

**IN THE COURT OF APPEAL
CIVIL DIVISION**

CO:

**ON APPEAL FROM SIR THAYNE FORBES SITTING AS A JUDGE OF THE HIGH
COURT**

**IN A MATTER UNDER SECTION 288 OF THE TOWN AND COUNTRY PLANNING
ACT 1990**

BETWEEN:

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

Appellants

-and-

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

Respondents

-and-

**(1) BAA LIMITED AND STANSTED AIRPORT LIMITED
(2) UTTLESFORD DISTRICT COUNCIL AND OTHERS**

Interested Parties

GROUNDS OF APPEAL

The Learned Judge erred in law in that:

GROUND ONE

1. The Learned Judge failed to determine that the Secretaries of State did, as a matter of proper construction of their decision letter, decide that a negative effect on the tourism trade deficit in the sum of £12.6bn was an immaterial planning consideration; and that

2. The Secretaries of State thereby erred in law, given that *inter alia*:
 - (1) The Government has stated that proposals such as G1 should be subject to a rigorous economic assessment at a Planning Inquiry, and all economic effects taken into account;
 - (2) Economic assessment of the G1 proposal identified that it would result in a substantial widening of the tourism trade deficit whereas the Government's expectation, when formulating its policy, was that the proposal would have the benefit of narrowing of the tourism trade deficit; and
 - (3) The estimated direct economic gain of £1bn that would result from the G1 proposal was taken into consideration as a benefit of the G1 proposal in the same decision letter.

GROUND TWO

1. The Learned Judge failed to determine that the Secretaries of State did, as a matter of proper construction of their decision letter, decide that the annual emission of an additional 1.06 million tonnes of CO₂ and additional emissions of other harmful greenhouse gases was an immaterial planning consideration; and that
2. The Secretaries of State thereby erred in law, given that *inter alia*:
 - (1) The Government has stated all environmental effects of the G1 proposal should be taken into account in deciding whether or not it should be permitted;
 - (2) Regulation 3 of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 ("the 1999 Regulations") requires a decision-maker to take all of the "environmental information" relating to a proposed development into account;
 - (3) The Government's own admission that the creation of an Emission Trading Scheme that included aviation, as envisaged in the Air Transport White Paper and the Air Transport White Paper Progress Report, may not provide

a total solution to the tension between an increase in aviation and the need to reduce emissions of CO₂ and other harmful greenhouse gases;

- (4) The Government's own description of climate change, i.e., that it is the most serious global environmental threat that there is.

GROUND THREE

1. The Learned Judge failed to determine that the Secretaries of State did, as a matter of proper construction of their decision letter, decide that the noise effects of the G1 proposal, whilst not insignificant, could not lead to the refusal of permission because that would impermissibly contravene Government policy as expressed in the Air Transport White Paper; and that

2. The Secretaries of State thereby erred in law through failing to follow the approach which they acknowledged was required of them, namely to take into account all of the environmental effects of that proposal, even if to do so would lead to a refusal in frustration of Government policy.

Paul Stinchcombe & Sarah Hannett

4-5 Gray's Inn Square

1 April 2009