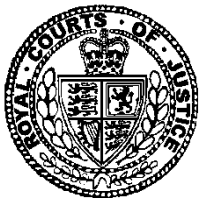

Neutral Citation Number: [2024] EWHC 3262 (Admin)

Case No: AC-2023-LON-003633

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
SITTING IN LONDON

Tuesday, 17th December 2024

Before:
FORDHAM J

- -

Between:

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

- -
- -

David Wolfe KC and **Jack Parker** (instructed by Leigh Day & Co) for the **Claimant**
Saira Kabir Sheikh KC and **Daisy Noble** (instructed by Legal Department, London Borough of Tower Hamlets) for the **Defendant**
Charlotte Kilroy KC (instructed by TFL) for the **Interested Party**

- -

Hearing date: 22.11.24
Draft judgment: 6.12.24

- -

Approved Judgment

- -

FORDHAM J

This Judgment was handed down remotely at 10am on 17th December 2024 by circulation to the parties or their representatives by email and by release to the National Archives.

FORDHAM J:

Introduction

1. This case is about the lawfulness of a decision by the Mayor of Tower Hamlets (MTH) to remove a neighbourhood traffic scheme (the Scheme) after a public consultation. There are questions about the legal relationship between two elected Mayors: MTH and the Mayor of London (MOL). Full versions of the public domain documents to which I will refer can readily be found online by anyone who wants to see fuller detail. To assist them and the parties I will include signposting paragraph number references. The Claimant is a local resident of Bethnal Green. He is part of the "Save Our Safer Streets" group of local residents formed in July 2022. He has the sufficient interest which the law requires, to bring this claim and hold MTH to account under the law.

Statutory Schemes

2. Three statutory schemes are prominent in this case. (1) The Traffic Management Act 2004. (2) The Road Traffic Regulation Act 1984 together with the Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996. (3) The Greater London Authority Act 1999 (GLAA99). As a London local authority and a local traffic authority, the Defendant's functions are regulated and circumscribed by all three of these Acts. The relationship between the Defendant and MOL is governed by GLAA99. MOL gives directions to TFL (the Interested Party), a statutory body set up under GLAA99.

Statutory Duties

3. The following statutory duties are prominent in this case. (1) The Defendant has a network management duty: to manage its road network with a view to achieving the expeditious movement of traffic (including pedestrians), so far as may be reasonably practicable having regard to its other obligations, policies and objectives (2004 Act s.16). (2) The Defendant has a network arrangements duty: to make such arrangements as it considers appropriate for planning and carrying out action in performing the network management duty (2004 Act s.17). (3) The Defendant has traffic order duties: when making traffic orders for facilitating the passage of traffic (including pedestrians) – including experimental orders and revocation orders – to comply with applicable consultation requirements (1984 Act ss.6 and 9; 1996 Regulations regs.6-8, 13 and 22). (4) The Defendant has a LIP Implementation Duty: where MOL has approved the Defendant's local implementation plan (LIP) of proposals for implementation of MOL's transport strategy (MTS), including a timetable for implementing the different proposals, the Defendant "shall implement the proposals contained in [the LIP] in accordance with the timetable included" (GLAA99 s.151(1)(a)). The MTS was issued by MOL in March 2018. The Defendant's LIP was approved by MOL on 8.4.19. (5) The Defendant has statutory "have regard" duties. (5a) In exercising its network management and network arrangements duties, it "shall have regard to" statutory guidance issued by the Department for Transport (DfT) (2004 Act s.18(2)). Relevant DfT statutory guidance was entitled Traffic Management Act 2004: Network Management to Support Active Travel (1.4.22). (5b) In exercising any function, the Defendant "is to have regard" to the MTS (GLAA99 s.144(1)). (5c) In exercising any function, the Defendant "is to have regard" to MOL statutory guidance "about the implementation of" the MTS (GLAA99 s.144(3)). Relevant MOL statutory guidance was: Guidance for Borough Officers on Developing the Third Local Implementation Plan (March 2018); Local Implementation

Plan Finance and Reporting Guidance (April 2019); and Guidance on Developing LIP Three-Year Delivery Plans for 2022/23-2024/25 (October 2021). (6) The Defendant, as a "best value authority", has a best value duty: a general duty to make arrangements, after mandatory consultation, to secure continuous improvement in the way its functions are exercised having regard to a combination of economy, efficiency and effectiveness (Local Government Act 1999 (LGA99) s.3(1)(2)).

Common Law Duties

4. The following common law duties are prominent in this case. (1) The duty to give legally adequate reasons (see South Bucks DC v Porter [2004] UKHL 33 [2004] 1 WLR 1953 at §36). (2) The duty to conduct a fair and legally adequate consultation (see R (Moseley) v Haringey LBC [2014] UKSC 56 [2014] 1 WLR 3947 at §§23 and 25). (3) The duty to depart from statutory guidance only for an identifiable good reason (see R (Munjaz) v Mersey Care NHS Trust [2005] UKHL 58 [2006] 2 AC 148 at §21). (4) The duty to reach a decision which is reasonable (a) as to its outcome, being within the range of reasonable responses; and (b) as to its reasoning process, being free from demonstrable flaw such as material reliance on a legal irrelevancy (or material disregard of a legal relevancy) or absence of evidence to support an important step or serious logical or methodological error (see R (Law Society) v Lord Chancellor [2018] EWHC 2094 (Admin) [2019] 1 WLR 1649 at §98).

The Impugned Decision

5. MTH's impugned Decision was made on 20.9.23. There are Minutes of the Cabinet meeting, a Record of Decisions and a public statement by MTH. In local authority governance terms it was a "key decision" (affecting two wards), which MTH was legally empowered to take by s.9E(2)(a) of the Local Government Act 2000. In his decision-making MTH was considering making appropriate arrangements for the 2004 Act network arrangements duty, which triggered the duty to have regard to the April 2022 DfT statutory guidance. The undertaking of prior public consultation was emphasised in the DfT statutory guidance. A first phase of consultation had taken place on 9.7.22, with consultation papers and a survey questionnaire. A second phase of consultation had taken place on 19.1.23 with a second survey questionnaire incorporating a Travel Survey. A 28-page officers' report (OR) together with 8 Appendices was published on 12.9.23. Removing the Scheme was Option 1 in the January 2023 consultation. Retaining it was Option 2. The OR also described and discussed an Option 3.

Judicial Review

6. Judicial review is a supervisory, and not a substitutionary, jurisdiction. That means the Court's function is not to decide the merits of removing – or retaining – the Scheme. The merits of evaluative judgments and policy choices are entrusted to front-line public authorities, in respect of which there is always a latitude for judgment and appreciation. Judicial review is restricted to deciding questions of law. That includes delineating and applying a set of objective standards. It includes understanding and applying relevant statutory and common law duties. In that way, judicial review holds public authorities to account under the law. In relation to the MTS, the contents of MOL statutory guidance, the approval of the Defendant's LIP and the exercise of MOL's statutory enforcement powers, the primary decision-maker is MOL. In relation to the contents of the DfT statutory guidance, the primary decision-maker is the Secretary of State for Transport. In

relation to the impugned decision, the primary decision-maker is MTH. The parties have made focused submissions on points of law, with supporting evidence and legal materials. The oral submissions were made by Mr Wolfe KC, Ms Kilroy KC, Mr Parker and Ms Sheikh KC. I am grateful to all Counsel, solicitors and team members who have contributed. It is the questions of law, which they have addressed, which I am tasked with deciding. Nothing else.

The Issues

7. The agreed Issues, which I have to decide, come to this. (1) Whether MTH gave legally inadequate reasons for the Decision. (2) Whether the consultation process was so unfair as to be unlawful. (3) Whether MTH unlawfully failed to take into account the results of the Travel Survey. (4) Whether MTH failed lawfully to apply DfT statutory guidance on the monitoring and removal of low traffic neighbourhoods. (5) Whether the Decision was unreasonable. (6) Whether the Decision was taken in breach of the LIP Implementation Duty and/or MTH unlawfully failed to have regard to the LIP. (7) Whether the Decision was taken in breach of the best value duty.

Reasons and Reasonableness

8. Issues (1) (legally inadequate reasons) and (5) (unreasonableness) were addressed together in the oral arguments. Mr Wolfe KC and Mr Parker's skeleton argument had identified the link, in submitting that their points about legally inadequate reasons also indicated unreasonable decision-making or a failure to take legal relevancies into account. Ms Sheikh KC and Ms Noble's skeleton argument also saw the link, in submitting that in reality and on analysis the legally inadequate reasons ground of review shone a bright light on substantive complaints governed by the threshold of unreasonableness. In my judgment, the parties were right, in the nature of the circumstances of the present case, to see this link and adopt this approach. Looking at the two words, we would expect some relationship between what is lawful as a "reasoned" decision and a "reasonable" one. The common law duty of reasonableness involves a baseline requirement that the decision be reasonable as to its outcome, being within the range of reasonable responses. The common law duty of legally adequate reasons involves a baseline requirement of disclosed thinking, leaving no room for genuine doubt as to what a decision-maker has decided and why (Clarke Homes Ltd v Environment Secretary (1993) [2017] PTSR 1081 at 1089H) to bring effective accountability by laying bare any challengeable flaw (R (Oakley) v South Cambridgeshire DC [2017] EWCA Civ 71 [2017] 1 WLR 3765 at §§31-32). Legally adequate reasons means "proper, intelligible and adequate", and reasons which are "improper" will thereby "reveal some flaw in the decision-making process which will be open to challenge on some ground other than the failure to give reasons": see Save Britain's Heritage v Number 1 Poultry Ltd [1991] 1 WLR 153 at 166H. But each duty involves more than its baseline requirement. Reasonableness requires that the reasoning process be free from demonstrable flaws such as material reliance on a legally irrelevant consideration or material disregard of a legally relevant consideration, or absence of evidence to support an important step, or a serious logical or methodological error. Legally adequate reasons require a communicated reasoning process which grapples with the principal controversial issues. There is scope for overlap, and for a degree of principled convergence. A public law deficiency in the "reasoning process" could constitute a failure to give legally adequate reasons; or it could constitute unreasonableness; and so it could be both. I was shown R (Wells) v Parole

Board [2019] EWHC 2710 (Admin) at §§29-41, where Saini J took the issues as to reasons and reasonableness together. I will be doing the same thing.

Low Traffic Neighbourhood Schemes

9. Different names are used for schemes of this kind. The Scheme had become known as "Bethnal Green Liveable Streets". It had been approved by the former MTH in Cabinet on 29.1.20, after a public consultation on 28.10.19 and an officers' report. MOL's March 2018 MTS had spoken of "Liveable Neighbourhoods". The Defendant's MOL-approved LIP dated February 2019 had spoken of "Love Your Neighbourhood Schemes". It listed in Table 18 (§21 below) a programme of such schemes in 20 areas. Three of those listed areas combined to become the Scheme. TFL uses a Form C delivery indicators document, as an Annual Report on Interventions and Outputs, which asks about "Low Traffic Neighbourhoods (LTNs)". LTN was also the description used in the DfT's September 2023 review, whose headline findings were published within draft Statutory Guidance entitled Implementing Low Traffic Neighbourhoods on 17.3.24.

Traffic Orders and Experimental Traffic Orders (ETOs)

10. I referred to the relevant statutory duties as including being the Defendant's traffic order duties. When making traffic orders for facilitating the passage of traffic (including pedestrians) – including ETOs and revocation orders – it must comply with applicable consultation requirements. Carrying the impugned Decision into effect would involve making traffic orders. An ETO is a temporary order which runs for a maximum of 18 months (1984 Act s.9) and can by further order be given "permanent" effect (1996 Regulations reg.23); otherwise it will lapse. Although an ETO involves the same prior statutory consultation as a s.6 traffic order (reg.6), it does not (see reg.22(1)) involve the same prior 6 week public notice and consideration of objections (regs.7, 8 and 13). Traffic orders, ETOs, and ETOs which have been given permanent effect can all be revoked by order (1984 Act Sch 9 §27). A revocation order could itself be an ETO or it could be a traffic order. Ms Sheikh KC told the Court, on instructions, that the Defendant's plan for giving effect to MTH's impugned Decision was by means of a single simultaneous set of traffic orders, with 6 week public notice and consideration of objections. The indication was that this could enable integrated consideration to objections to the removal of the Scheme. Mr Wolfe KC submitted that this is not what the OR says (§7.7). He said closures could be removed individually, and that each could be removed using ETOs before any 6-week objections process. As I see it, what the OR says (at §§7.5 and 7.7) is that Option 1 (removal of the scheme) would be by revocation orders; and that the "new restrictions" in Option 3 would be by ETOs. The impugned Decision did not adopt Option 3; nor any new restrictions. And a briefing for MTH dated 16.5.22 had said of the Scheme that "removal or amendment of the traffic orders prohibiting motor traffic will require a statutory consultation of a minimum eight weeks, as they are permanent" (in fact, I was told, for a traffic order it is 6 weeks rather than 8). Various submissions were made about the use of traffic orders and ETOs. Ms Sheikh KC submitted that, because giving effect to the impugned decision would involve traffic orders and prior statutory consultation, and then a right of statutory review on a point of law, MTH's impugned Decision has only decided "the direction of travel" and there is "a long way to go". The Defendant's pleaded defence had also included reference to the prospect of the Defendant submitting a revised LIP to MOL for approval pursuant to ss.148-149 of GLAA99. That subsided in the written and oral submissions. The main point in the written and oral submissions was that a low intensity of review should be

applied; in part because this was a high level, policy decision, which has further stages ahead of it; which includes the traffic orders stages. I will deal with that now.

Intensity of Review

11. As the Court of Appeal explained in R (Packham) v SST [2020] EWCA Civ 1004 [2021] Env LR 10 at §51 "it is fundamental that … the intensity of review … will always depend on fact and context", where "intensity of review" is how "closely" the Court will "scrutinise the reasoning for a decision". As was also there explained, there is a "conceptually different" question, about "the extent to which a court will accord a margin of judgment or discretion to a decision-maker", which question will also "always depend on fact and context". These are distinct points, because the judicial review court "may closely scrutinise the reasoning for a decision" and "yet still conclude it is proper to accord the decision-maker a broad margin of discretion". Mr Wolfe KC and Mr Parker did not submit for a heightened intensity of review; nor for a narrowed decision-making latitude. They did, however, resist Ms Sheikh KC and Ms Noble's claims for an especially reduced "light-touch" intensity of scrutiny; or for an especially widened decision-making latitude. Ms Sheikh KC and Ms Noble submitted that this is a decision which is political and high-level in nature; it involved an evaluative assessment where the institutional competence lies with MTH and not the Court; and that it is a decision only on the direction of travel, given that traffic orders with statutory consultation would need to follow. My attention was invited to Packham at §§48-53; and R (Friends of the Earth) v SSESNZ [2024] EWHC 995 (Admin) [2024] PTSR 1293 at §141. On this aspect of the case, I prefer the submissions of Mr Wolfe KC and Mr Parker. This is the ordinary – not an enhanced – supervisory jurisdiction of judicial review (Friends of the Earth §142). The Court applies the traditional test of unreasonableness (Packham §51). MTH is entitled to a broad latitude, or margin of discretion (Packham §52). But it is not a macro-political decision, in the exercise of non-statutory powers, as a political judgment on matters of national economic policy (Packham §48). It is not a predictive evaluation. It arises in the context of modal shift to active travel, by walking, cycling and public transport. It involves cleaner air. There are concerns raised about the interests of children, including concerns raised by headteachers of the local schools. The conventional approach to the supervisory jurisdiction is already appropriately "light touch". The fact that a series or set of traffic orders would be needed next, with their statutory objections mechanisms, does not materially affect this position. As to that aspect, in real-world terms, this was plainly an important decision: it was a Scheme-specific decision; it followed two rounds of public consultation; and it in reality be the only opportunity for the community to respond to the scheme as a whole. There is no heightened intensity of review; nor narrowed decision-making latitude. But there is no especially reduced "light-touch" intensity of scrutiny; and no especially widened decision-making latitude.

Geography

12. The A10 between Shoreditch High Street and Hoxton tube stations runs south to north. The relevant neighbourhoods in which the Scheme is to be found are to the east of that vertical line on the map. Their northern border is the A1208 (Hackney Road) as far as Cambridge Health tube station. Their southern border is the A1209 (Bethnal Green Road) as far as Bethnal Green tube station. That makes the eastern border the A107 between Bethnal Green and Cambridge Heath tube stations. This area encompasses two separate wards side by side: Old Bethnal Green area to the east; Weavers to the west. That is why there were two consultation January 2023 papers, seen at Appendix E and F to the OR.

13. You could walk through the middle of the relevant area going east along Columbia Road, then Wellington Row, Durant Street, Gosset Street and along Old Bethnal Green Road. Along the way, you would be able to see 6 of the 14 current road "closures" which were shown in OR Appendix A Option 1. These are at the junction of Columbia Road and Gosset Street (labelled closure [11]); on Quilter Street (first closure [12]); on the junction of Wellington Row and Barnet Grove (second closure [12]); on Teesdale Street (closure [2]); on Canrobert Street (closure [5]); and where Old Bethnal Green Road meets Temple Street (closure [3]). There are 8 other current road closures. Of these, 3 would be seen if you turned right off Old Bethnal Green Road down Pollard Row (closure [6]); or if instead you took the next right down Clarkson Street (closure [4]); and then if you made your way to the parallel Pundersons Gardens (closure [1]). To see the remaining 5 current road closures you would start again from the Shoreditch High Street tube station corner. One is on the junction of Old Nichol Street and Boundary Street (closure [20]). The other four are roads where they adjoin the roundabout at Arnold Circus (closure [19]), one block north of Old Nichol Street. The MTH's Decision is to remove 13 of these 14 road closures, all except Canrobert Street (closure [5]). The Scheme was originally going to include other road closures, but these were never implemented. The January 2023 consultation papers at OR Appendix E and F identified two of these: the junction of Gosset Street and Warner Place; and the junction of Virginia Road. The original scheme map – seen in those consultation papers – appears to show two more. That leaves various existing one-way streets. On your walk, you would have seen these in the Columbia Road area near the flower market; and also in the Old Bethnal Green Road area. The MTH's Decision involves making some roads two-way: at Old Bethnal Green Road, Ravenscroft Street and Columbia Road. That was set out at Appendix A Option 1 at [7], [16] and [17]. In the Decision, MTH has adopted Option 1 (removal), except that he has retained the road closure at Canrobert Street.

14. Under new Option 3 discussed in the OR, there would be 13 out of the 14 existing road closures removed. The one which would remain is the one you would have seen at Canrobert Street. Under Option 3, there would be 'soft' restrictions with signs and exemptions in four places, policed by ANPR (automatic number plate recognition) cameras. They would be where Old Bethnal Green Road meets Temple Street; a new location where Ropley Street meets Hackney Road; at the west end of Old Nichol Street; and on three of the roads off Arnold Circus. These were all set out at OR Appendix A Option 3 at [3], [8], [18] and [21]. One-way traffic would be retained at part of Old Bethnal Green Road and part of Ravenscroft Street, all set out at OR Appendix A Option 3 at [7] and [16]. Option 3 also involved a widened footway (on Old Bethnal Green Road between Mansford Street and Pollard Row) and a new school street (on Pollard Street): shown in OR Appendix A Option 3 at [9] and [10]. There was no consultation on Option 3 and MTH did not adopt it. However, MTH did retain the closure at Canrobert Street, which retention was one aspect of Option 3.

History

15. The Scheme was conceived within the LIP, which the Defendant prepared for MOL in February 2019 after a consultation. The LIP was in response to the March 2018 MTS. The LIP was prepared following the issuing of the March 2018 MOL statutory guidance on developing LIPs. The LIP was approved by MOL on 8.4.19 after an assessment process. TFL then issued the April 2019 MOL statutory guidance on LIP Finance &

Reporting Guidance explaining how any TFL funding would be released for a project included within a LIP.

16. Within the LIP, the Scheme was described in chapter 4 (Delivery Plan) as the combination of items 1, 2 and 4 found in Table 18 (§21 below). It was one of the "first phase projects". The other "first phase projects" were Bow Liveable Neighbourhood (Table 18 item 8) and Wapping (Table 18 item 12). The Bow scheme proceeded to a prohibition on traffic on Anthill Road at all times, but with exemptions for carers, residents and GPs. The Bow scheme featured in a Briefing for MTH dated 16.5.22. It was in operation from March 2022 under ETOs with an 18-month maximum life-span to September 2023, with consultation to September 2022. The Bow scheme was discontinued after public consultation to which TFL responded on 28.7.22. There has been no legal challenge to that decision. The Wapping scheme involved a prohibition at Wapping High Street at peak weekday times, with exemptions for buses, carers, residents and GPs. It involved a permanent traffic order. It featured in the same May 2022 Briefing. There was a consultation in relation to the removal of the Wapping scheme, to which TFL responded on 15.8.22. MTH decided on 5.10.22 to retain the Wapping scheme. The Briefing of 16.5.22 featured four other schemes which by then had been brought into effect. The Briefing said they too had been "implemented". The other schemes from Table 18 had not started, following a September 2021 review of the programme. Those which had commenced included the Brick Lane scheme, which involved pedestrian zones at weekends. Like the Wapping scheme, the Brick Lane scheme involved ETOs which had been made permanent. There was consultation in relation to the removal of the Brick Lane scheme – alongside the Scheme – to which TFL responded on 16.2.23. MTH decided on 20.9.23 to remove the Brick Lane scheme. There has been no legal challenge to that decision.

17. Because the focus of the Chapter 4 Delivery Plan within the LIP was on the first three years (2019/20, 2020/21 and 2021/22), MOL issued the October 2021 MOL statutory guidance on developing LIP Three-Year Delivery Plans for 2022/23, 2023/24 and 2024/25. That MOL statutory guidance described the need for new MOL-approved costed and funded plans, monitoring plans and annual reports (to showcase delivered schemes). There was a "Form A" which was an Annual Spending Submission and Programme of Investment. There was also a "Form C" which was a Borough Wide Annual Report on Interventions and Outputs". The Defendant's Form A for year 2022/23 contained no Table 18 projects. That Form A was approved by MOL on 23.3.22. In due course, the Defendant's Form C submitted on 3.7.23 stated that the number of LTNs introduced in 2022/23 was zero. In both cases, this is because the Table 18 projects had not been taken forward after the September 2021 review.

18. Mayor Lutfur Rahman had been elected as the new MTH on 5.5.22. This was his Manifesto:

> ***When you vote for me on 5th May, I am asking you to support my administration for the next four years. I want you to tell me when the Council has done something well, and I want you to tell me when it needs to do better. And I promise I will listen.***
>
> ***I pledge to: (1) Hold regular surgeries around the borough so that you can come to me for help on individual issues. (2) Reopen our roads, and abolish the failed Liveable Streets scheme, which has seen emergency services and vulnerable residents' access blocked. (3) Recognise that jamming up main roads reduces the speed of traffic, so queueing vehicles emit more fumes, not less. (4) Only introduce traffic reduction measures through consultation with, and by the consent***

> ***of the people of this borough. (5) End the practice of 'consultation' being nothing more than you being asked to rubber-stamp a decision which has already been made. (6) Work with residents, community groups and other interested parties to develop plans and ideas together. (7) Carry out consultation which is fair and worthwhile, on the basis of the 'Gunning Principles' devised by Stephen Sedley QC. The principles are: (a) Consultation must begin when proposals are being developed (not after decisions have already been taken); (b) Proposals out for consultation must include enough information and explanations so that those being consulted can properly respond; (c) There must be adequate time for those being consulted to consider the proposals and respond; (d) Consultation responses will be considered before a decision is taken and how the responses were taken into account will be made clear. (8) Ensure that everyone affected by any proposals will be notified and can have their say. This pledge is at the start of my manifesto because it is so important to me that the community is at the heart of my administration.***

19. After that election, the Briefing of 15.5.22 was produced for the new MTH. It addressed the process for amending implemented schemes, including the Scheme. The various consultations followed. Meanwhile, in August 2022 the Defendant had published its own Strategic Plan, with a Year 1 delivery plan 2022/23 which described a pledge/policy to "reopen our roads, and consult on abolishing the Liveable Streets scheme" and described this as the year one activity:

> ***Undertake public consultation on reopening roads (Jul 22). Following consultation, develop a programme of appropriate alterations (Aug 22). Assess cost of reversing any schemes (Aug 22). Commence process for reversing any schemes (if agreed) (Oct 22).***

Regarding the Scheme, there was the first phase of consultation on 9.7.22 and the second phase on 19.1.23. The OR was produced and published on 12.9.23, and the Decision taken on 20.9.23. The evidence of Mr Austin – the Defendant's Principal Planning Solicitor – tells me it was "called-in" by the Defendant's Overview and Scrutiny Committee who on 23.10.23 resolved that no further action was appropriate.

Table 18

20. Chapter 4 of the LIP included this:

> ***The supporting commentary incorporates both the three-year and 2019/20 annual programme. The programmes set out in the indicative programme of investment seek to deliver the outcomes of the MTS alongside the Tower Hamlets objectives. Where possible, LIP funding will be supplemented with developer funds and in some cases these funds can deliver entire projects without the need to rely on TfL or council funding. The programme maintains the principles of the Healthy Streets approach and has used geographic principles from the Air Quality Management Plan, Cycle Strategy and Road Safety collision data to develop a programme to deliver traffic reduction benefits to both key transport links in the borough and wider environmental improvements to its distinct and unique neighbourhoods. These programmes have been developed in explicit consideration of the MTS outcomes to ensure they are in support of them.***
>
> ***Love Your Neighbourhoods – See Table 18. Love Your Neighbourhood schemes are cells of residential streets, bordered by main roads (the places where buses, lorries and lots of traffic passing through should be), or by features in the landscape such as canals or trainlines. Active travel will be encouraged in each area while rat runs will be restricted. Modal filters, pocket parks, cycle parking, crossings, protected cycle route and continuous footways are typical Love Your Neighbourhood scheme features and will enable local residents to reinhabit their area from through traffic impacts. These projects will be delivered under the 'Love Your Neighbourhood' branding which is used to establish a pride in the local public realm. The Mayor of Tower Hamlets has set an ambitious target to start delivery on 20 areas in the next 3 years.***

> ***The first phase projects are: Bow Liveable Neighbourhood; Wapping area; and Bethnal Green area. The Mayor has given priority to the Love Your Neighbourhood schemes due to their comprehensive nature. This will incorporate all green initiatives with additional match funding from Tower Hamlets' capital. The LIP funding allocated is £800,000 in year 1 and £850,000 for both years 2 and 3. This scheme is in strong support of MTS outcome 1 and 3 by encouraging active travel and ensuring London's streets are used more efficiently with less motor traffic on them.***

21. Table 18 items 1, 2 and 4 combined to become the Scheme. The text for each item (location, current status, programme and issues) appeared in different columns. I have stripped out "programme" for each item, for clarity of later cross-referencing.

> ***1. Location: Weavers North (Jesus Green surroundings). Current Status: Traffic review and street design proposals complete; public consultation and MNR Community Street Audit complete; Mayor Biggs approved works proceed to implementation starting 2018/19 with £85k LIP funding available 18/19 for first phase of works. Issues: Good level of public support in consultation due to ASB issues needing tackling. Proposed interventions include: Road closure Ravenscroft / Quilter; Banned right Baxendale into Barnet Grove; Ropley St one-way working; Durant St Pocket Park consolidation road closure to prevent mopeds; Entry narrowed from Columbia Rd into Barnet Grove; Enhanced ped routes on desire lines; reduced rat running and ASB potential; additional traffic calming to slow speed.***
>
> ***Programme: Delivery on site Dec 18– Jun 19.***
>
> ***2. Location: Arnold Circus / Boundary Estate. Current Status: Work at Calvert Ave junction and Virginia St – Columbia Rd cycle route completed. Traffic management in rest of area now under detailed review for consultation in Q4 2018/19 and implementation 2019 onwards. Within the LEN partnership area so target for cycle parking and EVs, etc. Issues: Good level of resident's support already indicated through Planning Forum proposals.***
>
> ***Programme: Design Dec 2018 towards implementation starting 2019/20.***
>
> ***4. Location: Bethnal Green Middleton Green / Pundersons Gardens Area. Current Status: Traffic management in remaining area now under detailed review for consultation in Q4 2018/19 and implementation 2019 onwards. Issues: Community Safety request for road closures to prevent road racing and ASB driving will be basis of stopping through traffic.***
>
> ***Programme: Design Dec 2018 – Feb 2019 prior to consultation. Build 2019/20 – onwards with funding in LBTH vapitland possible LIP allocation.***

I add that Table 18 item 8 (Bow) and item 12 (Wapping) had these as their stated Programmes:

> ***8. [Bow]… Programme: Construct of initial works Nov 2018 – July 2019 therefore propose this as next Liveable Neighbourhood Bid for TfL by Nov 2018 for first phase work 2019/20.***
>
> ***12. [Wapping]… Programme: Consultation December / January with delivery from March 2019 onwards.***

Three Options

22. Options 1, 2 and 3 were discussed in detail in the OR. I have taken the following brief "summary of each option" from the Equality Impact Analysis which was in the OR at Appendix G:

> ***Option 1: This is the scheme that was referred to as Option 1 in the public consultation. [1] Old Bethnal Green Road. Removal of closure on Punderson's Gardens. Removal of closure on Teesdale Street. Removal of closure on Old Bethnal Green Road. Removal of closure on Clarkson***

> ***Street. Removal of closure on Canrobert Street. Removal of closures on Pollard Street and Pollard Row. Making Old Bethnal Green Rd two way between Pollard Row & Clarkson Street. [2] Columbia Road Area. The removal of the closure on the junction of Columbia Road and Gosset Street and Gosset Street and allowing southbound traffic only (amended to allow northbound emergency vehicle access). The removal of closures on Quilter Street and the junction of Wellington Row and Barnet Grove. Wellington Row would be one way westbound from the junction of Delta Street to the junction with Gosset Street. Wellington Row would be one way eastbound from the junction of Delta Street to the junction with Durant Street. Barnet Grove one way southbound between the junction of Elwin Street to the junction with Barnet Grove. Making one-way sections on Ravenscroft Street (between Ezra Street and Columbia Road) two way. Making one-way section on Columbia Road (between Chambord Street and Ravenscroft Steet) two-way. [3] Arnold Circus Area. Removal of closures at each arm of Arnold Circus. Removal of Closure on the junction between Old Nichol Street. [4] A series of areawide improvements to the public realm to encourage active travel. Option 1 includes plans to create a network of accessible walking routes across Bethnal Green. Creating this network would make it easier for residents to access important services including doctors' surgeries, shops and public transport. The council has identified a first phase of pedestrian improvements under consideration. Pedestrian improvements across the area will include: (a) New zebra crossings on Columbia Road, Gosset Street, Ravenscroft Street and Old Bethnal Green Road; (b) New continuous crossings across the area including where existing physical closures are removed; (c) Speed calming raised junctions at various locations across the area.***
>
> ***Option 2: Full retention of current scheme with all existing closures introduced by the scheme kept in place.***
>
> ***Option 3: This is an amended version of Option 1 which seeks to address concerns raised by key internal and external stakeholders and the public consultation. The differences are as follows: [1] Old Bethnal Green Area. Keep closure on Canrobert Street. Keep Old Bethnal Green Road one way between Pollard Row and Clarkson Street. New camera filters on Old Bethnal Green Road junction with Temple Street to operate during peak times (with resident exemption). Widen footway on Old Bethnal Green Road between Mansford Street and Pollard Row. New school street on Pollard Street. [2] Columbia Road Area. Keep one-way section on Ravenscroft Street (between Ezra Street and Columbia Road). New camera filter on Hackney Road junction with Ropley Street to operating Monday to Saturday. Only restricts non-exempt vehicles from turning in from Hackney Road into Ropley Street. [3] Arnold Circus Area. Four new camera filters on Old Nichol Street and Arnold Circus junction with Calvert Avenue, Navarre Street and Hocker Street restricting night-time non-resident through traffic and associated ASB.***

MTH's Reasons

23. The approved Minutes of the Cabinet meeting are available online. They record what was said by those who addressed the meeting, and what was said by Cabinet members. Here is what the Minutes say about what the Mayor said at Cabinet:

> ***In response to the public and Councillor contributions, the Mayor indicated that the comments and questions from residents clearly showed the passion regarding the LTN issue. He felt the contributions showed that some residents had been failed by the system and had suffered as a result of LTN measures and he was aware of many similar instances of residents being negatively affected. He welcomed the contributions which he felt would assist him in his determination on this issue…***
>
> ***The Mayor welcomed the report which he felt was well written and provided clear recommendations. He made a statement that included the following points:***
>
> ***[1] Low Traffic Neighbourhoods (LTNs) had been one of London's most divisive issues in recent years. The Council had found itself caught up in regional, national and even international politics which had made the business of running the Council more challenging. LTNs had divided political parties, but most detrimentally divided residents. Neighbouring London***

> ***boroughs such as Brent and Ealing had removed LTNs because of their divisiveness. In Tower Hamlets the divisions had been considerable.***
>
> ***[2] Tower Hamlets was an inner-city local authority with narrow streets and tall buildings. Residents had less space to move around than other London neighbours. A one-size-fits-all approach to improve air quality, with limited consultation introduced in the middle of the COVID lockdown was always likely to cause disunity amongst residents. The recent consultation showed that whilst LTNs improved air quality in the immediate vicinity, they push traffic down surrounding arterial roads typically occupied by less affluent residents. LBTH had the third lowest car ownership rate in London, but a significant portion of its local economy was dependent on car usage, particularly among lower paid workers such as taxi drivers, couriers and businesses such as market traders. The emergency services had divided views on LTNs. The London Ambulance Service, for example, opposed hard physical closures. Council services had struggled to reach all our residents in a timely way because of closures leading to waste cleanliness issues across the borough.***
>
> ***[3] The recent consultation showed division amongst residents: whilst there was support for retaining the scheme, roughly 42% of residents wanted them removed. The consultation process was challenging, with around 3,000 respondents in total. Many of them did not live in Tower Hamlets. For residents-only results, the margin was in the low-hundreds. Opposition to LTNs was a key issue in the 2022 Council and Mayoral elections, in which the Mayor was elected with over 40,000 votes and the Aspire party won an overall majority of Council seats.***
>
> ***[5] Having carefully considered the issues the mayor had considered that division was not the answer and that the Council could find better ways to reduce air pollution, whilst uniting residents and businesses rather than dividing them. The Council would start again by removing the bulk of existing LTNs in the borough and propose new solutions that spread the costs and benefits of traffic reduction schemes amongst residents.***
>
> ***[6] The consultation on residents views had aimed to understand the finer details. The consultation had led to the retention of several schemes. The Mayor had previously announced that Wapping Bus Gate would be retained due to resident support. The Council would also retain the road closure on Canrobert St. Walking routes and spaces would be retained as they had proved beneficial to most residents. School streets, which facilitated the timed closure of roads to allow drop off and pick up children, would also be retained. The Council would invest £6m to improve air quality including improving road safety, building more infrastructure to promote walking and cycling and enhancing public spaces including planting more trees. It would work with residents on new schemes which were universally supported. People were more likely to embrace wider public health initiatives if they were part of the solution. The Mayor believed the Council could build the most successful approach to reducing toxic air pollution in the borough, one that did not push costs on to the most disadvantaged residents and listened to them instead.***
>
> ***Accordingly, the Mayor agreed to adopt option 1 from the reports, subject to retention of the closure on Canrobert Street.***

24. MTH released a public statement the same day. Its text fits with the Minutes. Mr Wolfe KC and Ms Sheikh KC both told me that MTH read out the public statement at the meeting. Nobody submitted that some material point in it is absent from the Minutes, though the judicial review grounds emphasise the reference to "the local election result which saw the election of Mayor Rahman on a manifesto promise to remove LTNs". I am not going to set it out separately. It is available online entitled: "My statement on the removal of LTNs".

The Section 151 Issue

25. I turn first to the first part of Issue (6): whether the Decision was taken in breach of the LIP Implementation Duty. Here is s.151(1) of GLAA99:

> ***151. Implementation by a London borough council. (1) Where [MOL] has approved a local implementation plan, or a local implementation plan as proposed to be revised, submitted to him under s.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 s.145(3)(a) above …***

26. I need to give more of the statutory context. Part IV Chapter 1 of GLAA99, in which the s.151 duty appears, includes the following five duties. First, MOL owed a duty to develop and implement policies for the promotion and encouragement of safe, integrated, efficient and economic transport facilities and services to, from and within Greater London (s.141(1)). Secondly, MOL owed a duty to prepare and publish the MTS, containing those policies as well as proposals for securing safe, integrated, efficient and economic transport facilities and services (s.142(1)). Thirdly, the Defendant owed a duty, with statutory consultation, to prepare and submit a LIP containing its proposals for the implementation of the MTS in its area, requiring MOL's approval (ss.145-146). Fourthly, the Defendant owed a duty (s.145(3)) to include in the proposed LIP:

> ***(a) a timetable for implementing the different proposals in the plan, and (b) the date by which all the proposals contained in the plan will be implemented.***

Fifthly, MOL owed a duty (s.146(3)) to approve the LIP only if MOL considered:

> ***(a) that the local implementation plan is consistent with the transport strategy, (b) that the proposals contained in the local implementation plan are adequate for the purposes of the implementation of the transport strategy, and (c) that the timetable for implementing those proposals, and the date by which those proposals are to be implemented, are adequate for those purposes.***

27. There are also statutory powers. The Defendant has a power – at any time, when it considers this appropriate – after statutory reconsultation, to prepare and submit a revised LIP for MOL's approval (ss.148-149). The SST has power to direct MOL to revise the MTS, to remove an inconsistency with national transport policy which is detrimental to any area outside London, with which MOL must comply (s.143). MOL can revise the MTS (s.142(3)) and the Defendant must then revise the LIP accordingly (s.148). MOL can issue a direction to the Defendant to prepare and submit a LIP (s.147) or revised LIP following a revised MTS (s.150(1)), or a general or specific direction as to how the Defendant exercises its functions (s.153(1)), including a direction to prepare and submit a revised LIP. In cases of default, MOL can step in and prepare the Defendant's LIP (s.147) or revised LIP (s.150(2)(4)), can exercise the Defendant's "powers in connection with the implementation of" its LIP proposals (s.152(1)(3)) and recoup the reasonable expense (s.152(7)).

28. Then there are the Defendant's network management duty and network arrangements duty. Here are ss.16(1) and 17(1) of the 2004 Act.

> ***16. The network management duty. (1) It is the duty of a local traffic authority or a strategic highways company ("the network management authority") to manage their road network with a view to achieving, so far as may be reasonably practicable having regard to their other obligations, policies and objectives, the following objectives – (a) securing the expeditious movement of traffic on the authority's road network; and (b) facilitating the expeditious movement of traffic on road networks for which another authority is the traffic authority…***

> ***17. Arrangements for network management. (1) 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…***

29. Having identified that statutory context, I can describe the arguments in support of granting judicial review on this Issue. On this issue, TFL stands as an interested party acting in "support" of the claim (see CPR54.14(1)). Ms Kilroy KC for TFL and Mr Parker for the Claimant made the oral submissions. Their analysis had these key stages:

    (1) Stage 1. The fact that MTH had relevant network management and network arrangements duties (2004 Act ss.16 and 17) did not provide him with lawful authority to choose to contravene a statutory duty arising under s.151(1)(a) of GLAA99. The general network management duty (s.16(1)) is to manage the road network to secure expeditious movement of traffic "so far as may be reasonably practicable having regard to their other obligations, policies and objectives". That does not mean other statutory obligations become legal relevancies, which could then be breached. It means the general duty is qualified by other obligations. So therefore is the duty to make appropriate arrangements (s.17) for performing the qualified network management duty. Ms Sheikh KC is wrong to claim a hierarchical primacy for the 2004 Act ss.16 and 17, such that a statutory duty found in another enactment is somehow overridden.

    (2) Stage 2. GLAA99 s.151(1)(a) imposes a clear and express statutory duty, in circumstances where MOL approved the LIP, that the Defendant:

        shall implement the proposals contained in [the LIP] in accordance with the timetable included by virtue of s.145(3)(a) …

    (3) Stage 3. It follows from s.151(1)(a) that the Defendant was under a statutory duty to implement the projects in Table 18 (§21 above) in accordance with the timetable included within the Table 18 "Programme" for each project. Table 18 was within Chapter 4 of the LIP. The LIP was approved by MOL on 8.4.19. Any individual Table 18 project which the Defendant failed to "implement", as specified in Table 18, put it in breach of its statutory duty. The "timetable included" is found in the "Programme" details. The sole way of avoiding breach of this statutory duty would be by exercising the statutory power (s.148(1)) to submit an appropriate revision to the LIP, after further fresh consultation (s.149(1)), for further approval by MOL (s.149(3)). Table 18 would have to be revised or revoked in this way.

    (4) Stage 4. The legally correct interpretation of "implement" in the phrase "shall implement … in accordance with the timetable" means (i) to bring the proposal into effect in accordance with the timetable and (ii) to then retain it in effect. That means a duty to retain a project, for the overall lifetime of the LIP. The sole way of avoiding breach of this statutory duty would be by having an express end-date within the timetable in Table 18, or to use the power to submit an appropriate LIP revision, after further fresh consultation, for further MOL approval. This is because "implementation" connotes an ongoing action. The date for putting a project into effect is its latest start-date. The purpose of implementation is to achieve outcomes. To act "in accordance with the timetable" means to have commenced by a given date, and then to continue after that. Parliament did not say implementation "until" a particular date. Any other interpretation would have the unthinkable legal consequence that a local authority could evade its responsibilities by installing a scheme by the specified date but then dismantling it the very next day, arguing that the scheme had been duly "implemented in accordance with the timetable". That cannot be right.

(5) Stage 5. There is no question of chapter 4 of the LIP having been superseded, as Ms Sheikh KC claims. The fact that new Delivery Plan documents have been submitted, and even approved, for 2022/23 onwards containing no further Table 18 projects does not supersede Table 18 and chapter 4. Table 18 is a set of projects to start in the first 3 years, and to continue after that. The only way in which a later Delivery Plan could be relied on would be if the Defendant had submitted a Delivery Plan which identified a proposal for the removal of an existing Table 18 project, which MPL would then need to have approved.

(6) Stage 6. This is an enforceable statutory duty in judicial review proceedings. The High Court, on a claim by a person with a sufficient interest, will enforce the statutory duty just as all statutory duties imposed on public authorities are enforceable by judicial review. That means the Court would construe the LIP to identify what constitutes a proposal contained in it, and to identify what constitutes the timetable for that proposal, to identify the breach. The Court then identifies the action constituting the breach as being unlawful and gives whichever judicial review remedies restrain or reverse the breach. Nor is there any discretionary bar, such as delay or alternative remedy. None has been raised, and they would not remove the Court's jurisdiction. True, MOL has a raft of statutory powers of intervention, including to step in and exercise the powers of Tower Hamlets LBC (s.152(1)) and to issue directions to Tower Hamlets LBC requiring actions to be taken or reversed (s.153(2)(e) and (f)), with which there is then a statutory duty to comply (s.153(4)). But these do not remove the High Court's judicial review jurisdiction.

30. The Defendant's position fluctuated during the proceedings. Stages 3 and 4 have always been contested. Stage 1 was prominently contested at the oral hearing. In the pleaded Defence, a point was made suggesting that the Decision was or would be contingent on a subsequent application for a revision to the LIP. It was not maintained. As to Stage 5, Ms Sheikh KC and Ms Noble's skeleton argument identified the Defendant'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 Defendant's Form A (approved by MOL on 23.3.22) and its Form C (dated 3.7.23). There was a faint suggestion that the point is premature because the impugned decision will require traffic orders whose legality is challengeable by an application for statutory review to the High Court. There was a faint and very belated attempt in oral submissions to rely on MOL's statutory powers of intervention in relation to Stage 6. But Stage 6 was always a necessary part of the claim and no exclusive remedy or alternative remedy argument had ever been raised, in the summary grounds of resistance, in the Defence, or even in the skeleton argument.

31. My analysis is as follows. I accept Stages 1 and 2. I have considerable concerns about Stage 6. I was told – and of course accept – that Counsel discharged their professional responsibilities and none was aware of any authority which needed to be brought to my attention as to whether this is a justiciable statutory duty and what the jurisdictional effect is of this statutory duty alongside MOL's express intervention powers. My concern is because not all statutory duties imposed on public authorities are a basis for judicial review. Some duties are target duties. A special right or duty could, as a matter of statutory interpretation, be accompanied hand-in-hand or in-one-breath (I think the legal Latin is "uno flatu") by an exclusive statutory remedy. I would not assume that Stage 6

flows from Stage 2. But I am going to proceed on the basis that this Court has jurisdiction on judicial review to enforce the s.151(1)(a) duty. The discretionary bar of alternative remedy was not raised by the Defendant for consideration. It would not be a jurisdictional answer. It is far too late fairly to raise it now. Procedural rigour has to mean something. The Defendant's arguments as to prematurity fail. As to them, there is no suggestion of any intention to put forward a revision to the LIP. Deferring the argument to an application for statutory review to an individual traffic orders would serve no legitimate purpose and the coherence of the argument could be lost by the focus on individualised orders relating to separate junctions. All in all, I should grasp the nettle.

32. On analysis, I have concluded that the argument unravels at Stages 3 and 4. I accept that an LIP is statutorily required to contain proposals (s.145(1)), a timetable for implementing the different proposals (s.145(3)(a)) and a date by which all the proposals contained in the plan will be implemented (s.145(3)(b)). I accept that MOL is statutorily required to be satisfied as to the adequacy of the proposals (s.146(3)(b)), the timetable for implementing the proposals (s.146(3)(c)) and the date by which the proposals are to be implemented (s.146(3)(c)). I accept that I should approach the interpretation of the LIP with an understanding that these are its features. I accept that MOL has a statutory power, to step in and exercise the Defendant's powers, which is triggered by the Defendant having "failed" or being "likely to fail", "satisfactorily", "to implement any proposal … as required by s.151(1)(a)" (s.152(1)); a statutory power to issue directions "as to the action required to be taken to implement the proposals contained in the LIP in accordance with [the] timetable and … date" (s.153(2)(e)); and a statutory power to issue directions "as to the steps required to be taken to remove the effects of action which is incompatible with such proposals" (s.153(2)(f)).

33. My first difficulty is in the content of the LIP which MOL has approved. The Scheme is derived from three different items from Table 18: items 1, 2 and 4 (§21 above). Item 2 says "implementation starting 2019/20" and item 4 says "build 2019/20 onwards". I have been unable to find a prescribed timetable, or even a single prescribed completion date. Chapter 4 is a Delivery Plan with a three-year "indicative" programme of "investment" (2019-2022); and a detailed annual programme (2019/20). The contents of Chapter 4 and Table 18 raise many questions. When would commencement of "design" or "delivery" be too late to fall within the prescribed "timetable"? Was there a prescribed timetable for all 20 items in Table 18, or just some of them? Some of the 20 programmes in Table 18 give no dates at all. Some say "20/21 delivery at earliest". What about aspects of the Scheme that were never implemented? What about projects that were never commenced? The answer is that Table 18 does not provide the content for the Scheme which could make it an enforceable statutory duty.

34. Then there is a second difficulty. Table 18 lists schemes which would require a public consultation and a decision. That truth is expressly recorded within Chapter 4. Decisions with public consultation need to be made with an open mind, by a decision-maker who is listening. MOL knows these cardinal rules. The Scheme had its consultation on 28.10.19 to 25.11.19, with its OR for the decision of the former MTH in Cabinet on 29.1.20. Then there were the processes for the various ETMOs. So how was the delivery of each of these 20 items within Table 18, within a prescribed timetable, being identified so as to trigger a concrete statutory obligation? That would mean having entered into a commitment – avoidable only by an LIP reconsultation and revision – to proceed with the individual project on which the public were being consulted. That would be a pre-

commitment prior to a public consultation. Which takes me to a different part of Chapter 4. Within Chapter 4 at §4.9 there is a description of "risks to the delivery of the three-year programme and annual programme". There is an express reference to s.151 and the requirement "to implement the LIP under s.151". There is a reference to "change in policy or political direction". And for "individual projects" there is this:

> ***Risk: Individual projects are not supported by the public at the consultation stage. Potential mitigation measures: Undertake appropriate consultation at an early stage to ensure public support. Redesign project to resolve objections. Maintain strategic principles. Impact if not mitigated: Non-progression/ reduction in scope of individual projects.***

This is part of Chapter 4. It was approved by MOL. It is not describing a breach of statutory duty. It is not describing a reconsultation and revision of the LIP. It is describing the nature of individual projects following public consultation, as a necessary and appropriate feature of what was being said within Chapter 4. This shows that the description of the individual schemes would need to be understood alongside the Defendant's public law duties, including no predetermination. Alongside which are the Defendant's traffic management statutory duties. It is not a question of those overriding a s.151 statutory duty. It is a question of the public law setting, assisting in interpreting objectively what is happening in legal terms when individual projects are found listed in Table 18 of Chapter 4.

35. There is then a third difficulty. The Scheme was brought into effect. The first ETMOs were in June 2020. That is four years ago. It was in effect throughout the rest of the three years covered by the chapter 4 Delivery Plan. How open-ended is the supposed ongoing "implementation" duty? The MTS has overarching aims to achieve targets for trips by sustainable modes by 2041. If the "implementation" duty is ongoing, then is it a statutory duty which continues to 2041, absent a new MTS or a new or revised LIP? I think that has to be Ms Kilroy KC and Mr Parker's logic. They pointed to no other candidate date for the statutory duty to come to an end. The starting-point is that Parliament envisaged a "date by which" proposals "will be implemented" (s.145(3)(b)). That suggests a positive answer is needed to the question "has this proposal been implemented". On the other hand, I can see that implementation can be ongoing, as can the exercise of powers in connection with implementation (cf. s.152(1)). I would accept that "implement … in accordance with the timetable" in s.151(1)(a) could involve an ongoing duty by reference to an ongoing "timetable". But I think that would need to be spelled out in the LIP. I do not accept that it is open-ended. Added to which there is a return of the problem of the implications of having a closed mind to any question of whether to remove a scheme; and the ongoing implications of traffic management statutory duties. I am, overall, unable to accept the logic that discontinuing the Bow scheme (Table 18 item 8) was a breach of statutory duty; that the Wapping scheme had to continue in order to avoid a breach of statutory duty; that the pausing of further projects in the September 2021 was a breach of the statutory duty; or that the sole answer to all of this lies in reconsultation and revision. If MOL wants to insist on a timetable for a project which can be enforced under s.151(1)(a) – as urged in the submissions of TFL in the present case – then something different needs to be insisted on by MOL within an approved LIP than is found in Table 18 of Chapter 4.

36. It is for these reasons – relating to Stages 3 and 4 in the argument – that I am unable to accept Ms Kilroy KC and Mr Parker's submissions. There are three footnotes. The first is as to Stage 5. If the true interpretation of Chapter 4 of the LIP were that there is a

concrete prescribed timetable for an individual project to be installed and continued during the life of the LIP, then I would accept that the subsequent steps would not then suffice to displace that statutory duty. The fact that Chapter 4 was tied to 3-years is part of the reason why the premise cannot be accepted. The replacement of Chapter 4, with subsequent approved steps, in which TFL knew perfectly well that previously identified projects were not now included, reinforces the picture. There was no requirement to confirm continuance of an individual project. There was no requirement to get approval for discontinuance of an individual project. All of which is why the premise does not work. So the points really run together in that way.

37. The second footnote is the specific Stage 4 point about reversing an implemented proposal the very next day. The answers, in my judgment, are these. First, although it is a fair test of the logic, it is not a very realistic prospect. It is certainly not this case. An equally fair test of the logic is to ask what end date the "implementation" duty has. Secondly, it would – as framed – be patently unreasonable. As a public authority, the Defendant has enforceable public law duties to act reasonably, and not to frustrate the statutory purpose. To reverse an implemented proposal the very next day, the Defendant would need to act reasonably. Thirdly, Parliament has given MOL the power to issue a direction (s.153), including a direction to require of the Defendant a revised LIP (s.148) with new proposals. So, MOL could require a revised LIP, to meet the MTS. Fourthly, the impunity with which the Defendant would be acting would also be tempered by reference to the impact on accessing future TFL funding. That was a point made in TFL's consultation responses on 28.7.22.

38. The third footnote is by way of a reality check. If Ms Kilroy KC and Mr Parker are right, there was always a statutory duty on the Defendant to maintain the Scheme, as well as the Bow scheme, the Wapping scheme, and presumably also the Brick Lane scheme. It was an ongoing statutory duty, under the LIP and statutory scheme with which TFL was very familiar, in respect of which MOL has enforcement powers triggered by the very same breach, presumably accompanied by the basic public law duty to consider exercising those powers. TFL was very well aware throughout of what the Defendant was proposing, alongside the Defendant's actions in not continuing with any further Table 18 projects. TFL responded to all the consultations. There were the July 2022 consultations, involving the Scheme, the Bow scheme and the Wapping scheme. There were the January 2023 consultations, involving the Scheme and the Brick Lane scheme. TFL opposed the removal of all of these schemes. But what was absent from those responses was any reference to an ongoing statutory duty to retain schemes under s.151. Ms Kilroy KC says TFL prefers collaboration. But it does seem inconceivable – had TFL thought that retaining these individual projects was the Defendant's statutory duty – that TFL would not have pointed this out; alongside points about the merits of the schemes, and alongside any points about collaboration. I would be being less than fully transparent if I did not admit to finding some comfort in this.

The Best Value Issue

39. I deal next with Issue (7): whether the Decision was taken in breach of the best value duty. Here are s.3(1)-(3) of LGA99:

> ***3. The general duty. (1) A best value authority must make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness. (2) For the purpose of deciding how to fulfil the duty***

> ***arising under subsection (1) an authority must consult – (a) representatives of persons liable to pay any tax, precept or levy to or in respect of the authority, (b) representatives of persons liable to pay non-domestic rates in respect of any area within which the authority carries out functions, (c) representatives of persons who use or are likely to use services provided by the authority, and (d) representatives of persons appearing to the authority to have an interest in any area within which the authority carries out functions. (3) For the purposes of subsection (2) "representatives" in relation to a group of persons means persons who appear to the authority to be representative of that group…***

40. Mr Parker submitted as follows. Although this is a "general duty" not concerned with "specific operational matters" (R (Nash) v Barnet LBC [2013] EWCA Civ 1004 [2013] PTSR 1457 at §51), the Decision involved a high-level choice. The s.3(1) duty was engaged. The public consultation could stand as a s.3(2) consultation. The s.3(1) best value duty was breached. The Scheme when brought into effect in 2020/21 had been costed at £2.7m. The OR gave a broad unparticularised costing of £2.5m for removing the scheme (Option 1). Retention of the Scheme had a zero cost and Option 3 had a broad unparticularised costing of £1.2m. No funding was in place, as the OR recorded. TFL funding could not be relied on, as TFL had pointed out in its consultation response on 15.8.22, but which the OR did not record. Neither the OR nor MTH's reasons explained how the outcome of the £1.5m removal of this £2.7m scheme – rather than its retention or £1.2 modification – was best value in terms of economy, efficiency or effectiveness. Nor, given the lack of detail and information in the OR, and given the absence of identified funding, could MTH reasonably reach such a view. This was a breach of the s.3(1) general duty and the decision should be quashed on this ground.

41. I am unable to accept these submissions. In the first place, this was a scheme-specific decision. I do not accept the analysis that, in making this decision, MTH was "deciding how to fulfil" the general duty arising under s.3(1) to "make arrangements to secure continuous improvement". Parliament did not impose a duty, whenever making any decision, to be satisfied as to best value; nor to have regard to economy, efficiency and effectiveness; nor to explain how regard had been had to economy, efficiency and effectiveness. In the second place, MTH was in my judgment informed in a legally sufficient way, so as to be able to make a decision having regard to cost and value. The OR recorded (§3.33), as a key theme from consultees favouring scheme retention: "Concerns of the costs of removal of public realm where significant financial investment has been made". The OR also had a specific section from the Chief Finance Officer (§§6.1 to 6.3) on the estimated costs of the different options, which explained budgetary implications; and with no suggestion of TFL funding. There was no breach of s.3.

The DfT Guidance Issue

42. I turn next to Issue (4): whether MTH failed lawfully to apply DfT statutory guidance on the monitoring and removal of low traffic neighbourhoods. Here are the two key passages from the April 2022 DfT statutory guidance:

> ***Reallocating road space: measures. As set out in 'Gear Change', we continue to expect local authorities to take measures to reallocate road space to people walking and cycling. The focus should now be on devising further schemes and assessing COVID-19 schemes with a view to making them permanent. The assumption should be that they will be retained unless there is substantial evidence to the contrary…***
>
> ***Monitoring and evaluation. As set out in in Local Transport Note 1/20, trials can help achieve change and ensure a permanent scheme is right first time. Trial or experimental schemes should be left in in place for the full duration of the temporary traffic regulation order (TTRO) or***

> ***experimental traffic regulation order (ETRO) where appropriate, or where no traffic regulation order (TRO) is required, until at least 12 months' traffic data is available and has been published. This will allow them to settle in in and for changes in in travel patterns and behaviours to become apparent so that that an informed decision can be made. Adjustments may be necessary to take account of real-world feedback but the aim should be to retain schemes and adjust, not remove them, unless there is substantial evidence to support this. In assessing how and in in what form to make schemes permanent, authorities should collect appropriate data to build a robust evidence base on which to make decisions. This should include traffic counts, pedestrian and cyclist counts, traffic speed, air quality data, public opinion surveys and consultation responses…***

43. Mr Wolfe KC submitted as follows. These passages clearly describe a presumption of retention or adjustment – rather than removal – of traffic orders which reallocate road space to people walking and cycling; where removal needs "substantial evidence". This is a generally applicable point. Indeed, the reference in the DfT statutory guidance to the public consultation which the Defendant undertook is in the next passage under the heading "monitoring and evaluation". The statutory "have regard" duty (2004 Act s.18(2)) required a proper understanding of the true objective meaning of the policy (Gransden v SSE (1985) 54 P & CR 86 at 94). The OR made references to the DfT statutory guidance. But it failed to tell MTH that there was this presumption of retention or adjustment rather than removal; and that removal needs "substantial evidence". It follows that MTH could not "have regard" to this important feature of the statutory guidance. That means MTH did not appreciate that the decision would be a departure from the statutory guidance, which would need an identified good reason. Unsurprisingly in those circumstances, no identified good reason for the departure was identified. This was a breach of the statutory "have regard" duty (s.18(2)) and the decision should be quashed on this ground.

44. I am unable to accept these submissions. These passages in the DfT statutory guidance are addressing temporary and experimental orders, leaving them in place to get adequate data, assessing them, and making decisions about making them permanent. If there were a general freestanding presumption of retention or adjustment, it would be very easy for the drafter of the DfT statutory guidance to have said that. What this means is that reference to this part of the DfT statutory guidance would have been apt in relation to the Bow scheme, where the traffic orders were still ETOs. TFL in its consultation response on 15.8.22 invoked the DfT statutory guidance to support a point about traffic counts, cycle counts, air quality data and feedback from residents. But TFL did so only in relation to the Bow scheme, and not the Scheme, which was addressed in the same response. TFL did not, for its part, say there was a general presumption of retention or adjustment in the DfT statutory guidance. In the event, the OR did describe the traffic counts, pedestrian and cyclist counts, traffic speed, air quality data, public opinion surveys and consultation responses. It referred (at §3.92) to the DfT statutory guidance which it said "encourages" measures to reallocate road space to people walking and cycling. There was further reference to the DfT statutory guidance in Appendix D, including the measures "highlighted" in the guidance. Officers had worked up Option 3, as a way in which "the benefits of the scheme are retained", recording the "strong theme" that the Defendant "should work towards improving it rather than complete removal" (§3.91). I am unable to accept that the OR needed to set out – derived from the DfT statutory guidance – a presumption of retention or adjustment of traffic orders which reallocate road space to people walking and cycling, rather than their removal; with removal needing "substantial evidence". There was no breach of 2004 Act s.18(2).

45. By way of footnote, I record that the DfT statutory guidance was withdrawn on 2.10.23. There is DfT draft statutory guidance dated 17.3.24. Ms Sheikh KC and Ms Noble submitted that it would be pointless to grant any remedy on this ground, since any fresh decision could not involve having regard to withdrawn historic statutory guidance. Mr Wolfe KC says the right response would still be a quashing order, for reconsideration to have regard to whatever statutory guidance may be in place at the time of a future decision. This is a remedies point which does not arise.

The Travel Survey Issue

46. I turn to Issue (3): whether MTH unlawfully failed to take into account the results of the Travel Survey. The context is that the January 2023 consultation questionnaires included the Travel Survey with four questions. Q1 asked whether the consultee used taxicard; blue badge; DP freedom pass; or OP freedom pass. Q2 asked about how the consultee travelled to their regular place of work. Q3 asked about how often the consultee travelled for purposes other than work. Q4 asked, for "each mode of transport used to travel to work", whether and how much the consultee had reduced or increased their use compared with before the scheme was implemented. The OR said (at §3.35) that "details" regarding the Traffic Survey was provided in Appendices B and C (consultation reports). Those Appendices had a heading "Travel Survey", but they then referred only to Q1.

47. Mr Wolfe KC submitted as follows. The OR was materially defective, because it claimed to give "details" of the Travel Survey, but then failed to do so. It told MTH only about Q1. This matters, because an analysis of the data would have shown that among consultees who answered the Travel Survey there was "an increase in walking, cycling and use of public transport and no change or reduction in the use of cars". That point is explained in a witness statement of Charlotte Wasserman, who obtained the data through a freedom of information request. This matters. It showed that the Scheme was delivering on one of its key original objectives: encouraging active travel. The OR told MTH about perceptions that walking and cycling had been made safer, but not that there had been an actual modal shift. The witness statement evidence of Mr Baxter, the officer who wrote the OR, is no answer. First, because the question whether the Travel Survey needed conscientious consideration is an objective question which focuses on the MTH's decision, not a reasonableness review of Mr Baxter's design of the OR. Secondly, because Mr Baxter's reason about the design of the OR – namely that the responses to Q2-4 lacked essential details to make a meaningful contribution as to insight into the trend in travel behaviour – was plainly not a good reason. The fourth requirement of legally adequate consultation is that the product of consultation is conscientiously taken into account in making the decision (see Moseley §25). This requirement is breached where a key feature of the consultation product is left out of account: see R (Kohler) v Mayor's Office for Policing and Crime [2018] EWHC 1881 (Admin) at §§66-68; and R (Stephenson) v SSHCLG [2019] EWHC 519 (Admin) [2019] PTSR 2209 at §§39-40, 50, 58. That is what has happened here. The duty of legally adequate consultation was breached and the Decision should be quashed on this ground.

48. I am unable to accept these submissions. First, it is clear from a fair reading of the OR that the purpose was to provide MTH with a full, fair and helpful collation of information for consideration. There were cycle counts and pedestrian counts (§§3.51 to 3.57). There was NO2 data which showed significant reductions between 2019 and 2022 across the borough, including the roads on the boundary and within Bethnal Green (§3.46) with a reduction in the Scheme area which "can be attributed to the traffic reduction observed

around each of the monitoring sites" (§3.47). Ms Wasserman does not say this could be derived from the Travel Survey answers, which in fact she says would have showed "no change or reduction in the use of cars".

49. Secondly, the OR conveyed a message of modal shift. The Executive Summary on the first page said: "The scheme has delivered on some of its key objectives by reducing some traffic levels and improving parts of Bethnal Green's public realm in a way that makes it safer for walking and cycling." TFL's response was also recorded in the OR (§3.17), referring to "the benefits" being "to promote active travel and reduce road danger, traffic congestion and air pollution in the area". Option 3 was developed, in an aim to retain "the benefits of the scheme" (§3.91). Option 2 (retention of the scheme) was described a scoring highest "in terms of road safety, air quality and public realm suitable to encourage active travel" (§3.94). Appendices B and C recorded the responses about the scheme making the area feel safer to walk, cycle and use public transport; responses from businesses saying "more of our staff cycle or walk to work" and "are more likely to go for a walk … at lunch"; and being "more willing to walk"; and the Defendant's Public Health Team response "on the evidence around low-traffic neighbourhood interventions on … active travel". I cannot accept that information was being presented only as to perception and safety, without changes in behaviour.

50. Thirdly, it is unmistakeable that officers did need to reach an evaluative judgment about analysing and presenting information. That is unmistakeably part of the role of those "professional advisers" who write reports and present information which will assist the decision-maker by being "full and clear enough to enable [them] to understand the issues and make up their minds", as to which reports "the courts should not impose too demanding a standard": see Morge v Hampshire County Council [2011] UKSC 2 [2011] 1 WLR 268 at §36. There was a judgment call, and there is no indication anywhere that it was other than a good faith judgment call. It is appropriate that Mr Baxter should explain what he did and why. Had he not done so, Mr Wolfe KC could have said that no reason had been put forward. It is impossible in my judgment to characterise Mr Baxter's reason as unlawful or unreasonable. Yes, Q4 could have yielded data on how many people said they travelled "to work" more or less by different modes. The fact that even Ms Wasserman describes answers involving "an increase in walking, cycling and use of public transport" and yet she describes answers involving "no change or reduction in the use of cars". This indicates that the Traffic Survey was not suitable to show modal shift away from cars. As Mr Wolfe KC rightly accepted, the Claimant did not include in this ground for judicial review another aspect of the questionnaire, which asked whether modes were used more or less.

51. Fourthly, and looking objectively, I cannot accept that the overall message of the OR could have been materially different for MTH if he had been told that people through the Traffic Survey could be taken as reporting "an increase in walking, cycling and use of public transport"; or for that matter if MTH had then also been told that people through the Traffic Survey could be taken as reporting "no change or reduction in the use of cars". Mr Baxter thought that the Traffic Survey was not fit as an evidence-based message. He could have said that in the OR. That was his position, whether that be about "walking, cycling and use of public transport"; and also as to "the use of cars". In all the circumstances and for all these reasons, there was no failure of conscientious consideration, through officers leaving some key feature uncommunicated in the OR. There was no legally inadequate consultation on this ground.

The Reconsultation Issue

52. I turn to Issue (2): whether the consultation process was so unfair as to be unlawful. To understand this issue, I need to provide some further contextual detail. I have explained that the OR identified new Option 3. It included a rationale and an evaluation of the three options. The matter proceeded to a decision without any consultation of the public in relation to Option 3. I have already set out a summary of the three options (§22 above). These were the consultation feedback themes on Option 1 (remove) and Option 2 (retain) (at OR 3.32 and 3.33):

> ***Key themes from respondents supporting Option 1 included: [1] Concerns from residents who rely on vehicle use for access to services such as medical appointments. There were also concerns from those reliant on carers who reached them by car. Many responses referenced reliance on Hackney Road to get in or out of the area as a particular issue causing significant increases in journey times and fuel costs. [2] Congestion and displaced traffic on other roads including some internal streets and parts of the network of boundary roads. [3] Access for the emergency services and council vehicles such as passenger services, highways and maintenance and waste collection. [4] Impact on local businesses on Old Bethnal Green Road. [5] Access to Highways and Utility services & highway assets.***
>
> ***Key themes from respondents supporting Option 2 include: [1] Road safety and air quality implications of pre-scheme traffic levels returning to the area. [2] Removal of attractive public realm including wide pavements and planting on Old Bethnal Green Road. [3] Concerns regarding the loss of the contra flow cycle lane between Temple Street and Mansford Street as a safer alternative to Bethnal Green Road and Hackney Road. [4] Concerns of the costs of removal of public realm where significant financial investment has been made.***

53. Here is what the OR said about Option 3 (OR §3.58, 3.91):

> ***3.58 Option 3 seeks to take a balanced approach to address responses received in the consultation, consideration of the data and the development of the Equalities Impact Assessment (EqIA) as set out in section 4 or this report…***
>
> ***3.91 Through Option 3, the benefits of the scheme are retained while addressing the impacts which have been identified. A strong theme emerging from the support for Option 2 was that the scheme was not perfect, and the Council should work towards improving it rather than complete removal. Option 3 retains most of the low traffic benefits of the scheme without the adverse impacts that have been caused by physical closures.***
>
> ***[1] Majority of the reduction in traffic levels is retained: The scheme was successful in reducing much of the east west through traffic in the area. The retention of the one-way operation of Old Bethnal Green Road restricting the east west through traffic would continue to limit through traffic. The busiest road in the area before the scheme was Old Bethnal Green Road (between Mansford Street and Pollard Row) where traffic counts measured 8315 vehicles trips in 2019. This reduced to 2739 in 2021 after the scheme was implemented. The amended scheme is not expected to result in any additional traffic at this point resulting from the removal of closures.***
>
> ***[2] The southbound only access on the junction of Columbia Road and Gosset Street would further restrict east-west through traffic by restricting westbound traffic. Traffic through this junction is expected to be reduced due to no direct route to Cambridge Heath Road due to the retention of the one-way system on Old Bethnal Green Road.***
>
> ***[3] Road Safety: [a] The road safety benefits of reduced traffic for much of the area will be retained. [b] The retention of the majority of the new public realm on Old Bethnal Green Road which includes wider footways, planting and a segregated cycle route. [c] An improvement to road safety will be made around Elizabeth Selby Primary School through the widening of the footway on Old Bethnal Green Road. This will also improve pedestrian safety for access to Lawdale Primary School and Oaklands Secondary School. [d] A new School Street will be***

implemented on Pollard Street improving safety around one of the main entrances for Elizabeth Selby School. [e] Traffic on Columbia Road next to Columbia Road Primary School will be reduced through the new camera filter on Ropley Street and new southbound access on the junction with Gosset Street. [f] A new zebra crossing will be installed on Ravenscroft Street close to one of the entrances of Columbia Primary School. [g] A new Copenhagen crossing will be installed with pedestrian priority where the closure is removed on Teesdale Street. [h] Where the Old Bethnal Green Road closure is removed, a new zebra crossing will be installed as well as ANPR closures to be times around school times.

[4] Air Quality: The retention of much of the traffic reduction benefits of the scheme will extend to the air quality benefits.

[5] Concerns around the removal walking and cycling infrastructure including planting to make way for increased space for vehicle traffic: Much of the infrastructure around Old Bethnal Green is retained with further enhancements being made. This will allow children, parents, families, and staff to arrive and leave the school in a safe and healthy environment whilst encouraging more active travel. The removal of walking infrastructure is limited to various junctions where access improvements are to be made. These include Teesdale Street, Clarkson Street, Punderson's Gardens and Gosset Street.

[6] Cost of scheme: The elements of the scheme where there has been significant investment in the public realm will be retained. These include the planting, cycle track and widened footways on Old Bethnal Green Road. Further investment will be made towards improvement footways on Old Bethnal; Green Road, a new school street and areawide accessibility improvements.

[7] Emergency services access is improved: Emergency vehicle access would be improved throughout the area through Option 3.

[8] Access for those reliant on car access: Access for those reliant on vehicle use for access to services such as medical appointments will improve through Option 3.

[9] Network resilience is improved: Network resilience will be significantly improved through Option 3. Many parts of the scheme area including Jesus Green and the Mansford Estate are no longer reliant on Hackney Road for Access. Under the current traffic arrangements, access to and from the Mansford Estate is severely restricted if there are any planned or unplanned closures to Mansford Street or Temple Street.

[10] Access to businesses on Old Bethnal Green Road: We undertook direct engagement with the businesses on Old Bethnal Green Road on the proposals. Five of the six businesses stated they have seen a significant fall in trade since the closures were introduced. They all attributed this fall in trade to the lack of passing trade resulting from the closures.

54. Here is what the OR said about evaluating the Options (§§3.92 to 3.94):

3.92 Evaluating the Options. Appendix C sets out an evaluation exercise which has been undertaken which scores the options according to the following criteria:

(a) Facilitating the passage of vehicle traffic: The Traffic Management Act 2004 also places a duty on Local authorities to facilitate the passage of traffic. The council has a duty to coordinate street works while ensuring network resilience is maintained and that there is efficient and expeditious movement of traffic, as far as possible.

(b) Facilitating the passage of vulnerable road users including pedestrians and cyclists: The Traffic Management Act 2004 also places a duty on Local authorities to facilitate the passage of vulnerable road users. This includes the level of service from footways, crossings and cycle routes to meet the needs of demand in the area. Statutory Guidance for the TMA 2004 (network management to support active travel) encourages measures to reallocate road space to people walking and cycling. Measures highlighted in in this this guidance include installing cycle facilities, enabling walking and restricting access for motor vehicles at certain times. Local

> ***authorities have a authorities have a statutory duty under section 39 of the 1988 Road Traffic Act to take steps both to reduce and prevent accidents.***
>
> ***(c) Local Access: This includes access for emergency service vehicles, deliveries, and servicing for businesses. This also include the vehicles required for the council to fulfil various statutory functions including highways maintenance, passenger transport and waste collection.***
>
> ***(d) Air Quality: The council has presented data on the likely air quality impacts across of the Liveable Streets across the area. This evaluation will consider the likely impact of the different options on air quality by considering the estimated traffic levels and traffic levels and population densities across the area.***
>
> ***(e) Financial cost: This includes the cost of works to develop and implement the option. option. These costs include detailed design, design, traffic management and physical works.***
>
> ***3.93 All of the options are feasible and the evaluation in in Appendix – Options Evaluation, the available data, and feedback received through the consultation are deemed sufficient to enable fair consideration between them. them.***
>
> ***3.94 A summary of the evaluation is: [1] Option 1 scores strongest in 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 in terms of network resilience and access for those reliant on vehicles such as disabled vehicles such as disabled people. From the consultation, the proportion of responses disabled people were more in in support of Option 1 than for Option 2. From disabled responses from within the consultation area 70.4% 70.4% supported Option 1. [2] Option 2 scores highest in in terms of road safety, air quality and public realm suitable to suitable to encourage active travel. [3] 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 that support Option 2.***

55. Here are the evaluation scores from OR Appendix D (correcting the transposition typos):

> ***Option 1. Overall Score +1***
> ***(a) Facilitating the passage of vehicle traffic +5***
> ***(b) Facilitating the passage of vulnerable road users including pedestrians and cyclists -3***
> ***(c) Local Access +5***
> ***(d) Air Quality -3***
> ***(e) Financial Cost -3***
>
> ***Option 2. Overall Score +1***
> ***(a) Facilitating the passage of vehicle traffic -4***
> ***(b) Facilitating the passage of vulnerable road users including pedestrians and cyclists +4***
> ***(c) Local Access -5***
> ***(d)Air Quality +3***
> ***(e) Financial Cost +3***
>
> ***Option 3. Overall Score +2***
> ***(a) Facilitating the passage of vehicle traffic +4***
> ***(b) Facilitating the passage of vulnerable road users including pedestrians and cyclists -2***
> ***(c) Local Access +3***
> ***(d) Air Quality -1***
> ***(e) Financial Cost -2***

56. Mr Wolfe KC submitted as follows. In the OR, officers worked up an important new Option 3. It had a reconciling rationale: to keep the benefits of the scheme identified by those who supported its retention; and at the same time to address the disbenefits identified by those who supported its removal (OR §3.91). Option 3 was a balanced approach (OR §3.58), in light of a strong theme emerging from the support of Option 2

(retention), that the scheme was not perfect and the Council should work towards improving it rather than complete removal (OR §3.91). A principal stated concern of MTH was that such schemes can be "divisive". Consultation responses from residents within the scheme in its two adjacent wards had come out 59% and 58% in favour of retention (Option 2), and 41% and 42% in favour of removal (Option 1). The community was divided. Now Option 3 had emerged. It scored the highest in the OR evaluation scoring (Appendix D). But it had never been disclosed to the public. Officers had worked it up without any ventilation for wider comment. It was unforeseeable. It was not a derivative of the consultation. Unlike retention of Canrobert Street alone, which was properly derivative of the consultation, Option 3 was significantly different. It was not being promoted by any consultee or group. There had been no message to consultees about considering any 'middle way'. Save Our Safer Streets had specifically been told in May 2023 that the Defendant was not working on any Option 3. Local headteachers had united, in their response on 30.1.23, in urging the Defendant to

> ***reconsider your proposal and work with us and other stakeholders and the wider community on a third option, which accepts that the current layouts are popular and successful, but could be better.***

57. The July 2022 consultation papers had described "replacing physical closures with cameras" as an option which "will not be taken forward", and now Option 3 was being put forward to MTH which involved ANPR cameras in place of hard closures. MTH was concerned about emergency vehicle access, but Option 3 was specifically described as having "addressed" the concerns raised by the London Ambulance Service about access (OR §3.14). MTH was concerned about divisiveness, but the community was divided by the binary choice of retain or remove. Option 3 presented the opportunity for a reconciling solution, which could significantly have united the community and diluted the division. Option 3 was now an option under active consideration (Moseley §25) and removal of the scheme was deprivation of a benefit (Moseley §26).

58. The case-law shows that it can be unfair, and a breach of the duty of legally adequate consultation, if a significantly changed proposal becomes the decision that the public body in fact intends to proceed to make: see Keep Wynthenshawe Special Ltd v University Hospital of South Manchester NHS Foundation Trust [2016] EWHC 17 (Admin) at §§75-77. The question whether it is unfair not to reconsult, depriving consultees of the opportunity to make representations on the proposal as amended, is whether the process has been so unfair as to be unlawful: see R (Holborn Studios Ltd) v Hackney LBC [2017] EWHC 2823 (Admin) [2018] PTSR 997 at §§78, 85. Here, the unfairness lies not in the adoption of a new and changed proposal, but in its rejection. Consultees were deprived of the opportunity to voice their support for Option 3 as a compromise, so that divisiveness could dissipate, addressing disbenefits while keeping benefits. The Court can take it that some consultees would have supported Option 3. Beyond that, what would have happened is speculative. The whole point is that informed voices of the community went unfairly unheard. Added to which is this. Had consultees been aware that officers had worked up a third-way Option 3, they would have been encouraged to suggest their own third-way options for consideration. The consultation process was so unfair as to be unlawful and the decision should be quashed on this basis.

59. I have been unable to accept these submissions. Mr Wolfe KC candidly told me that all of the cases which he has been able to find in which there was an unfair failure of reconsultation are cases where the decision-maker adopted some new direction on which

there had not been consultation. In the present case, Option 3 was not adopted. But Ms Sheikh KC agreed that there could, in principle, be an unfair failure of reconsultation where the unfairness relates to a new, suggested but rejected new course. I agree.

60. In my judgment, the consultation process was not so unfair as to be unlawful. Mr Wolfe KC is right to accept that MTH's decision to adopt Option 1 (removal) but with the retention of the Canrobert Street closure was a course which was derivative of the consultation, and that adopting that course without reconsultation of itself involved no unfairness. Consultees had not specifically been asked about removal of the Scheme with the Canrobert Street closure retained. But responses could address that and MTH could fairly adopt it without reconsultation. I agree. Consultation is not a process where everybody gets to comment on what everybody else says; or where everybody gets a right of reply, or responds to a minded-to decision. The four principles of legally adequate consultation are not framed with multiple rounds. The product of consultation, for conscientious consideration by the decision-maker, can involve a new idea. Whether it is identified by a consultee, or comes from officers writing an OR, an idea which was not identified in the consultation paper can be legally adequate consultation working, evidencing a product for conscientious consideration at the final stage of legally adequate consultation: see Keep Wythenshawe Special at §76. In delivering the product of the consultation there was a judgment call for officers as to how they could best assist the decision-maker. Here, officers thought about whether they could identify a balanced approach "to address responses received in the consultation, consideration of the data and the development of the Equalities Impact Assessment" (OR §3.58). It was foreseeable that they would do this. Especially given what consultees had been saying. Officers were responding to the "strong theme emerging from the support for Option 2 … that the Council should work towards improving it rather than complete removal" (§3.91). And it would have been open to any consultee or group to identify a middle-way and put it forward. The Defendant was not consulting on ANPR cameras. But MTH could not shut his mind to whatever consultees wanted to say; and Waste Collection Services did make a point about ANPR (OR §3.24). In my judgment, it was a foreseeable exercise – properly derivative of the consultation – to think about a middle-way and work it up for consideration. Devising Option 3 for consideration, and conducting the evaluation from which it emerged as strongest overall, was the lawful act by conscientious officers, having thought about the available information. It presented and illustrating a middle-way. Its consideration did not in my judgment require a round of reconsultation. Still less, when it was rejected and an existing Option chosen.

61. The case-law on reconsultation emphasises that the Court is looking to see whether there was unfairness. And it is right, in my judgment, to test the claimed unfairness by considering the real-world dimension. Resident consultees were divided 58-59% (retain) and 40-41% (remove). Removal (Option 1) would remove all 14 road closures; retention (Option 2) would retain all 14 road closures. The new Option 3 removed 13 of the 14 road closures, with the only retained closure being Canrobert Street. MTH's decision was to remove 13 of the 14, and it was Canrobert Street which was to be retained. As I have explained, Mr Wolfe KC accepts that retaining Canrobert Street was derivative of the consultation and so the absence of reconsultation about what MTH actually decided involved no unfairness. Under Option C there would be the 'soft' restrictions with signs, exemptions and ANPR cameras in four places; the retention of one-way traffic in two places; the pavement widening and the new school street. This was not the third option, which "accepts that the current layouts are popular and successful, but could be better"

which the headteachers were describing. After the OR was published on 12.9.23 for the Cabinet meeting on 20.9.23, the Claimant's solicitors wrote on 20.9.23 to say that Option 3 was "a new proposal made without proper consultation or adequate analysis". They said Option 3 would "immediately and significantly increase road danger in Bethnal Green" and that Option 3 "has not had sufficient work or consultation to be available as a rational or legitimate choice". They did not say that Option 3 could unify a divided community but needed consultation so that the strength of support for this compromise could be demonstrated. I am not making a criticism of the solicitors. I am making a point about the real-world dimension when it comes to Option 3. There is no witness statement evidence in this case which illustrates that Option 3 could have captured unifying support from a polarised community. Mr Ramsay – the headteacher at Oaklands School – describes a letter of 20.10.23 which he and 85 other headteachers wrote asking that MTH's decision be reconsidered. But, like the Claimant's solicitors on 20.9.23, the headteachers were not saying that Option 3 had a unifying potential, if only it had been consulted upon. The Claimant's solicitors' letter before claim of 26.9.23 relied on the failure to consult on Option 3, but it did not say the Claimant was deprived of unifying support for Option 3. After all, they had previously written to say it was dangerous and could not be adopted. The Claimant does not say he would have supported it. Nor does anyone else. Juliette Tuke of Save Our Safer Streets explains that the group would have been "likely to welcome the development of a public consultation on a redesigned Scheme which retained and added to the benefits of the Scheme while addressing some of [its] drawbacks". She says Option 3 was never raised, and was first seen when the OR was published. But she does not say it had a unifying potential, if only it had been consulted upon. That is not, at all, a criticism of any of these witnesses. All of these responses and this evidence have the integrity of the real-world perspective which they reflect.

62. In all these circumstances and for all these reasons, I cannot accept that there was an unfairness in not having consulted on rejected Option 3. I reach these conclusions without needing to resolve two contested questions about (i) whether, in this case, removal of the scheme was a decision "depriving" the pro-retention residents of a "benefit" (Moseley §26; cf. R (Better Streets for Kensington and Chelsea) v Kensington and Chelsea RLBC [2023] EWHC 536 (Admin) [2023] RTR 24 at §56); and (ii) whether once the question of unfairness has been answered there is no separate hurdle of material prejudice (cf. SSCLG v Hopkins [2014] EWCA Civ 470 [2014] PTSR 1145 at §49). The Claimant says yes to both and I have assumed both points in his favour. His answer to the second is more convincing than to the first, since retainers and removers could each claim equal and opposite benefits of which they are deprived by an adverse decision.

The Reasons/Reasonableness Issues

63. I turn to Issues (1) and (5): whether MTH gave legally inadequate reasons for the Decision and whether it was unreasonable. I have explained why these go together: §8 above. Mr Wolfe KC submitted as follows. This was not a decision adopting a recommendation in the OR. In such cases, the OR reasons for the recommendation become the reasons for the decision. MTH's reasons are to be found in what he is recorded as saying in the Minutes at the Cabinet meeting, put alongside the public statement he read out and issued the same day (§§23-24 above). It is impossible for anyone to understand, from those reasons, why MTH decided to adopt Option 1 (removal); why he decided to retain the single road closure at Canrobert Street; why he

rejected Option 2 (retention); and why he rejected the middle-way Option 3 which was effectively the preferred option in the OR, given that it scored highest overall in the Appendix D evaluation. MTH's reasons do not address the principal controversial issues: the benefits of the Scheme; the adverse impacts of its removal; the divisive effects; and the impacts for car-reliant businesses. MTH referred to his manifesto commitments (§§18, 24 above), but these were general, they were no more than a factor, and they included listening to the community through legally adequate consultation in making scheme-specific decisions. MTH referred to public opinion, but relevant public opinion supported Option 2 (retention) with resident consultees responding 58-59% (retain) over 40-41% (remove). He also referred to access for emergency vehicles, but Option 3 had addressed that concern. He referred to the "divisive" effect of the Scheme, but divisiveness is not resolved by choosing in favour of one of two divided camps. These were not legally adequate reasons. Nor, in the same way, was this a reasonable decision. As an outcome, it was beyond the range of reasonable responses. As a reasoning process, there were unlawful gaps in the logic. Option 2 was supported by the majority of resident consultees as well as corporate respondents including schools and NHS authorities. Option 1 was supported by no robust evidence base, but ultimately rested on a manifesto pledge and minority public opinion. Option 3 retained the scheme with adaptations, as a fully-worked up proposal which scored highest overall, and which addressed the emergency vehicle access concerns. The reasoning process was demonstrably flawed. The decision should be quashed.

64. I am unable to accept these submissions. MTH spoke at the Cabinet meeting and issued his public statement the same day. He disclosed his thinking, and there is no baseline doubt about what he decided and why. As Ms Sheikh KC and Ms Noble rightly identify, MTH was particularly concerned about divisive effect; traffic displacement; those who were car-reliant including for business reasons; emergency vehicle access; and problems for council waste services. He was explaining in a single set of reasons why he was choosing Option 1, not Option 2 and not Option 3. So, even if emergency vehicle access was addressed by Option 3, the point about emergency vehicle access was logical and intelligible in a decision rejecting Option 2. In fact, Option 1 was identified in the OR as the decision which "scores strongest in terms of access for emergency services, residents, deliveries and vehicles associated with council's operations such as highway maintenance and waste collection" (OR §3.94). Options 2 and 3 were both evaluated as less strong. Option 1 was also "the strongest … in terms of network resilience and access to those reliant on vehicles", which included disabled people (70.4% of whom supported Option 1) (OR §3.94). "Network resilience" is about the network's responsiveness to change and incident and is promoted by allowing for multiple routes through an area. Again, Options 2 and 3 were evaluated as less strong. As Ms Sheikh KC and Ms Noble submit, MTH was giving particular emphasis to these matters. He was valuing them highly. He was affording them particular weight. He retained one of the road closures. It was the one at Canrobert Street, which was the one retained by Option 3. He said in the minutes that this closure had proved beneficial to most residents; and put it alongside the Wapping scheme which had been retained "due to resident support". It is rightly not suggested that MTH's general manifesto commitment, which he referenced (§24 above), was legally irrelevant. I would agree with Mr Wolfe KC that one way to look at divisiveness is that choosing between two divided camps does not remove the division. But MTH saw divisiveness differently. He thought having the Scheme had divided the community. He thought divisiveness was best addressed by returning to no Scheme; with a clean slate from which to move forward; starting again and then seeking to find ways

to move forward making changes with community support. That was his reasoning process. It was his decision to take; not mine. His is a generous latitude for evaluative judgment and choice. His reasoning was laid bare, so that people could disagree and the Claimant could challenge its lawfulness in Court. The outcome is not outside the range of reasonable responses. There is a communicated reasoning process which grapples with the principal controversial issues. The reasoning process does not contain demonstrable flaws such as material reliance on a legally irrelevant consideration or material disregard of a legally relevant consideration, or absence of evidence to support an important step, or a serious logical or methodological error.

65. There is one footnote. The witness statement evidence of OR author Mr Baxter described the fact of MTH, Mr Baxter and colleagues having toured the area on 3 July 2023, during which there were exchanges between MTH and residents on Canrobert Street about retaining that closure. This was not described in the OR or in MTH's reasons. This, alongside the description of peak pedestrian demand at Canrobert Street (OR §3.57), could have been legally relevant factual evidence to respond to any challenge alleging an absence of any evidence capable of supporting the retention of the Canrobert Street. But no such criticism has featured in this claim.

The LIP-Relevancy Issue

66. Finally I return to the remaining part of Issue (6): whether MTH unlawfully failed to have regard to the LIP. Mr Parker submitted that the inclusion of the Scheme within Table 18 was an obviously relevant consideration, making it a legal relevancy to which regard needed to be had. It was a project which gave rise to the s.151 implementation duty. It contributed to MTS outcomes and objectives, whose delivery its removal served to undermine. Its removal had potential future funding implications. But none of this was identified for MTH by officers in the OR. It follows that the decision was unlawful for material failure to have regard to a legal relevancy, and should be quashed on this ground.

67. I am unable to accept these submissions. I have already addressed why there was no s.151 statutory duty to retain the Scheme (§§32-35 above). That means no statutory duty can have been a legally relevant consideration. There were s.144(1) and (3) "have regard" duties on the Defendant, so far as the MTS and the MOL statutory guidance is concerned. It is not said that some applicable MOL statutory guidance was disregarded in making this decision. In OR Appendix D, in explaining why Option 1 scored -3 and Option 2 scored +4 for "facilitating the passage of vulnerable road users including pedestrians and cyclists", the OR told MTH (twice) that the statutory duty to do so was alongside the DfT statutory guidance encouraging measures to reallocate road space to people walking and cycling; referred to the MTS as informing key objectives in the Defendant's LIP; and set out seven "key principles" for taking a "healthy streets approach to public spaces". This communicated that the Scheme (which scored +4) contributed to MTS outcomes and objectives, whose delivery its removal (which scored -3) served to undermine. A fuller explanation could have been given, and indeed could have made the point that retention of the Scheme was not required by the s.151 implementation duty. As to potential future funding implications, the OR explained the funding position and did not suggest that TFL funding would be available. There was, in my judgment, 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.

Conclusion

68. I have given my answers to the questions of law which arise. That means MTH's impugned Decision was a lawful one, which it was open to MTH in law to choose to take. I will therefore dismiss the claim for judicial review.

Costs

69. The Defendant, accepting that the Claimant benefits from the Aarhus cap and his costs liability is limited to £5,000, asks the Court to consider ordering in my discretion that a proportion (put at 33%) of its costs should be borne by TFL. The basis for a costs order is that TFL actively participated by leading on an unsuccessful ground; which did not reflect its position on the ground (§38 above); which took a significant portion of court time; and where a costs order would have a disciplining effect on future interventions. In the particular circumstances of the present case, I decline to order costs against TFL. TFL as an Interested Party supported the claim, full-square, on a ground which was already identified and pleaded by the Claimant. There was then a sensible division of presentational labour, using the same court time as would have been needed anyway.

Permission to Appeal

70. The Claimant submitted an application for permission to appeal. The seven "grounds" were the seven issues analysed in the judgment (§§25-67), with a summary as to why the Claimant maintains that – contrary to the Court's findings on each – the Defendant did indeed act unlawfully as had been claimed. The s.151 issue was separately said to involve a compelling reason for an appeal to be heard, independently of arguability. I have not been persuaded, on any of the seven issues, that there is a realistic prospect of success in the Court of Appeal; nor that the s.151 issue involves the claimed compelling reason. I will refuse permission to appeal. I will however accede to the sensible application for a modest extension of time to file any application for permission to appeal with the Court of Appeal, so that the deadline will be 4pm on 14 January 2025.