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Your Ref:

Our Ref: TR020004_s53_1-6

Date: 24 June 2020

Dear Ms Hardie

Application under Section 53 (s53) of the Planning Act 2008 (PA2008) by Heathrow West Ltd (the Applicant)

The six s53 authorisation request applications submitted by the Applicant on 12 November 2019 have been reviewed by the Planning Inspectorate (the Inspectorate) on behalf of the Secretary of State.

The Inspectorate has given careful consideration to the Applicant's authorisation requests and subsequent correspondence with the landowner, the Applicant and Persons with Interest in the land. As set out in the Inspectorate's recommendation report the Inspectorate has determined that the criteria under s53(1) of the PA2008 have not been met.

Statement of Reasons

Section 53(1) of the PA2008 states:

"(1) Any person duly authorised in writing by the [Secretary of State] may at any reasonable time enter any land for the purpose of surveying and taking levels of it [, or in order to facilitate compliance with the provisions mentioned in subsection (1A),] in connection with—

(a) an application for an order granting development consent, whether in relation to that or any other land, that has been accepted by the [Secretary of State],

(b) a proposed application for an order granting development consent, or

(c) an order granting development consent that includes provision authorising the compulsory acquisition of that land or of an interest in it or right over it."

The s53 authorisation requests are not in connection with an application for an order granting development consent as no application has been made, therefore s53(1)(a) does not apply.

The s53 authorisation requests are not in connection with an order granting development consent as no order has been made, therefore s53(1)(c) does not apply.

In respect of s53(1)(b), whether the proposed application is in connection with an order granting development consent, s31 of the PA2008 states that development consent is required to the extent that the development "*is or forms part of a nationally significant infrastructure project*" (NSIP).

The Inspectorate asked the Applicant to explain how the development forms part of a NSIP.

The Applicant has provided an explanation based on three 'candidate routes' that explain why it considers that Heathrow West forms part of a NSIP:

- i. First candidate route - The Proposed Development is a NSIP in its own right. The Applicant references relevant thresholds in s14 and s23 of the PA2008 that it states could theoretically apply. Reference is also made to statements in the Airports National Policy Statement (ANPS) that indicate that a terminal may constitute a NSIP.
- ii. Second candidate route - A terminal is part of the ANPS defined Northwest Runway Scheme (NRS) NSIP and that its terminal would integrate with, and replace elements of, Heathrow Airport Ltd.'s application for the NRS NSIP. Heathrow West therefore requires development consent under s31 of the PA2008 in that it *'forms part of a NSIP'*. The Applicant emphasises that whilst the first candidate route could apply, the second candidate route is relied on to demonstrate that Heathrow West requires development consent.
- iii. Third candidate route - The Applicant also states that regardless of the first and second candidate routes, the Secretary of State could direct the proposed Heathrow West development into the PA2008 under s35 of the Act.

The Inspectorate's consideration of the three candidate routes is as follows:

- i. First candidate route - The Applicant simply asserts with reference to the PA2008 and the ANPS that terminal development may be subject to the PA2008 regime. No evidence is presented that the PA2008 thresholds are met by the Proposed Development. The Inspectorate considers that the Applicant has not demonstrated how the Proposed Development by itself achieves the relevant passenger increases required by s23 of the PA2008 to be considered a NSIP in its own right;
- ii. Second candidate route - The Inspectorate is not persuaded that Heathrow West *'forms part of a NSIP'*. The Applicant confirmed that it has no contractual or commercial link with the Heathrow Airport Limited scheme. Heathrow Airport Ltd confirmed that Heathrow West is not part of its NRS NSIP, which already includes a terminal building. Heathrow Airport Ltd also stated that no evidence is provided that the Applicant's design can integrate with and replace the relevant components of the HAL NRS NSIP in construction or operation.
- iii. Third candidate route - The Applicant is entitled to request a s35 direction and this remains open to the Applicant in future, however it has no bearing on the current s53 decision.

On this basis, the Inspectorate considers that at this time it has not been demonstrated, that the Applicant's Proposed Development 'is, or forms part of, a NSIP' for the purposes of s31 of PA2008. Consequently, the Applicant has to date not demonstrated that the Proposed Development is capable of being the subject of a proposed application for development consent for the purposes of s53(1)(b). The Inspectorate therefore considers that the current authorisation requests must be refused. Please accept this letter as formal notification of the decision to refuse your authorisation requests made under s53 of the PA2008 submitted in November 2019.

This decision is without prejudice to any subsequent s55 acceptance decision, any subsequent request under s53 that satisfies the requirements of s53, or request for a s35 direction.

Documentation

Please find enclosed copies of the Planning Inspectorate's recommendation report in respect of the s53 authorisation requests.

The Planning Inspectorate has also written today to the London Borough of Hillingdon (the Landowner) to notify it of the determination.

Please note that copies of this refusal letter will be made available on our website:

<https://infrastructure.planninginspectorate.gov.uk/>

If you have any queries, please do not hesitate to contact us.

Yours sincerely

Simone Wilding

**Head of Operations
on behalf of the Secretary of State**

Enc Copy of recommendation report

cc. Raj Alagh, London Borough of Hillingdon