

HEATHROW AIRPORT LIMITED

Appellant

-and-

(1) FRIENDS OF THE EARTH LIMITED  
(2) PLAN B EARTH

Respondents

---

STATEMENT OF FACTS AND ISSUES

---

**FACTS**

**General factual background**

1. These proceedings arise from the decision of the Secretary of State for Transport on 26 June 2018 to designate the Airports National Policy Statement (“ANPS”) under s 5(1) of the Planning Act 2008 (“PA 2008”). The ANPS supports, as a matter of policy, the delivery of additional hub airport capacity in the South East of England by way of a third runway at Heathrow Airport, the North West Runway (“NWR”).

Heathrow and aviation strategy

2. Heathrow is Europe’s busiest airport and its two existing runways and four passenger terminals handled approximately 78 million passengers in 2017. It is also Europe’s third busiest cargo airport.
3. Proposals for the expansion of Heathrow have a long history. In 2003, the Government published the White Paper “The Future of Air Transport” (“the ATWP”) which proposed a new runway at Heathrow. On 15 January 2009, a decision paper “Adding Capacity at Heathrow: Decisions Following Consultation” was published, confirming policy support for a third runway. This decision was subject to a claim for judicial review in *R (Hillingdon) v Secretary of State for Transport* [2010] EWHC 626

(Admin) (“the 2010 judicial review”). On the basis of an undertaking that the various policy issues would be reviewed and that the impugned decision would not itself be designated as a National Policy Statement, the decision was not quashed. There was no further progress before the 2010 General Election, following which the Coalition Government published its programme for government which included a commitment to cancel the scheme for a third runway at Heathrow.

4. During July 2012 the Government consulted on its draft strategy for aviation. This led to the adoption in March 2013 of the ‘Aviation Policy Framework’ (“APF”), which replaced the 2003 ATWP. The APF is a White Paper that sets out the Government’s overall objectives for aviation and the policies it would use to achieve those objectives. One of the main objectives of the APF is “to ensure that the UK's air links continue to make it one of the best connected countries in the world”, for which (it says) “it is essential ... to maintain the UK's aviation hub capability” (para 9). The APF records that a further objective is to ensure that the aviation sector makes a significant and cost-effective contribution towards reducing global emissions (para 12). It makes clear that because aviation is an international sector it is Government policy to make progress on reducing climate change impacts through the International Civil Aviation Organisation (“ICAO”), the United Nations agency that regulates international aviation, and continue to work with the European Union to ensure the success of the EU Emissions Trading Scheme. (para 13), strongly supporting action at a European level (para 14). The ANPS stated that the APF set out other Government policy on airport capacity and wider aviation issues (para 1.38) and that the APF set out the Government’s key objective on aviation emissions (para 5.70).
5. In September 2012, the Coalition Government established the Airports Commission (“AC”). It was an independent body of experts, chaired by Sir Howard Davies. The main purposes of the AC were to examine the scale and timing of any requirement for additional capacity to maintain the UK’s position as Europe’s most important aviation hub, and to identify and evaluate how any need for additional capacity should be met in the short, medium and long term. The terms of reference of the AC required it to look, inter alia, at the environmental impact of meeting any needs. The AC considered 58 different proposals for delivering additional airport capacity in the South East of England by 2030. On 17 December 2013 the AC published an interim report, which

assessed the evidence on the nature, scale and timing of steps needed to maintain the UK's status as an international hub for aviation. It also selected three options for further consideration in its final report, including the NWR scheme.

6. The AC consulted on and adopted an Appraisal Framework comprising a number of “modules” on different topics, including carbon. It also established an Expert Advisory Panel with 21 members. In the course of preparing its interim and final reports, the AC carried out a number of consultations and published supporting documents, studies and assessment covering topics including carbon. On 1 July 2015, the AC published its final report (the “AC Final Report”). The AC Final Report concluded that there was a need for additional runway capacity in the south east of England and that all three shortlisted options were credible. It recommended that the NWR scheme was the most appropriate way to meet that need. Environmental issues including carbon were considered in the AC Final Report. Alongside the AC Final Report, the AC published various documents including “Module 8: Carbon: Further Assessment” which provided “an assessment of the shortlisted airport schemes against the AC’s objective of minimising carbon emissions in airport construction and operation”. The AC advised (Final Report p.65) that “Any change to UK’s aviation capacity would have to take place in the context of global climate change, and the UK’s policy obligations in this area.”
7. The AC identified carbon impacts from expansion in four areas: net increase in air travel; airside ground movements and airport operations; changes in travel patterns as a result of the scheme’s surface access arrangements; and construction of new infrastructure. The AC used two carbon policy scenarios in its analysis:
  - a. a “carbon capped” scenario, in which emissions from the UK aviation sector are limited to the Committee on Climate Change (“CCC”)’s “planning assumption” for the sector (sometimes called the “aviation target”) of “around 2005 levels”, i.e. 37.5 million tonnes of carbon dioxide (MtCO<sub>2</sub>) in 2050;<sup>1</sup> and

---

<sup>1</sup> The CCC was established under the Climate Change Act 2008 to give independent advice to government: see para 32 below.

- b. a “carbon traded” scenario in which emissions are traded as part of a global carbon market. Under this scenario overall global CO<sub>2</sub> emissions are set at a cap consistent with a future global goal to limit warming to 2°C.

#### Proposal for ANPS

8. On 12 December 2015, the UK Government was one of 197 Governments to adopt the Paris Agreement on Climate Change (“The Paris Agreement”), although the Agreement was not ratified until 17 November 2016. On 14 December 2015, the Secretary of State announced that the Government accepted the case for airport expansion; agreed with, and would further consider, the AC’s shortlist of options; and would use the mechanism of a national policy statement (“NPS”) under the PA 2008 to establish the policy framework within which to consider an application by the developer for planning consent. Over the course of the following year the Department for Transport considered the AC Final Report and carried out further work on certain of the areas that the AC had considered, including carbon emissions.
9. In March 2016 the Secretary of State published ‘Appraisal of Sustainability: Airports NPS Scoping Report’. The Scoping Report presented the results of ‘a review of relevant Plans, Policies and Programmes (‘PPPs’) which have the potential to influence aviation capacity’ (3.3.1). These were listed in Appendix A to the Scoping Report. Neither the Scoping Report nor its Appendix A makes any reference to the Paris Agreement.
10. On 25 October 2016, the Secretary of State announced that the NWR scheme was the Government’s preferred option. That announcement was the subject of an unsuccessful claim for judicial review: *R (Hillingdon LBC) v Secretary of State for Transport* [2017] 1 WLR 2166 (“the 2016 judicial review”).
11. In February 2017, the Secretary of State launched a consultation on a draft NPS. As well as the draft NPS, the consultation documents included a draft Appraisal of Sustainability (“AoS”). The AoS built on the Scoping Report and like the Scoping Report made no reference to the Paris Agreement. In October 2017, the Secretary of State consulted on a revised draft NPS together with additional documents, including a report on carbon abatement. In June 2018, the Secretary of State published the

Government's response which considered, among other things, "carbon emissions support measures" (at 8.1 and following). At 8.18 the response stated:

"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."

12. At 8.19 it stated:

"The Government's position remains that action to address aviation emissions is best taken at the international level, given aviation is an inherently global industry and climate change is a global rather than local environmental issue. Industry and Government have made significant progress in addressing aviation CO2 emissions, such as the agreement at the International Civil Aviation Organisation (ICAO) Assembly in October 2016 to develop a global market based measure for international aviation. 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."

13. At 8.25, the response stated:

"... aviation and climate change is a much broader issue than the development of a runway at a single airport. The Government does not agree that until the future policy in relation to aviation carbon emissions is fixed, no further runway development should be planned. The ongoing development of policy relating to carbon emissions from international aviation, which will be driven forward during the development of the Aviation Strategy, does not prevent the Government from taking forward plans now for airport expansion which is needed by 2030. The Government believes that the Department has demonstrated, through robust analysis, forecasting and modelling, that the UK's climate change obligations will be achievable in a range of policy futures."

14. Between November 2017 and March 2018, the Transport Select Committee conducted a detailed inquiry into the revised draft ANPS. It reported to the House of Commons on 5 June 2018. On the same day, the Secretary of State laid before Parliament the final proposed ANPS. This was published alongside a final version of the AoS. The final AoS made no reference to the Paris Agreement. The AoS main report stated as follows:

- a. The DfT modelled emissions for both Gatwick and Heathrow Airports without expansion over a 60-year period from 2025/2026 to 2085/2086 for both carbon-capped and carbon-traded scenarios and modelled future emissions for the same period under the three shortlisted schemes (6.11.2-3). Under the "carbon-capped"

scenario the gross emissions from flights departing from airports were limited to the CCC's "planning assumption", whereas under the "carbon-traded" scenario measures would be in place to ensure that an increase in CO<sub>2</sub> emissions as a result of expansion would not lead to an increase at international level (6.11.5-6.11.6).

- b. The assessment was based on CO<sub>2</sub> emissions only but there were likely to be highly significant climate change impacts associated with non-CO<sub>2</sub> emissions from aviation, which could be of a similar magnitude to CO<sub>2</sub> emissions themselves, but which could not be readily quantified due to the level of scientific uncertainty and therefore had not been assessed (6.11.11).
  - c. The emissions from each of the shortlisted scheme were considered (Table 6.4) and judged to have "significantly negative" effects (6.11.14).
15. Appendix A-9 to the AoS ("Carbon") contained further detail. The "assumptions and limitations" of the assessment were considered at 9.11. Para 9.11.5 explained there were also non-carbon emissions associated with the combustion of fuels in aircraft engines while in flight, noting that with these sources included, the global warming effect of aviation "could be up to two times that of the CO<sub>2</sub> impact by itself", but that "the level of scientific uncertainty involved means that no multiplier should be applied to the assessment". It noted that

"This position is kept under review by DfT but it is worth noting that non-CO<sub>2</sub> emissions of this type are not currently included in any domestic or international legislation or emissions targets and so their inclusion in the assessment would not affect its conclusion regarding legal compliance",

and recommended that

"further work be done on these impacts by an applicant during the detailed scheme design, according to the latest appraisal guidance".

16. On 14 June 2018, the Chairman and Deputy Chair of the CCC wrote to the Secretary of State in the following terms:

"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 ...”.

17. On 20 June 2018, the Secretary of State responded explaining how climate change had been addressed and stating that the forthcoming Aviation Strategy would include “a framework for UK aviation carbon emissions to 2050, which ensures that aviation contributes its fair share to action on climate change, taking into account the UK’s domestic and international obligations”.
18. On 25 June 2018, the Secretary of State made a statement to Parliament promising that expansion would be governed by five key pledges including that it would be “delivered within existing climate change... obligations”. On the same day, solicitors for the London Borough of Hillingdon and others (Harrison Grant) wrote to the Secretary of State asking if there would be further consultation following the CCC’s 2018 Progress Report, expected on 28 June 2018. The Secretary of State replied by letter on the same day stating that there would not be further consultation because “... the proposed NPS is clear that an increase in carbon emissions that would have a material impact on the ability of Government to meet its carbon reduction targets would be a reason to refuse development consent. In any event, wider policy on carbon emissions from aviation will be considered as part of the development of the Aviation Strategy, when it will be subject to consultation”.
19. On 25 June 2018, there was a debate and vote on the proposed ANPS in the House of Commons. MPs voted in favour of the ANPS by a majority of 296.

#### The ANPS

20. On 26 June 2018 the Secretary of State designated the ANPS under section 5(1) of the PA 2008. That designation is the object of this legal challenge. On the same day, the Secretary of State published a “post adoption statement” which addressed environmental matters including carbon emissions. At 4.4.50 it stated:

“This has been considered using two future policy scenarios, meeting the UK’s overall emissions target in the Carbon Capped case, and meeting the UK’s commitments under any future international agreement in a Carbon Traded case. This includes both aviation and surface access emissions. As set out in the “Next steps towards an aviation strategy” document, published in spring 2018, the Government will consider areas of greater scientific

uncertainty, such as aviation's contribution to non-CO2 climate change effects and how policy might make provision for their effects as part of the forthcoming Aviation Strategy.”

21. Carbon emissions are dealt with in paras 3.61–3.69 of the ANPS, as follows:

3.61 Although not a differentiating factor between the three shortlisted schemes, the Government has considered the issue of carbon emissions, given the Government's commitment to tackle climate change, and its legal obligations under the [CCA] 2008.

3.62 The [AC] identified carbon impacts from expansion in four areas: a net increase in air travel; airside ground movements and airport operations; changes in travel patterns as a result of the scheme's surface access arrangements; and construction of new infrastructure. Emissions from air travel, specifically international flights, are by far the largest of these impacts.

3.63 To address uncertainties over the future policy treatment of international aviation emissions, the [AC] used two carbon policy scenarios in its analysis.

3.64 The first was a ‘carbon capped’ scenario, in which emissions from the UK aviation sector are limited to the [CCC's] planning assumption for the sector of 37.5 [MtCO<sub>2</sub>] in 2050. The second was a ‘carbon traded’ scenario, in which emissions are traded as part of a global carbon market, allowing reductions to be made where they are most efficient across the global economy.

3.65 The [AC] then assessed whether the needs case could be met under each of these scenarios, that is whether expansion would still deliver the necessary improvements and provide benefits to passengers and the wider economy. The Government has updated this analysis to take account of the latest passenger demand forecasts.

3.66 This further analysis reinforces the conclusion that any one of the three shortlisted schemes could be delivered within the UK's climate change obligations, as well as showing that a mix of policy measures and technologies could be employed to meet the [CCC's] planning assumption.

3.67 Of the three shortlisted schemes, the [NWR Scheme] produces the highest carbon emissions in absolute terms. However, this is in part due to the greater additional connectivity provided by the scheme, and, in relation to the increase in emissions caused by expansion under any of the schemes, the differences between the schemes are small. Both of the carbon policy scenarios incorporated measures to ensure that the increased emissions from any of the shortlisted schemes were not additional overall either at the global level (in the carbon traded case) or at the UK level (in the carbon capped case).

3.68 The further analysis also shows that, in both carbon policy scenarios, the [NWR Scheme] would deliver significant benefits to passengers and the wider economy (such as lower fares, improved frequency and higher productivity), and would do so more quickly than the [Gatwick 2R Scheme]. Both Heathrow schemes provide more passenger benefits by 2050 than the [Gatwick 2R Scheme].

3.69 The Government has considered this further analysis, and concludes both that expansion via a Northwest Runway at Heathrow Airport (as its preferred scheme) can be delivered within the UK's carbon obligations, and that the scheme is the right choice on economic and strategic grounds regardless of the future regime to deal with emissions from international aviation.”

22. Paras 4.41–4.52 concern “climate change adaptation”. They explain “how the [ANPS] puts Government policy on climate change adaptation into practice, and in particular how the applicant and the Secretary of State will take into account the effects of climate change when developing and considering airport infrastructure applications”.
23. Paras 5.76–5.83 set out how the carbon emissions impacts will be assessed of any scheme brought forward for a development consent order (“DCO”) under the PA 2008. The applicant is required to provide evidence of the carbon impact against the Government's carbon obligations (para 5.76); and satisfy the Secretary of State as to the acceptability of mitigation measures put forward (para 5.78). In respect of decision-making on any application, para 5.82 states:

“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.”

#### International treaties on climate change

24. The UN Framework Convention on Climate Change (“UNFCCC”) signed at the Rio Earth Summit in 1992 sets out, in Article 2, an objective of  
“stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system”.
25. Article 3(3) of the UNFCCC enshrined the ‘precautionary principle’ in the following terms:  
“The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures.”
26. The Kyoto Protocol (1997) to the UNFCCC “operationalised” the Rio Convention by committing industrialised countries, including the UK, to specific individual targets for the period 2008-2012, as set out in Annex B to the Protocol. The Kyoto Protocol

entered into force on 16 February 2005. It provides that parties are to limit or reduce the emissions of greenhouse gases from aviation (other than chlorofluorocarbons, which are controlled by the Montreal Protocol) working through the International Civil Aviation Organisation.

27. The Doha Amendment (2012) sought to extend the commitments in the Kyoto Protocol by setting tighter individual targets for industrialised countries, including the UK, for the next period 2013-2020. The Doha Amendment was not, however, ratified by sufficient parties for it to enter into force.
28. On 12 December 2015, the Paris Agreement was adopted, but not at that stage ratified. Article 2 explains that it seeks to enhance the implementation of the Rio Convention including by

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

Article 4 provides:

“1. In order to achieve the long-term temperature goal set out in Article 2, Parties aim to reach global peaking of greenhouse gas emissions as soon as possible, recognizing that peaking will take longer for developing country Parties, and to undertake rapid reductions thereafter in accordance with best available science, so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century, on the basis of equity, and in the context of sustainable development and efforts to eradicate poverty.

2. Each Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.

3. Each Party's successive nationally determined contribution will represent a progression beyond the Party's then current nationally determined contribution and reflect its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.

4. Developed country Parties should continue taking the lead by undertaking economy-wide absolute emission reduction targets. Developing country Parties should continue enhancing their mitigation efforts, and are encouraged to move over time towards economy-wide emission reduction or limitation targets in the light of different national circumstances.

...”

29. The Preamble to the Decision to adopt the Paris Agreement recognised that climate change represents “an urgent and potentially irreversible threat to human societies and the planet and thus requires the widest possible cooperation by all countries, and their participation in an effective and appropriate international response, with a view to accelerating the reduction of global greenhouse gas emissions” and emphasised the urgent need to address the significant gap between the Parties’ existing mitigation pledges “and aggregate emission pathways consistent with holding the increase in the global average temperature to well below 2 °C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5 °C above pre-industrial levels”.

#### Domestic approach to aviation and climate change

30. On 1 December 2008, the Climate Change Act (“CCA 2008”) came into force, establishing a carbon reduction target in the form of a duty on the Secretary of State for Business, Energy and Industrial Strategy (“BEIS”) “to ensure that the net UK carbon account for the year 2050 is at least 80% lower than the 1990 baseline” (s 1(1): “the statutory 2050 target”). The CCA 2008 is the legislative centrepiece of the UK’s efforts to tackle climate change.
31. Sections 2 and 3 provide a mechanism for the amendment of the statutory 2050 target. The Secretary of State is under a duty to set “carbon budgets” for five-year budgetary periods beginning with the period 2008-2012, and to ensure that the “net UK carbon account for a budgetary period does not exceed the carbon budget” (s 4). Provision is made for the setting, amendment and management of those budgets.
32. The CCC established under the CCA 2008 is made up of between five and eight independent experts drawn from disciplines including climate change science, economics, technology, forestry and behavioural science (s 32 and Schedule 1). The CCC is under a statutory duty to provide advice to the Government, Parliament and/or the devolved administrations on the statutory 2050 target (s 33); the 5-yearly carbon budgets (limits on UK emissions) (s 34); and annually on progress towards meeting the statutory 2050 target (s 36).
33. Emissions from international aviation are not included within the carbon budgets established under the CCA 2008 (s 30). However, they must be taken into account

when setting budgets (s 10(2)(i)). The CCC has recommended that this be interpreted to mean that carbon budgets should be set as if international aviation were included within the statutory carbon reduction target. To date, the UK's carbon budgets have been set at a level that accounts for international aviation emissions, setting a trajectory for emissions reductions over time that is designed to be consistent with the statutory 2050 target that includes these emissions. In 2012, a DfT document stated:

“Whilst we will revisit the issue of whether the net carbon account will be revised to include international aviation and shipping when we come to set the fifth carbon budget, Government reaffirms its overall commitment to the 2050 target and recognises that emissions from international aviation and shipping should be treated the same as emissions from all other sectors, in order to reach our long-term climate goals.”

34. As explained above, the CCC identified a “planning assumption” that emissions from UK aviation (domestic and international) should be no more than 2005 levels – 37.5 MtCO<sub>2</sub> – in 2050. A decision on whether to accept this “planning assumption” or “aviation target” was deferred by the APF for consideration as part of the emerging Aviation Strategy, currently expected in 2020, which would “*re-examine how the aviation sector can best contribute its fair share to emissions reductions at both the UK and global level*”.

35. In its December 2009 report “*Meeting the UK aviation target – options for reducing emissions to 2050*” the CCC gave its assessment of the actions required to ensure that UK aviation CO<sub>2</sub> emissions in 2050 do not exceed 37.5 MtCO<sub>2</sub>. As noted in its Foreword, the report:

“analyses the potential to reduce the carbon intensity of air travel through technological improvements in airframe and engine design, through operational efficiency improvements and through the use of sustainable biofuels”

and

“explores the likely impact of a carbon price on demand and the potential reduction from modal shift to high-speed rail and the use of videoconferencing”.

36. The CCC stated that if the aviation target and the statutory 2050 target were to be achieved, aviation emissions would account for around 25% of the UK's total allowed emissions. In respect of demand, the report found (Foreword, p. 2) that:

“there is potential for aviation demand to increase while still meeting the Government’s target – in the most likely scenario, a 60% increase in demand is allowed.”

The CCC advised that if aviation emissions amounted to 37.5MtCO<sub>2</sub> in 2050 and were included in the statutory 2050 target, then this target could be achieved through reducing emissions in other sectors by 85% on 1990 levels.

37. The CCC’s 2009 Report also considered the issue of aviation’s non-CO<sub>2</sub> climate impacts. It stated that these were ‘likely to become accounted for in any international framework in decades to come’ (page 132). The CCC used best estimates of aviation’s Global Warming Potential (GWP) of 1.9-2.0 to model a range of indicative policy scenarios, which spelled out the implications for UK policy of non-CO<sub>2</sub> emissions being accounted for: namely that either the aviation sector, or other sectors, or both, would need to make deeper reductions in emissions (pages 131-132). Nevertheless, the CCC made clear that it was “not recommending that the UK aviation target should currently be redefined to include non-CO<sub>2</sub> effects” (page 132).

38. On the same theme, on 3 July 2013 the CCC wrote to the Airports Commission and said:

“Reducing emissions in other sectors by 85% in 2050 on 1990 levels is at the limit of what is feasible, with limited confidence about the scope for going beyond this.

It is of course possible that there may be scope to reduce emissions more in other sectors, which would allow aviation demand to grow by more than 60% in 2050. However, this may well be the limit, here and in other developed countries, compatible with achieving the internationally agreed climate objective.”

39. The APF of March 2013 sets the existing wider policy on aviation and makes a number of statements on climate change and aviation. It leaves open the question of whether the UK should adopt the CCC’s planning assumption. In respect of non-CO<sub>2</sub> emissions it states:

“Aviation’s most significant contribution to climate change in the longer term is through emissions of carbon dioxide (CO<sub>2</sub>), which make up about 99% of the sector’s Kyoto basket of greenhouse gas emissions, and this has therefore been the focus of government action. But we recognise that the complexities of atmospheric chemistry mean that the total climate change impacts of aviation are greater than those from its CO<sub>2</sub> emissions alone. Non-CO<sub>2</sub> emissions from aviation can have both cooling and warming effects on the climate, with a likely overall warming impact on the atmosphere. Nitrogen oxides (NO<sub>x</sub>), sulphur oxides (SO<sub>x</sub>) and water vapour all contribute to the overall effect, with NO<sub>x</sub> emissions resulting in

the production of ozone, a greenhouse gas and air pollutant with harmful health and ecosystem effects. However, despite advances over the past decade, considerable scientific uncertainty remains about the scale of the effect on climate change of non-CO2 emissions. As a consequence there is no consensus on whether and how to mitigate them” (para 2.2).

and

“Our focus will remain on actions to target CO2 emissions, which may also help to reduce some of the non-CO2 emissions. We will continue to support efforts to improve the understanding of the non-CO2 impacts of aviation ...” (para 2.3).

40. The Department of Transport’s UK Aviation Forecasts (October 2017) estimated total UK international and domestic departing aircraft CO2 to be in the range 38.1 Mt CO2 to 44.1 Mt CO2 (Table 36 p.107). At para 3.13 of the 2017 Aviation Forecasts states that:

“The forecasts of UK aviation CO2 emissions should be interpreted within the context of broader UK and international climate change policy. The Climate Change Act (2008) commits the UK government by law to reducing greenhouse gas emissions by at least 80% of 1990 levels by 2050. The UK has also signed up to the Paris Agreement that aims to hold the increase in global average temperature to well below 2°C of pre-industrial levels. In addition, aviation’s entry into the EU ETS in 2012 and the forthcoming implementation of the Carbon Offsetting and Reduction Scheme for International Aviation agreed at the International Civil Aviation Organisation mean that any growth of the CO2 emissions in scope of these schemes above the level of the caps set under these schemes will be exactly offset by emission reductions from other sectors, paid for by the aviation sector.”

And at para 8.2 it makes clear that:

“No variations on aircraft fleet or carbon emissions assumptions (e.g. biofuels, operational practices, fleet retirements, fleet turnover and performance of new aircraft types) are modelled. The impact and potential to alter emissions forecasts with such variables are being separately assessed in a parallel study on carbon abatement in UK aviation. The forecasts presented here will provide the baseline for the MACC [*marginal abatement cost curve*] work in developing strategy options for mitigating future CO2 emissions.”

41. International emissions from the UK have been included in the EU Emissions Trading System in relation to intra-EEA flights since 2012. The UK will in addition be part of the Carbon Offsetting and Reduction Scheme for International Aviation (“CORSIA”) from 2021.
42. On 14 March 2016, the Minister of State for Energy, Andrea Leadsom, said to the House of Commons that the Government “believe we will need to take the step of enshrining the Paris goal of net zero emissions in UK law – the question is not

whether, but how we do it, and there is an important set of questions to be answered before we do". On 24 March 2016 Amber Rudd, Secretary of State for Energy and Climate Change, said, in answer to an oral question on what steps her department was taking to enshrine the commitment to net zero emissions made at the Paris Climate Change Conference and that the "question is not whether we do it but how we do it".

43. On 16 September 2016 the CCC met to discuss the implications of the Paris Agreement for the UK's climate change targets, concluding: "that whilst a new long-term target would be needed to be consistent with Paris, and setting such a target now would provide a useful signal of support, the evidence was not sufficient to specify that target now".
44. In October 2016, the CCC published a report entitled "UK Climate Action following the Paris Agreement" that considered "the domestic actions the UK Government should take as part of a fair contribution to the aims of the [Paris] Agreement".
45. The CCC's advice was that it was neither necessary nor appropriate to amend the statutory 2050 target at the time and it advised that "the Government does not alter the level of existing carbon budgets or the 2050 target now" (p 11). It stated that there would be "be several opportunities to revisit the UK's targets in [the] future". The CCC advised that "the UK 2050 target is potentially consistent with a wide range of global temperature outcomes" (p 16).
46. On page 9 of the report it was said that:

"Emissions pathways indicate that CO<sub>2</sub> emissions will need to reach net zero by the 2050s-70s, along with deep reductions of all other greenhouse gases, in order to stay below 2°C. To stay close to 1.5°C CO<sub>2</sub> emissions would need to reach net zero by the 2040s ..."
47. The CCC report stated (Executive Summary, p 8):

"The Agreement describes a higher level of global ambition than the one that formed the basis of the UK's existing emissions reduction targets:

  - The UK's current long-term target is a reduction in greenhouse gas emissions of at least 80% by the year 2050, relative to 1990 levels. This 2050 target was derived as a contribution to a global emissions path aimed at keeping global average temperature to around 2°C above pre-industrial levels.

- The Paris Agreement aims to limit warming to well below 2°C and to pursue efforts to limit it to 1.5°C. This is more ambitious than both the ambition underpinning the UK 2050 target and previous international agreements."

48. In that context, however, the report advised Government (Executive Summary, p 7):

"Do not set new UK emissions targets now. ... The five-yearly cycle of pledges and reviews created by the Paris Agreement provides regular opportunities to consider increasing UK ambition".

49. On 17 November 2016, the UK ratified the Paris Agreement. In October 2017, the Government published its Clean Growth Strategy which "sets out a comprehensive set of policies and proposals that aim to accelerate the pace of 'clean growth' i.e. deliver increased economic growth and decreased emissions" (Executive Summary, p 10). In regard to UK climate action the Clean Growth Strategy states (Annex C, p 139-140):

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

...

Scientific evidence shows that increasing magnitudes of warming increase the likelihood of severe, pervasive and irreversible impacts on people and ecosystems. These climate change risks increase rapidly above 2°C but some risks are considerable below 2°C. This is why, as part of the Paris Agreement in 2015, 195 countries committed to hold "the increase in the global average temperature to well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognising that this would significantly reduce the risks and impacts of climate change". The Agreement recognised that in order to achieve this goal, global emissions of greenhouse gases would need to peak as soon as possible, reduce rapidly thereafter and reach a net zero level in the second half of this century.

...

The UK's current target is to reduce its greenhouse gas emissions by at least 80 per cent by the year 2050, relative to 1990 levels. This 2050 target was set to be consistent with keeping the global average temperature to around 2°C above pre-industrial levels with a 50 per cent likelihood. In October 2016 the Committee on Climate Change (CCC) said that the Paris Agreement target "is more ambitious than both the ambition underpinning the UK 2050 target and previous international agreements", but that the UK should not set new UK emissions targets now, as it already has stretching targets and achieving them will be a positive contribution to global climate action. The CCC advised that the UK's fair contribution to the Paris Agreement should include measures to maintain flexibility to go further on UK targets, the development of options to remove greenhouse gases from the air, and that its targets should be kept under review".

50. In December 2017, Plan B commenced legal proceedings against the Secretary of State for BEIS (“the 2017 judicial review”). Plan B alleged that the Secretary of State had unlawfully failed to revise the statutory 2050 target in line with the Paris Agreement. In defending the claim the Secretary of State for BEIS pleaded:

“[While] the Government is fully committed to the objectives 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, individually or collectively, to achieve this aim.” (emphasis in original)

51. This claim was refused permission in the High Court ([2019] Env. L.R. 13) and an appeal to the Court of Appeal against the refusal of permission was dismissed.

52. In January 2018 the CCC published a report entitled “An independent assessment of the UK’s Clean Growth Strategy”. In the course of this report the CCC invited the Secretary of State for BEIS to commission a review of the statutory 2050 target in October 2018, following the publication of the IPCC’s anticipated report on the implications of the Paris Agreement’s 1.5°C ambition. It explained that the Paris Agreement was likely to require revision to the statutory 2050 target (Executive Summary, p 21):

“This [2050 target] is currently set in legislation as a reduction of at least 80% on 1990 emissions. However, the Paris Agreement is likely to require greater ambition by 2050 and for emissions to reach net-zero at some point in the second half of the century. It is therefore essential that actions are taken now to enable these deeper reductions to be achieved.”

53. Also in January 2018, the Government published “A Green Future: Our 25 Year Plan to Improve the Environment.” The report stated:

“We will: Provide international leadership and lead by example in tackling climate change... We will use our diplomacy on the international stage to encourage more ambitious global action ...Using our leading role in the UNFCCC, through which the Paris Agreement was established, we will urge the international community to meet the goals enshrined in the text – in particular, as a first step, through securing robust and integral rules and standards. This is vital for future environmental security: current global commitments under the Agreement are insufficient to limit average temperature rise to well below 2°C.”

54. The report in its next paragraph set out two actions that would be taken by Government, which were as follows:

“• Working to secure robust and integral rules and standards that underpin the goals of the Paris Agreement.

• Show global leadership by phasing out unabated coal-fired electricity by 2025.”

55. In April 2018 the Government published ‘Beyond the Horizon: The Future of UK Aviation – Next Steps towards an Aviation Strategy’. It explained that the Aviation Strategy “will investigate what technical and policy measures are available to address aviation emissions and what their combined impact could be. It will then consider what the possible combination of measures could be through to 2050 and how that relates to the recommendation of the [CCC]” (para 6.18). It continued (para 6.24):

“The government’s Aviation Strategy presents an opportunity to take stock of the considerable progress made in recent years by both industry and government and to look ahead at what further action is required between now and 2050. The government will look again at what domestic policies are available to complement its international approach and will consider areas of greater scientific uncertainty, such as the aviation’s contribution to non-carbon dioxide climate change effects and how policy might make provision for their effects.”

56. On 17 April 2018, the Government announced at the Commonwealth Heads of Government Meeting that after the IPCC report later that year, it would be seeking advice from the UK’s independent advisers, the CCC, on the implications of the Paris Agreement for the UK’s long-term emissions reduction targets.

57. The IPCC’s report into the global implications of crossing the threshold of 1.5°C global warming was commissioned by governments in 2015. The draft report was reviewed by governments around the world between 8 January and 25 February 2018.

#### Events following designation of the ANPS

58. The IPCC’s final report on the global implications of crossing the threshold of 1.5°C global warming, incorporating input from this review stage, was published on 8 October 2018. The IPCC report identified the potential impacts and associated risks of projected climate change in excess of 1.5°C and concluded that on current nationally stated mitigation ambitions the 1.5C limit would not be reached. It stated that “[i]n model pathways with no or limited overshoot of 1.5°C, global net anthropogenic CO2 emissions decline by about 45% from 2010 levels by 2030... reaching net zero around

2050” and advised that “[a]voiding overshoot and reliance on future large-scale deployment of carbon dioxide removal can only be achieved if global CO<sub>2</sub> emissions start to decline well before 2030”.

59. In December 2018 the Department for Transport published its consultation materials on the forthcoming Aviation Strategy. The main consultation document was entitled “Aviation 2050: The future of UK aviation”. It explained that the Government proposes to “negotiate in ICAO (the UN body responsible for tackling international aviation climate emissions) for a long term goal for international aviation that is consistent with the temperature goals of the Paris Agreement, ideally by ICAO’s 41st Assembly in 2022” (para 3.83). It also indicated that the Government would “also consider appropriate domestic action to support international progress” (3.85). Various steps were identified, including requiring “planning applications for capacity growth to provide a full assessment of emissions, drawing on all feasible, cost-effective measures to limit their climate impact, and demonstrating that their project will not have a material impact on the government’s ability to meet its carbon reduction targets” (para 3.96). The Government would review the CCC’s revised aviation advice and advice on the implications of the Paris Agreement, both due in spring 2019, and “use CCC’s reviews to monitor the sector’s progress at the national and international level and to adjust its mix of policy measures and overall approach accordingly” (para 3.97).

60. The consultation material also included a paper, ‘International aviation and the Paris Agreement temperature goals’, which states that:

"For the Paris Agreement’s goals to be met, large reductions in global greenhouse gas emissions are required ...

The Paris Agreement is a temperature-based target and therefore implies inclusion of all emissions that affect climate. Aviation has significant non-CO<sub>2</sub> climate impacts from oxides of nitrogen (NO<sub>x</sub>), particle emissions, and effects on cloudiness that overall cause additional overall warming but these impacts are subject to greater scientific uncertainty than its CO<sub>2</sub> impacts. Examples of CO<sub>2</sub> emission equivalents metrics indicate up to a doubling of aviation CO<sub>2</sub> equivalent emissions to account for these non-CO<sub>2</sub> effects ...

... any continued emissions of CO<sub>2</sub> from aviation using fossil fuels beyond around 2050 will be inconsistent with the Paris Agreement goals in the absence of extra measures ...”.

61. On 1 May 2019, Parliament approved a motion to declare a climate and environmental emergency.

62. On 2 May 2019, the CCC published ‘Net Zero: The UK’s contribution to stopping global warming’ which recommended a new statutory 2050 target for the UK – “net-zero greenhouse gases by 2050”. The CCC also advised that this target should include emissions from international aviation and shipping (page15, page 205). On the day of the publication of “Net Zero”, Plan B wrote to the Secretary of State requesting a review of the ANPS pursuant to s 6 PA 2008. On 8 May 2019, the Secretary of State responded confirming he would carefully consider Plan B’s request. He noted that as well as considering CCC’s ‘Net Zero’ report it may be necessary to consider the CCC’s recommended policy for aviation that was to be provided later that year.
63. On 26 June 2019, the statutory 2050 target in s 1(1) CCA 2008 was amended by the Climate Change Act 2008 (2050 Target Amendment) Order 2019 to give effect to the CCC’s recommendation that the UK should set a new statutory 2050 target.
64. On 24 September 2019, the CCC wrote to the Secretary of State advising that international aviation and shipping emissions should be brought formally within the UK’s net-zero statutory 2050 target, and setting out the rationale and implications for the UK’s climate strategy. Although not within the ‘target’ in s.1(1) of the CCA 2008, international aviation and shipping must be (and are) taken into account when setting carbon ‘budgets’ against that ‘target’ (CCA 2008, s.10(2)(i)).
65. It has been anticipated that the Aviation Strategy setting out Government policy on aviation and climate change will be published in 2020.
66. On 25 June 2020, the CCC published its 2020 Progress Report update report to Parliament. It said the “key remaining elements of the net-zero policy package must be put in place in the coming months.” In relation to aviation, the Report recommended:

**“International aviation and shipping should be formally included in UK climate targets when the Sixth Carbon Budget is set, and net-zero plans should be developed.**

**Aviation (8% of 2019 emissions).** A policy framework is needed to achieve net-zero emissions by 2050, including demand-side measures, efficiency and low-carbon fuels, with residual emissions offset by verifiable removals. The UK's airport capacity strategy should be reviewed in light of the net-zero target. Action is also needed on non-CO2 warming effects from aviation.”

The Secretary of State’s approach to the Paris Agreement

67. The Secretary of State’s approach to the Paris Agreement was recorded in his witness evidence as follows (Ms Low’s First Witness Statement, 196):

“458. In October 2016 the CCC said that the Paris Agreement "is more ambitious than both the ambition underpinning the UK 2050 target and previous international agreements" , but that the UK should not set new UK emissions targets now, as it already has stretching targets and achieving them will be a positive contribution to global climate action. Furthermore, the CCC acknowledged in the context of separate legal action brought by Plan B against the Secretary of State for Business, Energy and Industrial Strategy... that it is possible that the existing 2050 target could be consistent with the temperature stabilisation goals set out in the Paris [Agreement]. Subsequently, in establishing its carbon obligations for the purpose of assessing the impact of airport expansion, my team has followed this advice and considered existing domestic obligations as the correct basis for assessing the carbon impact 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.”

68. The approach in the AoS was as follows (Ursula Stevenson Witness Statement):

“3.128 As noted in Caroline Low’s Witness Statement, in October 2016 the CCC said that the Paris Agreement target “*is more ambitious than both the ambition underpinning the UK 2050 target and previous international agreements*”, but that the UK should not set new UK emissions targets now, as it already has stretching targets and achieving them will be a positive contribution to global climate action. The AoS has followed this advice and considered existing 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 and set through the carbon budgets beyond 2032, then government will be required to make appropriate policy decisions across all sectors of the economy to limit emissions accordingly.

...

3.133 The carbon policy scenarios tested and reported within the carbon appendix of the AoS are subject to a number of future changes... If different or potential future changes to carbon targets are applied, for example under the Paris Agreement..., then the ability of the Government to meet its carbon reduction targets would be applied in decision-making (para. 5.82 of the ANPS). The CCC has acknowledged that the ambition set by the Paris Agreement to limit warming to 1.5°C may require a revision of future carbon budgets, but has advised that no change be made to the currently set 2032 budget. The various scenarios reported in the AoS (and previously by the AC), in addition to the impact of available measures to reduce carbon emissions will provide a useful reference for further assessment against these targets at the DCO.”

69. The Secretary of State’s (amended) pleadings on this issue stated (Amended Detailed Grounds of Defence):

“62 (6) The Secretary of State and his officials did not ignore the Paris Agreement, or that there would be emerging material within Government evidencing developing thinking on its implications, but it was concluded that such material should not be taken into account, i.e. it was not relevant, since it did not form an appropriate basis on which to formulate the policies contained in the ANPS. This included for the reasons set out at paragraph 34, above. Those reasons relate to the nature of the obligations set out in the Paris Agreement, its effect in domestic law as an unincorporated international treaty, and to the fact that as at the date of designation of the ANPS, the CCC’s views on the implications of the Paris Agreement had not yet been sought, let alone received. As the Government’s statutory advisor on matters relating to climate change, the CCC has a critical advisory role in relation to setting of relevant policy by the Government.

(7) In sum, the above facts demonstrate why emerging material within Government evidencing developing thinking on the Paris Agreement was not so obviously material to the designation of the ANPS that the Secretary of State was obliged to take it into account, and indeed the clear statutory indications are that such matters were not intended by Parliament to be considered

...

(9) Accordingly, the Secretary of State will not pursue any discretion argument that there (a) was no emerging material within Government evidencing developing thinking on the implications of the Paris Agreement, or (b) that such material would highly likely have made no difference to the decision to designate the ANPS. There is no need for him to do so as the argument that he was obliged to consider such material in the first place is hopeless...”

## **Legislative Framework**

### SEA Directive

70. Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (the “SEA Directive”) is intended

“to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with this Directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment” (Article 1).

71. Article 3 requires an environmental assessment to be carried out for certain plans and programmes which “set the framework for future development consent of projects” of a certain description and which are likely to have significant environmental effects.

72. Where environmental assessment is required, an environmental report must be prepared (Article 5) containing the information set out in Annex I

“that may reasonably be required taking into account current knowledge and methods of assessment, the contents and level of detail in the plan or programme, its stage in the decision-making process and the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment” (Article 5(2)).

The information to be provided, subject to Article 5(2), includes (by Annex I(e)

“the environmental protection objectives, established at international, Community or Member State level, which are relevant to the plan or programme and the way those objectives and any environmental considerations have been taken into account during its preparation”.

The SEA Directive imposes consultation requirements (Articles 6 and 7).

73. The SEA Directive was transposed through the Environmental Assessment of Plans and Programmes Regulations 2004.

#### Planning Act 2008

74. National Policy Statements (“NPSs”) are the statements of national planning policy for “nationally significant infrastructure projects” in England and Wales under the statutory regime in Parts 2 and 3 of the PA 2008. Section 14(1) defines “nationally significant infrastructure projects” as including projects consisting of “airport-related development” (s 14(1)(i)). The PA 2008 specifies the procedural steps that must be undertaken before a national policy statement can be formally “designated” by the Secretary of State, including consultation, parliamentary scrutiny and consideration of sustainability (s 5(3) and (4)). It also obliges the Secretary of State, when determining an application for development consent, to have regard to any relevant national policy statement (s 104 in Part 6).

75. Subsection 5(1) establishes that the Secretary of State may designate a statement as an NPS if that statement is issued by the Secretary of State, and sets out national policy in respect of one or more specified descriptions of development. Subsection 5(3) provides that before designation the Secretary of State must carry out an “appraisal of the sustainability of the policy set out in the statement”. This appraisal of sustainability is capable of constituting the “environmental report” for the purposes of articles 3 and 5

of the SEA Directive. Subsections 5(7) and (8) impose a requirement on the Secretary of State to give reasons:

(7) A national policy statement must give reasons for the policy set out in the statement.

(8) The reasons must (in particular) include an explanation of how the policy set out in the statement takes account of Government policy relating to the mitigation of, and adaptation to, climate change. ... .”

76. Section 6 provides for an NPS to be reviewed. Section 6(1) states:

“(1) The Secretary of State must review each national policy statement whenever the Secretary of State thinks it appropriate to do so.”

77. By s 6(2), such a review may relate to all or part of an NPS. Section 6(3) provides:

“(3) In deciding when to review a national policy statement the Secretary of State must consider whether –

(a) since the time when the statement was first published or (if later) last reviewed, there has been a significant change in any circumstances on the basis of which any of the policy set out in the statement was decided,

(b) the change was not anticipated at that time, and (c) if the change had been anticipated at that time, any of the policy set out in the statement would have been materially different.”

78. Section 6(4) contains equivalent provisions for a decision to “review part of a national policy statement”. Sections 6(5) and 6(7) provide that, having completed the review the Secretary of State may amend or withdraw the statement, or leave it as it is.

79. Sections 7 and 8 reflect the consultation requirements of the SEA Directive. Section 9 provides for parliamentary scrutiny of proposals to designate and to amend an NPS.

80. Section 10 provides:

“(1) This section applies to the Secretary of State’s functions under sections 5 and 6.

(2) The Secretary of State must, in exercising those functions, 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;

... .”

81. Section 13(1) provides that the court “may entertain proceedings for questioning a national policy statement or anything done, or omitted to be done, by the Secretary of State in the course of preparing such a statement only if ... (a) the proceedings are brought by a claim for judicial review ...”.

82. Where an application is made for development consent under the PA 2008, it is subject to examination under Chapter 4 of Part 6. Subsection 87(3) provides that the examining authority may in examining the application disregard representations which “relate to the merits of policy set out in a national policy statement”. Section 104 relates to applications for development consent where an NPS has effect in relation to development of the description to which the application relates. It provides:

“(2) In deciding the application the Secretary of State must have regard to—

(a) any national policy statement which has effect in relation to development of the description to which the application relates (a “relevant national policy statement”),

...

(b) any local impact report (within the meaning given by section 60(3)) submitted to the Secretary of State before the deadline specified in a notice under section 60(2),

(c) any matters prescribed in relation to development of the description to which the application relates, and

(d) any other matters which the Secretary of State thinks are both important and relevant to the Secretary of State's decision.

(3) The Secretary of State must decide the application in accordance with any relevant national policy statement, except to the extent that one or more of subsections (4) to (8) applies.

(4) This subsection applies if the Secretary of State is satisfied that deciding the application in accordance with any relevant national policy statement would lead to the United Kingdom being in breach of any of its international obligations.

(5) This subsection applies if the Secretary of State is satisfied that deciding the application in accordance with any relevant national policy statement would lead to the Secretary of State being in breach of any duty imposed on the Secretary of State by or under any enactment.

(6) This subsection applies if the Secretary of State is satisfied that deciding the application in accordance with any relevant national policy statement would be unlawful by virtue of any enactment.

...”

83. Section 106 provides that, in determining the application, the Secretary of State may disregard representations which the Secretary of State considers “relate to the merits of policy set out in a national policy statement”.

**These proceedings**

84. Four claims for judicial review, brought by a total of ten claimants including the respondents, were listed for a ten-day “rolled up” hearing before the Divisional Court (Hickinbottom LJ and Holgate J) in March 2019. A lengthy judgment was handed down on 1 May 2019: [2020] PTSR 240; [2019] JPL 1163; [2019] EWHC 1070 (Admin).
85. The Divisional Court listed the contents of its judgment at para 5. It dealt with six “preliminary points” at paras 86-184, including the relationship between the ANPS and the DCO Process (paras 91-112) and the standard of review (paras 141-184).
86. The Divisional Court considered at paras 558-660 the respondents’ Climate Change grounds. The legislative and policy background was treated at paras 558-601. The grounds considered and dismissed by the Divisional Court included:
- a. breach of s5(8) of the PA 2008, alleged by Plan B (paras 603-624 and 659(ii): cf Issue 1, below);
  - b. breach of s 10 of the PA 2008, alleged by FoE (paras 633-649 and 659(iv): cf Issue 2, below);
  - c. breach of the SEA, alleged by FoE (paras 501 and 650-656: cf Issue 3, below);  
and
  - d. failure to take into account non-CO2 emissions and the needs of future generations, alleged by FoE (paras 638-649 and 659(iv): cf Issue 4, below).
87. In respect of four issues not relevant to this appeal, the Divisional Court granted permission to proceed but refused the substantive claims. In relation to all other issues, including the Climate Change grounds, it refused permission to apply for judicial review (para 667). Each of the claims was accordingly dismissed (para 668).

88. The Court of Appeal granted the Respondents and others permission to appeal, and heard the appeal over six days in October 2019. In a judgment dated 27 February 2020 ([2020] EWCA Civ 214) the Court of Appeal (Lindblom, Singh and Haddon-Cave LJ) granted the respondents permission to apply for judicial review and granted declarations that:
- a. the Secretary of State acted unlawfully in failing to take into account the Paris Agreement when deciding to designate the ANPS; and that
  - b. the ANPS is of no legal effect unless and until the Secretary of State has undertaken a review of it in accordance with the PA 2008;
89. Appeals on different grounds by the London Borough of Hillingdon and others and by Heathrow Hub Limited and another were dismissed in a separate judgment of the same date.
90. In respect of the issues which now arise in this appeal, the Court of Appeal's approach was as follows:
- a. At para 13, the Court identified the issues relating to climate change.
  - b. At paras 15-36, the origins of the ANPS were considered.
  - c. At paras 37-44, the relevant provisions of the Planning Act 2008 were set out.
  - d. At paras 50-61, the relevant provisions of the SEA Directive and SEA Regulations were considered.
  - e. At paras 184-186, the Court introduced the climate change issues.
  - f. At paras 187-195 the relevant parts of the Divisional Court's judgment were summarised.
  - g. At paras 196-221 the facts considered to be relevant to the climate change issues were set out.
  - h. At paras 222-233 the Court considered the question: "did the Government's commitment to the Paris Agreement constitute government policy on climate change, which the Secretary of State was required to take into account?" It found

that and that the Secretary of State was required to take it into account (cf Issue 1, below).

- i. At paras 234-238 the Court considered whether the designation of the ANPS was unlawful because the Secretary of State acted in breach of s 10(3) PA 2008. It found that it was (cf Issue 2, below).
- j. At paras 242-247 the Court considered whether the Secretary of State breached the SEA Directive by failing to the Paris Agreement, finding that he did (cf Issue 3, below).
- k. At paras 248-261 the Court found that the Secretary of State also erred in his consideration of non-CO2 impacts and the effect of emissions beyond 2050 (cf Issue 4, below).
- l. At paras 267-280 the Court considered the question of relief (cf Issue 5, below).
- m. At paras 281-285 the Court set out its conclusions.

## **ISSUES**

91. The issues before the Supreme Court are whether, as set out in HAL's Grounds of Appeal:
- (1) The Court of Appeal erred in concluding that:
    - (a) the Paris Agreement (and the temperature goals contained therein) constituted 'government policy' for the purposes of s 5(8) of the PA?
    - (b) the designation of the ANPS was unlawful because the Secretary of State failed adequately to take account of the Paris Agreement, contrary to s 5(8) of the PA?
  - (2) The Court of Appeal erred in concluding that the designation of the ANPS was unlawful because the Secretary of State acted in breach of s 10(3) of the PA 2008?

- (3) The Court of Appeal erred in concluding that the Secretary of State acted in breach of the SEA Directive by failing adequately to consider or address the Paris Agreement in the AoS?
- (4) The Court of Appeal erred in its conclusions in relation to:
- (a) the Secretary of State’s approach to non-CO2 climate impacts of aviation and
  - (b) the effect of emissions beyond 2050?
- (5) The Court of Appeal erred in granting the relief it did. If so, what relief should follow from the Supreme Court’s conclusions on the above issues?

**Heathrow Airport Limited:**

**MICHAEL HUMPHRIES Q.C.**  
Francis Taylor Building

**LORD ANDERSON OF IPSWICH K.B.E. Q.C.**  
Brick Court Chambers

**RICHARD TURNEY**  
Landmark Chambers

**MALCOLM BIRDLING**  
Brick Court Chambers

**Friends of the Earth Limited:**

**DAVID WOLFE Q.C.**  
Matrix Chambers

**PETER LOCKLEY**  
11KBW

**ANDREW PARKINSON**  
Landmark Chambers

**Plan B Earth:**

**TIM CROSLAND**  
Plan B Earth

## **ANNEX 1: CHRONOLOGY**

IN THE SUPREME COURT  
BETWEEN

UKSC 2020/0042

HEATHROW AIRPORT LIMITED

Appellant

-and-

(1) FRIENDS OF THE EARTH LIMITED  
(2) PLAN B EARTH

Respondents

---

CHRONOLOGY

---

<u>DATE</u>	<u>EVENT</u>
1992	UN adopted the United Nations Framework Convention on Climate Change (“the UNFCCC”).
11 December 1997	Kyoto Protocol adopted with a commitment period running to 2012. It entered into force on 16 February 2005.
2000	The Royal Commission on Environmental Pollution recommends UK emission reductions of 60% by 2050 based on a 2°C global limit.
16 December 2003	Government published the White Paper “ <i>The Future of Air Transport</i> ” (“the Air Transport White Paper”) which proposed a new runway at Heathrow.
2006	Stern Review, <i>The Economics of Climate Change</i> (as commissioned by Gordon Brown, then Chancellor of the Exchequer).
2007	House of Commons Environmental Audit Committee recommends a more stringent target than 60% by 2050 for consistency with the 2°C limit ( <b>Appx/565</b> ).
October 2008	Letter from Lord Turner (Chair CCC) to Ed Miliband (Secretary of State for DECC) recommending a 2050 carbon target of at least an 80% reduction of emissions for consistency with 2°C limit ( <b>Appx/570</b> ).
26 November 2008	Climate Change Act 2008 (“CCA 2008”) and PA 2008 received Royal Assent.
1 December 2008	CCA 2008 came into force. It established a “carbon target” of at least 80% emissions reductions by 2050; and established the Committee on

	Climate Change (“CCC”).
15 January 2009	Government published a decision paper “ <i>Adding Capacity at Heathrow: Decisions Following Consultation</i> ” (“the 15 January 2009 Decisions”). This confirmed policy support for a new third runway at Heathrow.
8 December 2009	CCC published “ <i>Meeting the UK aviation target – options for reducing emissions to 2050</i> ” ( <b>Appx/576</b> ).
26 March 2010	High Court judgment on legal challenge to the 15 January 2009 Decision: <b><i>R (Hillingdon and others) v Secretary of State for Transport</i></b> [2010] EWHC 626.
6 May 2010	General Election held, following which the Coalition Government published its programme for Government which included a commitment to cancel the scheme for a third runway at Heathrow.
2012	The Doha Amendment to the Kyoto Protocol is adopted.
2012	International aviation emissions from the UK included in the EU Emissions Trading System in relation to intra-EEA flights.
2012	UNFCCC Conference of the Parties (“COP”) commissions an expert review (‘Structured Expert Dialogue’) of the adequacy of the 2°C temperature limit.
7 September 2012	Airports Commission (“AC”) established.
March 2013	The SST issued an Aviation Policy Framework (“the APF”) which sets out long-term aviation policy ( <b>Appx/633</b> ).
April 2013	The AC published a discussion paper on aviation and climate change ( <b>Appx/657</b> ).
17 December 2013	The AC published an interim report (“the AC Interim Report”) ( <b>Appx/698</b> ).
January 2014	The AC consulted on a draft Appraisal Framework.
April 2014	The AC adopted the Appraisal Framework.
2 September 2014	The AC published conclusions ruling out Thames Estuary options.
November 2014	The AC published a consultation on its assessments of short-listed schemes. This included assessments of carbon, biodiversity and noise.
8 May 2015	The AC undertook further consultation.
May 2015	Final Report of the Structured Expert Dialogue which concludes that “ <i>The ‘guardrail’ concept, in which up to 2 °C of warming is considered</i> ”

	<i>safe, is inadequate</i> ”(Appx/926).
1 July 2015	The AC final report is published (Appx/928).
12 December 2015	Paris Agreement adopted.
14 December 2015	The SST announced that the Government accepted the case for airport expansion; agreed with, and would further consider, the AC’s short-list of options; and would use the mechanism of an NPS under the PA 2008 to establish the policy framework within which to consider an application by a developer for development consent.
March 2016	WSP produces ‘Appraisal of Sustainability: Airports NPS Scoping Report’ (“the draft Scoping Report”) (Appx/1010), which was sent to the consultation bodies as required under regulation 12(5) of the Environmental Assessment of Plans and Programmes Regulations 2004/1633.
14 March 2016	Rt. Hon. Andrea Leadsom MP, the then Minister of State for Energy, said in a debate in the House of Commons during the Report stage of the Energy Bill:  <i>“The Government believe[s] we will need to take the step of enshrining the Paris goal of net zero emissions in UK law—the question is not whether, but how we do it, and there is an important set of questions to be answered before we do.”</i> (Appx/1062).
24 March 2016	Rt. Hon. Amber Rudd MP, the then Secretary of State for Energy and Climate Change, stated in answer to an Oral Question:  <i>“As confirmed last Monday during the Report stage of the Energy Bill, the Government will take the step of enshrining into UK law the long-term goal of net zero emissions, which I agreed in Paris last December. The question is not whether we do it but how we do it.”</i> (Appx/1064).
13 October 2016	CCC published “UK climate action following the Paris Agreement” (Appx/1067).
25 October 2016	The SST announced that the Government’s preferred option was the NWR scheme at Heathrow (“the October 2016 Preference Decision”).
17 November 2016	Paris Agreement ratified by the UK.
30 January 2017	Judicial review of the October 2016 Preference Decision struck out: <b>R</b>

	<i>(Hillingdon &amp; others) v SST</i> [2017] 1 WLR 2166.
2 February 2017	DfT launched a consultation on the draft ANPS for a period of sixteen weeks.
8 June 2017	General Election.
21 July 2017	DfT published “ <i>Beyond the horizon. The future of UK aviation: A call for evidence on a new strategy</i> ”.
12 October 2017	Government published its “ <i>Clean Growth Strategy</i> ”(Appx/1233).
24 October 2017	A further consultation on the revised draft ANPS is launched.
1 November 2017	Transport Committee appointed to carry out Parliamentary scrutiny of, and an inquiry into, the revised draft ANPS.
December 2017	Plan B commenced judicial review proceedings against the Secretary of State for BEIS alleging an unlawful failure to revise the carbon targets in the CCA 2008 in the light of the Paris Agreement (“the Plan B 2050 Target judicial review”).
8 January 2018 – 25 February 2018	The IPCC’s report into the implications of crossing the threshold of 1.5°C global warming was commissioned by governments in 2015. The draft report was reviewed by governments around the world between 8 January and 25 February 2018.
11 January 2018	Government published “ <i>A Green Future: Our 25 Year Plan to Improve the Environment</i> ”(Appx/1272).
17 January 2018	CCC published a report, “ <i>An independent assessment of the UK’s Clean Growth Strategy</i> ” (Appx/1240).
23 March 2018	Transport Committee published its report in relation to the ANPS, including 25 recommendations.
April 2018	Government published “ <i>Beyond the horizon – The Future of UK Aviation: The Next Steps towards an Aviation Strategy</i> ”(Appx/1288).
17 April 2018	The Government announced at the Commonwealth Heads of Government Meeting that after the IPCC report later that year, it would seek advice from the CCC on the implications of the Paris Agreement for the UK’s long-term emissions reduction targets.
1 May 2018	On 1 May 2018 The Rt Hon Claire Perry MP, on behalf of the Government, informed Parliament that the Government wanted to know how to get to a “ <i>zero-carbon economy by 2050</i> ”, and asked for cross-

	party support for “ <i>something so vital</i> ” ( <b>Appx/1295</b> ).
5 June 2018	DfT published: <ol style="list-style-type: none"> <li>1. the final “Appraisal of Sustainability: Airports National Policy Statement” (<b>Appx/1335</b>);</li> <li>2. the Government response to the consultations on the ANPS (“the Consultation Response”) (<b>Appx/1296</b>); and</li> <li>3. a response to the Transport Committee’s report, in a document entitled the “<i>Government response to the Transport Committee report on the revised draft ANPS</i>” (“the Transport Committee Response”).</li> </ol>
14 June 2018	The Chairman (Lord Deben) and Deputy Chair (Baroness Brown) of the CCC wrote to the SST in relation to the ANPS ( <b>Appx/1333</b> ).
20 June 2018	The SST replied to Lord Deben ( <b>Appx/1420</b> ).
25 June 2018	The SST made 5 key pledges to Parliament.  Debate and vote on the proposed ANPS in the House of Commons. MPs voted in favour of the ANPS by 415 votes to 119, a majority of 296 with support from across the House.
26 June 2018	The SST designated the ANPS under s. 5(1) of the PA 2008.  On the same day, DfT published: <ol style="list-style-type: none"> <li>a. “<i>The Airports National Policy Statement: Post Adoption Statement</i>” setting out how environmental considerations and consultation responses were integrated in to the final ANPS (<b>Appx/1480</b>).</li> <li>b. A relationship framework document, setting out how the DfT and HAL would work together to achieve additional airport capacity through airport expansion, necessary airspace modernization and related matters.</li> </ol>
28 June 2018	CCC published its 2018 Progress Report to Parliament on reducing UK emissions.
20 July 2018	Supperstone J. refused permission in the Plan B 2050 Target judicial review following oral hearing: [2018] EWHC 1892 (Admin).
8 October 2018	The IPCC Special Report on Global Warming of 1.5°C was published ( <b>Appx/1527</b> ).
17 December 2018	Government published the green paper <i>Aviation 2050: the future of UK aviation</i> for consultation ( <b>Appx/1531</b> ).
11 January 2019	Secretary of State files a position Statement for Pre-Trial Review in Divisional Court proceedings.

15 January 2019	Pre-Trial Review in Divisional Court proceedings.
22 January 2019	Asplin LJ. refused permission to appeal against the refusal of permission to apply for judicial review in the Plan B 2050 Target judicial review.
31 January 2019	Holgate J requires the Secretary of State to file amended Grounds of Resistance in FOE and Plan B claims.
1 February 2019	The Secretary of State files amended Grounds of Resistance in the FoE and Plan B claims ( <b>Appx/443/475</b> ).
1 May 2019	Parliament approves motion to declare a climate and environmental emergency.
2 May 2019	CCC published 'Net Zero – The UK's contribution to stopping global warming' ( <b>Appx/1542</b> ).  Plan B requested a review of the ANPS under s. 6 of the PA 2008 in light of the CCC's report ( <b>Appx/1573</b> ).
8 May 2019	DfT responded to Plan B's request of 2 May 2019 indicating that careful consideration will be given to this request but that it may be necessary to consider the CCC's recommended policy approach on aviation which is due to be published later in the year ( <b>Appx/1575</b> ).
12 June 2019	Government responds to CCC report and lays before Parliament a draft statutory instrument to amend s.1 of the CCA 2008 to introduce a net zero target by 2050.
27 June 2019	Climate Change Act 2008 (2050 Target Amendment) Order 2019/1056 came into force amending the carbon target in s.1(1) to at least 100% by 2050 (compared to a 1990 baseline).
27 February 2020	Court of Appeal judgment handed down.

## **ANNEX 2: PROCEDURAL HISTORY**

UKSC 2020/0042

IN THE SUPREME COURT  
BETWEEN

**HEATHROW AIRPORT LIMITED**

**Appellant**

**-and-**

**(1) FRIENDS OF THE EARTH LIMITED  
(2) PLAN B EARTH**

**Respondents**

---

**PROCEDURAL HISTORY**

---

<b>26 June 2018</b>	Airports National Policy Statement designated by the Secretary of State for Transport (“SST”)
<b>23 July 2018</b>	Pre-action protocol letter sent by Friends of the Earth (“FoE”)
<b>31 July 2018</b>	SST responds to pre-action protocol letter by FoE
<b>1 August 2018</b>	Pre-action protocol letter sent by Plan B
<b>3 August 2018</b>	SST responds to pre-action protocol letter by Plan B
<b>6 August 2018</b>	FoE and Plan B claims filed
<b>9 August 2018</b>	FoE and Plan B claims issued
<b>16 August 2018</b>	Order granted extending time for filing of Acknowledgments of Service (“AoS”)
<b>21 August 2018</b>	Arora Holdings Ltd (“Arora”) apply to be an interested party in both claims
<b>4 September 2018</b>	SST and Heathrow Airport Limited (“HAL”) lodge AOSs in both claims

<b>12 September 2018</b>	Order of Holgate J, adjourning permission applications to an oral hearing which would also consider case management. Arora joined as an interested party
<b>4 October 2018</b>	Following the hearing the Court orders a rolled-up hearing and makes other detailed directions (sealed on 8 October 2018)
<b>1 November 2018</b>	Amended grounds of claim and evidence served in both claims
<b>29 November 2018</b>	SST and HAL serve Detailed Grounds of Defence and evidence in both claims
<b>21 December 2018</b>	Replies and reply evidence filed and served by the claimants, along with applications to rely on reply evidence and applications for specific disclosure.
<b>9 January 2019</b>	Rejoinder evidence filed by SST along with applications to rely on the same
<b>11 January 2019</b>	Secretary of State files Position Statement for Pre-Trial Review in Divisional Court proceedings.
<b>15 January 2019</b>	Pre-trial review hearing and further order by Holgate J (order sealed 21 January 2019; dated 15 January 2019).
<b>31 January 2019</b>	E-mail from Holgate J., following emails to the Judge from FoE and Plan B, requiring that, in light of the SST's "concession/limitation of issues" made at the pre-trial review hearing, the SST amend his Detailed Grounds within 24 hours in order to set this out in one place in its pleadings.
<b>1 February 2019</b>	The Secretary of State files amended Grounds of Resistance in the FoE and Plan B claims.
<b>11 – 15 and 18-19 March 2019</b>	Hearing before Divisional Court of Hickinbottom LJ and Holgate J
<b>1 May 2019</b>	Divisional Court hands down judgment
<b>8 May 2019</b>	FoE and Plan B file Appellant's Notices in the Court of Appeal; FoE did not include skeleton argument as required by Part 52C PD (para 3(3)(g), but did inform the Civil Appeals Office in its Appellant's Notice that it expected the skeleton argument to be supplied within 14 days.
<b>10 May 2019</b>	SST files written submissions in Divisional Court on consequential matters

<b>17 May 2019</b>	Letter from the Civil Appeals Office to FoE, explaining that it should write to seek an extension of time for the skeleton argument.
<b>20 May 2019</b>	FoE file and serve skeleton in support of permission to appeal and (as per the Civil Appeals Office's letter) seek an extension from the court citing reasons for why the skeleton could not be filed with the Appellant's Notice.
<b>24 May 2019</b>	SST and HAL write to the Civil Appeals Office requesting expedition in accordance with the Part 52C PD para. 26
<b>29 May 2019</b>	SST files and serves Statement of Reasons objecting to the grant of permission to appeal
<b>22 July 2019</b>	In relation to FoE and Plan B applications Lindblom LJ ordered that the application for permission to appeal (and, if permission to apply for judicial review were granted on that application, the claim itself) would be heard together with other appeals filed
<b>16 September 2019</b>	WWF-UK file application for permission to intervene [ <i>note CoA judgment wrongly has this date as 18 September</i> ]
<b>19 September 2019</b>	SST files written objection to WWF application to Intervene. HAL writes in support of SST objection to WWF application on 20 September 2019
<b>25 September 2019</b>	WWF files reply to SST objection.
<b>4 October 2019</b>	Lindblom LJ granted WWF permission to intervene in writing only, with written submissions to be filed and served by 10 October 2019, and gave the parties permission to respond in writing by 16 October 2019
<b>7 October 2019</b>	SST files and serves written application to vary order of 4 October 2019 seeking an extension of time to respond to WWF submissions until after the hearing
<b>8 October 2019</b>	Order of Lindblom LJ granting extension to deadline for response in writing to WWF's submissions to 1 November 2019
<b>15 October 2019</b>	Order of Lindblom LJ granting permission to all other parties to respond to SST's response to WWF submissions by 6 November 2019

<b>22 – 25 October 2019</b>	Court of Appeal hearing before Lindblom, Singh and Haddon-Cave LJ
<b>27 February 2020</b>	Order of Lindblom LJ, Singh LJ and Haddon-Cave LJ in both claims, setting aside the order of the Divisional Court, granting permission to apply for judicial review, ordering relief and refusing HAL and Arora's applications for permission to appeal to the Supreme Court.
<b>28 February 2020</b>	HAL files and serves application for permission to appeal to the Supreme Court
<b>2 March 2020</b>	HAL files additional documents pursuant to rule 14(2) of Supreme Court Rules
<b>6 March 2020</b>	FoE file response to HAL application for permission to appeal
<b>7 March 2020</b>	Plan B file response to HAL application for permission to appeal
<b>6 May 2020</b>	Order of Supreme Court granting HAL permission to appeal
<b>18 May 2020</b>	HAL files and serves notice of intention to proceed with the appeal
<b>20 May 2020</b>	WWF write to the Supreme Court confirming that they do not intend to seek permission to intervene in the proceedings
<b>1 June 2020</b>	Plan B file and serve acknowledgement of HAL's notice of intention to proceed
<b>2 June 2020</b>	FoE file and serve acknowledgement of HAL's notice of intention to proceed