



CONTEXT

On 25 June 2018, Parliament voted to designate the Government's Airports National Policy Statement (NPS). Campaigners seeking to block the construction of a third runway at Heathrow had a 6-week period to launch legal proceedings against the Government. A number of campaigners have decided to pursue legal action resulting in 5 different challenges. The campaigners assert that the NPS should not have been designated by Parliament as the Government had failed to undertake its legal requirements in preparing the document.



1. COUNCILS, GREENPEACE & MAYOR OF LONDON

Hammersmith and Fulham, Hillingdon, Richmond, Wandsworth and Windsor and Maidenhead Councils, together with Greenpeace and the Mayor of London, Sadiq Khan have submitted legal proceedings under the Judicial Review Pre-Action Protocol, to the Secretary of State for Transport.

The case being brought states that the Government's approach to air quality and noise is unlawful and also that it has failed to carry out a fair and lawful consultation exercise prior to issuing its decision.

They argue that Transport Minister Chris Grayling "unlawfully designated the Airports National Policy Statement" under the Planning Act 2008 and cites the grounds of the legal challenge as being on air quality, inadequate environmental assessment, climate change, surface access, a breach of the habitats directive and a flawed consultation process.



2. HEATHROW HUB

Heathrow Hub Ltd (who are promoting an extension of the existing northern runway) are seeking permission for Judicial Review on five grounds:

- The Secretary of State acted unlawfully in making it an effective precondition of selecting the Heathrow Hub's ENR scheme that Heathrow Airport guarantee that it would implement the scheme.
- The Secretary of State acted in breach of the Heathrow Hubs' legitimate expectation that the Secretary of State would not reject the ENR scheme relying (solely or in part) on the Heathrow Airport Ltd's failure to give a guarantee that it would implement the ENR scheme if the Secretary of State found it to be the most suitable scheme;



- The Secretary of State made an incorrect assumption that the NWR scheme provided greater capacity for air traffic movements (“ATMs”) and more respite. The ENR scheme provides for at least the same capacity and the NWR scheme could not in practice deliver the levels of respite attributed to it;
- The Secretary of State failed to provide any adequate and/or intelligible reasons for its assertion in the Airports NPS that the NWR scheme provided greater capacity for ATMs and more respite than the ENR scheme;
- In rejecting the ENR scheme partly on concerns relating to its safety, the Secretary of State acted unfairly in that he failed to provide any explanation of what the safety concerns were or provide a reasonable opportunity for them to be addressed.



3. FRIENDS OF THE EARTH

Law firm Leigh Day, on behalf of Friends of the Earth, filed papers with the High Court on 6th August 2018 asking for the airports NPS published in June to be quashed. The environmental organisation claims that the NPS fails to account for all the impacts on future generations, who will be left with the adverse consequences of growth from aviation-increasing climate impacts.



4. PLAN B

Plan B assert that the designation of the NPS is an obvious and serious breach of the Climate Change Act, which renders the plans to expand Heathrow airport unlawful.



5. NEIL SPURRIER

A Teddington resident who lives under the flight path has provided 7 reasons for a judicial review including: air quality, climate change, a biased process & the unreasonable financial burden placed on the public purse.



PROCESS

The High Court will decide which of the legal challenges has sufficient grounds to proceed on Thursday 4th October 2018. Under a judicial review, the court cannot directly block the new runway from being built but a judge could strike out an offending part of the government’s plan or order the policy to be changed or reviewed.

Should any of the applications not be successful then the losing party could then appeal to the Court of Appeal, and even if they lose at the Court of Appeal they could then appeal to the Supreme Court. There will also be a second opportunity to challenge the plans in court after the development consent order is completed.