

PALLANT

C H A M B E R S

30th July 2021 – High Court Quashes Approval for A303 Stonehenge Tunnel Scheme *R (on the application of Save Stonehenge World Heritage Site Limited v S of S for Transport & Highways England and Historic England [2021] EWHC 2161 (Admin)*

Holgate J has allowed the judicial review brought by Save Stonehenge World Heritage Site Limited against the development consent order made by the Secretary of State for Transport on 12th of November 2020 which gave consent for the £1.7bn A303 tunnel scheme.

The JR was brought under 5 main grounds with sub-grounds under each. The majority of the grounds failed, but 2 succeeded as follows:

Ground 1(iv) – That the Secretary of State made a material error in law in failing to lawfully carry out the required balancing exercise weighing the impacts on the significance of all designated heritage assets affected and not just upon the Stonehenge monument itself; and

Ground 5(3) – That the Secretary of State acted unlawfully and irrationally in failing to consider alternatives to the proposed western cutting and portals. With regard to this, Holgate J said:

“In my judgment the clear and firm answer to that question is no. The relevant circumstances of the present case are wholly exceptional. In this case the relative merits of the alternative tunnel options compared to the western cutting and portals were an obviously material consideration which the SST was required to assess. It was irrational not to do so. This was not merely a relevant consideration which the SST could choose whether or not to take into account”.

As a consequence, Holgate J quashed the decision to grant the development consent order as well as the order itself.

The judgment leaves considerable questions as to where the scheme is now going and it is understood that the Department of Transport is considering its options. One option would be an appeal but it is not known if an appeal against the judgment is to be made.

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