

BETWEEN:

THE QUEEN
(on the application of JENNIFER DAWES)

Claimant

- and -

SECRETARY OF STATE FOR TRANSPORT

Defendant

- and -

RIVEROAK STRATEGIC PARTNERS LIMITED

Interested Party



CONSENT ORDER

UPON reading the Statement of Facts and Grounds for judicial review and supporting evidence

AND UPON permission for judicial review having been granted on all grounds by the Order of Mrs Justice Lang dated 12 October 2020

AND UPON reading the Defendant's letter to the Claimant dated 1 December 2020 consenting to judgment and the Interested Party's email confirming that they will not be defending the claim

UPON the Defendant indicating in correspondence that the Claimant's claim is conceded on the basis of ground 1(b);

AND UPON reading the Statement of Reasons justifying the making of this Order as agreed between the Claimant, the Defendant and the Interested Party

IT IS HEREBY ORDERED BY CONSENT THAT:

1. The Claimant's claim for judicial review is allowed on ground 1(b).
2. The Secretary of State's decision dated 9 July 2020 to make the Manston Airport Development Consent Order 2020 is quashed.
3. The Defendant shall pay the Claimant's reasonable costs of the claim on the standard basis to be subject to detailed assessment by the Court if not agreed. In accordance with the Order of Mrs Justice Lang dated 12 October 2020, such costs shall be limited to £35,000 but the parties may make written submissions to the Court on whether this is exclusive of VAT if the matter is not disposed of by the Court of Appeal in *R(o.a.o. Friends of the Earth) v Secretary of State for Transport* C1/2019/1056(B).
4. The Interested Party shall pay the Claimant's additional costs occasioned by the Interested Party of the claim on the standard basis to be subject to detailed assessment by the Court if not agreed. In accordance with the Order of Mrs Justice Lang dated 12 October 2020, such costs shall be

limited to £35,000 but the parties may make written submissions to the Court on whether this is exclusive of VAT if the matter is not disposed of by the Court of Appeal in *R(o.a.o. Friends of the Earth) v Secretary of State for Transport* C1/2019/1056(B).

5. The Defendant shall make an interim payment in respect of the Claimant's costs in the sum of £20,000 within 21 days of the date of this Order.
6. The hearing listed for 1.5 days on 16 and 17 February 2021 is vacated.

Approved by Mr Justice Holgate 15/02/2021

We the parties consent to an order in the above terms

Signed.....*Harrison Grant*.....

Harrison Grant, Solicitors for the Claimant

Dated: 18 December 2020

Ref: DAW0011/SR

Signed.....*for the Treasury Solicitor*.....

Government Legal Department for the
Defendant

Dated: 18 December 2020

Ref: Z2008345/JBY

Signed.....*BDB Pitmans LLP*.....

BDB Pitmans LLP, Solicitors for the
Interested Party

Dated:

Ref:

Statement of Reasons

1. The Claimant advances three grounds of challenge in this judicial review claim as set out in the Statement of Facts and Grounds:
 - (1) (a) Breach of the Tameside Duty
 - (b) Failure to Give Reasons
 - (2) Breach of Procedural Requirement/Unfairness
 - (3) Net Zero Duty
 - (a) Failure to Discharge the Net Zero Duty
 - (b) Failure to have regard to mandatory material considerations
2. The Defendant accepts that his decision letter dated 9 July 2020 (the “Decision Letter”) did not give adequate and intelligible reasons to enable the reader to understand why he disagreed with the Examining Authority Report on the issue of need for the development of Manston Airport. The lack of adequate reasons in the Decision Letter rendered the Secretary of State’s decision dated 9 July 2020 to make the Manston Airport Development Consent Order 2020 (the “Manston DCO”) unlawful.
3. The Interested Party has indicated in its email to the Claimant and Defendant of 1 December 2020 that it will not continue to defend the claim.
4. The parties therefore consent to the Court allowing the Claimant’s claim on the basis of ground 1(b) and to the quashing of the decision to make the Manston DCO.
5. The application for development consent by the Interested Party will be remitted back to the Secretary of State to determine in accordance with rule 20(2) of the Infrastructure Planning (Examination Procedure) Rules 2010.
6. The issue of whether the Aarhus Convention costs cap is exclusive of VAT is to be disposed of by the Court of Appeal in *R(o.a.o. Friends of the Earth) v Secretary of State for Transport C1/2019/1056(B)* so the parties reserve their position on this pending that decision; if the issue is not so disposed of, then the parties shall be permitted to make written submissions to the Court on this issue.

7. In the light of the above, it is requested that the Court make the Consent Order without the need for attendance by the parties.