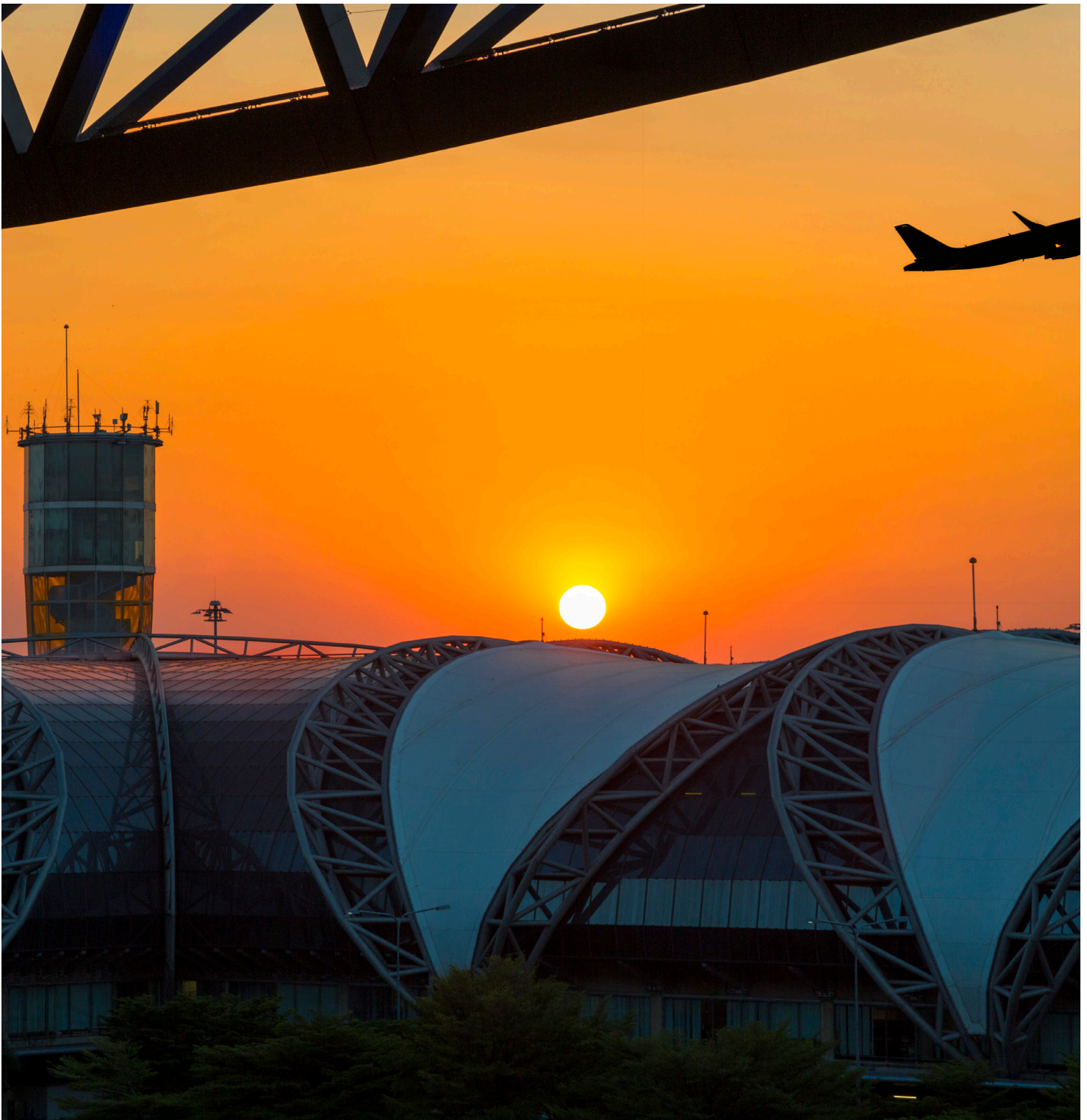


## The Heathrow judgment: implications for new infrastructure schemes

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).<sup>1</sup> 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 CO<sub>2</sub> 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 CO<sub>2</sub> budget is binding and needs to be considered in business cases

It is now clear that the CO<sub>2</sub> 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'<sup>2</sup> 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.<sup>3</sup> 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.**



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

<sup>2</sup> 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.

<sup>3</sup> More specifically, the market price of carbon offsets.

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