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IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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ON APPEAL FROM THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND KING'S BENCH DIVISION (JUDICIAL REVIEW)

Between:

JOHN HAMILTON HASSARD, ROBERT BRUCE, CAROL PORTER, ROBERT McKEAN, DAVID PEOPLES, WILDRIGE COOTE, DERICK DONNELL, DAVID BRUSH AND VICTOR BRUSH

Respondents/Applicants

and

THE DEPARTMENT FOR INFRASTRUCTURE

Appellant/Respondent

and

NIALL McKENNA, MICHAEL KERR, GRAINNE DONNELLY, BARBARA WARD, BENNY HURL, DAMIEN HARVEY, SEAMUS MARLOW, COLIN MULLIN AND SEAN QUINN AS COMMITTEE MEMBERS OF THE ENOUGH IS ENOUGH CAMPAIGN GROUP

and

THE DEPARTMENT OF AGRICULTURE, ENVIRONMENT AND RURAL AFFAIRS

and

FRIENDS OF THE EARTH

Notice Parties

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Mr Tony McGleenan KC, Mr David Elvin KC with Mr Philip McAteer and Mr Michael Neeson (instructed by the Departmental Solicitor's Office) for the Appellant and Notice Party
Mr Marc Willers KC with Mr Acland Bryant (instructed by McIvor Farrell Solicitors) for the Respondents
Mr Stephen Toal KC and Mr Plunkett Nugent (instructed by Conor Sally & Co Solicitors) for Enough is Enough, Notice Party

Mr David Wolfe KC with Mr Conor Fegan (instructed by Laura Neal) for Friends of the Earth, Notice Party

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Before: Keegan LCJ, Treacy LJ and Humphreys J

KEEGAN LCJ (*delivering the judgment of the court*)

Introduction

[1] This is an appeal from a decision of Mr Justice McAlinden ("the judge") provided on 23 June 2025, reported at [2025] NIKB 42 whereby he quashed a decision made by the Department for Infrastructure ("DfI") to proceed with the first phase of the western transport corridor of the A5 Road dual carriageway scheme ("the A5 WTC") and consequential orders. He confirmed this outcome in a second decision of 11 March 2026 reported at [2026] NIKB 10 following remittal of one aspect of the appeal.

[2] An appeal from the DfI decision to proceed with the A5 WTC had been brought pursuant to Article 67BA of the Roads (Northern Ireland) Order 1993 as amended ("the 1993 Order") by members of the Alternative A5 Alliance and named individuals. This appeal was successful before the judge on three grounds, namely that there was a flawed environmental impact assessment, non-compliance with climate change obligations and a breach of human rights. We will deal with all of these issues in due course in this judgment, but first we set out some history in relation to this road and the litigation history.

[3] The current A5 road is a 52.8-mile (85 kilometres) road linking Derry/Londonderry with Aughnacloy in Co Tyrone close to the Irish border. It is a primary north/south route with the result that improvement of the road is not only supported and financially backed by the Northern Ireland Executive but also by the government of the Republic of Ireland ("RoI"). The principal reasons why improvement in this road is supported relate to improving the network but also road safety. Road safety is an obvious and pressing issue given the number of deaths that have occurred on this road in recent years, many of them young people. This had led to campaign groups such as Enough is Enough who were represented in this court advocating for urgent change. Mr Toal KC graphically presented the current picture to this court in his address on behalf of those bereaved. To quote Mr Toal:

> "Over the past 10 years on average a person is injured every 4 days on the A5. They are injured because these are not low speed, low impact collisions. It is an absolute miracle that we have only lost 57 people in 18 years."

[4] He also reminded us of what the judge said at first instance at para [300] of his judgment as follows:

> "I am acutely aware that this decision will bring significant, fresh anguish to the doors of those who have been injured and maimed and those who have lost loved ones as a result of road traffic accidents on the existing A5 road. One of the primary justifications for the construction of this new road is that it will be much safer than the existing road and that, over time, many lives will be saved and many serious injuries prevented and many families will be spared the utter heartbreak of the sudden and shocking loss of a loved one. It is likely that delays in the progression of this scheme will coincide with the occurrence of further loss of life and serious injury on the existing road. These matters combined with the other benefits identified by the PAC in its 2023 report were considered to constitute overwhelmingly compelling arguments for the progression of this scheme. However, the decision to proceed with the scheme must be taken in accordance with the law and the principle of the rule of law cannot be subverted, even if the motivation for doing so is to achieve what is deemed to constitute a clear societal benefit. The shortcomings and shortcuts in the decision making highlighted in this judgment are capable of being remedied. The relevant Ministers, departments and officials should redouble their efforts to deal with these shortcomings and that may involve the finalisation of a CAP which is long overdue. But irrespective of the difficulties in overcoming these shortcomings, concerted efforts must be made by all concerned so that sooner, rather than later, a new and safer A5 dual carriageway may come into operation and the long list of names of those who have perished on that road will not be added to."

[5] Of course, any large road project such as this must comply with environmental requirements. In addition, any large road project such as this comes at a cost to adjoining landowners who are affected and stand to lose land. These realities frame the legal arguments. In addition, it is no overstatement to say that the litigation history has been long and torturous. The judge has helpfully recounted the background in his judgment and so we simply summarise the progression of the case to date by reference to the following milestones as follows.

[6] On 12 March 2013, Stephens J quashed a decision to proceed with this road on the basis that an appropriate assessment ought to have been, but was not, carried out on the River Foyle and the River Finn. Thereafter, a second decision to proceed was

quashed on 15 November 2018, on the basis that the Permanent Secretary of DfI, who made the decision to proceed, acted *ultra vires* at a time when the Executive was suspended applying the principles found in *Buick* [2018] NIQB 43, [2018] NICA 26.

[7] We are concerned with a third decision to proceed with the A5 road. This decision was prefaced by an updated environmental statement ("ES"), consultation and a Planning Appeals Commission ("PAC") Inquiry convened in 2020, adjourned and then reconvened which produced a final report in 2023, the details of which we shall return to.

[8] Following a recommendation that the road should be proceeded with, the responsible Minister at the time Mr John O'Dowd MLA decided that any decision to proceed required full Executive approval. Thus, the matter went before the Executive Committee on 2 October 2024 and was approved. A Ministerial Statement issued the same day. Thereafter, the judicial review proceedings were brought.

[9] The responsible department is the DfI however, the Department for Agriculture, Environment and Rural Affairs ("DAERA") has also played a part in this case which has evolved through the current litigation. DAERA has policy and legislative responsibility for compliance, specifically the responsibilities set out in the Climate Change Act (Northern Ireland) 2022 ("the 2022 Act"). DAERA is the lead department responsible for the compliance with environmental targets in Northern Ireland and is specifically tasked with producing a Climate Action Plan ("CAP").

[10] Given the above context, it is surprising that DAERA did not play any part in first instance proceedings. DfI appeared at the lower court as the only relevant department. Thereafter, DAERA sought to intervene at the Court of Appeal stage on the climate change issue and file evidence. There was also an application by Friends of the Earth to intervene in the Court of Appeal. After some preliminary hearings there was consent from all to DAERA and Friends of the Earth added as notice parties. Thereafter, DAERA's position developed into one of substance in that there was a request to file evidence and DAERA effectively took the burden of the climate change arguments before this court. This led us to remit the climate change aspect of the appeal to the judge as he had not been sighted on any of the fresh evidence that DAERA filed. The judge provided a second judgment after the remittal in which he decided that what was before him was effectively a new case. As such he decided that he would not engage substantially with the fresh evidence and that his original decision stood.

[11] Suffice to say, that the approach to this litigation adopted by the relevant departments has been unsatisfactory and caused delay. Whilst we asked for an explanation as to how this came about, the response we received does not satisfy us that full thought was given to this case at the appropriate stage. This is surprising in a context where DAERA has substantially advanced the argument in the climate change challenge and filed new evidence. The stated position that the judge should

somehow, of his motion, have made DAERA an intervener at the lower court when DfI were not advancing this is unfair to him. Furthermore we signal that the approach adopted may become relevant when it comes to costs.

Findings of the court at first instance

[12] We commend the judge for the comprehensive judgments he has provided in which he sets out the wealth of evidence that was before him in commendable detail. We do not intend to repeat his factual analysis in this judgment. In summary, the judge found that the DfI decision was unlawful for the following reasons:

(a) The department's decision breaches section 52(1) of the 2022 Act and was irrational due to there being an inadequate evidential base for it to conclude that the decision complied with section 52(1);

(b) The department failed to comply with the obligations of the Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment ("the EIA Directive"), transposed into domestic law by Part V of the 1993 Order as it applied prior to 16 May 2017; and

(c) The department failed to consider and give adequate reasons in respect of the interference that the A5 dual carriageway scheme would have on the applicants' rights protected by article 8 of the European Convention on Human Rights ("ECHR").

[13] The judge dismissed all other grounds of challenge to the decision and ordered that the appellant pay the respondents' costs in accordance with the Aarhus costs cap in the sum of £35,000 plus VAT.

Issues on appeal

[14] The appeal is now brought by the two relevant departments, DfI as appellant and DAERA as notice party. (It has been necessary to refer to the two departments interchangeably by acronym or as the appellant/appellants to maintain the flow of this judgment). Many points are articulated in a series of appeal notices. However, there are essentially four substantive matters for this court to decide upon as follows:

(i) Was the judge correct to quash the decision on the basis of non-compliance with the EIA Directive?

(ii) Was the judge wrong to quash the decision on human rights grounds?

(iii) Was the judge wrong to quash the decision for non-compliance with the obligations contained in section 52(1) of the 2022 Act?

(iv) Was the judge wrong in how he dealt with the evidence in relation to climate change on remittal to uphold the original decision?

[15] We will answer each of these questions in the order we have set out above. Additionally, we note that the departments make the case that even if some illegality is established the decision should not be quashed. First, we turn to the relevant legal framework.

Legislative framework

Climate Change Act (Northern Ireland) 2022

[16] Sections 1, 3-5 and 24 of the 2022 Act are as follows:

> "**The emissions targets for 2050**
>
> 1.—(1) The Northern Ireland departments must ensure that the net Northern Ireland emissions account for the year 2050 is at least 100% lower than the baseline.
>
> (2) The Northern Ireland departments must ensure that the net Northern Ireland emissions account for carbon dioxide for the year 2050 is at least 100% lower than the baseline for carbon dioxide.
>
> (3) The duty in subsection (1) does not require the net Northern Ireland emissions account for methane for the year 2050 to be more than 46% lower than the baseline for methane.
>
> …
>
> **The emissions target for 2040**
>
> 3. The Northern Ireland departments must ensure that the net Northern Ireland emissions account for the year 2040 is in line with the target for the year 2050.
>
> (NOTE: Section 3 was amended by NI SR 2024/214 and as from 12 December 2024 reads:
>
> "The Northern Ireland departments must ensure that the net Northern Ireland emissions account for the year 2040 is at least 77% lower than the baseline.")

The emissions target for 2030

4. The Northern Ireland departments must ensure that the net Northern Ireland emissions account for the year 2030 is at least 48% lower than the baseline.

Power to amend emissions targets

5.—(1) The Department may by regulations amend section 1, 3 or 4 so as to specify—

(a) for a particular emissions target, an earlier year than that for the time being specified;

(b) for a particular year, a higher percentage than that for the time being specified.

(2) The Department may by regulations amend this Part so as to impose a duty on the Northern Ireland departments to ensure that the net Northern Ireland emissions account for a specified year is at least a specified percentage lower than the baseline.

(3) See section 54 for restrictions on the powers conferred by subsections (1) and (2).

…

Emissions not to exceed carbon budget

24. The Northern Ireland departments must ensure that the net Northern Ireland emissions account for each budgetary period does not exceed the carbon budget for that period."

[17] Section 52(1)(a) of the 2022 Act states:

"(1) The duties mentioned in sections 1, 3 to 5 and 24 on the Northern Ireland departments (namely, to ensure that the net Northern Ireland emissions account is below a certain amount and that the net Northern Ireland emissions account for carbon dioxide for 2050 is below a certain amount) are duties on each of them—

(a) to exercise its own functions, so far as is possible to do so, in a manner that is consistent with the achievement of that objective."

EIA Directive 2011/92/EU

[18] The A5 WTC project amounts to a development to which the EIA Directive applies. The relevant transposing measure is Part V of the 1993 Order, as it applied prior to 16 May 2017.

[19] We adopt the background to this aspect of the challenge set out by the judge between paras [214] and [236] of his first judgment.

[20] In summary, the EIA Directive requires:

(i) publication of an environmental statement;

(ii) consultation with the public and statutory consultation authorities;

(iii) consideration of all the environmental information; and

(iv) a decision on whether to authorise the project.

[21] The difference between an environmental statement and the process of assessment is illustrated by the description of the assessment process in Article 67A of the 1993 Order (and Articles 5–10 EIA Directive):

> "(7) Before deciding whether to proceed with the construction or improvement in relation to which an environmental impact assessment has been made, the Department must take into consideration—
>
> (a) the environmental statement;
>
> (b) any opinion on that statement or the project which is expressed in writing by —
>
> (i) any of the consultation bodies; or
>
> (ii) any other person;
>
> and is received by the Department within any period specified for the purpose;
>
> (bb) where Article 67B applies, and the EEA State has indicated in accordance with paragraph (4) of that Article that it wishes to participate in the procedure required by this Part, any opinion on that statement or the project which is expressed in writing by—

(i) the EEA State;

(ii) a member of the public in the EEA State; or

(iii) an authority having environmental responsibilities designated by the EEA State to be consulted about the project under Article 6(1) of the Directive;

and is received by the Department within the period specified under sub-paragraph (3A)(i);

(c) where a local inquiry is held, the report of the person who held the inquiry."

European Convention on Human Rights

[22] Article 8 of the ECHR states:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Human Rights Act 1998

[23] Section 6 of the Human Rights Act 1998 (Acts of Public Authorities) states:

> "(1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right."

Consideration

1. Compliance with EIA Directive obligations

[24] Part V of the 1993 Order provides for road projects to be subject to environmental impact assessment ("EIA") and requiring an Environmental Statement ("ES"). This legislation was amended most recently in 2017 to give domestic effect to changes to European Union ("EU") Directives. It was further amended in 2019 to take

account of Brexit. As the ES in this case is 2016, provisions relating to content and procedure introduced in 2017 do not apply because the ES was prepared before 16 May 2017. Whether that was a conscious choice not to file a fresh ES for the public inquiry after the quashing in 2018, we have not been addressed on. In any event, certain obligations remain. The EIA Directive provides the framework for assessing the effects of certain public and private projects on the environment. The A5 WTC project amounts to a development to which the EIA Directive applies and was subject to the requirement to conduct an EIA in accordance with the EIA Directive.

[25] The EIA process aims to ensure that projects likely to have significant effects on the environment are subject to an assessment prior to their authorisation. As noted by the appellant and the judge, the EIA is, in essence, a form of regulated consultation which seeks to ensure that environmental decision-making is informed to the greatest degree possible by a detailed understanding of the likely significant environmental effects of a project. In this case the focus is upon the nature and extent of the obligations imposed by the EIA Directive on the appellant.

[26] As at first instance, the respondent's argument centred on the appellant's alleged failure to assess the impacts arising from induced cross-border travel originating from or terminating in the Republic of Ireland in particular, the Greenhouse Gas ("GHG") emissions associated with such journeys. In summary the challenge is that a lack of explicit reference to increased GHG emissions from induced trips fundamentally undermined the integrity of the EIA process. This was all at a time when a climate change effects assessment under the EIA Directive and 1993 Order provisions was not mandatory.

[27] In any event, the point was made that although the appellants engaged in a further exercise to produce estimates of GHG emissions resulting from induced trips, this was not available at the public inquiry and had not been subjected to consultation. As this contains further environmental information relevant to the decision, these new GHG estimates ought to have been disclosed to the public in advance. In this regard reliance is placed upon the fact that the department's only reference to these emissions is in an Annex to its decision letter.

[28] In dealing with these points the judge considered the affidavit evidence of Mr Gokuldas Gopalakrishnan. He acknowledged that the PAC only recommended that the DfI publish the revised GHG emissions estimates. However, he found that such environmental information was "new and sufficiently important to warrant it being made the subject of further consultation and scrutiny prior to any decision being made." In this way, although the judge considered that the assessed increase in GHG emissions did not move the estimated impact into a different category above "large adverse", because the methodology used to estimate these estimates was not subjected to independent public scrutiny, the weight to be attached to the appellant's argument must be doubted. He therefore concluded that the department's failure to undertake such a consultation breached its obligations under the EIA Directive.

[29] In reaching this conclusion, the judge reasoned at para [296] as follows:

> "The respondent's contention that the GHG assessment simply represents the outworking of the PAC recommendation to update the assessment is not completely accurate. It is correct to say that the PAC recommended that the GHG emissions assessment should be updated to identify the emissions estimated to result from that portion of the scheme which was actually approved. However, the part of the recommendation relating to estimates of GHG emissions produced by induced trips was a recommendation to carry out new work to produce new environmental information which was not included in the existing GHG emissions estimates and which the PAC concluded should have been. Fresh work was required to remedy an omission. The new environmental information resulting from this fresh work needs to be put out for consultation and subjected to scrutiny in order to ascertain whether the methodology adopted is appropriate and robust."

[30] The appellant disagrees with the above conclusion and submits that the judge erred in three main respects:

(i) in his analysis of and findings in relation to compliance with the EIA Directive;

(ii) in particular, in concluding that the appellant could not lawfully proceed with its decision in the absence of further consultation in respect of its methodology for estimating GHG emissions from induced trips and to do so in the context of further environmental impact assessment; and

(iii) in his conclusion that the failure to undertake that consultation amounted to a breach of the obligations of the EIA Directive transposed by Part V of the 1993 Order.

[31] Although the appellant acknowledges that the EIA process represents a form of regulated consultation, the argument is advanced that it does not prohibit planning authorities from authorising developments which have been assessed as likely to produce adverse effects. Rather, the argument was advanced that the EIA process requires that these effects are identified and assessed in a manner which facilitates public participation. Thus, it was submitted that the fact that information may be required as the result of the public inquiry process does not therefore require further consultation.

[32] In this regard, the appellant draws attention to the distinction between the content of the ES and the process of carrying out an EIA as follows. The ES represents

the assessment of environmental impact carried out by the department. Its purpose is to facilitate consultation on the project. Both the public and the expert statutory consultation authorities are entitled to comment upon the ES, along with those conducting the public inquiry. It is not required to be approached on the basis of a "counsel of perfection" as per *R (Blewett) v Derbyshire CC* [2004] Env LR 29 at para [41] and *R (Friends of the Earth Ltd and another) v Secretary of State for Transport* [2021] PTSR 190 at para [143]. All of those procedures will generate more environmental information. Therefore, the assessment process requires the department to take account of all information prior to taking a decision.

[33] The appellant's argument maintains that it is lawful for an ES to generate the consideration of additional materials or environmental information which did not form part of the original ES. Where the ES satisfied the minimum requirements, a decision to authorise a project such as the A5 WTC will be lawful, provided all of the environmental information is considered prior to the decision. Not all information is required to be produced in the form of an ES and may emerge as the result of an inquiry as per Sullivan J in *R (Davies) v Secretary of State* [2008] EWHC 2223 (Admin) at [36]-[41].

[34] Reliance is also placed upon the principles governing the adequacy of an ES as outlined in cases such as *Blewett* which are well established and have been further endorsed and applied in *R (Friends of the Earth Ltd and another) v Secretary of State for Transport* [2021] PTSR 190 at [142]-[150]; *Re Moreland and Owenvarragh Residents Association* [2022] NIQB 40, at ([91]-[97]; *Re Newry Chamber of Commerce* [2015] NIQB 65 (at [76]).

[35] In addition, the point is made that even if cross-border induced demand had been excluded from the ES, its environmental effects were considered in the overall assessment before the decision was authorised. This remains part of the normal functioning of the EIA process, illustrated in cases such as *Davies* at paras [36]-[41]. Therefore, the point is made that the ES was not deficient and does not prevent a decision-maker from using it as a proper basis for its decision-making, having regard to the information which became available at and after the public inquiry in 2023.

[36] Drawing all of the above together it is the appellant's argument that the effects arising from cross-border travel had been appropriately assessed. With respect to the GHG emissions assessment, the appellants maintain that not all environmental information must be included in the ES, rather its inclusion is at the decision-maker's discretion.

[37] Furthermore, the appellant relies on the fact that the methodology employed by the DfI was prepared in accordance with the recognised UK wide technical guidelines governing the choice of methodology for future demand modelling for the purposes of conducting EIA. This was also endorsed by the PAC report at para 3.80. The traffic model used for the EIA, namely the Fixed Demand Model, was established using a study area of the road network on both sides of the border. The point is

stressed that this model related to all predicted journeys including cross-border journeys but did not include the potential of effects arising from induced cross-border demand as the guidelines did not necessitate this form of modelling, namely a Variable Demand Model, as outlined in the affidavit of Mr Gokuldas Gopalakrishnan.

[38] Mr Gopalakrishnan's affidavit is in this regard, particularly paras [16]-[20] as follows:

> "16. Following development of the base model, the specification of traffic forecasting and appraisal methodologies was carefully considered and consulted with the Department's Transport Planning and Modelling Unit ahead of developing the forecast traffic model. This included the methodology for developing future year demand forecasts. TAG unit M2.l and M4 details the two options for developing future year demand forecasts, using either Fixed Demand Modelling (FDM) or Variable Demand Modelling (VDM).
>
> 17. FDM assumes that the overall demand within the modelled area remains constant and does not change in response to changes in the transport network. For example, if a new road is built, the overall number of trips remains the same, but the routes taken by these trips are likely to change because of the network changes (e.g. car trips moving from substandard local road to new high standard dual carriageway). On the other hand, with VDMs, the number of trips can increase or decrease in response to changes in the transport network. For example, if a new road is built, VDM would estimate the impact of the road on travel choices such as changing the user's mode of travel (e.g. from bus to private car), changing their choice of destination (e.g. choosing to shop in a supermarket that's further away). Inevitably, VDMs are more complex, require additional data at a greater level of granularity, making them much more time and resource intensive.
>
> 18. DfT's TAG Unit M2.l Variable Demand Modelling (published May 2020), Section 2.2 details the method that can be used to establish the case for developing or omitting a VDM. Para 2.2.4 of M2.1 notes that, in order to establish a case for omitting variable demand in the traffic model development, preliminary; quantitative estimates of the potential effects of variable demand on both traffic levels and benefits should be made, and the methodology for

> doing so, using an elastic assignment procedure is set out in Para 2.2.5 of M2.1. The elastic assignment procedure is a method used in transportation modelling to estimate changes in travel demand in response to variations in travel conditions, such as congestion or travel costs.
>
> 19. TAG Unit M2.1 (paragraph 2.2.6) states that 'it will be acceptable in general to use a fixed demand assessment where the resulting difference in supressed/induced traffic when using the demand model does not change benefits resulting from a scheme by more than 10% in the opening year and 15% in the forecast year (10-15 years later) relative to a fixed demand case.' I refer to copies of the guidance appearing between pages 3073 and 3156 of the booklet of documents.
>
> 20. For the A5WTC scheme, these tests have been undertaken at each appropriate decision point and these tests considered the entire model area as presented in Figure 1 which includes NI as well as RoI. As reported in the Outline Business Case 2022 (at p3.4.14) the resulting TAG tests have demonstrated that the VDM impact and the potential induced traffic due to the introduction of the scheme are well below the thresholds set out in TAG. Paragraph 3.4.14 appears between pages 3157 and 3658 of the booklet of documents."

[39] In response to the PAC's recommendation an assessment of the quantum of emissions arising from induced travel was undertaken. This revealed that the adverse effects caused by an increase in GHG emissions arising from the scheme remained within the margin which had previously been assessed to be "large adverse." The potential traffic generated by additional cross-border induced journeys was assessed to be relatively low. These changes were also incorporated into the updated GHG assessment.

[40] On the basis of these facts, the argument was advanced that the judge was wrong to conclude that further consultation was required. The following points were highlighted. At the time of authorisation, the appellant had clear and reliable data on potential increase in GHG emissions. In any event, the judge failed to assess whether the additional GHG assessment would have altered the decision. This contrasts with the judge's approach in relation to Reports to Inform Appropriate Assessments for Tully Bog, where he accepted that updated assessments removing scientific doubt did not require further consultation. Further, the choice of assessment methodology for induced demand, as explained in Mr Gopalakrishnan's affidavit, ultimately aligned with PAC principles.

[41] In assessing these arguments we acknowledge that the approach of the courts in climate related challenges highlights some tensions surrounding the interpretation of EIA obligations post-Brexit. These tensions emerge from cases such as *R (Friends of the Earth Ltd) v Secretary of State for International Trade/Export Credits Guarantee Department (UK Export Finance)* [2022] EWHC 568 (Admin) where Thornton J, in her dissenting judgment, considered that UK Export Finance's ("UKEF") failure to calculate emissions as part of its climate impact assessment had been irrational. This was in the context of the Paris Agreement and the UK's commitment to pursue efforts to limit global temperature rise to 1.5°C, which Thornton J found, the decision-making process failed to appropriately address. Indeed, although Thornton J acknowledged the clear margin of discretion to be afforded to UKEF's decision-making, she underlined its reliance upon general assurances and policy considerations as opposed to an assessment of the project's emissions impact against the Paris temperature goals. As such, Thornton J would have quashed the decision.

[42] This approach is also apparent in *Finch v Surrey County Council* [2024] UKSC 20 where reference is made to the more purposive interpretation given to the EIA Directive in line with the Court of Justice of the European Union's approach.

[43] What these cases reveal is that a more purposive interpretation of climate change-related obligations may at times be necessary where the adequacy of climate assessments is called into question. Courts must therefore have a clear vision as to the obligations under the Directive and its application to this case. With that in mind we turn to the particular provisions in play.

[44] Article 6 of the EIA Directive requires that the public and relevant authorities are given "early and effective opportunities" to participate in the decision-making process, and that new environmental information, including that which arises during the assessment process should be subject to consultation where it is relevant to the decision. Indeed, the importance of public consultation as an integral feature of the EIA has been emphasised in cases such as *R (on the application of Champion) v North Norfolk District Council and another* [2015] UKSC 52 at [4] and *Berkeley v Secretary of State for Environment* [2001] 2 AC 603, where Lord Hoffman stressed that:

> "The directly enforceable right of the citizen which is accorded by the [EIA] Directive is not merely a right to a fully informed decision on the substantive issue. It must have been adopted on an appropriate basis and that requires the inclusive and democratic procedure prescribed by the Directive in which the public, however misguided or wrongheaded its views may be, is given an opportunity to express its opinion on the environmental issues." (p.615)

[45] The obligations which flow from Article 67 of the 1993 Order apply to all projects listed in Annex 1 of the EIA Directive and are subject to EIA. Projects for the

construction of a new road of four or more lanes which would be 10 kilometres or more in continuous length are included in Annex 1, hence the A5 Scheme requires an EIA by virtue of the nature of the development. Annex 4 to the EIA Directive gives an indication as to the information which an ES is normally expected to contain. This comprises several matters including a description of the aspects of the environment likely to be significantly affected by the project and the likely significant effects of the project on the environment. This description should cover the direct effects and any indirect secondary cumulative short, medium and long-term permanent and temporary positive and negative effects of the project.

[46] Article 67(5) of the 1993 Order provides an ES need not contain information referred to in Annex 4 if the department does not consider it relevant. For present purposes, Article 67(6) is important because it states that the ES must include at least:

(a) A description of the project (comprising information on the site, design and size of the project);

(b) A description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects;

(c) The data required to identify and assess the main effects which the project is likely to have on the environment;

(d) An outline of the main alternatives studied by the department and an indication of the main reason for the choice taking into account the environmental effects; and

(e) A non-technical summary of the information in (a)-(d).

[47] Article 67A(7) requires the department before deciding whether to proceed with a project, to take into consideration the ES, opinions expressed in writing about the ES and the project including opinions obtained through transboundary consultation and where local enquiries are held the report of the person who held the inquiry. Article 67A(3) requires notice of the ES to be published to ensure that members of the public who are likely to be concerned are given a reasonable opportunity to express their opinion before the department decides whether to proceed with the project.

[48] It can be seen from the above that the requirements of the EIA Directive are wide. They require definition, consultation, and a clear indication of alternatives in terms of the environmental effect of a project. Given the fact that the A5 WTC impacts upon transport from the Republic of Ireland, there is also a requirement to look at transboundary impacts.

[49] The PAC report refers to the ES in some detail. At para 3.14 there is a recitation of the detail provided in it as follows:

> "The updated ES for the A5 scheme comprises the following documents which contain a total of nearly 10,000 pages:
>
> - The ES published in three volumes in February 2016 (Volume 3 being subdivided into five parts).
> - The ESA published in March 2019.
> - The report on quarrying in Urbalreagh, also published in March 2019 and incorporated by reference into the 2019 ESA.
> - The ESA published in March 2022, with 18 chapters, 35 figures and 35 appendices and accompanied by five supporting documents.
> - Seven supplementary information documents published in November 2022.
> - The lay-out drawings, longitudinal profiles and cross-section report published in January 2023.
> - Revision D of the non-technical summary, dated January 2022."

[50] The PAC report also comments that the repeated adding of environmental information did, to some extent, make it difficult to navigate the documents. Ultimately, the PAC concluded that the project to construct a mainly dual carriageway road on a defined route has not changed.

[51] Importantly, the PAC went on to say, at para 3.17:

> "What has changed is the environmental baseline; some significant new environmental information has become available. DfI chose to update the 2016 ES rather than to produce a new ES. In our view, notwithstanding the difficulties experienced by readers, that was a choice it was entitled to make. The updated ES is a compilation produced by the scheme promoter and include an updated non-technical summary. It is not, in Lord Hoffman's phrase, a disparate collection of documents produced by other parties. We agree with DfI that, as the ES was published prior to May 2017, the more elaborate

> procedures required by the 2017 amendments to the Roads Order do not apply."

[52] At para 3.30, the PAC also stated its view on the adequacy of the EIA as follows:

> "We recognise that the level of detail provided in the ES and supporting documents is significant and that it describes the project as currently envisaged by DfI. It is adequate for the purposes of EIA and the public inquiry. As we have nothing else to go on, we will base our consideration of the environmental effects of the project solely on the specimen design presented in the updated ES. However, we remain concerned of the potential for subsequent changes and how decisions on them would be taken."

[53] Given the above it is unsurprising that this appeal point does not turn on the overall adequacy of the ES. Rather, it relates to one specific and arguably more minor aspect. That is, the claim that there was a failure to assess the effects including GHG emissions arising from induced demand cross-border journeys. Induced demand that encompasses not the predicted regular journeys but a further category of cases on the basis that trips would be taken on the road if improved as the network had become easier to use. This is the height of the case made against the ES. It has, however, led to a wealth of argument on whether this court should declare the DfI as having failed to comply with EIA obligations.

[54] The judge had the benefit of argument on this issue and evidence was filed on affidavit by Mr Gokuldas Gopalakrishnan which was uncontradicted. This evidence engaged with the core issue as to what was involved in the preparation of the revised estimates which included an estimate of the quantum of emissions arising from induced trips originating or determining in the RoI.

[55] As the judge sets out in his first judgment at para [240], Mr Gopalakrishnan's affidavit reveals that in preparing its revised estimates, the DfI used the English Department for Transport guidance publication "Latest evidence on induced travel demand: an evidence review" published in May 2018 as a tool to quantify the volume of induced traffic likely to be generated by the proposed road. Using this guidance and utilising the outputs of the A5 WTC TAG elasticity test, a proportionality methodology was developed using an uplift factor on the existing A5 WTC traffic model demands to estimate the impacts of induced demand generated by the scheme.

[56] As a result, as the judge also faithfully records, the evidence was that traffic forecasts for passenger vehicles but not goods vehicles in the core demand model outputs were uplifted by 1% and 3% with the higher figure being used to provide the upper bound for the estimate of GHG emissions arising from induced traffic. When these increases to the core demand modelling results were compared to the high

growth demand model outputs, the increased core figures were still less than the high growth demand figures.

[57] It might be thought that this uncontradicted evidence was sufficient to dismiss the challenge mounted on EIA grounds. However, the judge's decision went the other way and is expressed at para [241] of his first judgment as follows:

> "Having given this matter careful consideration, and taking full account of the view expressed by the PAC that it did not consider that it would be necessary for the DfI to do anything other than to publish the revised GHG emissions estimates with the decision, I conclude that the environmental information contained in the revised estimates, is new and is sufficiently important or significant to warrant it being made the subject of further consultation and scrutiny prior to any decision being made. I take on board the respondent's argument that the assessed increase in GHG emissions still does not move the estimated impact of the proposed road into a different category above 'large adverse' but if the methodology used to estimate the increase has not been subjected to independent scrutiny, how much weight can be attached to the respondent's conclusions in this regard."

[58] At para [242] of his first judgment, the judge went on to say that his conclusion was that "the protections incorporated in the domestic iteration of the EIA process were not invoked in circumstances where they should have been."

[59] The above conclusion is problematic in light of what the PAC actually required comprised in Recommendation 16 as follows:

> "We recommend the Department, if it announces a decision to proceed with any part of the scheme, to publish at the same time revised estimates of the total greenhouse gas emissions likely to arise from the part of the scheme being authorised, including:
>
> - an estimate, based on the best available information, of the quantum of emissions at construction stage caused by the use or disposal of the felled timber, the disposal of extracted peat, and soil disturbance due to the clearance of woodland;
>
> - a properly researched and realistic assessment of the quantum of emissions from energy use at operational stage;

- a fully explained and mathematically accurate sequestration calculation; and

- an estimate of the quantum of emissions arising from induced trips originating or terminating in the Republic of Ireland."

[60] Viewed through this lens, we consider that the judge has erred in his analysis of EIA compliance for the following reasons.

[61] Firstly, it is apparent as the PAC pointed out that the ES was not itself deficient. The traffic model and future demand modelling was prepared for it in line with technical guidelines and was endorsed as adequate.

[62] Secondly, even if the absence of this induced demand cross-border had not been included within the ES, the likely environmental effects were still included within the overall assessment and were taken into account in the authorisation decision. It is important to note that the PAC found that there would be adverse environmental consequences because of GHG emissions. The adverse effects as a result of GHG emissions had already been assessed to be large adverse and was not realistically altered by the potential for a relatively low level of additional cross-border induced travel.

[63] Thirdly, the PAC simply required a publication of further statistics on this which was complied with.

[64] Fourthly, there had been considerable public consultation and engagement with the question of GHG emissions on this road. This was not a new issue which was left out of account in the ES. That fact distinguishes this case from *Finch*, which is relied on by the respondents to the appeal. *Finch* is a case where a conscious decision was made to leave out of the ES the issue of indirect release as there was no information about combustion emissions down the line. The factual matrix underlying this case is markedly different.

[65] Thus, on overall analysis and bearing in mind the extent of the information provided in the EIA and the comprehensive discussion of that in the PAC report and the recommendation that was complied with, we consider that the judge has erred in requiring a greater analysis of this distinct issue and effectively requiring a new environmental statement. This is not a counsel of perfection. In our view, such an approach, is too exacting and is over and beyond the requirement to have an adequate ES.

[66] In addition, the methodology and additional expert evidence filed by Mr Gopalakrishnan which was not contradicted should have satisfied the judge that the question of transboundary emissions was adequately addressed.

[67] We also find considerable merit on the point raised by the appellant that the approach the judge took was inconsistent with the approach taken by him in rejecting the respondent's argument at first instance that environmental assessments in respect of Tully Bog were inadequate.

[68] Therefore, we find in favour of the appellant on the EIA ground and reverse the decision of the trial judge on this aspect of the challenge.

2. *The human rights challenge*

[69] Article 8 of the ECHR protects the private and family life of persons affected by this decision. It became engaged in this case because hundreds of households faced interference with property rights due to compulsory acquisition and prolonged uncertainty associated with the A5 WTC. The PAC report highlighted severe psychological impacts caused by 14 years of "blight" and recommended a time-limit on authorisation to prevent indefinite uncertainty. The judge did not decide whether article 8 was substantively breached but held that the appellant's failure to consider these issues rendered the decision unlawful.

[70] The PAC recommended that any authorisation for the A5 WTC scheme should be expressly time-limited so that if physical construction of the authorised section does not begin by the end of the 2028-29 financial year, the authorisation will lapse. This was to prevent prolonged uncertainty, already lasting 14 years, from continuing into a third decade, which PAC considered an excessive and disproportionate interference with affected individuals' article 8 rights. The recommendation aimed to provide reasonable certainty for landowners and businesses and ensure that environmental assessments remain current.

[71] This is all in the context where there was evidence that the decision will have a substantial impact on the human rights of many people whose lives and livelihoods are affected by the Scheme. The scale of their interference is exemplified by reference to the department's Human Rights Act Impact Assessment ("HRAIA") which highlights that there will be 240 farms that are impacted by the Scheme. All the respondents to this appeal contend that their human rights are engaged in some way. For example, the evidence filed by Mr Hassard states that he will lose approximately 21% of his usable farmland if the Scheme proceeds. The PAC also summarised the overall position of the AA5A as follows:

> "2.222 In 2020, the AA5A submitted impact statements by way of illustration. It is apparent that many of the authors have had their lives seriously affected by the threat of vesting. Several have suffered from anxiety and depression and have needed medical help. The uncertainty has been going on for about 14 years, which is a substantial portion of any person's life. While it is

> important to consider evidence dispassionately, the human dimension must never be overlooked."

[72] Compliance with human rights obligations was therefore for the DfI to make good. In that regard the following arguments were presented by Mr Elvin KC. In summary, the DfI maintained that it complied with article 8 obligations by recognising potential interferences, conducting detailed assessments, and balancing them against overriding public interest.

[73] The DfI argues the High Court wrongly treated the absence of express reference to article 8 in rejecting PAC's recommendation as complete failure to consider the human rights inferences at stake, despite the department's broader human rights analysis. Reliance was placed on the clear articulation of this position in the affidavit of Mr Colin Hutchinson as follows:

> "66. The Department recognises that progressing the Authorised Scheme is likely to cause inconvenience, disruption and potentially distress to affected landowners. In respect of the nine applicants, two own land which will be affected by proceeding with the Authorised Scheme, two are not affected by any proposed vesting of lands, either within the Authorised Scheme or otherwise, four may be affected by future vesting orders which are outside the scope of the Authorised Scheme. The remaining individual is a tenant of land which is not affected by vesting within the Authorised Scheme. The below table provides details of the two applicants who will be affected by the current authorisation for the Authorised Scheme. The Department has undertaken consultation with both affected landowners, or their families, since 2008 and received a number of objections from these individuals to the proposed scheme in its entirety across various consultation periods and through public inquiries."

[74] Further, the DfI argues that the judge erred in concluding that it failed to consider article 8 rights when rejecting the PAC's time-limit recommendation. In this regard it contends that the High Court overlooked that quashing the vesting orders would itself prolong uncertainty.

[75] In terms of substantive consideration of human rights the DfI robustly maintains that due consideration to the respondents' human rights was proffered, not least, a detailed HRAIA as part of the scheme preparation, which was later made available to the public and considered by the PAC during the public inquiry. During argument it was stressed that a revised assessment was then carried out prior to the decision to authorise the scheme.

[76] Understandably, the DfI relies upon HRAIAs conducted in 2016, 2020, and 2023, and a revised HRAIA before authorisation, which concluded:

> "… construction of the scheme will give rise to interferences with the rights of individuals, but not violations, as the interferences are justified in light of the strength of the countervailing public interests."

[77] Furthermore, the point was well made by Mr Elvin that following receipt of the PAC Report in 2023, DfI undertook a further HRAIA which considered the impact on human rights of those affected by commencing the Authorised Scheme. The assessment recognised that the construction of the scheme will give rise to interferences with the rights of individuals, but not violations, as the interferences are justified considering the strength of the countervailing public interests.

[78] PAC's Recommendation 3 had expressly considered human rights impacts and the appreciation of this by DfI:

> "The appellant had expressly recognised, through assessment reports … the potential for any decision in respect of the scheme to interfere with human rights."

[79] The PAC stated that the A5 Scheme "would involve large scale interferences with and limitations on rights identified by Article 8 of the ECHR and Article 1 of the First Protocol to the ECHR" (para 2.217). In its consideration of human rights issues, the PAC noted that official figures indicated that the total land take for the scheme would be approximately 1,209 hectares affecting 314 farms. It would involve the demolition of eight homes and one traveller site, and it would temporarily affect direct access to over 180 dwellings. It would impact on seven areas of land used by local communities. In the absence of updated figures setting out the number of households that would be affected by compulsory acquisition, the PAC inferred from the available information that hundreds of households would suffer an interference with their Convention rights due to the expropriation of their property for the scheme and that there is potential for many other people to suffer an interference with or limitation on their Convention rights due to the impact of the scheme on the amenity enjoyment of their land.

[80] Thus, the PAC recommended that authorisation be time-limited:

> "… if physical construction of any phase or section so authorised has not begun by the end of the financial year 2028/29, the authorisation will lapse."

[81] The rationale provided by PAC was as follows:

> "People whose human rights would be or might be infringed by the scheme are entitled to know whether it is going ahead or not. They need reasonable certainty so they can make plans for their businesses and their lives." (para 2.226)

[82] PAC also warned that if funding confidence proved misplaced:

> "… it is conceivable that the prospect of implementation could stretch well into the 2030s. The preferred route was announced in 2009. In our opinion, the prolongation of blight and uncertainty into a third decade would have an excessive and disproportionate effect on the interests and wellbeing of persons whose lands and properties are proposed to be vested." (para 2.225)

[83] The DfI declined to commit to this recommendation, citing several concerns. In summary these were that as the largest infrastructure project ever undertaken it was subject to constraints and uncertainties of the public expenditure system. A time limit would also have undesired impacts upon outstanding commercial negotiations with the designated contractors.

[84] Against the position adopted by DfI the respondents maintain that the department's failure to engage with PAC's human rights concerns and to conduct a proportionality assessment rendered the decision unlawful. The respondents argue that the High Court correctly quashed the decision and exercised its discretion to grant relief.

[85] The respondents argue that the DfI's decision to approve the scheme "clearly interferes with the respondents' rights protected by both Article 8 and Article 1 of the First Protocol of the ECHR." They maintain that the department had a statutory and common-law duty to provide legally adequate reasons for its decision to proceed and, specifically, for rejecting PAC's Recommendation 3.

[86] The respondents rightly acknowledge that the PAC's recommendations are not binding. It has never been suggested otherwise. However, it was stressed upon us by Mr Willers KC that the law remains clear that where the decision maker rejects an inspector's view, "... He must explain why he rejects the inspector's view. He must do so fully, and clearly." *as per Secretary of State for Communities and Local Government v Allen* [2016] EWCA Civ 767 at para [19].

[87] The judge was satisfied that the DfI provided reasons for rejecting PAC's recommendation based on funding uncertainty and commercial/contractor negotiations. However, he found that DfI failed to acknowledge and observe the recommended time-limit and that refusal was underpinned by an inadequate article

8 analysis which needed to weigh the public benefits associated with the construction of the A5 with residents' private rights.

[88] The respondents assert that neither the appellant's decision letter issued on 2 October 2024, nor the updating HRAIA from September 2024 seek to balance the interference with the human rights engaged against the practical difficulties which it is suggested could arise if such a time limit were imposed. Further, the case was made the appellant's decision letter does not mention human rights when addressing Recommendation 3, nor does the updating HRAIA mention time limitations or the impact of not imposing a time limitation on human rights.

[89] It is therefore argued that the department's decision does not respond to the key reasons that underpinned the PAC's Recommendation 3 and so offend the principle articulated by the House of Lords in *South Bucks District Council and another (Respondents) v Porter (FC)* [2004] UKHL 33 at [36]:

> "The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the 'principal important controversial issues.'"

[90] Where human rights are concerned, *R (Nash) v Chelsea College of Art & Design* [2001] EWHC Admin 538 at [35] and *R (on the application of the Spitalfields Historic Building Trust) v London Borough of Tower Hamlets and another* [2025] UKSC 11 at [54] it was held that the "... more substantial the interference with human rights, the more the court will require by way of justification before it will be satisfied that the decision falls within the range of decisions which are rationally open to the public authority within the parameters of its discretion."

[91] Mr Willers KC frankly acknowledged that this challenge essentially relates to reasons for the human rights assessment. A subsidiary argument was framed in terms that the appellant did not accept a recommendation from the PAC that authorisation for any part of a scheme be time limited so that if a physical construction of that part did not commence by the end of 2028/2029 that the authorisation would lapse.

[92] In reaching our conclusion on this issue we return to the judge's decision. The judge held that the appellant had failed to address the respondent's article 8 rights when giving reasons for rejecting the recommendation and, therefore, made a declaration to that effect. The judge's reasoning is found in various parts of his first judgment, which we will not quote *in extenso*. However, his ultimate conclusion is found at para [281] where he says:

> "The respondent's submissions during the hearing of this case are cogent and compelling but the problem is that when the DfI made its decision to reject the PAC's

> Recommendation 3, the DfI did not make any reference to the human rights issues raised by the PAC. The DfI patently failed to address the human rights concerns that gave rise to Recommendation 3. Having considered the respondent's submissions on this issue, I remain firmly wedded to the views expressed in para [269] of this judgment."

[93] Para [269] reads:

> "[269] The applicants argue that the decision to proceed with the proposed road interferes with their article 8 rights. In Recommendation 3, the PAC recommended that any decision to proceed with the scheme should be time limited. If construction work does not commence before then end of the 2028-2029 financial year, the authorisation should lapse. This recommendation was rejected by the DfI on the basis that it was impracticable. The applicants rely on the decision of Lindblom J in the case of *Secretary of State for Communities and Local Government v Allen* [2016] EWCA Civ 767 at para [19] where he stated that where the Secretary of State disagrees with an inspector:
>
> > 'He must explain why he rejects the inspector's view. He must do so fully and clearly. But there is no heightened standard for 'proper, adequate and intelligible' reasons in such a case. Whether the reasons given are 'proper, adequate and intelligible' will always depend on the circumstances of the case … What he has to do is to make sure that his decision letter shows why the outcome of the appeal was as it was, bearing in mind that the parties to the appeal know well what the issues were.'"

[94] With respect, this reasoning is flawed. Firstly, human rights issues were quite clearly taken into account, both the article 8 rights to private life and article 1 protocol 1 rights to property enjoyed by the objectors. These are qualified rights and so, as in any consideration of this nature, a balance is struck between the public and the private interests. There was substantial evidence before the PAC on the issue of the imposition that this road would make on the objectors in breach of their human rights. This is discussed in detail in the PAC report. The Departmental Statement that followed also deals with this issue in detail. There can be no complaint as to this. And so, the only issue is as to how the DfI dealt with Recommendation 3.

[95] This recommendation is discussed in the Departmental Statement which provided reasons to depart from it. It is within the discretion of the decision maker to decide that a rigid time limit was unrealistic given the vagaries with large projects such as this and unexpected delays. In our view the reasons are easily discernible. The Departmental Statement deals with this matter adequately. There is no established basis for the reasons challenge to succeed.

[96] Overall, we find the argument based upon human rights unconvincing. In addition, the judge went too far and made assumptions which he should not have made. It is the department which has to take into account financial issues and assess them. We disagree that there was a marked inconsistency in the appellant's approach to the PAC recommendation. We agree with the appellant that the judge's decision with regard to the human rights issues and inadequacy of reasons regarding the recommendation point to the fact that he misconstrued the PAC's recommendation.

[97] The PAC recommendation specifically referred to a decision by the appellant to proceed with any part of the scheme, that is including those parts not authorised by the decision to proceed and yet to be taken forward. The reasons provided by the appellant related to the decision not to accept the recommendation in respect of proceeding with any part of the scheme.

[98] In his reasoning, the judge failed to recognise that the uncertainty about which the PAC was concerned would likely be increased by quashing the vesting orders leading to a likely reconsideration of them in the future in circumstances where the lands owned or occupied and which were subject by the objectors and which were subject to vesting orders had already been vested on the issue of compensation and statutory interest was simply outstanding.

[99] In truth, the response to recommendation 3 from PAC provided by the DfI appears more than adequate as follows:

> "The department remains committed to commencing construction for the parts which have been authorised at the earliest opportunity and by the end of the financial year 2028/2029. However, it does not consider that the recommendation is appropriate in principle. The A5 WTC represents the largest infrastructure project ever undertaken in Northern Ireland and will require very significant investment of public funds. The size and nature of the project are therefore of an entirely different magnitude to any other development (public or private) which has ever taken place in Northern Ireland, and which might otherwise be authorised through the planning process. The project is promoted by public authority, which is funded exclusively by and is subject to the constraints and uncertainties of the public expenditure

> system. The project is therefore funded in an entirely different manner than a private development for which private sector funding might otherwise be more certain. The department also does not consider that a condition of this nature appropriate, insofar as it could provide an impediment to the ability of the department to implement the scheme, in the event of unforeseen delays associated with legal challenges and the possibility of competing spending priorities emerging in the interim period. A condition of this nature may also have undesired impacts upon outstanding commercial negotiations within the designated contractors." (para 5.2.6)

[100] Properly analysed, the reasons are readily discernible from the Departmental Statement. Due consideration was given to the respondents' human rights and the evidence filed by them. The appellant clearly carried out a detailed human rights assessment as part of the scheme preparation. This matter was part of public consultation. A revised assessment was carried out prior to the decision to authorise the scheme. The potential interference with article 8 rights was rightly recognised. The potential uncertainty for those affected as to whether the scheme would proceed was also properly acknowledged. We are not satisfied that any substantial prejudice has been caused. The approach taken was well within the discretionary remit of the decision maker.

[101] Therefore, the appeal succeeds in relation to the human rights challenge. We reverse the judge's findings on that issue.

3. The climate change challenge

[102] The backdrop to this remaining aspect of the case is the measures taken within Northern Ireland to tackle climate change. An agreed metric in this case is the path to net zero targets by 2050 which followed the signing of the Paris Agreement in 2016 and ensuing instruments. The United Nations Framework Convention on Climate Change with which the UK agreed, pledged to reduce GHG emissions under the Paris Agreement. The Paris Agreement effectively set a target for trying to deal with global average temperature increases to 1.5 degrees to conserve and enhance the environment. The Climate Change Act which the UK brought into force in 2008 set a target to reduce UK greenhouse gases by 80% from 1990 levels to 2050, a target which was subsequently amended to 100% in 2019.

[103] As a result, Northern Ireland committed to net zero targets by 2050 within the United Kingdom-wide target. Wales has set its own net zero target for 2050 while Scotland's net zero target has a 2045 deadline. This involves the phasing out of fossil fuels and the promotion of renewable energy. This policy drive found expression in the Northern Ireland Energy Strategy issued in December 2021 and more recently

received legislative imprimatur in the 2022 Act which the Northern Ireland Assembly passed on 6 June 2022.

[104] The policy background to the 2022 Act is found in the explanatory notes as follows:

> "4. Climate change is a defining crisis of our time on a global and national scale. In June 2019, the UK amended the Climate Change Act 2008 to set a 'net zero target' which commits the UK to reduce net greenhouse gas emissions by "at least" 100 per cent below 1990 levels by 2050. While the Climate Change Act 2008 extends to Northern Ireland, specific greenhouse gas emission reduction targets for Northern Ireland are not included in it, or any other legislation.
>
> 5. In order to address this legislative gap, the Northern Ireland Executive, through the *New Decade, New Approach* agreement, made a commitment that it will 'introduce legislation and targets for reducing carbon emissions in line with the Paris Climate Change Accord.' Under the Climate Change section at Appendix 2 of that agreement it further states that 'The Executive should bring forward a Climate Change Act to give environmental targets a strong legal underpinning.'
>
> 6. Northern Ireland is not immune to the severity of the impacts of a changing climate and it is important that it plays its part in the global and UK effort to tackle climate change. The Act aims to achieve this by creating a framework that will establish a pathway to achieving emission reduction targets which will ensure that Northern Ireland makes a contribution to the achievement of the UK 2050 Net Zero target. In doing so this will help to ensure that Northern Ireland develops a greener, low carbon circular economy in which the environment can prosper and be protected."

[105] As a result the Northern Ireland Assembly made a choice to enact the 2022 Act. This followed the Climate Change Act in 2008 which is a UK wide statute. However, the 2022 Act is unique in that obligations are placed not just on the relevant minister but on all departments when climate change obligations are engaged in decision making. This fact is at the core of the third point on appeal namely whether the relevant decision-making department DfI has complied with climate change obligations when the relevant decision was made in October 2024.

[106] Summarising the effect of the 2022 Act, the official guidance issued by all departments which is readily available highlights the following matters:

(i) The 2022 Act sets a target of net zero greenhouse gas (GHG) emissions by 2050 for Northern Ireland compared to baseline, along with interim targets including an at least 48% reduction in net emissions by 2030. DAERA must also, by June 2024, review and potentially set updated 2030 and 2040 interim emissions reduction targets to ensure that they are in line with the 2050 net zero target.

(ii) The 2022 Act also sets other sectoral targets including 2030 targets of at least 80% ~~of~~ electricity consumption from renewable sources (Department for the Economy, "DfE")) and 70% of waste is recycled (DAERA) as well as a target for a minimum spend of 10% of overall transport budgets on active travel (DfI).

(iii) There is a legal requirement on all Northern Ireland departments to exercise their functions, as far as is possible to do so, in a manner consistent with the achievement of the targets of the Act and carbon budgets set under it.

(iv) Section 23 of the Act requires DAERA to make regulations that set carbon budgets. A carbon budget is the maximum total amount of emissions permitted for a budgetary period. The first budgetary period is 2023-2027 and every five years thereafter. The first three carbon budgets for Northern Ireland (2023-2027, 2028-2032 and 2033-2037) must be set by the end of December 2023 and each subsequent budget must be set at a minimum of 12 years in advance of the budgetary period commencing. Carbon budgets must be set at a level that is consistent with meeting the 2030, 2040 and 2050 emissions reduction targets.

(v) When setting carbon budgets, the 2022 Act requires that a number of factors are taken into account and also sets out relevant requirements around consultation, including the need to carry out a 16-week public consultation on proposed carbon budgets.

(vi) In addition, the 2022 Act requires that DAERA seeks the advice of the UK Climate Change Committee (CCC) on the level of carbon budgets and the setting of the 2030 and 2040 emissions reductions targets. On 2 March 2023, the CCC provided their advice to the Department on the level of the first three carbon budgets and the emissions reduction targets for Northern Ireland.

(vii) If a carbon budget is not met, the 2022 Act requires that DAERA (with the assistance of other departments) publishes a report setting out proposals and policies to compensate for the excess emissions in subsequent budgetary periods.

(viii) Sections 13-22 place requirements on Northern Ireland departments to produce and publish various sectoral plans setting out how specific sectors will contribute to meeting the 2030, 2040 and 2050 emissions reduction targets.

(ix) There are specific requirements on the DfE to develop and publish sectoral plans for the energy sector and industrial processes sector.

(x) There are specific requirements on DfI to develop and publish sectoral plans for the infrastructure sector and transport sector.

(xi) There are requirements on DAERA to develop and publish sectoral plans for the agriculture sector, fisheries sector and waste management sector.

(xii) DAERA is required to produce five-year climate action plans ("CAP") to set out the policies and proposals that Northern Ireland departments will implement to meet the corresponding carbon budget as well as set out how the emissions reduction targets will be achieved.

(xiii) DAERA must publish and lay each CAP before the Assembly before the end of the first year of a carbon budgetary period, with the first CAP needing to be laid before the end of 2023.

(xiv) DAERA must commission a financial, social, economic and rural impact assessment on the effects of each CAP and carry out a 16-week public consultation on the draft CAP.

(xv) There are requirements in the 2022 Act on all Northern Ireland departments when deciding on the proposals and policies to be included in each CAP to have regard to:

- The desirability of coordinating with UK, RoI etc.
- The just transition principle.
- The special economic and social role of agriculture.
- The desirability of using nature-based projects.
- The risk of carbon leakage and the desirability of eliminating or minimising that risk.

(xvi) The plan must also explain how DAERA intends to mitigate any negative effects uncovered in the relevant financial, social, economic and rural impact assessment and also explain how the policies and proposals set out take account of the just transition principle. CAPs must also include annual GHG emissions targets as well as air quality, soil quality and biodiversity targets.

(xvii) The Act places a duty on DAERA to prepare and publish a series of interim and final reports setting out what progress has been made in implementing the proposals and policies set out in the CAPs and the progress made in achieving carbon budgets and emissions reduction targets.

(xviii) There are also reporting requirements placed on the UK Climate Change Committee ("CCC") to report on:

- the progress made in respect of the achievement or otherwise of carbon budgets and the emissions reduction targets; and

- progress made in implementing Northern Ireland Climate Change Adaptation Programmes.

(xix) DAERA is required to respond to each of the CCC reports.

(xx) Section 37 of the 2022 Act places a duty on DAERA to establish a Just Transition Commission for Northern Ireland. The role of the Just Transition Commission will be to oversee the implementation of the just transition elements of the Act, and to provide advice to Northern Ireland departments on how to ensure that all proposals, policies, strategies and plans required under the Act comply with the just transition principle.

(xxi) Section 30(3) of the 2022 Act sets out the objectives of the just transition principle which include supporting jobs that are climate resilient and environmentally sustainable, supporting low-carbon investment and supporting those who are most affected by climate change and may be the least equipped to adapt to its effects or may stand to lose out economically.

(xxii) The Just Transition Commission has to include as a minimum, representatives from the following sectors; agriculture, fisheries, academia, trade unions, civic society and environmental groups.

(xxiii) Section 31 places a requirement on DAERA to establish a Just Transition Fund for Agriculture in order to provide advice and financial assistance to the agricultural sector to help deliver its contribution under policies and proposals within CAPs.

(xxiv) Section 42 of the 2022 Act requires regulations to be made in regard to climate change reporting by public bodies. The type of information that public bodies may be reporting to DAERA is likely to include:

- an assessment of the current and predicted impact of climate change in relation to the public body's functions;

- proposals and policies, with associated timescales, that the public body is bringing forward for adapting to, or mitigating the effects of climate change; and

- assessments on the progress that the public body has made to implementing their proposals and policies.

(xxv) Section 50 of the 2022 Act requires the Executive Office to establish an independent office to be known as the "Northern Ireland Climate Commissioner." The functions of the Commissioner are to oversee and report on the operations of the 2022 Act. (This has not been achieved as yet.)

[107] At this point it is useful to recap that the proposed dual carriageway scheme that we are considering is larger than any road building project ever undertaken in Northern Ireland. We have already discussed the environmental statement assessment which was made in 2022 and the identification within that of the significant effects on GHG emissions from this road. Inevitably, this intersects with the 2022 Act and the obligations within it. This Act came into operation on 7 June 2022, three months after the ES for the A5 WTC was published.

[108] Some context is also required to address the issue of whether there has been compliance with the 2022 Act obligations. First, we turn to the PAC report. Reading that we can see that the PAC considered the climate change effects in detail. It is notable that PAC referred to how DAERA dealt with the issue specifically from February 2023 publishing a Northern Ireland GHG projections update. The PAC also referred to the CCC, a statutory advisory body, which produced a report entitled "The path to a net zero Northern Ireland" in March 2023.

[109] Significantly, at para 3.430 of its report the PAC described the 2050 GHG reduction target as extremely stretching going significantly beyond the committee's previous advice on what would be a fair and achievable contribution from Northern Ireland to the achievement of UK wide net zero emissions. The PAC goes on to say that the CCC developed a stretch ambition pathway that reaches a 93% reduction in emissions on 1990 levels by 2050 and requires Northern Ireland to bolster the contribution of GHG removals and, therefore, balance some of the residual emissions from agriculture.

[110] The PAC then goes on to discuss the various tables that were produced as part of the Environmental Statement Addendum and what the objectors were saying about the climate effects, not just of pollution from cars on the road, but from the removal of the environment to create the road and the operational emissions from constructing the road. It is fair to say that this is a very comprehensive report. Para 3.454 of the PAC report effectively makes the uncontroversial assessment that:

> "In the context of the current Northern Ireland emissions reduction targets, the scheme would have a large adverse effect on climate."

[111] We note that various issues are raised in relation to complying with the carbon budget and GHG were front and centre of the PAC Recommendation 17 which we have discussed above.

[112] The Departmental Statement under the heading "Consideration of the A5 WTCs impact on the achievement of emissions targets specified in sections 1, 3, 4 and 24 of the Climate Change Act (Northern Ireland) 2022" bears examination. Summarising the DfI position was stated as follows:

> "It is recognised that the A5 WTC Scheme is expected to result in an increase in emissions (972,520 tCO_{2e}) in both the construction and operational phases compared to the scenario where the scheme is not built. In addition to the duties outlined in 24 and 52, the Act places a duty on the Department for Infrastructure to develop and publish a sectoral plan for the transport sector setting out how the sector will contribute to the achievement of the emissions targets in sections 1, 3 and 4. The transport sector includes emissions from surface road transport, railways, domestic shipping and aviation, and other mobile support vehicles. In order to inform the transport decarbonisation pathway, a transport emissions model (TEM) has been developed by specialists on behalf of the Department for Infrastructure for the operational phase end user emissions as a result of the development of the TEM, the department has a very good understanding of how transport emissions are likely to behave over time, both on an NI wide basis and at a scheme level. The level of detail that is modelled, can be monitored and interrogated at targeted points in the pathways. This provides the department with a high level of evidence and supporting data that can assist in future decisions in management around transport emissions to ensure that the sector can almost fully decarbonise by 2050. The department's focus on surface transport decarbonisation is based on three high level policies; reducing the need for journeys, shifting away from our reliance on the private car towards more use of public transport, walking, wheeling and cycling; and switching fuels to low emission alternatives such as electric vehicles."

[113] Importantly, the DfI goes on to explain how work is focused on dealing with climate change effects in the following terms:

> "In light of the status of the A5 WTC as an Executive flagship project, the Executive will need to consider the increased carbon emissions associated with the A5 WTC project while meeting its obligations under the Act. The first Northern Ireland Climate Action Plan (CAP) which is aligned to the first carbon budget period 2023-2027, is currently being developed and will set out the policies and programmes for meeting the carbon budget for that period. The CAP will be considered and approved by the Executive before it is laid before the Assembly by the Minister for DAERA. The additional predicted emissions relating to the scheme have been considered by DfI, have been built into the assumptions in relation to the transport sector emissions and have been shared with DAERA and the Department for Economy as part of the engagement undertaken by the Department. In addition, this information has formed part of the documentation provided to the Executive when the decision was made to proceed with this part of the scheme."

[114] The conclusion is expressed as follows:

> "The department recognises that the scheme will result in an increase in emissions in both the construction and operational phases compared to the scenario where the scheme is not built. These emissions will be attributed across a number of sectors. However, the A5 WTC is a priority investment for the Northern Ireland Executive and will deliver several benefits including improving safety and regional connectivity, these benefits are set out in 2.1.1. In considering and approving the decision to proceed with this part of the scheme, the Executive is fully informed of the predicted additional GHG emissions associated with the construction and operation of the road. The emissions generated from the construction and operation of the scheme will therefore be included within the Executive plans to deliver the emissions reduction targets specified in 1, 3 and 4 Act and as required by section 24 of the Act to ensure that any carbon budget set under the Act is not exceeded. When compared to the anticipated Northern Ireland carbon budget, the scheme is expected to contribute 0.4621% to CB1, 0.1019% to CB2 and 0.1163% to CB3. DfI has provided draft policies to DAERA relating to its duties in respect of the transport sector through the development of a transport emissions model, the

> department can demonstrate how the sector will almost fully decarbonise by 2050. DfI is therefore confident that it will still be possible to achieve its transport sector obligations and that the transport emissions from the scheme will not be incompatible with achieving the objectives of the Act. Considering the emissions from the scheme in the context of the carbon budgets, the department is confident that given the priority afforded to the scheme, it will not prevent the emissions targets specified in sections 1, 3, 4 and 24 of the Climate Change Act (Northern Ireland) 2022 from being met." (para 5.3.16)

[115] The DfI also addressed its mind to the absence of a CAP and recorded that:

> "In the absence of an approved Climate Action Plan and more detailed knowledge of the carbon impact of future infrastructure projects it is not currently possible to show the trajectory with and without the proposed scheme. However, whilst the scheme will result in an increase in emissions, the A5 WTC is a priority investment for the Northern Ireland Executive, and therefore the emissions generated from the construction and operation of the scheme will need to be factored into the Executive's plans to meet the emissions reduction target specified in sections 1, 3 and 4 of the Act and as required by section 24 of the Act to ensure that any carbon budget set under the Act is not exceeded." (para 5.3.19)

[116] During the remittal hearing, the judge had the benefit of evidence on affidavit both from the DfI but also from DAERA. Following approval from the Court of Appeal for DAERA to intervene, an affidavit was filed by DAERA from Mr Patrick Savage, dated 18 November 2025. Mr Savage is the Deputy Director within DAERA. He explains DAERA obligations relating to the Climate Change Act, the CAP which is required by section 29 of the Act and their approach to the modelling of future GHG emissions in Northern Ireland.

[117] This is a very comprehensive affidavit which clearly put in issue DAERA's position. We particularly note para [50] of the affidavit, which opines on section 52 as follows:

> "If the Act is interpreted as requiring that a project such as the A5 WTC can only proceed if its projected emissions are either specifically accounted for in a CAP or, alternatively, DAERA has provided an assurance around the specific implications of the project on Northern Ireland's overall net zero pathway, the inevitable consequence would be

> that such projects will not be able to proceed in the short to medium term as there is no means of complying with such a prescriptive obligation."

[118] We remitted the case to the judge to consider the evidence from DAERA. In the event, further voluminous evidence was also filed.

[119] The judge adopted a narrow approach to the remitted hearing. In summary, he decided that a new case has been made by DAERA. As such he reached no view on what section 52 should mean. Therein lies the first error pertaining to the climate change challenge which we have had to deal with.

[120] There are very many grounds of appeal which are touching on the nature and extent of the section 52 obligations. However, in our view, this aspect of the challenge distils into two core questions.

(i) What does section 52 require of a department in making a decision which has climate implications?

(ii) Is there an evidential gap in this particular case which renders the decision irrational?

[121] The first question requires an exercise of statutory interpretation. We apply the well-established principles set out in recent Supreme Court authority *R(O) v Home Secretary (SC (E))* [2023] AC 255 paras [29]-[31], *R (PACCAR Inc and others) v Competition Appeal Tribunal and others* [2023] 1 WLR 2594 paras [40]-[42], *For Women Scotland v Scottish Ministers* [2025] UKSC 16 para [10]. Summarising, the court's task is to consider the ordinary meaning of the words at issue and within the permissible bounds of interpretation, is to give effect to Parliament's purpose. The relevant provisions should be read in the context of the statute as a whole.

[122] Applying the ordinary meaning to the words, section 52 places a mandatory obligation on all Northern Ireland departments, including DfI, to exercise their function so far as is possible to do so in a manner consistent with the achievement of the net Northern Ireland emissions targets.

[123] In relation to the meaning of "consistent" we were referred to the recent judgment of the Irish Supreme Court in *Coolglass Windfarm v An Coimisiún Pleanála* [2026] IESC 5. This concerned the refusal of an application for planning permission for a windfarm which was challenged on the grounds that the respondent had failed to properly discharge its obligations under Ireland's climate legislation. Section 15(1) of the Climate Action and Low Carbon Development Act 2015 requires public bodies to perform their functions, in so far as practicable, in a manner consistent with the approved climate action plan, the climate action strategy, the national adaptation framework and sectoral adaptation plans, the national climate objective and generally the objective of mitigating greenhouse gas emissions.

[124] It is evident that the statutory obligations in the different jurisdictions on this island have common elements as well as distinguishing features. Both impose a requirement to perform functions "in a manner consistent with" the expressed goals of tackling climate change. However, in Northern Ireland, this duty relates to a specific set of statutory targets whilst the obligation in Ireland is connected to a series of plans, strategies and objectives. It is also notable that the Northern Irish duty is one to be performed "in so far as is possible" whilst the public bodies in Ireland are constrained by a requirement "in so far as is practicable."

[125] In the judgment of the Irish Supreme Court, the obligation to act "in a manner consistent with" the various plans and objectives could, in any given scenario, be satisfied by any one of a range of potential decisions. The consistency obligation was found to be stronger than a "have regard to" obligation but less exacting than a "comply with" obligation. However, the court recognised that the plans and strategies are expressed at a level of generality and in a case where the requirement related to a plan containing more granular detail, the range of possible decisions within the range would be correspondingly narrowed. The court found:

> "This operates as a form of climate sense check, and to ensure that decisions and actions of public sector bodies are all aligned with the climate objectives. The section 15(1) obligation is not more prescriptive than that: first because the objective with which consistency is required, is stated at a level of significant generality; second, because consistency implies a range of possible outcomes; and finally, because even that degree of consistency is not required, if it is impracticable." (para [108])

[126] We align with the Irish Supreme Court's analysis of the obligation to act "in a manner consistent with." That is because it does not prescribe any particular method of achieving the goal in question. This flexibility in terms of delivery reads across into the Northern Ireland situation. What this means is that it is for individual departments to select the means of furthering the objective and provided it is within the range of potential decisions, or it is not possible to achieve the desired consistency, the courts will not interfere.

[127] However, we also recognise that the obligation in the 2022 Act goes beyond a "climate sense check" and provides a more exacting obligation than the analogous provision in the Irish 2015 Act. This is because the obligation relates not merely to plans and objectives set at the level of generality but to specific emissions targets for 2030, 2040 and 2050 and to set carbon budgets. Furthermore, the obligation cannot be avoided for reasons of practicality but only when it is not possible to comply. That is what "so far as possible means." Section 52 of the 2022 Act imposes a more specific and exacting duty than that imposed by section 15 of the Irish Act.

[128] Adopting a purposive approach, section 52 must be read in context, in light of the entirety of the statute. The preceding sections set out what exactly net zero means for Northern Ireland. Specifically, section 1 requires net Northern Ireland carbon dioxide emissions to be reduced by 100% from 1990 levels by 2050; section 3 (as enacted) requires the net Northern Ireland emissions account for 2040 to be in line with the target for the year 2050; and section 4 requires net Northern Ireland GHG emissions to be reduced by at least 48% by 2030. The Act provides for sectoral plans including for transport showing how each sector will contribute to the achievements of the emissions target, and it also requires DAERA to set carbon budgets by regulation. The DAERA responsibility extends, as we have heard, to the publication of a climate action plan however it is now accepted that a CAP was not a prerequisite for the decision to be made.

[129] Pausing at this point, it should be noted that when the decision under challenge was made neither the CAP, the sectoral plans or the carbon budgets were finalised. These were not mandatory requirements, but the absence of finalised documents raised the risk of challenges as this case illustrates.

[130] The climate obligations are clear and exacting. However, we are satisfied that the legal obligation created by the 2022 Act to achieve net zero by 2050 is not a prohibition upon the authorisation for a new road where it has been assessed, as far as possible, to be consistent with emission reduction obligations. Nor does it require that the precise GHG contribution of every project which may be authorised between now and 2050 should be specified upon a precise and quantified pathway prior to authorisation.

[131] Compliance with section 52 requires the relevant department to reach a rational conclusion, on the basis of adequate inquiry, that the exercise of the function is, so far as possible, consistent with achievement of the statutory targets. The *Tameside* duty of inquiry will form an important part of the decision-making process since in this particular field the decision maker will require expert scientific analysis in order to ensure that the obligation of consistency can be met.

[132] As such, we find that the obligation under section 52 required the appellant to ensure that it had sufficient information about the emissions levels, the potential future policy options available and to determine whether the emissions from the scheme prevented achievement of the statutory targets. When the DfI authorised the decision, it had sufficient information regarding the scheme and the transport sector policy pathways to ensure that it would not undermine compliance with reduction obligations under the 2022 Act. Moreover, there is a cross over with other departments and sectors as this is a Northern Ireland wide obligation which requires a joined-up approach. The appellant is not responsible for all sectors impacted by the project, rather, it is only responsible for the transport and infrastructure sectors, and it ensured that the emissions from the project were captured.

[133] What was well explained by Mr McGleenan KC for the appellant, is that for each budgetary period there is only one, single, carbon budget. The CAP must outline proposals and policies for meeting that carbon budget, covering the areas of responsibility of each department which are consistent with the targets in the budget. There are therefore no separate, sectoral carbon budgets. The CAP does not need to be laid before the period begins and therefore will not necessarily be in place throughout the period to which it relates. Approval of projects is therefore not dependent on a CAP being in place.

[134] Moreover, the 2022 Act does not require project level emissions to be accounted for in advance within a CAP. Neither does the 2022 Act require that the GHG emissions of projects be specified upon a precise and quantified pathway to permit authorisation. It is therefore argued that the lack of a finalised CAP does not prohibit consent to the authorisation of the scheme. The PAC's recommendation that a decision on the scheme should await publication of the CAP and a quantified policy pathway ultimately exceeded the requirements of the 2022 Act and was a recommendation the appellant was lawfully entitled to reject.

[135] It follows that, in our view, the judge proceeded on the erroneous understanding that the CAP ought to include an individual assessment of the effect of the A5 WTC project and that it was necessary to have a CAP for each carbon budget before a decision could be made on any project which would impact upon any carbon budget. He considered that evidence ought to be provided which would address the issues that the court considered should be addressed in a CAP. It was effectively argued that the judge ultimately misunderstood the nature and purpose of the CAP and what it should contain. We accept the appellant's submissions that the judge's conclusions and findings in relation to the interpretation of section 52 and requirements as to the content of the CAP, including his proposed project level approach, are "wrong and unworkable." Rather than assist with the achievement of the 2022 Act's aims and objectives, we agree with the DfI that such an interpretation has the potential to impede the achievement of environmental objectives and the path to Net Zero.

[136] The correct legal position is that when considering whether to approve a project that will lead to increased emissions, a department does not need to account for same at a project level, within the CAP or some similar exercise as suggested by the judge. It does, however, need to consider whether the proposed function is being exercised, so far as is possible to do so, in a manner that is consistent with the objective described in section 52. A department can only exercise this function following the discharge of its *Tameside* obligations, if it concludes that the exercise would be consistent so far as possible with that objective. The nature of a *Tameside* duty is well-established and is outlined in the Divisional Court's judgment in *R (Plantagenet Alliance) v Secretary of State for Justice* [2015] 3 All ER 261, at para [100]. In addition as *Re McAleenon's Application* [2024] 3 WLR 803, para [40]states:

> "… it is for the public authority to determine on the information available to it the facts which are relevant to the existence and exercise of its powers, subject to review by a court according to the usual rationality standard. The court has a supervisory role only." (para [40])

[137] A parallel can also be drawn with the English Court of Appeal decision in *Packham v SOS Transport* [2021] Env LR 10. This case considered the interaction between an individual infrastructure planning decision and statutory climate obligations under national legislation. Similarly, in *R (Friends of the Earth) v Heathrow Airport Limited* [2020] UKSC 52, the Supreme Court rejected a challenge that the Secretary of State had not taken account of obligations under the Paris Agreement or Climate Change Act 2008 when designating a national planning policy statement which would govern any future decision on a third runway expansion at Heathrow. The Supreme Court applied *Tameside* principles to the lawfulness of the Secretary of State's decision.

[138] In line with the *Tameside* duty, the DfI was required to ensure that it had sufficient information about the emissions levels, the potential future policy options which were available and to determine whether the emissions from the scheme would preclude achievement of the statutory targets.

[139] We can see the breadth of evidence including highly technical evidence that DAERA was in a position to provide on the key issues falling within its remit that were taken into account. This evidence is important as in addition to the overall GHG reduction targets for 2030, 2040, 2050, DAERA must set carbon budgets for five-year budgetary periods. This is contained in the affidavits of Mr Hutchinson of 15 December 2025, and two affidavits of Mr Savage.

[140] In addition, a comprehensive affidavit was filed by Mr McNickle the lead Northern Ireland statistician associated with the production of the Northern Ireland GHG inventory. This evidence addressed the calculation of projected emissions by reference to the Emissions Projection Tool ("EPT"), the use of EPT in CAP development and how projected emissions for roads projects are accounted for within the construction activity sector, the transport emissions sector and the Land Use, Land-Use Change and Forestry ("LULUCF") sector. The judge sets out the content of these affidavits in his second judgment which we will not repeat.

[141] It is also important to note that the draft CAP sets out 52 policies and proposals designed to reduce emissions across nine sectors. Crucially, the CAP acknowledges that some sectors are expected to contribute more than others to the climate action plan and some policies and proposals have a greater impact than others. This is unsurprising in a small jurisdiction where some sectors will have the ability to make more savings on emissions than others and where some sectors will struggle.

[142] When distilled to its essence the appellant's challenge relates to the judge's interpretation or lack of interpretation of this evidence. As to this, the first thing to say is it was not the function of the judge to look behind this uncontradicted evidence or conduct a merits review of it particularly given the highly technical nature of the evidence. As the Court of Appeal stated in *R (Mott) v Environment Agency* [2016] 1 WLR 4338 in para [74]:

> "The court must be astute to avoid the danger of substituting its view for the decision maker and of contradicting … a conscientious decision maker acting in good faith and with knowledge of all the facts" and… this was particularly so in the case of the decision makers educated predictions for the future."

[143] What the judge should have done was simply decide whether the evidential lacuna he had previously referred to had been filled in circumstances where he clearly said it could be filled in his first judgment. If he had adopted this approach, we consider he would have reached a different outcome. There was simply no basis for him to reject the specialist evidence filed by the relevant departments. This evidence came from highly qualified figures, Mr Savage and Mr McNickle.

[144] Mr McNickle comprehensively dealt with all arguments that were put to him including points made by Laura Neal on behalf of Friends of the Earth in an affidavit filed although not ultimately admitted. Mr McNickle's conclusion at para [115] of his affidavit is clear:

> "For all the reasons I have set out, the methodologies used are the best available to calculate projected emission and the approval and construction of the A5 project will not present an anomaly that requires to be, or can be, added separately to the available emissions projections. A project specific approach to calculations underlying the CAP is not appropriate or possible and, nor is it appropriate or possible to carry out a similar exercise as part of an authorisation decision in an attempt to isolate the effects of authorisation of a specific project on the path to net zero."

[145] Unfortunately, the judge also failed to appreciate that DfI and the Executive were informed of the broader transport sector emissions and that there was extensive consultation. It may have been better if a CAP had been produced prior to this decision and/or judgment. However, the judge should not have interpreted the draft CAP himself without inviting submissions. This was a treacherous route for him to take. As it turned out the judge's analysis was wrong in that he misplaced emphasis on the fact that this specific project was not mentioned in the CAP.

[146] It is also telling that there was consensus among all of the parties before us that the judge's conclusions at para [106] of his second judgment as to what section 52 requires in the second judgment are wrong. This paragraph cannot be reconciled with previous paragraphs. We agree with the DfI submission that it would place too high a burden upon departments to ensure that individual projects fit within climate action plans specifically. That would stymie all major development in Northern Ireland.

[147] In addition, the judge should have appreciated that the draft CAP Annex A in the quantification report clearly deals with estimation of overall Northern Ireland emissions for the first carbon budget and the use of the EPT and the use of the TEM.

[148] It is unfortunate that a full body of evidence was not provided earlier. However, we have no reason to believe that the fresh evidence collated during the litigation process was newly created evidence. Rather, it explained the position already taken by DAERA in more detail and is broadly consistent with the Departmental Statement which formed the basis of the decision to proceed with A5 WTC. This followed PAC recommendation 14 and expressed a confidence on the part of DfI that it will still be possible to achieve its transport sector obligations and that the transport emissions from the scheme will not be incompatible with achieving the objectives of the Act.

[149] This was a realistic and honest assessment in challenging terrain with many variables. The impugned decision should not be read hypercritically. It is also by its nature a forecast for which government is accountable. In this arena questions and queries will naturally arise. However, a supervisory court is not the place to debate the merits. The judge may well have been right that there are some inconsistencies in the evidence, however, that should not have precluded an overarching view of the case. The only function of this court is to decide on the evidence before it whether the process was lawful. Given the uncontradicted body of evidence including highly technical, specialist evidence, which is before this court the irrationality finding cannot stand.

[150] We are satisfied that DfI has, in making the decision to proceed with the A5 WTC, performed its function in a manner consistent with the obligations set out in the 2022 Act. In addition, there has clearly been no failure of inquiry.

[151] Finally, we record that there is no claim of bad faith made against DfI or DAERA in terms of the decision reached. There is also no suggestion that the legislation is unworkable advanced by any of the responsible departments. If that were the case any responsible department should of course raise the matter in the political arena.

[152] On an overall analysis it is our view that the impugned decision withstands public law challenge. Accordingly, the judge's finding that the appellant's decision to proceed with the A5WTC, breached the duty placed upon it by section 52 the Climate Change Act (NI) 2022 should not stand. It was also wrong to find that there is an

"evidential lacuna" which rendered the decision irrational or that there had been any failure of inquiry. The fundamental error the judge made was his failure to consider how the decision fitted within climate targets across Northern Ireland as a whole.

[153] The judge quashed the impugned decision on climate change grounds for lack of evidence and enjoined the DfI to fix the problem. This was not a wholesale demolition of the climate change justification but rather a call for greater clarity. The evidence relied upon in this appeal served to expand and clarify and to fill the purported evidential gap. We are satisfied that there is sufficient evidence which validates the decision made to proceed with the A5 WTC and that the DfI had complied with the obligations imposed by section 52 of the Climate Change Act.

Conclusion

[154] Accordingly, we allow the appeal, set aside the order of the High Court and dismiss the application on all grounds for the reasons we have given. The judge was wrong in his approach and the outcomes he reached in relation to the issues we identified at para [14]f herein. We will hear the parties as to costs.