

**IN THE HIGH COURT OF JUSTICE  
KINGSLAND MOOT DIVISION  
ADMINISTRATIVE COURT**

**IN THE MATTER OF A STATUTORY REVIEW UNDER PARAGRAPH 35 OF  
SCHEDULE 9 OF THE ROAD TRAFFIC REGULATION ACT 1984**

**BETWEEN:**

**THE FREE AND SAFE TRANSPORT ASSOCIATION**

**Claimant**

**and**

**MESSERVY COUNTY COUNCIL**

**Defendant**

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**DETAILS OF CLAIM**

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**Introduction**

1. By this claim under paragraph 35 of Schedule 9 to the Road Traffic Regulation Act 1984 (“RTRA”), the Claimant, the Free and Safe Transport Association (also known as “FASTA”), seeks an order quashing the making by the Defendant of an experimental traffic order (“ETO”) under section 9 RTRA. The ETO controls use by motor vehicles of Bond Street, a cul-de-sac in the village of Havelock, specifically a 600m stretch leading up to and alongside the Bond Primary School.
2. The Claimant is a not-for profit public interest group that campaigns for access to the countryside for motor vehicles, in particular unsealed roads or “green lanes”. Its members, of which there are approximately 150 within Messervy, and many more in neighbouring local authority areas, include those who drive rugged 4x4s and riders of trail motorcycles. It seeks to promote lawful and responsible use of green lanes by

motorists, as well as ensuring that lanes are kept in good repair by the relevant highway authority.

## Statement of facts

### Background

3. The Defendant is the local traffic authority. Its area is largely rural, dominated by agriculture and small villages and hamlets, and bisected by the A007 dual-carriageway. There is one large town, Vesper, and five intermediate settlements, including Havelock.
4. Havelock is well-known among the Claimant's membership for the "Martin Aston circuit", an informal 10-mile off-road loop on a byway open to all traffic ("**BOAT**") located at the south-eastern edge of Havelock. It can only be accessed from a track leading off the end of the cul-de-sac at Bond Street, beyond Bond Primary School. The Martin Aston circuit is one of only three BOATs in Messervy, and is longer than both other BOATs combined. It is prized by off-road motorists for its fords, jumps and rutted sections which make the circuit a challenging drive, and many of the Claimant's members travel long distances, including from outside Messervy, to access it. The circuit is particularly popular in the morning and late afternoons, as a quirk of its topography means that it can get quite boggy in the middle of the day.
5. The Defendant's 'Messervy Transport Strategy' published in May 2017 ("**the Strategy**") sets out its policy goals up to 2035, and preferred strategic approach to achieving those goals. The Strategy includes a policy aspiration, in Chapter 4, that by 2035 "*no child's education or health should be adversely affected by adverse air quality or highway safety concerns, in particular near schools and public recreation areas.*" In order to achieve this goal, the Strategy advocates "*targeted reductions in, or total exclusion of, vehicular traffic near sensitive areas and/or in areas with particular air quality exceedances*".
6. During the pandemic, the Defendant brought forward a number of schemes which sought to achieve the aims set out in the Secretary of State for Transport's guidance

“Traffic Management Act 2004: network management in response to COVID-19”. This encouraged local authorities to deliver a *“lasting transformative change”* in the way people make short journeys in towns and cities and *“to make significant changes to ... road layouts to give more space to cyclists and pedestrians”*. It advised that *“measures should be taken as swiftly as possible, and in any event within weeks, given the urgent need to change travel habits before the restart takes full effect”*.

7. The Defendant implemented low traffic neighbourhoods in a number of areas in Vesper, including in the centre of the town and close to primary schools. In a press release dated 3 August 2020 the Defendant stated that it *“welcomed the initiative from central government to support schemes to reduce traffic flow that the County Council has long identified as strategically important in our Messervy Transport Strategy”*.
8. On 19 July 2021, England entered stage 4 of the “Roadmap for easing COVID-19 restrictions”.
9. On 15 August 2021, in view of the general loosening of COVID-19 related restrictions, the Secretary of State withdrew her previous guidance and issued further guidance, which provided, so far as material, as follows:

*The COVID-19 pandemic has offered local authorities unparalleled opportunities to make our towns healthier and more encouraging to active forms of transport. The Government is confident this has set the country up well for a “green restart” post-COVID-19 as part of its “building back greener” policy agenda.*

*Now that life is returning to normal, local authorities should use the lessons learned to inform their approach to traffic management moving forward. Although the window offered for rapid and radical change has now largely passed, local authorities should seek to enact measures which embed new travel habits, whilst taking a pragmatic stance to ending schemes and experiments which have not delivered clear benefits. [...]*

*When enacting new measures in communities, particular in respect of local traffic neighbourhood schemes, local authorities should be sensitive to local people's concerns. Measures should only be made using experimental or temporary traffic orders which bypass pre-implementation consultation where there is a clear justification to do so.*

10. On 17 September 2021, the Defendant issued a press release stating its intention to bring in further measures, this time outside Vesper in the intermediate settlements including Havelock. Local newspaper stories which covered the press release referred directly to reports from parents that the pupils at Bond Primary School had been encouraged by their teachers to write letters to the Defendant about the importance of protection from air pollution and their desire to cycle and walk to school.
11. In response to the press release and newspaper reports, the Claimant wrote to the Defendant on 25 September 2021. Having explained the nature of the Claimant organisation (as per paragraph 2 above) and the importance of the Martin Aston circuit (as per paragraph 4 above), the letter stated as follows (so far as relevant):

“We strongly believe that the closure of the roads near Bond Primary School would be an excessive and unjustified measure, which would leave our members shaken, if not even quite stirred up against the Council. It would significantly impede our members’ access to the Martin Aston circuit – indeed it would make it nigh on impossible. We are not aware of any incidents involving our members and people attending or visiting the primary school. Moreover, the Council’s own data shows that there is no air quality problem on Bond Street or in the general vicinity of Bond Primary School.”

12. The Defendant did not reply to the Claimant’s letter.

#### The Experimental Traffic Order

13. It in this context that the Defendant made the ETO on 29 September 2021, restricting vehicular traffic on the road leading up to and past the school, to the end of the cul-de-sac. The text of the ETO is set out here in full for convenience:

“Messervy County Council in exercise of its powers under sections 1(1) 2(1) to (3), 3(2), 9, 10(a) and (c) and 122 and parts III and IV of Schedule 9 of the Road Traffic Regulation Act 1984 (hereinafter referred to as "the Act") and of all other enabling powers hereby make the following Order:

1. This Order shall be cited as The Messervy County Council (Bond Primary School) (Prohibition of Motor Vehicles) Experimental Traffic Order 2021 and come into operation on 7 October 2021.

2. In this Order:

“Class 1, Class 2 and Class 3 vehicles” have the same meaning as in section 3 of The Use of Invalid Carriages on Highways Regulations 1988;

“motor vehicle” has the same meaning as in section 185 of the Road Traffic Act 1988.

3. Save as provided in Article 4, no person shall cause any motor vehicle to proceed along Bond Street from its junction with the B8745 Scaramanga Row to its junction with the B8799 Trevelyan Close between the hours of 8am and 10am, and 2:30-4pm, Monday-Friday.

4. Nothing in Article 3 of this Order shall apply so as to prevent any person from causing a motor vehicle to proceed in the lengths of road specified in that Article if the vehicle being used:

(a) is for fire brigade, police or ambulance purposes;

(b) is in the service of a local authority or water authority in pursuance of statutory powers or duties;

(c) is in connection with the maintenance, improvement or reconstruction of that length of road or the laying, erection, alteration

or repair in or adjacent to that length of road of any sewer, water, gas, or electricity apparatus or of any telecommunications apparatus as defined in the Communications Act 2003; or

(d) is a Class 1, Class 2 or Class 3 vehicle.”

14. The ETO was made under delegated powers by the Defendant’s Head of Highways Safety and Air Quality Control, Charles Boothroyd without any further consideration by the Defendant’s Cabinet.
15. The ETO was published on the Defendant’s website on 30 September 2021, accompanied by a ‘Statement of Reasons’, which is set out here in full for convenience:

“Messervy County Council makes the The Messervy County Council (Bond Primary School) (Prohibition of Motor Vehicles) Experimental Traffic Order 2021 (“Order”) in discharge of its duties and responsibilities as traffic authority for Messervy.

The Order will restrict traffic outside Bond Primary School during drop-off and pick-up times to safeguard and protect our children from the risks posed by traffic generally, but also to mitigate the adverse air quality implications of parents driving to the school on the ‘school run’. These measures will encourage the uptake of active forms of travel to and from school, a key part of the Government post-COVID transport policy.

Accordingly, the Council considers the Order justified for the following reasons in section 1 of the Act:

(a) for avoiding danger to persons or other traffic using the road or any other road or for preventing the likelihood of any such danger arising,

(c) for facilitating the passage on the road or any other road of any class of traffic (including pedestrians),

(g) for any of the purposes specified in paragraphs (a) to (c) of subsection (1) of section 87 of the Environment Act 1995 (air quality).

These measures are being introduced following the success of similar measures in Vesper last year. They will be introduced on Bond Street in Havelock on a trial basis through an experimental order for a period of 18 months. If the Council considers them successful, the Council will seek to make the experimental order permanent. Details of how to participate in the ongoing process of monitoring and review of these measures are available on the Council's website."

## Legal principles

16. Section 9 RTRA provides for the making of "*experimental traffic orders*" which may make any provision for "*controlling or regulating vehicular and other traffic (including pedestrians)*" as could a traffic regulation order made under section 1 RTRA ("TRO"). An ETO must however be made for an experimental purpose, and it is necessary for an order-making authority to identify what the experiment is and its purpose (Trail Riders Fellowship v Peak District National Park Authority [2012] EWHC 3359 (Admin)).
17. Section 122 RTRA applies to the exercise by a local authority of any of the functions under the RTRA, including the making of experimental traffic orders pursuant to section 9 RTRA. It imposes a duty on a local authority, when exercising such functions, to "*secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians) and the provision of suitable and adequate parking facilities on and off the highway*", so far as practicable, having regard to a number of specified matters including the effect on the amenities of any locality affected. The Court of Appeal has clarified that this duty involves application of a three-stage approach (Trail Riders Fellowship v Hampshire County Council [2019] EWCA Civ 1275; [2020] PTSR 194), namely:

- a. The decision-maker should have in mind the duty to secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians) so far as practicable;
- b. The decision-maker should then have regard to factors which may point in favour of imposing a restriction on that movement; including the effect of such movement on the amenities of the locality and the factors mentioned in section 1 of the 1984 Act as being expedient in deciding whether a TRO should be made; and
- c. The decision-maker should then balance the various considerations and come to the appropriate decision.

### **Grounds of challenge**

18. The Claimant seeks the quashing of the ETO on two grounds:

- a. The ETO is ultra vires section 9 RTRA, as it is not made for the purposes of a genuine experiment, nor is any experiment discernible from the Statement of Reasons.
- b. The ETO is ultra vires as the local traffic authority failed to carry out the balancing act required by section 122 RTRA. In particular the local traffic authority has wholly failed to consider its duty to secure the expeditious and convenient movement of vehicular traffic for those wishing to access the Martin Aston circuit.

### **Relief**

19. For these reasons the Claimant seeks the following relief, namely an order that:

- a. Quashes the ETO; and



- b. Orders that the Defendant shall pay the Claimant's costs of and incidental to the claim to be assessed if not agreed.

**S.A. Fin & Co Solicitors LLP**

8 November 2021

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**ORDER**

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UPON consideration of the claim form and details of claim filed on behalf of the Claimant on 8 November 2021;

IT IS ORDERED THAT:

1. Both parties shall file skeleton arguments which comply with the Moot Rules of Kingsland Cup and Prize Moot no later than 4pm on Wednesday 22 December 2021 by email to [kingslandcup@fbchambers.co.uk](mailto:kingslandcup@fbchambers.co.uk).
2. Skeleton arguments filed in accordance with paragraph 1 above shall be accompanied by a copy of the entry form pursuant to rules 12-13 of the Moot Rules.

HHJ Ian Fleming,  
(sitting as a judge of the High Court)

15 November 2021