

**Case Name:** *Bristol Airport Action Network Co-Ordinating Committee v Secretary of State for Levelling Up, Housing and Communities* [2023] EWHC 171 (Admin) (31 January 2023)

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**Commentary:** This case was an unsuccessful judicial review brought by campaigners objecting to the expansion of Bristol Airport on climate grounds. In this case, the court affirmed the decision of planning inspectors to approve the airport's expansion to facilitate a capacity increase of 2 million passengers per year, an increase of 20% based on current capacity. The court was keen to note in postscript that the judgment is not intended to contradict the significance of climate change and greenhouse gas emissions. Rather, this case concerns how and by whom emissions should be addressed.

The planning application was originally rejected by North Somerset Council before being approved by a three-person panel of inspectors in February 2022. The Claimant, Bristol Airport Action Network Co-Ordinating Committee brought a claim for judicial review on the basis of six grounds of appeal, five of which concerned the inspectors' consideration of the additional greenhouse gas emissions that would be generated by the expanded airport. The sixth ground related to the effect of the expansion on the nearby SAC (Special Conservation Area). The following sets out, in summary, the court's decision in relation to each submitted ground of claim.

Ground One – The Claimant argued that the panel erred in its interpretation of development plan policies CS1 (a commitment to reducing carbon emissions and tackling climate change, mitigating further impacts and supporting adaptation) and CS23 (entitled 'Bristol Airport', requiring the airport, in its proposals for development, to demonstrate the satisfactory resolution of environmental issues, including the impact of growth on surrounding communities and surface access infrastructure) of North Somerset's Core Strategy (adopted 2017). The Claimant contended that the climate impact of expansion of the airport was relevant to determining whether the proposals complied with policies CS1 and CS23 and amounted to a standalone material consideration. Mr Justice Lane considered that as per *Tesco Stores Ltd v Dundee CC* [2012] UKSC 13, the decision maker is entitled to exercise judgment in order to determine how the increase in emissions are to be dealt with under policy. In its consideration of the issue, the panel made reference to the NPPF, which guides the decision maker that planning is not always the appropriate control to decide upon a matter relating to development and where other systems of control exist, the planning system may be entitled to expect such systems to operate effectively. The panel were correct to determine that the emissions were not relevant for the purposes of the development plan as they were not likely to have a material impact on the Secretary of State's ability to meet its wider obligations to meet net zero targets under the Climate Change Act 2008, and therefore granting permission would not be contrary to the development plan.

Ground Two – The Claimant argued that the panel erred in its interpretation of "Beyond the Horizon - the Future of UK Aviation: Making Best - Use of Existing Runways" (June 2018) ('MBU'). The crux of the Claimant's argument was that the impact of all airport development should be assessed before any airport expansion resulting in an increase of greenhouse gas emissions could be consented. However, the panel were not presented with any national assessment of airport emissions, nor does such assessment exist. The court reminded us that Mr Justice Holgate had previously provided authority in *R (Goesa Ltd) v Eastleigh Borough Council and Southampton International Airport Ltd* [2002] EWHC 1221, that the decision maker takes responsibility for which benchmarks are acceptable and to be used in any decision-making process. The court considered that the panel had not taken the expansion emissions to be insignificant and had instead given due consideration to their significance in considering whether the emissions would affect the country's net zero targets. The panel were correct in their interpretation of the MBU, that there was no such requirement to consider the cumulative impact of all of the country's aviation emissions.

Ground Three – The Claimant argued that the panel erred in treating the Climate Change Act 2008 and various duties therein as a "separate pollution control regime" for the purposes of paragraph 188 of the NPPF, and that it is incorrect to consider that the NPPF's assumption that where there are separate controls on pollution, these controls will operate effectively. The court found two issues with the Claimant's interpretation of policy. Firstly, such interpretation would act only to duplicate policy where duplication is not needed. Secondly, to duplicate national policy with policy at a local level would force local decision makers into an area of national policy which sits outside of their jurisdiction. The court found that the panel carefully considered the relationship between emissions and development control in its decision and did so within the realms of its jurisdiction. Furthermore, there was no evidence to suggest that the panel had considered, as the Claimant alleged, that the NPPF's assumption was irrebuttable.

Ground Four – The Claimant argued that the panel erred in law in discounting the impact of the expansion on the local carbon budget for the Council. The court arrived at the test of whether an authority has failed to take into account a relevant consideration. It was clear to the court that the panel engaged on the issue of the Council's local carbon budget, however, the panel gave the consideration no weight. It was therefore for the Claimant to demonstrate public law illegality – an area the court is hesitant to involve itself in given that this brings into question the level of weight to attribute to each consideration, which is ultimately within the jurisdiction of the decision maker. The court held that the panel did not act irrationally to afford the carbon budget no weight, as the budget has no basis in either law or policy.

Ground Five – The Claimant argued that the impact of non-CO2 emissions was a matter of critical importance to determining the effect of the airport's expansion on climate

change. In its submissions, the Claimant contended that elements of technical evidence presented to the panel were not taken into consideration, which suggested the panel had not taken account of the full climate change impact of aviation emissions and that such overlooking of evidence was an error of law due to a failure to consider a material consideration. The court determined that as the Committee on Climate Change considers that non-CO2 aviation emissions should not be included within the net-zero target, it was difficult to see why technical information relating to this issue should be considered as a material consideration relevant to the impact of the airport expansion. The panel was therefore entitled to not use the technical information provided to it. Furthermore, the Environmental Statement submitted with the application did consider non-CO2 emissions and therefore there was no defect in the ES that the panel unlawfully failed to recognise.

Ground Six – The proposals would result in the loss of 3.7ha of agricultural land for car parking and 0.16ha of woodland for road improvements which areas are situated outside of but near to the North Somerset and Mendip Bats SAC. The SAC was designated as such due to the presence of lesser and greater horseshoe bats, and the relevant areas to the proposal are relevant to the SAC as they are foraging areas for the bats. The proposal would provide replacement land so as to avoid any impact on the SAC itself. The panel concluded that based on evidence presented by the airport, the replacement land would avoid harm, guaranteeing beyond reasonable doubt that the project would not adversely affect the integrity of the SAC. The court held that there was no indication that the panel misunderstood the relevant law or misapplied it, and was right to rely on the airport's uncontested evidence, and the fact that replacement land would be provided prior to works to the relevant foraging land.

Accordingly, all grounds of the claim failed, and the judicial review was dismissed.

*Case summary prepared by Matt Speed*