

Paul Thompson in *Construction News*: 24 November 2006

UK aggregates body set to take its fight against the Government to the European Court of Justice

Appeal on stone tax ruling

QUARRIERS have pledged to keep up the battle against a tax on freshly-dug aggregates by taking the fight to the European Court of Justice. The British Aggregates Association confirmed last week that it had lodged an appeal against a decision made by the Court of First Instance in September. The ruling stated that the Government had not broken the European Commission's state aid rules when it introduced the Aggregates Levy. BAA had been given two months to lodge an appeal. *Construction News* first revealed the association's intention to battle on against the decision in September but its legal team at solicitors Herbert Smith wanted to use the time to plough through the 23-page ruling.

It will focus its appeal on points that it claimed showed the Court of First Instance had ignored existing case law when making its verdict. The association claimed that the ruling flew in the face of accepted state aid rules and allowed European Union member countries such flexibility they could artificially prop up businesses and sectors under the guise of environmental taxation.

The grounds for the appeal include:

- That the Court of First Instance approach conflicts with the approach followed by the ECJ in previous environmental levy cases.
- That the court questions the fundamental principle of EC law that state aid is an objective concept whereby a measure is assessed on the basis of its effects only and not on the basis of the policy objectives it pursues.
- That the court adopts an approach that leaves so much discretion to EU member states that it renders state aid disciplines meaningless when applied to environmental taxes.

BAA director Robert Durward said: "The fact remains that the CFI decision is fundamentally at odds with the ECJ on a number of counts. "The CFI added its own interpretation of how the Aggregates Levy worked to offer environmental benefit. But the CFI was no more successful than either the UK Treasury or the EU in trying to explain a law that has failed to deliver any environmental benefit."

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