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Plan B is a Charitable Incorporated Organisation (CIO)

Registered Charity Number: 1167953

Our ref: Heathrow/1

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Direct email: tim@planb.earth

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Sent by email only:

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Dear Niall and Joe

The Secretary of State for Transport's failure to consider the relevance of the UK's obligations under the Paris Agreement on Climate Change to the proposed expansion of Heathrow Airport

Letter sent pursuant to the pre-action protocol for judicial review

1. We are the charitable incorporated organisation Plan B. Earth ("**Plan B**" or "**we**"), registered and regulated by the Charity Commission.
2. We write to you pursuant to the Pre-Action Protocol for Judicial Review in respect of the Secretary of State for Transport's failure to give proper consideration to the UK's obligations under the Paris Agreement on Climate Change ("**The Paris Agreement**") in the context of the *Airports National Policy Statement: new runway capacity and infrastructure at airports in the South East of England* ("**the NPS**"), which he designated as a national policy statement under the provisions of section 5(1) of the Planning Act 2008 ("**the 2008 Act**") on 26 June 2018.
3. We consider that failure to be unlawful for the reasons given below. We therefore invite him to agree to review the NPS, under section 6 of the 2008 Act, in accordance with his obligations under section 10 of the 2008 Act and other relevant legal provisions. If he refuses to do so, we intend to issue judicial review proceedings in the Administrative Court.
4. Since we do not envisage receiving a substantive response from you prior to 6 August 2018, which is the deadline for filing a claim form

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under section 13 of the 2008 Act, we intend to file the claim form by that date in any event and invite you to agree:

- (a) that there should be an immediate stay of proceedings pending your PAP letter response to be lifted upon receipt of your PAP letter response;
 - (b) that we should have 21 days to file and serve evidence and grounds following receipt of your PAP letter response; and
 - (c) that the normal timetable will take effect thereafter (ie you will have 21 days from service of our grounds and evidence to file an acknowledgment of service and summary grounds of resistance).
5. Please confirm your agreement or otherwise to this proposal by close of business on 3 August 2018.

Summary of our argument

6. Under section 10 of the 2008 Act:

“(2)The Secretary of State must, in exercising [his functions in relation to National Policy Statements], do so with the objective of contributing to the achievement of sustainable development.

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

(a)mitigating, and adapting to, climate change ...”

7. On 26 June 2018 the Secretary of State designated the NPS, relating to the expansion of Heathrow Airport, as a national policy statement under section 5(1) of the 2008 Act.
8. For that designation to be lawful he was bound by section 10 of the 2008 Act to have due regard to the “*desirability of mitigating and adapting to climate change.*”
9. We consider that at a minimum section 10 of the 2008 Act required him to consider and give due weight to the following matters:
- (i) The Government’s obligations under the Climate Change Act 2008
 - (ii) The Government’s obligations under the Paris Agreement of 2015
 - (iii) The opinion of the Committee on Climate Change (“**CCC**”), published in January 2018, that the Paris Agreement was ‘likely to require’ a more ambitious 2050 carbon target (“**the 2050 Target**”) and its recommendation to the Government to review its climate change targets in light of the Paris Agreement
 - (iv) The Government’s commitment of April 2018 to reviewing its climate change targets in light of the Paris Agreement
 - (v) The letter from the Chair of the CCC, Lord Deben, to the Secretary of State, dated 14 June 2018, drawing his attention to the UK’s obligations under the Paris Agreement

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- (vi) The potentially disastrous consequences for people in the UK (and beyond), and in particular for younger and future generations of UK citizens, of the Paris Agreement temperature limit being exceeded.
10. The Secretary of State appears to have considered only item (i) above and to have ignored items (ii) to (vi). In particular, the NPS makes no reference either to the Paris Agreement or to the Government's commitment to reviewing the UK's current climate change targets in accordance with the Paris Agreement.
11. In conducting his assessment of the impact of Heathrow expansion on the UK's climate change obligations only against the current terms of the Climate Change Act he has been conducting the assessment against a target that is:
- a) recognised, by the international community, as being inadequate and dangerous; and
 - b) which, the Government has now committed to reviewing.
12. We consider that approach to be inconsistent with:
- (a) section 10 of the 2008 Act;
 - (b) his obligation to avoid interference with rights protected by the Human Rights Act, including the right to life, the right to family life, the right to the quiet enjoyment of property, and the duty to avoid discrimination in the enjoyment of such rights; and
 - (c) his obligation under section 149 of the Equality Act, given that it is the young and future generations who will bear disproportionately the impacts of climate change.

The Climate Change Act 2008

13. The Climate Change Act 2008 imposes a duty on the Secretary of State for Business, Energy and Industrial Strategy, to ensure that the net UK carbon account for the year 2050 (i.e. the 2050 Target) is at least 80% lower than the 1990 baseline; and to set and implement 5 yearly carbon budgets that are consistent with that target.
14. The 80% target was fixed in 2008 in light of **(i)** the prevailing scientific knowledge about climate change, **(ii)** the UK's international commitments at that time, and **(iii)** an equitable and rational framework for deriving the UK's contribution from the global goal. In 2008, there was an international policy and political consensus that, in order to avoid irreversible and uncontrollable climate change, it was sufficient to limit global warming below 2°C above pre-industrial levels. Consequently, the 2050 target "*was designed to keep the UK on a path consistent with a global 2°C pathway*" with a probability of around 50%.

The Paris Agreement 2015

15. In 2015, in light of significant developments in the science, the international community rejected the 2°C limit as inadequate and dangerous. The Paris Agreement on Climate Change was adopted, committing its 195 signatories (including the government of the UK) both to limiting warming to “*well below*” 2°C and to pursuing efforts towards a 1.5°C limit.
16. Governments (including the UK Government) also adopted an accompanying Decision, which articulates the risks of non-compliance with the Paris Agreement limit and the urgent need for governments to increase their ambition:

“Recognizing that climate change represents an urgent and potentially irreversible threat to human societies and the planet ...

Emphasizing with serious concern the urgent need to address the significant gap between the aggregate effect of Parties’ mitigation pledges in terms of global annual emissions of greenhouse gases by 2020 and aggregate emission pathways consistent [with the Paris Agreement temperature limit ...]”

17. In November 2016, the United Nations Environment Programme published its “*Emissions Gap Report*” comparing the current plans of governments with the actions necessary to ‘avert disaster’. This concluded:

“This report estimates we are actually on track for global warming of up to 3.4 degrees Celsius. Current commitments will reduce emissions by no more than a third of the levels required by 2030 to avert disaster. So, we must take urgent action.”

The Airports Commission

18. In its report of 2015 the Airports Commission concluded:

‘any change to [the] UK’s aviation capacity would have to take place in the context of global climate change, and the UK’s policy obligations in this area’

The CCC’s advice to the Government on revising its climate change targets in light of the Paris Agreement

19. In September 2016 the CCC stated as follows:

“It was clear that the aims of the Paris Agreement, to limit warming to well below 2°C and to pursue efforts to limit it to 1.5°C, went further than the basis of the UK’s current long-term target to reduce emissions in 2050 by at least 80% on 1990 levels (which was based on a UK contribution to global

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emissions reductions keeping global average temperature rise to around 2°C)”.

20. In October 2016, the CCC published a 60 page report, *UK Climate Action Following the Paris Agreement*. Likewise the report highlights emphasises that the Paris Agreement requires more ambitious targets:

“While relatively ambitious, the UK’s current emissions targets are not aimed at limiting global temperature to as low a level as in the Agreement, nor do they stretch as far into the future.”

21. It recommended, however, that the Government wait for further evidence before revising its climate change targets.
22. In January 2018, the CCC published *“An independent assessment of the UK’s Clean Growth Strategy”*, stating that the Paris Agreement was likely to require a more ambitious 2050 Target, and recommending that the Government conduct a review of its climate targets following publication of the IPCC report into the implications of the 1.5°C target in October 2018.

The Government’s response to the CCC’s advice

23. On 17 April 2018 the Government publicly committed to reviewing its climate targets in light of the Paris Agreement and in line with the CCC’s recommendation.
24. On 1 May 2018, the Right Hon Claire Perry MP, in an exchange with Barry Gardiner, the Shadow Secretary of State for International Trade, in the House of Commons, implied that the terms of reference for a request were now defined and that the CCC would be asked to ensure the UK reaches a zero-carbon economy by 2050:

“He will also know that we are the first developed nation to have said that we want to understand how we will get to a zero-carbon economy in 2050, and my request to the committee— [Interruption.] ... We were the first country in the world to ask how we will get to decarbonised economy in 2050, and I hope that we would enjoy cross-party support for something so vital”.

Lord Deben’s letter to you of 14 June

25. On 14 June 2018, Lord Deben, the Chair of the CCC wrote to the Secretary of State as follows:

“Dear Secretary of State,

The UK has a legally binding commitment to reduce greenhouse gas emissions under the Climate Change Act. The Government has also committed, through the Paris Agreement, to limit the rise in global temperature to well below 2°C and to pursue efforts to limit it to 1.5°C.

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

The NPS

1. The NPS makes no reference to any of the matters set out above. Rather it assumes, contrary to the available evidence, that the current 2050 Target will remain the long-term benchmark for the UK's climate change obligations (see §5.71 below):

"5.71 The UK's obligations on greenhouse gas emissions are set under the 2008 Climate Change Act. Under this framework, the UK has a 2050 target to reduce its greenhouse gas emissions by at least 80% on 1990 levels, and has a series of five year carbon budgets on the way to 2050".

2. Specifically, no reference is made to the facts:
 - (a) that the current 2050 Target remains tied to a 2°C temperature limit rejected by the international community as inadequate and dangerous;
 - (b) that the CCC has advised the Government to reassess its targets in light of the Paris Agreement and the IPCC's report into the implications of the 1.5°C goal; and
 - (c) that the Government has agreed to conduct such a review, which is expected to commence shortly.

Conclusion

3. The Government has committed to a process of review of its climate change targets in light of the Paris Agreement.
4. The proposed expansion of Heathrow is a major national project with long-term implications. What matters in the long-run is how it measures up to the UK's climate change targets once they have been reviewed in light of the Paris Agreement, rather than the historic target that is anchored to the inadequate 2°C global temperature limit.
5. The Secretary of State's failure to consider the Paris Agreement or the Government's commitment in the NPS means he has been assessing the implications for the Government's climate change obligations against the wrong yard-stick, in breach of:
 - (a) the Planning Act, section 10;
 - (b) his obligation to avoid interference with rights protected by the Human Rights Act, including the right to life, the right to family life,

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the right to the quiet enjoyment of property, and the duty to avoid discrimination in the enjoyment of such rights; and

- (c) his obligation under section 149 of the Equality Act, given that it is the young and future generations who will bear disproportionately the impacts of climate change.
- 6. Such matters also constitute a failure to take into account relevant considerations and/or to fulfil his *Tameside* duty to take reasonable steps to acquaint himself with relevant information.

The details of the actions required by the Secretary of State

- 7. In light of the above, we require the Secretary of State to suspend and review the NPS taking into account the relevant matters set out above and setting out clear reasons for any decision reached as a result of that review.

Alternative dispute resolution

- 8. We are willing to seek to resolve this matter through discussion and negotiation (and/or mediation) with you. Please contact us as a matter of urgency if you wish to explore this option.

Details of any interested parties

- 9. Should you be aware of any interested parties, we should be grateful if you could notify us as a matter of urgency such that they can also be provided with a copy of this letter.

Further information and documents to be provided

- 10. In accordance with the obligations under the Pre-action Protocol for Judicial Review, please provide us with all correspondence, notes of meetings and other documents relating to the Secretary of State's consideration of the Paris Agreement and the Government's commitment to a forthcoming review of the UK's climate targets, in connection with his functions under section 5 of the 2008 Act.
- 11. Such documents and information are clearly necessary for to us to be able to properly plead any judicial review proceedings. If such documents or information are not provided now, but are subsequently relied upon and require any re-pleading of the case, we will bring this to the attention of the Court and seek costs accordingly.

Details of the claimant

- 12. The proposed claimant is Plan B. Earth. Its registered address is 62 Sutherland Square, London, SE17 3EL. We have not as yet instructed solicitors but may do so in due course.

Service of documents

13. We are willing to accept correspondence and service of documents by email at tim@planb.earth.
14. Please confirm if you are similarly willing to receive correspondence and accept service by email.

Costs

15. Should it be necessary to file proceedings, we consider that any claim would fall within the scope of the Aarhus Convention and accordingly considers that the costs limits under CPR 45.3 should apply. Please confirm in your reply if you disagree that such a claim would be an Aarhus Convention claim and/or whether you would intend to object to the application of the costs limits.

Proposed reply date

16. The usual period for responding to a Pre-Action Protocol letter is 14 days. Such a response should therefore be provided by close of business on Wednesday 15 August 2018.
17. Please also confirm your agreement to a stay and our filing evidence and grounds within 21 days of your response as set out above as a matter of urgency and, in any event, by 3 August 2018.

Conclusion

18. We should be grateful if you will acknowledge receipt of this letter by return and confirm that you will respond within the proposed timeframe.

Yours faithfully



Tim Crosland
Director, Plan B