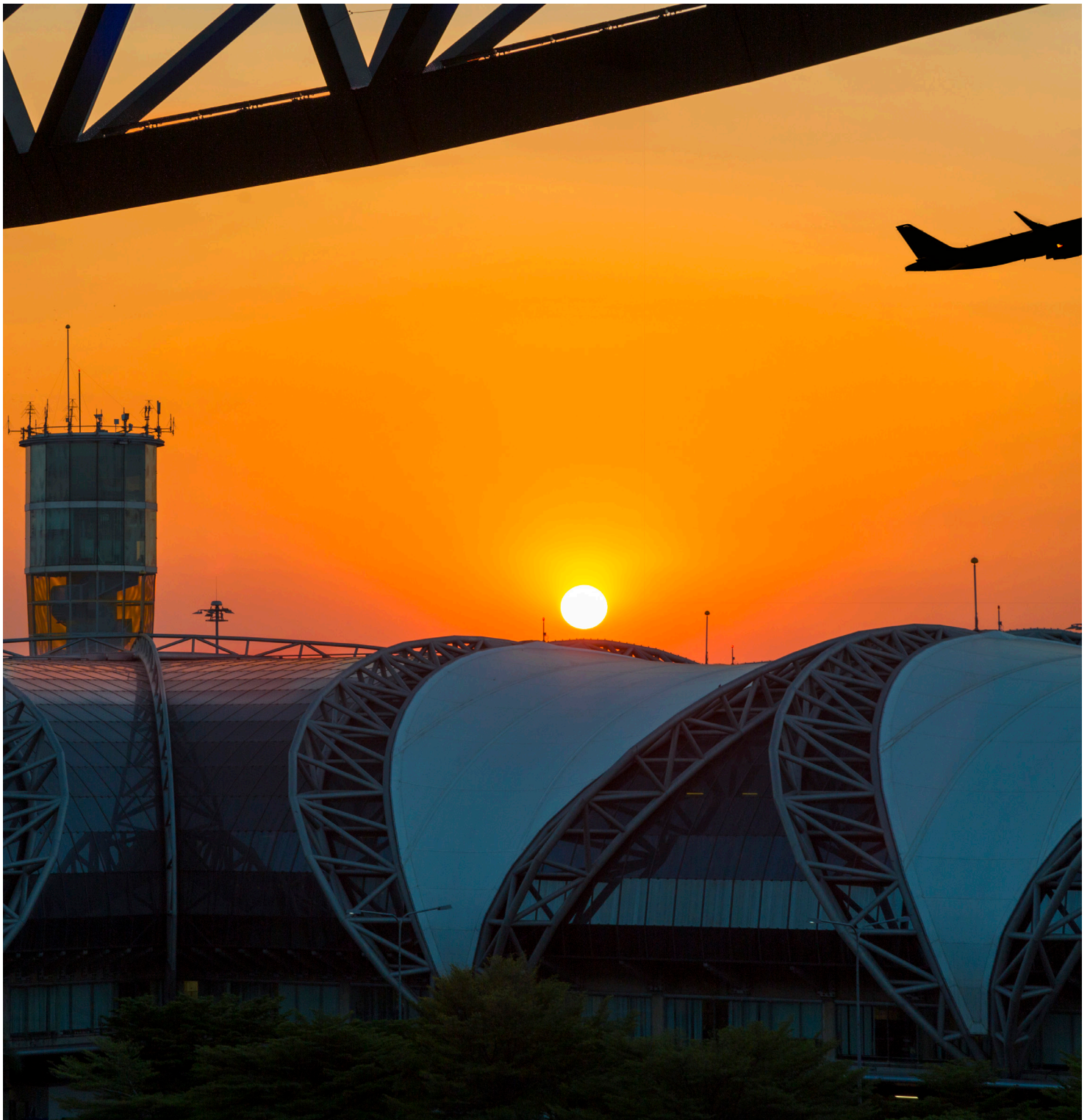


The Heathrow judgment: implications for new infrastructure schemes

9 March 2020

The Court of Appeal has ruled that the UK government's decision to provide policy support for a new runway at Heathrow was unlawful on environmental grounds (specifically, a failure by the government to consider the Paris Agreement).¹ There has been speculation about what this means for other new infrastructure projects, which could be subject to challenge. From an economics perspective then, what are the key implications for evidencing the case for new infrastructure?



What did the Court of Appeal say?

The judgment clarifies that in making decisions on new infrastructure, the government will need to consider the Paris Agreement in developing policy going forward.

The Court did not say that the expansion of Heathrow could not be undertaken due to the amount of CO₂ that would be emitted, but that the policy supporting the scheme could not stand because the Paris Agreement had not been considered in the decision-making process.

The direction of travel towards 'net zero' is clear, and this judgment means that the weight given to environmental issues in the appraisal of infrastructure schemes (and government policy more generally) is likely to become greater in the future. Schemes with negative carbon emissions will be easier to approve, but those with positive carbon emissions can still be developed as long as the Paris Agreement (and other relevant legislation) is considered in the decision making.

The CO₂ budget is binding and needs to be considered in business cases

It is now clear that the CO₂ budget (i.e. the amount that the UK can emit while remaining consistent with its climate change obligations) is a binding constraint on the UK government and that there are a range of parties who are prepared to litigate to hold the government to account on it.

Those responsible for proposing infrastructure schemes will need to articulate clearly the carbon costs of their scheme during construction, operation and decommissioning to enable the government and other stakeholders to assess the implications. In particular, this means that the impact of any scheme needs to fully integrate carbon into the scheme development, including:

- quantifying the carbon costs in both the economic case and the financial case (to assess the costs of abatement or offsetting);
- considering the management expertise required during construction and operation to mitigate the level of carbon produced;
- considering the implications of carbon abatement at an early stage so that the planning applications submitted are consistent with the minimum efficient level of carbon emissions.

In many cases some of these actions are already being taken, but others are new. In all cases, we would expect the role played by environmental issues in choosing policy options to be greater than has been the case historically.

The role of carbon in choosing between options

All 'five case business cases'² require scheme promoters to assess the value for money of different options, including 'doing nothing' and 'doing the minimum'. In defining the strategic objectives against which to assess and select options, it is expected that environmental impact will be a more important factor going forward than has been the case in the past.

Scheme promoters will have to include carbon pricing on their risk register and risk assessment

If a scheme promoter is required to offset its carbon emissions, this will introduce a new financial risk: the price of carbon offsets.³ This risk should be included in a scheme's risk register and the promoter's cash-flow modelling to understand the risk associated with the scheme.

What is the read-across to non-UK infrastructure?

The 'direction of travel' across Europe and further afield is clear: many countries have ambitious plans to decarbonise their economies. While many countries are still at the early stages of their planning, infrastructure is too big a sector of the economy to ignore in those plans. It seems likely, therefore, that developers of infrastructure schemes may be required to actively consider their carbon emissions and how to reduce or offset them. So, while the policy and governance frameworks in other countries differ from those in the UK, the key issues (and potential solutions) are similar.



The direction of travel towards 'net zero' is clear, and this judgment means that the weight given to environmental issues in the appraisal of infrastructure schemes (and government policy more generally) is likely to become greater in the future.



¹ Case reference [2020] EWCA Civ 214; Case Nos. C1/2019/1053, C1/2019/1056 and C1/2019/1145.

² See the UK government's guidance on developing a business case, <https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-government>, accessed 6 March 2020.

³ More specifically, the market price of carbon offsets.

Oxera Consulting LLP is a limited liability partnership registered in England no. OC392464, registered office: Park Central, 40/41 Park End Street, Oxford OX1 1JD, UK; in Belgium, no. 0651 990 151, branch office: Avenue Louise 81, 1050 Brussels, Belgium; and in Italy, REA no. RM - 1530473, branch office: Via delle Quattro Fontane 15, 00184 Rome, Italy. Oxera Consulting (France) LLP, a French branch, registered office: 60 Avenue Charles de Gaulle, CS 60016, 92573 Neuilly-sur-Seine, France and registered in Nanterre, RCS no. 844 900 407 00025. Oxera Consulting (Netherlands) LLP, a Dutch branch, registered office: Strawinskylaan 3051, 1077 ZX Amsterdam, The Netherlands and registered in Amsterdam, KvK no. 7246218. Oxera Consulting GmbH is registered in Germany, no. HRB 148781 B (Local Court of Charlottenburg), registered office: Rahel-Hirsch-Straße 10, Berlin 10557, Germany. Although every effort has been made to ensure the accuracy of the material and the integrity of the analysis presented herein, Oxera accepts no liability for any actions taken on the basis of its contents. No Oxera entity is either authorised or regulated by any Financial Authority or Regulation within any of the countries within which it operates or provides services. Anyone considering a specific investment should consult their own broker or other investment adviser. Oxera accepts no liability for any specific investment decision, which must be at the investor's own risk. © Oxera 2020. All rights reserved. Except for the quotation of short passages for the purposes of criticism or review, no part may be used or reproduced without permission.