

## **HS2AA WINS COMPENSATION JUDICIAL REVIEW**

### **Judge describes DfT's actions as "very odd", "muddled" and "doomed from the start"**

- Mr Justice Ouseley today published his judgement on the two judicial review actions brought by HS2 Action Alliance, concerning compensation and environmental protection
- In a major victory for the more than 300,000 households blighted by HS2, the Court ruled that Justine Greening acted unlawfully in her 2012 decision on compensation, as it was based on a fundamentally flawed consultation process. This should lead to the Government re-consulting on the compensation scheme in a fair and lawful way.
- On the environmental case, the Judgment leaves the field clear for HS2AA to appeal, which it will be doing

### **Compensation**

Mr Justice Ouseley ruled that the decision making process followed by the Government to determine what compensation scheme should apply was "all in all so unfair as to be unlawful."

The Court was scathing about the behaviour of the Department for Transport (DfT). The Judge said that the DfT, "bizarrely" opted for a compensation scheme which received just 21 responses in its favour from the public, out of 36,036 responses that commented on property blight.

The Judge also said that the reasons provided by the DfT for its choice of compensation scheme were "in part very odd" and its consultation strategy reflected "muddled thinking" and was "doomed from the start". His Judgement decided that the public were not given the information they needed to respond and DfT were found to have moved the goalposts in how they selected their scheme.

The Judge was also highly critical of the DfT for losing HS2AA's consultation response - which he said was a "sorry saga". He described HS2AA's 34 page response as "careful and substantial" and "detailed, well informed and fully reasoned" and he finds that "it was in reality just brushed aside" and never properly considered.

### **Environment**

The Court sided with the Government in ruling that the Strategic Environmental Assessment (SEA) Regulations did not apply to HS2, but rejected the DfT's claims that it had in practice complied with the requirements of the SEA Regulations. But the field is clear for HS2AA to appeal this.

Commenting on the judgements, Hilary Wharf, director, HS2AA said:

*“Today’s judgement is a huge victory for the hundreds of thousands of people whose lives are blighted by HS2. The Government’s shabby attempt to railroad through an inadequate compensation scheme whilst ignoring the views of ordinary people have been judged to be unlawful.*

*“The Government must now go back to the drawing board and rethink its approach to compensation. There are many better compensation alternatives which would help all those up and down the country trapped by HS2. A market-based Property Bond scheme reflects private sector best practice and has been supported by the Council of Mortgage Lenders, the British Bankers Association and the National Association of Estate Agents. Implementing such a scheme would give confidence to the property market whilst at the same time shift the remaining cost of property blight away from ordinary people.*

*“If the events of the last 12 months weren’t enough here is a legal decision which further confirms that the DfT are not fit for purpose.*

*“We must thank the thousands of people across the country often only able to afford modest donations which helped fund these legal cases. Without them we could never have won today. We will need to ask again for help to fund our important appeal.” she added.*

ends

**Notes to Editors:**

1. [HS2 Action Alliance](#) is a national group making the powerful case against HS2 and fighting for fair compensation. It is a not for profit organisation working with 90 local groups, who all believe HS2 does not represent an effective answer to the UK’s transport, economic or environmental needs. HS2AA has thousands of registered supporters across the country who are opposed to HS2.
2. HS2 Action Alliance raised the funds necessary to bring two judicial reviews challenging the decision announced in January 2012 by Justine Greening, the then Secretary of State for Transport, to proceed with HS2. One case concerned the unfairness of the Government’s February 2011 consultation on compensating people and communities blighted by HS2. The other case related to non-compliance with important environmental legislation (called the Strategic Environment Assessment Directive and the Habitats Directive).
3. HS2AA’s winning compensation case was taken by Richard Stein of Leigh Day &Co with David Wolfe QC of Matrix chambers. Our environmental case was taken by Simon Ricketts of SJ Berwin with David Elvin QC and Charles Banner (Junior Counsel) of Landmark Chambers.

4. The compensation case was based on four main arguments – (1) that insufficient information had been given to consultees about the three compensation options for a long term scheme to enable them to properly respond; (2) that DfT changed the basis on which they selected the scheme from the five aims they spelt out in their 2011 consultation document; (3) that the decision (for a hardship based scheme) did not meet Philip Hammond’s promise of fair compensation for those suffering significant losses; (4) that HS2AA’s response was ‘lost’ and not conscientiously considered by the Secretary of State. The Judge found in support of all these grounds except Hammond’s promise– but he acknowledged that his words would be found “encouraging and reassuring” and this influenced the Judge’s other findings. Overall the Court held the consultation that led to the decision on the choice of compensation scheme was so unfair as to be unlawful.
  
5. The environmental case concerned non-compliance with the “Strategic Environmental Assessment Regulations” and the “Habitats Directive”. HS2AA argued on two main points of law that the SEA Regulations applied to HS2 because (1) the January 2012 decision contained a ‘plan or programme’ to develop HS2 and (2) it was ‘required’ as a result of the SoS committing to the 2010 White Paper. HS2AA also argued on a point of fact –that the Government were wrong to say that in practice they had done enough to comply with the SEA Regulations (by doing an AoS). The Court held that the SEA Regulations did not apply to HS2 (as Parliament will make the decision in a Hybrid Bill). The judge also ruled against our case on the Habitats Directive on similar grounds. However he rejected DfT claims that in any event they had complied with the requirements of the SEA Regulations. This latter point means the way is open to appeal.
  
6. HS2 Limited’s own figures indicate that there are over 172,000 properties located within 1km (or 250m of a tunnel) of the proposed 120 mile route of HS2 between London and the West Midlands. For the full Y network (about 330 miles) this figure is likely to be over 300,000 – but Government refuses to release the exact figures.