

N210PC
Statutory Review
Acknowledgment of Service

Name and address of person to be served

name
 Uttlesford District Council

address
 Council Offices, London Road, Saffron Walden,
 Essex CB11 4ER

In the High Court of Justice Planning Court in the Administrative Court	
Claim No.	CO/2356/2021
Claimant(s) <i>(including ref.)</i>	Uttlesford District Council
Defendant(s)	Secretary of State for Housing, Communities and Local Government

SECTION A

Tick the appropriate box

- 1. I intend to contest all of the claim
- 2. I intend to contest part of the claim
- 3. I do not intend to contest the claim

- } complete sections B, C, D, E and F
- ✓ complete section E and F

SECTION B

Insert the name and address of any person you consider should be added as a defendant.

name

address

Telephone no.

Fax no.

E-mail address

name

address

Telephone no.

Fax no.

E-mail address

SECTION C

Summary of grounds for contesting the claim. If you are contesting only part of the claim, set out which part before you give your grounds for contesting it.

The requirement to file and serve summary grounds of resistance in accordance with CPR Practice Direction 8C paragraph 5.5(a)(i) arises only where a party intends to contest a claim. As Bristol Airport Action Network Committee Coordinators ("BAAN CC") do not intend to contest the claim, summary grounds of resistance have not been provided alongside this acknowledgment of service.

However, in order to assist the permission judge, BAAN CC intends to file and serve summary grounds in support of the claim alongside supporting evidence within two weeks of the date of this acknowledgment of service. BAAN CC and Group for Action on Leeds Bradford Airport have instructed the same solicitors and counsel in these proceedings and will prepare documents on a joint basis to the extent possible.

SECTION D

Give details of any directions you will be asking the court to make, or tick the box to indicate that a separate application notice is attached.

If you are seeking a direction that this matter be heard at an Administrative Court venue other than that at which the claim was issued, you should complete, lodge and serve on all other parties form N464 with this acknowledgement of service.

SECTION E

Do you deny that the claim is an Aarhus Convention claim? Yes No

If Yes, please set out your grounds for denial in the box below.

SECTION F

**delete as appropriate*

I believe that the facts stated in this form are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

I am duly authorised by the Bristol Airport Action Network Committee Coordinators to sign this statement.

(if signing on behalf of firm or company, court or tribunal)

Position or office held

Solicitor

(To be signed by you or by your solicitor or litigation friend)

Signed

[Redacted signature]

Date

2 August 2021

Give an address to which notices about this case can be sent to you

name
Ricardo Gama

address
Leigh Day
Prior House
25 St John's Lane
London EC1M 4LB

Telephone no.
[Redacted]

Fax no.
[Redacted]

E-mail address
[Redacted]

If you have instructed counsel, please give their name address and contact details below.

name
Estelle Dehon

address
Cornerstone Barristers
2-3 Gray's Inn Square
London WC1R 5JH

Telephone no.
[Redacted]

Fax no.
[Redacted]

E-mail address
[Redacted]

Completed forms, together with a copy should be lodged with the Planning Court in the Administrative Court Office (court addresses below) in which this claim was issued **within 21 days** of the service of the claim upon you, and further copies should be served on the Claimant(s) and any other Defendant(s) within 7 days of lodgement with the Court.

Administrative Court addresses

• Administrative Court in **London**

Administrative Court Office, Room C315, Royal Courts of Justice, Strand, London, WC2A 2LL.

• Administrative Court in **Birmingham**

Administrative Court Office, Birmingham Civil Justice Centre, Priory Courts, 33 Bull Street, Birmingham B4 6DS.

• Administrative Court in **Wales**

Administrative Court Office, Cardiff Civil Justice Centre, 2 Park Street, Cardiff, CF10 1ET.

• Administrative Court in **Leeds**

Administrative Court Office, Leeds Combined Court Centre, 1 Oxford Row, Leeds, LS1 3BG.

• Administrative Court in **Manchester**

Administrative Court Office, Manchester Civil Justice Centre, 1 Bridge Street West, Manchester, M3 3FX.

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

CO/2356/2021

**IN THE MATTER OF AN APPLICATION UNDER S. 288 TOWN AND COUNTRY PLANNING ACT
1990**

B E T W E E N:-

THE QUEEN
(on the application of
UTTLESFORD DISTRICT COUNCIL)

Claimant

-and-

SECRETARY OF STATE FOR HOUSING COMMUNITIES AND LOCAL GOVERNMENT

Defendant

-and-

(1) STANSTED AIRPORT LTD
(2) STOP STANSTED EXPANSION
(3) NORTH SOMERSET COUNCIL
(4) BRISTOL AIRPORT ACTION NETWORK COMMITTEE COORDINATORS
(5) GROUP FOR ACTION ON LEEDS BRADFORD AIRPORT

Interested Parties

SUMMARY GROUNDS IN SUPPORT OF CLAIM

**ON BEHALF OF BRISTOL AIRPORT ACTION NETWORK COMMITTEE COORDINATORS AND
GROUP FOR ACTION ON LEEDS BRADFORD AIRPORT**

*References to the Claimant's electronic bundle are to the PDF page number in the format [CB/x]
and to the PDF page number North Somerset Council's electronic bundle in the format [NSC/x]*

INTRODUCTION

1. The following brief legal submissions are made on behalf of two interested parties, Bristol Airport Action Network Committee Coordinators ("BAAN CC") and Group for Action on Leeds Bradford Airport ("GALBA") to the Claim in support of the grant of permission.
2. BAAN CC is a community campaigning group based in the South-West region which exists to oppose the application by Bristol Airport Ltd to expand Bristol Airport. BAAN became Rule 6 party to the application for planning permission to expand Bristol Airport on 11 January 2021.

3. GALBA is a community campaigning group based in West Yorkshire which opposes the expansion of Leeds Bradford Airport. In April 2021, the Secretary of State gave directions under Article 31 of the Town and Country Planning (Development Management Procedure) (England) Order 2015/595 restricting Leeds City Council from granting planning permission for the airport expansion at Leeds Bradford Airport, in order to decide whether to “call in” the planning application.
4. Both BAAN CC and GALBA are directly affected by the outcome of the Claim. The lawful interpretation of the Aviation Policy Framework (“APF”) and the June 2018 policy statement “*Beyond the Horizon: The Future of UK Aviation – Next Steps towards an Aviation Strategy*” (“MBU”) disputed between the Claimant and the Defendant are of central relevance to the planning decision-making concerning Bristol and Leeds Bradford Airports.
5. BAAN CC and GALBA make the following short submissions in support of the Claim in respect of Ground 1 only. They contend that the Decision Letter issued on behalf of the Defendant on 21 June 2021 (“DL”) is unlawful because it misinterprets, and consequently misapplies, relevant planning policy, namely, the AFP and the MBU.

FACTUAL BACKGROUND

6. The Court is respectfully directed to the short factual chronology of relevant legislative and policy developments set out at paragraph 3 of the Legal Submissions submitted on behalf of North Somerset Council, with which BAAN CC and GALBA agree.

LEGAL FRAMEWORK

7. When the court considers a claim pursuant to section 288 of the Town and Country Planning Act 1990, it is well-established that the proper interpretation of planning policy is ultimately a matter of law for the court, and that a failure properly to understand and apply relevant policy will constitute a failure to have regard to a material consideration, or will amount to having regard to an immaterial consideration: see the judgment of Lord Reed in *Tesco Stores v Dundee City Council* [2012] PTSR 983 (“*Tesco Stores*”) at §§17-22.
8. Statements of policy are to be interpreted objectively by the court in accordance with the language used and in its proper context: per Lindblom LJ in *St Modwen Developments Ltd v SSCLG* [2017] EWCA Civ 1644 at §6(4).

9. BAAN CC and GALBA both contend that a fundamental aspect of the “*proper context*” of the APF, the Airports National Policy Statement (“**ANPS**”) and the MBU must include the subsequent environmental and climate change policy under the National Planning Policy Framework (“**NPPF**”) (February 2019), the Climate Change Act 2008 (2050 Target Amendment) Order 2019 and the Government’s acceptance of the Sixth Carbon Budget.

The Climate Change Act 2008 and adoption of the Net Zero Target

10. Section 1 of the Climate Change Act 2008 (“**CCA 2008**”) sets a mandatory target for carbon emissions. At the time of the implementation of the ANPS and MBU in June 2018, it provided:

“It is the duty of the Secretary of State to ensure that the net UK carbon account for the year 2050 is at least 80% lower than the 1990 baseline.”

11. On 27 June 2019, Article 2 of the Climate Change Act 2008 (2050 Target Amendment) Order 2019/1056 amended section 1 so as to lower the statutory target for 2050 as “at least 100% lower than the 1990 baseline” (“**the Net Zero target**”).

12. Sections 2(2) and 2(3) CCA 2008 provides that the Secretary of State may amend the target in Section 1 (either by the percentage specified, or by the baseline year) in the following circumstances:

“(2) The power in subsection (1)(a) may only be exercised –

(a) if it appears to the Secretary of State that there have been significant developments in –

(i) scientific knowledge about climate change, or

(ii) European or international law or policy,

that make it appropriate to do so [...]

(3) The developments in scientific knowledge referred to in subsection (2)

are–

(a) in relation to the first exercise of the power in subsection (1)(A), developments since the passing of this Act; ...”

13. Section 4 CCA 2008 imposes a duty on the Secretary of State to set the carbon budget each succeeding period of five years beginning with the period 2008 – 2012, and “to ensure that the net UK carbon account for a budgetary period does not exceed the carbon budget”. Section 8(2) CCA 2008 obliges the Secretary of State to set the carbon budget:

“(2) The carbon budget for a period must be set with a view to meeting –

(a) The target set in section 1(the target for 2050), and

(b) The requirements of section 5 (requirements as to level of carbon budgets),

and complying with the European and international obligations of the United Kingdom.”

14. Section 32 CCA 2008 establishes the Committee on Climate Change (“CCC”) as an independent, UK-wide body tasked with advising the Government and Parliament on climate change.
15. Section 10(2) CCA 2008 requires both the Secretary of State, in coming to any decision relating to carbon budgets, and the CCC, to take the following matters into account:
 - “(a) scientific knowledge about climate change;
 - (b) technology relevant to climate change;
 - (c) economic circumstances, and in particular, the likely impact of the decision on the economy and the competitiveness of particular sectors of the economy;
 - (d) fiscal circumstances, and in particular the likely impact of the decision on taxation, public spending and public borrowing;
 - (e) social circumstances, and in particular the likely impact of the decision on fuel poverty;
 - (f) energy policy, and in particular the likely impact of the decision on energy supplies and the carbon and energy intensity of the economy;
 - (g) differences in circumstances between England, Wales, Scotland and Northern Ireland;
 - (h) circumstances at European and international level;
 - (i) the estimated amount of reportable emissions from international aviation and international shipping for the budgetary period or periods in question.”

POLICY FRAMEWORK

The APF (March 2013)

16. The APF provides policy support for airports outside the South-East of England to make best use of their existing capacity. However, it specifically provides at paragraph 1.24 “that proposals for expansion at these airports should be judged on their individual merits, taking careful account of all relevant considerations, particularly economic and environmental impacts”.

The MBU (June 2018)

17. The MBU is a policy comprising of seven substantive pages published under the APF. In broad terms, it sets out the Government's position in June 2018 that there is a case for making best use of their existing runways (paragraphs 1.25-1.26). While noting at paragraph 1.9 that "for the majority of environmental concerns, the government expects these to be taken into account as part of existing local planning application processes", the MBU at paragraphs 1.11 – 1.13 sets out forecasts for the impact on carbon emissions as a consequence of increased air traffic.
18. The MBU expressly recognises that there is "uncertainty over future climate change policy and international arrangements to reduce CO2 and other greenhouse gases" (paragraph 1.14).
19. Paragraph 1.29 summarises:

"Therefore the government is supportive of airports beyond Heathrow making best use of their existing runways. However, we recognise that the development of airports can have negative as well as positive local impacts, including on noise levels. We therefore consider that any proposals should be judged by the relevant planning authority, taking careful account of all relevant considerations, particularly economic and environmental impacts and proposed mitigations. This policy statement does not prejudge the decision of those authorities who will be required to give proper consideration to such applications. It instead leaves it up to local, rather than national government, to consider each case on its merits."

The National Planning Policy Framework (February 2019)

20. The National Planning Policy Framework ("**NPPF**") (February 2019), which was the version of the NPPF in force at the time of the DL, requires the planning system to "contribute to the achievement of sustainable development"; at a very high level, this is summarised as "meeting the needs of the present without compromising the ability of future generations to meet their own needs" (see paragraph 7). The NPPF further states at paragraph 148 that: "The planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change. It should help to: shape places in ways that contribute to **radical reductions in greenhouse gas emissions**, minimise vulnerability and improve resilience... and support renewable and low carbon energy and associated infrastructure." (emphasis added)

The Government endorsement of the Sixth Carbon Budget (April 2021)

21. On 9 December 2020, the CCC published their report, *'The Sixth Carbon Budget: the UK's path to Net Zero'* pursuant to section 24 of the CCA 2008, which contains the CCC recommendations for the carbon budget running from 2033 to 2037 ("**the Sixth Carbon Budget**"). On 20 April 2021, the Government announced that it accepted the CCC's recommended budget level.

SUBMISSIONS ON GROUND 1: ERROR OF LAW BY VIRTUE OF A FAILURE PROPERLY TO UNDERSTAND AND APPLY RELEVANT POLICY

22. BAAN CC and GALBA support the first ground of the Claimant's appeal for three reasons:
- a) The DL failed to properly understand and therefore, properly apply, the MBU. Lawfully interpreted, the MBU anticipates and assimilates the development of future environmental policies implemented following its adoption in June 2018;
 - b) The interpretation of the MBU taken in the DL artificially and incorrectly excludes carbon and other greenhouse gas emissions from the decision-maker's consideration solely by virtue of the fact that the MBU requires carbon emissions also to be considered at a national level; and
 - c) As the incorrect interpretation of MBU formed the fundamental policy basis upon which the decision to grant the planning application was made, the planning balance would plainly be affected had the MBU been interpreted differently.
23. BAAN CC and GALBA make no submissions as to the further grounds of appeal brought by the Claimant.

a) The objective interpretation of MBU in its proper legislative context

24. The MBU is forward-looking regarding the possibility of greater knowledge, and accordingly, further Government policies, which concern environmental impacts and risks. Paragraph 1.14 of the MBU provides:

"As explained in Chapter 6 of the Aviation Strategy Next Steps document, we have made significant steps in developing international measures for addressing aviation carbon dioxide (CO₂) emissions... However, there remains

uncertainty over future climate change policy and international arrangements to reduce CO2 and other greenhouse gases.”

25. In contrast, the DL treats the MBU as having accounted for climate change policies immutably for all time, at the point of the inception of the MBU (June 2018). Paragraph 18 of the DL (CB/7) provides:

“The in-principle support for making best use of existing runways provided by MBU is a recent expression of policy by the Government. It is given in full knowledge of UK commitments to combat climate change, having been published long after the Climate Change Act 2008 (CCA) and after the International Paris Agreement. It thoroughly tests the potential implications of the policy in climate change terms, specifically carbon emissions.”

26. However, the MBU is not conclusive of these matters (see paragraph 1.14); its conclusions and proposals to make best use of existing runways are deliberately “subject to environmental issues being addressed” (paragraph 1.5). Accordingly, the approach to the MBU’s consideration of carbon emissions in the DL either overlooks, or misunderstands, the anticipatory outlook of the MBU, and MBU’s explicit acknowledgment that Government’s understanding of and policy response to climate change would inevitably develop over time.

27. The static understanding of the MBU and its approach to carbon emissions endorsed by the DL is further incompatible with the present and proper context of the MBU. The “future climate change policy” referred to in paragraph 1.14 of the MBU has taken the form of the following legislative developments:

- a) The amendment of section 1(1) of the CCA 2008 in June 2019, having had regard to the matters set out in sections 2 and 10 CCA 2008;
- b) The Government’s acceptance of the Sixth Carbon Budget; and
- c) The explicit recognition in the NPPF published in February 2019 of the need to radically reduce greenhouse gas emissions.

28. BAAN CC and GALBA submit that the legislative developments post-dating the MBU must form a crucial part of the “proper context” in which the MBU is interpreted by the planning decision-maker. Rather than treating the MBU as dispositive of the question of carbon emissions, the Panel was required by the MBU itself to consider the proposed development “subject to environmental issues being addressed” (paragraph 1.5).

29. Paragraph 94 of the DL (**CB/19**) illustrates that the Panel incorrectly and unlawfully interpreted MBU as operating entirely separately from any subsequent statutory commitments concerning carbon emissions:

“Although UK statutory obligations under the CCA have been amended since the publication of MBU to bring all greenhouse gas emissions to net zero by 2050, with an additional target of a 78% reduction in carbon emissions by 2035 set to be introduced, MBU remains Government policy.”

30. This artificial interpretation of the MBU, which specifically notes the need for planning decision-makers to be responsive to “future climate change policy and international arrangements to reduce CO2 and other greenhouse gases” amounts to an error of law; it disregards both the wording and the proper legislative context of the policy.

b) The artificial exclusion of carbon emissions from local decision-making by the interpretation of the MBU advanced in the DL

31. In paragraph 23 of the DL (**CB/8**), the Panel suggest that the fact that carbon emissions are considered at a national policy level necessarily excludes the extent of carbon emissions as a factor to be taken into account in local planning decision-making which engage the MBU:

“Consistent with the APF, MBU differentiates between the role of local planning and the role of national policy, making it clear that the majority of environmental concerns, such as noise and air quality, are to be taken into account as part of existing local planning application processes. Nonetheless, it adds that some important environmental elements should be considered at a national level, such as carbon emissions, which is specifically considered by MBU. The Council apparently understood this distinction in resolving to grant planning permission in 2018. However, it subsequently changed its position, deciding that carbon is a concern for it as local planning authority despite MBU, and this led, at least in part, to the refusal of planning permission, as well as to its subsequent case as put at the Inquiry.”

32. However, the MBU itself contains no such rigid dichotomy between national climate policy and local planning considerations, nor any requirement that environmental elements considered at a national level should be excluded from planning decision-making. On the

contrary, the MBU emphasises that national environmental considerations fall within the ambit of the local planning process at paragraph 1.29:

“However, we recognise that the development of airports can have negative as well as positive local impacts, including on noise levels. We therefore consider that any proposals should be judged by the relevant planning authority, taking careful account of all relevant considerations, particularly economic and environmental impacts and proposed mitigations. This policy statement does not prejudge the decision of those authorities who will be required to give proper consideration to such applications. It instead leaves it up to local, rather than national government, to consider each case on its merits.”

33. The MBU is therefore explicit that environmental impacts are part of the remit of local planning decision-makers; reference to the MBU cannot be used to sidestep or displace such environmental considerations. Accordingly, the interpretation of the MBU exemplified in the DL – that the existence of the MBU itself removes carbon emissions from the consideration of local planning decision-makers – is incompatible with paragraph 1.29 of the MBU.

Ground 1 Challenges Incorrect Interpretation of Policy, not Weight

34. Both the Secretary of State and the First Interested Party (“STAL”) try to frame Ground 1 as primarily about the weight to be given to MBU, following the CCC’s Sixth Carbon Budget Report, rather than about the interpretation of MBU itself. This is incorrect: Ground 1 squarely challenges the Panel’s erroneous interpretation of MBU and has nothing to do with the weight afforded the policy.
35. While Ground 1 draws out the fact that the Panel ignored climate change/carbon policies other than MBU, what the Secretary of State and STAL miss is that the reason the Panel took this approach was their incorrect interpretation of MBU itself.
36. In fact, *Tesco Stores* directly addresses the type of challenge made by the Claimant in this claim. Paragraph 20 of that decision cites the following passage of the judgment of Brooke LJ in *R(Woods) v Derbyshire County Council* [1997] JPL 958 with approval:

“If there is a dispute about the meaning of the words included in a policy document which a planning authority is bound to take into account, it is of course for the court to determine as a matter of law what the words are capable of meaning. If the decision-maker attaches a meaning to the words they are not

properly capable of bearing, then it will have made an error of law, and it will have failed properly to understand the policy." (emphasis added)

37. Further, at §6(4) of *St Modwen Developments Ltd v SSCLG* [2019] EWCA Civ 1643, Lindblom LJ emphasises that:

"The proper interpretation of planning policy is ultimately a matter of law for the court. The application of relevant policy is for the decision-maker. But statements of policy are to be interpreted objectively by the court in accordance with the language used and in its proper context. A failure properly to understand and apply relevant policy will constitute a failure to have regard to a material consideration, or will amount to having regard to an immaterial consideration." (emphasis added)

38. The Secretary of State asserts at §44 of his Summary Grounds of Defence: "The Panel highlighted that despite the net zero target, the MBU itself remains unchanged, which is obviously correct", and he consequently characterises the Claimant's first Ground of review as alleging a simple failure to give sufficient weight to the Net Zero Target as a material consideration. This fails to engage with the argument that the subsequent change in legislative context brought about by the Net Zero Target alters the correct interpretation of the MBU, because the terms of the MBU itself envisage that such developments will be taken into account when the local planning decision-maker considers whether the environmental impacts of the proposed scheme have been addressed.
39. The Panel's incorrect interpretation of MBU is not made good by the Panel simply noting that the Net Zero Target came into force since the publication of the MBU, without accounting for the consequent impact of that development on the correct interpretation of the policy.
40. Both sets of Summary Grounds deal briefly with the interpretation of MBU (Secretary of State §§47-50; STAL §§82-85). However, neither address the basis on which the Claimant's SFG explains the proper interpretation of that policy with detailed references to the terms of the MBU. STAL summarises what it contends is the entire policy effect of MBU at §17: "The MBU 'policy statement' is set out at paras 1.25-1.29. Para 1.29 of MBU states, in bold text: '... the government is supportive of airports beyond Heathrow making best use of their existing runways.'" That is an oversimplification leading to error; as set out above, MBU

expressly states that climate policy is a developing area and that climate impacts should be taken into account in light of developments at a national and international level.

41. Both SGDs effectively contend that the correct interpretation of MBU is that carbon emissions are something for national rather than local consideration (eg §19ff of STAL's SGD). As set out above, that is incorrect. MBU makes it clear that proposals to make best use of an existing runway are "subject to environmental issues being addressed" (§1.5); not limiting that to "local" issues and not, either explicitly or implicitly, excluding issues, such as carbon impact, which have wider ramifications and impacts (eg on the UK's carbon budgets). This is made absolutely clear in §1.29 of MBU.

c) Simplex and No Difference

42. The MBU plainly forms the policy justification for the decision to grant planning permission in the DL. Paragraph 102 of the DL (**CB/20**) concludes that:

"Accordingly, for all of the foregoing reasons, having due regard to current national aviation policy and wider planning policy, including the development plan and the Framework, the proposed development would not have a significant or unacceptable effect on carbon/climate change."
43. Given that the unlawful interpretation of "national aviation policy", including the MBU, formed a key part of the basis for this conclusion, it is highly likely that the overall planning balance would have been substantially affected by this error of law. Given the weight the Panel afforded to the conclusion quoted from paragraph 102 of the DL, it simply cannot be the case that the error of law would have made no difference to the decision to grant the planning application.

Permission Should be Granted for this Appeal to Proceed

44. For the reasons set out above, the BAAN CC and GALBA submit that the claim is plainly arguable and that permission be granted on that basis.
45. Furthermore, §10 of the Claimant's Statement of Facts and Grounds states that the DL has "wider ramifications than the development of Stansted airport", as the Panel's incorrect interpretation of MBU "will provide the template for various other airport developments that are currently in the planning system." So it has proved. The Panel's decision was issued after Bristol Airport Limited ("**BAL**") had filed its Statement of Case (September 2020) [**NSC/28-69**] but before BAL's Opening Statement in the inquiry, made on 20 August 2021

[NSC/140-225]. BAL's Statement of Case referred to MBU;¹ and BAL's Opening Statement explicitly relied on the Panel's approach to MBU in the Stansted Airport appeal, which has been made a Core Document in the Bristol Airport Inquiry: see §46 [NSC/152]; see also the wider submissions at §§218 [NSC/193] and 248(e) [NSC/201].

46. While the Panel deciding BAL's appeal is not bound by the Stansted Panel's incorrect interpretation of MBU, that appeal decision is plainly being relied on as a similar decision which interprets the same policy in relation to a similar form of development, meaning that a consistent interpretation should be applied, unless cogent reasons are given for departing from that interpretation: *DLA Delivery Limited v Baroness Cumberlege of Newick* [2018] JPL 1268 at §§34-36. North Somerset Council and BAAN CC have, in their Opening Statements and in their witness evidence, provided bases on which the Bristol Panel should depart from the Stansted Panel's interpretation of MBU, but the Court will be aware of the difficulty confronting a party making such submissions. It is crucial, therefore, that the Court give guidance as to the correct interpretation of MBU.
47. Turning to Leeds Bradford Airport, the Officer's Report recommending approval (dated 11 February 2021) referred to and relied on MBU. That pre-dated the Stanstead Panel's decision and approached the interpretation of the policy differently: MBU was not considered dispositive and MBU, the Net Zero Obligation and the CCC's recommendations were all considered together, with some aspects (such as international aviation impacts) excluded. The approach overall taken on carbon emissions was different from that in the Stansted and Bristol appeals because of how they were assessed in the environmental statement produced by Leeds Bradford Airport Limited ("LBA"). As set out above, the Secretary of State is currently considering whether the decision should be called in. If, in making that decision, the Secretary of State chooses to take the same approach to interpreting MBU as is reflected in his Summary Grounds of Defence in the instant appeal, then he would fall into error.
48. Finally, the Stansted Panel's approach to treating MBU as dispositive of the potential implications of airport expansion "in climate change terms, specifically carbon emissions" (DL § 18) makes it difficult to see how decision-makers, or the Secretary of State, can properly take the cumulative climate impact of a number of different airport expansion applications into account, as they should. On the other hand, the correct interpretation of MBU, as argued for by the Claimant and as set out above, appropriately allows for the

¹ See §§1.3 [NSC/29]; 2.7 [NSC/32], 4.1, 4.4-4.5 [NSC/37], 9.25 [NSC/53], 13.2 and 13.3 [NSC/60].

cumulative climate change impact of consented and proposed regional airport expansion to be considered.

49. For all those reasons, too, there is a compelling case for permission to be granted for this appeal.

CONCLUSION

50. BAAN CC and GALBA support the first ground upon which this Claim is brought and submit that permission should be granted for the claim and that the decision to grant planning permission should, in due course, be quashed.

ESTELLE DEHON

17 August 2021

