

**IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT**

In the matter of a claim for judicial review

BETWEEN

THE QUEEN

on the application of

PLAN B. EARTH

Claimant

- and -

**THE SECRETARY OF STATE FOR
TRANSPORT**

Defendant

-and-

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

Interested Parties

CLAIMANT'S REPLY TO DEFENDANT'S

DETAILED GROUNDS OF DEFENCE

INTRODUCTION

1. The Secretary of State's Detailed Grounds of Defence ("DDG") betray a fundamental misunderstanding of the crucial role played by the global climate change temperature limit in domestic and international climate change policy.
2. Since climate change is a global problem, requiring international co-operation, the climate change policies of individual nations are framed as contributions towards maintaining a common global temperature limit (which is sometimes referred to as "the global climate obligation"). If countries were unable to agree on a common limit (if for example China operated on the basis that 2.0°C warming were tolerable while the EU on the basis that the appropriate limit were 1.5°C) then effective international co-operation on climate change would not be possible. Lord Adair Turner, the first Chair of the CCC, emphasised the "crucial" role of the global temperature limit to Ed Miliband, then Secretary of State for DECC, when advising in 2008 on the appropriate level for the original 2050 Target¹:

"To determine a UK emissions reduction target, we first considered what a global target should be and then the UK's appropriate contribution. The global emissions target needs to be based on an analysis of the climate science. The crucial issue is what level of global temperature should the world seek to avoid, and what emissions path will keep us below this temperature." (emphasis added)

3. In 2008 the recognised global limit was 2°C. In December 2015, however, that limit was superseded by the more stringent limit of 1.5°C and "well below" 2°C ("**The Paris Temperature Limit**").
4. The Secretary of State's Detailed Grounds of Defence and evidence have substantially simplified the matters in issue in these proceedings. They confirm that the climate change impacts of the ANPS were assessed against the historic, discredited limit of 2°C, which was current at the time that the Airports Commission published its final report in July 2015, but superseded in December 2015 by the Paris Temperature Limit. It is clear that the Secretary of State's analysis of the climate change impacts of the ANPS proceeded on a basis that is fundamentally and dangerously flawed.
5. The significance of the error is compounded by the fact that had the Secretary of State assessed the ANPS against the more stringent Paris Temperature Limit, it would most likely have failed the test, since consistency with the 2°C limit was already considered by the Airports

¹ See TC/2/1

Commission and the CCC to be “*at the upper end of what is currently expected to be deliverable*”².

6. It is the failure to assess the ANPS against the Paris Temperature Limit and current UK policy on climate change that underpins all three of the Claimant’s grounds of claim, which are that the Defendant’s designation of the ANPS was:
 - (i) ultra vires
 - (ii) an irrational policy
 - (iii) a breach of the interpretive provision of the Human Rights Act 1998.

A. THE SECRETARY OF STATE’S EVIDENCE ON THE TEMPERATURE LIMIT USED TO ASSESS THE ANPS

7. The Secretary of State’s witnesses are explicit that the ANPS was not tested against the Paris Temperature Limit, which has been the basis for Government policy on climate change since December 2015. The position is explained by Caroline Low as follows³:

“Subsequently, in establishing its carbon obligations for the purpose of assessing the impact of airport expansion, my team has ... considered existing domestic legal obligations as the correct basis for assessing the carbon impacts of the project, and that it is not appropriate at this stage for the government to consider any other possible targets that could arise through the Paris Agreement.”

8. Further, Low explains that in assessing the climate change impacts under the carbon traded scenario, the Secretary of State relied on the old, discredited 2°C limit⁴:

“The carbon traded scenario assumes aviation emissions are tackled at an international level. It follows BEIS modelling assumptions that UK aviation is part of the EU Emissions Trading System until 2030 and then a full functioning global cap thereafter. Under this scenario overall CO2 emissions are set at a cap consistent with a future global goal to limit warming to 2°C ...” (emphasis added).

9. Phil Graham makes the same point⁵:

“Under the first of the AC’s two approaches (‘carbon traded’), aviation emissions are tackled at international level through a global carbon trading system ... under this

² Airports Commission, Final Report, 2.64

³ Witness statement of Caroline Low, §458

⁴ Low, §469

⁵ Witness statement of Phil Graham, §124

approach the CCC planning assumption is not treated as a constraint since all emissions across the world are assumed to be captured within a carbon market that only allows total global carbon emissions consistent with a 2 degree climate stabilisation target.” (emphasis added).

10. As does Ursula Stevenson, while acknowledging that the 2°C limit has been superseded:

“The overarching target was devised by the CCC to reduce UK’s carbon emissions in line with global targets to limit global temperature rise to 2°C in consonance with the international consensus of the time. In the setting of the Carbon Budgets, there is an expectation that, should additional reductions be required to meet stricter emissions targets, as for example under the Paris Agreement, future budgets will be altered by the CCC accordingly ...⁶

...The AoS has followed this advice and considered domestic legal obligations as the correct basis for assessing the carbon impact of the project. At this stage it is not possible to consider what any future targets might be recommended by the CCC to meet the ambitions of the Paris Agreement. It is expected that, should more ambitious targets be recommended ... then government will be required to make appropriate policy decisions across all sectors of the economy to limit emissions accordingly.”⁷

B. THE SECRETARY OF STATE’S SUBMISSIONS ON THE TEMPERATURE LIMIT USED TO ASSESS THE ANPS

11. Despite the evidence of his witnesses, the Secretary of State attempts to argue that he did in fact take the Paris Agreement limit into account in the course of the Consultation Response⁸. He highlights 8.17 of the Consultation Response, which in fact serves only to emphasise that Plan B’s concerns were shared by ‘many respondents’:

“Many respondents argue that expansion leads to a rise in carbon emissions which will threaten the UK’s ability to meet its domestic and international climate commitments. Specific concerns included the perception that the Government has misinterpreted or ignored advice from the Committee on Climate Change (CCC) ... Several respondents refer to the UK Climate Change Act 2008 and what they perceive as inadequate targets, or the Government’s responsibility to meet targets set out in the 2015 Paris Climate Agreement.” (emphasis added).

⁶ Witness Statement of Ursula Stevenson, §3.126

⁷ Stevenson, §3.128

⁸ Defendant’s Detailed Grounds, §9 & §24

12. In responding to these concerns, the Secretary of State at first acknowledged that the Government is subject to both domestic and international obligations on climate change, but then, contrarily, proceeded to ignore the international obligations:

“The Government notes the concerns raised about the impact of expansion on the UK’s ability to meet its climate change commitments; the Government has a number of international and domestic obligations to limit carbon emissions. The UK’s obligations on greenhouse gas emissions are set under the Climate Change Act 2008.”

13. Further on, the Secretary of State highlights the following, fleeting reference to the Paris Agreement in the Consultation Response:

“The Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) is the first worldwide scheme to address CO2 emissions in any single sector and will be a first important contribution from this sector to meeting the long-term goal set out by the 2015 Paris Climate Agreement to pursue efforts to limit the global temperature increase to well below 2 degrees Celsius.” (emphasis added).

14. In stating that *“The Claimant inexplicably omits even to mention this”*, the Secretary of State reveals his fundamental misunderstanding of Plan B’s case. Plan B’s complaint is not the trivial one that the Paris Agreement was nowhere mentioned in the consultation process. It the substantial and serious complaint that the Secretary of State, in designating the ANPS, failed to consider its compatibility with the Paris Temperature Limit, which is current UK Government policy.

15. Further, it is telling that the sole reference to the Paris Agreement, invoked by the Secretary of State to show that he gave it appropriate consideration, fundamentally misstates the critical term of the Paris Agreement. The Paris Agreement does not commit Parties *“to pursue efforts to limit the global temperature increase to well below 2 degrees Celsius”*. It commits parties *“to pursue efforts to limit the global temperature increase to 1.5°C”* and to hold *“the increase in the global average temperature to well below 2°C”*. In so far as the Secretary of State purports to have taken the Paris Temperature Limit into account, he has in fact taken into account the wrong limit.

C. THE SECRETARY OF STATE’S EVIDENCE CONCERNING THE CONSISTENCY OF THE ANPS WITH MORE STRINGENT CARBON EMISSIONS TARGETS

16. As set out in Section A (above), the Secretary of State’s evidence is clear:

- (i) the ANPS was tested against the 2°C limit, not the revised Paris Agreement limit⁹; and
 - (ii) if more stringent carbon reduction measures are required to respect the Paris Agreement limit, such measures would be required across all sectors of the UK economy¹⁰.
- 17. His evidence raises the question of whether the ANPS would accommodate or preclude the more stringent measures envisaged. The Secretary of State chose not to address this question directly. It may be inferred from his evidence, however, that the ANPS would preclude any more stringent carbon reduction measures, let alone the net zero target for 2050, which is envisaged by the Government.
- 18. Caroline Low, on his behalf, says as follows¹¹:

“My team forecast that CO2 emissions with both a Heathrow NWR and best use of existing runway capacity would be 40.8 MtCO2 in 2050.”
- 19. On the Secretary of State’s own evidence “best use” of the ANPS proposal, without additional measures, would substantially exceed the planning assumption consistent even with the discredited 2°C limit.
- 20. Low gives an indication of the sort of measures additional measures necessary to align ANPS to the planning assumption consistent with the 2°C limit:

“The carbon capped scenario restricted emissions from the UK departing flights to 37.5 Mt CO2 in 2050, the level of the CCC planning assumption, in effect assuming the imposition of a “hard cap” on aviation emissions. This was achieved solely through imposing a much higher carbon price (which reduces aviation demand) than the BEIS price forecasts used in the carbon traded scenario. For example, for the NWR, the carbon price was over three times the central BEIS value in 2050.” (emphasis added).
- 21. In summary, the Secretary of State has advanced no evidence that the ANPS is consistent with the UK’s current *policy* on climate change, which is to support implementation of the Paris Temperature Limit. Given the significance of the limit, which reflects the scientific consensus on the boundary between humanity and catastrophic climate change, that is a serious omission.

⁹ See witness statements of Low, Graham and Stevenson

¹⁰ See in particular, Stevenson, §3.128

¹¹ Low, §505

D. THE SECRETARY OF STATE'S RESPONSE TO PLAN B'S GROUND 1

22. The Secretary of State's response to Plan B's Ground 1, which is that the designation of the ANPS was *ultra vires*, is that:
- (i) It was "both adequate and entirely appropriate" for him to consider the 2050 Target as the sole determinant of the Government policy on climate change, given that the IPCC Report had not been published at the time of the ANPS designation and that the CCC had not yet advised on whether the 2050 Target needed to be raised¹²; and that
 - (ii) In any event, the Secretary of State did give proper account to the Paris Agreement¹³.
23. The Secretary of State's position is ostensibly that section 1 of the Climate Change Act 2008 should be the exclusive measure for assessing "*Government policy relating to the mitigation of, and adaptation to, climate change*" (2008 Act, section 5(8)) and "*the desirability of ...mitigating, and adapting to, climate change*" (2008 Act, section 10(3)).
24. Low is explicit on the issue: "*my team has ... considered existing domestic legal obligations as the correct basis for assessing the carbon impacts of the project*".
25. Such a restrictive interpretation is indefensible for the following reasons.
26. First, Sections 5(8) and 10(3) of the 2008 Act do not restrict the analysis to the Climate Change Act 2008, section 1(1). The 2008 Act was introduced with the Climate Change Act 2008 in mind¹⁴. If the purpose of the legislation were to restrict the Secretary of State's analysis to the Climate Change Act 2008, section 1, then that is what the provisions would say.
27. Second, as the Secretary of State, acknowledges, "*CCA 2008 does not include emissions from international aviation*"¹⁵. The analysis can not sensibly be confined to legislation which does not even apply.

¹² DDG, §23

¹³ DDG, §24

¹⁴ See, for example, the 2007 White Paper, *Planning for a Sustainable Future*, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/228933/7120.pdf, page 11; and Carnwath J's comments in *Hillingon 2010*: "Of particular relevance is the White Paper *Planning for Sustainable Communities* (Cm 7120), published in May 2007, which set the policy background for two major statutes in 2008, the Planning Act 2008 and the Climate Change Act 2008. The White Paper discussed two issues, which bear directly on the matters raised by the parties in this case: first, the increasing importance of climate change as a factor directing planning policies, and secondly, the need for a more efficient procedure for establishing and applying national planning policy in relation to major projects."

¹⁵ DDG to Friends of the Earth, §30

28. Third, the Secretary of State's witnesses confirm that the benchmark adopted for the purposes of the carbon traded scenario was not the Climate Change Act 2008, but rather the historic, discredited global temperature limit of 2°C¹⁶.
29. Fourth, the legislation is currently subject to review and the Government has informed Parliament of its aim to introduce a substantially more stringent target (100% emissions reductions by 2050 instead of 80%).
30. Further, the Secretary of State argues that "*the Claimant is wrong to assert that "Government policy [...] is to limit warming to the more stringent standard of 1.5°C and "well below" 2°C"*". Such a contention is insupportable given that:
- (i) The scientific consensus, accepted by the UK Government, is that beyond 1.5°C warming, the consequences for humanity, whether assessed in terms of the environment, the economy or international security, are likely to be devastating;
 - (ii) The UK Government advanced, signed and ratified the Paris Agreement, which established the Paris Temperature Limit;
 - (iii) The UK Government has made numerous statements (including its recent 25 Year Plan for the Environment) confirming its policy support for the Paris Temperature Limit;
 - (iv) Since the adoption of the Paris Agreement in 2015, the UK Government has expressed no support for any alternative global temperature limit (and certainly not for the historic 2°C limit);
 - (v) In April 2018, the UK Government announced it would review its domestic climate change targets in light of the Paris Temperature Limit.
31. In order to defend Plan B's claim, however, the Secretary of State is compelled to argue the unarguable. The Planning Act, section 5(8) obliges the Secretary of State to explain how the ANPS "takes account of" UK Government climate change policy. Since the Secretary of State has manifestly and admittedly failed to consider the ANPS against the Paris Temperature Limit, which is the anchor of UK Government policy, he finds himself in the hopeless position of denying that the Paris Temperature Limit is UK Government policy at all. That position does not withstand even passing scrutiny.
32. In so far as the Secretary of State seeks to argue that at the time of designation the Government was not aware of the IPCC's assessment of the implication of crossing the 1.5°C threshold; or

¹⁶ See Low, Graham and Stevenson

of the CCC's conclusion that the 2050 Target was likely to require amendment, he is wrong. In truth, the Government reviewed the IPCC report between 8 January 2018 and 25 February 2018, and received the final version of the full report in the first week of June 2018 (see TC/2/2). It was in January 2018 that the CCC advised the Government that the 2050 Target was likely to require amendment in light of the Paris Agreement. It was in May 2018 that the Government declared its ambition to reach net zero emissions by 2050 (ie a 2050 Target of 100% emission reductions).

33. The Secretary of State's claim to have assessed the climate change impacts of the ANPS against the Paris Agreement is contradicted by his own witnesses (see Section A above). In so far as the Secretary of State relies on his reference to the Paris Agreement in the Consultation Response, this was no more than a fleeting reference, in which he misstated the Paris Agreement's critical terms, only emphasising his omission.
34. In summary, the Secretary of State has no credible answer to Plan B's Ground 1.

E. THE SECRETARY OF STATE'S RESPONSE TO PLAN B'S GROUND 2

35. The Secretary of State's response to Plan B's Ground 2, which is that the designation of the ANPS was irrational, is to point out that the threshold for irrationality is high¹⁷, which Plan B acknowledges.
36. Further, the Secretary of State notes that the threshold is higher still where:
 - (i) Parliament has had a role in approving measures¹⁸
 - (ii) The decision involved political, social and economic considerations¹⁹
 - (iii) Where the matters in issue involve scientific, technical and predictive assessment²⁰
37. These principles, which are accepted, do not assist the Secretary of State in this case.

The role of Parliament

38. The consequence of the Secretary of State's failure to discharge his obligations under the 2008 Act was that Parliament was not alerted to the conflict between the ANPS and the Government's commitment to the implementation of the Paris Temperature Limit.

¹⁷ DDG, §26

¹⁸ DDG, §27(1)

¹⁹ DDG, §27(2)

²⁰ DDG, §27(3)

39. The point is alluded to by Lord Deben in his letter to the 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.

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.”

40. The 2008 Act envisages that Parliament is informed of the true relationship between the ANPS and the Government policy on climate change, so that Parliament has the opportunity to resolve any conflict arising. As things stand, Parliament has approved the proposal on the false premise that there is no conflict between the ANPS and the Government’s policy on climate change.

The nature of the matters in dispute

41. Plan B’s submissions do not require the Court to engage in complex political or technical considerations. They simply invite the Court to find that the Secretary of State should have assessed the ANPS against current Government policy on climate change, which includes commitment to the Paris Temperature Limit. Plan B’s claim relates to whether or not the Secretary of State has correctly applied the applicable legal framework, which is the proper province for a judicial review.

F. THE SECRETARY OF STATE’S RESPONSE TO PLAN B’S GROUND 3

42. The Secretary of State’s response to Plan B’s Ground 3, which is that the designation of the ANPS breached the Human Rights Act 1998, section 3 (ie the interpretative provision of the Act) is that:

- (i) The Secretary of State did in fact take proper account of the Paris Agreement
- (ii) That Plan B is not a “victim” for the purposes of section 7 of the Human Rights Act
- (iii) That government policy has “yet to be amended in light of the Paris Agreement”
- (iv) That Plan B is seeking to argue that the Paris Agreement should be given “direct effect”

- (v) That Plan B does not cite any Strasbourg authority in support of its argument
 - (vi) That “no reliance can be placed” on the *Urgenda* decision because Dutch law is “monist”
 - (vii) A “similar argument” was refused permission by Supperstone J.
43. The Secretary of State’s diverse submissions on Ground 3 only emphasise the absence of a substantive defence.
44. First, the Secretary of State’s own witnesses are explicit that the Paris Agreement was not used to assess the climate change impacts of the proposal. In reality, the assessment was conducted as if the Paris Agreement did not exist at all. On the one occasion when the Secretary of State refers to the Paris Agreement (not in the ANPS itself but in responding to concerns raised in consultation that his policy was inconsistent with the Paris Agreement) he misstated its fundamental term.
45. Second, whether Plan B is a “victim” for the purposes of the Human Rights Act 1998, section 7 is irrelevant. Section 7 is a restriction to bringing proceedings, which allege a breach of section 6 of the Act. Plan B does not allege a breach of section 6 of the Act; it alleges a breach of section 3, to which section 7 does not apply.
46. Third, as is clearly stated in the Government’s 25 Year Plan for the Environment, and many other documents, the Paris Agreement is *already* Government climate change policy.
47. Fourth, Plan B is not arguing that Paris Agreement should be given “direct effect”. It is arguing that the Secretary of State was wrong to take as his baseline the global temperature limit that was discredited in 2015, while ignoring the current Paris Temperature Limit, which has been the anchor for Government policy since December 2015.
48. Fifth, Plan B does cite Strasbourg jurisprudence in support of its argument, referring specifically to *Tatar v Romania* (App. No. 67021/01, Judgment of 27 January 2009), which is unchallenged authority that in dealing with environmental matters, a State’s margin of appreciation is constrained by relevant international treaty obligations and general principles of law.
49. Sixth, Plan B does not suggest that the decision of the Dutch Court in *Urgenda* is binding on this Court (clearly it is not). But it is certainly notable that the Dutch Court of Appeal has recently held that that the Dutch Government’s failure to implement policy consistent with the global temperature limit was a breach of its obligations under ECHR Article 2 and 8. If the Secretary of State’s contention is that the case is irrelevant to this Court’s determination then he

is wrong. Further, the Secretary of State's attempt to distinguish the case on the grounds that the Dutch legal system is "monist" is misconceived. The decision in *Urgenda* is not premised on the Paris Agreement having direct effect. Indeed the first instance decision was in June 2015, prior to the adoption of the Paris Agreement. The decision in *Urgenda* is based on the obligation of governments to take reasonable measures to safeguard the right to life of those within its jurisdiction, in light of the global temperature limit, a principle which is directly applicable to this case.

50. Seventh, a similar argument was not rejected by Supperstone J. The argument in that case:
- (i) referred to section 6 of the Human Rights Act and not to section 3;
 - (ii) did not involve a situation in which the Secretary of State had interpreted Government "policy" on climate change as if the Paris Agreement formed no part of Government policy
 - (iii) related to allegations of specific breaches to identified individuals (for example a victim of Hurricane Irma).
51. In any event, in accordance with the Practice Direction on permission decisions, a permission decision may not be relied upon as precedent, as the Secretary of State is no doubt aware.
52. In reality, the Secretary of State has no answer to Plan B's Ground 3.

G. OTHER MATTERS RAISED BY THE SECRETARY OF STATE

"Post-designation" events

53. The Secretary of State implies that Plan B case depends on "post-designation events"²¹. That is incorrect:
- (i) In December 2015, the 2°C temperature limit was replaced with the Paris Temperature Limit
 - (ii) In October 2016, the CCC had advised that "*pathways that return to 1.5°C would imply a UK reduction of at least 86-96% below 1990 levels by 2050*"²².
 - (iii) In January 2018 the IPCC sent its draft report to the UK Government, advising that the consequences of crossing the 1.5°C temperature limit would be

²¹ DDG, Plan B, §12

²² CCC, 2016 Report, UK Climate Action Following the Paris Agreement, page 24

devastating; and that for a 50% chance of avoiding them, the world would need to reach “net zero” carbon emissions by 2050 or shortly thereafter.

- (iv) In January 2018 the CCC advised the Government that the Paris Agreement is “*likely to require greater ambition by 2050*” than the current 2050 Target.
- (v) In January 2018 the UK Government published its 25 Year Plan for the Environment, emphasising its policy commitment to the Paris Temperature Limit (“*Using our leading role in the UNFCCC, through which the Paris Agreement was established, we will urge the international community to meet the goals enshrined in the text*”)²³.
- (vi) In May 2018, the Energy Minister, Claire Perry, informed Parliament that “*we want to understand how we will get to a zero carbon economy in 2050.*”²⁴

54. By the time of the designation of the ANPS the Secretary of State either knew or ought to have known that there had been fundamental changes to UK Government policy on climate change since 2008 and since the report of the Airports Commission in July 2015. As it was, he proceeded as if there had been so such changes.
55. Further, in so far as Plan B does refer to matters subsequent to the designation that is only to avoid artificiality, to provide the Court with the proper context, and to confirm matters, which were already clear at the time of designation. For example the letter to the Prime Minister of July 2018, signed by 142 MPs, which says, “... *we will support you in setting a before-2050 net zero greenhouse gas emissions reduction target, and hope that you will enshrine this in law within the lifetime of this Parliament*”, serves only to emphasise the statement the Government made in Parliament in May 2018, regarding its policy intent to revise the 2050 Target to 100% emission reductions by 2050, an outcome which would be precluded by the ANPS.
56. To the extent that the Secretary of State considers that any such matters constitute a significant *change* of circumstance, he might have been expected to undertake a review of the ANPS pursuant to section 6 of the 2008 Act, which he has declined to do.
57. It is notable that the Secretary of State himself seeks to rely on a number of post designation events, for example the permission decision of Supperstone J, published on 20 July 2018, which can not be relied upon as a precedent, and the terms of reference of the Government’s tasking to the CCC, of October 2018²⁵.

²³ TC/1/6

²⁴ TC/1/8

²⁵ DDG, §15

The timing of the challenge

58. The Secretary of State implies that the ANPS is not the appropriate stage for consideration of climate change impacts²⁶:

“It is only once a final scheme is proposed that consideration can be given to the precise impacts that will actually arise.”

59. He relies upon the judgement of Carnwath LJ (as he then was) in *R (Hillingdon) v. Secretary of State for Transport [2010] EWHC 626 (Amin)*.

60. The contention is misconceived for three reasons.

61. First, Carnwath LJ’s judgement, which related to the Government’s 2009 decision to confirm policy on a new runway at Heathrow, expressly endorsed the NPS as the appropriate moment to consider Government policy on climate change:

“However, the claimants’ submissions add up, in my view, to a powerful demonstration of the potential significance of developments in climate change policy since the 2003 White Paper. They are clearly matters which will need to be taken into account under the new Airports NPS. As has been seen, the Act specifically requires an explanation as to how the NPS takes account of the government’s climate change policy ...”²⁷

The preparation of the Airports NPS will necessarily involve a review of all the relevant policy issues, including the impact of climate change policy.”²⁸

62. The Secretary of State is wrong to suggest that *Hillingdon 2010* supports a deferral of consideration of climate change policy to the DCO stage.

63. Second, Plan B’s claim does not relate to the details of a proposed development scheme. It relates to the Secretary of State’s fundamental failure to conduct his analysis against current UK Government policy on climate change and the Paris Temperature Limit. That is clearly an issue for the ANPS and not for any DCO.

64. Third, in so far as the Secretary of State asserts it was unnecessary to consider the implications of the CCC’s review of the UK’s climate change targets at the ANPS stage, on the basis that any change to the Climate Change Act might be considered through the DCO process, so long as it occurred prior to the DCO, his submission faces an obvious and important objection. It reduces an issue of overwhelming public importance to a race between the DCO process and

²⁶ DDG, CO/3147/2018, §40

²⁷ Hillingdon, 2010, §77

²⁸ Hillingdon, 2010, §97

the review of climate change commitments. If the DCO process were to come first, recommended changes to the Climate Change Act would be precluded.

65. Fourth, the Secretary of State's failure to consider the ANPS against the Paris Temperature Limit, which is, according to the scientific consensus, the boundary between humanity and catastrophic climate change, is a prime example of a "showstopper" (to adopt the language of Carnwath J).

The effect of the Paris Agreement

66. The Secretary of State contends that the Paris Temperature Limit is not binding on the Government²⁹:

"... while the Government is fully committed to the objectives of the Paris Agreement (the UK played an important role in pushing for ambitious aims to be set in the Paris Agreement, the legal obligation upon the Parties is to prepare, communicate and maintain nationally determined contributions to reduce net emissions, with a view to achieving the purpose of holding global average temperature increases to "well below" 2°C above pre-industrial levels, and pursuing efforts to limit them to 1.5°C. This is not the same as a legal duty or obligation for the Parties, individuals or collectively, to ensure that no more than these maximum temperature increases are reached."

67. The argument is misconceived in this context for three reasons.
68. First, the issue for the purposes of the 2008 Act is not whether the Government is under a legal obligation to implement the Paris Temperature Limit, but whether it is Government policy to implement the Paris Temperature Limit. It is evident, even from the text above, that it is.
69. Second, in light of the devastating consequences of crossing the 1.5°C threshold, as set out by the IPCC in its report sent to the UK Government for comment in January 2018, the Secretary of State's analysis misses the point.
70. Third, in any event the UK Government does have a legal obligation to enact policy consistent with the Paris Agreement pursuant to the international law duty to prevent harm occurring to other sovereign states.

²⁹ DDG, Friends of the Earth, §34(1)

Plan B's "misleading assertion"

71. The Secretary of State suggests that Plan B's assertion at ASFG §40 to the effect that the Government announced on 17 April 2018 that "*it would review and revise its climate change targets to align them to the Paris Agreement*" is misleading.
72. The Secretary of State is right to point out that Plan B does not know what the Government announced at the meeting of the Commonwealth Heads of Government on 17 April. That is because there was no press release of the announcement, which was communicated publicly only by way of a tweet.
73. However it is entirely reasonable to infer a Government intention to revise its climate targets in light of the Energy Minister's statement to the House of Commons, in May 2018, that "*we want to understand how we will get to a zero carbon economy in 2050.*"³⁰ The statement is a clear expression of the Government's policy intention to revise the 2050 Target and to revise it substantially (i.e. to emissions reductions of 100% by 2050).
74. To avoid further speculation regarding the content of the Government's announcement on 17 April, Plan B has applied for specific disclosure of the text of the Minister's speech, an application, which the Secretary of State opposes.

CONCLUSION

75. Whether as a matter of construction of the 2008 Act, as a matter of rationality, or for consistency with the Human Rights Act 1998, the Secretary of State was bound to consider whether the ANPS was consistent with the Paris Temperature Limit (which is the boundary between humanity and catastrophic climate change) and the Government's current policy on climate change.
76. As his own witnesses confirm, he did not even attempt to do so.

**Tim Crosland
Director, Plan B
21 December 2018**

³⁰ TC/1/8