

Gatwick presentation

On behalf of Dorking Climate Emergency

Thank you. I'm Tim Crosland, director of the climate justice charity, Plan B, and today representing Dorking Climate Emergency.

I'm going to talk mainly about the litigation over Heathrow expansion, and its relationship to Gatwick plans to expand passenger capacity in light of a recent decision from the European Court of Human Rights. But first I'm going to provide a couple of bits of background.

It's been five years and one day since the British Parliament declared a climate and environmental emergency. Speaking on 1 May 2019, on behalf of the government Michael Gove said:

"I make it clear that the Government recognise the situation we face is an emergency. It is a crisis, and it is a threat that we must all unite to meet"

A few years before that, in December 2015, I served as a legal adviser to some of the small island states at COP21 in Paris. It was an emotional moment when the international community adopted the Paris Agreement, giving international recognition to the 1.5°C temperature limit for the first time. For the people I work for and others, this was not an abstract number or goal. It was recognition of their right to exist. It was their lifeline.

The British Government claimed to be a champion of the Paris Agreement. But just 2 ½ years on, in June 2018, Chris Grayling, Secretary of State for Transport, signed the Airports National Policy Statement in support of Heathrow expansion (referred to as 'the ANPS'). Lord Deben and Baroness Brown, Chair and Vice Chair of the Climate Change Committee at the time, wrote to him as follows:

"The UK has a legally binding commitment to reduce greenhouse gas emissions under the Climate Change Act. The Government has also committed, through the Paris Agreement, to limit the rise in global temperature to well below 2°C and to pursue efforts to limit it to 1.5°C. We were surprised that your statement to the House of Commons on the National Policy Statement on 5 June 2018 made no mention of either of these commitments."

Their statement, and Grayling's reply to it, reinforced a suspicion that the Government knew the expansion plans were inconsistent with the Paris Agreement, but had decided to press ahead anyway.

Plan B, along with others, brought a judicial review against the ANPS. Through the process of litigation the following two facts emerged:

The Department of Transport's own estimate was that the expansion of Heathrow Airport, with no other airport expansion in the UK, would result in 40 million tonnes of carbon dioxide emissions, just from UK aviation, every year by 2050

The Department of Transport knew that could not be reconciled with the Paris Agreement.

As these facts came into focus, the Department of Transport changed its line of defence: it claimed it had treated the Paris Agreement as "irrelevant", as it was an international treaty not part of domestic law. They were therefore under no legal obligation to take it into account.

The Court of Appeal rejected that argument and ruled the ANPS unlawful on that basis:

"In particular ... it was a basic defect in the decision-making process that the Secretary of State expressly decided not to take into account the Paris Agreement ... That was a fundamentally wrong turn in the whole process." (para. 276)

The Supreme Court reversed that decision, ruling that "Ratification [of the Paris Agreement] does not constitute a commitment operating on the plane of domestic law to perform obligations under the treaty".

That decision appeared to have removed a critical legal impediment to aviation expansion in the UK.

But that changed on 9 April this year, with the European Court of Human Rights historic ruling against the government of Switzerland. For the first time, the Court ruled that member states have a positive legal obligation to implement policies to ensure compliance with the Paris Agreement. And that ruling applies not just to Switzerland but all 46 countries of the Council of Europe, including the UK.

Plans to expand passenger capacity from Gatwick are incompatible with the 1.5°C reduction of emissions across all sectors of the economy, including aviation. Following the decision in Strasbourg, those plans now face overwhelming legal obstacles and development consent should be refused now.

Thank you.

Question:

The Committee on Climate Change's 2023 progress report to Parliament, published subsequent to the Government's 'Jet Zero Strategy', states at p.267:

"No airport expansions should proceed until a UK-wide capacity management framework is in place to annually assess and, if required, control sector CO2 emissions and non-CO2 effects."

In April of this year the European Court of Human Rights ruled that states, including the UK, have a positive legal obligation to ensure policies do not breach the internationally recognised temperature Agreement.

On 3 May the High Court ruled that the Government's climate plans were irrational and unlawful and not supported by the evidence.

What assessment has Gatwick Airport undertaken to show that the increased carbon emissions from its plans to expand passenger capacity are consistent with i) the 1.5°C temperature limit; ii) the UK Climate Change Act 2008?