The Court of Appeal, in *R (Friends Of The Earth) V Secretary Of State For Transport And Others* ruled on 27 February 2020 that Heathrow Airport’s plans to build a third runway were illegal because there was no consideration given to climate change obligations under the Paris Climate Agreement.

The third runway scheme, estimated to cost £14bn was challenged by environmental groups due to concerns that an additional runway would encourage more air travel and in turn increase carbon emissions.

The Government failed to consider the provisions contained in the 2016 Paris Agreement when preparing the Airport National Policy Statement (‘ANPS’) for the Heathrow expansion. It is true that the Secretary of State did take into account the implications of meeting targets under the Climate Change Act 2008; however, under legal advice, a conscious choice was made not to consider the Paris Agreement. In the Court’s view, this omission was unlawful.

Lord Justice Lindblom made clear that the Court of Appeal ruling was not intended to consider the merits of the decision to construct a third runway, but merely to consider the Government’s requirements under law to consider all national policy statements prior to preparing the ANPS. On this basis, it is possible for the Government to amend and resubmit the ANPS to comply with this requirement. Although the Government has said that it will not appeal this decision, Heathrow Airport has declared an intention to appeal to the Supreme Court.

Comment

This is the first ruling in the English courts to take the Paris Agreement into account and it may have wide-reaching implications to the other signatories to the agreement. There is the possibility that other infrastructure projects in the UK may be challenged on the basis that the Paris Agreement was not considered in the decision making process.

It also shows that the English courts are placing increasing importance on climate change commitments and it is likely that future cases will also be seen through this lens. As stated in the Court of Appeal judgment: “the issue of climate change is a matter of profound national and international importance”.

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