R. (on the application of Save Stonehenge World Heritage Site Ltd.) v Secretary of State for Transport

Press summary of the judgment of the Court of Appeal, handed down on 16 October 2024

1. Stonehenge is a monument of great international importance. Together with its setting and with the Neolithic and Bronze Age monument at Avebury, it has the highest possible conservation status, as the Stonehenge, Avebury and Associated Sites World Heritage Site. A short distance to the south of the monument, within the World Heritage Site, runs a single carriageway section of the A303 trunk road. This stretch of road is often heavily congested with traffic.

2. Since the 1990s a number of schemes have been proposed for widening it to a dual carriageway, part of which would be tunnelled. This case concerns the most recent of these proposals, initially approved by the Secretary of State for Transport in November 2020 and, after a successful challenge in the High Court and subsequent redetermination, approved again in July 2023. The central question is whether that redetermination was properly and fairly carried out, and the decision itself lawful.

3. The appellant, Save Stonehenge World Heritage Site Ltd., appealed against the order of Holgate J., dated 19 February 2024, refusing its application for permission to apply for judicial review of the decision of the Secretary of State for Transport, to grant the application of National Highways Limited, for a development consent order under the Planning Act 2008 approving its proposals to improve the A303 between Amesbury in the east and Berwick Down in the west.

4. The scheme involves the replacement of the existing single-carriageway road with a dual carriageway some 13 km in length, including a 3.3 km bored tunnel with 1 km cuttings at either end in a 5.4 km section of road. Save Stonehenge is a company formed by supporters of Stonehenge Alliance, a campaign group that has taken part in the development consent order process as an objector to the scheme.

5. The application for a development consent order was made in 2018. An examination was held in 2019. In January 2020 the examining authority submitted its report recommending against the making of the order. The Secretary of State's decision rejecting that recommendation and granting development consent was issued in November 2020. In July 2021, on a challenge to that decision by Save Stonehenge, it was quashed by the High Court. Upon redetermination the scheme was approved again by the Secretary of State, in a decision letter dated 14 July 2023. On 24 August 2023 Save Stonehenge issued another claim for judicial review. Holgate J.'s judgment in the court below was handed down on 19 February 2024, after a hearing lasting three days – 12, 13 and 14 December 2023. He refused permission to apply for judicial review on all grounds. Permission to appeal to this court against the decision to refuse permission to apply for judicial review was granted on 16 May 2024.

6. The hearing took place some two weeks after a new national administration had come to power, and lasted three days – 15, 16 and 17 July 2024. On 29 July 2024 the Chancellor of the Exchequer, speaking in the House of Commons, announced that the Government did

not intend to proceed with the project. On 9 August 2024, after discussion between the parties, the Government Legal Department wrote again to the Civil Appeals Office, stating:

> "The Secretary of State maintains her position that the decision to grant the DCO was lawful and that the appeal should be dismissed. The Appellant maintains its position that the grant of the DCO was unlawful.
>
> The Parties agree that the appeal has not been rendered academic, in light of the Chancellor's announcement, as it is concerned with the question of whether the grant of the DCO was lawful and therefore invites the Court to deliver a judgment."

7. Having considered the parties' request that we continue to give our judgment and decide the appeal, even though the proposed development now seems unlikely to be constructed, we accept that we should do so. The development consent order remains extant, authorising the works, and the claim for judicial review and subsequent appeal have not been withdrawn. In the circumstances we are satisfied that the appeal before us is not merely academic.

8. This case concerns a specific category of planning decisions that the legislature has assigned to government ministers, steered by policy set nationally. It relates to an infrastructure project "of national significance". For such development a self-contained statutory consent procedure has been created under the 2008 Act. One of the aims of the legislation was to accelerate and bring greater coherence to the process of determination for major schemes of this kind, and so reduce the uncertainties and delays that used to impede decision-making. Within that statutory regime, this claim for judicial review brings into play well established principles of public law bearing on planning decision-making undertaken by ministers with the aid of their officials.

9. The subject matter here is of cultural importance on both the national and international plane. It is liable to generate controversy and debate. Perhaps especially in cases such as this, the court must be conscious of its proper role and take care not to exceed it. That role is simply to apply the law in reviewing the decision of the minister to whom it has been entrusted by Parliament, and to establish whether or not that decision was lawfully made. It is not to gauge the environmental or societal merits of the development proposed, or to second guess the decision-maker's exercise of planning judgment.

10. Five main issues arose on this appeal. The Court of Appeal has dismissed the appeal on all five. In summary, it has concluded:

    (1) that the redetermination process was conducted properly and fairly, that the judge did not wrongly substitute his view for the Secretary of State's, and that it was not legally necessary for a further examination to be held;

    (2) that the ministerial briefing given to the Secretary of State was legally adequate, that the weblinks provided to the Secretary of State were not inadequate, and that the Secretary of State did not fail to consider matters he ought to have considered personally;

(3) that the Secretary of State's view on the scheme's compliance with the Convention Concerning the Protection of the World Cultural and Natural Heritage was legally sound;

(4) that the risk of the World Heritage Site being delisted by the World Heritage Committee and the likely impact of delisting were adequately considered; and

(5) that the Secretary of State's consideration of the then current review of the National Policy Statement for National Networks in the light of the UK's "net zero" commitment was legally adequate.

11. Permission to appeal to the Supreme Court has been refused.