Neutral Citation Number: [2025] EWHC 1111 (Admin)

Case No: AC-2024-LON-003125

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 9 May 2025

Before :

TIM SMITH
(sitting as a Deputy High Court Judge)

- -

Between :

WEST DULWICH SERVICE STATION LIMITED ON BEHALF OF WEST DULWICH ACTION GROUP	**Claimant**
- and –	
THE LONDON BOROUGH OF LAMBETH	**Defendant**

- -

Charles Streeten (instructed by **Broadfield Law UK LLP (formerly BDB Pitmans LLP)**) for the **Claimant**
Heather Sargent (instructed by the **Legal Department of the London Borough of Lambeth**) for the **Defendant**

Hearing date: 12th February 2025

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Approved Judgment

This judgment was handed down remotely at 10.00am on 9 May 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR TIM SMITH (sitting as a Deputy High Court Judge):

Introduction

1. The term "low traffic neighbourhoods" refers to an initiative introduced by Government to reduce traffic in residential areas. The objective is to reduce vehicular traffic entering an area, using a suite of traffic management orders promoted by the local traffic authority. Benefits of a low traffic neighbourhood are said to be an improvement to safety for pedestrians and cyclists and an improvement to air quality through reducing vehicle emissions. But, as the Government recognises, not everyone perceives low traffic neighbourhoods to be beneficial. Some point to the impact which the traffic management restrictions have on access to local businesses by customers and service vehicles, and consequent damage to trade for those businesses. Low traffic neighbourhoods can therefore sometimes be controversial. So it has proven to be in this case.

2. This case involves a challenge to the traffic management orders which establish, on an experimental basis, a low traffic neighbourhood in Dulwich.

3. On 6th August 2024 the London Borough of Lambeth ("the Council") approved two experimental traffic orders (together "the Orders") pursuant to the Road Traffic Regulation Act 1984[1] ("the Act"), as follows:

    a) The Lambeth (Moving Traffic Restrictions) (Amendment No 3) Experimental Order 2024, LBC 2024 No. 33, and

    b) The Lambeth (Free Parking Places, Loading Places and Waiting, Loading and Stopping Restrictions) (No 3) Experimental Traffic Order 2024, LBC 2024 No 34

4. One of the Orders restricts the ability for vehicular traffic to enter an area, the other restricts the ability to park within the area. The combined effect of the Orders is to prevent vehicular traffic from entering, passing through or waiting within the part of Dulwich bounded by Croxted Road to the east and Norwood Road to the west. The Orders are experimental traffic orders made under section 9 of the Act. The experimental period allows for the actual effects of the Orders to be judged, and it operates as – in effect – an extended period of further consultation before any decision is reached whether or not to make the Orders permanent.

5. The Claimant, West Dulwich Action Group, is an unincorporated association said to have been formed to represent the interests of local residents and businesses affected by a series of street improvement orders relating to West Dulwich. It is comprised of a number of separate businesses and Residents' Associations. This claim is brought by the Group acting through one of its members, West Dulwich Service Station Limited (trading as "Autocar Repairs"), as a representative claimant.

6. By this claim the Claimant challenges the lawfulness of the Orders and asks for an order by the court that each be quashed.

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[1] The early part of the Agreed Statement of Facts refers to the Road Traffic Regulation Act 1981 but the correct date is 1984

7. There are three separate grounds of challenge which may be summarised as follows:

    a) Ground 1: that the Council's consultation on the Orders was unfair and/or that the Council had regard to immaterial considerations when deciding to make the Orders,

    b) Ground 2: that the Council's decision to make the Orders failed to have regard to material considerations, and/or was irrational in that it concluded that due regard was had to statutory guidance published by the Department for Transport relating to the Orders, and/or was inadequately reasoned, and

    c) Ground 3: that the Council failed to comply with its duties of consultation under regulation 6 of the Local Authorities Traffic Orders (Procedure) (England and Wales) Regulations 1996 (SI 1996/2489) and/or that it had unlawfully fettered its discretion in how it approached its decision to make the Orders

8. Grounds 1 and 3 both deal in broad terms with the adequacy of consultation, albeit by reference to different procedural requirements. In their skeleton arguments and their oral submissions Mr Streeten (who appeared for the Claimant) and Ms Sargent (who appeared for the Council) dealt with both of these grounds together. I have found it convenient to do the same in this judgment.

Interim relief application

9. Before proceeding to summarise the background facts a short procedural point arises. The claim was accompanied by an application for interim relief seeking to suspend the operation of the Orders. The Council resisted any interim relief being granted.

10. I asked Mr Streeten whether the interim relief application had ever been dealt with. He said that it had not. It appears that it has been overlooked by the court. Nevertheless both parties agreed that, having now got as far as a substantive hearing into the challenge, the interim relief application had been superseded. I therefore do not deal with it in this judgment.

Background Facts

Preliminary points

11. The Court is assisted by the parties having agreed both a Chronology of the main events and a Statement of Facts, for which I thank them. Despite these agreed documents not all of the key facts are agreed, and the agreed Statements do not contain any interpretive comments which the parties variously wish to make in differing directions. As such it is necessary at times to go beyond the agreed Statements and examine in more detail the parties' accounts of the events leading to the making of the Orders.

12. In addition the Claimant takes issue with some of the witness evidence filed on behalf of the Council. In broad terms the complaint is that some of it amounts to an *ex post facto* rationalisation of the decision, filling in some of the evidentiary void said to exist in the Council's decision-making processes. For the Council Ms Sargent denies that

there is anything improper about the witness evidence and submits that the court can properly have regard to it in the determination of the claim. It is convenient for me to address those complaints as part of my consideration of the specific grounds of challenge to which they relate.

The Facts

13. The Council first began its engagement on a series of related traffic management proposals in West Dulwich in early 2022. Consultation took place between 25th January and 25th March 2022, with the stated objective of identifying a list of changes to traffic management that could be implemented in the area. The consultation included an "in-person walkabout" on 12th February 2022 as well as an online event on the evening of 17th February. A report was published at the end of that consultation.

14. There is a factual dispute as to who was actually consulted as part of this first engagement. The Council's position is that letters with details of the consultation were distributed to a number of the businesses who are members of the Claimant organisation, and that officers of the Council also dropped off leaflets at businesses on the west side of Rosendale Road. The Claimant disputes parts of this evidence. For example it presents evidence from the proprietors of three of the businesses named by the Council as recipients of the leaflet drop, all of whom deny that they received any correspondence about the proposals.

15. The Council's evidence is that feedback gathered through this engagement was used to inform what later became the proposals that were consulted on.

16. A non-statutory consultation was then undertaken by the Council on the three related proposals which together constituted a wider traffic management scheme for the area. The proposals were:

    a) That a controlled parking zone be implemented by a Traffic Management Order under the 1984 Act;

    b) That phases 1 and 2 of what were called the West Dulwich Street Improvements (which I refer to in this judgment as the "Street Improvements Scheme" and which the Council's officers described in delegated reports as creating a low traffic neighbourhood) be implemented as Experimental Traffic Orders under the 1984 Act. The area affected was bounded by Croxted Road to the east, Norwood Road to the west, the South Circular road (A205) to the north, and Idmiston Road/Chatsworth Way to the south; and

    c) That phase 3 of a bi-directional cycleway between Brockwell Park and Gipsy Hill, with consequential highway measures, be introduced, also as a Traffic Management Order under the 1984 Act

17. It is common ground between the parties that the area affected by the Street Improvements Scheme includes a number of residents as well as a considerable number of businesses, fifty of them along the length of Rosendale Road and over a hundred of them on Norwood Road. Norwood Road is listed as a "boundary road" affected by the proposals.

18. The non-statutory consultation undertaken by the Council was advertised to take place between 11th April and 7th May 2023. It comprised two main elements. Firstly, comments could be made via a comments portal on the "Commonplace" website (a dedicated website from which the key documents could be accessed, key dates viewed, and key contact details for officers of the Council ascertained). Secondly, direct engagement with officers of the Council was offered at a "drop-in" event held at West Norwood Library on Saturday 22nd April 2023 between 10:00-16:00.

19. The above consultation modes were advertised by site notices wrapped around lamp posts in the area and by the delivery of a letter and explanatory booklet to local residents and businesses. The envelope containing the letter and explanatory booklet had printed on it an unique reference number ("URN") to be entered with any consultation responses for the purposes of ensuring that each recipient household could respond only once. Only one response per household or business was permitted irrespective of the number of people at the address. The URN was not repeated in the contents of the envelope.

20. Consultation feedback was sought via responses to a consultation questionnaire. The questions in the questionnaire mostly directed the respondents as to the areas where their views were sought, rather than allowing for fully open responses. The Claimant expresses a concern that the responses to the questionnaire were unfairly circumscribed. I return to this theme when considering the arguments of the parties on Grounds 1 and 3, but an example provided by the Claimant in its Statement of Facts and Grounds is the following question:

> *"If a C[ontrolled] P[arking] Z[one] were to be introduced on your road, what days do you think parking controls should operate?"*

The question did not allow for a response which challenged its fundamental premise, namely whether the introduction of a CPZ was a supportable idea or not.

21. The drop-in session at West Norwood Library was not a happy event. Feelings against the proposals by some of those in attendance was clearly running high, and it is common ground between the parties that as a result the environment was an hostile one for the Council's officers in attendance. For this reason those officers withdrew for a lunch break all at the same time (rather than having a staggered lunch break as planned) and, as a result, consultees arriving during the lunch break were not able to participate because no officers were present then.

22. Meanwhile in early May 2023 Ms Smorto, an officer of the Council, contacted certain businesses based within the area of the Street Improvements Scheme to offer them online meetings. There is a dispute between the parties as to which businesses were contacted in this way, but it is agreed that some of the businesses did receive follow-up visits from Ms Smorto.

23. One of the businesses concerned – the butcher Scotch Meats – was visited by Ms Smorto on the evening of 5th May 2023. The proprietor of Scotch Meats emailed Ms Smorto later that evening to thank her for the visit, and she copied into that email ten other local businesses with a request that local Councillors please arrange to meet those businesses to discuss the proposals as well. Ms Smorto responded to that email copying

in the ten businesses and asking that any of them whom she had failed to contact please let her know if they were requesting a meeting. Online meetings of 15 minutes then took place with some of those businesses.

24. The Claimant submits that some local businesses then contacted Helen Hayes MP, the Member of Parliament for the local area, to ask for her assistance in resisting the proposals. Ms Hayes wrote to the Council, asking for a list of the local businesses that had been contacted. The Council replied at the time with a list of 31 local businesses – a figure which the Council now claims under-recorded the true number of 36 – but there is a factual dispute between the parties as to how many businesses were actually contacted.

25. Part of the consultation asked respondents to indicate, on a sliding scale, how happy or unhappy they were with the proposals. The Council calculated that 67.5% of respondents completed that question to indicate that they were either "unhappy" or "very unhappy", and that 63.5% of respondents said they were "very unhappy".

26. Concerned about the adequacy of the consultation and engagement, the Claimant coordinated a petition to the Council asking for it to re-evaluate the proposals. The petition garnered more than 1,000 signatures. The Council declined to re-evaluate the proposals at that stage. Amongst other things it noted that a forthcoming period of statutory consultation on the proposals would afford respondents the opportunity to make further comment.

27. On 6th December 2023 the Rosendale Road (Central) Residents' Association ("RRCRA") wrote to the Council's Chief Executive expressing its own concerns about the adequacy of the consultation undertaken ("the 6th December letter"). RRCRA is a member of the Claimant organisation. It wrote on its own behalf and on behalf of three named businesses (described in the letter as "the Businesses") who are also members of the Claimant organisation. The letter set out a series of detailed criticisms of the consultation undertaken by the Council, introduced by the following paragraphs:

> "5. RRCRA and the Businesses are extremely concerned both by Lambeth's procedural approach to advancing its proposals for the West Dulwich Street Improvements, and by the substance of what is proposed. RRCRA and the Businesses wish to make clear to Lambeth their strong objection to the West Dulwich Street Improvements and that they intend to take legal action in the event that Lambeth proceeds to make an unlawful decision in relation to them.
>
> 6. To this end RRCRA and the Businesses have taken advice from counsel specialising in matters like the West Dulwich Street Improvements and accordingly have identified what appear to be a number of serious legal errors in Lambeth's approach to date"

28. The overarching complaint was that the consultation undertaken to date by the Council did not comply with the well-known "Gunning principles" on what is required for a consultation to be lawful. The letter identified the following particular complaints:

a) The consultation questions were framed in such a way that respondents could not indicate that they objected to the proposals in principle, only to indicate how they thought the proposals should be implemented;

b) The consultation documents did not include relevant background information to inform responses, for example baseline traffic data for the area;

c) It was not clear that the URN recorded on the envelopes enclosing consultation documents would be needed in order to respond to the consultation, hence a number of recipients discarded them and realised too late that they were needed to submit their response; and

d) No information was included in the consultation documents about the anticipated impacts of the West Dulwich Street Improvement proposals

29. The letter concluded with the following words:

> "We also ask that RRCRA and the Businesses are fully consulted on any future proposals relating to the West Dulwich Street Improvements, in accordance with the Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996 and the Gunning criteria, before even any temporary proposals are introduced pursuant to an experimental traffic order made under section 9 of the 1984 Act"

30. On 16th February 2024 officers of the Council published a delegated report ("OR1") which summarised the outcome of the non-statutory consultation and other evidence related to the proposals and recommended that the Council proceed to the next stage with the Street Improvements Scheme and undertake statutory consultation.

31. Having seen OR1, RRCRA wrote again to the Council expressing concerns that the comments in the 6th December letter appeared not to have been taken into account, and asking the Council to defer a decision on the proposals.

32. The Council responded on 23rd February 2024. Its response confirmed that the 6th December letter had not been taken into account. The response went on to state:

> "It has been approved that an amended scheme to that initially consulted on will be introduced on a trial basis using an experimental traffic order. The first six months of this trial is a statutory consultation period by which members of the public may submit comments about the operation of the street improvements. It is anticipated that the trial will be introduced in Summer 2024 and you will be contacted closer to the time with more information on the scheme and how to submit your comments"

33. On 26th February 2024 the Council, acting by its Assistant Director of Parking, Network Management and Fleet (Mr Pook) under delegated authority, took a "key decision" to approve the proposals in line with the recommendations in OR1. The decision gave authority to, amongst other things:

A) Approve the orders for implementing the West Dulwich Street Improvement scheme including traffic restrictions and waiting restrictions in the area bounded by the South Circular (A205), Norwood Road (A215), Croxted Road (A219) and Robson Road,

B) Commence statutory consultation on Experimental Traffic Management Orders for traffic and parking restrictions in the West Dulwich Street Improvements Scheme, and

C) Implement the proposed restrictions as a trial under an Experimental Traffic Management Order.

34. On 17th March 2024 the Department for Transport published draft statutory guidance entitled "Implementing low traffic neighbourhoods" ("the Guidance"). The Guidance was published pursuant to section 18 of the Traffic Management Act 2004 ("the 2004 Act"). It remains in draft.

35. On 11th April 2024 the Council did respond to RRCRA's letter of 6th December 2023. The response from Mr Pook informed the RRCRA that statutory consultation on the Street Improvements Scheme would take place "within the first 6 months of the trial".

36. Dissatisfied with the responses from the Council, the Claimant instructed solicitors to write a letter before claim to the Council. A letter was sent by BDB Pitmans on 3rd May 2024. It alleged unfair consultation by ignoring the RRCRA's 6th December letter before a delegated decision was taken, noted the publication of the Guidance in draft, and requested that the Council reconsider its decision in light of the Guidance. The letter included the following passages:

> "16. Again, what is required is an open-minded reconsideration of both the principle and the details of the matters covered by the Decision with reference to these newly published documents [i.e. the draft statutory guidance], rather than a self-serving assertion that the Council has complied with them …
>
> …
>
> 23. The Council is requested to undertake in writing that it will address the above issues the Claimant has identified and will not make an ETO unless and until it has done so. If the Council does not agree, please explain why not"

37. The Council responded to the letter before claim with its own letter dated 23rd May 2024. The letter from the Council's legal team stated as follows:

> "I am instructed my client is satisfied that there are no arguable grounds for judicial review at this stage; but that in the interests of avoiding litigation, my client undertake <u>before an ETO is made</u> to revisit the Decision (with an open mind) in the light of:
>
> (i) Your clients' 6 December 2023 letter;
>
> (ii) The guidance published by the DfT on 17 March 2024; and

(iii) Any responses that have been received to the statutory consultation.

I am instructed to emphasise that the statutory consultation will be of statutory consultees only i.e. not of members of the public.

Please confirm that the above undertaking satisfies your request and that your client will not bring a judicial review claim against the 26 February 2024 decision" (emphasis is as per the original)

38. On 5th June 2024 BDB Pitmans replied to this letter from the Council. The reply acknowledged that there was no requirement to consult with the public in general but it asserted that there was sufficient discretion in the relevant Regulations to allow the Council to consult with RRCRA, and it requested that this be done. The Council did not respond to this request.

39. Meanwhile statutory consultation on the proposed Experimental Traffic Orders began on 30th May 2024. It ended on 20th June.

40. During the statutory consultation, an online meeting took place between the Claimant and the Council on 3rd June 2024. The evidence states that the meeting lasted for 55 minutes, and that the Claimant took the opportunity both to express its particular concerns about the overall street improvements programme and to deliver a detailed, 53-page presentation document ("the 53-page presentation") outlining further those concerns. The 53-page presentation included 23 questions which the Claimant asked the Council to respond to. Council officers participating in the online meeting agreed to pass the presentation on to the relevant officers, to answer the questions, and to hold a follow-up meeting.

41. No follow-up meeting took place before the Orders were made on 6th August 2024, although one did place afterwards on 28th August.

42. On 23rd July 2024 a second officers' delegated report was published by the Council ("OR2").

43. The "Report Summary" at the front end of OR2 stated:

> "This report considers the responses to the consultation carried out with the statutory consultees on 30 May relating to the West Dulwich Street Improvement Experimental Traffic Order (ETO). The report also considers further pre-engagement community feedback from the Rosendale Road Central Residents Association, as well as new draft traffic management guidance for Low Traffic Neighbourhoods issued by the Department for Transport"

44. The Recommendations in OR2 were then set out in the following terms:

> "1. Having considered all responses received from statutory consultees in May 2024 and the Rosendale Road Central Resident's Association (RRCRA) (Appendix A) relating to the proposed West Dulwich Street Improvement scheme, as set out in the report, to authorise the making of the Experimental Traffic Management Orders under the provisions of sections 9, 10, 45, 49, 124 and Schedule 1 and Part

> IV of Schedule 9 of the Road Traffic Regulation Act 1984 for the implementation of highway changes to deliver the West Dulwich Street Improvement scheme as a trial.
>
> 2. Having considered the West Dulwich Street Improvement scheme in respect of the Department for Transport's draft traffic management guidance regarding the implementation of Low Traffic Neighbourhoods, published on 17 March 2024 to agree to the making of the Experimental Traffic Order [sic.] in recommendation 1"

45. A table in OR2 set out a list of the nine statutory consultees who had been consulted in the period between 30th May and 20th June 2024. Of these nine, six had not responded at all and the other three had responded to say that they had no issues with the proposals.

46. Below this table of statutory consultees, OR2 then noted the 6th December letter (a copy of which was appended at Appendix A to OR2). The Council's response to this representation was also attached in a separate Appendix B. Regarding the letter itself, the comment was made in the main body of OR2 that:

> "The issues raised have been fully considered as part of the decision making process and it is noted that the six month ETO statutory objection period will provide an opportunity to make representations on the trial scheme"

47. Appendix B, containing the Council's response to the 6th December letter, was much more detailed running to 12 pages and responding to what it identified as being thirteen separate issues raised by RRCRA in that letter. Of these, Issue 11 was summarised as "Lambeth has failed to conduct any analysis whatsoever of the socio-economic impacts of its proposals and has failed to take into account the adverse effects of the proposals on local businesses". The response included the following passage:

> "During the informal consultation period, thirty-six local businesses were invited to attend 1-2-1 with officers from the Transport Strategy team, Parking team, Community Street Design team and local ward Councillors. Seven businesses attended meetings, during which, their various needs were discussed, including parking, loading, staff journeys etc. Changes made as a result of these meetings include relocating the zebra crossing to provide additional parking outside the shops and relocating a loading bay to better suit the businesses.
>
> As a result of engagement with local businesses, the revised CPZ design provides a total of 17 free time limited spaces. The number of parking bays on Rosendale Road directly outside the shops doubled from 3 bays (in original proposals) to 6 bays (in revised proposals).
>
> Living Streets research shows that businesses benefit from infrastructure that supports walking, wheeling and cycling. Research shows that "Shoppers on foot can spend up to six times more than those who arrive by car".
>
> Equality Impact Assessments were conducted for the three projects, examining the socio-economic and broader demographic characteristics of the West Dulwich population. They are available as appendices to the decision report"

48. Issue 13 was identified as being the request that (amongst other things) RRCRA and local businesses be part of the statutory consultation before any experimental proposals were introduced. The response cross-referred to the detailed summary of the consultation that had been undertaken (and which formed the response to Issue 7) but it concluded with the following comments:

> "Lambeth Council prioritises collaboration and experimentation in the design of the borough's streets. Lambeth has fulfilled and surpassed its legal obligation in respect to consultation and has adhered to the Gunning principles.
>
> …
>
> It is regrettable that the RRCRA does not feel that the consultation undertaken has been satisfactory. Lambeth greatly values the feedback of Residents Associations, community groups and individuals. Feedback received during these informal consultation periods has been integral to developing current design proposals"

49. Another appendix to OR2 was the Council's Equalities Impact Assessment. It set out a series of questions which it then answered. One such question and answer was as follows:

> "Do you have any uncertainty about the impact of your proposal?
>
> No, but a minority of people who completed the survey were not in support of some part of this scheme, particularly the modal filter locations"

50. The Council's decision, taken by Mr Pook acting under delegated powers on 31st July 2024, was to make the Orders. They were made on 6th August 2024. The six-month statutory consultation upon them during the experimental phase – to which the Council had referred in its engagement with the Claimant – commenced on 19th August 2024 and ended on 20th February 2025.

The challenge

51. On behalf of the Claimant, BDB Pitmans sent a pre-action protocol letter on 27th August 2024 alleging that the Orders were unlawful and should be quashed.

52. The Council replied to the pre-action correspondence on 13th September 2024. It refuted each of the grounds of complaint raised on behalf of the Claimant and refused to revisit its decision to make the Orders. It also responded to a number of requests for information made in the BDB Pitmans letter.

53. The Claimant issued this claim on 17th September 2024. The claim is a statutory challenge brought under the 1984 Act, rather than a judicial review. As such there is no requirement for the permission of the court before the claim can proceed to a substantive hearing. The hearing before me was therefore the first occasion on which the court had considered the details of the claim.

The Relevant Law

54. Part 1 of the 1984 Act confers powers to make a traffic order for the purposes of regulating traffic using a road. Outside of Greater London they are referred to as "traffic regulation orders". Within Greater London they are referred to as "traffic management orders". The two are essentially the same, although because the subject-matter in this case is within Greater London I generally adopt the term traffic management order.

55. By section 6 of the 1984 Act, in Greater London the power to make a traffic management order is conferred on the relevant London Borough (for any road which is not controlled by either the Secretary of State for Transport or the Greater London Authority) in the following terms:

> "(1) The traffic authority for a road in Greater London may make an order under this section for controlling or regulating vehicular and other traffic (including pedestrians). Provision may, in particular, be made—
>
> (a) for any of the purposes, or with respect to any of the matters, mentioned in Schedule 1 to this Act, and
>
> (b) for any other purpose which is a purpose mentioned in any of paragraphs (a) to (g) of section 1(1) of this Act.
>
> …
>
> (3) Any order under this section may be made so as to apply—
>
> (a) to the whole area of a local authority, or to particular parts of that area, or to particular places or streets or parts of streets in that area;
>
> (b) throughout the day, or during particular periods;
>
> (c) on special occasions only, or at special times only;
>
> (d) to traffic of any class;
>
> (e) subject to such exceptions as may be specified in the order or determined in a manner provided for by it"

56. Section 9 of the 1984 Act allows for traffic management orders to be made on an experimental basis. Section 9 provides (so far as is relevant) as follows:

> "(1) The traffic authority for a road may, for the purposes of carrying out an experimental scheme of traffic control, make an order under this section (referred to in this Act as an "experimental traffic order") making any such provision—
>
> (a) as respects a road outside Greater London, as may be made by a traffic regulation order;

> (b) as respects a road in Greater London, as may be made by an order under section 6, 45, 46, 49, or 83(2) or by virtue of section 84(1)(a) of this Act.
>
> …
>
> (3) An experimental traffic order shall not continue in force for longer than 18 months"

57. Schedule 9 paragraph 35 of the 1984 Act makes provision for legal challenges to a traffic management order. The basis of a legal challenge under paragraph 35 is essentially the same as a challenge by way of judicial review (Anand v Royal Borough of Kensington and Chelsea [2019] EWHC 2964 (Admin), per Lang J at [45]).

58. Section 16 of the Traffic Management Act 2004 ("the 2004 Act") provides that:

> "(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)"

59. Section 18(1) of the 2004 Act provides that the Secretary of State for Transport may publish guidance to network management authorities (that is to say, in this case, the Council) "about the techniques of network management or any other matter relating to the performance of the duties imposed by sections 16 and 17". Section 18(2) provides that the network management authority must have regard to any such guidance.

60. The Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996 governs the procedures to be followed by a traffic authority proposing to make a traffic management order. Regulation 6 relates to consultation requirements and provides as follows:

> "An order making authority shall, before making an order in a case specified in column (2) of an item in the table below, consult the persons specified in column (3) of the item."

The table below regulation 6(1) then sets out a list of required consultees by reference to different types of traffic management order.

61. The principles underlying a lawful consultation – the "Gunning" principles - are derived from R v London Borough of Brent, ex p Gunning [1985] 84 LGR 168 and were endorsed by the Supreme Court in R (Moseley) v Haringey London Borough Council [2014] 1 WLR 3947. Per Lord Wilson JSC at [25]:

> "In R v Brent London Borough Council, Ex p Gunning (1985) 84 LGR 168 Hodgson J quashed Brent's decision to close two schools on the ground that the manner of its prior consultation, particularly with the parents, had been unlawful. He said, at p 189:
>
> > "Mr Sedley submits that these basic requirements are essential if the consultation process is to have a sensible content. First, that consultation must be at a time when proposals are still at a formative stage. Second, that the proposer must give sufficient reasons for any proposal to permit of intelligent consideration and response. Third … that adequate time must be given for consideration and response and, finally, fourth, that the product of consultation must be conscientiously taken into account in finalising any statutory proposals"
>
> Clearly Hodgson J accepted Mr Stephen Sedley QC's submission. It is hard to see how any of his four suggested requirements could be rejected or indeed improved"

62. Guidance on the standard applied to reasons for a decision include (per Lord Brown of Eaton-Under-Heywood, South Buckinghamshire District Council v Porter (No 2) [2004] 1 WLR 1953):

> "The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the "principal important controversial issues", disclosing how any issue of law or fact was resolved"

63. I turn now to consider the submissions of the parties on the three grounds. I deal with Grounds 1 and 3 together for the reasons I have given above.

Grounds 1 and 3

Claimant's submissions

64. Mr Streeten submitted that three different complaints were bound up within Grounds 1 and 3:

    a) That consultation on the Orders was not carried out fairly,

b) That there was a breach of the statutory requirements in regulation 6 of the 1996 Regulations ("Regulation 6"), and

c) That the results of the consultation were not conscientiously taken into account by the Council prior to making its decision on the Orders

65. Mr Streeten added further that even consultation which was carried out voluntarily must be fair and must accord with the Gunning principles. As authority for this proposition he cited the judgment of Laing LJ in R (Eveleigh) v Secretary of State for Work and Pensions [2023] 1 WLR 3599.

66. Mr Streeten also submitted that what is "fair" in any given case is necessarily fact-sensitive. He accepted, referring to Clifford v Secretary of State for Work and Pensions [2025] EWHC 58 (Admin), that demonstrating unfairness at a level which amounts to unlawfulness is a "substantial hurdle" (per Calver J at [22]), but he submitted that this was one such case.

67. As regards Regulation 6, Mr Streeten submitted that use of the word "shall" in regulation 6(1) confirmed that the requirements for consultation which it then set out were mandatory. He drew attention in particular to line 7 in the Table of required consultees, where the requirement in "All cases" of traffic management orders was to consult with a broader category of "such other organisations" as it thought appropriate. He submitted that any fair approach required consultation with the Claimant under this heading, and that this had not been done adequately.

68. The Claimant's complaints about the adequacy of consultation included the limits to the geographic area consulted. With reference to the various plans in evidence Mr Streeten submitted that some areas which would clearly be affected by the Orders – for example Park Hall Road, the east side of Rosendale Road, and Norwood Road - were excluded from the ambit of targeted consultation.

69. There is also a factual dispute between the parties about who was actually consulted. On the one hand the witness statement of Mr Phillips for the Council names eleven businesses to whom letters were said to have been distributed, but on the other hand the Claimant has produced witness statements from three of those eleven all declaring that they were not contacted. Mr Streeten noted that the witness statement of Mr Phillips does not append copies of the letters said to have been sent; only a sample letter with the address redacted and a copy of a written instruction to the mailing company to print envelopes and their contents and to post them but with none of the addresses shown in that instruction. Mr Streeten emphasised that even though this witness statement was filed by Mr Phillips after the exchange of skeleton arguments, from which the particular complaint about alleged failings in the consultation will have been seen, it is telling that the evidence still omits details critical to verifying Mr Phillips's account of events.

70. Once non-statutory consultation commenced in April 2023, Mr Streeten submitted that there were similar grounds for concern about the adequacy of consultation. Again the Council's witness evidence shows the area of consultation and the businesses said to have been consulted. Mr Streeten highlighted what he characterised as an arbitrary decision to consult the east side of Norwood Road but not the west side. He cast doubt on the explanations offered by Mr Phillips, firstly that the Council wanted by this stage to be "more targeted" in its consultation (but Mr Streeten noted the fact that Park Hall

Road was still consulted even though it is further away from the affected area than is the west side of Norwood Road), and secondly that the area of consultation was defined by the boundary of the proposals, hence the east side of Norwood Road was inside and therefore included but the west side was outside and excluded (however, Mr Streeten suggested that proposals affecting Norwood Road would affect the east side and the west side equally).

71. A further target of Mr Streeten's criticism was the event hosted at West Norwood library. Some details of this are set out for the Council in Mr Phillips's witness statement. Mr Phillips was not present personally, but – noted Mr Streeten – there was a good deal of consistency between the two parties' accounts of what transpired. The Claimant's complaints focus on the following aspects of the event and its aftermath:

A) That because of the officers' decision to remove themselves from the event and terminate it early, not everybody who visited in anticipation of being able to comment was able to;

B) That despite the claim from officers that all representations by those present were heard and considered, the written record from the event was sparse and could not possibly have captured everything; and

C) The summary report on consultation appended to OR1 was so selective in its treatment of the library event as to be positively misleading

72. Moreover, submitted Mr Streeten, the data on levels of satisfaction with the proposals presented in the summary report on consultation appended to OR1 did record the 63.5% of respondents who were "very unhappy" and the 4% who were "unhappy" but no analysis accompanied the bare statistical representation. The same was true of the Equality Impact Assessment which was appended to OR2. Moreover both OR1 and OR2 left the data uncommented upon and appeared to ignore what Mr Streeten submitted was the significance of these levels of public dissatisfaction with the proposals.

73. Turning next to the statutory consultation, the Agreed Statement of Facts records that consultation was confined to the limited statutory list including the emergency services, the Road Haulage Association, and representatives of London taxis and private hire vehicles. Even though the Claimant had, in the words of Mr Streeten, been "desperately" trying to engage with the Council to share its views on the consultation, it had not been consulted.

74. Mr Fowles (a representative of the Claimant) said that he had tried over a period of months to engage with Councillor Chowdhury, the Council's Deputy Leader and Cabinet Member for the portfolio of responsibilities that includes traffic and transport. The deadlock was only broken when Mr Fowles attended Councillor Chowdhury's ward surgery in May 2024 to discuss the proposals with her. At that meeting Cllr Chowdhury is said to have told Mr Fowles that she recalls from historic correspondence his having expressed "vehemently anti-LTN views" and that this is why she had declined to engage with him. This, submits Mr Streeten, is evidence that the Council did not engage conscientiously with the Claimant's representations but rather had relegated their importance owing to a perception that the Claimant would be resolutely opposed to any such type of proposal.

75. Mr Streeten also submits that the Council's approach to the consultation responses was to consider how they should shape the implementation of the proposals, treating the more fundamental question of whether they should be implemented at all as beyond the scope of consideration.

76. As to Regulation 6, Mr Streeten submitted that the Council erred in law in not consulting with the Claimant as an organisation representing persons likely to be affected by the Orders. Whilst accepting that Regulation 6 and the table of consultees imported an element of discretion, Mr Streeten submitted that the reasoned representations submitted by such a group should be taken into account when deciding how to exercise that discretion (see Stannard v Crown Prosecution Service [2019] 1 WLR 3229, per Hickinbottom LJ at [45]). Mr Streeten added that this flawed approach to the exercise of discretion was compounded by the fact that the Guidance also states that consultation on an ETO "should include … groups representing local businesses".

Council's submissions

77. For the Council Ms Sargent noted that, whilst engagement and consultation on the proposals had taken place over a considerable period of time, only the period between 30th May and 20th June 2024 constituted statutory consultation.

78. Referring to the Claimant's reliance on the case of Clifford, Ms Sargent sought to emphasise three points: (i) that in judging lawfulness, the consultation process as a whole needed to be reviewed, not just individual elements of it; (ii) the burden of proof that there was unlawfulness rests with the Claimant, and (iii) the hurdle to be cleared by the Claimant is "substantial", amounting to the need for "a factual finding that something has gone clearly and radically wrong" (per Sullivan LJ in R (JL and AT Baird) v Environment Agency [2011] EWHC 939 (Admin).

79. In responding to criticisms about the geographic area selected for the Council's engagement Ms Sargent denied that it had been selected arbitrarily, rather that it had been selected based on the Council's assessment of the likely area of impact of the Orders. The scope of the proposals had changed over time. This is the reason why in the initial 2022 'broad brush' engagement exercise both sides of Norwood Road were contacted but by April 2023 the proposals had been refined so that parking changes in the proposed controlled parking zone would apply only to the eastern side of Norwood Road. She added that businesses on both sides of the road could be expected to be aware of the consultation, not least because of the lamp post wraps displayed in the area.

80. As to the evidentiary dispute about which businesses were consulted in the 2022 engagement, Ms Sargent maintained that the Council had shown that it did consult all eleven businesses referred to in the 2022 engagement report. She noted that the three businesses who all denied being contacted in 2022 had themselves struggled to recall later events from 2023, and hence – submitted Ms Sargent – this may reasonably cast doubt on the reliability of their recollections from earlier than that in 2022.

81. As to the suggested error in recording URNs only on the envelopes circulating consultation material (thus depriving recipients of the ability to input their responses through the Commonplace online platform), Ms Sargent submitted that any recipient faced with that difficulty could always have contacted the Council to notify them and

ask for an opportunity to engage. She added that (a) no party who requested further engagement was denied it, and (b) the lamp post notices recorded that details of the proposals could be viewed at the library at any time.

82. As to the consultation event at West Norwood Library, Ms Sargent acknowledged that it was a difficult event. There was a large degree of agreement between the parties about the levels of hostility being displayed towards the Council representatives and of attempts to deal with it by balancing the need to engage with the need to preserve the safety and well-being of the Council representatives in attendance. Ms Sargent submitted that it was not correct to say that no feedback of comments from that event was recorded; a log was kept by one of the officers in attendance entering feedback into her laptop in real time. As to how the library event was summarised in OR1, Ms Sargent submitted that nothing which was said there was inaccurate and that the Claimant's criticisms are unwarranted.

83. As to the criticism about how the overall sentiments of respondents to the consultation was presented, Ms Sargent characterised them as unduly nit-picking. Read fairly and as a whole, she submitted, the percentage weighting between those happy and unhappy with the proposals was not concealed, and what the reports sought to convey was the fact that some elements of the proposals were viewed more favourably than others.

84. Responding to the complaint that the 53-page presentation, shared as part of the 3rd June 2024 online meeting, was not then shared with officers before a decision was made on the ETOs as had been promised, Ms Sargent pointed to an email exhibited to Mr Phillips's second witness statement showing that Mr Deacon (Cabinet Support Officer) had shared it with Ms Boustred (Project Sponsor) and Ms Stanyon (Senior Parking Engineer) from the Council's Highways Department, and that this was consistent with what Mr Fowles had been told by other officers in emails which he himself had exhibited to witness evidence.

85. Ms Sargent submitted that the evidence does not support an allegation that the Council had closed its mind to the principle of the Orders and was interested only in how they were to be implemented. She pointed in particular to officers' detailed response to the RRCRA's representations, where Issue 2 had raised this point specifically, as evidence that the Council did not regard implementation of the Orders in some form as a foregone conclusion.

86. Finally in relation to Regulation 6, Ms Sargent relied upon the broad discretion afforded to the Council in its selection of representative consultees such as the Claimant.

87. Finally, submitted Ms Sargent, it is in the nature of an ETO that further statutory consultation was being undertaken for the 6 months of its experimental period, between 19th August 2024 and 20th February 2025. A further decision on what to do will be taken by the Council based on any representations that have been made. That decision might be to continue with the traffic management measures on a permanent basis or to abandon them. If nothing is done then the default position is that the Orders will continue as temporary orders for the maximum duration permitted under the 1984 Act – 18 months – and will then automatically expire on 20th February 2026.

Discussion and conclusions

88. As a preliminary point it is necessary for me to consider the Claimant's objections to admission of the second witness statement of Mr Phillips for the Council. Although the respective Counsels' submissions on this point were made in the context of Ground 2 there are, as the following discussion reveals, instances in which Ms Sargent seeks to deploy the witness evidence in relation to Grounds 1 and 3.

89. The starting point is to note that the court should be naturally cautious of attempts to introduce through witness evidence *ex post facto* reasoning to defend against a public law challenge. Self-evidently the witness evidence was not in existence at the time the impugned decision was taken, and hence it cannot have influenced how the decision was taken. Nevertheless there is no absolute bar to the introduction of post-decision witness evidence.

90. The courts have given guidance on the approach to be taken to an application to admit such witness evidence. I have derived most assistance from the judgment of the Court of Appeal in R (United Trade Action Group) v Transport for London [2022] RTR 2 (commonly referred to by the short-hand "UTAG"), to which both Counsel referred me. It is unnecessary for me to set out the facts of that case, but at [125] of the judgment of the court seven points were established, of which I emphasise the first, third and sixth:

> "125. The law governing the admissibility of "ex post facto" evidence in proceedings for judicial review is already mature. There is an ample body of authority to indicate the correct approach. Without seeking to be exhaustive, we can identify these seven points in the light of the relevant cases:
>
> (1) The court will always be cautious in exercising its discretion to admit evidence that has come into existence after the decision under review was made, as a means of elucidating, correcting or adding to the contemporaneous reasons for it (see the judgment of Hutchinson LJ, with whom Nourse and Thorpe LJJ agreed, in R. v Westminster City Council Ex p. Ermakov [1996] 2 All E.R. 302, at [315] and [316]). The basis for this principle is obvious. Documents or correspondence or other explanatory evidence generated after the event cannot have played any part in the making of the challenged decision (see the judgment of Coulson LJ, with whom Lewison and David Richards LJJ agreed, in Kenyon v Secretary of State for Housing, Communities and Local Government [2020] EWCA Civ 302 at [27]–[30]). The same may be said of the professional views of officers who were not involved in advising the decision-making body when it took its decision, or of those who were, but seek later to add to the advice they actually gave. The court must avoid being influenced by evidence that has emerged after the event, possibly when proceedings have been foreshadowed or issued. So the need for caution is plain.
>
> …
>
> (3) Evidence directly in conflict with the contemporaneous record of the decision-making will not generally be admitted (see the judgment of Jackson LJ, with whom Rimer and Lewison LJJ agreed, in R. (Lanner Parish Council) v Cornwall Council [2013] EWCA Civ 1290 at [64]). But in the absence of such contradiction, there is no reason in principle to prevent "ex post facto" evidence being admitted if its function would be "elucidation not fundamental alteration, confirmation not

> contradiction" (see the judgment of Hutchinson LJ in Ermakov, at 315h–j). That is the touchstone. As Elias J, as he then was, said in R. (Hereford Waste Watchers Ltd) v Herefordshire Council [2005] Env. L.R. 29, at [46] , it is "proper to allow further explanation in an appropriate case", if the decision-maker's reasoning lacks the "clarity or detail which is desirable".
>
> …
>
> (6) When the admissibility of evidence is in dispute in a claim for judicial review, the court's approach should be realistic, and not overly exacting. Rarely will it be necessary for a judge to carry out a minute review of every paragraph and sentence of a witness statement, paring the statement down to an admissible minimum and formally excluding the rest, or admitting evidence for some grounds of the claim and ruling it out for others. The court should not be drawn too readily into an exercise of that kind. It finds no support in the case law. Excising passages of text from an otherwise admissible witness statement may be a somewhat artificial exercise to perform, and it may serve no useful purpose. It may make no difference to the judge's consideration of the issues in the claim. Or it may risk the loss of valuable context or clarification"

91. With respect to (3) from the above extract, reviewing Mr Phillips's witness evidence it is clear that parts of it are "elucidation not fundamental alteration, confirmation not contradiction" and parts of it are more than that. But equally, by and large the parts which Ms Sargent prayed in aid as part of her submissions were confined to points of "elucidation" rather than impermissible commentary or gloss attempted to be placed on the underlying facts. I have no difficulty in accepting the validity of that evidence, and where I have referred to it below it may be taken that I have characterised those parts I have referred to as merely "elucidation … [and] … confirmation". It is unnecessary for me to rule on the admissibility of the remainder of the witness statement because, admissible or not, my conclusions have not been informed by it. I consider that the approach I have taken accords with the guidance in (6) of the extract from UTAG.

92. I turn now to consider Grounds 1 and 3.

93. I identify in the Claimant's submissions on these grounds two species of complaint: procedural and substantive. Procedural complaints broadly relate to the manner in which the consultation was conducted. Substantive complaints relate more to how the product of the consultation was considered and assessed by officers of the Council when taking the delegated decisions.

94. I deal firstly with the procedural complaints.

95. Here it is necessary to consider both any applicable statutory requirements and the general common law principles underpinning a fair consultation.

96. The consultation that was undertaken in the lead up to the making of the Orders had multiple different elements over a long period of time. Some of the consultation was statutory, some non-statutory. Sensibly Ms Sargent had no quarrel with Mr Streeten's submission that, whether mandatory or voluntary, the common law requirements for a fair consultation still had to be observed. Authority for that proposition is the judgment

of Laing LJ in R (Eveleigh) v Secretary of State for Work and Pensions [2023] 1 WLR 3599 at [92]:

> "Finally, if it is to be assumed that a public authority has freely decided to consult on the sort of decision to which the Gunning criteria are capable of applying, I also find it difficult to see, whether the test is fairness, or rationality, why the Gunning criteria, or an equivalent, should not apply to that exercise"

97. The parties are agreed on the way in which the court should approach the lawfulness of consultation in a case like this. Both referred me to the judgment of Calver J in R (Clifford) v Secretary of State for Work and Pensions [2025] EWHC 58 (Admin), and in particular to [21]-[24]:

> "21. Whether the consultation process is fair is a fact-sensitive question that depends upon all the circumstances of the particular case looked at as a whole, and without drawing artificial distinctions between particular stages of the whole process. It is for the court to decide whether a fair procedure was followed: its function is not merely to review the reasonableness of the decision-maker's judgment of what fairness required.
>
> 22. If it is alleged that a consultation process is unfair, it is for the claimant to show that the unfairness was such as to render the consultation process unlawful. Especially with the benefit of hindsight, it may well be possible to identify how a consultation process might have been improved; but, even if it was less than ideal, it will become unlawful only if what has occurred makes it unfair as a matter of law. That is a substantial hurdle: in R (J L and A T Baird) v Environment Agency [2011] EWHC 939 (Admin), Sullivan LJ said that "in reality a conclusion that a consultation process has been so unfair as to be unlawful is likely to be based on a factual finding that something has gone clearly and radically wrong" at [51]; see also R (Royal Brompton and Harefield NHS Foundation Trust) v Joint Committee of Primary Care Trusts [2012] EWCA Civ 472 at [13] per Arden LJ at [16].
>
> 23. In R (Moseley) v Haringey London Borough Council [2014] UKSC 56, [2014] 1 WLR 3947, Lord Wilson JSC identified the purposes and requirements of a fair consultation at [24]-[26]:
>
> > "24. Fairness is a protean concept, not susceptible of much generalised enlargement. But its requirements in this context must be linked to the purposes of consultation. In R (Osborn) v Parole Board [2014] 1 AC 1115, this court addressed the common law duty of procedural fairness in the determination of a person's legal rights. Nevertheless the first two of the purposes of procedural fairness in that somewhat different context, identified by Lord Reed JSC in paras 67 and 68 of his judgment, equally underlie the requirement that a consultation should be fair. First, the requirement "is liable to result in better decisions, by ensuring that the decision-maker receives all relevant information and that it is properly tested": para 67. Second, it avoids "the sense of injustice which the person who is the subject of the decision will otherwise feel": para 68. Such are two valuable practical consequences of fair consultation. But underlying it is also a third purpose, reflective of the democratic principle at the heart of our society.

> 25. … [the following] basic requirements are essential if the consultation process is to have a sensible content. First, that consultation must be at a time when proposals are still at a formative stage. Second, that the proposer must give sufficient reasons for any proposal to permit of intelligent consideration and response. Third … that adequate time must be given for consideration and response and, finally, fourth, that the product of consultation must be conscientiously taken into account in finalising any statutory proposals.
>
> 26. Two further general points emerge from the authorities. First, the degree of specificity with which, in fairness, the public authority should conduct its consultation exercise may be influenced by the identity of those whom it is consulting. Thus, for example, local authorities who were consulted about the Government's proposed designation of Stevenage as a "new town" (Fletcher v Minister of Town and Country Planning [1947] 2 All ER 496, 501) would be likely to be able to respond satisfactorily to a presentation of less specificity than would members of the public, particularly perhaps the economically disadvantaged. Second, in the words of Simon Brown LJ in Ex p Baker [1995] 1 All ER 73, 91 , "the demands of fairness are likely to be somewhat higher when an authority contemplates depriving someone of an existing benefit or advantage than when the claimant is a bare applicant for a future benefit."
>
> 24. It is *sufficient* to show that the unfairness affects only a group of the persons affected by the consultation: see R (Medway Council) v Secretary of State for the Environment [2002] EWCA 2516 (Admin). Unfairness to the general body of consultees is not required: R (Royal Brompton and Harefield NHS Foundation Trust) v Joint Committee of Primary Care Trusts [2012] EWCA Civ 472 at [14]"

98. Unsurprisingly Ms Sargent sought to emphasise the height of the hurdle to be cleared by the Claimant here. Mr Streeten did not shrink from the challenge but maintained that it had been overcome on the facts of this case.

99. A consultation is, of course, often made up of several individual set pieces (of which there were many here). No one element is likely to be determinative. Failings in one element could be remedied by later elements. In my judgement, when ruling on the lawfulness of the consultation it is necessary to take a step back so that the whole consultation process is in view. What the court is trying to detect is whether something has gone "clearly and radically wrong" with the process as a whole (per Sullivan LJ in JL & AT Baird, cited with approval by Calver at [22] of Clifford). That hurdle is undeniably a high one.

100. I begin by looking at elements of the consultation process which attracted particular complaint from the Claimant:

a) The failure to indicate the importance of the URNs on the envelopes sending early consultation material was unfortunate. But whilst I can appreciate that recipients may have discarded the envelopes before realising that they needed them to submit consultation responses, it does not follow that all such recipients would have done so irretrievably. Opening the envelope with the intention of reviewing the material straight away, for example, would just have required the

recipient to fish the envelope out of the bin again to find the URN. I accept that there will have been others who opened the envelope with the intention of reviewing the contents at leisure, by which time the envelope may well not have been retrievable, but for those recipients there was (as Ms Sargent submitted) the ability to ask the Council for help and other media by which consultation views could be conveyed;

b) Against the complaint that the geographic boundaries for targeted consultation were selected arbitrarily, it must be remembered that the consultation was still advertised by physical notices posted in the vicinity of the affected area. Moreover there were plenty of fora through which word-of-mouth could have warned those at excluded addresses "Have you seen this? I think you may want to respond";

c) As to whom was actually consulted by letter there remains a factual dispute between the parties. This is an area covered by Mr Phillips's second witness statement. However, properly construed, Mr Philip's evidence can say no more than that it was the Council's intention to consult the businesses he refers to and that instructions were given to a third party contractor to deliver letters to those businesses. That evidence is not irreconcilable with the sworn evidence from some of the businesses that they never received the material. Mr Phillips's evidence does not say – nor could it sensibly attempt to – that the consultation letters did come to the attention of all the businesses on his list of thirty six addresses. Doing the best I can with the evidence before me, my finding of fact is that some of the businesses did not receive the letters that Mr Phillips asserts were sent to them. Something clearly went wrong in between the Council drawing up its list of addresses and instructing delivery of the letters and the actual delivery. In reaching this conclusion I do not infer any bad faith on the part of Mr Phillips in his evidence. I have no doubt that the Council intended to deliver the letters but that, for reasons which I cannot discern, there was a failure to deliver at least some of them;

d) Some time was spent by Mr Streeten criticising the conduct of the library event. Plainly it was a difficult situation for the Council's officers to find themselves in. Feelings were evidently running high, and the general sense of hostility together with the volume of people in attendance wanting to express their views meant that the event was not as effective as was intended. The fact that officers withdrew all together at lunchtime leaving the session unattended may have meant that attendees turning up during the lunch break will have been deprived of the chance to express their views there and then. But the evidence does not suggest that there were people who had relied upon the library event as their only opportunity to be able to express their views. In addition, whilst the Claimant criticises officers for not having been able to take detailed notes of the comments being made to them, it is not suggested by the Council that a verbatim note was taken or was intended to be taken. Instead, officers present took a manual note of the gist of the comments being made, recording them in short-hand before inputting them into a laptop. The details logged were brief but they convey an impression of the strength of feeling against the proposals. In consultation events that are well attended it is rarely possible to do much more than that even when there is no atmosphere of hostility;

e) Where I am less sympathetic to the Council is with how the library event was reported in the delegated reports. What OR1 recorded was as follows:

> "A face-to-face drop-in session at West Norwood Library was held on Saturday 22 April 2023 between 10am-4pm. Staffed by officers from all three project teams it gave the local community an opportunity to look at the proposals in detail and ask any further questions"

Ms Sargent submits that nothing which is said there is factually inaccurate. I accept that. But the passage is a masterclass in selective partial reporting. It is what it does not say that renders the reporting of the event misleading;

f) Criticism is also levelled at the way the figure of 67.5% dissatisfaction with the proposals was reported. Mr Streeten complains that the pie chart revealing this data was reproduced without comment in OR1. I see little in this criticism. The figures speak for themselves and it would be for the reader to reach their own conclusion. The more difficult area for the Council is the evidence from Mr Phillips's second witness statement about what the statistics purport to show. Ms Sargent submitted, based on Mr Phillips's witness evidence, that the figure did not express a 67.5% dissatisfaction with the proposals as a whole but rather with the element of the proposals upon which the respondent was commenting at the time, and that the questionnaire was set up in this way. That may be so, but what remains misleading even with that explanation is the question and answer in the Equalities Impact Assessment (appended to OR2) which stated that "a minority of people who completed the survey were not in support of some part of this scheme …". Accepting at face value Mr Phillips's explanation of what the data shows, it remains the case that a majority of people were clearly not in support of part of the scheme;

g) I have described above the attempts by the Claimant's representatives to meet with Councillor Chowdhury. Eventually Mr Fowles was able to meet with her by turning up at one of her ward surgeries. There is a dispute as to whether Councillor Chowdhury actually said that she had declined to engage with the Claimant owing to the "vehemently anti-LTN views" expressed by members of the group in the past. Mr Fowles is clear that she did say this, Councillor Chowdhury herself denies it. I consider it unnecessary to resolve this factual dispute because undeniably Councillor Chowdhury did then engage with the group, participating in an online meeting with them on 3rd June 2024 along with Councillor Cowell (without officers present) and receiving the group's 53-page presentation objecting to the Orders. The Claimant's case is that it was agreed during the remote meeting that the presentation would be passed onto the relevant highway officers and that they would consider it, but - as the correspondence appended to Mr Phillips's witness statement records - the 53-page presentation was indeed circulated to other officers after the meeting at which it was tabled. It is also unnecessary to resolve whether the comment constitutes evidence of a predisposition against the objections being made by the Claimant because Councillor Chowdhury, although being the Council member with responsibility for the highway portfolio, was not the ultimate decision-maker on the Orders. After the June remote meeting with the Councillors, officers of the Council did agree to a further 25-minute remote

meeting with the Claimant in August 2024. The evidence of Mr Fowles for the Claimant is that at that meeting the participating officers confirmed that they had not seen the 53-page presentation shared with Councillor Chowdhury;

h) Finally complaint is made that the consultation questions unfairly shepherded respondents so that they could only comment on how the proposals should be implemented, not on whether they should be. It is true that many of the questions required respondents to accept the premise of the question when responding. However, as Ms Sargent submitted, there were still some opportunities to enter free-text answers in which general opposition could be expressed. In addition it is plain that responding to the consultation form was not the only opportunity afforded to objectors to express their opposition to the proposals. Reference has been made above to the petition against the Orders procured by the Claimant, and to the detailed 53-page submission submitted on the Claimant's behalf.

101. When it comes to the statutory part of the consultation process an extra layer of argument is added. That relates to Regulation 6 and whether the Council's statutory consultation complied with it.

102. As I have noted above, Regulation 6 specifies a list of organisations whom the Council must consult when proposing traffic management measures like the Orders. In the case of orders of this nature category 7 consultees include:

> "(c) Such other organisations (if any) representing persons likely to be affected by any provision in the order as the order making authority thinks it appropriate to consult".

Mr Streeten submitted that the Claimant (or at least the RRCRA) should have been consulted within this category.

103. It is clear from the language used that category 7(c) is discretionary. Nothing within the wording of the Regulations directs how that discretion is to be exercised (although – as will be seen from a discussion of Ground 2 below – there is content of relevance in the Guidance).

104. The foundation of the Claimant's complaint here is two-fold: that the Council did not properly engage with the question of whether to consult the Claimant/RRCRA, and that, in view of the circumstances as a whole, if it had done so it should have concluded that statutory consultation should have been extended in that way.

105. As to the first complaint, there is evidence that the Council consulted with its narrow standard list and that (upon enquiry) comment was made that this is believed to be what all London Boroughs do, and it is common ground that the Council did not consider consulting bodies other than those it usually consults. But this agreed fact may reveal little more than that the Council rarely finds a compelling reason to add others to the standard list.

106. In short, I see nothing unlawful in the decision of the Council to conduct statutory consultation without including the Claimant or the RRCRA in it. The discretion

conferred on the Council about whether to add any other organisation to the specific statutory list is broad. This much was conceded by the Claimant's lawyers in correspondence with the Council in June 2024, where they stated:

> "… we do believe that the Regulations give the Council a wide discretion as to who it does in fact consult and so we reiterate the request in the 6 December letter that the [RRCRA] be included as a consultee within the statutory consultation …"

107. That recognition cuts both ways, of course, in that the same "wide discretion" gives the Council significant scope to conclude that the RRCRA should not be consulted. Something truly compelling would need to be shown before the failure to do so could be considered unlawful. The Claimant does not come close to doing so.

108. As to the second complaint, it is clear from its long history of engagement that the Claimant was a prominent commentator on the proposals. But that of itself does not compel the exercise of a broad discretion to include them in statutory consultation. The Council may have been content that the Claimant had provided, and would continue to provide, its views on the proposals irrespective of whether it was included in the statutory consultation (and by that stage the Council had, for example, given a commitment to delay a decision and to reconsider it in light of the 6th December letter so the Claimant's status as a consultee whose views should be given weight was already established). The 53-page presentation was comprehensive. It would be reasonable for the Council to have concluded that it had already been furnished with the views from the Claimant which statutory consultation would otherwise have procured.

109. Drawing together the strands from the first theme – the procedural complaint – I conclude as follows.

110. The court must always be wary of the fact that it is approaching its appraisal of the consultation exercise as a whole with the benefit of hindsight, and that the overall task is to appraise whether what was done was legally sufficient, not whether it could have been improved upon. That much is confirmed by the succinct guidance of Calver J in Clifford at [22], which I have referred to above but which bears repeating:

> "Especially with the benefit of hindsight, it may well be possible to identify how a consultation process might have been improved; but, even if it was less than ideal, it will become unlawful only if what has occurred makes it unfair as a matter of law. That is a substantial hurdle"

111. Some of the elements of consultation could undoubtedly have been improved upon. The shortcomings I have identified range from the inconvenient (e.g printing of the URNs on envelopes only) through to the more significant (e.g. errors in the hand-delivery of some printed material). But the question always is whether something has gone so "clearly and radically wrong" as to render the consultation process unlawful. This asks a question about the overall impression left by the consultation when viewed as a whole. Was it so seriously deficient as to clear the high hurdle applicable to it? In my judgement the answer is clearly not.

112. I turn secondly to the substantive complaint. This relates to whether and how the Council considered the product of its engagement when reaching a decision on the Orders.

113. Determining the substantive complaints involves a more conventional public law assessment of Wednesbury rationality applied to the particular circumstances and the evidence.

114. I use the broad term "engagement" deliberately to signal that what must be considered by the Council is more than just the outcome of the formal consultation events. This view is supported by the case of Stannard v Crown Prosecution Service [2019] 1 WLR 3229, to which Mr Streeten referred in his submissions. The facts of Stannard are not at all comparable with those in the present case but I accept that the guidance offered by Hickinbottom LJ, at [45] of his judgment, would certainly apply to the present fact pattern as well. He said:

> "If an affected person sends written representations to … an authorised person with a reasoned case …, on ordinary public law principles, the authorised person will have to consider those representations when considering the exercise of his discretion …"

115. So far as representations from or on behalf of the Claimant are concerned, there are two significant documents: the 6th December letter, and the 53-page presentation shared with Councillor Chowdhury as part of the remote meeting on 3rd June 2024, during the statutory consultation period.

116. The Council's treatment of the 6th December letter has already been described above. When OR1 was published in February 2024 it was clear that the content of the letter had not been taken into account – a fact which officers later confirmed in writing. But after the pre-action protocol letter sent by BDB Pitmans in May 2024 the Council did agree to revisit the delegated decision that followed after OR1 having regard to (amongst other things) the 6th December letter.

117. OR2, published in July 2024, not only appended a full copy of the 6th December letter, it also provided (in a separate Appendix) the Council's response to it. That response, which ran to 12 pages, was commendably comprehensive. It distilled from the 6th December letter 12 separate "issues" and it responded to all of them. The overall conclusion remained that the proposed Orders were appropriate and should be confirmed, but there can be no serious complaint from the Claimant that the issues were not engaged with properly prior to a decision to make the Orders.

118. But in my view the Council faces far greater difficulties when it comes to the 53-page presentation.

119. It is common ground that the 53-page presentation was first shared with Councillor Chowdhury as part of the 55-minute remote meeting with her. Thereafter the narrative diverges. Mr Fowles's witness statement records that the Council's officers who hosted the later remote meeting with the Claimant's representatives in August 2024 had not seen and were not aware of the presentation. However Mr Phillips's second witness exhibits an email dated 17th June 2024 showing that the presentation was shared with

two other officers in the Council's Highways Department, Ms Boustred and Ms Stanyon.

120. Mr Streeten noted that neither Ms Boustred nor Ms Stanyon were authors of OR2, and indeed it was not clear whether the presentation was shared with Mr Pook who took the delegated decision following the publication of OR2. What is clear is that the presentation is not referred to at all in OR2 (in stark contrast to the 6 December 2023 letter, which – in addition to the treatment summarised above – is mentioned specifically in the first paragraph of the Recommendations), leaving me in serious doubt as to whether it can have formed part of the Council's consideration in the lead up to the decision whether to make the Orders.

121. The 53-page presentation is impressive. It draws upon a lot of material, both generated by the Claimant and obtained from other sources, and is presented in a very accessible way. Whilst it is the case that many of the themes in the presentation have echoes in the 6th December letter, there is also more detailed and up to date information presented in it. Some themes also appear for the first time in the presentation. Some examples of each category of content include the results of engagement surveys undertaken in May 2024, a presentation of (and submissions based upon) accident data for roads within the zone affected by the Street Improvements Scheme, and an analysis of the aftermath following suspension of the experimental Streatham low traffic neighbourhood scheme in early March 2024.

122. The absence of any clues that the presentation material was in the minds of the officers who contributed to the drafting of OR2 – still less that the issues were engaged with – is therefore troubling. It is no answer to say that OR2 gave a comprehensive response to the 6th December letter, because – as I have noted above – the 53-page presentation both developed and supplemented the themes found in the letter. The material it contained was, in my judgement, highly relevant to the decision confronting officers.

123. It is also no answer for the Council to maintain that the commencement of the experimental period of the Orders provides another opportunity for statutory consultation before any decision is taken to make the Orders permanent. OR2 states in terms, with reference to the 6th December letter, that:

> "The issues raised have been fully considered as part of the decision making process **and it is noted that the six month ETO statutory objection period will provide an opportunity to make representations on the trial scheme**" (my emphasis)

124. That statement, whilst factually correct, betrays an apparent flaw in the Council's approach to its decision-making, namely that the integrity of the consultation on the Street Improvement Scheme at the stage of experimental traffic orders is less important because it will be followed by a longer period of statutory consultation after they have come into effect. That plainly cannot be an answer to complaints about the adequacy of the consultation undertaken before the experimental orders were made. If it were then there would be no need for any consultation at that early stage, yet consultation is both mandated and was supplemented by non-statutory engagement undertaken by the Council.

125. On the evidence I am forced to conclude that, despite assurances to the contrary given to the Claimant, the 53-page presentation did not form part of the Council's considerations in its decision to make the Orders. It should have done. Its content was highly relevant to the issues being deliberated upon and thus it was a material consideration. The failure to have regard to it was a serious failing, rendering the decision to make the Orders unlawful in the Wednesbury sense.

126. Despite the substantial overlap between Grounds 1 and 3 and the fact that they were argued together, it is nevertheless tolerably clear that the failure I have identified forms part of Ground 1 only. Ground 3 relates more to Regulation 6 and I have dismissed those complaints. Formally, therefore, I allow the claim on Ground 1 but dismiss Ground 3.

127. Strictly speaking that conclusion is sufficient to dispose of the claim. Nevertheless in deference to the patient arguments made by Counsel on Ground 2 I go on to consider that too.

Ground 2

Claimant's submissions

128. The Claimant's submissions under Ground 2 have four limbs.

129. The first limb relates to the treatment of the Guidance and a failure in the duty to give adequate reasons for the decision.

130. The Guidance is especially germane on the facts of this case, submitted Mr Streeten, because it seems to have been motivated by a concern arrived at through the Department's research on low traffic neighbourhoods that local communities do not understand them well and feel excluded from the opportunity to express their views.

131. The Guidance also warns traffic authorities against the dangers of "ineffective engagement", and the advice should have been heeded especially closely by the Council. Finally the Guidance contains some good practice advice on how to engage with the local community, including advice which helps to inform the exercise of discretion in selecting consultees under Regulation 6.

132. The Council's position is that it had regard to the Guidance when considering these proposals (having been requested to do so specifically by the Claimant), and that its processes complied with them. This express acknowledgement was the reason why the Claimant did not bring a challenge any earlier. But – submitted Mr Streeten – that argument is unsustainable on the facts when one understands that:

A) The Council's regulation 6 consultation was undertaken with what Mr Pook describes in his witness statement as "the standard list" of consultees even after the RRCRA had specifically asked to be included, and

B) OR2 gave the briefest of summaries of what the Guidance included, followed by a bare assertion that the proposals had been reviewed against it (a position reiterated in response to the pre-action protocol correspondence preceding this claim)

133. Moreover, submitted Mr Streeten, paragraph 2.16 of OR1 included a recognition that "the implementation of the scheme may potentially interfere with certain residents' human rights …" and so this was a case where reasons for the decision had to be given to meet the requirements of regulation 7 of the Openness of Local Government Bodies Regulations 2014 (explored by this court in the judgment of Garnham J in R (Newey) v South Hams District Council [2018] EWHC 1872 (Admin)). The reasons given for the decision fell well short of the standard expected in public decision-making (South Buckinghamshire District Council v Porter (No 2) [2004] 1 WLR 1953). And where – as here – the process adopted by the Council is prima facie at odds with what the Guidance recommends then reasons for the decision were especially important. For all of these reasons Mr Streeten submitted that the reasons given for the decision were legally inadequate.

134. The second limb is that the Council unlawfully failed to have regard to several material considerations. This limb does, as Mr Streeten fairly conceded, involve a substantial degree of overlap with Ground 1. The elements of the decision-making process upon which Mr Streeten relies have all been canvassed in connection with Grounds 1 and 3.

135. The third limb is that even if the Council did have regard to the material considerations identified by the Claimant, the decision nevertheless to make the Orders was irrational in a *Wednesbury* sense. The "strong public opposition" which the Guidance warned about was undeniably present here. Similarly the Council's narrow approach to regulation 6 consultation, by excluding the Claimant and the RRCRA from it, was irrational in light of what the Guidance says. Mr Phillips's attempt to reconcile the Council's processes with the Guidance, and to portray the outcome of the consultations as supportive of the decision to make the Orders, are both unpersuasive.

136. The fourth and final limb is that the Council's agreement, in its response on 23rd May 2024 to the Claimant's solicitor's letter before action, to reconsider its decision to make the Orders in light of the Guidance, created a legitimate expectation which was not then fulfilled. Despite the warning to the Council that it should undertake the exercise genuinely and not just with "a self-serving assertion that the Council has complied with" the Guidance, that is precisely what happened.

Council's submissions

137. In response to the Claimant's submissions on regulation 7 of the Openness of Local Government Bodies Regulations 2014 and the case of Newey, Ms Sargent submitted that it is no part of the Claimant's case that it is representing residents whose rights have been affected. In referring to paragraph 2.16 of OR1, the 2014 Regulations and related case-law, the Claimant was (submitted Ms Sargent) opportunistically seeking to rely on the alleged infringement of someone else's rights in support of its claim.

138. In addition Ms Sargent submitted that when one reads OR2 it is clear that the draft Guidance was referred to and taken into account. It was not one of the principal controversial issues in the Council reaching its decision and so the overview summary of its terms, and the conclusion that overall the Guidance had been observed, were legally adequate. Ms Sargent added that the nature of the Guidance was very high-level, containing a series of key themes and principles, and thus it was harder for the Claimant to show a failure by the Council to observe those broad themes.

139. Finally Ms Sargent noted that an Experimental Traffic Order itself triggers a further 6-month period of consultation for the Council to consider whether to make them permanent orders at the end of the trial period. The Guidance recognises this. The main consideration, submitted Ms Sargent, is whether during the experimental trial period any issues are capable of being resolved such that majority support is capable of being secured to make the orders permanent.

Discussion and conclusions

140. There are a number of arguments made under the umbrella of Ground 2 which are in fact more relevant to Grounds 1 and 3. I have therefore addressed them when considering Grounds 1 and 3 above.

141. Much of what remains centres on the Council's treatment of the statutory guidance published by the Secretary of State. In addition, the separate limbs of Ground 2 identified by Mr Streeten in his submissions are themselves not separated by solid boundaries.

142. For these reasons I have therefore responded to the residual submissions on Ground 2 (that is to say those not covered already in Grounds 1 and 3) as a whole rather than trying to separate my conclusions into the limbs identified by Mr Streeten.

143. There is no dispute that guidance issued by the Secretary of State must be considered when deciding whether to make a traffic management order. This can be seen from section 18(2) of the 2004 Act. Both parties acknowledge that the Guidance was still in draft at the time the decision was taken to make the Orders. However, the Council's defence to Ground 2 does not turn on the status of the Guidance but to whether it was addressed substantively. Even if this had been the Council's ground of resistance I would not have accepted it, because – as Mr Streeten submitted, and I agree – the status of the Guidance becomes irrelevant once it is recognised that the Council committed as part of its reply to pre-action protocol correspondence to have regard to it.

144. The Guidance is referred to specifically in OR2. It features in the wording of Recommendation 2 with an acknowledgement that the recommendation follows consideration of the Guidance. It is also then analysed – albeit briefly – in paragraphs 2.4-2.6 of OR2 in the following terms:

> "2.4 The Department for Transport's draft guidance regarding the Traffic Management Act 2004 and the implementation of LTNs was published in March 2024 following a Givernment review which took place between September 2023 and January 2024.
>
> 2.5 The draft guidance focuses of a variety of themes including:
>
> i. Obtaining community support
>
> ii. Good practice in engagement
>
> iii. Design principles for effective LTNs

> 2.6 Although still in draft format, officers have carefully reviewed the West Dulwich Street Improvement proposals against the updated guidance to ensure any relevant implications have been appropriately considered"

145. The Claimant's criticism is that mere mention of the Guidance is not enough; that there needs to be substantive and demonstrable consideration and application of its terms to the decision-making process followed by the Council; that the Council failed to do this; and that the failure is especially egregious in circumstances where the Claimant's pre-action protocol correspondence warned that "what is required is an open-minded reconsideration of both the principle and the details of the matters covered by the Decision with reference to [the Guidance] rather than a self-serving assertion that the Council has complied with them".

146. It is true that the extracts from OR2 that I have quoted above give the briefest summary of the Guidance alongside a bare assertion that it has been complied with. In order to judge whether the Claimant's criticism of the Council's approach is well-founded it is necessary to examine the content of the Guidance in more detail.

147. The Foreword to the Guidance begins in the following terms:

> "Last year, the Department for Transport commissioned a review of low traffic neighbourhoods (LTNs) – this is the outcome. The research shows that, while they can work, in the right place, and, crucially, where they are supported, too often local people don't know enough about them and haven't been able to have a say. Increasingly and frustratingly, we see larger and larger low traffic schemes being proposed by some councils despite concerted opposition by local residents and by local businesses, and in some cases being removed again. This guidance makes it clear that should not happen"

148. The Guidance then goes on to make recommendations to traffic authorities intending to embark upon the consideration of LTN orders. Those recommendations relate mostly to how consultation and engagement should be conducted. That is the "procedural" limb that I identified in Grounds 1 and 3 discussed above.

149. Although I found that the Council fell into error in how it dealt substantively with the output of the consultation (specifically the 53-page presentation produced by the Claimant), overall I did not harbour any significant concerns about the conduct of the consultation and engagement as a whole. As I noted above, the threshold for finding a consultation process to be so deficient that it is legally flawed is a high one. Something must have gone "clearly and radically wrong". The Guidance cannot disturb the case-law which established that standard, nor does it attempt to do so.

150. Much was made by Mr Streeten of warnings in the Guidance about the levels of public opposition often generated by LTN proposals. The instant case was a case in point, he submitted.

151. I am not persuaded that the content of the Guidance along these lines gives rise to an independent ground of challenge, however.

152. Firstly I consider that OR2 did include some recognition of the levels of public opposition to the Orders. It noted the 6th December letter containing objections from the RRCRA, and responded to it in detail. Although OR2 did not itself present the bare data about the 67.5% of respondents who were unhappy with the proposals, Appendix A to OR1 had done.

153. Secondly, as Mr Streeten accepted from me during the course of oral argument, the consultation was not a referendum on the proposals. No part of the Guidance suggests that the level of opposition should be regarded as a pivotal factor, rather the Guidance recommends measures to be adopted in the consultation and engagement to ensure that proposals are explained adequately and that opposition flowing from misunderstanding or unsupported suspicion can be avoided.

154. Another aspect of the Guidance which Mr Streeten sought to develop was the influence it is said to have over the selection of statutory consultees for the purposes of Regulation 6. The Guidance mentions Regulation 6 specifically. It lists the mandatory Regulation 6 consultees before adding this comment:

> "There is also a requirement in the regulations to consult other organisations representing people likely to be affected by the provisions of the order, as the local authority sees fit. There is no fixed list, but this should include road user groups, local accessibility groups and groups representing local businesses and services, and taxi and private hire operators"

155. My conclusion in relation to Grounds 1 and 3 was that the Council enjoyed a broad discretion as to how it considered the general criterion of "such other organisations". In my judgement the Guidance does nothing to narrow the breadth of that discretion. That much is implicit from the use of the words "… as the local authority sees fit" in the extract I have quoted from above.

156. The Council did not see fit to consult with the Claimant or the RRCRA in the statutory consultation. In my judgement, as I have explained above, that was within the range of reasonable responses from the Council. The terms of the Guidance do not alter that conclusion.

157. I accept the submission of Mr Streeten for the Claimant that there was a requirement, under regulation 7 of The Openness of Local Government Bodies Regulations 2014, for a written record of the reasons for the decision to be given. This is because the decision to make the Orders was a decision delegated to an officer which "affect[s] the rights of an individual" (per regulation 7(2)(b)(ii)). I reject Ms Sargent's submission that regulation 7 is a claim upon which the Claimant can rely only if it represents the interests of "an individual" whose human rights have been affected and that, in this case, it does not. I prefer Mr Streeten's formulation that because members of the Claimant include the RRCRA, who do represent individuals, regulation 7 is engaged. This conclusion appears to me to be consistent with the observations of Garnham J in R (Newey) v South Hams District Council [2018] EWHC 1872 (Admin).

158. However, the subsidiary question then arises of whether the reasons that were given were legally sufficient.

159. Mr Streeten relies on the judgment of John Howell QC (sitting as a Deputy High Court Judge) in R (Shasha) v Westminster City Council [2017] PTSR 306 as authority for the proposition that the reasons expressed in OR2 can be taken to be the reasons for the decision reached by Mr Pook in this case:

> "Where members of an authority take a decision, it is a reasonable inference, in the absence of contrary evidence, that they accepted the reasoning in any officer's report to them, at all events where they follow the officer's recommendation"

160. The question then becomes whether the reasons seen in OR2 are legally adequate, having regard to the well-known guidance of Lord Brown in South Buckinghamshire District Council v Porter (No 2) [2004] 1 WLR 1953 which I have cited above.

161. For the Defendant Ms Sargent submitted that the Guidance was not one of the "principal controversial issues" and hence there was no need to reach a reasoned conclusion on it. I do not accept that submission. Once the Council had conceded in its pre-action protocol response that it would reach a fresh decision having regard to the Guidance, the Guidance became one of the "principal controversial issues" in this case.

162. However, in my judgement the reasons given were legally adequate. As I have noted above, most of the Guidance relates to the conduct of the consultation and engagement to be undertaken by the Council. Paragraph 2.6 of OR2 did amount to a simple statement that the Guidance had been complied with, but what followed in OR2 to describe the engagement conducted by the Council was more than enough to remedy the deficiency in that bare assertion.

163. Overall my conclusions on Ground 2 are that the Council did have adequate regard to the Guidance and that it gave sufficient reasons for how it had done so.

164. Ground 2 is therefore dismissed.

Relief

165. I have allowed the claim on Ground 1 and dismissed Grounds 2 and 3.

166. In the course of oral argument both Counsel made provisional submissions to me on the question of relief. However, I consider it appropriate to allow them to make further submissions to me on the appropriate relief having now seen how I have disposed of the claim.

167. I will therefore give directions for the filing of brief written submissions on the question of relief and any subsidiary matters.