

Case Name: *Berks, Bucks And Oxon Wildlife Trust, R (On the Application Of) V Secretary of State for Transport* [2019] EWHC 1786 (Admin) (10 July 2019)

Full case: [Click Here](#)

Commentary: The High Court has dismissed a legal challenge by Berks, Bucks, and Oxon Wildlife Trust to the decision made by the Secretary of State for Transport ('SSfT') on 12 September 2018 to approve Highways England's ('HEs') recommendations relating to a preferred corridor area for the proposed new Oxford to Cambridge Expressway ('Expressway Scheme') brought on Strategic Environmental Assessment ('SEA') and Habitats grounds

The legal challenge was brought on 2 grounds, both of which were unsuccessful. Ground 1 was that the SSfT had unlawfully failed to carry out a SEA contrary to the requirements of the SEA Directive/SEA Regulations. Ground 2 was that the SSfT had unlawfully failed to carry out an Appropriate Assessment ('AA') contrary to the requirements of the Habitats Directive/Habitats Regulations. As to Ground 1, the High Court held that the SSfT's decision: (i) was not a 'plan' for the purposes of the SEA Directive/SEA Regulations but was instead a step taken in the course of the preparation of a project; (ii) was 'not required by administrative provisions' for the purposes of the SEA Directive/SEA Regulations as there was no procedure let alone a formal procedure requiring the taking of the decision by the SSfT; (iii) did 'not set the framework for the future development consent of projects' for the purposes of the SEA Directive/SEA Regulations as it merely identified the broad areas where detailed work would be focussed to find potential routes for the Expressway Scheme as a step in preparing a specific project; and (iv) was not a plan which, in view of the likely effect on protected sites, had been determined to require an AA under the Habitats Directive/Habitats Regulations. As to Ground 2, the High Court held that: (i) the requirement to carry out an AA pursuant to Art. 6(3) of the Habitats Directive is not engaged unless there is a 'plan or project' in existence (ii) the SSfT's decision was not a 'plan' for the purposes of Habitats Directive/Habitats Regulations but a step taken in the course of the preparation of a project (iii) that, in any event, the SSfT's decision was unlikely to have a significant effect on protected sites as it was an early preliminary step in the definition of a project yet to take shape and would not result in the execution of work or any intervention in the environment. The Claimant's applications for permission to appeal to the Court of Appeal and for a reference to the CJEU were refused by the High Court. The author is unsure whether the Claimant intends to apply direct to the Court of Appeal for permission to appeal.

Comment: This case is another illustration of the strict and arguably narrow approach that the domestic courts are taking to the scope of the SEA Directive/SEA Regulations in relation to Government policy making (see the *Friends of the Earth Limited v Secretary of State for Housing, Communities and Local Government* [2019] EWHC 518 (Admin) High Court judgment which considered whether NPPF 2 required an SEA). It is also a helpful authority as to what is a 'plan' for the purposes of the Habitats Directive/Habitats Regulations with the High Court considering it is appropriate to have regard to the same factors as are considered when deciding what is a 'plan' for the purposes of the SEA Directive/SEA Regulations.

Case summary prepared by Town Legal LLP