



PRESS SUMMARY

R (Save Stonehenge World Heritage Site Limited) v Secretary of State for Transport [2021] EWHC 2161 (Admin)

Planning Court, High Court of Justice: Mr Justice Holgate

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the court is the only authoritative document. It is published at www.judiciary.uk/judgments. References to paragraphs in the judgment appear in square brackets.

Outcome

- (1) The claim for judicial review is allowed on two grounds and the Court quashes the A303 (Amesbury to Berwick Down) Development Consent Order 2020 made by the Secretary of State for Transport (“SST”) on 12 November 2020.

Background

- (2) On 16 November 1972 UNESCO adopted the Convention Concerning the Protection of the World Cultural and Natural Heritage (the “World Heritage Convention”). The UK ratified that convention on 29 May 1984.
- (3) In 1986 the World Heritage Committee (“WHC”) inscribed Stonehenge and Avebury under the Convention as a World Heritage Site (“WHS”) having Outstanding Universal Value (“OUV”). WHC describes Stonehenge as “one of the most impressive prehistoric megalithic monuments in the world on account of the sheer size of its megaliths, the sophistication of its concentric plan and architectural design.....”. “There is an exceptional survival of prehistoric monuments and sites within the World Heritage property including settlements, burial grounds and large constructions of earth and stone. Today, together with their settings, they form landscapes without parallel.”
- (4) In October 2018 Highways England (“HE”), the strategic highways company for the strategic road network in England, applied to the SST for a development consent order (“DCO”) under the Planning Act 2008. The DCO is for a new section of the A303, a dual carriageway 13 km long between Amesbury and Berwick Down to replace the existing single carriageway road.

- (5) Running from west to east the proposed road would comprise:-
 - A northern bypass of Winterbourne Stoke
 - A new interchange between the A303 and A360 at Longbarrow
 - A new cutting 1 km long (the western cutting)
 - A new tunnel 3.3 km long running past Stonehenge
 - A new cutting 1 km long (the eastern cutting)
 - A new junction between the A303 and the A345 at the Countess roundabout.
- (6) The new road would cross the Stonehenge part of the WHS. The area of that part is about 25 sq. km. It contains over 700 known archaeological features, including 415 which form part of 175 scheduled ancient monuments, designated as having national importance under the Ancient Monuments and Archaeological Areas Act 1979.
- (7) HE's application was accompanied by an Environmental Statement ("ES") and a Heritage Impact Assessment ("HIA").
- (8) Between April and October 2019 the application was the subject of an Examination before a Panel of five Inspectors.
- (9) During the Examination a number of parties made representations for and against the proposal. In particular, there were a number of objections to the proposed western cutting, tunnel portals and the Longbarrow junction.
- (10) The objectors included the Stonehenge Alliance, an umbrella campaign group which included the British Archaeological Trust. The Council for British Archaeology and the Consortium of Archaeologists also objected to the proposal.
- (11) In addition, the WHC expressed its concerns about the adverse impacts of the proposal on the WHS, in particular the effects of the western cutting. The WHC has urged the UK to consider a longer tunnel so that the western portals would be located further to the west and outside the WHS. The Examination received evidence on that option, which would involve extending the length of the tunnel to about 4.5 km. Another option would be to add a cover to the cutting.
- (12) HE said that the cut and cover option would cost an additional £264m and the extension to the tunnel £578m.

The Panel's Report

- (13) In their report to the SST the Panel recommended that the application for the DCO should be refused. On heritage issues the Panel reached two conclusions.
- (14) First, they found that the effects of the scheme would harm six of the seven attributes of the WHS's OUV. It would also harm the integrity and authenticity of the WHS. There would be permanent and irreversible harm, critical to the OUV, which would affect future generations. The heritage benefits of the proposal would not outweigh the fundamental nature of that harm. The overall effect would be significantly adverse to the OUV of the WHS (paras. 5.7.306 to 5.7.326 and 7.2.32).
- (15) Second, assessing the proposal against paragraph 5.133 of the National Policy Statement for National Networks ("NPSNN"), the effect of the proposal on both the OUV of the WHS and on the significance of heritage assets through development within their settings would result in "substantial harm" (para. 5.7.333). The overall benefits of the proposal would not outweigh that substantial harm, and so the proposal would conflict with paragraph 5.133 of the NPSNN.
- (16) The Panel then concluded that the totality of the adverse impacts of the scheme would strongly outweigh its overall benefits (para.7.5.52).

- (17) The Panel’s finding that the scheme would cause substantial harm to heritage assets was driven by their assessment of the effects of the Longbarrow junction, and the western cutting and portals (paras. 5.7.216 to 5.7.248 and 5.7.329 to 5.7.330).
- (18) The Panel explained that the reason why the government’s statutory adviser, Historic England, took a different view, namely that the scheme would cause only “less than substantial” harm, was that they attached less weight to the impact of the Longbarrow junction, the western cutting and portals (paragraphs 5.7.329 to 5.7.330).

The Secretary of State’s decision letter

- (19) In his decision letter the SST said that he preferred the views of Historic England to those of the Panel on the heritage issues (paragraphs 33 to 34, 43 and 50).
- (20) The SST also disagreed with the Panel on their separate assessment of the scheme’s general impacts on landscapes and visual amenity. He concluded that the beneficial impacts of the scheme throughout most of the WHS outweighed the harm caused at specific locations. Consequently, he judged that the landscape and visual impacts should have “neutral weight” in the overall planning balance (paragraph 56).
- (21) The SST’s overall conclusion was that the clear need case for the proposed road and the benefits of the scheme outweighed any harm (paragraphs 80 to 87).

The Court’s Role

- (22) HE’s proposal for the A303 has been controversial. There are many widely differing views, both for and against the proposal. But the court’s role in judicial review needs to be understood. Judicial review is a means of ensuring that Ministers and public bodies act within the limits of their legal powers and in accordance with relevant legal principles. The court is only concerned to decide questions of law. It is not responsible for making political, social or economic choices or for saying whether this road scheme should, or should not, go ahead. Those choices have been entrusted by Parliament to the SST.

The judgment

- (23) The judgment covers a wide range of issues raised by the parties. It is set out under the following headings (with paragraph numbers):-

Subject	Paragraph Numbers
Planning legislation for nationally significant infrastructure projects	26-36
The National Policy Statement for National Networks	37-48
Development plan and other policies	49-55
World Heritage Convention	56-59
Legal Principles	60-67
The Environmental Statement	68-77
Views of parties at the Examination	78-86
The Panel’s report	87-121
The decision letter	122-144
The grounds of challenge	145-290
Conclusions	291-294

- (24) The claimant raised a number of grounds which the court rejects. But two separate grounds succeed. They are dealt with at [167] to [180] and at [242] to [290].
- (25) In relation to the first point, it is agreed between the parties that the SST had to take into account the significance of each designated heritage asset affected by the proposal and the impact of the proposal on that significance. The Court accepts that that requirement can be met by a sufficient precis being provided to a decision-maker. But in this case the Court concludes that the SST was not given legally sufficient material to enable him to make the assessments which the law required him to do.
- (26) In relation to the second point, the Court concludes that the SST was legally obliged to consider the relative merits of the alternatives to the proposed western cutting, namely, the cut and cover option and an extended tunnel 4.5 km long extending beyond the western boundary of the WHS (see paragraphs (11) and (12) above). No such assessment was made by the Panel or by the SST as it should have been.
- (27) Each of these errors vitiates the decision to make the DCO, which must be quashed. The redetermination of the application is now a matter for the SST.