

Dermot Cox

Future Development of Air Transport – South East
Department for Transport
Room 1/28c
FREEPOST LON 17806
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Dear Sirs,

My response to the “Future Development of Air Transport” consultation is that the Government’s proposal for a third runway at Heathrow is an abuse of its powers and anti-democratic.

I was chairman of the Heathrow Association for the Control of Aircraft Noise (HACAN) during the Terminal 5 public inquiry. Our association made a full contribution to several sections of the inquiry. This was famously the longest public inquiry into a planning application in British history. It was an example of democracy in action. While we were disappointed in the final recommendation made by the Inspector Mr Roy Vandermeer QC, and believe he made the wrong decision, we do respect the thoroughness, fairness and balance that he brought to the inquiry itself and his final report.

Mr Vandermeer’s recommendation of approval for Terminal 5 was explicitly presented as part of package of conditions, many of which related to the prime concern of our association, the existing noise pollution from Heathrow and its potential future increase should the airport be permitted to expand.

In dealing with the question of noise, Mr Vandermeer accepted the arguments put forward by our association and others that the noise measurement and control system used by the Government cannot be relied upon. (Mr Vandermeer was assisted by a specialist inspector for the noise topic, Mrs Wendy Burden.) He agreed that assessing noise impacts by counting the number of people within the LAeq_{16hour} 57 dB(A) contour can give misleading indications of the current and projected disturbance experienced by real people. The reason for this is that the LAeq contour system is insensitive to the number of flights, while human beings are highly sensitive to the number of flights. His considered views on this issue are shown in the following quotations from his report:

“The measure of the noise climate used by the Government to test the success of its policy is the LAeq_{16hour} index. This was the subject of severe criticism much of which I consider to be well founded.... More significantly, I believe that it fails to give adequate weight to the number of aircraft movements. Many local residents are unconvinced by the Government’s argument that the noise climate has improved. They believe that it has become worse over the last 5-10 years and this appears to be a reflection of the substantial increase in movements over that period.” (para 34.4.42)

“It is however necessary to look beyond the picture painted by the LAeq_{16hour} 57 dB(A) contour as the Department accepted. On the basis of other considerations, primarily the increase in the number of aircraft movements, I conclude that Terminal 5 would cause substantial harm to the noise climate. This conclusion is based on an expectation that the number of aircraft movements would not exceed 480,000.” (para 21.6.3)

Mr Vandermeer drew the conclusion that the only way that the noise impact from expanding Heathrow through a fifth terminal could be kept within a reasonable limit in terms of the burden on affected citizens was to impose a limit of 480,000 a year on flight numbers as a condition for granting approval:

“While I consider that the noise impact of 480,000 movements could be made acceptable, I am firmly of the view that any such further increase in flights, however it might be achieved, would rapidly become intolerable. The proper application of the precautionary principle demands the imposition of a planning condition to prevent this and to restore public confidence that Heathrow would be properly controlled. I do not believe that the Government should repeat the mistake of an earlier Government.” (para 32.5.40)

Mr Vandermeer was well aware of the history of broken promises by governments in relation to Heathrow. On behalf of HACAN, I had made clear that we could have no confidence that the Government would honour any environmental condition it imposed for permitting expansion. We know the routine: inquiry is held; permission is granted subject to conditions; work begins on expansion; government tears up condition; next expansion proposal is submitted. Mr Vandermeer felt it was important that the Government should win back the trust of citizens.

“Nobody hearing evidence from people living around Heathrow as I have done could fail to appreciate the profound feeling that noise generated by aircraft using the airport has not been controlled in any effective manner. There was particular anger at the Government’s failure to impose the limit on aircraft movements proposed by Sir Iain Glidewell which had permitted the subsequent dramatic increase in the number of movements. This led HACAN to conclude that no useful purpose would be served by proposing any planning conditions or obligations. Such a situation does not reflect well on our planning system.” (para 32.5.30)

Mr Vandermeer did not recommend that a further condition preventing the construction of a third runway be attached to the approval for Terminal 5. However, the limit on flight numbers effectively precludes a third runway since such a runway would naturally generate a large increase in flights. Mr Vandermeer was unambiguous in his own conclusion that a third runway at Heathrow would not be acceptable. The closing paragraph of his overall conclusion looks forward to the Government review of future air transport policy and states his belief that this should not include any proposal for expansion at Heathrow beyond Terminal 5:

“It was not the role of this inquiry to set out long-term aviation policies for the South East. I warmly welcome the Government’s decision to bring forward such policies and hope that these would ensure that future decisions on major airport development are not influenced by short-term expedience. In the context of the Government’s review, it should be assumed that no further major development would take place at Heathrow after Terminal 5. Terminal 5 itself should be accepted only if it is substantially subject to the controls I have set out and on the understanding that it is the means by which time would be provided for a new strategy to be identified.” (para 34.5.31)

When the Secretary of State for Transport announced his decision on Terminal 5 in the House of Commons, simultaneously with publication of Mr Vandermeer’s report, on 20th November 2001 he gave permission for the terminal subject to the condition of the limit on flight numbers recommended by Mr Vandermeer. He agreed with the Inspector that this limit was essential to provide protection for the public against aircraft noise:

“The inspector weighs all the benefits and costs very carefully. He says, and I use his words, that he has come to the clear conclusion that the benefits of terminal 5 would substantially outweigh the environmental impact, as long as its effects are properly controlled. I agree with him that terminal 5 should go ahead, but subject to conditions. I shall outline the key conditions to the House.

First, a limit on the number of flights each year has been set at 480,000. The limit has been imposed on a precautionary basis, and because of the inspector’s concerns about noise. It was recommended by the inspector himself....” (Hansard 20 Nov 2001: Column 178)

“I have decided that giving the go-ahead for a fifth terminal is essential if we are to maintain Heathrow as one of the world’s leading airports and bring benefits to the British economy. I have no doubt that the national interest requires the project to proceed, as long as we establish measures to safeguard local people and their communities. I believe my decision achieves that, and I commend it to the House.” (Hansard 20 Nov 2001: Column 179)

During the questions that followed this announcement, Mr Tom Brake MP put several simple but fundamental questions to the Secretary of State to explore how secure were the conditions for approval of Terminal 5, including:

“Can the Secretary of State rule out a third runway, in a way that would be legally enforceable? Can he confirm that the figure of 480,000 flights a year is a permanent and legally enforceable limit?” (Hansard 20 Nov 2001: Column 183)

Mr Byers replied:

“This is a difficult issue, especially for people who live nearby, and we are trying to strike a balance between the national interest and the need to safeguard the quality of life of people living nearby. The decision letter and the inspector’s recommendations strike that balance, which is why I have agreed with majority of the recommendations made. We will address the issue of a third runway in studies being carried out on the needs of the south-east of England and in the aviation White Paper.

With regard to the limit of 480,000 flight movements, I was very aware of the concern expressed about terminal 4. Planning conditions were not laid down with regard to the number of flights. The view was expressed that there should be a limit on the number of flights but that was not part of the planning decision. Importantly for people living nearby, we are making it a planning condition that there will be a limit of 480,000 flight movements a year. That means that the limit cannot be changed, even by my successor, unless a fresh planning application is made and new consideration given to the matter.” (Hansard 20 Nov 2001: Column 183)

This answer shows the duplicity of the Minister and his Department. My Byers acknowledges the anger felt by people affected by Heathrow at the abandonment in 1986 of the limit on flight numbers that had been recommended by the Terminal 4 Inspector, Iain Glidewell QC, and initially implemented by the Government in 1979. He gives the impression of wishing to reassure local people that the limit imposed in relation to Terminal 5 is more secure because it is a planning condition. But he fails to give a commitment that it will be permanent. His reference

to a third runway at Heathrow shows that he was well aware that his Department would shortly issue a proposal for a third runway, which would clearly require the breaking of the 480,000 limit. On the very day that the Secretary of State was announcing approval of Terminal 5 subject to conditions and emphasising the need "to safeguard the quality of life of people living nearby", he was laying the groundwork to remove the most important component of that safeguard.

On 23rd July 2002 the Government announced its consultation "The Future Development of Air Transport in the United Kingdom", which includes a proposal for a third runway at Heathrow and an increase in flights to 655,000 a year, requiring the abolition of the 480,000 limit on flight numbers imposed as a condition of approval for Terminal 5. Mr Tim Collins MP for the Opposition questioned the proposal to increase flight numbers in the light of that limit. Dr Jenny Tonge MP raised the same issue:

"The Secretary of State should know that my constituents are not saying, 'Not here'; they are saying, 'Not any more here.' We already have four terminals at Heathrow and do not want any more, although one is to be imposed on us. If he cannot guarantee that air traffic movements will be capped at 480,000 a year and that there will be no third runway at Heathrow, which were both conditions imposed by the inspector on the granting of permission for terminal 5, what is the use of public inquiries in the first place?" (Hansard 23 Jul 2002: Column 867/8)

Mr Byers' successor, Mr Darling, replied to Mr Collins as follows:

"The decision on terminal 5 holds good, and was made in the light of existing pressures on Heathrow and its two runways. The Inspector acknowledges in his report that the Government are embarking on long-term consultation, looking ahead to the next 30 years. So the position on terminal 5, and the cap on the number of flights that was referred to at that time, remains good in relation to Heathrow's current situation. Everybody knew that we would look at Heathrow in the context of the other London airports over a longer period." (Hansard 23 Jul 2002: Column 854)

Mr Darling replied in similar terms to Dr Tonge:

"The decision on terminal 5 was recognised as one in relation to the airport as it is now. It needs a fifth terminal to deal with the airport as it is now. The inspector noted and acknowledged in his conclusions the fact that the Government would consult on what was necessary for the next 30 years. The decision made by the Government at the time made that clear." (Hansard 23 Jul 2002: Column 868)

Mr Darling is being deliberately misleading in these replies. He implies that Mr Vandermeer's recommendations in his report concerning conditions for the approval of Terminal 5 were to apply only in the short term and that Mr Vandermeer accepted that the forthcoming Government consultation and strategy on airports policy might lead to abolition of those conditions, the construction of a third runway and an increase in flight numbers to 655,000 year. He implies that there is no conflict between the proposal in his Department's consultation and Mr Vandermeer's report and his predecessor's implementation of the conditions recommended in that report a mere eight months earlier. He implies that because he sees no conflict he does not owe any explanation of the difference in approach to MPs or to concerned citizens.

In fact, as the quotation given above of the final paragraph in Mr Vandermeer's conclusions makes perfectly clear, "in the context of the Government's review, it should be assumed that no further development would take place at Heathrow after Terminal 5". Mr Vandermeer considered the 480,000 limit on flight numbers to an essential and enduring condition to protect local people. Mr Vandermeer dealt with possibility he foresaw that the Government might not welcome the balanced package of conditions he recommended as part of the approval for Terminal 5 and put his own position in the clearest possible language:

"I recognise that some of the controls I advocate may be unpalatable to BAA or even to the Government and that the final decision is for the Secretary of State. Nevertheless, I regard it as essential that I put my own position beyond doubt. It is my judgement that any substantial reduction in the package I shall be identifying would render Terminal 5 unacceptable in spite of the economic benefits it may bring." (para 32.1.18)

Further proof that Mr Darling was wrong to imply that the Government's proposals for a third runway at Heathrow were in keeping with the inspector's conclusions is given by the fact that Mr Vandermeer felt impelled to give a radio interview on the BBC's PM programme on the day of Mr Darling's announcement. This interview can be replayed and downloaded from the BBC News website. Mr Vandermeer says that he would be "very concerned" about the possible construction of an additional runway at Heathrow because of "the inevitable breaching of the cap on movements" that he had recommended and the Government has implemented. He says he reached "a very clear view" and he "stands by it" that any further expansion beyond that allowed for in his report would create "considerable environmental problems". Mr Vandermeer repeats the point made in his report that the only circumstances in which he considers the limit on flight numbers should be reviewed would be if there was a dramatic change in aviation technology leading to very quiet aircraft (para 34.5.29). Neither Mr Darling nor aviation experts foresee such a technological development.

The South East consultation document itself does not discuss the context for Mr Vandermeer's recommendation of the limit on flight numbers and the Government's implementation of that limit eight months previously. It merely states:

"The 480,000 limit on the annual number of air transport movements imposed as a condition of the Terminal 5 development would clearly be exceeded with a new runway." (para 7.8)

There is no acknowledgement of the great weight given by the Inspector to this limit in order to protect affected citizens as part of the approval package. There is no discussion of what could justify abolishing this protection. There is no acknowledgment of the fact that the Inspector concluded that this consultation should not include proposals for any "further major development at Heathrow after Terminal 5". Despite Mr Byers' statement in November 2001 that he was well aware of the concern about the abolition of the limit imposed as part of the approval for Terminal 4, there is no acknowledgment of the damage that would be done to public trust in Government through such a blatant betrayal of the most important condition relating to Terminal 5. There is no explanation of what could justify causing that damage.

The consultation discusses "action to tackle environmental concerns". The section on noise at Heathrow refers only to noise contour caps. It mentions the contour cap imposed by the Secretary of State following Mr Vandermeer's recommendation. It does not refer to Mr Vandermeer's criticisms of relying solely on noise contours for assessing noise disturbance. It

does not make clear that Mr Vandermeer imposed a limit on flight numbers precisely as the only effective means of controlling noise. This section of the consultation has a series of questions to readers on “control of noise impacts”. The first question asks with apparent naïveté:

“do you think that contour caps are the best way to determine a noise limit for an airport? If not, what other limits might you suggest?.” (para 16.43)

It would have been more honest to have referred in the section on noise to the conclusions of the longest public inquiry into airport expansion that numerical limits on flight numbers are the only means of providing real protection to communities, certainly in relation to our largest airport.

The assessment of noise impacts with a third runway at Heathrow is carried out solely in terms of LAeq_{16hour} 57 dB(A) contours. In addition to failing to refer to the Terminal 5 Inquiry criticisms, the consultation fails to mention that the Department for Transport (or its predecessor) announced a new study into aircraft noise on 8th May 2001. The study is designed to update the research dating back to the 1980s underlying the noise contour system that quantifies the relationship between noise energy and community annoyance. HACAN and many others have strongly criticised the continued application of this research 20 years later. Mr Vandermeer supported such new research (para 32.5.47). It is quite possible that this study, which is still in progress, will conclude that the LAeq_{16hour} 57 dB(A) contours significantly underestimate both existing noise annoyance and any increase in annoyance from expanding Heathrow. The limitations of the contour methodology are illustrated by the relatively small impact it predicts from increasing flight numbers at Heathrow by 175,000 a year, a 36% increase above 480,000. My own view remains that the only effective environmental limit for aircraft noise at Heathrow is the limit on flight numbers.

While I argued at the Terminal 5 inquiry, based on past experience, that any noise-related environmental conditions recommended by the Inspector would be worthless because the Government would cynically agree to them at the time and then tear them up later, it gives me no satisfaction to see the Government having in exactly that way.

Sadly, I have concluded that the Government is institutionally corrupt. Of course I am not asserting that ministers or officials are personally corrupt. Nor am I asserting that the Government is politically corrupt, perhaps in the sense that a political party might accept a cash donation larger than £5000 from an individual hoping to be permitted to continue profiting from promoting cigarette smoking to children and adults. Rather, Government ministers and Department for Transport officials have decided that their duty in relation to aviation is to promote the interests of certain British aviation businesses, and British Airways in particular – the only major air transport company that advocates further expansion at Heathrow. They have lost any sense that they have a duty to protect the interests of citizens affected by Heathrow. They constantly use the language of “sustainable” policies, but in practice undermine any real environmental safeguards. This corruption is “institutional” because all the individuals concerned would honestly state that they were acting in what they considered the greater national interest. However, the executive collectively fails to defend the interests of citizens, while the corruption is seen in the bad faith and misleading behaviour it has to use to achieve its chosen objectives.

The consultation on future aviation policy should not have contained a proposal for a third runway at Heathrow. It should have explained the reasons why Heathrow cannot expand beyond 480,000 flights a year. This would not, as might appear in the light of the recent judicial

review ruling against the exclusion of Gatwick, be to unfairly disadvantage other possible locations for airport expansion. (I do not advocate expansion at any other location.) It would give reassurance to communities in other locations that, if they were subjected to an expanded or new airport, the environmental safeguards established at the same time would be honoured in practice. One reason why this consultation process is arousing such intense opposition is that everybody knows the Government cannot be trusted to honour any pledge, commitment or planning condition imposed as part of a permission for airport development.

I was disappointed that Terminal 5 was permitted. However, the Inspector recommended approval as part of an essential package of conditions, which were imposed by the Secretary of State. The package was based on principles of fairness and justice. The Government's approach in relation to Heathrow has consistently been to welcome any approval for expansion but discard the corresponding conditions. That is unfair and unjust.

If the Government attempts to abolish the limit it has imposed on flight numbers at Heathrow or actively advocates building a third runway at Heathrow, I am sure that there is sufficient evidence for such an action to be prevented through legal means. No doubt Mr Vandermeer would be willing to give evidence during any judicial review proceedings on whether Mr Darling was right in interpreting his report as saying that the environmental conditions he recommended apply only to the "airport as it is now" or whether when he wrote "in the context of the Government's review, it should be assumed that no further major development would take place at Heathrow after Terminal 5" he meant what he said.

I played a full part in the democratic process of the Terminal 5 Inquiry and support democratic procedures. However, should legal action fail to prevent an attempt by the Government to break the environmental conditions imposed in relation to Heathrow, I would consider it justified for concerned members of the community to take direct action. Following the completion of Terminal 5, this could take the form of closing Heathrow airport down if flight numbers began to exceed 480,000 in a period of less than twelve months so that the limit was maintained in any twelve month period. I cannot see that there is any other way for communities to protect themselves if they cannot rely on the Government to protect them.

Yours sincerely

Dermot Cox