

Airport planning law and policy

Introduction

1. This appendix provides an overview of the law and policies relevant to airport planning in England.¹ It is divided into two sections:
 - (a) Section A sets out the process of how development is controlled in England and, in particular, how planning permission for development at airports is obtained.
 - (b) Section B considers the evolution of policy relating to airport planning—in particular the White Paper, aspects of general planning policy guidance (PPG) and planning policy statements (PPS) relevant to airport developments—especially PPG13: Transport; PPG24: Planning and Noise; and PPS 23: Planning and Pollution Control.
2. The historical context of planning law and policy is important to an understanding of the extent to which the planning system itself has impeded or facilitated investment in capacity in the South-East.
3. This appendix is primarily based on a review of the relevant legislation; on government-produced and -sponsored literature (including circulars and policy papers); on a general textbook on planning law; on information provided by BAA; and on case law. It also draws upon meetings with BAA, the Planning Inspectorate² and the Department for Communities and Local Government (CLG).

Summary

Development control

4. The principal framework through which planning policies are delivered is the Town and Country Planning Act 1990 (TCPA 90) as amended by subsequent legislation including the Planning and Compulsory Purchase Act 2004, the Greater London Authority Act 2007 and (from a day to be appointed) the Planning Act 2008 (the Planning Act). Current legislation derives from the system of planning control that was introduced in 1947. The TCPA 90 contains a highly-developed ‘plan-led’ system of land use regulation. The following are the key features of development control in England:
 - (a) There is a hierarchical structure of guidance and plans at national, regional and local level against which planning applications are assessed—since 2004 the plan framework has consisted of a Regional Spatial Strategy (RSS) and a Local Development Framework (LDF). This is what is known as the plan-led system.
 - (b) Developers are required to obtain planning permission for carrying out any development of, or a material change of use of, land or buildings. Where such development is not authorized by a General Development Order, a specific application for planning permission must be made. Under the plan-led system decisions are made in accordance with the statutory development plan elements

¹Similar law and policy applies in Wales, Scotland and Northern Ireland, although there are some differences.

²The Planning Inspectorate is an executive agency of CLG in England and Wales

of the plan-led system unless other 'material considerations' are sufficient to override the plan. The majority of planning applications are made to, and decided by, the Local Planning Authority (LPA) (though the Secretary of State for Communities and Local Government (the Secretary of State) has power to call in and decide any application, and has specific powers to do so as regards major infrastructure projects). The decision may take one of three forms:

- (i) it may grant permission unconditionally;
 - (ii) it may grant permission subject to such conditions as they think fit; or
 - (iii) it may refuse permission.
- (c) LPA decisions that refuse planning permission or grant it conditionally may be appealed to the Secretary of State (previously the Office of the Deputy Prime Minister (ODPM)), who must arrange for a public local inquiry, for an informal hearing or for the appeal to be conducted by the exchange of written representations.
- (d) There are extensive powers for the Secretary of State enabling the direction and shaping of planning policy at both the national and regional level, and of determining individual planning applications through use of 'call-in' powers. These powers must also be exercised, however, within the framework of planning policy.
- (e) Section 106 TCPA 90 (section 106) enables a developer to enter into a 'planning obligation' agreement with the LPA, restricting the development or use of the land, or requiring specified operations or activities to be carried out; the land to be used in a specified way; or sums of money to be paid to the LPA. Such section 106 planning obligations are not planning conditions: these agreements are commonly used by developers and LPAs, but are negotiated outside the framework of the formal planning application system. Specific guidance is provided in the Circular 05/05: Planning Obligations about the use of obligations and their relevance to decision making.
- (f) The Planning Act, which was granted Royal Assent on 26 November 2008, will introduce a new system for nationally significant infrastructure planning, alongside further reforms to the town and country planning system and the introduction of a Community Infrastructure Levy. An Infrastructure Planning Commission (IPC) will be established under the Act as the new authority granting development consent for nationally significant infrastructure projects. The Act (which at the date of this report is not yet in force) also provides for the Government to produce national policy statements (NPSs) to be used as the policy framework for the IPC's decisions. It imposes a requirement on project promoters to consult affected parties and local communities prior to submitting an application, and sets out a new process for examining applications. The three departments responsible for drafting the NPSs are: the DfT, the Department for Energy and Climate Change, and the Department for Environment, Food and Rural Affairs.

Airport planning policy

5. Government policy relevant to airport planning falls within two categories:
- (a) airport policy, which sets out the Government's views on how airports should develop; and

- (b) planning policy, which sets out the various considerations which planning inspectors and local planning authorities should take into account when assessing a specific development.

Development control

Introduction

- 6. The planning system is designed to regulate the development and use of land in the public interest. To do this it has to balance a number of competing aims and interests.
- 7. The current planning system in England and Wales (parallel arrangements exist in Scotland and Northern Ireland, and various functions have been transferred to the National Assembly for Wales) is based on TCPA 90 (which restates with amendments earlier legislation from the Town and Country Planning Act 1947 onwards). Significant changes were introduced by the Planning and Compensation Act 1991 (PCA 91), the Planning and Compulsory Purchase Act 2004 (PCPA 2004) and the Greater London Authority Act 2007, and will be made by the Planning Act. As a consequence of these changes, many sections in TCPA 90 have been substituted or supplemented by additional provisions.
- 8. Planning legislation operates at:
 - (a) the national level through implementation of central government planning policies;
 - (b) the regional and local level through the RSS and LDF respectively; and
 - (c) the site-specific level through the determination of planning applications.

Administration

- 9. Planning control is administered by a system exercised by central and local government. The Secretary of State has a very wide range of powers and duties which enable her to initiate policies. The Government issues guidance to LPAs in a variety of forms, including circulars and Planning Policy Guidance Notes (PPGs) in England (which are undergoing replacement by Planning Policy Statements (PPSs)).³ We briefly summarize the relevant aspects of: PPG13—Transport; PPG24—Planning and Noise; and PPS23—Planning and Pollution Control; and identify other relevant guidance, including guidance on sustainable development and climate change, in paragraphs 175 to 196. Other statements of government policy, including those made by other departments, may also be relevant to plan-making and development control. Of note are the various Airport Policy White Papers which have been produced by the DfT and its predecessors at various times since the Second World War. The fact that no legislation is required to publish policy revisions enables national planning guidance to be very responsive to changing circumstances. The Secretary of State has power to restrict the grant of planning permission by the LPA; call-in and decide planning applications; and determine appeals made against the LPA's refusal to grant planning permission, or failure to take a decision.⁴
- 10. At local level, the primary decision-makers are the LPAs.

³In Scotland, Wales and Northern Ireland, guidance is issued in different formats.

⁴TCPA 90, sections 74, 76A, 77 and 78.

Legislation

11. The requirement to obtain planning permission is central to the whole system of development control. Section 57(1) TCPA 90 states that 'planning permission is required for the carrying out of any development of land'.
12. Section 55(1) defines development as the 'carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land'. For these purposes, section 55(1A) defines 'building operations' as including 'demolition of buildings; rebuilding; structural alterations of or additions to buildings; and other operations normally undertaken by a person carrying on business as a builder'.
13. Development without permission is a breach of planning control and may be subject to enforcement action,⁵ as is failure to comply with any condition attached to the planning permission.
14. Under section 59 of TCPA 90, the Secretary of State has power to make Development Orders. Such Orders may apply generally to all land, or only to a specified description of land, and may either:
 - (a) grant planning permission for development or a class of development specified in the order; or
 - (b) provide for the granting of planning permission by the local authority on application to the authority in accordance with the provisions of the order.
15. Under these Orders, general permitted developments can be carried out without the requirement to seek planning permission. In particular, by Schedule 2, Part 18, to the Town and Country Planning (General Permitted Development) Order 1995 (GPDO 1995), an airport operator is permitted to carry out limited aviation development on operational land at, or near to, the airport after consulting the local planning authority, other than the following:
 - (a) the construction or extension of a runway;
 - (b) the construction of a passenger terminal, the floor space of which would exceed 500 sq metres;
 - (c) the extension or alteration of a passenger terminal where the floor space of the building would be exceeded by more than 15 per cent;
 - (d) the erection of a building other than an operational building; and
 - (e) the alteration or reconstruction of a building other than an operational building, where its design or external appearance would be materially affected.
16. These powers are not available, however, if the development is or forms part of a scheme of development which gives rise to significant environmental effects. In that case, the permitted development rights do not apply.

⁵Under Part VII of the TCPA 90.

The plan-led system

17. The UK has what is known as a plan-led system. This means that planning authorities must determine planning applications in accordance with the statutory development plan unless 'material considerations' indicate otherwise.⁶ Where there are no other material considerations, the application will be decided in accordance with the plan only. Where there are other material considerations, the plan will be the starting point, although the other considerations must be taken into account and can, in principle, override the plan. Case law determines what constitutes a material consideration.⁷ In principle, any factor which relates to the use and development of land and is relevant to the application is capable of being a material consideration. The courts have held that government statements of planning policy can be material considerations to be taken into account when deciding whether to grant planning permission.⁸

The development plan

The new system

18. Recent reforms to planning legislation in PCPA 2004 mean that the statutory development plan for an area now consists of the Regional Spatial Strategy prepared by the Regional Planning Body and the Local Development Frameworks prepared by the district or unitary authority:
- (a) *Regional Spatial Strategies (RSSs)*. In each of the eight regions in England,⁹ the Regional Planning Body prepares an RSS reflecting the Secretary of State's policies in relation to the use and development of land within the region.¹⁰ These spatial strategies set out development goals for the region over a 15- to 20-year period. They are the subject of public consultation and examination in public before being approved and published by the Secretary of State. On commencement of the PCPA, former Regional Planning Guidance (RPG) became the RSS for each region and each region commenced a review of the RSS under the new system. RSSs should be spatial strategies setting out the strategic policies and proposals, including infrastructure proposals and management policies, governing the future distribution of regionally or sub-regionally significant activities and development within the region. The RSS is an integrated planning and transport spatial strategy and includes a Regional Transport Strategy, the main aim of which is to identify regional transport priorities needed to deliver the RSS and consistent with national policy.
- (b) *Local Development Frameworks (LDFs)*. A collection of documents which determine the local planning strategy for the area. LDFs are intended to streamline the local planning process and promote a proactive, positive approach to managing development. Local authorities (district or unitary councils) must prepare a Local Development Scheme (LDS) setting out a programme for the production of Local Development Documents (LDDs). LDDs must set out the local authority's policies

⁶PCPA 2004, section 38(6); TCPA 90, section 70(2). Section 70(2) PCPA 2004 requires planning applications authorities to 'have regard to the provisions of the development plan, so far as material to the application, and to other material considerations'.

⁷See further paragraph 23 below.

⁸This legal requirement, which underpins the plan-led system is applicable in Wales (though planning functions have been devolved to the National Assembly for Wales) and has an equivalent in Scotland but not in Northern Ireland.

⁹ie the North-East; the East of England; the East Midlands; the South-East; the South-West; the West Midlands; Yorkshire and Humberside; and the North-West.

¹⁰In London, the Spatial Development Strategy (called the 'London Plan') is the equivalent of an RSS containing the Mayor's policies for the use and development of land in the Greater London area. It is developed under a separate process under the Government of London (GOL) circular, given the separate powers and responsibilities given to the Mayor of London.

relating to the development and use of land in their area and must have regard, among other things, to national planning policies and guidance and to its RSS. The preparation and revision of the LDS and LDDs is subject to supervision by the Secretary of State, who may require changes and exercise default powers. The LDFs are put in place after engagement with all sectors of the community, including the business sector, local residents and other bodies and an independent examination by the Planning Inspectorate to consider if the LDDs are sound and generally consistent with regional and national policy. Whilst all local authorities have begun the production of plans in this way, only around 6 per cent have adopted a Development Plan Document (DPD) at present.

19. Further changes to the planning system will be made by the Planning Act in accordance with policies set out in *Planning for a Sustainable Future* (the Planning White Paper). The Government's policy objectives are stated as being to ensure earlier and more qualitative community engagement, and to provide local authorities with greater flexibility to determine which plans are necessary to produce the overall strategy for their areas.

The previous system

20. The reform to the development plan system resulted from the Government's concern that the process of updating plans under the previous system had become expensive and time-consuming.
21. The system of regional and local plans outlined above replaces an earlier system based mainly on Regional Planning Guidance (prepared by informal regional bodies and government offices), structure plans (prepared by county councils) and local or unitary plans (prepared by district authorities or unitary authorities in metropolitan areas). The purpose of the change was to simplify and streamline the framework of plans, in particular to speed up the process of updating plans, to make the system more efficient and transparent, and to promote the objectives of sustainable development.
22. Existing plans¹¹ have been preserved for three years, but gradually replaced by new-style RSSs and LDDs. At any time, the Regional Planning Body should identify which RSS policies are replacements and which are saved structure plans. Where local authorities can demonstrate that saved policies reflect the principles of local development frameworks and that it is not feasible or desirable to replace them within the three-year period, it is possible to seek approval to extend them.

Material considerations

23. 'Material considerations' have been interpreted broadly by the courts to mean 'any consideration which relates to the use and development of land'.¹² A material consideration may relate to personal circumstances (eg personal hardship), financial considerations (eg cost of development), or public concern (eg fear of crime). Material considerations also include government policy issued in a variety of forms including circulars, PPGs (now being replaced by PPSs) and, in the case of airport developments, airports white papers.

¹¹ie development plans under the pre-2004 Act system including old-style Structure Plans (produced by county councils), Local Plans (produced by non-unitary local authorities) and unitary development plans (produced by unitary authorities and combining the characteristics of both structure and local plans).

¹²See, for example, *Stringer v Minister of Housing and Local Government* [1971] JPL 114.

Environmental impact assessment

24. EC Directive 85/337/EEC first introduced the requirement for the assessment of the environmental effects for certain public and private projects, before the project could proceed. This was implemented in the UK by the Town and Country Planning (Assessment of Environmental Effects) Regulations 1988. These were replaced in 1999 by Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, which gave effect to amendments to the EC Directive¹³ and increased the range of projects that are subject to Environment Impact Assessment (EIA), introduced applicable threshold and criteria, and made a number of procedural changes to the system.
25. The regulations prohibit the grant of planning permission for which an EIA is required unless account has first been taken of the environmental information provided. Accordingly, the developer of any project which is subject to EIA must prepare an Environmental Statement (ES) which describes the likely environmental effect of a project. The ES must include information on the site, design and size of the development, information on proposed mitigation measures, an outline of the main alternatives studied by the applicant and the main reasons for their choice and a non-technical summary of the information provided in the ES. The regulations apply to two lists of development referred to as Schedule 1 and Schedule 2. EIA is compulsory for a development falling under Schedule 1 to the regulations unless (in exceptional circumstances) exempted by a direction of the Secretary of State. Developments listed under Schedule 2 to the regulations must either be accompanied by an ES or be screened by the local planning authority in order to decide whether an ES is required.
26. The construction of an airport with a basic runway length of 2,100 metres or more falls under Schedule 1; the construction of an airfield, either involving an extension to a runway or for which the area of works exceeds 1 hectare falls under Schedule 2.
27. We were told by MAG that initially ESs had only been intended to cover large schemes, but were now increasingly required for small developments too. This had resulted in increased bureaucracy and costs. The Planning Inspectorate, however, told us that thresholds for EIAs had not become tighter—at least not as far as airports were concerned.
28. The regulations require that the ES must be circulated to statutory consultation bodies and made available to the public. Its content, together with any comments, must be taken into account by the local planning authority or the Secretary of State (on call-in and recovered appeals) before granting planning permission.
29. The Town and Country Planning (Environmental Impact Assessment) (England) (Amendment) Regulations 2008 amend the 1999 Regulations to take account of two judgments of the European Court of Justice (ECJ) in May 2006. The ECJ ruled that where development consent comprises a multi-stage process (eg outline planning applications), an EIA can be required at the stage of approval of reserved matters even if it was not required when the application for outline planning permission was submitted. The regulations also apply to conditions attached to full planning permissions which do not permit development until the submission of certain detailed matters and their approval by the planning authority.

¹³Amendments made by Council Directive 97/11/EC (OJ 1997 L73/5).

Applying for planning permission

The process

30. Planning applications are made for site-specific development or for a material change of use of land or buildings, when such development is not given consent by a General Development Order. Planning applications are made to the LPA but the Secretary of State may subsequently take charge of the application. The LPA determines whether to grant approval, based on planning policy and consultation with interested parties, including those likely to be affected by the development in the local area, and also with other statutory consultees. An important part of the process can be pre-application discussions between developers and LPAs as well as local communities. The majority of planning applications are delegated to planning officers for decision. In all other instances, the elected Council itself takes the relevant decision.¹⁴ In reaching their decisions, LPAs must comply with any directions given by the Secretary of State. They must have regard to the views of any government departments or other public authorities whom they have been required to consult. The LPA must always have regard to the relevant policies of the development plan for the area unless material considerations indicate otherwise. Any consideration which relates to the use and development of land is capable of being a material consideration. For example, visual impacts of the development, parking problems and other effects on local amenity could be material in a particular case.

Call-ins

31. A small number of planning applications will also be 'called-in' each year and decided by the Secretary of State (ie overriding the normal LPA process).¹⁵ These applications are among the most complex and controversial¹⁶ and will usually be considered at a public inquiry. The Secretary of State will take a decision, following the report and recommendations of a planning inspector.
32. The Secretary of State's approach to call-in is as follows:¹⁷ to be very selective about calling in planning applications; and only to take this step if planning issues of more than local importance are involved. Such cases might include, for example, those which, in the Secretary of State's opinion:
- (a) might conflict with national policies on important matters;
 - (b) could have significant effects beyond their immediate locality, give rise to substantial regional or national controversy, raise significant architectural and urban design issues; or
 - (c) might involve the interests of national security or of foreign governments.
- However, each case would continue to be considered on its individual merits.
33. BAA told us that it was most likely that a significant airport development would be called-in and pointed out that all major developments at their airports had been called-in. However, the Planning Inspectorate was of the view that airport proposals

¹⁴Unless the application is 'called-in' by the Secretary of State (see paragraph 31).

¹⁵Section 76A, TCPA 90 (Major Infrastructure Projects); section 77, TCPA 90 (general power). Neither section is yet in force as regards Wales.

¹⁶For reasons such as: planning issues more than local importance, proposals may conflict with national policies or have wide implications.

¹⁷*Hansard (Commons)* 16 June 1999, Column 138.

consistent with the White Paper¹⁸ and likely to be approved by the relevant LPA would be less likely to be called in. We also note that the expansion of Coventry Airport, which involved the building of a new terminal, was not called in.

The decision

34. LPAs and planning inspectors must weigh up the considerations on the land use merits of the proposal to reach a balanced decision in the public interest. Relevant policies in the development plans may be outweighed by other 'material considerations'. The LPA must take into account any representations received from interested third parties within a statutory period.
35. The decision of the LPA may take one of three forms:
 - (a) it may grant permission unconditionally;
 - (b) it may grant permission subject to such conditions as it thinks fit; or
 - (c) it may refuse permission.
36. If the LPA refuses planning permission or imposes conditions, it must state clearly and precisely its full reasons in the notice of its decision.¹⁹

Conditional permission

37. TCPA 90 allows an LPA to attach to a grant of planning permission such conditions 'as they think fit'. General guidance is given in *Circular 11/95: Use of conditions in planning permission (July 1995)* and in various PPG and PPSs. Conditions should be necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects. Within these limits, however, the LPA has a wide discretion and, in particular, it may attach conditions:
 - (a) regulating the development or use of any land under the control of the applicant (whether or not it is the land in respect of which the application has been made) provided the condition is reasonably related to the permitted development; and
 - (b) granting permission for a limited period of time so that any permitted works have to be removed at the end of a certain period of time.
38. Conditional permission is different from a planning obligation agreed under section 106 (which is dealt with in detail below).
39. Approvals for airport developments are usually subject to planning conditions, some of which can impose limits on the growth of the airports. Of particular note are the following:
 - (a) the approval of the T5 development was subject to an annual limit on ATMs of 480,000; and
 - (b) BAA's application for increase in the capacity of Stansted airport to 25 mppa was approved with conditions by Uttlesford District Council in May 2003. Two key conditions were: an annual passenger throughput limit of 25 million and an

¹⁸See paragraphs 125 to 162 for a description of the White Paper.

¹⁹Town and Country Planning (General Development Procedure) Order, Article 22.

annual ATM limit of 241,000. On 8 October 2008 the relevant Secretaries of State gave consent (on appeal from the refusal of the LPA) to vary the conditions and allow the ATM limit to be increased to 264,000 ATMs and the passenger limit to be increased to 35 mppa. Planning permissions are time limited. TCPA 90²⁰ formerly provided that each planning permission must be implemented within five years. However, as from 24 August 2005, this has been amended to three years, unless a longer or shorter period is agreed and justified.

Appeal against a planning decision

40. LPA decisions that refuse planning permission, grant it conditionally or are not determined within a given period may be appealed to the Secretary of State. Appeals can be dealt with by written representations, hearings or inquiries. If parties agree, the appeal can be dealt with by written representations, although very few (if any) appeals relating to airports are dealt with in this way. However, at present, parties can invoke a statutory right to be heard and, should this happen, the appeal will be dealt with by an informal hearing or an inquiry, depending on the complexity or nature of the case.
41. In practice, the decision in the vast majority of planning appeals is now taken by planning inspectors on behalf of the Secretary of State, although she has the power to make the decision herself in any specific instance. This will be done in cases of exceptional importance or unusual difficulty. There are also a few types of appeal where inspectors do not have the authority to determine the appeal and it must, however minor, be referred to the Secretary of State for decision. Each Planning Inspector must exercise independent judgement and must not be subject to improper influence.
42. The Secretary of State or Planning Inspector's decision is final except for the possibility of challenge under section 288 of TCPA 90 which enables an application to be made to the High Court on the grounds either that the decision was outside the powers given by the planning legislation or that some procedural requirement had not been complied with. For example, an appeal to the High Court could be made on the basis that the Inspector or the Secretary of State had taken into account considerations not relevant to planning, had imposed or upheld an improper condition, or there had been some breach of the rules of natural justice in handling the appeal.

Agreements

Introduction

43. Developers may choose to enter into agreements or undertakings with an LPA ('planning obligations') in order to ensure that planning permission will be granted. Developers can also choose to enter into such obligations unilaterally.

The law

44. Section 106²¹ (formerly section 52 of the TCPA 1971) enables a person who has an interest in land in the area of the LPA to agree or undertake to restrict development

²⁰Section 91. Where outline planning permission has been granted, development must be begun within two years of final approval of reserved matters (section 92).

²¹Sections 106A and 106B TCPA 90 were added by section 12, TCPA 1991, to amend the way that such planning obligations can be modified or discharged. All these sections relating to planning obligations have been prospectively repealed by the PCPA 2004, as from a day still to be appointed.

of, or use of, the land; require operations or activities to be carried out in, on, under or over the land; require the land to be used in any specified way; or make payment to the LPA, either in a single sum or periodically.

45. Such an obligation is called 'planning obligation' to reflect the fact that the obligation²² may be created by agreement or by the person with the interest in the land making a unilateral undertaking.

What is permissible under section 106?

46. Planning obligations are entered into voluntarily by the parties and so are outside the general system of planning control. This may be attractive to the parties as it means that controls over development of land can be achieved by the LPA which are outside the LPA's power to impose planning conditions. Under such agreements a developer may have planning obligations:

- (a) restricting the development or use of the land in any specified way;
- (b) requiring specified operations or activities to be carried out in, on, under or over the land;
- (c) requiring the land to be used in any specified way; or
- (d) requiring a sum or sums to be paid to the authority on a specified date or dates or periodically.

47. Circular 05/05 Planning Obligations²³ emphasizes that, if there is a choice between imposing a planning condition or entering into an obligation, the imposition of a condition is to be preferred because it allows the developer the opportunity to appeal to the Secretary of State. The Circular also sets out a series of tests that must be met by all LPAs when seeking planning obligations. A planning obligation must be:

- (a) relevant to planning;
- (b) necessary to make the proposed development acceptable in planning terms;
- (c) directly related to the proposed development;
- (d) fairly and reasonably related in scale and kind to the proposed development; and
- (e) reasonable in all other respects.

48. Circular 05/05 retains the policy tests from the previous circular but places a greater emphasis on the requirement for the obligation to be necessary in order to make the development acceptable in planning terms.²⁴ The use of planning obligations must

²²Circular 05/05 encourages the use of unilateral obligation where it is possible for the developer to ascertain in advance the likely requirement of the local planning authority. This seems likely to be increasingly the case where LPAs set out detailed policies as part of their LDF. Developers are encouraged to submit unilateral undertaking alongside their planning applications in the interests of speed.

²³Replacing an earlier Circular 1/97.

²⁴Telling & Duxbury, p299, paragraphs B8 and B9 of Circular 05/05, state:

As summarized above, it will in general be reasonable to seek, or take account of, a planning obligation if what is sought or offered is necessary from a planning point of view, ie in order to bring a development in line with the objectives of sustainable development as articulated through the relevant local, regional or national planning policies. Development plan policies are therefore a crucial pre-determinant in justifying the seeking of any planning obligations since they set out the matters which, following consultation with potential developers, the public and other bodies, are agreed to be essential in order for development to proceed. Obligations must also be so directly related to proposed

be governed by the fundamental principle that planning permission may not be bought or sold. Unrelated benefits should not be allowed to determine the grant of permission for unacceptable development, nor should acceptable development be refused permission because the applicant is unable, or unwilling, to offer unrelated benefits. Circular 05/05 does not set out appropriate uses as this is a matter for local authorities to decide through its development planning process, for example by including general planning obligation policies in the new-style development plan documents.

49. Section 106 agreements feature heavily in airport planning applications and are often critical to the success of the application. In particular, MAG told us that offering and negotiating appropriate section 106 obligations with the relevant authorities as part of its consultation process and prior to the beginning of the planning inquiry into the proposed second runway (Runway 2) at Manchester Airport had contributed significantly to the success and expeditious conclusion of its planning application. Section 106 agreements are often used to secure necessary payments to surface access infrastructure or to set out detailed and complex obligations which would be too detailed for conditions and which impose particular obligations on the parties to the agreements. Examples might include obligations relating to the regulation of energy, waste and water in new developments.
50. We did not attempt to carry out a full review of all section 106 agreements relating to airport developments, as this would not have been practicable within the timescales of the inquiry. In order to form a view on the nature of section 106 agreements, we have reviewed BAA's own agreements and the summary of the environmental agreement signed by MAG and the relevant councils in relation to the Runway 2 inquiry. We summarize BAA's agreements²⁵ in Table 1.

developments that the development ought not to be permitted without them—for example, there should be a functional or geographical link between the development and the item being provided as part of the developer's contribution. Within these categories of acceptable obligations, what is sought must also be fairly and reasonably related in scale and kind to the proposed development and reasonable in all other respects. For example, developers may reasonably be expected to pay for or contribute to the cost of all, or that part of, additional infrastructure provision which would not have been necessary but for their development. The effect of the infrastructure investment may be to confer some wider benefit on the community but payments should be directly related in scale to the impact which the proposed development will make. Planning obligations should not be used solely to resolve existing deficiencies in infrastructure provision or to secure contributions to the achievement of wider planning objectives that are not necessary to allow consent to be given for a particular development.

²⁵BAA is also currently negotiating an agreement in relation to the runway extension at Aberdeen and has given two unilateral undertakings as part of the G1 inquiry.

TABLE 1 **BAA's section 106 agreements**

<i>Airport</i>	<i>Year</i>	<i>Development</i>	<i>Key aspects</i>
Heathrow	2007	Heathrow East Terminal	Commitments relating to surface access, the local labour strategy, reduction in CO2 emissions and the permanent closure of Terminal 1 following the full opening of HET. Payment of £25,000 to the Air Quality Action Plan.
Heathrow	2006	N3 car park	Payment of £25,000 to the Heathrow Air Quality Action Plan; provision of public open space; restoration and highways work; various studies relating to surface access.
Gatwick	2001	Sustainable development of the airport to 40 mppa within the boundaries by 2008	36 BAA obligations relating to surface access, air quality, waste management, energy, air and ground noise, landscaping, the establishment of a community trust and payments thereto, the establishment of an airport employment forum, and monitoring and reporting. Obligations by West Sussex County Council and Crawley Borough Council. The agreement determines on 31 March 2009, with negotiations on the possible extension of the agreement starting no later than 31 March 2006. The agreement was extended on 15 December 2008.
Stansted	2003	Extension of passenger terminal and other investments to support a more effective use of the runway and growth of the airport to 25 mppa	Various environmental obligations relating to air and ground noise, air quality, nature conservation, landscaping, the payment of £350,000 to initiatives to support training and employment initiatives, the payment of £2.2 million for affordable housing, design and construction, waste management and energy efficiency and surface access—in particular, rail infrastructure and train capacity, bus and coach station and passenger pick-up and parking.
Stansted	2004	Extension of passenger terminal and other investments to support a more effective use of the runway	Limit ATMs to 241,000 and passenger traffic to 25 mppa until the opening of the terminal extension. The limit was increased to 264,000 ATMs and 35 mppa on 8 October 2008.
Southampton	1991	Original airport development	Operational restrictions and limits on the hours of operation of the airport.
Southampton	1992	Resurfacing of runway and extension of terminal	Prevents the extension of realignment of the runway for an unlimited period of time. Restrictions on night-time flying; on the type of aircraft that can use the airport; consultation with the local authority on aircraft routing.
Glasgow*	2003	Surface access development	Promotion of and compliance with the local transport plan (The Green Plan).
Aberdeen*	2005	24-hour operation of the airport	Reduction of noise at source and annual ambient noise survey.

Source: BAA.

*Under Scottish law, such agreements are referred to as section 75 agreements.

51. The section 106 obligations offered by MAG in relation to Runway 2 similarly focused on mitigating the environmental impact of the development and covered the following topics: community relations, noise control, night flying, environmental works, highway improvements, public transport initiatives and social policy. In addition, the airport operator committed itself not to consider a third runway until at least 2011; to control the noise impact of the airport until at least 2011; and actively to oppose inappropriate development in Cheshire outside the operational area, other than that related to the technical efficiency or amenity of the airport.

Section 52 agreements

52. The precursor to section 106 agreements was agreements regulating development or use of land as authorized by section 52 of the TCPA 1971. This provision was couched in similar terms to section 106, but was narrower in scope and lacked the power given by section 106(5) for the LPA to enforce by an injunction any restriction or requirement imposed by the agreement. Section 52 permitted the restriction or regulation of the development or use of the land either permanently or during such period as might be prescribed by the agreement. Such an agreement could also contain such incidental and consequential provisions (including provisions of a financial character) as appeared to the local planning authority to be necessary or expedient for the purposes of the agreement.
53. In 1979, the then British Airports Authority (now BAA) signed an agreement with West Sussex County Council (the Council) under which it undertook not to construct a second runway at or in the vicinity of Gatwick before 2019 (the 1979 Agreement) in order to obtain planning permission for application CR/125/79.²⁶ This agreement also prohibits BAA from using the airport's emergency runway or any new emergency runway, should one be built, for normal operation. In return, the Council agreed to agree application CR/125/79 and not to oppose application CR/127/79 (outline application for permission for an airport passenger terminal complex and associated access) which, together with application CR/126/79 (application for permission for the provision of roads etc to enable the area to be developed for aircraft maintenance and parking cargo handling and other ancillary facilities), had been called-in by the Secretary of State. The Agreement states that the concern of the Council is 'to establish all possible safeguards against the possibility that the development of the second terminal ... would either be advanced as a justification or ultimately lead to a demand for a second operational runway at Gatwick airport'. In other words, the Council had, by a section 52 agreement, secured a 40-year-long prohibition on the development of a second runway at Gatwick, which was something it could not necessarily have secured under the planning system (because the relevant decision might well have been taken by the Secretary of State).²⁷
54. BAA made—in September 1999, and remaining in force until 31 December 2018—a Unilateral Statement of Intent, one of the provisions of which was to confirm that the 1979 Agreement was 'unaffected by this Statement of Intent'. The local community understood this to mean that BAA would support the agreement for its duration.

Other types of restrictions on airport developments

55. On 31 July 1952, a noise mitigation measure commonly known as the Cranford Agreement was put in place in relation to Heathrow Airport. The Cranford Agreement is a Ministerially-approved undertaking by a senior official, given at a meeting of the Cranford Residents' and District Amenities Association. The undertaking was a statement of best endeavour that, as far as practicable, the northern runway would not be used for landings or take-offs to the east. On 15 January 2009, the Government announced its intention to end this agreement.

²⁶The Recitals to the Agreement state that application CR/125/79 was an 'Application for permission for the widening of the existing main taxiway, construction of taxiway entrances and exits, the installation of associated runway lighting and repositioning of certain facilities in order to provide an emergency runway'.

²⁷Although such a long restrictive covenant may appear to be anti-competitive, section 106 planning obligations are expressly excluded from the Chapter I prohibition (agreements etc preventing, restricting or distorting competition) by section 3(1)(c) of, and Schedule 3, paragraph 1(1) to, the Competition Act 1998.

56. Stansted Airport is unique among UK airports in having been the subject of a passenger air transport movement (PATM) limit imposed and regulated by Parliamentary approval. The imposition of a PATM limit at Stansted had been supported by the 1985 Airports Policy White Paper²⁸ as 'a means of controlling the rate of expansion at Stansted in the light of developments in the London system as a whole'. This was enacted by section 32 of the Act (ie the Airports Act 1986). PATM limits were set by Order in 1987, 1996 and 1999. The latest limit of 185,000 PATMs was revoked by Parliament in 2004:²⁹ the annual ATM limit of 241,000 imposed by Uttlesford District Council in May 2003 as a condition of planning permission for an increase in capacity to 25 mppa was wider than the statutory limit and the Government had taken the view, expressed in the 2003 White Paper, that it was 'preferable for controls of this kind to be agreed locally'.³⁰

Modification and discharge of planning conditions and obligations

57. Section 73 of the TCPA provides for applications for planning permission to develop land without complying with conditions previously imposed on a planning permission. The local planning authority can grant such permission unconditionally or subject to different conditions, or they can refuse the application if they decide the original condition(s) should continue. In addition, the developer can seek the opportunity to have the planning conditions varied or removed by an application or appeal under Part III of the Act, if they are, or become, inappropriate or too onerous. Such applications are decided in the normal way, starting with the policies of the development plan.
58. A section 106 planning obligation may be modified or discharged at any time by agreement with the LPA, or on application to the LPA concerned after five years. Where a planning authority fails to give notice of its determination of an application for modification or discharge within the period prescribed by the Secretary of State, or refuses such an application, the applicant may appeal to the Secretary of State.³¹ The procedures relating to modifications of section 106 planning obligations and appeals are set out in sections 106A and 106B of TCPA 90.
59. Statistics in Table 2 show that of the 35 appeal decisions made by the Inspectorate over the last seven years, 13 (or 37 per cent of decisions) were allowed.

²⁸This paper is further discussed in paragraphs 108 to 113.

²⁹By the Stansted Airport Aircraft Movement Limit (Revocation) Order 2004 (SI 2004/1946).

³⁰The Regulatory Impact Assessment for the Revocation Order states that as the relevant planning condition does not come into effect until completion of an extension to the existing terminal (which as at the date of the Revocation Order had not been started), BAA agreed to enter into a unilateral section 106 planning obligation limiting ATMs at Stansted to 241,000 a year until such time as either the planning condition takes effect or further planning permission for an ATM in excess of 241,000 has been granted or agreed by the LPA and the airport operator.

³¹Regulation 8 of The Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992 (SI 1992 No 2832) transferred to inspectors decisions on appeals if an application to modify/discharge a section 106 obligation is refused or not determined.

TABLE 2 Section 106 appeal decisions, 2001 to 2008

<i>Year of decision</i>	<i>Number allowed</i>	<i>Number dismissed</i>	<i>Total</i>
2001	3	3	6
2002	2	5	7
2003	1	1	2
2004	3	2	5
2005	2	2	4
2006	0	1	1
2007	2	5	7
2008	0	3	3
Total	13	22	35

Source: Planning Inspectorate.

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60. We note that where it may be possible to overcome a planning objection to a development proposal equally well by imposing a condition on the planning permission or by entering into a planning obligation under section 106 of the Act, the Secretaries of State consider that imposing a condition is preferable because it enables the developer to appeal to the Secretary of State regarding the imposition of the condition (and the enforcement of conditions is more straightforward).
61. Section 52 of the TCPA 1971 did not have the specific provisions introduced by section 106 regarding modification and discharge of planning obligations or section 106B relating to appeals. Section 52 agreements could only be amended or discharged by agreement or in accordance with the general power to discharge or modify restrictive covenants affecting land. Under section 84 of the Law of Property Act 1925, power is given to the Lands Tribunal to discharge or modify section 52 agreements on being satisfied:
- (a) that by reason of changes in the character of the property or the neighbourhood or other circumstances of the case which [the Lands Tribunal] may deem material, the restriction ought to be deemed obsolete, or
 - (b) that [in a case falling within subsection (1A) below] the continued existence thereof would impede [some reasonable user] of the land for public or private purposes ... or, as the case may be, would unless modified so impede such user; or
 - (c) that the persons of full age and capacity for the time being or from time to time entitled to the benefit of the restriction, whether in respect of estates in fee simple or any lesser estates or interests in the property to which the benefit of the restriction is annexed, have agreed, either expressly or by implication, by their acts or omissions, to the same being discharged or modified; or
 - (d) that the proposed discharge or modification will not injure the persons entitled to the benefit of the restriction.
62. The ways in which a section 52 agreement can be modified or discharged were conveniently summarized by Mr Justice Maurice Kay, in the Medway Council challenge to the 2002 consultation on the Air Transport White Paper, as follows.³²

³²R (on the application of Medway Council and others) v Secretary of State for Transport [2002] EWHC (Admin) 2516 (Maurice Kay J).

As a matter of law there are three ways in which the 1979 Agreement [between BAA and Gatwick Airport] could be overturned:

- (a) By the parties themselves, namely West Sussex County Council and BAA, on a consensual basis;
- (b) By BAA applying to the Lands Tribunal pursuant to section 84 of the Law of Property Act 1925; or
- (c) By legislation pursuant to a hybrid bill.

Current reform—planning contributions

- 63. The Government announced at the pre-budget report in October 2007 that it would legislate for a new planning charge. Part 11 of the Planning Act provides for the Secretary of State to make regulations empowering (but not requiring) ‘charging authorities’ (in general, local planning authorities) to charge a Community Infrastructure Levy (CIL) on new developments in their area. As at the date of this report, however, the relevant provisions of the Planning Act have not been brought into effect and no regulations have been made.
- 64. Section 106 is intended to be retained as the legal underpinning for negotiated agreements between developers and local planning authorities, alongside CIL. Planning obligations (‘development consent obligations’ if the obligation relates to development consent given under the Planning Act) under section 106 will complement CIL. The use of planning obligations will continue to focus on three areas: non-financial, technical or operational matters, for which planning obligations are the only suitable tool; to deal with the site-specific impacts that developments will have on the immediate area without the mitigation of which the development ought not to be given; and to continue to secure on-site affordable housing contributions, in line with the Government’s policy on mixed communities.
- 65. The Government has stated that it will seek views on whether a statutory boundary should be drawn between what is covered by CIL and what is covered by negotiation, and that it will continue to encourage local planning authorities to use planning conditions rather than planning obligations wherever possible.

Statutory blight

- 66. Under the Compulsory Purchase Act 1965, the law provides for compensation in respect of lowering of value arising from certain indirect effects of future development (including airport development) during construction, such as noise or dust. In addition, under Part 1 of the Land Compensation Act 1973, those affected by future airport development can claim compensation for loss in the value of their property directly attributable to the operation of the development. This, however, does not apply until 12 months after the development is brought into operation, as there is a need to assess objectively the impacts of the development, both negative and positive.

The reform of the planning system for major infrastructure projects

Consultations and reviews

- 67. It has been recognized for a number of years that lengthy delays in reaching decisions on major infrastructure projects was one of the weaknesses of the planning

system.³³ In May 1999 the Department of the Environment, Transport and the Regions (DETR) published a consultation paper *Streamlining the Processing of Major Projects through the Planning System*, which was followed by the Green Paper *Planning: delivering a fundamental change*, published by the Department for Transport, Local Government and the Regions (DTLR) in December 2001. The proposals set out in these two papers were confirmed as policy in the statement *Sustainable Communities—delivering through planning*, published by the ODPM in July 2002. This statement identified the following reforms:

- (a) up-to-date statements of government policy before major infrastructure projects are considered in the planning system to help reduce inquiry time spent on debating the policy;
- (b) an improved regional framework which will assist consideration of individual projects;
- (c) improved inquiry procedures for major infrastructure projects; and
- (d) improved arrangements for compulsory purchase and compensation.

68. In 2005, the Government commissioned Kate Barker, then an external member of the Monetary Policy Committee, to consider how planning policy and procedures could better deliver economic growth and prosperity in a way that is integrated with other sustainable development goals. The Government also asked Sir Rod Eddington, the former Chief Executive Officer of BA, to examine how delivery mechanisms for transport infrastructure might be improved within the context of the Government's commitment to sustainable development. Both advisers published their findings in late 2006, which were subsequently carried forward by the Government via its Planning White Paper and Planning Bill.

Reform to planning procedures

69. The PCPA 2004 enacted the procedural changes announced by the Government in July 2002. It allows the Secretary of State to call-in any application for planning permission, and related applications, if she considers that the development to which the application relates is of national or regional importance. The Act also allows the consideration of any application referred to the Secretary of State concurrently by several inspectors, under the direction of a lead inspector.
70. Appeals and call-ins are governed by procedural rules, in some cases made by the Lord Chancellor under the Tribunals and Inquiries Act 1992, in others by the Secretary of State. In 2002 and 2005, new rules were introduced relating to inquiries into major infrastructure projects as part of the reform to speed up the process of reducing unnecessary delays. The 2002 Rules³⁴ apply to appeals for major infrastructure projects, as defined in the Schedule of the 2002 Rules. In relation to airports, these cover: the construction of airports with a basic runway length of 2,100 metres or more; the extension of any runway by more than 100 metres; construction of a new airport terminal, or the expansion of an existing terminal, which provides additional capacity for more than 5 million passengers a year; and construction of facilities which provide additional capacity for more than 100,000 tonnes of air cargo a year. Key changes introduced by these rules to speed up the inquiry process include the following provisions:

³³See, for example, *Modernising Planning*, which was published by the DETR in January 1998.

³⁴SI 2002 No 1223: The Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2002.

- (a) the provision for pre-inquiry round-table sessions as a means of agreeing facts and narrowing the extent of disagreements;
 - (b) a strict timetable agreed by the Secretary of State and which cannot be changed without his consent;
 - (c) technical advisers, ie experts on scientific and technical issues, may be appointed at the request of the inspector to assess the evidence and report to him. Mediators can also be appointed to facilitate agreement between the parties; and
 - (d) the inspector may curtail cross-examination if he considers that permitting it or allowing it to continue would put the inquiry timetable at risk.
71. The 2005 Rules³⁵ apply to major infrastructure projects which the Secretary of State thinks are of national or regional importance.³⁶ They incorporate the changes introduced by the 2002 Rules and set the procedures for inquiries to be held in concurrent sessions by a number of inspectors and provide for publicity for inspector's notes of pre-inquiry meetings and recommendations.
72. In addition, under the Town and Country Planning (General Development Procedure) (Amendment) (England) Order 2005, applicants are required to prepare an economic impact report (EIR), which includes the applicant's estimates of the overall economic impact of the development at the local, regional and national levels, and in particular estimates specific to employment, investment and economic output. The report should also separately identify the costs and benefits falling on or accruing to the local, regional or national level, as the case may be.

The Planning Act

73. In May 2007, the Government published its response to the report by Kate Barker on how land use planning could better deliver economic growth alongside other sustainable development goals, and Sir Rod Eddington's *Transport's Role in Sustaining the UK's Productivity and Competitiveness*, in the Planning White Paper. The Planning White Paper set out proposals to reform the regime for development consent for nationally significant infrastructure in the transport, energy, water and waste sectors, and other measures to change the town and country planning system. The Planning Bill will implement these proposals, if approved by Parliament.
74. The Planning Bill was introduced in the House of Commons on 27 November 2007 and received Royal Assent in November 2008 but, as at the date of this report, the main provisions have not been brought into force.
75. The focus of the Planning Act is on the creation of a new system of development consent for nationally significant infrastructure projects (NSIPs). The new system covers specific types of energy, transport, water, waste water and waste projects, which are defined in the Bill, but the Secretary of State will be able to add other types of projects, provided they are in the fields of energy, transport, water, waste water and waste.

³⁵SI 2005 No 2115: The Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005.

³⁶ie the 2005 Rules apply to call-ins, whilst the 2002 Rules continue to apply to appeals.

76. In relation to airport developments, an NSIP will concern the construction, alteration or increase of permitted use of airports in England³⁷ and will apply if development results in an increase in capacity of at least 10 million passengers or 10,000 ATMs of dedicated cargo aircraft, whether this is achieved via the construction or extension of a runway or the construction or extension of a building at the airport.
77. NPSs will be issued by the relevant Secretaries of State following consultation with the relevant local authorities and with other parties as considered appropriate by the Secretary of State. These NPSs will set out the case for NSIPs and the Infrastructure Planning Commission (IPC) must have regard to the relevant NPS when making decisions on applications.
78. The Secretary of State will have a wide discretion as to how prescriptive the policy should be. In particular, an NPS may, in relation to a specified description of development:
- (a) set out the amount, type or size of development;
 - (b) set out criteria to be applied in deciding whether a location is suitable (or potentially suitable);
 - (c) set out the relative weight to be given to specified criteria;
 - (d) identify one or more locations as suitable (or potentially suitable) or unsuitable for development;
 - (e) identify one or more statutory undertakers as appropriate persons to carry out the development; and
 - (f) set out circumstances in which it is appropriate for a specified type of action to be taken to mitigate the impact of the development.
79. An NPS must give reasons for the policy set out in the statement and the Secretary of State is required to keep NPSs under review. The Secretary of State may designate a statement as an NPS even if it was issued by the Secretary of State before the planning reform comes into force if the Secretary of State considers that it meets the standards for NPSs set out in the Act. In a written answer, the Government confirmed that it intended to publish an NPS on airports based on the White Paper.³⁸ Pre-commencement statements will be subject to the same consultation and publicity, and appraisal of sustainability requirements as new NPSs, but any sustainability appraisal of a policy statement and consultation carried out before the reform comes into force can be taken into account.
80. Judicial review of the newly designated NPSs will be possible, but only during a specified six-week period.
81. The new system is also intended to simplify the process of obtaining comprehensive development consent: developers of NSIPs will be able to submit only a single application for all development consents required under various consent regimes (whereas at the moment, developers may need to make several separate applications).
82. A major role in the new system is to be played by a new independent body to be called the Infrastructure Planning Commission. The IPC will be responsible for

³⁷However, airport policy is set at the national level and covers the whole of the UK.

³⁸Written answer: 3 February 2009, Hansard Vol 487, col 1132W.

examining applications for development consent for nationally significant infrastructure projects. The IPC will also be responsible for deciding any such application when there is in force a relevant NPS and will give consent by order.

83. The Secretary of State will be responsible for determining an application for development consent, based on recommendations from the IPC, where no NPS covering the relevant type of infrastructure is in place.
84. The Secretary of State will be able to direct that an application made to the relevant authority for consent should be referred to the IPC, provided the project is within one of the fields defined in paragraph 75, is in England and is considered by the Secretary of State to be of national significance. This may mean that smaller airport projects than those highlighted in paragraph 76 may be considered by the IPC, although it is unclear to us how the Secretary of State will exercise these powers in practice.
85. Prior to submitting an application, the applicant must consult the relevant local authorities, persons with rights over the land affected by the proposed development and other prescribed persons. The applicant also has a duty to consult the local community, ie those living in the vicinity of the land affected by the proposed development, must publicize the proposed application and must have regard to any relevant responses. The duration of the consultation period must be at least 28 days.
86. When the IPC receives an application for an order granting development consent, it must decide whether to accept an application for development consent. When doing so, the IPC needs to have regard, inter alia, to any adequacy-of-consultation representation received by it from a local authority consultee (ie whether the applicant complied, in relation to that application, with its duties to consult).
87. The IPC will appoint either a panel or a single commissioner for the consideration of a given application. The IPC will consider written representations and may decide to receive oral representations. The IPC may disregard any representations made if they are frivolous; relate to the merits of policy set out in an NPS; or relate to compensation for compulsory acquisition of land, as this is a matter for the Lands Tribunal.
88. In deciding the application, the IPC must have regard to:
 - (a) any relevant NPS;
 - (b) any matters prescribed in relation to development of that description; and
 - (c) any other matters which the IPC considers are both important and relevant to its decision.
89. The IPC must decide the application in accordance with any relevant NPS, except to the extent that:
 - (a) doing so would put the UK in breach of any of its international obligations;
 - (b) doing so would put the IPC in breach of any of its statutory duties;
 - (c) doing so would be in breach of any legislation;
 - (d) the adverse impacts of the proposed development would outweigh its benefits; and

- (e) if any condition prescribed for deciding an application otherwise than in accordance with an NPS is met.
90. At the end of its consideration of the application, the IPC must either make an order granting consent (not only for the development where consent is required but also for development which is associated with that development) or refuse it.
91. The Act sets a timetable for examination of applications and decisions. A deadline of six months is stipulated for carrying out the examination procedure and a further three months is allowed for the IPC to take a decision or (as the case may be) make recommendations to the Secretary of State. However, the IPC will be able to set a longer time frame if needed and can extend the deadline as many times as necessary, but must notify the Secretary of State of the reasons for doing either.
92. The examination of and/or decision on an application may be suspended by the Secretary of State if, as a result of a change in circumstances since the NPS was first published or last reviewed, the statement should be reviewed before the application is decided. The Secretary of State will intervene if the change was not anticipated and, if it had been, the relevant policy would have been materially different, would have had a material effect on the decision of the IPC, and if there is an urgent need in the national interest for the application to be decided before the NPS is reviewed. The Secretary of State may also intervene if she considers that this would be in the interests of defence or national security.
93. A judicial review of the IPC's decision is possible:
- (a) within six weeks of the publication of the Order, or, if later, the day on which reasons for granting the consent is published; or
- (b) in the case of refusal, within six weeks from the day the statement of the reasons for the refusal is published.
94. The decision by the IPC not to accept an application for an Order can also be challenged in the courts.
95. The promoter of an NSIP will be allowed to enter into agreements with local authorities, in the same way as a developer seeking planning permission under the TCPA 90. The local planning authority will be responsible for enforcing the obligation, but only the IPC or the Secretary of State will be able subsequently to modify or discharge a planning obligation entered into in this way.

Airport planning policy

Introduction

96. Government policy on planning issues related to airports is articulated in various documents:
- (a) airport policy White Papers, primarily focused on airport capacity developments; and
- (b) planning policy guidance and statements, focused on planning issues, for example transport, noise and air quality.

Policy on airport capacity development—timeline

*1940s to 1970s*³⁹

97. Heathrow was taken over from the RAF at the end of the Second World War and in the early 1950s replaced Croydon Airport as the main airport serving the South-East of the country. It was opened to civil aviation in May 1946. In 1953, the Government published a White Paper aimed at simplifying the pattern of traffic which was in future to be concentrated at Heathrow. Gatwick was selected to serve as the main alternative and as a base for seasonal flights.
98. In 1957, the Millbourn Committee considered that runway capacity would become critical by 1970 and recommended that early consideration should be given to the possibility that a further airport would need to be developed by 1970.
99. In 1963, the Interdepartmental Committee on the Third London Airport reported that a new airport would be required by 1973 and that Stansted was the best location. This was followed by the first Stansted public inquiry in 1965 to 1966 which concluded that the development of Stansted could only be justified by national necessity. The 1967 White Paper confirmed the decision to develop Stansted as a major airport. This decision was reversed a year later and the Roskill Commission was appointed to review the situation. In 1971, the Government reiterated the view that a third London airport was needed, but this time supported its location at Foulness (later called Maplin). This policy was abandoned in March 1974 and was followed by a new period of consultation.
100. The 1978 White Paper set out a policy of controlled development for the regional airports based on their categorization as gateway, regional, local and general aviation airports; and proposals for meeting demand in the South-East up to about 1990 by the provision of a fourth terminal at Heathrow and a second terminal at Gatwick. Both projects obtained planning permission and were carried out in the early 1980s.

The 1980s

101. The 1978 White Paper was followed by two Government-sponsored studies: the Advisory Committee on Airports Policy (ACAP) and a Study Group on South-East Airports (SGSEA), which identified six sites as suitable for the development of a third major airport.
102. Considering that, of these options, Stansted was prima facie the obvious choice, the Government invited the British Airports Authority to bring forward proposals for the development of Stansted and arranged a public inquiry to examine these, together with any alternative solutions. Uttlesford District Council, the planning authority for Stansted, put forward an alternative application for the construction of a fifth terminal at Heathrow.
103. In his report on these two proposals, the planning inspector, Sir Graham Eyre, recommended that:

³⁹Monopolies and Mergers Commission (MMC) 1991 report on *BAA plc*; MMC 1985 report on the *British Airports Authority*; and *Airport Management*, Vol I, No 3: The Assessment of UK Government aviation policies and their implications.

- (a) the Stansted development should be approved but also that the Government should make an unequivocal commitment that a second runway at Stansted should never be built; and
- (b) no planning permission should be granted for any development at Heathrow, but that there should be a resolute aim to commission a fifth terminal and other airport development at Heathrow by the mid-1990s to increase its capacity to 53 million passengers a year, and that the proposed limit of 275,000 ATMs at Heathrow (which had been put forward by the inspector on the Terminal 4 inquiry) should be abandoned.
104. The inspector believed that together these developments at Stansted and Heathrow would provide flexible capacity within the London airports system to meet demand from about 1990 and into this century. The inspector added that Gatwick should continue to operate as a one-runway airport.
105. The inspector also made recommendations on wider airports issues, which the Government considered in its 1985 White Paper, alongside the recommendations made on Heathrow and Stansted.
106. The 1985 White Paper considered that it had authorized sufficient investment in the regional airports and that there was now sufficient capacity in the regions to meet the expected growth in demand. It was, however, clear that additional capacity would be needed in the London airports system by the early 1990s.
107. The 1985 White Paper also identified that runway capacity would become a constraint on growth in the 1990s at both Gatwick and Heathrow, but this issue would be mitigated by the introduction of larger aircraft and higher load factors. The White Paper clearly recognized the interaction between terminal and runway capacity constraints.
108. The 1985 White Paper concluded that airport capacity should be provided, as far as possible, where demand existed and that there was no case for inhibiting traffic growth; that if a 275,000 ATM limit were imposed at Heathrow, the need for capacity elsewhere would be greater; further terminal development would be required at the London airports after the mid-1990s and the capacity of the available runways would continue to influence both the timing and location of such developments, although neither the timing nor the location of such further development could yet be decided; and where and what scale of future capacity should be provided would have to be determined in good time on the best available information.
109. The 1985 White Paper acknowledged that the Government had stated on several occasions in the past that it did not intend to provide a fifth terminal at Heathrow, but stated that it had reviewed its position in the light of the inspector's report. The Government abandoned the restriction of ATMs at Heathrow. It agreed with the inspector that there was a strong case for allowing traffic growth at Heathrow. It was not prepared to make any commitments at that stage on the question of a fifth terminal at Heathrow but would keep the matter under review. This position was linked to concerns that there might not be sufficient runway capacity to justify a fifth terminal.
110. The Government reaffirmed the policy that Gatwick should develop to its full potential as a single-runway airport and that a second runway should not be constructed, as already agreed between the BAA and West Sussex County Council. The Government unreservedly accepted the inspector's recommendation that it should make an unequivocal declaration of intent that a second main runway would not be

constructed at Stansted and was of the view that, based on forecasts, it was doubtful that such a runway would be justified in the foreseeable future. It invited BAA to identify a small area which might be required for construction of a second terminal in the future.

111. The Government considered that it was its responsibility to ensure that there were adequate airport facilities to meet demand in the South-East.⁴⁰

Post-BAA privatization and the 1990s

112. There was no formal statement of government policy in the 1990s, but the Government commissioned a number of technical studies, the aims of which were to ascertain the timing of the need for a new runway in the South-East and to make recommendations on the location of such runway.
113. The first such study was carried out by the CAA between 1988 and 1990. It concluded that, shortly after the turn of the century, new runway capacity would be needed to serve demand arising in the South-East and that a second runway at Gatwick would be preferable in terms of airline competition to development at Heathrow.
114. Following on from this advice, the Government appointed a working group representing various interests (including BAA) to identify, from its wider perspective, those airports which had worthwhile potential for providing additional runway capacity to serve the South-East.⁴¹ In its July 1993 report, the group did not make recommendations and simply highlighted the benefits and environmental problems of each option reviewed. It also concluded that the benefits to passengers could provide a case for a further runway at Heathrow or Gatwick by 2010 or, if this were not provided, at Stansted by 2015.
115. In 1995, the Government decided not to pursue any of the options reviewed by the RUCATSE group and asked BAA to carry out a feasibility study on a new option: a close parallel runway at Gatwick. In May 1996, the Transport Select Committee recommended that the Government should produce a new White Paper setting out a framework for airport policy. By 1998, the feasibility study led by BAA had not been completed and the newly-elected Government asked the company to suspend the work, pending the development of its new airport policy.

The 2000s

SERAS

116. In March 1999, the DETR commissioned a nationwide programme of studies to inform its airport policy. As part of this programme, the South East and East of England Regional Air Services Study (SERAS) was carried out, the purpose of which was to provide a better understanding of the demand for, and constraints on, airports and air service development in the South-East and East of England over the following 30 years, and to consider options for sustainable development of airports and air services. The study sought to establish whether the UK needed one or more major hub airports in the South-East and whether Heathrow should be developed further.

⁴⁰1985 Airports Policy paper, p56, paragraph 12.10.

⁴¹This became known as the RUCATSE (Runway Capacity to serve the South East) working group.

117. The starting point for the SERAS study was that nothing was ruled in or out and the study involved three stages:⁴²
- (a) Stage 0: a preliminary search for potential new sites (existing and new);
 - (b) Stage 1: the identification of (one or two) preferred options at each existing site and the new sites shortlisted in Stage 0;
 - (c) Stage 2: the intermediate appraisal of packages of site-specific options to provide a given level of capacity, as well as packages offering different levels of capacity; and
 - (d) Stage 3: detailed appraisal of a shortlist of preferred packages.
118. In Stage 0, from an initial list of 400 sites, the site of Cliffe (in Kent) was identified as the most promising option for a major new passenger airport and sites at Alconbury (Cambridgeshire) and Hullavington (Wiltshire) for a dedicated freight and low-cost airline airport.
119. Stage 1 appraised 60 options for capacity enhancement at Heathrow, Gatwick, Stansted, Luton and Cliffe against the following criteria: capacity gain, capital costs, residential property take, ecology, heritage, landscape, noise, air quality, public safety, and green belt and planning issues. These options were considered in isolation and there was no attempt to assess how they interacted with one another. BAA was required to provide technical advice on a list of broadly defined options. At the end of this review, Ministers selected 22 packages of options at the different locations for further assessment in the next stage of the study. In making their decision, Ministers attached a high weighting to the capacity gain criterion, since it was the extra capacity which would produce economic benefits, bearing in mind the scale of the forecast increase in demand for South-East airports.⁴³
120. In the last stage of the study, the consultants reviewed the benefits and negative impacts of the various options for new runway capacity, and of the various packages of those options. The consultants were also required to carry out sensitivity tests and refinements of options. Based on the consultants' report, ministers shortlisted a limited number of options for consultation.
121. The first consultation document, published on 23 July 2002, was challenged in judicial review proceedings⁴⁴ upon the basis that it did not include any option at Gatwick. In his witness statement, the DfT representative explained that the Government had decided that it would be highly undesirable as a matter of policy and principle to overturn the 1979 Agreement because (a) people should be able to rely on it; (b) to overturn it would seriously undermine efforts to create greater certainty; and (c) there was evidence that West Sussex County Council and others were opposed to the overturning of it. At a later stage in this witness statement, he added that:

In the light of the possible need to provide for a hub [airport] in the South East of three runways, Ministers decided that the option for two new runways at Gatwick should be ruled out. This was because the

⁴²It had been intended that the study would involved four stages, but following the overrun of Stage 1, Stages 2 and 3 were merged.

⁴³The selection process is described in paragraph 203 of the High Court Decision of 18 February 2005: www.bailii.org/ew/cases/EWHC/Admin/2005/20.html.

⁴⁴*R (on the application of Medway Council, Kent County Council, Essex County Council and Mead and Fossett) v Secretary of State for Transport* [2002] EWHC (Admin) 2516, [2003] JPL 583.

opening of even the first of the new runways would be delayed until 2024 or thereabouts [ie because of the 1979 Agreement].

122. The judge ruled that the decision to exclude Gatwick options from the consultation process had been irrational and/or unfair. The Secretary of State did not appeal the decision and published a new version of the consultation paper that included development options relating to Gatwick.

Airport Development Priorities for the South-East and Scotland set out in the Future of Air Transport White Paper

123. Following consultation, the Government published the White Paper in December 2003.⁴⁵ In its opening chapters, the Government clarified the purpose of this policy document: saying that the role of the Government was one of setting the policy framework, operating through the planning system. The White Paper did not itself authorize (or preclude) any particular development, but set the policies which would inform and guide the consideration of specific planning applications. The White Paper emphasized the need for decisions about the amount and location of future airport capacity so as properly to reflect environmental concerns.
124. The White Paper was intended to:
- (a) provide a clear policy framework against which airport operators, airlines, regional bodies and local authorities could plan ahead;
 - (b) give greater certainty whenever possible to those living close to airports and their flight paths;
 - (c) take a view of the long-term demand for air travel and set long-term strategy to respond to this anticipated demand, rather than addressing each separate proposal in a piecemeal and uncoordinated fashion;
 - (d) provide the approach for balancing the economic and social benefits of airport development and air travel and their environmental impact; and
 - (e) link airport development to wider transport strategy.
125. The Government reaffirmed the policy expressed in previous airport white papers that it should make the best use of existing airports before supporting the provision of additional capacity. The White Paper identified Heathrow, Gatwick, Birmingham and Edinburgh as particularly capacity constrained.

The South-East

126. The White Paper also identified that there was some spare capacity at peak hours only at Luton and, to a lesser extent, at London City Airport. The Government was of the view that two new runways would be needed over the next three decades: it would take a decade to put in place the first one. The second one would probably be built around 2015 to 2020. The Government did not support the development of a new hub airport.

⁴⁵Although the White Paper is set against broader government objectives relating to air travel, its focus is on airport development. We have only highlighted in this appendix the aspects of the White Paper which are of particular relevance to the issues of our market inquiry. In particular, guidance on voluntary blight schemes has not been reproduced here.

Stansted

127. At Stansted, more terminal capacity would allow passenger numbers to continue to grow up to 35 mppa without additional runway capacity and this would have a limited noise impact. The Government required the airport operator and the Strategic Rail Authority (SRA) to consider the impact of the development on existing and planned rail capacity. An additional runway, which the Government considered could open by 2011/12 and which would therefore be the first new runway to be built in the South-East, would provide additional capacity of up to 46 mppa. The paper also stated that the new runway would be the wide-spaced runway option presented in the consultation document.⁴⁶ The Government rejected the option of two additional runways at Stansted.
128. The Government considered that a key advantage of developing Stansted Airport was that substantial additional capacity could be provided with a lower noise impact than for other comparable options. The wide-spaced runway option presented in the SERAS consultation document would result in the loss of 100 properties.
129. The Government noted that the surface transport schemes (widening of the M25 and M11 and upgrading of the A120) announced by the Government in 2003 would support the development of the airport.
130. Additional surface access issues that needed further consideration included: increasing capacity of the West Anglia Main Line; peak capacity at Liverpool Street and Tottenham Hale; increased capacity on the M11 between the M25 and the airport; and enhanced local access.

Heathrow

131. The Government was of the view that any further development at Heathrow could only be supported if:
 - (a) it resulted in no net increase in the total area of the 57 dBA noise contour compared with summer 2002, a contour area of 127 sq km;
 - (b) compliance with EU air quality limits were to be achieved; and
 - (c) there were provision of improved public transport access.
132. The evidence of the DfT's work suggested that the mandatory air quality limit value would be exceeded in substantial areas around Heathrow. Such exceedences would not be acceptable, and would be against the law.⁴⁷ However, the DfT assessed that by 2015 to 2020, there would be a substantially better prospect of avoiding exceedences, because it would provide more time to develop improved technologies, for both aircraft and road vehicles, to tighten standards, and to achieve widespread use of the improved technologies in road and aircraft fleets.
133. On the basis of the available evidence, the Government could not be confident that air quality limits at Heathrow with the addition of a third runway would be met, even with aggressive mitigation measures. It therefore promised an urgent programme of

⁴⁶This was subsequently challenged in court and the judge ruled that the DfT should not have been so prescriptive. This is discussed in paragraphs 163 to 165.

⁴⁷See discussions on air quality policy in paragraphs 181 to 185.

action to examine the position further to see how growth might be delivered whilst meeting the conditions set out above.⁴⁸

134. The Government acknowledged BAA's case for adding a sixth terminal associated with a third runway and asked it to carry out further work on proposals for terminal capacity and an appraisal of the environmental impact of development, on the basis of which a further consultation would be required.
135. The Government reiterated the importance of considering the scope for greater utilization of the two existing runways, for example via the introduction of mixed-mode operation in peak hours and said that this too should be studied in detail, with a view to bringing forward proposals for public consultation.

Gatwick

136. The Government stated that it would only consider it appropriate to seek to overturn the 1979 Agreement between West Sussex County Council and BAA—which prevented the construction of a second runway at Gatwick before 2019—if there was demonstrably no alternative way forward.
137. It considered that there was a stronger case for the wide-spaced runway option (after 2019) at Gatwick and proposed to keep this option open.

Luton

138. The White Paper noted that Luton was subject to a planning limit of 10 mppa and handled about 7 million passengers a year. There was a case to justify expansion of Luton to the full potential of a single runway (estimated at 30 mppa and 240,000 ATMs).
139. The Government had considered two options and concluded that there was a stronger case for the option consisting of the replacement full-length runway to the south of the existing runway and on the same alignment, with the latter to be used as a taxiway. The airport operator had not favoured that option and had instead proposed to lengthen the existing runway and taxiway. The White Paper acknowledged that the airport operator's proposed single-runway solution might be a more cost-effective approach than the consultation option, and that less land outside the current boundary might be required.
140. The Government did not support a second runway at Luton, even though a close parallel runway had been proposed by the airport operator.

Smaller South-East airports

141. The Government recognized the importance of smaller airports in providing services to meet local demand and in thereby relieving pressure on the main airports, and encouraged regional and local planning frameworks to consider policies which would facilitate the delivery of growth at these airports.
142. It noted that several of the local authorities supported the growth of London City Airport to 5 mppa.

⁴⁸A study, the Project for the Sustainable Development of Heathrow, led by the DfT, was subsequently undertaken.

143. It also commented that BAA had expressed doubts that Southampton Airport could reach the capacity of 7 mppa⁴⁹ suggested in the consultation document. BAA believed that within its current boundary the airport would be more likely to grow to a capacity of between 2 and 2.5 mppa.
144. The Government did not support the development of Redhill, due to its proximity to Gatwick raising airspace problems.
145. The Government added that the potential of the other South-East/Eastern airports, such as Norwich, Southend, Lydd, Manston, Shoreham and Biggin Hill, should not be overlooked.
146. In particular, Farnborough, Biggin Hill (some concerns expressed by residents), Blackbushe, Fairoaks, Farnborough, Northolt and Southend presented potential for growth in relation to business aviation.
147. The White Paper noted that planning was also well advanced to release several Ministry of Defence London sites by moving other units to Northolt. North Weald, however, would in all likelihood be affected by developments at Stansted.
148. White Waltham, on the other hand, might offer potential capacity in the longer term for business aviation.

Scotland

149. The conclusions of the White Paper were drawn up in conjunction with the Scottish Executive (now the Scottish Government).

Edinburgh Airport

150. Demand was expected to reach about 20 mppa by 2030 and the Government believed that there was a good economic case for the phased development of the airport, involving:
 - (a) first, making full use of the existing runway through building a full-length parallel taxiway, together with a new control tower, additional terminal capacity and more aircraft stands;
 - (b) second, making more use of the current crosswind runway for departing aircraft, although this would provide only a small amount of additional runway capacity; and
 - (c) third, constructing a new parallel runway, probably around 2020, at which point the use of the crosswind runway would be terminated and the runway closed to all but taxiing traffic.
151. The analysis of potential future route development suggested that, at some stage, it might also be necessary to extend the existing runway to allow a wider range of aircraft to access Edinburgh and to facilitate direct services to a range of long-haul destinations.

⁴⁹BAA told us that the ATWP had made an erroneous reference to the airport's ability to handle up to 7 mppa within the existing boundary.

Glasgow International Airport

152. Passenger numbers were expected to double to 15 mppa by 2030.
153. The Government supported the doubling of terminal capacity and an increase in air-side facilities. It supported the safeguarding of land required for these developments, but was concerned about the potential increase in the size of the 57 dBA noise contour, as the development could affect an additional 10,000 people. In addition, the proposed increase in terminal capacity at Glasgow Airport would need to be supported by improvements to the surface transport infrastructure serving the airport. The Government asked Strathclyde Passenger Transport (SPT) to work up plans for a rail link and BAA, local authorities and SPT were invited to work up proposals for enhancing the transport corridors.
154. There was no clear case for an additional runway, as a significant proportion of traffic was for charter and long-haul flights which did not require many ATMs.

Glasgow Prestwick International Airport

155. The Government considered that Prestwick International could be handling up to 6 mppa.
156. As the Government saw no significant environmental impact associated with growth at Prestwick, it supported its development once current capacity of 3 mppa had been reached, potentially within five to ten years.

Aberdeen Airport

157. The White Paper noted that the airport had not experienced any growth in recent years due to a decline in oil-industry-related traffic, but demand was expected to rise from 2.5 mppa today to between 4 and 5 mppa by 2030.
158. There was a good case for the current airport to be developed incrementally, and possibly also a case for the extension of the current runway to accommodate a wider range of aircraft types. The White Paper asked BAA to reach a firmer view on the prospects of the airport.

Other Scottish airports

159. The growth potential of Dundee Airport was limited by the length of runway, but offered a service to London City Airport. The White Paper noted that RAF Leuchars was nearby.
160. The Government considered that Inverness had the potential to grow and that additional terminal capacity would be required, probably before 2015.

Developments since the White Paper

Judicial review of the White Paper

161. In June 2004, groups opposing the proposals of the White Paper in the South-East (these were the London Boroughs of Wandsworth and Hillingdon, Essex and Hertfordshire County Councils, Uttlesford, East Hertfordshire and North Hertfordshire District Councils, together with some individuals) won permission for a judicial review of the ATWP. Judgment was given in February 2005.

162. The claimants' main contention was that:

If issues are to be regarded as settled so that inquiry time is not to be 'wasted' by going over them, it was essential that the process whereby those issues are settled is both fair and proportionate to the level of detail that is 'settled' by the policy. Otherwise, they contend, there is a danger that the statutory procedures of environmental impact assessment followed by thorough examination of all material considerations at a public local inquiry will have been unfairly pre-empted by an inadequate decision making process for national policy.

163. The Court found that the plans of the White Paper for additional runways at Stansted and Heathrow were lawful, but added two qualifications:

(a) In relation to Stansted, support for a second runway as the first new runway in the South-East was a fair outcome of the consultation process, but the White Paper assertion that 'the new runway would be the wide-spaced runway option presented in the consultation document' was too prescriptive, as it had not been the subject of sufficient consultation, noting that the capacity advantage of the wide-spaced option over other options was not forecast to be realized within the timescales of the White Paper.

(b) In relation to Luton Airport, the White Paper unfairly conveyed the impression that Luton's proposal to extend its existing runway had been consulted upon and that it was supported in policy terms; and, since it had not been consulted upon, any decision as to whether or not it should have policy support would have to be the subject of full consultation.

Implementation of the White Paper

164. The DfT appears to have taken a proactive approach to the implementation of its airport policies.

165. In 2004, it set up the Air Transport White Paper Implementation Programme Board and an External Advisory Group (EAG) to support the delivery of the White Paper. In addition to these progress meetings and fulfilling a commitment made in the White Paper, the Government commissioned a progress report in 2006 (the White Paper Progress Report), which reported on progress made since 2003 on the range of measures set out in the White Paper.

166. The Programme Board brought together senior management from across the DfT to ensure that all areas relevant to the White Paper policies (aviation, rail, Highways Agency etc) were represented. Board members also included HM Treasury and the CAA.⁵⁰

167. The EAG comprises various stakeholders, including BAA and other airport operators, airlines⁵¹ and other business representatives, and representatives of environmental organizations. Meeting several times a year, the main purpose of the EAG is to maintain a formal channel of communication between the DfT and external stakeholders

⁵⁰Following the publication of the White Paper Progress Report, the DfT decided to expand the remit of the Programme Board to cover the whole programme of strategic projects in the Aviation Directorate's Business Plan. The name of the Board was therefore changed to the Aviation Programme Board. Membership remains broadly the same as that of the ATWP Implementation Programme Board.

⁵¹A representative of a charter airline was added to the membership following the first meeting. easyJet was invited to participate in the group but declined.

with an interest in the implementation of policies set out in the White Paper (and the White Paper Progress Report). It is kept informed of progress on delivering the White Paper programme and used as a sounding board to identify and discuss issues that impact on the programme.

168. The White Paper Progress Report updated the passenger demand forecasts included in the White Paper. After accounting for future UK airport capacity constraints, national air travel demand was forecast to grow under the central case to 465 mppa by 2030.⁵²
169. It reported that operators of Edinburgh and Birmingham airports, where new runways were supported by the White Paper, did not expect to build them until some time after 2020.
170. However, the Report noted that the additional airport capacity identified in the White Paper would not be sufficient to support all the unconstrained demand. After accounting for future UK airport capacity constraints, national air travel demand was forecast to grow under the central case to 465 million in 2030.
171. The Report indicated that a planning application for a second runway at Stansted was expected during the second half of 2007, but that the operator did not expect the new runway to be operational before 2015.
172. The Government stated its support for the development of a third runway at Heathrow, as soon as it was confident that the stringent environmental limits set in the White Paper could be met.
173. The Adding Capacity at Heathrow Airport consultation document, launched in November 2007, stated that with a third runway the airport could support up to 702,000 ATMs a year by 2030, but that analysis suggested that the noise contour and air quality limits were likely to be a constraint on traffic growth on a third runway before 2020, although this would subsequently ease as the aircraft fleet serving Heathrow would continue to get quieter and cleaner. The consultation closed on 27 February 2008.
174. On 15 January 2009 the Secretary of State for Transport announced his decision confirming policy support for adding a third runway at Heathrow with additional passenger terminal facilities and a slightly longer runway (2,200 metres operational length), but subject to an aggregate limit of 605,000 annual movements, with any increases above that being subject to review in 2020. He also announced that the Government did not support the introduction of mixed mode on the existing runways as an interim measure before a third runway.

Other relevant planning guidance

Transport

175. PPG13: *Transport*, issued in March 2001, aims to promote more sustainable transport choices for people and freight, promote accessibility to jobs, shopping, leisure and services by public transport and seeks to reduce the need to travel by car.

⁵²The Progress Report committed the Government to publish in 2007 a technical note on the DfT's passenger demand forecasts and revised UK aviation emissions forecasts. This report, which was published in November 2007, forecast a revised central case of 480 mppa by 2030. The DfT published further forecasts in January 2009, which showed a revised central case of 455 mppa by 2030.

176. In addition, the guidance promotes the widespread use of travel plans among businesses to be submitted alongside planning applications.
177. The guidance recognizes that airports may be major transport interchanges and traffic generators and that there is a need to consider the extent to which development is related to the operation of an airport and its sustainability. It notes that 'the environmental impacts of aviation proposals will always need to be very carefully considered'.
178. LPAs should consult the DfT's Airports Policy Division on draft development plan policies and proposals relating to airports and airfields. In consultation with the DfT's Airports Policy Division, LPAs should:
 - (a) identify and, where appropriate, protect sites and surface access routes, both existing and potential (including disused sites), which could help to enhance aviation infrastructure serving the regional and local area; and
 - (b) avoid development at or close to an airport or airfield which is incompatible with any existing or potential aviation operations.

Air quality

179. The Government's policy in relation to planning considerations of air quality is set out in PPS23: *Planning and Pollution Control and its supporting annex covering pollution control, air and water quality*, published in 2004. PPS23 aims to facilitate planning for good-quality, sustainable development that takes appropriate account of pollution control issues, while avoiding duplication of existing pollution control systems. The PPS and its supporting annex set out how the planning system can contribute to improvements in air quality.
180. The Air Quality Framework Directive (Council Directive 96/62/EC) sets the framework for how EU member states must monitor and report ambient levels of air pollutants. A series of four 'daughter' directives sets Europe-wide limit values or target values for 12 pollutants—sulphur dioxide, nitrogen dioxide, particulate matter, lead, carbon monoxide, benzene, ozone, polycyclic aromatic hydrocarbons, cadmium, arsenic, nickel and mercury. A new ambient air quality directive (Directive 2008/50/EC of the European Parliament and of the Council) was adopted in May 2008. This streamlines the four existing air quality daughter directives, and introduces some flexibilities or derogations in meeting limit values—potentially up to an additional five years (2015) for nitrogen dioxide and perhaps to 2011 for PM₁₀—and adds new controls on ultra-fine particles in order to protect public health better.
181. The First Air Quality Daughter Directive (Council Directive 99/30/EC) sets the target for the two air pollutants which are relevant to airport developments: nitrogen dioxide and particulate matters PM₁₀. Mandatory EU limit values came into force in 2005 for particulates, and will do so in 2010 for nitrogen dioxide under Directive 99/30/EC, subject to the remarks above.
182. The Air Quality Standards Regulations 2007 implement the air quality standards, including limit values, for these and other pollutants as set out in the above European directives. Overall responsibility for achieving the EU limit and target values lies with the Secretary of State. Local authorities have a statutory duty to work towards air quality objectives under the Air Quality (England) Regulations 2000. These objectives are those that are legally binding on the UK. The level and type of transport to and from the airport will therefore be an issue for a local authority.

183. The White Paper states that airport development could not go ahead if there was evidence that this would be likely to result in breaches of the air quality limits. It also identifies a number of measures to deal with this issue, including the need for local authorities and transport bodies working with airports to limit road traffic emissions associated with air passengers and employees, including through increased use of public transport.

Noise

184. PPG24: *Planning and Noise*, issued in July 1994, covers the planning powers of local authorities for minimizing the adverse impacts of noise. It identifies that noise can be a characteristic of development: 'Much of the development which is necessary for the creation of jobs and the construction and improvement of essential infrastructure will generate noise'. It adds: 'The planning system should not place unjustifiable obstacles in the way of such development'.
185. The note identifies that 'Noise characteristics and levels can vary substantially according to their source and type of activity ... in addition to noise from aircraft landing and take-off, noise from aerodromes is likely to include activities such as engine testing as well as ground movements'.
186. The guidance suggests that 'Local planning authorities consider carefully in each case whether proposals for new noise-sensitive developments would be incompatible with existing activities'. In addition, the note proposes that 'Local planning authorities should consider both the likely level of noise exposure at the time of the application and any increase that may reasonably be expected in the foreseeable future'.
187. The guidance note highlights the need to balance the impact of noise-sensitive development with appropriate control measures, recognizing that 'There will be circumstances when it is acceptable—or even desirable in order to meet other planning objectives—to allow noise-generating activities on land near or adjoining a noise-sensitive development'.
188. There is no absolute measure of annoyance from noise, nor can there be given the subjectivity of individual reactions. However, the CAA's United Kingdom Aircraft Noise Index Study 1985 informed the Government view that, for daytime aircraft noise, the level of 57dB(A) Leq (16 hours) represents the onset of community annoyance.⁵³ The Equivalent Continuous Noise Index (Leq) is generally agreed to provide a convenient and useful indicator of the comparative 'annoyance value' of different sets of noise events.⁵⁴
189. The White Paper states that measures to control noise will be primarily set at the local level. It draws attention to the national and European framework which in particular includes:
- (a) implementing the EU Directive 2002/49/EC,⁵⁵ which requires periodic (every five years) noise mapping at many airports from 2007 to identify day and night noise problems, and from 2008, action plans to deal with them;
 - (b) retaining and, where necessary, strengthening the current regulations by central Government of noise at Heathrow, Gatwick and Stansted airports;

⁵³Leq = equivalent continuous noise level; 16 hours daytime per day is used in the UK.

⁵⁴The DfT, *Appraisal framework for airports in South East and East of England*.

⁵⁵The Directive requires the use of a variant of Leq which incorporates events in the evening and night.

- (c) the consideration by central Government of exercising similar powers at other airports if there is evidence that a major noise problem is not being dealt with adequately through local controls; preference, however, remains for local solutions to local problems; and
 - (d) airport master plans would be required to describe measures airport operators intend to apply to deal with local noise problems.
- 190. The White Paper also announced the Government's intention to develop new legislation to strengthen and clarify noise control powers. This was taken forward by the Government and forms part of the Civil Aviation Act 2006 that came into force on 1 March 2007.
- 191. Although recognizing that airport operators already operate voluntary schemes to mitigate the impacts of noise on local communities, the ATWP set out measures that the Government would expect airport operators to adopt with immediate effect:
 - (a) households subject to levels of noise of 69 dBA Leq or more to be offered assistance with the cost of relocating; and
 - (b) airport operators to offer acoustic insulation to noise-sensitive buildings (eg schools, hospitals), exposed to levels of noise of 63 dBA Leq or more.
- 192. In addition, the following requirements were set in relation to future airport growth:
 - (a) The airport operator must offer to purchase properties where there is both a level of noise of at least 69 dBA Leq and where the increase in noise level is at least 3 dBA Leq.
 - (b) The airport operator must offer acoustic insulation for properties where there is both a level of noise of at least 63 dBA Leq and where the increase in noise level is at least 3 dBA Leq.
- 193. Noise contours from 2002 would be used as a base when applying these measures related to further growth. The ATWP said that noise contours were to be produced in 2007 for 2006 and at least once every five years thereafter.

Sustainable development and climate change

- 194. PPS1: *Delivering Sustainable Development* affirms that sustainable development is the core principle underpinning planning and sets out key principles which should be applied to ensure that development plans and decisions on planning applications contribute to the delivery of sustainable development. This includes ensuring that development plans address the causes and potential impacts of climate change, for example by encouraging patterns of development which reduce the need to travel by private car. The supplement on Climate Change published in December 2007 complements PPS1 by setting out how planning should contribute to reducing emissions and stabilizing climate change and take into account the unavoidable consequences.

Other relevant guidance

- 195. Other guidance documents produced by CLG are also of relevance to airport development, in particular PPS7: *Sustainable Development in Rural Areas*, PPG9: *Nature Conservation* and PPG15: *Planning and the Historic Environment*. The CAA's Guidance on the Application of the Airspace Change Process (CAP 725) includes

environmental assessments that airspace change sponsors (including airport operators) should submit when consulting on airspace changes.

196. Also likely to be of major importance in the reformed planning system is the proposed replacement of PPG4 (1992) by a new PPS4: *Planning for Sustainable Development*. PPS4 will create a new framework for local and regional planning decision-makers to help them respond flexibly and positively to economic opportunity and the need for employment growth, regeneration and prosperity while continuing to address climate change and other environmental issues. At the date of publishing this report, there has been consultation on a draft of PPS4, but a new policy statement has not been issued.