Neutral Citation Number: [2026] EWCA Civ 1040

Case No: CA-2026-001695
CA-2026-001666

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT
Mr Justice Mould
[2026] EWHC 1556 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 04/08/2026

Before :

LORD JUSTICE HOLGATE
LORD JUSTICE DOVE

- -

Between :

(1) PETER BARCLAY **(2) COMMUNITIES AGAINST GATWICK NOISE EMISSIONS**	**Claimants/ Appellants**
- and -	
SECRETARY OF STATE FOR TRANSPORT	**Defendant/ 1st Respondent**
- and -	
GATWICK AIRPORT LIMITED	**Interested Party/2nd Respondent**

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Alex Goodman KC and Gethin Thomas (instructed by **Goodenough Ring Solicitors**) for the **First Appellant**

Estelle Dehon KC, Odette Chalaby and Lois Lane (instructed by **Leigh Day**) for the **Second Appellant**

Rose Grogan KC and Daniel Kozelko (instructed by **Government Legal Department**) for the **First Respondent**

James Strachan KC and Victoria Hutton (instructed by **Herbert Smith Freehills Kramer LLP**) for the **Second Respondent**

Hearing dates : 27 and 28 July 2026

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Approved Judgment

This judgment was handed down remotely at 10.00am on 4 August 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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LORD JUSTICE HOLGATE AND LORD JUSTICE DOVE :

Acronyms

AEF = Aviation Environment federation
ANPS = Airports National Policy Statement
CAGNE = Communities against Gatwick Noise Emissions/Second Appellant
CAP = GAL's Carbon Action Plan

CCC = Climate Change Committee

CORSIA = Carbon Offsetting and Reduction Scheme for International Aviation

DCO = Development consent order

DESNZ = Department for Energy Security and Net Zero

DfT = Department for Transport

DL = The SST's decision letter dated 21 September 2025
EA = Environment Agency
ExA = Examining Authority
GACC = Gatwick Area Conservation Campaign

GAL = Gatwick Airport Limited/Second Respondent

GHG = Greenhouse gas

IEMA = Institute of Environmental Management and Assessment

JZS = Jet Zero Strategy

JZS:OYO = Jet Zero Strategy: One Year On

MBU = Beyond the horizon: the future of UK Aviation-Making best use of existing runways"
MDL = the SST's minded to decision letter dated 27 February 2025
NEF = New Economics Foundation
NEIA = National Economic Impact Assessment

NWR = Heathrow North West Runway scheme

SAF = Sustainable aviation fuel

SST = Secretary of State/First Respondent

TWUL = Thames Water Utilities Limited

[ ] = paragraph

Introduction

1. On 21 September 2025 the defendant, the Secretary of State for Transport, decided to make a development consent order under the Planning Act 2008. The DCO authorises the improvement of the northern runway at Gatwick Airport and the lifting of restrictions so that the northern and southern runways may be operated as dual runways. The DCO also authorises other development including airfield works, terminal works, hotels, offices, car parking and the improvement of surface access routes leading to the airport.

2. The appellants Peter Barclay and Communities against Gatwick Noise Emissions both brought claims for judicial review against the order under s.118 of the 2008 Act. The airport operator, Gatwick Airport Limited, took part as an interested party. The two applications for permission to apply for judicial review came before Mould J at a rolled up hearing on 20 to 23 January 2026. The judge handed down his judgment on 23 June 2026 (2026] EWHC 1556 (Admin)).

3. In his order of the same date dealing with Mr Barclay's application, the judge granted permission to apply for judicial review on grounds 1 and 4 and refused permission on grounds 2, 3 and 5. He then rejected grounds 1 and 4 and dismissed the application for judicial review. Mr Barclay seeks permission to appeal against that order. He continues to rely on grounds 1 and 4.

4. In his order dealing with CAGNE's claim, the judge noted that the claimant had withdrawn ground 5. He refused permission to apply for judicial review on grounds 2, 3 and 4. He granted permission to apply on grounds 1, 6 and 7 but then rejected those grounds and dismissed the claim. CAGNE seeks permission to appeal under CPR 52.8 against (a) the judge's refusal of permission to apply for judicial review on grounds 3 and 4 and (b) the judge's dismissal of the claim for judicial review in relation to grounds 1 and 7.

5. On 9 July 2026 Holgate LJ adjourned the applications by both appellants for permission to appeal to a joint hearing which took place before us on 27 to 28 July 2026.

6. We are grateful to all counsel for their written and oral submissions.

Matters covered by the judgment of Mould J

7. Given that we are only dealing with applications for permission to appeal rather than a substantive hearing, and given also that the judge delivered a detailed and thorough

judgment, it is unnecessary for us to summarise a number of matters. Instead, we cross-refer to relevant sections of that judgment:

Introduction [1]-[10]

The claimants [11]-[12]

Legal framework [17]-[39]

Policy framework [40]-[74]

The SST's decision [75]-[84]

Mr Barclay's grounds of appeal

8. In summary, Mr Barclay advances the following grounds of appeal:

Ground 1

(1) The judge erred in concluding that the SST in her decision had correctly interpreted the Airports National Policy statement.

(2) The judge misinterpreted the ANPS, in particular [1.6], [1.39], [2.28] and [3.18]-[3.20] of the ANPS and "Beyond the horizon: The future of UK aviation: Making Best Use of Existing Runways", in particular [1.29].

(3) The judge was wrong to interpret the Government's policy as supporting more intensive use of existing runways at Gatwick.

Ground 4

(1) The judge was wrong to find that the SST did not rely on GAL's National Economic Impact Assessment or its estimation of business passenger benefits;

(2) The judge failed to find that it was irrational for the SST to conclude that there would be significant national economic benefits, whilst accepting the significant uncertainties in the economic assessment, without addressing GAL's NEIA and the criticisms of it raised by Mr Barclay's case;

(3) The judge was wrong to find that the Secretary of State had given adequate and intelligible reasons and that there were not gaps of logic in the SST's analysis.

9. Mr Alex Goodman KC and Mr Gethin Thomas submitted for Mr Barclay that each of the grounds has a real prospect of success and/or that there are compelling reasons for the appeal to be heard.

CAGNE's grounds of appeal

In summary, CAGNE advances the following grounds of appeal:

Ground 1

The SST took an irrational approach to assessing the significance of GHG emissions. The SST's conclusion that the emissions would have a moderate significant adverse effect, as explained in the second edition of the guidance of the Institute of Environmental Management and Assessment, was contradictory to her conclusion that the project would not materially impact the Government's ability to meet its net zero targets for the purposes of [5.82] of the ANPS.

Ground 3

The SST accepted that non-CO_2 GHG aviation emissions are an effect of the proposed development and to be the subject of EIA. The SST failed to require a quantitative assessment of those emissions despite the existence of valid methodologies. This was irrational and/or in breach of a statutory obligation to reach a reasoned conclusion on likely significant environmental effects.

Ground 4

The SST failed to take into account material risks relating to the delivery of the Jet Zero Strategy and/or comply with the *Tameside* duty to make reasonable enquiries about that matter and/or if those risks were taken into account by the SST, she acted irrationally in giving full weight to the JZS.

Ground 7

The SST accepted that a requirement was necessary to prevent the discharge of wastewater into Thames Water's system if the latter could not accommodate the flows predicted for the development. The SST acted unlawfully in imposing a requirement in the DCO that GAL need only complete the physical development of alternative water treatment works before the extended runway could be used for operations, and not (a) that those works should also be operational and (b) that GAL should use them. In addition, the requirement contains an unlawful "tailpiece" that could allow the controls it imposes to be sidestepped.

10. Ms Estelle Dehon KC, Ms Odette Chalaby and Dr Lois Lane submitted for CAGNE that each of the grounds has a real prospect of success and/or that there are compelling reasons for the appeal to be heard.

Ground 1 of Mr Barclay's application

11. This ground is dealt with by the judge at [85]-[105] of the judgment.

12. Ground 1 is the contention that both the SST and the judge failed to properly understand and therefore apply the policy in the ANPS, in particular concerning the expansion of Gatwick Airport. Mr Barclay's submission is that properly understood the ANPS, in endorsing the NWR, specifically did not support expansion of capacity at Gatwick Airport, or at the very least the extent of the expansion of capacity at Gatwick Airport represented by the proposal in the DCO. Whilst it is accepted that it could be permissible for there to be further expansion at Gatwick Airport, if that were contemplated it would need to be assessed as a departure from the ANPS, rather than, as the SST and the judge perceived it, in accordance with the policies of the ANPS.

13. At its heart, this submission is one which depends upon the correct interpretation of the policy in the ANPS. It is, of course, correct that the interpretation of any policy used by a decision-maker to determine an exercise of discretion is a matter of law which may ultimately require the intervention of the court, albeit policies of the kind in question in this case have been written for the benefit of specialists as well as the wider public (see *Tesco Stores Ltd v Dundee City Council* [2012] UKSC 13; [2012] PTSR 983 at [17]-[19] and *Hopkins Homes Ltd v Secretary of State for Communities and Local Government* [2017] UKSC 37; [2017] 1 WLR 1865 at [22]-[23]). The question of the weight to be attached to the policy and aspects of judgment involved in applying the policy are matters for the decision-maker subject to supervision by the court under conventional public law principles.

14. The task of interpreting policy should not be undertaken as if the policy were a statute or contract. Policies may well contain broad statements of principle which may superficially conflict and require balancing in order to reach a decision. Policies should be interpreted bearing in mind that they are to be applied, as has already been observed, both by expert professionals and also the wider public for whose benefit they have been written. Any interpretation should bear clearly in mind that the policy has been written for the purpose of practical decision-taking, potentially in a wide variety of factual circumstances. In particular for the purposes of this case, the policy must be read and interpreted in the context of its subject matter and the policy objectives which it seeks to achieve and serve. That will include the wider framework within which it sits and other elements of policy to which it relates. The policy in question, and those to which it relates, must be read as a whole. As already noted policies will often require the exercise of judgment in considering how they apply to a given set of factual circumstances: it is therefore important to distinguish between policy interpretation, or the meaning of the words of the policy, and the policy's application which requires the exercise of judgment in relation to applying the policy to the individual facts of the case. It must be acknowledged that in some instances a policy may contain broad policy concepts or terms of art which have a specialist meaning which signal the need for the exercise of expert judgment rather than amounting to terms or concepts which require interpretation by lawyers.

15. Applying these principles we are entirely satisfied that there was nothing even arguably wrong with the interpretation of the ANPS which the ExA, the SST and the judge arrived at in relation to the issue of expansion at Gatwick Airport and the support of the ANPS for the NWR. Our reasons are as follows.

16. The judge provided extensive citation of the relevant policies which it is unnecessary to reiterate for present purposes. It suffices to note the following. The context in which the ANPS was promulgated on 14 December 2015 included in particular the work of the Airports Commission which concluded in July 2015 and which itself arose in the light of the requirements of the Aviation Policy Framework which had given rise to its establishment. The Airport Commission concluded that the NWR presented a stronger case than the competitor schemes which were a new runway at Gatwick Airport or a westerly extension of the northern runway at Heathrow. Indeed, the conclusion reached in the ANPS at [3.19] was that the proposed scheme for the new runway at Gatwick would not enhance, and therefore would threaten, the UK's global aviation hub status, as noted by the judge. No doubt this underpinned the requirement for any airport expansion by way of making better use of an existing runway to demonstrate a need

which is additional to and/or different from the need being met by the NWR scheme (see below).

17. At [47] – [61] of his judgment the judge set out the provisions of the ANPS and, obviously, regard needs to be had to all of the ANPS in reaching conclusions on the interpretation of its policy but in relation to the points raised in this ground of appeal it is in our view important to note that the primary purpose of the ANPS was to provide support for the development of NWR and the context for the formulation of a DCO for that scheme. At [1.6] the ANPS noted that NWR would not open for at least 10 years and it was considered "imperative that the UK continues to grow its domestic and international connectivity in this period, which it considered would require the more intensive use of existing airports other than Heathrow and Gatwick". The ANPS went on in [1.40]-[1.42] to set out the scope of its application to airport development proposals in the following terms:

> "1.40 The [ANPS] has effect in relation to the delivery of additional airport capacity through the provision of a Northwest Runway at Heathrow Airport. It also applies to proposals for new terminal capacity located between the new Northwest Runway and the existing Northern Runway at Heathrow Airport, as well as the reconfiguration of terminal facilities in the area between the two existing runways at Heathrow Airport. Each of these elements is also capable of constituting a nationally significant infrastructure project.
>
> 1.41 The [ANPS] does not have effect in relation to an application for development consent for an airport development not comprised in an application relating to the Heathrow Northwest Runway, and proposals for new terminal capacity located between the Northwest Runway at Heathrow Airport and the existing Northern Runway and reconfiguration of terminal facilities between the two existing runways at Heathrow Airport. Nevertheless, the Secretary of State considers that the contents of the [ANPS] will be both important and relevant considerations in the determination of such an application, particularly where it relates to London or the South East of England. Among the considerations that will be important and relevant are the findings in the [ANPS] as to the need for new airport capacity and that the preferred scheme is the most appropriate means of meeting that need.
>
> 1.42 As indicated in paragraph 1.39 above, airports wishing to make more intensive use of existing runways will still need to submit an application for planning permission or development consent to the relevant authority, which should be judged on the application's individual merits. However, in light of the findings of the Airports Commission on the need for more intensive use of existing infrastructure as described at paragraph 1.6 above, the Government accepts that it may well be possible for existing airports to demonstrate sufficient need for their proposals, additional to (or different from) the need which is met by the

> provision of a Northwest Runway at Heathrow. As indicated in paragraph 1.39 above, the Government's policy on this issue will continue to be considered in the context of developing a new Aviation Strategy".

18. At [2.28] of the ANPS the document repeated the point made in [1.6] that given the lead times for the NWR more intensive use of existing airports other than Heathrow and Gatwick would be required. These paragraphs are summarising the conclusions reached by the Commission and are not substantive Government policy. They set out the context for the substantive policy set out above in [1.40]-[1.42] (and also for that matter at [1.29] of MBU set out below). Chapter 3 of the ANPS presented the justification for the NWR and the reasons that it was preferred over the scheme for the new runway at Gatwick Airport. Overall the NWR was perceived as providing the most effective and appropriate means to meet the needs case and maintain the UK's hub status.

19. Alongside the ANPS, and clearly as part of the context for the purpose of its interpretation, the government also published MBU. The introductory paragraphs of MBU set out the background to the document, including the recommendation of the Airports Commission which the government supported that all airports who wished to make best use of their existing runways (including in the South East) should be supported to do so subject to environmental issues being addressed. At [1.25] – [1.27] of MBU the case for airports across the whole of the UK making best use of their existing runways is supported, with the exception of Heathrow Airport where the government's policy on increasing capacity had been set out in ANPS. The paragraphs explain that if the expansion proposed was less than 10mppa it would be dealt with as an application for planning permission; if it was in excess of this threshold it would be dealt with as an NSIP. The culmination of this strand of policy is set out in [1.29] as follows:

> "1.29 Therefore the government is supportive of airports beyond Heathrow making best use of their existing runways. However, we recognise that the development of airports can have negative as well as positive local impacts, including on noise levels. We therefore consider that any proposals should be judged by the relevant planning authority, taking careful account of all relevant considerations, particularly economic and environmental impacts and proposed mitigations. This policy statement does not prejudge the decision of those authorities who will be required to give proper consideration to such applications. It instead leaves it up to local, rather than national government, to consider each case on its merits."

20. At [4.2.61] the ExA concluded that whilst the DCO scheme comprised works to an existing runway it was necessary for the development to demonstrate a need which was additional to or different from the NWR scheme. Since there was no cap on the size of a scheme to make best use of an existing runway in the policy the DCO fell within the scope of MBU. At [4.3.36]-[4.3.37] the ExA concluded that whilst the growth of Gatwick Airport would attract some point to point traffic which would otherwise have flown from Heathrow this would revert to Heathrow when NWR opens: as a result the DCO scheme "would not unduly affect the hub status of LHR in the long term".

Ultimately at [20.3.6] the ExA concluded that in the light of the fact that the scheme made use of an existing runway and there is a nationally recognised need for aviation development in particular in the South East which current capacity could not fulfil, that "the need that has been shown to be present for Gatwick's growth is both largely additional to, and different from the need that would be met by the LHR NWR runway scheme."

21. At MDL [43] the SST agreed with this conclusion and also accepted at MDL [52] that any impact on Heathrow Airport's hub status would be short term and not significant or long lasting and would not affect its hub status in the longer term. This agreement was in the context of the current mix of low cost carriers and long-haul traffic at each airport as well as Heathrow's established hub status and the volumes of transfer passengers served. The detail of the conclusions was provided in [69] of MDL as follows:

> "The Applicant considered that Gatwick is unique amongst London's airports due to its carrier make up of full service, low-cost, charter and regional carriers [ER 4.3.14]. The LCC market is dominant at Gatwick [ER 4.3.12], in comparison to Heathrow, which only captures 3% of the low-cost market in the London airport system [ER 4.3.34]. Forecasts submitted by the Applicant demonstrate that transfer passengers (a marker of a hub airport operation) would remain below 5% of passengers at Gatwick, as compared to Heathrow's estimation that 23% of their passengers are transferring between flights [ER 4.3.17]. The Applicant has forecast strong, long-haul growth of over 145% by 2047, which Heathrow Airport Ltd. argued the Applicant would need to demonstrate is different from, or additional to, the hub demand to be served by a new runway at Heathrow [ER 4.3.22]. The Applicant noted that Gatwick would continue to serve point-to-point routes where the demand is typically large enough to justify several carriers on a route, and that the implementation of the NWR scheme would see a reversion of long-haul traffic to Heathrow, allowing Gatwick to consolidate as a lower-cost, complementary airport playing an important role as part of the wider market offer [ER 4.3.24]. The Secretary of State, therefore, is minded to agree with the ExA that a need has been demonstrated that is largely additional to, and different from the need that would be met by the NWR scheme."

22. The SST reiterated these conclusions in the DL at [21] and [24]. In addressing the contentions of Mr Barclay under this ground the judge noted that the starting point for the policy statements in ANPS and MBU was the recognition that new capacity in the form of NWR would not materialise for at least 10 years and that in the meantime Heathrow was operating at capacity and Gatwick was operating at capacity at peak times and hence the need for more intensive use of airports "other than Heathrow or Gatwick". This was not to be read as policy of hostility to more intensive use of the existing runway at Gatwick Airport. Indeed, on the contrary the provisions of [1.39] of ANPS and [1.29] of MBU provided support for making the best use of the existing runway at Gatwick Airport. The judge concluded that the contents of Chapter 3 of

ANPS did not affect this position: this was directed at explaining the preference for NWR over the scheme for the development of a new runway at Gatwick Airport. The judge quoted [30] of the DL as providing an accurate and proper summary of the policy position in the following terms:

> "Paragraph 1.39 of the ANPS outlines that the Government is supportive of airports beyond Heathrow making best use of their existing runways, recognising that the development of airports can have positive and negative impacts [ER 4.2.4]. This is reiterated in paragraph 1.29 of [MBU]. Paragraph 1.42 states that in light of the findings of the Airports Commission in 2013 on the need for more intensive use of existing infrastructure, the Government accepts that it may well be possible for existing airports to demonstrate sufficient need for their proposals, additional to (or different from) the Airports Commission's preferred choice of a Northwest Runway at Heathrow Airport".

23. In our view the judge was unarguably correct in reaching the conclusion that the ExA and the SST had correctly interpreted the policy in ANPS in the material which has been summarised above. It is unsustainable to contend that the ANPD "did not support an increase in capacity at Gatwick" or that it "does not support an increase in capacity at Gatwick Airport of a scale equivalent to that of a second runway". Nor is it tenable to contend that expansion of Heathrow and expansion of capacity at Gatwick are "seen as alternatives". The proper interpretation of the policy was precisely as the ExA and the SST concluded. The ANPS at [1.42] and MBU at [1.29] specifically contemplated that proposals for increased capacity at airports other than Heathrow (for which there was a specific scheme for a new runway) by way of making best use of existing runways would be supported, subject to the satisfaction of environmental concerns and demonstration that they met a demonstrable need for additional or different need to that being met by NWR. The approach to interpretation of this policy that is advanced on behalf of Mr Barclay does not reflect the language of the policy read in context, and at times seeks to write words into the policy which are simply not there.

24. It is in our view clear that what is written in [1.06] and is repeated in [2.28] of ANPS concerning the requirement to make "more intensive use of existing airports other than Heathrow and Gatwick" was written to describe the context of Heathrow and Gatwick Airports being at capacity. It could not have been the intention that it should be read as precluding any, or any significant, increase in capacity at Gatwick Airport through making best use of its runway infrastructure. Such an interpretation would be inconsistent with the provisions of both ANPS and MBU which did not preclude a scheme being brought forward for making best use of the runways at Gatwick Airport, or identify that Gatwick was out of the scope of the MBU policy. The point raised in this ground in relation to scale is without substance. As the ExA observed there is no cap on the scale of proposals that can be brought forward under the ANPS and MBU policy and in particular proposals which would lead to an increase of in excess of 10mppa are expressly contemplated. The ExA and SST correctly understood the ANPS and MBU policy in relation to a proposal of the kind contained in the DCO scheme and applied it accurately.

25. It is maintained that the judge erred in deploying an artificially narrow construction of the political and factual context of the policy and in particular the problem it was

designed to address. It is submitted that the problem to be addressed was not simply that of constrained airport capacity in London and the South East, which the judge noted, but also the need to preserve the UK's hub status and in particular the hub status of Heathrow Airport. The difficulty with that submission is that the judge was clearly aware of this point and addressed it at [104] of his judgment. In any event, as noted above, both the ExA and the SST examined in detail the impact on the hub status of Heathrow Airport arising from the development of the DCO scheme and concluded that whilst there might be a short term impact once the NWR was operational this traffic would return to Heathrow Airport and its hub status would not, beyond the short term, be harmed. This also addresses the third point raised by Mr Barclay's skeleton argument at [32] and following, and the fourth point in [35] and thereafter of the skeleton argument. The understanding of the policy in ANPS and MBU that the ExA and the SST applied reflected and gave consideration to the impact on the hub status of Heathrow Airport but concluded that the effect was insufficient to preclude the grant of consent to the DCO. This was a conclusion which also relates to the different needs which the scheme would serve and different types of demand that the ExA and the SST found that the Heathrow and Gatwick Airports serve.

26. For all of these reasons we have reached the conclusion that Mr Barclay's Ground 1 is not arguable and there is not a good reason for this ground to be permitted to proceed. As a result in our judgment permission to appeal must be refused.

Ground 4 of Mr Barclay's application

27. This ground is addressed by the judge at [132]-[180] of the judgment.

28. Mr Barclay's contention is that the judge erred in finding that there had been no error in the SST's analysis of the need for and the economic benefits of the DCO scheme based on flaws in GAL's business passenger forecast. The need case advanced by GAL at the examination included the NEIA which provided a split of benefits between leisure and business travellers. In that connection objectors to the scheme commissioned expert analysis from NEF which raised what they considered to be two critical omissions from GAL's need case. The first was the inexplicable forecast of a very large number of business passengers, which was contrary to the long term trend after COVID of a decline in that type of passenger. The second point was that GAL's forecast did not identify the extent to which the forecasts were projecting additional business passengers at the national level as compared to those business passengers displaced from other airports. The submission to the judge was that these omissions were not grappled with at all in the SST's decision. The SST simply observed that the socio-economic benefits arising from the scheme were to be afforded great positive weight as a consequence of its local and national impacts on economic growth and that the scheme would meet a different need from that being met by NWR.

29. The judge responded to these submissions by undertaking an extensive review of the ExA and the SST's evidence and conclusions in relation to the assessment of need and socio-economic benefits. It is unnecessary for the purposes of this judgment to repeat the examination of this material which occurs at [142]-[169] of the judgment and those paragraphs must be taken as read for what now follows. It is, however, worthwhile to distil some key points from that exercise.

30. Firstly, at DL[19], the SST noted the following about the separate markets which Heathrow and Gatwick serve:

> "19. The Secretary of State is content that the ExA considered the most recent Government forecasts available at the time, which show a significant increase in aviation demand in London up to 2050, which the Applicant predicts could not be met by any future Heathrow scheme alone [ER 4.3.7 - 4.3.8]. The ExA also considered evidence presented by Airport Coordination Limited, supported by the evidence of the Legal Partnership Authorities and easyJet, that the demand specific to Gatwick is significantly outstripping its supply at certain times of the year [ER 4.3.29 - 4.3.31]. The ExA noted that the markets served by Heathrow and Gatwick, while similar in some ways, are very different in others, including by reference to the proportion of the low cost carrier market, and rate of passengers transferring flights [ER 4.3.33 - 4.3.35] and so conceivably meet a different demand. Transfers are expected to remain a small sector demand compared to Heathrow [ER 4.3.16 - 4.3.17] therefore the Proposed Development is unlikely to affect the 'hub' status of Heathrow long term [ER 4.3.37]. While noting the concern that Gatwick is primarily a leisure flight airport, the Secretary of State has had regard to the Applicant's Planning Statement, confirming the trend for low-cost carrier airlines (which dominate Gatwick's traffic [ER 4.3.12]), which have opened up new routes and destinations to both business and leisure travellers [Planning Statement (APP-245), 2.4.17]".

31. Building on this and the other paragraphs in the SST's conclusion bearing upon these issues the judge reached the following key conclusion in [151] of his judgment:

> "151. The SST's reasons and conclusions in these paragraphs are neither founded upon nor justified by reference to any estimation of the growth in business passengers that would follow the coming into operation of the proposed development. The SST's judgment that the proposed development fulfils the policy requirement to show a need that is additional to, and different from that to be met by a new runway at Heathrow is founded on different considerations. Those considerations are identified in DL19, which I have set out above. It is Gatwick's function as primarily a leisure airport dominated by low cost carrier flights, and the expectation of continuing growth in those markets, that the SST identified as material factors in substantiating the need for the proposed development. That is entirely consistent with policy, since the relevant question was whether the evidence established a need which was both additional to and different from that which was to be met through development of a new runway at Heathrow. Hence the ExA's and the SST's focus on the contrasting functions of and markets served by Gatwick and Heathrow. Some weight is given to opportunities to

> expand business travel in the final sentence of DL19. There is no suggestion that the SST's reasoning in that sentence, or in DL19 as a whole, was founded in any material way on the NEIA or its estimation of the value of benefits to business passengers."

32. In dealing with the issues in relation to socio-economic benefits the judge set out the overall conclusions which the SST reached in DL [260]-[264] noting in the judgment at [169(4)] that in neither the conclusions of the ExA or the SST on socio-economic benefits is any reliance placed upon the NEIA. Other evidence is relied upon to forge the key conclusions in relation to need and socio-economic benefits. As a result the judge concluded that there was no substance in Mr Barclay's submissions on this ground: there was no gap in the reasoning of the SST and her conclusions were supported by appropriate and intelligible reasons. Whilst the NEIA was present in the wider evidence submitted by GAL in support of the development neither the ExA nor the SST reached conclusions based upon any estimation of the growth in business passengers using the proposed development.

33. Having reviewed the evidence we have formed the view that the essentially factual conclusions reached by the judge were entirely accurate and based upon a straightforward reading of the conclusions of the ExA and SST's decisions. The development of Mr Barclay's case to contend that there was no basis other than the business passenger forecast (as a principal source of national economic benefit) on the basis of which the SST could have concluded that there were national economic benefits from the scheme is in our view unsustainable. There was a wide variety of evidential material as well as established policy upon which the ExA and the SST could draw to reach conclusions on these topics and the selection of those to be relied upon, as well as the weight to be attached to them, was a matter for the SST and as noted her conclusions were fully reasoned and the sources for them explained in DL [259]-[264].

34. It was clear that there was a dispute between NEF and GAL in relation to the role that business passengers, or more particularly the fare revenue that they generated, played in calculating the net present value of the scheme. However, the assessment of need, which was a necessary component of the analysis of need for and the benefits of the scheme, involved a wide range of evidence in which the calculation of net present value and the NEIA was but a part. It was a matter for the ExA, and thereafter the SST, which of the strands of the evidence to focus upon and give weight to. It appears to be uncontroversial that neither the ExA nor the SST identified or placed weight upon the NEIA and its analysis of net present value. Other elements of the evidence were preferred. The selection of the evidence to be relied upon and the weight to attach to it was entirely a matter for the ExA and the SST. There was no requirement or justification to make the NEIA a mandatory consideration in the decision-making process in this case. Nor was it a requirement for the SST to address the NEIA in order to reach the conclusions which she did that there were significant national as well as local economic benefits from the scheme. It follows from this that, firstly, there was no gap in the logic of the SST and no requirement to resolve a technical dispute in relation to a document upon which she placed no reliance. Furthermore, the dispute over the NEIA was not a principal controversial issue which required the SST to provide reasons. The reasons are clear, at least by implication, that the NEIA did not form any part of the SST's conclusions on the issues of need and benefit. The conclusions which the ExA and the SST reached were simply not based on any estimated growth in

business passengers or the revenue from them. We are unable to conclude that this ground has a real prospect of success or that there is any other compelling reason that permission should be granted.

Ground 1 of CAGNE's application

35. The judge dealt with this ground at [182]-[212].

36. The SST dealt with the assessment of the significance of GHG emissions at DL [194]-[201] (which the judge summarised at [182]) and at DL [210] (which he quoted at [183]). She dealt with the application of [5.82] of the ANPS at DL [211]-[212] (quoted at DL [183]). The judge quoted [5.82] of the ANPS at [189].

37. The IEMA guidance on "significance" has been published to assist practitioners in assessing GHG emissions in statutory and non-statutory EIA ([1.1]). It has not been prepared to assist practitioners, or decision-makers, in the application of policy, including planning policy, such as [5.82] of the ANPS. The guidance is intended to be capable of being used to assess development of all types and size and not just nationally significant infrastructure projects under the 2008 Act.

38. Chapter VI of the guidance addresses the assessment of the "significance" of GHG emissions for evaluating "likely significant environmental effects", alongside mitigation and effects on climate change (section 6.1). The "crux of significance" is said to be whether a project "contributes to reducing GHG emissions relative to a comparable baseline consistent with a trajectory towards net zero by 2050", rather than the magnitude of its emissions alone (section 6.2).

39. Section 6.3 of the guidance gives advice on "significance principles and criteria". At [186] the judge quoted a key passage which distinguishes between:

- a major significant adverse effect
- a moderate significant adverse effect
- a minor non-significant adverse effect
- a negligible non-significant effect

We would add a reference to p.26 of the guidance which states that for GHG emissions to qualify as a minor significant adverse effect (or better) involves satisfying a "high bar" which "indicates exemplary performance where a project meets or exceeds measures to achieve net zero earlier than 2050". There is a final category, significant beneficial effect, which is reserved for "projects which directly or indirectly remove or avoid GHG emissions in the without project baseline".

40. This part of IEMA's guidance cross-refers to Box 3 on page 26 of the document which gives examples of each of the significance criteria (see the judgment at [187]).

41. It is self-evident that there are differences of degree between the significance criteria. The guidance states that it is down to the practitioner to differentiate between the level of, for example, significant adverse effects. Box 3 explains major, moderate and minor effects as follows:

> "Major adverse: the project's GHG impacts are not mitigated or are only compliant with do-minimum standards set through regulation, and do not provide further reductions required by existing local and national policy for projects of this type. A project with major adverse effects is locking in emissions and does not make a meaningful contribution to the UK's trajectory towards net zero.
>
> Moderate adverse: the project's GHG impacts are partially mitigated and may partially meet the applicable existing and emerging policy requirements but would not fully contribute to decarbonisation in line with local and national policy goals for projects of this type. A project with moderate adverse effects falls short of fully contributing to the UK's trajectory towards net zero.
>
> Minor adverse: the project's GHG impacts would be fully consistent with applicable existing and emerging policy requirements and good practice design standards for projects of this type. A project with minor adverse effects is fully in line with measures necessary to achieve the UK's trajectory towards net zero."

42. Section 6.4 of the guidance states:

> "The context of a project's carbon footprint determines whether it supports or undermines a trajectory towards net zero. Determining that trajectory and the position of a project within it, however, is the challenge for practitioners.
>
> It is down to the practitioner's professional judgement on how best to contextualise a project's GHG impact."

43. So, a major adverse effect "does not make a meaningful contribution to the UK's trajectory towards net zero". A moderate adverse effect "falls short of fully contributing to the UK's trajectory towards net zero". A minor adverse effect is "fully in line with measures necessary to achieve the UK's trajectory towards net zero".

44. In the last sentence of DL [212] the SST considered that, while the effects of the development's carbon emission would be significant, they do not meet the threshold for a "major significant adverse effect". The reasons for that judgment were given in DL [200] applying Box 3 of the guidance. So as the judge said at [196]:

(1) The proposed development was "fully consistent with applicable existing policy";

(2) GAL's Carbon Action Plan provides flexibility and scope to adapt to emerging policy;

(3) The proposed development would be fully consistent with good practice design standards;

(4) It would lead to an increase in GHGs, both CO_2 and non-CO_2;

(5) The scale of those effects would "fall short of fully contributing to the UK's trajectory towards net zero".

45. Although CAGNE faintly suggested that the SST did not make a finding that the effect would be "moderate adverse", it is obvious from the decision letter that she did that by applying IEMA's guidance in Box 3. The SST also decided that the proposed development was better in two respects. First, it was fully consistent with existing policy requirements. Second, the fact that the project would "fall short of fully contributing to the UK's trajectory towards net zero" "would be mitigated in the long term by the policies brought forward in the JZS".

46. The SST's application of the significance criteria in Box 3 of the IEMA guidance did not dictate the outcome of the application of [5.82] of the ANPS. The proposed development would fall short of fully contributing to the UK's net zero trajectory, mitigated in the longer term by JZS policies, but that left open the policy question under the ANPS whether that failure was "so significant that it would have a material impact on the ability of the government to meet its carbon reduction targets, including carbon budgets". That again involved a question of degree which was a matter of judgment for the SST. A proposed development may not be *fully* compatible with the UK's net zero trajectory, as the SST found to be the case here, but not still not materially impact upon the UK's ability to meet its net zero and the carbon budgets. It is not arguable that that statement involves any inherent contradiction or is otherwise illogical. There are degrees of compatibility.

47. Ms Dehon sought to rely upon one paragraph in the decision of this court in *Boswell v Secretary of State for Energy Security and Net Zero* [2025] EWCA Civ 669, [70]. But she did not read that paragraph properly and in context. It does not assist CAGNE's case.

48. Mr Boswell had contended that there was an inconsistency between the Secretary of State's conclusions that the GHG emissions from an energy project would have a significant adverse environmental impact and that the development would support the transition to net zero. For this purpose, the claimant argued that the Secretary of State had applied section 6.3 of the IEMA guidance. The decision of this court was simply that the Secretary of State had not applied the IEMA guidance for this purpose and so the ground of appeal failed. Instead, the Secretary of State's conclusions that the GHG emissions would have a significant adverse effect but would be managed in an economy-wide manner to ensure consistency with carbon budgets and net zero were based on the specific NPS policies applicable in that case (see e.g. [27], [43], [46]-[48], [51]-[56] and [72]-[80]).I It must be noted that [70] arose in a section of the judgment [68]-[71] which briefly considered what the position would have been if, contrary to the court's decision, the Secretary of State had based her conclusions on section 6.3 of the IEMA guidance and it was *assumed* that there was therefore an internal inconsistency in the decision letter [68]. Paragraphs [69]-[70] offered two possible explanations as to why that assumption was wrong. The observations went no further than that. They did not involve any consideration of the relationship between section 6.3 of the IEMA guidance (including the distinction between major and moderate significant adverse effects) and the policy test in [5.82] of the ANPS. That was essentially the point made by the judge in this case at [211].

49. Furthermore, and in any event, the SST's findings in the present case were materially different from those in *Boswell*, notably the conclusion at the end of DL [210] that falling short in fully contributing to the UK's net zero trajectory would be mitigated in the long term by policies brought forward in the JZS.

50. For these reasons we conclude that ground 1 is unarguable.

Ground 3 of CAGNE's application

51. The judge considered this ground at [234]-[262].

52. At DL [177] the SST referred to the Jet Zero Strategy at [3.64] which deals with non-CO_2 GHG emissions from aviation. It states that there are large uncertainties over the magnitude of non-CO_2 impacts on climate. Recent scientific evidence suggests that the best estimate is that about two thirds of aviation's historical climate impacts resulted from non-CO_2 emissions. Although non-CO_2 emissions can have both warming and cooling effects, the net warming rate is likely to be around three times that of CO_2. However, there are real uncertainties. The non-CO_2 impacts of aviation on climate are eight times more uncertain than those resulting from CO_2.

53. CAGNE accepts that the SST did take into account an assessment of the impact of non-CO_2 emissions from the proposed development but that was carried out on a qualitative basis. CAGNE contends that the SST's decision was unlawful because the assessment was not carried out on the basis of a quantified estimate of the non-CO_2 GHG emissions. CAGNE points to DL [178] where the SST stated that she was:

> "disappointed that the Applicant [GAL] did not take a precautionary approach and attempt to qualify these, in line with developing guidance produced by DESNZ or DfT."

54. CAGNE submits that the SST has identified what a precautionary approach would have been in this case, namely a quantitative assessment of non-CO_2 GHG emissions. It also submitted that a refusal to carry out such an assessment because of the lack of scientific consensus on the methodology for carrying out such an assessment is contrary to the precautionary principle.

55. Ms Dehon relied upon the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (SI 2017 No.572). Regulation 5(1) describes the process of EIA. Regulation 5(2) requires EIA to identify, describe and assess, in an appropriate manner, the direct and indirect significant effects of a proposed development on the specified environmental factors, which include "climate". By reg.5(5) the SST must ensure that she has, or has access to, sufficient expertise to examine the environmental statement. In deciding whether to make a DCO the SST must reach a reasoned conclusion on the significant effects of the proposed development on the environment that are likely to arise (reg.21(1)(b)).

56. It is well-established that the adequacy of the information in an environmental statement, and of an EIA as a whole, is a matter of evaluative judgment for the decision-maker, subject to review on *Wednesbury* grounds (see e.g. *R (Suffolk Energy Action Solutions) v Secretary of State for Energy Security and Net Zero* [2023] EWHC 1796 (Admin) at [57]-[61], *R (Friends of the Earth Limited) v Heathrow Airport Limited*

[2020] UKSC 52; [2021] PTSR 190 at [142]-[147]; *R (Finch) v Surrey County Council* [2024] UKSC 20; [2024] PTSR 988 at [77]-[78]; *Boswell* at [96]). As *Finch* confirmed, insufficiency of evidence may be relevant to a decision-maker's judgment as to the adequacy of the nature and scope of EIA in a particular case.

57. In her submissions, Ms Dehon rightly accepted that ground 3 is a challenge to a matter of evaluative judgment for the SST which, in this case, can only be impugned on the ground of irrationality. But she added that those matters are informed by firstly, the provisions referred to in [53] above and secondly, the precautionary principle. The first point adds nothing. It has been taken into account in the case law referred to above. As to the second point, in *R (Wyatt) v Fareham Borough Council* [2022] EWCA Civ 983; [2023] PTSR 1952 Sir Keith Lindblom SPT summarised (in the context of the Conservation of Habitats and Species Regulations 2017 – SI 2017 No.1012) key legal principles applicable to the precautionary principle at [9](6)-(10) (approved by the Supreme Court in *C.G. Fry and Son Limited v Secretary of State for Housing, Communities and Local Government* [2025] UKSC 35; [2025] PTSR 1823 at [26]). Although the precautionary principle requires a high standard of investigation under the regime of the Habitats Regulations, its application ultimately rests on the judgment of the decision-maker.

58. GAL's position at the examination of its application was that there was no well-established method for quantifying non-CO_2 emission impacts and uncertainty on how to identify the magnitude of impact (DL [168]).

59. GACC and other opponents contended that GAL should have used DESNZ's GHG conversion factors for use in company reporting, which includes a multiplier of 1.7 for estimating non-CO_2 GHG. In addition the DfT's Transport Analysis Guidance suggested that this multiplier could also be used as a sensitivity test in a Green Book type appraisal for a transport project or socio-economic analysis (DL [169]).

60. GAL responded that a multiplier was not a straightforward CO_2 equivalent metric and does not accurately reflect different relevant contributions over time. Furthermore, an emissions estimate modified in this way could not be contextualised. In its CAP GAL had committed to monitor and respond to emerging policy on non-CO_2 GHG (DL [170]-[171]).

61. The Examining Authority set out its conclusions in its report to the SST at ExA [8.4.27]-[8.4.29]. Those conclusions were summarised by the SST in DL [174]. The Examining Authority considered that:

(1) There was no agreement on whether any multiplier appropriately addresses the magnitude of impact let alone what that multiplier should be;

(2) However, that did not mean that non-CO_2 should be left out of account in the assessment;

(3) Agreeing with CAGNE, the lack of a "settled methodology" does not prevent the use of a valid methodology [i.e. if one exists] but a methodology "must produce plausible outcomes" and "too many uncertainties create problems for quantifying results".

Consequently, the Examining Authority considered that a qualitative judgment would be more appropriate. The non-CO_2 emissions would add to the magnitude of negative impacts and the proposed development would be likely to have a net warming effect.

62. Following the SST's MDL, when the report of the Examining Authority was published, the SST issued a consultation letter. She received a response from CAGNE on 9 June 2025 which, along with other responses, was summarised in DL [175]-[176]. As the judge pointed out at [248], in [11] of that response CAGNE accepted that the conclusions of the Examining Authority, including the taking of a qualitative rather than a quantitative approach, had been justified and lawful at the time of the Examination. If nothing else had changed, then logically that would also apply to the SST's agreement in her decision letter with the Examining Authority's approach.

63. However, CAGNE contended that because of two sources subsequent to the Examination the SST should have taken a quantitative approach. Ms Dehon relied solely upon those two sources as the basis for arguing ground 3:

(1) The advice of the Climate Change Committee on the seventh carbon budget (CB7) at pp.226 and 228-231;

(2) The EU's Emissions Trading Scheme had been amended at the beginning to require aircraft operators subject to that scheme to monitor and report non-CO_2 GHG.

64. We note that the CCC distinguishes between CO_2 emissions which have impacts lasting centuries as opposed to non-CO_2 emissions with effects lasting for 10-20 years. The CCC's analysis is said to be based on the warming impacts of non-CO_2 GHG, as to which there is "large uncertainty".

65. At DL [177]-[178] and DL [206]-[207] the SST explained why, despite the representations she had received (from CAGNE, GACC and NEF), she continued to agree with the view of the Examining Authority that a qualitative and not a quantitative approach to non-CO_2 emissions was appropriate in the circumstances. That was indisputably a matter of judgment for the SST as the decision-maker. It is plain that the SST took into account the representations she received, including the two additional sources upon which ground 3 is based. Accordingly, the narrow question for us is whether it is arguable that the SST's judgment was irrational. Irrationality is a high hurdle to surmount, particularly on matters concerned with technical or expert opinion.

66. The judge concluded that the SST's judgment was not arguably irrational and refused to grant permission to apply for judicial review on this ground. We agree. As the judge said, it is obvious from the decision letter that the SST was not persuaded by the post-examination representations she received that the methodological problems and uncertainties identified by the Examining Authority had been overcome so as to make a quantitative assessment appropriate. Her "disappointment" about the absence of any attempt on GAL's part to quantify non-CO_2 emissions is nothing to the point. Instead, she had to take a decision on whether or not to grant a development consent for the project, whilst complying with the requirements of EIA legislation as summarised above [256]-[260].

67. As we have said (see [50] above) the SST referred at DL [177] to the negative impact of non-CO_2 GHG emissions from aviation as described in the NZS at [3.64]. At DL [178] the SST said this:

> "She therefore agrees that a qualitative assessment is appropriate in the circumstances and agrees with the ExA's conclusion at ER 8.4.29] that non-CO2 emissions produced by the Proposed Development would add to the magnitude of impacts and likely have a net warming effect. However, the Secretary of State is content that through the strategic objectives set out within the JZS, and the commitments made within the CAP, the Applicant will monitor and respond to emerging policy relating to non-CO2 emissions as this comes forward and be able to mitigate these effects. She therefore considers that, contrary to NEF's representations, the impacts of non-CO2 emissions have now been taken into account insofar as it is possible to do so."

It is important to note that the SST did take into account the impact of non-CO_2 GHG emissions and that she treated this as an additional negative impact of the proposed development in relation to global warming. But she also considered that through the strategic objectives of the JZS on this subject and GAL's commitments to monitor and to respond to emerging policy on non-CO_2 emissions GAL would be able to mitigate those effects.

68. We consider that the SST was entitled to continue to rely upon the ExA's concerns about the quantification of non-CO_2 GHG emissions for the purposes of reaching a planning decision. In those circumstances she was also entitled to rely upon the qualitative assessment that had been made as an adequate assessment of those emissions for the purposes of EIA. The SST's conclusion was not surprising given that, as the judge said, the representations she received did not make any real attempt to show that the two sources put forward used a method which overcame the ExA'a concerns. As a matter of law, the precautionary principle did not compel the SST to decide otherwise. It is not arguable that the SST acted irrationally or failed to reach reasoned conclusions on a likely significant environmental effect under the EIA Regulations.

69. For these reasons we conclude that ground 3 is unarguable.

Ground 4 of CAGNE's application

70. The judge dealt with this ground at [287]-[304].

71. GAL assessed CO_2 emissions resulting from the proposed development as 6.344MtCO_2e or 0.657% of the emissions in CB6 (DL [154]). The component of those emissions relating to aviation was based on the assumptions in the "High-ambition" scenario in the JZS. Aviation emissions resulting from the proposed development would amount to 5.577 MtCO_2e or 0.578% of CB6. GAL's projections showed emissions from Gatwick flights increasing out to 2032 before beginning to decrease on a downward trajectory to 2050. According to GAL's assessment, aviation emissions represented a minor adverse, and not significant, environmental effect.

72. Ms Dehon pointed to the assumptions made in the High-ambition scenario on the use of sustainable aviation fuel in 2030, 2040 and 2050 and the future use of zero emissions aircraft. She said that the approach in the JZS had also been used to contextualise GHG emissions and to serve as a cumulative assessment of emissions, taking into account other airport development.

73. GAL contended that it was reasonable for them to rely on the High-ambition assumptions because that scenario represented Government policy. GACC argued that the assumptions in the JZS and mitigation by carbon removal technologies were uncertain. The High-ambition scenario was not worst case. GACC said that a likely or expected scenario should also have been considered (DL [156]). In response:

> "The Secretary of State acknowledges that there is uncertainty given the JZS includes reliance on new and emerging technology but notes paragraph 1.10 of the JZS, which sets out that the Government is committed to the Jet Zero High-ambition scenario, and the Secretary of State agrees with the Applicant and the ExA that this is a reasonable approach for it to adopt."

74. GAL claimed that it had presented a worst-case assessment and also a sensitivity analysis (DL [157]).

75. At DL [165] the SST had regard to the regime established by the Climate Change Act 2008 whereby the Secretary of State for Energy Security and Net Zero regularly assesses whether the UK has sufficient policies and proposals to meet carbon budgets and net zero as required by s.13 of that Act. She referred to the Government's commitment to comply with carbon budgets and the UK's nationally defined contributions under the Paris Agreement.

76. At DL [166] the SST concluded as follows:

> "166. The Secretary of State has taken account of the concerns of Interested Parties about the uncertainty surrounding the means to achieve the objectives in the JZS, however, she notes the ExA's view that the policy itself is robust and that there are mechanisms to review and adjust the policy as necessary [ER 8.4.11]. Consequently, there is no reason why the weight given to the JZS trajectory should be reduced and that the policy must be considered in the context of the CCA2008, and the requirement to meet national GHG emission reduction targets [ER 8.4.10 – 8.4.12]."

77. In DL [166] we note the SST endorsed [8.4.10]-[8.4.12] of the ExA's report (see also DL [11]) which provided as follows:

> "8.4.10. While we asked IPs at ISH6 [EV11-001] about the extent, breadth and relevance of policy documents relating to GHGs, paragraph 3.61 of the JZS confirms that the Government's existing planning policy frameworks, along with the JZS and Flightpath for the Future have full effect and are

> material considerations in the statutory planning process for proposed airport development.
>
> 8.4.11. It can also be expected that IPs concerns about the uncertainty surrounding the means to achieve the objectives in the JZS can be addressed through proactive monitoring and intervention commitments in the JZS and Jet Zero Strategy: One Year On (July 2023) with multiple solutions provided to achieve objectives. Moreover, while the modelling on which the JZS is based was subject to detailed interrogation from IPs the policy itself is robust. Consequently, there is no reason why the weight given to the JZS trajectory should be reduced.
>
> 8.4.12. The JZS must also be seen in the context of the CCA2008, and the need to meet national GHG emission reduction targets. Notwithstanding the uncertainties inherent in the JZS, MBU and the delivery of the Carbon Budget Delivery Plan (CBDP), as the control regime is operated by the Government it is reasonable to conclude that the means for achieving its net zero obligations under the CCA2008 would be met."

78. The JZS states at [1.10] that the Government is committed to the High-ambition scenario. Although ambitious, the pathway to 2050 is seen as "realistic" ([1.9]). The JZS states that progress against the trajectory will be monitored annually and the Strategy reviewed, taking into account whether emerging technologies are being developed and adopted at the required pace. If the emissions trajectory is not being met, then Government will consider what additional measures are required "to ensure that the sector maximises in-sector reductions to meet the UK's overall 2050 net zero target" (p.10).

79. At [3.58] the JZS helpfully puts the High-ambition scenario into its true context:

> "3.58 Our economy-wide Net Zero Strategy considers that, even if there was no step up in ambition on aviation decarbonisation (e.g. through our "continuation of current trends" scenario), we would still be able to achieve net zero by 2050. However, this is not the approach we are taking: instead we are committing to ambitious action to reduce in-sector aviation emissions. Our "High-ambition" scenario, which we will use to monitor the sector's progress, has 19.3 $MtCO_2e$ in the Climate Change Committee's (CCC) Balanced Net Zero Pathway."

80. The JZS:OYO published in July 2023 explains the commitment to data-led monitoring of emissions, and reviews of the Strategy as part of the progress towards "Jet Zero" (p.12).

81. The Examining Authority was satisfied that concerns about uncertainty in delivering the objectives of the JZS would be addressed through the commitments to pro-active monitoring and intervention in the JZS and JZS:OYO. They considered the policy to be robust ([8.4.11] of the report). The SST agreed, referring to "the mechanisms to

review and adjust the policy as necessary" (DL [166]). Both the authority and the SST were lawfully entitled to reach those conclusions. The SST was also entitled to have regard to the regime under which her Department's policies are subject to monitoring and review alongside other policies by the Secretary of State for Energy Security and Net Zero under the Climate Change Act 2008 (DL [165]).

82. Ms Hutton for GAL helpfully drew attention to *R (Dawes) v Secretary of State for Transport* [2023] EWHC 2352 (Admin) at [104]-[105] in which Dove J (as he then was) reached the following important conclusions:

(1) The SST was entitled to rely upon his or her own policies, including the JZS, to deliver the purpose for which they had been designed, namely achieving the carbon budgets [104];

(2) The context for (1) began with the Climate Change Act 2008, its architecture and provisions enacted so as to ensure that its aims are achieved [105];

(3) That context also included policies identified by the SST, including the JZS, to support the objectives of the 2008 Act without precluding airport expansion [105];

(4) The policies, including JZS, are multifaceted and include reliance upon other measures such as the UK Emissions Trading Scheme and the Carbon Offsetting and Reduction Scheme for International Aviation [105];

(5) It was not unlawful for the SST to rely upon her own policies, such as JZS, designed to enable the aviation sector to achieve carbon budgets and net zero, when assessing the impact and weight to be attached to the GHG emissions from an airport project and their impact upon climate change [105].

Those points also apply in the present case to the SST's decision, including her conclusions that the weight to be given to the JZS High-ambition trajectory should not be reduced (DL [166], DL [204] and DL [206]) and also the weight she gave to the project's impact on climate (DL [212]).

83. CAGNE seeks to argue that the SST erred in law in the handling of two pieces of information:

(1) Information on delivery risks associated with the JZS contained in the Department for Transport's July 2025 Policy Commission return; and

(2) Revised modelling for JZS:OYO showing fewer flights from Gatwick in 2050 then had been assumed in the High-ambition trajectory for the JZS.

84. Ms Dehon advances three alternative errors of law:

(1) If this material was before the SST, she failed to take it into account;

(2) If this material was before the SST and she took it into account, her conclusions on GHG emissions were irrational;

(3) If this material was not before the SST, she failed to comply with her *Tameside* duty of enquiry so as to obtain the information and take it into account.

As to point (1), Ms Dehon submits that the SST was legally obliged to take the information into account (a) in order to comply with the EIA Regulations and/or (b) because it was an obviously material consideration (*Friends of the Earth* at [116]-[120]). All of these formulations relied upon by CAGNE, including the alleged breach of EIA Regulations, depend upon it being arguable that the appellant can establish irrationality on the part of the SST.

85. There is a short answer to the complaint based on the revised modelling for the JZS:OYO. The information was provided by AEF, an interested party in the Examination, to the Examining Authority (Deadline 6 representations on post-hearing issues). It was therefore taken into account by the Authority and thus by the SST. Despite the detailed questioning of the modelling on which the Strategy had been based, the Authority concluded that the policy was "robust" ([8.4.11]). The SST agreed and relied upon the mechanisms for reviewing and adjusting the policy as necessary (DL [166]). It is not arguable that the SST's approach to this issue was irrational.

86. That leaves the DfT's Policy Commission return. This document was not taken into account by the Examining Authority or by the SST when she decided to grant the application for the DCO. The purpose and status of Policy Commission returns was helpfully explained by Sheldon J in *R (Friends of the Earth Limited) v Secretary of State for Energy Security and Net Zero* [2024] EWHC 995 (Admin); [2024] PTSR 1293 at [19]-[31] and by the Court of Appeal in *R (Global Feedback Limited v Secretary of State for the Environment* [2023] EWCA Civ 1549; [2024] 1 WLR 2923 at [85]. In addition, the process has been described in the witness statement of Jessica Matthew (the Director of the Local Transport Planning and Housing Directorate in the DfT and responsible for advising ministers on applications for DCOs) at [17]-[24]. The returns form part of a non-statutory process by which Government Departments provide information to the DESNZ on the performance of their policies relevant to the strategy for net zero so that the Secretary of State in charge of that Department can comply with her duty under s.13 of the 2008 Act. The legislation does not contain sector specific targets. The Government is able to adjust the approach to policies as necessary and appropriate so as to comply with the targets in the Act. The returns are produced quarterly (see [2024] PTSR 1293, 1305 at [19]).

87. Ms Matthew referred to the Carbon Budget and Growth Delivery Plan prepared under s.14 of the 2008 Act. This document, along with its predecessors, the JZS and the JZS:OYO, recognise that there is inherent uncertainty in forecasting emissions, particularly looking ahead over such long periods, and in the delivery of policy proposals. Indeed, such considerations are not peculiar to climate change policy. Despite that uncertainty, there is confidence that the policies and proposals in place will meet carbon budgets. As would be expected given the timescales involved, the policies provide for monitoring and for alternative measures to be put in place in order to achieve compliance with the statutory target for net zero.

88. The Policy Commission return produced in July 2025 referred to updated CO_2 projections reflecting "the Spending Review 2025 and developments in the evidence base". These are examples of the sort of changes in circumstances which can be expected to occur during each year. They illustrate why regular updates are provided.

That process, including the July 2025 return, is *consistent* with the very policies in the JZS upon which the SST relied in DL [166]-[167] for monitoring and revision to achieve the JZS trajectory. As a matter of principle it is not arguable that it was irrational for the SST to rely upon those policies unless she also took into account the July 2025 Return. Indeed, the contrary view would mean that she (and the Examining Authority) would also have to take into account a whole sequence of similar Returns which monitor changes in circumstance and in the delivery of the JZS and other relevant policies. Not surprisingly, Ms Dehon did not seek to go that far.

89. Was there something specific then in the July 2025 Return which could lead the court to take a different approach here? In our view it is not arguable that there was. The document indicates that the projected emissions for transport as a whole over the CB6 period depart from the levels assumed in the trajectory. That raises the obvious question of what is the position regarding aviation emissions? But at that point rival interpretations of the material have resulted in very substantial technical disputes which could not be resolved in proceedings for judicial review, or in an appeal from the High Court, the burden being on the claimant. But in any event, this does not matter. The technical debate does not reveal any arguable case that the SST acted irrationally on this issue in relying upon her policies in JZS and JZS:OYO in the way in which she did in the decision letter. The reasoning in *Dawes* applies.

90. For these reasons it is not arguable that the SST acted irrationally in any of the respects alleged and ground 4 is unarguable. We reach this conclusion without relying upon this Court's reasoning in *Global Feedback*.

Ground 7 of CAGNE's application

91. The judge dealt with this ground at [351]-[365].

92. This ground is related to the arrangements provided for in the DCO for the treatment of waste water. There is no dispute but that the development proposed will give rise to additional waste water flows which will need to be accommodated either by the existing TWUL infrastructure or through the provision of what was known within the DCO as Work No 44. The relevant provisions of the DCO in respect of Work No 44 are in the following terms:

> "(3) The undertaker must prepare and provide to Thames Water Utilities Limited a development phasing plan which will include forecast passenger growth numbers for the period up to the commencement of dual runway operations and ten years after the commencement of dual runway operations. The development phasing plan must include detailed forecasts of the wastewater discharge rates and expected connection points for the authorised development throughout this period and be based on hydraulic modelling undertaken by Thames Water Utilities Limited or the undertaker in consultation with Thames Water Utilities Limited and validated by Thames Water Utilities Limited in writing.
>
> …

> (7) Thames Water Utilities Limited must confirm in writing within twelve months of the provision of the development phasing plan pursuant to sub-paragraph (3) whether its infrastructure will be able to accommodate the additional foul water flows from the airport for the ten-year period after the commencement of dual runway operations.
>
> (8) The commencement of Work No. 44 (wastewater treatment works) must not take place until either—
>
> (a) Thames Water Utilities Limited confirms that its infrastructure will not be able to accommodate the additional foul water flows;
>
> (b) Thames Water Utilities Limited has not provided any confirmation pursuant to sub-paragraph (7) within the time period specified therein; or
>
> (c) Thames Water Utilities Limited has not responded pursuant to sub-paragraph (4)(a) or (4)(c) within the time period specified therein,
>
> unless otherwise agreed in writing by Thames Water Utilities Limited.
>
> (9) The commencement of dual runway operations must not take place until either—
>
> (a) Work No. 44 (wastewater treatment works) has been completed, and an application has been submitted for an environmental permit under regulation 12(1)(b) (requirement for an environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(a) for its operation; or
>
> (b) Thames Water Utilities Limited confirms that its infrastructure will be able to accommodate the additional foul water flows, unless otherwise agreed in writing by Thames Water Utilities Limited."

93. The genesis of these provisions was that whilst the SST expressed the view in the MDL that she was minded to accept the view of the ExA in relation to the water environment she nonetheless raised a request for further information from TWUL on these issues. This led to the following assessment at [266] of the DL.

> "In its response on 24 April 2025, the Applicant set out confirmation from TWUL the unlikelihood that the required hydraulic modelling, confirming whether wastewater flows could be accommodated by its existing infrastructure, would be completed prior to the revised statutory deadline of 27 October 2025. The Secretary of State notes that as a result of this, the

> Applicant and TWUL have reached an agreement on the wording of requirement 31. This wording confirms that the commencement of dual runway operations cannot take place until either TWUL have confirmed the existing wastewater treatment works can accommodate the additional flows from the airport or that the on-site wastewater treatments works have been completed and the application for the necessary permits submitted to the Environment Agency ("EA"). The Secretary of State notes the representation made by CAGNE on 9 June 2025 that wastewater treatment should be fully operational prior to dual runway operations. However, she is content that in the event an on-site wastewater treatment works is needed, the timescales included within the requirement wording allows a sufficient period for the EA to consider potential impacts on the receiving watercourse and set appropriate permit limits to protect the environment accordingly. The Secretary of State notes the matter of wastewater was agreed between the Applicant and the EA in their Statement of Common Ground, and the ExA reported that this was EA's preferred approach [ER 11.3.33] indicating the EA foresee no issue or adverse effect resulting from wastewater. The Secretary of State is satisfied that the outstanding concerns regarding the management of wastewater have now been addressed."

94. The concern which was and is identified by CAGNE is that form of the requirement leaves scope for TWUL's infrastructure to be found to lack capacity to accommodate the flows generated by the development and the scheme could begin to operate without the necessary infrastructure in place. CAGNE submit that the conclusion that this requirement addresses the risks is therefore not rational. The form of the requirement does not require a permit to have been granted by the EA, nor the WWTW to be operational, nor GAL to use the completed WWTW if, for example, it becomes more convenient in the future to dispose of wastewater in a different way.

95. The judge concluded it was rational for the SST to conclude that in the circumstances of the case the risks identified by CAGNE were insufficient to require more by way of this requirement. We agree. The concerns which CAGNE had identified and upon which they continue to rely were farfetched. In the event that TWUL confirm that their infrastructure is inadequate and it is necessary for Work No 44 to be constructed then it is entirely reasonable to assume that the design and capacity of the WWTW will be appropriate for licensing by the EA. Further, it is reasonable to assume that, having been required to invest a substantial sum in the construction of the WWTW, GAL would bring the works into use. In assessing the need for and formulation of the requirement the SST was entitled to assume that the EA, TWUL and GAL would act rationally.

96. There is a further point which is relied upon by CAGNE in respect of the tailpiece to the requirement in the form of the words "unless otherwise agreed in writing by Thames Water Utilities Limited". CAGNE contend that this addition to the requirement is unlawful in the light of the decision of the High Court in *R (Midcounties Co-operative Limited) v Wyre Forest District Council* [2009] EWHC 964. In that case Ouseley J

identified that such a tailpiece, which contains no words purporting to limit its application and which could permit development to occur very different in scale and impact from that which was applied for outside the statutory process, would be unlawful.

97. The judge concluded that the tailpiece was lawful in that it only enabled TWUL to give its agreement to an alternative means of achieving the purpose which the requirement was designed to meet. Having considered the submissions made by CAGNE in relation to this requirement we have formed the view that the judge was correct. In our view it is clear that the concern raised in the *Midcounties Co-operative* case was not engaged in the present circumstances, since any use of the tailpiece would have to be undertaken in the context of the requirement in 31(9) and be used to obtain the object of that requirement in terms of the adequate treatment of waste water. That is not simply as a consequence of the proper construction of the requirement but also as a result of requirement 1(4) of the DCO. Requirement 1(4) of the DCO provides that where details or actions can be "otherwise agreed" by a discharging authority such agreement is not be given "save where it has been demonstrated to the satisfaction of the discharging authority that the departure from the previously certified or approved document, details or obligation does not give rise to any materially new or materially different environmental effects to those assessed in the environmental statement". Although CAGNE raised the point that the process envisaged by the tailpiece, if it were to be engaged, would not be supervised by a regulator but by a statutory undertaker it is clear that, firstly the formulation envisaged by the tailpiece, reflected in many places in the DCO in similar terms, ensures the decisions in relation to these issues resides with the statutory undertaking who has statutory responsibilities in relation to the relevant infrastructure. We are satisfied that in the particular circumstances of the present case the judge was unarguably right to conclude that the tailpiece in 31(9) was not unlawful. There is no other good reason to grant permission and we therefore refuse permission to appeal on this ground.

Conclusions

98. We conclude that each of the grounds of appeal raised by each appellant is unarguable. Neither appeal has a real prospect of success. We also consider that there are no other compelling reasons for either appeal to be heard. Accordingly, each of the applications for permission to appeal is dismissed. Finally, pursuant to [61] of the Practice Direction (Citation of Authorities) [2001] 1 WLR 1001, the Court certifies that this decision may be cited as an authority.