

# Leigh Day

16 February 2021

## Judicial review hearing into Stonehenge road project ordered

Campaigners have secured a hearing in their judicial review challenge about the decision to allow a new A303 dual carriageway and tunnel that would cause significant harm to the Stonehenge World Heritage Site (WHS).

A High Court judge has decided that legal arguments, concerning Transport Secretary Grant Shapps' decision to allow the eight-mile road project with a two-mile tunnel past Stonehenge, must be dealt with at a "rolled up" hearing at which the Court will decide both whether the claim is arguable and, if so, whether it succeeds.

Now the claim by Save Stonehenge World Heritage Site (SSWHS), a group of individual supporters of the Stonehenge Alliance, will proceed to hearing at the High Court in a matter of months. There will be a preliminary hearing next week to set the timetable for that process.

If the Court ultimately rules that Mr Shapps' decision was unlawful, he will have to rethink the hugely controversial road project. Permission for the scheme was granted against the advice of the Examining Authority (ExA), a five-person panel of expert inspectors, who examined the application by Highways England for the Amesbury to Berwick Down draft Development Consent Order under section 37 of the Planning Act 2008.

The inspectors said the scheme, with deep cuttings and tunnel entrances within the WHS, would permanently harm the integrity of the WHS and seriously harm its authenticity. It is argued that the scheme is also contrary to the Wiltshire Core Strategy and the requirements of the World Heritage Convention.

Mr Shapps agreed with the ExA that the development will harm visual and spatial relationships and settings in the ancient landscape of the World Heritage Site but concluded that the level of harm would not be substantial and would be outweighed by the public benefit.

At the public examination, the Stonehenge Alliance and a number of other parties argued that the World Heritage Site ought to be protected in its entirety. However, Mr Shapps is reportedly satisfied the Development has been designed to accord with the National Planning Policy Statement for National Networks (NPSNN) and that reasonable mitigation has been included to minimise harm to the landscape.

The Stonehenge site was declared by the World Heritage Committee (WHC) to be of Outstanding Universal Value (OUV) in 1986. Owing to its remarkable complex of prehistoric monuments and sites it is considered to be a "landscape without parallel".

SSWHS says that an alternative plan for the road, namely a longer tunnel that would cause less harm, was unlawfully discarded and not considered by Mr Shapps.

SSWHS makes its case that the decision to allow the road is unlawful on the following grounds:

- Harm to each heritage asset within the project should have been weighed in the balance, instead of considering the "historic environment" as a whole.

- None of the advice provided by Historic England provided the evidential basis for the Secretary of State's conclusion of "less than substantial harm" to any of the assets impacted by the project.
- He allowed purported "heritage benefits" to be weighed against heritage harm, before deciding whether that overall harm was "substantial" or "less than substantial", which was unlawful under the National Policy Statement
- He failed to take into account that development consent would breach the World Heritage Convention
- He left out of account mandatory material considerations: the breach of various local policies; the impact of his finding of heritage harm which undermined the business case for the proposal and the existence of at least one alternative

**Tom Holland, Stonehenge Alliance President, said:**

"This is very good news. We have always believed that the Government's intention to build a great gash of concrete and tarmac through the World Heritage Site is a dereliction of its responsibilities, and we are delighted that there will now be the opportunity to test this conviction in a court of law. We urge Grant Shapps to review his decision, and act to conserve rather than vandalise this most precious of prehistoric landscapes."

**Leigh Day solicitor Rowan Smith said:**

"There is clearly a huge level of public outrage against, what is in effect, an existential threat to one of the most treasured symbols of British history. However, this legal case must proceed on points of procedural error. Today's decision means that our client's case and the Government's decision-making process will now be fully scrutinised by the Courts."

Campaigners continue to fundraise for their legal action.

Leigh Day has instructed barristers David Wolfe QC (Matrix chambers) and Victoria Hutton (39 Essex chambers) to act on SSWHS's behalf.

ENDS

For more information contact Leigh Day press office