

Case Name: *Goesa Ltd, R (On the Application Of) v Eastleigh Borough Council* [2022] EWHC 1221 (Admin) (23 May 2022)

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Commentary:

This was an unsuccessful challenge by a campaign group to Eastleigh Borough Council's decision in June 2021 to grant planning permission to Southampton International Airport Limited ("SIAL") for a 164-metre extension of a runway with an associated blast screen and the reconfiguration and enlargement of a long-stay car park. The claimant was granted permission to bring the challenge on four grounds, all of which were rejected.

The claimant's first ground was that there was a legitimate expectation that the permission would not be issued until the Secretary of State ("SoS") had fully had time to decide whether to call in the application. It referred to the Council's statement on 16 April 2021 that the Planning Casework Unit had apparently received several requests for the SoS to consider calling in the application and that it had asked the Council not issue the permission until the SoS had decided whether to call in the application for a public inquiry. It continued to say that the completion of the s106 legal agreement would not be completed until the middle of May and, as such, it had agreed to this informal request. The court held that this announcement did not contain any clear, unequivocal representation that the decision notice would not be issued until the SoS had decided whether to call in the application irrespective of the length of time that might take. The court was satisfied that the Council had allowed the SoS time to consider the case when it granted the permission over 7 weeks later, and also that the Council made it plain that it was not agreeing to any further delay beyond May 2021.

The second ground of challenge was that the Council breached its duty under the EIA regulations by making no assessment of the cumulative effects of greenhouse gas ("GHG") emissions in combination with other projects. However, the court noted that the Council had followed the guidance published by the IEMA but that no criteria or thresholds had been set by which to measure the significance or acceptability of GHG emissions from a particular proposal. The court held that there was nothing unlawful with the Council using the benchmarks it considered to be appropriate (namely national aviation targets) in order to reach a judgment on these issues.

The third ground was that the Council misinterpreted paragraph 11(d) of the NPPF and unlawfully applied the 'tilted balance' in favour of granting permission without finding that the "most important policies for determining the application" were out of date. The court referred to the 2019 case of *Mansell v Tonbridge and Malling Borough Council* where it was said that was wrong and inappropriate to carry out a legalistic dissection of officer's reports. The court in this case considered that the judgment as to what are the

most important policies does not involve an objective question of law such as the interpretation of a policy (which might be susceptible to only one answer). Instead, it is a subjective judgment about what are the most important policies for deciding the application in question. The court was satisfied that the officer had addressed this question in the specific context of the application before the Council.

The final ground was that the Council unlawfully took into account an immaterial consideration, namely that refusing planning permission would lead to the loss of the airport. The court concluded that the claimant was referring to a small number of comments which came nowhere near establishing the “general tenor” of the 20-hour discussion by the full Council so as to show that there was a general view that the airport would close if the application was refused or that the councillors would have voted the other way had they disregarded the closure issue.

Case summary prepared by Safiyah Islam