

IN THE COURT OF APPEAL, CIVIL DIVISION



22585

REF: C1/2011/0483



THE QUEEN ON THE APPLICATION OF
GRIFFIN (ON BEHALF OF "FIGHT THE
FLIGHTS')

-v- NEWHAM LONDON BOROUGH COUNCIL &
ANR

ORDER made by The Rt. Hon. Lord Justice Sullivan

On consideration of the appellant's notice and accompanying documents, but without an oral hearing, in respect of an application for permission to appeal

Decision: granted, refused, adjourned. An order granting permission may limit the issues to be heard or be made subject to conditions.

Permission to appeal refused.

ReasonsGrounds 1-3

Do not have a real prospect of success. They rely on one element of the January 2009 statement by the Secretary of State, plucked out of context. When the statement is read as a whole it is clear that, rightly or wrongly, the Government has very carefully (the Appellant would say disingenuously) facing both ways in policy terms. While it was announcing a change in climate change policy (the new 2050 target), the Government was at the same time making it clear that its ATWP policy in respect of aviation capacity remained unchanged. Hence the approval of the third runway at Heathrow in accordance with the ATWP, the linking of "Any future capacity increases at Heathrow beyond the decision I have announced today" to the CCC's review of progress towards achieving the 2050 target, and the emphasis on new technologies and the sustainable use of renewable fuels as illustrations of the manner in which the 2050 target might be met. The statement does not acknowledge that the two policies, the new 2050 target and continued adherence to the capacity increases in the ATWP, are inconsistent. The Appellant's view that they are inconsistent is readily understandable, but that was not the Government's stated policy position when consent to vary the conditions on the permission was granted in July 2009: the Government's "approach to the future of aviation remain[ed] unchanged", as stated in paragraph 2.19 of the July 2009 officers' report. The December 2009 CCC Report supports the Appellant's view that there was an inconsistency between the two policies, and that there may well need to be some reduction in the increases in capacity assumed in the ATWP if the 2050 target is to be met, but that is to consider the matter with the benefit of hindsight, which was not available to the Respondent in July 2009.

Grounds 4-5

Have no prospect of success. There is a difference between an area where development is likely to affect land and an area where there is likely to be "significant community annoyance", but if Mr. Sahadevan's witness statement is read as a whole, it is clear that he applied the 57d BA contour as a starting point, and not as the sole criterion. He was entitled to conclude that the London Borough of Redbridge and Waltham Forest (and the members of the public within those boroughs) need not be consulted because "They lie a significant distance from the predicted full use 57d B.....contour."

While the interaction between climate change policy and aviation policy is, in principle, an issue of wide public importance, this appeal turns on a very narrow issue: whether the new 2050 target announced in January 2009 had caused the Government by July 2009 to change those policies in the ATWP which supported capacity increases at "other existing South East airports, including London City..." In July 2009 there had been no such change in policy, but any future decision-maker dealing with a proposed increase in airport capacity will have to consider the CCC's December 2009 Report, any further reports by the CCC, and the Statements of Government policy in March 2011 in the Appeal Bundle. A decision as to what the policy position was in July 2009 would not answer any issue of wider importance such as to amount to some other compelling reason for granting permission to appeal.

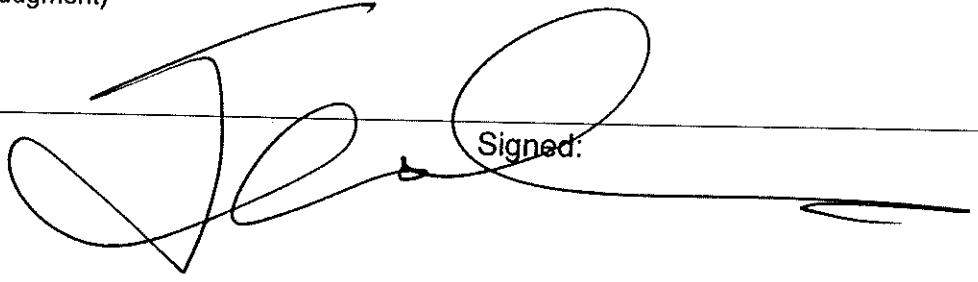
Information for or directions to the parties

The Respondent's application for the costs of its submissions in response to the application for permission to appeal is refused. The Respondent was not invited to make those submissions, and it chose to do so at its own costs. The Appellant's application for an interim PCO is therefore academic. The application for a PCO should be renewed if the Appellant renews her application for permission to appeal.



Where permission has been granted, or the application adjourned

- a) time estimate (excluding judgment)
- b) any expedition



Signed:

Date: 19th May 2011

By the Court

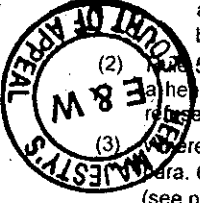
Notes

(1) Rule 52.3(6) provides that permission to appeal may be given only where –

- a) the Court considers that the appeal would have a real prospect of success; or
- b) there is some other compelling reason why the appeal should be heard.

(2) Rule 52.3(4) and (5) provide that where the appeal court, without a hearing, refuses permission to appeal that decision may be reconsidered at a hearing, provided that the request for such a hearing is filed in writing within 7 days after service of the notice that permission has been refused. Note the requirement imposed on advocates by paragraph 4.14A of the Practice Direction.

(3) Where permission to appeal has been granted, the appeal bundle must be served on the respondents within 7 days of receiving this order (see para. 6.2 of the Practice Direction to CPR Part 52). A letter of notification will be sent to the appellant or his solicitors, as soon as practicable (see para. 6.3).



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**DATED 19 MAY 2011
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**THE QUEEN ON THE APPLICATION OF
GRIFFIN(ON BEHALF OF FIGHT THE FLIGHTS)**

- and -

- 1. LONDON BOROUGH OF NEWHAM**
- 2. LONDON CITY AIRPORT LIMITED**

ORDER

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Lower Court Ref: CO/11145/2009