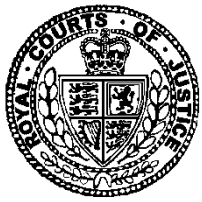

Neutral Citation Number: [2026] EWCA Civ 24

Case No: CA-2025-000177

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
Mr Justice Fordham
[2024] EWHC 3262 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22 January 2026

Before :

LORD JUSTICE SINGH
LORD JUSTICE ARNOLD
and
LORD JUSTICE MILES

- -

Between :

THE KING (on the application of OLIVER HAWES)	**Claimant/ Appellant**
- and -	
LONDON BOROUGH OF TOWER HAMLETS	**Defendant/ Respondent**
-and-	
TRANSPORT FOR LONDON	**Interested Party**

- -
- -

David Wolfe KC and Jack Parker (instructed by **Leigh Day**) for the **Appellant**
Saira Kabir Sheikh KC and Daisy Noble (instructed by **Legal Services, London Borough of Tower Hamlets**) for the **Respondent**
Charlotte Kilroy KC and Antonia Eklund (instructed by **Transport for London Legal**) for the **Interested Party**

Hearing date: 26 November 2025

- -

Approved Judgment

This judgment was handed down remotely at 10 a.m. on 22 January 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Singh:

Introduction

1. This appeal concerns the lawfulness of a decision by the Mayor of Tower Hamlets to revoke a Low Traffic Neighbourhood scheme ("the Scheme") in Bethnal Green after a public consultation. The appeal is against the Order of Fordham J ("the Judge"), dated 17 December 2024, dismissing the Appellant's claim for judicial review of that decision.

2. Between January 2020 and March 2022, the Respondent implemented the Scheme in Bethnal Green. The Scheme as implemented included 14 road closures. The impugned decision, to revoke the Scheme, was made by the new Mayor of Tower Hamlets on 20 September 2023. It was decided that the Scheme would be removed, but with one road closure (on Canrobert Street) being retained.

3. The Appellant, Oliver Hawes, is a resident of Bethnal Green and is part of the "Save Our Safer Streets" group of local residents. The Respondent is the London Borough of Tower Hamlets. The Interested Party, Transport for London, has a strategic interest in transport in Greater London as a whole.

4. There are three issues in this appeal:

   (1) whether the Respondent's decision to revoke the Scheme breached its duty to implement its third Local Implementation Plan ("LIP") under section 151(1)(a) of the Greater London Authority Act 1999 ("the 1999 Act");

   (2) whether the impugned decision involved an unlawful failure by the Respondent to have regard to the contents of its LIP (regardless of whether the section 151(1)(a) duty was breached); and

   (3) whether it was so unfair as to be unlawful to fail to re-consult members of the public in respect of an amended proposal option (known as "Option 3") that was not ultimately adopted by the Respondent.

5. I recognise that there are strong and differing views about Low Traffic Neighbourhood ("LTN") schemes in the London Borough of Tower Hamlets and as between the Mayor of Tower Hamlets and the Mayor of London. I also recognise that both the relevant Mayors are democratically elected by their respective electorates. But this Court cannot enter into those differences of political opinion. It is not the task of this Court to assess the merits of LTNs in general or the particular Scheme in this case. The Court's task is strictly one of deciding what are the respective legal powers and duties of the public authorities concerned.

6. For the reasons set out in this judgment, I have reached the conclusion that the Appellant's arguments on issues (2) and (3) above must be rejected as a matter of law but the argument advanced by the Appellant, and supported by the Interested Party, on issue (1) in this appeal succeeds as a matter of law. This is because of the correct statutory interpretation of the relevant legislation.

Local Implementation Plans

7. A local implementation plan is a plan prepared by a London borough council containing its proposals for the implementation of the Mayor of London's transport strategy in its area: see section 145(1) of the 1999 Act. Under that provision, councils are under a statutory duty to create such plans. Under section 145(3) of the 1999 Act, each local implementation plan must include a timetable for implementing the different proposals in the plan (section 145(3)(a)) and the date by which all the proposals contained in the plan will be implemented (section 145(3)(b)).

8. Section 151(1)(a) of the 1999 Act is the key provision in this appeal and, so far as material, provides as follows:

> "151 Implementation by a London borough council
>
> (1) Where the Mayor [of London] has approved a local implementation plan, or a local implementation plan as proposed to be revised, submitted to him under section 146(1) above, the London borough council which submitted the plan—
>
> (a) shall implement the proposals contained in it in accordance with the timetable included by virtue of section 145(3)(a) above, or, as the case may be, section 149(2) above [section 149(2) relates to revised plans] …"

9. It is also important to set out the provisions of sections 152 and 153 of the 1999 Act, which relate to the powers of the Mayor of London in this context:

> "152 Implementation by the Mayor
>
> (1) Where the Mayor considers–
>
> (a) that a London borough council has failed, or is likely to fail, satisfactorily to implement any proposal contained in a local implementation plan as required by section 151(1)(a) above, or
>
> (b) that such a council has failed, or is likely to fail, to implement all such proposals as required by section 151(1)(b) above,
>
> he may, for the purposes of implementing the proposals contained in the local implementation plan, exercise on behalf of the council the powers that the council has in connection with the implementation of those proposals.
>
> …
>
> (3) Where the Mayor considers that a London borough council has failed to comply with any direction issued by him under

section 153 below, he may exercise on behalf of the council such of the powers of the council as are necessary for the purposes of ensuring that the direction is complied with.

…

153 Directions by the Mayor

(1) The Mayor may issue to any London borough council–

(a) general directions as to the manner in which it is to exercise its functions under sections 145 to 151 above, or

(b) specific directions as to the manner in which it is to exercise those functions.

(2) Directions issued by the Mayor under subsection (1) above may include in particular directions–

(a) as to the timetable in accordance with which a local implementation plan or revisions to such a plan must be prepared,

(b) as to the bodies or persons who must be consulted about a local implementation plan or revisions to such a plan,

(c) as to the timetable mentioned in section 145(3)(a), 149(2) or 150(6) above,

(d) as to the date mentioned in section 145(3)(b), 149(2) or 150(6) above,

(e) as to the action required to be taken to implement the proposals contained in the local implementation plan in accordance with the timetable or by that date, or

(f) as to the steps to be taken to remove the effects of action which is incompatible with such proposals.

…

(4) Where the Mayor issues a direction to a London borough council under subsection (1) above, the council shall comply with the direction."

Other statutory duties

The Mayor of London's Transport Strategy

10. Under section 141 of the 1999 Act, the Mayor of London owes a general transport duty. Under section 142 of that Act, the Mayor of London shall publish a document known as the transport strategy ("the MTS") containing his policies and proposals for discharging his obligations under section 141.

The Respondent's network management duty and network arrangements duty

11. The Respondent has a network management duty and network arrangements duty as set out in sections 16(1) and 17(1) of the Traffic Management Act 2004 ("the 2004 Act"). In summary, under section 16(1) of the 2004 Act, a local traffic authority is under a duty to manage its road network, "so far as may be reasonably practicable having regard to their other obligations, policies and objectives", with a view to securing the expeditious movement of traffic. Under section 17(1) of the 2004 Act, a network management authority "shall make such arrangements as they consider appropriate for planning and carrying out the action to be taken in performing the network management duty".

Experimental traffic orders

12. I should also note the Road Traffic Regulation Act 1984, which provides for traffic regulation orders and experimental traffic orders. Section 9(3) provides that an experimental traffic order shall not continue in force for longer than 18 months.

Inclusion of the Scheme in Tower Hamlets' LIP

13. The Respondent's LIP dated February 2019 was approved by the Mayor of London. Table 18 of the LIP listed 20 "Love your neighbourhood" schemes in the borough. Items 1, 2 and 4 of Table 18 were combined to become the Scheme (the proposals for Weavers North (Jesus Green Surroundings), Arnold Circus/Boundary Estate and Bethnal Green Middleton Green/Pundersons Garden area). Commentary on the "Love Your Neighbourhood" Schemes in the LIP was found in Chapter 4 of the LIP, entitled "Delivery Plan".

14. There was a public consultation on the Scheme on 28 October 2019 and the Scheme was approved by the former Mayor of Tower Hamlets in Cabinet on 29 January 2020.

15. A new Mayor of Tower Hamlets was elected on 5 May 2022. Removing the Scheme was one of the Mayor's manifesto commitments.

The revocation process

16. There were two phases to the consultation process prior to the revocation of the Scheme:

(1) On 9 July 2022, the Mayor of Tower Hamlets consulted the public in the area on whether to remove the Scheme, with consultation papers and a survey questionnaire, 'Reopening our roads'.

(2) On 16 January 2023, there was a second phase of consultation, with a second survey questionnaire, 'Changes Survey'.

i. Option 1 was to remove the Scheme. All 14 road closures would be removed and certain road sections would become two-way. The subsequent Officers' Report (to which I will refer below) stated that a network of accessible walking routes would be introduced.

ii. Option 2 was to retain the Scheme.

iii. The results of this phase of the public consultation were that, in the two affected wards, 41% and 42% supported Option 1 (remove) and 59% and 58% supported Option 2 (retain).

17. An Officers' Report was published on 12 September 2023, with eight appendices. In addition to Options 1 and 2 as set out in the January 2023 consultation, it discussed an Option 3. Option 3 would be to retain the Scheme but with amendments "to address concerns raised by key internal and external stakeholders and the public consultation". Rather than removing all 14 road closures, Canrobert Street would remain closed and additional measures would be put in place, including new camera filters. Option 3 received the highest overall score based on the officers' analysis.

18. The Officers' Report set out its summary of the evaluation of the three options as follows, at para 3.94:

> "A summary of the evaluation is:
>
> Option 1 scores strongest in terms of access for emergency services, residents, deliveries and vehicles associated with council operations such as highway maintenance and waste collection. It is also the strongest option in terms of network resilience and access for those reliant on vehicles such as disabled people. From the consultation, the proportion of responses disabled people were more in support of Option 1 than for Option 2. From disabled responses from within the consultation area 70.4% supported Option 1.
>
> Option 2 scores highest in terms of road safety, air quality and public realm suitable to encourage active travel.
>
> Option 3 scores highest overall by striking a balance between competing demands on streets within the scheme area. It seeks to address most of the concerns of stakeholders that support Options 1 and those that support Option 2."

19. The question of removal of the Scheme then proceeded to a decision without any re-consultation of the public, in particular there was no consultation in relation to Option 3.

20. The decision to remove the Scheme was made by the Mayor of Tower Hamlets in Cabinet on 20 September 2023. It was decided that one road closure (on Canrobert Street) would be retained but that the Scheme would otherwise be removed, without adopting the other Option 3 proposals.

21. The minutes of the Cabinet meeting of 20 September 2023 set out the decision under challenge at section 6.4, headed 'Liveable Streets Bethnal Green consultation outcome and measures'. In particular, at para 2, the decision is recorded as follows:

> "To approve Option One (of the three options summarised in section 2 of the report).
>
> a. Subject to the retention of the closure of Canrobert Street in Bethnal Green."

22. The reasons for the decision are set out as follows:

> "The options set out in this report seek to address several issues that have been identified by residents and key stakeholders since the implementation of the Liveable Streets scheme in Bethnal Green.
>
> Alternative options
>
> Through the public consultation, responses and feedback from the public and key stakeholders was assessed by the project team. The review, assessment and available data have contributed to the development of an additional option to the two that were originally consulted on."

The report sets out this third option in detail along with the options to completely retain or remove the existing scheme.

23. After the decision the Mayor of Tower Hamlets issued a statement on the removal of LTNs in the following terms:

> "LTNs have been one of London's most divisive issues in recent years. Boroughs have found themselves caught up in regional, national, and even international politics – making the day-to-day business of running them more challenging.
>
> LTNs have divided political parties, but most detrimentally they have divided our communities. Neighbouring boroughs, such as Brent and Ealing, have removed LTNs because of their

> divisiveness. In Tower Hamlets, the divisions have been considerable over recent years.
>
> …
>
> Our consultation research shows that, while LTNs improve air quality in their immediate vicinity, they push traffic down surrounding arterial roads – typically lived on by less affluent and BME residents. Tower Hamlets has the third lowest car ownership in London, but a significant portion of our local economy is dependent on car usage, particularly among lower paid workers such as taxi drivers, couriers, small businesses, and market traders.
>
> The emergency services have divided views on LTNs. The London Ambulance Service, for example, opposes hard physical closures. Our refuse service also struggles to reach all our residents in a timely way because of closures – leading to waste and cleanliness issues.
>
> Our consultation shows division among residents, too. While there is support for retaining the schemes, roughly 42% of residents want them removed.
>
> The consultation process itself has been challenging, with around 3,000 respondents in total – many of whom do not live in Tower Hamlets. For resident-only results, margins are in the low hundreds.
>
> …"

24. At one stage of these judicial review proceedings (in the Detailed Grounds of Resistance to the claim for judicial review, at para 99), it was stated by the Respondent that its decision-making process (to determine the future strategy for traffic measures in Bethnal Green) would determine what would be contained in any revised LIP, and logically preceded any revision to the LIP, but this stance was not maintained at the hearing in the Administrative Court: see the judgment below, at para 30.

The judgment of the Administrative Court

25. The factual context to this case was helpfully set out by the Judge at paras 12-24 of his judgment. In particular the Judge described the geography of the area at paras 12-14, the history of the Scheme at paras 15-19 and set out the details of Chapter 4 of the LIP and, in particular, Table 18 at paras 20-21. It is accordingly unnecessary for me to set those matters out in detail here.

26. In the Administrative Court, there were seven grounds of judicial review, all of which were dismissed by the Judge. The grounds relating to the three issues which remain live in this appeal were:

    (1) Ground 6 in the Administrative Court: whether the decision was taken in breach of the LIP Implementation Duty and/or the Mayor of Tower Hamlets unlawfully failed to have regard to the LIP (both labelled "issue 6" but addressed separately by the Judge).

    (2) Ground 2 in the Administrative Court: whether the consultation process was so unfair as to be unlawful.

Section 151 of the 1999 Act

27. The Judge addressed the section 151 issue at paras 25-38 of his judgment.

28. At para 29, the Judge set out what he considered to be the six key stages of the analysis required in support of granting judicial review on this issue. The Judge accepted stages one and two of the Appellant's argument:

    (1) The general network management duty is qualified by the requirement for an authority to have regard to its other obligations.

    (2) Section 151(1)(a) of the 1999 Act imposes a clear and express statutory duty on a London borough.

29. The remaining stages in the Appellant's argument were as follows:

    (3) Under section 151(1)(a), the Respondent was under a statutory duty to implement the projects in Table 18 as they formed part of an approved LIP. The required "timetable" was found within the programme details. If it did not intend to implement the Scheme, the Respondent would need to follow the statutory procedure for revising the LIP.

    (4) "Implement" in section 151(1)(a) means to bring the proposal into effect in accordance with the timetable and then retain it in effect. The Respondent could have included an express end date in the LIP or used the statutory procedure for revising the LIP but had not done so.

    (5) There was no question of Chapter 4 of the LIP ("the Delivery Plan") having been superseded by the submission or approval of new Delivery Plan documents.

    (6) The section 151(1)(a) duty is an enforceable statutory duty in judicial review proceedings. The court should construe the LIP to identify what constitutes a proposal and a timetable for implementation, and identify any breaches of the statutory duty.

30. At para 30, the Judge noted that the Respondent's position had fluctuated during the proceedings. He said that Stages 3 and 4 had always been contested and Stage 1 was

prominently contested at the oral hearing. However, in the pleaded defence, a point had been made suggesting that the decision was or would be contingent on a subsequent application for a revision to the LIP but this had not been maintained. As to Stage 5, the skeleton argument identified the Respondent's August 2022 Strategic Plan Year 1 Annual Delivery as having superseded the LIP Chapter 4, but in oral submissions that error was recognised and reliance was placed instead on the Respondent's Form A (approved by the Mayor of London on 23 March 2022) and its Form C (dated 3 July 2023).

31. From para 31, the Judge said that his analysis was as follows. He accepted Stages 1 and 2 of the Appellant's argument. He had considerable concerns about Stage 6 and would not assume that Stage 6 flowed from Stage 2 but proceeded on the basis that the court had jurisdiction on judicial review to enforce the section 151(1)(a) duty. The Judge noted that the discretionary bar of there being an adequate alternative remedy had not been raised by the Respondent. It would not be a jurisdictional answer anyway and it was far too late fairly to raise it now. The Judge also said that the Respondent's arguments as to prematurity failed because there was no suggestion of any intention to put forward a revision to the LIP.

32. On analysis, however, the Judge concluded that the Appellant's argument unravelled at Stages 3 and 4:

    (1) The Judge analysed Table 18 of the LIP and found that it did not contain a timetable for implementing the proposals and so the table did not provide the content for the Scheme which could make it an enforceable statutory duty.

    (2) The projects listed in Table 18 still required public consultation and the making of Experimental Traffic Management Orders ("ETMOs") at the time the LIP was approved, so Table 18 could be taken as a commitment to enter into the Scheme. The potential need to redesign the projects following public consultation was recognised in Chapter 4 of the LIP.

    (3) The Judge did not accept that section 151(1)(a) imposed an open-ended duty to keep the Scheme in effect, at least in this case, given that this had not been specified in Table 18.

33. The Judge added three points which he described as "footnotes":

    (1) If he had found that Table 18 did include a timetable such that the section 151(1)(a) duty applied, then the proposals could not simply be superseded by issuing new plans.

    (2) Even though the section 151(1)(a) duty imposes no duty to keep the Scheme in effect, this does not mean the Respondent could have lawfully removed the Scheme the day after introducing it, contrary to the Appellant's suggestion. The Respondent would still be under a duty to act reasonably in accordance with public law principles.

    (3) As a "reality check", the Judge noted that in its consultation responses, the Interested Party, Transport for London, had at no point suggested that section 151(1)(a) required the Respondent to maintain the Scheme.

The re-consultation issue

34. The Judge addressed the re-consultation issue at paras 52-62 of his judgment. In particular, at paras 52-55, the Judge quoted extensively from the reports and other documents before the court, setting out the options which had been considered by the Respondent. The Judge's key reasoning on the consultation issue appears at paras 59-62 and, in particular, at para 60.

35. Both parties accepted, and the Judge agreed, that there could, in principle, be an unfair failure to re-consult where the unfairness relates to a new, suggested but rejected course.

36. However, the Judge held that the consultation process in this case was not so unfair as to be unlawful, for the following reasons:

    (1) It was a foreseeable exercise, properly derivative of the consultation, for the officers to identify a middle way and work it up for consultation.

    (2) To test the claimed unfairness, the court should consider the "real-world dimension". Under both Option 3 and the course ultimately decided upon, 13 roads would be reopened and Canrobert Street would remain closed.

    (3) The Appellant accepted that retaining Canrobert Street was derivative of the consultation. The absence of re-consultation on the course the Mayor of Tower Hamlets actually took involved no unfairness.

    (4) There was little evidence, and no witness statement, showing that Option 3 had "unifying potential" in the borough. In fact, after publication of the Officer's Report, the Appellant's solicitors had criticised Option 3.

    (5) The Judge noted that he had reached his conclusions without needing to resolve two contested questions, which he had assumed in the Appellant's favour:

        a) whether, in this case, removal of the scheme was a decision "depriving" the pro-retention residents of a "benefit" (as per *R (Moseley) v Haringey London Borough Council* [2014] UKSC 56; [2014] 1 WLR 3947, at para 26);

        b) whether, as the Respondent submitted, once the question of unfairness has been answered, there is a separate hurdle of material prejudice (cf. *Secretary of State for Communities and Local Government v Hopkins* [2014] EWCA Civ 470; [2014] PTSR 1145, at para 49).

The issue whether the Mayor of Tower Hamlets had unlawfully failed to have regard to the LIP

37. The Judge addressed the LIP-relevance issue at paras 66-67 of his judgment. He rejected the submissions made on behalf of the Appellant before him.

38. On the basis that there was no statutory duty to retain the Scheme, the inclusion of the Scheme within Table 18 was not a legally relevant consideration to which regard must be had in the making of the decision. On the other hand, under section 144(1) and 3 of the 1999 Act, the Respondent was under a duty to "have regard" to the Mayor of London's transport strategy and statutory guidance. In considering the Officers' Report, the Judge held that there was no obviously relevant consideration as to the fact or contents of the LIP which was unreasonably omitted from consideration in the making of the Decision. This ground of review was therefore dismissed.

The Appellant's grounds of appeal

39. Permission to appeal was granted by Asplin LJ on 7 April 2025 on what were then numbered as Grounds 1, 4 and 6. These can be summarised as follows:

    (1) Breach of the LIP implementation duty: The Judge erred in law in finding that the Decision was not taken in breach of section 151(1)(a) of the 1999 Act (PTA Ground 1).

    (2) Failure to take the LIP into account: The Judge erred in finding that the Decision was not unlawful for a failure to take into account the content of the Council's LIP (PTA Ground 6).

    (3) Failure to re-consult: The Judge erred in law in finding that the failure to re-consult in respect of Option 3 was not unfair (PTA Ground 4).

40. It is those grounds which give rise to the three issues which arise on this appeal: see para 4 above.

Issue (1): Breach of the LIP Implementation Duty

41. The submissions for the Appellant on this issue were made at the hearing by Mr Jack Parker. In summary:

    (1) The following points were raised only by the Judge and had not been part of the Respondent's case:

        a) That the LIP did not contain a timetable for implementation, or that anything turned on this point.

        b) That there was no statutory duty to implement the Scheme because traffic orders/public consultation were still required at the time the LIP was approved.

    (2) Any concern as to the certainty of the *initial implementation* timetable does not matter in this case because the Scheme *was* in fact implemented. Further, the LIP did contain a timetable. It contained a final date for implementation, which was 2041.

(3) The fact that the Scheme was contingent upon later public consultation and the making of statutory traffic orders is of no factual relevance here because the Scheme was in fact supported by consultation and traffic orders. Further, the Judge's conclusion would mean that no LIP duty would be enforceable in relation to any Scheme requiring further consultation/orders for implementation. The fact that the LIP contained contingencies in the event that individual projects were not supported at consultation stage is not relevant here, where the projects were implemented.

(4) The implementation duty was necessarily ongoing throughout the lifetime envisaged for the MTS (i.e. to 2041) and this is how the reasonable reader would have viewed Table 18. The lawful route for removing the Scheme would be by using the statutory procedure to revise the LIP.

(5) The Interested Party's failure to raise the question of a breach of the section 151(1)(a) duty during the consultation phases is legally irrelevant to the existence or scope of the duty.

Issue 2: Failure to take the LIP into account

42. Mr Parker also made oral submissions on this issue. He submits that, even in the absence of a breach of section 151 of the 1999 Act, it was unlawful for the Mayor of Tower Hamlets to fail to have regard to the fact that the Scheme was an integral part of the LIP and that it was expressly identified as making an important contribution to the delivery of the MTS. The Respondent was under the section 144(1) duty to have regard to the MTS. Nowhere in the Officers' Report did the Respondent acknowledge that the Scheme was contributing to the MTS outcomes and objectives or that its removal would undermine those objectives. Nor does the Officers' Report show that account was taken of the financial implications for the Respondent in terms of future funding by the Interested Party.

Issue 3: Failure to re-consult

43. The lead on this issue was taken at the hearing by Mr David Wolfe KC for the Appellant. He submits that, contrary to the Judge's findings, the consultation process was so unfair as to be unlawful, because:

(1) Option 3 included features such as use of ANPR cameras, which had previously been expressly ruled out by the Respondent. To comply with the requirements of fairness, consultation on this was required.

(2) Option 3 was very different in substance and effect from Options 1 and 2.

(3) Irrespective of the Appellant's own view, Option 3 might well have had unifying potential.

(4) Creation of a third option, moving away from a binary approach, potentially changed the entire complexion of the process in a fundamental way.

(5) The differences between the three options were of particular importance in the circumstances, particularly in light of the possibility that the Mayor of Tower Hamlets would be prepared to retain elements of the Scheme.

(6) It was unfair to deprive the public of the opportunity to comment on Option 3 when support for it might have elicited changes to the Scheme.

The Interested Party's Submissions

44. Submissions for the Interested Party were made at the hearing by Ms Charlotte Kilroy KC. First, she submits that:

(1) The Mayor of London has a discretion whether to take enforcement action under the 1999 Act and may opt to use other steps to bring about compliance with his transport strategy: see sections 152 and 153 of the 1999 Act. But these powers on the part of the Mayor of London do not mean that a member of the public with standing (such as the Appellant) cannot bring a claim for judicial review to enforce the duty in section 151 of that Act.

(2) Parliament must have intended the provisions of Part IV of the 1999 Act to be practical and effective; the Judge's decision may deprive them of this intended effect.

(3) The LIP's commitment to reducing traffic and creating Liveable Neighbourhoods was central to the Mayor of London's decision to approve the LIP. In this regard the Interested Party refers to the Statement of Julie Clark, Lead Sponsor with the Investment Planning team at Transport for London, which was before the Administrative Court.

(4) Following the Mayor's approval of the 2019 LIP, the Respondent had received substantial funding from the Interested Party to be spent on implementing Liveable Neighbourhoods and the Scheme: see the witness statement of Ms Clark, at para 35.

(5) The Respondent has not produced a revised LIP or sought approval for one.

(6) The Respondent had previously made arguments that show that it was aware that the impugned decision is inconsistent with the LIP and required the Mayor's approval. It previously argued that it would prepare a revised LIP later, or alternatively that the LIP had been superseded.

45. The core of Ms Kilroy's submission is that, once the LIP had been given the statutory approval of the Mayor of London, the Respondent remains under a statutory obligation under section 151 of the 1999 Act to implement it unless and until it is revised in accordance with that Act. For a revised LIP to be approved by the Mayor of London, the Respondent would need to explain how it is consistent with the MTS and the Mayor could only approve it if he considered it consistent with his MTS.

46. As currently framed, submits Ms Kilroy, the impugned decision is clearly inconsistent with the MTS, as it is part of a policy to remove traffic reduction schemes.

47. While uncertainty as to an implementation timetable, or a need for public consultation in the future, could be relevant to a defence against a claim that a council has not implemented an LIP, these factors are not relevant here where the Scheme *has* been implemented. These points had not featured in the Respondent's arguments in the Administrative Court.

48. The implementation duty cannot reasonably be understood as a one-off duty; the Mayor of London's obligations with regards to the MTS, to which the LIP contributes, necessarily involve long-term commitments. Ms Kilroy argues that if this is not true generally then it is true for the proposals forming the Scheme in the LIP.

Analysis

49. As I have said at para 4 above, there are three issues in this appeal, the grounds of appeal having been renumbered for this purpose. I would allow the appeal on the first ground, which concerns section 151 of the 1999 Act. I would reject the second and third grounds, which concern an alleged failure to have regard to a material consideration and unfairness in not having a re-consultation process in this case.

The first issue: breach of section 151 of the 1999 Act

50. The main issue in the appeal concerns the alleged breach of section 151(1)(a) of the 1999 Act. On this I was particularly impressed by the submissions of Ms Kilroy for the Interested Party. As she submitted, the Judge's error was to ask himself the wrong question. His analysis focused on whether, if the Respondent had failed to implement the Scheme in accordance with the LIP either in time or at all, the Mayor of London could enforce its duty to implement the Scheme in accordance with the LIP pursuant to section 151 by obtaining a mandatory order by way of judicial review (as opposed to, for example, exercising his powers under section 152).

51. Given that it is common ground that the Respondent did in fact implement the Scheme in accordance with the LIP, however, the correct question is whether the Respondent was under a duty to *retain* the Scheme by virtue of section 151, with the consequence that its decision to remove the Scheme without obtaining the Mayor of London's approval of a revised LIP was unlawful. In other words, what Ms Kilroy submits is that, as well as the positive duties in section 151, there is a negative duty not to act inconsistently with an LIP which has been approved by the Mayor of London.

52. The answer to that question turns on whether "implement" in section 151 means "implement (but without any obligation to retain)" or "implement (and retain)". The Judge appeared to accept that there could be an obligation to retain but seems to have considered that it was necessary for that to be spelt out in the LIP itself. In my judgement, that is unnecessary because it is, with respect, obvious that the concept of "implement" in its statutory context includes an obligation to retain an approved scheme. Having regard to the statutory context and purpose, "implement" must mean "implement (and retain)". Accordingly, the Respondent's decision to remove the

Scheme without going through the statutory process for revising it, including the approval of the Mayor of London, was unlawful.

53. This outcome is consistent with the way in which the proceedings have been brought and conducted. The remedy sought in this regard by the Appellant in the claim form, which cross-referred to the Statement of Facts and Grounds, was a quashing order, to set aside the decision said to be unlawful, not (for relevant purposes) a mandatory order. The Appellant's objective in bringing this claim for judicial review is not to seek mandatory relief to enforce a positive duty in section 151(1)(a) of the 1999 Act. It is, rather, to restrain the Respondent from proceeding to act in a way which is inconsistent with the negative duty in that provision.

54. I do not accept the Respondent's submissions on the first issue, although they were ably advanced by Ms Saira Kabir Sheikh KC, and can be summarised as follows:

(1) The Judge was right to find that the programme provided in Table 18 did not provide a sufficient basis on which to identify whether the Respondent was or was not in breach of the section 151 duty. Table 18 contained a range of dates for items 1, 2 and 4, and the programme was expressed in open-ended terms. The Judge was right to test the Appellant's logic by examining whether the LIP provided the necessary content to render the duty enforceable in the hypothetical case where there had not been any "implementation". As I have indicated above, I do not accept that this issue should be determined on a hypothetical basis; it should be dealt with on the basis of the facts of the present case.

(2) The Appellant's argument that "implement" in section 151(1)(a) involves an ongoing duty would have difficult implications:

a) It is submitted that the Appellant's interpretation would require the Respondent to have a "closed mind" as to any questions of whether to remove a scheme, and be inconsistent with the Respondent's ongoing traffic management statutory duties. I do not accept this submission. The Respondent's duties have to be read as a whole and in a harmonious manner. As section 16(1) of the 2004 Act makes clear, and as the Judge held, the duty in that section is subject to the Respondent's other obligations. As I have said at para 11 above, under section 16(1) of the 2004 Act, a local traffic authority is under a duty to manage its road network, "so far as may be reasonably practicable having regard to their other obligations, policies and objectives", with a view to securing the expeditious movement of traffic. Nor do I accept that my interpretation of section 151 of the 1999 Act would prevent the Respondent from engaging in proper consultation in the future, if circumstances change and there is felt to be a need to change the Scheme. But that would have to be done in an orderly fashion, consistent with the statutory regime, which includes putting forward a revised scheme for the approval of the Mayor of London.

b) It is submitted that the Respondent would be required to maintain the Scheme until 2041, even if it had no public support. For similar reasons, I do not consider that this would follow as a matter of law. As I have said, the statutory framework contemplates the possibility of revising a

scheme in the future but this must be done in an orderly manner, consistent with the requirements of the 1999 Act.

(3) The Appellant's argument that, in the absence of an enforceable and continuing duty, all proposals could be put into effect and then removed the next day, ignores the fact that the Respondent is bound by normal public law principles. In particular, it would have to act reasonably. I do not accept that, on the correct interpretation of the 1999 Act, these are the only public law constraints on what the Respondent can do. The first, and overriding, legal duty imposed on the Respondent is to act in compliance with section 151(1)(a) of the 1999 Act and, as I have explained earlier, this includes a negative duty as well as a positive duty.

The second issue: failure to have regard to a relevant consideration

55. Turning to the second issue, it is strictly unnecessary to determine this in the light of my conclusion on the first issue.

56. If, however, I had rejected the first ground, I would not accept the Appellant's contention that the Respondent failed to have regard to a material consideration, namely the fact that the Scheme was in the LIP. It was not contended on behalf of the Respondent that this was not a material consideration but Ms Sheikh KC submits that, on the facts, the Respondent clearly did take this fact into account. The Judge agreed with that submission and so do I. The Officers' Report did refer to the MTS. The entire premise of the Officers' Report was the extent to which the Scheme had met its objectives (as informed by the MTS) and how it balanced other objectives (also captured by the LIP).

The third issue: re-consultation

57. I did not understand there to be any material difference between the parties as to the relevant legal principles on consultation.

58. First, Mr Wolfe reminded us of the well-known *Gunning* principles as to what a lawful consultation requires, principles which have received the imprimatur of the Supreme Court: see the decision of the Supreme Court in *R (Moseley) v Haringey London Borough Council* [2014] UKSC 56; [2014] 1 WLR 3947, where Lord Wilson JSC said, at para 25:

> "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. The Court of Appeal expressly endorsed them, first in *Ex p Baker* [1995] I All ER 73, cited above (see pp 91 and 87), and then in *R v North and East Devon Health Authority, Ex p Coughlan* [2001] QB 213, para 108. In *Ex p Coughlan*, which concerned the closure of a home for the disabled, the Court of Appeal, in a judgment delivered by Lord Woolf MR, elaborated, at para 112:

> 'It has to be remembered that consultation is not litigation: the consulting authority is not required to publicise every submission it receives or (absent some statutory obligation) to disclose all its advice. Its obligation is to let those who have a potential interest in the subject matter know in clear terms what the proposal is and exactly why it is under positive consideration, telling them enough (which may be a good deal) to enable them to make an intelligent response. The obligation, although it may be quite onerous, goes no further than this.'

The time has come for this court also to endorse the Sedley criteria. They are, as the Court of Appeal said in *R (Royal Brompton and Harefield NHS Foundation Trust) v Joint Committee of Primary Care Trusts* (2012) 126 BMLR 134, para 9, 'a prescription for fairness'."

59. Mr Wolfe also relies on the following passage in Lord Wilson's judgment, at para 24, where it was emphasised that one of the purposes of consultation is to enable public participation in a democratic process:

> "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] 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. This third purpose is particularly relevant in a case like the present, in which the question was not: 'Yes or no, should we close this particular care home, this particular school etc?' It was: 'Required, as we are, to make a taxation-related scheme for application to all the inhabitants of our borough, should we make one in the terms which we here propose?'

60. Mr Wolfe further relies on what was said by Lord Reed JSC at paras 37-39, where he too emphasised the importance of public participation in the decision-making process:

> "37. Depending on the circumstances, issues of fairness may be relevant to the explication of a duty to consult. But the present case is not in my opinion concerned with circumstances in which a duty of fairness is owed, and the problem with the consultation is not that it was 'unfair' as that term is normally used in administrative law. In the present context, the local authority is discharging an important function in relation to local government finance, which affects its residents generally. The statutory obligation is, 'before making a scheme', to consult any major precepting authority, to publish a draft scheme, and, critically, to 'consult such other persons as it considers are likely to have an interest in the operation of the scheme'. All residents of the local authority's area could reasonably be regarded as 'likely to have an interest in the operation of the scheme', and it is on that basis that Haringey proceeded.
>
> 38. Such wide-ranging consultation, in respect of the exercise of a local authority's exercise of a general power in relation to finance, is far removed in context and scope from the situations in which the common law has recognised a duty of procedural fairness. The purpose of public consultation in that context is in my opinion not to ensure procedural fairness in the treatment of persons whose legally protected interests may be adversely affected, as the common law seeks to do. The purpose of this particular statutory duty to consult must, in my opinion, be to ensure public participation in the local authority's decision-making process.
>
> 39. In order for the consultation to achieve that objective, it must fulfil certain minimum requirements. Meaningful public participation in this particular decision-making process, in a context with which the general public cannot be expected to be familiar, requires that the consultees should be provided not only with information about the draft scheme, but also with an outline

> of the realistic alternatives, and an indication of the main reasons for the authority's adoption of the draft scheme. That follows, in this context, from the general obligation to let consultees know 'what the proposal is and exactly why it is under positive consideration, telling them enough (which may be a good deal) to enable them to make an intelligent response': *R v North* and *East Devon Health Authority, Ex Coughlan* [2001] QB 213, para 112, per Lord Woolf MR."

61. Lady Hale DPSC and Lord Clarke JSC agreed with both judgments, and in particular with what Lord Reed had said at para 39: see para 44.

62. In support of his submissions on consultation, Mr Wolfe relies upon the following passage in the judgment of Munby J in *R (Montpeliers and Trevors Association) v Westminster City Council* [2005] EWHC 16 (Admin), at para 29:

> "… Fairness in my judgment required that there should be a process of consultation in which those being consulted could express their views on all the various options. That never took place. It is no good Mr Cosgrove saying, even if it is the case, that proponents of the retention of the barriers expressed views supportive of that contention in the course of both the statutory process and the subsequent consultation exercise. Fairness required a consultation process in which all those interested, whether pro or con, were invited to express their views on all the various options. …"

63. In my view, those authorities only take the Appellant so far, because they set out the general principles as to any fair consultation process but what this appeal raises is the particular issue of when a re-consultation is required when there has already been a consultation process.

64. On that issue, the most helpful judgment, on which both parties relied, is that of Dove J in *Keep Wythenshawe Special Ltd and Others v University Hospital of South Manchester NHS Foundation Trust and Others* [2016] EWHC 17 (Admin). Although it is a long passage, I think it helpful to set out fully what Dove J said at paras 73-77, as he cited earlier relevant authority and, in my view, accurately set out the relevant principles:

> "73. One of the particular questions which arises in this case is when fairness determines that there should be re-consultation by the decision-maker. When do circumstances exist which give rise to a legal requirement that there should be a further round of consultation? This issue arose before Silber J in the case of *Smith v East Kent Hospital NHS Trust* [2002] EWHC 2640 (Admin). From paragraph 43 onwards he reached the following conclusions:

‘43. A matter of crucial importance in determining whether the defendants in this case should have re-consulted on the proposals under challenge was *the nature and extent* of the difference between what was consulted on in the consultation paper and the proposal accepted in the March 2002 decision. Clearly, if all the fundamental aspects of the decision under challenge had not been consulted on but ought to have been, that would indicate a breach of the duty to consult, whilst at the other extreme, trivial changes do not require further consideration. In approaching this issue, *it is necessary to bear in mind not only the strong obligation of the defendants to consult, but also the dangers and consequences of too readily requiring re-consultation*, as those dangers also flow from the underlying concept of fairness, which underpins the duty to consult.

44. As Schiemann J, as he then was, (with whom Lloyd LJ agreed) pointed out in explaining these dangers in *R v Shropshire Health Authority ex p Duffus* [1990] Med LR 119 at p223:

> “A consultation procedure, if it is to be as full and fair as it ought to be, takes considerable time and meanwhile the underlying facts and projections are changing all the time. It is not just a question of an iterative process which can speedily be run through a computer. Each consultation process if it produces any changes has the potential to give rise to an expectation in others, that they will be consulted about any changes. If the courts are to be too liberal in the use of their power of judicial review to compel consultation on any change, *there is a danger that the process will prevent any change – either in the sense that the authority will be disinclined to make any change because of the repeated consultation process which this might engender, or in the sense that no decision gets taken because consultation never comes to an end*. One must not forget there are those with legitimate expectations that decisions will be taken.”

45. So I approach the issue of whether there should have been re-consultation by the defendants in this case, on the proposals now under challenge on the basis that the defendants had a strong obligation to consult with all parts of the community. The concept of fairness should determine whether there is a need to re-consult if the decision-maker wishes to accept a fresh proposal but the courts should not be too liberal in the use of its power of judicial review to compel further consultation on any change. *In determining whether there should be further re-consultation, a proper balance has to be struck between the*

> *strong obligation to consult on the part of the health authority and the need for decisions to be taken that affect the running of the health service*. This means that there should only be re-consultation if there is a fundamental difference between the proposals consulted on and those which the consulting party subsequently wishes to adopt."

74. During the course of the argument on this point both parties, and in particular the defendants and those defending the decision, emphasised the phrase 'fundamental difference' in their submissions. As the argument developed, it appeared to me that this phrase was in danger of having more rhetorical force than substantive content, and in and of itself providing limited assistance in determining when re-consultation might be required. In my view that phrase cannot be detached from the clear and undoubtedly accurate conclusion reached by Silber J that any consideration of the need to re-consult will be determined by the concept of fairness.

75. The requirements of fairness in considering whether or not to re-consult must start from an understanding of any differences between the proposal and material consulted upon and the decision that the public body in fact intends to proceed to make. This is because there will have already been consultation. The issue is, then, whether it is fair to proceed to make the decision without consultation on the differences, which will therefore be heavily influenced in this particular context by the nature and extent of the differences. Whilst it is not possible to produce any exhaustive list of the kind of matters that would need to be considered (alongside all the other legal principles set out above) to determine whether re-consultation is required, some illustrations may assist. Examples would include where it has been determined that it is necessary to reopen key decisions in a staged decision-making process which had already been settled prior to consultation occurring; or where the key criteria set out for determining the decision and against which the consultation occurred have been changed; or where a central or vital evidential premise of the proposed decision on which the consultation was based has been completely falsified. These examples serve to illustrate the very high order of the significance of any difference which would warrant re-consultation.

76. It is also important to point out that the question of a change's significance is not to be determined with the benefit of hindsight: it is significance at the point in time when the question of re-consultation is to be determined that counts. Finally, the fact that a change arises so as to reflect views produced by the consultation process does not itself require re-consultation. Once again, it is the extent of the change or difference which is the

> starting point. If the change arose from the original consultation that is simply evidence of the fourth Sedley criterion in operation and not in and of itself a reason for re-consultation. It is the extent of the change which requires examination.
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> 77. Having observed all of the above in relation to the legal principles governing consultation it is important to recognise, as the courts have on several occasions, that a decision-maker will have a broad discretion as to how a consultation exercise may be structured and carried out. As Sullivan J (as he then was) observed in *R (on the application of Greenpeace Limited) v Secretary of State for Trade and Industry* [2007] EWHC 311 at paragraphs 62 and 63:
>
> > 'A consultation exercise which is flawed in one, or even in a number of respects, is not necessarily so procedurally unfair as to be unlawful. With the benefit of hindsight it will almost invariably be possible to suggest ways in which a consultation exercise might have been improved upon. That is most emphatically not the test. It must also be recognised that a decision-maker will usually have a broad discretion as to how a consultation exercise should be carried out In reality, a conclusion that a consultation exercise was unlawful on the ground of unfairness will be based upon a finding by the court, not merely that something went wrong, but that something went "clearly and radically wrong".'
>
> Subsequently in the case of *R (JL and AT Beard) v The Environment Agency* [2011] EWHC 939 Sullivan LJ confirmed that *the 'test is whether the process was so unfair as to be unlawful.'* " (Emphasis added)

65. Applying that test, which the parties were and remain agreed is the relevant test (whether the process was so unfair as to be unlawful) I do not accept Mr Wolfe's submission that, in the circumstances of this case, fairness required re-consultation.

66. In essence I accept the Respondent's submissions on the consultation issue, which can be summarised as follows. The Respondent submits that it is not the case that Option 3 included elements specifically ruled out during consultation, and that Option 3 was not very different in substance and effect from the options consulted on. As a matter of substance, the sole issue identified by the Appellant that differed in respect of Option 3 was the proposed use of ANPR cameras. As noted by the Judge, the consultation provided the opportunity for consultees to provide their views on the use of ANPR. The Judge was right to find that there is no evidence that Option 3 could unify a divided community.

67. I note, in particular, that there had already been two rounds of consultation, including for material purposes the second consultation exercise. In that exercise the Respondent had consulted on Options 1 and 2. True it is that there was no Option 3 and the public

did not have the opportunity to comment on that. However, they did have the opportunity to make other suggestions. Furthermore, and importantly, the officers clearly took into account the product of the consultation exercise in order to arrive at their report to the Mayor. This, as the Judge said, was an entirely foreseeable consequence of a consultation exercise. The precise details of what became Option 3 may not have been predicted but the public would have known that there would be conscientious consideration of the consultation exercise and, depending on what it produced, the Respondent might well revise its earlier thinking. That is not an unfair consultation exercise. To the contrary, it is a fulfilment of one of the purposes of a proper consultation exercise, which is for the relevant public authority conscientiously to take into account everything which has emerged from the consultation exercise.

68. Very importantly in the circumstances of this case, the fact is that Option 3 was not in the end adopted by the Mayor of Tower Hamlets, whose decision it was, not the Cabinet's. The officers did not themselves make any recommendation as to which of the three options should be adopted by the Respondent. They left that to the choice of the Mayor. I would not want to rule out the possibility, as a matter of principle, that, even where an option has not been adopted, there may be circumstances in which fairness requires that there should be consultation upon that option but, on the facts of this case, I am satisfied that there was no unfairness in the process adopted by the Respondent.

Conclusion

69. For the reasons I have given, I would allow this appeal on the first issue: the Respondent's decision to revoke the Scheme was in breach of section 151(1)(a) of the 1999 Act.

70. If my Lords agree, and subject to any written submissions to be made on the question of remedy after hand down of this judgment, it appears to me that the appropriate remedy would be a quashing order.

Lord Justice Arnold:

71. I agree.

Lord Justice Miles:

72. I also agree.