Case Name: *The London Borough of Hillingdon Council), R (On the Application Of) v The Secretary of State for Transport & Anor* [2021] EWCA Civ 1501 (15 October 2021)

Full case: Click Here

Commentary:
This case concerned a claim by The London Borough of Hillingdon Council (the 'Council') for permission to appeal against an order dismissing its claim for judicial review of an inspector's decision on appeal under paragraph 22 of Schedule 17 to the High Speed Rail (London-West Midlands) Act 2017 (the '2017 Act').

The paragraph 22 appeal had been brought by High Speed Two (HS2) Limited ('HS2') against the Council's refusal to approve HS2's proposed lorry route arrangements for construction sites in the borough under paragraph 6 of the 2017 Act. The Council had refused HS2's lorry route arrangements on the basis that they "ought to be modified to prevent or reduce prejudicial effects on road safety or on the free flow of traffic in the local area" and that two subsequent conditions needed to be introduced to make the arrangements acceptable. HS2 alleged that such conditions were unnecessary and that existing measures would achieve the required traffic monitoring and management. The Inspector agreed with HS2, holding that the burden of proof fell on the Council to demonstrate that the proposed arrangements would be so prejudicial as to require that the Schedule 17 submission should be modified and that such a burden had not been discharged. Moreover, the first condition imposed by the Council conflicted with statutory guidance and sought to replicate or modify controls already in place in the Environmental Minimum Requirements ("the EMR") which would have been considered necessary or sufficient by Parliament when it approved deemed planning permission, therefore failing to meet the "necessity test in paragraph 55 of [the NPPF]", .

Hillingdon applied for judicial review of the Inspector's decision on the following three grounds:

1. The inspector had misconstrued and misapplied paragraph 6(5)(b)(ii) of Schedule 17 – wrongly believing that it imposed a legal "burden of proof" on the council and that it empowered decision-makers to approve lorry route arrangements despite a lack of adequate information, placing unlawful reliance on the Environmental Minimum Requirements ("the EMR") and misunderstanding Parliament's intention in Schedule 17.
2. The inspector had failed to take into account material considerations – including failing to take into account all of the documentary evidence before him.
3. The inspector's decision was irrational as the inspector had granted approval without adequate evidence to support his conclusions.

The court rejected the appeal on all three grounds.

On the first ground, the court held that it was clear that the inspector's comments reflected the reality that the statutory scheme required the Council to show with sufficient evidence, if

it could, why HS2's request should be refused unless its two conditions were imposed. Having considered for himself the evidence submitted, the inspector had held that the Council had not been able to do this. In doing so, he committed no error of law.

On the second ground, the court held that the inspector had taken into account material considerations – his approach was consistent with the relevant provisions of Schedule 17, including paragraphs 13 and 26. The inspector had also taken into account the statutory guidance and the undertakings given by the Council as qualifying authority, which did not envisage a need for extra controls to be imposed on lorry movements to and from HS2 construction sites.

On the third ground, the court held that the inspector had a wide discretion in appraising the evidence and submissions on the issues he had defined. Having considered the evidence, he found it adequate for the decision that fell to him. This was, in the circumstances, a realistic and reasonable view for him to take.

Case summary prepared by Emma McDonald