IN THE HIGH COURT
ADMINSTRATIVE COURT
IN AN APPLICATION FOR JUDICIAL REVIEW

BETWEEN

R (on the application of) [redacted]

Claimant

and

LONDON BOROUGH OF TOWER HAMLETS

Defendant

and

TRANSPORT FOR LONDON

Interested Party

SKELETON ARGUMENT ON BEHALF OF THE DEFENDANT

Hearing: 20 - 21 November 2024

Essential reading: as per the Claimant's Skeleton Argument, in addition to the following:

Defendant's Detailed Grounds of Resistance (**CB/106 – 135**)

Officer's report (**CB/157 – 185**) including Appendix D (Options Evaluation) (**CB/239 – 246**)

Witness statement of Simon Baxter (**SB1/80 – 101**)

References:

'SFG/x' are references to paragraphs in the Claimant's Statement of Facts and Grounds

'CSA/x' are references to paragraphs in the Claimant's Skeleton Argument

References to pages in the Core and Supplementary Bundles are in the form 'CB/x', 'SB1/x' and 'SB2/x'

Facts and Context of the Decision

1. The Mayor's decision in 2023 to seek the removal of traffic measures in Bethnal Green Weavers Ward ('WW') and Old Bethnal Green Road ('OBG') ('the Decision') was a policy/political decision in respect of the potential direction of future transport policy for OBG and WW. This appears to have been belatedly somewhat understood by the Claimant in his skeleton argument who now asserts it was a "*policy decision".* He rightly states it has *"no immediate operational impact"* (**CSA/6**). It did not and could not have authorised the physical removal of the road closures in OBG and WW.

2. No action can be taken unless Traffic Management Orders ('TMOs') to do so are made in accordance with the statutory procedure in the Local Authorities Traffic Orders (Procedure) (England and Wales) Regulations 1996 ('the Regulations'). That procedure requires consultation with specific bodies and groups (including Transport for London ('TfL')) and publication for the prescribed period, during which objections can be made. The Claimant will be entitled to make objections during that process. The Defendant Council, as order making authority, will be required to take into account any duly made objections (regulation 13, the Regulations). The outcome of that procedure is unknown and cannot be pre-determined.

3. The road closures introduced as part of the 'Love Your Neighbourhood' scheme were put in place by the Council under powers conferred on it by the Road Traffic Regulation Act 1984 ('RTRA 1986'). By virtue of that Act, the Council is the traffic authority for roads within its borough, save for those which TfL is the traffic authority (section 121A(2), RTRA 1984). The measures were introduced by TMOs made under section 6 of the RTRA 1984. Those TMOs were subject to consultation with specific bodies and groups (including TfL) and published for the prescribed period, during which objections could be made, in accordance with the procedure in the Regulations. The power to make such TMOs includes the power to revoke or modify them (Schedule 9, paragraph 27, RTRA 1984).

4. To remove the measures in OBG or WW, the Council must make further TMOs. This is a rigid and rigorous statutory process prescribed by the Regulations by which TMOs are subject to scrutiny, including, in certain circumstances, the holding of a public inquiry. Whether or not TMOs will ultimately be made is unknown. That process is yet to be undertaken. The context of the Decision is that it is a political/policy decision to set in motion a statutory process, the end point of which is unknown at this stage.

5. As the Decision is largely one of political judgement and one that will yet have to be endorsed by way of a rigorous statutory process, the Mayor should be accorded a large margin of discretion. The Court should undertake a "*low intensity of review*" or a "*light touch approach*" in such cases (see: Packham v Secretary of State for Transport [2020] EWCA Civ 1004; Regina v Secretary of State for the Environment, Ex parte Hammersmith and Fulham London Borough Council and Others [1990] 3 W.L.R. 898; Reg. v. Secretary of State for the Environment, Ex parte Nottinghamshire County Council [1986] A.C. 240 , H.L.)

6. The claim seeks to portray the Decision as the end of the road for the OBG and WW traffic measures and elevates its significance. It has no regard for the statutory process that must necessarily follow in order for that policy decision to have any real effect.

Further context

7. The OBG and WW traffic measures comprised part of the wider 'Liveable Streets' programme, which also included traffic measures in Bow, Brick Lane and Wapping. These measures formed an initial part of the 'Love Your Neighbourhood' project, which were identified in the Council's 2019 Local Implementation Plan 3 ('LIP'). In particular, Chapter 3 of that document identified a range of objectives, including the high-level objective of the "*creation of 50 School Streets and half of the borough to be Liveable Neighbourhoods"* (quoted in the Witness Statement of Julie Clark, paragraph 38 (**SB1/113**)). The specific measures proposed in Bethnal Green were set out in the Programme of Investment in Chapter 4 (the Delivery Plan) of the Council's LIP (as confirmed at paragraph 35 of the Witness Statement of Julie Clark on behalf of the Interested Party (**SB1/111**)).

8. An allocated budget was identified for the Love Your Neighbourhood project in the LIP Delivery Plan for 2019/2020, and an indicative budget for 2020/2021 and 2021/2022. This was all contained within the Delivery Plan within Chapter 4 of the 2019 LIP, which covered the initial three-year period of the LIP only (as confirmed by paragraph 33 of the Witness Statement of Julie Clark on behalf of the Interested Party (**SB1/111**)).

9. The OBG and WW traffic measures were approved in January 2020, following consultation in 2019. The measures were implemented in phases by a number of permanent and experimental TMOs between August 2020 and May 2021. The measures have been retained since their implementation and been subject to monitoring, in accordance with Chapter 5 of the Council's LIP. As explained by Julie Clark, the allocated funding was provided in arrears once TfL were satisfied the measures had been implemented.

10. TfL then issued new guidance titled 'Guidance on developing LIP three-year delivery plans for 2022/23 – 2024/25'. In the summer of 2022, in accordance with the commitments in the Council's new Delivery Plan 2022/2023, the Mayor engaged in a process of determining public opinion on the removal of the traffic measures. Further submissions in respect of the LIP are made in the Defendant Council's response to ground 6.

11. The OBG and WW measures were subject to an initial consultation and review in July – August 2022, at the same time as an initial consultation exercise was undertaken in respect of measures in Brick Lane and Wapping. Following the consultation, the decision was taken to retain schemes in Wapping. The output of the initial exercise in respect of Bethnal Green and Brick Lane informed options that were subject to a more detailed consultation exercise in January – February 2023. The following key points about the consultation should be noted:

a. It sought views on two options; Option 1 was to 'Remove the Liveable Streets closures and implement a series of areawide improvements to the public realm to encourage active travel' and Option 2 was to 'Retain the current scheme'.

b. Part 2 of the consultation documents provided information and data on a range of issues; including the impact on disabled residents; access for emergency service vehicles; Council streetworks and services; congestion on boundary roads and air quality (**SB2/13ff**). This was informed by data collected through monitoring during the lifetime of the measures. It is notable that the Claimant does not seek to challenge the adequacy of the information provided in respect of these options.

c. The consultation response form sought views on a number of specific measures in place, in addition to seeking overarching views on the two options. This provided for a more fine-grained response, allowing consultees to express agreement with certain of the measures but not with others.

d. The consultation response form included an opportunity to select any number of thirty responses about the impacts of the traffic measures, ranging from issues about traffic noise, safety for pedestrians, cyclists and drivers, congestion, air quality and the general pleasantness of the area (**SB2/91**).

e. The consultation response form also provided a free-text question allowing consultees to provide "*more information on any other ways the area has changed following the implementation of the Liveable Streets scheme."* (**SB2/92**). A number of consultees took advantage of the opportunity to provide further comments and express views in the free text box on matters such as, for example, the use of ANPR[1] cameras.

12. Following the consultation, the Council continued to engage with stakeholders, most notably, with Save Our Saver Streets ('SOSS'), the group of which the Claimant is a member. In particular, SOSS encouraged the Council through discussions to develop an option aimed at addressing the issues identified through making improvements to the existing traffic measures and made various suggestions as to how this might be done, including through the use of ANPR cameras.

13. The output of the consultation exercise and engagement with key stakeholders informed a report to Cabinet produced by officers in September 2023 (**CB/157 - 185**) ('OR'). The OR contained detailed analysis of the output of the consultation in respect of OBG and WW in Appendices B and C (**CB/193 – 210; 211 - 238**) At this stage, it is sufficient to note the following:

a. The OR identified that whilst the measures had delivered on some of its key objectives, feedback showed that there had been a series of adverse impacts for

[1] Automatic number plate recognition.

people reliant on vehicle use for services such as medical appointments as well as access to facilities and support network; hindered access for emergency access vehicles; impacts on some local bus services, and displaced traffic on surrounding roads and streets (**CB/157**).

b. The OR provided a detailed analysis of the findings of the consultation and stakeholder engagement at paras 3.1 – 3.36 (**CB/160 – 167**). This included emergency services, utility companies, local schools (including Oaklands Secondary School), TfL and local businesses (**CB/161ff**). It drew together the themes from respondents supporting Option 1 and Option 2 (paras 3.32 – 3.33 **CB/166 – 167**) and the outcome of the consultation (paras 3.34 – 3.36 **CB/166ff**). The OR referred to the travel survey and scheme evaluation included within the consultation and provided details of both in Appendices B and C (para 3.35 **CB/167**).

c. The OR contained a detailed analysis of underlying data collected during a period of some 24 months during which the traffic measures had been in place. This included traffic volumes, traffic congestion, bus journey delays, air quality, collision data, cycle counts, pedestrian counts and emergency service response logs (**CB/168 – 173**).

d. The OR considered a further alternative (Option 3) as a potential means of addressing the consultation responses (paras 3.58 – 3.91 **CB/173ff**). This option was developed in part through discussions with SOSS, where the Council had discussed with the group what a 'middle way' option might look like (see email records of these meetings at **SB2/256**). This was referred to as a "*balanced approach"* (OR, para 3.58 **CB/173**) insofar as it sought to address responses from the consultation, consideration of the data and the output of the Equalities Impact Assessment as far as possible, whilst recognising that it represented a compromise position that could not meet all concerns (see Witness Statement of Mr Baxter, para 9 **SB1/86**).

e. The OR did not purport to identify a preferred option, but recommended that the Mayor adopt one of the three options that were analysed in the OR. The analysis summarised the full evaluation contained in Appendix C to the OR (paras 3.92 – 9.94 **CB/180 – 181**). The OR explained the criteria against which Option 1, Option 2 and Option 3 scored highest, noting that Option 3 addressed *"<u>most</u> of the concerns of stakeholders"* that supported Options 1 and 2 (OR, para 3.94 **CB/181**). This analysis summarised the findings in the full evaluation in Appendix D to the OR. Appendix D contained a table evaluating each option against a range of criteria, including "*facilitating the passage of vehicle traffic*", "*facilitating the passage of vulnerable road users including pedestrians and cyclists*", "*local access*", "*air quality*", and "*financial cost*". Each option was scored between -5 to 5 on the basis of each criterion.

14. On 20 September 2023, the Council held a cabinet meeting. The meeting allowed members of the public and representatives of certain stakeholders to make representations in respect of the decision, following which the Mayor canvassed views of Cabinet members. It is inevitable that not every individual or group that sought a speaking slot were able to do so; however, those that did included those in support of the scheme (C's Reply, footnote 1 **CB/97**).

15. The Mayor announced his decision as to the future direction of transport policy within OBG and WW at that meeting. The decision was taken to adopt Option 1, but subject to the retention of the closure on Canrobert Street to reflect the responses in the consultation. This amendment was intended to compliment the proposed improvements to walking routes and spaces in the wider area as part of Option 1. The Decision is recorded in the Cabinet meeting minutes (**CB/367 – 369**) and the Mayor's public statement (**CB/360 - 361**). The policy decision was also taken that the Brick Lane traffic measures currently in place should be removed. This decision is not subject to challenge by the Claimant.

16. The Mayor's statement summarised the key reasons for the decision, namely, the divisive effect of traffic measures within the local community; the effect of traffic displacement; the disadvantage for the significant proportion of the population that were reliant on cars for their businesses; the London Ambulance Service's concerns about access and problems caused to the Council's waste services (**CB/360 – 361**). These reasons are addressed in more detail in response to Ground 1 below.

Response to grounds of challenge

17. The Claimant challenges the decision on seven grounds. For the reasons explained in respect of each ground, these grounds are without merit. This claim is essentially a disagreement with the outcome of the democratic decision-making process about the direction of transport policy within the borough.

Ground 1: Failure to give adequate reasons

18. The reasons provided by the Mayor for the Decision must be considered in the context set out above. Although, the Defendant's position is that the standard of reasoning is adequate by any measure, it is pertinent to bear in mind that a "*low intensity*" of review is applied to cases involving issues "*depending essentially on political judgment*" (see: for example Packham v Secretary of State for Transport [2020] EWCA Civ 1004; Office of Fair Trading v IBA Ltd [2004] EWCA Civ 142).

19. The reasons provided for the Decision were legally adequate for their purpose.

20. For the first time in its Skeleton Argument, the Claimant argues that the Council is in breach of its Constitution (**CSA/18**). This was not pleaded in the Claimant's SFG, which merely referred to the Constitution in support of the proposition that there was a duty to give reasons (in respect of which there is no dispute) (**SFG/32 (CB/30)**). The Claimant has not

applied to amend his grounds and is not now able to rely on an alleged breach of the Council's Constitution. Any breach is, in any event, is disputed for the reasons set out below.

21. The legal principles applicable to the duty to give reasons are as follows:

    a. "*What is required is that there should be a decision with reasons. Provided that these set out clearly the grounds on which the decision has been reached it does not seem to me necessary that all the thinking which lies behind it should also be made available*" (R (Alconbury Developments Ltd) v SSETR [2001] UKHL 23 [2003] 2 AC 295 at [170]).

    b. It is well established that *"[r]easons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision."* (South Bucks District Council and another v Porter (No 2) [2004] UKHL 33 at [36]).

    c. "The extent and substance of the reasons must depend upon the circumstances. They need not be elaborate or lengthy. But they should be such as to tell the parties in broad terms why the decision was reached" (Stefan v General Medical Council [1999] 1 WLR 1293, 1304B).

    d. Reasons "*need refer only to the main issues in the dispute, not to every material consideration*" (South Bucks District Council and another v Porter (No 2) [2004] UKHL 33 at [36]).

    e. The issue in the context of a reasons challenge is "*whether the decision… leaves room for genuine as opposed to forensic doubt as to what [the decision-maker] has decided and why*" (Clarke Homes Ltd v Secretary of State for the Environment (1993) [2017] PTSR 1081 at 1089H).

    f. The duty to give reasons does not constitute an obligation to give "*reasons for reasons"* (Marks and Spencer Plc v Secretary of State for Levelling Up Housing and Communities, Westminster City Council, Save Britain's Heritage [2024] EWHC 452 (Admin) at [64] citing Horada v Secretary of State for Communities and Local Government [2016] PTSR 1271 at [40]; *Watton and Cameron v Cornwall Council* [2023] EWHC 2436 (Admin), at [31]).

22. The Claimant's approach is inconsistent with those principles. The Claimant argues that the Mayor was required to explain not just why he was opting for Option 1 and rejecting Option 2 in its current form, but *"why there was no possible variation of the existing Scheme which would work"* (C's Reply, para 5 (**CB/97 – 98**). The Mayor's reasons were adequate to explain why he had opted for Option 1 over the other options presented in the OR; he was not required to go further than this and address all other potential variations of those options.

23. The Court in Office of Fair Trading held at [104] that "*The statutory duty to give reasons is an important one, but it is not the same as a duty to give a "judgment" (such as that of a court) or a duty to make a "report" (such as that of an inquiry inspector)…. The numerous cases on the subject lay down no general test, other than the requirement that reasons must be "intelligible and must adequately meet the substance of the arguments advanced" (see Re Poyser and Mills Arbitration [1964] 2QB 467 , 477–478; cited in de Smith para 9–049 as "the most frequently cited judicial articulation of the test"; see also Wade pp 916–9)."*

24. Properly construed, the Mayor's reasons for the Decision met the standard required both more generally and having regard to the proper context of decision making in this case.

25. The reasons for choosing Option 1 were recorded in the Mayor's public statement (**CB/360 – 361**), as follows:

    a. The divisive effect of traffic measures within the local community;

    b. The effect of traffic displacement;

    c. The disadvantage for the significant proportion of the population that were reliant on cars for their businesses;

    d. The London Ambulance Service's concerns about access; and

    e. Problems caused to the Council's waste services.

26. There are three key points to note about the reasons provided.

27. First, all of the issues identified reflect and draw upon the analysis of these issues in the OR. The reasons given reflect the areas where Option 1 scored highest, as identified in the OR (OR, para 3.94 **CB/181** and Appendix D (**CB/239 – 246**)). It is readily apparent from the Mayor's statement that he gave greater weight to the factors identified (i.e. traffic displacement, local and disabled access etc.) than to other factors identified in the OR (such as the benefits of the traffic measures), as he was entitled to do. It is therefore entirely possible to understand 'in broad terms' why the Mayor decided to adopt Option 1, in circumstances where it is apparent that he gave greater weight to the factors against which Option 1 scored most highly.

28. Second, the reasons provided allow the reader to understand not just why the Mayor selected Option 1 over Option 2, but also why he rejected Option 3. It is readily apparent from the OR that Option 1 scored higher than *both* Option 2 *and* Option 3 in respect of these criteria.

29. Third, the Mayor's reasons are contained in a public statement which, by its nature, represents a summary of the key points for the Decision in a format that is readily understandable for the public. It did not, and was not required to, repeat the extensive information and data that was already set out in the OR.

30. With regards to the arguments advanced in the Claimant's Reply and repeated in its Skeleton Argument, these are misconceived for the following reasons.

31. First, the Claimant seeks to argue that issue (a) (the divisive effect of the traffic measures) was a "*political reason*" unrelated to the evaluation criteria in Appendix D (C's Reply, para 13(a) (**CB/99**), implying that it was not material to the Decision. The divisiveness of the Scheme amongst local people was plainly a material consideration that the Mayor was entitled to take into account. In particular, the divisiveness of the Scheme was borne out by the lack of any clear majority from the consultation exercise and the range of strong views both for and against the Scheme from stakeholders. It was partly because of the divisiveness of the Scheme that the Mayor considered that a fresh approach was required, rather than adopting a middle way that would leave those on both sides dissatisfied.

32. Second, insofar as the Claimant suggests that the Mayor was departing from a recommendation in the OR or 'disagreed' with his officers (**SFG/39 (CB/32)**) and C's Reply, para 14 (**CB/100**)), this is misconceived. The Claimant mischaracterises the nature of the advice in the OR. It is readily apparent from the OR that there were advantages and disadvantages to each of the options considered (paras 3.92 – 9.94 **CB/180 – 181**). Appendix D evaluated each of the three options and concluded that each scored highly on different issues, such that the decision would have to weigh these factors against one another. The OR did not, therefore, purport to recommend an option but invited the Mayor "*to approve one of the three options summarised in section 2 of this report*" (**CB/158**). This reflected the fact that no 'clear winner' emerged from the analysis, but a judgment had to be struck as to which factors ought to be weighed more heavily in the Decision.

33. Nor did officers consider that Option 3 was capable of overcoming all of the issues raised by the Scheme (Witness Statement of Mr Baxter, para 9 (**SB1/86**)). Officers were well aware that it did not perform as well as Option 1 in respect of certain key criteria, in particular, "*facilitating the passage of vehicle traffic*" and "*local access*". Option 1 scored 5/5 against both of these criteria. Whilst the Claimant's position is that Option 3 resolved all the issues identified satisfactorily (C's Reply, para 13 (**CB/100**)), that view was not shared by officers or by the Mayor. Whilst Option 3 was an improvement over the Scheme (Option 2) in respect of "*facilitating the passage of vehicle traffic*" and "*local access*", it fell short of Option 1 in respect of these two criteria. The Mayor was plainly entitled to give greater weight to these two criteria in reaching his decision.

34. The reasoning is entirely adequate for its purpose. The Mayor's statement, taken with the detailed analysis in the OR and evaluation in Appendix D, are plainly sufficient to provide intelligible and adequate reasons for the decision taken by the Mayor. The Mayor was under no obligation to identify every piece of data, stakeholder feedback and consultation response that weighed in favour or against the policy approach adopted. The fact that the Claimant does not agree with those reasons does not render them inadequate. Indeed, the Claimant's approach amounts in practice to requiring reasons for reasons.

35. In reality and on analysis this ground shines a bright light on the Claimant's true complaint which is that he disagrees with the decision to give greater weight to the criteria against which Option 1 performed the best. However, this is an impermissible interference with democratic decision making and does not found the basis for a claim in judicial review. This ground is without merit and should be dismissed.

Ground 2: Unlawful consultation

36. This ground too must be considered having regard to its context as a policy/political judgement (see e.g. Packham). The consultation exercises carried out were designed to inform the Mayor's political/policy decision as to the direction of transport measures within Bethnal Green. It necessarily precedes the statutory consultation, publication and objection process that must be carried out in accordance with the Regulations in respect of any TMOs.

37. There was no statutory requirement on the Mayor to consult before making TMOs. However, the consultation he undertook was fair and adequate for its purpose and in context.

38. Option 3 was not included in the consultation because it did not exist at the time that the consultation was carried out. As the Claimant acknowledges, Option 3 was formulated in the period after the conclusion of the consultation (C's Reply, para 17 (**CB/101**)). It was an attempt by officers to devise a 'middle way' that reflected the outcome of the consultation and the concerns raised. Indeed, it was informed by discussions with the Claimant's own organisation, SOSS, which sought to persuade officers of the merit of adopting an 'Option 3'. It is therefore wrong to suggest, as the Claimant does at SFG/58 (**CB/35**), that the Defendant "*decided*" not to include Option 3 in the consultation.

39. Insofar as Ground 2 attacks the formulation of the options for the January – February 2023 consultation, the following two points are pertinent:

    a. It is well established that the courts allow a consultant body a wide degree of discretion as to the options on which they choose to consult (R (Whitston) v Secretary of State for Justice [2014] EWHC 3044 (Admin) at [28]); and

    b. It is necessary that consultation is carried out at a formative stage (R (Moseley) v Haringey LBC [2014] UKSC 56 at [24]). This means that the Defendant was right to carry out public consultation on the Scheme at an early stage in the development of options. Only after the consultation were officers in a position to develop a 'middle way' policy option taking into account the output of the consultation and discussions with stakeholders.

40. As the Claimant acknowledges (SFG/54 (**CB/34**)) and C's Reply, para 17 **CB/101**), however, this ground amounts, in substance, to a complaint that there was a duty on the Council to

re-consult, having developed an alternative option after the close of the consultation. However, no such duty arose in the circumstances.

41. The following legal principles relating to the duty to re-consult are pertinent:

    a. It is well-established that whether a duty to reconsult arises depends on (i) the purposes for which the requirement of consultation is imposed; (ii) the nature and extent of any changes and (iii) their potential significance for those who might be consulted (R (Holborn Studios) v Hackney LBC [2017] EWHC 2823 (Admin)). As recognised in Holborn Studios, there are different types of consultation undertaken by public authorities, one such example (not at issue in that case) is "*a consultation designed to assist an authority in developing a policy, where a number of options may be suggested, and where any proposal is liable to evolve significantly once due consideration has been given to the responses to the consultation"* (at [77]).

    b. Whether a duty to reconsult arises depends on what fairness requires. This is to be determined by reference to the circumstances as they appeared to the authority at the relevant time (Holborn Studios, [86]). It is not sufficient to establish that a decision is unlawful merely to show that it would have been better or fairer for there to have been re-consultation; "*the test is whether the process has been so unfair as to be unlawful*" (Holborn Studios, [86]). Consideration must be given to whether the absence of re-consultation deprived those who were entitled to be consulted of the opportunity to make any representations that they may have wanted to make (Holborn Studios, [92]).

    c. With regards to whether a consultation process was 'so unfair as to be unlawful', the courts will not lightly find that a consultation process is unfair (R (Help Refugees Ltd) v SSHD [2018] EWCA Civ 2098 at [90]). Fairness does not require perfection (R (Keep the Horton General) v Oxfordshire Clinical Commissioning Group [2019] EWCA Civ 646 at [18]). In practice, a conclusion that a consultation exercise was unlawful on the ground of unfairness will be based upon a finding by the court, not merely that something went wrong, but that something went 'clearly and radically' wrong (R (Greenpeace Ltd) v SSTI [2007] Env LR 623 at [63]).[2]

    d. There is no duty to reconsult unless there is a "*fundamental difference*" or "*fundamental or significant change*" that has arisen owing to a change in circumstances (R (Nettleship) v NHS South Tyneside Clinical Commissioning Group [2020] EWCA Civ 46 at [43]; R (Carton) v Coventry City Council (2001) 4 CCLR 41, 44C-E; R (Elphinstone) v Westminster City Council [2008] EWCA Civ 1069 ELR 24 at [62] – [63]).

[2] This is not a separate test to that of whether the process is 'so unfair as to be unlawful'; R(Plant) v Lambeth LBC [2016] EWHC 3324 (Admin), at [88].

e. The Court has recognised that the duty to re-consult should not be implied too liberally. To do so would create "*a danger that the process will prevent any change - either in the sense that the authority will be disinclined to make any change because of the repeated consultation process which this might engender, or in the sense that no decision gets taken because consultation never comes to an end*" (R v Shropshire Health Authority ex p Duffus [1990] 1 Med LR 119 at p223).

f. As the Court in Keep Wythenshawe Special Ltd v NHS Central Manchester CCG [2016] EWHC 17 (Admin) explicitly made clear, *"the fact that a change arises so as to reflect views produced by the consultation process does not itself require re-consultation. Once again, it is the extent of the change or difference which is the starting point. If the change arose from the original consultation that is simply evidence of the fourth Sedley criterion in operation and not in and of itself a reason for re-consultation."* (At [76]).

42. Applying these principles, the Council makes the following five submissions.

43. First, the purpose of the consultation was to inform the development of a policy direction for LTNs within the Borough, building on the information obtained from the first stage consultation. It was inevitable, therefore, that the outcome of the consultation would feed into the further development of options, which would then be subject to a statutory process in order to have effect.

44. In circumstances where the Defendant had already carried out two rounds of non statutory consultation in respect of the traffic measures and was engaging in a series of meetings with stakeholders, the suggestion that it was under an obligation to re-run its public consultation exercise in respect of every further option that emerges for consideration through the decision-making process would make public decision making practically impossible. In truth, as the Claimant is aware, the consultation process continued after the formal public consultation exercise closed as explained in the witness statement of Mr Baxter; officers met with a range of stakeholders to continue to gather feedback and views, including the Claimant's own organisation, SOSS (Witness Statement of Mr Baxter, para 7 (**SB1/86**)). That process will continue as the Council moves towards the making of TMOs to give effect to the Decision.

45. Second, as explained by officers, Option 3 was an "*amended version of option 1*" (**CB/170**). In this regard, it was a 'middle way' comprising components of Option 1 and Option 2. All of the elements that make up Option 3 had therefore been the subject of the consultation exercise, which was not limited to an 'either/or' choice between options but had allowed consultees to express views on particular measures.

46. In response to the Claimant's suggestion at CSA/32 that use of ANPR cameras had been ruled out prior to the consultation, it is clear from the consultation documents that the use of ANPR cameras was expressly identified as a potential solution under consideration, albeit

one that officers had reservations about (**SB2/7** and **SB/27**). The consultation documents identified that the use of ANPR cameras to replace physical closures "*would address the access issues that come with [Option 2] but the issues of displaced traffic would remain"* (**SB2/7** and **SB2/27**). Indeed, as explained by Mr Baxter, responses received as part of the consultation included comments on the use of ANPR cameras (Witness Statement, para 22 (**SB1/90**). It is readily apparent, therefore, that ANPR cameras had not been ruled out prior to consultation and were not understood to have been by consultees.

47. Third, the Claimant's allegation that no information was provided to consultees on Option 3 is baseless (**CSA/33**). As explained above, Option 3 was a product of the consultation exercise and ongoing stakeholder engagement and therefore could not have been presented as part of the public consultation exercise held in January to February 2023. With regards to the underlying information that informed the development of Option 3, that was the very same data made available to consultees, in addition to the results of the consultation exercise which were inevitably unavailable until the very end of that process. It is notable that the Claimant does not challenge the adequacy of the data and information provided in respect of Options 1 and 2.

48. Fourth, contrary to CSA/32, the differences between Option 3 and Option 1 come nowhere close to meeting the "*high order of significance of any difference which would warrant re-consultation"* (Keep Wythenshawe Special, at [75]).

49. Fifth, the very fact that Option 3 emerged out of the consultation responses is evidence that the consultation was rightly carried out when options were at a formative stage, as was the case in Keep Wythenshawe Special.

50. In these circumstances, there is no merit in the argument that the absence of a third round of consultation was *"so unfair as to be unlawful",* which is the test that the Claimant must meet to succeed on this ground. The facts fall significantly short of the type that might indicate something had gone 'clearly and radically wrong'.

51. Furthermore, the fact that a consultation may be "*not perfect or could have been improved*" is not enough to render it unlawful, provided that "*in all the circumstances, it provided a fair opportunity for those to whom the consultation was directed adequately to address the issue in question*" (R (Keep the Horton General) v Oxfordshire Clinical Commissioning Group [2019] EWCA Civ 646 at [66] per Sir Terence Etherton.

52. For the reasons set out above, the consultation plainly provided a fair opportunity to those to whom it was directed to comment on the direction of transport policy within the borough.

53. Finally, in order to succeed on a claim for procedural unfairness a Claimant must have been materially prejudiced (Secretary of State for Communities and Local Government v Hopkins Developments Ltd [2014] EWCA Civ 470 at [49]. This is because it is not a breach of natural

justice "*unless the appellant has been substantially prejudiced thereby*" (Swinbank v Secretary of State for the Environment & Anor (1988) 55 P &CR 371, per David Widdicombe QC).

54. Contrary to the Claimant's suggestion that this case law has been superseded by section 31(2A) and/or (3A) of the Senior Courts Act 1981, this is plainly and obviously wrong. Both Hopkins Developments and Swinbank and were recently applied by Lang J in Bramley Solar Farm Residents Group v SSLUHC [2023] EWHC 2842 (Admin), as authority for the need to demonstrate material prejudice in a claim for procedural unfairness relating to consultation.

55. For the first time in the Claimant's Skeleton Argument he identifies an issue on which it alleges it would have made representations if Option 3 had formed part of the consultation. This is the use of ANPR cameras (**CSA/38**). The Council makes two points in response to this.

56. First, there was plainly nothing to stop the Claimant from commenting on the potential use of ANPR cameras as part of the consultation. Indeed, some respondents commented on precisely this issue.

57. Second, and more significantly, the Claimant's criticism of the consultation must be considered in the context of the specific engagement carried out between officers and the Claimant's organisation, SOSS, which was involved in meetings with officers following the public consultation. This provided an opportunity to gain even more detailed feedback as to the group's views, supplementing those provided through the consultation. It was in part as a result of this engagement that the Defendant pursued the development of Option 3 as a form of 'middle way' (see email records of discussions at **SB2/256**). One issue that was subject to extensive discussion between SOSS and officers was the very issue that the Claimant alleges it was deprived of the opportunity to comment on; namely, the use of ANPR. The Claimant's group's own account of discussions with officers records that *"there was a lot of discussion about ANPR at the meeting"* (**SB2/249**). Indeed, the letter from SOSS that records this conversation makes it readily apparent that SOSS (like officers) had some reservations about the use of ANPR.

58. In these circumstances, it is inconceivable that the Claimant or its organisation has suffered any prejudice whatsoever from the absence of a public re-consultation on Option 3. The only issue identified by the Claimant as one on which it was deprived of the opportunity to comment was an issue that was subject to specific discussions between SOSS and officers. Indeed, it is surprising that the Claimant would criticise the development of Option 3 in circumstances where his own group proposed such an approach and played such a critical role in its development.

59. Finally, this ground must be viewed in its context and in light of the fact that the Claimant will be entitled to fully participate in the statutory process in respect of the TMOs required

to bring effect to the Decision by making an objection and raising any issues it wishes to. Any such objections must then be taken into account by the Council as part of that process.

60. In any event, as a matter of substance, the Mayor's Decision selected one of the options that *had* been directly subject to consultation. This is not a case in which the Decision bore no resemblance to that which consultees had been asked to comment.

61. The Claimant is unable to demonstrate <u>any</u> prejudice, let alone substantial prejudice.

62. This ground is without merit and should be dismissed.

<u>Ground 3: Failure to take into account the travel survey responses</u>

63. The Claimant alleges that the Defendant failed to take into account the responses to the travel survey, which was included at the end of the consultation questionnaire. For the reasons explained below, the exclusion of this information was an entirely justified exercise of professional judgment by offices. Once again, it is necessary to note that the TMO process will provide an opportunity by which travel data may be taken into account if it is thought to be of any relevance. There is no merit to this ground.

64. The results gathered through the travel survey were considered by officers after the close of the public consultation. The output of the survey was deemed, as a matter of judgment, to lack utility as a source of information for the Mayor's decision, both because of the level of detail provided and the lack of representativeness of the survey results (WS of Mr Baxter, para 50 ff **SB1/97**). Consequently, officers decided to exclude the output of the travel survey from the OR (subject to the data on the use of taxicards, blue badges and freedom passes, which are addressed below). The data was therefore not subject to any detailed evaluation and did not play a role in the formulation of options, advice in the OR or the Mayor's Decision.

65. The decision to exclude the data was a decision that officers were plainly entitled to take as a matter of professional judgment. Having reached the conclusion that the data was insufficient and unreliable, it was entirely proper for officers to exclude it from consideration. Indeed, it would have been irrational to do otherwise. The fact that the Claimant has obtained the data through a request under the Freedom of Information Act 2000 does not itself render it useful or informative.

66. Contrary to the Claimant's contention at SFG/66 (**CB/37**), however, there was plainly information available to the Mayor on the effect of the traffic measures on active travel. Appendices B and C to the OR presented the consultation responses on issues such as the effect of the Liveable Streets schemes on walking, cycling and public transport (pages 5 – 6 of Appendix B (**CB/197 – 198**) and pages 6 – 7 of Appendix C (**CB/216 – 217**). This included comments on the perception of how safe or pleasant it is to travel in the borough. The data from the travel survey on the use of taxicards, blue badges and freedom passes was

included in the OR as it was the only information available of its type. The outcome of that question was therefore summarised expressly in Appendices B and C to the OR.

67. The Claimant's attempt to distinguish between 'data' on active travel and 'perceptions' around active travel is indicative of the forensic approach adopted by the Claimant (C's Reply, para 21 (**CB/102**)). Officers were entitled to disregard the 'data' gathered through the travel surveys for the reasons explained above. There is plainly a connection, however, between how safe or pleasant active travel modes are perceived to be and respondents' propensity to use those modes.

68. The Council clearly took into account the effects of the traffic measures on active travel. Indeed, this is reflected in the analysis in Appendix D ('scheme evaluation'), which expressly considers how the options perform in the context of active travel (**CB/239 – 246**).

69. Notwithstanding the above, this ground seeks impermissibly to trespass on the role of the officers in preparing a report for the committee. It is a matter for officers to decide on the level of detail contained within a report subject to not materially misleading the committee.

70. In R v Selby DC Ex p Oxton Farms [2017] PTSR 1103 Lord Justice Judge held:

"The report by a planning officer to his committee is not and is not intended to provide a learned disquisition of relevant legal principles or to repeat each and every detail of the relevant facts to members of the committee who are responsible for the decision and who are entitled to use their local knowledge to reach it. The report is therefore not susceptible to textual analysis appropriate to the construction of a statute or the directions provided by a judge when summing a case up to the jury."

71. This point was re-emphasised in Morge v Hampshire CC [2011] UKSC 2 at [36] where Lady Hale stated in respect of planning officers' report as follows:

"…in this country planning decisions are taken by democratically elected councillors, responsible to, and sensitive to the concerns of, their local communities. As Lord Hoffmann put it in R (Alconbury Developments Ltd and others) v Secretary of State for the Environment, Transport and the Regions [2001] UKHL 23, [2003] 2 AC 295 , para 69, "In a democratic country, decisions about what the general interest requires are made by democratically elected bodies or persons accountable to them." Democratically elected bodies go about their decision-making in a different way from courts. They have professional advisers who investigate and report to them. Those reports obviously have to be clear and full enough to enable them to understand the issues and make up their minds within the limits that the law allows them. But the courts should not impose too demanding a standard upon such reports, for otherwise their whole purpose will be defeated: the councillors either will not read them or will not have a clear enough grasp of the issues to make a decision for themselves. It is their job, and not the court's, to weigh the competing public and private interests involved."

72. As set out above, there was plainly adequate information before the Mayor on the issue of the effect of the traffic measures on active travel to reach a lawful decision. This ground is flawed and runs counter to well established judicial authority on the context of officers' reports.

Ground 4: Unlawful failure to apply the applicable statutory guidance on low traffic neighbourhoods

73. This ground is without merit. The Claimant alleges that the Defendant failed to take into account the statutory guidance entitled "Traffic Management Act 2004: network management to support active travel" (**SB1/697-707**).

74. A key and preliminary point is that this Guidance was expressly withdrawn by the Secretary of State on 2 October 2023. It has since been replaced by statutory guidance 'Implementing low traffic neighbourhoods', which was published on 17 March 2024.

75. The Guidance was expressly referred to in the OR at paragraph 3.92 (**CB/180**). That paragraph summarised the thrust of the Guidance as it applied to the decision. Appendix D, which contains a detailed evaluation of the three options, has a specific criteria relating to how the options meet the statutory guidance. It is clear, therefore, on a proper reading of the Officers' Report and its appendices, that there has been no failure to take into account the Guidance.

76. As acknowledged by the Claimant (C's Reply, para 26 (**CB/103**)), the presumption referred to in SFG/73 – 74 (**CB/38**) relates specifically to making experimental schemes permanent. It originates from the section entitled "Monitoring and evaluation" in the now withdrawn Guidance (**SB1/703**). The passages quoted by the Claimant at SFG/73 (**CB/38**) must be considered in their context:

> *"As set out in Local Transport Note 1/20, trials can help achieve change and ensure a permanent scheme is right first time. Trial or experimental schemes should be left in place for the full duration of the temporary traffic regulation order (TTRO) or experimental traffic regulation order (ETRO), where appropriate, or where no traffic regulation order (TRO) is required, until at least 12 months' traffic data is available and has been published. This will allow them to settle in and for changes in travel patterns and behaviours to become apparent so that an informed decision can be made. 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."*

77. The Bethnal Green traffic measures were made permanent, consistently with this guidance, in January 2022. That decision was taken in line with the Guidance. Contrary to the Claimant's assertion (C's Reply, para 25 (**CB/103**)), the presumption does not apply directly to a decision to remove permanent traffic measures, which in any event has been informed

by a considerable quantity of additional data and evidence gathered since the making of the permanent orders.

78. In any event, the subsequent withdrawal of the Guidance means that the quashing of the decision on the basis of a failure to have regard to it would serve no practical purpose. There would be no obligation to have regard to the Guidance in any redetermination of the Decision.

79. The Claimant seeks to argue that notwithstanding the Guidance has been revoked, the challenge on this ground is not academic (CSA/57). In particular, the Claimant seeks to rely on the publication of draft guidance in March 2024 in this regard. However, the publication of draft guidance does nothing to address the issue the Claimant faces, which is that if the Mayor was required to re-take the Decision, there would be no obligation to take into account the now revoked guidance. Indeed, the passage from the draft guidance quoted by the Claimant at CSA/57(2) is entirely supportive of the Decision insofar as it makes clear that schemes should be *"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"* (**SB1/728**). That draft guidance also makes clear the importance of councils "*continu[ing] to regularly review low traffic neighbourhoods, ensuring they keep meeting their objectives, aren't adversely affecting other areas, and are locally supported"* and identifies the need for an approach in which local support is "*paramount"*.

80. The public controversy around LTNs is expressly acknowledged in the new Guidance. These themes are wholly consistent with the approach adopted by the Mayor, who identified the "*divisive*" nature of the existing traffic measures and his desire to start afresh in order to introduce measures that are capable of gaining a greater consensus in support. This is also reflected in the fact that the consultation did not produce a decisive majority in favour of either retention or removal.

81. Whilst it is readily apparent that the Guidance was taken into account in the Decision, in any event, the quashing of the ground served no purpose in circumstances where that guidance has now been revoked. It is also significant that any future statutory guidance issued under the Traffic Management Act 2004 ('TMA 2004') will be of direct relevance to the merits of TMOs made by the Council in order to give effect to the Mayor's policy decision.

82. For these reasons, this ground should be dismissed.

Ground 5: Irrationality

83. The Claimant claims that the Mayor's Decision was irrational on the basis that there was "*substantial evidence*" supporting the retention of the Scheme in full or in part (**CSA/60**).

84. This ground is framed in terms of both the Mayor's alleged reliance solely on public opinion (SFG/90 (**CB/42**)) and his failure to adopt the option favoured by public opinion as shown

through consultation (SFG/88 (**CB/42**)). These two allegations are in direct contradiction with one another, demonstrating that this ground is ill-conceived and illogical.

85. In substance, this ground too is a thinly veiled attack on the merits of the Decision. This is demonstrated by the Claimant's attempt to unpick the reasoning for the Decision and the evidence base underlying it at SFG/83 – 87 (**CB/41 – 42**).

86. As demonstrated by the analysis in the OR and borne out by the Witness Statement of Mr Baxter, there were advantages and disadvantages to every option considered (OR, paras 3.92 ff. (**CB/180**)). Indeed, there was clear support from stakeholders and members of the public both for retention and for removal. This was readily apparent from the discussion at the Cabinet meeting itself, in which individuals spoke passionately both in support and against the removal of the traffic measures. In those circumstances, whatever option was adopted, there would be factors weighing for and against that decision.

87. The Mayor, as he was entitled to, attached more weight to certain material considerations than others. The considerations in respect of which he attributed greater weight aligned with those in relation to which Option 1 performed best. The Mayor's Decision was taken against a background of careful consideration by officers as to whether a 'middle way' (i.e. Option 3) would be sufficient to overcome concerns raised. As is readily apparent from the analysis in the OR, the scoring matrix in the Appendices, and the Witness Statement of Mr Baxter, neither officers nor the Mayor considered that Option 3 was capable of entirely overcoming the concerns with the Scheme.

88. Whilst the Claimant does not agree with the balance struck by the Mayor in reaching the Decision, this does not render the decision unlawful. It is a legitimate exercise of executive decision making as to the future direction of transport policy. Furthermore, the fact that the Mayor chose to retain certain elements of Option 2 underlines the willingness to accommodate the concerns of those who wished to see the traffic measures retained.

89. It is readily apparent that the outcome of the consultation was one of the factors taken into account by the Mayor (as acknowledged in **CSA/66**). The fact that the consultation did not yield a clear majority either in favour or against the Scheme was itself a factor that influenced the Mayor's decision. This was considered alongside a wealth of other evidence set out in the appendices to the Officers' Report. This included area wide air quality, pedestrian count, traffic count, cycle count and collision data (**CB/168 – 173**). This approach is wholly consistent with the Guidance, which makes clear that consultations *"are not referendums"* and the outcomes should be one part of the empirical evidence base for decisions (**SB1/704**).

90. Whilst the Claimant may think that all of the issues with and objections to the existing scheme could be overcome by Option 3 (**CSA/68**), that was not the conclusion reached by the Mayor. Nor was it the opinion of officers, whose analysis demonstrates that Option 3 did not perform as well as Option 1 in respect of two criteria. Indeed, the OR made clear

that *"Option 1 scores strongest in terms of access for emergency services, residents, deliveries and vehicles associated with council operations such as highway maintenance and waste collection. It is also the strongest highway strongest option in terms of network resilience and access for those reliant on option vehicles such as disabled people"* (para 3.94 (**CB/180)**). The Mayor was entitled to give weight to that analysis.

91. The Decision does not begin to come close to meeting the high threshold for irrationality. This is particularly so in circumstances where the TMOs that would be required to give effect to the Mayor's decision will be subject to a whole statutory process, which will include the consideration of responses from statutory consultees and any objections made to the orders (see also: Packham; Office of Fair Trading).

Ground 6: Breach of section 151 of the Greater London Authority Act 1999 and/or failure to have regard to its Local Implementation Plan

92. This ground discloses a total failure by both the Claimant and the IP to understand the LIP process, the matrix and context of the Council's 2019 LIP and the delivery plans. This ground was not referred to in the Claimant's pre-action protocol. It appeared for the first time in the filed Claim. The Interested Party chose not to make any comments or file any Summary Grounds of Resistance. After the Defendant had filed its detailed grounds of resistance, the IP submitted detailed grounds of resistance solely in respect of this ground and a witness statement from Julie Clarke with appendices. The IP's detailed grounds are flawed and are inconsistent with its own witness' statement. It misapplies the Greater London Authority Act 1999 and misunderstands both the context and decision making process.

Context

93. The LIP does not sit in isolation, but within the wider context of the Council's role in traffic regulation and management.

94. By virtue of section 14 of the TMA 2004, the Council is under the network management duty. That section provides as follows:

> *"(1) It is the duty of a local traffic authority or a strategic highways company ("the network management authority") to manage their road network with a view to achieving, so far as may be reasonably practicable having regard to their other obligations, policies and objectives, the following objectives—*
>
> *(a) securing the expeditious movement of traffic on the authority's road network; and*
>
> *(b) facilitating the expeditious movement of traffic on road networks for which another authority is the traffic authority.*

(2) The action which the authority may take in performing that duty includes, in particular, any action which they consider will contribute to securing—

(a) the more efficient use of their road network; or

(b) the avoidance, elimination or reduction of road congestion or other disruption to the movement of traffic on their road network or a road network for which another authority is the traffic authority;

and may involve the exercise of any power to regulate or co-ordinate the uses made of any road (or part of a road) in the road network (whether or not the power was conferred on them in their capacity as a traffic authority).”

95. By virtue of section 142 of the Greater London Authority Act 1999 (‘GLAA 1999’), the Mayor of London is obliged to prepare and publish a transport strategy (‘the MTS’), containing his policies and proposals for the promotion and encouragement of safe, integrated, efficient and economic transport services to, from and within Greater London.

96. The publication of the MTS triggers the duty of London borough councils to prepare a local implementation plan (section 145). Section 145(3) requires that a LIP includes (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. Section 146 provides that a London borough council’s LIP must be submitted to the Mayor of London and approved by him. Section 147 provides the Mayor of London with certain powers to direct the preparation of a LIP or prepare a LIP on behalf of a London borough, if the relevant council fails to do so. Section 148 empowers a London borough council to, at any time, prepare a revision to its LIP as it considers appropriate and section 149 prescribes a process for doing so. Any revisions must be approved by the Mayor of London.

97. Section 151 imposes a duty on London borough councils to implement the proposals contained within its LIP. It provides as follows:

“(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.

(2) Where the Mayor has prepared a local implementation plan or a revised local implementation plan on behalf of a London borough council under section 147 above, or, as the case may be, section 150 above, subsection (1) above shall apply in relation to the implementation by the council of the proposals contained in the plan as if the plan were a

local implementation plan approved by the Mayor under section 146 above, or, as the case may be, a local implementation plan as proposed to be revised, approved by the Mayor under that section."

98. Section 152 provides powers for the Mayor of London to implement any proposal contained in a LIP if the London borough council has failed, or is likely to fail, to satisfactorily implement any proposal contained in a LIP and recover from the council the costs of doing so. Section 153 empowers the Mayor of London to issue general or specific directions to London borough councils as to manner in which it is to exercise its functions under these provisions.

99. As explained above, the Council's LIP 3, which was published in 2019, identified a range of high level objectives in Chapter 3, including the objective that *"half of the borough half of the borough [will] be Liveable Neighbourhoods"* (**SB1/113**). The specific measures proposed in Bethnal Green (including in OBG and WW) were set out in the Programme of Investment in Chapter 4 (the Delivery Plan) of the Council's LIP (as confirmed by paragraph 35 of the Witness Statement of Julie Clark on behalf of the Interested Party (**SB1/111**)). The Delivery Plan contained a budget for 2019/2020, and an indicative budget for the following two years. The Delivery Plan in the Council's LIP covered the initial three year period of the LIP only (as confirmed by paragraph 33 of the Witness Statement of Julie Clark on behalf of the Interested Party (**SB1/111**)).

100. The OBG and WW traffic measures were implemented in phases by a number of permanent and experimental TMOs between August 2020 and May 2021, since which they have been retained and monitored. Funding was provided in arrears after the IP was satisfied these were properly implemented. The IP has not raised any suggestion with the Defendant Council to the contrary.

101. In October 2021, TfL issued new guidance titled 'Guidance on developing LIP three-year delivery plans for 2022/23 – 2024/25'. This Guidance is referred to in paragraph 42 of the Witness Statement of Julie Clark but has been omitted from the Hearing Bundles, and therefore is provided with this Skeleton Argument. This Guidance expressly states that it does not require boroughs to prepare a new LIP. They were instead directed only to prepare fresh Delivery Plans containing new traffic measures covering 2022/23 and 2024/25 respectively (para 2.1.1).

102. The 2022/2023 Delivery Plan superseded Chapter 4 of the Council's LIP, which contained the Delivery Plan for the first three years of the LIP period. This is confirmed by the Witness Statement of Julie Clark on behalf of the Interested Party, who explains that *"the three year plans contained in LBTH's Third LIP ended in 2021/2022"* (paragraph 41, **SB1/114**).

103. In the summer of 2022, in accordance with the commitments in the Delivery Plan 2022/2023, the Mayor engaged in a process of determining public opinion on the removal

of the traffic measures implemented in pursuant to the original three year Delivery Plan within the LIP.

Submissions

104. Ground 5 alleges a breach of section 151 of the GLAA 1999 and/or failure to have regard to its Local Implementation Plan. This ground is misconceived and has no merit. The Council makes the following four submissions.

105. First, the duty in section 151 of the GLAA 1999 is twofold; it requires that the Council implement the proposals in their LIP in accordance with the timetable set out in the LIP, and secondly, it requires the Council to implement all proposals within it by the date specified in the LIP.

106. As explained above, the Council's 2019 LIP, as published, set out the Council's high level objectives in Chapter 3. Chapter 4 of the LIP contained a Delivery Plan covering the first three years of the LIP period. That Delivery Plan contained *inter alia* proposals comprising the 'Love Your Neighbourhoods' initiative. Those proposals included implementing traffic measures in Bethnal Green, Bow, Brick Lane and Wapping.

107. The Council complied with section 151 by implementing traffic measures in Bethnal Green, Bow, Brick Lane and Wapping in accordance with the Delivery Plan in Chapter 4 of the LIP. Save for those measures in Bow, which have already been removed, the traffic measures have been retained for a period of over two years, during which their effects have been monitored in order to understand their effect.

108. Second, whilst section 151 requires the 'implementation' of measures within the LIP, it does not require that any implemented schemes are then retained in perpetuity. Indeed, the Claimant now accepts this (C's Reply, para 28 (**CB/104**)). Indeed, such an interpretation would require the implication of words into section 151, greatly extending the scope and nature of the duty. It would also render it impossible for the Council to discharge its network management duty under section 18 of the TMA 2004. As such, the fact that schemes have been implemented pursuant to the LIP does not prevent the Council responding to the evidence it has gathered by modifying or removing those schemes.

109. Third, following the publication of the LIP and the expiry of the initial Delivery Plan contained within it, the Council prepared a further Delivery Plan covering the years 2021/2022 (**SB1/629 – 630**). This was in accordance with guidance issued by the Mayor of London and TfL in October 2021. That Guidance made clear that boroughs were not expected to publish a new LIP, but that they were directed to prepare a new Delivery Plan to address the context that London now faces as it recovers from the pandemic.

110. That Delivery Plan superseded Chapter 4 of the 2019 LIP. It responded to the new priorities that had emerged from the pandemic, as outlined in the 2021 Guidance, whilst still reflecting the objectives in Chapter 3 of the 2019 LIP. Following, the publication of a

new Delivery Plan for 2021/2022, the LIP contains no proposals for LTNs in WW or OBG. Indeed, the Delivery Plan 2022/2023 makes clear that the Mayor was committed to consulting on the removal of those schemes, having identified issues with their operation in practice **(SB1/160).**

111. Fourth, and consequently, the Claimant is simply wrong to suggest that the removal of such measures would be contrary to the 2019 LIP, as updated by the Delivery Plan 2022/2023. On the contrary, both the consultation into the removal of those schemes and the policy decision to remove them directly reflect the commitments in the Delivery Plan 2022/2023 (**SB1/630**). Furthermore, as confirmed by the Mayor of London's own Guidance in 2021 the Council was not expected to prepare an entirely new LIP. This is entirely consistent with the fact that high level objectives do not need to be revised. The Delivery Plan is the vehicle for detailed traffic measures and these have been formulated in the new Delivery Plan.

112. Standing back, therefore, there are no grounds on which to assert that the Mayor's policy decision conflicts with the Council's LIP, as updated by the Delivery Plan 2022/2023, or is otherwise unlawful. The Mayor is entitled to decide to modify or remove such schemes as a matter of policy and having regard to the effect of those schemes and neither the Claimant nor the Interested Party has pointed to any authority to the contrary. Indeed, this is consistent with the Interested Party's Witness Statement, which makes clear that if a London borough subsequently removes a scheme implemented pursuant to a LIP, *"the options open to TfL in terms of the action it can take are more limited"* (paragraph 52 (**SB1/118**)).

113. The Claimant's alternative argument is that the Mayor failed to have regard to "*the substantive duty on the Council"* arising from the LIP. This fails to understand the proper context in which the Mayor's Decision was taken. The Decision was about the effectiveness and appropriateness of proposals implemented, funded and monitored through the LIP process. It is therefore nonsensical to say that the Mayor did not take into account or was somehow unaware of that context. The stance taken by the Mayor is entirely consistent with the revised Chapter 4 of the LIP.

114. The Defendant Council observes that the Claimant has attempted to introduce a further new ground at paragraph 77 of its skeleton argument including a contention that the Council did not have regard to any financial implications in terms of future TfL funding. The Claimant has not applied to amend its grounds and he does not have permission to proceed on this new point. Furthermore, it is entirely unparticularised. The Claimant should not be permitted to introduce this new or any other new grounds in his skeleton argument.

115. This ground is without merit and should be dismissed.

Ground 7: Breach of the duty of best value

116. The essence of this ground is that the Council has failed to fulfil the duty of best value in section 3(1) of Local Government Act 1999 because Option 3 or Option 2 would be cheaper. This purported ground is wholly misconceived. The duty of 'best value' is a general overarching duty that applies to local authorities in the exercise of their functions. It does not dictate a particular outcome for decision-making, nor does it say that expenditure cannot be incurred in pursuing particular outcomes. Whilst the cost of the various options may be a relevant consideration, the Mayor is not required to decide on the most cost efficient option regardless of the merits of the decision making and without having regard to the range of relevant material considerations. Nor does this duty create such an obligation to.

117. Indeed, section 6 of the OR identified the financial cost of the options considered in the report and the status of funding for those options (**CB/182**). The effect of the Claimant's argument would make a nonsense of local authority decision making. The discharge of Council functions requires a balance of a range of considerations, not limited to the financial cost of options under consideration. The Claimant has failed to substantiate or particularise in what way the duty of best value has been breached. To the extent that financial considerations are relevant to the removal of the OBG and WW traffic measures, they will be subject to further consideration as part of the statutory process for making TMOs.

118. This ground should be dismissed.

Conclusion

119. None of the grounds disclose any error of law. The Mayor's Decision was a political/policy decision in respect of the intended future direction of transport measures within Bethnal Green. A low intensity of review is applicable by the Court. It is, as the Claimant accepts, of no practical consequence. It does not, and cannot, authorise the physical removal of the road closures. In order for the Decision to be given effect, it is necessary that TMOs are made that have the effect of revoking those that introduced the traffic measures. That rigorous statutory process will provide the opportunity for consultation, objection and scrutiny of the proposals. The outcome of that process is not known.

120. The Court should exercise its discretion not to grant any relief should it find any of the grounds to be substantiated.

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