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Judge backs government on 9/10 HS2 challenges

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The government has vowed that there will be no delay to construction of High Speed 2 following a series of judicial reviews in which a High Court judge rejected most of the challenges to the high speed rail programme.

Mr Justice Ouseley dismissed nine out of 10 challenges to High Speed 2 brought by five groups including the HS2 Action Alliance, Buckinghamshire County Council, Aylesbury Golf Club and an organisation promoting a new Heathrow rail interchange at Iver.

The five cases were considered together at the Royal Courts of Justice from 3-17 December 2012. The judge concluded that it was lawful for the government to choose to rule out upgrading the existing network as a credible alternative to HS2. He noted that a patch and mend approach fails to meet the government's objectives of providing a long term boost to capacity and economic growth.

He also found that the government's approach to consultation on the HS2 strategy/phase one route, environmental assessment and consideration of the impact on habitats and protected species, had all been carried out fairly and lawfully. The 15 local authorities challenging the Secretary of State for Transport lost on all seven grounds of challenge they attempted. The government will be seeking to recoup legal costs from the claimants.

The one area where a challenge was upheld concerned the way in which the property compensation consultation had been carried out, not the merits of the policies. In order to save time and public money and to limit the impact on residents affected, the Secretary of State has decided that instead of appealing this decision the government will re-run this consultation in line with the judge's finding that further consideration should have been given to other potential compensation models. The DfT stressed that rerunning the property compensation consultation will not affect the HS2 construction timetable in any way.

High speed rail minister Simon Burns said: "This is a major, landmark victory for HS2 and the future of Britain. The judge has categorically given the green light for the government to press ahead without delay in building a high speed railway from London to Birmingham, Manchester and Leeds. We will now move forward as planned with the crucial business of getting the scheme ready for construction in 2017 and delivering enormous benefits for the country."

Hilary Wharf, director of HS2AA responded: "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."

HS2: judicial review backed government except on property compensation consultation



TEN LEGAL CHALLENGES

- Of the 10 broad areas of challenge made against HS2, the High Court has ruled categorically in the government's favour on nine of these. The judge:
 - dismissed challenges to the fairness and lawfulness of the 2011 consultation on HS2 strategy and the phase one route
 - rejected challenges that the government was required to comply with the Strategic Environmental Assessment Directive
 - dismissed challenges that the government failed to comply with the Habitats Directive
 - dismissed the challenge that the hybrid bill process could not comply with the Environmental Assessment Directive
 - dismissed the challenge that the government is required to present the environmental impacts of the entire Y network to Parliament alongside the phase one bill
 - dismissed challenges that the government has failed to comply with the Public Sector Equality Duty
 - dismissed challenges that the Secretary of State's decisions on Euston, the HS1 link, and the Heathrow spur were irrational
 - dismissed the challenge that the Secretary of State has fettered his discretion, and predetermined the

According to the DfT, the judge has not commented on the merits of particular property compensation schemes and he has not said the government should introduce a property bond. HS2AA said it would appeal against judge Ouseley's ruling on the environmental case.

The next stages for the HS2 project are a consultation on the draft environmental statement in the spring and the deposit of a hybrid bill by the end of 2013. Phase one of the scheme is set to open in 2026, with the full Y-shaped route open in 2032/33.

outcome of future aviation strategy

- dismissed the challenge that the government failed to properly consider the proposed route alternative submitted by the Aylesbury Park Golf Club claimants in response to the 2011 consultation
- but upheld the challenge that the consultation process was unfair, because not enough information was provided to consultees and the criteria by which compensation options were considered were not adequately explained. He also found that the government had not fully considered HS2 Action Alliance's detailed consultation response on compensation.

*Source: Department for Transport
Details accurate at 15 March 2013*

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