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Case Nos: (1) AC-2025-LON-003791
(2) AC-2025-LON-003839

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/06/2026

Before :

MR JUSTICE MOULD

- -

Between :

(1) PETER BARCLAY **(2) COMMUNITIES AGAINST GATWICK NOISE EMISSIONS**	**Claimants**
- and -	
SECRETARY OF STATE FOR TRANSPORT	**Defendant**
-and –	
GATWICK AIRPORT LIMITED	**Interested Party**

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- -

Alex Goodman KC and Gethin Thomas (instructed by **Goodenough Ring Solicitors**) for the **First Claimant**
Estelle Dehon KC, Ruchi Parekh, Odette Chalaby and Lois Lane (instructed by **Leigh Day**) for the **Second Claimant**
Nigel Pleming KC, Rose Grogan and Daniel Kozelko (instructed by **Government Legal Department**) for the **Defendant**
James Strachan KC and Victoria Hutton (instructed by **Herbert Smith Freehills Kramer**) for the **Interested Party**

Hearing dates: 20, 21, 22 and 23 January 2026

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Approved Judgment

This judgment was handed down remotely at 11am on Tuesday 23 June 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE MOULD

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Introduction

1. There are two claims before the court. In each case, the Claimants apply for permission to bring a claim for judicial review of the Secretary of State for Transport's **["SST"]** decision of 21 September 2025 to make the Gatwick Airport (Northern Runway Project) Development Consent Order 2025 **["the DCO"]**.

2. Planning permission was granted in 1979 for the development of a northern runway at Gatwick Airport. A condition was imposed at that time which prohibited the use of the northern runway simultaneously with the main runway at the airport. An agreement to the same effect with West Sussex County Council expired in 2019.

3. Gatwick Airport has expanded significantly in the period since the 1970s. The main runway was extended in the early 1970s. A north terminal was constructed in the 1980s. The main runway was again extended in 1998. In the early 2000s both the south and north terminals were upgraded. Further expansion followed in 2016 with the rebuilding of Pier 1 at the south terminal.

4. In 2009 Gatwick Airport served some 31 million passengers per annum **["mppa"]**. By 2019, the airport served more than 46 mppa. The airport operator, Gatwick Airport Limited **["GAL"]**, considers that passenger and airline demand at Gatwick Airport will return to pre-pandemic levels over the course of the next few years and continue to grow thereafter.

5. The DCO authorises development **["the proposed development"]** which will enable dual runway operations at Gatwick Airport through altering the existing northern runway, lifting restrictions on the northern runway's use and delivering the upgrades or additional facilities and infrastructure required to increase the passenger throughput capacity of the airport. This includes substantial upgrade works to certain surface access routes which lead to the airport. In brief summary, the proposed development consists of the construction, operation and use of works including airfield works, airport support facilities, terminal works, hotels offices and car parking, surface access works, highways works and other associated and ancillary works. The authorised works are set out in schedule 1 to the DCO.

6. Currently, the airport operates with a single main runway and two terminals. The existing northern runway is only used as such when the main runway is unavailable. Otherwise, the northern runway is used as a parallel taxiway for the main runway. A key element of the proposed development is the repositioning of the existing northern runway 12 metres to the north of its current position (measured from the centre line of the existing northern runway). Together with the lifting of the current restrictions on its use, the result will be to enable dual runway operations at Gatwick Airport. All arriving flights will use the existing main runway. Departing flights will be shared between the existing main runway and the repositioned northern runway, with the latter being used mainly for smaller aircraft. There will be controlled dependency between the two runways to enable safe crossing of the northern runway by arrival flights. These and other elements of the proposed development will enable increased airfield capacity and management of the growth in aircraft and passenger operations at the airport for which GAL is seeking to plan through promotion of the Northern Runway Project.

7. The proposed development is a nationally significant infrastructure project **["NSIP"]** as defined in section 14 of the Planning Act 2008 **["the 2008 Act"]**, comprising as it does both highways and airports related development falling respectively within the scope of sections 22 and 23 of the 2008 Act. GAL made the application for development consent on 6 July 2023. The application was accepted for examination on 3 August 2023. The examination began on 27 February 2024 and was completed on 27 August 2024.

8. The Examining Authority's **["ExA"]** report **["the Report"]** is dated 27 November 2024. The ExA concluded that under the draft DCO submitted for approval by GAL, moderate levels of harm would be caused to matters of greenhouse gas **["GHG"]** emissions, traffic and transport, and noise, with some harm to matters relating to the water environment and health and well-being. The ExA concluded that the harm caused by the proposed development would outweigh its benefits. The ExA recommended refusal of the application for development consent on the basis of the draft DCO submitted by GAL. However, the ExA went on to recommend an alternative DCO which introduced a wide range of detailed planning controls on the operation of the proposed development, such that harm levels would be reduced in matters of traffic and transport; and controlled in relation to noise, the water environment and health and well-being. Additional benefits would also result from good design. On the basis of the alternative DCO, the ExA concluded that the benefits of the proposed development would now outweigh harm and so recommended approval. The ExA advised that should the SST be minded to accept their recommendation, she should note that not all of the proposed changes in the recommended alternative DCO had been shared with GAL or other interested parties.

9. On 27 February 2025, the SST issued a letter **["the MDL"]** stating that she was minded to agree with the ExA that development consent could be granted on the basis of their recommended alternative DCO. However, the SST considered that she was not yet in a position to make a final decision. Instead, the SST invited GAL to respond on certain matters raised in the MDL. GAL's response would then be published and other interested parties invited to respond in turn on those matters.

10. Following the completion of that procedure, on 21 September 2025 the SST issued her decision letter **["the DL"]** granting development consent for the proposed development. The DCO authorising the Northern Runway Project in the terms concluded upon by the SST (which further amend the draft DCO recommended by the ExA) was made on the same date.

The Claimants

11. The Claimant in the first claim before the court, Mr Peter Barclay, is a local resident who participated in the examination before the ExA both in an individual capacity and as Chair of the Gatwick Area Conservation Campaign **["GACC"]**. GACC was established in 1968. It is an unincorporated voluntary association that seeks to protect and to improve the environment in the area affected by the operation of Gatwick Airport. GACC has particular regard to noise, congestion, air quality impacts and light pollution resulting from or associated with the operation of the airport. GACC's objectives also include the diminution of wider environmental impacts of airport operations and the activities facilitated by those operations, such as contributing to the impact of climate change. Mr Barclay says that in addition to participating actively

throughout the examination process, GACC submitted written representations in response to the MDL. He also draws attention to GACC's commissioning and submission of a report by the New Economics Foundation **["NEF"]** analysing GAL's business case for the proposed development.

12. The Claimant in the second claim is Communities Against Gatwick Noise Emissions **["CAGNE"]**. CAGNE is a community group formed in February 2014 to address issues arising in relation to Gatwick Airport, particularly in relation to the impact of noise levels, harm to the environment and airspace. CAGNE is an unincorporated association. CAGNE's Chair, Ms Sally Pavey states that CAGNE campaigns on a broad range of issues arising in relation to proposed development at Gatwick Airport, including flight paths, environmental concerns, surface access and noise. CAGNE is also concerned to address other issues relating to the aviation industry, such as worldwide climate change and air quality. CAGNE has consistently opposed the provision of a second runway at Gatwick Airport. Ms Pavey says that CAGNE participated actively throughout the examination before the ExA, commissioning and submitting expert evidence on noise, surface transport and air quality. CAGNE submitted extensive written representations in response to the Secretary of State's MDL.

The Grounds of Challenge

13. Mr Barclay advances the following five grounds of challenge to the SST's decision to grant development consent for the proposed development –

    (1) The SST failed properly to understand the Airports National Policy Statement (June 2018) **["the ANPS"]** and/or failed to have regard to relevant policy of the ANPS concerning expansion of Gatwick Airport.

    (2) In granting development consent pursuant to section 114 of the 2008 Act, the SST was obliged but failed to exercise her power so as to promote the policies and objects of the statutory scheme.

    (3) In making the DCO the SST acted in breach of certain provisions of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 **["the EIA Regulations"]** and/or failed to reach conclusions on the DCO and/or the adequacy of the environmental impact assessment **["EIA"]** for the proposed development in a procedurally rational manner; or alternatively, the SST's conclusions were *Wednesbury* unreasonable.

    (4) The SST's consideration of need and economic benefits was procedurally irrational and/or *Wednesbury* unreasonable.

    (5) The SST erred in her interpretation of the Aviation Policy Framework (March 2013) **["the APF"]** and ANPS policies governing aviation noise and/or in any event, reached irrational conclusions on noise.

14. CAGNE advance the following six grounds of challenge to the SST's decision to grant development consent for the proposed development –

(1) The SST took an irrational approach to the significance of GHG emissions and/or failed to give adequate reasons for her approach to that issue.

(2) The SST erred in law in her consideration of GHG emissions from international inbound flights under the EIA Regulations.

(3) The SST erred in law in her consideration of non-carbon dioxide (CO2) emissions under the EIA Regulations.

(4) The SST failed to take into account material risks to the Jet Zero Strategy (July 2022) **["JZS"]** and/or to comply with her *Tameside* duty of reasonable inquiry and/or took an irrational approach to the JZS.

(5) The SST unlawfully failed to weigh harmful noise impacts in the planning balance.

(6) The SST imposed an unlawful requirement in schedule 2 to the DCO in respect of Work No 44 (wastewater treatment works).

The proceedings

15. On 10 December 2025 I ordered that the applications for permission in both claims be listed together as a "rolled-up" hearing, the effect of which is that the court will proceed immediately to determine the claims if permission is granted. That rolled-up hearing began on 20 January 2026 and continued until 23 January 2026.

16. At the hearing Mr Barclay was represented by Mr Alex Goodman KC and Mr Gethin Thomas. CAGNE was represented by Ms Estelle Dehon KC and Dr Lois Lane (and in writing by Ms Ruchi Parekh and Ms Odette Chalaby). The SST was represented by Mr Nigel Pleming KC and Mr Daniel Kozelko (and in writing by Ms Rose Grogan (as she then was)). GAL was represented by Mr James Strachan KC and Ms Victoria Hutton. I am grateful to them all for their very helpful oral and written submissions.

Legal Framework

Deciding applications for development consent orders

17. Decisions on applications for orders granting development consent are made by the Secretary of State under the statutory arrangements enacted in Part 6 of the 2008 Act. Where a national policy statement **["NPS"]** has effect in relation to development of the description to which the application relates, the decision is made in accordance with section 104 of the 2008 Act –

"This section applies in relation to an application for an order granting development consent if a national policy statement has effect in relation to development of the description to which the application relates.

(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"),

(aa) the appropriate marine policy documents (if any), determined in accordance with section 59 of the Marine and Coastal Access Act 2009;

(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.

(7) This subsection applies if the Secretary of State is satisfied that the adverse impact of the proposed development would outweigh its benefits.

(8) This subsection applies if the Secretary of State is satisfied that any condition prescribed for deciding an application otherwise than in accordance with a national policy statement is met.

(9) For the avoidance of doubt, the fact that any relevant national policy statement identifies a location as suitable (or potentially suitable) for a particular description of development does not prevent one or more of subsections (4) to (8) from applying".

18. Where no such NPS has effect so that section 104 does not apply in relation to the application, the decision must be made in accordance with section 105 of the 2008 Act –

"105(1) This section applies in relation to an application for an order granting development consent if section 104 does not apply in relation to the application.

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

(a) 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),

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

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

19. Where the Secretary of State has decided an application for an order granting development consent, the Secretary of State must either make an order granting such consent or refusing it: section 114(1) of the 2008 Act. Section 116 of the 2008 Act requires the Secretary of State to prepare a statement of their reasons for deciding to make or to refuse such an order, as the case may be. A copy of that statement is to be provided to each interested party.

20. Section 119 of and schedule 4 to the 2008 Act provide for the correction of errors in development consent decisions.

21. Section 120 of the 2008 Act empowers the Secretary of State when granting a development consent order to impose requirements in connection with the development for which consent is granted.

Legal challenges to development consent orders

22. Section 118 of the 2008 Act provides for a legal challenge to be brought against the grant of or refusal to make a development consent order. Such a challenge must be brought by way of a claim for judicial review. The principles upon which the court acts in determining such a claim for judicial review are summarised at [60]-[67] and Appendix 1 to the judgment of Holgate J (as he then was) in R (Save Stonehenge World Heritage Site Limited) v Secretary of State for Transport [2022] PTSR 74 –

(1) The interpretation of planning policy is a matter for the court. Policy statements are to be interpreted objectively in accordance with the language used, read in its proper context. See Tesco Stores Ltd v Dundee City Council [2012] PTSR 983 at [17]-[19] and Hopkins Homes Ltd v Secretary of State for Communities and Local Government [2017] 1 WLR 1865 [**"*Hopkins Homes*"]** at [22]-[23].

(2) Issues of interpretation of policy are to be distinguished from issues of planning judgment in the application of policy. The former are appropriate for judicial analysis; whereas the latter are for the planning decision-maker, whose exercise of planning judgment is subject only to review on public law grounds. See *Hopkins Homes* at [24]-[26].

(3) A planning decision maker does not fail to take a relevant consideration into account unless he was under an obligation to do so. Where, therefore, it is alleged that the decision maker has failed to take into account a material consideration, it is insufficient for the claimant simply to say that the decision maker has failed to take into account that consideration. For the allegation to succeed, it is necessary for the claimant to show that the decision maker was expressly or impliedly required by the legislation or by a policy which had to be applied to take the particular consideration into account; or that on the facts of the case, the matter was so obviously material, that it was irrational not to have taken it into account. See R

(Friends of the Earth Ltd) v Secretary of State for Transport [2021] PTSR 190 at [116]-[121].

(4) The weight to be attached to any material consideration and all matters of planning judgment is within the exclusive jurisdiction of the decision maker. They are not for the court. Provided that a planning authority does not lapse into *Wednesbury* irrationality, in determining an application for planning permission that authority is free to give material considerations whatever weight it thinks fit, or no weight at all. See Tesco Stores Limited v Secretary of State for the Environment [1995] 1 WLR 759, 780 F-H.

(5) Decision letters are addressed to informed parties who understand the issues in the case. They should be read fairly and as a whole, in a straightforward and down to earth manner, without excessive legalism or criticism. See St Modwen Ltd v Secretary of State for Communities and Local Government [2018] PTSR 746 at [6] and Clarke Homes Ltd v Secretary of State for the Environment (1993) 66 P&CR 263, 271-2.

(6) Reasons given for planning decisions must be intelligible, adequate and enable the reader to understand why the matter was decided in the way that it was. Reasons can be briefly stated. There is no requirement to address each and every issue or point made, provided that the reasons explain the decision maker's conclusions on the principal important controversial issues. There is no duty to give reasons for reasons. See South Bucks District Council v Porter (No 2) [2004] 1 WLR 1953 **["*South Bucks*"]** at [36].

Climate change

23. The principal UK legislation addressing climate change is the Climate Change Act 2008 **["the CCA"]**. Section 1(1) of the CCA sets a "net zero" target for the year 2050 for a reduction of GHG emissions from sources in the UK –

"1(1) It is the duty of the Secretary of State to ensure that the net UK carbon account for the year 2050 is at least 100% lower than the 1990 baseline".

24. The net zero target reflects the terms of the Paris Agreement on Climate Change. The CCA provides for a national system of carbon budgeting. Successive carbon budgets are milestones along the way to achieving the net zero target by 2050. Section 4(1) places a duty on the Secretary of State to set a carbon budget for each succeeding period of five years and to ensure that the net amount of UK emissions during a budgetary period does not exceed this budget. By virtue of section 8(2), carbon budgets must be set with a view to meeting the target for 2050.

25. Section 13 of the CCA requires the Secretary of State to prepare proposals and policies for meeting the carbon budgets set under the CCA –

"13(1) The Secretary of State must prepare such proposals and policies as the Secretary of State considers will enable the carbon budgets that have been set under this Act to be met.

(2) The proposals and policies must be prepared with a view to meeting –

(a) the target in section 1 (the target for 2050),…".

26. Each time a new carbon budget is set, the Secretary of State must lay before Parliament a report setting out their proposals and policies for meeting the carbon budgets for the current and future budgetary periods; and the timescales over which those proposals are expected to take effect. The report must explain how the proposals and policies set out in the report affect different sectors of the economy. See section 14 of the CCA. There is a duty to report to Parliament each year with a statement giving details of the amount of UK emissions for the year: section 18 of the CCA. Sections 32 to 38 of the CCA provide for the formation of the Committee on Climate Change **["the CCC"]** which has duties to give advice to the Secretary of State and to report to Parliament on progress towards meeting the carbon budgets.

27. In R (Global Feedback Limited) v Secretary of State for Environment, Food and Rural Affairs [2024] 1 WLR 2923 **["*Global Feedback*"]** at [76]-[79], the Court of Appeal held that Part 1 of the CCA enacts a coherent set of provisions under which a comprehensive package of functions are conferred on the Secretary of State for Energy Security and Net Zero **["SSESNZ"]** –

"76 We have stressed the need to construe section 13 in its statutory context. It belongs to a coherent set of provisions in Part 1 of the Climate Change Act, aptly described by Ms Galina Ward K.C. (who appeared on behalf of both Secretaries of State) as a "total package". Taken together, those provisions demonstrate the comprehensive nature of the various functions given to "the Secretary of State" under Part 1.

77 Of particular significance, in our view, are sections 8, 10 and 14. Alongside section 13 they create a series of inter-related duties. They must be read with each other. The provision for the setting of carbon budgets in section 8 requires action at the national level and for the economy as a whole. The duty is to set a carbon budget for a budgetary period with a view to meeting the target for 2050 in section 1, and the requirements relating to the level of carbon budgets in section 5. Section 10 prescribes the matters that must be taken into account by the Secretary of State "in coming to any decision under [Part 1] relating to carbon budgets", which includes his duty to "prepare proposals and policies for meeting carbon budgets" in section 13. Section 14 reinforces that obligation in section 13 with the duty of the Secretary of State to report to Parliament on the "proposals and policies" he has prepared to enable carbon budgets to be met. It stipulates the required content of the report, and the arrangements for consultation with other authorities. As is made plain by section 14(2)(a), this duty relates to the Secretary of State's "current" proposals and policies, not to those that may come into being in the future, or that are inchoate or hypothetical.

78 These provisions are all premised on carbon budgets for a particular budgetary period being set for the whole of the UK, and on the assumption that one and the same Secretary of State will carry out the functions they contain. The statutory scheme envisages the duties laid down in Part 1 of the Climate Change Act being discharged by one Secretary of State, with whom responsibility lies for making the necessary judgments and undertaking the necessary steps. That Secretary of State is the Secretary of State who is charged with the conduct of the national response to climate change and the setting of carbon budgets. By contrast with the position in Northern Ireland under section 13 of the Climate Change Act (Northern Ireland) 2022, this statutory

scheme does not contemplate the splitting of that work between different ministers and different departments of government.

79 Section 13 itself is directed to the performance by the Secretary of State of the obligation imposed upon him to prepare such proposals and policies as he considers, in the exercise of his own judgment, will enable the carbon budgets to be met. We agree with, and gratefully adopt, Holgate J.'s lucid exposition of the section 13 duty to that effect in his judgment in [R (Friends of the Earth) v Secretary of State for Business, Energy and Industrial Strategy [2023] 1 WLR 225]".

The EIA Regulations

28. Regulation 4 of the EIA Regulations applies to applications for an order granting development consent for EIA development received by the Secretary of State. The proposed development is EIA development. Regulation 4(2) prohibits the Secretary of State from making an order granting development consent unless an EIA has been carried out in respect of that application.

29. What constitutes an EIA is stated in regulation 5 of the EIA Regulations –

"5(1) The environmental impact assessment ("the EIA") is a process consisting of –

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

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

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

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

(a) population and human health;

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

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

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

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

(3) The effects referred to in paragraph (2) on the factors set out in that paragraph must include the operational effects of the proposed development, where the proposed development will have operational effects.

(4) The significant effects to be identified, described and assessed under paragraph (2) include, where relevant, the expected significant effects arising from the vulnerability of the proposed development to major accidents or disasters that are relevant to that development.

(5) The Secretary of State or relevant authority, as the case may be, must ensure that they have, or have access as necessary to, sufficient expertise to examine the environmental statement or updated environmental statement, as appropriate".

30. Regulation 14 of the EIA Regulations requires an application for an order granting development consent to be accompanied by an environmental statement **["ES"]**. Regulation 14(2)-(4) states –

"An environmental statement is a statement which includes at least -

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

(b) a description of the likely significant effects of the proposed development on the environment;

(c) a description of any features of the proposed development, or measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment;

(d) a description of the reasonable alternatives studied by the applicant, which are relevant to the proposed development and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the development on the environment;

(e) a non-technical summary of the information referred to in sub-paragraphs (a) to (d); and

(f) any additional information specified in Schedule 4 relevant to the specific characteristics of the particular development or type of development and to the environmental features likely to be significantly affected.

(3) The environmental statement referred to in paragraph (1) must –

(a) where a scoping opinion has been adopted, be based on the most recent scoping opinion adopted (so far as the proposed development remains materially the same as the proposed development which was subject to that opinion);

(b) include the information reasonably required for reaching a reasoned conclusion on the significant effects of the development on the environment, taking into account current knowledge and methods of assessment; and

(c) be prepared, taking into account the results of any relevant UK environmental assessment, which is reasonably available to the applicant with a view to avoiding duplication of assessment.

(4) In order to ensure the completeness and quality of the environmental statement –

(a) the applicant must ensure that the environmental statement is prepared by competent experts; and

(b) the environmental statement must be accompanied by a statement from the applicant outlining the relevant expertise or qualifications of such experts".

31. Regulation 21(1) of the EIA Regulations requires that when deciding whether to make an order granting development consent for EIA development, the Secretary of State must do the following –

"(a) examine the environmental information;

(b) reach a reasoned conclusion on the significant effects of the proposed development on the environment, taking into account the examination referred to in sub-paragraph (a) and, where appropriate, any supplementary examination considered necessary;

(c) integrate that conclusion into the decision as to whether an order is to be granted; and

(d) if an order is to be made, consider whether it is appropriate to impose monitoring measures".

32. Regulation 3(1) defines "environmental information" as meaning –

"*the environmental statement (or in the case of a subsequent application, the updated environmental statement), including any further information and any other information, any representations made by any body required by these Regulations to be invited to make representations and any representations duly made by any other person about the environmental effects of the development and of any associated development".*

33. By virtue of regulation 30(2)(b)(aa), the Secretary of State's reasoned conclusion on the significant effects of the development on the environment must be included as information given to the applicant for the development consent order when notifying the Secretary of State's decision to approve the application.

34. Schedule 4 to the EIA Regulations specifies information for inclusion in an ES. Paragraph 1 requires a description of the development. That description should include an estimate by type and quantity of expected emissions such as noise emissions. Paragraph 2 concerns reasonable alternatives. Paragraph 3 requires a description of the existing and future environmental baseline. Paragraph 4 requires a description of the factors specified in regulation 5(2) likely to be significantly affected by the development, including *"climate (for example greenhouse gas emissions, impacts relevant to adaptation)"*. Paragraph 5 requires -

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

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

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

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

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

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

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

(g) the technologies and the substances used".

35. Schedule 4 further requires that –

"The description of the likely significant effects on the factors specified in regulation 5(2) should cover the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the development".

36. Where a public authority has the function of deciding whether to grant planning permission for EIA development under the EIA regulations, it is for that authority to decide whether the information contained in the document presented as an environmental statement is sufficient to meet the requirements of the EIA Directive. The public authority's decision is subject to review on normal *Wednesbury* principles. See R (Friends of the Earth) v Heathrow Airport Ltd [2021] PTSR 190 SC at [142] citing R (Blewett) v Derbyshire County Council [2004] Env LR 29 at [32]-[33]. Moreover –

"143. ... [In Blewett] Sullivan J observed (para 39) that the process of requiring that the environmental statement is publicised and of public consultation "gives those persons who consider that the environmental statement is inaccurate or inadequate or incomplete an opportunity to point out its deficiencies". The EIA Directive and Regulations do not impose a standard of perfection in relation to the contents of an environmental statement in order for it to fulfil its function in accordance with the Directive and the Regulations that it should provide an adequate basis for public consultation. At para 41 Sullivan J warned against adoption of an "unduly legalistic approach" in relation to assessment of the adequacy of an environmental statement and said:

"... The [EIA] Regulations should be interpreted as a whole and in a common-sense way. The requirement that 'an [environmental impact assessment] application' (as defined in the Regulations) must be accompanied by an environmental statement is not intended to obstruct such development. As Lord Hoffmann said in R v North Yorkshire County Council, Ex p Brown [2000] 1 AC 397, at p 404, the purpose is 'to ensure that planning decisions which may affect the environment are made on the basis of full

information'. In an imperfect world it is an unrealistic counsel of perfection to expect that an applicant's environmental statement will always contain the 'full information' about the environmental impact of a project. The Regulations are not based upon such an unrealistic expectation. They recognise that an environmental statement may well be deficient, and make provision through the publicity and consultation processes for any deficiencies to be identified so that the resulting 'environmental information' provides the local planning authority with as full a picture as possible. There will be cases where the document purporting to be an environmental statement is so deficient that it could not reasonably be described as an environmental statement as defined by the Regulations ..., but they are likely to be few and far between."

Lord Hoffmann (with whom the other members the Appellate Committee agreed on this issue) approved this statement in R (Edwards) v Environment Agency [2008] UKHL 22; [2008] 1 WLR 1587, para 38".

37. R (Finch) v Surrey County Council [2024] PTSR 988 **["*Finch*"]** concerned a planning permission for an oil extraction project. The question for the Supreme Court was whether the GHG emitted *"downstream"* of the production process when following refinement, the extracted oil was used by consumers, formed part of the *"indirect significant effects"* of the project and so fell within the scope of EIA under the requirements of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. The majority of the Court held that those downstream effects were effects of the project. The question was one of causation. It was certain knowledge that all of the oil extracted from operation of the project would be burnt and release GHGs emissions into the atmosphere. The quantity of those GHG emissions was capable of reasonable estimation and, on that basis, fell to be assessed as part of the indirect effects of the oil extraction project on the environment. At [7] Lord Leggatt JSC said –

"7. ... It is agreed that the project under consideration involves the extraction of oil for commercial purposes for a period estimated at 20 years in quantities sufficient to make an EIA mandatory. It is also agreed that it is not merely likely, but inevitable, that the oil extracted will be sent to refineries and that the refined oil will eventually undergo combustion, which will produce GHG emissions. It is not disputed that these emissions, which can easily be quantified, will have a significant impact on climate. The only issue is whether the combustion emissions are effects of the project at all. It seems to me plain that they are".

38. At [58] in *Finch*, Lord Leggatt JSC considered the correct approach to judicial review of a finding that an environmental effect is or is not *"significant"* for the purposes of Directive 2011/92/EU (as amended by 2014/52/EU), to which the EIA Regulations give direct effect in relation to EIA of applications for development consent under the 2008 Act –

"58. The term "substantial" is intrinsically vague because, in the absence of some further, more precise criterion, there will be cases in which the question whether the term applies has no answer on which reasonable people who understand the meaning of the term could all be expected to agree. The same is true of the term "significant" which is used in article 3(1) and other provisions of the EIA Directive. Deciding whether an effect of a project on the environment is "significant" clearly requires a value judgment and carries the potential for cases to arise in which different decision-

makers may legitimately reach different conclusions without it being possible to say that any of them has made an error in interpreting or applying the term".

39. At [74]-[75] in *Finch*, Lord Leggatt also explained the need for sufficient evidence for the purpose of describing *"the likely significant effects of project on the environment"* in article 5(1)(b) of and Annex IV to the EIA Directive, which have been transposed in regulations 5 and 14 of and schedule 4 to the EIA Regulations. Lord Leggatt said –

"74 Whatever the precise meaning of the term, to determine that a potential effect is "likely" requires evidence on which to base such a determination. If evidence is lacking so that a possible future occurrence is a matter of speculation or conjecture, then a rational person would not feel able to judge that it is "likely". Such agnosticism is not the same as judging the event to be unlikely. It reflects a belief that there is too little knowledge on which to base a judgment.

75 The need for sufficient evidence on which to base an assessment is not spelt out as a requirement in the EIA Directive. But it can be deduced from the description and purpose of the EIA procedure. …".

Policy Framework

Aviation Policy Framework (March 2013)

40. In July 2012, a draft APF was published for consultation. The Coalition Government proposed a high-level strategy setting out their overall objectives for aviation and the policies to be followed in order to achieve those objectives. On publication of the final APF in March 2013, the Coalition Government stated that the APF would henceforth stand as government policy on aviation, alongside any decisions made following the recommendations of the independent Airports Commission **["the Commission"]**. The Commission had been established in September 2012 with the remit of recommending how the United Kingdom could maintain its status as a global aviation hub and the country's international connectivity into the future, as well as making best use of existing airport capacity in the shorter term. By defining the government's objectives and policies on the impact of aviation, the APF was stated to set out the parameters within which the Commission would work.

41. The APF summarised the main elements of the government's aviation strategy. Under the heading "The benefits of aviation", the government stated –

"In the short to medium term, a key priority is to work with the aviation industry and other stakeholders to make better use of existing runway capacity at all UK airports".

42. In the medium to long term beyond 2020, the APF recognised that –

"There will be a capacity challenge at all of the biggest airports in the South East of England. There is broad consensus on the importance of maintaining the UK's excellent connectivity over the long term, but currently no consensus on how best to do this. A robust and generally agreed evidence base is needed before a decision can be made on the scale and timing of any requirement for additional capacity to maintain the UK's position as Europe's most important aviation hub. This is why the Government established the Airports Commission in 2012".

43. Under the heading "Managing aviation's environmental impacts", the APF stated that aviation's environmental impacts are both global (climate change) and local (primarily noise, as well as air pollution and surface access traffic congestion). The policy objective in relation to climate change was to ensure that the aviation sector makes a significant and cost-effective contribution towards reducing global emissions. The APF recognised that noise is the primary concern of local communities near airports. Paragraph 3.3 stated that the government wanted to strike a *"fair balance"* between the negative impacts of noise on health, amenity and productivity and the positive economic impacts of flights.

Airports Commission

44. On 17 December 2013 the Commission published its interim report, identifying a need for one net additional runway in London and the South East. The Commission also recommended making better use of existing airport infrastructure in the short to medium term.

45. On 1 July 2015, the Commission published its final report. The Commission stated that delivering new capacity by 2030 would be crucial to maintaining the UK's status as a global hub for aviation. The Commission short-listed and examined three alternative schemes as candidates to deliver that new capacity. Those schemes were one new runway at Gatwick Airport, one new North West runway at Heathrow Airport and a westerly extension of the northern runway at Heathrow Airport. The Commission concluded that the proposal for a new North West Runway at Heathrow Airport presented the strongest case. The Commission recommended that scheme to government. The Commission also stated that irrespective of how the government responded to that recommendation, a new runway would not open for at least 10 years. It was imperative that the UK continued to grow its domestic and international connectivity in the intervening period. To do so would require the more intensive utilisation of airports other than Heathrow and Gatwick.

Airports National Policy Statement (June 2018)

46. On 14 December 2015 the government accepted the Commission's recommendations for increased airport capacity in London and the South East and the three short-listed new runway options. The government began work on the draft ANPS. On 25 October 2016 the government announced that the proposal for a new North West Runway at Heathrow Airport was its preferred scheme to deliver new runway capacity in the South East. On 2 February 2017, the draft ANPS was published. On 5 June 2018 the ANPS was designated under the statutory procedure enacted under Part 2 of the 2008 Act.

47. Paragraphs 1.2 and 1.3 of the ANPS identify the capacity issue which the Commission had been asked to address –

> *"1.2 However, London and the South East are now facing longer term capacity problems. Heathrow Airport is operating at capacity today, Gatwick Airport is operating at capacity at peak times, and the whole London airports system is forecast to be full by the mid-2030s.There is still spare capacity elsewhere in the South East for point to point and especially low cost flights. However, with very limited capability at London's major airports, London is beginning to find that new routes to important long*

haul destinations are being set up elsewhere in Europe. This is having an adverse impact on the UK economy, and affecting the country's global competitiveness.

1.3 In September 2012, the Coalition Government established the independent Airports Commission 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 identify and evaluate how any need for additional capacity should be met in the short, medium and long term".

48. Paragraphs 1.3 to 1.6 of the ANPS summarise the work and conclusions of the Commission. The Commission found that there was a need for one additional runway to be in operation in the South East of England by 2030. It confirmed three shortlisted capacity schemes for further analysis: a Second Runway at Gatwick Airport, a North West Runway at Heathrow Airport and an Extended Northern Runway at Heathrow Airport. In its Final Report the Commission concluded that the proposal for a North West Runway at Heathrow Airport, combined with a significant package of measures to address its environmental and community impacts, presented the strongest case and offered the greatest strategic and economic benefits. Paragraph 1.6 of the ANPS then refers to the Commission's remit which also required it to look at how to make best use of existing airport infrastructure, before new capacity becomes operational –

"1.6 The Commission noted in its final report that a new runway will not open for at least 10 years. It therefore considered it imperative that the UK continues to grow its domestic and international connectivity in this period, which it considered would require the more intensive use of existing airports other than Heathrow and Gatwick".

49. Paragraphs 1.7 and 1.8 of the ANPS state that following the government's acceptance of the Commission's recommendation for increased capacity in the South East of England, and its shortlisted scheme options, it believed that a national policy statement promulgated under the 2008 Act was the most appropriate method to put in place the planning framework for a new runway in the South East of England –

"…[T]he Government's view is that an Airports NPS, and a development consent application made under the Planning Act, is the most appropriate route to deliver the Government's preferred scheme".

50. Against that background, paragraphs 1.12 to 1.15 of the ANPS state its principal purpose and scope –

"1.12 The [ANPS] provides the primary basis for decision making on development consent applications for a Northwest Runway at Heathrow Airport, and will be an important and relevant consideration in respect of applications for new runway capacity and other airport infrastructure in London and the South East of England. Other NPSs may also be relevant to decisions on airport capacity in this geographical area.

1.13 The Airports NPS sets out:

• The Government's policy on the need for new airport capacity in the South East of England;

• The Government's preferred location and scheme to deliver new capacity; and

• Particular considerations relevant to a development consent application to which the Airports NPS relates.

1.14 It sets out planning policy in relation to applications for any airport nationally significant infrastructure project in the South East of England, and its policies will be important and relevant for the examination by the Examining Authority, and decisions by the Secretary of State, in relation to such applications.

1.15 In particular, the Secretary of State will use the Airports NPS as the primary basis for making decisions on any development consent application for a new Northwest Runway at Heathrow Airport, which is the Government's preferred scheme. The policies in the Airports NPS will have effect in relation to the Government's preferred scheme, having a runway length of at least 3,500m and enabling at least 260,000 additional air transport movements per annum".

51. Paragraphs 1.38 and 1.39 of the ANPS stated the relationship between the ANPS and the APF -

"1.38 The [ANPS] sets out Government policy on expanding airport capacity in the South East of England, in particular by developing a Northwest Runway at Heathrow Airport. Any application for a new Northwest Runway development at Heathrow will be considered under the [ANPS]. Other Government policy on airport capacity has been set out in the [APF], published in 2013. The [ANPS] does not affect Government policy on wider aviation issues, for which the 2013 [APF] and any subsequent policy statements still apply.

1.39 On 21 July 2017, the Government issued a call for evidence on a new Aviation Strategy. Having analysed the responses, the Government has confirmed that it is supportive of airports beyond Heathrow making best use of their existing runways. However, we recognise that the development of airports can have positive and negative impacts, including on noise levels. We consider that any proposals should be judged on their individual merits by the relevant planning authority, taking careful account of all relevant considerations, particularly economic and environmental impacts".

52. Paragraphs 1.40 to 1.42 of the ANPS identified development covered by that national policy statement –

"1.40 The [ANPS] has effect in relation to the delivery of additional airport capacity through the provision of a Northwest Runway at Heathrow Airport. It also applies to proposals for new terminal capacity located between the new Northwest Runway and the existing Northern Runway at Heathrow Airport, as well as the reconfiguration of terminal facilities in the area between the two existing runways at Heathrow Airport. Each of these elements is also capable of constituting a nationally significant infrastructure project.

1.41 The [ANPS] does not have effect in relation to an application for development consent for an airport development not comprised in an application relating to the Heathrow Northwest Runway, and proposals for new terminal capacity located between the Northwest Runway at Heathrow Airport and the existing Northern Runway

and reconfiguration of terminal facilities between the two existing runways at Heathrow Airport. Nevertheless, the Secretary of State considers that the contents of the [ANPS] will be both important and relevant considerations in the determination of such an application, particularly where it relates to London or the South East of England. Among the considerations that will be important and relevant are the findings in the [ANPS] as to the need for new airport capacity and that the preferred scheme is the most appropriate means of meeting that need.

1.42 As indicated in paragraph 1.39 above, airports wishing to make more intensive use of existing runways will still need to submit an application for planning permission or development consent to the relevant authority, which should be judged on the application's individual merits. However, in light of the findings of the Airports Commission on the need for more intensive use of existing infrastructure as described at paragraph 1.6 above, the Government accepts that it may well be possible for existing airports to demonstrate sufficient need for their proposals, additional to (or different from) the need which is met by the provision of a Northwest Runway at Heathrow. As indicated in paragraph 1.39 above, the Government's policy on this issue will continue to be considered in the context of developing a new Aviation Strategy".

53. Chapter 2 of the ANPS addresses the need for additional airport capacity. At paragraph 2.26 reference is made to the Commission's conclusion in its interim report that there was a need for one additional runway to be in operation in the South East by 2030. Paragraph 2.27 refers to the Commission's conclusion in its final report that the proposed North West Runway at Heathrow Airport presented the strongest case for expansion and would offer the greatest strategic and economic benefits for the UK. Paragraph 2.28 turns to the Commission's consideration of the means of making best use of existing airport infrastructure, before new capacity becomes operational. Referring to paragraph 16.40 of the Commission's final report, the government states –

"2.28 ... The Commission noted in its final report that a new runway will not open for at least 10 years. It therefore considered it imperative that the UK continues to grow its domestic and international connectivity in this period, which it considered would require more intensive use of existing airports other than Heathrow and Gatwick".

54. The government's conclusions on the need for additional airport capacity are summarised at paragraphs 2.32 and 2.33 of the ANPS –

"2.32 Having reviewed the work of the Airports Commission and considered the evidence put forward on the issue of airport capacity, the Government believes that there is clear and strong evidence that there is a need to increase capacity in the South East of England by 2030 by constructing one new runway. The Government also agrees with the Airports Commission that this can be delivered within the UK's obligations under the Climate Change Act 2008. The Government considers that following the country's decision to leave the European Union the country will increasingly look beyond Europe to the rest of the world, and so the importance of maintaining the UK's hub status, and in that context long haul connectivity in particular, has only increased.

2.33 The next chapter of the Airports NPS sets out how the Government has identified the most effective and appropriate way to address the overall need for increased airport capacity, and maintain the UK's hub status, while meeting air quality and carbon

obligations and identifies that the Northwest Runway at Heathrow is the Government's preferred scheme".

55. Chapter 3 of the ANPS is headed "The Government's preferred scheme: Heathrow Northwest Runway". Paragraph 3.1 states the subject matter of chapter 3 –

"3.1 While the previous chapter of the Airports NPS sets out the Government's underlying policy and evidence on the need to expand airport capacity in the South East of England, this chapter sets out why the Government has stated its preference for the Heathrow Northwest Runway scheme".

56. Paragraph 3.11 refers to the government's announcement on 25 October 2016 that its preferred scheme to meet the new need for new airport capacity in the Southeast of England is a Northwest Runway at Heathrow Airport. Paragraphs 3.12 and 3.13 state –

"3.12 ... The Government believes that the Heathrow North West Runway scheme, of all the three shortlisted schemes, is the most effective and most appropriate way of meeting the needs case set out in chapter 2. As such, the Government has also concluded that the other shortlisted schemes do not represent true alternatives to the preferred scheme.

3.13 The remainder of this chapter is broken down into two distinct sections. The first section focuses on why the Government prefers the Heathrow North West Runway scheme to the Gatwick Second Runway scheme in terms of delivering additional airport capacity by 2030. The second section focuses on why the Government prefers the Heathrow North West Runway scheme to the Heathrow Extended Northern Runway scheme".

57. Paragraph 3.16 summarises the wide range of factors taken into account for the purpose of identifying the government's preferred scheme. In paragraphs 3.18 to 3.55 of the ANPS, the government carries out an assessment of the comparative performance of the Heathrow North West Runway scheme and the Gatwick Second Runway scheme against each of those factors.

58. One such factor is international connectivity and strategic benefits, including freight. The government's view is that Heathrow Airport is better placed than Gatwick Airport to address that factor. The reasons for that view are stated in paragraphs 3.18 to 3.24 of the ANPS. Paragraphs 3.18 to 3.21 state -

"3.18 Heathrow Airport is best placed to address this need by providing the biggest boost to the UK's international connectivity. Heathrow Airport is one of the world's major hub airports, serving around 180 destinations worldwide with at least a weekly service, including a diverse network of onward flights across the UK and Europe. Building on this base, expansion at Heathrow Airport will mean it will continue to attract a growing number of transfer passengers, providing the added demand to make more routes viable. In particular, this is expected to lead to more long haul flights and connections to fast-growing economies, helping to secure the UK's status as a global aviation hub, and enabling it to play a crucial role in the global economy.

3.19 By contrast, expansion at Gatwick Airport would not enhance, and would consequently threaten, the UK's global aviation hub status. Gatwick Airport would

largely remain a point to point airport, attracting very few transfer passengers. Heathrow Airport would continue to be constrained, outcompeted by competitor hubs which lure away transfer passengers, further weakening the range and frequency of viable routes. At the UK level, there would be significantly fewer long haul flights in comparison to the preferred scheme, with long haul destinations served less frequently. Expansion at Heathrow Airport is the better option to ensure the number of services on existing routes increases and allows airlines to offer more frequent new routes to vital emerging markets.

3.20 This was demonstrated by the forecasts produced by the Airports Commission, and continues to be found in the department's 2017 forecasts. Compared to no expansion, the Government estimate that a Northwest Runway at Heathrow Airport by 2040 would result in 113,000 additional flights a year across the UK as a whole (including 43,000 long haul), and 28 million additional passengers a year. By way of comparison, the Heathrow Extended Northern Runway would add 85,000 more flights and 22 million additional passengers.

3.21 Compared to no expansion, the Second Runway scheme at Gatwick would add 15,000 flights and 10 million passengers by 2040, across the UK as a whole, increasing to 77,000 and 23 million respectively in 2050. The Government project that 8,000 of these additional flights would be long haul in 2040, rising to 17,000 in 2050.Gatwick Airport has recently been successful in securing a number of long haul routes to the USA and Canada from low cost carriers, a new market segment".

59. Paragraph 3.71 of the ANPS states that the comparative assessment of the three shortlisted schemes against the range of factors considered in chapter 3 has enabled the government –

"…[T]o determine which scheme, overall, is the most effective and appropriate means of meeting the needs case and maintaining the UK's hub status in particular".

60. Paragraph 3.75 of the ANPS states –

"…[T]he Government considers that the Heathrow North West Runway scheme delivers the greatest strategic and economic benefits, and is therefore the most effective and appropriate way of meeting the needs case".

61. Chapter 5 of the ANPS focuses on the potential impacts of the Heathrow North West Runway scheme, the assessments that any applicant will need to carry out, and the specific planning requirements they will need to meet, in order to gain development consent. Paragraphs 5.44 to 5.68 address noise impacts. Paragraphs 5.69 to 5.83 address carbon emissions. I shall need to return to aspects of the policy stated in those paragraphs later in this judgment.

Making best use of existing runways (June 2018)

62. Alongside publication of the ANPS, on 5 June 2018 the government also published *"Beyond the horizon: the future of UK aviation – Making best use of existing runways"* **["MBU"]**.

63. Paragraphs 1.1 to 1.5 of MBU explain the policy background, including the relationship between MBU and the ANPS –

"1.1 The government's 2013 Aviation Policy Framework provided policy support for airports outside the South East of England to make best use of their existing airport capacity. Airports within the South East were to be considered by the newly established Airports Commission.

1.2 The Airports Commission's Final Report recognised the need for an additional runway in the South East by 2030 but also noted that there would be a need for other airports to make more intensive use of their existing infrastructure.

1.3 The government has since set out its preferred option for a new Northwest runway at Heathrow by 2030 through drafts of the Airports National Policy Statement (NPS), but has not yet responded on the recommendation for other airports to make more intensive utilisation of their existing infrastructure.

1.4 On 24th October 2017 the Department for Transport (DfT) released its latest aviation forecasts. These are the first DfT forecasts since 2013. The updated forecasts reflect the accelerated growth experienced in recent years and that demand was 9% higher in London in 2016 than the Airports Commission forecast. This has put pressure on existing infrastructure, despite significant financial investments by airports over the past decade, and highlights that government has a clear issue to address.

1.5 The Aviation Strategy call for evidence set out that government agrees with the Airports Commission's recommendation and was minded to be supportive of all airports who wish to make best use of their existing runways, including those in the South East, subject to environmental issues being addressed. The position is different for Heathrow, where the government's proposed policy on expansion is set out in the proposed Airports NPS".

64. The government's policy on making best use of existing runways, including those in the South East, is stated in paragraphs 1.25 to 1.29 of MBU -

"1.25 As a result of the consultation and further analysis to ensure future carbon emissions can be managed, government believes there is a case for airports making best of their existing runways across the whole of the UK. The position is different for Heathrow Airport where the government's policy on increasing capacity is set out in the proposed Airports NPS.

1.26 Airports that wish to increase either the passenger or air traffic movement caps to allow them to make best use of their existing runways will need to submit applications to the relevant planning authority. We expect that applications to increase existing planning caps by fewer than 10 million passengers per annum (mppa) can be taken forward through local planning authorities under the Town and Country Planning Act 1990. As part of any planning application airports will need to demonstrate how they will mitigate against local environmental issues, taking account of relevant national policies, including any new environmental policies emerging from the Aviation Strategy. This policy statement does not prejudge the decision of those authorities who will be required to give proper consideration to such applications. It instead leaves it up to local, rather than national government, to consider each case on its merits.

1.27 Applications to increase caps by 10mppa or more or deemed nationally significant would be considered as Nationally Significant Infrastructure Projects (NSIPs) under the Planning Act 2008 and as such would be considered on a case by case basis by the Secretary of State.

…

1.29 Therefore the government is supportive of airports beyond Heathrow making best use of their existing runways. However, we recognise that the development of airports can have negative as well as positive local impacts, including on noise levels. We therefore consider that any proposals should be judged by the relevant planning authority, taking careful account of all relevant considerations, particularly economic and environmental impacts and proposed mitigations. This policy statement does not prejudge the decision of those authorities who will be required to give proper consideration to such applications. It instead leaves it up to local, rather than national government, to consider each case on its merits."

Overarching aviation noise policy statement (March 2023)

65. On 27 March 2023 the government published its overarching aviation noise policy **["OANP"]** in the following terms –

"The government's overall policy on aviation noise is to balance the economic and consumer benefits of aviation against their social and health implications in line with the International Civil Aviation Organisation's Balanced Approach to Aircraft Noise Management. This should take into account the local and national context of both passenger and freight operations, and recognise the additional health impacts of night flights.

The impact of aviation noise must be mitigated as much as is practicable and realistic to do so, limiting, and where possible reducing, the total adverse impacts on health and quality of life from aviation noise".

ANPS Review announcement (October 2023)

66. On 22 October 2025 the SST announced a review of the ANPS.

Climate change

67. In December 2020 the CCC published its Sixth Carbon Budget report "The UK's path to Net Zero". In the sector summary report on aviation, the CCC advised that as a key policy change, the government should include international aviation emissions within the 6th carbon budget, subsequent carbon budgets and the 2050 net zero target –

"The forthcoming Aviation Decarbonisation Strategy should commit to a 2050 Net Zero goal for UK aviation, with use of verifiable GHG removals (but with limits), and set out demand management policies to ensure a trajectory to 2050 is achieved and that non-CO2 effects are addressed".

Jet Zero Strategy (July 2022)

68. In July 2022 the Department for Transport published "Jet Zero Strategy – Delivering net zero aviation by 2050" **["JZS"]** setting out the government's strategy and policies for decarbonising the aviation sector. JZS stated the government's commitment for the UK aviation sector to reach net zero - Jet Zero - by 2050 –

> *"Jet Zero is a clear goal that can be achieved through multiple pathways and solutions. Many of the technologies we need to achieve it are at an early stage of development or commercialisation; their nascent nature means that we do not yet know the optimal technological mix out to 2050. However, it is crucial that we use the best available evidence to set out an ambitious yet realistic pathway for the sector to decarbonise, which sees emissions reduce over the short and longer term. Through this Strategy we are committing to our "High ambition" scenario, which sees aviation CO2 emissions peak in 2019. ... We believe that our "High ambition" scenario represents the right level of ambition for aviation and is achievable if technology development continues as expected. We will therefore use this scenario to set an in-sector CO2 emissions reduction trajectory for aviation from 2025 to 2050. ... We also recognise that the urgent nature of climate change calls for continuous monitoring of aviation emissions, and that more frequent and transparent reporting will enable industry and government to respond quickly to emerging trends. We are therefore aiming for more timely annual reporting of aviation emissions data from 2023, working with the CAA and other partners. As a responsible government, we will need to regularly review the sector's progress and adapt our approach depending on progress made. We will monitor progress against our emissions reduction trajectory annually from 2025 and review the overall trajectory as part of the five year review process (starting in 2027)".*

Carbon Budget Delivery Plan (March 2023)

69. On 30 March 2023, pursuant to sections 13 and 14 of the CCA the government published the Carbon Budget Delivery Plan **["CBDP"]** setting out its proposals and policies for meeting relevant carbon budgets. Appendix D addressed delivery confidence across all sectors, stating that delivery confidence for all proposals and policies, particularly those delivering in later carbon budget periods, would be impacted by technological developments, societal changes and future spending arrangements. Appendix D stated –

> *"Risks to delivery are highest where there is a reliance on nascent or immature technologies and associated markets, such as zero emission vehicle or flight technologies or utilisation of lower carbon fuels. To mitigate this risk, stakeholder groups and R&D funding are being used to explore how technologies can be expedited and supported through development. ... The Zero Emission Flight Delivery Group (part of the Jet Zero Council) has been established to explore the UK's capabilities to deliver zero emission technologies. As committed to in the Transport Decarbonisation Plan, DfT will review progress against our pathway at least every five years and consider as necessary additional options to support delivery of UK carbon budget targets".*

Jet Zero One Year On (July 2023)

70. On 20 July 2023 the Department for Transport published Jet Zero Strategy: One Year On" **["JZS:ONO"]** which provided a review of progress and next steps towards delivery of the JZS since its publication in July 2022.

National Networks National Policy Statement

71. The National Networks National Policy Statement was designated under Part 2 of the 2008 Act on 24 May 2024 **["the NNNPS"]**. The NNNPS provides planning policy guidance for promoters of NSIPs on the national road and rail network in England.

Recent developments

72. On 3 May 2024 judgment was handed down in R (Friends of the Earth) v Secretary of State for Energy Security and Net Zero [2024] PTSR 1293 allowing claims for judicial review of the CBDP on the basis that the SSESNZ had failed to avail himself of sufficient information about the risks to delivery of the package of policies comprising the plan. However, the court did not quash the CBDP.

73. On 8 May 2025 judgment was handed down in R (Possible (The 10:10 Foundation) v Secretary of State for Transport [2025] EWHC 1101 (Admin) **["*Possible*"]** dismissing claims for judicial review of the promulgation of the JZS. Permission to appeal was refused by the Court of Appeal on 12 December 2025.

74. On 29 October 2025 the government published the Carbon Budget and Growth Delivery Plan **["CBGDP"]**. The sectoral analysis of delivery confidence in Appendix D stated –

> *"The package of policies and proposals in this report details our approach to building on this progress. Despite inherent uncertainty in long-term emissions forecasts, we have confidence that the measures outlined will put transport emissions on a pathway that will support meeting carbon budgets. We will continue to review our approach and explore contingency measures as required to ensure transport remains on track to deliver against this pathway, subject to funding decisions at future Spending Reviews.*
>
> *…*
>
> *Delivery risk is highest where our analysis assumes uptake of technologies still in development and/or that are not yet available at scale, with markets less mature. This includes heavier applications in the road vehicle sector, and decarbonisation solutions across the aviation and maritime sectors. We are also aware that the low carbon fuels that will play a role in reducing emissions from these modes of transport during the Carbon Budget 6 period will be in increasingly high demand globally, with associated risks to supply for UK transport. Government is implementing policy and funding the research, development and demonstration of clean transport technologies to mitigate these risks and position the UK to capture a share of growing global markets".*

The Decision

75. In paragraphs 3.5.8 to 3.5.13 of the Report, the ExA said that the starting point in policy terms for the proposed development should be the ANPS. The application is for development consent for an airport-based scheme. The primary focus of the proposed development is the airfield works. The highway elements were required to facilitate the airport expansion scheme. However, as the ANPS does not have effect in relation to the proposed development, the application falls to be considered primarily under section 105 of the 2008 Act.

76. Nevertheless, the ExA said that the ANPS will be an important and relevant consideration in the determination of the application for development consent, as Gatwick Airport lies within the South East of England and is considered to be a London airport. The ExA identified the ANPS as the primary source of policy against which the proposed development as a whole should be tested. The ExA said that the NNNPS will also be an important and relevant consideration. It will necessarily inform the formal determination of the highway elements of the proposed development under section 104 of the 2008 Act. In paragraphs 19 and 20 of the MDL, the SST agrees with that analysis.

77. The SST's consideration of the application for development consent and appraisal of the proposed development in the DL is structured in response to the approach taken by the ExA in the Report. Of the main planning issues by topic area addressed both by the ExA and the SST, those to which the grounds of claim relate are (i) the principle of the proposed development and the need case (DL12-DL24); (ii) noise and vibration (DL50-DL134); (iii) greenhouse gas emissions (DL146-DL212); (iv) socio-economics (DL226-DL264); and (v) the water environment (DL265-DL268).

78. The SST's conclusions on the principle of the proposed development and the need case are stated in DL24. Overall -

"…[T]he Secretary of State agrees with the ExA that there is a need for aviation capacity as outlined and supported by the ANPS, and that the Applicant has demonstrated sufficient need for the Proposed Development that would partially satisfy, would be additional to, and different from the need met by the Heathrow scheme".

79. The SST states her overall conclusions on noise and vibration in DL129-DL134. In DL133-DL134 she says -

"In conclusion, having taken into account national policy on aviation noise, relevant sections of the [Noise Policy Statement for England], National Planning Policy Framework ("NPPF") and the Government's associated planning guidance on noise, as well as the ANPS as the primary policy on noise, in accordance with paragraph 5.67 of the ANPS, the Secretary of State is satisfied that the overall proposals will meet the aims for the effective management and control of noise, within the context of Government policy on sustainable development, as set out at paragraph 5.68:

- Avoid significant adverse impacts on health and quality of life from noise;

- Mitigate and minimise adverse impacts on health and quality of life from noise; and

- Where possible, contribute to improvements to health and quality of life.

The Secretary of State therefore concludes that neutral weight should be given to the issue of noise and vibration in the overall planning balance of the Proposed Development (with the exception of outdoor noise, to which she has given limited negative weight)".

80. In DL202-DL212 the SST states her conclusions on issues raised in relation to GHG emissions. The overall conclusion is given in DL212 –

"The Secretary of State is satisfied that the Proposed Development is compatible with the Government's JZS, and that the Proposed Development can be managed within Government's overall strategy for meeting net zero, and the relevant carbon budgets. The Proposed Development will not materially impact the Government's ability to meet its net zero targets in accordance with paragraph 5.82 of the ANPS and 5.18 of the NNNPS, nor will it lead to a breach of any international obligations that result from the Paris Agreement or Government's own polices and legislation relating to net zero. Therefore, the Secretary of State considers that while the effects of the Proposed Development are significant, they do not meet the threshold for a major, significant adverse effect, and she has therefore placed moderate, adverse weight against the making of the Order".

81. The SST's conclusion on socio-economic matters is set out in DL259-DL264. In DL264 the SST says –

"Overall, the Secretary of State agrees with the ExA that the Applicant's assessment shows that significant beneficial effects of direct, indirect and induced employment would be brought about by the Proposed Development that would support both local and national economic growth [ER 10.3.2 and 10.3.4]. However, she also believes that taken together, these provisions represent a proactive strategy to maximise the socioeconomic benefits, and the Secretary of State attaches great weight to the overall effect of these benefits arising from the Proposed Development. Accordingly, the Secretary of State disagrees with the conclusion reached by the ExA on weight and considers that this attracts great positive weight in the overall planning balance".

82. The particular issue which gives rise to complaint by CAGNE in relation to the water environment concerns proposed arrangements for the treatment of wastewater. The SST addresses that issue in DL266-DL267 –

"In its response on 24 April 2025, the Applicant set out confirmation from [Thames Water Utilities Limited] the unlikelihood that the required hydraulic modelling, confirming whether wastewater flows could be accommodated by its existing infrastructure, would be completed prior to the revised statutory deadline of 27 October 2025. The Secretary of State notes that as a result of this, the Applicant and TWUL have reached an agreement on the wording of requirement 31. This wording confirms that the commencement of dual runway operations cannot take place until either TWUL have confirmed the existing wastewater treatment works can accommodate the additional flows from the airport or that the on-site wastewater treatments works have been completed and the application for the necessary permits submitted to the Environment Agency ("EA"). The Secretary of State notes the representation made by CAGNE on 9 June 2025 that wastewater treatment should be fully operational prior to dual runway operations. However, she is content that in the event an on-site wastewater treatment works is needed, the timescales included within the requirement wording allows a sufficient period for the EA to consider potential impacts on the receiving watercourse and set appropriate permit limits to protect the environment accordingly. The Secretary of State notes the matter of wastewater was agreed between the Applicant and the EA in their Statement of Common Ground, and the ExA reported that this was EA's preferred approach [ER 11.3.33] indicating the EA foresee no issue or adverse effect resulting from wastewater. The Secretary of State is satisfied that the outstanding concerns regarding the management of wastewater have now been addressed.

Noting the agreement between the Applicant and TWUL on wastewater management, the Secretary of State agrees with the ExA's conclusion that the Proposed Development accords with the ANPS, NNNPS and other relevant policy requirements and legislation and therefore agrees that water environment matters should be given neutral weight in the overall planning balance [ER 11.4.5]".

83. Having summarised her conclusions on the degree of weight, whether positive negative or neutral, that she gives to the various planning considerations taken into account on the basis of the ExA's Report, the SST states her overall conclusion on the planning balance in DL427 –

"Having carefully considered all matters and the additional information received, the Secretary of State is satisfied that the need for the Proposed Development has been established and that this need should be afforded moderately positive weight given the contribution it would make to increasing aviation capacity, outlined in the ANPS. The Secretary of State has weighed the expected benefits of the Proposed Development against the potential negative effects that may occur, and she is of the view that any potential negative impacts have been reduced as a result of amended requirements/controls now within the Order meaning they are substantially outweighed by the need, the social and economic benefit and the benefit of good design expected from the Proposed Development. She is also satisfied that all legislative and policy tests have been met".

84. The SST's decision to grant development consent on GAL's application and to make the DCO is recorded in DL475.

Barclay Ground (1) – Misinterpretation of the ANPS

The Claimant's submissions in summary

85. Mr Barclay submits that the SST founded her decision on a misinterpretation of the ANPS. Properly understood, the policy of the ANPS was that expansion of Gatwick Airport presents a threat to the UK's global hub status. Although the ANPS makes a policy choice between a new runway at Heathrow and a new runway at Gatwick, the policy of the ANPS is not limited to stating the government's preference for new capacity through development of a new runway to be delivered at Heathrow. There is a broader policy thrust evident from paragraphs 1.6, 1.42 and 3.18 to 3.21 of the ANPS, which sees further expansion of Gatwick Airport as inimical to the maintenance of the UK's status as a global aviation hub. That policy is underpinned by the recommendation of the Commission in paragraph 16.40 of its final report, that better use should be made of existing airport capacity other than at Gatwick. It is supported by the capacity assessment in chapter 2 of the ANPS which is itself informed by the Commission's findings and recommendations.

86. It was submitted that the SST has simply failed to grapple with the fundamental policy position. As stated in paragraph 3.19 of the ANPS, by stark contrast to expansion at Heathrow –

"…expansion at Gatwick Airport would not enhance, and would consequently threaten, the UK's global aviation hub status".

87. Leading counsel argued that this key aspect of national policy in respect of expansion at Gatwick Airport is logically prior to any consideration of the case for the proposed development by reference to the policy for making best use of existing runways under MBU. Properly understood in the context of the conclusions of the Commission and the government's policy as stated in the ANPS, the MBU is not to be read as lending support to expansion of airport capacity at Gatwick Airport. The SST's misunderstanding of this critical element of national planning policy for airports as promulgated by the ANPS has vitiated her conclusions as to whether the proposed development is acceptable in principle and enjoys policy support under the ANPS and the MBU.

Discussion and conclusions

88. At the outset, it is necessary to understand the problem which the government is seeking to address in promulgating the policy stated in the ANPS.

89. That problem is encapsulated in paragraph 1.2 of the ANPS, which I have quoted above. Both Heathrow and Gatwick Airports were operating at or close to capacity. London and the South East were facing longer term capacity problems. There was still spare capacity elsewhere in the South East, but very limited capability at London's major airports. In consequence, London was beginning to lose out to other European airports, adversely affecting both the UK economy and the UK's global competitiveness.

90. The task set for the Commission following publication of the APF in July 2012 had been to advise government on the means of maintaining both the UK's status as a global aviation hub and the UK's advantageous connectivity into the longer term. In short, the Commission had been asked to find and recommend the solution to the capacity challenge which had been identified in the APF itself and to which reference is made in paragraph 1.2 of the ANPS.

91. Nevertheless, as regards the short to medium term, the policy of the APF was clearly stated. A key priority is to work with the aviation industry and other stakeholders to make better use of existing runway capacity at all UK airports.

92. In paragraph 16.40 of its final report to government in July 2015, the Commission endorsed that key priority of current aviation policy –

> *"16.40 Irrespective of how the Government responds to the recommendation set out in this report a new runway will not be open for at least 10 years. It is imperative that the UK continues to grow its domestic and international connectivity in this period, and this will require the more intensive utilisation of existing airports other than Heathrow and Gatwick".*

93. In early June 2018, the government in turn endorsed that recommendation in promulgating both the ANPS and the MBU. Paragraph 1.6 of the ANPS essentially repeats paragraph 16.40 of the Commission's final report. In paragraph 1.38 of the ANPS, the government states that any application for a new North West Runway at Heathrow Airport will be considered under the ANPS itself. However, the ANPS is stated not to affect Government policy on wider aviation issues, for which the APF and any subsequent policy statements apply. Paragraph 1.39 of the ANPS confirms the government's support for airports beyond Heathrow making best use of their existing

runways. Published on the same day, paragraph 1.29 of MBU also states the government's support for airports beyond Heathrow making best use of their existing runways. Paragraph 1.27 of MBU makes it clear that the policy of support extends to an airport expansion project of a scale that qualifies as nationally significant and so falls to be determined by the SST on an application for development consent under the 2008 Act.

94. Fundamental to these statements of policy support for making best use, or more intensive use, of existing capacity at London and South East airports is the recognition, by both the Commission and government, that additional capacity in the form of a new runway at either Heathrow or Gatwick will not come on stream for at least 10 years. As stated in paragraph 1.2 of the ANPS, at the date of its publication Heathrow was already operating at capacity; and Gatwick was operating at capacity at peak times. There was some spare capacity elsewhere across the South East. It was in that context that both the Commission (in paragraph 16.40 of its final report) and the government (in paragraph 1.6 of the ANPS) focused on the need for more intensive use to be made of existing airports *"other than Heathrow and Gatwick"*.

95. Those statements by the Commission and the government are, however, not to be read as a policy of hostility to proposals to make more intensive use of existing runways at Heathrow and Gatwick. Such a policy would be wholly inconsistent with the Commission's and the government's clear recognition of the need for action during the period before a new runway comes into operation at either Heathrow or Gatwick, in order to limit the adverse economic impact resulting from London and the South East's limited spare capacity. Properly understood, paragraph 1.6 of the ANPS is concerned with the need to optimise the use of existing airport capacity prior to the coming into operation of a new runway. Its emphasis on the contribution from existing airports other than Heathrow and Gatwick during that interim period is no more than an acceptance of the reality of the position. Both Heathrow and Gatwick were then judged to be operating at or close to their existing capacity, which meant that the burden of intensification must fall at least in part on other London and South East airports.

96. The government's stated policy in paragraphs 1.39 of the ANPS and 1.29 of MBU is one of support for airports *"beyond Heathrow"* making best use of their existing runways. That policy reflects the government's selection of Heathrow Airport over Gatwick Airport as the preferred location for the development of a new runway. It is entirely consistent with that policy choice that the concomitant policy of making best use of existing runways should be read as embracing proposals in the short to medium term to optimise the use of the existing runways at Gatwick Airport. It is beyond reasonable argument that both the ANPS and MBU are to be read together and interpreted consistently with each other as complementary statements of government policy. Had it been the government's intention, looking forward from having settled on Heathrow Airport as the right location for development of a new runway in the longer term, to rule out making better use of the existing runways at Gatwick Airport in the short to medium term, one would expect to see that clearly stated in both paragraph 1.39 of the ANPS and paragraph 1.29 of the MBU. One would have expected the government to state its support for airports *"beyond Heathrow and Gatwick"* making best use of their existing runways. That is simply not what is said in those paragraphs. The stated policy is clearly expressed and cannot sensibly be read as excluding Gatwick Airport from its embrace.

97. This analysis is in no way undermined by paragraphs 3.18 and 3.19 of the ANPS. Those paragraphs must be read in their proper context. They form part of the government's assessment of the relative performance of the North West Runway scheme at Heathrow and the Gatwick Second Runway scheme as candidates to address the overall need for increased airport capacity and maintain the UK's hub status. The discussion of the advantages and disadvantages of expansion at Heathrow and Gatwick in paragraphs 3.18 and 3.19 is concerned with the impact of one new runway at one or the other of those two airports on the UK's status as an international hub.

98. In other words, paragraph 3.19 is concerned with the impact of the expansion of Gatwick Airport under the Second Runway scheme on the existing operation of Heathrow Airport. That paragraph is simply not concerned with the scenario in which Heathrow Airport is able to expand its operations and build on its existing function as a major international hub through development of the North West Runway scheme. Paragraph 3.19 does not purport to consider the merits of expansion at Gatwick Airport through intensifying use of its existing runways in that scenario. In short, in the context of the overarching policy choice made by the ANPS of a North West Runway at Heathrow to address the overall need for increased airport capacity and maintain the UK's hub status, it is not the purpose of paragraphs 3.18 and 3.19 of the ANPS to express any policy on intensifying the use of existing runways at Gatwick Airport. For the reasons I have given, the government's policy on that form of development is stated in paragraph 1.39 of the ANPS. It is a policy of support.

99. The ANPS does acknowledge the need to consider the potential impact of proposals to intensify use of existing airports across London and the South East on the Heathrow North West Runway scheme. In paragraph 1.41, the SST's stated policy is that the contents of the ANPS will be both important and relevant considerations in the determination of such an application, particularly where it relates to London or the South East of England. Among such considerations are the findings in the ANPS as to the need for new airport capacity and that the North West Runway scheme is the most appropriate means of meeting that need. Paragraph 1.42 states that proposals to intensify the use of existing airports will need to be the subject of applications for planning permission or for development consent. They are to be judged on their individual merits. The following passage in paragraph 1.42 then merits repetition –

"However, in light of the findings of the Airports Commission on the need for more intensive use of existing infrastructure as described at paragraph 1.6 above, the Government accepts that it may well be possible for existing airports to demonstrate sufficient need for their proposals, additional to (or different from) the need which is met by the provision of a Northwest Runway at Heathrow".

100. Thus, the government's policy of support for airports beyond Heathrow making best use of their existing runways (as stated in paragraph 1.39 of the ANPS and paragraph 1.29 of MBU) requires the airport operator promoting such a scheme to support it with evidence of need; and it must be shown to be a need that will not be met by provision of the North West Runway scheme.

101. Turning to the decision under challenge, in paragraphs 29 to 31 of the MDL the SST summarises the policy background. In paragraph 29 she says that although the ANPS does not have effect in relation to the proposed development, the contents of the ANPS are important and relevant considerations. In DL30 the SST says –

"Paragraph 1.39 of the ANPS outlines that the Government is supportive of airports beyond Heathrow making best use of their existing runways, recognising that the development of airports can have positive and negative impacts [ER 4.2.4]. This is reiterated in paragraph 1.29 of [MBU]. Paragraph 1.42 states that in light of the findings of the Airports Commission in 2013 on the need for more intensive use of existing infrastructure, the Government accepts that it may well be possible for existing airports to demonstrate sufficient need for their proposals, additional to (or different from) the Airports Commission's preferred choice of a Northwest Runway at Heathrow Airport".

102. In my view, that is an accurate and proper summary of the policy position as stated in both the ANPS and MBU. There was an issue between GAL and interested parties before the ExA and the SST as to whether the northern runway at Gatwick Airport was properly to be regarded as an existing runway for the purposes of applying paragraphs 1.39 of the ANPS and paragraph 1.29 of MBU. In 2019, that runway was used for 2,800 flights. The SST considers that issue in paragraphs 32 to 34 of the MDL and reaches the provisional conclusion that the proposed development does constitute works to an existing runway, a conclusion that she confirms in DL14. That particular conclusion is not challenged by the Claimants.

103. The SST's provisional conclusions on policy considerations are stated in paragraphs 41 to 43 of the MDL and essentially confirmed in DL12. In DL15 the SST says –

"It is recognised by the ExA and the Secretary of State that whilst there is no requirement for MBU developments to demonstrate a need for their proposals [ER 4.2.56], the scale and size of Gatwick (and that of the Proposed Development) and its proximity to Heathrow means that to benefit from policy support, it is necessary to demonstrate a need additional to, or different from, any Heathrow scheme, a position is supported with paragraph 1.42 of the ANPS [ER 4.2.59]".

104. Mr Goodman KC relied upon that reasoning as evidence of the SST's misinterpretation of the ANPS. He submitted that DL15 reveals the SST's failure to recognise and to grapple with the broader thrust of policy in the ANPS, that further expansion of Gatwick Airport is inimical to the maintenance of the UK's status as a global aviation hub, whether through provision of a new runway or through the expanded use of an existing runway at that airport. For the reasons I have given, I am unable to accept that submission. The ANPS promulgates no such policy. The SST approached her decision on a correct understanding of policy of support for the proposed development given under paragraph 1.39 of the ANPS. That policy of support is in accordance with the APF and the recommendation of the Commission. It is complemented by paragraph 1.29 of MBU. That policy of support is not unqualified, as the SST properly recognises in DL15. Paragraph 1.42 of the ANPS requires that the proposed development is shown to meet a demonstrable need for further capacity that is additional to and different from that met by the Heathrow North West Runway scheme. In DL24 the SST concludes that the proposed development fulfils that policy requirement. There is no challenge to the validity of that conclusion.

105. I grant permission on ground (1) of Mr Barclay's claim but reject it. His contention that the SST has misinterpreted the ANPS is without foundation.

Barclay Ground (2) – Failure to promote the policy and objects of the statutory scheme

The Claimant's submissions in summary

106. The Claimant's case is that in determining GAL's application for development consent, the SST was under a duty to promote the policies and objects of the 2008 Act and the CCA, each of which share the common objective of mitigating climate change by reducing GHG emissions. The Claimant contends that in granting development consent for the proposed development, the SST has acted in breach of that duty.

107. Mr Goodman KC relied upon the judgment of the Divisional Court in R(Spurrier) v Secretary of State for Transport [2020] PTSR 240 at [644]-[645] –

"644.We consider the two Acts have to be looked at together, as Mr Maurici submitted. They were passed on the same day (26 November 2008), and are clearly to be read together. Subsection (3) of section 10 of the PA 2008 is a subset of subsection (2): "For the purposes of subsection (2) the Secretary of State must (in particular) have regard to…" (emphasis added). It too concerns sustainability. Its specific reference to "the desirability of mitigating, and adapting to, climate change…" appears clearly to chime with the CCA 2008. The CCA 2008 was obviously passed because of the perceived desirability of mitigating, and adapting to, climate change. As the Summary of the Explanatory Notes to the CCA 2008 states

"The Act sets up a framework for the UK to achieve its long-term goals of reducing greenhouse gas emissions and to ensure steps are taken towards adapting to the impact of climate change."

645. Both section 5(8) and section 10(3) of the PA 2008 refer to "mitigating, and adapting to, climate change". That is precisely the objective of the CCA 2008. The link between the Acts is obvious; and, on their face, sections 5(7) and (8) and 10 of the PA 2008 appear to us clearly to reflect the CCA 2008 and to be read with that other Act".

108. It was submitted that it was the legislative purpose of the 2008 Act that decisions on applications for development consent for NSIPs, which affect the statutory objectives of mitigating the impact of climate change, should be made within a coherent framework set both by the legislative provisions of the CCA and the 2008 Act, read together; and by national policy statements and carbon action plans promulgated in accordance with those statutes. Constituent elements of that framework enacted by the CCA include the Net Zero target (s.1 CCA); the CCA's requirements for carbon budgets (s.6 CCA); the Secretary of State's duties to prepare and report on policies and proposals for meeting carbon budgets (ss.13/14 CCA); the annual reporting duty (s.16 CCA); and the functions of the CCC (ss.33-38 CCA).

109. Constituent elements enacted by the 2008 Act include the statutory arrangements for the preparation and designation of NPS under Part 2 of the 2008 Act. Section 5(7) of the 2008 Act requires reasons to be given for the policy stated in an NPS. Section 5(8) states –

"5(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".

110. Section 6 of the 2008 Act provides for the periodic review of NPS -

"6(1)The Secretary of State –

(a) must review each national policy statement whenever the Secretary of State thinks it appropriate to do so,…".

111. Section 10 of the 2008 Act provides -

"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;

(b) achieving good design".

112. It was submitted to be the evident legislative purpose of the CCA and the 2008 Act that applications for development consent for NSIPs should ordinarily be determined pursuant to sections 104 and 105 of the 2008 Act pursuant to an NPS; and in accordance with the framework for meeting the Net Zero target enacted by the CCA.

113. The policy of the ANPS was to support the expansion of airport capacity in London and the South East by providing a new runway at Heathrow Airport in preference to Gatwick Airport. Mr Goodman KC submitted that there had been material changes since the publication of the ANPS in June 2018 –

(1) In 2019, the enactment of the significantly more challenging Net Zero target under the amended section 1 of the CCA, in response to the Paris Agreement.

(2) In 2021, the publication of the 6th Carbon Budget.

(3) On 30 March 2023, publication of the CBDP pursuant to sections 13 and 14 of the CCA.

(4) On 3 May 2024, the successful legal challenge to the CBDP.

(5) On 29 October 2025, pursuant to sections 13 and 14 of the CCA the publication of the CBGDP, which superseded the CBDP.

(6) The principal policy objective of the ANPS for a new runway at Heathrow Airport to provide new airport capacity for London and the South East has not come forward.

(7) The fact that the ANPS does not provide policy guidance on the determination of applications for development consent for airport expansion projects in these materially changed, current circumstances.

114. Mr Goodman KC relied upon the principle established in Padfield v Minister of Agriculture, Fisheries and Food [1968] AC 997, 1030B-D and the observations of the Supreme Court in M v Scottish Ministers [2012] 1 WLR 3386 at [47] –

> *"The importance of Padfield was its reassertion that, even where a statute confers a discretionary power, a failure to exercise the power will be unlawful if it is contrary to Parliament's intention. That intention may be to create legal rights which can only be made effective if the power is exercised, as in Singh v Secretary of State for the Home Department. It may however be to bring about some other result which is similarly dependent upon the exercise of the power. Authorities illustrating that principle in the context of a statutory power to make regulations, where such regulations were necessary for the proper functioning of a statutory scheme, include Greater London Council v Secretary of State for the Environment [1984] JPL 424 and Sharma v Registrar to the Integrity Commission [2007] 1 WLR 2849, para 26, per Lord Hope of Craighead. In the present case, the exercise of the power to make regulations by 1 May 2006 was necessary in order to bring Chapter 3 of Part 17 of the 2003 Act into effective operation by that date, as the Scottish Parliament intended. The Ministers were therefore under an obligation to exercise the power by that date".*

115. It was submitted that in the present case, the ANPS was approved by Parliament and designated by the SST in June 2018. It was an essential element of the coherent legislative framework enacted by the 2008 Act and the CCA, for the purpose of determining an application for development consent for an airport expansion project in the South East of England. The ANPS had been promulgated within the statutory framework set by the 2008 Act and the CCA, with the objective of enabling such a determination to be made in accordance with the objective of mitigating climate change by reducing GHG emissions. By the date of the SST's decision in September 2025, the ANPS was out of date and acknowledged to be in need of review to address the materially changed circumstances. By determining GAL's application against the background of an out of date NPS, misconstruing the ANPS as contended under ground (1) above and failing to take account of a lawful carbon budget delivery plan under sections 13 and 14 of the CCA, the SST had failed to promote the common objective of the 2008 Act and the CCA as identified at [644] in *Spurrier,* of mitigating and adapting to climate change.

Discussion and conclusions

116. In my view, the Claimant's submissions under this ground lose sight of the essential factual and legal context of the decision that is the target of his claim.

117. In summary, that factual and legal context was as follows –

(1) GAL had made an application for development consent for the proposed development. The proposed development constituted an NSIP both by virtue of the airport expansion proposals and the surface access works.

(2) The application for development consent must be made in accordance with Part 5 and determined in accordance with Part 6 of the 2008 Act. Section 103 of the 2008 Act confers the function of deciding the application on the SST.

(3) Sections 104 and 105 of the 2008 Act contemplate and provide for the SST to exercise her decision making function in two alternative factual scenarios. In the first scenario, a NPS has effect in relation to development of the description to which the application relates. In that scenario, the SST's decision making function is to be carried out in accordance with the framework set out in section 104 of the 2008 Act. The second scenario is one in which section 104 does not apply in relation to the application for development. In that scenario, the SST's decision making function is to be carried out in accordance with the framework set out in section 105 of the 2008 Act.

(4) In the present case, the SST found that no NPS had effect in relation to development of the description to which the application relates, insofar as that development comprised of works to expand existing runway capacity and airport infrastructure at an airport other than by development of a new North West Runway at Heathrow Airport. The SST found that the ANPS did not have effect in relation to such a description of development. There is no challenge to that finding. Nor is there any challenge to the SST's acceptance of the ExA's conclusion that the primary focus of the proposed development is the airfield works.

118. On the basis of the SST's finding that no NPS had effect in relation to the airfield works which were the principal component of the NSIP, it is beyond reasonable argument that she acted lawfully in making her decision on GAL's application in accordance with the framework set by section 105 of the 2008 Act.

119. Section 105(2)(c) required that in deciding the application, the SST must have regard to –

"any … matters which she thinks are both important and relevant to [her] decision".

120. Parliament, therefore, conferred primary responsibility on the SST to identify those matters which, in her judgment, were both important and relevant to her decision on GAL's application for development consent for the airfield works. The SST thought that the ANPS was such a matter, albeit that it did not have effect in relation to the proposed development. The Claimant asserts that at the time of the SST's decision, the ANPS was *"out of date"* in the light of the legal and factual changes which had taken place following its publication in June 2018. Nevertheless, at the date of the SST's determination of GAL's application for development consent the ANPS remained in effect. The ANPS had neither been withdrawn nor suspended subject to review, in accordance with the statutory arrangements under Part 2 of the 2008 Act. By virtue of section 106 of the 2008 Act, Parliament had expressly empowered the SST to disregard representations made and evidence submitted in response to GAL's application for development consent, which she considered to relate to the merits of the policies set out in the ANPS.

121. The SST addressed GACC's contention that the ANPS was out of date in DL16-DL17 –

"16. With regards to the ANPS, there is no dispute that the ANPS only has effect in relation to Heathrow Airport [ER 3.5.2]. Nonetheless, paragraph 1.41 of the ANPS confirms this is still an important and relevant consideration in the determination of airport related developments, particularly where it relates to London or the south-east

of England. The Secretary of State notes that in its letter of 9 June 2025, Gatwick Area Conservation Campaign ("GACC") raised concerns that the use of the ANPS is outdated, due to the introduction of the Government's legally binding environmental obligations (the inclusion of aviation in carbon budgets and net zero targets) which mean aviation demand must be more carefully managed or reduced. GACC highlighted that the ANPS does not reflect recent airport expansions granted at Luton, Stansted, London City, Bristol and Southampton Airports, meaning that the analysis underpinning the ANPS and the need for aviation development in the south-east of England cannot now be rationally relied upon.

17. While the Secretary of State determines each application on its own merits and consideration of this Application will be based on the particular facts of this case, she agrees that other airport decisions may provide relevant context. It is clear that throughout its considerations on the need for the Proposed Development, the ExA has taken account of recent airport decisions, in particular those of Stansted, Southend, London City [ER 4.3.26] and Luton (where a final decision was still awaited at the close of Examination [ER 4.3.28]) even if/where the ExA's overall conclusion then differs. It found that based on forecasts, there remained a shortfall in capacity at London airports to accommodate the need [ER 4.5.2]. Additionally, the ExA set out at [ER 4.3.1] that the demand forecasts used had been updated post pandemic, as part of the Jet Zero Strategy ("JZS"). The Secretary of State agrees with the ExA's conclusions at [ER 4.3.6 - 4.3.7] and she is satisfied that the evidence took appropriate account of the Government's environmental policies and strategies, including the JZS [ER 4.3.3]. Furthermore, she is satisfied that all impacts of the Proposed Development have been considered by the ExA within the relevant sections of the Report, taking account of all relevant legislation and policy requirements, outside of, and in addition to, the ANPS. The ExA's consideration of the specific legislation and policy in relation to carbon 4 budgets, including the Committee on Climate Change's ("CCC") recommendations, is primarily contained within Chapter 8 of the Report and the Secretary of State's conclusions in the Greenhouse Gas Emissions section of this letter".

122. I have already rejected the Claimant's argument under ground (1) that the SST misconstrued the ANPS. The reasoning in DL16-DL17 shows that the SST took into account recent developments both in airport expansion and climate change policy which had taken place since publication of the ANPS in June 2018. She accepted the ExA's assessment that there remained a shortfall in capacity at London airports to meet the forecast need. The SST satisfied herself that all impacts of the proposed development had been considered by the ExA, taking account of all relevant legislation and policy requirements, including the ANPS and JZS. In relation to the specific legislation and policy in relation to carbon budgets, the SST referred forward to her assessment and conclusions on GHG emissions in DL146-DL212.

123. In DL212 the SST concluded –

"The Secretary of State is satisfied that the Proposed Development is compatible with the Government's JZS, and that the Proposed Development can be managed within Government's overall strategy for meeting net zero, and the relevant carbon budgets. The Proposed Development will not materially impact the Government's ability to meet its net zero targets in accordance with paragraph 5.82 of the ANPS and 5.18 of the NNNPS, nor will it lead to a breach of any international obligations that result from the Paris Agreement or Government's own polices and legislation relating to net zero".

124. Paragraph 5.70 of the ANPS states the government's key objective on aviation emissions –

> *"5.70 The Government's key objective on aviation emissions, as outlined in the Aviation Policy Framework, is to ensure that the aviation sector makes a significant and cost effective contribution towards reducing global emissions. This must be achieved while minimising the risk of putting UK businesses at a competitive international disadvantage. The development of the Heathrow Northwest Runway scheme being considered under the Airports NPS does not override this objective*".

125. That policy was promulgated in the context of the then current target under the CCA of reducing GHG emissions by 2050 by at least 80% on 1990 levels. Since then, the more challenging Net Zero target has been enacted in 2019. In July 2022 the government committed through promulgation of the JZS to the "Jet Zero" goal of achieving net zero UK aviation emissions by 2050. Nevertheless, paragraph 5.82 of the ANPS which states the policy to be applied for the purposes of making decisions on applications for development consent, is expressed in terms which enable it to be applied in relation to those more challenging legislative and policy targets. As is clear from DL211 and DL212, that is the approach taken by the SST to applying that policy in her determination of GAL's application.

126. In short, the SST's judgment that she should have regard to the ANPS as an important and relevant consideration was one that she properly and reasonably made within the statutory framework of Part 6 of the 2008 Act, under which she was required to determine GAL's application for development consent. In making that judgment, the SST took account of GACC's argument that the ANPS had become outdated by virtue of subsequent, legislative and policy changes and airport expansion plans in London and the South East. The SST concluded that the policies of the ANPS which, correctly construed, supported the expansion of existing airport capacity at Gatwick, remained important and relevant considerations in her decision on GAL's application. Her reasons for that conclusion cannot arguably be impugned as irrational. She explained why the ANPS remained an important and relevant statement of policy.

127. The SST also judged the CBDP to be an important and relevant matter to which she should have regard in discharging her duty as decision maker under section 105 of the PA 2008. In DL165 the SST explained why that was her judgment, notwithstanding the decision of this court in R (Friends of the Earth) v Secretary of State for Energy Security and Net Zero [2024] PTSR 1293 -

> *"Paragraph 5.38 of the NNNPS 2024 sets out that the Secretary of State for Energy Security and Net Zero regularly assesses whether the UK has sufficient policies and proposals to meet the UK carbon budgets, with a view to meeting the net zero target [ER 8.4.9], as required by section 13 of the CCA2008. This is reflected in the Carbon Budget Delivery Plan ("CBDP"). The Secretary of State notes that there has been a successful challenge to the CBDP and that the Government is required to produce a revised CBDP within the next 12 months (see R (Friends of the Earth) v Secretary of State for Energy Security and Net Zero [2024] EWHC 995). This date was subsequently amended to 29 October 2025. The CBDP was not quashed, remains government policy and sets out the Government's commitment to comply with carbon budgets and the nationally defined contribution in the Paris Agreement".*

128. Neither the SST's judgment nor her reasons for it can arguably be impugned as irrational.

129. Mr Goodman KC did not really grapple with the implications of his argument. What was the SST to do? It was for GAL to choose the timing of its application for development consent for the proposed development. The SST's statutory responsibility was to determine the application in accordance with sections 104 and 105 of the 2008 Act. As Ms Hutton submitted, an integral element of the statutory framework is the requirement that applications for development consent are determined in a timely way: section 107 of the 2008 Act. That is one of the *Padfield* purposes of the 2008 Act. By enacting section 105 of the 2008 Act, Parliament clearly contemplated that applications for development consent may come forward for development in relation to which no NPS has effect when the application falls to be determined.

130. For the reasons I have given, the SST's approach in making her determination under section 105 of the 2008 Act in relation to the airfield works which are the primary focus of the application, was both lawful and reasonable. Analysed by reference to the *Padfield* principle and the Supreme Court's observations in M v Scottish Ministers, the SST was justified in determining of GAL's application on the basis that both the ANPS and the CBDP were important and relevant matters within the meaning of section 105(2) of the 2008 Act. Her approach was in accordance with the evident legislative purpose that decisions on applications for development consent should be made in accordance with the decision making framework enacted by sections 103 to 107 of the 2008 Act. It is clear from the paragraphs to which I have referred, and from DL146-DL212 read as a whole, that the SST had well in mind the legislative and policy objectives of reducing GHG emissions; and of ensuring steps are taken towards mitigating and adapting to the impact of climate change.

131. In the light of this analysis, I conclude that ground (2) is not reasonably arguable and refuse permission. Had I given permission, for the reasons I have given I should have rejected it.

Barclay Ground (4) – Need and economic benefits

The Claimant's case

132. The Claimant's case under this ground founds upon a report prepared on behalf of GAL by Oxera Consulting LLP **["Oxera"]**. Oxera is an economics and finance consultancy. The report presents the findings of a National Economic Impact Assessment of the proposed development **["the NEIA"]**. The NEIA was presented by GAL in support of its application for development consent, as one of a number of technical reports submitted in support of its need case.

133. Section 3.2 of the NEIA provides an overview of the methodology upon which it is based. It refers to the HM Treasury Green Book guidance on how to assess the costs and benefits to UK society of investing in new infrastructure schemes. A cost-benefit analysis is carried out which quantifies the relevant costs and benefits of the scheme, in order to assess its overall value. Applying Green Book principles, the Department for Transport has developed Transport Analysis Guidance **["TAG"]**. TAG provides a framework for cost-benefit welfare analysis in the transport sector. Transport

interventions for which funding is subject to Treasury approval are required to be appraised on the basis of TAG.

134. The proposed development is a private investment project and, as such, not subject to the same requirement. Nevertheless –

"A TAG welfare analysis is considered as a useful framework to assess and present the economic impact (costs and benefits) of the Project that are additional at the national level".

135. One element of the NEIA is an estimate of *"user benefits"* resulting from the proposed development. Such benefits are expressed as leisure passenger benefits and business passenger benefits, essentially reflecting the reduction in the fares which existing and future passengers would enjoy through operation of the proposed development. The value of these benefits overall is estimated at £150 billion, with the benefits to business passengers valued at £134.6 billion.

136. GACC also commissioned economic consultants, New Economics Foundation **["NEF"]** to prepare a report assessing the socio-economic case for the proposed development. In preparing that report, NEF examined the economic assessments submitted by GAL, including the NEIA. NEF considered that the value of the passenger benefits in the NEIA was significantly overstated. It was well in excess of benefits estimated by the Commission and the Department for Transport in the context of the ANPS (which had considered a larger expansion of Gatwick through provision of a new runway). NEF considered the credibility of estimated benefits to business passengers was highly questionable.

137. Dr Alex Chapman is a senior economist at NEF. In his witness statement dated 30 October 2025, he says that he raised NEF's concerns about the reliability of the NEIA's estimated benefits in relation to business travellers in a relevant representation submitted in early October 2023, prior to the start of the examination process. Dr Chapman's evidence is that, despite continuing references during the examination process to NEF's concerns over GAL's reliance on the NEIA as evidence in support of the economic benefits of the proposed development, the questions which he had raised about the overstated value of business user benefits were never answered. In their written and oral submissions, Mr Strachan KC and Ms Hutton made clear that Dr Chapman's account was not accepted as accurate.

138. The Claimant's case is that the SST omitted to address the issues raised by NEF about the credibility of the NEIA's estimate of the value of benefits to business passengers resulting from operation of the proposed development. These asserted benefits were a core element of GAL's case on both the need for the proposed development and the national economic benefits which would result from its operation. The Claimant contends that the SST has failed to consider rationally the alleged business passenger travel growth asserted by GAL in reliance on the NEIA, which was a key forecast and assumption underpinning the alleged economic benefits of the proposed development. In giving great positive weight to the national economic benefits of the proposed development, the SST reached an irrational conclusion and failed to give adequate reasons for that conclusion.

139. The Claimant further contends that the SST neither knew nor had attempted to establish how many of the projected business passengers upon which the NEIA was based would simply have been displaced to Gatwick from either Heathrow or other London airports. In the absence of that knowledge, the SST could not rationally conclude that GAL had established that the proposed development would meet a need additional to, and different from, that to be met by a new runway at Heathrow.

140. Mr Goodman KC relied upon the analysis of the *Wednesbury* principle at [55]-[56] in R(KP) v Secretary of State for Foreign, Commonwealth and Development Affairs [2025] EWHC 370 **[*"KP"*]** –

> *"55. In most contexts, rationality is the standard by which the common law measures the conduct of a public decision-maker where there has been no infringement of a legal right, no misdirection of law and no procedural unfairness. It encompasses both the process of reasoning by which a decision is reached (sometimes referred to as "process rationality") and the outcome ("outcome rationality"): see e.g. R (Law Society) v Lord Chancellor [2018] EWHC 2094 (Admin), [2019] 1 WLR 1649, [98] (Leggatt LJ and Carr J).*
>
> *56. Process rationality includes the requirement that the decision maker must have regard to all mandatorily relevant considerations and no irrelevant ones, but is not limited to that. In addition, the process of reasoning should contain no logical error or critical gap. This is the type of irrationality Sedley J was describing when he spoke of a decision that "does not add up – in which, in other words, there is an error of reasoning which robs the decision of logic": R v Parliamentary Commissioner for Administration ex p. Balchin [1998] 1 PLR 1, [13]. In similar vein, Saini J said that the court should ask, "does the conclusion follow from the evidence or is there an unexplained evidential gap or leap in reasoning which fails to justify the conclusion?": R (Wells) v Parole Board [2019] EWHC 2710 (Admin), at [33]".*

Discussion and conclusions

141. In order to address the Claimant's contentions under this ground, it is necessary to refer in some detail to both the ExA's and the SST's consideration both of the need for the proposed development and its socio-economic effects.

Need

142. I have already referred to the SST's conclusion in DL15 that, because of the scale and size of Gatwick Airport and of the proposed expansion of its airport operations, Gatwick's proximity to Heathrow Airport required that GAL should demonstrate a need for the proposed development which was in addition to or different from any Heathrow scheme. The SST said that conclusion was supported by paragraph 1.42 of the ANPS. The conclusion in DL15 reflected the ExA's conclusions in paragraphs 4.2.59 and 4.2.62 of the Report.

143. The ExA carried out a comprehensive assessment of the need case in support of the proposed development in section 4.3 (paragraphs 4.3.1 to 4.3.99) of the Report. The ExA found that there were long recognised aviation capacity constraints, hence the policy support for a new runway at Heathrow given by the ANPS. At paragraph 4.3.7 the ExA said –

"4.3.7 While there has been some decline in the DfT central case forecasts successively from 2017 through to the 2023 SAF figures, Government forecasts still predict significant growth in air passenger demand. The same forecasts indicate a significant increase in aviation demand in London, with a predicted 230mppa demand in 2023, some 50mppa above 2019 levels and to over 300mppa in 2050 [APP-250]. In the context of these overall levels of air passenger demand, the ExA agrees with the Applicant that the Proposed Development would deliver a reasonably modest increase in capacity to help meet this demand".

144. The ExA found that even allowing for GAL's projected longer-term growth of 13 mppa provided by the proposed development, the overall shortfall in aviation capacity at London airports would remain significant over the long term. The ExA said that there were capacity constraints at all London airports either for planning or operational reasons. In terms of its operating characteristics, Gatwick was found to be distinctive in having a fairly diverse, mixed range of traffic, albeit dominated by low cost carriers, set in a reasonably affluent catchment with frequent and reasonably easy and direct access to London. The airport is also well established as the second largest airport in the UK. There was evidence of demand for growth at Gatwick from the airport's current leading airline, EasyJet. There was a reasonable prospect of the proposed development becoming operational substantially in advance of a new runway at Heathrow, given the significant construction times and position in the planning system of that project.

145. Having then assessed the effect that the proposed development was likely to have on the hub status of Heathrow Airport, the ExA concluded –

"4.3.37 The ExA therefore considers that the Proposed Development would not unduly affect the hub status of LHR in the long term. While in the short term there may be some effect, this would not be significant or long lasting. Furthermore, the DfT's modelling for the Airports Commission cited by the Applicant demonstrates that the Proposed Development could in itself promote more transfer traffic at LHR with more capacity for point-to-point traffic opened at Gatwick. The ExA agrees that flights at Heathrow which are viable from a mixture of point to point and transferring traffic would stay at LHR as the transferring passengers contribution to the flight would remain at LHR and economies of scale would be unlikely to make a move to Gatwick logical for the connecting flights for the transfer traffic".

146. Having given detailed consideration to forecast demand and the growth modelling work which was in evidence before the examination, in paragraph 4.3.99 the ExA stated its overall conclusions on the need case. The ExA concluded that in the context of the overall levels of air passenger demand in the London system, the proposed development would deliver a reasonably modest increase in capacity to help meet this demand. There was persuasive evidence of Gatwick being heavily constrained at certain key times and months of the year with demand significantly outstripping supply. If consent was granted for the proposed development, it would be operational substantially in advance of a new runway at Heathrow. The proposed development would not unduly affect the hub status of Heathrow in the long term. A 2mppa increase for peak growth in the baseline forecasts was reasonable and theoretically achievable.

147. Having considered airport capacity and airspace issues, in section 4.5 of the Report the ExA drew together its conclusions on the principle of the proposed development and the need case. Those conclusions include –

"4.5.3 The ExA are content that the need that has been shown to be present for Gatwick's growth is both largely additional to, and different from the need that would be met by the LHR NWR runway scheme. Gatwick is dominated by LCC traffic, a trend that is likely to largely continue and is a sector of the market that LHR does not serve to any great extent.

4.5.4 Transfer traffic is not forecast to grow significantly under the Proposed Development and while some long-haul traffic may be attracted to Gatwick which would have otherwise gone to Heathrow, this would likely revert to that airport as and when the NWR scheme opens, as Heathrow's economies of scale and structural advantages to this marketplace would remain.

4.5.5 We have concluded that the forecast growth in the NRP may not be as rapid as predicted by the bottom-up forecasts but it would likely be 'quicker' than the top down forecasts presented. This would lead to the benefits of the NRP in the 'early years' being overstated to a small degree, but this would not be significant and would be a relatively short-term effect".

148. In paragraphs 44 to 80 of the MDL the SST essentially agreed with the ExA's assessment and conclusions on the need case. In DL18-DL19 she said –

"18. In her minded to letter, the Secretary of State set out that she was minded to agree with the ExA that there remains a nationally recognised need for aviation development, particularly in the south of England, which has not only been demonstrated by the ANPS but by the Airports Commission and by the DfT forecasts from 2017, 2022 and 2023, for which the current capacity at London airports fall short [ER 4.5.2]. ....

19. The Secretary of State is content that the ExA considered the most recent Government forecasts available at the time, which show a significant increase in aviation demand in London up to 2050, which the Applicant predicts could not be met by any future Heathrow scheme alone [ER 4.3.7 - 4.3.8]. The ExA also considered evidence presented by Airport Coordination Limited, supported by the evidence of the Legal Partnership Authorities and easyJet, that the demand specific to Gatwick is significantly outstripping its supply at certain times of the year [ER 4.3.29 - 4.3.31]. The ExA noted that the markets served by Heathrow and Gatwick, while similar in some ways, are very different in others, including by reference to the proportion of the low cost carrier market, and rate of passengers transferring flights [ER 4.3.33 – 4.3.35] and so conceivably meet a different demand. Transfers are expected to remain a small sector demand compared to Heathrow [ER 4.3.16 - 4.3.17] therefore the Proposed Development is unlikely to affect the 'hub' status of Heathrow long term [ER 4.3.37]. While noting the concern that Gatwick is primarily a leisure flight airport, the Secretary of State has had regard to the Applicant's Planning Statement, confirming the trend for low-cost carrier airlines (which dominate Gatwick's traffic [ER 4.3.12]), which have opened up new routes and destinations to both business and leisure travellers [Planning Statement (APP-245), 2.4.17]".

149. The reference in DL19 to paragraph 4.3.12 of the Report is to GAL's own description of the markets served by Gatwick in contrast to Heathrow –

"4.3.12 The Applicant notes that LHR has not traditionally served the lower cost carrier (LCC) market, with 1.2mppa LCC passengers in 2019, 3% of the London

system's market. In contrast, Gatwick's traffic is dominated by LCC, with airlines such as easyJet, Ryanair, Wizz Air, and Norwegian all operating from the airport. The Applicant notes that LCC growth is responsible for 73% of total growth in the London system since 2005 and the short haul (majority) element of this market is forecast to continue to deliver the largest growth in passenger volumes [APP-250]".

150. The SST's overall conclusions on the principle of the proposed development and the need case are given in DL24 –

"24. Overall, the Secretary of State agrees with the ExA that there is a need for aviation capacity as outlined and supported by the ANPS, and that the Applicant has demonstrated sufficient need for the Proposed Development that would partially satisfy, would be additional to, and different from the need met by the Heathrow scheme [ER 4.5.12]. .... The Secretary of State considers she has not been presented with any new evidence that changes her position from that set out in the minded to letter and like the ExA, considers the Principle of the Proposed Development and the Need Case carries moderate weight in favour of the Order being made [ER 4.5.12]".

151. The SST's reasons and conclusions in these paragraphs are neither founded upon nor justified by reference to any estimation of the growth in business passengers that would follow the coming into operation of the proposed development. The SST's judgment that the proposed development fulfils the policy requirement to show a need that is additional to, and different from that to be met by a new runway at Heathrow is founded on different considerations. Those considerations are identified in DL19, which I have set out above. It is Gatwick's function as primarily a leisure airport dominated by low cost carrier flights, and the expectation of continuing growth in those markets, that the SST identified as material factors in substantiating the need for the proposed development. That is entirely consistent with policy, since the relevant question was whether the evidence established a need which was both additional to and different from that which was to be met through development of a new runway at Heathrow. Hence the ExA's and the SST's focus on the contrasting functions of and markets served by Gatwick and Heathrow. Some weight is given to opportunities to expand business travel in the final sentence of DL19. There is no suggestion that the SST's reasoning in that sentence, or in DL19 as a whole, was founded in any material way on the NEIA or its estimation of the value of benefits to business passengers.

Socio-economics

152. Paragraphs 4.4 and 4.5 of the ANPS state –

"4.4 In considering any proposed development, and in particular when weighing its adverse impacts against its benefits, the Examining Authority and the Secretary of State will take into account:

• Its potential benefits, including the facilitation of economic development (including job creation) and environmental improvement, and any long term or wider benefits; and

• Its potential adverse impacts (including any longer term and cumulative adverse impacts) as well as any measures to avoid, reduce or compensate for any adverse impacts.

4.5 In this context, environmental, safety, social and economic benefits and adverse impacts should be considered at national, regional and local levels. These may be identified in the Airports NPS, or elsewhere. The Secretary of State will also have regard to the manner in which such benefits are secured, and the level of confidence in their delivery".

153. The ExA provided a very detailed analysis of the potential socio-economic effects of the proposed development in chapter 10 of the Report. In section 10.1 (paragraphs 10.1.1 to 10.1.12) the ExA summarised GAL's assessment in chapter 17 of the environment statement **["ES"]** submitted in support of the application for development consent. GAL had developed the scope of the socio-economic assessment in consultation with relevant statutory and non-statutory consultees. Potential socio-economic effects were analysed in up to five separate study areas extending from the site boundary across the six authorities area **["SAA"].** Effects were assessed across a series of indicative construction and operational periods. Paragraphs 10.1.8 to 10.1.10 of the Report tabulate a series of reported residual significant beneficial effects of the proposed development. Those effects include estimated increases in direct, indirect and induced employment, expressed both in terms of jobs and gross value added **["GVA"]**. The assessment was that there would be substantial increases in indirect and induced employment both in terms of jobs and GVA across the SAA and at national (UK) level. Tables 10.10 and 10.11 summarise the estimated total *"catalytic effects"* in the SAA and disaggregate those effects both in terms of numbers of jobs and GVA across study areas. Paragraph 10.1.10 says that the catalytic effect is estimated as the difference between the total net employment impact of the proposed development in the SAA and the combined direct, indirect and induced employment footprint of the proposed development in the same area. The catalytic effect is given for 2029 as 2500 jobs, for 2038 as 7200 jobs and for 2047 as 6500 jobs. Table 10.11 gives the catalytic GVA in the SAA for those years as £168M, £538M and £550M respectively.

154. In paragraphs 10.1.11 and 10.1.12 of the Report the ExA state –

"10.1.11 In addition to the above, the Applicant also stated that other benefits would also be realised because of the Proposed Development, but these had not been captured in the assessment [APP-251]. These included the potential impact on tourism, competition, resilience, and freight.

10.1.12. In respect of tourism, the Applicant further stated that there would be a potentially positive effect, through increased services and reduced fares, as well as an increase in expenditure in the UK by inbound tourists as well as overseas by outbound tourists. However, these effects had not been quantified given the lack of available evidence on how tourism could generate welfare impacts on the UK economy [REP9-112]".

155. In section 10.2 (paragraphs 10.2.1 to 10.2.156) of the Report, the ExA considers and reports on the issues raised during the examination procedure in relation to the socio-economic effects of the proposed development. Having firstly considered a number of issues raised about the methodology used by GAL for its socio-economic assessment, in paragraph 10.2.23 the ExA expresses its satisfaction that GAL's method is both appropriate and has adequately identified the socio-economic effects of the proposed development.

156. In relation to economic effects and benefits, the ExA notes at paragraph 10.2.25 that the main issue which remains unresolved in respect of the assessment of catalytic employment is the likely scale of such employment; specifically, the methodology used to assess catalytic employment benefits.

157. That issue primarily arose between GAL and the local authorities in the local and wider surrounding area. East Sussex County Council had commissioned a review from air transport consultants, York Aviation **["YA"]** which concluded that GAL's method of assessing wider catalytic impacts in the local area was not robust. The ExA addresses that issue in detail in paragraphs 10.2.24 to 10.2.50 of the Report.

158. At paragraph 10.2.44 the ExA notes that NEF made a representation regarding the catalytic assessment methodology. NEF stated its overall support for GAL's approach but subject to two qualifications: firstly, that the displacement/spillover impacts were not adequately described; and secondly, that the catalytic employment impacts rely on new business passengers.

159. In paragraphs 10.2.44 to 10.2.48 of the Report, the ExA set out the respective arguments of GAL and NEF on those two points of difference –

"10.2.44 We also note that the New Economics Foundation (NEF) made a representation regarding the catalytic assessment methodology at [REP8-173]. Overall, NEF stated that they supported the Applicant's approach in respect of the catalytic employment assessment as it was a more academically robust and cautious approach than that suggested by YA. However, NEF did identify two issues with the Applicant's approach:

▪ *that the displacement/ spillover impacts were not adequately described; and* ▪ *that the catalytic employment impacts rely on new business passengers.*

10.2.45 NEF concluded [REP8-173] that whilst it accepted that there would be some likely employment growth resulting from the Proposed Development, the assessment approach used by the Applicant meant that there would be no certainty that there would be any net employment benefit at the national level.

10.2.46 This was because [REP8-173] by attributing catalytic growth to the Proposed Development it would rely on the use of new capacity by new business passengers created. NEF further stated that it was far from clear whether there would be any net additional business passenger growth at all arising from the Proposed Development. As such, if the inputs used by the Applicant in their assessment were wrong, regardless of the robustness of the internal workings of the model, the outputs would be incorrect.

10.2.47 The Applicant provided a response to the issues raised by NEF at [AS-163]. In terms of displacement, the Applicant commented that the assessment was undertaken at the West Sussex County level and displacement was reflected which would occur between the counties which make up the SAA.

10.2.48 In respect of the second issue raised by NEF, the Applicant stated [AS-163] that it agreed that in principle catalytic employment was driven partly by business passenger connectivity. However, in the approach used, the relationship derived is between air traffic and total employment and not between air traffic and specifically

catalytic employment. This is considered by the Applicant to be an important point as in this case air traffic is not used as a proxy but is in fact the main driver for the impact the Applicant sought to measure. While catalytic employment may be specifically driven by air travel demand, the Applicant further stated that other types of employment related to airport activity are instead driven by the magnitude of airport activity i.e. the more traffic at the airport, the more employment. In the assessment, catalytic employment was derived as a residual when subtracting the separately calculated direct/ indirect /induced from the total local employment estimated, that is the impact of airport activity on local employment, which includes direct, indirect, induced, and catalytic employment".

160. The ExA state their conclusions on the catalytic employment assessment in paragraphs 10.2.49 and 10.2.50 –

"10.2.49 We note that catalytic effects arise from the wider benefits that the government, consumers, employees, and other industries gain from the services the airport would provide. For example, increased flights and capacity that could provide links connecting UK residents and businesses to destinations and markets around the world.

10.2.50 We are mindful of the differences of opinions between the Applicant and the JLAs in respect of the assessment of catalytic employment effects. However, we are content that the Applicant has adequately justified the methodology it has followed to assess catalytic effects. We are therefore satisfied that the approach adopted addresses the issues of displacement and causality".

161. In paragraphs 10.2.137 to 10.2.142 of the Report, the ExA draws the following conclusions on GAL's proposed Employment, Skills and Business Strategy **["ESBS"]** to be secured by means of a section 106 agreement –

"10.2.137 As detailed above, the Applicant has demonstrated that there would be significant employment opportunities created by the Proposed Development. We note that the Applicant has been working with the local authorities and regional stakeholders to maximise the benefits of the opportunities that would be created.

10.2.138 As such, we consider that the initiatives which would be secured by the ESBS and Implementation Plan would assist in maximising the employment and skills development opportunities created by the Proposed Development.

10.2.139 We note that the availability of employment lies at the heart of inclusive economic growth and the alleviation of poverty. It is also widely accepted that good quality employment can have positive influences on an individual's overall health and wellbeing.

10.2.140 As such, with specific regard to health implications, we are content that the initiatives set out in section 8.6 of the ESBS at Appendix 5 of the s106 agreement [REP10-019] would both promote and increase health equity by enabling greater accessibility to employment for local vulnerable groups. The measures included within the ESBS would, through training, employment and procurement initiatives, aid in removing barriers to employment.

10.2.141 Furthermore, we consider that the provision of the ESBS complies with objectives in the ANPS, insofar as the Applicant has identified an appropriate measure to compensate for potential adverse health effects.

10.2.142 We are therefore satisfied that the provision of the ESBS, Implementation Plan and associated funding could provide a mechanism to maximise economic benefits for communities and businesses. We are satisfied that, given the amendments and additional provisions made to the ESBS and Implementation Plan by the Applicant, that it could provide suitable conditions to deliver sustainable employment, skills development and career progression for communities and enhancements in the productivity and growth of business".

162. The ExA's overall conclusions on socio-economic effects are stated in paragraphs 10.3.1 to 10.3.6 of the Report –

"10.3.1 In terms of the socioeconomic assessment, we note that there is not a standardised methodology which specifies the detail required to prepare socioeconomic assessments, or that provides defined standards or thresholds for assessing the significance of socioeconomic effects.

10.3.2 Whilst accepting that uncertainties exist within the socioeconomic assessment, we are satisfied that the Proposed Development would provide significant beneficial effects in terms of the availability of labour, due to the airport attracting additional staff, and direct, indirect, and induced employment. Gatwick Airport is already an important employer in the area and currently supports a significant level of local employment and the potential economic benefits from the Proposed Development, if realised, would undoubtedly result in both local and national economic growth.

10.3.3 As such, we consider that the Applicant has adequately assessed the effects of the Proposed Development in line with both paragraph 4.4 and 4.5 of the ANPS and has provided sufficient evidence to support its conclusions on those effects.

10.3.4 We are satisfied that the Proposed Development would support economic development in both the local area and nationally. Such effects would not be affected by the conclusions of the ExA with regard to the forecast traffic levels for the future baseline and the Proposed Development, as found in Chapter 4 of this Report. 10.3.5. 10.3.6.

10.3.5 In conclusion, we find that the Proposed Development in respect of socioeconomics, would accord with the ANPS and other relevant legislation and policy requirements.

10.3.6 Accordingly, we ascribe moderate weight to matters relating to socioeconomics in favour of the Order being made".

163. The SST considers socio-economics in DL226-DL264. In DL228 she agrees that GAL has undertaken an appropriate socio-economic assessment which adequately identifies effects arising from the proposed development. She addresses the issues in relation to the assessment of catalytic employment in DL229-DL231 –

"229. The ExA states that a number of local authorities raised concerns regarding the methodology by which catalytic effects of the Proposed Development had been assessed [ER 10.2.27] and that the main unresolved area of disagreement was the scale of catalytic employment and the methodology used to assess the catalytic employment benefits [ER 10.2.25]. The ExA also highlighted that this topic was identified as an issue in several of the LIRs [ER 10.2.29]. The Secretary of State notes the concerns raised by KCC about whether the wider benefits expected as a result of the Proposed Development had been overstated [ER 10.2.28].

230. The ExA reports that the matter of catalytic impacts was widely discussed throughout the Examination. The Secretary of State has considered the ExA's extensive summary of these discussions, and the additional evidence submitted by the Applicant and other Interested Parties, such as York Aviation ("YA") [ER 10.2.30 - 10.2.48].

231. The APF accepts that while there is broad agreement that aviation benefits the UK economy, both at a national and a regional level, views can differ on the exact value of this benefit depending on the assumptions and definitions used [APF, paragraph 1.3]. Having taken these differing opinions into account, the ExA concluded that the Applicant had sufficiently justified their approach and that the approach addresses the issues of displacement and causality [ER 10.2.50]. The Secretary of State agrees".

164. In DL253 and DL256 the SST states her satisfaction that the ESBS provides a mechanism for maximising the economic benefits and opportunities created by the proposed development.

165. The SST's overall conclusions are set out in DL259-DL264. In DL 260, the SST addresses the debate as to whether the economic wealth benefit resulting from the proposed development was overstated by GAL –

"260. The Secretary of State notes the representations of GACC and NEF (June 2025), which state that the Applicant has overstated the level of economic wealth benefit that would arise from the Proposed Development, as they consider expansion would take further spending abroad rather than into the UK and contribute to a growing tourism deficit. However, the Secretary of State has noted that the APF sets out that there is broad agreement that aviation benefits the UK economy both at a national and local level with significant economic benefits. She is content that the APF allows for different views on the exact value of economic benefits, and these benefits can extend beyond tourism or direct contribution to UK wealth [APF, paragraphs 1.1 - 1.49]. She has additionally noted the support for the Proposed Development in the Sussex Chamber of Commerce's email of 10 June 2025, for the benefits that the project will bring to the region and wider UK. They consider that Gatwick Airport has generated economic growth for the region and that the Proposed Development offers global business connections, the jobs and skills growth and a significant economic boost to the area which will support the economy and increase resilience and job prosperity. This will strengthen the diversity of the area and success of the region".

166. In DL261, the SST expressly accepts that there are uncertainties within the socio-economic assessment. She nevertheless notes the considered position of the ExA, following consideration of the evidence, that the proposed development would provide certain significant beneficial effects –

"261. While accepting that uncertainties exist within the socioeconomic assessment the Secretary of State notes that the ExA were satisfied that the Proposed Development would provide significant beneficial effects in terms of availability of labour due to the airport attracting additional staff and direct, indirect and induced employment. The ExA further noted that Gatwick Airport is already an important employer in the area and currently supports a significant level of local employment and the potential benefits from the Proposed Development if realised would undoubtedly result in both local and national economic growth [ER 10.3.2]. Along with the significant employment benefits created by the Proposed Development, the Secretary of State has noted the initiatives that would be secured by the ESBS and Implementation Plan and that would assist in maximising the employment and skills development opportunities created by the Proposed Development [ER 10.2.138]. The ExA took account that the availability of employment lies at the heart of inclusive economic growth and the alleviation of poverty and the wide acceptance that good quality employment can have positive influences on an individual's overall health and wellbeing [ER 10.2.139]. The ExA noted that the initiatives set out in section 8.6 of the ESBS at Appendix 5 of the section 106 agreement would both promote and increase health equity by enabling greater accessibility to employment for local vulnerable groups and such measures would assist in removing barriers to employment [ER 10.2.140]".

167. In DL263 the SST finds that the beneficial effects flowing from the ESBS, the £20 million ESBS Fund, the Homelessness Prevention Fund and the Gatwick Community Fund provide a comprehensive and targeted package of socioeconomic mitigation and enhancement.

168. Those beneficial effects identified in DL261 to DL263 provide the foundation for the SST's overall conclusion in DL264 –

"264. Overall, the Secretary of State agrees with the ExA that the Applicant's assessment shows that significant beneficial effects of direct, indirect and induced employment would be brought about by the Proposed Development that would support both local and national economic growth [ER 10.3.2 and 10.3.4]. However, she also believes that taken together, these provisions represent a proactive strategy to maximise the socioeconomic benefits, and the Secretary of State attaches great weight to the overall effect of these benefits arising from the Proposed Development. Accordingly, the Secretary of State disagrees with the conclusion reached by the ExA on weight and considers that this attracts great positive weight in the overall planning balance".

169. I have made extensive reference both to the ExA's and the SST's consideration of the socio-economic effects of the proposed development. The following points clearly emerge from that analysis –

(1) Both the ExA and the SST address the concerns raised by NEF on behalf of GACC and YA on behalf of the local authorities in relation to the methodology for assessing catalytic employment. The ExA addresses the particular concern raised by NEF in that context over the likelihood of any net additional growth in business passengers. The ExA concludes that GAL had adequately justified its methodology. The SST accepts that conclusion.

(2) In DL260 the SST acknowledges that GACC and NEF consider that GAL has overstated the level of economic wealth benefit resulting from the proposed development. In response to those concerns, the SST relies upon the broad agreement identified in the APF that aviation benefits the UK economy at both the national and local level with significant economic benefits. In DL260 she refers to and gives weight to evidence that Gatwick has generated regional economic growth which the proposed development offers opportunities to build on and strengthen.

(3) The SST acknowledges the uncertainties in economic assessment. There is no standardised methodology for socio-economic assessment nor any established test for significance. Nevertheless, the SST's overall conclusion in DL264 that the proposed development will support both local and national economic growth is founded on two clearly stated factors. Firstly, that significant beneficial effects of direct, indirect and induced employment will be brought about by the proposed development that will support both local and national economic growth. Secondly, that through the ESBS and other delivery mechanisms, GAL has put forward a proactive strategy to maximise delivery of the proposed development's socio-economic benefits. The main reasons for those overall conclusions are stated in DL261 and DL263, which I have set out above.

(4) In their conclusions, neither the ExA nor the SST place any reliance upon the NEIA or economic assessment of the proposed development in accordance with TAG.

My Conclusions

170. The SST is under a statutory duty to have regard to any matters that she thinks are both relevant and important to her decision on GAL's application: section 105(2) of the 2008 Act. She is required to give her reasons for her decision: section 116 of the 2008 Act.

171. In *South Bucks* at [34], the House of Lords drew attention to the following statement of principle by Lord Lloyd of Berwick in Bolton Metropolitan Borough Council v Secretary of State (1995) 71 P&CR 309, 314-315 –

"[I]n so far as [the Court of Appeal in that case] was saying that a decision letter must refer to 'each material consideration' I must respectfully disagree. This seems to go well beyond Phillips J's formulation in Hope v Secretary of State for the Environment [(1975) 31 P & CR 120, 123]. What the Secretary of State must do is to state his reasons in sufficient detail to enable the reader to know what conclusion he has reached on the 'principal important controversial issues'. To require him to refer to every material consideration, however insignificant, and to deal with every argument, however peripheral, would be to impose an unjustifiable burden.

. . .

Since there is no obligation to refer to every material consideration, but only the main issues in dispute, the scope for drawing any inference [the inference suggested being 'that the decision-maker has not fully understood the materiality of the matter to the decision'] will necessarily be limited to the main issues, and then only, as Lord Keith pointed out [in R v Secretary of State for Trade and Industry, Ex p Lonhro plc [1989] 1 WLR 525, 540], when 'all other known facts and circumstances appear to point overwhelmingly' to a different decision."

172. In my view, that long established approach to review of planning appeal decisions is applicable to review of decisions on applications for development consent under the 2008 Act. The obligation to have regard to certain considerations and to give reasons for the decision is common both to the determination of planning appeals under Part 3 of the Town and Country Planning Act 1990 and the determination of applications for development consent under Part 6 of the 2008 Act.

173. In this case, the SST considered both the need for and the socio-economic effects of the proposed development to be important and relevant considerations in her decision on GAL's application. Both were raised by policy and considered by the SST within the policy framework set by the APF and ANPS. It is beyond argument that the SST had regard to those considerations.

174. For the reasons given in paragraph 151 of this judgment, the Claimant's challenge to the SST's reasoning and conclusions in relation the need for the proposed development is unsustainable. There is no gap in the logic of the SST's analysis. Her conclusions are rational and supported by proper, adequate and intelligible reasons.

175. In relation to the socio-economic effects of the proposed development, a main issue for the SST to resolve was the nature and degree of socio-economic benefits to which it would give rise through construction and operation. Unsurprisingly, all parties including both GAL and GACC submitted representations and economic evidence in relation to that question. Equally unsurprisingly, that material gave rise to extensive debate between economic experts, in a field of assessment where there is no single approved method of assessment and no single test or benchmark against which performance is to be measured.

176. The SST recognised the uncertainties, took the established policy position as her starting point and from the plethora of assessment evidence submitted for examination, identified those factors which, in her judgment, supported a conclusion on the socio-economic effects of the proposed development.

177. As both Mr Pleming KC and Mr Strachan KC submitted, the particular benefits relied upon by the SST to found her overall conclusions that the proposed development would give rise to significant socio-economic benefits both at the national and local level are clearly identified and explained in DL259-DL264. That explanation is founded on the assessments examined by the ExA in the Report and the ExA's conclusions following its analysis of that evidence.

178. The NEIA formed part of the wider evidence submitted by GAL and other parties in relation to the socio-economic effects of the proposed development. It does not form any significant part of the SST's overall conclusions in DL259-DL264. The SST does not express any conclusion about the net present value of the proposed development. Neither the ExA's conclusions in section 10.3 of the Report nor the SST's reasons and conclusions in DL259-DL264 are founded upon or justified by reference to any estimation of the growth in business passengers that would follow the coming into operation of the proposed development.

179. The SST's conclusions in DL264 are supported by intelligible and adequate reasons. There is no gap in her logic. Her conclusion is plainly rational. The weight to be given to the socio-economic benefits identified in DL264 was a matter exclusively for the

SST to determine. Applying long established principles of review, the absence of any specific reasoning in relation to the NEIA and issues debated during the examination in relation to that assessment is entirely unremarkable. It provides no proper basis for the Claimant's argument that the SST failed properly to take those matters into consideration. The Claimant's contention, that the effects of direct, indirect and induced employment which are reported by the ExA cannot rationally support the SST's conclusion that the proposed development will support national as well as local economic growth, is unsustainable.

180. I grant permission on this ground but, for the reasons given, I reject it.

GHG Emissions

181. Grounds (1) to (4) of CAGNE's claim and ground (3) of Mr Barclay's claim are directed at the SST's consideration of GHG emissions in DL146 to DL212. In summary, in DL146-DL151 the SST sets out the policy and legislative context. In DL152-DL162 she summarises GAL's assessment of carbon emissions. The SST then turns to consider the issues raised during the examination. Those issues include the policy context (DL163-DL167); non-CO_2 emissions (DL168-DL178); and *Finch* and downstream effects including inbound flight emissions (DL179-DL186). In DL187-DL201 the SST addresses mitigation and aviation emissions controls, including the significance of emissions. Finally, in DL202-DL212 the SST states her conclusions on GHG emissions.

CAGNE ground (1) – significance of GHG emissions

The SST's approach and conclusions

182. The SST addresses the significance of the GHG emissions resulting from the proposed development in DL194 to DL201. In summary –

(1) GAL's assessment criteria were based on the Institute of Environmental Management and Assessment's Guide on Assessing Greenhouse Gas Emissions and Evaluating their Significance (February 2022) **["the IEMA Guidance"]** and contextualised against UK carbon budgets. Assessing the proposed development against UK carbon budgets means that an assessment is made against Paris Treaty obligations as carbon budgets are linked to those obligations (DL194).

(2) GAL's revised assessment indicated that the proposed development's total emissions contribution to Carbon Budget 6 **["CB6"]** is 0.657%. That figure includes domestic inbound flight emissions but excludes inbound international flights, fuel produced outside of the UK and non-CO_2 emissions, on the basis that these cannot be contextualised against the UK's carbon budgets. GAL has assessed until the end of CB6 but not the period up to 2050 (DL195).

(3) The test for significance is governed not by an increase in GHG emissions but by alignment with net zero. That approach reflects the IEMA Guidance. Section 6.3 of the IEMA Guidance also gives an indicative threshold of 5% of the UK's carbon budget over an applicable time period, at which the magnitude of GHG emissions irrespective of any reductions is likely to be significant (DL196).

(4) It is appropriate to assess significance on the basis of the proposed development's contribution to CB6 which would be 0.657%. That figure represents the increase in carbon emissions resulting from the proposed development, for the purposes of applying the policy of paragraph 5.82 of the ANPS. That approach is also consistent with the IEMA guidance that the assessment should seek to quantify the difference in GHG emissions between the proposed project and the baseline scenario (D201).

183. In DL210 to DL212, the SST sets out her overall assessment of significance and her conclusions on the application of paragraph 5.82 of the ANPS –

"210. Regarding significance, the Secretary of State has considered Box 3 of the IEMA Guidance, which provides practitioners with examples of how to distinguish different levels of significance. She considers that the Applicant has been fully consistent with applicable existing policy and has provided flexibility and scope within its CAP to adapt to emerging policy, and the Proposed Development would be fully consistent with good practice design standards for projects of this type. The Secretary of State considers that the Proposed Development would lead to an increase in GHGs, both carbon and non-CO2, and that the scale of the effects from the Proposed Development would fall short of fully contributing to the UK's trajectory towards net zero, although this would be mitigated in the long-term by the policies brought forward in the JZS.

211. Paragraph 5.82 of the ANPS 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." [ER 8.5.12]. The magnitude of the increase in carbon emissions resulting from the Proposed Development is predicted to be a maximum of 0.657% of any carbon budget [ER 8.4.103].

212. The Secretary of State is satisfied that the Proposed Development is compatible with the Government's JZS, and that the Proposed Development can be managed within Government's overall strategy for meeting net zero, and the relevant carbon budgets. The Proposed Development will not materially impact the Government's ability to meet its net zero targets in accordance with paragraph 5.82 of the ANPS and 5.18 of the NNNPS, nor will it lead to a breach of any international obligations that result from the Paris Agreement or Government's own polices and legislation relating to net zero. Therefore, the Secretary of State considers that while the effects of the Proposed Development are significant, they do not meet the threshold for a major, significant adverse effect, and she has therefore placed moderate, adverse weight against the making of the Order".

The IEMA Guidance

184. As is implicit in its title, the stated aim of the IEMA Guidance is to assist practitioners with *"addressing GHG emissions assessment, mitigation and reporting in statutory and non-statutory Environmental Impact Assessment"*. Part 4 of the IEMA Guidance addresses significance. Reference is made to the Paris Agreement, to the UK's carbon reduction targets and carbon budgets. Section 6.2 says that to meet the 2050 net zero target and interim budgets, action is required to reduce GHG emissions from all sectors, including development projects. EIA for any proposed project must therefore give

proportionate consideration to whether and how that project will contribute to or jeopardise the achievement of those targets.

185. The crux of significance is said to be –

"… not whether a project emits GHG emissions, nor even the magnitude of GHG emissions alone, but whether it contributes to reducing GHG emissions relative to a comparable baseline consistent with a trajectory towards net zero by 2050".

186. Section 6.3 of the IEMA Guidance gives advice on significance principles and criteria –

"A project that follows a 'business-as-usual' or 'do minimum' approach and is not compatible with the UK's net zero trajectory, or accepted aligned practice or area based transition targets, results in a ***significant adverse effect****. It is down to the practitioner to differentiate between the 'level' of significant adverse effects e.g. '****moderate****' or '****major****' adverse effects (see Box 3 for an example of such a differentiation).*

A project that is compatible with the budgeted, science based 1.5°C trajectory (in terms of rate of emissions reduction) and which complies with up-to-date policy and 'good practice' reduction measures to achieve that has a ***minor adverse*** *effect that is* ***not significant****. It may have residual emissions but is doing enough to align with and contribute to the relevant transition scenario, keeping the UK on track towards net zero by 2050 with at least a 78% reduction by 2035 and thereby potentially avoiding significant adverse effects.*

A project that achieves emissions mitigation that goes substantially beyond the reduction trajectory, or substantially beyond existing and emerging policy compatible with that trajectory, and has minimal residual emissions, is assessed as having a ***negligible*** *effect that is* ***not significant****. This project is playing a part in achieving the rate of transition required by nationally set policy commitments.*

A project that causes GHG emissions to be avoided or removed from the atmosphere has a ***beneficial*** *effect that is* ***significant****. Only projects that actively reverse (rather than only reduce) the risk of severe climate change can be judged as having a beneficial effect".*

(original emphasis)

187. Box 3 on page 26 of the IEMA Guidance provides practitioners with examples of these significance criteria, to enable different levels of significance to be distinguished. An example is given of each of the five categories: major adverse, moderate adverse, minor adverse, negligible and beneficial. Those given for major, moderate and minor adverse are as follows -

"For the avoidance of doubt IEMA's position that all emissions contribute to climate change has not changed. This Box 3 provides practitioners with examples of how to distinguish different levels of significance. Major or moderate adverse effects and beneficial effects are ***considered to be significant****. Minor adverse and negligible effects are* ***not considered to be significant****.*

> ***Major adverse****: the project's GHG impacts are not mitigated or are only compliant with do-minimum standards set through regulation, and do not provide further reductions required by existing local and national policy for projects of this type. A project with major adverse effects is locking in emissions and does not make a meaningful contribution to the UK's trajectory towards net zero.*
>
> ***Moderate adverse****: the project's GHG impacts are partially mitigated and may partially meet the applicable existing and emerging policy requirements but would not fully contribute to decarbonisation in line with local and national policy goals for projects of this type. A project with moderate adverse effects falls short of fully contributing to the UK's trajectory towards net zero.*
>
> ***Minor adverse****: the project's GHG impacts would be fully consistent with applicable existing and emerging policy requirements and good practice design standards for projects of this type. A project with minor adverse effects is fully in line with measures necessary to achieve the UK's trajectory towards net zero".*
>
> (original emphasis)

188. As noted by the SST at DL196, the IEMA Guidance qualifies the approach taken in Box 3 in relation to very large scale projects –

> *"A modification to this approach is required for the very largest-scale developments, those that in themselves have magnitudes of GHG emissions that materially affect the UK's or a devolved administration's total carbon budget. An indicative threshold of 5% of the UK or devolved administration carbon budget in the applicable time period is proposed, at which the magnitude of GHG emissions irrespective of any reductions is likely to be significant. A project that meets this threshold can in itself materially affect achievement of the carbon budget".*

Paragraph 5.82 of the ANPS

189. As noted in DL211, paragraph 5.82 of the ANPS states –

> *"For decision making, the policy of the ANPS is that an 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 the government to meet its carbon reduction targets, including carbon budgets".*

The Claimant's case in summary

190. Ms Dehon KC submitted that the SST's conclusions in DL210 and DL212 are inherently contradictory and reveal a demonstrable flaw in her reasoning which amounts to irrationality. Moreover, the SST failed to reach a reasoned conclusion on the significant effects of the proposed development on the environment, contrary to regulation 21(1)(b) of the EIA Regulations.

191. As is evident from the SST's reasons in DL210, she followed the IEMA Guidance. Applying the significance criteria in Box 3 of the IEMA Guidance, the SST made a clear finding that the proposed development will fall short of fully contributing to the

UK's trajectory towards net zero. On that basis, in DL212 she concluded that by reason of the impact of GHG emissions, the proposed development would give rise to moderate adverse effects on the environment, which were significant. However, the SST then made inherently contradictory and inconsistent findings that the proposed development is compatible with the JZS, can be managed with the government's overall strategy for meeting net zero and relevant carbon budgets and accordingly will not have a material impact on the UK's ability to meet its carbon reduction targets.

192. It was submitted that those findings cannot be reconciled with her conclusion that, applying the IEMA Guidance, the proposed development would result in significant adverse effects. As is clearly stated in the IEMA Guidance, the defining characteristic of a project which results in significant adverse effects by virtue of its GHG emissions is that it is not compatible with the UK's net zero trajectory. On the application of the IEMA Guidance, a project assessed to result in a moderate adverse effect on climate is one which does not fully comply with the policies, including JZS and carbon budgets, which are necessary to achieve the UK trajectory towards net zero.

193. Ms Dehon KC submitted that the SST's reasoning in DL210 and DL212 reveals a logical gap or critical error of the kind identified in *KP* as process irrationality. Counsel relied on R (Boswell) v Secretary of State for Energy Security and Climate Change [2025] EWCA Civ 669 **["*Boswell NZ*"]** at [70] –

"On the basis that the Secretary of State was legally entitled to find that the proposal was compatible with the "net zero" trajectory, taking into account EN-1, a finding that the GHG emissions would amount to a "significant adverse effect" in the sense used in section 6.3 of the IEMA guidance would plainly have been in error. It would have involved a clear misapplication of that guidance".

194. The corollary to that analysis, it was submitted, is that the SST's clear finding, applying section 6.3 of the IEMA Guidance, of significant adverse effect is necessarily, logically inconsistent with her wider finding of compatibility with the government's strategy for meeting net zero and the trajectory to that carbon reduction target.

Discussion and conclusions

195. It is an established principle of judicial review that planning decision letters must be read fairly and as a whole. In DL210 to DL212 the SST states her reasons and conclusions on two issues. The first issue is whether the proposed development will have significant effects on the environment by virtue of GHG emissions. The second issue is whether the increase in GHG emissions resulting from the proposed development will be so significant as to have a material impact on the government's ability to meet its carbon reduction targets, including carbon budgets. The first issue requires a determination by the SST in order to enable her to discharge her duty under regulation 21(1)(b) of the EIA Regulations. The second issue requires the SST's determination in order to enable her to apply the policy stated in paragraph 5.82 of the ANPS.

196. The SST states her conclusion on the first issue in the final sentence of DL212. She concludes that the effects of the proposed development are significant. They do not meet the threshold for a major, adverse effect. They are moderately adverse. DL210 sets out the SST's reasons for her conclusion. They are as follows –

(1) Box 3 of the IEMA Guidance has been considered.

(2) GAL has been fully consistent with applicable existing policy.

(3) GAL's Carbon Action Plan **["CAP"]** provides flexibility and scope to adapt to emerging policy.

(4) The proposed development will be fully consistent with applicable good practice design standards.

(5) The proposed development will lead to an increase in GHGs, both CO_2 and non-CO_2.

(6) The scale of the effects from the proposed development will fall short of fully contributing to the UK's trajectory towards net zero.

(7) That failure will be mitigated in the long-term by the policies brought forward in the JZS.

197. The SST states her conclusion on the second issue in DL212. She concludes that although the effects of the proposed development are moderately adverse and significant, it will not materially impact the Government's ability to meet its net zero targets; nor will it lead to a breach of the UK's international obligations resulting from the Paris Treaty or of the government's policies and legislation relating to net zero. Her reasons in DL211 and DL212 are as follows –

(1) The policy test in paragraph 5.82 of the ANPS is applied.

(2) The predicted magnitude of increase in carbon emissions resulting from the proposed development to a maximum of 0.657% of any carbon budget.

(3) The proposed development is compatible with the JZS.

(4) There is the ability to manage the proposed development within the government's overall strategy for meeting net zero and the relevant carbon budgets.

198. As Mr Pleming KC submitted, the question raised by regulation 21(1)(b) of the EIA Regulations is whether the environmental effects of the proposed development resulting from GHG emissions are significant. Whereas the question raised by paragraph 5.82 of the ANPS is whether those effects are acceptable within the terms of the stated policy.

199. Those two questions are related, since the answer to the first question is likely to influence the answer to the second question. They are not, however, the same question. Nor does the answer to the first question necessarily determine the answer to the second question.

200. Ms Dehon KC emphasised that the SST has chosen to answer the question of significance by applying the criteria in Box 3 of the IEMA Guidance. The SST's conclusion that the proposed development's effects will be moderately adverse is explained by reference to the example given in Box 3, of a project that falls short of fully contributing to the UK's trajectory towards net zero. That clear finding, however, needs to be understood in context. The IEMA Guidance is a guide to making an

environmental assessment which informs the application of policy. It does not dictate the outcome of the application of policy. A conclusion that a project falls short of fully contributing to the UK's trajectory towards net zero leaves it open to the decision maker, applying the policy in paragraph 5.82, to judge whether that failure is such as to undermine the achievement of the net zero target to a material degree.

201. The policy in paragraph 5.82 is essentially concerned with evaluating a risk; in particular, the degree of risk that the aviation project under consideration presents to the achievement of the government's carbon reduction targets. In making that policy judgment, it is to be expected that the SST will focus on factors that may assist her in evaluating the risk presented by the proposed development's inability fully to contribute to the UK's trajectory towards net zero.

202. Unsurprisingly, therefore, that is the focus of the SST's reasoning in DL210 to DL212. She sets the acknowledged shortfall in the proposed development's contribution towards the net zero trajectory in the context of the risk management and mitigation measures provided both through policy and the CAP. The SST does not resile from her finding that the proposed development will not fully contribute to the UK's trajectory towards net zero. On the contrary, that significant effect leads her to place moderate adverse weight against the making of the DCO. She does not, however, treat that finding as determinative of her judgment on the policy question raised by paragraph 5.82 of the ANPS. She gave her reasons for declining to do so.

203. The purpose of Box 3 in the IEMA Guidance is to distinguish between different levels of significance of the GHG impacts of projects for the purpose of carrying out EIA. The examples given are carefully formulated by reference to the test for significance stated in paragraph 6.2 of the IEMA Guidance, which is whether the project contributes by reducing GHG emissions relative to a comparable baseline consistent with a trajectory towards net zero by 2050. Thus, a project with minor adverse effects, considered to be insignificant, is one which is fully in line with measures necessary to achieve UK's trajectory towards net zero. Whereas a project with moderate adverse effects, considered to be significant, is one which falls short of fully contributing towards the UK's trajectory towards net zero. The relevant distinction is between full and partial contribution towards the UK's net zero trajectory. It is not the materiality of the impact of the given project on the UK's ability to meet its carbon reduction targets.

204. It is important to have in mind that the IEMA Guidance is not confined in its application only to NSIPs or large scale development projects. As is made clear in its introduction, the IEMA Guidance is intended to assist practitioners with assessing the significance of GHG emissions in both statutory and non-statutory EIA. In other words, it was intended to be applied in relation to the full range of projects that constitute EIA development for the purposes of the EIA Regulations. The scale of such projects will vary considerably, as will the magnitude of their GHG emissions.

205. Any such project which fails to make a meaningful contribution to the UK's trajectory towards net zero is likely to be assessed as having major adverse effects within the Box 3 criteria. Nevertheless, the scale of that project and the magnitude of its GHG emissions may be so limited that it could not sensibly be said to have a material impact on the government's ability to achieve net zero or manage the trajectory towards that target through carbon budgets. That is why paragraph 6.3 of the IEMA Guidance modifies the approach set out in Box 3 in relation to very large scale developments. The

IEMA Guidance recognises that projects of that scale may result in GHG emissions of sufficient magnitude that they *"materially affect"* the UK's total carbon budget. As the SST noted in DL196, the indicative threshold proposed in the IEMA Guidance is 5% of the UK's carbon budget in the applicable time period, on the basis that a project that exceeds that threshold may in itself materially affect achievement of the carbon budget. In DL211, the SST accepts that the predicted magnitude of increase in carbon emissions resulting from the proposed development will be a maximum of 0.657% of any carbon budget.

206. Thus, the significance criterion for moderate adverse effects in Box 3 of the IEMA Guidance neither assumes nor necessarily implies that the GHG impacts of the project under assessment, albeit significant, will have a material impact on the UK's ability to meet its carbon reduction targets. To the contrary, the IEMA Guidance itself draws a clear distinction between the significance of a project's effects for the purpose of carrying out EIA and the materiality of those effects in relation to the UK's ability to achieve its carbon reduction targets.

207. In the light of this analysis, there is no inherent contradiction or logical gap in the SST's conclusions that although resulting in significant adverse effects, the proposed development will not materially affect the government's ability to meet its net zero targets. Contrary to the Claimant's submissions, the SST's reasoning does not reveal any such logical gap or inherent contradiction. The reasons given in DL210 to DL212 are sufficient to fulfil the SST's duty under regulation 21(1)(b) of the EIA Regulations. They provide a reasoned conclusion as to the effects of the proposed development on the environment by virtue of the impact of GHG emissions. It was not suggested that the SST was wrong to apply the IEMA Guidance for the purpose of reaching her conclusion on that question. Nor was it submitted that the SST acted unreasonably in judging the proposed development's effects to be moderately adverse and accordingly significant, applying the criteria in Box 3 in the IEMA Guidance. The SST gave proper and adequate reasons for that judgment.

208. Having found the proposed development to give rise to significant adverse effects through failing to contribute fully to achieving the UK's carbon reduction targets, she was required by paragraph 5.82 of the ANPS to reach a judgment as to the materiality of that impact. In DL212 she answers that question in accordance with the terms of the relevant policy. She gives her reasons.

209. It is important to note that the policy stated in paragraph 5.82 of the ANPS is directed at identifying nationally significant aviation projects which merit refusal of development consent on the basis of their resulting increase in carbon emissions alone. In DL212, the SST explains why that is not the position in relation to the proposed development. She finds that the effects of the proposed development although significant in terms of GHG impacts, do not meet the threshold in Box 3 of the IEMA Guidance for a major adverse effect. Her overall judgment in DL212 that the proposed development's GHG impacts justify giving moderate adverse weight against granting development consent is explained.

210. In my view, it is neither illogical nor contradictory for the SST to conclude that the proposed development does not merit refusal of development consent on the basis that it would have a material impact on the ability of Government to meet its carbon reduction targets. Her judgment that the proposed development is compatible with the

JZS and can be managed within the government's overall strategy for meeting net zero and relevant carbon budgets does not contradict her finding in DL210, that by virtue of the scale of its effects the project will fall short of fully contributing to the UK's trajectory towards net zero. It is a broader judgment which reflected her qualified finding in DL210, that the shortfall will be mitigated in the long term by the policies brought forward in the JZS. That conclusion was open to her and explains logically and coherently why she judged the acknowledged shortfall not to be material for the purposes of applying the policy in paragraph 5.82 of the ANPS. When she turned to the application of policy in paragraph 5.82 of the ANPS, it was neither illogical nor contradictory for the SST to take a broader approach, one that was consistent with the terms of the policy.

211. The analysis of the Court of Appeal at [70] in *Boswell NZ* does not assist CAGNE's argument. As is clear from that paragraph, and as Mr Pleming KC submitted, the policy context in that case was set by a different national policy statement. In the particular context of the requirements of policy as stated in paragraph 5.82 of the ANPS, the SST's conclusions and reasons in DL210 to DL212 are both reasonable, logically coherent, internally consistent and sufficiently explained.

212. I grant permission on ground (1) of CAGNE's claim but, for the reasons I have given, I reject it.

CAGNE Ground (2) – GHG emissions from inbound international flights

The SST's approach and conclusions

213. In DL180 the SST summarises GAL's approach to assessment of GHG emissions from aircraft in the ES submitted in advance of the examination process. Emissions from outbound aircraft had been assessed. Emissions from inbound flights had not been assessed. This was because the standard international approach was to account for aviation emissions at the source location for both international and domestic flights.

214. On 20 June 2024 the Supreme Court handed down judgment in *Finch*. In the light of *Finch*, GAL both accepted that the proposed development may give rise to significant downstream GHG emissions in respect of inbound flights and provided further evidence for consideration alongside the submitted ES.

215. In DL181 the SST explains GAL's approach to assessment of the downstream effects of inbound flights –

> *"181. ... The Applicant provided an assessment of total inbound emissions, based on a simple doubling of emissions associated with outbound flights [ER 8.4.38]. This revised assessment disregarded geographic boundaries by including international emissions, ignoring the potential for double-counting of emissions [ER 8.4.48]. The Applicant outlined that carbon emissions from domestic inbound flights are extremely small and would reduce substantially over time as a result of the JZS, but they do fall within the scope of the UK's carbon budgets [ER 8.4.39]. However, the Applicant explained that inbound international emissions were not within the scope of the JZS and contextualising them against the UK's carbon budgets would not be meaningful and was inconsistent with IEMA Guidance (which advises assessment against a trajectory towards net zero, which in the UK is statutory carbon budgets). The Applicant also*

referred to the principle set out in the Finch judgment that a reason not to assess carbon emissions could be that they were reasonably judged not to be significant. Nonetheless, the Applicant provided a contextualisation of total aviation emissions against an ICAO sector-based scenario, which models similar levers and aligns with the Jet Zero High-Ambition scenario [ER 8.4.38, REP7-079, paragraphs 37-47 and REP9-120, paragraphs 2.3.1-2.3.5]. The Applicant concluded that modelling outbound and inbound emissions in this way, the total of 1.022 MtCO2e would represent 0.11% of 2050 global international aviation emissions, and an even smaller proportion of global emissions, and that this proportion was "minimal" [paragraphs 2.3.8 and 2.3.9, REP9-120]".

216. In DL182, the SST agrees that, in the light of *Finch*, it is now necessary to take into account the effect of downstream emissions from inbound international flights as an element of the environmental effects of the proposed development. The SST then explains her approach to assessment –

"182 … She agrees with the Applicant's argument that these are not in the scope of the JZS, and that contextualising them against the UK's carbon budgets would not be meaningful and would be inconsistent with the IEMA guidance. While the Secretary of State notes the usage of the ICAO sector-based scenario, which provides contextualisation at a global level, she considers that there was not sufficient evidence provided by the Applicant that would allow the Secretary of State to utilise it as an appropriate benchmark to assess the impact of international inbound emissions. In coming to this judgement, she notes paragraph 81 of the judgment of R (on the application of Andrew Boswell) v The Secretary of State for Energy Security and Net Zero [2025] EWCA Civ 669 (22 May 2025), which states "nor is there any legal principle which requires a public authority deciding whether to grant a development consent to "contextualise" the GHG emissions or to compare them with a benchmark. It is not unlawful for the decision maker, for example, to conclude, as in this case, that the GHG emissions will be managed across the economy to ensure consistency with carbon budgets and the 2050 net zero target." The Secretary of State considers that it is not possible to carry out a meaningful assessment of significance on a quantitative basis using a national, international or sectoral benchmark because there is a lack of an appropriate and justified international benchmark and it is inappropriate to assess against the UK's carbon budgets (as per the IEMA Guidance)".

217. In drawing her conclusions on GHG emissions, at DL205 the SST adds the following analysis in relation to inbound international flight emissions –

"205 … The Secretary of State, as outlined earlier, agrees with the Applicant that inbound international emissions are not within the scope of the JZS, however, contextualising them against ICAO's sector-based scenario would not be meaningful, and no other benchmarks for international aviation emissions were set out during the Examination or decision stage. She therefore concludes that whilst inbound international emissions are an effect, it is not possible to carry out a meaningful quantitative assessment against a relevant benchmark. However, taking into account the quantum of emissions produced and the fact that these emissions will, as with outbound emissions, reduce over time following aircraft technology improvements, the impact of decarbonisation policies in the JZS and the Sustainable Aviation Fuel Mandate, introduced on the 1 January 2025, the Secretary of State does not consider that the effects of inbound flight emissions materially affect her overall conclusions on

significance and are not on their own or in combination with the total GHG emissions of a scale to justify refusing consent. The Secretary of State is further satisfied that although inbound emissions are not accounted for in UK carbon budgets, where applicable they will be managed and mitigated through emissions trading schemes such as UK ETS and CORSIA, which covers States that have volunteered to participate in it and represents nearly 80% of international aviation activity (page 48, JZS). Furthermore, the adoption of a global goal for international aviation of net zero CO2 emissions by 2050 places the sector on a trajectory firmly aligned with the Paris Agreement's 1.5C global temperature target (page 6, JZS: one year on)".

The Claimant's case in summary

218. Ms Dehon KC submitted that the SST's consideration of the effects of inbound international flights was founded upon a misreading of the judgment of the majority of the Supreme Court in *Finch*. The issue before the Supreme Court was whether there was a sufficiently evidenced causal link between the oil extraction project and the downstream emissions from consumption of the oil following extraction and refinement. The significance of those downstream emissions, if properly to be regarded as environmental effect of the project for the purposes of EIA, was not before the Court for decision. Lord Leggatt's discussion of the limits of meaningful assessment must be understood in that context. It relates to uncertainties in establishing causality, not to the assessment of direct and indirect effects of the proposed development and their significance required under regulation 5(2) of the EIA Regulations.

219. It was submitted that the SST erred in law in finding that the absence of a relevant benchmark prevented her from making a meaningful assessment. The EIA Regulations do not require an assessment to be contextualised against a relevant benchmark: see R (GOESA) v Eastleigh Borough Council [2022] PTSR 1473 **["*GOESA*"]** at [122].

220. It was submitted that the SST's conclusions on the significance of the proposed development's effects on the environment resulting from GHG emissions are primarily founded upon the GHG impacts of emissions from outbound flights. In DL204, the SST finds that approximately 95% of the emissions from the proposed development are attributable to aviation emissions. As a matter of logic, an assessment of the additional contribution to GHG emissions from inbound international flights might have led the SST to a different and more adverse finding on significance. It was submitted that the SST's conclusion that the effects of emissions from inbound international flights did not materially affect her overall finding on significance is illogical. It cannot reasonably be reconciled with her conclusions on the significance of the proposed development's effects on the environment resulting from GHG emissions.

Discussion and conclusions

221. Ms Dehon KC is of course correct to say that the issue for decision by the Supreme Court in *Finch* was whether emissions from downstream consumption of the extracted oil were properly to be regarded as likely effects of the oil extraction project. The lawfulness of the approach to assessment of those emissions, in the event that they ought properly to be brought into assessment as likely effects of the project, was not before the Court for decision; not least, because they had not in fact been brought within the scope of the EIA carried out by the applicant and the local planning authority in that case.

222. However, it does not follow that Lord Leggatt's comprehensive analysis of the principles which govern EIA should be seen as confined only to the Supreme Court's determination of the issue which was before it for decision.

223. In particular, Lord Leggatt's observations at [76]-[78] in *Finch* are of more general application -

> *"76 The initial, information gathering stages of the process, including the preparation of the environmental statement, are thus directed towards the ability to reach a reasoned conclusion on the significant effects of the project on the environment. This is confirmed in article 5(1), which provides that the environmental statement shall "include the information that may reasonably be required for reaching a reasoned conclusion on the significant effects of the project on the environment, taking into account current knowledge and methods of assessment."...*
>
> *77 Implicit in these provisions, and in the aims of the EIA Directive, is the criterion that material should be included in the environmental statement and taken into account in the procedure only if it is information on which a reasoned conclusion could properly be based. Conjecture and speculation have no place in the EIA process. Thus, if there is insufficient evidence available to found a reasoned conclusion that a possible environmental effect is "likely", there is no requirement to identify, describe and try to assess this putative effect. This criterion must also govern, where a possible effect is regarded as "likely", the nature and extent of the assessment of the effect.*
>
> *78 There is here an area of evaluative judgment involved in determining the scope of an EIA. Judging whether a possible effect of a project is likely and capable of assessment may, depending on the circumstances, be a matter on which different decision-makers, each acting rationally, may take different views".*

224. It is clear from that analysis that circumstances may arise in which the decision maker undertaking EIA identifies a project as giving rise to a likely effect or effects which, acting reasonably, they nevertheless judge either (i) not to be capable of meaningful assessment; or (ii) to be capable of assessment only to a limited or qualified extent. Provided that in making that judgment, the decision maker has given proper consideration to the possibility of assessment, that does not amount to a failure to fulfil the requirements of the EIA Regulations. On the basis of the Supreme Court's approach in [76]-[78] of *Finch*, in such circumstances the decision maker's judgment will fulfil the obligation imposed by regulation 5(2) of EIA Regulations.

225. The lawfulness of that approach is also reflected in the reasoning in [121] and [167] of *Finch*, on which Ms Dehon KC relied. In [121], Lord Leggatt speaks not only of the impossibility of identifying the multiplicity of future uses of steel as likely effects of its manufacture in the causative sense; but also of making *"any meaningful assessment of them at the time of the decision whether to grant development consent for the construction and operation of the steel factory"*.

226. At [167] in *Finch*, Lord Leggatt returned to this theme and said that the EIA Directive does not, on his interpretation, impose obligations which are impossibly onerous and unworkable –

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

227. In DL182 and DL205, the SST accepts that downstream GHG emissions from inbound international flights are likely effects of the proposed development. Her judgment, however, is that it is not possible to carry out a meaningful assessment of the significance of those effects on a quantitative basis, using a national, international or sectoral benchmark. She finds there to be a lack of an appropriate and justified international benchmark; and that it is inappropriate to assess against the UK's carbon budgets. In DL205, to the limited extent that she considers it possible to do so, the SST assesses whether the effects of inbound flight emissions affect her overall conclusions on significance. Her judgment is that they do not affect those conclusions to a material degree. She gives her reasons for that judgment in the extract from DL205 quoted above –

(1) Where applicable they will be managed and mitigated through emissions trading schemes such as the UK Emission Trading Scheme and CORSIA (the International Civil Aviation Organisation's Carbon Offsetting and Reduction Scheme for International Aviation), which covers States that have volunteered to participate in it and represents nearly 80% of international aviation activity.

(2) The adoption of a global goal for international aviation of net zero CO_2 emissions by 2050 places the sector on a trajectory firmly aligned with the Paris Agreement's 1.5C global temperature target.

228. In my view, the SST's approach in DL182 and DL205 is demonstrably a proper application of the criterion for assessment stated by the Supreme Court in [77] and [78] in *Finch*. The SST has done what regulation 5(2) of the EIA Regulations required of her in order to assess the effects of GHG emissions from inbound international flights, to the limited extent to which she judged it possible to do so in the light of the available evidence.

229. It is both lawful and reasonable for the SST to base her judgment on the lack of any national, international or sectoral benchmark against which to contextualise or compare those GHG emissions. *Boswell NZ* (to which the SST refers in DL182) includes the following guidance on the use of benchmarks for the purpose of evaluating the significance of the effect of GHG emissions on climate –

"80. In our view the evaluation of the significance of an estimated amount of GHG emissions and its acceptability is a matter of fact and judgment for the decision-maker. He or she may decide to choose benchmarks to help in arriving at that judgment. But that choice too is a matter of judgment for them. Any conclusion drawn on the acceptability of the GHG emissions in comparison with a benchmark is also a matter of judgment for the decision-maker. The 2017 Regulations do not determine how these matters should or may be approached (R (on the application of Goesa Limited) v Eastleigh Borough Council [2022] EWHC 1221 (Admin); [2022] PTSR 1473 at [122]-[123]; R (Boswell) v Secretary of State for Transport [2024] EWCA Civ 145; [2024] Env. L.R. 28 at [44], [53]).

81. Nor is there any legal principle which requires a public authority deciding whether to grant a development consent to "contextualise" the GHG emissions or to compare

them with a benchmark. It is not unlawful for the decision-maker, for example, to conclude, as in this case, that the GHG emissions will be managed across the economy to ensure consistency with carbon budgets and the 2050 net zero target".

230. In the present case, the SST's judgment was that in the absence of an appropriate benchmark, she was unable meaningfully to assess the significance of GHG emissions from inbound international flights on a quantitative basis. That judgment was reasonably open to her, for the reasons that she gives in DL182. There is no legal principle which requires a public authority deciding whether to grant a development consent to contextualise GHG emissions or to compare them with a benchmark. The converse is also true: there is no legal principle which prohibits the judgment that the absence of an appropriate benchmark for contextual or comparative assessment inhibits the meaningful assessment of the significance of the effect of GHG emissions other than on a qualitative basis.

231. The Claimant's challenge to the rationality of the reasoning and conclusions in DL182 and DL205 is accordingly without merit. The SST's conclusion that she was unable to make a meaningful assessment of downstream GHG emissions from inbound international flights on a quantitative basis was reasonably open to her for the reasons that she gives in those paragraphs. Having so concluded, her assessment of the significance of those effects in DL205 was necessarily founded upon qualitative factors. There is nothing contradictory or illogical about that explanation. The fact that CAGNE may disagree with the SST's judgment as to the materiality of the GHG emissions from inbound international flights is itself immaterial to the rationality of the SST's analysis.

232. I am conscious that this discussion reflects Lang J's approach to determination of an essentially similar issue that arose in the recent, unsuccessful legal challenge to a development consent order authorising the expansion of London Luton Airport: see R (Luton and District Association for the Control of Aircraft Noise) v Secretary of State for Transport [2025] EWHC 3206 (Admin) **["*LADACAN*"]** at [60]-[85], with which I respectfully agree.

233. For the reasons I have given, I consider that this ground of challenge is not reasonably arguable. I refuse permission. Had I granted permission on this ground, for those same reasons I should have rejected it.

CAGNE Ground (3) – Non-CO_2 emissions

The SST's approach and conclusions

234. Paragraph 3.64 of JZS states –

"Much of our Strategy focusses on how we reduce the CO_2 emissions from aviation, however, we also recognise that aviation has non-CO_2 climate impacts, which need to be addressed. There are large uncertainties over the magnitude of non-CO_2 impacts on climate. Recent scientific evidence suggests the best estimate is that roughly two thirds of aviation's historical climate impacts are due to non-CO_2, and that, whilst non-CO_2 emissions can have both warming and cooling effects, the net warming rate is likely to be around three times that of CO_2. The uncertainties are real however: the non-CO_2 impacts of aviation on climate are eight times more uncertain than those resulting from CO_2".

235. In DL177 the SST refers to that paragraph of the JZS and recognises the impact of non-CO_2 emissions. In DL168 to DL178 she discusses the issues raised between the parties in relation to the approach to assessment of those emissions and the conclusions to be drawn on their significance. Her overall conclusions are stated at DL206 and DL207.

236. GAL's submitted ES acknowledged that it is likely that non-CO_2 emissions from the proposed development will contribute to changes in climate. However, the ES did not attempt to quantify the impact of those emissions, on the basis that there is no established methodology for doing so. In paragraph 8.4.29 of the Report, the ExA concluded that a qualitative approach to assessment would be more appropriate. The ExA concluded that non-CO_2 emissions from the proposed development would add to the magnitude of its impacts and be likely to have a net warming effect on climate.

237. In DL168 the SST notes GAL's position. In DL169, the SST refers to the contrary case advanced by GACC and others that non-CO_2 impacts can and should be assessed quantitatively through modelling on the basis of the multiplier for company reporting recommended by the Department for Energy and Net Zero –

"The Department for Energy Security and Net Zero ("DESNZ") in "Government Greenhouse Gas Conversion Factors for Company Reporting", recognises the non-CO2 effects from aviation and that there is currently no better way of taking these effects into account than applying an aggregate multiplier and a multiplier of 1.7 is recommended based on the best available scientific evidence [ER 8.4.17]. NEF noted that in the aviation unit of DfT Transport Analysis Guidance (TAG), DfT suggested that this 1.7 multiplier can also be applied as a sensitivity test in a scheme's core socioeconomic assessment [REP1-241, paragraph 3.5]. CAGNE argued that the judgement of the High Court in Bristol Airport Action Network v SSLUHC [2023] EWHC 171 (Admin) ("Bristol Airport") did not conclude that non-CO2 emissions should be ignored by decision makers, nor did it find that the lack of a settled methodology prevented the use of a valid methodology to provide helpful information [ER 8.4.20]".

238. In DL170 and DL171 the SST notes GAL's response to that argument. A multiplier is not a straightforward CO_2 equivalent metric and does not reflect accurately the different relative contributions to climate change over time. Consequently, the use of a 1.7 multiplier had to be seen in the context of significant and acknowledged uncertainties in this area. GAL referred to R (Bristol Airport Action Network Co-ordinating Committee) v Secretary of State for Levelling Up, Housing and Communities [2023] PTSR 853 where this Court found there to be very far from being any scientific consensus that the departmental multiplier was a relevant tool in determining non-CO2 emissions from aviation other than for company reporting.

239. The ExA sets out its conclusions on non-CO_2 emissions in paragraphs 8.4.27 to 8.4.29 of the Report. In DL174 the SST provides a full and accurate summary of those conclusions –

"The ExA highlighted that non-CO_2 impacts from aviation are recognised and referenced in the 6CB, the JZS and the Applicant's ES. The likelihood of non-CO_2 emissions contributing to climate change is also acknowledged, but there is no agreed methodology for quantifying impacts, or the magnitude of impacts. There was no agreement between Interested Parties to the application about whether any multiplier

appropriately addresses the magnitude of non-CO_2 impacts let alone what multiplier should be applied, and difficulties also occur in contextualising impacts as set out in the IEMA guidance [ER 8.4.27]. The ExA were unconvinced that non-CO_2 impacts should be excluded from the overall assessment given its potential scale, and whilst recognising the possibility of further research and action as set out in the JZS and CAP, concluded that this does not assist in determining the impact of non-CO_2 emissions on climate change arising from the Proposed Development. The ExA also stated concerns that when taking into account the full costs of non-CO_2 emissions presented by NEF, the full impact of non-CO2 emissions had not been addressed [ER 8.4.28]. The ExA agreed with CAGNE's comment that the lack of a settled methodology does not prevent the use of a valid methodology but that any methodology needs to produce plausible outcomes and too many uncertainties create problems for quantifying results. The ExA concluded that in the consideration of the effect of non-CO_2 emissions caused by the Proposed Development, a qualitative judgement would be more appropriate. In line with DfT advice, the ExA considered that that these emissions would mean that the Proposed Development would add to the magnitude of effects and likely have a net warming effect [ER 8.4.29]. The Secretary of State agrees that a qualitative judgement would be more appropriate for assessing the economic cost of non-CO_2, given the uncertainties for quantifying the results".

240. In response to her consultation letter of 28 April 2025, the SST received further representations on the question of whether she should require the quantitative assessment of non-CO_2 emissions. DL175 and DL176 summarise the further points made by CAGNE, GACC and NEF on that issue. CAGNE advanced four arguments in support of the SST adopting a quantitative assessment of the impacts of non-CO_2 emissions –

(1) The ExA and the SST's acceptance in her decision to grant development consent for the London Luton Airport Expansion scheme that it is methodologically possible to calculate non-CO_2 emissions. Non-CO_2 emissions are effects of the proposed development, which can be contextualised in the same way as Scope 3 emissions.

(2) CAGNE noted the CCC's advice on the Seventh Carbon Budget **["7CB"]** report. The CCC accepts that there are uncertainties with non-CO_2 emissions, but takes a different approach to evaluating non-CO_2 emissions compared to that used in the 6CB report on the basis that non-CO_2 effects are likely to make up the dominant part of the UK aviation sector's contribution to current global warming. CAGNE argued that a proper, precautionary approach, compliant with legal obligations under the precautionary principle (and now reflected in the CCC's approach) can no longer rely on uncertainties to avoid assessment and consideration of non-CO_2 emissions, particularly given the methodological approaches now available.

(3) CAGNE noted that as of 1st January 2025, aircraft operators under the purview of the EU Emissions Trading Scheme are now obliged to monitor and report non-CO_2 effects. The European Commission published guidance in February 2025, which CAGNE argued provided a clear methodology by which emitters can themselves monitor and determine non-CO_2 impacts, supporting the quantitative approach.

(4) CAGNE noted [163] of the updated National Planning Policy Framework **["the Framework"]** which makes clear that the need to mitigate and adapt to climate change should also be considered in preparing and assessing planning applications,

taking into account the full range of potential climate change impacts. CAGNE argued that the full range obviously includes non-CO_2 emissions.

241. In DL176 the SST summarises the position of CAGNE, GACC and NEF on the issue of quantitative assessment of non-CO_2 emissions –

"CAGNE concluded that given the scientific consensus around the significant impact of non-CO_2 emissions from aviation, the ExA were wholly correct to conclude these could not be left out of account, and that further evidence points in favour of going beyond a qualitative approach and requiring a quantitative approach to assessment. NEF, similarly, cited the IEMA guidance when contextualising non-carbon emissions, which states "where quantified carbon budgets or a net zero trajectory is lacking, a more qualitative or policy based approach to contextualising emissions to evaluate significance may be necessary. In these instances, uncertainty and the likelihood of effect should be discussed." Annex 1 to GACC's representation attempted to quantity the effect of non-CO_2 emissions and compare it to the UK's carbon budgets".

242. In DL177 and DL178 the SST states her conclusion on the appropriate approach to assessment of non-CO_2 emissions. She agrees with the ExA that a qualitative assessment is appropriate in the circumstances. She gives her reasons for that conclusion –

"177. The Secretary of State notes the ExA's conclusions, and the representations following the publication of the minded to letter. In reaching her conclusion, she has taken into account CAGNE's submissions as summarised above. She has also taken into account paragraph 3.64 of the JZS, which highlights "that roughly two thirds of aviation's historical climate impacts are due to non-CO_2, and that, whilst non-CO2 emissions can have both warming and cooling effects, the net warming rate is likely to be around three times that of CO_2." The Secretary of State recognises the impact of non-CO2 emissions, and therefore has noted the three strategic objectives, on page 57 of the JZS, which includes developing and implementing policies to address and reduce non-CO_2 impacts.

178. In response to representations arguing that the Applicant should quantify non-CO_2 emissions, the Secretary of State is disappointed that the Applicant did not take a precautionary approach and attempt to quantify these, in line with the developing guidance produced by DESNZ or DfT. However, she notes that there is no established methodology, as cited within the Bristol Airport judgment, where scientific consensus would guide the quantifying of these emissions in relation to a planning decision. She therefore agrees that a qualitative assessment is appropriate in the circumstances and agrees with the ExA's conclusion at ER 8.4.29 that non-CO_2 emissions produced by the Proposed Development would add to the magnitude of impacts and likely have a net warming effect. However, the Secretary of State is content that through the strategic objectives set out within the JZS, and the commitments made within the CAP, the Applicant will monitor and respond to emerging policy relating to non-CO_2 emissions as this comes forward and be able to mitigate these effects. She therefore considers that, contrary to NEF's representations, the impacts of non-CO_2 emissions have now been taken into account insofar as it is possible to do so".

243. In DL207 the SST states her overall conclusion that GAL has adopted an appropriate approach to the assessment of non-CO_2 emissions. She agrees with the ExA that a

qualitative assessment is appropriate. She finds that non-CO_2 emissions resulting from the proposed development would add to the magnitude of its impacts on climate and be likely to have a net warming effect.

The Claimant's case in summary

244. Ms Dehon KC submitted by the date of the SST's decision, the evidence before her established clearly that it was possible to carry out a quantitative assessment of the impacts of non-CO_2 emissions from the proposed development. The position had changed materially since the ExA reported its conclusions. It was irrational for the SST now to conclude that a qualitative approach to assessment of non-CO_2 emissions was appropriate.

245. There was clear evidence before the SST that, notwithstanding the uncertainties, a settled methodology is now available by which non-CO_2 emission effects can be quantified. In failing to require GAL now to quantify those emissions and making her decision without having the benefit of a quantitative assessment of the effects of non-CO_2 emissions, the SST was in breach of regulations 5, 14 and 21 of the EIA Regulations.

246. In advising on CL7 the CCC's position was now that the non-CO_2 effects of aviation can and should be assessed. Ms Dehon KC relied upon the CCC's key messages on aviation and the analysis in Box 7.6.3 and Figure 7.6.4 of the CCC's advice on 7CB. Reliance was also placed on the initial EU Monitoring, Reporting and Verification (MRV) guidance for aircraft operators on non-CO_2 data collection published in February 2025.

247. There was no scientific uncertainty as to the climate impacts of non-CO_2 emissions from civil aviation. The acknowledged gravity of those impacts militated in favour of a precautionary approach to assessment. To the degree to which there remained an absence of scientific consensus as to the methodology for assessment, the SST was under a duty to adopt a precautionary approach and calculate a reasonable worst case estimate of non-CO_2 emissions.

Discussion and conclusions

248. It is helpful to begin with CAGNE's own written representations submitted on 9 June 2025 in response to the SST's consultation letter. Paragraphs 10 to 19 of those written representations addressed the issue of non-CO_2 emissions. In paragraph 11, CAGNE said that the ExA was clearly correct to take into account non-CO_2 emissions in coming to a conclusion on the overall climate impacts of the proposed development. In the light of *Finch*, they should be assessed as part of the EIA, in order to describe the direct and indirect effects of the proposed development on the climate. The question was how the impact of those non-CO_2 emissions fell to be assessed. As to the appropriate method of assessment -

> *"Given that it is not just likely but certain that non CO_2 impacts have a warming effect, a certainty reinforced by developments which have occurred after the examination, the causal test is past and non CO_2 impacts are required to be assessed. The ExA took a qualitative approach, which was both lawful and justified at the time of the examination".*

249. There was, therefore, no issue before the SST that a qualitative approach to assessment of non-CO_2 emissions is lawful in principle for the purposes of carrying out EIA in accordance with the EIA Regulations. The question for the SST was whether that approach to assessment was justified in the light of the evidence before her. As to that question, CAGNE accepted that a qualitative assessment of the proposed development's non-CO_2 emissions had been a justified method to deploy, in the light of the evidence before the ExA at the time of the Report.

250. It is pertinent to recall the reasons given by the ExA for its conclusion that a qualitative, rather than a quantitative, assessment of non-CO_2 emissions was the appropriate method to deploy for the purposes of EIA of the proposed development. Those reasons are stated in paragraphs 8.4.27 to 8.4.29 of the Report. The ExA said that non-CO_2 impacts from aviation are recognised in both the 6CB and the JZS. GAL had identified those impacts in the ES for the proposed development. The likelihood of non-CO2 emissions contributing to changes in climate was also acknowledged. However –

"there is no agreed methodology for quantifying impacts or the magnitude of impact. There is also no agreement between parties about whether any multiplier appropriately addresses the magnitude of impact let alone what multiplier should be applied. Difficulties also occur in contextualising impact as directed by the IEMA Guidance".

The ExA accepted CAGNE's submission that the lack of a settled methodology does not prevent the use of a valid methodology. However –

"any methodology must produce plausible outcomes and too many uncertainties create problems for quantifying results. To consider the effect of non-CO_2 emissions caused by the Proposed Development a qualitative judgment would be more appropriate and in line with DfT advice".

251. Applying a qualitative approach to assessment, the ExA concluded that non-CO_2 emissions resulting from the proposed development would add to the magnitude of its impacts and be likely to have a net warming effect.

252. The SST did not demur from the ExA's conclusion that the impacts of non-CO_2 emissions must be brought into assessment as effects of the proposed development in accordance with the EIA Regulations. In DL174, the SST stated her agreement with the ExA's conclusions.

253. I return to CAGNE's written representations of 9 June 2025. In paragraph 12 CAGNE submitted –

"However, the Secretary of State should go further and adopt a quantitative rather than a merely qualitative approach to non-CO_2. Matters have moved on since the ExA produced its report. There is increasing global recognition that harmful non-CO_2 emissions are manifestly capable not only of qualitative but also quantitative assessment".

254. In paragraphs 13 to 17 CAGNE set out the *"four arguments"* summarised by the SST in DL175, to which I have already referred. CAGNE's submission in support of the SST now adopting a quantitative approach to assessment of non-CO_2 emissions was as follows –

"18. In light of this evolving global recognition of the assessibility of non-CO_2 impacts and changes to national policy, the Secretary of State should adopt a quantitative approach, as proposed by, inter alia, AEF and NEF through the Examination. As the ExA accepted in their report (at 8.4.29), the lack of a settled methodology does not prevent the use of a valid methodology, particularly in circumstances where the Applicant accepts that non-CO_2 impacts will occur and will have some radiative forcing effect.

19. In summary given the scientific consensus around the significant impact of non-CO_2 emissions from aviation, the ExA were wholly correct to conclude these could not be left out of account. However, following the close of the Examination, further evidence points in favour of going beyond a qualitative approach and requiring a quantitative approach to assessment".

255. There can be no dispute that the SST took CAGNE's *"four arguments"* into consideration. In DL177 she says that she has done so. She sets out each of them in DL175. In DL176, she rightly summarises CAGNE's case that they amount to further evidence pointing in favour of going beyond a qualitative approach and requiring a quantitative approach to assessment of non-CO_2 emissions.

256. It was for the SST to judge whether the matters raised by CAGNE in their written submissions had resolved the methodological problems and uncertainties relied upon by the ExA in paragraphs 8.4.27 to 8.4.29 of the Report. For the purposes of EIA, the nature and extent of the assessment of an acknowledged environmental effect involves an evaluative judgment: see *Finch* at [77]-[78]. That judgment embraces the selection of the appropriate method or methods of assessment in the given case. Views may reasonably differ over the reliability or appropriateness of any given method of assessment. It is obvious from the SST's reasons in DL177 and DL178 that she was not persuaded by CAGNE's arguments that those methodological problems and uncertainties had now been resolved, at least sufficiently to justify attempting a quantitative assessment of the proposed development's non-CO_2 emissions. In reaching that judgment, the SST took account not only of CAGNE's further written submissions, but also those of NEF and GACC: see DL176.

257. The fact that there is scientific consensus around the impact of non-CO_2 emissions from aviation was not the issue with which the SST had to grapple. The issue was the absence of scientific or policy consensus on how to make a meaningful and reliable quantitative assessment of the impact of non-CO_2 emissions from an airport expansion project. CAGNE did not point to new evidence which indicated that any such scientific consensus had now emerged. Neither did GACC or NEF.

258. CAGNE said that the further evidence to which they referred *"points in favour"* of going beyond a qualitative approach and requiring a quantitative assessment. The ExA's conclusions were founded upon the lack of agreement between parties about the validity of using a multiplier, as well as the choice of multiplier. CAGNE did not suggest that agreement had now been reached on those matters. As to the proffered alternative methods, the CCC's advice in Box 7.6.3 and Figure 7.6.4 of its 7CB report includes a discussion of the sources, nature and climate impacts of non-CO_2 emissions from aviation. That discussion is largely qualitative. Figure 7.6.4 does present a graph showing the contribution to global warming from UK aviation CO_2 and non-CO_2 effects on two bases. For that purpose, non-CO_2 effects are calculated using a method taken

from a scientific paper (Lee and others "The contribution of global aviation to anthropogenic climate forcing for 2000 to 2018" (2020)). Box 7.6.3, however acknowledges that –

"There is large uncertainty in the warming impacts of non-CO_2 effects".

259. I was not shown any evidence which indicated to the SST how that UK wide analysis translated into a meaningful or reliable quantitative assessment of the impacts of non-CO_2 emissions from the operation of the proposed development. Likewise, it is unclear to me how guidance given by the EU document to aircraft operators on the future monitoring, reporting and verification of non-CO_2 emissions, should require the SST to conclude that she now possessed a reliable, established method of assessing the impacts of non-CO_2 emissions from operation of the proposed development on a quantitative basis.

260. The rationality of the SST's judgment that a qualitative approach to assessment of non-CO_2 emissions was appropriate is not undermined by her disappointment that GAL did not attempt to quantify the non-CO_2 emissions from the proposed development. The rational response to that state of affairs was to ask herself whether such an attempt would advance her understanding of the environmental impact of those emissions. She answered that point in DL178. It remained the case that there was neither an established methodology for that purpose nor any scientific consensus to guide the quantifying of non-CO_2 emissions *"in relation to a planning decision"*.

261. The Claimant's invocation of the precautionary principle goes nowhere. The SST clearly had the precautionary principle in mind, in reaching her judgment that a qualitative method of assessment was appropriate: see DL178. Both the ExA and the SST acknowledged the likely effects of non-CO_2 emissions from the proposed development, in terms of the magnitude of impacts and net warming effect on climate. It was the very absence of an established methodology or scientific consensus on how to undertake a quantitative assessment which created uncertainty. In taking a qualitative approach to assessment, the ExA and SST were able to take those effects into account in their overall conclusions on the significance of the effects of the proposed development on climate. That is consistent with the precautionary principle. The SST also refers to GAL's commitments in the CAP to monitor and respond to emerging policy relating to non-CO_2 emissions as it comes forward to mitigate their effects. She notes the strategic objectives of the JZS to –

(1) work closely with academia and industry, and monitor global developments in this area, to better develop our understanding of non-CO2 impacts and potential mitigations.

(2) develop and implement policies to address and reduce non-CO2 impacts.

(3) work with industry and academia, including the CCC, to explore a means of estimating and tracking non-CO2 emissions from the UK aviation industry.

262. The claimant in *LADACAN* raised essentially similar issues about the SST's assessment of non-CO_2 emissions in the context of her decision to authorise the London Luton Airport Expansion scheme. In [125]-[126] of her judgment, Lang J said –

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

126. There was no legal obligation to embark upon an attempt to quantify such non-CO_2 emissions which were only indicative. The nature and extent of the assessment was a matter for the decision-maker to decide. Regulation 5(2) of the EIA Regulations requires that the assessment of significance is undertaken "in an appropriate manner, in light of each individual case". On the basis of the environmental information, the ExA and the Defendant made a legitimate evaluative judgment that quantification was not appropriate in the circumstances. The question of how to go about assessing significance is a matter of judgment and evaluation for the decision-maker: see the authorities cited in Ground 1 above, in particular, Boswell, at [80] and [96], GOESA at [122] – [123], and Finch at [58]".

263. For the reasons I have given, that analysis applies, *mutatis mutandis*, in the circumstances of the present case.

264. This ground of challenge is really founded on CAGNE's frustration with the SST's unwillingness to accept that the methodological problems and uncertainties properly and justifiably relied upon by the ExA had now been sufficiently overcome. However, the fact that notwithstanding the further evidence presented by CAGNE in its submissions following publication of the Report, the SST was not so persuaded, provides no arguable basis for impugning the rationality of her reasoning in DL177-DL178 and her overall conclusion in DL207. I refuse permission. Had I granted permission on this ground, for those same reasons I should have rejected it.

Barclay ground (3) – failure to comply with the EIA Regulations

265. Mr Barclay advances four particular arguments in support of his contention that the SST failed to comply with the EIA Regulations in her consideration of the effects of GHG emissions.

A. Approach to significance

266. It was submitted that in her assessment of GHG emissions in DL146-DL212, the SST failed to fulfil her duty under regulation 5(2) of the EIA Regulations to identify, describe and assess in an appropriate manner, the direct and indirect significant effect of the proposed development on (amongst other environmental factors) climate. The SST failed to carry out the requisite systematic and comprehensive assessment of the likely significant effects of the proposed development (see *Finch* at [62]), of measures that could mitigate those effects, or to reach a reasoned conclusion on those effects in accordance with regulation 21(1)(a) of the EIA Regulations.

267. Mr Goodman KC attributed that failure to the SST having confused or muddled her assessment of the proposed development's effects on climate with her consideration of the proposed development's performance against carbon budgets, the JZS and other policy controls. She had lost sight of the obligation placed upon her by the EIA

Regulations to make a clear and reasoned finding on the proposed development's significant environmental effects.

268. In my view, there is nothing in this complaint. I have already set out DL210 and DL212. Those paragraphs contain a clear finding by the SST that the proposed development will give rise to significant environmental effects by virtue of the impact of GHG emissions, including both CO_2 and non-CO_2 emissions, on climate. The SST provides reasons for that finding. It is legitimate for the SST to explain her finding of significance by reference to an established methodology published in guidance on the assessment of GHG emissions from projects subject to statutory EIA, i.e. the IEMA Guidance. It is also entirely legitimate for the SST to describe the significant environmental effects of the proposed development in the context of the relevant statutory and policy framework, i.e. carbon budgets and the JZS, which are in place to control and mitigate the impact of GHG emissions from aviation development during its operation. To do otherwise would risk drawing conclusions divorced from the real-world circumstances in which the proposed development will be carried out.

269. For the reasons I have given in discussing ground (1) of the CAGNE claim, there is no confusion or muddle in the SST's reasoning and conclusions in DL 210-DL212. The distinction drawn in *GOESA* at [123] is properly recognised. DL210 and DL212 clearly state and explain on the one hand, the SST's conclusions on the significant effects of the proposed development on the environment, by virtue of its GHG impacts; and on the other hand, her conclusions on the materiality of those effects applying paragraph 5.82 of the ANPS. As I have explained, the SST properly identified the clear distinction between the significant environmental effects of the proposed development and, in light of those effects, the acceptability of the proposed development on the application of policy. It is entirely unsurprising that those distinct conclusions should each be informed by both the evidence which the SST discusses in detail in DL146ff and the applicable statutory and policy framework for the management of the UK economy's transition to net zero, including the civil aviation sector.

270. The contention that there has been a failure to provide a systematic and comprehensive assessment of the likely significant effects of the proposed development on climate by reason of the impact of GHG emissions is simply unsustainable. DL146-DL212, set in the context of the ES, and the copious information before the ExA and the Report cannot arguably be impugned on that basis. Public involvement and scrutiny have been secured both through the statutory Examination process and the further consultation undertaken by the SST, following publication of the Report and the MDL.

271. Ground (3A) is not arguable.

B. Non-CO_2 emissions

272. Mr Barclay's criticisms of the SST's approach to assessment of non-CO_2 emissions essentially reflect those advanced by CAGNE under ground (3) of their claim. I need not repeat my reasons for rejecting them.

273. Mr Barclay's assertion that the SST's qualitative assessment amounts to no more than a statement of the obvious does no justice at all to the SST's careful explanation of her approach to assessment of the environmental effects on climate of non-CO_2 emissions

from the proposed development. Nor does it do justice to the analysis and conclusions given by the ExA in the Report.

274. For the reasons I have given in rejecting ground (3) of the CAGNE claim, this ground is not arguable.

C. Adequacy of mitigation measures

275. The argument advanced by the Claimant is that the mitigation measures proposed by GAL in relation to the future monitoring, management and control of GHG emissions are too limited in scope and ineffective. It is contended that it will not be possible in practice to monitor the effectiveness of those mitigation measures to which GAL has committed.

276. The adequacy of proposed mitigation to monitor, manage and control the impact of GHG emissions from the proposed development is not a question of law for the court. It was a matter for the SST to determine as a matter of judgment, in the light of GAL's proposals, the evidence, the parties' representations and the findings and conclusions of the ExA in the Report.

277. The ExA considers mitigation and aviation emission controls in paragraphs 8.4.60 to 8.4.79 of the Report. Paragraphs 8.4.60 to 8.4.66 address the CAP. In 8.4.78 the ExA concludes –

"Many IPs considered that the CAP lacked clear actions and had limited formal enforcement powers and little opportunity for local authority involvement. However, given the uncertainties with the JZS which we have already identified, we accept that the approach of not having prescriptive measures and allowing flexibility is appropriate. This is particularly so with the CAP being secured through [Requirement 21] of the recommended DCO and the SoS having a major role in overseeing its effectiveness".

278. The policy stated in paragraph 5.78 of the ANPS is that the SST will need to be satisfied that the mitigation measures put forward by the applicant are acceptable, including at the construction stage. A management / project plan may help clarify and secure mitigation at this stage. The applicant is expected to take measures to limit the carbon impact of the project.

279. Requirement 21 in schedule 2 to the DCO provides –

"*From the date on which the authorised development begins, the authorised development and the operation of the airport must be carried out in accordance with the carbon action plan unless otherwise agreed in writing with the Secretary of State (following consultation with CBC)".*

280. The SST discusses the issues raised in relation to the adequacy of the proposed CAP and other emissions controls in DL187 to DL193. As I have already noted, in DL178 the SST refers to the strategic objectives of the JZS for developing and implementing policies to address and reduce non-CO_2 impacts; and the commitments made within the CAP to monitor and respond to emerging policy coming forward on mitigating that component of emissions. In DL208 the SST states the following overall conclusions –

"208. The Secretary of States considers the Applicant has put forward sufficient mitigation measures to limit the carbon impact of the Proposed Development through the CAP and SAC, which are secured in the DCO, and include controls to be exercised by the Secretary of State and relevant local authorities. She is satisfied that the Applicant has complied with paragraph 5.78 of the ANPS, and 5.19 of the NNNPS".

281. The Claimant has advanced no arguable basis for challenging the rationality of that conclusion.

D. Cumulative effects

282. Mr Barclay contends that the SST has failed to carry out an assessment of the cumulative effects of the proposed development contrary to the requirements of the EIA Regulations. The focus of the Claimant's argument under this ground is the lack of assessment of the cumulation of effects on climate from GHG emissions from the operation of the proposed development and future expansion of Heathrow, through development of the North West Runway in accordance with the policy of the ANPS. It is said that no such assessment was made in promulgating the ANPS, since it did not commit to expansion at Gatwick. It was submitted to be irrational to omit to assess the cumulative effect of two closely located schemes at the UK's two largest airports.

283. The SST addresses this issue at DL161 –

"The Applicant's ES stated that an assessment to examine how the impacts arising from the Proposed Development might cumulatively impact upon individual receptors is not appropriate for the assessment of GHG emissions, as impacts arising from GHG emissions have the same impact whether they are located near to Gatwick or in another region/country [ER 8.3.24]. The inappropriateness of undertaking a cumulative assessment is reflected in the IEMA Guidance, and the comparison of each emissions category to the UK carbon budgets, and to a sector-based net zero trajectory, provides the cumulative assessment. Additionally, the overall comparison of emissions from all aggregated sources to the carbon budgets provides a cumulative appraisal [ER 8.3.25]. The Secretary of State agrees. The Secretary of State considers that the inclusion of any third runway at Heathrow as part of a cumulative assessment would be inappropriate, given that the proposed scheme is early within the planning stage, no application for a DCO has been submitted, there is presently no detail of the likely GHG impacts of any third runway proposal available and, in any event, the Government's position is that all Heathrow proposals should demonstrate how they are compatible with the UK's legal, environmental and climate obligations".

284. The assessment of cumulative effects for the purposes of EIA in accordance with the EIA Regulations is a matter for the judgment of the SST: see R (Boswell) v Secretary of State for Transport [2023] EWHC 1710 (Admin) at [40]-[46], upheld in R (Boswell) v Secretary of State for Transport [2024] EWCA Civ 1710. The SST's conclusions in DL161 are founded upon those drawn by the ExA in paragraphs 8.3.24 and 8.3.25 of the Report. They reflect the approach advised on page 21 of the IEMA Guidance, in particular –

"Effects of GHG emissions from specific cumulative projects therefore in general should not be individually assessed, as there is no basis for selecting any particular (or

more than one) cumulative project that has GHG emissions for assessment over any other".

285. The Claimant has advanced no arguable basis for challenging the rationality of the SST's analysis in DL161.

Conclusion on ground (3) of the Barclay claim

286. None of the four sub-grounds is arguable. I refuse permission on ground (3) overall. Had I granted permission on this ground, for the reasons given, I should have rejected it.

CAGNE ground (4) – JZS delivery risks

The SST's approach

287. In DL151 the SST summarises the JZS and refers to JZS:ONO –

"151. The JZS sets out the Government's strategy and policy for decarbonising the aviation industry. It states that Jet Zero can be achieved without Government intervention to directly limit aviation growth (JZS, paragraph 3.57). It sets out policies that will influence the level of aviation emissions the sector can emit and maximise in-sector emissions reductions through a mix of measures that will ensure the UK aviation sector reaches net zero by 2050 (JZS, paragraph 3.1). These measures include improving the efficiency of the existing aviation system; sustainable fuels; new technology; markets and removals; sustainable travel choices for consumers; and addressing non CO2 emissions (JZS, page 26). The JZS also sets out how the aviation sector will achieve net zero aviation by 2050 and introduces a carbon emission reduction trajectory that sees UK aviation emissions peak in 2019, with residual emissions of 19.3 MtCO2e in 2050, compared to 23 MtCO2e residual emissions in the CCC's Net Zero Balanced Pathway (JZS, paragraph 3.58). The "JZS: One Year on" (July 2023) policy paper sets out progress and achievements made since the launch of the JZS and the next steps to deliver net zero aviation by 2050. The JZS modelling includes the Proposed Development as a capacity assumption (see paragraphs 3.17, 3.18 and Annex D of the Jet Zero modelling framework) [ER 4.2.41]".

288. DL155 records that GAL based its assessment of aviation emissions from the proposed development on the JZS high ambition scenario. The Claimant says that GAL used the high ambition trajectory modelled in the JZS to quantify the extent of GHG emissions that would be caused by additional flights following the coming into operation of the proposed development; to contextualise those emissions and assess their significance; and as the basis for its approach to cumulative assessment. In DL156 the SST says –

"156. The Applicant considered it was appropriate to rely on the Jet Zero High-ambition scenario as it represented current Government policy on aviation [REP4-005, paragraph 16.2.25]. GACC, in its representation of 9 June 2025, argued that emissions are uncertain (due to the assumptions in the JZS) and it is also uncertain that they will be mitigated (by carbon removal technologies). In part, GACC stated this is because the High Ambition scenario used by the Applicant to estimate future GHG emissions is not the worst-case and that a likely or expected scenario should also have been considered (page 10). The Secretary of State acknowledges that there is uncertainty

given the JZS includes reliance on new and emerging technology but notes paragraph 1.10 of the JZS, which sets out that the Government is committed to the Jet Zero High ambition scenario, and the Secretary of State agrees with the Applicant and the ExA that this is a reasonable approach for it to adopt".

289. In DL166 and DL167 the SST addresses concerns about the uncertainty of achieving the policy objectives of JZS and the measures upon which, as summarised in DL151, delivery of the JZS high ambition scenario is based. In particular –

"166. The Secretary of State has taken account of the concerns of Interested Parties about the uncertainty surrounding the means to achieve the objectives in the JZS, however, she notes the ExA's view that the policy itself is robust and that there are mechanisms to review and adjust the policy as necessary [ER 8.4.11]. Consequently, there is no reason why the weight given to the JZS trajectory should be reduced and that the policy must be considered in the context of the CCA2008, and the requirement to meet national GHG emission reduction targets [ER 8.4.10 – 8.4.12]".

The Claimant's case in summary

290. The Claimant argues that in reaching these conclusions, the SST has failed to take account of material information. That information comprised of so-called "Policy Commission" returns provided by the Department for Transport to the SSESNZ in July 2025 which are said to substantiate significant delivery risks in relation to the JZS high ambition scenario. It also comprises of revised modelling undertaken for the purposes of JZS:ONO which is said to show significantly lower levels of take up of airport capacity at Gatwick than those assumed for the JZS itself; and in GAL's assessment of GHG emissions in the ES submitted for the proposed development.

291. The Claimant's argument is that because GAL chose to use the JZS high ambition scenario as the basis for its quantitative assessment of GHG emissions in the ES for the proposed development, the SST was obliged to determine whether the high ambition scenario is a reliable basis for assessment. In order to do so on a proper and rational basis, the SST needed to interrogate the evidence before her, and that which acting reasonably and based on reasonable inquiries, was available to her. Both the Policy Commission returns and the revised modelling work which informed JZS:ONO were material to that necessary inquiry.

292. Ms Dehon KC submitted that the SST has erred in three ways. She has failed to take account of obviously material information indicating that the JZS high ambition scenario would not now be likely to be achieved. She has failed in her *Tameside* duty of reasonable inquiry in relation to the information available to her within her own department in the form of the July 2025 DfT Policy Commission returns. Alternatively, if it was the case that the SST has taken account of the Policy Commission returns and JZS:ONO modelling, then her acceptance of GAL's approach to assessment of the GHG emissions for the proposed development as explained in DL166 is irrational.

Discussion and conclusions

293. I have referred above to the duty imposed on the SSESNZ under section 13 of the CCA. The SSESNZ is required to prepare proposals and policies for meeting the carbon budgets set under the CCA, with the objective of meeting the net zero target.

294. In *Global Feedback* at [75] the Court of Appeal said that the duty enacted by section 13(1) of the CCA had been imposed on the SSESNZ and did not fall upon other Secretaries of State. At [80]-[84] the Court rejected a *"multi-partite"* approach to performance of the section 13 duty –

"80 In the light of Holgate J.'s reasoning, and our own conclusions so far, three characteristics of the section 13 duty seem clear. First, as we have said, responsibility for its performance lies with the Secretary of State who bears the primary responsibility for ensuring that carbon budgets are established and met. Second, it effectively requires a strategic and – as Ms Ward put it – a "whole-economy", or "economy-wide", judgment to be applied by the Secretary of State. And third, as Holgate J. also held, it is a "continuing" duty.

81 As for the first characteristic, the carbon budgets are established, under the statutory scheme, by SSESNZ – previously SSBEIS. It was this Secretary of State who was ultimately accountable for operating the legislative machinery designed to bring about a reduction in greenhouse gas emissions and to secure the meeting of carbon budgets through the Net Zero Strategy, and he was properly the defendant in the proceedings before Holgate J.. It was his duty under section 13 to prepare the "proposals and policies" that he considered would enable carbon budgets to be met.

82 Turning to the second characteristic, one sees that the carbon budgets themselves are to apply at the national level, and are directed at the national economy. They are not broken down into targets for individual sectors of the economy. We have referred already to the requirement in section 13(3) that the proposals and policies are to be "taken as a whole" in assessing their contribution to sustainable development. In the same vein, section 14(3) requires that the Secretary of State's report must explain how they "affect different sectors of the economy". These provisions show the composite nature of the duties imposed on the Secretary of State.

83 In our view, the Secretary of State with responsibility for the functions contained in Part 1 is uniquely well placed to discharge the duty in section 13. He has an overview of the whole economy, is conscious of the likely levels of greenhouse gas emissions in all sectors of it for the budgetary period or periods in question, and is able to judge the potential for appropriate action to ensure the meeting of carbon budgets. The section 13(1) duty therefore corresponds to the "whole economy" or "economy-wide" approach envisaged in Part 1, with a single Secretary of State holding responsibility for the setting and implementation of the carbon budgets.

84 We reject the piecemeal or multipartite approach to the performance of the section 13 duty advocated by Mr. Wolfe, in which that particular task is divided between different ministers and departments of government, each responsible under section 13 for some notional proportion or "share" of the carbon budget for an individual sector of the economy. That is not what section 13 states, and we do not consider it is what Parliament intended".

295. In R (Boswell) v Secretary of State for Transport [2024] EWHC 1572 (Admin) **["*Boswell A12*"]**, the claimant sought to argue that in applying paragraph 5.18 of the NNNPS, the SST failed to have regard to an obviously material consideration, namely the risks of non-delivery by the government of its carbon reduction targets under its

current policies and strategies: see [15] and [48] of Lang J's judgment. At [53]-[57], Lang J rejected that argument –

"53. In my judgment, it was not arguably irrational or otherwise unlawful for the defendant to rely on the policies and proposals already in place to enable the carbon budgets to be met, including to look at risk. Delivery risk was not even arguably an obviously material consideration for the defendant's decision making.

54. The Climate Change Act 2008 creates a separate regulatory framework to the development control process set out in the Planning Act 2008. The Climate Change Act 2008 requires the Government to set targets and to adopt policies designed to achieve those targets. Part of that process requires an examination of delivery risk.

55. ... A decision maker determining an application for a Development Consent Order is entitled to assume that the Government would put in place policies and proposals that will achieve the Government's carbon targets, and will review the delivery risk associated with those policies and proposals and, if necessary, respond to such risks by putting further policies and proposals in place in future thereby ensuring that the Government's carbon targets will be achieved. That process is for the Climate Change Act 2008 regime to regulate. It is not a process for a decision maker in a development control process to undertake each time a decision to grant or refuse permission for a development is taken.

56. Here the defendant was satisfied that the emissions arising from the Scheme would not prejudice compliance with carbon budgets even before taking into account non-planning policies such as the Transport Decarbonisation Plan. ("TDP") He said at DL/70:

"....the Secretary of State is satisfied .... that the Proposed Development would be unlikely to materially impact the ability of the Government to meet its carbon reduction targets. As set out in more detail below, the Secretary of State also considers that the Applicant's assessments represent a conservative assessment and therefore, as recognised by paragraph 5.18 NPSNN, he considers that the impacts may ultimately be lower than those assessed given the range of non-planning policies adopted by Government which seek to reduce carbon emissions from road transport, as set out in the Applicant's TDP sensitivity assessment."

57.The defendant was entitled to rely on his own policies in the TDP which had not been the subject of any successful legal challenge".

296. Lang J's analysis is supported by the later analysis by the Court of Appeal in *Global Feedback* of the role and responsibilities of the SSESNZ in fulfilling the duty imposed by section 13 of the CCA. It is reflected in the explanation given by Jessica Matthew, in paragraph 13 of her witness statement on behalf of the SST dated 19 December 2025, of the role of the DfT's July 2025 Policy Commission returns –

"Section 18 CCA 2008 creates a duty on the [SSESNZ] to prepare such proposals and policies as the Secretary of State considers will enable carbon budgets set under the CCA 2008 to be met. To meet this obligation, SSESNZ has in place a process of internal review and monitoring of compliance with carbon budgets. The Department supports the SSESNZ in discharging the s.13 duty by identifying and pursuing proposals and

policies to reduce greenhouse gas emissions emitted from the transport sector, providing updated emissions projections based on planned in-delivery proposals and policies, and providing information on delivery risk associated with these measures. These are provided for routine commissions run by the DESNZ. As a result, routine commission returns are produced by DfT and other sector teams responsible for emitting sectors and decarbonisation policies across government, which the SSESNZ assesses to determine whether sufficient proposals and policies are in place to enable carbon budgets to be met".

297. The JZS is a component of the panoply of proposals and policies which the government has put in place to enable the objectives of the CCA 2008 to be achieved. As found by the Court of Appeal in *Global Feedback*, it is the responsibility of the SSESNZ to operate the legislative machinery designed to bring about a reduction in greenhouse gas emissions and to secure the meeting of carbon budgets through the Net Zero Strategy. The SSESNZ has responsibility under section 13 to prepare the proposals and policies that they consider will enable carbon budgets to be met.

298. In *Boswell A12*, Lang J held that in the context of determining an application for development consent under the 2008 Act, the SST acts lawfully in proceeding on the basis that the government, and in particular the SSESNZ, will review delivery risk associated with those policies and proposals; and, if necessary, respond to such risks by putting further policies and proposals in place in future thereby ensuring that the government's carbon targets will be achieved. As Lang J observed, that process is for the CCA regime to regulate. It is not a process for a decision maker in an essentially *ad hoc* manner in the context of an individual development project.

299. That analysis is also supported by the reasoning of the Court of Appeal in *Global Feedback* at [82]-[84], emphasising the *"whole economy"* approach.

300. In the light of this analysis, in my judgment, the Claimant's arguments in support of this ground of challenge are without substance. It was unarguably lawful and rational for the SST to proceed as she did in DL156 and DL166. It was rational for her to take the view that it would not be appropriate to interrogate risks to the delivery of the JZS high ambition scenario in the context of her determination of GAL's application for development consent. Her department's July 2025 Policy Commission returns were produced for a quite different purpose, essentially under the aegis of the CCA and to inform the SSESNZ's discharge of their role and responsibilities under section 13 of the CCA. The part those returns play in that process is summarised by Sheldon J at [19]-[32] in *Friends of the Earth*. It was not arguably irrational for the SST to decide that she should not reduce the weight given to the JZS high ambition scenario; and that she should consider that policy in the context of the CCA and the statutory requirements to which the CCA gives effect.

301. For these reasons, it was neither irrational nor in breach of the SST's *Tameside* duty of reasonable inquiry for her not to regard the DfT July 2025 Policy Commission returns as material information in her determination of GAL's application for development consent. The same applies to the modelling results for JZS:ONO. The fact that GAL based its assessment of aviation emissions from the proposed development on the same assumptions does not displace that analysis. GAL did no more than to give practical effect to the principled approach stated in *Global Feedback* and *Boswell A12*.

302. The Claimant's argument is not supported by National Farmers Union v Herefordshire [2025] EWHC 536 (Admin). As is clear from [81] in Lieven J's judgment, the issue in that case was whether it was lawful for the local planning authority not to assume that the regulatory regime was operating effectively on the basis of clear evidence that it was failing to do so. That was a rational judgment for that authority in that case. Conversely, it was a rational judgment for the SST in this case to decline to reduce the weight given to the JZS high ambition scenario, and to accept GAL's assessment of GHG emissions based on that scenario, on the basis that delivery risks were for government and the SSESNZ to address and resolve on an economy wide basis, in accordance with the statutory arrangements under the CCA.

303. In the light of this, I can see no advantage in addressing the points of dispute arising on the evidence of Mr Tim Johnson of the Aviation Environment Federation in his witness statement dated 9 January 2026, Ms Matthew and Mr Joe Delafield of the DfT in his witness statement dated 16 January 2026 responding to Mr Johnson. As Mr Pleming KC submitted, the evidence of Mr Johnson is relied upon by the Claimant to seek to undermine extant and lawful government policy. The information considered by Mr Johnson has been generated by the DfT for the purpose of enabling government policy to be kept under review in accordance with the statutory scheme of the CCA; and on an economy wide basis of managing delivery risk in the context of carbon budgets and the SSESNZ's duty under section 13 of the CCA. CAGNE's case is a legal challenge to the decision to grant development consent for an individual infrastructure project. It is not a challenge to the efficacy of operation of those distinct statutory and policy arrangements. The SST was not under a duty to take account of or to inquire into the matters raised in Mr Johnson's evidence.

304. For these reasons, I refuse permission on this ground of challenge. Had I granted permission, I should have rejected it.

Noise Issues

Policy

305. The APF acknowledges that for local communities near airports, noise is the primary concern. Paragraph 3.3 of the APF states –

> *"We want to strike a fair balance between the negative impacts of noise (on health, amenity (quality of life) and productivity) and the positive economic impacts of flights. As a general principle, the Government therefore expects that future growth in aviation should ensure that benefits are shared between the aviation industry and local communities. This means that the industry must continue to reduce and mitigate noise as airport capacity grows. As noise levels fall with technology improvements the aviation industry should be expected to share the benefits from these improvements".*

306. Paragraph 3.12 of the APF states the overall policy objective –

> *"The Government's overall policy on aviation noise is to limit and, where possible, reduce the number of people in the UK significantly affected by aircraft noise, as part of a policy of sharing benefits of noise reduction with industry".*

307. In relation to measures to reduce and mitigate noise in the context of growth in aviation, paragraph 3.24 of the APF states –

"The acceptability of any growth in aviation depends to a large extent on the industry tackling its noise impact. The Government accepts, however, that it is neither reasonable nor realistic for such actions to impose unlimited costs on industry. Instead, efforts should be proportionate to the extent of the noise problem and numbers of people affected".

308. Paragraph 3.29 sets out the government's policy on the concept of noise envelopes –

"The Government wishes to pursue the concept of noise envelopes as a means of giving certainty to local communities about the levels of noise which can be expected in the future and to give developers certainty on how they can use their airports. Following any such recommendations made by the Airports Commission, in the case of any new national hub airport capacity or any other airport development which is a nationally significant infrastructure project, the Government is likely to develop a National Policy Statement (NPS) to set out the national need for such a project. The Government would determine principles for the noise envelope in the NPS having regard to the following:

(1) The Government's overall noise policy.

(2) Within the limits set by the envelope, the benefits of future technological improvements should be shared between the airport and its local communities to achieve a balance between growth and noise reduction.

(3) The objective of incentivising airlines to introduce the quietest suitable aircraft as quickly as is reasonably practicable".

309. Paragraphs 5.44 to 5.68 of the ANPS set out a detailed statement of policy on the assessment of noise impacts. Paragraph 5.44 states that the impact of noise from airport expansion is a key concern for communities affected, an issue which the government takes very seriously. High exposure to noise is an annoyance, can disturb sleep, and can also affect people's health. Aircraft operations are by far the largest source of noise emissions from an airport, although noise will also be generated from ground operations and surface transport, and during the construction phase of a scheme.

310. In relation to mitigation, paragraph 5.55 of the ANPS states that the Government recognises that aircraft noise is a significant concern to communities affected and that, as a result of additional runway capacity, noise-related action will need to be taken. Such action should strike a fair balance between the negative impacts of noise and positive impacts of flights. Paragraph 5.60 states –

"5.60 The applicant should put forward plans for a noise envelope. Such an envelope should be tailored to local priorities and include clear noise performance targets. As such, the design of the envelope should be defined in consultation with local communities and relevant stakeholders and take account of any independent guidance such as from the Independent Commission on Civil Aviation Noise. The benefits of future technological improvements should be shared between the applicant and its local communities, hence helping to achieve a balance between growth and noise reduction.

Suitable review periods should be set in consultation with the parties mentioned above to ensure the noise envelope's framework remains relevant".

311. The policy on decision making is given in paragraphs 5.67 and 5.68 –

"5.67 The proposed development must be undertaken in accordance with statutory obligations for noise. Due regard must have been given to national policy on aviation noise, and the relevant sections of the Noise Policy Statement for England, the National Planning Policy Framework, and the Government's associated planning guidance on noise. However, the Airports NPS must be used as the primary policy on noise when considering the Heathrow Northwest Runway scheme, and has primacy over other wider noise policy sources.

5.68 Development consent should not be granted unless the Secretary of State is satisfied that the proposals will meet the following aims for the effective management and control of noise, within the context of Government policy on sustainable development:

• Avoid significant adverse impacts on health and quality of life from noise;

• Mitigate and minimise adverse impacts on health and quality of life from noise; and

• Where possible, contribute to improvements to health and quality of life".

312. The policy stated in paragraph 5.68 of the ANPS essentially reflects and applies the policy aims of the Noise Policy Statement for England (2010) **["NPSE"]** –

"Noise Policy Aims

Through the effective management and control of environmental, neighbour and neighbourhood noise within the context of Government policy on sustainable development:

- *avoid significant adverse impacts on health and quality of life;*
- *mitigate and minimise adverse impacts on health and quality of life; and*
- *where possible, contribute to the improvement of health and quality of life".*

313. Paragraph 1.8 of the NPSE states that the noise policy aims should be interpreted by having regard to the set of shared UK principles that underpin the government's sustainable development strategy. A set of guiding principles on sustainable development are then set out and explained. Those guiding principles include ensuring a strong healthy and just society, using sound science responsibly, living within environmental limits, achieving a sustainable economy and promoting good governance.

314. Paragraphs 2.20 and 2.21 of the explanatory note to the NPSE explain the distinction in the noise policy aims between the concepts of significant adverse and adverse impacts. Reference is made to the Lowest Observed Adverse Effect Level or LOAEL, an established concept in the field of toxicology which is also applied to noise impacts. This is the level above which adverse effects on health and quality of life can be

detected. The NPSE introduces the concept of a Significant Observed Adverse Effect Level or SOAEL. This is the level above which significant adverse effects on health and quality of life occur. Paragraph 2.22 advises that it is not possible to have a single objective noise-based measure that defines SOAEL that is applicable to all sources of noise in all situations. The SOAEL is likely to be different for different noise sources, for different receptors and at different times. In not specifying SOAEL values, the NPSE provides policy flexibility.

315. The explanatory note explains that the first noise policy aim is that significant adverse effects on health and quality of life should be avoided, while also taking into account the guiding principles of sustainable development. The second noise policy aim refers to the situation where the impact lies somewhere between LOAEL and SOAEL –

"It requires that all reasonable steps should be taken to mitigate and minimise adverse effects on health and quality of life while also taking into account the guiding principles of sustainable development (paragraph 1.8). This does not mean that such adverse effects cannot occur".

316. The third noise policy aim seeks, where possible, positively to improve health and quality of life through the pro-active management of noise while also taking into account the guiding principles of sustainable development, recognising that there will be opportunities for such measures to be taken and that they will deliver potential benefits to society.

317. On 27 March 2023, the government published its Overarching Aviation Noise Policy Statement **["OANPS"]** –

"The government's overall policy on aviation noise is to balance the economic and consumer benefits of aviation against their social and health implications in line with the International Civil Aviation Organisation's Balanced Approach to Aircraft Noise Management. This should take into account the local and national context of both passenger and freight operations, and recognise the additional health impacts of night flights.

The impact of aviation noise must be mitigated as much as is practicable and realistic to do so, limiting, and where possible reducing, the total adverse impacts on health and quality of life from aviation noise".

The SST's consideration of noise effects

318. The SST's consideration of the noise effects of the proposed development is set out in DL50 to DL134.

319. In DL80, the SST says that GAL's proposed Noise Insulation Scheme **["NISD"]** provides additional comfort to local communities that the effects of aircraft noise from the proposed development will be mitigated, in compliance with paragraph 5.68 of the ANPS. Implementation of the NISD is secured by requirement 18 in schedule 2 to the DCO.

320. In DL106 to DL108, the SST discusses GACC's primary concern that the benefits of the proposed development will not be shared properly between GAL and the local communities affected by noise –

"106. The Secretary of State notes that GACC's primary concern is that the air noise limits and contours, as proposed by both the Applicant and the ExA, go against the expectations of the ANPS and APF regarding the sharing of benefits. GACC's position is that the test in the APF that noise should reduce as capacity grows is not met. They point out that the future baseline case (without the Proposed Development), encloses a lower contour area than either the Applicant or the ExA have proposed from first operation of the Proposed Development.

107. The Secretary of State is aware that the Report highlighted paragraph 3.12 of the APF which states that, "Government's overall policy on aircraft noise is to limit and, where possible, reduce the number of people in the UK significantly affected by aircraft noise, as part of a policy of sharing benefits of noise reduction with industry" [ER 6.4.93]. It also referenced paragraph 3.29 of the APF and paragraph 5.60 of the ANPS, which set out that the benefits of future technological improvements should be shared between the airport and its local communities to achieve a balance between growth and noise reduction [ER 6.4.94 - 6.4.95]. The Secretary of State notes the ExA also reference the OANPS at ER 6.4.96, detailing the government's overarching policy on aircraft noise.

108 While acknowledging GACC's concerns, the Secretary of State is mindful of the wording in the APF and ANPS, which is that there is a balance to be reached between growth and noise reduction. She also considers the wording in the OANPS to be particularly relevant, in that "the impact of aircraft noise must be mitigated as much as is practicable and realistic to do so, limiting, and where possible reducing, the total adverse impacts on health and quality of life from aircraft noise." It is clear the aim of the policy is to ensure significant adverse effects from noise are avoided and remaining adverse effects from noise are mitigated and minimised as much as possible, not to remove additional noise completely. The specific policies regarding the sharing of benefits ensures the balance can be delivered by aligning any benefits to the Applicant from growth, to benefits to the community from reducing noise effects, for example as new aircraft technology advances, but does not state that these must happen at the same time but rather as soon as reasonably practical. There is also a connection to noise receptor mitigations, as set out below, which are part of the overall approach to noise and which work to mitigate the impacts of aircraft noise. The Secretary of State will set out her conclusions on the compliance with policy requirements, in relation to this Application, in the conclusion paragraph below".

321. DL110 to DL120 state the SST's discussion of and conclusions on issues raised in relation to air noise limits and contours. Having determined air noise limits and contours in DL110, in DL111 to DL112 the SST refers to arrangements for their periodic review during operation of the proposed development. Those arrangements are secured through the terms of requirement 15 in schedule 2 to the DCO –

"111. This will be supported by a provision that the Applicant will review the limits every five years following the ninth year of dual runway operations or when commercial air traffic movements reach 382,000, whichever is sooner. To address concerns raised by the JLA and other Interested Parties, the Secretary of State confirms that the

Applicant will be required to produce five-year forecasts of compliance with the air noise limits.

112. The CAA will act as the independent assessor of both annual compliance and five year forecasts. Its role will be to verify the Applicant's data and provide assurance to stakeholders that noise limits are being met and future projections are credible".

322. Issues had arisen in relation to the robustness of the proposed arrangements for review of noise limits. The SST addresses those issues in DL116 –

"116. The Secretary of State acknowledges and agrees with the concerns raised by the JLA, GACC and other Interested Parties regarding the need for a robust review mechanism. This is to ensure the air noise limits and contours remain relevant over time, particularly as technological advances in aircraft design are realised. The Secretary of State agrees with GACC that this is consistent with paragraph 5.60 of the ANPS, which states that "suitable review periods should be set in consultation with the parties mentioned above (local communities and relevant stakeholders) to ensure that the noise envelope's framework remains relevant". She also acknowledges GACC's concern that failure to incorporate such a review mechanism could lead to unacceptable consequences for communities around the airport. As such, the Secretary of State has determined that the final air noise limits and contours will be accompanied by a formal review provision. This will include a provision for the Applicant to produce forward-looking projections on compliance, which will be subject to independent assessment by the CAA. She considers that this approach will provide all parties with assurance that air noise limits and contours continue to be relevant and remain responsive to change so that benefits of quieter technology will be shared with the communities as appropriate".

323. The SST's overall conclusions on the question of noise limits and contours are given in DL119 –

"119. Overall, the Secretary of State is satisfied that her revisions to requirement 15 are necessary to achieve a balance between allowing the Airport to grow, with the associated economic benefits through infrastructure improvement, and mitigating and minimising adverse impacts of noise on health and quality of life on local residents. She is further satisfied that the inclusion of a review mechanism ensures any noise reduction benefits, particularly those arising from technological advancements, are shared with the local community. With her amendments to requirement 15 in place the Secretary of State has been able to reach a different conclusion both on air noise limits and contours and on compliance with policy requirements than those reached by the ExA and set out by the ExA at [ER 6.4.129 - 6.4.130]. The Secretary of State considers that her adopted approach will ensure compliance with the policy requirements set out in paragraphs 3.29 of the APF and 5.60 of the ANPS to sufficiently share the benefits and further considers that the approach aligns with the aims of the OANPS and the aims at paragraph 5.68 of the ANPS to mitigate and minimise adverse impacts on health and quality of life. Requirement 15 of the Order will secure appropriate monitoring and reviewing of the air noise limits and contours, to both identify issues of projected non-compliance in advance, but also to ensure the limits and contours remain appropriate at key points in the Airport's growth so that as dual runway operations progress, the impacts are lessened or mitigated as much as is practicable to do so. The detail of the

amendments to requirement 15 are set out in Schedule 2 to the DCO and in the Development Consent Order and Related Matters section of this letter".

324. The SST stated her overall conclusions on issues in relation to noise and vibration at DL129 to DL134 –

"129. In accordance with paragraph 5.53 of the ANPS, the Secretary of State is content that the Applicant has appropriately assessed operational noise, with respect to human receptors, using the principles of the relevant British Standards and other guidance. In assessing the likely significant impacts of aircraft noise, she is satisfied that the Applicant has had regard to the noise assessment principles, including noise metrics, set out in the national policy on airspace. As set out above, the Secretary of State agrees with the Applicant's approach to the setting of the LOAELs and SOAELs.

130. With regard to the assessment of construction noise, in accordance with paragraph 5.53 of the ANPS, the Secretary of State is satisfied that the Applicant has undertaken a prediction, assessment and management of construction noise in accordance with British Standards and other guidance. She agrees that the Applicant's approach to assessment and mitigation, as set out at paragraph 182 of the minded to letter, is appropriate, and that there are existing regulatory regimes that will enable any outstanding concerns that a LPA might have in relation to policy compliance to be addressed [ER 6.4.138 - 6.4.139].

131. As set out at paragraphs 110 - 120 of this letter, the Secretary of State has reached an alternative conclusion on air noise limits and compliance with policy requirements to those reached by the ExA. The Secretary of State considers that her adopted approach will ensure compliance with paragraph 5.60 of the ANPS, allowing the benefits of future technological improvements to be shared between the Applicant and its local communities, helping to achieve a balance between growth and noise reduction. Requirement 15 of the Order will secure an appropriate monitoring and review mechanism of the air noise limits.

132. As set out at paragraph 71, the Secretary of State is satisfied that the Applicant's revised NISD and requirement 18 meets the aims for the effective management and control of noise, as set out at paragraph 5.68 of the ANPS. She considers that the amendments suggested by the JLA, which she has incorporated into requirement 18, would provide further security and comfort for local communities.

133. In conclusion, having taken into account national policy on aviation noise, relevant sections of the NPSE, National Planning Policy Framework ("NPPF") and the Government's associated planning guidance on noise, as well as the ANPS as the primary policy on noise, in accordance with paragraph 5.67 of the ANPS, the Secretary of State is satisfied that the overall proposals will meet the aims for the effective management and control of noise, within the context of Government policy on sustainable development, as set out at paragraph 5.68: - Avoid significant adverse impacts on health and quality of life from noise; 31 - Mitigate and minimise adverse impacts on health and quality of life from noise; and - Where possible, contribute to improvements to health and quality of life.

134. The Secretary of State therefore concludes that neutral weight should be given to the issue of noise and vibration in the overall planning balance of the Proposed

Development (with the exception of outdoor noise, to which she has given limited negative weight)".

325. Requirement 15 in schedule 2 to the DCO provides that GAL as undertaker shall not operate the airport for dual runway operations unless the specified air contour enclosed areas set out in the table included in that requirement are complied with. There is to be annual publication of air noise contour reports to demonstrate compliance, as soon as is reasonably practicable following the first year and subsequent years of dual runway operations. The air noise contour enclosed areas are to be calculated using the Civil Aviation Authority's **["CAA"]** model, version 2.4 or later. Paragraphs 15(7) and (8) state –

"(7) On the earlier of the ninth anniversary of the commencement of dual runway operations or the end of the year when commercial air transport movements per annum reach 382,000, the undertaker will review the air noise limits with contour limits being put in place as measured by the 51 dB LAeq 16 h and 45 dB LAeq 8 h contours the summer season average day, to ensure they remain relevant for the subsequent five year period and submit to the CAA for approval, repeating this on every fifth anniversary thereafter.

(8) To ensure compliance with future air noise contour enclosed areas, the undertaker will report compliance with the air noise contour enclosed areas and produce five yearly forecasts to project compliance which will be independently assessed by the CAA".

(Paragraphs 15(7) and (8) are quoted in the terms enacted under article 2 of and the schedule to the Gatwick Airport (Northern Runway Project) Development Consent (Correction) Order 2026, which came into force on 21 January 2026).

CAGNE Ground (6) – Unlawful failure to weight noise harms

The Claimant's submissions in summary

326. On behalf of CAGNE, Dr Lois Lane submitted that the SST's overall conclusion in DL134 that she should give neutral weight to the issue of noise and vibration in the overall planning balance was in breach of her duty under regulation 21(1)(b) of the EIA Regulations.

327. GAL acknowledged in closing submissions to the Examination that the proposed development would give rise to significant effects on the environment through noise impacts even following the application of the proposed mitigation. The SST was required to evaluate and to weigh those effects in her overall decision whether to grant development consent. She had failed to do so. Regulation 21(1)(b) and (c) of the EIA Regulations obliged the SST to reach a reasoned conclusion on the significant effects of the proposed development on the environment and integrate that conclusion into her decision to grant the DCO. In order lawfully and rationally to fulfil that statutory duty, the SST must ascribe some level of appropriate weight to those reported, significant environmental effects of the proposed development. To give neutral or no weight to those effects in DL134 was both legally inadequate and irrational.

Discussion and conclusions

328. The focus of the Claimant's argument is on the requirements of regulation 21(1)(b) and (c) of the EIA Regulations. Those provisions require her to do two things: firstly, to reach a reasoned conclusion on the significant effects of the proposed development on the environment; and secondly, to integrate that conclusion into her decision as to whether to grant the DCO.

329. Regulation 21 does not prescribe the approach which the SST must take in order to fulfil those requirements. Nor does regulation 21 affect the cardinal principle of planning law that the attribution of weight to any given material consideration is a matter exclusively for the decision maker: see Tesco Stores Limited v Secretary of State for the Environment [1995] 1 WLR 759, 780 F-H.

330. Dr Lane relied upon paragraph 11.8.5 of GAL's closing submissions to the Examination in which GAL acknowledged the following residual significant environmental effects of the proposed development –

"In EIA terms, the Project will result in the following effects which are 'significant' following the application of existing and proposed mitigation –

- *37 properties are predicted to experience a short term moderate adverse effects during the daytime as a consequence of construction noise.*
- *80 properties are predicted to experience permanent moderate adverse effects during the daytime as a consequence of air noise; and*
- *30 properties are predicted to experience permanent moderate adverse effects during the daytime as a consequence of ground noise".*

331. These effects were reported as significant adverse environmental effects in GAL's ES, notwithstanding that they were not predicted to exceed the SOAEL values accepted by the SST for the purposes of applying the noise policy aims of the NPSE and paragraph 5.68 of the ANPS. GAL's ES at Table 14.4.3 described the following effects typically associated with noise exceeding LOEAL –

"Noise can be heard and causes small changes in behaviour, attitude or other physiological response, eg turning up volume of television; speaking more loudly; where there is no alternative ventilation, having to close windows for some of the time because of the noise. Potential for some reported sleep disturbance. Affects the acoustic character of the area such that there is a small actual or perceived change in the quality of life".

332. The SST does not express any disagreement with the reported findings of the ES upon which the significant adverse effects summarised by GAL in paragraph 11.8.5 of its closing submissions were founded. The SST is to be taken to have accepted that the noise effects of the proposed development reported in the ES and identified by GAL are significant effects of the proposed development.

333. The policy of the OANPS is that the impact of aviation noise must be mitigated as much as is practicable and realistic to do so. That overarching policy speaks of limiting, and

where possible reducing, the total adverse impacts on health and quality of life from aviation noise. It does not require that any such impact is to be avoided in the development of additional airport capacity. That reflects the second national policy aim of the NPSE which seeks to mitigate and minimise impacts on health or quality of life from the construction and operation of the proposed development. As is made clear in paragraph 2.24 of the explanatory note to the NPSE, it is not the aim of national policy to avoid such impacts, albeit that they are predicted to exceed LOAEL (but not SOAEL) for the proposed development.

334. As is clear from DL133 and DL134, in this case the SST thought it appropriate to state her overall conclusion on the performance of the proposed development in relation to the noise impacts of its construction and operation within the framework of national policy to which I have already referred. Her judgment in DL134 that she should give neutral weight to the issue of noise and vibration in the overall planning balance is her evaluation of the noise effects of the proposed development within that framework of national planning policy. It is clearly consistent with the existence of the residual significant effects identified by GAL in paragraph 11.8.5 of its closing submissions.

335. It was not suggested that those residual significant effects were predicted to exceed the applicable SOAEL values for the purpose of applying paragraphs 5.67 and 5.68 of the ANPS. GAL's case was that those effects were the product of applying existing and proposed mitigation. They were residual effects, reported as significant for the purposes of EIA, the existence of which does not necessarily weigh significantly against the proposed development as a matter of applicable national policy. There is no reason to infer that the SST failed to take those residual effects into consideration in reaching her overall conclusion that, evaluated within the framework of planning policy to which she referred, it was appropriate to attribute neutral weight to noise and vibration in the overall planning balance.

336. Neutral weight is not necessarily the same as no weight. In the planning context, the concept of neutral weight is apposite to a case in which the decision maker identifies factors which tell both in favour of and against the grant of development consent. The overall balance in such a case may both legitimately and rationally be found to justify an overall evaluative judgment of neutral weight.

337. The Claimant placed reliance on Pearce v Secretary of State [2022] Env LR 4 **["*Pearce*"]** at [108] –

"108. Although it is a matter of judgment for the decision-maker as to what are the environmental effects of a proposed project and whether they are significant, EIA legislation proceeds on the basis that he is required to evaluate and weigh those effects he considers to be significant (and any related mitigation) in the decision on whether to grant development consent (see e.g. Commission v Ireland [2011] Env. L.R. 478). It follows that if the decision-maker considers that a particular effect is not significant, he is not obliged to weigh that matter in his decision on whether or not development consent should be granted. Whether he need explicitly state that conclusion or give reasons for it will depend on the circumstances. For example, the matter may have been treated in the ES and by the parties as a significant environmental effect and become an important controversial issue in the examination. Subject to complying with any obligation to give reasons that may arise, a decision-maker's conclusion that an effect is not significant may only be challenged in the courts on Wednesbury grounds".

338. The SST's approach in DL133 and DL134 is consistent with those observations. For the reasons I have given, there is no arguable basis for inferring that in drawing her overall conclusions in those paragraphs, the SST failed to take into account and evaluate the residual significant effects to which GAL referred in its closing submissions. Indeed, it is to be noted that in DL134 the SST qualified her attribution of neutral weight in relation to outdoor noise. She gave limited negative weight to those impacts, a judgment which reflects her assessment in DL123.

339. The Claimant's argument under this ground derives no support from Vistry Homes Limited v Secretary of State for Levelling Up, Housing and Communities [2025] PTSR 60. Holgate J's analysis in [154]-[159] must be read in the context of the policy on biodiversity net gain with which the decision challenged in that case was concerned.

340. The SST's attribution of neutral weight in DL134 is both an understandable and proper response to the evaluation of the noise effects of the proposed development. There were residual noise effects which were significant, but given the proposed development's overall compliance with applicable planning policy on noise, the judgment that overall, the noise effects of the proposed development should weigh neither for nor against the grant of development consent cannot arguably be characterised as irrational. Properly understood in this way, the SST's conclusions in DL133 and DL134, and indeed her overall conclusions in DL129 to DL134 read as a whole, fulfil the requirements of regulation 21(1)(b) and (c) of the EIA Regulations.

341. I grant permission on this ground but, for the reasons I have given, it is rejected.

Barclay ground (5) – erroneous interpretation of the noise policy framework

The Claimant's submissions in summary

342. For the Claimant, Mr Gethin Thomas submitted that the SST had failed to assess the performance of the proposed development against the overarching policy requirement stated in paragraph 3.3 of the APF. The clear stated expectation in that paragraph was that future growth in aviation should ensure that benefits are shared between the aviation industry and local communities. The SST had not made that assessment in this case. She did not attempt to assess whether the overall benefits of the growth secured by the proposed development were shared between the aviation industry and local communities.

343. Mr Thomas argued that the SST had made a further error as revealed by her reasoning in DL108. She had imported a temporal qualification into the policy requirement stated in paragraph 3.3 of the APF. She had interpreted that policy as requiring benefits to be shared *"as soon as reasonably practical"*. That was a misinterpretation of the plain words of paragraph 3.3 of the APF, which contemplate a simultaneous sharing of benefits.

Discussion and conclusions

344. The Claimant's first contention is without substance. In DL106, the SST characterises GACC's primary concern as being rooted in the expectations of the APF and the ANPS regarding the sharing of benefits. It cannot sensibly be suggested that in summarising the issue in that way, the SST lost sight of or ignored the general principle stated in

paragraph 3.3 of the APF. That general principle is expressed as a policy requirement that the benefits of growth in aviation are shared between the industry and local communities. Paragraph 3.3 then states two practical measures through which that policy objective should be pursued: firstly, to reduce and mitigate noise as airport capacity grows; and secondly, to share the benefits from technology improvements as noise levels fall with those improvements. Each of those two measures is then explained further in paragraphs 3.12 and 3.29 of the APF respectively. They are in turn reflected in paragraph 5.60 of the ANPS and the OANPS.

345. The SST's consideration of GACC's concerns in DL106 to DL108 reflects both the general principle stated in paragraph 3.3 of the APF and the two measures identified in that paragraph. Reference is made to paragraphs 3.12 and 3.29 of the APF, to paragraph 5.60 of the ANPS and to the OANPS. The performance of the proposed development in relation to those two measures forms the subject matter of the SST's conclusions on air noise limits and contours in DL110 to DL120. I have set out extracts from those paragraphs above.

346. The SST's overall conclusion in DL131 and DL132 is that requirements 15 and 18 in schedule 2 to the DCO will both effectively mitigate future operation of the proposed development and enable opportunities to be taken to reduce noise as technological improvements come forward. In DL131 the SST speaks of the sharing of the benefits of such improvements between GAL and local communities, helping to achieve a balance between growth and noise reduction. In DL132, the SST speaks of requirement 18 meeting the policy aims for the effective management and control of noise, incorporating amendments which will provide further security and comfort for local communities.

347. In reaching these conclusions, the SST clearly had in mind the general policy principle stated in paragraph 3.3 of the APF. It is obvious that paragraph 3.3 is one of the specific policies to which the SST refers in DL108. It is of no legal significance that she makes no express reference to that paragraph. Application of that policy in her determination of the application for development consent was for her to judge. It is obvious from the SST's reasons in the paragraphs to which I have referred that she was satisfied that the proposed development was in accordance with that general principle. The benefits of future growth from operation of the proposed development would be acceptably shared between GAL and the local communities whom GACC represents, through the regulatory controls imposed by requirements 15 and 18 in schedule 2 to the DCO. There is no arguable basis for challenging the rationality of those conclusions.

348. The Claimant's second point is also unsustainable. There is no justification for reading paragraph 3.3 of the APF as a policy requirement that the benefits of future growth in aviation must accrue to both the aviation industry and local communities at the same time. In DL108 the SST says –

"The specific policies regarding the sharing of benefits ensures the balance can be delivered by aligning any benefits to the Applicant from growth, to benefits to the community from reducing noise effects, for example as new aircraft technology advances, but does not state that these must happen at the same time but rather as soon as reasonably practical".

349. As a matter of language, the SST is obviously correct. Paragraph 3.3 of the APF does not stipulate a requirement that the benefits of future growth in aviation should be shared simultaneously by the aviation industry and local communities. More importantly, however, the SST's approach is self-evidently correct as a practical understanding and application of the general policy principle stated in paragraph 3.3 of the APF in the real world. Given that the policy objective of shared benefits is to be achieved, at least in part, through future technological improvements, it is necessarily the case that to some degree, the benefits to local communities may come later, as those improvements begin to take effect in practice.

350. I refuse permission on this ground of challenge. Had I granted permission, I should have rejected this ground for the reasons I have given.

CAGNE ground (7) – waste water treatment works

351. Work No. 44 in schedule 1 to the DCO includes the construction of wastewater treatment works. Requirement 31(3) and (7) to (9) in schedule 2 to the DCO impose the following controls on delivery of that work –

"(3) The undertaker must prepare and provide to Thames Water Utilities Limited a development phasing plan which will include forecast passenger growth numbers for the period up to the commencement of dual runway operations and ten years after the commencement of dual runway operations. The development phasing plan must include detailed forecasts of the wastewater discharge rates and expected connection points for the authorised development throughout this period and be based on hydraulic modelling undertaken by Thames Water Utilities Limited or the undertaker in consultation with Thames Water Utilities Limited and validated by Thames Water Utilities Limited in writing.

(7) Thames Water Utilities Limited must confirm in writing within twelve months of the provision of the development phasing plan pursuant to sub-paragraph (3) whether its infrastructure will be able to accommodate the additional foul water flows from the airport for the ten-year period after the commencement of dual runway operations.

(8) The commencement of Work No. 44 (wastewater treatment works) must not take place until either –

(a) Thames Water Utilities Limited confirms that its infrastructure will not be able to accommodate the additional foul water flows;

(b)Thames Water Utilities Limited has not provided any confirmation pursuant to sub-paragraph (7) within the time period specified therein; or

(c)Thames Water Utilities Limited has not responded pursuant to sub-paragraph (4)(a) or (4)(c) within the time period specified therein,

unless otherwise agree in writing by Thames Water Utilities Limited.

(9) The commencement of dual runway operations must not take place until either –

(a) Work No. 44 (wastewater treatment works) has been completed, and an application has been submitted for an environmental permit under regulation 12(1)(b)

(requirement for an environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016 for its operation; or (b)Thames Water Utilities Limited confirms that its infrastructure will be able to accommodate the additional foul water flows,

unless otherwise agreed in writing by Thames Water Utilities Limited".

352. The context in which these requirements were imposed in the DCO is summarised in DL266. On 24 April 2025, GAL had reported that Thames Water Utilities Limited **["TWUL"]** would not be in a position to have concluded the required hydraulic modelling to confirm whether wastewater flows from the proposed development could be accommodated by its existing infrastructure, prior to the revised statutory deadline of 27 October 2025. GAL and TWUL had reached an agreement on the wording of a requirement confirming that the commencement of dual runway operations cannot take place until either (i) TWUL have confirmed that the existing wastewater treatment works can accommodate the additional flows from the airport; or (ii) on-site wastewater treatment works have been completed and the application for the necessary permits submitted to the Environment Agency **["EA"]**. Requirement 31 is based on that agreement.

353. CAGNE takes no issue with the need for both the inclusion of Work No. 44 and of effective controls to ensure that the additional water flows from operation of the proposed development will either be accommodated by TWUL's existing infrastructure or through provision of Work No. 44.

354. CAGNE's case under this ground is that the terms of paragraph 31(9) of requirement 31 impose no more than an obligation on GAL to have completed the physical works for provision of the wastewater treatment facility comprised in Work No. 44. There is no obligation to bring that facility into operation. That being the case, it would be in accordance with the conditional controls imposed by requirement 31(9) for GAL to commence dual runway operations in circumstances where (i) TWUL's existing infrastructure is incapable of accommodating additional wastewater flows; but (ii) the wastewater treatment works, although completed, have not been brought into use to provide the required additional capacity. In imposing a requirement which results in that state of affairs, the SST has acted irrationally.

Discussion and conclusions

355. The Claimant founded its case under this ground on the principle stated in [35] of Leeds City Council v Secretary of State for Communities and Local Government [2009] EWHC 1014 (Admin) [**"*Leeds CC*"**] –

"…where an Inspector considers of his own motion that a particular objection to a planning application can be met by condition or package of conditions not proposed by the applicant for permission, it is incumbent on him to ensure to a standard of rationality that such condition or conditions are indeed adequate to meet the particular objection".

356. In order to determine whether the SST has failed to achieve that legal standard in relation to the provisions of requirement 31(9), it is accordingly necessary to understand correctly the particular objection which that requirement is intended to meet.

357. That is explained by the SST in DL266. As at 24 April 2025, there remained a lack of certainty as to the ability of TWUL's existing infrastructure to accommodate the additional wastewater flows resulting from future operation of the proposed development. That uncertainty would not have been resolved by the date of the SST's decision on GAL's application for development consent, because TWUL's modelling work would not have been completed in time to enable that to happen. It was obviously necessary for appropriate arrangements to be made to manage that uncertainty and to avoid a future state of affairs in which TWUL's wastewater infrastructure provided insufficient capacity to accommodate the proposed development.

358. The solution to that problem proposed by GAL and TWUL was that the DCO should enable the provision of additional wastewater treatment capacity as part of the works authorised by the DCO. The evident purpose of requirement 31(9)(a) was that the works authorised by the DCO to provide additional capacity at the airport should have been completed prior to the commencement of dual runway operations. The practical effect of requirement 31(9) is that the capacity needed to accommodate the additional wastewater flows from operation of the proposed development will be in existence, either in the form of TWUL's existing infrastructure or of the completed wastewater treatment facility whose construction is authorised under Work No. 44.

359. In the language of [35] of *Leeds CC*, the particular objection which was to be met by the imposition of requirement 31(9) was the risk that, following completion of the ongoing modelling work, TWUL's existing infrastructure would be found to lack sufficient capacity to accommodate the additional flows generated by the coming into operation of the proposed development. It would be objectionable for the proposed development to begin operations in such circumstances.

360. As is clear from DL266, it is the SST's judgment that that objection has been addressed and that risk overcome by the imposition of requirement 31(9)(a) with the agreement of GAL and TWUL. In my view, it was not irrational for the SST to conclude that the terms of requirement 31(9)(a) are sufficient for that purpose. Fulfilment of the steps required by requirement 31(9) will ensure that the wastewater treatment infrastructure is in place to accommodate the additional flows generated by the proposed development at the time when dual runway operations begin. That purpose will have been achieved either through confirmation that TWUL's existing infrastructure has sufficient capacity to manage those additional flows; or through provision of the requisite capacity through completion of Work No. 44.

361. In DL266 the SST addressed CAGNE's argument that requirement 31(9) is inadequate to overcome the particular objection which it seeks to address –

"The Secretary of State notes the representation made by CAGNE on 9 June 2025 that wastewater treatment should be fully operational prior to dual runway operations. However, she is content that in the event an on-site wastewater treatment works is needed, the timescales included within the requirement wording allows a sufficient period for the EA to consider potential impacts on the receiving watercourse and set appropriate permit limits to protect the environment accordingly. The Secretary of State notes the matter of wastewater was agreed between the Applicant and the EA in their Statement of Common Ground, and the ExA reported that this was EA's preferred approach [ER 11.3.33] indicating the EA foresee no issue or adverse effect resulting

from wastewater. The Secretary of State is satisfied that the outstanding concerns regarding the management of wastewater have now been addressed".

362. That reasoning, in my view, provides a rational justification for the terms in which requirement 31(9) has been imposed. The gravamen of CAGNE's complaint is twofold: that there is a risk that having completed construction of Work No. 44, GAL will decline to bring it into use; and the risk that the EA will, in the event, decline to process or issue the requisite environmental permit. In my judgment, it was rational for the SST to take the view that neither of those risks was sufficient to warrant any amendment to the terms of requirement 31(9). In particular, I think it fanciful to contemplate that having invested in and completed construction of wastewater treatment works in the circumstances contemplated in requirement 31 and as agreed with TWUL, GAL would decide not to bring those works into active use for the purpose for which they were needed and provided.

363. CAGNE's further point under this ground concerns the so-called *"tailpiece"* at the end of requirement 31(9) which states *"unless otherwise agreed in writing by [TWUL]"*. It is submitted that this tailpiece is unlawful on the basis discussed at [70] in R (Midcounties Co-operative Limited) v Wyre Forest District Council [2009] EWHC 964 (Admin) –

"I accept the existence of a very limited power to make immaterial variations informally. But while the tailpiece in the condition in question could be applied in that way, it contains no words purporting to limit its application. The tailpiece on its face does enable development to take place which could be very different in scale and impact from that applied for, assessed or permitted and it enables it to be created by means wholly outside any statutory process. It undermines the effect of specifying floorspace limits. I do not consider that a public document such as a planning permission should contain such a provision".

364. I do not accept that the tailpiece in requirement 31(9) is properly to be characterised in that way. Read in context, the tailpiece does no more than to provide an element of flexibility in enabling TWUL as statutory undertaker to give its agreement to alternative means of achieving the evident purpose for which the requirement has been imposed. I do not accept that it opens the door to the consequences which impressed the court in the *Midcounties* case, of enabling development to take place which could be very different in scale and impact from that applied for, assessed or permitted; and of enabling it to be created by means wholly outside any statutory process.

365. I grant permission on ground (7) but for the reasons given, I reject it.

Disposal

366. I grant permission on grounds (1) and (4) of Mr Barclay's claim but reject both grounds. I refuse permission on grounds (2), (3) and (5) of Mr Barclay's claim. I grant permission on grounds (1), (6) and (7) of CAGNE's claim but reject each of those grounds. I refuse permission on CAGNE's grounds (2), (3) and (4). CAGNE withdrew ground (5) of its claim. The overall outcome is that both claims are dismissed.