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Case No: CO/3994/2018

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL
31/07/2019

Before:

THE HON. MRS JUSTICE THORNTON DBE

Between:

The Queen on the application of Lasham Gliding
Society Limited

Claimant

- and -

Civil Aviation Authority

Defendant

- and -

TAG Farnborough Airport Limited

Interested Party

Azeem Suterwalla and Daisy Mackersie (instructed by Keystone Law) for the Claimant
Gordon Nardell QC and James Burton (instructed by Civil Aviation Authority) for the Defendant

Hearing dates: 05 - 06 June 2019

HTML VERSION OF JUDGMENT

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The Hon. Mrs Justice Thornton :

Introduction

1. The Claimant, the Lasham Gliding Society, challenges a decision by the Civil Aviation Authority, the statutory regulator of UK airspace, to permit the introduction of air traffic controls in airspace around Farnborough Airport, which is presently largely uncontrolled.
2. The Civil Aviation Authority's (CAA) Airport Modernisation Strategy (2018) sets the scene for the present challenge:

"Demand for air travel has grown strongly in recent decades, and the Government expects that demand will continue to rise significantly between now and 2050. Growth in demand for air travel means increasing pressure on our airspace. The strategic case for airspace modernisation and the resultant benefits were set out by the Department for Transport in 2017. Those benefits include more choice and value for consumers, through the capacity for airlines to add new flights, reduced flight delays and enhanced global connections that can help to boost the UK economy, while continuing to improve high safety standards. Unlocking the benefits of modernisation will make journeys faster and more environmentally friendly. Better airspace design can manage noise impacts and improve access for other airspace users, including the Ministry of Defence, which requires more access to airspace to support a greater number of military aircraft."

3. However, controlled airspace is particularly problematic for gliders which need space in which to soar. Lasham Gliding Society ("LGS") is one of the largest gliding clubs in the world. It is seriously concerned that one of the effects of the CAA's decision will be to increase the risk of a mid-air collision between its gliders and those aircraft which divert away from any newly controlled airspace around Farnborough Airport into the adjacent uncontrolled zone over Lasham where its gliders fly. Other concerns relate to the loss of space for its gliders. LGS challenges the CAA's decision on the basis that the CAA has misconstrued the Transport Act 2000; is in breach of its duties under the Act and has acted irrationally.

Factual background

The Parties

4. LGS is a private, not for profit, gliding club. It was established in 1951 and regularly hosts national, regional and international gliding championships. Over 240 gliders are based at the club. Peak levels of glider activity can extend to 70 – 80 gliders in the air in an hour during the morning on a summer's day.
5. Witness evidence on behalf of LGS was provided by:
 - i) Mr Peter Reading; (sadly now deceased); a former member of LGS and a former member of the UK's Airprox Board, whose primary objective is to enhance air safety in the UK.
 - ii) Dr Colin Jackson; a member of LGS and qualified flight instructor.
 - iii) Mr Chris Hyett; a member of LGS and a former air traffic controller.
 - iv) Mr Colin Watt; chief flying instructor at LGS.
 - v) Mr Mark Green; deputy manager of the West London Aero Club whose members principally fly powered light aircraft.

6. The Defendant, the Civil Aviation Authority, is the statutory regulator responsible for the planning and regulation of UK airspace. Witness evidence on behalf of the Defendant was provided by Mr Lindsey, manager of the CAA's Airspace Regulation section.
7. The Interested Party, TAG Farnborough, took control of Farnborough Airport from the Ministry of Defence in 2003 and has used it for the departure and arrival of business jets (jets accommodating around 10 passengers). TAG Farnborough was the originator or 'Sponsor' of the proposed change in airspace controls under scrutiny in these proceedings, which it submitted to the CAA for approval. TAG Farnborough has played no part in these proceedings.

Controls on airspace

8. At the root of the regulatory system for airspace are the concepts of "controlled" airspace (CAS) and the "structure" of that airspace. The various classes of controlled airspace denote differing rules about the kind of aircraft – in terms of their navigational equipment – that are allowed to access each volume of CAS. Airspace is classified as Class A, C, D, E and G.
9. Class A is the most strictly regulated airspace where pilots must comply with air traffic control instructions at all times. Class G denotes uncontrolled airspace where aircraft may fly with autonomy when and where they like. Additional detail on the classes is set out below.
10. The 'structure' of CAS refers to the boundaries – vertical and lateral – of each volume of airspace and the features or procedures that govern aircraft movements within it. These features include defined routes for aircraft departing from and arriving at aerodromes, known as SIDs (standard instrument departure) and STARS (standard arrival route). Both features are classified as Performance Based Navigation (PBN).
11. PBN enables departing and arriving aircraft to follow a precise pre-determined track, reducing the need for intervention by air traffic control. The CAA considers that PBN facilitates, among other things, environmental and efficiency benefits, although this is disputed by LGS. By enabling aircraft to fly more accurate paths, with narrower swathes, this allows more aircraft to safely occupy a given airspace with reduced need for tactical intervention by air traffic control. In environmental terms, PBN allows for greater accuracy in climb and departure profiles and it can help avoid overflight of noise-sensitive locations.
12. In addition to the need to obtain clearance from air traffic control in controlled airspace, the designated classification of airspace or a specific notified feature or procedure within a CAS may entail 'conspicuity' requirements – that is, a requirement that an aircraft makes itself 'known' to air traffic control and other aircraft automatically, by using a transponder or similar device. A transponder is an item of airborne equipment which provides air traffic control with information about the aircraft.
13. The absence of air traffic control clearance and conspicuity requirements means that uncontrolled airspace is an 'unknown' environment. Conversely controlled airspace is a 'known' environment. A known environment is particularly important to ensuring safety where aircraft operate under Instrument Flight Rules (IFR), since these aircraft (often business or commercial passenger jets) tend to operate at higher airspeeds and have a more restricted view from the flight deck than aircraft operated under Visual Flight Rules (VFR) (where pilots navigate, in essence, by looking out of the window).
14. Class A is for Instrument Flight Rules (IFR) flying only. Class D is airspace for IFR and VFR flying. Clearance from air traffic control is necessary to enter. Class E airspace is for IFR and VFR use. IFR aircraft require air traffic clearance to enter but VFR traffic does not. In the UK many areas of class E airspace are Class E+. This means that, in addition to the class E requirements, the airspace requirements are supplemented with a specified conspicuity requirement, for instance Class E+TMZ (Transponder Mandatory Zone). A TMZ requires the operation of a serviceable transponder. VFR aircraft operating a serviceable transponder do not require air traffic clearance to access this airspace and can operate autonomously.

Airspace change at Farnborough

15. An 'airspace change' means a change to the boundaries, classification or notified features of airspace and may include the introduction of new procedures or new conspicuity requirements.
16. At present much of the airspace surrounding Farnborough Airport (below a certain altitude) is Class G uncontrolled airspace, where aircraft are under no requirement to notify or comply with instructions from Air Traffic Control.
17. The basic aim of the airspace change proposed for Farnborough Airport is to introduce volumes of Class D or Class E controlled airspace, in the immediate vicinity of the aerodrome and control areas (CTA) further away (in height and lateral distance). TAG also wished to introduce PBN for aircraft arriving and departing from Farnborough.

The decision making process

18. In February 2014, TAG Farnborough published and consulted on its proposed changes to the airspace. The proposal was referred to as Option 25.
19. LGS provided a detailed response to the consultation. It made a number of criticisms of the proposal, including that TAG Farnborough had ignored, or not properly understood, the requirements of gliders and the extent of the effect of its proposals on gliding from Lasham. In particular, TAG Farnborough had not analysed the risk that the introduction of controlled airspace would have the effect of compressing light powered aircraft reluctant, or unable, to enter the controlled airspace, into a limited channel of non-controlled airspace near Lasham, creating dangerous 'bottlenecks' or 'choke points' that would significantly increase the risk of mid-air collisions (referred to as 'the Lasham bottleneck' or 'Lasham Gap').
20. Following the consultation TAG re-designed the proposal to reduce the size and volume of the proposed new controlled airspace. In particular the boundary of the controlled area nearest to Lasham was moved laterally eastward away from Lasham, and the base height of the controlled area was raised. This option was referred to as Option 34. LGS did not consider that the changes met its concerns and continued to press its case.
21. Option 34 was submitted to the CAA on 3 July 2015 for approval. The CAA examined the proposal but had concerns. Further development of the design was therefore undertaken by TAG Farnborough between October 2015 and August 2016. A revised proposal (Option 38) was put out for a second formal consultation from July to November 2016.
22. The CAA facilitated a series of meetings between TAG and interested parties in 2016. The meetings failed to find meaningful common ground between LGS and TAG Farnborough. LGS and others put forward their own design proposal which was assessed by the CAA but rejected as unsuitable.
23. The Court was provided with a selection (but by no means the entirety) of the decision making documentation generated during the four year period of decision making. The documents included; consultation documents, feedback reports; technical reports and minutes of meetings.

The concerns of the MOD

24. The Ministry of Defence (MOD) operates an RAF base, RAF Odiham, close to the Lasham Gliding Club. RAF Odiham hosts light aircraft as well as gliders. The MOD shared LGS's concerns about the introduction of airspace controls around Farnborough airport and the increased risk of a mid-air collision in the Lasham Gap.
25. In an attempt to assuage the MOD's concerns, TAG undertook an analysis whereby it calculated the flights currently operating in the airspace that will become controlled if the proposal is implemented. Having established current flying patterns, it assessed the numbers likely to divert through the Lasham Gap in the event of the introduction of controls. It used data from June 2014 to estimate that, in a worst-case scenario, 15 powered light aircraft crossed the proposed area of controlled airspace in an hour. Of those 15, TAG considered that 5 – 7 aircraft would re-route through the Lasham bottleneck. TAG did not consider that this added significantly to the safety risk. The analysis was set out in a

document referred to as Appendix J, an undated internal document sent from TAG Farnborough to the MOD.

26. The MOD responded to the analysis by way of letter dated 4 June 2015 (references to ACP are to Airspace Change Proposal). In a section headed 'Outstanding concerns', the MOD stated that:

"4 Despite the efforts made by Farnborough to accommodate military requirements, there are 2 outstanding concerns which have proven difficult to fully address. These are as follows:

a) traffic funnelling. Comprehensive data analysis provided by Farnborough has suggested that any increase in traffic transiting close to or through the RAF Odiham MATZ would be negligible compared to current figures.....

The MoD are of the opinion that the analysis conducted and data collected does not provide a comprehensive picture of the prevailing traffic situation in this geographical area, particularly with respect to non-transponding traffic and gliders not FLARM equipped. It is the opinion of the MoD that even the slight increase in movements predicted by Farnborough within this already congested and contested airspace will have a noticeable impact. The MoD are still of the opinion that should traffic choose to route around the proposed CAS be that for ease or due to a lack of suitable radio/navigational equipment, this may increase the likelihood of Mid-Air Collision (MAC) to other airspace users. In addition, avoidance of the proposed CAS by transiting traffic could increase movement through the portion of the RAF Odiham MATZ that sits outside the proposed CAS, making the controlling of IFR approaches and departures particularly challenging.

.....

5 Ultimately, the issues of traffic funnelling and noise pollution are difficult to predict ahead of any ACP implementation, despite the analysis and mitigations proffered by Farnborough. Should the Farnborough ACP be implemented in its current form, the MOD would actively monitor the ACP's impact on all aspects of our operations, with particular emphasis on funnelling and noise pollution. DAATM would raise significant concerns to the CAA as a matter of urgency and would not wish to be constrained by standard post implementation review timelines.

....

Conclusion

8 The MoD has no objection to this ACP....

It is clear that concerns regarding traffic funnelling and noise pollution are unlikely to be resolved ahead of the proposed airspace change and that these would be closely monitored by the MoD post implementation. The draft LOA provided by Farnborough includes several robust procedures which will allow RAF Odiham operations to continue as per the current day for the majority of the time, however, it is clear that more work is required to include 618 VGS requirements. Finally, the MOD would wish to be included in the ongoing development of the LOA to ensure that fair and equitable access to the proposed CAS is agreed to ensure minimal impact on MoD operations"

27. The reference to an 'LOA' in the MOD letter is a reference to a letter of agreement which provides for special access rights to the controlled airspace. As part of the approval of TAG Farnborough's proposal for airspace change, TAG undertook to agree reasonable access by LGS, MOD and others.

The Regulatory and policy framework

28. The CAA's functions are set out in primary legislation, including Part I of the Transport Act 2000 which provides for the regulation of air traffic services.

29. Section 66 of the Act provides:

"66.— Air navigation: directions.

(1) The Secretary of State may give directions to the CAA imposing duties or conferring powers (or both) on it with regard to air navigation in a managed area.

..."

30. The current directions issued to the CAA under s.66(1) are contained in the Civil Aviation Authority (Air Navigation) Directions 2017 ("2017 Directions"), which came into force on 01 January 2018 and superseded the Civil Aviation Authority (Air Navigation) Directions 2001.

31. Paragraphs 3 to 5 provide:

"Airspace design

3. The CAA must—

(a) develop and publish a national policy for the classification of UK airspace;

(b) classify UK airspace in accordance with such national policy, publish such classification, keep such classification under review and, as the CAA considers necessary, modify it;

(c) develop and publish rules, guidelines, technical design criteria and common procedures for the use of UK airspace;

...

(e) prepare and maintain a co-ordinated strategy and plan for the use of UK airspace for air navigation up to 2040, including for the modernisation of the use of such airspace;

...

Airspace changes: procedure and guidance

4.—(1) Subject to directions 6 and 9, the CAA must develop and publish procedures, and guidance on such procedures, for the development, making and consideration of a proposal—

(a) for a permanent change to airspace design,

...

(2) A procedure developed under paragraph (1) must be proportionate and reflect published Government policy.

...

Proposed permanent change to airspace design

5.—(1) *Subject to direction 6, in accordance with its published strategy, procedures and policy on the design and classification of UK airspace, the CAA must decide whether to approve a proposal for a permanent change to airspace design.*

(2) *The CAA may make its approval of a proposal subject to such modifications and conditions as the CAA considers necessary."*

Airspace Strategy

32. Pursuant to the obligation under the 2001 predecessor provisions to paragraph 3(e) of the 2017 Directions to prepare and maintain an airspace strategy, the CAA published its strategy titled: "Future Airspace Strategy for the United Kingdom 2011 to 2030", in 2011. The strategy is designed to provide the framework for implementation of the UK's international obligations in relation to aviation. To cater for growth in demand for air travel, airspace and air traffic control services need to be modernised, simplified and harmonised, generating safety, environmental and commercial benefits. The strategy envisages the phasing out of traditional ground-based radio navigation systems in favour of satellite-based navigation (known as PBN).
33. In December 2018 the CAA published a replacement strategy referred to as the Airspace Modernisation Strategy, an extract of which appears at the start of this judgment. The 2011 policy remains applicable to older airspace change proposals but the CAA interprets and applies the 2011 policy in the light of developments in government policy and technology as reflected in the 2018 policy.

Changes to airspace design

34. Pursuant to paragraph 5(1) of the 2017 direction, the CAA must decide whether to approve a proposal for a permanent change to airspace design. CAA Guidance on the Application of the Airspace Change Process (CAP 725) sets out a seven-stage process from development of a proposal through consultation to approval, implementation and subsequent review. This was the process followed by the CAA in its decision making in this case. The seven stages are set out below (references to the Sponsor are to the entity proposing the airspace change, in this case TAG Farnborough):
- i) Stage 1 – Framework Briefing: The Sponsor and CAA meet to discuss the general nature of the proposal and the associated operational, environmental and consultation requirements.
 - ii) Stage 2 – Proposal development: The Sponsor develops design options, identifies consultees, and begins work on an environmental assessment of the proposal.
 - iii) Stage 3 – Preparing for consultation: The Sponsor designs the consultation process, with advice from the CAA.
 - iv) Stage 4 – Consultation and formal proposal submission: Sponsors are reminded that it may be necessary to re-consult if the proposal changes as a result of consultation. The material produced and received during the consultation must be provided by the Sponsor to the CAA.
 - v) Stage 5 – CAA assessment and decision: The CAA makes a detailed assessment of the proposal, in particular an operational assessment, environmental assessment, and an assessment of the adequacy of the Sponsor's consultation exercise. During this process the CAA will continue to engage with the Sponsor and, where appropriate, with other stakeholders (for example, where the Sponsor modifies the submitted proposal in response to observations from the CAA). The CAA then makes its decision, in accordance with the Transport Act 2000 s. 70 and applicable policies and guidance. The decision is published, accompanied by a written record of the three assessments. The CAA also publishes key material generated during the process.

vi) Stage 6 – Implementation: If the proposal is approved (with or without modifications), the relevant changes to airspace procedures and structures are formally notified. The decision sets out a proposed timescale for implementation.

vii) Stage 7 – Post-implementation review: An operational review is undertaken on the basis of the first 12 months' operation of the implemented airspace change. Where necessary the CAA can require modification.

35. CAP 725 has also been superseded by new guidance known as CAP 1616, in force from 01 January 2018. However, the procedural elements of CAP 725 continued to apply to the Farnborough proposal. CAP 1616 sets out the CAA's policy approach to the interpretation and application of s.70(2) Transport Act, including its interpretation of section 70(2)(a) which arises under Ground 2.

CAA's general duty under section 70 TA

36. The statutory duty at the heart of the present challenge is the general duty on the CAA in the exercise of its air navigation functions, set out in section 70 of the Transport Act:

"70.— General duty.

(1) The CAA must exercise its air navigation functions so as to maintain a high standard of safety in the provision of air traffic services; and that duty is to have priority over the application of subsections (2) and (3).

(2) The CAA must exercise its air navigation functions in the manner it thinks best calculated—

a. to secure the most efficient use of airspace consistent with the safe operation of aircraft and the expeditious flow of air traffic;

b. to satisfy the requirements of operators and owners of all classes of aircraft;

c. to take account of the interests of any person (other than an operator or owner of an aircraft) in relation to the use of any particular airspace or the use of airspace generally;

d. to take account of any guidance on environmental objectives given to the CAA by the Secretary of State after the coming into force of this section;

e. to facilitate the integrated operation of air traffic services provided by or on behalf of the armed forces of the Crown and other air traffic services;

f. to take account of the interests of national security;

g. to take account of any international obligations of the United Kingdom notified to the CAA by the Secretary of State (whatever the time or purpose of the notification).

(3) If in a particular case there is a conflict in the application of the provisions of subsection (2), in relation to that case the CAA must apply them in the manner it thinks is reasonable having regard to them as a whole. ..."

The decision under challenge

37. The CAA issued its decision on 10 July 2018 approving a modified version of the proposal submitted by TAG. TAG's proposal was modified by the replacement of two Class D control zones with a Class

E + Transponder Mandatory Zone, which removed the need for transponder equipped aircraft flying with visual flight rules to obtain air traffic control clearance to enter the zone.

38. The Court was provided with the reasons document, an operational assessment, consultation assessments and an environmental assessment. This was not the entirety of the decision documentation.
39. An executive summary explains the reasons for the decision (references to ACP are to Airspace Change Proposal):

"6. The CAA has concluded that the Modified ACP maintains a high standard of safety in a congested area of airspace used by a wide variety of airspace users and aircraft that will benefit from changes to airspace design that create a known environment and that the classification of airspace approved combined with the access arrangements open to all radio equipped aircraft mean the changes will not create a detrimental effect on safety in surrounding remaining Class G airspace, in particular the changes will not create the detrimental effect on safety referred to as 'bottle-necks' in surrounding remaining Class G airspace.

7. The CAA has concluded that the Modified ACP will make the most efficient use of airspace because the airspace design we have decided to approve will increase the overall number of aircraft that can safely use the airspace. The CAA has concluded that the Modified ACP will enable all aircraft to benefit from the expeditious flow of traffic because IFR traffic will now be able to flight plan using SIDs and STARs and are less likely to be re-routed due to risk of conflict with an unknown aircraft.

8. The CAA has concluded that the Modified ACP combined with the access arrangements open to all to accept represents the most equitable means of satisfying the requirements of the operators and owners of all classes of aircraft whilst at the same time achieving the important benefits of the proposal.

9. The CAA has taken into account the environmental impact of the change as set out in this decision and has concluded that when considering all of the CAA's statutory duties as a whole it is reasonably proportionate and the right decision to approve the proposal.

10. The CAA has considered alternatives proposed by GA stakeholders. These proposals were not treated as an airspace change proposal as they had not followed the process a Sponsor must follow to propose a change to airspace design to the CAA (CAP 725). Nonetheless careful consideration has been given to whether any of the alternatives proposed or the information in the alternatives proposed means the ACP should be modified in any of the ways proposed. The CAA has concluded it should not. The CAA has concluded that the design proposed is unfeasible due to the effect on Gatwick and Heathrow and that the design proposed is so different to that being considered by the CAA in this proposal that it could not be dealt with by way of a modification but would need to be proposed as an alternative proposal developed in accordance with the CAA's airspace change process."

The grounds of challenge

40. LGS challenges the decision on three grounds:

Ground 1: the decision fails to maintain a high standard of safety in the airspace as required by s.70(1) Transport Act 2000

Ground 2: the decision fails to secure the most efficient use of the airspace in accordance with s.70(2)(a) Transport Act 2000

Ground 3: the decision fails to have regard to the onerous effects of the airspace design change on LGS (Ground 3 was originally broader than this but was restricted as now appears by order of Ouseley J).

Discussion

Ground 1: Failure to maintain a high standard of safety as required by Section 70(1) TA

Submissions of the parties

41. On behalf of LGS Mr Suterwalla submitted that no rational decision maker could have concluded that a high standard of safety would be maintained by the decision as required by s.70(1) Transport Act. It is common ground that 70% of powered light aircraft currently using the uncontrolled airspace around Farnborough will choose not to enter into the newly controlled airspace and that a proportion will fly through the Lasham Gap, which is the densest area of LGS's gliding operations. The analysis of the numbers of aircraft likely to fly through the Lasham Gap prepared by TAG in Appendix J was flawed yet was relied on by the CAA in its decision making. LGS recognises that the CAA has experience in the design of airspace which requires technical and specialist knowledge but the CAA did not carry out or rely on a factual or evidence based analysis which was necessary to enable it to reach a rational conclusion on safety.
42. On behalf of the CAA, Mr Nardell submitted that the CAA had reached a lawful and rational decision. The Court should be slow to second-guess on rationality grounds the conclusions reached by a public body to whom Parliament has entrusted the function of determining regulatory matters of a technical or specialised nature. The CAA approached the question of safety by reference to the material submitted by TAG Farnborough; the information gathered during the consultation and decision-making process and the CAA's own expert judgment and experience. Whilst LGS disagrees with the CAA's conclusions, the CAA has not misinterpreted s70 Transport Act and the claim on ground 1) comes nowhere near the high threshold for an irrationality challenge.

Analysis

43. Counsel were agreed as to the applicable principles for a rationality challenge. When a decision is made by a public body in good faith, following a proper procedure and applying conscientious consideration, a Claimant must show more than that a mistake has occurred. It must be shown that the decision was one that could not reasonably have been reached on the material or was otherwise irrational. Facts which have been found by a body charged with making decisions based on their findings of fact are not readily susceptible to challenge. The Court should be wary of invitations to engage in detailed analysis of the phraseology used and drawing fine distinctions between different parts of what may be long and complex reasoning. A Court of review should be concerned with rationality, rather than forming its own view on part of the material available to the decision maker (R(Fraser) v National Institute of Health and Clinical Excellence [2009] EWHC 452 (Admin) Simon J at [47]).
44. Counsel were also agreed as to the analysis of Andrews J in R(Law Centres) v Lord Chancellor [2018] EWHC 1588 Admin, in turn drawing on the analysis of Laws LJ in R(Khatun) v Newham [2005] QB 37. Where a decision maker has a wide discretion conferred by statute, it is for the decision maker to decide (a) what factors are relevant or irrelevant, (b) what weight is to be put on them, and (c) the manner and intensity of inquiry to be undertaken into any relevant factor accepted or demonstrated as such, subject only to Wednesbury review.
45. Counsel were however at odds over the Court's approach to the margin of appreciation. They agreed on the underlying principles. The scope of judicial review is acutely sensitive to the regulatory context. The Courts allow an enhanced margin of appreciation for the exercise of regulatory judgment in technical and specialised areas including; educated predictions for the future; specialist judgments and

the application of specialised scientific and technical knowledge or expertise (R(Mott) v Environment Agency [2016] EWCA Civ 564).

46. Mr Suterwalla contended that the flaws in Appendix J were obvious and apparent as a matter of good sense. No specialist knowledge was required to identify the flaws and the Court should not therefore afford the CAA an enhanced margin of appreciation. He drew the Court's attention to the decision of R(Justice for Health Ltd v Secretary of State for Health [2016] EWHC 2338 (Admin) in which it was argued that the Secretary of State had no adequate evidence on which to base his decision.
47. Mr Nardell rejected LGS's submissions about Appendix J. The decision taken was highly technical and well within the wide margin of appreciation the Court should afford the CAA.
48. The scope of judicial review is acutely sensitive to the regulatory context. The CAA has statutory responsibility for managing UK airspace. By Section 70, the Transport Act imposes a broad primary duty on the CAA to maintain a high standard of safety in the provision of air traffic services. Subsidiary to its primary duty, the CAA must exercise its air navigation functions in the manner it thinks best calculated to secure efficient use of airspace, and to satisfy the requirements of operators and owners of aircraft. Beyond these broad 'end goal' stipulations, section 70(2) Transport Act is not prescriptive. It allows the CAA considerable latitude in its assessment of how best to achieve the statutory goals imposed upon it. It does not, for example, prescribe a particular method for evaluating the safety impacts of airspace design. The CAA is simply required to go about its duties in the manner best calculated to achieve the required end goal. The 2017 Directions requires the CAA to publish a strategy and develop and publish proportionate procedures. Other than these requirements, it is for the CAA to decide on its processes, subject to the broad umbrella provisos in Section 70(2).
49. Pursuant to statutory requirements, the CAA has promulgated guidance on its decision making, referred to as 'CAP 725' (and now CAP 1616). The guidance lays down a seven stage process for decision making on an airspace change proposal whereby the CAA engages in a process of analysis and scrutiny of a Sponsor's proposal in the form of an interactive dialogue with the Sponsor and public input via the consultation process. There is no suggestion by LGS that the CAA has not followed its guidance.
50. Once a formal decision on the airspace proposal has been made and implemented, a post-implementation review takes place thereby providing an opportunity to assess whether the airspace change proposal is meeting its objectives and any unintended consequences.
51. It is clear that airspace change is a technical and specialised area of regulation and that Farnborough Airport sits within an area of particularly complex airspace (witness statement of Mr Lindsey (CAA)). Decision making staff at the CAA have skilled and specialist knowledge. So too do the members of LGS who provided witness statements. Mr Nardell acknowledged their experience, particularly Mr Reading. He accepted that Mr Reading's views on safety represented a tenable opinion, whilst also submitting that it is not for the Court to decide between competing tenable opinions.
52. Against this backdrop, I am of the view that the starting point for this Court must be that the CAA is entitled to an enhanced margin of appreciation, pursuant to R(Mott) v Environment Agency. In this respect, I did not understand Mr Suterwalla to seriously dispute this general proposition. His focus in oral submissions was on the flaws with Appendix J which he submitted were sufficiently egregious to take the CAA's decision making outwith the margin of appreciation and enable the Court to intervene.
53. I remind myself that the Court must be astute to avoid the danger of substituting its views for that of the decision maker and of contradicting a conscientious decision maker acting in good faith and with knowledge of the facts. In addition, *"if...the court should be very slow to impugn decisions of facts made by an expert and experienced decision-maker, it must surely be even slower to impugn his educated prophecies and predictions for the future"* (R v Director General of Telecommunications ex p Cellcom [1999] ECC 314 at [26] Lightman J). Further, I accept Mr Nardell's submission that it is not the function of the Court in a judicial review challenge to assess the merits of competing tenable opinions on highly technical issues like airspace design.

54. Turning then to the decision making on safety: Mr Suterwalla accepted that the CAA had asked itself the right question with respect to the safety implications of the introduction of controlled airspace:

"General aviation airspace user stakeholders expressed a view at the CAA chaired Facilitation GA workshops that the introduction of controlled airspace in this environment would increase risk and reduce safety margins in this environment. Some of those present expressed the view that extending the CTR and introducing certain CTA areas will result in traffic squeeze. In their view, some GA pilot's reluctance to speak to ATC to access Class D airspace would lead to bottlenecks of traffic through remaining heavily congested Class G areas in which gliders and powered aircraft potentially occupy the same volume of airspace." (paragraph 54 Decision document)

('GA' in the quote above refers to general aviation, a collective term for a diverse range of users such as business, corporate, transport and air ambulances, who use a wide range of aircraft including powered aircraft, such as helicopters and unpowered aircraft, such as gliders)

55. The CAA answered its question as follows:

"55. With respect to the airspace that would be classified as Class D (if the Sponsor implements what the CAA has approved), the CAA has concluded that any safety concerns can be mitigated by Farnborough ATC providing adequate resource to safely integrate VFR and IFR air traffic. CAP1535P (The Skyway Code) states that if you plan a route through controlled airspace, a crossing clearance may not always be possible and you should also have a contingency plan. The CAA recognises that the introduction of additional controlled airspace could result in 'pinch points' and bottlenecks but we have concluded that the build-up of bottlenecks can be reduced by all airspace users exhibiting appropriate airmanship including recognising the need to equip with a radio and to speak to air traffic control and can be managed by Farnborough ATC providing sufficient resource and fair and reasonable access arrangements.

56. With respect to the airspace that would be classified as Class E with an associated Transponder Mandatory Zone (in CTAs 8 and 9) (if the Sponsor implements what the CAA has approved) such classification will provide autonomous access to GA VFR transit aircraft (thereby reducing the need for any re-routing of suitably equipped aircraft and removing the need for any GA pilot with a transponder to speak to ATC to pass through the airspace) but will nevertheless address the issues identified above with the current airspace design and still result in a known environment and associated safety benefits."

56. As is apparent from the extract quoted above, the CAA did not dispute the potential for bottlenecks but considered that the risk could be managed by TAG providing adequate resource to safely integrate air traffic; appropriate airmanship by all airspace users and TAG providing fair and reasonable access arrangements to the controlled airspace. I was told during the hearing that LGS has thus far declined to enter into discussions about access arrangements. This is on the basis that LGS does not consider these will resolve its concerns.

57. Turning then to Appendix J, which both Counsel took me through in detail. LGS's concerns about Appendix J may be summarised as follows:

i) The CAA did not come to its own views on the TAG analysis but simply accepted it.

ii) The TAG analysis discounted the two highest peak flying times as anomalies and therefore discards them as irrelevant. Yet, the most acute safety issues are likely to arise at peak flight times.

iii) TAG appears to have arrived at an estimate of aircraft which cross the proposed control zone which bears no logical relationship to the data gathered during a review in June 2014. LGS cannot understand the basis for the estimate.

iv) The Claimant criticises TAG's reliance on anecdotal evidence from flight instructors that 30-50% of aircraft currently passing through the controlled zone would fly elsewhere rather than through the Lasham bottleneck. The evidence base is insufficiently rigorous. LGS relies on evidence from the Deputy Manager of the West London Aero Club who was present at the meeting relied on by TAG who does not recall any such statement being made at the meeting.

v) TAG's conclusion that an additional 5 – 7 aircraft per hour would fly through the Lasham bottleneck is flawed. LGS conducted its own assessment using the traffic volumes published by TAG and concluded that 27-28 aircraft would fly through the Lasham bottleneck thereby increasing the risk of a mid air collision in the vicinity of the gliding club by 9.6 – 9.8 times.

vi) TAG drew an irresponsible and dangerous conclusion from its analysis. Mr Reading castigated TAG's conclusion that "the risk is already very significant in itself due to the presence of very large numbers of aircrafts" as 'appearing to suggest that the higher the existing base line risk is, the less TAG need to be concerned about adding to it'.

vii) The MOD remained concerned about the risk of mid air collision despite TAG's analysis.

58. The CAA's response is set out in Mr Lindsey's witness statement:

"182 Although Mr Reading criticised [the TAG analysis], in my view this was, and is, sound analysis which the CAA had in mind ...and which accorded with our own understanding of this airspace

.....

184.....I appreciate the LGS does not agree with TAG's analysis that the new CAS would result in 5 to 7 additional powered GA movements per hour through the 'Lasham bottleneck' (accepting that this does not include gliding activity). But this modelled prediction accorded with my team's observations in the control room at Farnborough. The CAA does not agree with LGS's numbers.....

...

186 it is true that the CAA did not itself carry out any independent detailed analysis of the numbers on which TAG's predictions were based. But that is not how the airspace design change process works. It is for the Sponsor to persuade the CAA, with acceptable evidence, that its proposal will maintain a high standard of safety. Within the parameters of our standard process and policy requirements the choice as to the nature of that evidence is, in the first instance, for the Sponsor. As I mentioned above, no definitive or universal methodology exists to calculate the exact numbers of VFR users in any given volume of airspace and the process relies on a Sponsor's consultation to draw out the local issues, as well as the current positions of national representative bodies on the matter. The CAA received TAG's proposal, which included analysis, and all that analysis was carefully examined in the light of all the consultation responses. I also note, once more that the CAA did initiate its own enquiry where it felt that necessary.....

...

188 But in any event CAA was starting from a position in which it had a great depth of knowledge here, about patterns of GA behaviour generally and about GA traffic in this area. The CAA had previously commissioned QinetiQ to produce a Class G users 'behaviours' model and draft report. This was based largely on responses to questionnaires sent to Class G users and some working assumptions. The working assumptions included that new class D would see about one third of GA request clearance through the new class D. TAG used the QinetiQ work and TAG's assumption that 30% of the 15 powered VFR per hour would request a clearance with the ACP in place was in line with the QinetiQ work. However, it is important to bear in mind that these were only assumptions (in the QinetiQ work and the TAG work) and the CAA was well aware of that. I consider the assumptions conservative.

189 in addition to the QinetiQ report the CAA had also Sponsored and participated in VFR working groups such a 21st century class G. All of this helped to inform CAA's thinking and decision-making with regard to GA."

59. As Mr Lindsey explained, CAP 725 does not require the CAA to undertake independent detailed analysis. The guidance states that the CAA's role is to provide guidance, scrutinise and assess the Sponsor's proposal. Its role is not to assist the Sponsor in developing the design. The CAA simply did not agree with LGS's own assessment that 27-28 aircraft would fly through the Lasham bottleneck. It is not for the Court to rule on the merits of competing tenable opinions. TAG's conclusion that the addition of 5-7 aircraft through the Lasham Gap would not significantly increase the safety risk because *"the risk is already very significant"* was, as Mr Nardell acknowledged, infelicitous. It was not however the CAA's wording and infelicity of expression is not, of itself, unlawful.
60. Mr Suterwalla invited me to review and assess Appendix J for myself. I have done so, in light of submissions by both Counsel on the document. On a fair reading of Appendix J as a whole, I am not persuaded of 'obvious' flaws 'apparent as a matter of common sense', as suggested by Mr Suterwalla. Nor am I persuaded that the document can be said to fall outwith the enhanced margin of appreciation.
61. I have reviewed the document in light of LGS's criticism that the TAG analysis failed to address the peak case. The analysis of aircraft considered likely to operate in transit through the proposed controlled zone was based on data from June 2014, during a period of extended good weather and observation of the largest number of aircraft seen during the year. The data included data from the weekends which were stated to be at the high end of the average. The text from the analysis goes on to state that: *"the unit took the worst case scenario – the average of the maximum between the hours of 0800 and 2000 UTC which is 13.7 and then rounded up to 15 per hour"*. The analysis of the aircraft flying through the Lasham Gap 'over the busiest month' sets out the maximum number of aircraft each hour as well as the average. The assessment identifies two of the maximum figures as anomalies and excludes them but justifies this on the basis of local knowledge and experience.
62. Mr Nardell responded to Mr Suterwalla's complaint that there appeared to be no logical relationship between the data collected in June 2014 and TAG's estimate of aircraft expected to cross the proposed control zone by providing an enlarged copy of the table of data (titled Farnborough ACP response for MOD consideration). The layout of the data had initially appeared confusing before Mr Nardell explained that the total figure for each hour appeared above the data collected. The data generated was used to arrive at an assessment of VFR GA likely to operate in transit through the zone.
63. LGS produced a witness statement about events at a consultation meeting in an attempt to refute TAG's assessment that 30-50% of aircraft currently passing through the controlled zone would fly elsewhere rather than through the Lasham bottleneck. However this, along with other criticisms, treats the CAA as constrained by a single, uniquely correct approach to its task of applying s.70(1) TA and by one uniquely correct conclusion to the issues raised by LGS's objections. Mr Lindsey explained in his witness statement that there is no definitive or universal methodology to calculate the exact numbers of VFR users in any given volume of airspace. He also said that TAG's analysis accorded with the CAA's observations and experience. This is, it seems to me, a judgment squarely within the enhanced margin of appreciation of a specialist regulator.

64. Stepping back from the detail, the effect of Mr Suterwalla's submissions is to artificially elevate the status of Appendix J in the CAA's decision making. The nature of the statutory exercise under s.70 Transport Act meant the CAA had to form a judgment on the question of safety. In reaching that expert regulatory view, the CAA was entitled to determine for itself the most appropriate methods of assessment and prediction; the sufficiency of the information placed before it; and the way in which that information fell to be evaluated – all against the background of its own wealth of knowledge and expertise. Put simply, the CAA applied its knowledge and experience to the TAG analysis and concluded that it 'looked right'. Appendix J was part only of a complex technical and predictive expert judgment. This is classic Mott territory.
65. The Court should also take account of the position of the MOD and the nature of the regulatory process. The MOD shared the same concerns as LGS. Whilst Appendix J did not resolve all of its concerns, the MOD did not object to the proposal being implemented. It accepted that its concerns were unlikely to be resolved ahead of the proposed airspace change and placed emphasis on the need for fair and equitable access arrangements. This point is reflected in the undertaking required of TAG to ensure reasonable access to the airspace for other users. The MOD stressed it would actively monitor the impact of the change and raise significant concerns with the CAA as a matter of urgency. This is a reference to stage 7 of the regulatory process – the post implementation review, which can be an opportunity for MOD, LGS and others to register concerns in light of practical experience of the change. It may therefore be the case that the safety case is reassessed in due course, as part of the regulatory process.
66. Accordingly, I am not persuaded that the CAA's assessment of the safety implications of the proposal was irrational. LGS evidently disagrees with the CAA's reasoning and conclusions. But that is not a disagreement the Court can resolve.

Ground 2 Interpretation and application of s.70(2)(a) Transport Act 2000

Submissions of the parties

67. On behalf of LGS, Mr Suterwalla submitted that the CAA misinterpreted and misapplied the duty on it to secure the "most efficient use of airspace" under s.70(2)(a) Transport Act. "Efficient" should be assessed by reference to the numbers of aircraft movements that will actually take place in the airspace when the new design is implemented, not the capacity of the airspace for aircraft movements as the CAA has assessed. Further, s.70(2)(a) requires the CAA to confine its assessment of "efficient" to the specific volume of airspace which will become controlled on implementation of the airspace change proposal, rather than doing what the CAA claims it did which was to take a "whole airspace" approach by looking beyond the airspace that would become controlled to adjacent airspace. The CAA's conclusion that the changes would enable more aircraft to use the airspace is irrational because it is unsupported by evidence or reasoning to show that more aircraft will use, or even be able to use, the newly controlled airspace.
68. On behalf of the CAA Mr Nardell pointed to the CAA's interpretation of the 'efficient use of airspace' in CAP 1616 as "the most number of aircraft movements through a specific volume of airspace over a period of time". The CAA's guidance gives an example of a beneficial characteristic for this objective as being to "minimise the occurrence of choke-points". He submitted that s.70(2)(a) allows efficiency to be determined by reference to the wider airspace and an increase in the capacity of airspace for such movements. LGS's interpretation constrains the natural meaning of the subsection and seeks to introduce an impermissible gloss on the simple phrase 'efficient use of airspace', reading in constraining words that are not there and which would conflict with the overall sense and purpose of the section.

Analysis

69. Paragraph 60 of the CAA's decision is the key passage in relation to ground 2.

"The CAA considers that the most efficient use of airspace means the use of airspace that secures the greatest number of movements of aircraft through a specific volume of airspace over

a period of time so that the best use is made of the limited resource of UK airspace. It is therefore concerned with the operation of the airspace system as a whole. We have concluded that the changes proposed will enable more aircraft than is currently the case to use the airspace. In Class D airspace all users with a radio will be able to access the airspace provided that they obtain a clearance to do so. In class E + TMZ airspace all users can access the airspace without clearance from air traffic control provided that they are transponding which means that air traffic controllers and other aircraft can see their presence on their equipment. Both these classifications of airspace create what is referred to as a known environment. Aircraft that flight plan are able to plan more efficient and will be given more expeditious routing by air traffic control when flying through known airspace and will be unlikely to be delayed on the ground before take-off as well as less likely to be rerouted mid-flight. We have considered the access arrangements open to all suitably equipped airspace users to accept. We note there was extensive simulator testing of the proposed designs which would have included working with heavy demand of Gatwick and Heathrow aircraft in this airspace and GA aircraft calling up for clearance. We have concluded that overall more aircraft will be able to use the airspace and the changes proposed will lead to a more efficient use of that airspace. It may be possible to increase further the efficient use of this airspace if it were possible to agree access arrangements (LoAs) with some GA airspace users. However this decision has been taken in the absence of such agreements at this time and based instead on the unilateral offer of access arrangements set out in the Sponsor's letter to the CAA dated 4th of September 2017."

70. Although there was some discussion and disagreement before me as to the approach adopted by the CAA in its decision; I accept Mr Nardell's submission that the CAA adopted the whole airspace approach. Although densely worded, paragraph 60 of the decision makes express reference to whole airspace ("*... operation of the airspace system as a whole*"). There are also references to Heathrow and Gatwick aircraft. Mr Nardell explained that the introduction of PBN has the additional benefit of increasing capacity or efficiency in the heavily controlled airspace that services the major London airports. This is because Farnborough arrivals and departures can be integrated with arrivals and departures from the major airports.

Interpretation of section 70(2)(a)

71. In interpreting s.70(2)(a) Transport Act, "*the basic task for the court is to ascertain and give effect to the true meaning of what Parliament has said in the enactment to be construed. The controversial provision should be read in the context of the statute as a whole and the statute as a whole should in turn be read in the historical context of the situation which led to its enactment*" (R(Quintaville) v Secretary of State for Health [2003] 2 AC 687 page 695 per Lord Bingham).
72. The Court should start with the plain and ordinary meaning of the word or phrase used (Bennion on Statutory Construction, approved in numerous judicial contexts).
73. The court must seek to avoid a construction that produces an absurd result since this is unlikely to have been intended by Parliament. 'Absurdity' in this context includes "*virtually any result which is unworkable or impracticable, inconvenient, anomalous or the illogical*" (passage from Bennion cited with approval by Lord Kerr in R v McCool and another Northern Ireland [2018] UKSC 23 at [24]).
74. Section 70(2) of the Transport Act imposes a broad duty on the CAA to exercise its air navigation functions in the manner it thinks best calculated to secure efficient use of airspace. Beyond this broad

'end goal', section 70(2) is not prescriptive and allows the CAA considerable latitude in its assessment of how best to achieve the statutory goal. This general duty on the CAA applies to every exercise by the CAA of its air navigation functions, not just to an airspace change involving classification of an identified volume of airspace. More generally, airspace is a limited resource and the CAA is granted broad discretion in its regulation of the scarce national resource of 'UK airspace' (section 72 Transport Act). The 2017 Directions confer functions on the CAA, several of which apply to the whole of UK airspace and have nothing to do with individual airspace changes.

75. Turning to the specific words of s.70(2)(a) - the sub-section refers broadly to efficient use of airspace not to the efficient use of 'the' airspace, which would have lent support to Mr Suterwalla's interpretation. It would seem odd for Parliament to have granted the CAA a broad discretion by the words 'best calculated to secure' but then impose a prescriptive reference to the airspace in question.
76. It seems to me that on its plain and ordinary meaning 'efficient use of airspace':
- i) is capable of referring to an increase in the capacity of airspace to accommodate aircraft movements as well as, or in addition to, actual numbers; and
 - ii) entitled the CAA to assess the contribution made by the proposal to the efficient use of UK airspace, as a whole, not just the airspace to be controlled.
77. I accept Mr Nardell's submission that LGS's interpretation constrains the natural meaning of the subsection and seeks to introduce an impermissible gloss on the simple phrase 'efficient use of airspace', reading in constraining words that are not there and which would conflict with the overall sense and purpose of the section.
78. As regards capacity/actual numbers; nothing in the subsection, expressly or by necessary implication, confines the CAA to considering a predicted increase in movements "as a matter of fact" particularly given this is not an area where the CAA is necessarily dealing with facts or what has/has not happened or what will/will not happen. The CAA is dealing with evaluation and predictions. Further, Mr Suterwalla's construction requires words to be read in as to the point in time at which the fact of the increase in numbers is to be assessed. Placing a gloss on the statute raises a series of questions as to which there is no answer. For example, is it the CAA that must be satisfied? To what standard? How long a timescale? Parliament has conspicuously it seems to me declined to ask those questions which would be akin to requiring a factual examination by the regulator. Instead, the regulatory regime leaves the CAA with a degree of freedom within the general objectives of the s.70 duty in its pursuit of the broad public good of utilising a scarce national resource. The timescales involved may conceivably be lengthy. The 2017 Directions require the CAA to plan for the use of UK airspace up to 2040. This will inevitably require the exercise of judgment which Parliament has not sought to constrain in the drafting of section 70 Transport Act.
79. As regards consideration of the UK airspace as a whole; it was common ground that the CAA could and should look outside the proposed area of controlled airspace to assess the safety implications as required by Section 70(1). There would be an odd (and unexplained) asymmetry if the CAA could look outside the controlled airspace for its safety assessment, but not for its efficiency assessment. Mr Suterwalla submitted that the CAA's interpretation would mean a potentially unlimited amount of airspace would have to be considered in the decision making. However, the extent of the airspace relied on will be context specific and a matter for the CAA's judgment, subject to the doctrine of relevant considerations and the duty to disregard irrelevant considerations.

Irrationality

80. It follows from my analysis as to the proper interpretation of section 70(2)(a) Transport Act that I am of the view that the CAA's decision making on this cannot be said to be irrational. Having interpreted section 70(2)(a) correctly, the CAA reached the view that the creation of a known controlled environment would enable more aircraft to use the Farnborough airspace, along with consequential benefits for Heathrow and Gatwick aircraft. Accordingly, I do not accept Mr Suterwalla's submission that the CAA had not defined the specific volume of airspace. Nor do I accept that the CAA had failed

to analysed the numbers of aircraft in the airspace now and in the future. The CAA was entitled to consider the capacity of the aircraft to use the space in general terms not in actual numbers.

Ground 3 Whether the CAA has had regard to all relevant considerations for the purpose of its assessment under s.70(2)(b) and (c) Transport Act 2000

Submissions of the parties

81. The parties dealt with this ground briefly in written and oral submissions
82. On behalf of LGS, Mr Suterwalla submitted that the decision does not explain how the CAA took into account the effect of the change on LGS, in particular the practical and financial viability of its operations. The CAA is therefore in breach of its duties under section 70(2)(b) and (c) TA.
83. On behalf of the CAA, Mr Nardell contended that Ground 3 is predicated on LGS's contention that its operations are imperilled by safety concerns which the CAA rejects for reasons given in Ground 1. The CAA was not obliged when addressing s70(2)(b) and/or (c) to perform the logical contortion of nevertheless accepting LGS's safety fears as well founded. In any event the Decision contains numerous indications that both the CAA and TAG were well aware of the characteristics and requirements of gliding operations.

Analysis

84. From my review of the decision-making documentation before the Court, it is apparent that LGS's concerns about the impacts on its operations stemmed from its concerns about the safety implications of the proposal. For the reasons set out above I have concluded that whilst the CAA and LGS disagree over the safety implications of the airspace design, the CAA did not act unlawfully in its assessment. As Mr Nardell submitted, it follows therefore that having reached a lawful conclusion under s.70(1), as with the s.70(2)(a) assessment, the CAA was not obliged, when addressing s.70(2)(b) and/or (c), to perform the logical contortion of nevertheless accepting LGS's safety fears as well-founded.
85. In any event, it is clear that the CAA was aware of and understood the various impacts LGS claimed the airspace change proposal would have on its operations. The witness statement of Mr Lindsey details his understanding and experience, as well as that of the case officer, as to the characteristics of gliding operations. Mr Lindsey goes on to explain that it was this understanding that led him to propose modifications to TAG's proposal. The decision document details a series of meetings in 2016 involving the CAA, TAG and LGS in an attempt to resolve the concerns expressed by LGS. Mr Lindsey's evidence explains that the meetings were not the norm but an extra step taken by the CAA in the particular circumstances of the case. Mr Lindsey also explained that significant additional CAA management time was diverted to assess and respond to the alternative airspace design proposal submitted by LGS and others. The alternative design proposal refers to the threat of LGS becoming financially unviable, with job losses. A consultation response document from LGS in May 2014 explained the potential impacts of the proposal on LGS's recreational activities, including the financial impacts.
86. Nor do I accept that the decision is inadequately reasoned. Decision documents are to be read fairly and in good faith. If reasons are given in general terms, the Court should not exclude reasons which fairly fall within them. The decision maker must be given credit for having the background to this situation well in mind and must be taken to be properly and professionally informed (Lightman J in R v Director General of Telecommunications, ex p Cellcom [1999] ECC 314). In this case the decision document explained that feedback from the consultations led to the production of an alternative proposal by LGS and others. The alternative proposal which contains the references to financial viability is annexed to the decision document. The reasons for considering the TAG proposal to be the most equitable for all users are given in broad terms but they must be read in light of the CAA's assessment that fair and reasonable access arrangements and proper airmanship would mitigate safety concerns and, by implication, consequential financial concerns.
87. I accept that LSG remains concerned that the impact of the CAA's decision is to seriously impair its ability to operate as a gliding club. However, the merits of the CAA's decision are not a matter for the

Court.

Conclusions

88. For the reasons set out above, I am of the view that the CAA did not misinterpret or fail to comply with s.70 of the Transport Act. Nor did it reach irrational conclusions. The claim for judicial review is dismissed.

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