

**Agenda Item 15**  
**Report NPA32/18**

Report to	<b>South Downs National Park Authority</b>
Date	<b>16 October 2018</b>
By	<b>Major Planning Projects and Performance Manager</b>
Title of Report <b>Note</b>	<b>Update on the Authority's application for Judicial Review of Highway England's Preferred Route for the A27 at Arundel.</b>

**Recommendation: To note the progress of the Authority's application for Judicial Review.**

**I. Introduction**

- I.1 Highways England (HE) announced in May 2018 that a variation of route option 5a would be taken forward as the preferred route for the A27 at Arundel. This preferred route incorporates a new dual carriageway bypass from Crossbush junction south of the current A27 and has the potential to have significant impacts on the National Park.
- I.2 In summary the Authority's view is that HE discounted route options outside of the National Park too early solely on the basis of cost rather than based upon a full comparison of the residual impacts of fully mitigated and compensated routes both inside and outside of the Park. More particularly:
  - HE failed to have regard to National Park purposes, including the duty of giving greater weight to conservation than other factors and therefore erred in law.
  - HE failed to have regard to paragraph 5.152 of the National Networks National Policy Statement (strong presumption against the building of new roads in the National Park) and that it failed in its application of paragraph 5.151 of the same policy statement (that the Secretary of State should refuse development consent except in exceptional circumstances and where it can be demonstrated that it is in the public interest).
  - HE failed to carry out any exercise of public consultation in relation to route options 4 and 5B. Furthermore, by making cost the determinative factor in the rejection of these alternative routes outside of the National Park for the purposes of public consultation the Defendant erred in law. The exclusion of an otherwise viable option for consultation solely on the grounds of cost usurps a function vested in the Secretary of State and predetermines an issue prior to consideration by the Secretary of State.
- I.3 A decision was taken at a meeting of the Authority on 24 May 2018 to commence proceedings for a Judicial Review of HE's decision. This meeting of the Authority excluded the press and the public as papers tabled discussed Counsel's advice in detail and this is covered by legal professional privilege.
- I.4 This paper and the information it contains is appropriate to be considered in public as the court proceedings are now a matter of public record. As the hearing may be held before the next meeting of the NPA this may be Members' last opportunity to discuss matters in relation to the Judicial Review in advance of the court hearing. If Members have any questions that require reference to the legal advice received which has informed our case, or any potential action to be taken before, during or after the conclusion of the hearing the Authority will need to consider moving into private session at the end of the meeting at the

point at which such matters are raised. This is because such matters may be exempt under Para 5 of Part 1, Schedule 12A of the Local Government Act 1972, information to which a claim to legal professional privilege could be maintained in legal proceedings.

- 1.5 Prior to the launch of legal proceedings officers explored with senior HE staff whether the SDNPA's aims could be achieved without recourse to legal action. This was not possible and the Authority issued its claim for Judicial Review with the High Court on 20 June 2018. Through our claim we are seeking:
- a) A Court Order quashing HE's preferred route announcement
  - b) A Court Order requiring HE to re-consult in relation to route options 4 and 5B before any decision as to the preferred route is taken
  - c) Payment of our legal costs in bringing this claim

## **2. Permission granted for Judicial Review**

- 2.1 Proceeding to Judicial Review requires permission from the Court. The Authority received permission to commence Judicial Review proceedings by Court Order dated 11 September (see appendix one). The Judge agreed that the Authority's claim raises arguable questions of law in relation to whether something went clearly and radically wrong with HE's consultation and whether the Court's intervention is required at this stage.
- 2.2 In relation to HE's preferred route announcement for the A27 at Arundel permission has also been granted to move for Judicial Review (Court Order reference CO/2752/2018, dated 11 September) for a claim submitted by Dr Emma Tristram. This claim is entirely separate from the Authority's legal claim and raises different concerns, principally relating to traffic figures.
- 2.3 In the Court Order dated 11 September the Judge ordered that the Authority's and Dr Tristram's claims be joined and heard by the same Judge, as although they raise separate matters they both relate to the same decision by HE. Subsequently the Authority requested that the cases be heard separately but sequentially with the Authority's case being heard first followed by Dr Tristram's claim. However a Court Order dated 8 October has determined that the cases will be heard together in a single hearing. As the Authority will be the lead off party it should be heard first in court.

## **3. Next steps**

- 3.1 Now that permission has been granted for the Authority to proceed with Judicial Review the defendant (HE) must file and serve detailed grounds for contesting our claim with the High Court by 16 October. The Authority will then have 21 days to lodge our reply. The court hearing is expected to take place later in the year, or possibly in early 2019. Judgment will follow shortly after.
- 3.2 Without prejudice to this on-going legal action officers continue to engage with HE on the development of appropriate mitigation and compensation measures for the A27 at Arundel to ensure that the National Park purposes influence any on-going design work. Two SDNPA Members have also been invited to participate in the A27 Elected Representatives' Forum which is a non-decision making forum being set up as part of the stakeholder engagement work being undertaken by HE. The principal purposes of this forum are to provide regular updates on scheme progress to the local community and to provide an opportunity for local people to ask questions about the scheme via their locally elected representatives.

## **4. Other Implications**

<b>Implication</b>	<b>Yes*/No</b>
Will further decisions be required by another committee/full authority?	No
Does the proposal raise any Resource implications?	The cost of the Judicial Review will be met from existing resources. If successful it is anticipated that our legal costs will be recovered from HE.
How does the proposal	As the organisation that is tasked with protecting and enhancing

represent Value for Money?	the SDNP and faced with a proposal that even HE themselves recognise as having large adverse effects on the primary purpose of the SDNP, the SDNPA is acting to protect the National Park.
Are there any Social Value implications arising from the proposal?	No
Have you taken regard of the South Downs National Park Authority's equality duty as contained within the Equality Act 2010?	There are no equality issues arising from the Judicial Review process. Equalities issues in relation to the highways scheme will be considered as part of the ongoing consultation and design process by HE.
Are there any Human Rights implications arising from the proposal?	It is not anticipated that there will be any Human Rights implications.
Are there any Crime & Disorder implications arising from the proposal?	None
Are there any Health & Safety implications arising from the proposal?	None
Are there any Data Protection implications?	No
Are there any Sustainability implications based on the 5 principles set out in the SDNPA Sustainability Strategy:	Any road scheme that proceeds will have significant impact. Officers will continue to work with relevant agencies to mitigate negative impacts.

## 5. Risks Associated with the Proposed Decision

- 5.1 There are no direct risks arising from this paper. The risks associated with the Judicial Review process were considered when the Authority took its decision to launch legal proceedings.

## MIKE HUGHES

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Appendices	1 – Court Order reference CO/2429/2018 dated 11 September 2018 2 – Court Order reference CO/2429/2018 dated 8 October 2018
SDNPA Consultees	Chief Executive; Director of Countryside Policy and Management; Director of Planning; Chief Finance Officer; Monitoring Officer; Legal Services, Business Service Manager
External Consultees	None
Background Documents	A27 Arundel Bypass Preferred Route Announcement, Highways England

