Case Name: *Save Stonehenge World Heritage Site Ltd & Anor, R (On the Application Of) v Secretary of State for Transport* [2024] EWHC 339 (Admin) (19 February 2024)

Full case: [Click Here]

Commentary: This was an unsuccessful judicial review of the grant of a Development Consent Order ("DCO"). National Highways had applied for a DCO authorising a dual carriageway upgrade to the A303 running through the Stonehenge, Avebury and Associated Sites World Heritage Site.

A previous decision to grant the DCO had been quashed following a judicial review in July 2021 – Save Stonehenge World Heritage Site Ltd, R (On the Application Of) v Secretary Of State For Transport [2021] EWHC 2161 (Admin) ("Stonehenge 1").

A new decision granting the DCO was issued by the Minister of State on behalf of the Secretary of State for Transport ("SST") in July 2023. In this present case, the successful claimant in Stonehenge 1, Save Stonehenge World Heritage Site ("SSWHS"), challenged the re-grant. SSWHS was joined in the challenge by Andrew Rhind-Tutt, an affected landowner (together with SSWHS, "the Claimants").

This challenge was heard at a rolled-up hearing (an expedited procedure where the permission and substantive stages are heard at the same time). The Hon. Mr Justice Holdgate emphasised that the court was only concerned with whether there was an error of law in the redetermination of the DCO application and not with the merits of the scheme or any alternatives.

The grounds of challenge, and the reasons they failed, were in summary as follows:

<u>Ground 1 – The SST failed to re-open the examination into the application for the DCO, which was a breach of the common law duty to act fairly and Article 6 (right to fair trial) of the European Convention on Human Rights ("the Convention")</u>

The relevant issues were capable of being handled fairly by way of written representations, which the Claimants had had the chance to make, and as such there was no unfairness or breach of Convention rights in failing to re-open the examination.

<u>Ground 2 – When assessing an alternative route (F010), the SST failed to have regard to obviously material considerations and failed to have regard to a "non-expressway" option</u>

On a proper reading of the decision, the SST had in fact had regard to all material considerations and was under no obligation to consider a non-expressway option as it would not have met the scheme's policy objectives.

Ground 3 – The SST acted irrationally in giving no weight to the risk of Stonehenge being delisted as a World Heritage Site

The weight to be given to a material consideration is a question of planning judgment for the decision maker and not a matter for the courts provided it is not irrational. The SST exercised such judgment in giving it no weight for the reasons set out in the decision letter and that exercise of judgment was not irrational.

Ground 4 – The SST adopted an unlawful approach to the Convention in finding that the grant of the DCO would not involve any breach by the UK of its obligations under the Convention because the scheme accorded with the National Policy Statement for National Networks ("NPSNN")

This ground had already been found unarguable in Stonehenge 1.

Ground 5 – The SST failed to have regard to the Carbon Budget Delivery Plan and the Net Zero Growth Plan (published March 2023) which together were an obviously material consideration

On a proper reading of the decision letter, the SST considered all relevant climate change policy and legislation and was under no obligation to go further than he had in making specific reference to these particular plans.

Gound 6 – The SST failed to consider not applying the NPSNN as is it under review for being out of date in relation to obligations in the Climate Change Act 2008; or the SST acted irrationally in not departing from the NPSNN in relation to climate change.

The issue here is that under the Planning Act 2008, the SST must apply the NPSNN unless one of a number of conditions apply, including that applying the NPSNN would result in the UK being in breach of its international obligations. The Claimants argued that given the identified issues with the NPSNN, applying it could result in the UK being in breach of its obligations under the Paris Agreement.

In this case, in coming to his decision on whether to grant the DCO, the SST had taken into account the matters which led to decision to review the NSPNN. In doing so, he came to the conclusion that applying the NPSNN would not lead to a breach of the UK's international obligations. As such there was no irrationality in applying the NSPNN, and considering the disapplication of the NSPNN would not have made a difference to the SST's decision making on the DCO application.

Ground 7 – The SST approach to environmental impact assessment was unlawful in relation to the cumulative effect of greenhouse gas emissions from the DCO scheme and other committed road schemes.

This ground was stayed pending the decision of the Court of Appeal in R (Boswell) v Secretary of State for Transport [2023] EWCA Civ 154.

All grounds considered in this case being found unarguable, permission for judicial review was refused, with ground 7 on environmental impact assessment to be decided at a later date.

Case summary prepared by Dougal Ainsley