

**IN THE MATTER OF SECTION 70 OF THE TOWN AND COUNTRY PLANNING ACT 1990;
SECTION 38(6) OF THE PLANNING AND COMPULSORY PURCHASE ACT 2004 AND
REGULATIONS 3, 4 & 26 OF THE TOWN AND COUNTRY PLANNING (ENVIRONMENTAL
IMPACT ASSESSMENT) REGULATIONS 2017**

**Re: Opinion concerning the correct legal approach to climate change in
determining Planning Application 20/02559/FU**

LEGAL OPINION

Plain Language Summary (4 pages)

1. When considering Leeds Bradford Airport’s planning application, the Plans Panel is under two legal obligations relating to the climate change impact of the proposal:
 - (1) The Panel cannot grant or refuse planning permission unless it:
 - (a) understands whether the proposal will have a likely significant impact on the environment by contributing to climate change and
 - (b) takes that impact into account in making its decision on planning permission.This is the obligation in regulations 3, 4 and 26 of the Environmental Impact Assessment Regulations 2017 (“**EIA Regulations**”);
 - (2) The Panel is obliged to consider climate change impacts when it decides whether the proposal fails to comply with the **Core Strategy policy SP12** because of its adverse environmental effects and whether it fails to comply with paragraph 148 of the National Planning Policy Framework (“**NPPF**”), which requires planning decisions to “shape places in ways that contribute to a radical reduction in greenhouse gas emissions”.
2. **It would be unlawful for the Plan Panel to ignore the climate change impact of the proposal, or to assume that the impact can be accommodated** (for example, by assuming that national carbon budgets can absorb any extra emissions; or by assuming any international carbon reduction schemes will reduce or neutralise extra emissions). If the Panel made these assumptions, it would be doing the opposite of what the EIA Regulations require. Ignoring the climate change impact would also fail to understand policy SP12 and paragraph 148 of the NPPF.

Legal Obligation 1: Likely Significant Impact by Contributing to Climate Change

3. The Panel is legally obliged under the EIA Regulations to understand whether the proposal will have a likely significant impact on the environment by contributing to climate change. This breaks down as follows:
 - (1) “Likely” means “possible”.
 - (2) “Significant” means “more than trivial,” depending on the circumstances of the proposal.

- (3) Significance has to be judged against the relevant “environmental protection objectives”, which the Court of Appeal has held include the UK’s statutory obligation to achieve net zero by 2050 and the UK’s obligations under the Paris Agreement to limit emissions in order to avoid more than 2 degrees of global warming. They also include regional and local objectives: the West Yorkshire Combined Authority’s target of net zero by 2038; Leeds’ own target of net zero by 2030.
4. The courts have stated that “likely significant impact” is designed to be quite a low threshold. This is because of how important it is that environmental impacts are fully considered before any decision is made whether to permit the development.
 5. The climate change impact of a proposal means the impact of any additional emissions that it will cause which contribute to global warming or global heating: most commonly greenhouse gas emissions (“GHG” emissions, sometimes referred to as CO₂ or CO₂e), but also the water vapour contrails caused by aeroplanes, because they create warming by trapping more radiation in the atmosphere (known as “radiative forcing”).
 6. A proposal causes emissions directly (eg emissions from the building); indirectly (eg emissions it facilitates, by allowing more planes to fly); cumulatively (eg emissions that accumulate over time) and in combination (eg in combination with emission from other similar proposals likely to come forward). In the context of airport development, the main emissions are those caused by increasing domestic and international flights. The Panel is legally obliged to consider all these emissions.
 7. Once any emissions are released into the atmosphere, they will cause warming. This will have an impact on whether the relevant “environmental protection objectives”, set out above, can be met, and so on whether planning permission can be granted.
 8. The UK has put in place carbon budgets under the Climate Change Act 2008. The existence of these national budgets does not mean the Panel can avoid determining the likely significant climate change impacts of the proposal, nor can the Panel just assume that the national government can absorb the extra emissions from the proposal into the budgets. This would be unlawful, for three main reasons:
 - (1) The UK carbon budgets include emissions from a lot of different sectors (eg power stations; the gas network; ground-based transport; all industry; all agriculture and food production; and all users, from hospitals to schools to universities). Almost all single developments appear to have very small impacts when compared to the whole of the UK’s carbon budget.
 - (2) The overall purpose of the carbon budgets is to limit emissions, so using them as a reason to justify more emissions and assuming those emissions can be accommodated is the opposite of how the budgets are supposed to influence decisions.

- (3) The carbon budgets are only one of the environmental protection obligations. There is also the more stringent obligation under the Paris Agreement, plus regional and local obligations – the Panel is obliged to take all these into account.
9. Focusing on emissions from international flights, it would also be unlawful for the Panel to assume that any extra emissions would be absorbed by CORSIA (the Carbon Offsetting and Reduction Scheme for International Aviation). This is for two reasons:
- (1) CORSIA has not in fact begun to operate as a carbon offset regime. It begins with a pilot phase in 2021 and a voluntary phase in 2024, and the details of the scheme are yet to be determined (for example, it is not yet decided what will count as a valid ‘offset’). The scheme is also designed to end in 2035 and will, even if it operates with the best anticipated efficiency, only cover 6% of projected CO₂ emissions from all international aviation between 2015 and 2050. The scheme is thus too uncertain to justify any assumption by the Panel that it will operate to offset all, or even most, of the additional emissions from international aviation caused by the proposal.
 - (2) The Committee on Climate Change (“CCC”) – the independent statutory body tasked with advising the government under the Climate Change Act – addressed CORSIA in its Net-Zero Report (May 2019), and stated: “It is essential that these internationally-focused efforts are additional to putting in place robust and effective policies to achieve net-zero GHG emissions domestically in the UK and are not an alternative for doing so.” (pg 47, emphasis added). The result of the CCC’s advice is that efforts like CORSIA cannot be used to justify emissions or to assume that emissions will comply with the net zero obligation.
10. Accordingly, the Panel is obliged to consider the evidence before it on the likely significant impact of the proposal on climate change. That evidence includes credible information provided by objectors, because one of the goals of the EIA Regulations is to ensure the public are able to contribute to the environmental information before the decision-maker. In light of the evidence currently submitted to the Council and available on the planning portal, it is my view that it would be lawful for the Panel to determine that the emissions from the proposal would cause a likely significant adverse impact on climate change.
11. **The Panel cannot lawfully decide whether to grant or refuse planning permission unless it takes the impact on climate change into account.**

Legal Obligation 2: Planning Considerations under Local and National Policy

12. The Panel is then obliged by the Planning and Compulsory Purchase Act 2004 to consider whether the adverse environmental impact on climate change (as well as any other adverse impacts and any benefits) mean that the proposal fails to comply with the main relevant planning policy, SP12. This policy does not allow

support for development at the airport unless adverse environmental effects are properly mitigated.

13. As explained above, the Panel cannot simply assume that the existence of the UK carbon budgets and CORSIA will mitigate the GHG emissions or the warming impact of contrails. The Panel is also obliged to take into account evidence on the environmental costs of the proposal, as this is relevant to determining compliance with SP12. In my view, in light of the evidence currently submitted to the Council and available on the planning portal, it would be lawful for the Panel to determine that the proposal does not comply with policy SP12.
14. The Panel is also obliged to consider whether the proposal complies with paragraph 148 of the NPPF, which requires planning decisions to “shape places in ways that contribute to a radical reduction in greenhouse gas emissions”. In my view, in light of the evidence currently submitted to the Council and available on the planning portal, it would be lawful for the Panel to determine that the proposal does not comply with this national policy.

Conclusion

15. This is the plain language summary of a more detailed legal advice which sets out the relevant legislation and case law.
16. In summary, the legal obligations in regulations 3, 4 and 26 of the Environmental Impact Assessment Regulations 2017, the statutory duty in section 38(6) of the Planning and Compulsory Purchase Act 2004 and the obligation in national policy to secure a radical reduction in GHG emissions mean that it would be unlawful for the Plans Panel to ignore the climate change impact of the proposal, or to assume that the impact can be accommodated.
17. **The Panel cannot lawfully decide whether to grant or refuse planning permission unless it takes the impact of the proposal on climate change into account. Ignoring the climate change impact would also fail to understand policy SP12 and paragraph 148 of the NPPF.**

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