**Text

Description automatically generated**

**HIGHWAYS IN A CLIMATE CRISIS**

***R (Boswell) v (1) Secretary of State of Transport and (2) National Highways* [2023] EWHC 1710 (Admin)**

[Simon Randle](https://www.4-5.co.uk/barristers/profile/simon-randle) and [Vivienne Sedgley](https://www.4-5.co.uk/barristers/profile/vivienne-sedgley)

4-5 Gray’s Inn Square

|  |
| --- |
| **Introduction** |
| The judgment may not be the final word, given a stated intention to ask the Court of Appeal to reconsider this matter. However the decision makes interesting reading on the important issue of how transport links can be promoted in light of the climate crisis – and gives a clear steer to follow for the time being.  Challenges to transport links, especially related to road construction, either in their own right or as part of a development proposal, have raised questions about how such proposals can be promoted in light of the desire to curb polluting emissions.  In this case, the Court concluded that the claim was really challenging the acceptability of the carbon impacts from the three road schemes, and that it was not the role of the Courts to be drawn into the arena of the merits of climate decision making.  Nevertheless, the judgment suggests greater and greater potential for such claims as scientific advances are made, and decision-makers are expected to keep up. The growing appetite for such claims cannot be ignored and is likely to become greater and greater in line with public emphasis on the environment and carbon emissions. |

|  |
| --- |
| **Background** |
| The judgment can be found [here](https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/Admin/2023/1710.html&query=(boswell)).  The High Court has refused a claim for judicial review of the Secretary of State’s decisions to grant consent for three road schemes along the A47, within a 12 miles radius of Norwich. The claim was grounded in criticism of the assessment of carbon emissions.  The Climate Change Act 2008 imposes a statutory duty on the Secretary of State to ensure that the net UK carbon account for 2050 is at least 100% lower than the 1990 baseline.  The road schemes were nationally significant infrastructure projects requiring development consent pursuant to the Planning Act 2008.  The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017/572 set out the process of environmental impact assessment for development consent under the Planning Act 2008.  The Secretary of State had concluded that each scheme would lead to an increase in carbon emissions. However, he considered the increase to be insignificant when compared with the UK’s national carbon budgets for 2023-2037, and compatible with the UK’s trajectory towards ‘Net Zero’.  The Claimant was a scientist with a background in computer modelling of complex phenomena, including climate change. He argued the Secretary of State had acted unlawfully by failing to meaningfully assess the combined carbon emissions from all three road schemes. The Claimant calculated that they amounted to 0.47% of the UK’s 6th national carbon budget, and the use of almost half a percent for relatively small schemes in a small area of Norfolk left very limited emission space for other sectors of the economy, meaning considerable amounts of carbon would need to be offset somewhere else in the economy. |

|  |
| --- |
| **Judgment** |
| The Judge reached the following key conclusions:   1. The cumulative impact of the schemes *had* been considered, albeit not against the UK’s national carbon budgets. 2. However, the question of when and how cumulative impacts should be assessed was a matter for the Secretary of State as decision-maker (see, e.g. *R (Finch) v Surrey County Council* [2022] PTSR 958). The Court would only interfere if it was outside the range of reasonable decisions, i.e. on *Wednesbury* grounds. 3. It was logically coherent not to assess *local* road schemes against *national* targets where carbon emissions do not have a local geographical limit. It was a scientific assessment to which the Court would afford respect (see, e.g. *R (Mott) v Environment Agency* [2006] 1 WLR 4338). IEMA (Institute of Environmental Management & Assessment) Guidance suggested assessing specific cumulative projects would be arbitrary. 4. Although the Claimant’s concerns were acknowledged in independent guidance and recent caselaw, the Secretary of State’ approach was not unlawful on the state of present scientific knowledge. The benchmark was not a geographical or sector-bound carbon target.   Notably, the judgment concluded by noting the IEMA guidance that *“The available contextual information base is rapidly developing and will continue to grow in the coming years….”* and the requirement in regulation 14(3)(b) of the 2017 Regulations that *“the environmental statement…must include the information reasonably required…taking into account current knowledge and method of assessment.”* |

|  |
| --- |
| **Conclusion** |
| This decision has the potential to add significantly to the debate and gives a helpful indication as to the lawful approach to be followed. It will, no doubt, assist many as to how best to proceed, including both promoters and those opposed to such proposals.  However, it is unlikely to be the end of the argument.  Firstly, the Court of Appeal may look at the issue.  Secondly, the scientific evidence base will continue to develop and potentially improve. This will need to be reflected in the evidence that will need to be produced in respect of any individual proposal, the approach that may need to be followed be decision-makers and has potential to change the outcome.  At some point it is logical to assume that the argument of looking at small increments will cease to be justifiable. This is clearly a matter to keep a careful eye on. |

[**Simon Randle**](https://www.4-5.co.uk/barristers/profile/simon-randle)

[**Vivienne Sedgley**](https://www.4-5.co.uk/barristers/profile/vivienne-sedgley)

**13 July 2023**

*This article is provided free of charge for information purposes only. Every reasonable effort is made to ensure the information is accurate and up to date, but no responsibility for its accuracy, or for any consequences of relying on it, is assumed by the authors or by Chambers as a whole. The information and commentary do not, and are not intended to, amount to legal advice to any person. You are strongly advised to obtain case specific advice from a lawyer; please contact the clerking team at 4-5 Gray’s Inn Square (*[*clerks@4-5.co.uk*](mailto:clerks@4-5.co.uk)*) who will be glad to assist.*