

R (Plan B Earth & Others) v Secretary of State for Transport [2020] EWCA Civ 214
 (“the Heathrow Challenge”)

39 Essex Chambers
PEP Webinar
14 05 2020

Thomas Hill QC
Thomas.Hill@39essex.com

The Claims

- A series of conjoined claims
- Challenging designation of the Airports National Policy Statement (“ANPS”) pursuant to section 5 of Planning Act 2008
- ANPS supports the construction of a third (northwest) runway at LHR
- Claims were grouped into three issues: Habitats Directive; SEA Directive; Climate Change
- The Appellants failed on the first two groups of issues and succeeded on the third

The Issue

- Section 5 (7) & (8) of Planning Act 2008 : requirement that the reasons for the policy be set out and, in particular, that the NPS must include an explanation of how the NPS “takes account of Government policy relating to the mitigation of, and adaptation to, climate change”
- Government concession that (on legal advice) it had not had regard to the Paris Agreement and discounted it for the purposes of section 5(8).
- Reasons given: international agreement not incorporated into domestic law; underlying concern that its terms might be inconsistent with Climate Change Act 2008

The Decision

- The Government had taken an impermissibly narrow approach to its obligations under section 5(8); had misdirected itself and failed to discharge its duties under the 2008 Act.
- Government concession that section 31 of Senior Court Act not applicable.
- Court of Appeal declares the designation of the ANPS to be unlawful.

Comment (1)

- The Paris Agreement does not achieve the status of a “trump card” capable of “defeating” the most entrenched elements of government policy
- The Court of Appeal’s judgment is a textbook example of the application of conventional administrative law principles to the facts of this case.
- The Court was keen to emphasize [231] that “taking account of policy” did not even require the executive to conform to those policy commitments
- In summary, there is no novel point.

Comment (2)

- Government reappraisal of ANPS (in theory) underway
- The implications of the 2019 amendment to section 1 of Climate Change Act 2008
- Possibility of ANPS coming back little changed, but intense scrutiny of the discharge of the section 5(8) duty (and associated reasons) can be expected
- The hiatus provides an opportunity for political manoeuvring....

Comment (3)

- Last week the Supreme Court granted PTA to HAL & Arora on the climate change grounds (formerly the IPs and now the Appellants)
- No doubt the appeal will be prosecuted with great energy
- Difficulty (not insuperable) of the absence of the SoSfT alongside the Appellants, he having accepted the burden of the judgment and gone back to remedy the unlawfulness in the ANPS.

THOMAS HILL QC
39 ESSEX CHAMBERS
14th May 2020