**26 July 2021**

**PRESS SUMMARY**

**R (Transport Action Network) v The Secretary of State for Transport [2021] EWHC 2095 (Admin)**

**Planning Court, High Court of Justice: Mr Justice Holgate**

**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. It is published at www.judiciary.uk/judgments. References to paragraphs in the judgment appear in square brackets.**

*Outcome*

(1) The claim for judicial review is dismissed.

*Background*

(2) The claimant, Transport Action Network Limited ("TAN") is a not for profit company that campaigns for "more sustainable transport." This includes opposing road schemes that it considers to be damaging.

(3) TAN challenged the decision on 11 March 2020 by the Secretary of State for Transport ("SST") to adopt the "Road Investment Strategy 2: 2020-2025" ("RIS 2") under s.3 of the Infrastructure Act 2015 ("the 2015 Act").

(4) Under the 2015 Act the SST appointed Highways England as the highway authority and the "strategic highways company" for the strategic road network ("SRN") in England. This comprises about 4,500 miles of motorways and trunk roads, or 2% of the overall road network in England. Highways England is wholly owned by the SST.

(5) A RIS sets out the government's longer term objectives for the SRN including road building projects, improvements and other works. The Strategy also provides a funding commitment by government for those works. The Strategy covers a 5 year period, although some of the projects included are not expected to be begun or completed within that time frame. A project may require a longer lead-in time.

(6) The predecessor to RIS 2 "The Road Investment Strategy: 2015-2020" ("RIS 1") was adopted on 1 December 2014. It contained 112 schemes, many of them previously identified in "Investing in Britain's Future" (Cm. 8689 June 2013). Twelve of the schemes were subsequently dropped. Of the remaining 100 schemes, 55 were completed by 2020. The 45 other schemes were rolled forward into RIS 2.

(7) RIS 2 adds 5 new schemes which would create or improve about 40 miles of the SRN including the Lower Thames Crossing, the dualling of the A66 Northern Trans-Pennine route and the dualling of the A46 Newark bypass. Only one of the 5 new schemes is expected to be open before 2025 (the dualling of the A417 in the vicinity of the Air Balloon junction). The others are expected to be completed between 2030 and 2035.

(8) HE is responsible for delivering the objectives and projects in RIS 2. But that is subject to each project continuing to provide value for money and remaining deliverable. The RIS states that it does not interfere with normal planning processes. HE must obtain any planning or environmental consents necessary for each project.

*TAN's legal challenge*

(9) Section 3(3) of the 2015 Act requires the SST to set out in a RIS the objectives to be achieved by HE during the period covered by the Strategy and the financial resources to be provided for achieving those objectives. Section 3(5) provides that when the SST adopts a RIS he must have regard, in particular, to the effect of the Strategy on –

> "(a) the environment, and
> (b) the safety of highway users."

(10) TAN argued that the SST failed to comply with that requirement as regards the effect of RIS 2 on the environment, in that he failed to take into account its effect on the ability of the UK to achieve:-

> (1) objectives of the Paris Agreement for each State to reach peaking in greenhouse gas ("GHG") emissions as soon as possible and to achieve "rapid reductions" thereafter (GHG emissions peaked in the UK in the 1990s);
> (2) the UK's net zero target for 2050 in s.1 of the Climate Change Act 2008 ("the CCA 2008");
> (3) the fourth and fifth carbon budgets ("CB4" and "CB5") set under the CCA 2008, covering the periods 2023-2027 and 2028-2032.

(11) The claimant argued that in adopting RIS 2 the SST had been under a legal obligation (a) to take into account himself a quantitative assessment of the carbon emissions from projects in RIS 2 in 2050 and in the period running up to that year and (b) to form a judgment on how those emissions would affect the achievement of those three objectives in the UK.

(12) TAN accepted that the 2015 Act did not require the SST to take those matters into consideration. But it submitted that it was irrational in the sense used in public law for the SST not to have done so. It is generally a matter of judgment for the decision-maker whether to take a particular factor into account and, if so, how far to go into that subject. The court will only treat what was done as legally irrational if it went beyond the range of reasonable approaches which could lawfully have been taken.

(13) The SST submitted that in the decision of the Supreme Court given on 16 December 2020 on the legal challenge to the Airports National Policy Statement *(R (Friends of the Earth Limited) v Secretary of State for Transport* [2021] UKSC 52) that Court rejected the argument that the temperature reduction target in the Paris Agreement was a matter which a policy-maker was legally obliged to take into account. The SST said that the same should apply to the objective in the Paris Agreement of making "rapid reductions" in GHG emissions.

(14) There is no dispute in the present case that RIS 2 and the briefing provided to the SST did take into account the effect of the Strategy on climate change and the CCA 2008. The SST added that his officials had carried out a quantitative analysis of carbon emissions and advised him that the Strategy was consistent with a major carbon saving required to deliver the net zero target for 2050 and that this was based upon a

comprehensive analysis of the carbon impacts of the Strategy. This approach was in line with that taken previously in RIS 1. There was no legal requirement for the SST to be shown the quantitative analysis carried out by his officials.

(15) In its original claim TAN had sought to argue a number of other grounds of challenge. In particular, TAN had argued that RIS 2 was a "plan or programme" which should have been subject to "strategic environmental assessment". That would have required the assessment of impact upon climate change targets for which TAN contends. The Court of Appeal refused the claimant permission to raise that point. It was unarguable.

*The Court's role*

(16) The adoption of a strategy for road building and its effect upon climate change is a subject attracting many widely differing views. But the court's role in judicial review needs to be understood. Judicial review is a means of ensuring that Ministers and public bodies act within the limits of their legal powers and in accordance with relevant legal principles when making their decisions. The court is only concerned to decide questions of law. It is not responsible for making political, social or economic choices. Those choices have been entrusted by Parliament to Ministers and public bodies, in this case the SST. It is not for the court to pass judgment on the merits of the policy decisions made in RIS 2.

(17) The judgment analyses the 2015 Act at [19] to [37]. The court concludes that a RIS is a high-level strategy focusing on public investment in the SRN. The legislation does not require environmental matters to form part of the objectives set out by a RIS. The SST must have regard to the effect of a RIS on the environment, but the scope of that consideration is a matter for the judgment of the SST.

(18) The court summarises relevant parts of the Paris Agreement, the Climate Change Act 2008 and climate change policy at [38] to [55]. In the *Friends of the Earth* case the Supreme Court decided that the UK had given effect in domestic law to its obligations under the Paris Agreement through the net zero target and the carbon budgets set under the CCA 2008 (see [45]).

(19) The judgment then discusses relevant legal principles in [56] to [81]. The court decides at [57] to [58] that RIS 2 is a high-level strategy in a macro-political field. It involves decisions by central government on substantial public investment in a road network which is said to be vital for the national economy but where there are competing factors. Accordingly, applying existing legal authority, only a "low intensity" of judicial review is appropriate and the claimant bears a heavy burden to establish that the SST's decision was irrational. An "enhanced margin of appreciation" must be given to a decision involving scientific, technical and predictive assessments ([59]).

(20) The principles for deciding what is to be treated as having been within the knowledge of a Minister, and the legal adequacy of the briefing he or she receives, are discussed at [60] to [73].

(21) At [82] to [92] the court identifies key points in the transport policy documents which were within the knowledge of the SST and which form part of the context for his decision to adopt RIS 2.

(22) At [96] the court summarises relevant points in RIS 2 for the purposes of this case. For example, the document refers to the need for the UK to scale up efforts to reduce GHG emissions from the transport sector and the importance of the switch to zero emission vehicles. At the same time the SRN should be improved to meet the needs of future drivers of those vehicles.

(23) At [97] to [104] the court summarises the quantitative analysis by officials of emissions from new schemes included in RIS 2, other schemes having previously been assessed

in connection with RIS 1. For example, this analysis is said to show that additional emissions from the new schemes would represent a very small proportion of the reduction in emissions which are projected to be achieved from the overall road network.

(24) The briefing given to the SST included the draft of RIS 2. His knowledge included the policy documents to which it referred and the targets in the Climate Change Act 2008.

*A summary of the conclusions on the legal issues raised by TAN's application for judicial review*

(25) At [107] to [117] the court first explains why the SST was not required as a matter of law to have regard to the Paris Agreement as something going beyond the Climate Change Act 2008. TAN's reliance upon the decision of the Court of Appeal in *R (Plan B Earth) v Secretary of State for Transport* [2020] PTSR 1446 that the Minister was obliged to take the Paris Agreement into account was overturned by the Supreme Court in the *Friends of the Earth* case. Essentially the same reasoning applies to TAN's reliance upon the "urgency" objective in article 4.1 of the Paris Agreement.

(26) The court rejected TAN's contention that the SST had been required to consider personally a quantified assessment of carbon emissions from the programme in RIS 2 and their effect on targets in the CCA 2008. The court also rejected their submission that a RIS is an environmental decision-making document. It is essentially a high-level investment strategy ([121] to [124]). In any event, there are other mechanisms by which carbon emissions from the transport sector are monitored and assessed against the targets in the CCA 2008 (see [126]).

(27) The SST took into account a number of government policy documents dealing with climate change and the carbon reduction targets in the CCA 2008. He was aware of the approach taken in RIS 1 and the National Policy Statement for National Networks that the impact of carbon emissions from new schemes is very small compared to projected emissions. The numerical analysis conducted by officials in 2020 was to similar effect. An overall summary of that analysis was given to the SST in the briefing to him on 6 March 2020. There was no legal requirement for a copy of that analysis to be given to him or summarised more fully ([127] to [136]).

(28) The SST accepts that the analysis by officials carried out before he adopted RIS 2 only considered emissions from new schemes for 2050 and 2031 (which falls within CB5). Subsequently, in April 2020 officials produced an analysis for each year of the period 2023 to 2050. Although TAN had originally criticised the work carried out by officials for not addressing CB4 and CB5, its evidence from experts introduced a new point, namely that the department should have assessed overall emissions from RIS 2 over a 30 year period between 2020 and 2050 (see [137] and [139]). The judgment explains that no target was identified to the court against which to compare any analysis on that new basis. Furthermore, TAN's argument regarding analysis for years prior to 2050 has been rejected by the Court of Appeal in *R (Packham) v Secretary of State for Transport* [2020] EWCA Civ 1004. There was no legal requirement for the SST to have been advised by his officials of any assessment related to CB4 or CB5 or cumulative assessment of emissions over a longer period. The SST's knowledge and the briefing given to him were legally adequate for the purposes of adopting RIS 2.

(29) Lastly, the judgment deals with the SST's alternative argument that because the effects of the 5 new schemes were *de minimis* there was no legal obligation for him to take into account the quantitative analysis or its implications. The court found that the approach taken was not irrational. It also accepted the judgment reached by the department that the measures of carbon emissions from RIS 2 were *de minimis* ([143] to [160]).