

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

Claim No CO/3206/2020

BEFORE THE RT HON LORD JUSTICE STUART-SMITH AND THE HON MRS
JUSTICE THORNTON DBE

B E T W E E N:

R (FRIENDS OF THE EARTH LIMITED)

Claimant

-and-

(1) SECRETARY OF STATE FOR INTERNATIONAL TRADE /
(2) EXPORT CREDITS GUARANTEE DEPARTMENT (UK EXPORT FINANCE)
(“UKEF”)
(3) HM TREASURY

Defendants

-and-

(1) TOTAL E&P MOZAMBIQUE AREA 1 LIMITADA
(2) MOZ LNG1 FINANCING COMPANY LIMITED

Interested Parties



ORDER

UPON the Claimant's application for judicial review

AND UPON the order of the Hon Mrs Justice Thornton DBE dated 14 May 2021 granting the Claimant permission on Ground 1 and providing that the Claimant's costs liability to the Defendants and Interested Parties combined be capped at £10,000 inclusive of VAT

AND UPON hearing Jessica Simor QC for the Claimant, James Eadie QC for the Defendants and Adam Hepinstall QC for the Interested Parties

IT IS ORDERED THAT:

1. The Claimant's claim for judicial review is dismissed
2. The Claimant has permission to appeal to the Court of Appeal on the following grounds:
 - a. Ground 1: The Defendants failed to discharge their *Tameside* duty of inquiry in relation to the quantification of the indirect downstream greenhouse gas emissions from the processing and use of the LNG generated by the Project (Scope 3 emissions) and/or their judgment that a high level qualitative review

of the emissions impact was sufficient was irrational.

- b. Ground 2: The Defendants were required to adopt a view of the Paris Agreement on Climate Change that was more than merely “tenable”.
 - c. Ground 3: There was no rational basis on which the Defendant could conclude that the decision to provide funding was compatible with Article 2(1)(c) of the Paris Agreement on Climate Change or the Paris Agreement as a whole.
3. Permission to appeal is refused on the following ground:
- a. Ground 4: the Court erred in holding that a lower standard of rationality applies if the decision is multifactorial.
4. The Claimant must lodge its grounds and skeleton argument within 42 days of this Order.
5. The Claimant do pay the costs of the Defendants in the amount of £10,000. This order is not to be enforced until (a) the conclusion of any appeal to the Court of Appeal and/or (b) any order to the contrary by the Court of Appeal.

Observations:

1. PTA: Grounds 1 and 3 have real prospects of success. Ground 2 raises a point of general importance which provides a compelling reason for an appeal to be heard. Ground 4 has no real prospects of success. The judgment(s) do not suggest that a lower standard of rationality applies where the decision is multi-factorial. What is rational will, however, be acutely fact-sensitive in any case. The contrary is not reasonably arguable and there is no other compelling reason for an appeal to be heard on this ground.
2. The normal order for costs is that the losing party (the Claimant) should pay the costs of the successful party (the Defendants). However, in the circumstances of this case, the Defendants’ suggestion that an order for costs should not be enforced at this stage is reasonable and appropriate. If the Claimants pursue their proposed appeal to judgment in the Court of Appeal, the Court of Appeal can make any appropriate order both in relation to the costs of the appeal and in relation to the costs at first instance. If the Claimants decide before judgment not to pursue an appeal, the present order for costs will become enforceable, subject only to the Claimants successfully appealing the present order.

16 March 2022

BY THE ORDER OF COURT