Neutral Citation Number: [2025] EWHC 3206 (Admin)

Case No: AC-2025-LON-001560

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 8 December 2025

Before :

MRS JUSTICE LANG DBE

- -

Between :

THE KING **Claimant**

on the application of

LUTON AND DISTRICT ASSOCIATION FOR THE CONTROL OF AIRCRAFT NOISE

- and -

SECRETARY OF STATE FOR TRANSPORT **Defendant**

LONDON LUTON AIRPORT LIMITED **Interested Party**

PRESS SUMMARY

NOTE: This summary is provided to help in understanding the Court's decision. It does not form part of the judgment. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: www.judiciary.uk, https://caselaw.nationalarchives.gov.uk and www.bailii.org

Introduction

1. The Claimant applied for judicial review, in accordance with section 118(1) of the Planning Act 2008 ("PA 2008"), of the decision of the Defendant, dated 3 April 2025, to grant a development consent order ("DCO") to the Interested Party ("IP") for the expansion of London Luton Airport ("the Airport").

2. The IP is the owner of the Airport and trades as "Luton Rising". It is a commercial business and Public Airport Company, owned by Luton Borough Council, for

community benefit. It submitted the application for development consent in 2023. The proposed development will increase overall passenger capacity from 19 million passengers to 32 million per annum. It will include a new passenger terminal and additional aircraft stands.

3. The Claimant is an unincorporated association which was established to oppose the expansion of the Airport.

4. Between August 2023 and February 2024, the proposed development was examined by the Examining Authority ("ExA"), comprising five appointed inspectors. On 10 May 2024, the ExA submitted its report to the Defendant, and recommended that the Defendant withhold consent.

5. Between August and November 2024, the Defendant undertook further consultations, in particular, on the potential implications of the judgment of the Supreme Court in *R (Finch) v Surrey County Council & Ors* [2024] UKSC 20*,* [2024] PTSR 988.

6. In a decision letter ("DL") dated 3 April 2025, the Defendant granted development consent and made the London Luton Airport Expansion Development Consent Order 2025, which came into force on 24 April 2025.

7. The claim for judicial review was issued on 16 May 2025. Following a hearing, the claim for judicial review was dismissed by the Court on Grounds 1 to 5. Permission to appeal was refused.

8. Ground 6, in which the Claimant contended that the Defendant erred in relying upon the Jet Zero Strategy, as it is unlawful, is to be determined at a later date, in the light of a pending appeal to the Court of Appeal against the decision in *R (Possible (the 10:10 Foundation) and Another) v Secretary of State for Transport* [2025] EWHC 1101 (Admin) which upheld the lawfulness of the Jet Zero Strategy.

Grounds of challenge

Ground 1

9. The Claimant submitted that it was unlawful for the Defendant and the IP not to include greenhouse gas ("GHG") emissions from inbound flights in the environmental impact assessment ("EIA"), made under the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("the EIA Regulations"). This amounted to a failure to assess the indirect likely significant effects of the proposed development on the climate, contrary to regulations 14(2) and (3) and 21(b) of the EIA Regulations, and contrary to the judgment in *Finch*.

Conclusions

10. The Court accepted the submissions made by the Defendant and the IP. In the EIA process, the obligation under regulation 5(2) is to "identify, describe and assess, in an appropriate manner, in light of each individual case, the direct and indirect significant effects of the proposed development". Effects which are not "significant" are not required to be assessed as part of the EIA. When deciding whether to make a DCO under regulation 21(1)(b), the Secretary of State must reach a reasoned conclusion on the "significant effects" but not on those effects which have not been assessed as significant. Less than significant effects are considered as part of the overall planning balance.

11. In *Finch* the contested issue was whether the combustion emissions could be regarded as likely effects of the development, within the meaning of the EIA Directive and the EIA Regulations.

12. In contrast, in this case, the Defendant and the IP accepted that the emissions from inward bound flights were likely effects of the development. The emissions were quantified and published by the IP. The contested issue was whether it was possible to make a meaningful assessment of their significance when, in accordance with standard national and international practice, the appropriate benchmarks (e.g. the Climate Change Committee's ("CCC") Planning Assumption, the Sixth Carbon Budget, the Jet Zero Strategy) all calculated emissions for outward bound flights only, for consistency and in order to avoid double counting. The Airports National Policy Statement's ("ANPS") significance test for GHG emissions also required assessment against the carbon budgets (at paragraph 5.82). The assessment would necessarily be flawed if the calculation was undertaken on a different basis to the benchmarks, as it would not be comparing like with like. The flaw was demonstrated in the Claimant's representations where it erroneously compared the combined emissions as 5% of a CCC allowance, where the CCC allowance did not include inbound flights.

13. The evaluation of the significance of an estimated amount of GHG emissions and its acceptability are matters of fact and judgment for the decision-maker. In undertaking that exercise, the decision-maker is entitled to select a benchmark to assist in arriving at a final judgment. There is no set significance threshold for carbon emissions. The selection of an appropriate benchmark is a matter of judgment based on a technical/scientific assessment to which the Court affords respect: see *R (Mott) v Environment Agency* [2016] 1 WLR 4338. In *R (Boswell) v Secretary of State for Energy, Security and Net Zero* [2025] EWCA Civ 669, the Court of Appeal held, at [80]:

> "In our view the evaluation of the significance of an estimated amount of GHG emissions and its acceptability is a matter of fact and judgment for the decision-maker. He or she may decide to choose benchmarks to help in arriving at that judgment. But that choice too is a matter of judgment for them. Any conclusion drawn on the acceptability of the GHG emissions in comparison with a benchmark is also a matter of judgment for the decision-maker. The 2017 Regulations do not determine how these matters should or may be approached …."

14. The Defendant relied upon the guidance given in *Finch* in respect of cases where there is insufficient evidence to assess significance (per Lord Leggatt, at [77], [138]) and where effects are not capable of meaningful assessment (per Lord Leggatt, at [167]).

15. Alternatively, if the ruling in *Finch* did require further consideration of the indirect impacts, the Defendant was able to reach a judgment because the emissions of inbound and outbound flights had been quantified. The outbound emissions were considered to be minor adverse and not significant (representing 0.41% of the Sixth Carbon Budget). The inbound emissions were the same as the outbound and so were substantially less than 1%. A conclusion that the inbound emissions were not significant was clearly a rational conclusion open to the Defendant.

Ground 2

16. The Claimant submitted that the Defendant unlawfully failed to take account of a material consideration, namely, the treatment of inbound flight emissions by the Gatwick ExA when considering the expansion of Gatwick Airport. They identified the

same methodological difficulties with assessing inbound flight emissions against UK carbon budgets, but nonetheless took them into account.

Conclusions

17. The Court accepted the submissions made by the Defendant and the IP. The Gatwick ExA report related to a different examination for a different project at a different airport, at which the Examiners heard different evidence and representations. Gatwick is a much larger airport than Luton and so the resulting emissions would be quantitatively different.

18. Furthermore, the Gatwick ExA report was not a decision. It was a recommendation which the Secretary of State subsequently rejected. She concluded that whilst inbound emissions were an effect, it was not possible to carry out a meaningful assessment against a relevant benchmark. She did not consider that the effects of inbound flight emissions materially affected her overall conclusions on significance, and were not on their own, or in combination with the total GHG emissions of a scale to justify refusing consent. They would be managed and mitigated through emissions trading schemes.

19. There was no legal basis upon which to conclude that the Defendant was required to treat the views of the Gatwick ExA as a mandatory material consideration when exercising her planning judgment. The Defendant rightly based her decision on the evidence, representations and ExA recommendations made in the Luton application.

Ground 3

20. The Claimant submitted that neither the IP nor the Defendant conducted any assessments of non-CO_2 emissions, despite accepting that it was possible to do so. The section on non-CO_2 impacts in the Environmental Statement ("ES") did not constitute a "description" of the impacts or an "assessment" of them for the purposes of the EIA Regulations. The Defendant excluded non-CO_2 emissions from its assessment of the extent of climate impacts, which was an error of law contrary to the EIA Regulations, and the guidance in *Finch*.

Conclusions

21. The Court accepted the submissions of the Defendant and the IP. The ES described the non-CO_2 effects and acknowledged their warming effect. It referred to the significant scientific uncertainty about their impacts, as confirmed in the CCC Sixth Carbon Budget Report.

22. The ExA agreed with the IP's approach. Although it acknowledged that multipliers could have been applied, there was no scientific consensus in regard to them. The ExA accepted the IP's reasons for concluding that a qualitative approach was appropriate in light of the uncertainties. The Defendant accepted the approach endorsed by the ExA.

23. There was no legal obligation to embark upon an attempt to quantify such non-CO_2 emissions which were only indicative. The nature and extent of the assessment was a matter for the decision-maker to decide. Regulation 5(2) of the EIA Regulations requires that the assessment of significance is undertaken "in an appropriate manner, in light of each individual case". On the basis of the environmental information, the ExA and the Defendant made a legitimate evaluative judgment that quantification was not appropriate in the circumstances. The question of how to go about assessing significance is a matter of judgment and evaluation for the decision-maker: see *Boswell*, at [80] and [96], and *Finch* at [58].

24. The decision in this case was consistent with the approach that was applied and found to be lawful in the *Bristol Airport* case. Lane J. rejected an argument that the Secretary of State ought to have made use of a multiplier to quantify non-CO_2 emissions and also an argument that there had been a failure to consider non-CO_2 emissions in the ES. Lane J. did not accept the argument that there was "space" to apply the precautionary principle, as argued by the Claimant in this case too. In refusing permission to appeal Lane J.'s decision to the Court of Appeal, Andrews LJ stated:

> "10. ….. The underlying issue in *Friends of the Earth* was whether the Secretary of State had acted irrationally in not addressing the effects of non-CO_2 emissions in the ANPS. The Supreme Court said that the precautionary principle added nothing to the argument as to whether it was rational to exclude those effects. As the Judge explains at para 228 and following, the precautionary principle likewise added nothing in the present context, where the issue was very similar – whether the decision-maker had rationally concluded that the issue of the impact of non-CO_2 emissions should be left over for future consideration."

25. The Court found that there was no proper basis for not following the *Bristol Airport* decision.

Ground 4

26. The Claimant submitted that the Defendant erred in law in concluding that the Secretary of State's duty under the Climate Change Act 2008 ("CCA 2008") to adopt policies and procedures that ensure the legislative duty to reach net zero is complied with was a "pollution control regime" and therefore the policy presumption in paragraph 4.54 of the ANPS and paragraph 201 of the National Planning Policy Framework ("NPFF") applied.

27. Applying the analysis in *Gladman Developments Limited v Secretary of State for Communities and Local Government* [2020] PTSR 128, the CCA 2008 is not a parallel system of control with licensing or permitting powers. Rather it is a regime which is programmatic in nature, imposing obligations on the State to comply with a duty by whatever means it chooses. The Defendant, who owes the duties in sections 1 and 4 CCA 2008, has no specific powers of enforcement under the CCA 2008 and cannot compel any given polluter to limit or cease pollution. The regime falls squarely within the description of programmatic obligations in *Gladman*.

28. The *Bristol Airport* case, in which Lane J. distinguished *Gladman*, and rejected the claimant's submission that the CCA 2008 was not a separate pollution control regime, was wrongly decided. It was decided before *Finch*, which accepted that "a local planning authority, in deciding whether to grant planning permission, [can] take into account the fact that the proposed use of the land is one that will contribute to global warming through fossil fuel extraction" (at [150]).

Conclusions

29. The Court accepted the submissions of the Defendant and the IP. The ExA and the Defendant were correct in applying paragraph 4.54 of the ANPS, rather than paragraph 201 of the NPPF. The principle that decision-makers are entitled to have regard to and rely upon regimes outside the planning system when granting permission or consent is well-established in the case law (see *R (APT) v Secretary of State for Transport* [2025] EWHC 1992 (Admin)).

30. In *Boswell,* at [81], the Court of Appeal held that it is not unlawful to conclude, in planning cases, that GHG emissions will be managed across the economy to ensure consistency with carbon budgets and the 2050 net zero target.

31. In the *Bristol Airport* case, the High Court considered the CCA 2008 and the argument advanced by the claimant that the Secretary of State had erred in treating the CCA 2008 as a "separate pollution control regime" for the purposes of the NPPF. The High Court rejected the argument that the CCA 2008 was "programmatic in nature" and distinguished *Gladman*, which was concerned with the broad provisions of the Air Quality Directive, and air quality issues which have "a significant and discrete local element" (at [139]). In contrast, the specific duties in the CCA 2008 require the setting of carbon budgets and trading emission schemes at a national level which are designed to control emissions. The consequence of the claimant's approach would be "to duplicate the system of controlling aircraft emissions, put in place by the CCA" and "lead local planning decision makers into an area of national policy with which they are not directly concerned." (at [143]).

32. When refusing permission to appeal against Lane J.'s judgment on this point, the Court of Appeal stated that the Judge was right to distinguish *Gladman*, for the reasons he gave.

33. The position has not changed as a result of the judgment in *Finch* or the revised wording in paragraph 163 of the NPPF. At [150] in *Finch*, Lord Leggatt did not purport to overturn the long-established principle that a planning decision-maker can assume that a separate regime of environmental control will operate properly when assessing environmental impacts. He was addressing a different point, namely, that it would be wrong for the local planning authority not to have regard to the material consideration that the proposed use of the land for oil extraction would have the effect of increasing GHG emissions, and so contributing to global warming.

34. Therefore the Defendant was entitled to rely on the proper operation of the regime in the CCA 2008, which provides controls on GHG emissions from aviation, when reaching her conclusions on the impact of GHG emissions.

Ground 5

35. The Claimant submitted that the Defendant erred in law in failing to give adequate reasons for finding compliance with section 85(A1) of the Countryside and Rights of Way Act 2000 ("the CROW Act").

36. Section 85(A1) of the CROW Act provides:

> "(A1) In exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty in England, a relevant authority other than a devolved Welsh authority must seek to further the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty."

37. The equivalent duty in section 11A(1A) of the National Parks and Access to the Countryside Act 1949 was recently considered in *New Forest National Park Authority v Secretary of State for Housing, Communities and Local Government and Another* [2025] EWHC 726 (Admin). Mould J. held, at [61] – [63] that the duty required the decision-maker to "determine whether the proposed development is consistent with the promotion of the statutory purposes" and, if not "consider whether the grant of planning permission would be in accordance with their duty to seek to further those purposes".

The duty to "seek to further" is not a duty necessarily to fulfil the relevant purposes but to consider whether, in a case where there is conflict, granting planning permission is justified. As part of that exercise, it is legitimate to consider mitigation and compensation either by way of conditions or planning obligations.

38. The ExA report considered that the proposed development would have a significant adverse effect on the aesthetic and perceptual qualities of the Chilterns National Landscape ("Chilterns NL") (paragraph 3.8.95). In the absence of any additional mitigation measures to offset the harms, the ExA was unable to recommend that the duty had been complied with (paragraph 3.8.99).

39. On 27 September 2024 the Defendant invited further representations from Natural England ("NE"), the Chilterns Conservation Board ("the CCB"), and the IP on what, if any, further enhancement measures they may agree could be brought forward, should it be decided that further measures would be necessary to assure compliance with the duty. There were a number of exchanges between the parties, but ultimately no agreement was reached.

40. On 1 November 2024, the CCB set out how any proposed compensation or enhancement measures could be formulated, including by reference to a number of potential comparator schemes. The CCB considered that the Great Western Railway ("GWR") "Mend the Gap" scheme was the closest comparator, and the funds that arose from that scheme were £3.75 million, split as £3 million for enhancement projects and £750,000 for mitigation projects. The CCB's suggestion was that an appropriate quantum for a fund could be calculated by comparing the size of the area in which the impacts of GWR electrification were deemed to be experienced with the size of the area in which the impacts of the overflying as a result of the Airport's expansion would be experienced, and applying that ratio to the size of the fund for "Mend the Gap".

41. On 8 November 2024, the IP set out a proposal for a one-off payment of £250,000. The IP explained how that sum had been reached, engaging with the CCB's proposed comparators. The CCB considered that the scale of this offer demonstrated a disregard for the scale of harm to the area.

42. On 25 November 2024, NE submitted a letter stating: "[t]he fundamental concern with the [IP's] suggested approach…is that in the absence of agreement with the CCB it is unclear what such funds might be used for or whether they are capable of delivering any meaningful contribution towards furthering the [statutory] purposes…".

43. The Defendant set out the legal requirements and the history in detail at DL/201 – 207, and concluded at DL/208 - 209:

> "208. The Secretary of State thanks the Applicant and the Chilterns Conservation Board for their engagement on this matter, and notes their respective interpretations of the purpose of section 85 of the CRoW Act and that ultimately, an agreement could not be reached. The Secretary of State notes the debate between the Applicant and Interested Parties as to the requirements of section 85 of the CRoW Act and has considered this further below. The Secretary of State is aware that since the above responses were provided, on 16 December 2024, DEFRA published guidance for relevant authorities seeking to further the purposes of Protected Landscapes and has had regard to this when making her decision. The Secretary of State considers that in this case a financial contribution of £250,000 for projects which further the purposes of conserving or enhancing the

> Chilterns National Landscape is sufficient and necessary to meet section 85 of the CRoW Act in this case (on either the Applicant or Chiltern Conservation Board and Natural England's interpretation of its requirements).
>
> 209. Accordingly, the Secretary of State has included a new article 54 in the Order in the terms proposed by the Applicant in its response dated 8 November 2024. With the inclusion of this article, the Secretary of State is satisfied that the section 85 CRoW Act has been met. The Secretary of State, having considered the effects of the Proposed Development, considers that a fund of £250,000 represents a reasonable and proportionate contribution to further the purposes of enhancement and conservation in relation to the Chilterns National Landscape."

44. The Defendant went on to consider the impacts on the Chilterns NL. At DL/213, she accepted the IP's assessment that no significant effects would occur on the Special Qualities of the Chilterns NL as a result of the proposed development. Mitigation measures were considered at DL/215 – 217. She concluded, at DL/219:

> "219. Given that landscapes such as the Chilterns National Landscape have the highest status of protection in relation to landscape and scenic beauty, the Secretary of State has given great weight to the need to conserve this landscape and its special qualities. Noting that there will be some negative but not significant impacts, she has considered whether there are exceptional circumstances for granting consent. The Secretary of State is satisfied that the need for the Proposed Development and the expected benefits carry great positive weight. She is also satisfied that the Applicant has adequately assessed alternative options to increase the capacity of the airport and that the Proposed Development represents the best option. The Secretary of State also accepts that it is not possible for the Applicant to further mitigate the residual harm beyond the existing measures included in the Order, or inbuilt into the Application. She is therefore satisfied that the exceptional circumstances test has been met."

45. The Claimant submitted that the Defendant failed to give adequate reasons for her conclusions on the duty under section 85(A1) of the CROW Act, giving rise to substantial doubt as to whether she had performed the duty. The decision letter did not explain how the Defendant determined the dispute between the IP and the CCB on the amount of the contribution, nor how she was satisfied that the contribution would be used to further the purpose of the Chilterns NL. The Defendant failed to grapple with the advice of the CCB, the expert Protected Landscapes team or give significant weight to it.

Conclusions

46. The Court accepted the submissions of the Defendant and the IP. The Defendant considered the issues in detail and at length at DL/183 - 219. She specifically set out her reasoning and conclusions on her obligations under section 85(1A) of the CROW Act and clearly understood them and applied them. It should be borne in mind that the Claimant has not pursued any challenge to the lawfulness of the Defendant's substantive decision; the only challenge is procedural.

47. The Defendant specifically invited representations on what, if any, further enhancement measures should be secured. The Defendant was presented with competing submissions on appropriate enhancement measures and the quantum of any financial payment. This was recorded in the DL and forms part of the Defendant's reasoning. The CCB set out proposals as to how the quantum of a financial payment could be calculated, by reference to a previous project by GWR, but did not identify a specific sum for this case. The IP set out a justification for the figure of £250,000 in its letter and submitted that the CCB's comparators were unsuitable. It is obvious from the decision letter that the Defendant, in the exercise of her judgment, preferred the position of the IP to that of the CCB. The CCB and the Claimant cannot have been in any doubt about that.

48. The Defendant's conclusion that the financial contribution was a "reasonable and proportionate contribution to further the purposes of enhancement and conservation" was expressly based upon the Defendant's consideration of the effects of the proposed development. The Defendant's assessment of the effects of the proposed development was known to the Claimant and the other parties as it was set out in the DL. In concluding that the financial contribution was reasonable and proportionate, the Defendant followed the approach recommended in the new DEFRA guidance and alerted the parties to the guidance. She was not required to give any further reasons. The duty to give reasons does not require a detailed explanation of every step in the reasoning process; that would amount to a duty to give reasons for reasons.

49. It was expressly stated at DL/208 that the payment was for projects which further the purpose of conserving or enhancing the Chilterns NL. Indeed, that was the basis of the IP's proposal. Furthermore, the CCB will be under a legal duty to use the contribution to further the statutory purpose of section 87(A1) of the CROW Act. There is an express obligation to do so in article 54 of the DCO. The Defendant was not required to identify the specific projects.

50. There is no evidential basis for the submission that the Defendant failed to grapple with the views of the CCB and NE. It is plain from the decision that the Defendant took time and trouble in addressing this difficult issue. However, ultimately the Defendant was not obliged to accept the views of the CCB or NE. In departing from the views of a statutory consultee, there is no general requirement for "cogent reasons" going beyond the ordinary standard of reasons in the *South Bucks* case: see *R (Together Against Sizewell C Ltd) v Secretary of State for Energy, Security and Net Zero* [2023] EWHC 1526 (Admin), per Holgate J. at [107] – [114].

51. In conclusion, the Defendant's reasons were adequate and intelligible and met the required legal standard, set out in *South Bucks DC v Porter (No 2)* [2004] 1 WLR 1953, per Lord Brown at [36].