IN THE COURT OF APPEAL
ON APPEAL FROM
THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT
[2019] EWHC 1070 (ADMIN) (HICKINBOTTOM LJ AND HOLGATE J)

APPEAL NO: C1/2019/1053

BETWEEN

THE QUEEN
on the application of
PLAN B. EARTH

Appellant

- and -

THE SECRETARY OF STATE FOR TRANSPORT

Respondent

- and -

(1) HEATHROW AIRPORT LIMITED
(2) ARORA HOLDINGS LIMITED

Interested Parties

APPELLANT'S SKELETON ARGUMENT

[References in this skeleton are in the form "[CB/x/y]" and "[SB/x/y]" where "CB" is the Core Bundle, "SB" is the Supplementary Bundle, "x" is the tab number and "y" is the page number"]

Nb. At the time of drafting the original Grounds of Appeal, The Climate Change Act 2008 s. 1 maintained a "carbon target" of reducing greenhouse gas emissions by at least 80% by 2050 compared to a 1990 baseline. On 27 June 2019 that target was amended by statutory instrument to read "at least 100%". The Grounds of Appeal have been revised in this skeleton argument in order to reflect that amendment.

A. INTRODUCTION

1. The Appellant wishes to challenge the Secretary of State's decision (**[CB/x/y]** and **[CB/x/y]**) to designate the Airports National Policy Statement ("**the ANPS**") in support of the expansion of Heathrow Airport under the Planning Act 2008 ("**the 2008 Act**"), on the basis of his failure to give proper consideration to "government policy relating to … climate change" contrary to the statutory requirement of s. 5(8) of the 2008 Act.

2. Specifically the Secretary of State proceeded on the false premise that the Paris Agreement on Climate Change and the Government's commitment to introducing a net zero carbon target in accordance with the Paris Agreement were "irrelevant" considerations for the purposes of s.5(8) of the 2008 Act.

3. Since climate change is a global threat, which no one country can tackle in isolation, national climate change policies are determined as contributions to maintaining a global climate change temperature limit. The final report of the Airports Commission highlighted the importance of the global climate change context as a constraint on UK aviation capacity **[CB/x/y]:**

> "*Any change to UK's aviation capacity would have to take place in the context of global climate change, and the UK's policy obligations in this area.*"

4. In July 2015, when the Airports Commission report was published, the political consensus was that extreme danger from climate change could be avoided by limiting average global warming to 2˚C above pre-industrial levels. It is common ground between the parties that the now superseded "carbon target" in the Climate Change Act 2008 ("**CCA**"), which was to reduce UK greenhouse gas emissions by <u>at least</u> 80% by 2050 compared to 1990 levels, was derived from that 2˚C global limit.

5. In December 2015, however, the Paris Agreement on Climate Change ("**The Paris Agreement**") introduced a step change to global (and hence national) climate change policy. Amid gathering evidence that even 2˚C warming would pose intolerable risks for humanity, the UK Government played a leading role in negotiating the Paris Agreement on Climate Change, which committed

governments to holding warming to "well below" 2˚C while aiming for a 1.5˚C limit.

6. In March 2016 the Government made an unequivocal policy commitment to introduce a new "net zero" carbon target to bring the UK into line with the Paris Agreement[1]. A "net zero" target means emissions reduction of 100% as opposed to 80%. Such a target does not require actual emissions of carbon to be reduced to zero. It means only that remaining emissions must be balanced by action to remove an equivalent amount of carbon from the atmosphere (eg through reforestation).

7. In April 2018 the Government announced it would commission the Committee on Climate Change ("**the CCC**"), the Government's statutory adviser on climate change, to provide formal advice on the implementation of a new target[2]; and on 1 May 2018, the Rt Hon Claire MP, on behalf of the Government, informed Parliament that the CCC had been asked to advise on how to reach "net zero" emissions by 2050[3].

8. The Government's position aligned to an emerging consensus that, if the Paris temperature limit were to be maintained, global emissions would need to reach net zero by 2050. In January 2018, for example, the European Parliament had voted for net zero emissions by 2050[4].

9. Thus at the time of the Secretary of State's designation of the ANPS, in June 2018, it was already clear that:

(1) it was Government policy to introduce a new net zero carbon target in accordance with the more stringent Paris Agreement temperature limit;

(2) that that target would be substantially more ambitious than the minimum level of 80% set out in the CCA at the time; and

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[1] SB/x/y

[2] SB/x/y

[3] SB/x/y

[4] SB/x/y

(3) that the new target was likely to be 100% emissions reduction by 2050.

10. In the context of a long term national infrastructure project, such as the proposed expansion of the UK's national airport, it would have been sensible to have considered these profound developments in government policy on climate change. The Secretary of State should at least have turned his mind to the question of whether the ANPS was likely to be compatible with the more stringent target that was envisaged.

11. The Secretary of State, however, chose to ignore these developments and proceeded as if there had been no material developments in government policy relating to climate change since 2008 and as if no change were in contemplation. He proceeded on the basis that the seminal Paris Agreement and the Government commitment to introduce a net zero target in line with that agreement were "irrelevant" to government policy on climate change and hence irrelevant to his decision.

12. The basis of the Appellant's claim that the designation of the ANPS was unlawful, and that it should be quashed, is that the Secretary of State approach to these matters was fundamentally flawed.

13. The short-sightedness of his approach has been highlighted by subsequent events.

14. The judgement of the Court below was published on the morning of 1 May 2019.

15. On 2 May 2019, the CCC published its advice on a new carbon target, as requested by the Government, recommending the introduction of a net zero target by 2050, in accordance with the Government's stated intention of May 2018 **[SB/x/y].**

16. On 27 June 2019, the CCA s.1 carbon target of at least 80% emissions reduction by 2050 was replaced, via statutory instrument, with the substantially more ambitious target of "at least 100%" by 2050 (ie a "net zero" target) **[SB/x/y]**.

17. The Secretary of State must now concede that the benchmark used to assess the ANPS was fundamentally less demanding than <u>current</u> government policy on

climate change: current government policy is to reduce emissions by at least 100% by 2050 in accordance with a global temperature limit of "well below 2˚C" and 1.5˚C.

18. Presumably, the Secretary of State will say that at the time of the designation of the ANPS, in June 2018 he could not have predicted these "developments" in Government policy.

19. In truth, while Government policy was not implemented into law until June 2019, the policy commitment to introduce a new net zero target in accordance with the Paris Agreement had been made in March 2016 and by May 2018 it was already clear that the Government was aiming to decarbonise the economy by 2050. It was not sensible for the Secretary of State to ignore that position.

20. In any event, it is now apparent that contrary to the express purpose of the 2008 Act, Government policy on aviation and climate change are now advancing in contrary directions. In the Appellant's submission, this is the inevitable consequence of the Secretary of State's blinkered approach.

21. The Court below ruled in favour of the Secretary of State on the basis that "*neither policy nor international agreement can override a statute*". In reality there was no question of "overriding" a statute, since the CCA, prior to amendment, imposed only a <u>minimum</u> requirement in terms of emissions reduction. Further, the express terms of s. 5(8) of the 2008 Act required the Secretary of State to take account of government policy and not to confine his consideration to the statutory minimum obligation.

B. GROUNDS OF APPEAL

22. In refusing permission, the Court below made the following errors:

(i) **The Court erred in law in treating the <u>minimum</u> target of 80% greenhouse gas emissions reduction by 2050, which obtained at the time but which has now been amended to a target of 100% reductions, as precluding any consideration of Government policies and commitments which implied a more stringent level of reduction:** The Court proceeded on the basis that "Government policy relating to … climate change" could not differ at all (or

at least could not differ materially) from the base level of the emissions target which was previously set out in the CCA, prior to its amendment. That approach was fundamentally flawed. It was clear, even prior to the CCA's amendment that Government policy could exceed the 80% emissions reduction target, since the CCA established only a minimum level of reductions of "at least 80%" by 2050, a consideration which the Court failed to take into account.

(ii) **Consequently the Court erred in law in holding that neither the Paris Agreement Temperature Limit ("Paris Temperature Limit") nor the Government's policy commitment to introducing a net zero target in accordance with the Paris Agreement, formed any part of "government policy relating to … climate change" for the purposes of section 5(8) of the Planning Act 2008 and that they were otherwise irrelevant considerations**: By the time of the designation of the ANPS, not only had the Government advanced, signed and ratified the Paris Agreement, it had publicly committed to introducing a net zero target in accordance with the Paris Agreement and expressly communicated its intention to decarbonise the economy by 2050. The Court erred in law in treating these matters as irrelevant to Government policy on climate change.

(iii) **The Court erred in law in holding that the historic, discredited 2˚C temperature limit was a relevant consideration, which it was proper for the Secretary of State to take into account**: In addition to the CCA target, the Secretary of State assessed the ANPS against the historic and discredited 2˚C global temperature limit, rejected by 195 governments including the UK Government, in December 2015. The Court was wrong to consider the historic 2˚C limit a relevant consideration. The relevant global temperature limit was that established by the Paris Agreement (ie "well below" 2˚C and aiming for 1.5˚C).

(iv) **The Court erred in law in treating as irrelevant the Secretary of State's failure to explain to Parliament the basis of his decision:** It was only as a result of the Appellant's legal action that it emerged that the Secretary of State had used the 2˚C target as the basis for assessment and

that he had treated the Paris Agreement as irrelevant. The Secretary of State's failure to explain the basis of his decision to Parliament was of itself a breach of s.5(8) of the 2008 Act, which the Court was wrong to ignore.

C. LEGAL AND FACTUAL BACKGROUND

Legal background

23. The 2008 Act and the CCA were passed simultaneously on 26 November 2008 (see §565 of the judgement below), with the objective of aligning government policies on planning and climate change. The 2008 Act contains express statutory obligations on the Secretary of State to consider climate change impacts in designating a National Policy Statement.

24. Specifically, s.5(7)-(8) of the 2008 Act read as follows:

> *"(7) A national policy statement must give reasons for the policy set out in the statement.*
>
> *(8) The reasons must (in particular) include an explanation of how the policy set out in the statement takes account of Government policy relating to the mitigation of, and adaptation to, climate change."* (emphasis added)

25. CCA s. 1(1) establishes a minimum target (**"the carbon target"**) for carbon emissions reduction. Prior to 27 June 2019, this read as follows:

> *"It is the duty of the Secretary of State to ensure that the net UK carbon account for the year 2050 is at least 80% lower than the 1990 baseline."* (emphasis added).

26. Article 2(1)(a) of the Paris Agreement on Climate Change, which the UK Government advanced, signed and ratified, commits parties to:

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

27. In June 2019, the CCA was amended to bring it into line with the Paris Agreement temperature limit. CCA s.1(1) now reads:

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

Factual background

28. When the CCA came into force, the politically recognised global temperature limit, which is the basis for Government policy relating to climate change, was 2˚C.

29. The "carbon target" set out in the CCA s. 1 (**"the 2050 Target"**) was based on that 2˚C global limit (see §566 of the judgement below) but the 2˚C limit is not referred to in the statute itself.

30. From around 2010, concerns emerged regarding the adequacy of the 2˚C limit. As a result, a number of governments, including the UK Government, invested heavily in obtaining a further international agreement on climate change (see §567 of the judgment).

31. The outcome of these efforts was the landmark Paris Agreement on Climate Change, adopted by consensus on 12 December 2015. The Paris Agreement established the more stringent global temperature limit of "*well below 2˚C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5˚C …*" (see §580 of the judgment).

32. On 14 March 2016, the Rt. Hon. Andrea Leadsom MP, the then Minister of State for Energy, said in a debate in the House of Commons during the Report stage of the Energy Bill:

> *"The Government believe[s] we will need to take the step of enshrining the Paris goal of net zero emissions in UK law – the question is not whether, but how we do it, and there is an important set of questions to be answered before we do."*[5]

33. That position was further confirmed on 24 March 2016 by the Rt. Hon. Amber Rudd MP, the then Secretary of State for Energy and Climate Change, in answer to an Oral Question as to "*What steps her Department is taking to enshrine*

[5] SB/x/y

the commitment to net zero emissions made at the Paris climate change conference of December 2015 in UK law". She replied:

> *"As confirmed last Monday during the Report stage of the Energy Bill, the Government will take the step of enshrining into UK law the long-term goal of net zero emissions, which I agreed in Paris last December. The question is not whether we do it but how we do it."*[6]

34. In October 2016 the Committee on Climate Change (**"the CCC"**), the Government's independent statutory adviser on climate change, advised that:

> "*In line with the Paris Agreement, the Government has indicated it intends at some point to set a UK target for reducing domestic emissions to net zero. We have concluded it is too early to do so now, but setting such a target should be kept under review.*"[7]

35. In January 2018, following the presentation of the draft report of the Intergovernmental Panel on Climate Change (the IPCC), the EU Parliament voted for a net zero target by 2050 in light of the Paris Agreement[8]. Also In January 2018 the CCC recommended that the Government commission a review of the UK's climate change targets in light of the Paris Agreement[9], a recommendation, which the Government publicly accepted in April 2018[10].

36. On 1 May 2018 (and still prior to the designation of the ANPS) The Rt Hon Claire Perry MP, on behalf of the Government, informed Parliament that the Government wanted to know how to get to a "zero-carbon economy by 2050", and asked for cross-party support for "something so vital"[11].

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[6] Ibid.

[7] SB/x/y

[8] SB/x/y

[9] Judgment, §588

[10] Judgment, §589

[11] SB?x/y

37. The Secretary of State himself commissioned a report, "*International aviation and the Paris Agreement temperature goals*"[12], published in December 2018, which states:

> "*any continued emissions of CO2 from aviation using fossil fuels beyond around 2050 will be inconsistent with the Paris Agreement goals in the absence of extra measures*".

38. Further, the importance of the Paris Agreement to Government policy relating to climate change is evident from a number of key policy documents.

39. In October 2017, for example, the UK Government published its *Clean Growth Strategy* under ss. 12 and 14 of the CCA. In his amended defence to the Friends of the Earth claim, the Secretary of State acknowledges that the *Clean Growth Strategy* constitutes Government policy on climate change:

> *"The relevant domestic legal and policy commitments being those found principally in or set under the CCA 2008 itself (which included for example the Clean Growth Strategy referred to paragraphs 8.5 and 8.6 of the Consultation Response)"* [13].

40. In the Prime Minister's Foreword to the *Clean Growth Strategy*, Theresa May states:

> "*On the world stage, we were instrumental in driving through the landmark Paris Agreement."*[14]

41. In the Minster's Foreword, Greg Clark MP states

> *"Following the success of the Paris Agreement, where Britain played such an important role in securing the landmark deal, the transition to a global low carbon economy is gathering momentum."*[15]

42. As highlighted in the judgment (at §587) the Strategy itself states:

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[12] SB/x/y

[13] SB/x/y

[14] SB/x/y

[15] SB/x/y

"The actions and investments that will be needed to meet the Paris commitments will ensure the shift to clean growth will be at the forefront of policy and economic decisions made by governments and businesses in the coming decades."[16] (emphasis added).

43. The strategy explains the risks of climate change in general terms:

"*This growing level of global climate instability poses great risks to natural ecosystems, global food production, supply chains and economic development. It is likely to lead to the displacement of vulnerable people and migration, impact water availability globally, and result in greater human, animal and plant disease. Climate change can indirectly increase the risks of violent conflicts by amplifying drivers of conflicts such as poverty and economic shocks. For this reason the UN, Pentagon and UK's National Security and Strategic Defence Reviews cite climate change as a stress multiplier."*[17]

44. More specifically, it explains *why* the historic, discredited 2˚C limit was replaced with the more stringent Paris Temperature Limit:

"Scientific evidence shows that increasing magnitudes of warming increase the likelihood of severe, pervasive and irreversible impacts on people and ecosystems. These climate change risks increase rapidly above 2°C but some risks are considerable below 2˚C. This is why, as part of the Paris Agreement in 2015, 195 countries committed to hold "the increase in the global average temperature to well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognising that this would significantly reduce the risks and impacts of climate change …"[18] (emphasis added).

45. In January 2018, the Government published "*A Green Future: Our 25 Year Plan to Improve the Environment*". In this the Government promised:

"We will: Provide international leadership and lead by example in tackling climate change…

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[16] SB/x/y

[17] SB/x/y

[18] SB/x/y

We will use our diplomacy on the international stage to encourage more ambitious global action …

Using our leading role in the UNFCCC, through which the Paris Agreement was established, we will urge the international community to meet the goals enshrined in the text ... This is vital for future environmental security: current global commitments under the Agreement are insufficient to limit average temperature rise to well below 2˚C."[19]

46. On 27 March, 2018, the Foreign and Commonwealth Office ("**FCO**") Minister, Mark Field MP, was asked the following written question:

"*What diplomatic steps his Department has taken to support the implementation of the Paris agreement on climate change.*"

47. Mr Field began his response as follows:

"*Climate change is an existential threat … Our diplomats and Climate Envoy are working, with BEIS* [the Department for Business, Energy and Industrial Strategy] *and international partners, to ensure international implementation of Paris Agreement commitments*" [20].

48. On 2 May 2019, the day immediately following the publication of the judgement below, the CCC published its advice to the Government recommending a 'net zero' target by 2050, stating:

"*We conclude that net-zero is necessary, feasible and cost-effective. Necessary – to respond to the overwhelming evidence of the role of greenhouse gases in driving global climate change, and to meet the UK's commitments as a signatory of the 2015 Paris Agreement …*

I urge the governments of the UK, in London, Edinburgh, Cardiff to consider our advice carefully and legislate for these new targets as swiftly as possible. We must now increase our ambition to tackle climate change. The science

[19] SB/x/y

[20] SB/x/y

demands it; the evidence is before you; we must start at once; there is no time to lose."[21]

49. On 27 June 2019, CCA s.1 was amended via *The Climate Change Act 2008 (2050 Target Amendment) Order 2019* and the "at least 80%" carbon target was replaced with the substantially more ambitious "at least 100%" target (ie a "net zero" target).

GROUND 1: THE COURT ERRED IN LAW IN TREATING THE MINIMUM TARGET OF 80% GREENHOUSE GAS EMISSIONS REDUCTION BY 2050, WHICH WAS THE STATUTORY OBLIGATION AT THE TIME, AS PRECLUDING CONISDERATION OF GOVERNMENT POLICY COMMITMENTS TO INTRODUCE A MORE STRINGENT LEVEL OF REDUCTION

50. The Court below considered that the Secretary of State was right to disregard evidence of government policy to introduce more stringent emissions reduction, on the basis that to take account of it would be to "override or undermine" the statutory regime:

> "*Despite the fact that Government policy could of course be outside any statutory provisions – and despite Mr Crosland's submissions that that, in some way, the CCA 2008 cap has to be read with the Paris Agreement (see, e.g., Transcript, day 7 pages 112 and 116) – neither policy nor international agreement can override a statute. Neither Government policy (in whatever form) nor the Paris Agreement can override or undermine the policy as set out in the CCA 2008. In our view, this way of putting the submission is inconsistent with Mr Crosland's express and unequivocal concession that the carbon target in the CCA 2008 is Government policy and was a material consideration for the purposes of the ANPS. It seeks collaterally to undermine the statutory provisions*."[22] (emphasis added)

51. The Court below was wrong to treat the CCA as precluding consideration of government policies, which implied emissions reduction of greater than 80% by 2050, and wrong to hold that consideration of such policies would be to

[21] SB/x/y

[22] Judgment, §615

"undermine" the statute. The CCA s.1(1) establishes only a minimum target and, even prior to its amendment, it did not in any way preclude or discourage greater ambition on the part of the Government:

> *"It is the duty of the Secretary of State to ensure that the net UK carbon account for the year 2050 is at least 80% lower than the 1990 baseline."* (emphasis added).

52. Neither the Secretary of State nor the Court offered any explanation for interpreting CCA, s. 1 contrary to its natural meaning, which is that it imposes only a minimum level of emissions reduction.

53. Moreover, the Court below elsewhere noted the CCC's position that the CCA and the Paris Agreement were "potentially compatible" (§610 of the judgement), on the basis that the CCA only establishes a minimum level of ambition.

54. More specifically, the CCC had explained *how* the Climate Change Act and the Paris Agreement should be read in conjunction: pending revision to the CCA, the Government should retain the flexibility to go further than the 80% emissions reduction target by 2050. The CCC's advice on this matter was clearly set out in a report published in January 2018:

> *"This [carbon target] currently set in legislation as a reduction of at least 80% on 1990 emissions. However, the Paris Agreement is likely to require greater ambition by 2050 and for emissions to reach net-zero … It is therefore essential that actions are taken now to enable these deeper reductions to be achieved."*[23] (emphasis added).

55. Indeed on 14 June 2018 the CCC had written directly to the Secretary of State to express its surprise that he had not referred to both the CCA and the Paris Agreement in his statement to Parliament:

> *"The UK has a legally binding commitment to reduce greenhouse gas emissions under the Climate Change Act. The Government has also*

[23] "An independent assessment of the UK's Clean Growth Strategy" [SB/x/y]

committed, through the Paris Agreement, to limit the rise in global temperature to well below 2°C and to pursue efforts to limit it to 1.5°C.

We were surprised that your statement to the House of Commons on the National Policy Statement on 5 June 2018 made no mention of either of these commitments. It is essential that aviation's place in the overall strategy for UK emissions reduction is considered and planned fully by your Department …".[24] (emphasis added)

56. Furthermore, the Secretary of State himself claimed to have taken into account both CCA obligations and his international law obligations, as evidenced in his post adoption statement:

> "*The Government acknowledges that the scheme is likely to result in an increase in emissions from activities at Heathrow Airport and that any increase in emissions must be kept within the UK's commitments. This has been considered using two future policy scenarios, meeting the UK's overall emissions target in the Carbon Capped case, and meeting the UK's commitments under any future international agreement in a Carbon Traded case.*"[25] (emphasis added)

57. The Secretary of State and the Court erred in holding that the CCA s.1 precluded consideration of Government policy commitments to increase emissions reduction beyond the 80% that was previously the statutory minimum.

GROUND 2: CONSEQUENTLY THE COURT ERRED IN LAW IN HOLDING THAT NEITHER THE PARIS TEMPERATURE LIMIT NOR THE GOVERNMENT'S POLICY OF INTRODUCING A NET ZERO TARGET IN ACCORDANCE WITH THE PARIS AGREEMENT FORMED ANY PART OF "GOVERNMENT POLICY RELATING TO … CLIMATE CHANGE"

58. Because the Court below proceeded on the basis to consider policy commitments which implied more stringent emissions reduction than the statutory minimum, would be to "undermine" the statute, it did not consider

[24] SB/x/y

[25] Post adoption statement, 4.4.50 [SB/x/y]

whether i) the Paris Temperature Limit and ii) the Government's commitment to introducing a net zero target in accordance with that limit were in fact key aspects of Government policy relating to climate change.

59. Nor did the judges note in their judgment that seven other claimants (the Mayor of London, the five boroughs and Greenpeace) expressly supported the Appellant's position that the Paris Agreement was "a key aspect" of Government policy relating to climate change.

1. The Paris Agreement is a key aspect of Government policy

60. Had the judges considered whether, as a matter of fact, the Paris Agreement is part of Government policy relating to climate change, they would have been bound to conclude that it was.

61. First, the Government advanced, signed and ratified the Paris Agreement, and as noted by the judges below (§575), "invested heavily" in doing so. In the circumstances, it would be surprising if it were Government policy to ignore the Paris Agreement in relation to its own long-term national infrastructure projects.

62. Second, the Government's policies relating to climate change are explicit that implementation of the Paris Agreement temperature limit is a central Government policy objective (see §§39ff).

63. Third, the Secretary of State acknowledges in his pleadings that:

> "*the Government is fully committed to the objectives of the Paris Agreement (the UK played an important role in pushing for ambitious aims to be set in the Paris Agreement)*"[26].

64. Fourth, the Government had, by the time of the designation of the ANPS, publicly committed to the implementation of a net zero target in line with the Paris Agreement (see §§32-33 and §36 above and §591 of the judgment below) and such a target has now been passed into law.

[26] See DGR to FOE claim, §34(1), SB/x/y

65. Since the Paris Agreement temperature limit is in fact a component of "*Government policy relating to … climate change*" for the purposes of s. 5(8) of the 2008 Act the Secretary of State was bound to take it into account and his failure to do so was unlawful. The Court below was wrong to hold otherwise.

2. It was, at the time of designation of the ANPS, Government policy to introduce a net zero target in line with the Paris Agreement, a policy which has now been implemented into law

66. It is common ground that the Government publicly committed to introducing a net zero target in line with the Paris Agreement in March 2016, and that in May 2018 it publicly stated that its goal was net zero emissions by 2050.

67. Had the Court below considered whether it was Government policy to establish a net zero emissions target in line with the Paris Agreement, it would have been bound to conclude that it was.

68. The Secretary of State was wrong to consider that the Paris Agreement and the Government's commitment to introducing a net zero target in line with the Paris Agreement were irrelevant to Government policy relating to climate change and the Court below was wrong to adopt his position.

GROUND 3: THE COURT ERRED IN LAW IN HOLDING HOLD THAT THE HISTORIC, DISCREDITED 2˚C TEMPERATURE LIMIT WAS A RELEVANT CONSIDERATION

69. Contrary to the main thrust of its judgment, the Court below acknowledged that the Secretary of State did not in fact confine his analysis to the CCA. He also assessed the ANPS against the 2˚C global temperature limit, which is not (and was not) set out in statute, but which had been politically recognised as the global temperature limit prior to the adoption of the Paris Agreement in December 2015:

> "*After Paris, Mr Crosland submitted, the "discredited" temperature limit of 2ºC was neither Government policy nor a relevant consideration for the purposes of the ANPS. The fact that it (and not the Paris temperature limit) was treated as policy and a relevant consideration is clear from (e.g.) Graham, paragraph 124, where it is said that the Aviation Target was not a constraint because "all emissions are assumed to be captured within a carbon market that*

allows total global carbon emissions consistent with a 2 degree climate stabilisation target …"[27] (emphasis added).

70. It follows that it was not in fact the Secretary of State's position that the global temperature limit was an irrelevant consideration. He did assess the ANPS against *a* global temperature limit. It was just that that limit was the *wrong* global temperature limit, ie the one that was current at the time of the Airports Commission's Final Report in June 2015, but which had been superseded in December 2015 on the basis that it presented intolerable risks.

71. That the 2˚C temperature limit was by June 2018 no part of Government policy relating to climate change is evident not only from the Government's ratification of the Paris Agreement, but from documents including the Government's *Clean Growth Strategy* (see §§39ff above), which explain the necessity for the more stringent Paris limit.

72. It is notable that the Secretary of State provided no justification for his reliance upon the 2˚C limit either in his pleadings or in his submissions to the Court.

GROUND 4: THE COURT ERRED IN LAW IN TREATING AS IRRELEVANT THE SECRETARY OF STATE'S FAILURE TO EXPLAIN TO PARLIAMENT THE BASIS OF HIS DECISION

73. The Secretary of State informed neither the consultees to the ANPS process nor Parliament that his position was that Paris Temperature limit was irrelevant and that the historic 2˚C target was the appropriate global benchmark against which to assess the ANPS. To the contrary, in his response to the consultation on the ANPS, the Secretary of State asserted:

> "*The Government notes the concerns raised about the impact on the UK's ability to meet its climate change commitments; the Government has a number of international and domestic obligations to limit carbon emissions*."[28]

[27] See judgment, §613

[28] Government response to the consultation on the ANPS, §8.18, [SB/x/y]

74. He referred directly to the Paris Agreement at 8.19 and 8.42 of the consultation response, implying that it has been taken into consideration, even if he did not say so in terms.

75. In his post adoption statement, the Secretary of State claimed he had assessed the ANPS against both domestic and international commitments (see §56 above).

76. Initially, in responding to the Appellant's case, he claimed that he had taken the Paris Agreement into account: "*the Secretary of State considered the Paris Agreement in producing the ANPS …*"[29]

77. It was only following the disclosure of his witness statements, however, which revealed that he had in fact relied upon the 2˚C target and not the Paris Temperature Limit, that the Secretary of State acknowledged that he had disregarded the Paris Agreement as irrelevant. Initially, however, he declined to concede the point in his pleadings until directed to do so by Holgate J:

> "*The Defendant appears to be seeking to draft the concession in language materially different from that used in the position statement and from what was said at the PTR and without explaining so far to the court why he has sought to do this …*
>
> *The court therefore directs the defendant to reconsider his position on these issues today. If he maintains his revised "concession" then he must file by 9am tomorrow a position statement explaining why the different wording is said to be justified, why para 29 was included in his position statement in different terms and set out any consequential amendments of pleadings needed.*"[30]

78. Following this direction, the Secretary of State amended his pleadings to read as follows:

> "*The Secretary of State and his officials therefore did not ignore the Paris Agreement, or that there would be emerging material within Government evidencing developing thinking on its implications, but it was concluded that*

[29] SST's Amended Detailed Grounds of Defence §24, [CB/x/y]

[30] SB/x/y

such material should not be taken into account, i.e. it was not relevant, since it did not form an appropriate basis upon which to formulate the policies contained in the ANPS".[31]

79. Since the Secretary of State did not disclose his true approach to the Paris Agreement until January 2019, it follows that there was a breach of:

(i) the basic fairness requirements of a consultation process; and of

(ii) the obligation to explain to Parliament his approach to Government policy relating to climate change, pursuant to s. 5(8) of the 2008 Act.

80. It is only a result of these legal proceedings that the Secretary of State's true position on the Paris Agreement, and the Government's commitment to introducing a net zero target, has been revealed.

CONCLUSION

81. The Secretary of State and the Court below interpreted "Government policy relating to …climate change", for the purposes of s. 5(8) of the 2008 Act, in such a way that it precluded consideration of the overwhelming evidence that government policy had changed profoundly since 2008; precluded consideration of the Paris Agreement temperature limit, which had formed the anchor point for government policy on climate change since December 2015; and precluded consideration of the Government's commitment to introducing a net zero carbon target in line with the Paris Agreement.

82. Simultaneously it interpreted the same provision as permitting consideration of the 2˚C global temperature limit, which the UK Government had rejected as inadequate and dangerous in December 2015.

83. As a result of this interpretation of the law, Government aviation policy and Government policy on climate change are proceeding in contrary directions, with potentially disastrous consequences.

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[31] CB/x/y

84. In passing simultaneously the Climate Change Act 2008 and the Planning Act 2008, and in passing express statutory provisions to harness government policies on planning and climate change, Parliament did everything it could to prevent such a situation arising. That the situation has in fact arisen is down to the Secretary of State's errors of law.

85. In the Appellant's submission, the designation of the ANPS was unlawful and should be quashed.

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