

# Latest HS2 appeal goes in the same direction

The battle to stop HS2 in its tracks has been fought in the High Court. Legal expert **JON MOWBRAY** from Chesham law firm **IBB Solicitors** offers his view on the story so far

**T**HE latest legal challenge to the HS2 project involved an appeal against a High Court ruling made in July 2014, which dismissed a claim by HS2 Action Alliance and the London borough of Hillingdon for a judicial review.

The claimants were seeking to challenge the safeguarding directions which were made by the secretary of state for transport to protect land between London and Birmingham.

They argued that the effect of the directions was to prohibit forms of development on the land they cover, regardless of the environmental impacts of doing so, and that they placed a constraint on the

planning decision-making of local authorities along the proposed route and further afield.

The fact that the directions were not limited in duration had the effect, the claimants argued, of sterilising the land indefinitely.

They were therefore seeking a ruling that the directions should, under European law, be subject to a strategic environmental assessment prior to adoption, including an assessment of reasonable alternatives.

To succeed they needed to establish that the directions constituted a 'plan or programme' for setting the framework for development consent.

They argued that the stated objectives of the

directions were to ensure that new developments along the route of HS2 would not prejudice the building or operation of HS2, or lead to additional costs, and that these were therefore a mandatory and weighty consideration for any local planning authority reviewing an application.

The secretary of state responded by arguing that the directions did not set out any substantive policy framework but were simply a procedural mechanism for ensuring at a local level HS2 was considered.

If a planning appeal was made against a decision of the local planning authority, the directions would no longer be technically relevant and therefore could not be held

to set the framework for considering developments.

The Court of Appeal agreed with the Secretary of State and the High Court and dismissed the appeal.

Whilst this therefore joins the long list of failed

legal challenges, it is highly likely that opponents of this controversial project will pursue further court action in the future.

■ **LEGAL VIEW:** Jon Mowbray, a partner at IBB Solicitors

