Neutral Citation Number: [2009] EWHC 463 (Admin)

Case No: CO/10952/2008

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13 March 2009

Before:

SIR THAYNE FORBES
Sitting as a Judge of the High Court

- -

Between:

Carol Barbone and Brian Ross	**Claimants**
(on behalf of Stop Stansted Expansion)	
- and -	
(1) The Secretary of State for Transport	**Defendant**
(2) The Secretary of State for Communities and Local Government	
- and -	
(1) BAA Limited and Stansted Airport Limited	**Interested Parties**
(2) Uttlesford District Council and others	

- -
- -

Paul Stinchcombe and Sarah Hannett (instructed by **Leigh Day & Co**) for the **Claimants**
Timothy Mould QC and James Maurici
(instructed by **the Treasury Solicitor**) for the **Defendants**
Michael Humphries QC and James Pereira
(instructed by **CMS Cameron McKenna**) for the **First Interested Party**

Hearing dates: 24, 25, 26, and 27 February 2009

- -

Approved Judgment

Sir Thayne Forbes :

Introduction

1. In these proceedings, the Claimants, who are representatives of "Stop Stansted Expansion" ("SSE"), apply under section 288 of the Town and Country Planning Act 1990 ("the 1990 Act") to quash the decision made by the Defendants, the Secretary of State for Transport and the Secretary of State for Communities and Local Government ("the Secretaries of State"), given by letter dated 8th October 2008 ("the DL"), whereby they allowed an appeal ("the appeal") by the First Interested Parties, BAA Ltd and Stansted Airport Ltd ("BAA"), against the decision of Uttlesford District Council ("the LPA") to refuse planning permission for BAA's proposals to increase the capacity of Stansted Airport by varying existing planning conditions that regulated the annual number of air traffic movements ("ATMs") and the annual throughput of air passengers that the airport could lawfully accommodate under its existing planning permission.

2. The planning permission granted by the Secretaries of State, following BAA's successful appeal, has had the effect of lifting the permitted annual throughput of passengers at Stansted Airport from 25 million passengers per annum ("mppa") to 35 mppa and of increasing the ATMs to a figure not exceeding 264,000 overall in any period of 12 calendar months.

3. The development project comprised by the application/appeal was identified throughout by all parties as the "G1" project/proposal. The G1 proposal was concerned with the existing single runway at Stansted Airport. A further proposal, known as "G2", seeks the development of a second runway and is to be considered at a Planning Inquiry to be held in due course (having recently been postponed from a proposed hearing date of April 2009).

4. On behalf of the Claimants, Mr Stinchcombe accepted that the G1 proposal was supported as a matter of national policy by the Future of Air Transport White Paper ("the ATWP"), which was published by the Government on 16th December 2003. However, Mr Stinchcombe pointed to a number of statements made by or on behalf of ministers ("the ministerial statements") following publication of the ATWP (including during the course of legal proceedings: see next paragraph), to the effect that when making any decision on a project supported by the ATWP the decision-maker would be required to take into account all the environmental impacts and economic effects of the project (including, so far as the latter was concerned, a "rigorous economic assessment"), even if to do so might lead to a refusal of planning permission for the project in question, in frustration of the national policy support for it expressed within the ATWP. In effect, it was Mr Stinchcombe's submission (a submission that lay at the heart of the Claimants' case) that the Secretaries of State were bound to give proper effect and/or to observe those ministerial statements in their decision-making with regard to BAA's appeal.

5. On behalf of the Secretaries of State, Mr Mould QC (supported by Mr Humphries QC on behalf of BAA) made it clear that there was not and never has been any issue between the parties about this aspect of the matter. Thus, Mr Mould acknowledged that the general approach identified in paragraph 4 had been readily accepted as correct by the Secretary of State in *R (Essex County Council and others) ~v~*

Secretary of State for Transport (2005) EWHC 20 (Admin) ("*The Essex County Council Case*": proceedings brought to challenge the ATWP): see paragraphs 10 to 12 of the Secretary of State's Detailed Grounds of Defence in that case, which Mr Mould summarised in the following terms.

1) The ATWP does not itself authorise any particular development.

2) It would be legitimate for any interested party to make a case to a public inquiry into a planning application for airport development that the adverse environmental impacts of the proposed development were such that planning permission should, on balance, be refused – notwithstanding that such refusal would frustrate national policy.

3) Having regard to his duties under planning legislation and the environmental impact assessment regime, the decision-maker would need to evaluate that case in order properly to determine the planning application, balancing the need for the development against its adverse effects as appropriate.

4) The decision-maker's evaluation of these considerations would be undertaken in the context of the policy framework set by the ATWP, the development plan and other relevant policies.

6. Mr Mould was at pains to emphasise that this still remains the position of the Secretaries of State in the present case: see paragraph 12 of Mr Mould's written skeleton argument, which is in the following terms:

> "12. The Defendants acknowledge that they were committed to reaching a decision on the G1 project which embraced a proper evaluation of all its environmental and economic effects, even if that process led them to refuse planning permission and so to frustrate the Government's published policy of support for making full use of the existing runway at Stansted Airport, i.e. in the White Paper "The Future of Air Transport" … They contend, however, that this was the approach which they took in reaching their decision. It was no more (and no less) than what was required of them in the proper exercise of their development control functions under the [1990 Act]."

The Legal Framework

7. Section 288 of the 1990 Act empowers the Court to quash the decision of the Secretaries of State if persuaded by the Claimants that the decision is invalid. There are two statutory bases for the grant of such relief: (i) that the decision is not within the powers bestowed by the 1990 Act; and (ii) that the Claimants have been substantially prejudiced by non-compliance with relevant requirements.

8. So far as material, regulations 2 and 3 of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 ("the 1999 EIA Regulations") provide as follows:

> "2. – Interpretation
>
> (1) In these Regulations –
>
> …
>
> "environmental information" means the 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;
>
> …
>
> 3. – Prohibition on granting planning permission or subsequent consent without consideration of environmental information
>
> This regulation applies –
>
> (a) to every application for planning permission for EIA development received by the authority with whom it is lodged on or after the commencement of these Regulations;
>
> …
>
> (2) The relevant planning authority or the Secretary of State or an inspector shall not grant planning permission or subsequent consent pursuant to an application to which this regulation applies unless they have first taken the environmental information into consideration, and they shall state in their decision that they have done so."

9. As Mr Humphries observed, no novel or controversial issues of law arise in this case. Accordingly, the following well-established propositions of law were common ground between the parties.

   1) The determination of an application for planning permission must be made having regard to the relevant provisions of the development plan and to all other material considerations: see section 70(2) of the 1990 Act. A national policy statement is a material consideration: see *R (Essex CC and others) ~v~ Secretary of State for Transport (2005) EWHC 20 (Admin)* at paragraph 48.

   2) Where a determination falls to be made with regard to the development plan, it is to be made in accordance with that plan unless material considerations indicate otherwise: see section 38(6) of the Planning and Compulsory Purchase Act 2004 ("the 2004 Act"). The ATWP is not part of any development plan. What constitutes the development plan for these purposes is prescribed by statute: see section 38 of the 2004 Act.

   3) What constitutes a material consideration is a question of law and it is for the decision-maker to assess the relative weight to be given to all the material

considerations that bear upon his determination of an application for planning permission: see *Tesco Stores Ltd ~v~ Secretary of State (1995) 1 WLR 759* ("*Tesco*"), where Lord Hoffman put the matter in this way at 780 F-H:

> "The law has always made a clear distinction between the question of whether something is a material consideration and the weight which it should be given. The former is a question of law and the latter is a question of planning judgment, which is entirely a matter for the planning authority. Provided that the planning authority has regard to all material considerations, it is at liberty (provided that it does not lapse into *Wednesbury* irrationality) to give them whatever weight the planning authority thinks fit or no weight at all. The fact that the law regards something as a material consideration therefore involves no view about the part, if any, which it should play in the decision-making process.
>
> This distinction between whether something is a material consideration and the weight it should be given is only one aspect of a fundamental principle of British planning law, namely that the courts are concerned only with the legality of the decision-making process and not with the merits of the decision. If there is one principle of planning law more firmly settled than any other, it is that matters of planning judgment are within the exclusive province of the local planning authority or the Secretary of State."

4) Matters of planning judgement are within the exclusive province of the decision-maker: see *Tesco*, supra. An application under section 288 of the 1990 Act is not an opportunity for a review of the planning merits of the decision-maker's decision, and the court must be astute to ensure that such challenges are not used as a cloak for what is, in truth, a rerun of the arguments on the planning merits: see *R (Newsmith Stainless Ltd ~v~ Secretary of State for the Environment, Transport and the Regions (2001) EWHC 74 (Admin)* at paragraphs 6 to 8.

5) The law requires that the reasons given for a decision to allow a planning appeal and grant planning permission must be proper, adequate and intelligible. The reasons should state the decision-maker's conclusions on the principal important controversial issues in the appeal. The decision should be read as a whole. The considerations which should govern the Court's determination of a challenge to the sufficiency of reasons are summarised in the speech of Lord Brown in *South Bucks DC ~v~ Porter (No 2) (2004) 1WLR 1953* at paragraph 36, as follows:

> "36 The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the "principal important controversial issues", disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required

> depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. They should enable disappointed developers to assess their prospects of obtaining alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact on future such applications. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision."

6) Decision letters should be read in a straightforward down-to-earth way, without excessive legalism or exegetical sophistication: see the judgment of Sir Thomas Bingham MR in *Clarke Homes ~v~ Secretary of State for the Environment (1995) 66 P & CR 263* at pages 271-272.

The Factual Background.

10. As I have already indicated, Stansted Airport currently operates from a single main runway.

11. In 2003, the LPA granted planning permission for the extension of the passenger terminal at the Airport, together with a variety of extensions and improvements to the Airport facilities. The 2003 planning permission was granted subject to conditions that placed annual limits on passenger throughput and overall ATMs of 25 mppa and 241,000 respectively.

12. In December 2003, following extensive public consultation, the Government published the ATWP, setting out its strategic framework for the development of airport capacity in the UK for the period to 2030, against the background of wider developments in air transport. In my view, it is both helpful and convenient to summarise some of the ATWP's main provisions at this stage of my judgment.

13. In paragraph 1.6 of the ATWP, the Government identified the need for a national strategic framework for the future development of airport capacity. Amongst the reasons given for that need are the following: (i) to provide a clear policy framework against which airport operators, airlines, regional bodies and local authorities can plan ahead; and (ii) to set out a strategic and sustainable approach to balancing the economic benefits of airport development, the social benefits of easier and more affordable air travel, and the environmental impacts that air travel generates.

14. Chapter 2 of the ATWP sets out the strategic framework against which the Government reached its conclusions on the future development of the UK's airports. The Government emphasised that there is a need for a balanced approach, recognising both the costs and benefits of air travel. Paragraphs 2.17 to 2.19 identify the principles of the Government's "balanced strategy" and state that these are reflected in its conclusions on the future development of airport capacity in later chapters of the ATWP. Amongst those stated principles are the need: (i) to seek to reduce and minimise the impacts of airports on those who live nearby and on the natural environment; (ii) to ensure that, over time, aviation pays the external costs its activities impose on society at large – in other words, that the price of air travel reflects its environmental and social impacts; and (iii) to minimise the need for airport development in new locations by making the best use of existing airports where possible.

15. Chapter 3 of the ATWP discusses the environmental impacts of air transport and airport development. It addresses a number of topics, including the impact of aircraft noise and climate change. Chapter 4 discusses the wider economic and social context within which the aviation industry operates.

16. Chapter 11 of the ATWP sets out the Government's strategy for airport development in the South East of England. Paragraphs 11.6 and 11.7 state that the Government's first priority is to make the best possible use of the existing runways at the major South East airports, in order to provide some much-needed additional capacity and goes on to say at paragraph 11.11:

> "11.11 In summary, our principal conclusions about new runway capacity in the South East are:
>
> …
>
> - we support making the best use of the existing runway at Stansted
>
> …"

17. Paragraphs 11.24 and following of the ATWP are specifically concerned with Stansted Airport. Paragraph 11.24 summarises the then current position with regard to passenger throughput and ATMs under the terms of the 2003 planning permission. Paragraph 11.25 discusses the forecast noise impacts of an increase in passenger throughput to 35 mppa. Paragraph 11.26 then states:

> "11.26 Because we expect there to be an increasingly severe shortage of runway capacity at the major South East airports over the remainder of this decade, making full use of the available capacity at Stansted will be essential to avoid stifling growth. Making full use of Stansted would generate large net economic benefits. We therefore support growth at Stansted to make full use of the existing runway and expect the airport operator to seek planning permission in good time to cater for demand as it arises."

18. Paragraph 12.2 of the ATWP states that it would be for airport operators to decide how to take forward plans for airport expansion in the light of the policies set out in the ATWP. However, airport development would continue to be subject to the planning system.

19. So far as concerns the ministerial statements to which Mr Stinchcombe made reference, it is only necessary to quote what was said on 19th April 2004 by the Parliamentary Under-Secretary of State in the Office of the Deputy Prime Minister, Ms Yvette Cooper MP ("the Minister"), when responding in the House of Commons to the following amendments, proposed by the House of Lords, to the Bill that in due course became the 2004 Act: (i) that Economic Impact Assessments be required on major infrastructure proposals; and (ii) that an Inspector be always at liberty to consider the need for a development even though it was specifically proposed in a White Paper.

20. In her response, the Minister stated that both amendments were unnecessary. So far as economic issues were concerned, the Minister said this:

> "… the Inspector will consider the economic effects, along with all the other aspects of the application as part of the Inquiry. Those would also include environmental and any other impacts, and local people would have a further opportunity to raise their concerns, including any concerns on economic aspects, at the Inquiry. If the economic impact is disputed, concerns can be raised about that too … The Government do not want to predetermine through the legislation which issues the Inspector should consider or focus on at an Inquiry. The Inspector will need to be able to consider what the particular issues to be resolved are, and what to devote Inquiry time to, in each particular case.
>
> … the Inspector will still need to consider the balance between a project's economic impact and other benefits, and will be able to consider the rigour of different analyses and assessments that are put forward, as is the case at the moment. We in no way dispute the importance of rigorous economic assessment and its role in any analysis of a major infrastructure project and in the debates that are necessary at the planning level. Material considerations that are disputed, whether economic, environmental, social, even aesthetic, will obviously be the territory of the Inquiry."

21. So far as concerns the question of the need for the development, the Minister confirmed as follows:

> "Again, we do not think that that requirement is necessary. Throughout the progress of the Bill, the Government have said that where there is a national policy statement White Paper, it should help to reduce the argument at a Planning Inquiry about the need for a specific development at a particular site – but that of course, the Inspector is likely to have to consider the

> balance between need and other factors. Those who oppose a specific development will be able to present their arguments against it, and it is right that they should have the opportunity to do so. It has never been the Government's intention to rule out the possibility of the Inspector spending some time considering need, but that will be done in the context of what is said about need in the national policy statement. The Inspector must ensure that all relevant impacts of a specific development are considered during an Inquiry, and that means all material considerations, together with relevant impacts such as the economic or environmental impact."

22. BAA operates Stansted Airport. On 26th April 2006, BAA applied pursuant to section 73 of the 1990 Act for planning permission to remove the conditions on the 2003 planning permission limiting passenger throughput and ATMs. On 30th November 2006, the LPA gave notice of their refusal of planning permission. In due course, BAA appealed.

23. It was the Government's stated intention to report progress generally on the policies and proposals set out in the ATWP by the end of 2006. In December 2006, the Government published the ATWP Progress Report ("the ATPR"). Amongst other matters, the ATPR set out progress on the Government's commitment to responding effectively to climate change and proposed the inclusion of flights within and from EU Member States in the European Union's Emissions Trading Scheme ("the EU ETS") with effect (it then hoped) from 2008. Subject to the policy intention of including flights within the EU ETS, the Government re-affirmed in the ATPR its policy support for major continued expansion of aviation at Stansted and elsewhere. Chapter 5 of the ATPR reported progress in relation to Stansted and, at paragraph 5.11, referred to BAA's then pending planning appeal.

24. BAA's planning appeal was heard by an Inspector ("the Inspector") at a public inquiry beginning on 30th May 2007. On 14th January 2008, the Inspector published his report ("the IR") in which he recommended that the appeal be allowed and that planning permission be granted subject to conditions. On 8th October 2008, the Secretaries of State issued their decision letter in which they accepted the Inspector's reasoning and recommendations, allowed the appeal and granted planning permission accordingly.

The Grounds of Challenge.

25. Broadly stated, it is the Claimants' case that, in deciding to allow BAA's appeal, the Secretaries of State conspicuously failed to carry out a full and proper evaluation of the G1 project proposals that accorded with the foregoing ministerial statements as to what would be required to be taken into account when deciding upon a project that was supported by the national policies expressed in the ATWP. As a result, it is submitted that the Secretaries of State have fallen into error.

26. In support of that case, Mr Stinchcombe identified the following three particular factors which, so he submitted, the Secretaries of State failed to take into account, adequately or at all (in the manner summarised below), in making their decision to allow the appeal.

1) The economic effects of the G1 project, in particular its impact on the UK balance of trade: it was Mr Stinchcombe's submission that the Secretaries of State entirely ignored the very considerable, and undisputed, negative impact of the G1 proposal on the UK's balance of trade ("the balance of trade deficit").

2) The noise impacts of the G1 project: it was submitted that the Secretaries of State decided that the "*not insignificant*" noise impacts of the proposal could not outweigh the need for the expansion of aviation identified in the ATWP, on the very basis that if it were otherwise this would amount to a challenge to the national policy espoused by the ATWP ("the noise impacts"); and

3) The emission of millions of tonnes of carbon dioxide (CO^2) and other greenhouse gases which will result from the implementation of the G1 project: it was Mr Stinchcombe's contention that the Secretaries of State decided that the millions of tonnes of aviation emissions which would ensue over the years as a result of the G1 proposal was an entirely immaterial planning consideration, not an environmental effect even to be taken into account ("the greenhouse gas emissions").

27. It was therefore Mr Stinchcombe's submission that the "core" challenge in the Claimants' section 288 application is the complaint that, despite ministerial statements that clearly and correctly represented that, when making their decision on the G1 project, the Secretaries of State would take into account all the environmental impacts and economic effects of the project, they manifestly failed to do so in the particular respects summarised in the previous paragraph. Mr Stinchcombe submitted that the errors of law thus made by the Secretaries of State can therefore be formulated as grounds of challenge in the following various ways.

1) *Ground 1*: *Misapplication of Policy*. The Secretaries of State misapplied their own policy as to the proper approach to be taken to aviation proposals supported by the ATWP, whereby they should have taken into account all the environmental impacts and economic effects of the GI project, even if to do so might lead to the refusal of permission for the project.

2) *Ground 2*: *Legitimate Expectation*. The Secretaries of State acted in breach of the legitimate expectation, created by their own ministerial statements, that they would take into account all the environmental impacts and economic effects of the G1 project, even if to do so might lead to the refusal of permission for the project.

3) *Ground 3*: *Failure to take Material Considerations into Account*. The Secretaries of State failed to take the following material factors/considerations into account: (i) the balance of trade deficit; (ii) the noise impacts; and (iii) the greenhouse gas emissions.

4) *Ground 4*: *Breach of the EIA Regulations*. By failing to take into account all of the environmental information before them prior to granting planning permission, the Secretaries of State acted in breach of Regulation 3 of the 1999 EIA Regulations.

5) *Ground 5*: *Inadequacy of Reasons*. The Secretaries of State gave wholly inadequate and insufficient reasons for deciding as they did.

28. For their part, Mr Mould and Mr Humphries submitted (correctly, in my view) that the Claimants' "core" complaint is essentially that the reasoning of the Secretaries of State demonstrates that they made their decision without having taken proper account of certain environmental and economic considerations that were material to their determination of the planning appeal, thereby failing to comply with their statutory duties (and the ministerial statements that, in effect, reiterated them) to have regard to all material considerations. Accordingly, the Claimants' core complaint focuses upon the way in which the Inspector and the Secretaries of State dealt with the three identified matters, namely the balance of trade deficit, the noise impacts and the greenhouse gas emissions ("the core matters").

29. It was Mr Mould's submission, supported by Mr Humphries, that the Secretaries of State did take properly into account all the environmental and economic effects of the G1 project. Mr Mould contended that the Secretaries of State did so, as they were entitled to do, consistently with the ministerial statements and their statutory duties, in the context of the framework of relevant national, regional and local policies. In short, as summarised in paragraph 53 of the DL, having weighed up all relevant considerations, the Secretaries of State came to the conclusion that the factors that weighed in favour of the G1 proposal (notably compliance with the ATWP and the statutory development plan) outweighed the identified harm.

30. Having regard to the way in which the Claimants' core complaint is focused on the three particular core matters identified in paragraphs 26 and 28 above, I agree with Mr Mould's suggestion (supported by Mr Humphries) that it is both appropriate and helpful to deal with those three matters, having first set them in the context of the decision as a whole. I also agree that, since the DL essentially accepts and follows the logic of the Inspector in the IR, it is convenient to set that context by reference to the approach and reasoning of the Inspector in the IR.

The Inspector's Report and the Decision Letter.

31. The Inspector set out his detailed reasons and conclusions in section 14 of the IR. In paragraph 14.43, he stated what he considered to be the ten main issues in the appeal. The Secretaries of State expressed their agreement with the Inspector's assessment in paragraph 27 of the DL. I agree with Mr Mould that the following issues as identified by the Inspector are the ones that relate most directly to the core matters:

> "14.43 I now consider that the main issues in this appeal (not in any order of priority) are:
>
> …
>
> (2) The extent to which the proposals accord in principle with current Government policy, with the statutory development plan and with the emerging Regional Spatial Strategy for the East of England;

> (3) The effects of the proposals on the living conditions and health of residents in the area, particularly in terms of aircraft noise and air pollution;
>
> (4) The effects of aircraft noise on the quality of life of the area in terms of the educational, cultural and leisure activities of communities;
>
> …
>
> (10) The economic (including employment) benefits of the proposals."

32. The Inspector then considered each main issue in turn, setting out his conclusions on each one and his reasons for those conclusions. For example, the Inspector dealt with the tenth main issue – the economic and employment benefits of the G1 proposal – in paragraphs 14.225 to 14.264 of the IR. After having thus considered each main issue in detail and in the light of the evidence and the contentions of the parties, the Inspector drew them together in order to reach his judgment of the overall planning balance in paragraphs 14.331 to 14.344 of the IR. In paragraph 14.344, he summarised his conclusion in the following terms:

> "14.344 In the absence of any significant harm in a number of respects as indicated above and of substantial conflict with the development plan, I conclude that the economic and other benefits I have identified, together particularly with the accordance with national policy support for making the best or full use of the existing runway at Stansted outweigh the harm I have found in respect of noise and the effects on the nature and character of communities."

33. The Secretaries of State followed a similar approach in the DL and reached essentially the same conclusion as the Inspector with regard to the overall planning balance, as can be seen from the terms of paragraphs 51 to 53 of the DL, as follows:

> **"Overall Conclusion**
>
> 51. The Secretaries of State consider that the proposal would accord with the ATWP, including that it seeks to reconcile growth in aviation to meet the needs identified in the ATWP. They also consider that in terms of principle, the appeal proposal is not in conflict with the development plan. The proposal would also be acceptable and in line with the development plan, the ATWP and national policies in other respects, including that: there is no evidence that the proposal would breach relevant local and national policies relating to nitrogen depositions on vegetation; there would be adequate provision of water resources, including that sewerage and drainage capacity would be adequate; the road network and rail and coach access would be adequate; and, that there would be large direct economic benefits.

> 52. Factors weighing against the proposal are: that additional noise would be harmful to the living conditions and health of residents and to the quality of life in the area; that there would be some negative health effects due to changes in levels of air pollution, though these would be small and not a significant conflict with the development plan; that there could be further erosion of traditional social linkages in smaller settlements and increased unauthorised activity and some adverse effects with regard to impact on residential areas; and, that NO_x levels are a cause for concern in terms of their impact on Hatfield Forest and nearby protected woodland.
>
> 53. Having weighed up all relevant considerations, the Secretaries of State are satisfied that the factors which weigh in favour of the proposal, notably compliance with the ATWP and the development plan, outweigh the harm identified. They therefore do not consider that there are any material considerations of sufficient weight which would justify refusing planning permission."

34. Both the Inspector (paragraph 14.45 of the IR) and the Secretaries of State (paragraph 28 of the DL) began their assessment of the planning merits of the G1 proposal by addressing the second main issue, i.e. the extent to which the proposal accords in principle with current Government policy and with the statutory development plan. I agree with Mr Mould and Mr Humphries that, in the light of the legal principles summarised above, that was indisputably a legitimate approach.

35. In paragraph 14.46 of the IR, the Inspector identified the ATWP as the principal element of Government policy relating to the appeal. As it seems to me, he was plainly correct in that conclusion. In paragraph 14.60, the Inspector concluded that, although not part of the statutory development plan, the ATWP should be accorded considerable weight as a material consideration in the appeal. In my view, that was a view to which the Inspector was entitled to come. In paragraphs 14.61 to 14.71 of the IR, the Inspector then went on to consider the various relevant policy provisions in the ATWP.

36. Mr Mould submitted that the Inspector's approach was entirely consistent with that asserted by the Claimants and accepted by the Secretaries of State to be both appropriate and correct in this case, as summarised in paragraphs 5 and 6 above.

37. I agree with that submission because I am satisfied that paragraphs 14.66 to 14.71 of the IR clearly demonstrate that the Inspector came to the following conclusions.

    1) He found that the policy in the ATWP established the need to provide additional runway capacity in the South East, with support for that purpose being given to making full use of the existing runway at Stansted.

    2) He found that the existence of that need as established policy did not, of itself, override other environmental and economic considerations bearing upon the determination of the planning appeal.

3) He found that the economic benefits of the G1 proposal were not settled by the ATWP, but rather fell to be considered and evaluated with all other material considerations.

4) He found that the environmental (and other) impacts of the G1 proposal were not settled by the ATWP but fell to be considered and evaluated with all other material considerations.

5) He acknowledged that the ATWP did not authorise the particular form of development (i.e. the G1 proposal) which BAA had put forward to meet the need established by policy.

6) He found that the planning application on appeal for the G1 proposal fell to be determined subject to "*all normal planning considerations*".

38. As Mr Mould pointed out, the Inspector's approach as summarised above was endorsed and followed by the Secretaries of State: see paragraph 28 of the DL. Mr Mould submitted (supported by Mr Humphries) that it was an approach that is both legitimate and reasonable, being consistent not only with the legal principles summarised above but also with the commitments made by the Government in the *Essex County Council Case* and elsewhere, upon which the Claimants rely. I agree with that submission which is, as it seems to me, beyond argument.

39. In paragraphs 14.81 to 14.90 of the IR, the Inspector considered both the statutory development plan (comprising Regional Planning Guidance for the South East, the Essex and Southend Replacement Structure Plan and the Uttlesford Local Plan) and the emerging Regional Spatial Strategy ("the RSS"). He found that, in terms of principle, the G1 proposal was not in conflict with the statutory development plan. He also found the proposal to accord in principle with the emerging RSS. The Secretaries of State agreed with those conclusions: see paragraph 30 of the DL. It is to be noted that the legitimacy of these findings is not criticised by the Claimants.

40. As Mr Mould observed, these conclusions on the second main issue identified by the Inspector (see above) set the policy context against which the Inspector and the Secretaries of State went on to consider the planning, environmental and economic impacts of the G1 proposal under the remaining nine main issues. I accept Mr Mould's submission that these conclusions should inform and guide my consideration of the Claimants' core complaint about the legitimacy of the approach taken by the Inspector and the Secretaries of State with regard to the three specific core matters upon which the Claimants' section 288 application is founded. I therefore now turn to consider those three matters, taking them in the order in which they were dealt with by Mr Stinchcombe on behalf of the Claimants, i.e. the balance of trade deficit, the noise impacts and the greenhouse gas emissions.

(1) The Balance of Trade Deficit.

41. In order better to understand the nature of the Claimants' case on this aspect of the matter, it is necessary to summarise how SSE dealt with this topic at the appeal.

42. *SSE's Case on Trade Deficit at the Appeal*. The basis of SSE's argument was that the projected increase in passenger air travel that will result from the G1 proposal,

with its likely emphasis on leisure and tourist flights, will result in a very substantial negative impact on the national trade deficit and that this deficit could and should be quantified in terms of net present value and weighed in the planning balance as an economic disbenefit of the G1 proposal. In paragraph 6.419 of the IR, the Inspector summarised SSE's case in the following terms:

> "6.419 SSE provided substantial evidence including detailed analysis to demonstrate that the adverse impact of Stansted's operations upon the UK trade deficit was c£1.27bn in 2004, would increase to c£1.51bn in the 25mppa case and to £2.11bn if 35mppa were to be permitted … On a Net Present Value ("NPV") basis, calculated in accordance with the methodology set down in the HM Treasury Green Book …, the negative impact on the UK trade deficit if the proposed development were to be permitted would be £18.8bn at 35mppa compared to £6.2bn at 25mppa i.e. a net disbenefit of £12.6bn."

43. *The Inspector's Conclusions.* The Inspector addressed this aspect of the broader issue raised under the tenth main issue (see paragraph 30 above), under the heading "*Tourism Deficit*": see paragraphs 14.237 to 14.237 of the IR. He did so on the explicit assumption that SSE's figures were reliable as far as they went, although he noted that they related to the current account which he understood to represent only one of several components of the overall UK balance of payments (see paragraph 14.236). The Inspector then went on to conclude that the assumed deficit should not be included in the calculation of net benefits of the G1 proposal and declined to give "tourism deficit" any significant weight in his conclusions on the tenth issue. The Secretaries of State plainly agreed with the Inspector and followed the same approach: see paragraph 43 of the DL. In paragraph 14.237 of the IR, the Inspector gave his reasons for his conclusion in the following terms:

> "14.237 The ATWP refers to the value of outbound as well as inbound tourism but nevertheless recognises the widening gap in the tourism balance of payments. It therefore appears that the deficit has been taken into account in drawing up national policy. Furthermore, there has previously been a specific rejection by the Government of basing a restriction of aviation capacity on this factor. I understand that this position is at least in part due to the social benefits of tourism that the Government acknowledges, irrespective of whether BAA is correct to argue that outbound tourism expenditure can be taken to reflect the monetary value of these benefits. No indication is given in the ATWP that any particular threshold of balance of payments deficit on the current account should bring consideration of this factor into the equation in weighing economic benefits, nor is there any indication that its consideration of economic effects is limited to the balance of payments on the current account. In essence this matter raises broad considerations relating to the operation and management of the national economy, which is a question of Government policy that goes beyond the scope of the appeal. While noting

> the scale of the deficit, I therefore do not suggest that it should be included as part of a calculation of net benefits of the proposal or given significant weight having regard to the context set by the ATWP."

The Parties' Submissions.

44. Mr Stinchcombe submitted that the "tourism deficit" that had been identified by SSE, as to the amount of which there was no real dispute, was plainly an important material consideration and one that both the Inspector and the Secretaries of State had entirely ignored in their decision-making: see paragraph 41a of Mr Stinchcombe's written skeleton argument. He suggested that, in effect, the Inspector and the Secretaries of State had concluded that the "tourism deficit" was an immaterial consideration, an approach that had been advocated by the evidence called by BAA (although not actually asserted at the appeal by Mr Humphries in his closing submissions on behalf of BAA). However, I agree with Mr Mould and Mr Humphries that, as a bald proposition, this does not accurately reflect the way in which the Inspector (and the Secretaries of State) dealt with this matter, which was fully considered in the context of the tenth main issue (see above), namely the economic and employment benefits of the G1 proposal: see paragraphs 14.225 to 14.264 of the IR.

45. It was Mr Stinchcombe's submission that the materiality of the "tourism deficit" and the need to take it properly into account were essentially self-evident, although he also pointed to and relied upon the following matters in support of that submission:

1) any meaningful "rigorous economic assessment" of the G1 proposal would be bound to take account of the impact of such a factor on the balance of tourism trade;

2) the ATWP clearly shows that the Government considers that the economic benefits of inbound tourism is a highly material consideration;

3) if inbound tourism attributed to expanded aviation is an economic benefit (by bringing money into the UK economy), by a parity of reasoning outbound tourism (by taking money out of the country) is a disbenefit to the UK economy and must be netted against that which is coming in, in order to reveal the true balance of tourism trade;

4) there has never been any suggestion by the Government that the "impact" of aviation on the balance of tourist trade was "immaterial" – on the contrary, the Government has taken vigorous action to attract foreign tourism in the face of a widening gap in the tourism balance of payments;

5) at the time of the ATWP, the Government anticipated that the expansion of aviation at Stansted would help to narrow the tourism trade deficit;

6) however, once the "tourism deficit" is entered into the calculation, it can be seen that, contrary to expectation, the G1 proposal will not narrow the tourism trade deficit, but will widen it (unless ignored); and

7) as such, the "tourism deficit" and its consequential effect on the calculation of the economic benefits of the G1 proposal is a prime example of what the Government must have had in mind when stating that "*…the Inspector will consider the economic effects as part of the Inquiry*": see paragraphs 20 and 21 above.

46. For his part, Mr Mould submitted (supported by Mr Humphries) that the question for the court is whether, in the light of Government policy, the approach adopted by the Inspector and the Secretaries of State was a legitimate one. He submitted that it was, for the reasons given in paragraph 14.237 of the IR (see above). I agree with that submission.

47. In the course of his speech in *Bushell ~v~ Secretary of State for the Environment (1981) AC 75* ("*Bushell*"), Lord Diplock said this at page 98:

> "Policy" as descriptive of departmental decisions to pursue a particular course of conduct is a protean word and much confusion in the instant case has, in my view, been caused by a failure to define the sense in which it can properly be used to describe a topic which is unsuitable to be the subject of an investigation as to its merits at an inquiry at which only persons with local interests affected by the scheme are entitled to be represented. A decision to construct a nationwide network of motorways is clearly one of government policy in the widest sense of the term. Any proposal to alter it is appropriate to be the subject of debate in Parliament, not of separate investigations in each of scores of local inquiries before individual inspectors up and down the country upon whatever material happens to be presented to them at the particular inquiry over which they preside."

48. As the Inspector observed in paragraph 14.237 of the IR, in the ATWP the Government acknowledged the widening gap in the tourism balance of payments, thus clearly taking "tourism deficit" into account when formulating policy. However, importantly, the ATWP does not suggest that this widening gap should be reduced by restricting outbound tourism by UK residents or that any such approach would be appropriate to deal with such a phenomenon.

49. In paragraphs 4.21 to 4.23 of the ATWP the socio-economics of aviation and tourism are considered. In paragraphs 4.24 to 4.27 the important role played by airports in the development of regional economies is identified. I agree with Mr Mould that it is therefore clear that the ATWP's policy of support for substantially expanding passenger travel from South East airports, including Stansted, is founded on the Government's judgment that the balance of national socio-economic advantage favours such a policy and that one of the many matters taken into account when reaching that judgment was the so-called "tourism deficit" i.e. the gap in the tourism balance of payments.

50. Accordingly, it seems to me that, as the Inspector observed, by seeking at a planning appeal to bring "tourism deficit" into account against a particular air transport scheme (i.e. the G1 proposal) SSE were in reality calling into question the Government's

judgment of national economic policy, which had already taken that phenomenon into account. As Lord Diplock said in *Bushell* (supra), a planning inquiry into a particular transport proposal promoted in the context of settled national policy is not the appropriate forum for such a debate and I reject Mr Stinchcombe's submissions to the contrary effect.

51. Furthermore, in my view it was not perverse or irrational of either the Inspector or the Secretaries of State to give weight to the direct economic benefits of the G1 proposal (see paragraphs 14.230 to 14.235 and paragraph 43 of the IR and DL respectively), whilst declining to give weight to the asserted "tourism deficit". The former was integral to the support given by national policy to expanding passenger and air transport movements through Stansted (see paragraph 11.26 of the ATWP). The latter was treated quite differently under the ATWP, as the Inspector and the Secretaries of State recognised.

52. I am therefore satisfied that the Inspector was entitled to deal with this matter in the way that he did. As Mr Humphries observed (see paragraph 56 of his written skeleton argument), the Inspector clearly considered the evidence on this issue very carefully and, far from ignoring the scale of the tourism deficit, he identified and noted it. However, for the perfectly sound reasons that he gave, he correctly concluded that it should not be included as part of a calculation of the net benefits of the G1 proposal, nor should it be given significant weight having regard to the policy context set by the ATWP. It follows that I am satisfied that the Secretaries of State were correct to agree with the Inspector's approach and conclusions on this aspect of the matter.

53. Accordingly, for those reasons, I have come to the firm conclusion that there is no substance in the Claimants' criticism of the way in which the Inspector and the Secretaries of State dealt with this particular core matter. In due course, I will reflect that conclusion in my determination of the various grounds of challenge.

(2) The Noise Impacts.

54. *SSE's Case at the Appeal*. The essential thrust of SSE's case at the appeal, with regard to the noise effects resulting from the G1 proposal, was that the increased noise at 35mppa would have very significant impacts. SSE pointed out that, for example, there would be over 50% more households in the 57dBA area when compared to that projected for 25mppa in 2014 and, in the case of Thaxted (which, at 35mppa, was just on the 57dBA contour), there would be nearly 300 noise events per day over 64 decibels – a level which would interrupt conversation every three to four minutes. It was submitted that this (together with other noise impacts) was a very significant material consideration that required to be taken fully into account in the planning balance by the decision-maker and one the acceptability of which could not be settled by the policy decisions enshrined in the ATWP.

55. *The Inspector's Conclusions*. As I have already observed (see paragraph 37 above), it is clear that the Inspector's approach to his decision-making (an approach with which the Secretaries of State agreed) was that, although the policy in the ATWP established the need to provide additional runway capacity in the South East, with support for that purpose being given to making full use of the existing runway at Stansted, the existence of that need as established by policy did not of itself override other

environmental and economic considerations bearing upon the determination of the planning appeal.

56. In my view, it is also perfectly clear that the approach of both the Inspector and the Secretaries of State to the issue of the noise impacts of the G1 proposal was that this was a significant environmental consideration, to be taken fully into account in drawing the overall planning balance in the appeal.

57. Thus, in paragraphs 14.91 to 14.149 of the IR, the Inspector carried out a detailed assessment of the noise impacts of the G1 proposal under his main issues 3 and 4 (see paragraph 30 above) and introduced that assessment in the following terms:

> "14.92 There is no doubt that noise is the environmental effect of operations at the airport and flights to and from it that is of most concern to the local community. It is referred to, often in strong terms, by most of the parties and individuals opposing the proposed G1 development, and [*the LPA*] points out the extent of objection from elected bodies. As well as technical evidence, I have heard and seen numerous oral and written submissions, many of them clearly deeply felt and correspondingly strongly expressed, from people with personal experience of airport and aircraft noise and its effects. I recognise the value of such local knowledge, and have the further benefit of my own extensive observations and experience in the area over a period of nearly 5 months. As a result I believe that I have a good grasp of the existing conditions in the area around the Airport."

58. In paragraphs 14.93 to 14.97 of the IR, the Inspector reviewed the relevant policy, guidance and statutory controls. In paragraphs 14.98 to 14.112, he dealt with various relevant matters relating to the assessment of noise, including the basis of assessment, the dBA L_{eq} metric and noise contours.

59. In paragraphs 14.113 to 14.137 of the IR, the Inspector set out his findings with regard to the effects of air and airport noise (other than on health), in paragraphs 14.138 to 14.144 he set out his views with regard to the effects of air and airport noise on health and in paragraphs 14.145 and 14.146 he dealt with the question of mitigation. In paragraphs 14.147 to 14.149, the Inspector then went on to express his conclusions on the noise impacts of the G1 proposal in the following terms:

> "**Conclusions on the effects of noise**
>
> 14.147 For the above reasons I consider that for those within the contours, and to a reducing extent some way beyond, noise from the increased ATMs arising from the G1 development would be harmful to the living conditions and health of residents and to the quality of life in the area including cultural and leisure activities. Some, but not all, of this harm could be mitigated. However, I do not consider that the levels of noise experienced at greater distances from the Stansted Airport (generally around 20 km but in some cases further depending

> on flight paths) to be such as to cause significant harm to living conditions or to quality of life.
>
> 14.148 One of the criteria in Structure Plan policy BIW9 includes the impact on public health and noise pollution levels. However, as BAA points out, under the policy this is only a consideration with no limit values set, and ECC [Essex County Council] does not suggest a breach of the policy. … [T]he policy states that the criteria are to be considered "having regard to the need for an appropriate hierarchy of aerodrome and aviation sites." As discussed previously, this need is established by the ATWP and it seems to me that the effects of noise that have been identified in evidence to the Inquiry falls within the scope of those taken into account in the formulation of that policy. The same point applies to Local Plan ENV11 … I therefore find no significant breach of these development plan policies.
>
> 14.149 It is implicit in the cases of a number of objectors that the noise impacts here should outweigh the need identified in the ATWP, notwithstanding that those impacts would if anything be less than was assumed in the White Paper. This course would either lead to a failure to provide the additional capacity seen by the ATWP as the first priority in the South East or to a need to provide additional capacity (beyond that already proposed) at other airports where the number of people affected by noise is likely to be greater. Either way it amounts to a challenge to Government policy, and as such is beyond the scope of this report for the reasons I have already indicated."

60. In his overall conclusions (see paragraphs 14.331 to 14.345 of the IR), the Inspector clearly identified the noise impacts that would result from the G1 proposal as a harmful effect of the proposed development: see paragraph 14.334, which is in the following terms:

> "14.334 I have concluded that additional air noise, and to a lesser extent, ground noise would be harmful to the living conditions and health of residents and to the quality of life in the area. Some, but not all, of this harm could be mitigated. The proposed development would thus conflict with criteria in Structure Plan and Local Plan policies, but the policies require this to be weighed against the need for the development, which in this case is established by the ATWP. I note also that the number of people affected is relatively small in relation to numbers around many other airports."

61. In my view, it is also clear that the Inspector took into account the harmful effect of the noise impacts of the G1 proposal when drawing the planning balance in paragraph 14.344 of his overall conclusions (already quoted in paragraph 32 above, but repeated for convenience) as follows:

> "14.344 In the absence of any significant harm in a number of respects as indicated above and of substantial conflict with the development plan, I conclude that the economic and other benefits I have identified, together particularly with the accordance with national policy on aviation generally and particularly the specific policy support for making the best or full use of the existing runway at Stansted **outweigh the harm I have found in respect of noise** and the effects on the nature and character of communities." (My emphasis)

62. In paragraph 31 of the DL, the Secretaries of State agreed with the Inspector's assessment of the noise impacts of the G1 proposal and, in drawing the overall planning balance, they identified additional noise which would be harmful to the living conditions and health of residents and to the quality of life in the area as one of a number of factors weighing against the G1 proposal: see paragraphs 51 to 53 of the DL, quoted in paragraph 33 above.

63. *The Parties' Submissions*. Mr Stinchcombe submitted that, by agreeing with and adopting the Inspector's approach and conclusions (in particular paragraph 14.149 of the IR) the Secretaries of State had determined that the "*not insignificant*" noise impacts of the proposal could not outweigh the need for expanded aviation identified in the ATWP, on the very basis that if it were otherwise this would amount to a challenge to the national policy espoused by the ATWP. It was Mr Stinchcombe's submission that such was the clear meaning of paragraph 14.149 of the IR (quoted in paragraph 59 above). He therefore submitted that this demonstrated that, despite their established harmful effect, the noise impacts of the G1 proposal had been completely discounted by both the Inspector and the Secretaries of State because it was considered that, on analysis, to take them into account would be tantamount to a challenge to national policy. It was Mr Stinchcombe's submission that this therefore amounted to a failure to take properly into consideration an important material factor and was a clear breach of the assurances given in the various ministerial statements upon which he relied.

64. For his part, Mr Mould, supported by Mr Humphries, submitted (correctly, in my view) that there was nothing in this particular criticism of the approach and conclusions of the Inspector and the Secretaries of State. He referred to the various relevant paragraphs in both the IR and the DL and submitted that it was manifest that the correct approach had been adopted, that effect had been given to that approach in drawing the overall planning balance and that it was clear that its noise impacts was one aspect of the identified harm of the G1 proposal which was judged to be outweighed by other factors weighing in its favour. There was no failure to evaluate those impacts, nor were they ignored. As Mr Mould observed, when the IR and the DL are each read fairly and as a whole, it can be seen that the Inspector and the Secretaries of State each carried out a demonstrably proper exercise of planning judgment that took account of and evaluated those noise impacts, based on a detailed noise assessment of the G1 proposal carried out by the Inspector and accepted by the Secretaries of State.

65. I agree with Mr Mould that paragraph 14.149 of the IR must not be read in isolation. I also agree that when it is read in the full context of the IR and the DL it cannot sensibly be taken as evidence that the Inspector (still less the Secretaries of State)

concluded that the ATWP established a need for the G1 proposal which necessarily overrode the harmful noise impacts of that proposal, rendering their inclusion in the planning balance meaningless (despite the terms of the relevant paragraphs of the IR and the DL in which the planning balance was drawn, see above).

66. As I have already stated, the Inspector explicitly directed himself that such would not be a permissible approach to determining the planning appeal. I agree with Mr Mould and Mr Humphries that paragraph 14.149 was clearly the Inspector's riposte to the implicit assertion by some objectors that the noise impacts of the G1 proposal at Stansted must necessarily (and, thus, always) override the established policy need for additional runway capacity, even where (as the Inspector had found) the actual noise impacts of the G1 proposal were less severe than the ATWP had itself assumed, when lending its support to a policy of making full use of the existing runway at Stansted. As Mr Mould and Mr Humphries observed, thus understood, paragraph 14.149 of the IR is entirely consistent with the Inspector's overall approach and overall conclusions and is also consistent with the overall approach and conclusions of the Secretaries of State.

67. Accordingly, for those reasons, I am satisfied that this particular complaint discloses no error of law or want of sufficient reasoning on the part of the Inspector or the Secretaries of State in relation to the issue of noise impacts. In due course, I will reflect that conclusion in my determination of the various grounds of challenge.

(3) Climate Change: the Greenhouse Gas Emissions.

68. As Mr Mould observed, it is important to appreciate the nature of SSE's case on the materiality of climate change and aircraft emissions as put forward in BAA's appeal. It is recorded by the Inspector in paragraphs 6.379 to 6.400 of the IR.

69. *SSE's Case at the Appeal*: SSE's case on the actual impacts of aircraft emissions focused on the global impact of climate change: see paragraphs 6.401 to 6.409 of the IR. It is important to note that it was common ground between BAA, SSE, the LPA and Essex County Council that no climate change effect directly linked to the proposed additional use of the existing runway could be demonstrated.

70. As Mr Mould and Mr Humphries pointed out, SSE's case was principally to question the efficacy of Government policy in seeking to reconcile the expansion of aviation with its stated commitment to meet the challenge of global warning: see paragraphs 6.389 to 6.394 of the IR, the latter of which is in the following terms:

> "6.394 Thus it is possible to have an evidence-based policy for air traffic expansion or for climate security, but not both together. Indeed, it is only possible to support air traffic expansion and climate security together by replacing a respect for evidence with a vague hope that "*something will turn up*" to rescue us from the contradiction to which all current evidence points."

71. It is clear that it was SSE's contention that, in terms of global warming and climate change, the impact of aircraft emissions, resulting from the promulgation of policy for the expansion of air transport in the ATWP (as exemplified by the increased

emissions that would result from the G1 proposal), would be highly damaging: see paragraphs 6.381 to 6.386 of the IR, the latter of which is as follows:

> "6.386 Aviation is highly damaging to the climate both because it is energy intensive and because plane exhausts in the upper atmosphere cause further warming effects, roughly doubling or quadrupling the effect of the carbon emissions alone [*the so-called "radiative forcing" effect*]. Any further increase in aviation would be disproportionately climate damaging over the timeframe in which Stern says action is most important and valuable."

72. SSE went on to argue that the Government's proposals to manage the impact of aviation through concerted international action under an emissions trading scheme were unrealistic and uncertain as to the timing of their delivery: see paragraphs 6.389 to 6.393 of the IR. Thus, in paragraph 6.392, the Inspector recorded part of the evidence given by SSE's witness in support of that contention in the following terms:

> "6.392 SSE's witness drew a distinction between a Government policy and a Government claim which purported to be factual but was not supported by the evidence. He provided examples from the ATWP Progress Report …, for example, the statement that "*Inclusion in the Emissions Trading Scheme is the most efficient and cost-effective way to ensure that the sector plays its part in tackling climate change*." However, that was a claim of fact rather than a policy statement and one which was not supported by the evidence. The history of the EU ETS and the lack of progress in including aviation in the scheme did not justify the Government's confidence that it would achieve the benefits claimed for it in the ATWP Progress Report. …"

73. SSE therefore contended that, in determining BAA's planning appeal, the Secretaries of State had to choose between the competing policies of (i) expanding air traffic and (ii) addressing climate change. In paragraphs 6.394 and 6.395 of the IR, the Inspector summarised SSE's argument in these terms (already quoted in part in paragraph 68 above, but repeated for convenience):

> "6.394 Thus it is possible to have an evidence-based policy for air traffic expansion or for climate security, but not both together. Indeed, it is only possible to support air traffic expansion and climate security together by replacing a respect for evidence with a vague hope that "*something will turn up*" to rescue us from the contradiction to which all current evidence points.
>
> 6.395 It is therefore not possible for a decision either to allow this Appeal or to refuse it to be consistent with Government policy on air traffic expansion, climate security and respect for evidence simultaneously. It is, accordingly, impossible to the

> Inquiry to avoid taking a position, implicitly or explicitly, on the relative merits of the three."

74. SSE then went on to argue that there was only one realistic and responsible means of delivering the Government's policy commitment to address climate change and that was to refuse to authorise any further increases in aircraft or passenger movements, at least until the proposed emissions trading scheme became an effective reality: see paragraphs 6.397 to 6.400, the latter of which was in the following terms:

> "6.400 Allowing a non-essential increase in climate impacts at just the point when reduction is most urgent and important would seriously undermine the Government's credibility on climate change. The only decision which could potentially reconcile climate security with expansion would be to allow the expansion to proceed if and when – but not until – some combination of technical improvements or emissions trading can be demonstrated to have actually achieved a net reduction of climate change impacts from aviation in line with Government and EU targets for reduction of other categories of emissions."

75. *The Inspector's Conclusions*: The Inspector addressed SSE's arguments in his conclusions at paragraph 14.72 to 14.80 of the IR. In paragraph 14.74, he correctly identified SSE's fundamental argument that Government policy on expanding aviation was simply incompatible with its policy of addressing greenhouse gas emissions. The Inspector put the matter in the following way:

> "14.72 SSE reminded the Inquiry of the gravity of the challenge represented by climate change, and of the need to take action to reduce emissions of greenhouse gases as soon as possible. It pointed out the contribution that the G1 development would make to CO_2 emissions, exacerbated by radiative forcing – the enhanced effect of emissions of CO_2 and other greenhouse gases at high altitude – adding to the already growing effects of aviation relative to the UK's targets on CO_2 emissions, and the limited potential for reducing this through operational or technological means. It also gave moving evidence of the impacts of climate change on the environment and peoples of the Arctic, and of their understandable fears for the future. Such points and similar ones were also made by many others at the Inquiry and in written representations.
>
> 14.73 I find it very significant, though not in the least surprising, that none of this is disputed by BAA, nor indeed by any other party at the Inquiry or in written representations.
>
> 14.74 SSE goes on to submit in various ways that policy support for expansion of aviation is incompatible with the acknowledged need to address greenhouse gas emissions. Again this view, in general terms or with specific reference to Stansted, found support among many others."

76. However, the Inspector concluded that the Government had faced up to the need to reconcile these policy objectives, both in the ATWP and in the ATPR (see paragraphs 14.75 to 14.79 of the IR) and commenced this section of the IR in the following terms:

> "14.75 To my mind the Government's policy on aviation as set out in the ATWP cannot legitimately be said to have ignored the issue of climate change. On the contrary, as BAA points out, it explicitly addresses the matter including consideration of how aviation contributes to climate change and the Government's approach to it generally and with particular reference to aviation. …"

77. I agree with Mr Mould's submission that this was a conclusion that the Inspector was entitled to reach on the evidence before him.

78. Thus, the Inspector summarised paragraphs 3.36 and following of the ATWP which state the Government's commitment to taking a lead in tackling the problem of climate change and to putting the UK on a path to a substantial, long term reduction in carbon dioxide emissions. They go on to state that the aviation sector needs to take its share of responsibility for tackling the problem of global warming. However, the reduction in greenhouse gas emissions across the economy does not mean that every sector is expected to follow the same path. The Government states that it is committed to a comprehensive approach, using economic instruments to ensure that growing industries are catered for within a reducing total. The Government believes that the best way of ensuring that aviation contributes towards the goal of climate stabilisation will be through a well-designed emissions trading regime, operating on an international basis. It is pressing for the development and implementation of such a scheme. A more detailed description of emissions trading is included as Annex B to the ATWP.

79. So far as concerns the ATPR, the Inspector summarised paragraphs 1.5 and 1.6 which refer to the recommendation of the Stern Review on the Economics of Climate Change and progress in relation to the policy of the ATWP itself that the price of air travel should, over time, reflect its environmental and social impacts. These matters are considered in more detail in Chapter 2 of the ATPR, which concludes with a summary of the next steps which the Government expects to take in the short to medium term.

80. At paragraphs 14.77 and 14.80 of the IR, the Inspector then said this:

> "14.77 … In the light of the matters I have outlined above, I am in no doubt that Government policy seeks to reconcile growth in aviation to meet the needs identified in the ATWP with action to address climate change. It is clear that SSE and others do not believe that the correct balance has been struck and/or question the likely effectiveness of the proposed mechanisms to address the issue of climate change, but that goes to the heart of Government policy. I do not question or seek to curtail the legitimacy of debate on the matter, but I

> maintain my view that such debate lies outside the scope of the present appeal.
>
> …
>
> 14.80 In conclusion on climate change policy, I consider that questions of the appropriateness and effectiveness of Government policies on aviation and climate change and their compatibility, while undoubtedly of great importance, are matters for debate in Parliament and elsewhere rather than through this appeal. I respectfully suggest that the Secretaries of State should not consider such questions in this context."

81. The Secretaries of State agreed with both the Inspector's approach and his conclusions on this aspect of the matter, see paragraph 29 of the DL, which is in the following terms:

> "**Government Policy on Climate Change**
>
> 29 The Secretaries of State agree with the Inspector's reasoning and conclusions on Government policy on climate change as set out in IR14.72 -14.80. They share the Inspector's view that Government policy seeks to reconcile growth in aviation to meet the needs identified in the ATWP with action to address climate change (IR14.77). They also agree with the Inspector's conclusion that questions of the appropriateness and effectiveness of Government policies on aviation and climate change, and their compatibility, are matters for debate in Parliament and elsewhere, rather than through this appeal (IR14.80). …"

The Parties' Submissions.

82. Mr Stinchcombe submitted that the conclusions reached by the Inspector and the Secretaries of State on this aspect of the matter amounted to a decision that the millions of tonnes of aviation emissions which would ensue over the years as a result of the G1 proposal was an entirely immaterial planning consideration, not an environmental effect even to be taken into account. Such a decision was, he contended, plainly wrong in law and a clear breach of the assurances given in the various ministerial statements upon which he relied.

83. Again, I agree with Mr Mould that, taken as a bald proposition, Mr Stinchcombe's criticism does less than justice to the way in which the Inspector (and thus the Secretaries of State) approached the issue of climate change. Thus, in paragraph 14.41 of the IR the Inspector acknowledged the importance of climate change and the contribution of aviation to it. He went on to state that he would address climate change and deal with the extent to which the G1 proposal accorded with Government policy on climate change in the context of main issue 2 (see above) and weigh the environmental effects in this respect in his overall conclusions. As Mr Mould pointed out, that is the approach the Inspector followed and the Secretaries of State took a similar approach in the DL.

84. However, I accept Mr Mould's submission that it is clear that the essential nature of SSE's case at the appeal was that the Inspector and the Secretaries of State should determine the G1 proposal on the basis that the relevant national policy as stated in the ATWP and ATPR (see the summary in paragraphs 76 to 80 above) was misjudged and unlikely to succeed in realising its objectives (see paragraph 14.77 of the IR). In short, SSE argued that the Secretaries of State should determine the appeal otherwise than in accordance with relevant and up to date national policy. The Inspector rightly decided that such a course of action was inappropriate and concluded that the appeal should be determined in accordance with national policy (see paragraph 14.80 of the IR). In paragraph 29 of the DL, the Secretaries of State agreed with the Inspector's approach and conclusion.

85. In my view, the approach adopted by the Inspector and the Secretaries of State on this aspect of the matter was legitimate, in accordance with established legal principles and the propositions summarised in paragraphs 5 and 6 above. In my view, it is also consistent (as Mr Mould submitted) with the approach indicated as correct in the passage from Lord Diplock's speech in *Bushell* to which I have already referred (see paragraph 47 above). On analysis, SSE's argument on climate change was just such a proposal as Lord Diplock described in that passage. It was an attack on national transport planning policy which seeks (in very simple terms) to offset that aspect of the environmental impact of the development of air transport against commensurate changes elsewhere in the economy.

86. Furthermore, as both Mr Mould and Mr Humphries pointed out, SSE's case was not based upon the anticipated local impact of the aircraft emissions associated with the G1 proposal. Rather, it was based upon the alleged global impact of that national planning policy, as exemplified by the evidence of a resident of Greenland (see paragraph 6.401 of the IR). The Inspector rightly recognised that fact (see paragraph 14.80 of the IR) and the Secretaries of State agreed. As it seems to me, their approach is entirely consistent with principles stated in *Bushell*.

87. Accordingly, I am satisfied that there is no substance in this particular complaint which discloses no error of law on the part of either the Inspector or the Secretaries of State.

Determination of the Grounds of Challenge.

88. For the foregoing reasons, I am satisfied that the Claimants' criticisms of the way in which the Inspector and the Secretaries of State dealt with each of the core matters that constitute the Claimants' core complaint (which provides the basis for their section 288 application) are unjustified and without substance. It is therefore possible to deal with the various grounds of challenge very briefly.

89. *Ground 1: Misapplication of Policy*. For the reasons given above, I am satisfied that neither the Inspector nor the Secretaries of State misinterpreted or misapplied national transport planning policy for air transport development as stated in the ATWP. Both the Inspector and the Secretaries of State approached the determination of the appeal in accordance with relevant policies set out in the ATWP, a material consideration which they were entitled to and did attach considerable weight. Nevertheless, they did so in the context of an overall approach to the determination of the appeal which was properly in accordance with established legal principles.

90. *Ground 2*: *Legitimate Expectation*. In my judgment, for the reasons given above, both the Inspector and the Secretaries of State gave proper effect to the commitments which the Government has made relating to the handling and determination of planning applications for air transport development enjoying policy support in the ATWP.

91. *Ground 3*: *Failure to take Material Considerations into Account*. For the reasons given above, I am satisfied that both the Inspector and the Secretaries of State took properly into account the three core matters that underlie the Claimants' core complaint.

92. *Ground 4*: *Breach of the 1999 EIA Regulations*. In my view, there was no such breach. The Secretaries of State rightly accept the applicability of Regulation 3 of the 1999 EIA Regulations to the decision to allow the appeal and to grant planning permission for the G1 proposal. However, for the reasons given above, I am satisfied that it is clear that both the Inspector and the Secretaries of State did take properly into consideration the environmental information relating to the estimated emissions from the G1 proposal and stated that they had done so (see paragraphs 6.381 and 14.72 to 14.80 of the IR and paragraph 29 of the DL). Accordingly, neither failed in their duty under that regulation.

93. *Ground 5*: *Inadequacy of Reasons*. I am satisfied that the Inspector gave proper, adequate and intelligible reasons for his conclusions on the main issues in the appeal. Those reasons form the basis of the Secretaries of State's reasons in the DL. In my view, both the Inspector and the Secretaries of State explained clearly and properly their conclusions on the three core matters raised by the SSE that now underlie the Claimants' core complaint.

Conclusion.

94. For all the foregoing reasons, I have come to the firm conclusion that this application must be and is hereby dismissed.