



**In the High Court of Justice
Queen's Bench Division
Planning Court**

CO/2356/2021

In the matter of an application for Planning Statutory Review

UTTLESFORD DISTRICT COUNCIL

Claimant

-and-

- (1) SECRETARY OF STATE FOR HOUSING,
COMMUNITIES AND LOCAL GOVERNMENT**
- (2) STANSTEAD AIRPORT LIMITED**
- (3) STOP STANSTEAD EXPANSION**
- (4) NORTH SOMERSET COUNCIL**
- (5) BRISTOL AIRPORT ACTION NETWORK**
- (6) GROUP FOR ACTION ON LEEDS BRADFORD AIRPORT**

Defendants

**Notification of the Judge's decision on the application for permission to
apply for Planning Statutory Review (CPR PD 8C)**

Following consideration of the documents lodged by the Claimant and the Acknowledgments of service filed by the Defendants;

Order by the Honourable Mrs Justice Lang DBE

1. The parties which were joined as 'Interested Parties' are to be joined as Defendants instead.
2. The application for permission to apply for planning statutory review is refused.
3. The Claimant do pay the First Defendant's costs of preparing the Acknowledgment of Service, which are summarily assessed in the sum of £16,843. This is a final order unless within 14 days of the date of this Order the Claimant files with the Court and serves on the First Defendant a notice of objection setting out the reasons why he should not be required to pay costs (either as required by the costs order, or at all). If the Claimant files and serves notice of objection, the First Defendant may, within 14 days of the date it is served, file and serve submissions in response. The Claimant may, within 7 days of the date on which the First Defendant's response is served, file and serve submissions in reply. A Judge will then make a final determination on costs, either on the papers, or at a hearing of any renewed application for permission.
4. The Claimant do pay the Second Defendant's costs of preparing the Acknowledgment of Service, which are summarily assessed in the sum of £15,000. This is a final order unless within 14 days of the date of this Order the Claimant files with the Court and serves on the Second Defendant a notice of objection setting out the reasons why he should

not be required to pay costs (either as required by the costs order, or at all). If the Claimant files and serves notice of objection, the Second Defendant may, within 14 days of the date it is served, file and serve submissions in response. The Claimant may, within 7 days of the date on which the Second Defendant's response is served, file and serve submissions in reply. A Judge will then make a final determination on costs, either on the papers, or at a hearing of any renewed application for permission.

5. The Second Defendant may challenge the summary assessment of its costs, by filing at Court and serving on the Claimant a notice of objection. The Claimant may file and serve submissions in response, within 14 days of receipt. The Second Defendant may file and serve submissions in reply, within 7 days of receipt. A Judge will then make a final determination on costs, either on the papers, or at a hearing of any renewed application for permission.

Reasons

The reason for paragraph 1 of the Order is that provision for "interested parties" is only made in CPR 54 in claims for judicial review. There is no such provision in statutory review claims.

I have considered all the competing submissions made by the parties. Broadly, I accept the submissions made in the First and Second Defendants' Summary Grounds of Defence.

Ground 1

The Claimant submits that the Panel failed to have regard to relevant policy developments in relation to climate change and carbon emissions and/or the limitations and reservations in national aviation policy.

I consider this submission to be unarguable. On a fair reading of the Decision Letter (DL), the Panel correctly identified and understood the relevant national and local policies. It was correct to find that carbon emissions policies are addressed at a national level, in the MBU, and are not a matter for local planning decision-makers. It was entitled to conclude that the national policy "Making best use of existing runways" ("MBU"), published in June 2018, was made in full knowledge of the UK's then commitments to combat climate change, and that it thoroughly tested the potential implications of the policy in climate change terms (DL 18). It was also entitled to conclude that the Government has not altered the policies in the MBU, notwithstanding changes to the targets for reduction of greenhouse gas emissions (DL 24-25).

Under the heading "Carbon and Climate Change", the Panel considered the specific climate change implications of the proposed development. It clearly considered the competing views of the parties and took into account Government announcements which post-dated the MBU. Its judgment was that carbon emissions weighed against the proposal only to a limited extent (DL 153). It is not open to the Claimant to challenge that exercise of planning judgment in a claim for statutory review.

Ground 2

The Claimant submits that the Panel erred in rejecting its proposed Condition 15 as neither necessary nor reasonable.

In my view, this submission is unarguable. The Panel had concluded that the impacts of the development were acceptable, based on the evidence and forecasts before it. Its reasons for concluding that Condition 15 was not necessary or reasonable were clearly explained at DL 142. It applied the correct legal and policy tests. This was an exercise of planning judgment which the Claimant cannot challenge in this claim.

Ground 3

The Claimant submits that the Costs Decision, ordering the Claimant to pay the costs of the Second Defendant (Stanstead Airport Limited), misapplied Ministerial Guidance, failed properly to take into account the Claimant's position, and was "spiteful" (DL 9) and "unprincipled" (DL 125).

In my judgment, this submission is unarguable. A decision whether or not to make an award of costs is pre-eminently a matter of discretion, and the Inspector who actually hears the appeal is in the best position to judge whether an award should be made. The Court will only interfere with an Inspector's exercise of discretion to award costs in exceptional circumstances. See *Golding v SSCLG* [2012] EWHC 1656 (Admin).

The Panel expressly considered the guidance that a costs application should be made as soon as possible. However, the only requirement is that a costs application should be made before the close of proceedings. The Panel was entitled to conclude that the Second Defendant had not acted unreasonably in deferring its application until the conclusion of the evidence.

The Panel set out cogent reasons explaining why it judged the Claimant to have acted unreasonably, resulting in unnecessary or wasted expenses, as described in the PPG. That was an exercise of judgment by the Panel with which this Court cannot properly interfere. The allegations of unprincipled and spiteful behaviour by the Panel are unfounded, in my view.

Costs

The Second Defendant claimed its costs of preparation of the Acknowledgment of Service in the sum of £50,717.50. In my view, this sum was excessive and disproportionate, and far in excess of the amounts of costs usually awarded at permission stage. The First Defendant was the decision-maker against whom the claim was brought, and its costs were far less. The Second Defendant only has a secondary role in these proceedings. Moreover, the Second Defendant and its legal team were already very familiar with the issues as they appeared at the Inquiry. In all the circumstances, I consider that the Second Defendant's costs ought to be reduced, and I summarily assess a reasonable and proportionate amount of costs in the sum of £15,000.

Signed:

Beverly Ann Laag

Dated: 1.10.21

The date of service of this order is calculated from the date in the section below

For completion by the Administrative Court Office

Sent / Handed to

either the Claimant, and the Defendant

or the Claimant's, and the Defendants' solicitors

Date: 01/10/2021

Solicitors:

Ref No.

Notes for the Claimant

If you request the decision to be reconsidered at a hearing in open court under CPR PD 8C 7.4, you must complete and serve the enclosed Form 86B within 7 days of the service of this order.