

Case Name: *Transport Action Network Ltd, R (On the Application Of) v Secretary of State for Transport* [2021] EWHC 2095 (Admin) (26 July 2021)

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Commentary:

This was a challenge brought by judicial review by Transport Action Network Limited (the claimants) to the decision of the Secretary of State for Transport ('SOST') to set 'Road Investment Strategy 2: 2020-2025' ('RIS 2'), pursuant to s.3(1) of the Infrastructure Act 2015 ('2015 Act'). The court dismissed the application for judicial review.

RIS 2 sets out the government's expenditure priorities for the operation, maintenance, renewal and enhancement of the strategic road network ('SRN') in England, including creating or improving sections of the SRN. Highways England (an interested party in these proceedings) as the highway authority for the SRN would develop the road schemes listed in RIS 2 and obtain planning and environmental consents. RIS 2 follows RIS 1 which was adopted in 2014.

The claimants claimed that the SOST failed to comply with its obligation in s.3(5) of the 2015 Act to 'have regard in particular to the effect of the strategy on the environment' in that he failed to take into account the effect of the strategy in RIS 2 on achieving:

1. The objective of the Paris Agreement to reach a peak in Greenhouse Gas emissions as soon as possible and to achieve 'rapid reductions' thereafter (referred to in the judgment as the 'urgency' objective in Article 4.1)
2. The net zero target for the UK in 2050 contained in s.1 Climate Change Act 2008 (the 2008 Act)
3. The fourth and fifth carbon budgets (CB4 and CB5) in s.4 of the 2008 Act.

The claimants argued that the obligation under s. 3(5) of the 2015 Act arose because these matters were 'obviously material' to the SOST's decision to set RIS 2 and therefore it was irrational for him not to have taken them into consideration. In response, the SOST argued that these matters were taken into account by the Department for Transport, and by the SOST himself, on the basis of his knowledge of relevant policies and climate change objectives and the briefing he received on RIS 2. Further, even if this were not the case, the defendant argued that such matters were not obviously material considerations for the purposes of his decision to set RIS 2, since evidence before the court showed the effects of the strategy in RIS 2 to be de minimis.

On the Paris Agreement, Holgate J held that it was implicit in the reasoning of the Supreme Court in *R (Friends of the Earth Limited v Secretary of State for Transport)* [2021] PTSR 203 that the 'urgency' objective in Article 4.1 of the Paris Agreement is not to be treated as an obviously material consideration. He found no reason for reaching a different conclusion in the context of the 2015 Act - unlike s.10(3) of the Planning Act 2008 in *Friends of the Earth*,

the 2015 Act requires the SOST to have regard to its effect on the environment without any specific reference to climate change.

Turning to the net zero and carbon budget arguments, Holgate J began by emphasising the nature and scope of an RIS, rejecting the submission made by the claimants that a RIS is an environmental decision-making document. As the SOST was told that the RIS was “consistent with a major carbon saving required to deliver net zero”, the Court found that the SOST was advised of the impact of the programme on the net zero target and did not need to be shown the supporting numerical analysis. Holgate J also rejected the claimants’ submissions that the SOST failed to take into account the predicted emissions related to CB4 and CB5.

On the de minimis argument, Holgate J accepted the defendants’ submission that the analysis of carbon emissions from RIS 2 were legally insignificant when related to comparators for assessing the effect on climate change objectives, therefore accepting that this analysis was not an obviously material consideration which had to be placed before the SOST for the purposes of setting RIS 2. Accordingly, the application for judicial review was dismissed.

Case summary prepared by Stephanie Bruce-Smith