IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

BETWEEN:

THE KING (on the application of)

Claimant

- and -

LONDON BOROUGH OF TOWER HAMLETS

Defendant

- and -

TRANSPORT FOR LONDON

Interested Party

CLAIMANT'S SKELETON ARGUMENT FOR HEARING ON 20/21 NOVEMBER 2024

Time estimate: 2 days (pre-reading 3 hours)

References*: to the core and first and second supplementary hearing bundles are given as* ***[CB/Tab/Page Number]****,* ***[SB1/Tab/Page Number]*** *and* ***[SB2/Tab/Page Number]*** *respectively*

Essential Reading:

- *Decision Notice* **[CB/10/145-156]** *Officer's Report for decision to remove the Scheme extracts: Executive Summary* **[CB/11/157-158]***; paragraphs 1 – 2.2* **[CB/11/158-160]** and paragraphs 3.91 – 6.3 **[CB/11/178-182]**
- *Mayor's Public Statement in respect of decision under challenge* **[CB/20/360-361]**.
- *Council's Local Implementation Plan (extracts)* **[SB1/26/388-391, 414, 417, 422-425, 431-434, 452-455, 502-505, 524-527]**
- *Officer's Report in respect of decision to implement the Scheme* **[SB1/23/212-219]**

INTRODUCTION

1. The Claimant challenges a decision on 20 September 2023 by the Mayor ("**the Mayor**") on behalf of the Defendant London Borough of Tower Hamlets ("**the Council**") (**"the Decision"**) [**CB/10/150 para 6.4**] to approve the near total removal of an already-implemented Low Traffic Neighbourhood ("**LTN**") scheme, known as the Bethnal Green and Weavers Liveable Streets Scheme, in Bethnal Green, London ("**the Scheme**").

2. Permission to bring the claim was granted on the papers by Sweeting J **[CB/7/105-107]**. The Council filed Detailed Grounds of Resistance **[CB/8/108-135]**. The Interested Party, Transport for London ("**TFL**") filed Detailed Grounds **[CB/9/136-144]** in support of Ground 6**.**

STATUTORY FRAMEWORK

3. The Council operates a Mayor and Cabinet political management arrangement for the purpose of Part 1A of the Local Government Act 2000 (**"LGA 2000"**). The Decision under challenge was made by the Mayor in his capacity as part of the executive of the Council (s.9C(2) LGA 2000). Executive functions may be discharged by the Mayor (s.9E(2) LGA 2000).

4. The Council operates in accordance with a Constitution which it is required by s.9P LGA 2000 to prepare.

5. The Scheme to which the Decision relates is contained within the Council's 'Local Implementation Plan' ("**LIP**"). The LIP is a plan which the Council is obliged (by s.145 of the Greater London Authority Act 1999; "**GLAA 1999**") to produce in order to demonstrate how the Council will implement the Mayor of London's transport strategy ("**MTS**") adopted by the Mayor of London pursuant to s.142 GLAA 1999.

6. The Decision under challenge is a policy decision (i.e. it had no immediate operational impact) which needed to be taken having regard to statutory guidance issued by the Secretary of State by virtue of s.18 of the Traffic Management Act 2004 ("**TMA 2004**"), including a presumption against the removal of LTNs. In order for the changes the subject of the Decision to be brought into effect, they would need to be implemented by way of traffic orders made in accordance with the statutory framework set out in the Road Traffic Regulation Act 1984. That has not yet happened.

SUMMARY OF THE BACKGROUND

7. The Claimant's SFG outlines the factual background. The following is a summary.

8. The Scheme includes traffic measures, including traffic restrictions and public space and safety improvements to improve the area for walking, cycling, public transport, improve air quality and help to discourage through-traffic and anti-social behaviour (see **[SB1/23/215 para 3.2]** and **[CB/16/249]**).

9. The Scheme was a measure contained within the Council's LIP (see Table 18, Item 4 at **[SB1/26/505]**, then known as a "Love Your Neighbourhoods" scheme). Having published its LIP and obtained the Mayor of London's approval for it **[SB1/27/529]**, the Council was thereafter obliged by s.151 GLAA 1999 to implement the proposals in its LIP at **[SB1/26/486 and 502-505]**.

10. The decision to implement the Scheme was taken in January 2020, prior to the Covid-19 pandemic, and was in accordance with the outcome of extensive public consultation which favoured its implementation [SB1/23/213 para 1.2].

11. The Bethnal Green element of the Scheme was introduced by the Council (under a previous administration) in June 2020 and the Weavers element in February 2021 **[CB/11/183 para 7.1-27]** at a cost of £2.7m **[SB1/23/217 para 6.1].** The Scheme was amended following concerns about emergency access in July 2021. Most of the Bethnal Green and Weavers elements were made permanent by the end of March 2022.

12. Following the election of a new Mayor, Lutfur Rahman, in May 2022 **[SB1/29/601]**, the Council initiated a public consultation proposing removal of the scheme in July 2022 **[SB2/13/122 and SB2/14/131]**. Having intended to make a final decision on the proposal in September 2022 **[SB1/2/10 para (d)]**, the Council deferred its decision and consulted further in January 2023. The documents made clear that only two options were being considered – essentially removal of the Scheme (**"Option 1"**); and retention of the Scheme in its entirety (**"Option 2"**) **[SB2/1/7 and SB2/2/27]**. In that further consultation, retention of the Scheme was supported by 58-59% of local consultees **[CB/11/167 para 3.34]** including the Claimant, and by key stakeholders, including TFL, the local NHS Trusts, the Metropolitan Police and local schools (as set out in detail below). Evidence collected by the Council and provided by respondents showed that

the Scheme was meeting its objectives to reduce congestion, improve air quality, support active modes of travel, improve safety for vulnerable road users and reduce anti-social behaviour (in accordance with the scheme evaluation **[CB/15/242-3]** as set out in greater detail below).

13. An officer's report ("**OR**") advised the Mayor's Decision (and, along with its attachments, was the only document relied on for him taking that Decision). However, it did not provide him with even a summary of answers to all the consultation questions, failed to explain to him the LIP position and the LIP implications of removal and failed to inform him of the provisions of statutory guidance applicable to removal of LTNs. It did present him, however, with a new "**Option 3**" which had not been subject to consultation and which, according to officers, would address all the areas about which the Mayor had expressed concern and scored "*highest overall by striking the balance between competing demands on the streets within the scheme area"* **[CB/11/181 para 3.94]**.

14. In accordance with nothing other than a headline commitment from his earlier election manifesto, the Mayor nonetheless decided at a meeting of the Council's Cabinet to remove the Scheme in its entirety (with the exception of one closure) without the reasons for that Decision being recorded in writing as required by the Council's Constitution (let alone any reason why not to adopt the 'highest scoring' Option 3 contemplated by officers) or evidencing any consideration by the Mayor of the LIP, the statutory guidance, the cost implications of removing it (£2.5m) having spent £2.7m to install it, or the travel survey responses (of which he was in fact anyway kept ignorant).

SUMMARY OF THIS CHALLENGE

15. The Claimant is a local resident who is affected by the Scheme and who made representations in support of retaining the Scheme as part of the consultation. There is no dispute that he has standing to bring the claim. He submits that the Decision was unlawful as set out below and summarised as follows:

    (1) **Failure to give adequate reasons.** The OR set out three options, including a modified version of the Scheme (referred to as "Option 3") which "scored highest" and, according to officers' evaluation, retained most of its recognised benefits and removed the disadvantages identified by officers. However, the

Mayor's "reasons" did not explain why Option 3 was discounted and, in any event, left members of the public in the dark as to how the Mayor factored various considerations into the Decision. The Mayor's "reasons" were nothing more than a summary restatement of his historic opposition to the Scheme.

(2) **Unlawful consultation.** The consultation process, which led to the removal of the Scheme in its entirety (referred to by Council officers as "Option 1"), was so unfair as to be unlawful.

(3) **Failure to take into account the travel survey responses.** The Mayor failed to take into account (not least because he was ignorant of it) significant obviously material evidence gathered via the Council's travel survey. This mattered because there was no other information available to him in respect of the effect of the Scheme on the use of different transport modes. The extent to which the Scheme has affected the way in which people travel to work and other places was obviously material to the Mayor's Decision on the Scheme but was left out of account.

(4) **Unlawful failure to apply the applicable statutory guidance on removal of LTNs.** The Mayor was under a duty to have regard to and apply statutory guidance issued by the Secretary of State entitled *"Traffic Management Act 2004: network management to support active travel"* ("**the Guidance**"). That Guidance (i) established a presumption against the removal of LTNs; and (ii) made clear that where problems have arisen, adjustments or adaptations should so far as possible be made to LTNs in preference to their removal. The Mayor failed to apply the Guidance properly or at all (not least because neither he nor the OR addressed the relevant provisions)

(5) **Rationality / Mayor erred by relying solely on public opinion to justify his Decision.** Having regard to the concerns raised by the Mayor in his public statement, he could not have reasonably concluded that the Scheme should be removed in its entirety given the extent to which those concerns could be addressed by choosing another option, and in view of the substantial expert evidence before the Mayor supporting retention of the Scheme in full or in an adapted form.

(6) **<u>Breach of s.151 of the GLAA 1999 and/or failure to have regard to the Council's LIP.</u>** By s.151 GLAA 1999, the Council was obliged to implement the proposals in its approved LIP in accordance with the timetable in that Plan. The Council's LIP, which has not been amended, specifically required it to implement the Scheme from 2019 onwards. By deciding to remove the Scheme entirely, the Mayor acted in breach of s.151 GLAA 1999 and, in any event, failed to take into account that the Decision to remove the Scheme was contrary to the LIP.

(7) **<u>Breach of Duty of Best Value</u>.** The Council unlawfully failed to discharge its duty to secure best value. There had been significant investment in implementing the existing Scheme following extensive consultation and experimental phases. The Council failed to take account of or explain how the cost to the public purse of removing the scheme in full could be justified by the Decision.

<u>GROUND 1: FAILURE TO GIVE ADEQUATE REASONS</u>

<u>Legal Principles</u>

16. The Council does not dispute it needed to give written reasons for the Decision as required by the Council's Constitution **[SB1/32/631]** and, in the circumstances of this matter, by virtue of the common law by reference to the principles set out in, for example, **R(Oakley) v South Cambridgeshire DC** [2017] EWCA Civ 71; [2017] 1 W.L.R. 3765 at [26]-[33] and [56]-[61].

17. Such reasons must be proper, intelligible and adequate: **Save Britain's Heritage v Number 1 Poultry Ltd** [1991] 1 W.L.R. 153 at 166. The extent and particularity of the reasons required depend on the circumstances and the nature of the issues: **South Bucks v Porter (No 2)** [2004] UKHL 33; [2004] 1 W.L.R. 1953 at [36] and **Stefan v GMC** [1999] 1 W.L.R. 1293 at 1304.

<u>Submissions</u>

18. Paragraph 22.1(b) of the Council's Constitution **[SB1/32/631]** required the Council to provide a written record of the reasons for the decision. Yet, the Council does not, anywhere in the relevant section of its DGD **[CB/8/117-121]**, rely on that formal written record of its decision as actually providing the reasons for it. The Council

seemingly accepts (per paragraphs 42-44 of the SFG **[CB/2/32]**) that – in breach of the requirements of the Constitution and thus unlawfully – the record did not explain why the Mayor selected Option 1.

19. The Council's position in this claim is that the reasons for the Decision were set out in a brief 'public statement' given by the Mayor at the meeting **[CB/20/360]** and that there were five 'key' reasons for the Decision **[CB/8/118-119**, **para 38-9]**:

    (1) the divisive effect of traffic measures within the local community;

    (2) the effect of traffic displacement;

    (3) the disadvantage for the significant proportion of the population that were reliant on cars for their businesses;

    (4) the London Ambulance Service's concerns about access; and

    (5) problems caused to the Council's waste services.

20. Even if it is accepted that the reasons given by the Mayor can be taken as the 'reasons' even though not in the formal decision record, they were nonetheless unintelligible and inadequate.

21. As noted above, the extent of reasons required will depend on the circumstances and issues arising for determination. Here, the following is particularly relevant:

    (1) Officers did not recommend that any one of the three options proposed in the OR should be adopted. Consequently, the reasons for deciding to remove the Scheme entirely (i.e. Option 1), as opposed to some other option, cannot be derived from the OR.

    (2) Although the OR did not recommend any particular option, the Council's officers had specifically developed Option 3 to overcome the objections to the Scheme whilst retaining its advantages. The Council's own evaluation matrix established that Option 3 *"scores highest overall by striking the balance between competing demands on the streets within the scheme area*." **[CB/11/181, para 3.94]** Being the 'highest scoring option', it is reasonable to infer that Option 3 would be the preferred option unless there were particular reasons to prefer another option.

(3) Option 3 was envisaged to address all of the 'reasons' subsequently identified by the Mayor for his Decision to remove the Scheme in its entirety, including:

(a) The 'divisiveness' of the Scheme, as the Mayor saw it (see bullet 3 of para. 3.94 of the OR at **[CB/11/181]**);

(b) The effects of traffic displacement (see, for example **[CB/11/177 para 3.86-87]** and Appendix D at **[CB/15/244]**);

(c) Issues caused for those reliant on cars (see, for example **[CB/11/173 para 3.61** and **178 para 3.91]**) and Appendix D at **[CB/15/244-5]** under the headings "Facilitating the passage of vehicle traffic" and "local access");

(d) Access for emergency services (see **[CB/11/176 para. 3.75-77** and **178 para 3.91]** and Appendix D at **[CB/15/245]**);

(e) Access for waste collection vehicles (see Appendix D at **[CB/15/245]** under the heading "local access"); and

(f) Business access (see para. 3.91 of the OR at **[CB/11/178]** and Appendix D at **[CB/15/245]** under the heading "local access").

(g) The Mayor decided **[CB/10/150 para. 6.4]** that one 'closure', on Canrobert Street, should remain in place even though this was not an option considered by officers in the OR otherwise and no reasons were given by the Mayor for its retention in his public statement.

(h) The Mayor's 'reasons' for his Decision included matters that were not the subject of any consideration in the OR evaluation matrix (i.e. the 'divisiveness' of the Scheme) or otherwise supported by any empirical data or considered by officers (i.e. the assertion that the Scheme was having an adverse impact on "*the significant proportion of the population that were reliant on cars for their businesse*s").

22. In light of those matters and the presentation of the issues in the OR, it was incumbent on the Mayor, insofar as he was minded to decide that the Scheme should be removed entirely (with the exception of one minor closure), to explain, as a minimum:

(1) Why the 'highest scoring' option (i.e. Option 3) which had been explicitly devised by officers to retain the benefits of the Scheme and yet address each of the concerns raised by the Mayor in his Statement, which ultimately 'scored highest' overall and which was estimated to be half the cost (£1.2m versus £2.5m for Option 1) in the OR at **[CB/11/182]**) whilst overcoming objections, was not adopted.

(2) How the Mayor factored the principal controversial issues into his Decision, including (i) the benefits of the Scheme, as he saw them; (ii) the adverse impacts of the removal of the Scheme, as he saw them; and (iii) the basis for assertions that were not the subject of any consideration by officers.

23. As for the first omission identified above:

(1) The Mayor did not explain why Option 3 was rejected in favour of Option 1. It is simply not possible to understand why the Mayor selected Option 1 over Option 3 in circumstances in which Option 3 was the 'highest scoring' option.

(2) The Council's position is that it was adequate for the Mayor to have identified his concerns with the existing Scheme, which were 'rooted' in the analysis in the OR **[CB/8/118-119 para. 38-40]**. But there is nothing in the OR, the record of decision or the Mayor's Statement to explain that this is what he was doing. Further, it is in any event impossible to understand from his Statement why the Mayor decided that Option 3 would not address his concerns with the Scheme or, if there were any outstanding objections on his part, why those objections outweighed the multiple benefits of retaining the Scheme identified by officers in terms of reducing traffic, improving road safety, improving air quality, etc.

(3) The Mayor simply did not engage with the officers' advice that Option 3 would address the objections raised and retain the benefits so as to score highest overall but merely restates his objections to the Scheme.

24. As for the second omission identified above, the perfunctory 'reasons' set out in the Mayor's public statement do not in any event enable the public or affected stakeholders to understand how the Decision to remove the Scheme in its entirety had

been arrived at. This indicates irrational decision-making and/or a failure to take into account relevant considerations. In particular:

(1) The Mayor did not explain how he factored into his Decision the benefits of retaining the Scheme;

(2) He did not explain how he factored into his Decision the adverse impacts of removing the Scheme;

(3) He did not explain the basis for including in his assessment matters that were not included within the Council's evaluation matrix (i.e. the 'divisiveness' of the Scheme, as he saw it) nor matters which were unsupported by any consideration by officers or other empirical evidence, such as the assertion that a "*significant proportion of the population that were reliant on cars for their businesses*" were adversely affected by the Scheme;

(4) He did not explain why he had decided to retain the 'closure' on Canrobert Street.

25. Taken together, the 'reasons' given by the Mayor were inadequate and the Decision should be quashed on this basis.

GROUND 2: UNLAWFUL CONSULTATION

The law

26. The principles of public law consultation are well-established: **R v Brent LBC ex parte Gunning** (1985) 84 LGR 168 QBD (**"Gunning"**) as endorsed in **R (Moseley) v London Borough of Haringey** [2014] UKSC 56; [2014] 1 W.L.R. 3947 (**"Moseley"**).

27. Consultees must be provided with sufficient information to enable an intelligent, meaningful response. While the fairness of any consultation will depend on the particular circumstances of the Decision in question, the courts have held that consultees may be required to be invited to give views on alternative options, which would entail the provision of sufficient information about what those options are or were and the basis on which they were being considered and evaluated (see **Moseley**, per Lord Wilson at [27]-[29]).

28. Where it is alleged that a public authority should have consulted on any changes to the proposals which arise during or after a consultation exercise has been conducted, the question of whether it is necessary to carry out further consultation will be determined by the concept of fairness: see **Moseley** at [23]-[24]; **Keep Wythenshawe Special Limited v NHS Central Manchester CCG** [2016] EWHC 17 (Admin) at [74]; and **R (Holborn Studios Ltd) v Hackney LB** [2017] EWHC 2823 (Admin); [2018] P.T.S.R. 997 at [76].

29. The requirements of fairness in considering whether to re-consult must start from an understanding of any differences between the proposal and material consulted upon and the decision that the public body in fact intends to proceed to make: **Keep Wythenshawe Special** at [75].

<u>**Submissions**</u>

30. The consultation process which led to the adoption of Option 1 was so unfair as to be unlawful. In summary, members of the public were deprived of the opportunity of making representations in respect of Option 3, which had only been formulated after the consultation process had concluded and which included measures previously discounted by the Council. Those representations may have resulted in support for Option 3 both from those in favour and those opposed to the existing Scheme. Any greater consensus in favour of Option 3 may well have affected the Mayor's Decision, given his concern about the 'divisive effect', as he perceived it, of the Scheme, as it existed.

31. There were clearly significant differences between Options 1 and 2, and Option 3, which consultees should have been given the opportunity to comment upon.

32. <u>First</u>, contrary to the Council's assertion otherwise, Option 3 comprised different measures to those considered as part of Options 1 and 2 and was not merely comprised of elements that had previously been consulted on. In particular, Option 3 included extensive use of ANPR cameras which had previously been expressly discounted by the Council as a potential solution. In the January 2023 consultation materials it was stated (see **[SB2/1/7]** and **[SB2/2/27]**) that: "*the Council has considered other options which will not be taken forward. These are completing the originally approved scheme with more closures or replacing physical closures with cameras*." It is therefore wrong for

the Council to suggest that cameras were identified as a potential solution under consideration or would have been understood as such by consultees. The consultation materials could not have been clearer that the use of ANPR cameras was not under consideration, being an option which was expressly stated as being one that was not being taken forward. Had consultees understood that the use of ANPR cameras was in fact under consideration, further support for their use may have been expressed. The fact that *some* respondents may have nonetheless commented on the use of the ANPR cameras (as suggested by the Council at **[CB/8/124 para. 56]** and **[SB1/6/90 para. 22]**) does not remedy the flaw.

33. Secondly, irrespective of its individual components, Option 3 was very different in substance and effect to either Option 1 or Option 2. Contrary to the Council's assertion otherwise, no information about Option 3 was provided to consultees in respect of its likely operation or impacts to enable respondents to comment meaningfully on it.

34. Thirdly, Option 3 was designed with the express purpose of overcoming many of the issues identified in respect of the Scheme whilst maintaining some of the benefits. Had members of the public been given the opportunity to comment on the possibility of a Scheme which retained the benefits of the existing Scheme whilst overcoming objections to it, members of the public may well have commented favourably on that option or supported its development.

35. That being said, it is emphatically not the case that Option 3 as developed by the Council was promoted by a third party residents' organisation called 'Save Our Safer Streets' nor can it sensibly be suggested that discussions with the group 'informed' the development of Option 3 as suggested by the Council (see, for example, **[SB1/8/86 para. 7]** and para. 49 and 65 of the Council's DGD at **[CB/8/121 and 126]**). As explained in the witness statement of Juliette Tuke, the Council only had a single meeting with the group at which there was no discussion of a possible 'middle way' and officers stated explicitly that this was not something that was being explored (see Tuke WS at para. 10 **[SB1/8/126]**). Indeed, the group made clear at the meeting that they would want to be involved in the process of improving the Scheme which had not happened thus far (see Tuke WS at para. 9). If anything, therefore, the engagement with Save Our Safer Streets, such as it was, only serves to reinforce the unfairness of the Council's

failure to engage further with stakeholders in respect of further options than those previously considered.

36. The fact that Option 3 was intended to provide a compromise between Option 1 and Option 2 does not mean that it was fair for the Council not to consult the public about it. The differences between Options 1 and 2 and Option 3 were of particular importance in the circumstances of this matter, given the Mayor's concern that the Scheme in its current form was 'divisive' and the fact that Option 3 had been developed as a 'compromise' option. That is particularly the case if the Mayor was prepared to retain elements of the Scheme by reference to the views of the public, as the Council suggests is the case in respect of Canrobert Street (see [**SB1/6/88 paras. 13-16]**). It was unfair to thereafter deprive members of the public from commenting on Option 3 when there was a realistic prospect that support for that option may have elicited changes to the Scheme.

37. Contrary to the Council's position otherwise, the differences between Option 1 and Option 3 were - in the circumstances of this matter (and in particular bearing in mind the Mayor's concerns in respect of the extent of public support for the Scheme) – so significant as to warrant a re-consultation. It was so unfair as to be unlawful for the Council to deprive members of the public from commenting on that option.

38. Had the Council consulted on Option 3, it is not 'highly likely' that the outcome for the Claimant and/or other members of the public would have been the same, by reference to s.31(2A) Senior Courts Act 1981. Even the Council does not suggest that to be the case. Even if (which is not accepted) it were necessary to demonstrate "substantial prejudice" to the Claimant, the Claimant has clearly been substantially prejudiced by the failure to consult on Option 3. Had he (and other members of the public) been given the opportunity to comment on Option 3, he would have had the opportunity to comment on elements of the scheme which had apparently been discounted (i.e. ANPR cameras) and would have had the opportunity to express support for an approach which had not previously been proposed by the Council, i.e. a compromise option of some kind.

39. The Claimant maintains that the Decision should be quashed on this ground.

GROUND 3: FAILURE TO TAKE INTO ACCOUNT THE TRAVEL SURVEY RESPONSES

The law

40. The product of consultation must be conscientiously taken into account by the decision-maker when the ultimate decision is taken: **Gunning** at p.189 and **Moseley** at [25].

41. For example, in **R(Kohler) v Mayor's Office for Policing and Crime** [2018] EWHC 1881 (Admin), the Divisional Court held that a decision by the Deputy Mayor for Policing and Crime to close Merton Police Station was legally flawed because the Deputy Mayor was not told about and so did not take into account an aspect of a consultation response which was material to the decision under challenge. The Court quashed the decision.

Submissions

42. In summary, the Mayor was not told about, and therefore failed to take into account, responses to the consultation (set out in detail below) which demonstrated that there had been a material increase in walking, cycling and use of public transport following the introduction of the Scheme and no change in the use of cars. Had the Mayor taken into account this information (which was the only evidence available to him in respect of the effect of the Scheme on the use of different transport modes), it would have demonstrated that the Scheme was delivering on a key objective, namely to increase the use of active travel modes, which may in turn have affected the Mayor's Decision to remove it.

43. As part of its consultation, the Council conducted a 'travel survey' which asked respondents to answer four questions **[SB2/7/94-95]**:

    (1) Do you use any of the following: Taxicard, Blue Badge, DP Freedom Pass, OP Freedom Pass?

    (2) How do you travel to your regular place of work? N.B. Respondents were asked to tick all modes that applied and to indicate how often they travelled by that mode.

    (3) How often do you travel for any other purpose (e.g. shopping, school run, leisure trips, business travel)? Respondents were asked to tick *all modes that applied and* to indicate how often.

(4) For each mode of transport used to travel to work, have you reduced or increased the use you make of it compared with before the Liveable Streets Scheme was implemented? Respondents were asked to indicate whether the use of particular transport modes had increased or decreased by way of tick boxes.

44. In the OR evaluation of the consultation **[CB/13/198 and CB/14/217] [CB/11/167 para. 3.35]**, the Mayor was only told about - and so only took into account - responses to the first question above (because he was not given information about the other responses). He unlawfully failed to take into account (let alone conscientiously) the responses to the other three questions.

45. As explained by [redacted] **[SB1/4/75]** by reference to charts produced on the basis of the Council's data (see **[SB2/27-31/201-231]**), the consultation responses to the latter three questions demonstrated there was a material increase in walking, cycling and use of public transport, and no change in the use of cars, following the introduction of the Scheme.

46. The failure to take into account the results of the travel survey mattered because:

(1) The extent to which the Scheme had affected the way in which people travelled to work and, in particular, whether the use of 'active modes' of travel had increased or decreased compared with before the Scheme was implemented was of critical importance to the Mayor's Decision.

(2) There was no other information available to the Mayor in respect of the effect of the Scheme on the use of transport modes (e.g. by way of traffic collection data or other survey data). The Council's suggestion that there was other information available to the Mayor on this issue, in the form of comments about people's perceptions of road safety and ease of movement (see Council's DGD at para.72 **[CB/8/127]**), misses the fact that the omitted data reflected actual usage of alternative modes and was of a materially different nature to that referred to by the Council.

(3) The omitted travel survey results demonstrated that the Scheme had delivered upon one of its key objectives, identified in the statutory Guidance on the

removal of LTNs, the Council's LIP and the Mayor's Transport Strategy, namely to increase the use of walking, cycling and public transport modes. The Council's ex post facto contention that the data "*lacked essential details which would have enabled a more reliable analysis*" (see **[SB1/6/99]**) is obviously misplaced. Any concern on officers' part about the absence of detailed demographic information applied equally to the other consultation questions, upon which the Council has placed reliance. It does not make sense to exclude the answers to one particular question on this basis. Further, had the Council wanted demographic information on the part of respondents to the consultation, they could have asked additional questions to elicit it. That is not the case. The ex post facto reasons given by Mr Baxter at para. 55 of his WS **[CB/SB1/99]** for excluding the data simply do not make sense and are legally irrelevant. There is nothing in any of the contemporaneous material to indicate that even officers (let alone the Mayor, which is what mattered) exercised a judgment to exclude the answers to these questions on the basis now claimed. To the extent that officers exercised a professional judgment to exclude the data for the reasons given by the Council, that judgment was legally irrelevant and anyway irrational.

(4) The information was directly relevant to the Mayor's concern, expressed in his 'reasons' for removing the Scheme, that the Scheme was having an adverse impact on those reliant upon cars for their business and showed that, in fact, there had been no reduction in the use of cars following the introduction of the Scheme.

47. The Mayor's failure to take into account the consultation responses in respect of these issues was therefore unlawful.

GROUND 4: UNLAWFUL FAILURE TO APPLY THE APPLICABLE STATUTORY GUIDANCE ON REMOVAL OF LTNS

48. The Mayor failed to apply (whether properly or at all) the relevant elements of the statutory guidance issued by the Secretary of State which (i) established a presumption against the removal of LTNs and (ii) made clear that where problems have arisen, adjustments or adaptations should so far as possible be made, in preference to removal.

49. At the time of the Mayor's Decision, guidance issued by the Secretary of State under s.18(1) TMA 2004 entitled *"Traffic Management Act 2004: network management to support active travel"* (**"the Guidance"**) **[SB1/35/697 – 707]** guided local authorities on how to approach potential changes to LTNs which have been implemented.

50. The Mayor was under a duty to have regard to the Guidance in making his Decision: s.18(2) TMA 2004.

51. The courts have held that such guidance "*is not an instruction, but it is much more than mere advice which an addressee is free to follow or not as it chooses. It is guidance which any [decision-maker] should consider with great care, and from which it should depart only if it has cogent reasons for doing so*": **R(Munjaz) v Mersey Care NHS Trust** [2006] 2 AC 148 per Lord Bingham at [21].

52. In order to lawfully apply a policy, "*it is essential that the policy is properly understood by the determining body. If the body making the decision fails to properly understand the policy, then the decision will be as defective as it would be if no regard had been paid to the policy*": **EC Gransden & Co Ltd v Secretary of State for the Environment** [1987] 54 P. & C.R. 86 at 94. A decision maker must also "*grapple with*" the issue posed by the policy in question: **Gladman Developments Ltd v Daventry DC and SSCLG** [2016] EWCA Civ 1146 at [35] – [37].

53. The Guidance specified that:

    (1) *"The assumption should be that [LTNs] will be retained unless there is substantial evidence to the contrary"* **[SB1/35/701 under the heading 'Reallocating road space: measures']**; and that

    (2) *"Adjustments may be necessary to take account of real-world feedback but the aim should be to retain schemes and adjust, not remove them, unless there is substantial evidence to support this*" **[SB1/35/703 under the heading 'Monitoring and evaluation']**.

54. The Guidance thus established a presumption against the removal of LTNs (whether they had been made permanent or were still in an experimental phase) and that, so far as possible, adjustments or adaptations should be made, in preference to removal, where problems had arisen.

55. The Guidance was not applied properly or at all by the Mayor, who was not even made aware of its relevant requirements:

(1) The only passing reference in the whole of the OR to the existence of the Guidance was at para. 3.92(b) **[CB/11/180]** and there is nothing in the report setting out the presumption against the removal of LTNs. Contrary to the Council's position, the passing reference to the existence of the Guidance is clearly insufficient to demonstrate that regard was had to its relevant requirements, let alone reasons given for departing from it, as required by **Munjaz**.

(2) Furthermore, contrary to the Council's position, para. 3.92 does not set out what was considered to be the *"substantial evidence"* required by the Guidance to justify removal of the Scheme. At most, para. 3.92 identifies the "criteria" applied by the Council to the Decision. So far as Appendix D to the OR is concerned, that does not, adequately or at all, address the presumption in favour of retention and adaptation.

(3) Neither the OR nor the Mayor's Statement referred to the correct policy test, namely, the presumption in favour of retention and adaptation when considering the removal of LTNs. The decision-maker(s) were nowhere directed to this important test.

(4) The failure to offer any explanation for rejecting Option 3 which demonstrated how the Scheme could be adjusted to overcome some of the objections raised. The realistic possibility of adaptation was reinforced by TFL's funding offer to overcome any of the downsides of the Scheme **[SB2/11/115]**.

(5) No account was taken of the fact that the historic objection from the London Ambulance Service to hard closures, cited by the Mayor as a key reason for removing the entire Scheme, had either been overcome or could have been overcome by use of cameras and emergency keys supported by TFL funding. That was the view of the officers who developed Option 3 (see OR para. 3.14 **[CB/11/162]**).

56. There is thus no evidence, still less *"substantial evidence",* as required by the Guidance, that the only viable option was the Scheme's (near) total removal. And contrary to the Council's submissions, the Mayor did not even turn his mind to the relevant requirements of the Guidance let alone did he provide any (let alone any cogent) reasons for departing from its relevant elements.

57. The Council is also wrong that the subsequent withdrawal of that particular guidance makes the challenge "academic":

    (1) The withdrawal of the Guidance does not affect the legality of the Decision at the time that it was made.

    (2) Draft guidance was published on 17 March 2024, entitled: *Implementing low traffic neighbourhoods* **[SB1/37/711]**. That guidance similarly provided that "*schemes should be adjusted if this reveals issues with performance and removed if they are shown to have failed to deliver as expected, including a failure to demonstrate local support, and cannot be amended to meet their objectives."* **[SB1/37/728]**.

    (3) In answer to a question in the House of Commons, on 3 September 2024, a Government minister said, "*The low traffic neighbourhood (LTN) guidance is not in force as it was published in draft. The Government will be considering next steps with this guidance*." **[SB2/38/272]**.

58. As such, any redetermination of the Decision will need to be made in accordance with such guidance as is in force at the relevant time.

<u>GROUND 5: RATIONALITY / MAYOR ERRED BY RELYING SOLELY ON PUBLIC OPINION TO JUSTIFY HIS DECISION</u>

59. Having regard to the concerns the Mayor expressed about the existing Scheme in his public statement and the evidence available to him, the Claimant contends that the Mayor's Decision to remove the Scheme in its entirety was irrational, in the sense that there was an unexplained evidential gap or leap in reasoning which fails to justify his conclusion (see the dicta of Saini J in **R(Wells) v Parole Board** [2019] EWHC 2710

(Admin) at [33], as cited by Sheldon J in **Friends of the Earth v SSESNZ** [2024] EWHC 995 (Admin) at [127]).

60. There was substantial evidence before the Mayor supporting retention of the Scheme in full or in an adapted form. That included a fully worked up proposal, namely Option 3, which was said by officers to address the objections on the part of the Mayor whilst retaining the acknowledged benefits of the Scheme. In those circumstances, adopting Option 1, the total removal of the Scheme, was irrational.

61. The Decision was irrational even having regard to the Mayor's statement because:

(1) Option 3, which would retain elements of the Scheme in an adapted form, scored highest overall;

(2) Option 2 scored highest in terms of road safety, air quality and public realm to encourage active travel (OR 3.94, **[CB/11/181]**), these all being original Scheme objectives;

(3) There was support for the existing Scheme from:

(a) London Ambulance Service NHS Trust **[SB2/16/146]**;

(b) TFL **[SB/23/163]**;

(c) Local schools **[SB/18/151]**;

(d) The Borough Fire Commander **[SB2/19/153]**;

(e) The Metropolitan Police **[SB2/21/157]**;

(f) The Council's own Public Health department **[CB/24/392-396]**;

(g) The North East London Health and Care Partnership **[SB/22/159]**;

(h) The Barts Health NHS Trust **[SB2/25/167]**;[1] and

(i) A significant majority of local resident consultees (58%) and all consultees (77%).

[1] The OR failed to make any reference to the consultation response of the NHS Trust organisations which supported the Scheme's retention. That of itself amounted to an unlawful failure to take account of an obviously material consideration. Where one of the principal objectives of the Scheme was to improve air quality and its health impacts, the carefully expressed views of the NHS Trust organisations needed to have been but were not addressed.

62. The Mayor's concern about ambulance and waste management vehicle delays could be overcome by adaptations rather than the entire removal of the Scheme **[CB/15/245 under the heading 'local access']**.

63. Traffic displacement (expressed as percentages rather than in absolute terms; see **[CB/11/169 para. 3.40]**) was relatively small and, in any event, needed to be considered in the context of overall traffic levels which do not appear to show an overall increase and in fact show a significant reduction in the Scheme area as a whole. Even presuming that traffic displacement was an issue which justified removal of the Scheme, the evidence before the Mayor was that this issue could be overcome through adaptations, rather than complete removal.

64. Otherwise, the <u>sole</u> justification for the Mayor's Decision to remove the Scheme in its entirety was his 2022 manifesto pledge to do so **[SB1/28/600 para. 2]**, a pledge that was in any event subject to other pledges to 'End the practice of "consultation" being nothing more than you being asked to rubber-stamp a decision which has already been made' **[SB1/28/600 para. 5]**, and to carry out consultation in accordance with the Gunning principles.

65. The Guidance in place at the time of the Decision identified a need to "*build a robust evidence base on which to make decisions. This should include traffic counts, pedestrian and cyclist counts, traffic speed, air quality data, public opinion surveys and consultation responses*." **[SB1/35/703]**

66. Public opinion was thus only *one* element informing decisions to review an LTN. Moreover, in this case a majority of local members of the public who responded to the consultation supported the Scheme's retention (58-59%) **[CB/11/167 para. 3.34]**. The Save Our Safer Streets stakeholder response, which called on the Mayor to retain and improve the Scheme, had 934 local signatories and as previously stated, the "Save Our Safer Streets in Tower Hamlets" petition was signed by 3,094 local people, the second-largest petition ever on the Council's petition platform **[SB2/32/232-3]**. Neither of these large representations was recorded in the OR.

67. Having decided to remove the Scheme altogether (which cost £2.7m to implement **[SB1/23/217 para. 6.1]**), the Mayor asserted in his Statement that: "*We need to start again … and get working on solutions*" and "*We will also work with our residents on*

new schemes that are more universally supported". In other words, the Mayor's declared intention is to create a blank slate at substantial expense (see Ground 7) and then (potentially) implement yet another form of traffic management scheme.

68. It was irrational for the Mayor to rely <u>solely</u> on the opinion of those members of the public who favoured removal of the scheme in circumstances in which (a) the majority of residents favoured the retention of the existing Scheme in two previous consultations, (b) there was substantial evidence, including expert evidence, in support of retention and (c) the objections to the Scheme could be overcome without resorting to its total removal. The Decision should be quashed on this basis.

<u>GROUND 6: BREACH OF S.151 OF THE GREATER LONDON AUTHORITY ACT 1999 AND/OR FAILURE TO HAVE REGARD TO THE COUNCIL'S LIP</u>

<u>The law</u>

69. Pursuant to s.151 GLA 1999, the Council was obliged to implement the proposals in its approved LIP in accordance with the timetable in that Plan.

<u>The Council's LIP</u>

70. The Council's LIP, dated February 2019, included the Scheme (see Table 18, Item 4) [**SB1/26/505**] (then known as "Love Your Neighbourhoods") and was programmed to be implemented from 2019 onwards.

71. The LIP is a statutory document which detailed the Council's proposals for implementing the Mayor of London's Transport Strategy within the borough. It provides, so far as relevant here that:

    (1) The Scheme was "*in strong support of MTS [Mayor's Transport Strategy] outcome 1 and 3 by encouraging active travel and ensuring London's streets are used more efficiently with less motor traffic on them*" (see **[SB1/26/502 final para.]**).

    (2) MTS Outcome 1 is: London's streets will be healthy and more Londoners will travel actively. Outcome 3 is: London's streets will be used more efficiently and have less traffic on them (see the LIP at **[SB1/26/417 and 452]**).

(3) Each of the MTS Outcomes is accompanied by an Outcome Indicator (see s.3.2 of the LIP **[SB1/26/417]**) and the Council would monitor and report to TFL in respect the Mayor's delivery indicators, which were set out at s.5.2 **[SB1/26/524]**.

72. By taking the Decision to remove the Scheme, the Mayor has acted in breach of the statutory duty imposed by s.151 GLAA 1999 in removing a scheme which was required by the LIP to be implemented from 2019 onwards.

73. Contrary to the Council's position (see **[CB/11/8 paras. 97-8]**, the duty under s.151 GLAA 1999 did not merely require the Council to introduce the Scheme, leaving it free then to remove the Scheme whenever it wished and without more. The obligation imposed by s.151 GLA 1999 required the Council not merely to implement the Scheme but also to retain it and monitor its effects, in accordance with the provision of the LIP itself, as set out at s.5.2.

74. Further, insofar as the Council relies on its power to prepare a revised LIP (see ss.148-9 GLAA 1999), that power does not assist the Council here. In particular, the existence of that power does not empower or permit the Council to remove (or introduce) measures in conflict with the LIP and thereafter revise its LIP to reflect that state of affairs. Rather, to comply with the duties imposed by the GLAA 1999, the Council would (if seeking to go down that route) need to prepare a revised local implementation plan which proposed removal of the Scheme and <u>if</u> approved by the Mayor of London, thereafter to implement the proposal in accordance with that revised plan. That process cannot be circumvented.

75. Insofar as the Council's position (see para. 99 of its DGD **[CB/8/134]**) is that it has not 'taken action' in respect of the removal of the Scheme, that position is absurd given the intended effect of the Council's Decision under challenge.

76. Further or alternatively, irrespective of the substantive duty on the Council to implement the measures in the LIP, in taking the Decision to remove the Scheme, the Mayor failed to have regard to a mandatory material consideration, namely the inclusion of the Scheme in the LIP, the contribution that the Scheme makes to the delivery of the Mayor's Transport Strategy Outcomes and the effect that removal of the Scheme would have on the delivery of those outcomes.

77. There is nothing in the OR to suggest that the Mayor even took into account the Council's obligations to deliver the LIP in his Decision to remove the Scheme, nor did it take into account the potential consequences of its removal for the delivery of the Mayor of London's Transport Strategy Outcomes and the financial implications for the Council in terms of future TFL funding (see Clark WS at para. 53 **[SB1/7/118]**). The 'reasons', such as they were, for the Council's position that there has been no breach of s.151 GLAA 1999 do not explain or justify why the Mayor failed to have regard to the LIP in taking its Decision to remove the Scheme.

78. The Decision should be quashed on this basis.

GROUND 7: BREACH OF DUTY OF BEST VALUE

The law

79. The Council is under a duty pursuant to s.3(1) LGA 1999 to "secure best value". This means that the Council *"must make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness."*

Submissions

80. The cost of originally implementing the Scheme was in the order of £2.7m **[SB1/23/217 para. 6.1]**; a *"significant investment*". The additional cost of Option 1 total removal was identified to be £2.5m (see para. 6.2 of the OR, **[CB/11/182]**), compared with £1.2m for Option 3 (modification of the Scheme) and zero cost for Option 2 (retention of the Scheme).

81. The Claimant contends that the Council failed to discharge its duty to secure best value because:

    (1) The OR explained that there is no funding in place for the removal of the Scheme (see paragraph 6.3 **[CB/11/182]**) and offered no explanation for how the removal of the Scheme was to be funded;

    (2) The OR offered no explanation as to how the removal of the Scheme would secure 'best value';

(3) There was no breakdown of the £2.5m cost for Option 1 which would be expected for such significant expenditure. Either in the body of the report or in a (potentially confidential) appendix, a decision-maker would expect to see what different elements (such as design, materials, inflation, contingency) led to a total cost estimate. £2.5m is a surprisingly round number for what would inevitably be a complex and intricate series of works to deliver Option 1.

(4) The Mayor failed to take into account the possible future funding implications of the Decision to remove the scheme and, in particular, the possibility that TfL would take into account the Council's actions in removing the Scheme in making decisions on future funding: see Clark WS at paragraph 53 **[SB1/7/118]**

82. There is simply no justification for the complete removal of the Scheme at a cost of £2.5m for which no funding is in place given that the identified objections to the Scheme could be overcome by way of a substantially cheaper option (i.e. Option 3 or indeed Option 2).

83. The Decision should be quashed on this basis.

<u>RELIEF</u>

84. The Claimant respectfully submits that the claim should be allowed and seeks:

(1) A quashing order in respect of the Mayor's Decision to direct the removal of the Scheme;

(2) A mandatory order for the Council to consult afresh on any future modification of the Scheme;

(3) Such other order as the court considers it appropriate to make; and

(4) For Council to pay the Claimant's costs subject to the default Aarhus costs cap.

David Wolfe KC, Matrix

Jack Parker, Cornerstone Barristers

29 October 2024