17 October 2012

PRESS SUMMARY

Walton (Appellant) *v* The Scottish Ministers (Respondent) (Scotland) [2012] UKSC 44
On appeal from [2012] CSIH 19

JUSTICES: Lord Hope (Deputy President), Lord Kerr, Lord Dyson, Lord Reed and Lord Carnwath

BACKGROUND TO THE APPEALS

This appeal concerns a challenge by the Appellant to the validity of schemes and orders made by the Scottish Ministers under the Roads (Scotland) Act 1984 ('the 1984 Act') to allow the construction of a road network bypassing Aberdeen to the west of the city. In March 2003, a partnership comprising local public and private bodies produced a regional transport strategy ('the MTS'), describing and costing numerous proposals, including the 'western peripheral route' ('the WPR'), intended primarily to reduce congestion in Aberdeen. The Ministers agreed to undertake the implementation of the WPR. Following a campaign against part of the proposed route, the Ministers decided in December 2005 to revise the scheme so as to include a road connecting Stonehaven to the WPR ('the Fastlink'). It was intended that the Fastlink would reduce congestion on the A90 between Stonehaven and Aberdeen. The Ministers subsequently published Environmental Impact Assessments under s.20A of the 1984 Act, on the basis that the scheme fell within the scope of the Environmental Assessment Directive ('the EIA Directive').

The Appellant is the chairman of Road Sense, a local organisation opposing the WPR whose members reside along or close to the proposed route. Following objections from him and others, a public inquiry was held to consider environmental and technical issues associated with the WPR, but not whether to proceed with it at all. Following detailed modifications, the Scottish Parliament approved the relevant orders and schemes on 3rd March 2010.

The Appellant challenged the validity of WPR in the Scottish courts, under paragraph 2 of schedule 2 to the 1984 Act, on a variety of grounds under EU and domestic law. The Inner House rejected those submissions. It also held that the Appellant was not in any event entitled to bring a challenge as he was not a 'person aggrieved', and that he had not shown his interests to have been 'substantially prejudiced' so as to entitle him to a remedy, as required respectively by paragraphs 2 and 3 of Schedule 2 to the 1984 Act. Before the Supreme Court, the Appellant argued that the Fastlink had been adopted without the consultation required by the Strategic Environmental Assessment Directive ('the SEA Directive'), and that that the scope of the public inquiry should have included the question whether the Fastlink was required, under common law principles of procedural fairness.

JUDGMENT

The Supreme Court unanimously dismisses the appeal.

REASONS FOR THE JUDGMENT

- The trunk road network on the periphery of Aberdeen is urgently in need of improvement. As such, Mr Walton's determination to pursue his challenge has been the subject of vigorous criticism and suggestions that he has acted irresponsibly. However, his challenge raised a difficult question of law which it was proper for the Court to consider **[148-149]**.

- The Court notes that the SEA and EIA Directives require environmental assessments to be carried out in different but mutually complementary circumstances. The SEA Directive is concerned with the environmental effects of 'plans and programmes' which set the framework for future development consent of 'projects'. The EIA Directive is concerned with the environmental impact of specific 'projects' **[11-14, 24]**.

- With that distinction in mind, and assuming for the purposes of analysis that the MTS qualified as a 'plan or programme' under the SEA Directive **[62, 100, 150]**, the Court holds that the Fastlink was not a modification to that plan or programme, and therefore did not trigger the consultation requirements of the SEA Directive. The WPR was a specific 'project' undertaken following the MTS, and the Fastlink was a modification of that project, rendering it subject to the EIA Directive's requirements instead **[64-69, 99, 102, 150]**.

- With regard to the fairness of the public inquiry, it was not argued that the Ministers were obliged by statute to assess the economic, policy or strategic justifications for the Fastlink. Nor was it argued that the Appellant had a legitimate expectation that the scope of the inquiry would include that assessment. In those circumstances, there was nothing to suggest that its remit was unfair to the Appellant **[72-73, 101-102]**.

- Those conclusions determined the Appellant's challenge. However, due to observations made by the Inner House **[1, 74-76]**, the Supreme Court also clarifies elements of the law on standing to raise such a challenge, and on the availability of a remedy where that challenge is well-founded in law .

- The Court notes that, when considering whether an individual is a 'person aggrieved', as he must be in order to raise a challenge under paragraph 2 of schedule 2 to the 1984 Act, the legislative and factual context will be important **[85].** Given the extent of the Appellant's participation in the consultative procedures under the 1984 Act, he was indubitably a 'person aggrieved' under that Act **[86-89]**. It would be inconsistent with the purpose of environmental law to require that a person's private interests must necessarily be affected for him to be a such a person, as environmental law proceeds on the basis that the environment is of legitimate concern to everyone. If an individual or organisation has a genuine interest in and sufficient knowledge of an environmental issue to qualify them to raise issues in the public interest, they should be regarded as a 'person aggrieved' **[152-155]**.

- The Court also concludes that the Appellant would have had standing, as a party with sufficient interest in the WPR, to raise common law proceedings for judicial review. However, such proceedings would have failed on their merits **[90-97]**. In *AXA General Insurance Ltd and others v HM Advocate and others* [2011] UKSC 46, the Court had clarified that the function of such proceedings was not only to redress individual grievances **[91]**. While distinguishing between a busybody and someone with a legitimate concern is context-specific, it is not always necessary for someone raising an action to demonstrate a personal interest where the challenged act affects the public generally **[92-94].** The rule of law would not be maintained if no-one could challenge an unlawful act because everyone was equally affected by it **[95]**.

- The Court considers that the nature of a person's interest will have a bearing on the court's exercise of discretion as to the remedy, if any, which should be granted where a challenge such as the Appellant's is successful **[96, 104]**. The Appellant would not have been entitled to a remedy in any event. The exercise of discretion to grant a remedy depends on the factual and statutory context, and there would be such prejudice to countervailing public and private interests that it would be extraordinary if it could not be taken into account in deciding whether the orders creating the Fastlink were to be quashed **[132]**. Nothing argued before the court suggested that this position is not in line with European legal principles on environmental assessment **[135-141]**. *References in square brackets are to paragraphs in the judgment*