

IN THE HIGH COURT OF JUSTICE



ADMINISTRATIVE COURT

BETWEEN:



Claimant

v

London Borough of Tower Hamlets

Defendant

and

Transport for London

Interested Party

INTERESTED PARTY'S SKELETON ARGUMENT

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

I: SUMMARY

1. Transport for London (“**TfL**”) is an interested party in this claim because the decision under challenge (the “**Decision**”), to approve the removal of the Bethnal Green and Weavers Liveable Streets Scheme (“**the Scheme**”), relates to a transport plan adopted by the Defendant to implement the Mayor of London’s (the “**Mayor**”) Transport Strategy (“**MTS**”). The Defendant’s Local Implementation Plan (“**LIP**”) is dated February 2019 (“**2019 LIP**”) and was introduced in order to implement the Mayor’s 2018 MTS, the central aim of which is the promotion of Safe and Healthy Streets. The Healthy Streets approach delivers improvements to London’s streets that help people walk, cycle and travel by public transport more safely and conveniently.

2. The preparation of LIPs to comply with the Mayor’s MTS is a statutory obligation on London Borough Councils (**LBCs**), under sections 142-152 of the Greater London Authority Act 1999 (the “**GLAA**”). LIPs must also be approved by the Mayor and thereafter strict mandatory provisions govern both their implementation, and any revision to them. LBCs cannot unilaterally decide to revise LIPs, nor unilaterally decide not to implement them.
3. The Defendant’s decision to remove the Scheme did not comply with those strict mandatory provisions. The Defendant did not prepare a revised LIP, follow the provisions on consultation or seek approval from the Mayor to remove the Scheme. The Defendant thus remains under a statutory obligation under section 151 GLAA to implement the 2019 LIP, including the Scheme, until a revision to that LIP is properly consulted on, and then approved by the Mayor. Any decision taken to remove the Scheme before that point is necessarily unlawful. For this reason TfL supports Ground 6 of the Claimant’s Claim, as explained in more detail below.

II: The Mayor of London’s Transport Strategy

4. The Mayor published his current transport strategy in 2018 (“**2018 MTS**”) [**SB1/24/220-248**]. The 2018 MTS has the principal goal¹ of significantly reducing dependency on cars, promoting the use of walking, cycling and public transport and creating Healthy Streets. The 2018 MTS identifies the creation of “Liveable Neighbourhoods” as a means of improving and managing London’s streets to create a public realm that encourages walking and cycling by all Londoners², and “Healthy Routes” so as to create attractive, safe and accessible walking routes to schools and other local destinations³.
5. Julie Clark in her witness statement on behalf of TfL [**SB1/7/102-123**] explains (§§10-16) [**SB1/7/104-106**]:

“10. At the heart of the current MTS is the Healthy Streets Approach (see pages 8-9 of Exhibit JC1). 80% of all deaths and serious injuries occur to people walking, cycling or riding

¹ Expressed in Policies 1 and 2, and Proposal 1 of the MTS (see pp 22-52)

² Proposal 1 (a) of the MTS (see pp 50-51)

³ Proposal 1(b) of the MTS (see pp 50-51)

motorcycles. Therefore, central to the approach are policies to eradicate deaths and serious injuries from London's roads.....

11. 'Safe and Healthy Streets' is the overarching term used within TfL to refer to a portfolio of schemes and projects, related to active travel, mode shift and road danger reduction. The Healthy Streets Approach prioritises health, safety and wellbeing, with the overall objective of delivering a transport system where everyone can travel safely by the healthiest and most space-efficient modes, specifically walking, cycling and public transport.

12. The MTS ... notes that to encourage more Londoners to choose active modes of travel, they need quiet, safe, accessible streets that are not dominated by motorised traffic and that are pleasant for walking, cycling and spending time. It further provides that TfL will work with London's boroughs to deliver improvements to their streets.....

14. [T]he MTSprovides that the Mayor, through TfL and the boroughs, and working with stakeholders, will adopt Vision Zero for road danger in London. The Mayor's aim is for no one to be killed in or by a London bus by 2030, and for all deaths and serious injuries from road collisions to be eliminated from London's streets by 2041. Vision Zero is further defined as: *ensuring the street environment incorporates safe speeds, safe behaviour, safe street design and safe vehicles to target road danger at its source. It means reducing the dominance of motor vehicles on streets, and then making the remaining essential motorised journeys as safe as possible. With Vision Zero, road danger reduction will be considered integral to all the schemes delivered on London's streets.*

15. [T]he MTSidentifies the creation of "Liveable Neighbourhoods" as a means of improving and managing London's streets to create a high quality public realm that encourages walking and cycling by all Londoners.

16. Liveable Neighbourhoods include a range of on-street measures aimed at achieving the objectives in the MTS, of which Low Traffic Neighbourhoods are one category.....

Mayor's Guidance on developing LIPs

6. In March 2018, the Mayor published, alongside his 2018 MTS, Guidance for LBC officers on developing LIPs ("**LIP Guidance**") [SB1/25/249-378]. The LIP Guidance (see also witness statement of Julie Clark at §§21-23 [SB1/7/108]) summarises the goals and strategic direction of the 2018 MTS (see §§1.6-7 [SB1/24/257]) and the part that the

LBC are expected to play in achieving it (see §§1.8-1.11 [SB1/24/258]). It identifies mandatory requirements for the content of the LIPs (see §1.17 and e.g. §§1.26-7, 1.31 and 1.33 [SB1/24/258-261]), and provides a model template.

7. Chapter 2 of the LIP Guidance addresses the process by which LBCs should identify their own Borough objectives by reference to the 2018 MTS (see §2.4 LIP Guidance [SB1/25/265]). Chapter 2 states (§2.1 [SB1/25/264]):

“LIPs should identify key local issues, challenges and opportunities, and what the borough plans to deliver in terms of policies, schemes and programmes to contribute to achieving the aims and outcomes of the Mayor’s Transport Strategy.

III: The Defendant’s 2019 LIP

8. The Defendant’s 2019 LIP closely follows the requirements and recommendations in the LIP Guidance. At Chapter 3, the Borough’s Transport Objectives are set out (see pp34-5, and Table 3 [SB1/26/412-416]). Chapter 4 meanwhile includes the Defendant’s Delivery Plan [SB1/26/484-521].
9. Chapter 4 of the 2019 LIP (see Tables 13 and 18, pp106-108; pp122-129 [SB1/26/486-509]) describes the plans for the Defendant’s “*Love Your Neighbourhood Scheme*”. The Bethnal Green and Weavers Liveable Streets Scheme (the “**Scheme**”), the decision to remove which is the subject of the Claimant’s claim, is part of the “*Love Your Neighbourhood Scheme*”.
10. As Julie Clark explains (see witness statement §§34-40 [SB1/7/111-114]) the 2019 LIP was approved by the Mayor after a detailed process of consideration. The commitment in it to reducing traffic and creating Liveable Neighbourhoods was central to the evaluation which underlay the Mayor’s decision to approve it (see Clark §38 [SB1/7/113-114]). The evaluation stated:

“[T]he LIP has a very strong commitment to reducing traffic in the borough through focussing on Liveable Neighbourhoods....

“the LIP contains very strong objectives and proposals, as follows:

1) Tower Hamlets streets will be healthy and more residents and visitors will travel actively:

- *Expanded and improved walking and cycling network*
- *Creation of 50 School Streets and half of the borough to be Liveable*

Neighbourhoods

- *Reduced use of private motor vehicles*
- *New public transport connections*

11. The evaluation expressly referred to the Scheme which the Defendant has decided to remove as one of the examples of Liveable Neighbourhoods (see Clark §30-40 [SB1/7/110-114]).
12. Following the Mayor's approval of the 2019 LIP, the Defendant received substantial funding from TfL to be spent on implementing Liveable Neighbourhoods and the Scheme (Clark §35 [SB1/7/111-112]).

IV: The implementation of the Scheme and decision to remove it

13. The Defendant implemented the Scheme in 2020 and 2021 (see Claimant's Skeleton argument at §11). In 2022, however, Mayor Rahman became the Defendant's mayor. His manifesto had stated that he would reverse Liveable Neighbourhoods and introduce car-friendly policies (Clark §42 [SB1/7/111-115]). In July 2022 the Defendant began a non-statutory consultation on the removal of the Scheme (Clark §42 [SB1/7/115]) which moved into a second-stage in January 2023 (Clark §46 [SB1/7/115]). As explained in the statement of Julie Clark (at §47 [SB1/7/116]), TfL opposed the Defendant's proposals explaining, *inter alia*, that the removal of the Scheme would make roads less safe for those walking and cycling.
14. TfL highlighted that the Scheme had been in place for less than 36 months, and that there had been insufficient monitoring to justify a decision to remove it and explained that it had offered funding and resources to address impacts of the Scheme on, for example, bus journey times.
15. The Defendant refused several opportunities to work with TfL before taking the Decision, including by simply not turning up to scheduled meetings (Clark §48 [SB1/7/117]). The Defendant has made it clear, furthermore, that the removal of the Scheme is part of a wider strategy of either removing or not implementing road safety and traffic reduction schemes across the borough (Clark §49 [SB1/7/117]). This wider

strategy is obviously in direct conflict with the 2018 MTS, and with the 2019 LIP (Clark §49 [SB1/7/117]).

16. The Defendant has not produced a revised LIP or sought approval for one (Clark §57 [SB1/7/119]).

V: Legal Framework

17. At section 141 GLAA, the Mayor has a duty to “*develop and implement policies for the promotion and encouragement of safe, integrated, efficient and economic transport facilities and services to, from and within Greater London*”; and at section 142, a duty to prepare a transport strategy to that end.

18. Section 144 GLAA requires LBCs to have regard to the MTS and any guidance issued by the Mayor on implementing the MTS in exercising any function.

19. Sections 145-152 GLAA contain a series of provisions requiring LBCs to prepare LIPs for implementing the MTS. These must be submitted to the Mayor for approval. If approved, the LBCs are required to implement the plans in the LIPs. Any revisions to the LIP must also be approved. In the event of any failure to prepare or implement LIPs the Mayor has powers both to issue directions for the preparation of LIPs, and to step into the shoes of the LBC to implement the LIPs.

20. Section 145(1) GLAA mandates preparation of LIPs:

(1) As soon as reasonably practicable after the Mayor has published the transport strategy under section 142 above, each London borough council shall prepare a plan (a “local implementation plan”) containing its proposals for the implementation of the transport strategy in its area.

21. Section 145(2) imposes consultation requirements in relation to the LIP, which include a requirement to consult TfL as well as organisations for disabled people.

22. Section 145(3) states that LIPs must contain a timetable for implementation:

- (3) *Each local implementation plan shall include—*
- (a) *a timetable for implementing the different proposals in the plan, and*
 - (b) *the date by which all the proposals contained in the plan will be implemented.*

23. Section 146 requires LIPs to be approved by the Mayor:

(1) *Each London borough council shall submit its local implementation plan to the Mayor for his approval.*

(3) *The Mayor shall not approve a local implementation plan submitted to him under subsection (1) above unless he considers—*

- (a) *that the local implementation plan is consistent with the transport strategy,*
- (b) *that the proposals contained in the local implementation plan are adequate for the purposes of the implementation of the transport strategy, and*
- (c) *that the timetable for implementing those proposals,are adequate for those purposes.*

24. If an LBC fails to prepare a LIP, section 147 endows the Mayor with powers to direct their preparation or prepare them himself:

- (1) *Where it appears to the Mayor that a London borough council has failed—*
- (a) *to prepare a local implementation plan in accordance with the requirements of section 145 above, or*
 - (b) *to submit a local implementation plan to him for approval under section 146 above,*

the Mayor may issue to the council a direction under section 153 below requiring the council to do so within such period as the Mayor shall specify in the direction.

- (2) *Where the Mayor has issued a direction of the kind mentioned in subsection (1) above, but the council has not complied with the direction within a reasonable time, the Mayor may prepare a local implementation plan on behalf of the council.*

25. Section 147(3) and (4) provide similar powers to issue directions and prepare LIPs in the event that the LBC has prepared an LIP but the Mayor has not approved it.

Revision of LIP

26. Under section 148 GLAA, LBCs have both powers and duties to prepare revised LIPs.

27. Section 148 provides that (emphasis added):

*(1) A London borough council **may** at any time prepare such revisions as it considers appropriate to the council's local implementation plan.*

*(2) Where the Mayor revises the transport strategy under section 41(2) above, each London borough council **shall** as soon as reasonably practicable after the Mayor has published the transport strategy as revised prepare such revisions to the council's local implementation plan as it considers are necessary in order to implement that strategy in its area.*

28. Revised LIPs must comply with the MTS and be approved by the Mayor using the same process as original LIPs, under section 146 GLAA (see section 149(2) and (3) GLAA).

Implementation of LIP

29. Once approved by the Mayor, the LIP or revised LIP must be implemented in accordance with the timetable included in the LIP. Section 151(1) states:

(1) Where the Mayor has approved a local implementation plan, or a local implementation plan as proposed to be revised, submitted to him under section 146(1) above, the London borough council which submitted the plan—

(a) shall implement the proposals contained in it in accordance with the timetable included by virtue of section 145(3)(a) above, or, as the case may be, section 149(2) above,

and
(b) shall implement all the proposals contained in it by the date included by virtue of section 145(3)(b) above, or, as the case may be, section 149(2) above.

30. If an LBC does not comply with the requirement to implement an LIP under section 151(1), under section 152 GLAA, the Mayor has powers to intervene to implement the LIP on the LBC's behalf:

(1) Where the Mayor considers—

(a) that a London borough council has failed, or is likely to fail, satisfactorily to implement any proposal contained in a local implementation plan as required by section 151(1)(a) above, or

(b) that such a council has failed, or is likely to fail, to implement all such proposals as required by section 151(1)(b) above,

he may, for the purposes of implementing the proposals contained in the local implementation plan, exercise on behalf of the council the powers that the council has in connection with the implementation of those proposals.

31. Section 152(2) confers the same powers to intervene in relation to revised LIPs. Section 152(7) allows the Mayor to recover the expenses of implementing the LIP on an LBC's behalf from the LBC.
32. The Mayor also has powers under section 153 GLAA to issue general directions as to the manner in which an LBC exercises its functions under sections 145-151 GLAA.

V: Interested Party's Submissions on Ground 6

33. As explained above, the Scheme which the Defendant decided to remove on 20 September 2023 is part of the Defendant's 2019 LIP which was approved by the Mayor. Implementing the Scheme is therefore a statutory obligation under section 151 GLAA.
34. The Defendant remains under an obligation to implement the proposals in the 2019 LIP, including the Scheme, until any proposed revision to the 2019 LIP has been approved by the Mayor.
35. TfL note that in both their Summary Grounds of Resistance (**SGR**), (see §84 [**CB/5/93**]) and Detailed Grounds of Resistance ("**DGR**") (§99 [**CB/8/134**]) the Defendant has stated that it intends to prepare a revised LIP, and that the Decision '*logically precedes*' the revision of the LIP and determines what will be contained in the revised LIP. The Defendant has emphasised that it has not yet '*taken action*' on the removal of the Scheme (see §99 DGR [**CB/8/134**]).
36. TfL emphasises that the MTS and the LIP Guidance contain mandatory processes which must be followed and factors which must be taken into account when deciding on the content of a LIP, whether it is an original LIP or a revised LIP (see e.g. §1.28-§1.33 of the LIP Guidance [**SB1/25/260-261**]). Any revised LIP must also (see above) explain the LBC's objectives and how they are consistent with the MTS.
37. No revised LIP has been produced and no consultation draft of a proposed revised LIP has been submitted to TfL (see witness statement of Julie Clark at §51[**SB1/7/117**]).

38. In order for any such revised LIP to be approved by the Mayor, it would have to comply with the provisions of sections 145-149 GLAA, and be prepared consistently with the LIP Guidance, which, *inter alia*, requires that the Defendant explain how the proposals are consistent with the MTS. In addition the Mayor could only approve the Defendant's proposed revisions if he considered they were consistent with his MTS (see section 146(3) GLAA). As currently framed the Decision is not consistent with the MTS, because it is part of an overall strategy adopted by Mayor Rahman to remove traffic reduction schemes in the Defendant's borough.
39. Until all these statutory obligations have been complied with no lawful decision to remove the Scheme can be taken by the Defendant.
40. In all these circumstances, it is TfL's position that the Decision of 20 September 2023, which is a decision to remove the Scheme, is unlawful. The Defendant has not followed the processes required by sections 145-151 GLAA, and cannot therefore lawfully decide to remove the Scheme.

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BLACKSTONE CHAMBERS
5 November 2024