Case Name: *Luton And District Association for the Control of Aircraft Noise, R (On the Application Of) v Secretary Of State For Transport [2025] EWHC 3206 (Admin) (08 December 2025)*

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Commentary:

This case concerned an unsuccessful claim for judicial review by Luton and District Association for the Control of Aircraft Noise (the "**Claimant**") against the decision of the Secretary of State for Transport (the "**Defendant**"), dated 3 April 2025, to grant a development consent order ("**DCO**") to London Luton Airport Limited (the "**IP**") for the expansion of London Luton Airport (the "**Airport**") (the "**Project**").

The claim was originally brought on six grounds, as follows:

1. error of law in excluding the greenhouse gas emissions from inbound flights from the environmental impact assessment (the "**EIA**") and failing to assess the significance of indirect effects on the climate, contrary to the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 and *R (Finch) v Surrey County Council & Ors*;
2. unlawful failure to take account of a material consideration, by failing to consider the treatment of inbound flight emissions by the examining authority (the "**ExA**") in relation to the expansion of Gatwick Airport;
3. error of law in excluding from the EIA the likely significant impacts of non-carbon dioxide ("**non-CO_2**") emissions on the climate, contrary to *Finch*;
4. error of law in concluding that the Government's duty under the Climate Change Act 2008 (the "**CCA 2008**") to adopt policies and procedures that ensure the legislative duty to reach net zero is complied with was a "pollution control regime";
5. error of law in failing to give adequate reasons for finding compliance with section 85(A1) of the Countryside and Rights of Way Act 2000 (the "**CROW Act**"); and
6. error of law in relying extensively on the Jet Zero Strategy (the "**JZS**"), which is currently subject to legal challenge.

In July 2025 Lieven J gave permission on the papers for Grounds 1 to 5 and stayed Ground 6. In November 2025, Holgate LJ granted permission to appeal against Lieven J's order for a stay and gave directions for the filing of pleadings and an oral permission hearing before a High Court Judge in respect of Ground 6.

Background

The IP applied for the DCO in 2023 to expand the Airport, increasing passenger capacity from 19 million passengers per annum to 32 million.

The application was examined by the ExA between August 2023 and February 2024, and on 10 May 2024 the ExA submitted its report (the "**ExA Report**") to the Defendant, concluding that consent should be withheld because the public benefits did not outweigh the environmental harms.

Following further consultation, the Defendant granted the DCO on 3 April 2025.

Ground 1

The ExA Report, in considering the significance of emissions, concluded that the ExA was satisfied that the Project would be compatible with the JZS and that the predicted emissions would not have a material impact on the ability of Government to meet its carbon reduction targets, but that the Project would not meet the requirement to be planned for in ways that could help to reduce emissions, in line paragraph 159 of the National Planning Policy Framework (the "**NPPF**").

In respect of *Finch*, the IP was invited to consider the implications which it did in its letter of 6 September 2024. The IP concluded that whilst it was inappropriate to include and contextualise the emissions of inbound flights, these emissions could be calculated and reported by doubling the emissions reported in the environmental statement which accounts for outbound flights only.

Despite the Claimant's response in its letter of 13 October 2024 that counting of emissions in the assessment for one project did not dispense with the need to assess them for another project, the Defendant found no reason to deviate from the IP's approach which was standard. The Defendant also considered assessment of those emissions from inbound flights not necessary or capable of meaningful assessment in light of the approach identified in *Finch.* The Judge, Mrs Justice Lang DBE, accepted the Defendant's and the IP's position that the emissions, having been quantified, would not be sufficiently significant to justify assessment, and the ground did not succeed.

Ground 2

Whilst the Claimant contended that the Project was sufficiently similar to the expansion of Gatwick Airport and the approach to inbound flight emissions was a material consideration which the Defendant unlawfully failed to take into account, the Judge considered the projects to be quite different, and that "[a]bsent a requirement arising from statute or policy, the test whether a consideration is so 'obviously material' that it must be taken into account is whether it was *Wednesbury* irrational not to have taken it into account", a high threshold which she did not consider had not been reached in this case.

Ground 3

The Claimant submitted that neither the IP nor the Defendant carried out an assessment of non-CO_2 emissions despite accepting that it was methodologically possible to do so and, contrary to *Finch*, relied on the assumption that future controls would address the impacts and therefore they did not need to be assessed.

In conclusion on this ground, the Judge accepted the submissions of the Defendant and the IP and distinguished this case from *Finch* in that there was no dispute over causation of the non-CO_2 emissions and the issue was whether or not the Defendant had erred in law in its assessment of the non-CO_2 emissions. The Judge accepted the IP's position in the environmental statement that "[i]t remains extremely challenging to accurately aggregate the effects of these non-CO_2 impacts into a CO_2-equivalence 'multiplier' for use within climate policy mechanisms" and that "there is no recognised benchmark against which to compare the emissions of non-CO_2 impacts". The Judge concluded that the non-CO_2 emissions had been "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".

Ground 4

Under the fourth ground, the Claimant asserted that the Defendant erred in law by applying the policy presumption in the 'Airports National Policy Statement: new runway capacity and

infrastructure at airports in the South East of England' and paragraph 201 of the NPPF to the CCA 2008.

In considering this ground, the Judge again accepted the submissions of the Defendant and the IP and concluded that "[t]he principle that decision-makers are entitled to have regard to and rely upon regimes outside the planning system when granting permission or consent is well-established in the case law". Contrary to the Claimant's submissions, Mrs Justic Lang did not consider "that the position has changed as a result of the judgment in *Finch* or the revised wording in paragraph 163 of the NPPF" and this ground therefore did not succeed.

Ground 5

The Claimant submitted that the Defendant failed to give adequate reasons for her finding compliance with the duty under s85(A1) of the CROW Act to "seek to further the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty".

Again, the Judge accepted the submissions of the Defendant and the IP and agreed that the issues had been considered in detail in the Defendant's decision letter, which specifically set out her reasoning and conclusions. She had invited representations and been "presented with competing submissions on appropriate enhancement measures and the quantum of any financial payment", concluding that the financial contribution was a "reasonable and proportionate contribution to further the purposes of enhancement and conservation". The Defendant's decision letter expressly stated that the payment was "for projects which further the purpose of conserving or enhancing the Chilterns [National Landscape]" and it was therefore plain that the issues had been properly addressed. This ground accordingly did not succeed.

Conclusion

The claim for judicial review was dismissed on all grounds and therefore the Judge considered there to be no need for her to consider the applications by the Defendant and the IP under section 31(2A) of the Senior Courts Act 1981 that relief should not be granted.

Case summary prepared by Sophie Bell