

Case Nos: C1/2019/1053; 1056; 1145 and 1154

**IN THE COURT OF APPEAL (CIVIL DIVISION)**

**ON APPEAL FROM THE HIGH COURT OF JUSTICE**

**QUEEN'S BENCH DIVISION**

**DIVISIONAL COURT**

The Royal Courts of Justice

Strand, London, WC2A 2LL

Thursday, 17 October 2019

**Before:**

**LORD JUSTICE LINDBLOM**

**LORD JUSTICE SINGH**

**LORD JUSTICE HADDON-CAVE**

**Between:**

|  |  |  |
| --- | --- | --- |
|  | **THE QUEEN ON THE APPLICATION OF** **PLAN B EARTH LIMITED****THE QUEEN ON THE APPLICATION OF** **FRIENDS OF THE EARTH LIMITED****THE QUEEN ON THE APPLICATION OF****THE LONDON BOROUGH OF HILLINGDON & ORS****THE QUEEN ON THE APPLICATION OF****HEATHROW HUB LIMITED & ANR** | Applicant |
|  | **- and -** |  |
|  | **SECRETARY OF STATE FOR TRANSPORT & ORS** | Respondent |

Transcript of Epiq Europe Ltd, Lower Ground, 18-22 Furnival Street, London EC4A 1JS

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Proceedings

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LORD JUSTICE LINDBLOM: Before we begin, there are three things I should like to say. The first is this. As I said in June this year when I gave permission for these cases to come before this court, the issues raised in the proceedings are of obvious importance. They will be of interest to a national and also an international audience.

With this in mind, I should make it clear, not only to those who have come to this courtroom today to hear the cases argued before us, but also to the wider public following the hearing on Livestream, that we approach these cases as we approach every case that comes before us, faithful to our duty to do justice. This means that we come to the issues we have to decide and make our decisions upon them on their legal merits objective and dispassionately.

I would also stress that in judicial review proceedings such as these, we are not concerned with the political or other merits of the decisions under challenge. Our only role is to decide whether the decisions in question were lawful.

Secondly, in this spirit, but also bearing in mind the unusual importance of these proceedings, all three of us have brought to the parties' attention details of previous professional work, in particulars as members of the Bar, that might be seen as relevant to the cases before us now. As each of us made clear, however, none of us saw any proper reason why we should not hear these proceedings. We know the parties are grateful for our having done this, and we are grateful to them for having confirmed, as each of them has, that in their view too, there is no reason why we should not proceed to hear and decide the cases for us in the normal way.

Thirdly, we are also grateful to the parties, and in particular their legal representatives, for the care they have devoted, at our request, to providing an agreed narrative of the relevant events, identifying the main issues before us and highlighting the relevant law. That hard work is going to save us a great deal of time and it will help us all to focus on the issues the court has to decide . We are also grateful to the advocates for having cooperated to agree a timetable for their respective submissions, so that we can make the best use of the six days in which this hearing must be completed.

There is much work to be done and we must now make a start. Mr Wolfe?

MR WOLFE: My Lords, good morning. As you have identified, there are before you several applications relating to the decision to designate the Airport National Policy Statement in relation to the Heathrow Airport expansion. I have the pleasure of being first in the queue to deal with one of those applications and it therefore falls to me to introduce to the court the cast of advocates who will be appearing and involved over the next six days and I do so now, if I may.

LORD JUSTICE LINDBLOM: Thank you.

MR WOLFE: I appear with Mr Lockley and Mr Parkinson for Friends of the Earth. Mr Crosland appears as Plan B. Also on the row are Mr Pleming, Ms Dobson and Ms David for Greenpeace and the Boroughs. For the Mayor of London you have Mr Jaffey, Ms Dobson, Ms David. For Heathrow Hub you have Mr Choogh, Mr Kingston, Mr O'Donoghue, Mr Choogh again, Ms Mockford. For the Secretary of State in all of the cases you have a combination of Mr Maurici, Mr Blundell, Mr Byass and Ms Sargent in relation to non-Hub appeals, and Mr Harmer, Mr Bates, Mr Moules and Mr Byass in relation to the Hub appeals. In terms of interested parties, you have Heathrow Airport Limited, for the non-Hub appeals, Mr Humphreys and Mr Turney, for the Hub appeals, Mr Facenna and Mr Turney. For Arora Holdings, you have Mr Banner. You then have two intervenors, the Speaker of the House of Commons, Ms Hannett, who is not attending and you have, again in writing, WWF not attending, Ms Mountfield and Mr Desai. My Lord, I think it is fair to say that some of them will dip in and out, as I will.

LORD JUSTICE LINDBLOM: Thank you.

MR WOLFE: My Lords, in terms of my involvement, I appear, as I have indicated, in the Friends of the Earth appeal and that is being heard along with Plan B, Mr Crosland's appeal first off, and we are today and tomorrow.

LORD JUSTICE LINDBLOM: That is right.

MR WOLFE: Finishing by tomorrow lunchtime, with a discrete topic of climate change. The intention is that I will open, Mr Crosland will open, Mr Maurici will reply to both of us. Mr Humphries, no doubt, will say something and then we will respond in due course.

LORD JUSTICE LINDBLOM: Yes, thank you.

MR WOLFE: My Lord, I hope that meets with the court's approval?

LORD JUSTICE LINDBLOM: It does, thank you.

MR WOLFE: In terms of the topic of climate change, you will have seen, and I do not take you to it now (I will dip into it as I need to) but the relevant section of the judgment is at paragraphs 558 and following. You have the judgment at the back of core bundle no.1. My Lord, we are here pursuant to your order and which you have at page 245 of that bundle of 22 July. In that you identified the point, you have reiterated again this morning, which is the obvious importance of the issues in relation to these proceedings.

 My Lords you have, and I will take you to it in due course, an agreed set of materials relating to climate change. It is a climate change annexe to the agreed statement of common ground that was before the court below. I will take you to that in due course. You will see that sets out, as it were, some agreed preparatory introductory comment.

LORD JUSTICE LINDBLOM: Yes.

MR WOLFE: I simply make the obvious points arising from it. First of all, no-one can be unaware of the urgent need to tackle climate change; no dispute about that.

LORD JUSTICE LINDBLOM: Yes.

MR WOLFE: As for aviation, even in relation to the position as it was with the statutory targets in 2018, aviation was planning to use up 25 per cent of the UK's total permitted carbon emissions and, in order to do that within the statutory targets, will potentially require emissions from all other sectors to be reduced by 85 per cent. So on any view, a particularly significant component in the areas of climate change necessary action, and therefore we say particular vigilance required in dealing with those issues. My Lord, our focus of our application is to ensure that that proper vigilance was and in due course is given through the ANPS process and the DCO process, the Development Consent Order process, which you will potentially follow.

LORD JUSTICE LINDBLOM: Yes.

MR WOLFE: My Lord, the themes which underpin our application, as you will have seen, are three subject areas. First of all, matters arising from the Paris Agreement; secondly, the non-carbon dioxide impact of aviation; and third, that the fact that the runway project has an operational lifetime running to at least 2086, which therefore extends beyond the 2050 horizon of existing statutory climate change targets. Those are the three climate change themes, if you like.

LORD JUSTICE LINDBLOM: Yes.

MR WOLFE: In terms of how they arise in our grounds of appeal, they pick up on two of the three grounds that we argued before the Divisional Court, ground one we lost on, but the Divisional Court nonetheless said some important things which I will turn to in due course, so we are essentially concerned with what were grounds two and three below.

LORD JUSTICE LINDBLOM: Yes.

MR WOLFE: But they come before this court as grounds A, B and C. They are in overall terms the meaning and application of sections 10(2) and 10(3) of the 2008 Planning Act, that is ground A; secondly, the Divisional Court's failure to give reasons for rejecting our challenge relating to non-CO2 and the project horizon timescale; and thirdly, the Divisional Court's error in relation to the Strategic Environmental Assessment.

 My Lord, because this matter is listed by my Lord's order for a rolled-up hearing, in effect combining a number of stages which I will not tr and unpack, it goes from everything from a pure application, which is in certainly form what it is, for permission to appeal against the Divisional Court's refusal of judicial review permission, rolled up right through into, as we understand it, the judicial review hearing that will be contemplated were that to be succeeded and various subsequent stages rolled up into --

LORD JUSTICE LINDBLOM: Yes, that is the effect of the order I made.

MR WOLFE: That is the effect. And the effect of that order in terms of my submissions is that, whilst I will focus my attention in accordance with our grounds of appeal on what the Divisional Court said, we also have to have an eye on the underlying Secretary of State's decision because that, of course, would be or is the focus of the putative judicial review hearing which is rolled up in that process.

LORD JUSTICE LINDBLOM: Yes.

MR WOLFE: My Lords, you have before you a skeleton argument and, with your permission, also a supplementary skeleton argument from us. I am not going to grind through them. They are in bundle 1 at pages 247 and 325 respectively. I envisage the court may have had an opportunity to read those in advance --

LORD JUSTICE LINDBLOM: Yes, you can --

MR WOLFE: -- and if not, I would stress that we do make all of the arguments in those documents.

LORD JUSTICE LINDBLOM: Yes, you can assume that we have read them.

MR WOLFE: And I am not going to grind you through all the different sub-elements of them in the course of barely two hours that I have.

LORD JUSTICE LINDBLOM: No, there is no need to do that and indeed, as you say, not time enough to do it.

MR WOLFE: I am grateful. My Lord, can I then pick it up with a brief introduction, a brief foray into the Climate Change Act and I am going to make an introductory point about the legislative scheme and timescales before turning to grounds of appeal.

LORD JUSTICE LINDBLOM: Yes.

MR WOLFE: You have the Climate Change Act in a bundle of legal materials prepared for the climate change issues. So for my purposes you will therefore have four bundles of legal materials, three which are common and a fourth which is specific to the climate change topics.

LORD JUSTICE LINDBLOM: Yes.

MR WOLFE: Within that climate change legal materials bundle at tab 1, you have extracts from the Climate Change Act 2008.

LORD JUSTICE LINDBLOM: Yes.

MR WOLFE: Section 1 of that, you have it, and you will see why this matters in a moment, in a form printed on 27 June of this year. Section 1(1) of that Act sets a statutory target for 2050:

"It is the duty of the Secretary of State to ensure that the net UK carbon account for the year 2050 is at least [100%] lower than the 1990 baseline."

The "[100%]" are important, because at the time of the designation of the ANPS last June, that figure was 80 per cent. You have seen that, if you keep a finger in tab 1 and you go to tab 2, that is the very recent amendment from 80 per cent to 100 per cent. So at the time of the decision in question here, that figure was 80 per cent.

LORD JUSTICE LINDBLOM: And that is the focus for the consideration here?

MR WOLFE: Exactly, your Honour. Exactly right. Exactly right. My Lords, section 2 in the Climate Change Act provided the power, which you have now seen exercised, to amend those statutory targets, and section 4 and subsequent, deals with a framework of what are called "carbon budgets". You see this in section 4, five yearly budgets that are designed to bring matters to the ultimate target by 2050, whatever the ultimate target might be. And in section 10, I am not taking you through it in grinding detail, are statutory considerations to be taken into account in relation to the setting of those carbon budgets. There is a suggestion in one of Mr Maurici's documents that these matters take into account some of the considerations that we encounter in the Planning Act, but there is no basis for that submission and I will deal with it if I need to. But for now, my Lords, you see the statutory list. There is a slightly fancy footwork in relation to the dealing with of international aviation emissions. I am going to take you in a sentence to a handy summary of that, but I will not explain it by reference to the underlying material, but you see that triggered in sections 10(5) and (6) dealing with international aviation emissions, and also, in section 30.

 My Lords, can I ask you to put that bundle away for now, if I may. The point I was just touching on, which is the inter-relationship between international aviation and so on is helpfully explained in the Climate Change Annex which I mentioned, which is in core bundle 2 at page 717. That provides the backdrop to the arguments before the Divisional Court and it still subsists here. You will see the point I have just made about international aviation emissions explained in agreed form at paragraph 8 on page 718.

LORD JUSTICE LINDBLOM: Yes.

MR WOLFE: You will see the points I made in relation to the overall impact of aviation set out in paragraphs 10 and 11 in terms of the 25 per cent and 85 per cent figures.

LORD JUSTICE LINDBLOM: Yes.

MR WOLFE: My Lord, that is the Climate Change Act context.

 Can I then pick things up briefly, if I may, in relation to the Planning Act. You have that in tab 1 of the common legal materials. This, of course, is common to all of the applications before the court which are annexed. I am sure others will take you to other parts of it, but I am going to take you only to the bits that I need for my purposes.

LORD JUSTICE LINDBLOM: Yes.

MR WOLFE: At tab 1 is the Planning Act, section 5(1) of which gives the Secretary of State the power to designate a statement, a national policy statement in various circumstances and we are here dealing with a national policy statement covering those matters; I am not concerned with the background detail and I will not take time on it. What we see in 5(3) as part of the process is this:

"Before designating a statement as a national policy statement for the purposes of this Act the Secretary of State must carry out an appraisal of the sustainability of the policy set out in the statement."

 You will see in due course the appraisal sustainability in play here and it takes effect potentially as an environmental report for the purposes of the Strategic Environmental Assessment Directive.

LORD JUSTICE LINDBLOM: Yes.

MR WOLFE: Still within section 5 but turning over the page, paragraphs 5(7) and 5(8) go together. 5(7):

" A national policy statement must give reasons for the policy set out in the statement."

 And 5(8):

" The reasons must (in particular) include an explanation of how the policy set out in the statement takes account of Government policy relating to the mitigation of, and adaptation to, climate change."

 So that is the reasons for giving obligations in relation to Government policy. That was the particular focus of ground one of our challenge below. We argued, unsuccessfully, that the ANPS did not properly explain how it had dealt with Government policy as embodied in the Climate Change Act.

LORD JUSTICE LINDBLOM: Yes.

MR WOLFE: You then have over the page at section 6, if you would, a review mechanism. 6(1):

"The Secretary of State must review each national policy statement whenever the Secretary of State thinks it appropriate to do so."

 So it is a discretionary process.

"A review may relate to all or part of a national policy statement."

 Then (3) and (4) deal respectively with the all or part situations. But they essentially follow a common format. So I would just look at the first, which is 6(3), if I may:

"In deciding when to review a national policy statement, the Secretary of State must consider whether -

(a) since the time when the statement was first published or (if later) last reviewed, there has been a significant change in any circumstances on the basis of which any of the policy set out in the statement was decided,

(b) the change was not anticipated at that time, and

(c) if the change had been anticipated at that time, any of the policy set out in the statement would have been materially different."

 So there is a mandatory consideration, if not a gateway, to the review process, one of the triggers for which was an unanticipated change.

LORD JUSTICE LINDBLOM: Yes.

MR WOLFE: That is of background relevance here, because the court will have seen that various people have asked the Secretary of State to review this ANPS pursuant to section 6(1) powers.

LORD JUSTICE LINDBLOM: Yes.

MR WOLFE: And the Secretary of State is thinking about that. Now, obviously that cannot change the legality of the decision last year.

LORD JUSTICE LINDBLOM: Is there a timescale for that exercise?

MR WOLFE: I do not think there is any process, and I do not think (but I will be corrected if I am wrong because I am not close to the detail) as to whether the Secretary of State has given any indications.

MR MAURICI: My Lord, there is no indication on the timetable. The most recent request came in yesterday from the Borough claimants, so there is not a timetable that I can give the court in relation to that.

LORD JUSTICE LINDBLOM: Thank you.

MR WOLFE: Obviously, as I say, that is not of any relevance to the legality of the designation as at June last year.

LORD JUSTICE LINDBLOM: No.

MR WOLFE: It is put against the appellant/claimant I think on the basis that it had the potential for rendering the proceedings academic. I will deal with that as and when I need to, if and when I need to, but we certainly do not accept that proposition.

LORD JUSTICE LINDBLOM: But in any event, the proceedings are not academic, as you stand in front of the court today.

MR WOLFE: We are here, indeed, my Lord. So sections 6(3) and 6(4) provide, essentially, parallel statutory considerations for the review of all or part of the ANPS.

 We then jump, if I may, to section 10. Section 10, certainly parts of it, are the focus of ground A and B of our challenge and the focus of ground 2 in the Divisional Court below. The heading is "Sustainable development". 10(1):

"This section applies to the Secretary of State's function under sections 5 and 6."

 So both of what we have just seen.

"(2) The Secretary of State must, in exercising those functions, do so with the objective of contributing to the achievement of sustainable development."

 So there is a statutory objective the Secretary of State has to have in mind in discharging those obligations and we will see in due course in the ANPS document itself, how the Secretary of State referred to that in his statutory reasons.

LORD JUSTICE SINGH: Mr Wolfe, is the phrase "Sustainable development" defined in this Act?

MR WOLFE: It is not. I will take you in a moment to how the Divisional Court dealt with that. It is almost my next point, my Lord.

LORD JUSTICE LINDBLOM: Following my Lord's question, is there any statutory definition in this legislative scheme, or for that matter in any other domestic legislative scheme of the concept of sustainable development?

MR WOLFE: I think there is in Wales, in Welsh legislation.

LORD JUSTICE LINDBLOM: Wales but not in England?

MR WOLFE: Exactly. There is a sustainable development duty in primary legislation in Wales but not in England. I will be corrected if I am wrong.

LORD JUSTICE HADDON-CAVE: I am grateful, Mr Wolfe. At some stage, do not take time now, please, I would be grateful if I could see that.

MR WOLFE: Of course, my Lord. As soon as I have done this little bit, I will take you to the Divisional Court said about this that will help I think on this point.

LORD JUSTICE LINDBLOM: Thank you.

MR WOLFE: 10(3):

" For the purposes of subsection (2) the Secretary of State must (in particular) have regard to the desirability of -

(a) mitigating, and adapting to, climate change…"

 So within the overarching statutory requirement to discharge positive objective, that discharge must be done with the purpose in particular, or have regard in particular, emphatic words "in particular", to the desirability of mitigating on the one hand and adapting to climate change. They, as the court will no doubt envisage, are entirely different things. Mitigating means heading off the impact of, adapting to means dealing with the effects of.

LORD JUSTICE LINDBLOM: Yes.

MR WOLFE: You will see how that plays out within the ANPS in due course.

 My Lords, in terms of the sustainable development question, we will see that in the Divisional Court in a moment if I may. I am not going to take you to any of the other provisions of the Planning Act, but they deal with something that was a fairly live issue before the Divisional Court, which was the inter-relationship between the ANPS process and the development consent process. That is of background relevance, well more than background relevance, central relevance to my case because the ANPS sets, obviously, the policy framework for the Development Consent Order which comes in due course, and there is a very particular statutory relationship between them explained in the Divisional Court judgment (I will not take you to it now) but through the prism in particular of 704, which in effectively sets the ANPS up as being the determining framework for the DCO application evaluation and that is why it matters, to get the ANPS right.

LORD JUSTICE LINDBLOM: Yes.

MR WOLFE: One of the answers, pushing back the other way, is to say: well, all of these issues, climate change and so on, can be ventilated before the Development Consent Order Planning Inquiry (or whatever it may be). We say no answer, because that ventilation will take place through whatever policy framework is set by the ANPS.

LORD JUSTICE LINDBLOM: Yes, understood.

MR WOLFE: Can I then touch, if I may, in terms of some sort of chronological order, I am going to take you through some key events, if I may. The first of those, if I may, is to pick up the Paris Agreement. You have that in the materials bundle for the climate change topic. You have that in tab 5 of that bundle. What you have here in form is, the first page of the print-out you have what is called a draft decision, and this is the decision that is the decision that was in due course adopted, annexed to which is the Agreement itself. I just want to draw attention to some of the recitals, I suppose they would be called, to the draft decision, the first couple of pages if I may, before turning to the Agreement itself. So on that first page, the first "*Recognizing*" and then "*Also recognizing*":

"*Recognizing* that climate change represents an urgent and potentially irreversible threat to human society and the planet and that requires the widest possible cooperation by all countries and their participation in an effective and appropriate international response with a view to accelerating the reduction of global greenhouse gas emissions…"

 That is the first place we get a hint that this is acceleration. More effort is needed. In terms of our statutory framework, we say this is manifestly increasing the desirability for mitigating climate change.

"*Also recognizing* that deep reductions in global emissions will be required in order to achieve the ultimate objective of the Convention [UN Framework Convention] emphasising the need for urgency in addressing climate change."

 Then over the page, I will not read them to you, but I ask you to side-line them for now, 25 per cent of the way down, "*Emphasizing*", "*Also emphasizing*" and "*Stressing*".

LORD JUSTICE LINDBLOM: Yes.

MR WOLFE: They are all explaining the way in which the Paris Agreement represents a scaling up and the recognition of a need to scale up the international response to climate change, the previous ambition being recognised not to be enough.

 You then have page 21 of the print-out, you have the Agreement itself annexed to the decision. Skipping over page 22 to the body of the Agreement itself. In Article 1 you see "Definitions", and you see 1(1), "'Convention' means the United Nations Framework Convention on Climate Change". That is the backdrop, 1992. Then Article 2, 2(1) (again I will not take you through all these, I simply want to emphasise the general direction of them. 2(1):

"This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response …"

 It tells us in 2(1)(a) what that means:

"Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognising that this would significantly reduce the risks and impacts of climate change…"

 It is that shift from a 2o aspiration to a 1.5o aspiration, which is (and I do not want to over-simplify it and I will be accused of over-simplifying I have no doubt) but that is at the heart of the increased ambition of this framework.

LORD JUSTICE LINDBLOM: Yes.

MR WOLFE: Article 3 then says what the parties to the Convention are agreeing to do:

"As nationally determined contributions to the global response to climate change, all Parties are to undertake and communicate ambitious efforts as defined in Articles 4 [et cetera] with a view to achieving the purpose of this Agreement."

 So it is a recognition and agreement to do things. Then just picking up Article 4:

"In order to achieve the long-term temperature goal set out in Article 2, Parties aim to reach global peaking of greenhouse gas emissions as soon as possible …"

 Then 4.2:

"Each Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions."

 So, whilst it does not specify numbers, it does not set numeric targets, it undoubtedly sets objective and they are environmental protection objectives, and I choose those words carefully because they will come back later. And it undoubtedly requires the parties to do things, including in the ways I have identified.

 My Lords, if I can then put that bundle down and turn to core bundle 1, which has within it an agreed narrative of events, a chronology in effect. That is at core bundle 1, page 1. No doubt others will take you to this and that is why I thought it would be helpful to position our timeline within this overall timeline, because we are obviously only concerned with some of the dates in here, but we are concerned with the (**inaudible**) and timing.

 You will see, my Lords, that the reference column (I am looking now at page C1/3) refers at variously to the judgment and to the agreed statement of common ground below and also at various places to the Climate Change Acts. I will only take you to a few of those, because for my purposes mostly what is in here is sufficient. There are also some references to some of the core bundles below, slightly unhelpfully (and I will apologise on behalf of everybody that they were not correct to your Lordships' bundles and I may need to re-write one of those at least to give a reference to your Lordships' bundles). A long introduction to some short points.

LORD JUSTICE LINDBLOM: All right.

MR WOLFE: Page 3, the first date for my purposes is 26 November 2008. Highlight that one if you would, the Climate Change Act.

LORD JUSTICE LINDBLOM: Yes.

MR WOLFE: The next date for my purposes is page 9, 12 December 2015. You have seen it already, Paris Agreement adopted.

LORD JUSTICE LINDBLOM: Yes.

MR WOLFE: At the foot of the page, March 2016, WSP (that is the Secretary of State's expert) produces Appraisal of Sustainability ANPS Scoping Report, that is the scoping report for the SEA Environmental Report, if I can translate that.

LORD JUSTICE LINDBLOM: Yes.

MR WOLFE: My Lord, the document reference there, CB11/17. It is unhelpfully to the bundles below. You have that in I think it is called Hillingdon bundle no.8 at page 1337. I may need to go to that later, but I will correct it now.

LORD JUSTICE LINDBLOM: Without taking any time now, and I am sure we can manage for the moment, in due course it would be helpful, I think, to have these references brought up to date.

MR WOLFE: I am sure it will be done by the collective teams.

LORD JUSTICE LINDBLOM: Thank you.

MR WOLFE: I just wanted to correct that one for now, if I may.

LORD JUSTICE LINDBLOM: That would make our task easier.

MR WOLFE: So what we have seen, my Lord, is that that scoping exercise, and you will see this again in my submissions in due course when I come to my SEA arguments, that is March 2016.

LORD JUSTICE LINDBLOM: Yes.

MR WOLFE: Over the page, page 10, foot of the page, we have the Climate Change Committee published UK Climate Change Transaction(?) following the Paris Agreement. The Climate Change Committee, as you will have seen, is a statutory creature whose advice needs to be taken by the Secretary of State in relation to climate change obligations. I am not going to take time on that, but they have a specific statutory role in that regard. I will come back in a moment, when I have looked at the chronology, to the content of that advice.

LORD JUSTICE LINDBLOM: Yes.

MR WOLFE: We then see at page 12, November 2016 the Paris Agreement ratified by UK. We then see page 16, the dates here are given as 8 January to 25 February 2018. Slightly unhelpfully, it then starts off by telling us what happened in 2015 for the narrative text. But the Intergovernmental Panel on Climate Change's report into the global implications of crossing the threshold of 1.5o global warming, was commissioned by the Government in 2015. The relevance of that, my Lords will appreciate, because the 1.5o is the Paris aspiration, the report that was commissioned in 2015, we are now told the draft report was reviewed by Governments around the world between 8 January and 25 February 2018.

 So no dispute but that the UK Government had the draft report of the IPCC, not at this point public documents, in the January to February period. Then on page 18, 17 April 2018, the Government announced at the Commonwealth Heads of Government Meeting, that after the IPCC report later in the year, it would seek advice from the Climate Change Committee on the implications of the Paris Agreement for the UK's long-term emissions reduction targets. That is following on from the drafts it had seen, it says, "Well, there is nothing here to make us realise we need to at least commission investigation by Climate Change."

LORD JUSTICE LINDBLOM: Yes.

MR WOLFE: Then we have 5 June 2018 publication of the various documents, a suite of documents comprising the ANPS and its related matters. So the ANPS in its final but predesignated form and the associated responses consultations and the appraisals of sustainability and so on. Then the final point in the chronology for my purposes is on page 21, 26 June 2018, ANPS designated.

 My Lord, I said I would go back (and if I put that bundle down for now) I will do so now -- it is the climate change supplementary bundle -- to look, if I may, at what the Climate Change Committee said in October 2016. You have that at page 22, if you have that. That will be in tab 2, starting at page at page 20, but I want to go to page 22, 19/20. So this is an extract, a key extract, from October 2016, the Climate Change Committee's report.

LORD JUSTICE HADDON-CAVE: Give us that reference again please.

MR WOLFE: I am sorry, it is climate change supplementary bundle, tab 2 (if you have tabs), page 19 is the cover page.

LORD JUSTICE LINDBLOM: Yes, thank you. Just a moment. (**Pause**)

LORD JUSTICE SINGH: It is the Friends of the Earth -- can you give us the same references that we have had before. I think this is number 5 or 6.

MR WOLFE: I am told it is called The Friends of the Earth supplemental bundle.

LORD JUSTICE HADDON-CAVE: It is. The folder I have has the spine note saying, "Supplemental bundle, Friends of the Earth appeal only".

MR WOLFE: That is the fellow; that is the one. Within that tab 2 or page 19 (depends on which one you find more helpful), that is the October 2016 report. Page 22, I just want to look at a very few highlights. Paragraph 1 is headed on page 22, "UK and international ambition". It tells us about the Paris Agreement and it explains in summary form, and I will not take you through it, what you have seen in the original text of the Paris Agreement, in other words, tells us what the current UK targets are and say in my summary, "More will be needed". "To achieve this aim", this is the second bullet point:

"… the Agreement additionally sets a target for net zero global emissions in the second half of the century."

LORD JUSTICE LINDBLOM: Yes.

MR WOLFE: Then the bottom of that section 1, below all the various bullet points:

"We welcome the Government's commitment to ratifying the Paris Agreement by the end of the year. The clear intention of the Agreement is that efforts should increase over time. While relatively ambitious, the UK's current emissions targets are not aimed at limiting global temperature as low at a level as in the Agreement nor do they stretch that far into the future."

 So that is a recognition that the UK's current statutory ambition is not sufficient in those ways to meet the Paris aspiration.

LORD JUSTICE LINDBLOM: Yes.

MR WOLFE: The Climate Change Committee then analysis the UK's current ambition and including some analysis of the various existing carbon budgets as to how on track or not we are to meet them. Then on page 24, middle of the page, by the hole punch:

"We currently have no scenario as to how the UK can achieve net zero domestic emissions."

 That is the Paris aspiration. They are not suggesting that there is nothing to be done; quite the contrary. Then on page 25 in your bundle --

LORD JUSTICE LINDBLOM: Does that assume, as its premise, if you will, that the UK can achieve net zero domestic emissions by a particular date, whatever it is and this is a question of how not whether?

MR WOLFE: It may well be that, my Lord, but the point is that what it is saying is that the current statutory regime is not focused on that aspiration.

LORD JUSTICE LINDBLOM: Yes, but the focus is on the question of how not the question of whether.

MR WOLFE: Both acceptable, yes.

LORD JUSTICE LINDBLOM: Yes, I see.

MR WOLFE: Then we have on page 25, heading "Strategies for hard to treat sectors". Within that first paragraph and in the last but one paragraph on the page, is a recognition that aviation is what is called a "hard to treat" sector.

LORD JUSTICE LINDBLOM: Yes.

MR WOLFE: That is because whilst some things can be done by way of innovation, there may be an irreducible minimum contribution which has to be offset by other things. That is the simple, my simple characterisation of it.

LORD JUSTICE LINDBLOM: Where were you reading from just now?

MR WOLFE: The first paragraph:

"Even with full deployment of the low, low carbon technology behaviours, some UK emissions will remain, especially from hard to treat sectors, aviation, agriculture and parts of industry."

LORD JUSTICE LINDBLOM: Yes, thank you.

MR WOLFE: So they cannot be reduced to zero. The effect of that, therefore, is there has to be offsetting somewhere else. However, in terms of what they recommend at that stage (this is page 26) paragraph 4, section 4, "Implications for UK policy priorities in the nearer term", they say this:

" “Current policy in the UK is not enough to deliver the existing carbon budgets that Parliament has set."

 In other words, we are not even on track to meet the existing statutory targets. So in that context, go to paragraph 3:

"However, we recommend the Government does not alter the level of existing carbon budgets or the 2050 target now."

 So in the context of not being even on track to do what we have statutorily signed up to do, we suggest we do not change those things, but clear sign-posting that more will need to be done in the future. So, and this is the important point for my purposes, by no means saying "Paris, tick, no more needed". Indeed, quite the contrary. Quite the contrary.

 So, my Lord, that was October 2016. You have seen the emerging understanding of that heading forward to February 2018.

LORD JUSTICE HADDON-CAVE: Before you move on, Mr Wolfe, the Climate Change Committee saying in their conclusion, "We recommend the Government does not alter the level of existing carbon budgets … now", how do you account for that recommendation at the end, given what went before?

MR WOLFE: What they were in effect saying is, because we are not even on track to meet those, we are not suggesting we change those targets now. Let us concentrate on meeting the existing targets, but sign-posting that those targets are not going to meet the Paris ambition in due course.

LORD JUSTICE HADDON-CAVE: Do what you can now.

MR WOLFE: But this is very much an open and unfulfilled Paris commitment. So this is by no means giving the indication that we can sit back and assume all is on track for Paris.

LORD JUSTICE HADDON-CAVE: Well, you would emphasise in the next paragraph, would you, the priority for now?

MR WOLFE: Absolutely, my Lord.

LORD JUSTICE HADDON-CAVE: And then at the foot of the page, "We will advise on whether to set a new long-term target", and so forth?

MR WOLFE: Yes. But that is all headed "near term".

LORD JUSTICE HADDON-CAVE: Yes, that all plays into the same theme.

MR WOLFE: Exactly right.

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