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

Case No: AC-2025-LON-001560

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 8 December 2025

Before :

MRS JUSTICE LANG DBE

- -

Between :

THE KING	**Claimant**
on the application of	
LUTON AND DISTRICT ASSOCIATION FOR THE CONTROL OF AIRCRAFT NOISE	
- and -	
SECRETARY OF STATE FOR TRANSPORT	**Defendant**
LONDON LUTON AIRPORT LIMITED	**Interested Party**

- -

Estelle Dehon KC, Ruchi Parekh and Hannah Taylor (instructed by **Leigh Day**) for the **Claimant**
James Strachan KC and Victoria Hutton (instructed by the **Government Legal Department**) for the **Defendant**
Michael Humphries KC and Rebecca Clutten (instructed by **Broadfield Law UK LLP**) for the **Interested Party**

Hearing dates: 4 & 5 November 2025

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 8 December 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

....

MRS JUSTICE LANG DBE

Mrs Justice Lang:

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

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

3. The Claimant is an unincorporated association which was established to oppose the expansion of the Airport. It made extensive submissions to the Examining Authority ("ExA").

4. In summary, the Claimant's grounds of challenge were as follows:

   i) **Ground 1:** Error of law in excluding from the environmental impact assessment ("EIA"), made under the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("the EIA Regulations"), the greenhouse gas ("GHG") emissions from inbound flights, contrary to *R (Finch) v Surrey County Council & Ors* [2024] UKSC 20, [2024] PTSR 988. Further, a failure to assess the significance of the indirect effects on the climate, contrary to the EIA Regulations and *Finch*.

   ii) **Ground 2:** Unlawful failure to take account of a material consideration, by failing to consider the treatment of inbound flight emissions by the ExA in relation to the expansion of Gatwick Airport.

   iii) **Ground 3:** Error of law in excluding from the EIA the likely significant impacts of non-carbon dioxide ("non-CO_2") emissions on the climate, contrary to *Finch*.

   iv) **Ground 4:** Error of law in concluding that the Government's duty under the Climate Change Act 2008 ("CCA 2008") to adopt policies and procedures that ensure the legislative duty to reach net zero is complied with was a "pollution control regime".

   v) **Ground 5:** Error of law in failing to give adequate reasons for finding compliance with section 85(A1) of the Countryside and Rights of Way Act 2000 ("the CROW Act").

   vi) **Ground 6:** Error of law in relying extensively on the Jet Zero Strategy ("JZS"), which is itself unlawful. The lawfulness of the JZS is currently subject to legal challenge. I dismissed the claims in *R (Possible (the 10:10 Foundation) and Another) v SST* [2025] EWHC 1101 (Admin) and an application for permission to appeal against my decision is pending.

5. On 25 July 2025, Lieven J. gave permission on the papers on Grounds 1 to 5. She stayed Ground 6, pending a final decision in the Jet Zero Strategy claim. On 3 November 2025, Holgate LJ granted permission to appeal against Lieven J.'s order for

a stay, and gave directions for the filing of pleadings and an oral permission hearing before a High Court Judge.

Chronology of key events

6. In 2023 the IP submitted an application for development consent for the expansion of the Airport under section 37(2) PA 2008. The proposed development would increase overall passenger capacity from 19 million passengers per annum ("mppa") to 32 mppa. This would involve the construction of a new passenger terminal and additional aircraft stands to the northeast of the existing runway. The proposed development would also include other works, set out at paragraph 4 of the Defendant's decision letter dated 3 April 2025 ("DL/4").

7. Between 10 August 2023 and 10 February 2024, the proposed development was examined by the ExA, comprising five inspectors. On 10 May 2024 the ExA submitted its report and recommendations to the Defendant.

8. The ExA recommended that the Defendant should withhold consent. In summary, the ExA considered that "the public benefits do not outweigh the environmental harms" (ExA/8.1.6). However, in the event that the Defendant disagreed, the ExA identified a number of matters on which the Defendant might wish to obtain further information.

9. Between 2 August 2024 and 11 November 2024, the Defendant invited responses to further consultations. These included a further consultation on the potential implications of the judgment in *Finch* on 29 August 2024 (which post-dated the ExA report) and on the duty under section 85 of the CROW Act on 27 September 2024.

10. In her letter of 3 April 2025, the Defendant granted development consent and made the London Luton Airport Expansion Development Consent Order 2025, which came into force on 24 April 2025.

Statutory framework

11. The DCO concerns development which is designated as a nationally significant infrastructure project, governed by the regime set out in the PA 2008. The DCO was granted by the Defendant under section 114 PA 2008.

12. The 'Airports National Policy Statement: new runway capacity and infrastructure at airports in the South East of England' ("the ANPS") is a designated National Policy Statement under section 5 PA 2008, which was presented to Parliament pursuant to section 9(8) PA 2008 in June 2018.

13. By regulation 4(2) of the EIA Regulations, the Secretary of State is prohibited from granting development consent unless an EIA, if required, has been carried out.

14. Regulation 5 of the EIA Regulations sets out the EIA process, so far as is material, as follows:

"**5.— Environmental impact assessment process**

(1) The environmental impact assessment ("the EIA") is a process consisting of—

(a) the preparation of an environmental statement or updated environmental statement, as appropriate, by the applicant;

(b) the carrying out of any consultation, publication and notification as required under these Regulations or, as necessary, any other enactment in respect of EIA development; and

(c) the steps that are required to be undertaken by the Secretary of State under regulation 21 or by the relevant authority under regulation 25, as appropriate.

(2) The EIA must identify, describe and assess in an appropriate manner, in light of each individual case, the direct and indirect significant effects of the proposed development on the following factors—

(a) population and human health;

(b) biodiversity, with particular attention to species and habitats protected under [any law that implemented] Directive 92/43/EEC and Directive 2009/147/EC;

(c) land, soil, water, air and climate;

(d) material assets, cultural heritage and the landscape;

(e) the interaction between the factors referred to in sub-paragraphs (a) to (d).

…"

15. Regulation 14 of the EIA Regulations sets out the requirements of an environmental statement so far as is material, as follows:

"**14.— Environmental statements**

(1) An application for an order granting development consent for EIA development must be accompanied by an environmental statement.

(2) An environmental statement is a statement which includes at least—

(a) a description of the proposed development comprising information on the site, design, size and other relevant features of the development;

> (b) a description of the likely significant effects of the proposed development on the environment;
>
> (c) a description of any features of the proposed development, or measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment;
>
> (d) a description of the reasonable alternatives studied by the applicant, which are relevant to the proposed development and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the development on the environment;
>
> (e) a non-technical summary of the information referred to in sub-paragraphs (a) to (d); and
>
> (f) any additional information specified in Schedule 4 relevant to the specific characteristics of the particular development or type of development and to the environmental features likely to be significantly affected.
>
> (3) The environmental statement referred to in paragraph (1) must—
>
> …
>
> (b) include the information reasonably required for reaching a reasoned conclusion on the significant effects of the development on the environment, taking into account current knowledge and methods of assessment;
>
> …
>
> (4) In order to ensure the completeness and quality of the environmental statement—
>
> (a) the applicant must ensure that the environmental statement is prepared by competent experts; and
>
> (b) the environmental statement must be accompanied by a statement from the applicant outlining the relevant expertise or qualifications of such experts."

16. Schedule 4 to the EIA Regulations describes the information to be included in an environmental statement, so far as is material, as follows:

> "3. A description of the relevant aspects of the current state of the environment (baseline scenario) and an outline of the likely evolution thereof without implementation of the development as far as natural changes from the baseline scenario can be assessed

with reasonable effort on the basis of the availability of environmental information and scientific knowledge.

4. A description of the factors specified in regulation 5(2) likely to be significantly affected by the development: population, human health, biodiversity (for example fauna and flora), land (for example land take), soil (for example organic matter, erosion, compaction, sealing), water (for example hydromorphological changes, quantity and quality), air, climate (for example greenhouse gas emissions, impacts relevant to adaptation), material assets, cultural heritage, including architectural and archaeological aspects, and landscape.

5. A description of the likely significant effects of the development on the environment resulting from, inter alia—

(a) the construction and existence of the development, including, where relevant, demolition works;

(b) the use of natural resources, in particular land, soil, water and biodiversity, considering as far as possible the sustainable availability of these resources;

(c) the emission of pollutants, noise, vibration, light, heat and radiation, the creation of nuisances, and the disposal and recovery of waste;

(d) the risks to human health, cultural heritage or the environment (for example due to accidents or disasters);

(e) the cumulation of effects with other existing and/or approved projects, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources;

(f) the impact of the project on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the project to climate change;

(g) the technologies and the substances used.

The description of the likely significant effects on the factors specified in regulation 5(2) should cover the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the development. This description should take into account the environmental protection objectives established at Union [level (as they had effect immediately before exit day) or United Kingdom] level which are relevant to the project, including in particular those established under [the

> law of any part of the United Kingdom that implemented] Council Directive 92/43/EEC and Directive 2009/147/EC."

17. Regulation 21 of the EIA Regulations sets out the approach to be adopted by the Secretary of State when deciding whether or not to grant development consent, as follows:

> "**21.— Consideration of whether development consent should be granted**
>
> (1) When deciding whether to make an order granting development consent for EIA development the Secretary of State must—
>
> (a) examine the environmental information;
>
> (b) reach a reasoned conclusion on the significant effects of the proposed development on the environment, taking into account the examination referred to in sub-paragraph (a) and, where appropriate, any supplementary examination considered necessary;
>
> (c) integrate that conclusion into the decision as to whether an order is to be granted; and
>
> (d) if an order is to be made, consider whether it is appropriate to impose monitoring measures.
>
> (2) The reasoned conclusion referred to in paragraph (1)(b) must be up to date at the time that the decision as to whether the order is to be granted is taken, and that conclusion shall be taken to be up to date if in the opinion of the Secretary of State it addresses the significant effects of the proposed development on the environment that are likely to arise as a result of the development described in the application.
>
> …"

18. The term "environmental information" used in regulation 21(1)(a) of the EIA Regulations is defined in regulation 3(1) as follows:

> "*"environmental information"* means the environmental statement .... including any further information and any other information, any representations made by any body required by these Regulations to be invited to make representations and any representations duly made by any other person about the environmental effects of the development ..."

Legal principles

19. In a claim for judicial review the claimant must establish a public law error on the part of the decision-maker. The exercise of planning judgment and the weighing of the various issues are matters for the decision-maker and not for the Court: *Seddon Properties Ltd v Secretary of State for the Environment* (1981) 42 P & CR 26. A legal challenge is not an opportunity for a review of the planning merits: *Newsmith v Secretary of State for the Environment, Transport and the Regions* [2001] EWHC 74 (Admin).

20. The Court will not interfere with matters of planning judgment other than on legitimate public law grounds: see *St Modwen Developments v Secretary of State for Communities and Local Government* [2017] EWCA Civ 1643; [2017] PTSR 476, per Lindblom LJ at [7]. In particular, the Court's consideration is limited to the question of whether the decision was lawful, and the Court will not trespass on the "forbidden territory" of the merits of the scheme. Therefore the scope for a challenge to a planning decision-maker's evaluative judgment, such as the assessment of "significance" in environmental impact assessments, is limited to public law grounds. Weight, including decisions to give an issue no weight, are matters for the decision-maker: see *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759, per Lord Hoffmann at [56].

21. The public law requirement to take into account material considerations was considered by the Supreme Court in *R (Friends of the Earth Ltd & Ors) v Heathrow Airport Ltd* [2020] UKSC 52, per Lord Hodge and Lord Sales, at [116] – [122]. A decision-maker is required to take into account those considerations which are expressly or impliedly identified by statute, or considerations which are "so obviously material" to a particular decision that a failure to take them into account would not be in accordance with the intention of the legislation, notwithstanding the silence of the statute. The test whether a consideration is "so obviously material" that it must be taken into account is the *Wednesbury* irrationality test. See also *R (Samuel Smith Old Brewery (Tadcaster) v North Yorkshire CC* [2020] UKSC 3, per Lord Carnwath at [29] - [32].

22. A decision letter must be read (1) fairly and in good faith, and as a whole; (2) in a straightforward down-to-earth manner, without excessive legalism or criticism; (3) as if by a well-informed reader who understands the principal controversial issues in the case: see Lord Bridge in *South Lakeland v Secretary of State for the Environment* [1992] 2 AC 141, at 148G-H; Sir Thomas Bingham MR in *Clarke Homes v Secretary of State for the Environment* (1993) 66 P & CR 263, at 271; *Seddon Properties Ltd v Secretary of State for the Environment* (1981) 42 P & CR 26, at 28; and *South Somerset District Council v Secretary of State for the Environment* (1993) 66 P & CR 83.

Ground 1: Error of law in excluding from the EIA the GHG emissions from inbound flights, and failure to assess the significance of the indirect effects on the climate, contrary to *Finch*.

Reports and decision

The Environmental Statement

23. The IP's Environmental Statement ("ES"), dated October 2023, described the assessment of the GHG impacts of the development, as follows:

> "**Assessing the GHG impacts of the Proposed Development within the national context**
>
> 12.2.5 It is important to set out clearly the context within which the assessment of the Proposed Development's GHG impacts, and their significance is undertaken.
>
> 12.2.6 The first key consideration in respect of GHG assessment for airport projects is the ANPS (Ref. 12.41), which makes clear in paragraph 5.82 that:
>
>> "Any increase in carbon emissions alone is not a reason to refuse development consent, unless the increase in carbon emissions resulting from the project is so significant that it would have a material impact on the ability of Government to meet its carbon reduction targets, including carbon budgets."
>
> 12.2.7 To assess the impacts of the project it is therefore critical to understand both the scale of any increase in GHG emissions and the materiality of their impact on the government's ability to meet its obligations. As is explained below, because the government's targets and budgets are expressed at a national level, this is therefore the scale at which the assessment of materiality must be considered.
>
> 12.2.8 In setting out the scale of any increase associated with the Proposed Development, as with any similar assessment, the GHG assessment has been developed on the basis of known plans and robustly foreseeable trends across the scope of assessment as described in Section 12.3. A description of these can be found in Section 12.6 on Assumptions and Limitations, including both the level of aviation demand and the carbon intensity of flights; further detail is provided in Section 2.3.6 of Appendix 12.2 of this ES …...
>
> 12.2.9 A second key consideration is the Jet Zero Strategy, published in 2022, setting out government strategy on how net zero will be achieved in the aviation sector, aligning with the

UK's wider net zero target. Following consultation in 2021, government has committed to achieving the 'High Ambition Scenario' presented in the Jet Zero Strategy. On the High Ambition Scenario the Jet Zero Strategy concludes that there will be 19.3 MtCO_2e of residual emissions in 2050 to be offset or removed …...

12.2.10 Fundamental to the UK aviation sector meeting the High Ambition Emissions Scenario in the Jet Zero Strategy, and in turn the UK achieving its net zero target by 2050, is the UK Emissions Trading Scheme (ETS) ….. and the Carbon Reduction Offsetting Scheme for International Aviation (CORSIA) …. A large majority of aviation GHG emissions from the airport will fall under the UK ETS, while the remainder will be managed under CORSIA. CORSIA requires aircraft operators in participating member states to offset any emissions above a specified baseline.

12.2.11 On these matters Paragraph 3.46 in the Jet Zero Strategy states:

> "The UK Emissions Trading Scheme (UK ETS) covers all domestic flights in the UK as well as flights from the UK to the EEA, and to and from Gibraltar. This Strategy draws on UK ETS Authority proposals in the Developing the UK ETS consultation to increase the ambition of the scheme by aligning the cap with a clear net zero trajectory, and new carbon price assumptions which illustrate the potential costs faced by airline operators in future. This Strategy also reflects the need to expand the reach and impact of carbon markets by facilitating interaction between UK ETS and other international schemes such as CORSIA."

12.2.12 As such the UK ETS sets an overall cap on the amount of carbon which may be emitted by participating airlines. Participants receive free carbon emissions allowances and/or buy emission allowances (at auction or on the secondary market) which they can trade with other participants as needed to cover the carbon emissions associated with operating their business, or to derive a commercial benefit from their own lower carbon emissions. The available allowances place a cap on the total amount of GHG emissions that can be emitted by sectors, including aviation, covered by the UK ETS. This cap will be reduced over time stimulating innovation by participants to increase the carbon efficiency of their operation, or indeed to take steps which would reduce the overall scale of their operations. This effectively puts a binding cap on the amount of GHG emissions the aviation sector can emit.

……

> 12.2.15 The Government's control of aviation's GHG emissions, and the assessment against the policy text in para 5.82 of the ANPS, must also be seen within the context of the Secretary of State's legal duty under section 1 of the Climate Change Act 2008, to achieve a UK net carbon account at least 100% below 1990 levels (i.e. net zero GHG emissions) by 2050 and its legal duty under section 4 to meet the five-yearly carbon budgets (including the Sixth Carbon Budget). The UK ETS and CORSIA, adopted by Government, mean that the Secretary of State will have both the controls and the legal obligation to ensure that the 2050 'net zero' target and future carbon budgets are met.
>
> 12.2.16 The UK ETS operates to cap aircraft emissions within its scope regardless of the total airport capacity in the UK, or indeed the capacity of the country's individual airports, since it bears directly on the operators of aircraft from wherever they fly in the UK. Like the UK's carbon targets themselves, the UK ETS operates at the national level and targets the activity responsible for emitting GHGs rather than the ground-based infrastructure from which they take off and land. This also avoids the risk of simply moving the source of carbon emissions (within the total UK ETS cap) from one airport to another which would be the likely outcome if emissions were capped on an airport-by-airport basis either through capacity constraint or direct emissions controls."

24. In section 12.5, the ES outlined the methodology employed for assessing the GHG emissions. In line with the ANPS and the EIA Regulations, two assessment scenarios were reported. First, a Future Baseline (or Do-Minimum) which assumes the development is not built. Second, a Core Planning Case (or Do-Something), which assumes the proposed development proceeds. The assessment for aircraft movements was summarised as follows:

> "12.5.7 Baseline GHG emissions for aviation are based on data provided which detail aircraft movements by destination, distance travelled and aircraft type for forecast aircraft movements from 2019 through to 2043 assuming airport capacity remains at 18 mppa. Baseline emissions were further modelled through to 2050 assuming passenger numbers remain constant at 18 mppa and the fleet mix remains the same as projected for 2043. This is an inherently conservative assumption, as it is very likely that increased numbers of zero emissions aircraft will replace conventionally-fuelled aircraft during the period between 2043 and 2050. GHG emissions from aircraft movements are calculated separately for the LTO and cruise phases of flight.
>
> 12.5.8 LTO [*Landing and Take-off*] is defined as aircraft movements below an altitude of 3000 feet i.e. during the approach, taxiing, take-off and climb. The EMEP/EEA Aviation

> Emissions Calculator (Ref. 12.46) was used to estimate the fuel consumption and carbon dioxide (CO_2) emissions for each model of aircraft and world region distance during the landing take-off cycle. Emissions were then converted to CO_2e using the appropriate ratio for aviation fuel taken from the Department for Business, Energy and Industrial Strategy (BEIS) conversion factors (Ref. 12.47).
>
> 12.5.9 CCD [*Climb-Cruise-Descend*] emissions are defined as all activities that take place at altitudes above 3000 feet. CCD includes climb to cruise altitude, cruise, and descent from cruise altitudes to 3000ft at the destination. CCD emissions are only calculated for flights departing from the airport to avoid double counting with other airport inventories. This is in line with approach defined in the UNFCCC [*United Nations Framework Convention on Climate Change*]. GHG emissions from the CCD phase have been calculated using the EMEP/EEA Air Pollutant Emissions Inventory guidebook aviation calculator (Ref. 12.48) based on aircraft type and distance travelled (in nautical miles) for aircraft departures from the airport."

25. In its sensitivity analysis, at 12.9.17, the ES listed known scenarios or risks that could occur and influence the conclusions of the core assessment.

26. Under the heading "Evaluation of significance", at paragraph 12.11.3, the ES explained that the assessment took into account the aviation mitigation measures described in the JZS, carbon pricing via UK Emissions Trading Scheme ("ETS") and Carbon Offsetting and Reduction Scheme for International Aviation ("CORSIA"), use of sustainable aviation fuels ("SAFs"), improved efficiency of aircraft and airspace management, and the rollout of Zero Emission Aircraft. Even if these measures were not fully implemented, ETS and CORSIA would continue to provide controlling mechanisms to prevent aviation emissions from exceeding carbon budgets.

27. Aviation emissions for the proposed development were assessed at no more than 3.24% within the JZS High Ambition scenario (paragraph 12.11.17). At paragraphs 12.11.19 – 12.11.23, consideration was given to the National Carbon Budgets, which only include emissions from aviation from the Sixth period onwards, but there are recommended planning assumptions from the Committee on Climate Change ("CCC"), for earlier periods. Table 12.26 showed that aviation emissions contributed a small and falling share of the CCC's planning assumption figures and a much smaller percentage of the UK's national carbon budget (paragraph 12.11.22).

28. Aviation emissions from the proposed development were summarised in its conclusions at paragraph 12.11.25:

> "12.11.25 It can be seen that Aviation emissions from the Proposed Development are:
>
> a. Aligned with existing and emerging best practice, as described in the UK Government's Jet Zero Strategy;

> b. Controlled via a combination of the UK ETS and CORSIA, meaning that they cannot exceed the limits set by these market-based mechanisms;
>
> c. Account for only a very small proportion of emissions within the Jet Zero Strategy High Ambition scenario; and
>
> d. Fall at the same rate as Jet Zero Strategy High Ambition scenario between the baseline year of 2019 and 2050."

29. Applying the significance rating, published by the Institute of Environmental Management ("IEMA"), set out at Table 12.10, the ES concluded:

> "12.11.26 The combination of these factors allows the significance of Aviation emissions to be evaluated as **Minor Adverse** and **Not Significant**."

The ExA report

30. The ExA report, dated 10 May 2024, provided an overview of the legislation and policy background and stated:

> "3.12.5. Under the CCA2008 the SoS must ensure that the net UK carbon account for the year 2050 is at least 100% lower than the 1990 baseline ('net zero'). A net 'carbon budget' is set by the SoS for each 5-year period from 2008 to 2012. The associated UK Emissions Trading Scheme (UK ETS) sets a cap on the amount of carbon that can be emitted, including by airlines, within the EEA and Gibraltar. This cap will be reduced over time to stimulate innovation to increase carbon efficiency and to reduce emissions. The allowances under the UK ETS will be aligned with the UK carbon budgets to achieve net zero by 2050.
>
> 3.12.6. National policies and strategies relating to GHG emissions from aviation are in the JZS and Decarbonising Transport: a better, greener Britain (2021). The former sets out the Government's commitment to decarbonise airport operations by 2040 and aviation by 2050. The latter sets out policy on decarbonising transport in line with the UK's target of net zero by 2050. The JZS identifies a 'High Ambition' scenario, which sees aviation carbon dioxide (CO_2) emissions peak in 2019 and then follow a reducing trajectory to achieve 'jet zero' by 2050.
>
> 3.12.7. The ANPS (paragraph 5.76) states that the Applicant must provide evidence of the carbon impact of the project so that it can be assessed against the Government's carbon obligations, including, but not limited to, the carbon budgets. Paragraph 5.82 states that "any increase in carbon emissions alone is not a reason to refuse development consent, unless the increase in carbon emissions resulting from the project is so significant that it would

have a material impact on the ability of Government to meet its carbon reduction targets".

3.12.8. The ANPS (paragraph 5.83) requires evidence of appropriate mitigation measures to demonstrate that the carbon footprint is not "unnecessarily high". The Applicant should quantify the GHG impacts before and after mitigation to show the effectiveness of proposed mitigation measures. This will require emissions to be split into traded sector and non-traded sector emissions, and for a distinction to be made between international and domestic aviation emissions (paragraph 5.76). The ANPS lists the emissions that should be quantified (paragraph 5.77) and the mitigation measures that are likely to be incorporated (paragraphs 5.78 and 5.80)."

31. Part of the ExA's summary of the IP's ES is set out below:

"**Aviation**

3.12.17. Baseline emissions from aviation were based on aircraft movements by regional destination, aircraft type and the assumption of 18mppa to 2043 …. The Core Planning case built on this using air traffic forecasts from the Need Case …. GHG emissions were calculated separately for the landing take-off (LTO) (below 3000 feet), and the cruise, climb and descent (above 3000 feet) phases of flight in one direction to avoid double counting with other airports….

3.12.18. The UK ETS and the global Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) were incorporated into both the baseline and Core Planning cases through application of carbon pricing to the demand forecasts ….

3.12.19. The Applicant applied the proposed actions from the JZS High Ambition scenario to both the Future Baseline and Core Planning cases These included uptake of SAFs from 2030, improvements in aircraft fuel efficiency at 2% per year and the introduction of Zero Emission Aircraft (ZEA) from 2040 …..

…..

3.12.23. To assess the significance of emissions from aviation, the Applicant compared them with the trajectory provided for in the JZS High Ambition scenario, the 'planning assumption' for aviation and the national carbon budgets. The Applicant concluded that the aviation emissions would account for a very small proportion of national emissions and would follow the JZS's High Ambition trajectory. Emissions would represent less than 3% of the planning assumption for aviation over budget periods 4 (2025 to 2027) and 5 (2028 to 2035) and would represent less than 1% of the national carbon budget for period

> 6 (2033 to 2037) ….. For these reasons, the Applicant concluded that the effects from aviation would not be significant …..”

32. The ExA report addressed the calculation of aviation emissions at paragraphs 3.12.63 – 3.12.66:

> “**Calculation of aviation emissions**
>
> 3.12.63. At the end of the Examination, HCC …., NHDC …., DBC …. and CBC ….. had not agreed to the calculation of emissions from aviation because only departing flights had been included. They did not consider that this approach was consistent with the IEMA guidance, including section 5.2, which states “*the assessment should seek to quantify the difference in GHG emissions between the proposed project and the baseline scenario. Assessment results should reflect the difference in whole life net GHG emissions*”. HCC stated that only counting emissions one-way did not account for the whole life cycle. NEF …. also argued that all emissions should count against the scheme in the balance and stated … that GHG emissions incurred overseas should be included, quoting BEIS’ ‘valuation of energy use and GHG emissions’ (January 2023).
>
> 3.12.64. In response to these concerns ….., the Applicant said that this was a widely established practice to avoid double-counting emissions. The Applicant ….. stated that advice on the inclusion of departing flights only has been adopted by the DfT and informed its policy on aviation and climate change. This was also the basis for the approach taken in the ANPS. The advice of the CCC is to consider emissions from departing flights only. Additionally, the United Nations Framework Convention on Climate Change recommends that for carbon reporting purposes nations submitting annual emissions totals should only consider departing flights to avoid double counting with other countries.
>
> 3.12.65. The ExA acknowledges the concerns that only including emissions from departing flights above 3000 feet would not account for the whole life cycle. However, given the unusual circumstances of flying, a different approach has necessarily been established and agreed internationally, to avoid double counting emissions. The ExA sees no reason to come to a different conclusion in this case.
>
> 3.12.66. This matter weighs neither for nor against the making of the Order.”

33. The ExA report considered the determination of significance of emissions at paragraphs 3.12.67 – 3.12.76. The ExA was satisfied that the IP had demonstrated that the project would be compatible with the UK’s current trajectory to Jet Zero (paragraph 3.12.69).

34. The ExA was also satisfied that emissions from aviation would remain less than 3% of the CCC's planning assumption up to the Sixth budget period (2033 to 2037) (paragraph 3.12.71) and less than 1% of the specific requirement for emissions in the Sixth budget (paragraph 3.12.72).

35. The ExA concluded, at paragraph 3.12.74, that the predicted emissions would not have a material impact on the ability of Government to meet its carbon reduction targets.

36. However, the development would emit many millions of tonnes of additional GHGs which did not meet the requirement of paragraph 159 of the National Planning Policy Framework ("the NPPF") that new development should be planned for in ways that can help to reduce GHG emissions. Given that this proposal would lead to an additional 13 million passengers, compared to the P19 permitted limits (19 million passengers from October 2023), the ExA concluded that the GHG emissions should attract moderate weight against the making of the DCO (paragraph 3.12.76).

37. Thus, the ExA correctly distinguished between the assessment of likely significant effects in the EIA process, and the weight to be attributed to the negative consequences of the proposed development when undertaking the planning balance.

Finch

38. The Supreme Court handed down its judgment in the case of *Finch* on 20 June 2024, after the completion of the ExA report in May 2024. In *Finch*, the developer applied to the local planning authority for planning permission for a project to extract oil for commercial purposes at a site in Surrey. In carrying out its EIA, the planning authority accepted as adequate, and relied upon, an ES prepared by the developer which assessed the GHG that would be produced by the operation of the development itself but did not attempt to assess the GHG that would be emitted "downstream" when the crude oil produced from the site was used by consumers, typically fuel for vehicles, after being refined elsewhere. The planning authority granted the permission sought.

39. The claimant applied for judicial review of the decision on the ground, inter alia, that such downstream emissions were "indirect significant effects of a project on … climate" within the meaning of regulation 4(2) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 ("the EIA Regulations 2017") and so ought to have been identified and assessed. Dismissing the claim, the High Court held that such emissions could not, under the EIA Regulations 2017 and Directive 2011/92/EU as amended ("the EIA Directive"), be regarded as effects of the activity of extracting the crude oil because of the need for the intermediate refining process to take place before the oil could be used.

40. The Court of Appeal, by a majority, dismissed an appeal by the claimant, holding that it was a matter for the evaluative assessment of the local planning authority, subject only to the scrutiny of the Court on public law grounds, as to whether there was a sufficient causal connection between the extraction of the oil and its eventual combustion, on which different planning authorities could reasonably take opposite views. The local planning authority had been entitled to use the existence of the intervening stages before the generation of the downstream emissions as good reason

for excluding those emissions from its consideration of the indirect significant effects of the proposed development on climate.

41. The Supreme Court allowed the claimant's appeal, by a majority of 3 – 2. Lord Leggatt (with whom Lord Kitchin and Lady Rose agreed, Lord Sales and Lord Richards dissenting) summarised the position at [7]:

> "…..it is not merely likely, but inevitable, that the oil extracted will be sent to refineries and that the refined oil will eventually undergo combustion, which will produce GHG emissions. It is not disputed that these emissions, which can easily be quantified, will have a significant impact on climate. The only issue is whether the combustion emissions are effects of the project at all. It seems to me plain that they are."

42. Lord Leggatt held that the emissions that occurred when the oil produced was burned as fuel were within the scope of the EIA. The issue was whether the combustion emissions constituted "direct or indirect…effects of the project" within the meaning of the EIA Directive and the EIA Regulations 2017. If they were, they must be assessed as part of the EIA. The concept of "effects of a project" was one of causation. The combustion emissions were "effects of the project" because it was known with certainty that if the project went ahead, all the oil extracted would inevitably be burnt thereby releasing GHGs into the earth's atmosphere. It was possible to make a reasonable estimate of the quantity of downstream GHG emissions which would thereby be released. The local planning authority, by confining its assessment of GHG to those directly released from within the well site boundary, had not complied with the legal requirement to assess both the direct and indirect effects of the proposed development.

43. The EIA Directive did not impose any geographical limit on the scope of the environmental effects of the project that had to be assessed and the Council was therefore wrong to limit the scope of the EIA to the well site boundary. The very nature of "indirect effects" was that they might occur away from their source, and the impact of GHG emissions did not depend on where the release occurred.

Consultation on *Finch*

44. On 29 August 2024, during the post-examination period, the Defendant invited the IP to consider the implications of *Finch.* The IP replied by letter dated 6 September 2024 and, in Appendix A to its letter, set out its detailed response on *Finch* ("the Finch Appendix"). By a letter dated 27 September 2024, the Defendant invited other parties to make comments on the IP's Finch Appendix and, by letter dated 13 October 2024, the Claimant did so.

45. The Finch Appendix calculated and reported the aviation emissions from both inbound and outbound flights by doubling the emissions from outbound flights only. These were set out at Table 1 and Table 9.

46. The Finch Appendix set out the key passages in the *Finch* judgment and made the following representations:

"2 AVIATION EMISSIONS FROM INBOUND FLIGHTS

2.1.1 As noted above, the Finch judgment held that there was a need to assess all likely direct and indirect significant effects of a project, save that "only effects which evidence shows are likely to occur and which are capable of meaningful assessment must be assessed" (*Finch* at [167]) and that "in principle, all likely significant effects of the project must be assessed, irrespective of where (or when) those effects will be generated or felt" (*Finch* at [93]).

2.1.2 In the Environmental Statement, Chapter 12 Greenhouse Gases …. the Applicant assessed greenhouse gas emissions from aircraft for flights between London Luton Airport and a destination airport. The following elements of such an air traffic movement are considered:

a. Landing take-off cycle (LTO): the LTO cycle considers emissions from aircraft during descent to, and ascent from London Luton Airport below 3000ft as well as during taxiing activities at London Luton Airport;

b. Cruise, climb and descend (CCD): CCD considers only greenhouse gas emissions from aircraft departing London Luton Airport above 3000ft to within 3000ft of the destination airport.[1]

2.1.3 In essence, the objective is to include the emissions of air traffic movement from its airport of origin to its airport of destination. The return (inbound) movement is not included in the calculation as this is counted as emissions of the airport / nation from which it is departing. This avoids either double counting (i.e. both airports / nations counting both legs of a return movement) or zero counting (i.e. each airport / nation counting both legs of a return flight against the other airport / nation).

2.1.4 This practice is consistent with the calculation of emissions in the UK carbon budgets and the trajectories in the Jet Zero Strategy. By convention, the Applicant has included the landing emissions at London Luton Airport as a proxy for those at the destination airport and, to avoid double counting, has not then included the landing emissions at the destination airport.

2.1.5 When assessing aviation emissions at a national and international level it is accepted practice to model emissions based on volumes of aviation bunker fuel consumed. If every nation accounts for the use of its own bunkered fuel used on

[1] Emissions from the inbound descent LTO phase into the airport are used as a proxy for emissions from the descent phase into the destination airport. This approach therefore accounts for equivalent emissions from a full journey between the airport and the destination airport. On this basis the term 'outbound' flights are used to represent all aviation emissions reported in the ES.

outbound flights then this avoids the double counting of aviation emissions between different countries and provides a more accurate account of global aviation emissions. The UK has aligned with this approach when estimating aviation emissions and, as stated above, only includes emissions from departing flights in both the UK carbon budgets and in the scenarios presented for UK aviation in the Jet Zero Strategy.

2.1.6 The approach taken by the Applicant, including reporting emissions from inbound aircraft in the descent phase of LTO into London Luton Airport, is also consistent with other recent airport projects approved by the Secretary of State.

2.1.7 To understand the significance of greenhouse gas emissions from a project on the climate, IEMA guidance[2] on assessing the significance of greenhouse gas impact, states emissions from a project should be contextualised against a relevant carbon budget. The UK carbon budgets reflect the aviation emissions from departing international aircraft and this is also the basis upon which aviation emissions were calculated for the Jet Zero Strategy. Thus, not only is excluding inbound flights considered current practice for calculating aviation emissions, but excluding inbound flights from the GHG assessment also allows for the magnitude and future trajectory of aviation emissions from the Proposed Development to be contextualised against UK carbon budgets and the scenarios presented in the Jet Zero Strategy. This is the approach taken in the Environmental Statement, Chapter 12 Greenhouse Gases. This approach is also consistent with the recent decision by the Secretary of State for Housing, Communities and Local Government and by the Secretary of State for Transport on the appeal relating to London City Airport, where the Secretaries of State noted that this is a widely adopted approach which has been used in a number of airport expansion proposals and endorsed by the High Court[3].

2.1.8 Furthermore, the assessment of greenhouse gas emissions presented in the Environmental Statement has applied the greenhouse gas impact significance test set out in the Airport's National Policy Statement (ANPS). The ANPS test states (Paragraph 5.82) that "Any increase in carbon emissions alone is not a reason to refuse development consent, unless the increase in carbon emissions resulting from the project is so significant

[2] Assessing Greenhouse Gas Emissions and Evaluating their Significance, 2nd Edition, IEMA, February 2022.

[3] Town and Country Planning Act 1990 – Section 78 Appeal made by London City Airport Limited, Application reference: 22/03045/VAR https://assets.publishing.service.gov.uk/media/66c33ed4057d859c0e8fa728/24-08-19_-_LONDON_CITY_AIRPORT__HARTMANN_ROAD__SILVERTOWN__LONDON_E16_2PX_-_App_No_3326646.pdf

that it would have a material impact on the ability of Government to meet its carbon reduction targets, including carbon budgets."

2.1.9 For the reasons set out above, therefore, it would not have been appropriate to include inbound emissions when applying the ANPS test because the test is directly linked to the impact on carbon budgets, and the methodology in relation to flights which is embedded within them.

2.1.10 To contextualise the impact of both inbound and outbound emissions against a carbon budget represents a challenge as there is no single budget available against which to undertake a meaningful assessment.

2.1.11 The Applicant does acknowledge however that while it may be inappropriate to include the emissions of inbound flights and, indeed, difficult to contextualise emissions from both inbound and outbound flights, it is possible to calculate and report these emissions. To do so the Applicant has considered it a reasonable approach simply to double the emissions reported in the Applicant's Environmental Statement, which (as above) accounts for outbound flights. For information, therefore, Table 12.18 from the Greenhouse Gases Chapter ….. has been recreated in Table 1 below to include greenhouse gas emissions for both outbound and inbound flights.

….."

The Claimant's response

47. The Claimant responded to the Defendant's invitation to comment in its letter of 13 October 2024. It submitted that *Finch* necessitated assessment of all direct and indirect significant effects which were likely to occur and were capable of meaningful assessment. It was reasonable for the Defendant to take account of the impact of emissions from inbound flights, and that this should be done in light of all relevant factors, such as the decision to include aviation emissions in the Sixth Carbon Budget.

48. Applying *Finch*, the Claimant addressed stand-alone tests, as follows:

"**2. Stand-alone tests**

As a key further general point, Lord Leggatt makes clear each project assessment should be performed as a stand-alone test without being concerned about double counting, which is a different approach to that required for the Jet Zero Strategy ("JZS") or the carbon budget.

In particular this applies to the need to assess the extent of emissions from inbound flights, contrary to what the Applicant argues (though at the same time providing the assessment).

The point turns on a crucial difference between reporting of emissions, and project-specific assessment of emissions. The latter, as clarified in *Finch*, focuses properly on informing the decision-maker and the public of the actual predicted impact on the climate from the extent of GHG emissions that the project would cause, rather than on avoiding double-counting.

From a decision-taking perspective, Lord Leggatt expressly finds at §125 that "there is no rule that the same effect on the environment cannot result from more than one activity or that, if particular effects have been or will be assessed in the context of one project, this dispenses with the need to assess them as part of an EIA required for another project.""

49. The Claimant then stated as follows:

"**4. Emissions from inbound flights**

For the reasons indicated in Section 2 above, we disagree with the Applicant's view that its proposed increases in GHG emissions from inbound flights should be ignored

The assessment in Appendix A appears reasonable in terms of the phases of flight, although we note that the use of the LLA bunker fuel measure omits any assessment of "tankering" (where an aircraft carries sufficient fuel for more than one sector when departing, and does not refuel at the first destination).

Appendix A Table 1 shows the revised net increases in aviation emissions attributable to the Proposed Development were it to go ahead as follows:

2050 Future baseline (without Development): 587,978 tCO_2e

2050 Core planning case (with Development): 1,149,852 tCO_2e

2050 Net impact Core case (with Development): 561,874 tCO_2e

The 1.15MT CO_2e is some 5% of the 23MT allowed by the CCC for the UK aviation sector by 2050, therefore representing a significant proportion.

Note however that the Applicant has only performed this assessment for its *Core planning case*, whereas the Applicant has based its Noise Limits on its *Faster Growth case*. Therefore, the emissions impact is still being understated."

The Defendant's decision

50. In her decision dated 3 April 2025, the Defendant addressed the issue of aviation emissions as follows:

"***Calculation of Aviation Emissions***

241. The Secretary of State notes that, at the close of Examination, a number of parties had not agreed to the calculation of emissions from aviation because only departing flights had been included and they did not consider this to be consistent with the IEMA guidance ….. The Applicant stated that this was a widely established practice internationally to avoid double-counting emissions which is adopted by DfT policy on aviation and climate change and is the accepted advice of the CCC…... Like the ExA, the Secretary of State sees no reason to come to a different conclusion in this case …..

242. In her consultation letter of 29 August 2024, the Secretary of State requested further information on the potential implications of the judgement by the Supreme Court in Finch in relation to the Proposed Development including any implications for the GCG Framework. In its letter of 6 September 2024, the Applicant considered at paragraph 1.2.1 Appendix A, the potential implications of the Finch judgment. The Applicant's position is that the decision of the Supreme Court in Finch does not require assessment of indirect GHG emissions in circumstances where either (a) there is insufficient information on which to make a reasonable assessment or (b) where it is possible to make a judgment, the effects are not significant (see 1.1 of Appendix A to the 6 September 2024 letter). The Applicant then made further submissions in the context of the following points:

a. The inclusion of GHG emissions from inbound flights as a result of the Proposed Development.

b. The inclusion of GHG emissions from 'well-to-tank' ("WTT") activities as a result of the Proposed Development.

c. The impact of indirect surface access emissions.

d. The impact of GHG emissions from increased employment because of economic growth deriving indirectly from growth at the Airport.

e. The impact on the Applicant's GCG Framework, including on the Limits and Thresholds proposed within GCG.

243. On point a., the Applicant restated their position on why it was only necessary to count emissions from outbound flights and that contextualising emissions from inbound flights is challenging because there is no single carbon budget to compare them to. However, it acknowledged that it was possible to calculate emissions from inbound flights and the Applicant considered it a reasonable approach simply to double the

> emissions set out in its ES. Whilst the calculation of emissions for both outbound and inbound flights was set out in Table 1 (see 2.1.11 of Appendix A to the 6 September 2024 letter) for operational years, no assessment was provided on the impact of the calculated emissions against the relevant carbon budgets."

51. The Defendant then went on to consider the points listed at DL/242, sub-paragraphs (b) – (e). At DL/255, the Defendant returned to consider all the matters at sub-paragraphs (a) to (e), as follows:

> "255. The Secretary of State considers that additional assessment of the matters identified at (a) to (e) is not necessary or capable of meaningful assessment in light of the approach identified in *Finch* for the reasons given by the Applicant. As to emissions from inbound flights, the Secretary of State is satisfied that including inbound flights is likely to amount to double counting of emissions and that it is appropriate to follow the approach adopted by the industry and national policy identified by the Applicant. As to the other indirect effects, the Secretary of State considers that there is insufficient evidence of a causal link between the Proposed Development and the emissions identified by the Applicant in its letter of 6 September 2024 for the reasons given by the Applicant. Although the Applicant has set out figures which could be attributed to these indirect effects, the Applicant has made it clear that these figures are likely to be conservative and/or it is not clear whether any net increases in emissions will be caused by the Proposed Development. The question of whether these indirect effects can be attributed to the Proposed Development is therefore difficult to meaningfully assess (see *Finch* at 167).
>
> 256. However, notwithstanding the points made above, the Secretary of State considers that the additional effects identified by the Applicant are not significant on their own and this is another reason why it is not necessary to assess them or account for them in the Secretary of State's assessment of the weighting of this matter in the planning balance."

52. The Defendant set out her conclusions on GHG at DL/273 – 278, as follows:

> "**The Secretary of State's Conclusions on Greenhouse Gases**
>
> 273. The ExA considered that the assessment of GHG emissions had incorporated the trajectories and assumptions in the Jet Zero Strategy and Decarbonising Transport (2021) and that, ultimately, emissions would be controlled through the carbon budgets set in the Climate Change Act 2008. The Secretary of State agrees …
>
> 274. The Secretary of State has had regard to the evidence of mitigation measures the Applicant has provided to ensure that

the carbon footprint is not unnecessarily high from construction and operations, and agrees with the ExA that it has been demonstrated that the carbon emissions of the Proposed Development would be reduced through good design largely secured by the Design Principles to meet the requirements of local policies …..

275. As set out above, the Secretary of State agrees with the ExA that a monitoring requirement is necessary to ensure emissions set out for the core planning case are not higher than the Limits during Phase 1 or offset only years later …..

276. The Secretary of State notes that the ExA was satisfied that the carbon emissions from the Proposed Development would align with the Jet Zero Strategy's High Ambition trajectory and that the Applicant had provided evidence that the predicted emissions would not materially impact the Government's ability to meet its climate targets. The Secretary of State agrees but like the ExA, considers that the emissions from the Proposed Development would be significantly greater than the 'without proposal' scenario. The Secretary of State is aware that all emissions contribute to climate change. Whilst the Proposed Development will result in an increase in carbon emissions, she considers that the Proposed Development needs to be considered in the context of existing and emerging policy and legal requirements to achieve the UK's trajectory towards net zero and is satisfied that there would be no breach of such national or international obligations. As mentioned above, the Secretary of State does not consider the *Finch* judgement alters this position.

277. While noting that the Applicant has provided an assessment of potential indirect impacts from the Proposed Development on carbon as a result of the Finch ruling and that this increases the impact of the Proposed Development, for the reasons set out above, the Secretary of State does not consider that this or any other assessment to the approach taken in the Applicant's ES is necessary. The Secretary of State is satisfied that the increase in carbon emissions resulting from the Proposed Development would not impact Government's ability to meet its legally binding carbon targets. Notwithstanding this position if the ruling in Finch were to require further consideration of the indirect impacts on carbon, the Secretary of State is satisfied with the approach taken by the Applicant and that this would still not impact Government's ability to meet its obligations legally binding carbon reduction targets or change the conclusion on this matter.

278. The Secretary of State agrees with the ExA's conclusion that the Proposed Development's effect on climate change through an increase in GHG emissions would be adverse and this

> carries moderate negative weight against the making of the Order …..."

Claimant's submissions

53. The Claimant submitted that it was unlawful for the Defendant and the IP not to include GHG emissions from inbound flights in the overall assessment of significance of climate impact. This was a failure to assess the indirect likely significant effects of the proposed development on the climate, contrary to regulations 14(2) and (3) and 21(b) of the EIA Regulations.

54. The Defendant and the IP relied on three reasons for their approach: (1) double counting; (2) the effects not being capable of meaningful assessment; and (3) the additional impacts not being significant on their own. These justifications did not withstand scrutiny.

55. There is no 'in principle' difficulty with double counting: see *Finch* at [125]. Also, the decision of the European Free Trade Association Court ("the EFTA Court") *Norwegian State v Greenpeace Nordic and Nature and Youth Norway* (E-18/24, 21 May 2025), at [73], which held that the obligation to assess environmental impacts under the EIA Regulations arises independently of which state must report emissions in accordance with the Paris Agreement, which is concerned with avoiding double counting.

56. Lord Leggatt's reference in *Finch* to the ability to undertake a meaningful assessment only applied to the causal link between a project and its impacts. It did not apply to the different question of assessing significance.

57. The Defendant and the IP did not demonstrate that it was impossible to determine the likely significance of the impact of GHG emissions from inbound flights.

58. The public was entitled to participate in the EIA process and the lack of an assessment of significance of the inbound flight emissions undermined their ability to do so.

59. The Defendant's conclusion that the additional effects of the GHG emissions, including from inbound flights, were not "significant on their own" was unlawful because any assessment of significance had to address the totality of GHG emissions from all sources. Furthermore, the Defendant could not simply assert lack of significance without an assessment from the IP and it would be irrational to do so.

Conclusions

60. I accept the submissions made by the IP and the Defendant.

61. As Lord Leggatt stated in *Finch*, at [13], the general obligation imposed by the EIA Directive is to ensure that, before development consent is given, projects that are likely to have significant effects on the environment are made subject to an assessment with regard to those effects (article 2(1)).

62. Regulation 14(2) of the EIA Regulations requires a description of the "likely significant effects" in the environmental statement. In the EIA process, the obligation under

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

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

64. In contrast, in this case, the Defendant and the IP accepted that the emissions from inward bound flights were likely effects of the development. The emissions were quantified and published in the Finch Appendix. The contested issue was whether it was possible to make a meaningful assessment of their significance when, in accordance with standard national and international practice, the appropriate benchmarks (e.g. the CCC's Planning Assumption, the Sixth Carbon Budget, the JZS) all calculated emissions for outward bound flights only, for consistency and in order to avoid double counting. The ANPS significance test for GHG emissions also required assessment against the carbon budgets (at paragraph 5.82). That approach was consistent with the advice of the CCC and the UNFCCC. The assessment would necessarily be flawed if the calculation was undertaken on a different basis to the benchmarks, as it would not be comparing like with like. The flaw was demonstrated in the Claimant's representations in response to the Finch Appendix where it erroneously compared the combined emissions as 5% of a CCC allowance, where the CCC allowance did not include inbound flights. The difficulty was explained in detail in the ES and the Finch Appendix, at paragraphs 2.1.2 to 2.1.10, which are set out above. The Defendant, in the exercise of her judgment, agreed with the IP's approach (at DL/241 and DL/255).

65. The use of national carbon budgets as a benchmark for the assessment of significance of GHG emissions was confirmed as lawful in *R (GOESA) v Eastleigh BC* [2022] EWHC 1221 (Admin), per Holgate J. at [122]. The evaluation of the significance of an estimated amount of GHG emissions and its acceptability are matters of fact and judgment for the decision-maker. In undertaking that exercise, the decision-maker is entitled to select a benchmark to assist in arriving at a final judgment. There is no set significance threshold for carbon emissions. The selection of an appropriate benchmark is a matter of judgment based on a technical/scientific assessment to which the Court affords respect: see *R (Mott) v Environment Agency* [2016] 1 WLR 4338. In *R (Boswell) v Secretary of State for Energy, Security and Net Zero Boswell* [2025] EWCA Civ 669, the Court of Appeal held, at [80]:

> "In our view the evaluation of the significance of an estimated amount of GHG emissions and its acceptability is a matter of fact and judgment for the decision-maker. He or she may decide to choose benchmarks to help in arriving at that judgment. But that choice too is a matter of judgment for them. Any conclusion drawn on the acceptability of the GHG emissions in comparison with a benchmark is also a matter of judgment for the decision-

> maker. The 2017 Regulations do not determine how these matters should or may be approached ….”

66. Issues as to which benchmark to use to assess the effects of aviation emissions from the proposed development were a matter for the relevant decision-maker to determine. The Defendant's judgments reached about relevant UK benchmarks were clearly open to her, and may only be challenged on *Wednesbury* principles, which the Claimant did not advance.

67. The Claimant submitted that the Defendant's approach was unlawful because double counting was a legally irrelevant consideration; there was no geographical limit to EIA; and no basis for saying that, if effects have been or will be assessed in the context of one project, assessment of those effects can be dispensed with.

68. However, the Claimant was wrong in equating the issue of double counting in this case with the issue that arose in *Finch* as to whether effects could be effects if they occurred outside the UK. The Defendant was self-evidently not excluding inbound emissions as effects on the basis that they would occur outside the UK, or might be identified as effects in other locations. The IP's response to *Finch* and the Defendant's reference to double counting was addressing the problem of seeking to compare such effects against UK benchmarks which do not include or count inbound emissions. There was a lack of an appropriate benchmark.

69. In *Finch*, Lord Leggatt recognised the difficulties that may arise where the evidence is lacking. He held, at [74] – [78]:

> “74. Whatever the precise meaning of the term, to determine that a potential effect is “likely” requires evidence on which to base such a determination. If evidence is lacking so that a possible future occurrence is a matter of speculation or conjecture, then a rational person would not feel able to judge that it is “likely”. Such agnosticism is not the same as judging the event to be unlikely. It reflects a belief that there is too little knowledge on which to base a judgment.
>
> 75. The need for sufficient evidence on which to base an assessment is not spelt out as a requirement in the EIA Directive. But it can be deduced from the description and purpose of the EIA procedure. As set out in article 1(2)(g), stage (iv) of that procedure - which follows (i) the preparation of the environmental statement by the developer, (ii) the carrying out of consultations, and (iii) the examination by the competent authority of the information received - is:
>
> “[a] reasoned conclusion by the competent authority on the significant effects of the project on the environment, taking into account the results of [its] examination;”
>
> 76. The initial, information gathering stages of the process, including the preparation of the environmental statement, are thus directed towards the ability to reach a reasoned conclusion

on the significant effects of the project on the environment. This is confirmed in article 5(1), which provides that the environmental statement shall "include the information that may reasonably be required for reaching a reasoned conclusion on the significant effects of the project on the environment, taking into account current knowledge and methods of assessment." Similarly, article 5(3)(c) provides that, "where necessary, the competent authority shall seek from the developer supplementary information, in accordance with Annex IV, which is directly relevant to reaching [a] reasoned conclusion on the significant effects of the project on the environment."

77. Implicit in these provisions, and in the aims of the EIA Directive, is the criterion that material should be included in the environmental statement and taken into account in the procedure only if it is information on which a reasoned conclusion could properly be based. Conjecture and speculation have no place in the EIA process. Thus, if there is insufficient evidence available to found a reasoned conclusion that a possible environmental effect is "likely", there is no requirement to identify, describe and try to assess this putative effect. This criterion must also govern, where a possible effect is regarded as "likely", the nature and extent of the assessment of the effect.

78. There is here an area of evaluative judgment involved in determining the scope of an EIA. Judging whether a possible effect of a project is likely and capable of assessment may, depending on the circumstances, be a matter on which different decision-makers, each acting rationally, may take different views."

70. In my view, the Claimant was mistaken when it submitted that this part of Lord Leggatt's judgment was confined to the question of the sufficiency of evidence for establishing the causation of effects. I agree with the Defendant and the IP that Lord Leggatt also considered the assessment of significance, even though that was not a contested issue in *Finch*, in order to explain the operation of the EIA process overall. In the final sentence of [77], Lord Leggatt was clearly applying the same "criterion" to the assessment of significance when he referred to the "nature and extent of the assessment of the effect".

71. At [167], Lord Leggatt went on to explain why the EIA Directive did not impose obligations which were impossibly onerous and unworkable, in respect of both causation and significance, saying:

"In particular, only effects which evidence shows are likely to occur and which are capable of meaningful assessment must be assessed."

72. The guidance in *Finch* at [167] was applied by the Defendant when she concluded, at DL/255, that assessment of the inbound flights was not "capable of meaningful assessment".

73. Lord Leggatt gave examples of circumstances where an assessment might not be necessary, saying at [138]:

> "138. Given the agreed fact that all the oil produced would be refined, I see no reason why environmental impacts resulting from the process of refining the oil should not in principle fall within the scope of the EIA for the project of extracting the oil. There are, however, potential reasons why the view might reasonably be taken that it was not necessary to include an assessment of such impacts in the EIA. One would be that there was insufficient information available on which to make a reasonable assessment of the relevant impacts. Another potential reason would be that, so far as it was possible to judge, such impacts were not themselves likely to be significant….."

74. The final sentence identified as a legitimate reason for not including an assessment of impacts that "as far is it was possible to judge, such impacts were not themselves likely to be significant ….".

75. This guidance was reflected in the reasoning in the Defendant's decision at DL/256. The Defendant made the further evaluative judgment that, notwithstanding her primary position, if the effect of *Finch* was that she was required to make an assessment (despite the inability to carry out a meaningful assessment given the problem with contextualisation), she concluded that the additional effects were not significant, and that was a reason why it was not necessary to assess them.

76. The Defendant went on to conclude, at DL/276 - 277, that there would be no breach of national or international obligations and that "if the ruling in Finch were to require further consideration of the indirect impacts on carbon, the Secretary of State is satisfied with the approach taken by the Applicant and that this would still not impact Government's ability to meet its obligations legally binding carbon reduction targets or change the conclusion on this matter.".

77. I do not accept the Claimant's submission that the Defendant's conclusion was unlawful because there was no assessment of significance from the IP and the emissions from inbound flights could not be considered on their own.

78. The Defendant was clearly able to reach such a judgment as the effects had been quantified. The existing outbound emissions were considered minor adverse and not significant. Even if combined with the inbound emissions (so effectively doubled), they would still be substantially less than 1%. A conclusion that the equivalent inbound emissions were not significant was therefore clearly a rational decision open to the Defendant.

79. As to the procedural criticisms made by the Claimant, the EIA process did involve identification and quantification of emissions from inbound flights, in the Finch Appendix. That information was the subject of consultation and the Claimant responded to it. It was also publicised via the website.

80. The information in the Finch Appendix was part of the "environmental information" examined by the Defendant, pursuant to the EIA process in regulation 5 of the EIA

Regulations. Regulation 3(1) of the EIA Regulations defines the term "environmental information", as used in regulation 21(1)(a), to include not just the initial ES but also any further information and any representations made.

81. The nature of EIA as a process which involves the initial production of an ES, publicity and consultation resulting in representations, and then consideration of the resulting "environmental information", which includes not just the ES, but any subsequent information and representations has been emphasised by the Court (see *R (Blewett) v Derbyshire CC* [2004] Env LR 29 per Sullivan J. at [41]; subsequently endorsed by the House of Lords in *R (Edwards) v Environment Agency* [2008] 1 WLR 1587, at [38], as endorsed by the Supreme Court in *R (Friends of the Earth) v Heathrow Airport Ltd* [2021] PTSR 19 per Lord Hodge and Lord Sales at [143]).

82. The adequacy of information provided in an ES is a matter of judgment for the decision-maker, subject to legal challenge on *Wednesbury* grounds. The same standard of review applies to the adequacy of information and evaluative concepts in the EIA process as a whole (see *R (Suffolk Energy Action Solutions) v Secretary of State for Energy, Security and Net Zero* [2023] EWHC 1796 (Admin) per Holgate J., at [57] – [61] and *Friends of the Earth* at [142] – [147], applying the approach in *Blewett*).

83. Lord Leggatt confirmed in *Finch*, at [58]:

> "58……Deciding whether an effect of a project on the environment is "significant" clearly requires a value judgment and carries the potential for cases to arise in which different decision-makers may legitimately reach different conclusions without it being possible to say that any of them has made an error in interpreting or applying the term."

84. In *Boswell*, the Court of Appeal confirmed in a joint judgment at [96]:

> "Similarly, the result of Finch and its reasoning do not disturb the basic and long- established principle, recently reaffirmed by the Supreme Court itself, that where a public authority has the function of deciding whether to grant planning permission for a project calling for EIA under the relevant legislation, it is for that authority to decide whether the "environmental information" available is sufficient to meet the requirements of the legislation, and its decision is subject to review on normal *Wednesbury* principles (see the judgment of Lord Hodge and Lord Sales in *Friends of the Earth* [2020] at [141]-[147])."

85. In my view, the Defendant made a lawful exercise of planning judgment which does not disclose any error of law. For the reasons set out above, Ground 1 does not succeed.

Ground 2: Unlawful failure to take account of a material consideration by failing to consider the treatment of inbound flight emissions by the ExA in relation to the expansion of Gatwick Airport

Gatwick Airport history

86. The report by the Examining Authority for the Gatwick Airport Northern Runway Project ("Gatwick ExA") was produced on 27 November 2024. In their report, the Gatwick ExA accepted that it was not possible to assess the significance of inbound flight emissions by reference to UK carbon budgets, but did consider additional emissions from inbound flights, as follows:

> "8.4.106. Throughout the Examination the Applicant has revised its findings about the contribution which the Proposed Development makes to UK carbon budgets. The contribution has increased with the addition of domestic inbound flight emissions, WTT emissions and emissions from waste incineration. The Applicant's revised assessment indicates a contribution of 3.459% to the Sixth Carbon Budget. This does not include inbound international flights (which as the Applicant has acknowledged would double emissions from 0.512MtCO_2e to 1.022MtCO_2e (excluding WTT emissions)), fuel produced outside of the UK or non-CO_2 emissions as these elements cannot be contextualised against UK carbon budgets…
>
> 8.4.107. The Applicant's evidence also shows that direct aviation emissions are doubled to 44.689MtCO_2e when inbound flights and WTT are included and that the inclusion of WTT emissions increases the total emissions by over 20% between 2018 and 2050 which is a substantial change.
>
> 8.4.108. Contextualising international inbound aviation emissions against an ICAO sector based scenario indicated a contribution of 0.13% (with WTT) which for a single project does not appear to be insignificant but doubts about using ICAO are not unreasonable.
>
> 8.4.109. No definitive evidence has been provided by IPs to demonstrate that the indicative threshold of 5% has been reached (and they are not required to do so). Nevertheless, IPs have raised considerable doubts about the Applicant's assessment that the Project would result in a 3.459% contribution in the Sixth Carbon Budget. Our judgment is that when other elements which cannot be contextualised against UK carbon budgets are considered, the 5% threshold is likely to be reached for the Project as a whole and a rise beyond 2037 could push the Proposed Development to being a significant adverse effect in EIA terms.
>
> ……

> 8.5.12. The Applicant has adopted the methodology of the IEMA Guidance and contextualised emissions accordingly while acknowledging the difficulties about contextualisation. Paragraphs 5.82 of the ANPS and 5.18 of the NNNPS note that any increase in carbon emissions alone is not a reason to refuse development consent, unless the increase in carbon emissions is so significant that it would have a material impact on the ability of Government to meet its carbon reduction targets including carbon budgets. We have no clear evidence that the indicative 5% threshold of a carbon budget has been met, while the Applicant's own assessment indicates an effect of over 3.4% but we note that the effects of non-CO_2 emissions, international inbound flights and fuel produced outside the UK were not included. Additionally, this figure relates to the entire airport and covers the period to 2037, not 2050. Nevertheless, our judgment is that were these other factors included the threshold is likely to be reached and a significant adverse effect in EIA terms should be recorded."

87. However, the Secretary of State did not accept the Gatwick ExA's approach. In her decision, dated 21 September 2025, she concluded as follows:

> "197. The Applicant, at paragraph 7.6 of its 24 April 2025 (Annex 4) response to the Secretary of State's minded to letter, highlighted that the 3.459% figure represents the airport as a whole, and does not relate to the increase in emissions attributable to the Proposed Development and is contrary to IEMA Guidance. The Applicant highlighted its Revised Table 16.9.13 ….., which states that the highest contribution the Proposed Development would make to 6CB is 0.657%, but noting at paragraph 7.3 that this was the figure that relates to 'the increase in carbon emissions resulting from the project' for the purposes of paragraph 5.82 of the ANPS. The Applicant therefore concluded that there is no reason to believe that, even factoring in the other emissions that the ExA considered not to have been quantified and contextualised against UK carbon budgets, the IEMA threshold of 5% of the UK carbon budget would be exceeded (paragraph 7.6). At paragraph 7.12, the Applicant considered that the correct approach is to conclude that the increase in carbon emissions resulting from the project is clearly not so significant that it would have a material impact on the ability of Government to meet its carbon reduction targets. At paragraph 7.13 the Applicant submitted that the ExA's conclusion of moderate adverse weight in relation to GHG emissions was unsound.
>
> ……
>
> 201. Taking into account the views provided by the Applicant, the ExA and Interested Parties during the Examination and throughout the decision stage, the Secretary of State considers

that it is appropriate to assess significance on the basis of the Proposed Development's contribution to CB6, which would be 0.657%. She agrees with the Applicant's statement at Annex 4, paragraph 7.3, of its representation of 24 April 2025, that the figure addresses "the increase in carbon emissions resulting from the Project (Proposed Development)", for the purposes of paragraph 5.82 of the ANPS. The Secretary of State notes this is also consistent with paragraph 5.2 of the IEMA guidance, which states "the assessment should seek to quantify the difference in GHG emissions between the proposed project and the baseline scenario (the alternative project/solution in place of the proposed project)." The Secretary of State therefore disagrees with the ExA that it is appropriate to use the figure for the emissions arising from the airport as a whole (as set out at ER 8.4.109) because the assessment carried out by the ExA does not reflect the applicable policy or IEMA Guidance. An overall consideration of the Secretary of State's assessment of significance is set out in the conclusion below.

……

205. The Secretary of State notes the Applicant's evidence that direct aviation emissions are doubled to 44.689MtCO_2e when inbound flights and WTT are included, and that the inclusion of WTT emissions increases the total emissions by over 20% between 2018 and 2050, which the ExA noted was a substantial change [ER 8.4.107]. She notes the Applicant's reasoning for contextualising inbound international aviation emissions against an ICAO sector-based scenario; however, she agrees with the ExA's statement at ER 8.4.108 that doubts about using ICAO are not unreasonable and further considers that the use of the ICAO benchmark has not been sufficiently justified by the Applicant. The Secretary of State, as outlined earlier, agrees with the Applicant that inbound international emissions are not within the scope of the JZS, however, contextualising them against ICAO's sector-based scenario would not be meaningful, and no other benchmarks for international aviation emissions were set out during the Examination or decision stage. She therefore concludes that whilst inbound international emissions are an effect, it is not possible to carry out a meaningful quantitative assessment against a relevant benchmark. However, taking into account the quantum of emissions produced and the fact that these emissions will, as with outbound emissions, reduce over time following aircraft technology improvements, the impact of decarbonisation policies in the JZS and the Sustainable Aviation Fuel Mandate, introduced on the 1 January 2025, the Secretary of State does not consider that the effects of inbound flight emissions materially affect her overall conclusions on significance and are not on their own or in combination with the total GHG emissions of a scale to justify refusing consent. The

> Secretary of State is further satisfied that although inbound emissions are not accounted for in UK carbon budgets, where applicable they will be managed and mitigated through emissions trading schemes such as UK ETS and CORSIA, which covers States that have volunteered to participate in it and represents nearly 80% of international aviation activity (page 48, JZS). Furthermore, the adoption of a global goal for international aviation of net zero CO_2 emissions by 2050 places the sector on a trajectory firmly aligned with the Paris Agreement's 1.5C global temperature target (page 6, JZS: one year on)."

Claimant's submissions

88. The Claimant submitted that the application to expand Gatwick Airport was a materially similar application to the proposed development at Luton Airport. It was an obviously material consideration that the Gatwick ExA identified the same methodological difficulties with assessing inbound flight emissions against UK carbon budgets, but nonetheless took them into account. Moreover, when GHG emissions which could not be assessed against UK carbon budgets were taken together with the GHG emissions which could be so assessed, the Gatwick ExA concluded that this "could push [the Gatwick development] to being a significant adverse effect in EIA terms".

89. The Defendant would have been aware of the Gatwick ExA report but made no reference to it. The failure to take into account such an obviously material consideration was irrational.

90. The fact that subsequently the Secretary of State did not follow the approach in the Gatwick ExA report did not alter the fact that it was a legally relevant consideration for the Luton decision and had to be taken into account. Furthermore, the Secretary of State's decision on Gatwick Airport suffered from some of the same errors as the decision in this case.

Conclusions

91. I accept the submissions made by the Defendant and the IP.

92. The leading cases on the requirement to take into account material considerations are summarised at paragraph 21 above. Absent a requirement arising from statute or policy, the test whether a consideration is so "obviously material" that it must be taken into account is whether it was *Wednesbury* irrational not to have taken it into account. In my view, this high threshold has not been reached in this case.

93. The submission that the Defendant was required to take into account the Gatwick ExA's views was wrong both in principle and on the facts. Case law has developed a principle that reasons should be given for failing to decide like cases in a like manner, and it is telling that the Claimant did not rely upon it here. The Gatwick ExA's views were merely recommendations to the Secretary of State on the Gatwick Airport extension

application. They did not have the status of a decision, and the recommendations were rejected by the decision-maker, the Secretary of State.

94. On the facts, the Gatwick ExA report related to a different examination for a different project at a different airport. The Gatwick application related to a much larger capacity airport than Luton (80.2 mppa as opposed to 32 mppa) and so the question of resulting emissions was quantitively different. Inevitably the Gatwick ExA's views reflected the evidence and representations before them, which were not the same as at the Luton examination.

95. I agree with the submissions of the IP and the Defendant that the Gatwick ExA's reasoning was internally inconsistent and flawed when it sought to compare future aviation emissions with UK carbon budgets. The Gatwick ExA noted, at paragraph 8.4.108 that there were 'not unreasonable' doubts about contextualising inbound flights against an International Civil Aviation Organisation ("ICAO") sector-based scenario. At paragraph 8.4.106, the Gatwick ExA report acknowledged that Gatwick Airport Limited had recognised that the inclusion of inbound international flights would double the predicted emissions from the airport, but that these could not be contextualised against UK carbon budgets. However it went on to conclude, at paragraph 8.4.109, that "Our judgment is that when other elements which cannot be contextualised against UK carbon budgets are considered, the 5% threshold is likely to be reached for the Project as a whole and a rise beyond 2037 could push the Proposed Development to being a significant adverse effect in EIA terms.". Thus, the Gatwick ExA purported to make an assessment against the Sixth Carbon Budget when the evidence before it was that inbound emissions could not be contextualised against domestic carbon budgets. The 5% threshold is the IEMA's suggested threshold for significance against the UK carbon budgets, which exclude inbound emissions. The Gatwick ExA did not turn its mind to the obvious flaws in such an approach and the issue of double counting.

96. The Gatwick ExA's approach was roundly rejected by the Secretary of State, at paragraphs 197, 201 and 205 of her decision letter. She concluded that whilst inbound emissions were an effect, it was not possible to carry out a meaningful assessment against a relevant benchmark. She did not consider that the effects of inbound flight emissions materially affected her overall conclusions on significance, and were not on their own, or in combination with the total GHG emissions of a scale to justify refusing consent. They would be managed and mitigated through emissions trading schemes.

97. The Gatwick ExA and decision demonstrate the differing assessment and planning judgments that have been made on the issue of aircraft emissions.

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

99. For the reasons set out above, Ground 2 does not succeed.

Ground 3: Error of law in excluding from the EIA the likely significant impacts of non-CO_2 emissions on the climate, contrary to *Finch*

Report and decision

The ExA report

100. The ExA report examined the approach to take to non-CO_2 emissions in detail at paragraphs 3.12.101 – 3.12.110:

> "**Non-CO_2 emissions**
>
> 3.12.101. The Applicant stated that there remains significant scientific uncertainty around the overall warming effect of non-CO_2 impacts, as recognised by the CCC …... Furthermore, non-CO_2 impacts are not included within the Nationally Determined Contributions declared pursuant to the 2015 Paris Agreement, the carbon budgets set pursuant to the UK CCA2008 and the Aviation emissions trajectory for the JZS High Ambition scenario that the assessment uses as a comparator for Aviation emissions. For all these reasons, the GHG assessment did not seek to quantify non-CO_2 impacts, consistent with current Government advice …. paragraph 9.8.9].
>
> 3.12.102. NEF highlighted that the aviation chapter of the DfT's WebTAG was published after D5 and included new detail on the approach to non-CO_2 emissions ….. The WebTAG guidance stated that qualitative assessment of non-CO_2 impacts using factors provided by the Department for Energy Security and Net Zero (DESNZ) was an appropriate sensitivity test. NEF rejected the Applicant's interpretation of a High Court ruling as having 'rejected' the multiplier, but rather the absence of use of this was not grounds for the court to intervene. NEF drew attention to the fact that WebTAG was being used as part of the Gatwick Airport DCO application.
>
> 3.12.103. In response, the Applicant stated that the guidance was also clear that, given uncertainties, a qualitative approach to non-CO_2 emissions was acceptable, even within the context of a full WebTAG appraisal ….. The Applicant remained of the view that the context for the partial WebTAG appraisal presented by (sic) as part of Gatwick Airports DCO application was different because the case being made was principally based on the assumption that a third runway was not provided at Heathrow and so sought to present the case in terms of overall UK wide benefits as an alternative to Heathrow Airport.
>
> 3.12.104. Further explanation on the lack of inclusion of these emissions was provided in ….. in response to an action from ISH8 …... In this, the Applicant acknowledged that it was

possible to calculate non-CO_2 effects but maintained that it was not appropriate to do this because of the uncertainty involved, the exclusion of these from the Jet Zero trajectory and 'legal precedent' excluding them from other aviation planning applications. This was reiterated at the end of the Examination in …..

3.12.105. Regarding the uncertainty in using a multiplier, the Applicant quoted ….. the CCC in its Sixth Carbon Budget Pathway Report, which stated that "It remains extremely challenging to accurately aggregate the effects of these non-CO_2 impacts into a CO_2-equivalence 'multiplier' for use within climate policy mechanisms.

3.12.106. The Applicant acknowledged ….. that the Government's own documents refer to uplift factors for non-CO_2 effects ranging between a multiplier of 1.7 and around 3, but caveated this because there was 'clearly no consensus' round which uplift factor would be most appropriate. It noted that addressing non-CO_2 effects is described as a core Government policy measure in the JZS, and that it is therefore to be dealt with at a national level.

3.12.107. The Applicant argued that it would not be possible to do a meaningful contextualisation of aviation effects against the JZS trajectory if non-CO_2 effects were included as part of this application because it would not be comparing like with like …... If an uplift factor was to be applied to the aviation emissions from the Proposed Development, then the same factor would need to be applied to the aviation emissions trajectory within the JZS. The overall contribution of the Proposed Development to UK aviation emissions would remain unchanged …...

3.12.108. The Applicant has interpreted legal precedent as saying that it would be anomalous for non-CO_2 emissions to be considered as part of an application and that these effects cannot form a proper basis for refusing consent …..

3.12.109. The ExA concludes that a range of multipliers could have been applied to provide an indication of the potential effects from non-CO_2 emissions through the costing of these. However, the ExA accepts that a WebTAG appraisal of non-CO_2 emissions is not currently a requirement for development. The ExA also acknowledges that the current test in policy is to compare GHG emissions against current emission trajectories and that these do not include non-CO_2 emissions. It is also accepted that future controls on non-CO_2 emissions will be introduced at a national level and it would therefore be disadvantageous to require a single development to incorporate this in their assessment.

> 3.12.110. The ExA concludes that non-CO_2 emissions are a neutral matter and neither weigh for nor against the making of the Order."

The Defendant's decision

101. The Defendant considered non-CO_2 emissions at DL/270 - 271:

> "***Non-CO_2 Emissions***
>
> 270. The Secretary of State notes that the Applicant did not seek to quantify non-CO_2 Impacts for the reasons set out in ER 3.12.101. Discussions took place around a new aviation chapter of DfT's WebTAG published during the Examination that included new detail on the approach to non-CO_2 emissions [ER 3.12.102]. The Applicant acknowledged that it was possible to calculate non-CO_2 emission effects but maintained that it was not appropriate to do so because of the uncertainty involved, the exclusion of these from the Jet Zero trajectory and 'legal precedent' excluding them from other aviation planning applications …...
>
> 271. The Secretary of State notes that the ExA concluded that a range of multipliers could have been applied to provide an indication of the potential effects from non-CO_2 emissions through the costing of these. The ExA accepted that a WebTAG appraisal of non-CO_2 emissions is not currently a requirement for development and that the current test in policy is to compare GHG emissions against current emission trajectories and that these do not include non-CO_2 emissions. It also accepted that future controls on non-CO_2 emissions will be introduced at a national level and it would therefore be disadvantageous to require a single development to incorporate this in their assessment ….. As such, the ExA considered that the non-CO_2 emissions weighed neither for nor against the making of the Order …… The Secretary of State agrees."

<u>Claimant's submissions</u>

102. The Claimant submitted that neither the IP nor the Defendant conducted any assessment of non-CO_2 emissions, despite accepting that it was methodologically possible to do so.

103. The ES did not include non-CO_2 emissions with the other qualitative assessments (see e.g. Table 12.23 and paragraph 12.11.54). The IP's reference to a qualitative assessment, at paragraph 2.1.29 of its Additional Submissions, was in the context of an economic appraisal of the proposed development.

104. The Defendant and the IP wrongly asserted that the Defendant concluded in her decision that it was not possible to make a meaningful quantitative assessment of non-

CO_2 emissions. The decision did not expressly reach that conclusion. At DL/271, the Defendant noted that the ExA concluded that a range of multipliers could have been applied. At DL/270, the Defendant stated that the IP considered that it was "not appropriate" to calculate non-CO_2 emissions "because of the uncertainty involved", not that it was not possible to do so.

105. The section on non-CO_2 impacts in the ES did not constitute a "description" of the impacts or an "assessment" of them for the purposes of the EIA Regulations. Therefore, the Defendant excluded non-CO_2 emissions from its assessment of the extent of climate impacts, which was an error of law contrary to the EIA Regulations.

106. Regulation 5(2) of the EIA Regulations requires a developer to "identify, describe and assess" the direct and indirect significant effects of a proposed development. The correct legal approach, in the light of *Finch*, was to apply a causal analysis and the precautionary approach.

107. The Defendant wrongly accepted as lawful the IP's refusal to describe the likely extent of non-CO_2 impacts. The Defendant relied on matters which were irrelevant to legal causation to exclude the assessment of non-CO_2 emissions, applying the approach in *Finch*. Those were (a) a lack of requirement for an appraisal using WebTAG; (b) absence of non-CO_2 emissions in current emission trajectories; and (c) an assumption that future controls on non-CO_2 emissions would be introduced at national level.

108. Reason (a) was obviously irrelevant. On (b), the fact that the non-CO_2 emissions could not be contextualised against current emissions trajectories was legally irrelevant to whether the impacts are 'effects' of the proposed development, which they plainly were. As to (c), the assumption of, and reliance on, future controls was directly contrary to *Finch* (at [108]) which precludes reliance on the assumption that other pollution control regimes will address an impact as a basis for excluding assessment of that impact.

109. The reference to future controls appeared to be linked to *R (Bristol Airport Action Network Co-ordinating Committee) v Secretary of State for Levelling Up, Housing and Communities* [2023] PTSR 853 ("*Bristol Airport*") where Lane J. held that, in the context of the evidence before the Bristol Airport Inspectors, it was lawful not to require assessment of non-CO_2 emissions. However, it did not follow that it was lawful in all circumstances to omit such an assessment. The High Court recognised that "[t]he precautionary principle is capable of being invoked where the nature of the decision-making leaves space for it" (at [228]), which was the position in this case.

110. Furthermore, the CCC's advice in relation to the Seventh Carbon Budget, given on 26 February 2025, changed to require aviation's non-CO_2 effects to be addressed and in Box 7.6.3 the CCC adopted a methodology to calculate the warming effects of non-CO_2 emissions. It also made the clear link between demand management and effective limiting of the warming impacts of non-CO_2 emissions. The Defendant appeared not to have taken these matters into account.

111. In any event, regulation 14(3) of the EIA Regulations requires an ES to take into account "current knowledge and methods of assessment". There are plainly methodologies available to quantify the warming impacts of non-CO_2 emissions. By

failing to use one of these established methodologies to quantify non-CO_2 impacts, the ES erred by not using the current methods of assessment.

112. In conclusion, the failure to describe the likely significant effects on the climate caused or contributed to by non-CO_2 emissions was an error of law.

Conclusions

113. I accept the submissions made by the Defendant and the IP.

114. Unlike the case of *Finch*, there was no contested issue about causation – it was accepted that aviation causes non-CO_2 effects. The issue is whether the Defendant erred in law in its assessment of the non-CO_2 effects.

115. The ES and other information presented to the ExA did not ignore the potential for effects to arise as a result of the non-CO_2 impacts of the proposed development. It briefly described them and acknowledged their warming effect.

116. The ES stated, in paragraphs 12.12.1 and 12.12.2, that non-CO_2 effects include the effects of "nitrogen oxides and water vapour that can, for example, result in contrails leading to the formation of cirrus clouds" and are "generally short-lived and reversible, meaning that they will dissipate after aircraft have passed.". This is in contrast to emissions of CO_2 which remain in the atmosphere causing warming for long time periods.

117. The ES explained that "[t]here remains significant scientific uncertainty around the overall warming effect of non-CO_2 impacts." (paragraph 12.12.3), citing the CCC Sixth Carbon Budget Report, which states:

> "It remains extremely challenging to accurately aggregate the effects of these non-CO_2 impacts into a CO_2-equivalence 'multiplier' for use within climate policy mechanisms. These effects still have significant uncertainties associated with them and their size can depend on the conditions under which the activity occurs, unlike for well-mixed greenhouse gases which affect the climate similarly independently of where they occur."

118. The ES pointed out, at paragraph 12.12.4:

> "12.12.4 Furthermore, there is no recognised benchmark against which to compare the emissions of non-CO_2 impacts. They are not within the Nationally Determined Contributions declared pursuant to the 2015 Paris Agreement or the carbon budgets set pursuant to the UK Climate Change Act, and are not included in the Aviation emissions trajectory for the Jet Zero Strategy High Ambition scenario that this assessment uses as a comparator for Aviation emissions."

119. The ES concluded, at paragraph 12.12.5:

> "12.12.5 For all these reasons, while it is important to acknowledge the presence and warming effect of these non-CO_2 impacts, this assessment has not sought to quantify non-CO_2 impacts, consistent with current Government and Committee on Climate Change advice. Ongoing GHG reporting by the Airport will follow all government policy as it evolves on this issue."

120. During the Examination, a body known as the New Economics Foundation ("NEF") drew attention to the potential, identified in WebTAG, to use a multiplier as a sensitivity test for non-CO_2 effects. In Additional Submissions, the IP confirmed that it did not consider this appropriate and noted that, even in the context of a full WebTAG appraisal, a qualitative approach to non-CO_2 emissions was acceptable.

121. In January 2024, the IP submitted a further document justifying its approach to non-CO_2 emissions, 'Commentary regarding Non Carbon Dioxide Emissions'. It reiterated and expanded upon the reasons why it did not consider it appropriate to quantify and assess the significance of non-CO_2 emissions. By reference to the WebTAG guidance, at paragraph 2.1.29, it concluded that "the primary approach [to the assessment] should be qualitative in light of the uncertainties.". Thus, contrary to the Claimant's submission, the approach was expressly described as "qualitative".

122. The Claimant criticised the IP for not using one of the "established methodologies" to quantify the non-CO_2 effects of aviation, in breach of the requirement in Regulation 14(3) of the EIA Regulations. Multipliers were reviewed by the ExA but the evidence indicated that there were no accepted methodologies for which there was scientific consensus. The Claimant referred to the advice in the Seventh Carbon Budget, in Box 7.6.3, but this also confirmed that there was large uncertainty in estimating the warming impacts of non-CO_2 effects.

123. The ExA considered the IP's approach to non-CO_2 emissions in some detail at paragraphs 3.12.101 - 3.12.110. Although it acknowledged that multipliers could have been applied to provide an indication of potential effects from non-CO_2 emissions, it accepted the IP's reasons for concluding that a qualitative approach was appropriate in light of the uncertainties. The Defendant agreed with that approach at DL/270.

124. Read fairly, the ExA's report accepted the approach adopted by the IP, as summarised at paragraphs 3.12.101 to 3.12.110. Its reasons were not limited to those set out at paragraph 3.12.109. The factors identified in paragraph 3.12.109 in the report arose out of the evidence and representations made in the Examination, and the ExA was entitled to place reliance upon them. Similarly, on a fair reading, the Defendant accepted the approach endorsed by the ExA, as a whole.

125. I accept the submission by the Defendant and the IP that non-CO_2 effects were not excluded from the IP's ES and other environmental information and, thereby, from the Defendant's assessment of climate impacts. They were properly taken into account, but on a qualitative and high-level basis because of significant scientific uncertainty about the scale of their effects, and the lack of any relevant benchmark against which to contextualise their effect.

126. There was no legal obligation to embark upon an attempt to quantify such non-CO_2 emissions which were only indicative. The nature and extent of the assessment was a

matter for the decision-maker to decide. Regulation 5(2) of the EIA Regulations requires that the assessment of significance is undertaken "in an appropriate manner, in light of each individual case". On the basis of the environmental information, the ExA and the Defendant made a legitimate evaluative judgment that quantification was not appropriate in the circumstances. The question of how to go about assessing significance is a matter of judgment and evaluation for the decision-maker: see the authorities cited in Ground 1 above, in particular, *Boswell*, at [80] and [96], *GOESA* at [122] – [123], and *Finch* at [58].

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

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

128. I agree with the Defendant's submission that there is no proper basis for not following the *Bristol Airport* decision.

129. In conclusion, the Defendant's decision does not disclose any error of law. For the reasons set out above, Ground 3 does not succeed.

Ground 4: Error of law in concluding that the Government's duties under the CCA 2008 comprised a "pollution control regime"

Report and decision

130. The ExA report applied the policy guidance in the ANPS which states, at paragraph 4.54:

> "4.54 In deciding an application, the Secretary of State should focus on whether the development is an acceptable use of the land, and on the impacts of that use, rather than the control of processes, emissions or discharges themselves. The Secretary of State should assess the potential impacts of processes, emissions or discharges to inform decision making, but should work on the assumption that, in terms of the control and enforcement, the relevant pollution control regime will be properly applied and

> enforced. Decisions under the Planning Act 2008 should complement but not duplicate those taken under the relevant pollution control regime."

131. The ExA proceeded on the basis that the CCA 2008 regime and the ETS would be properly applied and enforced:

> "**ExA's conclusions on the reliance on delivery of the Jet Zero Strategy**
>
> 3.12.48. Ultimately UK GHG emissions, including those from the aviation sector, are controlled by the carbon budgets and requirement to meet net zero by 2050 in the CCA 2008. The UK ETS is an important control mechanism to help deliver the legislative requirements and the Government has the ability to introduce other mechanisms as needed. The ANPS (paragraph 4.54) is clear that decisions under the PA 2008 should complement but not duplicate those taken under the relevant pollution control regime. The ExA concludes that the CAA is such a regime and must work on the assumption that it will be properly applied and enforced.
>
> 3.12.49. It is made clear in the JZS that multiple pathways and solutions are likely to be available to achieve the Government's trajectory for a reduction in aviation emissions. The Government has committed to monitoring progress against the trajectory annually from 2025 in addition to reviewing the overall trajectory every five years. Given this, the ExA considers it is reasonable that the Applicant has based its assessment on the current preferred High Ambition scenario and underlying assumptions, noting that regardless of which pathway is ultimately taken, the outcomes must necessarily be the same or similar to meet the legislative targets. For this reason, the ExA does not consider that it is necessary for the Applicant to assess a scenario assuming that little progress against the JZS is made or to review alternative pathways.
>
> 3.12.50. The CCC provides recommendations for Government, but these do not alter the policies, strategies and legislation that are before the ExA. The ExA has noted the CCC's conclusion that JZS faces delivery risk but must rely on the assumption that ultimately the CCA 2008 must be adhered to and that the Government would introduce additional policy to deliver its legislative duties, if required.
>
> 3.12.51. The ExA has noted the recent High Court judgment '*R (Friends of the Earth Ltd) v Secretary of State for Business, Energy and Industrial Strategy* [2024] EWHC 995 (Admin) that, among other things, concluded that the Government had breached its duty under the CCA to adopt policies which would enable the carbon reduction targets to be met. However, the ExA

must work on the assumption that the Government will act accordingly and ensure that its legislative duties are complied with, including working to ensure that appropriate policies are in place to manage the emissions from the aviation industry."

132. The ExA concluded:

"3.12.119. The assessment of GHG emissions has incorporated the trajectories and assumptions in the JZS, including the high ambition scenario, and Decarbonising Transport (2021). Emissions would ultimately be controlled through the budgets set in the CCA2008 and the Government has a duty to ensure that these are met. There would be numerous pathways and levers available to achieve these targets, including capping carbon costs. The Government has laid out its preferred pathway in the JZS and the ExA does not consider it unreasonable that the Applicant relies on this for the purposes of the ES, accepting that if the pathway changed in the future, the same outcomes would still be required……"

133. In her decision, the Defendant agreed with the ExA's approach, stating:

"**Conclusion on reliance on delivery of the Jet Zero Strategy**

235. The ExA concluded that the UK Greenhouse Gas emissions, including those from the aviation sector, are controlled by the carbon budgets and the requirement to meet net zero by 2050 in the Climate Change Act 2008, and that the Government has the ability to introduce control mechanisms, such as the UK Emissions Trading Scheme ("UK ETS") as needed, to help deliver the legislative requirements. Paragraph 4.54 of the ANPS is clear that decisions under the 2008 Act should complement but not duplicate decisions taken under the relevant pollution control regime, and the ExA considered that the Climate Change Act 2008 is such a regime and must work on the assumption that it will be properly applied and enforced ….. The Secretary of State agrees.

236. The Secretary of State is satisfied that the Jet Zero Strategy includes multiple pathways and solutions that are likely to be available to achieve the Government's trajectory for a reduction in aviation emissions and that there is a commitment to monitoring progress against the trajectory annually from 2025 in addition to reviewing the overall trajectory every five years. Given this, the Secretary of State agrees with the ExA that it is reasonable for the Applicant to have based its assessment on the current preferred High Ambition scenario in the Jet Zero Strategy and underlying assumptions and that the outcomes must necessarily be the same or similar to meet the legislative targets. The Secretary of State notes that it was for this reason the ExA considered that it was not necessary for the Applicant to assess a

> scenario assuming that little progress against the Jet Zero Strategy is made or to review alternative pathways as requested by some parties ….. The Secretary of State agrees. While she is aware that the lawfulness of the Jet Zero Strategy is being challenged, she is content that the strategy is and will remain Government policy and in any case agrees with the ExA that Government will ensure that its legislative duties are complied with, including working to ensure that appropriate policies are in place to manage the emissions from the aviation industry…... "

Claimant's submissions

134. The Claimant submitted that the Defendant erred in law in applying the policy presumption in paragraph 4.54 of the ANPS and paragraph 201 in the NPPF to the CCA 2008.

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

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

Conclusions

137. I accept the submissions of the Defendant and the IP.

138. The ExA and the Defendant were correct in applying paragraph 4.54 of the ANPS, rather than paragraph 201 of the NPPF. Unlike the NPPF, the ANPS does not use the language of "pollution control authority".

139. The principle that decision-makers are entitled to have regard to and rely upon regimes outside the planning system when granting permission or consent is well-established in the case law. It was recently considered by Saini J. in *R (APT) v Secretary of State for Transport* [2025] EWHC 1992 (Admin), as follows:

> "*Regulation outside the planning system: the "Gateshead principle*"

48. …. Without referring to every case, I am satisfied that there is an established line of authority to the effect that: (1) planning decision-makers are entitled to have regard to regulation outside of the planning system, (2) that there is no requirement to duplicate such controls which are often the responsibility of expert bodies/regulators, and (3) the decision-maker should generally assume these regulatory processes will operate effectively. One can draw these principles from *Gateshead MBC v Secretary of State for the Environment* [1995] Env. L.R. 37, per Glidewell LJ at pp.49-50; *Cornwall Waste Forum St Dennis Branch v Secretary of State for Communities and Local Government* [2012] Env LR 34, per Carnwath LJ at [30], [34] and [38]; *R (Frack Free Balcombe Residents Association) v West Sussex CC* [2014] EWHC 4108 (Admin) per Gilbart J at [95], [100]-[104]); and more recently *Gladman Developments v SSCLG* [220] PTSR 129, per Lindblom LJ at [43].

49. The nature of the principle was also addressed by Sullivan LJ in *R (An Taisce (The National Trust for Ireland)) v Secretary of State for Energy and Climate Change* [2014] EWCA Civ 1111 ("An Taisce") at [46]-[51]…..

……

59. ….. The Claimants originally argued that use of the principle is confined to cases of pollution control regimes (by reference to *Gladman*). That point was rightly not pursued by Mr Elvin KC in oral submissions. It is inconsistent with the case law.

60. The case law, which considers regulators in disparate fields, with a range of degrees of control and oversight over operational activity, demonstrates that the question is whether the decision-maker was "justified" in finding that the regulator's "controls… are adequate to deal with" the environmental concerns (*Gateshead*, p.49). The decision-maker is "entitled to rely on the operation of those controls with a reasonable degree of competence on the part of the responsible authority", despite the fact that "mistakes may occur in any system of detailed controls" (*Milne*, at [128]). The decision-maker is entitled to "have regard to, and rely upon, the existence of a stringently operated regulatory regime for future control" (*An Taisce*, at [46]). The decision-maker "will have to form a judgment as to whether those gaps and uncertainties [in the current environmental information] mean that there is a likelihood of significant environmental effects, or whether there is no such likelihood because it can be confident that the remaining details will be addressed in the relevant regulatory regime" (*An Taisce* at [48], citing *R (Jones) v Mansfield District Council* [2004] 2 P & CR 14).

> 61. Whether a regulatory regime can be relied within the Gateshead principle to control an environmental effect is plainly a matter for the decision-maker's judgment……"

140. The CCA 2008 imposes duties on the Secretary of State for Energy Security and Net Zero:

    i) to ensure net zero GHG emissions by 2050 (section 1);

    ii) to set carbon budgets covering successive five-year budgetary periods with a view to meeting the commitment to achieve net zero (sections 4, 8 and 10);

    iii) to prepare such proposals and policies as the Secretary of State for Energy Security and Net Zero considers will enable carbon budgets that have been set to be met (section 13);

    iv) to ensure that the UK's net GHG emissions for a budgetary period do not exceed the relevant carbon budget (see section 4(1)(b)).

141. Part 3 of the CCA 2008 provides for trading schemes relating to GHG emissions. The Greenhouse Gas Emissions Trading Scheme Order 2020 was made pursuant to section 44 and Part 3 of the CCA 2008 and established the ETS. The ETS is a 'cap and trade' system designed to reduce GHG emissions. The allowances under the ETS will be aligned with UK carbon budgets to achieve net zero by 2050. For flights not included with the ETS, the CORSIA order applies.

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

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

144. In my judgment, Lane J.'s analysis was correct. Furthermore, when refusing permission to appeal against his decision on this point, the Court of Appeal stated that the Judge was right to distinguish *Gladman* for the reasons he gave.

145. I do not agree that the position has changed as a result of the judgment in *Finch* or the revised wording in paragraph 163 of the NPPF. At [150] in *Finch*, Lord Leggatt did not purport to overturn the long-established principle that a planning decision-maker can assume that a separate regime of environmental control will operate properly when

assessing environmental impacts. He was addressing a different point, namely, that it would be wrong for the local planning authority not to have regard to the material consideration that the proposed use of the land for oil extraction would have the effect of increasing GHG emissions, and so contributing to global warming.

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

147. For the reasons set out above, Ground 4 does not succeed.

Ground 5: Error of law in failing to give adequate reasons for finding compliance with section 85(A1) of the CROW Act

Legal framework

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

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

149. The equivalent duty in section 11A(1A) of the National Parks and Access to the Countryside Act 1949 was recently considered in *New Forest National Park Authority v Secretary of State for Housing, Communities and Local Government and Another* [2025] EWHC 726 (Admin). Mould J. held, at [61] – [63] that the duty required the decision-maker to "determine whether the proposed development is consistent with the promotion of the statutory purposes" and, if not "consider whether the grant of planning permission would be in accordance with their duty to seek to further those purposes". The duty to "seek to further" is not a duty necessarily to fulfil the relevant purposes but to consider whether, in a case where there is conflict, granting planning permission is justified. As part of that exercise, it is legitimate to consider mitigation and compensation either by way of conditions or planning obligations.

150. Mould J. went on to confirm that ordinary and well-established principles apply to the review of decisions for compliance with the duty: it is not for the decision-maker to demonstrate positively that he has complied with the duty, it is for the claimant to establish, by reference to the reasons given, that at the very least there is substantial doubt as to whether he has erred in law in failing to comply with the statutory duty ([70]-[71]).

151. Mould J. held at [79]:

> "Where a planning application proposes development of land in a National Park which is found at least to leave the Park's natural beauty, wildlife and cultural heritage unharmed, that provides a proper basis for the decision maker to conclude that the

> development will further the section 5(1)(a) purpose of conserving and enhancing those characteristic features of the Park. That conclusion suffices as a proper discharge of the decision maker's duty under section 11A(1A) of the 1949 Act in determining that planning application."

152. The ordinary principles as to the standard of reasons in public law decisions apply. Reasons given for a decision must be intelligible, adequate and enable the reader to understand why the matter was decided as it was: see *South Bucks DC v Porter (No 2)* [2004] 1 WLR 1953, per Lord Brown at [36], which was applied to DCO decisions in *R (Mars Jones) v Secretary of State for Business, Energy and Industrial Strategy* [2017] EWHC 1111 (Admin). The question is whether the reasons given leave room for genuine, as opposed to forensic, doubt as to what was decided and why: see *R (CPRE Kent) v Dover District Council* [2017] UKSC 79, [2018] 1 WLR 108, per Lord Carnwath at [42].

153. Reasons can be briefly stated and there is no requirement to address each and every point made, provided that the reasons explain the decision-maker's conclusions on the principal important controversial issues. In circumstances where the Secretary of State disagrees with a recommendation from a planning inspector, there is no heightened standard of reasons: see *R (Client Earth) v Secretary of State for Business Energy and Industrial Strategy* [2020] EWHC 1303 (Admin), per Holgate J. at [146].

History

154. The Chilterns National Landscape ("Chilterns NL") is situated approximately 5 km west of the Airport and 3 km to the north at its closest points. The proposal will not involve any development in the Chilterns NL. The impacts of the development on the Chilterns NL relate to harm to the special qualities of relative tranquillity of the landscape and panoramic viewpoints arising from additional overflights on the same paths.

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

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

157. On 1 November 2024, the CCB set out how any proposed compensation or enhancement measures could be formulated, including by reference to a number of potential comparator schemes. The CCB considered that the Great Western Railway ("GWR") "Mend the Gap" scheme was the closest comparator, and the funds that arose from that scheme were £3.75 million, split as £3 million for enhancement projects and

£750,000 for mitigation projects. The CCB's suggestion was that an appropriate quantum for a fund could be calculated by comparing the size of the area in which the impacts of GWR electrification were deemed to be experienced with the size of the area in which the impacts of the overflying as a result of the Airport's expansion would be experienced, and applying that ratio to the size of the fund for "Mend the Gap".

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

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

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

> "208. The Secretary of State thanks the Applicant and the Chilterns Conservation Board for their engagement on this matter, and notes their respective interpretations of the purpose of section 85 of the CRoW Act and that ultimately, an agreement could not be reached. The Secretary of State notes the debate between the Applicant and Interested Parties as to the requirements of section 85 of the CRoW Act and has considered this further below. The Secretary of State is aware that since the above responses were provided, on 16 December 2024, DEFRA published guidance for relevant authorities seeking to further the purposes of Protected Landscapes and has had regard to this when making her decision. The Secretary of State considers that in this case a financial contribution of £250,000 for projects which further the purposes of conserving or enhancing the Chilterns National Landscape is sufficient and necessary to meet section 85 of the CRoW Act in this case (on either the Applicant or Chiltern Conservation Board and Natural England's interpretation of its requirements).
>
> 209. Accordingly, the Secretary of State has included a new article 54 in the Order in the terms proposed by the Applicant in its response dated 8 November 2024. With the inclusion of this article, the Secretary of State is satisfied that the section 85 CRoW Act has been met. The Secretary of State, having considered the effects of the Proposed Development, considers that a fund of £250,000 represents a reasonable and proportionate contribution to further the purposes of enhancement and conservation in relation to the Chilterns National Landscape."

161. The Defendant went on to consider the impacts on the Chilterns NL. At DL/213, she accepted the IP's assessment that no significant effects would occur on the Special

Qualities of the Chilterns NL as a result of the proposed development. Mitigation measures were considered at DL/215 – 217. She concluded, at DL/219:

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

Claimant's submissions

162. The Claimant submitted that the Defendant failed to give adequate reasons for her conclusions on the duty under section 85(A1) of the CROW Act, giving rise to substantial doubt as to whether she had performed the duty (*New Forest* at [86]). The decision letter did not explain how the Defendant determined the dispute between the IP and the CCB on the amount of the contribution, nor how she was satisfied that the contribution would be used to further the purpose of the Chilterns NL.

163. The Defendant failed to grapple with the advice of the CCB, the expert Protected Landscapes team or give significant weight to it. At the hearing, the Claimant decided not to pursue the submission that the Defendant failed to give cogent reasons to explain why she rejected the evidence of the CCB and NE (paragraph 91 of the Claimant's skeleton argument).

Conclusions

164. I accept the submissions of the Defendant and the IP.

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

166. The Defendant specifically invited representations on what, if any, further enhancement measures should be secured. The Defendant was presented with competing submissions on appropriate enhancement measures and the quantum of any financial payment. This

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

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

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

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

170. In conclusion, the Defendant's reasons were adequate and intelligible and met the legal standard, set out in *South Bucks* and the other authorities referred to above. For these reasons, Ground 5 does not succeed.

Final conclusions

171. The claim for judicial review is dismissed on Grounds 1 to 5. Therefore there is no need for me to consider the applications by the Defendant and the IP under section 31(2A) of the Senior Courts Act 1981 that relief should not be granted.