

Case Name: *London Borough of Hillingdon Council, R (on the application of) v High Speed Two (Hs2) Ltd [2020] EWCA Civ 1005 (31 July 2020)*

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Commentary:

This was a Court of Appeal case concerning HS2 Ltd's proposed ecological mitigation works at Colne Valley in west London.

HS2 Ltd had deemed permission under the High Speed Rail (London-West Midlands) Act 2017 to carry out works associated with the creation of the Colne Valley Viaduct South Embankment wetland habitat, but it was required to submit detailed plans and specifications of its proposals for approval by the Council.

The development site is located within the Colne Valley Archaeological Protection Zone and part of it is within the Mid-Colne Valley Site of Importance for Nature Conservation. The Council had refused to grant approval on the basis that the design and external appearance of the works would not preserve the archaeological interest and nature conservation value of the site and that the development could reasonably be carried out elsewhere.

HS2 Ltd argued that it was not obligated to provide any further evidence since it would investigate the potential impact of the works upon any archaeological remains itself and take all necessary mitigation and modification steps. The Council insisted that this would not enable it to conduct its statutory duty to evaluate the impact of the proposed development on archaeological interests.

HS2 Ltd appealed the Council's decision, and the Secretaries of State for Transport and Housing, Communities and Local Government approved the application against the inspector's recommendation. The Council applied for judicial review of the appeal decision. The High Court dismissed the claim finding that the powers of local authorities were substantially constrained under Schedule 17 of the 2017 Act and the information that an authority needed in order to perform its constrained role was commensurately limited.

In contrast, the Court of Appeal held that the duty to perform an assessment of impact of the rail scheme had been imposed by Parliament squarely and exclusively upon the Council and that this duty could not be circumvented by HS2 Ltd taking it upon itself to conduct a non-statutory investigation into such impact. The Court concluded that the Council was under no duty to process a request for approval from HS2 Ltd unless it was accompanied by evidence and information adequate and sufficient to enable it to perform its statutory duty. It therefore quashed the appeal decision and remitted the matter to the Secretaries of State for reconsideration in the light of its judgment.

The Court added that a central tenet of Schedule 17 was that authorities and HS2 Ltd should work in a proportionate, effective and collaborative way which balanced important local interests with the much broader national interest in the delivery of the HS2 project. It

considered that the object of this cooperation was to prevent the planning process creating an undue hindrance to the delivery of that broader national interest whilst giving proper weight to local concerns, and that its judgment was consistent with that important aim and it did not detract from the importance which Parliament and the Government had attached to the efficient and expeditious resolution of planning issues at the local level.

Case summary prepared by Safiyah Islam