

**Case Name:** *Save Stonehenge World Heritage Site Ltd, R (On the Application Of) v Secretary Of State For Transport* [2021] EWHC 2161 (Admin) (30 July 2021)

**Full case:** [Click Here](#)

**Commentary:**

On 12 November 2020, following a recommendation for refusal from a panel of inspectors, the Secretary of State for Transport ("SoS") granted a Development Consent Order ("DCO") for the A303 Stonehenge tunnel. Save Stonehenge World Heritage Site ("SSWHS") has successfully challenged that decision.

SSWHS claimed that the proposal would cause significant harm to the Stonehenge World Heritage Site ("WHS") and brought five grounds of challenge. Two parts of two of the grounds of challenge were upheld by Mr Justice Holgate: (1) Ground 1(iv) relating to the adequacy of heritage information before the SoS; and (2) Ground 5(iii) relating to the consideration of alternatives. Accordingly, the DCO has been quashed.

The successful part of the first ground was that the SoS was not given legally sufficient material to be able lawfully to carry out the "heritage" balancing exercise required by paragraph 5.134 of the National Policy Statement for National Networks and the overall balancing exercise required by section 104 of the Planning Act 2008: "In those balancing exercises the [SoS] was obliged to take into account the impacts on the significance of all designated heritage assets affected so that they were weighed, without, of course, having to give reasons which went through all of them one by one" (para 180). The SoS received a precis of the Environmental Statement and Heritage Impact Assessment in so far as they were addressed in the report of the panel of inspectors and the SoS did not receive any briefing on the parts of those documents relating to impacts on heritage assets which the panel accepted but did not summarise in its report. Mr Justice Holgate concluded that the SoS, therefore, could not form any conclusion upon the impacts on the significance of those heritage assets.

In upholding a second ground of challenge, Mr Justice Holgate held that the SoS failed to consider alternative schemes in accordance with the World Heritage Convention and common law by limiting his consideration of alternatives to whether an options appraisal had been carried out and whether there was information on alternatives. The SoS should have gone on to consider the relative merits of the proposal and alternatives, in particular: (1) the provision of a cut and cover section to the west of the proposed bored tunnel; and (2) an extension of that bored tunnel to the west so that its portals would be located outside the WHS. Mr Justice Holgate considered it to be irrational not to have drawn conclusions in relation to alternatives, particularly given that third parties had raised them and the panel of inspectors had addressed the information about them in their report: "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" (para 277).

For further commentary on this case, please see Simon Ricketts' recent blog post:  
[Stonehenge Road Tunnel Consent Quashed – SIMONICITY](#)

*Case summary prepared by Nikita Sellers*