



Press Release

Misbourne Environmental Protection vrs Environment Agency (with HS2 Interested Parties)

High Court Case No: CO/2565/2021

In what can only be described as a disappointing outcome, MRS JUSTICE LIEVEN, has refused permission for Judicial Review into the Environment Agency decision to grant HS2 permission to construct the Chiltern Tunnels.

MEP renewed the case on three grounds namely, the EA failed to consider cumulative impacts of the works, erred in law as regards interpretation of the Water Framework Directive with regard to temporary impacts and failed to require a discharge permit in respect of the discharge of grout (containing Bentonite) into the freshwater Aquifer.

We respectfully thank Justice Lieven for time taken to reach such a difficult & technical decision.

While MEP understand and accept the judgement, it is clear that protection of the Chilterns Aquifer, Misbourne Chalk Stream and Shardeloes lake has not been given adequate or necessary protection. However, the Judge has limited scope within a Judicial Review process since only errors in law can be considered. The fault originates with the Hybrid Bill process, as does much of the other ongoing damage to the AONB.

The fact that Align JV, HS2 Ltd and the Environment Agency have assessed the risks as minimal disguises the fact they will open up fissures in the Aquifer while pumping 1000's of tons of Cement Grout which will then fill these fissures – this has unknown consequences for the Waterbodies.

In a singular instance of greatest concern, the defendants presented an assessment that their grout would set within 30 secs *unless* introduced into fast flowing, turbulent conditions which they then admitted in court were “ubiquitous” throughout the Chilterns.

The net effect could mean grout migration hundreds of metres from the tunnel, blocking up fissures and disrupting water flow thereby damaging the spring fed Misbourne which could be lost in places.

The defendants presented a scenario of “it’ll be alright on the night” and since they have considered the effects of their pollution as “temporary” provided they do not pollute for more than 3 years, they are deemed to comply with the Water Framework Directive.

It is yet another example of Governments callous disregard for our freshwater and failure to protect our most precious water bodies, such as Chalk Streams, from damage which is otherwise avoidable. We shall be paying close attention to Align JV given their promises to the Court, as the entire liability for delivering this Tunnel without impacts to the Waterbodies now rests with them.

We are extremely grateful to our team of geologists, to our QC David Forsdick who did an excellent job assimilating the technical information at short notice, Charles Streeten QC and Rowan Smith at Leigh Day for advising us. It is unfortunate that the courts are unable to pronounce judgement on the scientific merits of a case, but only on the legal procedures which were followed in reaching a decision – otherwise the outcome may have been very different.

Finally, we would like to thank HS2 Action Alliance and HS2 Amersham Action Group as well as everyone else who has supported us financially. While the outcome was not what we wanted, all concerned can say that they made every possible effort to protect the Chilterns AONB.

Dr Jim Conboy, Chairman of MEP, said

“It is ironic that following the cancellation of the Eastern leg, and collapse of the business case for HS2, the trail of destruction along the phase 1 route continues unabated. While this campaign did not succeed, it was nevertheless important to make every possible effort to protect the Misbourne and the Chiltern Aquifer”

Chris Wilson, Director of MEP, said

“We are grateful to our many supporters for the financial and expert technical guidance and support we received in bringing our action. Although the judgement wasn’t in our favour, it doesn’t and shouldn’t deflect us from scrutinising this damaging and unnecessary project. We remain deeply concerned as to the long lasting impacts this project could have on our Aquifer and Precious Chalk Stream.

Andrew Cordiner, Director of MEP, said

“The Environment Agency, Align JV, the Department for Transport, UK Parliament, our MPs and most of all HS2 Ltd, have told the British Public that pollution and damage to our freshwater supplies and a rare chalk stream is okay, provided it only happens for less than 3 years. I can think of no better illustration highlighting the vacuous words of those Grandstanding a few weeks ago at Cop26”

Judgement –

<http://www.hs2amersham.org.uk/Resources/Construction/ChilternTunnel/MEPApprovedJudgment.pdf>