

**IN THE MATTER OF THE HIGHWAYS ACT 1980 AND THE ACQUISITION OF LAND ACT 1981**

**BEFORE Inspector Aidan McCOOEY BA MSc MRTPI, an Inspector appointed by the Welsh Ministers**

**THE PUBLIC LOCAL INQUIRY INTO**

**THE LONDON TO FISHGUARD TRUNK ROAD (A40) (LLANDDEWI VEFREY TO PEMBLEWIN IMPROVEMENT) SCHEME AND ASSOCIATED SIDE ROADS & COMPULSORY PURCHASE ORDERS**

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**LEGAL NOTE ON THE HEATHROW DECISION**  
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I am asked to give my view on behalf of the Welsh Government as to the present significance of effect to the current public inquiry of the Court of Appeal on 27 February 2020 in *R (Plan B Earth) v Secretary of State for Transport and R (Friends of the Earth Ltd) v Secretary of State for Transport* [2020] EWCA Civ 214 (“the Heathrow decision”). A copy of the full judgment is available at <https://www.judiciary.uk/judgments/r-friends-of-the-earth-v-secretary-of-state-for-transport-and-others/>

The Heathrow decision

The consolidated cases concerned the proposed expansion of capacity at Heathrow Airport by the addition of a third runway under the policy set out in the “Airports National Policy Statement: new runway capacity and infrastructure at airports in the south east of England” (“the ANPS”). That document, designated by the then Secretary of State for Transport in June 2018, is a national policy statement prepared under section 5(1) of the Planning Act 2008. It was subject to a number of legal challenges brought by claims for judicial review in accordance with the procedure that Parliament has provided for such challenges to be brought, in section 13(1) of the Planning Act.

The judgment was a consolidated case of two cases. The second deals with several challenges, brought by a number of local authorities, the Mayor of London, Greenpeace Ltd., Friends of the Earth Ltd. and Plan B Earth, concerning the planning aspects of the ANPS and its process.

The principal decision made by the Court of Appeal concerned whether the ANPS was produced lawfully.

The Court of Appeal concluded that the challenges should succeed in one important respect. This related to the legislative provisions concerning the Government’s policy and commitments on climate change, in particular the provision in section 5(8) of the Planning Act, which required that the reasons for the policy set out in the ANPS “must ... include an explanation of how the policy set out in the statement takes account of Government policy relating to the mitigation of, and adaptation to, climate change”. The Court concluded, in particular, that the designation of the ANPS was unlawful by reason of a failure to take into account the Government’s commitment to the provisions of the Paris Agreement on climate change, concluded in December 2015 and ratified by the United Kingdom in November 2016 (paragraphs 222 to 238 and 242 to 261).

The Court concluded that the ANPS was not produced as the law requires, and indeed as Parliament has expressly provided. The statutory regime for the formulation of a national policy statement, which Parliament put in place in the Planning Act, was not fully complied with. The Paris Agreement ought to have been taken into account by the Secretary of State in the preparation of the ANPS and an explanation given as to how it was taken into account, but it was not (paragraph 283).

The significance of the Heathrow decision to this Inquiry

The Heathrow decision is not relevant to the issues being determined by the Inspector. The Inspector is not to consider or to determine issues of law within the Inquiry and the principal issue within the Heathrow decision was a question of law namely whether a particular policy was lawful.

The Heathrow decision is a question under English Law whereas this Inquiry concerns the law as it stands in Wales. The legislation in Wales is different since there is a significantly different legislative framework including the Well-being of Future Generations (Wales) Act 2015 (the WBFGA), the Environment (Wales) Act 2016 and the Planning (Wales) Act 2015. The WBFGA includes 7 goals which include acting on climate change. There is no equivalent legislation under English Law.

This Inquiry is to determine the merits of the proposed A40 improvement scheme including whether it is in accordance with the various policies identified in the evidence of the Welsh Government, principally the statement of Mark Dixon.

Central to the development of the scheme the subject of this inquiry has been the Welsh Transport Appraisal Guidance (WelTAG) from December 2017. The principles of the Act are enshrined in WelTAG 2017 and the issue of the carbon and greenhouse gas implications of the proposed road improvement scheme have been identified from the outset.

It is the position of the Welsh Government that its policies including the raft of policies comprising Prosperity for All: A Low Carbon Wales are lawful and take account of its obligations under climate change including the Paris Agreement.

The decision to publish the draft Orders was made by the relevant Minister having been provided with all the relevant material including the Environmental Statement.

Anthony Vines

19 March 2020