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

CO/10952/2008

CAROL BARBONE AND BRIAN ROSS
(on behalf of Stop Stansted Expansion)

Claimants

-and-

(1) SECRETARY OF STATE FOR TRANSPORT
(2) SECRETARY OF STATE
FOR COMMUNITIES AND LOCAL GOVERNMENT

Defendants

-and-

BAA LTD AND STANSTED AIRPORT LTD

Interested Parties

Hearing – 24 February 2009
Time Estimate – 2 days (excluding judgment)
Reading List
We have nothing to add to the reading lists submitted by the Claimants and Interested Parties

SKELETON ARGUMENT FOR THE DEFENDANTS

Introduction

1. On 8 October 2008 the Defendants allowed a planning appeal by the Interested Parties and granted planning permission for the removal of one condition (Condition MPPA1) and the variation of a second

condition (Condition ATM1) attached to a planning permission dated 16 May 2003 ('the 2003 planning permission') relating to the development and use of Stansted Airport. The Interested Parties' application for planning permission to operate the Airport on that basis is known as the G1 project.

2. The Defendants' decision ('the decision') and their reasons for it are set out in their letter dated 8 October 2008 (the 'DL')[1]. The formal grant of planning permission on appeal is set out in DL54 ('the planning permission'). It will be noted that the planning permission was itself granted subject to conditions.

3. The practical effect of the decision is to enable the Interested Parties to implement the G1 project at Stansted Airport under the terms of the planning permission. The planning permission authorises them to operate the existing runway to an annual passenger throughput not exceeding 35 million passengers (mppa) and air transport movements (atms) not exceeding 264,000 overall in any period of 12 calendar months.

The Claimants' Case

4. The Claimants and the organisation which they represent, Stop Stansted Expansion ('SSE'), opposed the Interested Parties' planning appeal and are aggrieved by the decision. They apply to the Court to quash the decision pursuant to section 288 of the Town and Country Planning Act 1990 ('the TCPA').

5. Section 288 of the TCPA empowers the Court to quash the decision if persuaded by the Claimants that it is invalid. There are 2 statutory bases for the grant of such relief: firstly, that the decision is not within

[1] Bundle pages 1028-1048

the powers of the TCPA; and secondly, that the Claimants have been substantially prejudiced by non-compliance with relevant requirements.

6. In paragraph 42 of their skeleton argument, the Claimants assert 5 grounds of challenge to the validity of the decision as the basis for their application under section 288 of the TCPA. As the Claimants acknowledge in that paragraph, the 5 grounds are essentially alternative formulations of the "core complaint" which they articulate in paragraph 41 of their skeleton argument.

7. The Claimants' core complaint is essentially that the reasoning of the Defendants demonstrates that they made their decision without taking proper account of environmental and economic considerations which were material to their determination of the planning appeal. The Claimants contend that, in so doing, the Defendants failed in their statutory duties to have regard to all material considerations.

8. The Claimants identify 3 specific environmental and economic effects which they allege the Defendants failed properly to take into account in reaching their decision –

(1) the negative impact of the G1 project on the UK's balance of trade;
(2) the noise impacts of the G1 project; and
(3) the impact on the environment of the aviation emissions which would be generated by the operation of Stansted in accordance with the G1 project.

9. The Claimants further contend that, in so doing, the Defendants have not fulfilled their stated commitment to reach a decision which embraced a proper evaluation of all the environmental and economic effects of the G1 project, even if that approach 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.

The Defendants' Response

10. In response, the Defendants reject these contentions.

11. The Defendants' case is that they did indeed take into account the environmental and economic effects of the G1 project relied upon by the Claimants. They did so, as they were entitled to do consistently with their statutory duties, in the context of the framework of relevant national, regional and local policies. They rely on their reasoning in the DL and the more detailed reasoning of the Inspector in his Report ('the IR') which explains the basis of the decision.

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" ('the ATWP'). 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 TCPA.

13. In the event, following that approach did not lead them to refuse planning permission for the G1 Project. They stated their reasons in the DL. As they stated in summary in DL53, having weighed up all relevant considerations, they were satisfied that the factors which weigh in favour of the G1 proposal, notably compliance with the ATWP and the statutory development plan, outweigh the identified harm. They

therefore did not consider that there were any material considerations of sufficient weight which would justify refusing planning permission. Accordingly, they allowed the planning appeal and granted planning permission.

14. That was not the outcome for which the Claimants had argued, but it was one which was the product of a proper consideration by the Defendants of the planning merits of the G1 proposal in the light of the relevant policy framework and of material planning, environmental and economic considerations. It was a decision made in accordance with the Defendants' statutory duties and their stated commitment to proceed on that basis.

15. The Defendants' case is that this application should accordingly be dismissed.

Factual Background

16. Stansted Airport operates from a single main runway.

17. In 2003, the local planning authority, Uttlesford District Council, 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 annual limits on passenger throughput and overall air transport movements of 25 mppa and 241,000 atms respectively.

18. 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.

19. Chapter 11 of the ATWP set out the Government's strategy for airport development in the South East of England. Paragraphs 11.6 and 11.7 stated the Government's first priority as being 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. Paragraph 11.11 set out the Government's principal conclusions about new runway capacity in the South East. The first such conclusion stated the Government's support for making best use of the existing runway at Stansted.

20. Chapter 12 of the ATWP summarised the steps that would now need to be taken in order to implement its conclusions. Paragraph 12.2 stated 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. Airport development would continue to be subject to the planning system.

21. The Interested Parties operate Stansted Airport. On 26 April 2006 they applied pursuant to section 73 of the TCPA for planning permission to remove the conditions on the 2003 planning permission limiting passenger throughput and air transport movements. On 30 November 2006 Uttlesford District Council gave notice of their refusal of planning permission. The Interested Parties appealed.

22. 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. Chapter 5 of the ATPR reported progress in relation to

Stansted. Paragraph 5.11 referred to the Interested Parties' pending planning appeal.

23. The planning appeal was heard by an Inspector at a public inquiry beginning on 30 May 2007. On 14 January 2008, the Inspector reported his recommendation that the appeal be allowed and planning permission granted subject to conditions.

Legal Principles

24. The relevant legal principles are very well established.

25. 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: section 70(2) of the TCPA. A national policy statement is a material consideration: see e.g. R (Essex CC and others) v Secretary of State for Transport [2005] EWHC 20 (Admin)[2] at paragraph 48.

26. 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: section 38(6) of the Planning and Compulsory Purchase Act 2004 ('the PCPA'). What constitutes the development plan for these purposes is prescribed by statute: see section 38 of the PCPA.

27. It is for the decision maker to assess the relative weight to be given to all the material considerations bearing upon his determination of an application for planning permission[3]. It is a firmly settled principle of planning law that, in determining a planning application on appeal,

[2] 'Essex County Council'
[3] There are many authorities for this proposition – see e.g. City of Edinburgh Council v Secretary of State [1997] 1 WLR 1447

matters of planning judgment are within the exclusive province of the Secretary of State: Tesco Stores Ltd v Secretary of State [1995] 1 WLR 759, 780.

28. 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 must be read as a whole. The considerations which should govern the Court's determination of a challenge to the sufficiency of reasons given for a planning appeal decision are summarised in South Bucks DC v Porter (No. 2) [2004] 1 WLR 1953, paragraph 36.

The Inspector's Report and the Decision Letter

29. We submit that both the Inspector and the Defendants have adhered to these principles in the present case.

General Approach – Main Issues

30. The Claimants' core complaint focuses upon the handling in the IR and the DL of 3 specific issues (economic benefits, noise and climate change). It is appropriate and helpful, however, to respond on those 3 issues having first set them in the context of the decision as a whole.

31. Moreover, because the DL essentially accepts and follows the logic of the Inspector in the IR[4], it is convenient to set that context by reference to the approach and reasoning of the Inspector in the IR.

[4] see DL3

32. The Inspector set out his detailed reasons and conclusions in section 14 of the IR. In IR14.43 he stated what he considered to be the 10 main issues in the appeal. The 3 specific criticisms which underlie the Claimants' core complaint before the Court relate most directly to Issues (2), (3), (4) and (10). In DL27 the Defendants expressed their agreement with the Inspector's assessment of the main issues arising in the planning appeal.

33. The Inspector then considered each main issue in turn, setting out his conclusions on each one and his reasons for those conclusions. For example, he dealt with main issue (10), the economic and employment benefits of the G1 proposal, in IR14.225-264, his conclusions on that main issue being stated in IR14.262-264. Having thus considered each main issue in detail and in the light of the evidence and contentions of the parties, he drew them together in order to reach his judgment of the overall planning balance in IR14.331-344. That judgment is summarily stated in IR14.344 –

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.

34. In the DL, the Defendants followed a similar approach. For example, their conclusions on the main issue of the economic and employment benefits of the G1 proposal are stated in DL43. They reached essentially the same judgment as the Inspector of the overall planning balance, as is stated in their overall conclusions in DL51-53.

Second main issue – policy context

35. Both the Inspector (IR14.45) and the Defendants (DL28) began their assessment of the planning merits of the G1 proposal by addressing the second main issue – the extent to which the proposal accords in principle with current Government policy and with the statutory development plan. In the light of the legal principles to which we have referred, that was indisputably a legitimate approach.

The ATWP

36. In IR14.46, the Inspector identified the ATWP as the principal element of Government policy relating to the appeal. In IR14.60, he 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 IR14.61-71 he considered relevant policy provisions in the ATWP.

37. It is helpful for present purposes to identify some aspects of the ATWP itself which form the basis for the Inspector's analysis in those paragraphs of the ATWP.

38. In paragraph 1.6 of the ATWP, the Government identifies the need for a national strategic framework for the future development of airport capacity. Amongst the reasons given for that need are the following –

(1) To provide a clear policy framework against which airport operators, airlines, regional bodies and local authorities can plan ahead.

(2) 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.

39. 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 emphasises 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 say 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–

(1) To seek to reduce and minimise the impacts of airports on those who live nearby and on the natural environment.

(2) 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.

(3) To minimise the need for airport development in new locations by making best use of existing airports where possible.

40. 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 of the ATWP discusses the wider economic and social context within which the aviation industry operates.

41. We have already mentioned chapter 11 of the ATWP. Paragraphs 11.24 *et seq.* concern Stansted Airport. Paragraph 11.24 summarised the then current position with regard to passenger throughput and air transport movements 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.

42. Paragraph 11.26 then states –

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.

The development control process – evaluating all material considerations

43. We have already mentioned the Government's acknowledgement in the ATWP itself that airport development enjoying policy support in the ATWP would continue to be subject to the planning system. That fact was again acknowledged by the Government in its response to the legal challenge to the ATWP brought by Essex County Council, Uttlesford District Council and others: the Essex County Council case. See, in particular, paragraphs 10 to 12 of the Secretary of State's Detailed Grounds of Defence.

44. The propositions established by those paragraphs of those Detailed Grounds of Defence (and other, related statements as to approach relied upon by the Claimants in paragraphs 9 to 14 of their skeleton argument) are as follows –

(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 the fact that 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 and the development plan (and other relevant policies).

45. The Inspector's approach was consistent with these propositions: see IR14.66-14.71. Thus –

(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 by 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 rather 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 the Interested Parties 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".

46. The Inspector's approach was endorsed and followed by the Defendants: see DL28. We submit that it is an approach which was legitimate and reasonable, being consistent not only with the legal principles to which we have referred but also with the commitments made by the Government in the Essex County Council case and elsewhere, upon which the Claimants rely.

Climate change

47. In IR14.72-80, the Inspector dealt with Government policy on climate change. As climate change is one of the 3 specific topics to which the Claimants' core complaint relates, we address those paragraphs below.

The development plan

48. In IR14.81-90 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 ('RSS'). He found that, in terms of principle, the G1 proposal was not in conflict with the statutory development plan. He found the proposal to accord in principle with the emerging RSS. The Defendants agreed: see DL30. The legitimacy of these findings is not criticised by the Claimants.

Policy context – conclusions

49. These conclusions on the second main issue set the policy context against which the Inspector and the Defendants went on to consider the planning, environmental and economic impacts of the G1 proposal under the remaining 9 main issues. They should, in our submission, inform and guide the Court's consideration of the Claimants' core

complaint about the legitimacy of the Defendants' approach to the 3 specific matters upon which their current application is founded.

50. We now turn to those 3 specific matters. It is convenient to deal with them in the order taken by the Inspector and the Defendants – climate change, noise and economic benefits.

Climate Change

51. The Claimants' contention is stated in paragraph 41(c) of their skeleton argument –

[The Defendants] decided that the millions of tonnes of aviation emissions which would ensue over the years as a result of G1 was an entirely immaterial planning consideration, not an environmental effect even to be taken into account.

52. As a bald proposition, this contention is plainly incorrect. In IR14.41 the Inspector acknowledged the importance of climate change and the contribution of aviation to it. He stated that he would address climate change. He would deal with the extent to which the G1 proposal accorded with Government policy on climate change in the context of main issue 2 and weigh the environmental effects in this respect in his overall conclusions. That is the approach that he followed. The Defendants took a similar approach in the DL.

SSE's case in the planning appeal

53. It is important to appreciate the nature of SSE's case on the materiality of climate change and aircraft emissions to the determination of this planning appeal. It is recorded by the Inspector in IR6.379-400.

54. 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 warming (IR6.389/6.394). SSE contended for the highly damaging impact of aircraft emissions resulting from the promulgation of policy for the expansion of air transport in the ATWP, as exemplified in the increased emissions which would result from the G1 proposal (IR6.381/6.386). SSE argued 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 (IR6.389/6.390-1/6.393).

55. SSE therefore contended that, in determining this planning appeal, the Defendant had to choose between expanding air traffic and addressing climate change (IR6.395). 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 emission trading scheme became an effective reality (IR6.397/6.400). SSE's case on the actual impacts of aircraft emissions focused on the global impact of climate change (IR6.401-409).

The Inspector's conclusions

56. The Inspector addressed these contentions in his conclusions at IR14.72 *et seq*. In IR14.74, he correctly identified SSE's fundamental argument that Government policy on expanding aviation was simply incompatible with its policy of addressing greenhouse gas emissions.

57. The Inspector, however, concluded that the Government had faced up to the need to reconcile these policy objectives both in the ATWP and in the ATPR (IR14.75-14.77) and continued to develop its policy and proposals with that need in mind (IR14.78-14.79).

58. The Inspector was entitled to form that conclusion.

59. Paragraphs 3.36 *et seq.* of the ATWP 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 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.

60. Paragraphs 1.5 and 1.6 of the ATPR 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.

Submissions

61. Essentially, SSE's case was that the Inspector and the Defendants should determine the G1 proposal on the basis that this established

national policy was misjudged and unlikely to succeed in realising its objectives (IR14.77). Put shortly, SSE argued that the Defendants should determine the planning appeal otherwise than in accordance with relevant and up to date national policy. The Inspector concluded that such a course of action was inappropriate. He concluded that the planning appeal should be determined in accordance with national policy. The Defendants agreed (IR14.80/DL29). That approach was legitimate and accords both with the legal principles to which we have referred above and with the commitments mentioned in paragraphs 44 and 45 above.

62. It also reflects and is consistent with the approach vouchsafed by the House of Lords in Bushell v Secretary of State for the Environment [1981] AC 75[5]. In that case, Lord Diplock said this (page 98)[6] –

"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.

63. As we have submitted, SSE's argument on climate change is on analysis demonstrably just such a proposal as Lord Diplock described in that passage of his speech. 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 within the economy.

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[5] Bushell

[6] The passage is quoted at paragraph 60 in Essex County Council

64. Moreover, 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 transport planning policy, as exemplified by the evidence of a resident of Greenland (IR6.401). The Inspector rightly recognised that fact (IR14.80). The Defendants agreed. Their approach is consistent Bushell.

65. For these reasons, the Claimants' complaint (paragraph 51 above) misunderstands the Inspector's approach, is unjustified and discloses no legal error in the Defendants' decision.

Noise

66. The Claimants' contention is stated in paragraph 41(b) of their skeleton argument –

[The Defendants] determined that the "not insignificant" noise impacts of the proposals 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.

67. Again, as a bald proposition, this is incorrect. As we have submitted in paragraph 45 above, the Inspector's stated approach 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. The Defendants accepted and adopted that approach. The noise impacts of the G1 proposal were such an environmental consideration.

68. Not only did the Defendants adopt that approach, they gave effect to it in drawing the overall planning balance, as DL51-53 make clear. In DL52, the Defendants identified, as one of a numbers of factors weighing against the G1 proposal, additional noise which would be harmful to the living conditions and health of residents and to the quality of life in the area. It was one aspect of the identified harm which, in DL53, the Defendants judged to be outweighed by other factors weighing in favour of the G1 proposal. That, however, is not evidence that the Defendants ignored or failed to evaluate the noise impacts of the G1 proposal. Rather, it is demonstrably a proper exercise of planning judgment which takes account of and evaluates those impacts.

69. It is, moreover, an exercise of planning judgment which was based upon a detailed noise assessment of the G1 proposal by the Inspector under his main issues 3 and 4: see IR14.91-IR14.149. The Defendants accepted that assessment: see DL31.

70. The Claimants plainly seek to derive support for this part of their core complaint from the last sentence of IR14.149. However, it is incorrect as a matter of law to read and give effect to that sentence in isolation from the IR and the DL as a whole. Rather, the law requires that it be read in the full context of those documents.

71. Read in that context, it cannot sensibly be taken as evidence that the Inspector (still less the Defendants) concluded that the ATWP established a need for the G1 proposal which necessarily overrode the harmful noise impacts of that proposal. As we have already submitted, the Inspector had explicitly directed himself that such would not be a permissible approach to determining the planning appeal. In IR14.69 he had said that the environmental and other impacts of the proposal

were not settled by the ATWP but fell to be considered and weighed with the other material considerations.

72. IR14.149 is rather the Inspector's riposte to the objectors' implicit assertion that the noise impacts of the G1 proposal must override the need for additional runway capacity, even in circumstances where (as he had found) the actual noise impact of the G1 proposal was less severe than that which the ATWP had itself assumed, when lending its support to a policy of making full use of the existing runway at Stansted. Thus understood, that paragraph is consistent with his overall approach and overall conclusions. It is also consistent with the overall approach and conclusions of the Defendants in the DL.

73. The Claimants' complaint therefore discloses no error of law or want of sufficient reasoning on the part of the Inspector or the Defendants in relation to the issue of noise impacts.

Economic benefits

74. The Claimants' contention is stated in paragraph 41(a) of their skeleton argument –

[The Defendants] ignored the very considerable and undisputed, negative impact on the UK's balance of trade of the G1 project.

75. Yet again, so stated this assertion is simply incorrect. The point arose in the context of the Inspector's consideration of his main issue 10 – the economic and employment benefits of the G1 proposal: see IR14.225-IR14.264.

SSE's case in the planning appeal

76. The basis of the Claimants' argument was that the projected increase in passenger air travel under the G1 proposal, with its likely emphasis on leisure and tourist flights, would result in a very substantial negative

impact on the national trade deficit; and that this 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. The Inspector summarises SSE's case on this point in IR6.419.

Inspector's conclusions

77. The Inspector addressed this aspect of the broader issue raised under main issue 10 in IR14.236/IR14.237 under the heading "Tourism Deficit". He did so on the explicit assumption that SSE's figures were reliable as far as they went (IR14.236). He concluded, however, 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 concluding on main issue 10 (IR14.237).

78. The basis for the Inspector's approach is quite clear from both IR14.237 and IR14.262. He found that, in the light of Government policy, there was no justification for bringing "tourism deficit" into account for the purpose of identifying and evaluating the economic benefits of the G1 proposal in the context of a planning appeal. The Defendants plainly followed the same approach: see DL43.

Submissions

79. The question for the Court is whether, in the light of Government policy, this was a legitimate approach for the Inspector and the Defendants to take.

80. In our submission, that is demonstrably the case, for the reasons given by the Inspector in IR14.237. As the Inspector observes in that paragraph, in the ATWP itself the Government acknowledges the widening gap in the tourism balance of payments. Paragraphs 4.21 to 4.23 consider the socio-economics of aviation and tourism. Paragraphs

4.24 to 4.27 identify the important role played by airports in the development of regional economies. It is plain that the ATWP's policy of support for substantially expanding passenger travel from South East airports, including Stansted, is founded upon the Government's judgment that the balance of national socio-economic advantage favours that policy. As the Inspector observes, by seeking to bring "tourism deficit" into account against a particular air transport scheme at a planning appeal, SSE are in reality calling into question the Government's judgment of national economic policy.

81. As Lord Diplock said in Bushell[7], 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.

82. The Inspector was, therefore, entitled to conclude on this issue on the basis of the policy context set by the ATWP and to decline to attach significance to this aspect of SSE's case against the G1 proposal.

Response to Grounds of Challenge

83. We submit that the Claimants' core complaint which provides the basis for their application to the Court is unjustified. We are able to respond briefly to the 5 stated grounds of challenge.

84. Ground 1 – neither the Inspector nor the Defendants misinterpreted or misapplied national transport planning policy for air transport development as stated in the ATWP. Both the Inspector and the Defendants approached the determination of the planning appeal in accordance with relevant policies set out in the ATWP, a material

[7] paragraph 62 above

consideration to 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 planning appeal which was properly in accordance with the legal principles to which we have referred above.

85. Ground 2 – in determining the planning appeal, both the Inspector and the Defendants 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.

86. Ground 3 – both the Inspector and the Defendants took into account the 3 specific matters which underlie the Claimants' core complaint. It was not perverse of the Inspector or the Defendants to give weight to the direct economic benefits of the G1 proposal (IR14.230-14.235 and DL43) 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 (ATWP paragraph 11.26). The latter was treated quite differently under the ATWP, as we have already submitted and as the Inspector recognised.

87. Ground 4 – there is no issue as to the applicability of regulation 3 of the EIA Regulations to the decision to allow the planning appeal and to grant planning permission for the G1 proposal. However, for the reasons which we have given in examining the Claimants' core complaint, neither the Inspector nor the Defendants failed in their duty under that regulation. As we have submitted, both the Inspector and the Defendants did take into account the estimated emissions from the G1 proposal (IR6.381/IR14.72 and DLDL29).

88. Ground 5 – the Inspector gave proper, adequate and intelligible reasons for his conclusions on the main issues in the planning appeal. Those reasons form the basis of the Defendants' reasons in the DL. In particular, as we have submitted, both the Inspector and the Defendants explained clearly and properly their conclusions on the 3 specific matters raised by SSE which now underlie the Claimants' core complaint.

Conclusion

89. It is perhaps unsurprising that the final paragraphs of the Claimants' skeleton argument include a further attempt to use proceedings in respect of a planning application for a particular air transport scheme, for the purpose of mounting a challenge to the merits and efficacy of national policy on addressing climate change and global warming. As we have submitted, the House of Lords has declared that to be an impermissible exercise in the context of a planning appeal into a specific scheme. We respectfully submit that this application should be dismissed.

Timothy Mould QC
James Maurici
Landmark Chambers
180 Fleet Street
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16 February 2009

IN THE HIGH COURT OF JUSTICE
CO/10952/2008
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
BETWEEN

CAROL BARBONE AND BRIAN ROSS
(on behalf of Stop Stansted Expansion)
Claimants

-and-

(1) SECRETARY OF STATE FOR TRANSPORT
(2) SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
Defendants

-and-

BAA LTD AND STANSTED AIRPORT LTD
Interested Parties

DEFENDANTS' SKELETON ARGUMENT

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