



Court protects stability of roads programme over climate

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Transport Action Network is shocked by today's High Court ruling that the Secretary of State for Transport did not need to provide evidence to show he had considered the impact of the "largest ever" roads programme on climate targets [1].

In March 2020, Grant Shapps approved the £27 billion second Road Investment Strategy (RIS2), including over 4,000 miles of additional road capacity. Two weeks later he acknowledged that "we need to use our cars less" to tackle the climate emergency [2]. On the first day of the judicial review in June, government lawyers conceded that the minister, when approving RIS2, only had a briefing simply asserting it was "consistent" with the net zero by 2050 climate target. The ministerial briefing said nothing about how RIS2 would impact on nearer term targets that the UK is already set to miss by a mile.

That was despite the Infrastructure Act 2015 placing a specific requirement on the Secretary of State when setting a RIS to consider "in particular...the effect on the environment" [3]. As the inconsistency of increasing traffic and the worsening climate emergency grew ever clearer, the Department for Transport (DfT) did all it could to downplay this contradiction. Official analysis of RIS2 only considered the extra carbon from five schemes (amounting to 85 miles of road), rather than ways to slash emissions from England's Strategic Road Network, which now contributes over 10% of UK domestic carbon emissions [4].

Mr Justice Holgate ruled that the "briefing, albeit laconic, was a legally adequate precis", holding that "on matters of political and economic judgment a claimant for judicial review bears a heavy evidential onus to establish that a decision was irrational, absent bad faith or manifest absurdity". He concluded "that the government is taking a range of steps to tackle the need for urgency in addressing carbon production in the transport sector. Whether they are enough is not a matter for the Court".

Chris Todd, Director of Transport Action Network, said:

"In a month of unprecedented fires and floods, the effect of this judgment is to prioritise the 'stability and certainty' of the roads over that of our climate. The judgment has failed to grapple with the clear requirement created by Parliament that ministers must carefully consider environmental impacts. He reasoned that the more important the decision, the less a court should be willing to scrutinise decision-makers. This will surely send shivers down the spine of anyone hoping for urgent action on climate.

"Even if rising waters were lapping at the steps of the courts and Whitehall, it appears scrutiny of government climate decisions would still be side-stepped. As the quickening pace of global heating threatens the rule of law, we need legislation upheld rather than ministers let off the hook."

Despite tilting the scales so heavily against TAN and the DfT filing hundreds of pages of evidence, the judge was still unable to find the proof required to rule ministers had acted lawfully. So he was forced to speculate heavily, making many assumptions that “the defendant must have been aware” of, or about what “[i]t is reasonable to infer”.

Rebecca Lush, Campaigner at TAN, said

“The DfT does not treat climate change with the urgency it deserves. During the hearing, the Government admitted that Grant Shapps did not know the carbon impact of the roads programme he was approving and argued he did not need to know. The £27bn roads programme increases traffic and emissions, taking us backwards on tackling climate change. It is simply incompatible with the Government’s posturing on the world stage as a so-called climate leader.”

“Through this year-long challenge we have raised awareness of RIS2 and how it is part of an even larger £95 billion programme [5], shining a light on how DfT’s decision-making is struggling to catch up with stronger climate targets. As the Government draws up its Net Zero Strategy, opposition is rising and the roads programme is more at risk of being cut back this autumn than ever.”

With decisions on tackling climate change becoming increasingly complex, the judgment sets a key precedent for the use of expert evidence in climate judicial reviews before English courts [6]. With the Climate Change Committee’s [annual report to Parliament](#) calling for a “Net Zero Test’ to ensure that all Government decisions are compatible with the legislated emissions targets”, such legal challenges could prove vital to ensure ministers make evidence-based decisions.

Professor Jillian Anable, Chair of Transport and Energy at the Institute of Transport Studies in the University of Leeds, who provided written evidence for TAN, said:

“It is one tiny step forward and three steps back from this Government. The long overdue transport decarbonisation plan unfortunately totally failed to outline how the transport sector will make deep cuts within the next 10 years. If our carbon budget is overspent by 2030, there is no way back. So, its decision to continue to increase the pace of road-building in a decade when the vast majority of vehicles on the road will still be petrol and diesel and all modelling shows that we need to cut traffic in order to work within that carbon budget, can only be interpreted as either blatant dishonesty or failure to understand the science. Either way, this is very scary stuff.”

TAN’s other expert witness, Professor Phil Goodwin, Emeritus Professor of Transport at University College London and the University of the West of England, said:

“Even on its own assumptions, the roads programme no longer makes sense. All the road schemes were planned on the assumption of traffic growing smoothly and substantially over decades. But these demand forecasts will not apply if the current trajectory of global heating is continued, with all its disruption of economic and social life. Nor will the forecasts apply if the trajectory is successfully reversed, as that will require traffic reduction, not growth. RIS2 is not fit for either possible future.”

TAN has sought permission to appeal and is [crowdfunding](#) for its further legal costs. It has a further separate legal challenge to the [National Networks National Policy Statement](#). On 22 July, the DfT [confirmed](#) that while it would now review the policy to 2023, it would not suspend it, so this claim also remains live.

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Notes for editors

[1] *R (Transport Action Network Ltd) v Secretary of State for Transport and Another* [CO/2003/2020] was heard at the Royal Courts of Justice on 29 and 30 June 2021. TAN was represented by Rowan Smith at Leigh Day solicitors, David Wolfe QC (Matrix Chambers) and Peter Lockley (11 KBW). [TAN's pleadings and evidence are online](#) and the judgment should be [available on Bailii](#) shortly after it is handed down.

[2] Compare [Road Investment Strategy 2](#) with [Creating the transport decarbonisation plan](#).

[3] [Infrastructure Act 2015](#). This requirement was informed by RIS1, published in 2014, which contained a requirement to measure user emissions from the Network by 2020. DfT delayed this, then quietly dropped it in RIS2.

[4] 2015 missions from the Strategic Road Network are 39% of road traffic emissions - see Prof Anable's witness statement. These have not changed significantly up to 2019 and amount to over 10% of total UK CO2 emissions for that year.

[5] Based on figure 3.2 in [RIS2 Efficiency Review – ORR's advice on Highways England's Draft Strategic Business Plan for the Second Road Investment Strategy](#).

[6] For instance see this legal comment on an interim ruling in this case: [High Court considers use of expert evidence in judicial review](#) (Herbert Smith Freehills).