Development Consent Order Process: Information Paper

The Planning Act 2008 covers the consenting and authorisation process for nationally significant infrastructure projects (NSIPs). NSIPs are projects considered by government to be so large and important that permission to build them needs to be given at a national level, by a Secretary of State.

The construction or alteration of an airport falls under the Planning Act 2008 regime where its proposed increase in passenger capacity would be at least 10 million per year. Our proposed expansion of Heathrow would exceed this threshold and is classified as an NSIP under the Planning Act 2008.

What is a Development Consent Order?

Because our expansion proposals are an NSIP, permission for them requires the grant of a development consent order (DCO) under the Planning Act 2008 by the Secretary of State for Transport. A DCO combines consent to develop a project alongside a range of other consents that would normally have to be obtained separately, such as listed building consent and environmental consents. A DCO can also contain powers for the compulsory acquisition of land and development that is associated with the NSIP but not part of it.

The Planning Inspectorate (PINS) examines DCO applications and makes a recommendation to the relevant Secretary of State, who will make the decision on whether to grant or refuse permission.

Further information and comment regarding the DCO’s relationship with other processes, schemes and consents is set out below. Further information about the role of PINS in processing and examining applications for DCOs can be found on their website at: https://infrastructure.planninginspectorate.gov.uk/application-process/planning-inspectorate-role/

Town and Country Planning Act 1990 applications

We may also submit applications for planning permission under the Town and Country Planning Act 1990 (TCPA) for works which do not fall under the Planning Act 2008. These might include elements which require early delivery and need consent before the DCO application is determined. This could include uses which need to be relocated before construction starts. We will keep the potential for utilising the TCPA process under review.

Airspace change process

Any changes to Heathrow’s airspace design (i.e. flight paths) or operating procedures that result in changes to the movement of aircraft over the ground will need to go through an airspace change process (ACP). These cannot be included within a DCO and have to be separately applied for and approved by the Civil Aviation Authority (CAA) and, potentially, the Secretary of State for Transport. This procedure is explained in detail in our Airspace Change Process Information Paper.
It is anticipated that an ACP approval will be obtained after any DCO is granted. It will therefore be necessary for the DCO’s environmental impact assessment to provide an assessment of the “likely significant effects” of flying from a three runway airport based on best estimates made at the time of the DCO application of what the future flight paths may be.

It is the subsequent ACP process that will determine the final flight paths for the three runway airport, and which will be subject to its own process of consultation and environmental assessment. To ensure that the DCO and ACP processes work effectively they will be co-ordinated but kept separate throughout.

Relationship with rail access schemes

Heathrow’s expansion is not dependent on either the Western or Southern rail access schemes.

Network Rail is promoting the Western Rail access scheme independently from the DCO for Heathrow’s expansion. However, we will ensure that our DCO is compatible with what is brought forward by Network Rail.

A decision has yet to be made on whether the Southern Rail scheme is to proceed but our DCO Application is not expected to include anything for the scheme apart from any works and/or land provisions that are necessary to protect the scheme and so allow it to come forward in the future.

Other consents

The Planning Act 2008 allows certain other consents (i.e. additional to development consent) to be included in a DCO, ensuring the regime can act as a “one stop shop” for all construction-related consents. Listed Building Consent is one such example.

However, some of these other consents, such as various environmental consents, can only be included in a DCO with the agreement of the relevant authority or government department. These agreements will be applied for in parallel with our DCO application, where needed.

National Policy Statements

National Policy Statements (NPSs) are produced by government and set out the policy framework within which DCOS must be determined. NPSs are subject to public consultation and scrutiny by Parliament before being finalised.

The draft Airports National Policy Statement (ANPS) was published in February 2017 for consultation. It was republished in October 2017 for further consultation. It is expected to be finalised and formally designated (i.e. adopted) by the Secretary of State for Transport by mid-2018.

Development Consent Orders

Work has yet to start on the preparation of our draft DCO but we set out below some key provisions it is likely to contain.

Runway and terminals and other infrastructure

Our DCO application will seek consent for a new runway to the north west of the existing northern runway in accordance with the ANPS. The project will include new terminal capacity, aprons and taxiways. It will include airport support facilities, such as aircraft maintenance and cargo facilities. We are also likely to seek consent for other associated development, such as car parks and office space. We have yet to determine the scope of, and masterplan for, Heathrow’s proposed expansion and your feedback on the options identified and our emerging proposals will help inform the development of our project. For further information please see our Airport Expansion Consultation Document.

Air transport movements

We are currently intending that the DCO application would apply for an increase of at least 260,000 air transport movements (ATMs) at the airport each year. In addition to seeking consent for these additional ATMs for the three runway airport, the DCO is also likely to seek consent for an additional 25,000 ATMs (or approximately a 5% increase) a year on the two existing runways. This would be before the third runway comes into operation.

Design parameters

The expansion of Heathrow is a large and complex project that will be delivered over many years. It is not feasible to design all elements of the project to the same level of detail at the same time. It will be important to retain flexibility for those elements which are not required for several years, recognising that in the medium to longer term change is inevitable, for example it is not possible to anticipate how passenger or airline needs may change or how technology may develop. We therefore expect our DCO to seek consent for some works in detail and some by reference to parameters.

Parameters will set the minimum and maximum extents of the development but reserve detail for approval by the relevant local authority, or other person or body (as appropriate) at a later stage. In defining the parameters, we will follow Planning Inspectorate guidance to ensure...
that the scheme is clearly described and that the likely significant environmental effects are properly assessed.

For those aspects of the development where the design is defined in greater detail at the time of the DCO application, there would still be scope for the DCO to provide for an element of flexibility in the evolution of the detailed design.

Phasing
We anticipate that the DCO application will include a phasing and delivery plan so that the Secretary of State and stakeholders can be assured that the project will be built in an appropriate manner and generally in accordance with the assumptions, parameters and flexibility which will underpin the environmental impact assessment accompanying the DCO application.

Conditions
Any DCO would be granted subject to a series of requirements (similar to conditions to a planning permission). The purpose of these is to assist in the management and control of the development and to ensure that, for instance, appropriate mitigation is put in place.

Protective provisions are also usually contained in a DCO to protect the interests of statutory bodies whose assets and facilities might be affected by the construction or operation of the project. These provisions will be worked up in detail in consultation with the relevant statutory bodies.

It is also common for a section 106 agreement to be negotiated alongside the DCO application, setting out obligations and other commitments which cannot be secured by requirements or protective provisions.

DCO pre-application consultation
Pre-application consultation is a key part of the NSIPs planning process. We must formally consult interested parties, including the public, local authorities and other statutory consultees, such as Natural England, Historic England and the Environment Agency before submitting a DCO application.

We currently propose to undertake this ‘formal’ statutory consultation in 2019. Whilst this first consultation we are undertaking is ‘non-statutory’ (i.e. the strict legal requirements contained in the Planning Act 2008 do not apply) it is important to us as it will help to inform our project development process at an early stage. We will report to PINS on all of the pre-application consultation and engagement we have carried out, and the role it has played in helping to shape the project, in our Consultation Report which will accompany our DCO application.

Statement of Community Consultation
Before we undertake formal statutory consultation with local communities around Heathrow, we must set out how we will consult them in a Statement of Community Consultation (SoCC). We must consult with the relevant local authorities when we draft the SoCC so that they can comment on how, when and with whom we will consult on the project to ensure that local concerns are addressed.

Consultation Report
After we have undertaken pre-application consultation under the Planning Act 2008, we are required to compile a report explaining what consultation we have completed to inform the project. The report must also explain how we have taken into account feedback received as part of that consultation and how that feedback has helped shape the project. The Consultation Report is one of the documents that will be submitted to PINS with our DCO application.

DCO application process
On receipt of our application, PINS will review it and decide on behalf of the Secretary of State whether the application meets the standards required to be accepted for examination. This will include an assessment of whether the consultation we have undertaken has been adequate.

Pre-examination
Following acceptance of the application by PINS for examination we must formally notify and publicise acceptance of the application. At this stage, anyone interested will be able to register with PINS and provide a summary of their views on the application in writing. PINS will at the same time appoint an Examining Authority, which will be a panel of up to five examining inspectors, to examine the application.

Examination
The Examining Authority has up to six months to carry out the examination. During this period people who have registered to have their say are invited to provide more details on their views in writing.

The Examining Authority will ask written questions to both us and other parties who have submitted written responses. Hearings around specific issues will also be held.
Decision

Following completion of the examination the Examining Authority have up to three months to prepare a report for the relevant Secretary of State which includes a recommendation on whether our application for a DCO should be granted or refused permission.

The Secretary of State then has up to a further three months to make the decision on whether to grant or refuse permission for the development.

Post decision

Once a decision has been issued, there is a six-week period in which an application to challenge it in the High Court on legal grounds may be submitted. This process of legal challenge is known as Judicial Review.

Further Details

Further details on the DCO process can be found at the following websites:

Planning Inspectorate
http://www.planningportal.gov.uk/planning/planninginspectorate

Planning Act 2008

National Policy Statements (general)

Draft Airports National Policy Statement