



22 January 2014

PRESS SUMMARY

R (on the application of HS2 Action Alliance Limited) (Appellant) v The Secretary of State for Transport and another (Respondents), R (on the application of Heathrow Hub Limited and another) (Appellants) v Secretary of State for Transport and another (Respondents), R (on the application of Hillingdon London Borough Council and others) (Appellants) v The Secretary of State for Transport (Respondent) [2014] UKSC 3

On appeal from [2013] EWCA Civ 920; [2013] EWHC 481 Admin

JUSTICES: Lord Neuberger (President), Lady Hale (Deputy President), Lord Mance, Lord Kerr, Lord Sumption, Lord Reed and Lord Carnwath.

BACKGROUND TO THE APPEALS

These appeals arise out of the decision of the Government to promote the high speed rail link from London to the north known as HS2. The decision was announced in a command paper, “High Speed Rail: Investing in Britain’s Future – Decisions and Next Steps” (Cm 8247, 10 January 2012) referred to as the “DNS”. The DNS included confirmation of the Government’s high speed strategy and a summary of its decisions, and set out the process by which the Government intended to obtain development consent for HS2 through two hybrid bills in Parliament.

The appellants commenced judicial review proceedings in April 2012. The appellants’ claim was upheld in relation to certain aspects of the consultation process but dismissed on the issues relevant to these appeals. The Court of Appeal gave judgment dismissing the appellants’ appeal in July 2013.

The main issues for this court are first, whether the DNS should have been preceded by a strategic environmental assessment (SEA) under Directive 2001/42/EC (“the SEA Directive”), and secondly, whether the hybrid bill procedure, as currently proposed, will comply with the procedural requirements of Directive 2011/92/EU (“the EIA Directive”).

JUDGMENT

The Supreme Court unanimously dismisses the appeal. Lord Carnwath gives the lead judgment on the first issue, with which Lord Neuberger, Lord Mance, Lord Kerr, Lord Sumption and Lord Reed agree. Lord Reed gives the lead judgment on the second issue, with which the other justices agree. Lord Sumption and Lady Hale give separate concurring judgments. Lord Neuberger and Lord Mance give a joint concurring judgment, with which the other justices agree, on the case law of the CJEU which forms the basis of the issues in the appeals.

REASONS FOR THE JUDGMENT

The SEA Directive and the Aarhus Convention

The purpose of the SEA Directive is to prevent major effects on the environment being predetermined by earlier planning measures before the environmental impact assessment (“EIA”) stage is reached. The concept of a “plan” or “programme” embodied in the SEA Directive is not

something which simply defines the project or describes its merits, but sets the framework for the grant of consent by the authority responsible for approving it. The purpose is to ensure that the decision on development consent is not constrained by earlier plans which have not themselves been assessed for likely significant environmental effects [35-36].

The DNS is an elaborate description of the HS2 project, including the thinking behind it and the government's reasons for rejecting alternatives. However, it does not constrain the decision-making process of the authority responsible, which is Parliament. Formally, and in reality, Parliament is autonomous, and not bound by any "criteria" contained in previous Government statements [38-39]. Setting a framework implies more than mere influence [41]. There is a distinction in the context of the SEA Directive between merely influencing subsequent consideration and setting limits on the scope of what can be considered. Until Parliament has reached its decision, the merits of all aspects of the HS2 project remain open to debate [49]. There is also no reason to assume that plans or programmes covered by article 7 of the Aarhus Convention must also be subject to the SEA procedure. The SEA Directive must be interpreted and applied on its own terms [51-52]. It is not necessary to make a reference to the CJEU on this point [53].

Hybrid bill procedure and the EIA Directive

The second question is whether the hybrid bill procedure is compliant with the requirements of the EIA Directive and whether it is appropriate for the court to consider the compatibility of the Parliamentary procedure at the present stage [56].

It was argued that the effect of (1) the whipping of the vote at the second and third readings, (2) the limited opportunity provided by a debate in Parliament for the examination of the environmental information, and (3) the limited remit of the select committee following second reading, is to prevent effective public participation, contrary to article 6(4) of the EIA Directive [73].

It is appropriate to consider the appellants' contention at the present stage rather than waiting until legislation may have been enacted. The principal advantages are practical. The Parliamentary procedure will be costly and time-consuming. It is convenient to have the point of law decided before further time and expense are incurred on the basis of what is argued to be a mistaken understanding by Government. The court can consider the effect of the Directive without affecting or encroaching upon any of the powers of Parliament [93-95].

The question whether it is in the public interest to proceed with a project of national importance, such as HS2, may be a matter of national political significance. It is partly for that reason that such decisions may be considered appropriate for determination by the national legislature rather than by the ordinary process of development control. The national legislatures of member states are political institutions whose decisions are likely to be influenced by the policy of the dominant Parliamentary party or parties. The influence of party and government policy does not prevent the members of national legislatures from giving careful and responsible consideration to information, including environmental information, which is relevant to the matters that they have to decide. The contention that the procedure currently envisaged by the Government will not permit an adequate examination of the environmental information to take place is unpersuasive. There is no reason to suppose that Members of Parliament will be unable properly to examine and debate the proposed project [108-113]. There is no need for the court to make a preliminary reference to the CJEU before reaching a decision on this matter [117].

References in square brackets are to paragraphs in the judgment

NOTE

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. Judgments are public documents and are available at:

www.supremecourt.uk/decided-cases/index.html