



Briefing 24 July 2013: Judicial Review Appeal

HS2 an ‘egregious breach’ of European Environmental law concludes top Environmental and Planning Judge

Today in the Court of Appeal, The Master of the Rolls (Lord Chief Justice Dyson), Lord Justice Richards and Lord Justice Sullivan handed down their decision dismissing the Appeals brought against the Department for Transport’s decision to progress with High Speed 2 (HS2) by an alliance of 15 local authorities, HS2Action Alliance and Heathrow Hub Limited.

Councillor Martin Tett, Chairman of the 51m alliance and Leader of Buckinghamshire County Council said: “Yes, we are disappointed with the result. On four grounds brought to the Court of Appeal by the local authorities, the Appeal judges found against us on the technicality that in theory Parliament is not bound by any decision of the Government and could chose to reject or amend the project.

Most significantly, there was a split decision by the three Judges on the first ground that a full Strategic Environmental Assessment (SEA) should have been carried out to assess the effect on the environment of both HS2 and its alternatives. Whilst The Master of the Rolls and Lord Justice Richards supported the Department for Transport’s contention that no SEA was required as HS2 was not a ‘plan or programme’, Lord Justice Sullivan- one of the country’s leading environmental and planning judges - disagreed.

Councillor Martin Tett, proposing an alternative scheme commented: “Lord Justice Sullivan gives a very strong steer that HS2 Ltd has failed both in its obligation to fully assess the environmental implications of the project and vitally to assess these against the alternative we have put forward. His comments in his Judgement are damning of the Department for Transport’s approach stating: *“If, as I have concluded, an SEA is required and there has not been substantial compliance with the SEA Directive, it would be difficult to think of a more egregious breach of the Directive given the scale of the HS2 project and the likely extent of its effects on the environment.”*”

Councillor Tett concluded: “This is another example of the Department for Transport and HS2 Ltd riding roughshod over public opinion, ploughing ahead regardless of what local communities want and ignoring the environmental merits of the alternatives. We have evidence that our alternative to HS2 would provide all of the capacity required, far more quickly, at a fraction of the cost and would be less damaging to the environment.”

The local authorities have asked for permission to Appeal to the Supreme Court, which is the highest court in the land on the SEA ground and an additional, and related, ground that the Hybrid Bill process is incompatible with another aspect of European law, the Environmental Impact Assessment Directi

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