questions. This reflects the range and complexity of the issues which consultees were being asked to comment on. However, some respondents are likely to have found this number of questions overwhelming or to have not responded to them all in full. Consultees who needed help completing the questionnaire could call a helpline, look at information online or send an email, but this would require a higher level of active engagement with the process and might deter some potential respondents. Consideration could be given in future to using closed questions to gather indicative data on key specific issues with a smaller number of broader open text questions where consultees could comment on these issues if they are of interest or concern.

The questionnaire also focused primarily on specific issues. For example, questions 3, 6, 7, 15, 16 and 19 all ask consultees for their views on specific aspects of the proposals related to noise, including boundary designs, runway alternation, night flights, noise insulation and a noise envelope. This is an area in which consolidation of questions may have led to a more manageable number of questions for consultees. One question could have asked respondents for their views on the issue of noise and suggested that this may include comments on proposals for the issues listed above. Such an approach would allow consultees to answer a smaller number of overall questions, to comment on these specific issues should they wish, or to provide a holistic overview of their thoughts on noise issues if they feel this is more appropriate. A general invitation to provide comments on broad issues may also be seen to be more open to the suggestion of alternatives (see Principle 1).

Equalities monitoring

The Consultation Feedback Form says that “it is useful for us to understand who has taken part in the consultation, so please can you provide the following details” before referring to a privacy notice at the back of the document. The form should make it clear that provision of such information will not impact upon the consideration given to the views expressed by the consultee. Failure to do so may cause some consultees to feel unable to respond because they do not trust that either their views will be given equal weight or feel that they may be held accountable for the views expressed.

Future areas of research

A review of secondary evidence is of limited utility when it comes to understanding the audiences which were able to access a consultation and the reasons for this. Such analysis would require collection of primary evidence and research to understand which communities would be affected by the proposals, whether these communities participated in the consultation and, if they did not, what the barriers to participation were.

Were this work undertaken it would allow full identification of affected communities and a more targeted approach to community engagement. Research from the Joseph Rowntree Foundation has suggested that the voices of minority groups within minority communities are often not heard. Identifying these communities and groups would be the first step in understanding their needs and engaging them in a participatory engagement process.⁸

Principle 5

The consultation should last an appropriate amount of time.

The Airport Expansion Consultation ran for twelve weeks from 18th June until 13th September 2019.

This period incorporated one bank holiday in England and Wales (26th August) and in Scotland (5th August). In Northern Ireland there were two bank holidays during this consultation period (12th July and 26th August). None of these bank holidays fall in the final two weeks of the consultation.

The consultation period was significantly longer than the 28 days which are statutorily required and longer than the consultation periods for most recent statutory consultations for NSIPs. However, given the scale of the project and the complexity of the information available to consultees, a longer consultation period would be expected. See our second principle for further comment on the information which was available.

In allowing 12 weeks for responses Heathrow have adopted best practice, allowing ample time to contact consultees and for consultees to consider all of the information available and produce their response, even when bank holidays and school holidays are taken into account.

⁸ Heather Blakey, Jenny Pearce and Graeme Chesters, *Minorities within minorities: beneath the surface of community participation* (December 2006), available at <https://www.jrf.org.uk/report/minorities-within-minorities-beneath-surface-community-participation>

7 Alternative approaches to consider

Key question

Are there any elements of the engagement process undertaken by Vienna Airport that Heathrow might follow in the future?

7.1 Vienna Airport

In relation to this question, Heathrow Community Engagement Board (HCEB) particularly noted that the model used by Vienna Airport represented an acknowledged exemplar of good practice and a comparable context. As such, the engagement undertaken by Vienna Airport (Flughafen Wien AG) and their Dialogue Forum has been examined as a potential model that Heathrow might follow.

The table below compares the Dialogue Forum and HCEB:

Vienna Airport Dialogue Forum	Heathrow Community Engagement Board (HCEB)
Established by Flughafen Wien AG in reaction to community concerns.	Established (as HACC) in order to meet an obligation placed on Heathrow Airport under Section 35 of the Civil Aviation Act 1982
Body composed of volunteers at which airport and local community are represented	Independent body but airport and local community not directly represented on board (although local communities are represented through an advisory group)
Not for profit organisation funded by Vienna Airport	Company limited by guarantee funded by Heathrow Airport
Aims to balance the needs of the local population and the aviation industry/wider economic considerations	Aims to increase community and stakeholder participation in Heathrow's planning activities
Has a board of six members (a chairman and five deputies)	Has a board of directors (three executive and five non-executive)
Comprised of Flughafen Wien AG, Austrian Airlines, Austro Control, a working group against flight noise (made up of fourteen citizen's	Has two strategic advisory groups (one for elected members and one for communities and stakeholders), two working groups for transport

initiatives and residents' associations), the provinces of Vienna, Lower Austria and Burgenland and the mayors of affected communities

and environment and noise, and a passenger services group

The Vienna Dialogue Forum plays an active role in monitoring and evaluating air traffic agreements (including night flights agreements). Resolutions are passed unanimously and voting rights are distributed between founding members (e.g. Austrian Airlines gets one vote). All measures which have consensus will be adopted by the airport. For example, an agreement was reached in 2003 which saw the adoption of new rules on the number of flights at night, new distributions of traffic and amended departure routes to reduce the impact of the airport on areas of settlement. It therefore has far greater powers to intervene and influence the airport's operational activities and its findings are viewed as authoritative given the stakeholders involved.

7.2 Applying lessons in a UK context

In comparing the approaches taken by Vienna Airport with those that Heathrow have taken, it is vital to recognise the legislative context in which Heathrow is working. The engagement and consultation that Heathrow have undertaken are contributing to an application for development consent. As such, there are some statutory requirements that must be addressed.

These requirements set out who should be consulted, the minimum length for (statutory) consultation and elements such as how the consultation should be promoted. They do not however specify the methods for consultation. Any consultation, either statutory or non-statutory, should reflect the best practice principles for consultation (discussed above).

The emphasis for all consultation is to ensure that stakeholders who may have an interest in the proposals have the opportunity to share their views and that the process is fair – in that there are not barriers that prevent those stakeholders from taking part, such as access to information, ability to understand the proposal and their implications and impacts, and ability to respond. This provides a wide range of potential approaches to consultation which can be taken.

As such, the Vienna model could be taken up in a similar form as a means to engage with stakeholders, to provide a platform for sharing views and discussion and a means to bring a range of viewpoints together. This would then form one element of a wider engagement process. In turn, this could then support greater trust in the process, and has the potential to provide greater transparency, involvement and access to the decision-making process for stakeholders. This would draw on a key strength of the Vienna model in mediating between the wide range of interests.

Separately, there are statutory requirements to consult with specific groups of stakeholders, such as Local Authorities, Persons with Interest in Land and statutory stakeholders. These requirements would still need to be met as part of the consultation process.

The legislative requirements to undertake statutory consultation, and to demonstrate that the proposals have been fully engaged on with stakeholders would mean that implementing the Vienna model in isolation would not be feasible. There is an expectation of wide and representative engagement within both consultation best practice and the legislation surrounding the Development Consent Order process. Whilst the Vienna model has the potential to provide a means to incorporate a degree of representation and transparency into the decision-making process, in and of itself it is unlikely to be sufficient to meet the legislative requirements or best practice expectations in the UK.

There are particular elements of the Vienna model however which could add to the current approaches being undertaken by Heathrow and HCEB in respect of engagement and consultation:

Mediation

HCEB's stated function is to increase community and stakeholder participation in Heathrow's planning and decision-making processes and to work with local people to provide challenge and scrutiny of the airport's day-to-day operations and expansion proposals.

HCEB may like to reflect on scope to undertake a similar role in mediating between Heathrow and stakeholders that the Dialogue Forum has taken, bringing groups together and providing an opportunity for open discussion where the views of all parties are shared.

It is noted that whilst the decisions emerging from the Dialog Forum are implemented by Vienna Airport, any similar group in the UK is unlikely to be able to have that level of authority.

'Honest Broker'

The findings of the Britain Thinks research suggest that there is a low level of trust for Heathrow. HCEB could act as a trusted intermediary to bring groups together and share information.

However, care would be needed to ensure that HCEB doesn't become seen as the 'mouthpiece' for Heathrow. In particular, there may be a perception amongst stakeholders that as the HCEB (and the HACC previously) was established to address a statutory obligation (Section 35 of the Civil Aviation Act 1982) and as such may not be independent.

In this role, HCEB could facilitate the re-establishing of trust in Heathrow, holding Heathrow to account where necessary and moving communities from 'disengaged' to 'constructive criticism', helping the communities to understand Heathrow's pressures, relaying Heathrow's concerns and acting as a route into Heathrow.

Facilitating Representation

The Dialogue Forum was formed from the start with representation from all parties, including communities. It provides a clear route into the decision-making process for all communities and parties and a way for all parties to come together on an equal footing.

HCEB operates a number of strategic advisory groups and workings groups, but these are currently scoped to provide advice to HCEB. Consideration could be given to expanding the scope of these groups to take a more active role in the decision-making process, providing a point of access for communities and their representatives above and beyond the engagement and consultation process.

Fostering Innovation

Heathrow's engagement has been criticised for lacking innovation, and moreover suggesting innovation which is not then delivered. HCEB could support Heathrow in identifying innovative engagement techniques, informed by stakeholders, which meet the needs of the communities and generate greater engagement in the process.

8 Recommendations

Key question

How could Heathrow improve its consultation practice in future?

This section outlines our recommendations based on the findings of our research for each of our key consultation principles (outlined in chapters 5 and 6), as well as recommendations for best practice engagement moving forwards.

Principle 1

- It is too early to comment on whether the views of respondents have been taken into account, but the tables included in the Consultation One Consultation Feedback Report should be replicated in the feedback for the Airport Expansion Consultation, along with simplified and more accessible versions of the tables to allow the majority of respondents to see how their comments have fed into the decision making process
- The wording of consultation documents and particularly questionnaires should be given careful consideration in order to always suggest openness to alternatives and avoid any suggestion of a predetermined outcome

Principle 2

- A large volume of information was provided but concerns persist amongst local authorities about the adequacy of this information – Heathrow should work with local authorities to understand what information they feel is required

Principle 3

- Online information is generally available in reasonable volume and in an accessible format, suggesting a good degree of transparency. However, further research should be undertaken by technical experts to determine if the consultation materials fairly reflect the technical documents
- Offline consultees should be provided with the same non-technical information as online consultees

Principle 4

- Consideration should be given to offline consultees' means of accessing information, particularly if fees for acquiring consultation documents were applied
- Consideration should be given to foreign language speakers, with an assessment made of how best these consultees could be provided for

and any options for accessing non-English information clearly given in a range of languages

- Similar consideration should also be given to the provision of information in alternative formats, such as Braille, easy read and audio versions
- The questionnaire for the consultation should be shorter and questions should be amalgamated – in many instances this could be done by grouping several specific questions and instead asking one broader question, with prompts relating to the specific topics if necessary
- Research should be undertaken to understand the potentially audiences for this consultation and their views on any barriers to their participation

Principle 5

- The twelve-week consultation period was in line with best practice

Approach to engagement

- The Vienna model shows that there are lessons which could be adopted in Heathrow's and HCEB's approach to engagement in relation mediation, trust, facilitation and innovation
- The legal requirements placed on planners of NSIPs with regards to consultation do not limit or prevent new or innovative approaches to engagement, which can be undertaken alongside or, if necessary, in addition to consultation activities required by law.

Appendix A: Secondary data sources

This report draws upon the following secondary data sources:

- The Heathrow consultation website (including information pages and videos)
- Consultation materials (see below for a full list of documents and materials studied)
- London Borough officer reports
- Published responses to the consultation
- Collingwood Environmental Planning's *Heathrow Consultation Report* (September 2019)
- Britainthinks' *Hyper Local Area Research – Summary of emerging findings* (September 2019)
- YouGov's *HCEB Community Compensation Fund – Research report* by Jerry Latter and Natasha Ward (September 2019)
- YouGov's *HCEB Consultation Experience Surveys* (September 2019)
- Grodzinski, Sam and Hetherington, Tessa, *Duty to consult: when does it arise and what does it entail?*, Thompson Reuters (2017)
- *Consultation: The legal requirements* (Landmark Chambers)
- Andre, P., Enserink, B., Connor, D. and Croal, P., *Public Participation: International Best Practice Principles. Special Publication Series Number 4* (Fargo, USA, 2006), International Association for Impact Assessment. Available at <https://www.iaia.org/uploads/pdf/SP4.pdf>.

In its **consultation documentation** Heathrow categorises its documents under six headings, as follows:

The preferred masterplan
Preferred Masterplan
Construction Proposals
Updated Scheme Development Report
Future operations (including night flights)
Future Runway Operations
Early Growth
Surface Access Proposals
Updated Scheme Development Report

Impact assessment
Preliminary Environmental Information Report – Non-Technical Summary
Preliminary Environmental Information Report
Preliminary Transport Information Report
Equality Impact Assessment: Initial Findings
Plans to manage impacts
Proposals for Mitigation and Compensation
Draft Code of Construction Practice
Noise Insulation Policy
Economic Development Framework
Environmentally Managed Growth
Property Policies Information Paper
Property & Land Acquisition and Compensation Policies – Interim Professional Fees
Property & Land Acquisition and Compensation Policies – Interim Property Hardship Scheme
Property & Land Acquisition and Compensation Policies – Interim Property Hardship Scheme Panel Advice
Property & Land Acquisition and Compensation Policies – Interim Agricultural Land and Property
Property & Land Acquisition and Compensation Policies – Interim Residential Property
Property & Land Acquisition and Compensation Policies – Interim Commercial Property
Response to previous feedback
Consultation One Consultation Feedback Report
Future Operations Consultation Feedback Report
How do we obtain approval to expand Heathrow?

Plans to manage impacts
Heathrow Expansion and your area – Bedfont and Mayfield Farm
Heathrow Expansion and your area – Brands Hill
Heathrow Expansion and your area – Colnbrook and Poyle
Heathrow Expansion and your area – Cranford, Hatton and North Feltham
Heathrow Expansion and your area – Harlington and Cranford Cross
Heathrow Expansion and your area – Harmondsworth
Heathrow Expansion and your area – Longford and Bath Road
Heathrow Expansion and your area – Richings Park
Heathrow Expansion and your area – Sipson
Heathrow Expansion and your area – Stanwell and Stanwell Moor

In addition to the above, we have also examined:

Other documents
Heathrow Airport Expansion Consultation Document
Airport Expansion Consultation Feedback Form
Consultation Information Leaflet
Errata Sheet – Airport Expansion Consultation
Heathrow Expansion Project Statement of Community Consultation

Appendix B: Evaluation Framework

Below is our evaluation framework. The principles were devised based on analysis of existing legislative requirements, case law, guidance and best practice.

Outcomes	Success indicators	Sources
Principle 1	<p>It is clear how the outcomes of the consultation have fed or will feed into any decision-making process.</p> <p>Consultation takes place in stages, with more information available during latter stages.</p> <p>Information about alternatives either considered at a previous stage or open for consideration is freely and accessibly available in both technical and non-technical form.</p>	<ul style="list-style-type: none"> • Consultation Document • Consultation Feedback Form • Consultation One Feedback • PEIR • Masterplan Scheme Development Manual • Updated Scheme Development Report • Online summaries and videos
Principle 2	<p>Information is provided which is sufficiently detailed for a reasonable person to make a judgement on the proposals.</p>	<ul style="list-style-type: none"> • Consultation Document • Preferred Masterplan document • Construction Proposals • Code of Construction Practice • Surface Access Proposals document • Updated Scheme Development Report • PEIR • PTIR • Equality Impact Assessment • Proposals for

		<p>Mitigation and Compensation document</p> <ul style="list-style-type: none"> • Economic Development Framework • Consultation One Feedback Report • Online summaries and videos • YouGov's Experience Surveys • YouGov's Community Compensation Fund research • Collingwood Environmental Planning's report • Britainthinks' Hyper Local Area research • Local Authority consultation responses
<p>Principle 3</p>	<p>Information should be easy to understand.</p> <p>Information should be presented in an engaging way.</p> <p>Documents should use plain English, minimise acronym use and be as short as possible (whilst adhering to Principle 2).</p> <p>Questionnaires should minimise the number of questions to which consultees must respond.</p> <p>Questions should be as clear as possible.</p>	<ul style="list-style-type: none"> • Consultation document • Preferred Masterplan document • Construction Proposals • Updated Scheme Development Report • Future Runway Operations document • Early Growth document • Surface Access Proposals document • PEIR • PTIR

		<ul style="list-style-type: none"> • EIA Initial Findings document • Proposals for Mitigation and Compensation • Consultation One Feedback Report • Heathrow Expansion and Your Area documents • Online summaries and videos • Collingwood Environmental Planning's report • YouGov's Experience Surveys
Principle 4	<p>A range of response channels should be available.</p> <p>Consideration should be given to the needs of any relevant audience to the consultation.</p>	<ul style="list-style-type: none"> • Consultation document • Consultation Feedback Form • SoCC • YouGov's Experience Surveys • Britainthinks' Hyper Local Area research
Principle 5	<p>The consultation must last a minimum of 28 days but should last for a period which takes into account:</p> <ul style="list-style-type: none"> • The complexity of the proposals • The response channels adopted for the consultation • The characteristics of the consultees • Any other factor which might impinge on the ability of a consultee to respond promptly, such as holidays or election periods 	<ul style="list-style-type: none"> • Consultation document • SoCC

Appendix C: Legislative requirements

Summary of the relevant legislation

Key question

What are the legal requirements for consultation relating to an NSIP?

Part 5, Chapter 2 of the Planning Act 2008 (“Applications for orders granting development consent: Pre-application procedure”) outlines the legal and procedural requirements that must be met prior to the submission of an application for a Development Consent Order (DCO).

Section 42 (“Duty to consult”)

This stipulates that the applicant is legally obliged to seek input from any prescribed consultees and all relevant local authorities, as well as “each person who is within one or more of the categories set out in section 44”, and, in certain cases, the Marine Management Organisation. Further information on who should be consulted is laid out in Schedule 1 of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulation 2009.

Section 45 (“Timetable for consultation under Section 42”)

This states that the applicant must notify all consultees of the deadline for receipt of their response to the consultation, which “must not be earlier than the end of the period of 28 days that begins with the day after the day on which the person receives the consultation documents”.

Section 46 (“Duty to notify Secretary of State of proposed application”)

This states that the applicant is obliged to provide the relevant Secretary of State with all information and materials that would be made available to consultees (as defined in section 42), and that this must be done on or before commencing any consultation.

Section 47 (“Duty to consult local community”)

This clarifies the standards and process by which the applicant should conduct any consultation with local communities. Firstly, the applicant is required to prepare a Statement of Community Consultation (SoCC) that clearly states how they intend to engage with affected residents during the consultation process. Once the SoCC has been produced, it must be published and made publicly conveniently

available for consultees. The applicant should also publish a notice in local newspapers outlining where and when the statement will be made available for consultees. Finally, the applicant must ensure that the consultation is consistent with the proposals set out in the SoCC.

Section 48
(“Duty to publicise”)

This states that the applicant is obliged to publicise the proposed application and that this publicity must include the deadline for receipt of responses.

Section 49
(“Duty to take account of responses to consultation and publicity”)

This stipulates that the applicant must take account of any “relevant responses” when deciding whether changes to the original proposals are required prior to submission of the final DCO application.

Section 50
(“Guidance about pre-application procedure”)

This states that the applicant “must have regard to any guidance” issued by the Secretary of State or another recognised authority.

Adherence to legal requirements

Key question

To what extent did the Heathrow Airport Expansion Consultation adhere to legal requirements?

Chapter 3 (“Legal Requirement to Consult”) of Heathrow Airport’s SoCC demonstrates that they are cognisant of their obligations under the Planning Act 2008, particularly the duty to consult with the local community and to publicise both the consultation itself and any outcome thereof.

Heathrow Airports’s preferred approach to meeting these requirements is outlined in Chapter 4 of their SoCC (“Our Approach to Airport Expansion Consultation”). For ease of reference, this section will address the degree of compliance with each relevant section of the Planning Act 2008 in the order in which they appear in that document.

Section 42 (“Duty to consult”)

Paragraph 3.1.2 of the SoCC demonstrates an awareness of the applicant’s duty to consult with such parties, and paragraph 4.3.2 reaffirms their commitment to complying with their legal obligations.

The SoCC states that Heathrow intends to consult all relevant statutory

bodies as per Schedule 1 of the Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009, as well as the local authorities for directly affected and neighbouring authorities. It is assumed that these were the same local authorities as were notified of the previous stage of consultation, as listed in paragraph 3.4.2 of the Future Operations Consultation Feedback Report.

The SoCC also affirms Heathrow's commitment to consulting all three categories of PIL as defined in section 44 of the Planning Act 2008. These include "owners and occupiers of land on which the Project is located" (Categories 1 and 2) and "owners and occupiers of land who we consider would or might be entitled to make certain types of land compensation claim as a result of the implementing or implementation of the DCO" (Category 3).

It therefore appears that Heathrow both aware of their duty to consult under section 42 and committed to ensuring their compliance with these obligations.

Section 45 ("Timetable for consultation under section 42")

The consultation deadline of 13th September 2019 was clearly stated on the consultation website and in the majority of documents made available to consultees. The 12.5-week consultation period from 18th June 2019 is also well in excess of the 28 days required by the Planning Act 2008.

Section 46 ("Duty to notify Secretary of State of proposed application")

It is not possible to say from the information available to us whether the Secretary of State received the necessary materials before the commencement of the consultation.

Section 47 ("Duty to consult local community")

Producing a SoCC

Firstly, Heathrow Airport produced a SoCC, stating in section 3.1.7 of the document that this was done with the input of all local authorities "within the area in which noise effects from overflying aircraft may be experienced by communities". It is not clear at this stage if this incorporates all local authorities and neighbouring authorities as prescribed by Section 43 of the Planning Act 2008. Nonetheless, the SoCC clearly defines local community consultees for the purposes of this consultation (see 4.3.3), affirms the applicant's commitment to designing an "accessible and inclusive" consultation that reaches all sections of the community, and lays out their intention to engage with affected resident through a targeted publicity campaign.

4.5.1 *At the start of the Airport Expansion Consultation, we will write directly to all properties in Consultation Zone A and all those with an interest in land affected by the Project.*

4.5.2 *All residential, community and business properties in Zone B (approximately 2.6 million) will be sent a community information leaflet which sets out details of what is being consulted on, where more information can be found and how to respond to the Airport Expansion Consultation. The leaflet will be designed to be eye-catching and will use a graphic based approach to explain the Consultation.*

4.5.3 *Properties in Zone C will not receive a direct mail but will be notified of the Airport Expansion Consultation through a combination of online and print advertising.*

Availability for inspection

Secondly, Heathrow Airport demonstrates an awareness of the requirement to ensure the SoCC is made available for inspection by the public in a convenient manner for people living in the vicinity of the project (see Section 3.1.9), and sets out their intention to publishing both soft and hard copies of all consultation documents, including the SoCC.

4.5.7 *Copies of consultation documents, including the feedback form, will be made available to download from the Project website and will be available for inspection at public exhibitions and deposit locations. We will also provide USB/DVD copies of the materials on request free of charge.*

4.5.8 *Requests for hard copies of the technical documents will be reviewed on a case-by-case basis. To cover printing costs a reasonable copying charge may apply (up to a maximum of £500 for one full suite of documents) to be paid for by the recipient. These can be requested using the contact details at the end of this document.*

However, it should be noted that the proposed copying charge of up to £500 for hard copies of the consultation documents may prove prohibitive for some consultees. See Chapter 5 on Best Practice for further consideration of accessibility of consultations.

Publicising the SoCC

Thirdly, Heathrow demonstrates an awareness of the need to publicise the SoCC and the consultation in Section 3.1.9 of the SoCC. Section 4.5.18 goes on to outline their intention to “use targeted advertising in local online news media, as well as in London-wide news media [...] to raise awareness about the Consultation and encourage people to take part”. A full list of these print and online media outlets can be found on pages 24 and 25 of the SoCC (see tables 4.3 and 4.4).

Compliance with the SoCC

Finally, Heathrow is obliged to ensure that the consultation is conducted in a manner which is consistent with the SoCC. Further research would be required to confirm that this obligation was met, but insofar as it is possible to glean information from secondary documentation there is nothing to suggest that this did not take place.

Section 48 (“Duty to publicise”)

In section 3.1.10 of the SoCC, the applicant demonstrates an awareness of the requirement to publicise the proposed application – including the deadline for any submission – in both local and national newspapers (see table 4.3) and to invite meaningful feedback from interested parties, and commits to “publishing the notice of the proposed application at the same time as undertaking consultation with local planning authorities, statutory consultees, owners and occupiers of land and the general public”. Section 5 of the SoCC (“How to respond to the consultation”) also details the submission process for interested parties, and the same information appears in abridged form in several publicly available consultation documents and on the consultation website.

Section 49 (“Duty to take account of responses to consultation and publicity”)

Heathrow Airport recognises their duty to take any and all “relevant responses” into account when deciding whether any changes to the proposals are required before the final DCO application is submitted to the Secretary of State in Section 3.1.11 of the SoCC. It is too early to comment on whether this duty has been performed but the Consultation One Consultation Feedback Report outlines the approach taken in the previous round of consultation. The tables which match issues with Heathrow’s responses (see pages 54-133 of Consultation One Consultation Feedback Report for an example) is particularly useful for discerning how consultees’ views have been taken into account.

Section 50 (“Guidance about pre-application procedure”)

Heathrow Airport has demonstrated an awareness of the advice issued in the Department for Communities and Local Government’s “guidance on the pre-application process” (2015).⁹ It has made four key changes from the minimum statutory approach in line with that guidance:

- The 28-day mandatory consultation period has been extended to 12.5 weeks to allow input from the largest possible number of consultees and to facilitate the preparation and submission of detailed technical information;
- The consultation area is far larger than is legally required, extending beyond the immediate vicinity of the project, in order to facilitate input

⁹ Department for Communities and Local Government, *Planning Act 2008: Guidance on the pre-application process* (March 2015) available at <https://www.gov.uk/government/publications/guidance-on-the-pre-application-process-for-major-infrastructure-projects>

from all those who are likely to experience increased noise pollution as a result of the proposed expansion;

- The list of local authorities to be contacted and consulted has been expanded to include “those within the area in which noise effects from overflying aircraft [i.e. those below 4000ft] may be experienced by communities” (though this assumes that this incorporates all local authorities as prescribed by the Planning Act 2008, including all neighbouring authorities); and
- A large number of consultation documents have been made available to interested parties, thereby providing consultees with significantly more technical information than is required under the Planning Act 2008.



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