



Neutral Citation Number: [2025] EWCA Civ 702

Case No: CA-2024-001541

**IN THE COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**  
**Mr Justice Kerr**  
**[2024] EWHC 1405**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 10 June 2025

**Before:**

**LORD JUSTICE DINGEMANS**  
**LADY JUSTICE ELISABETH LAING**  
and  
**LORD JUSTICE HOLGATE**  
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**Between:**

**THE KING (on the application of**  
**TRANSPORT ACTION NETWORK LIMITED)**  
**- and -**  
**SECRETARY OF STATE FOR TRANSPORT**

**Appellant**

**Respondent**

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**David Forsdick KC and Charles Bishop (instructed by Leigh Day Solicitors) for the**  
**Appellant**

**Hugh Flanagan (instructed by the Treasury Solicitor) for the Respondent**

Hearing date: 30 April 2025  
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## **Approved Judgment**

This judgment was handed down remotely at 11.00 am on 10 June 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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**Lady Justice Elisabeth Laing:**

*Introduction*

1. This is an appeal against a decision of Kerr J ('the Judge'). It raises a short point of statutory construction about section 21 of the Infrastructure Act 2015 ('the Act'). On 9 July 2022, the Secretary of State for Transport ('the Secretary of State') 'specified' a second Cycling and Walking Investment Strategy ('the Strategy'). The question is whether the Secretary of State acted lawfully when, by a Ministerial Statement dated 9 March 2023 ('the Statement'), he purported to reduce, by £200m, the amount of capital funding for the last two years of the Strategy.
2. On the appeal, the Appellant, Transport Action Network Limited ('TAN'), was represented by Mr Forsdick KC and by Mr Bishop. The Secretary of State was represented by Mr Flanagan. I thank counsel for their written and oral submissions.

*The Infrastructure Act 2015*

3. The long title of the Act describes a wide range of loosely connected purposes, the first of which is to make provision for 'strategic highways companies and the funding of transport services by land'.
4. Part 1 is headed 'Strategic Highways Companies' ('SHCs'). Section 1 gives the Secretary of State power to appoint SHCs. The scheme of the following sections is, first, that sections 3 and 4 are headed 'Functions'. Two functions are created by sections 3 and 4, respectively. They are the Road Investment Strategy ('RIS') and the 'route strategy'. I say more about section 3 in the next paragraph. Sections 5-8 are headed 'Exercise of functions, and sections 9-14, 'Oversight'. Sections 15-17 deal with transfers of property and financial assistance, and sections 18-20 make supplemental and general provision.
5. Section 3(1) gives the Secretary of State a power, at any time, to '*set* a Road Investment Strategy' ('RIS') for an SHC, and '*to vary* a Strategy which has already been set' (my emphases). Section 3(3) requires a RIS to 'specify (a) the objectives to be achieved' during the period of the RIS and '(b) the financial resources to be provided by the Secretary of State for purpose of achieving those objectives'. In '*setting or varying*' a RIS, the Secretary of State is required by section 3(5) to have regard to two listed factors (my emphases). Section 3(6) requires the Secretary of State and any SHC to 'comply with' the RIS. Section 3(8) enacts Schedule 2 which 'contains provision about the procedure for *setting or varying*' a RIS (my emphases).
6. Schedule 2 is divided into two parts which make provision, respectively, for '*setting*' and for '*varying*' a RIS (my emphases). Part 1 is divided into four 'steps'. The first such step is that the Secretary of State must provide a SHC with proposals which must 'include details of...the financial resources to be provided for the Secretary of State for the purpose of achieving those objectives' (paragraph 2). The SHC must then respond to the Secretary of State's proposals (step 2: paragraph 2). Step 3 applies if the SHC agrees with the proposals (paragraph 4). The Secretary of State may then publish the proposals as a RIS, but only if 'satisfied that appropriate consultation has taken place' (paragraph 4(2)). Paragraph 5 provides for step 4. If the SHC has not agreed with the Secretary of State's proposals, or has not responded before the date specified for that purpose, the Secretary of State can give revised proposals to the SHC, or publish a RIS.

The Secretary of State may only publish such proposals ‘if satisfied that appropriate consultation has taken place’ (paragraph 5(2)).

7. Paragraph 6 of Schedule 2 applies ‘where the Secretary of State is considering varying’ a RIS (paragraph 6(1)). By paragraph 6(2), paragraphs 2-5 apply to ‘proposals for a varied’ RIS ‘as they apply to proposals for’ a RIS. ‘In performing their functions under this Part of this Schedule’ the Secretary of State and the SHC ‘must have regard to the desirability of maintaining certainty and stability in respect of’ RISs (paragraph 6(3)).
8. Part 2 of the Act is headed ‘Cycling and Walking Strategies’. It consists of one section, section 21. Section 21 provides:  
‘21 Cycling and Walking Investment Strategies  
(1) The Secretary of State may at any time—
  - (a) set a Cycling and Walking Investment Strategy for England, or
  - (b) vary a Strategy which has already been set.  
(2) A Cycling and Walking Investment Strategy is to relate to such period as the Secretary of State considers appropriate; but a Strategy for a period of more than five years must be reviewed at least once every five years.  
(3) A Cycling and Walking Investment Strategy must specify—
  - (a) objectives to be achieved during the period to which it relates, and
  - (b) the financial resources to be made available by the Secretary of State for the purpose of achieving those objectives.  
(4) The objectives to be achieved may include—
  - (a) activities to be performed;
  - (b) results to be achieved;
  - (c) standards to be met.  
(5) Before setting or varying a Cycling and Walking Investment Strategy the Secretary of State must consult such persons as he or she considers appropriate.  
(6) In considering whether to vary a Cycling and Walking Investment Strategy the Secretary of State must have regard to the desirability of maintaining certainty and stability in respect of Cycling and Walking Investment Strategies.  
(7) A Cycling and Walking Investment Strategy must be published in such manner as the Secretary of State considers appropriate.  
(8) Where a Cycling and Walking Investment Strategy has been published the Secretary of State must from time to time lay before Parliament a report on progress towards meeting its objectives.  
(9) If a Cycling and Walking Investment Strategy is not currently in place, the Secretary of State must—
  - (a) lay before Parliament a report explaining why a Strategy has not been set, and
  - (b) set a Strategy as soon as may be reasonably practicable.’

#### *The facts*

9. It is not necessary for me to say much about the facts. The Judge recorded (judgment, paragraph 5) that before the Act, ‘public funding for active travel was unstructured and ad hoc’. The phrase ‘active travel’ means cycling or walking. The first Strategy was published in 2017. Its aim was to encourage walking and cycling for short journeys, and as part of longer journeys. The Judge described some of the objectives of the first Strategy in paragraph 6. ‘Five sources of funding were identified’ and ‘Figures for

expected expenditure were included’ in the first Strategy. ‘The funding needed’ was further analysed in a modelling exercise which led to a departmental report in February 2020 (paragraph 7).

10. The Judge further described the first Strategy in paragraph 9. He described the financial and policy background to the Strategy in paragraphs 10 and 11. The Strategy was published on 6 July 2022 ‘to comply with the duties enacted by ...section 21’. The Foreword said that the government had ‘committed an unprecedented £2 billion of funding for active travel over 5 years’ and repeated various objectives. The Judge quoted the ‘revised set of four objectives for walking and cycling’ in paragraph 13. The next sub-heading was ‘Investment Principles’. The Judge summarised that section of the Strategy in paragraph 14; essentially, the importance of walking and cycling was emphasised.
11. Section 2 of the Strategy, headed ‘Financial resources, performance monitoring and governance’, acknowledged that section 21(3)(a) ‘requires the government to set out the financial resources available to deliver the objectives of’ a Strategy. The investment period included the 2020 spending review and the 2021 spending review settlements. The first Strategy ‘originally projected £ 1.2 billion of investment...This projection was updated in the first report to Parliament...to £ 2.4 billion...’ A second report to Parliament had been published with the Strategy. That report ‘provides a further revised estimate of investment ...during’ the period of the Strategy. ‘This revised projection £ 3.254 billion’.
12. Three ‘main sources of funding’ were then identified and then described in more detail. Under the heading ‘Total government funding for active travel’, table 1 was said to provide ‘an estimate for the total financial resources across government that may be invested in active travel’ during the period of the Strategy. ‘The projected investment’ had been calculated ‘using a range of evidence and data sources’. Those figures would be ‘updated in future statutory reports to Parliament to reflect further investment...’ Table 1 listed the three sources of funding and the ‘Projected investment’ from April 2021 to March 2025 next to each source. The first line referred to “Active Travel Revenue and Capital Funds” which are Department for Transport programmes. The figure given for that source was £1,298 million. The total was £3,559 million.
13. In paragraph 16, the Judge quoted the witness statement of Ms Jessica Matthew, the Co-director for ‘Local Transport’ in the Department for Transport, which describes the sources of that money in more detail. She said in paragraph 19 that in practice the amount of *funding* would fluctuate during the life of a Strategy. If a ‘*funding* stream’ relied on ‘competitive bids from local authorities, it cannot be known at the outset what proportion will be *spent* on active travel as that will only be clear once the bids are evaluated...’ The ‘projections’ in the Strategy were ‘based on best information available at the time of publication, including estimates of the proportion of wider funding programmes that is spent on active travel’ (my emphases).
14. On 22 November 2022, the Chancellor of the Exchequer made his Autumn Statement to Parliament. Government departments would be required to make savings by March 2023, when a Spring Statement was due. Ms Matthew explained that active travel was

‘one of the areas’ in the department’s budget ‘which was vulnerable to spending reductions’ by contrast with large infrastructure projects. The Judge described how officials decided what spending to cut in paragraphs 23-26 and 30-32.

15. There was a submission to the Secretary of State (‘the Minsub’) dated 13 February 2023. The Judge said that much of the Minsub had been redacted. He quoted an unredacted part of the Minsub in which officials gave advice about the impact of ‘Scenario 3’. They had no enthusiasm for ‘stopping’ Active Travel England. Active Travel England is an executive agency. It is sponsored by the Department for Transport and is responsible for managing the dedicated active travel funding allocated to that Department. Other options were considered by officials. In paragraph 32, the Judge again quoted the witness statement of Ms Matthew. Officials decided to recommend that the Department’s funding for active travel be reduced ‘by £200m, leaving £100m capital for active travel over the next two years. This amounted to a 65% reduction in each of the two years in question’. On 9 March 2023, officials sent a further submission to the Secretary of State with final proposals for savings. Paragraph 10 gave a ‘minimum savings amount of £50m’ a year in each year of the Strategy. The Judge recorded that that figure was wrong. The correct figure was £100m.
16. The Judge summarised and quoted from the Statement (made on 9 March 2023) in paragraph 33. The Statement repeated a commitment to active travel. Despite all the difficulties, Baroness Vere said, ‘we will still commit to spend at least a further £100m capital into active travel over the remainder of the spending period...’
17. In paragraph 34, the Judge explained by reference to counsel’s skeleton argument and Ms Matthew’s witness statement that, in a ‘finance business plan for the 2023/24 financial year’ the amount of the reduction was increased by a further £25m on 27 March 2023. He further explained, in paragraph 35, by reference to the same sources, that the amount of capital funding was increased at the start of the 2022/23 financial year by £40m. The ‘actual size of the reduction’ would depend on whether officials were able to ‘identify further funding for active travel over the course of the 2024/25 financial year’.
18. TAN issued a claim for judicial review, challenging, as the Judge put it in paragraph 1, ‘a decision’ of the Secretary of State ‘to reduce funding for investment in “active travel” schemes...made in’ the Statement. There were three grounds. The first two were that the Statement was inconsistent with section 21. The third was that the Secretary of State had failed to take into account a mandatory relevant consideration. Lang J refused permission to apply for judicial review on papers. After an oral hearing, Jay J gave permission.

#### *The judgment*

19. The Judge recorded in paragraph 50 that TAN had effectively accepted in writing that grounds 1 and 2 were different ways of putting the same point. The Judge recorded the parties’ submissions in paragraphs 40-50 (TAN) and 51-57 (the Secretary of State).
20. The Secretary of State argued that the ‘prescriptive element’ in section 21 was that ‘the strategy must state objectives and resources required to achieve them’. Section 21 does

not impose a duty to do anything, or to comply with the strategy. A contrast was made with section 3(6) (see paragraph 5, above). ‘Section 21 does not preclude funding decisions other than through the mechanism of the section. It does not require a mandatory programme of works. The language is akin to that of a target duty rather than an absolute duty’ (paragraph 53).

21. The Judge helpfully recorded, in paragraph 54, that the Secretary of State argued that the Strategy ‘does specify the resources to be made available’.
22. There was said to be ‘no inconsistency between’ the Strategy and section 21. It was ‘impossible and unrealistic to suppose that available funding levels may not be subject to change’ (paragraph 56).
23. The Secretary of State pointed out that TAN accepted that the second and third items in table 1 could change during the period of the Strategy, but did not accept that the amount of ‘dedicated funding’ could change. That reasoning was said to be inconsistent; ‘if the amounts in the second and third entries can fluctuate *necessarily* the total figure will do so and there is no good reason for requiring the first entry (denoting dedicated DfT funding) to be rigid and fixed’ (my emphasis) (paragraph 57).
24. The Judge preferred the Secretary of State’s construction of section 21 (paragraphs 58-64). The second and third lines of table 1 of the ‘original...funding allocation are not fixed. The first line stating the funding direct from the DfT therefore should not, in principle, need to be a fixed amount’ (paragraph 58).
25. The ‘most natural reading of section 21(3) is that in the phrase “the financial resources to be made available”, the words “to be made available” bear the meaning “intended to be made available”; rather than “which must be made available as a minimum”. The latter interpretation would condemn an underspend but not an overspend, without any obvious reason for differentiating. And it would mean that the adequacy of the expenditure could not be judged until the end of the period of’ the Strategy (paragraph 59).
26. In paragraph 60, he recorded an argument, by reference to section 21(4), that an objective specified under section 21(3) could, ‘in principle, therefore be quite general or even vague’. A rise in walking and cycling in one year could be specified. ‘While such vagueness could be criticised, such criticism would be political and would not mean that [the Strategy] fell short of what was required under section 21’.
27. The Judge accepted, in paragraph 61, that the purpose of section 21 was to ‘produce a structured and coherent approach to active travel funding, to replace the previous practice of piecemeal ad hoc spending’. But, he added, ‘It does not follow that section 21 requires a rigid adherence to a costed programme of works and projects’. Ms Matthew had explained that that would be difficult to do. The amount to be spent on a particular project ‘may depend on the outcome of a competition for funding. The minister’s political accountability is secured by periodic reporting to Parliament ...section 21(8)’.

28. The Judge thought that TAN's interpretation of section 21 was rigid and could have 'adverse consequences'. The Strategy provided for performance to be monitored in various ways. 'A minister should be able to change her or his mind about how much to spend in an area that may turn out to be benefitting disproportionately, or suffering disproportionately, compared with others. TAN's interpretation would make that difficult: the amount of dedicated funding down to the end of the [Strategy] period would have to remain constant, even if the rationale for the resourcing decisions at the start of the period had materially changed' (paragraph 62).
29. In paragraph 63, he said that he agreed with 'Lang J's view that resources "to be made available" under section 21(3(b)) are estimates or projections and not ring-fenced spending commitments. The variation procedure does not need to be used to make changes to available funding levels dictated by changes of circumstances without any changes in the objectives to be achieved. The variation procedure would be apt, where, for example, the minister wished to change the direction of government policy, e.g. by downgrading lanes for bicycles and diverting expenditure to electric car charging points instead, or something of that kind'.

### *Discussion*

#### *The words of section 21*

30. 'Strategy' is another word for a 'plan'. The strategy in this case is for 'investment' on walking and cycling. Section 21(1) does not in terms require the Secretary of State to set such a strategy, rather, giving him a power to do so. But if at any time there is no strategy, section 21(9) puts political pressure on the Secretary of State to set such a strategy, and also imposes a duty on him to set a strategy 'as soon as may be reasonably practicable'.
31. Two aspects of section 21 are immediately significant. First, the stability of any strategy is a theme which runs through section 21. Two particular features of section 21 exemplify this theme. First, the word 'set' connotes stability. It is used five times in section 21. Second, section 21(6) articulates this theme clearly by describing a dual factor which the Secretary of State must take into account when considering whether to set or to vary a strategy; 'the desirability of maintaining certainty and stability...' Second, the setting and varying of a strategy are linked. This linked pair of verbs is used twice in section 21 (and many times in section 3 and in Schedule 2).

#### *The requirements of section 21*

32. Section 21 does not impose many requirements. The first clear requirement is that the Secretary of State must 'specify' two things. Those are the 'objectives to be achieved during the period' of the strategy (as further described in section 21(4)) and 'the financial resources to be made available by the Secretary of State for the purpose of achieving those objectives'. The word 'specify' is important. The Secretary of State is required to particularise, in the strategy, 'the resources to be made available by the Secretary of State for the purpose of achieving those objectives'. Nor is that a vague aim or aspiration, as far as it goes. The words mean, simply, that the Secretary of State must say, or specify, in the strategy the 'resources to be made available' by him. He is not required, by contrast, to 'specify' resources which may come from other sources.

33. In paragraph 43 of its skeleton argument for this appeal, TAN submitted ‘if and to the extent necessary...TAN does contend that s.21 did not just impose a target duty. The words are clear and precise and amount to language imposing an imperative to ensure the achievement of the objectives and the making available of resources...’. Mr Forsdick wisely withdrew this argument in his oral submissions on this appeal. It is not clear to me whether TAN ran this extreme argument before the Judge. If TAN did so, it may account for the Judge’s reluctance to recognise, and therefore to accept a different, narrower argument.
34. Section 21 clearly does not require the Secretary of State to do any of the things which are specified in the strategy. Mr Flanagan is right in this respect to contrast section 21 with section 3. Section 21(3) imposes a precise and clear duty, nevertheless. It is important, however, to understand the limited content of that duty. The duty is not to ‘do’ anything other than to ‘specify’ in the strategy the things described in section 21(3)(a) and (b). The phrase ‘target duty’ is therefore inaccurate in this context.
35. Section 21 in broad terms gives the Secretary of State power both to set, and to vary, a strategy. Section 21 also imposes a second group of requirements on the Secretary of State if he wishes to vary a strategy, once it is set. The Secretary of State may not vary a strategy, once ‘set’, without considering whether to vary it (section 21(6)), without having regard to ‘the desirability of maintaining certainty and stability’ in the strategy (also section 21(6)), or without consultation (section 21(5)). The Secretary of State must also consult before setting a strategy (also section 21(5)). The procedural requirements which must be met before the Secretary of State can lawfully vary a strategy are more onerous than those which apply to setting a strategy; by design, because once a strategy has been ‘set’ (but not before) section 21(6) applies to any proposed variation.
36. A third requirement is necessarily implicit in section 21. The detailed prescription about variation necessarily excludes, in my judgment, the possibility that the Secretary of State could lawfully change that which Parliament has required him to specify without complying with the variation process. If the Secretary of State could change the specifics in the strategy without complying with that procedure, those procedural protections for the stability and certainty of the strategy would be a dead letter.

*The arguments to contrary*

37. The arguments which the Judge recorded from the Secretary of State relied, in my judgment, on several points which were not material to the real issue in the case. I will give two examples only. The first such argument is recorded in paragraph 53 (see paragraph 20, above). It is an answer to an argument that section 21 requires the Secretary of State to spend money, among other things. That is not what section 21 requires, nor (I think) did TAN argue that it did. The second is recorded in paragraph 56 (see paragraph 22, above). TAN did not (I think) argue that the Strategy could not be changed. TAN’s argument, rather, was that if the Strategy was to be changed, it had to varied in accordance with the statutory procedure. The argument as recorded in paragraph 57 (see paragraph 23, above) contains a non sequitur. The nature of the entries in the second and third lines of table 1 has no logical bearing on the nature of the entry in the first line. The question about each line, including the first, is whether it



‘specif[ies] the financial resources to be made available by the Secretary of State ...’, in accordance with section 21(3).

38. In his submissions on this appeal, Mr Flanagan in substance repeated the arguments he had made to the Judge, and sought to uphold the judgment. Many of those arguments were again misdirected. They were variants of an argument that section 21 requires the Secretary of State to do things which it plainly does not require. He repeated the (for this purpose) unilluminating contrast with section 3. He suggested that TAN’s construction of section 21 made it impractical to operate, and that figures specified were ‘necessarily projections’ or ‘estimates’. He suggested that TAN’s construction requires the phrase ‘to be made available’ to read as ‘must be made available’.

*The Judge’s reasons for dismissing the application for judicial review*

39. The points made by the Judge in paragraph 58 are not convincing. First, a forensic point about what TAN did or did not accept about the second and third lines of table 2 cannot help with what section 21 means (and see paragraph 37, above). Second, the reasoning in the last two lines of paragraph 58 contains a non sequitur. A principle about the meaning of section 21 cannot be deduced from that forensic point.
40. Paragraph 59 is a suggestion about how section 21(3)(b) should, or should not, be glossed. Section 21(3)(b) is clear as it stands, so there is no need to add any words to it. The Judge did not explain why those extra words are necessary, in any event. The effect of the added words is to dilute the specificity of section 21(3)(b), contrary to its clear language. The Secretary of State is required to specify ‘the financial resources to be made available by the Secretary of State...’. That does not mean, as perhaps the Judge thought, that the Secretary of State is also required to make those resources available. Section 21(3)(b) does not say that. The duty is to specify, not to do anything further. There is no requirement to assess the adequacy of those resources at any stage, contrary to Mr Flanagan’s submissions and to the Judge’s view. The financial resources to be made available by him have to be specified in the strategy, and if the Secretary of State wishes to change what he has specified in that regard, he must comply with the procedure for variation. Adding the words to section 21(3)(b) which the Judge suggested does not get round that fundamental difficulty.
41. Paragraph 60 is not an answer to the issue in the case. It does not help to say that a specified ‘objective’ can be vague, or that criticism of such vagueness would be ‘political’. There is nothing vague about a requirement to ‘specify the resources to be made available by the Secretary of State’. The word is ‘specify’ not ‘project’, ‘estimate’ or ‘guess’.
42. I do not think that TAN argued that section 21 requires the Secretary of State to adhere rigidly to ‘a costed programme of works and projects’. Again, the Judge may have thought, in paragraph 61, that that was the only other possible interpretation of section 21 (see paragraph 40, above). If he thought that, he was wrong. But if I am wrong, and that is what TAN argued, there is another interpretation of section 21. That interpretation is that if the Secretary of State wishes to change what he was required to specify, and has previously specified when he ‘set’ a strategy, as ‘the resources to be made available’ by him, then he must follow the procedure for varying the strategy. There is a confusion again between an obligation to specify the resources to be made

available by the Secretary of State and an obligation to spend those resources. The first is imposed by section 21 and the second is not. The amount which is actually spent is irrelevant. Political accountability via reports to Parliament is a different point, and does not help to answer the question in this case.

43. Section 21, correctly interpreted, does not prevent the Secretary of State from changing his mind about what to spend, contrary to what the Judge may have thought (paragraph 62). What it prevents is a change to what is required to be, and has been specified, unless the Secretary of State complies with the procedure for varying the strategy. The Secretary of State may vary the strategy, but is required to pause, to consider the matters in section 21(6) and to consult. As Mr Forsdick pointed out in his reply, there is no evidence that the Secretary of State did any of those things. But that is what Parliament has required, and if the Secretary of State finds it inconvenient, or ‘impractical’ to comply with the procedure for variation, then the Secretary of State can persuade Parliament to amend the legislation. The remedy is not to read in words which are not in section 21, or to ignore the words which are in section 21.
44. The reasoning in paragraph 63 does not support the Judge’s conclusion. The sums ‘specified’ may well be estimates or projections. The suggestion that the alternative is that they are ‘ring-fenced spending commitments’ is not an answer. The correct construction of section 21 does not entail that conclusion. The point is that once the Secretary of State has, in the strategy, complied with his obligation to ‘specify the financial resources to be made available’, the variation procedure is not merely ‘apt’ in the example the Judge gave. It is required, if the Secretary of State wishes to change what he has specified. Mr Flanagan found it difficult to explain, on his argument, in what circumstances the duty to follow the procedure for variation applied if it did not apply in this case.
45. Finally, there was some suggestion in Mr Flanagan’s oral argument that the resources to be made available by the Secretary of State were not specified in the Strategy in the first place, and that it was too late to challenge that failure now. I reject that suggestion. First, the first line in table 1 looks to me like the specification of the resources to be made available for a specified purpose. Second, this suggestion is inconsistent with what the Judge recorded in paragraph 54 of the judgment (see paragraph 21, above). Third, this argument is close to an argument that the Secretary of State did not, when publishing the Strategy, comply with the duty imposed by section 21(3). I consider that what the Judge recorded in paragraph 54, coupled with the presumption of legality, are an independent reason for rejecting this submission. I also reject the submission, if made, that the Statement did not amount to a relevant change in one item which had been ‘specified’ in the Strategy. It clearly did, as was obvious from the published materials (for example, the Statement refers to a ‘reduction’ while not giving an exact figure), and, as I think Ms Matthew accepted in her witness statement.

### *Conclusion*

46. For those reasons, I would allow TAN’s appeal.

### **Lord Justice Holgate**

47. I agree.

**Lord Justice Dingemans**

48. I also agree.