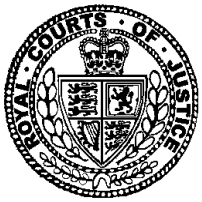

Neutral Citation Number: [2021] EWHC 1745 (Admin)

Case No: CO/4284/2020
Case No: CO/469/2020

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/06/2021

Before :

MR JUSTICE KERR

- -

Between :

THE QUEEN on the application of SOFIA SHEAKH

Claimant

- and -

LONDON BOROUGH OF LAMBETH **Defendant**

And between:

SOFIA SHEAKH

Claimant

- and -

LONDON BOROUGH OF LAMBETH

Defendant

- -
- -

Mr Tim Buley QC (instructed by **Scott-Moncrieff & Associates LLP**) for the **Claimant**
Mr Tim Mould QC (instructed by **Lambeth Legal Services**) for the **Defendant**

Hearing dates: 9th and 10th June 2021

- - - - - - - - - - - - - - - - - - - -

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

MR JUSTICE KERR

Covid-19 Protocol: this judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time of hand-down is **10am** on **28 June 2021**.

Mr Justice Kerr :

Introduction

1. The defendant in the two claims before me, the London Borough of Lambeth (**Lambeth**), has made certain orders restricting the movement of traffic within parts of the borough of Lambeth known as "Low Traffic Neighbourhoods", or **LTNs**. The broad purpose is to promote walking and cycling and to discourage, limit or prohibit use of motor vehicles within the LTNs.

2. The idea of introducing LTNs in Lambeth and elsewhere goes back several years, at least to 2019. More recently, LTNs have been given added impetus by the coronavirus pandemic leading to reduced use and reduced availability of public transport and consequent encouragement from central government to promote walking and cycling rather than using private motorised vehicles.

3. LTNs are introduced using powers given to local traffic authorities, such as Lambeth, to make orders regulating the movement of people and vehicles within their area. These are often called traffic regulation orders, of which there are various kinds provided for in the Road Traffic Regulation Act 1984 (**the ROTRA**). Such an order may be temporary, experimental or permanent, with varying procedural requirements depending on the type of order.

4. A person may bring a legal challenge to the making of certain kinds of traffic regulation orders, but only within narrow limits. The challenge must be brought within six weeks of the making of the order. The court cannot extend that time limit. A challenge brought within the six week period may be brought on, broadly, conventional judicial review grounds.

5. The claimant in the two claims before me lives near the boundary of one of the LTNs in Lambeth. She is disabled and heavily reliant on car transport due to restricted mobility. Unfortunately, she contracted Covid-19 last year and was seriously ill and in a coma for some weeks. Fortunately, she has recovered but remains vulnerable and still greatly dependant on use of her car.

6. She brings the two claims with the support of some local residents. However, other local residents support the use of LTNs. Opinion is divided on whether they are, on balance, are a good thing or not. The court takes no part in that debate and is wholly neutral on the merits or otherwise of LTNs.

7. The main focus of the claimant's case is that she and others similarly dependant on travel by car have suffered disproportionately from the introduction of LTNs within Lambeth, because the displacement of traffic from within the LTNs to the roads outside them leads to a build up of traffic outside them and consequently increased journey times, added stress and loss of quality of life.

8. The claimant says Lambeth has overlooked this in the course of developing its thinking and discussing it locally, to the point where decisions to make orders creating the three relevant LTNs were unlawful and the orders should be quashed. Lambeth disputes this and maintains that it has complied with all its legal obligations in the course of deciding to make the orders challenged.

9. The present claims are among a dozen or more brought in respect of LTNs introduced in Lambeth and other London boroughs. Some of the other claims have settled. Others are stayed, including a further challenge by the same claimant to further traffic regulation orders made by Lambeth while the present case was being prepared for hearing.

Relevant Law

10. Local traffic authorities such as Lambeth must, by section 16(1) of the Traffic Management Act 2004:

> "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.

11. "Traffic" includes pedestrians (section 31 of the same Act). By section 16(2):

> "(2) The action which the authority may take in performing that duty includes, in particular, any action which they consider will contribute to securing–
>
> (a) the more efficient use of their road network; or
>
> (b) the avoidance, elimination or reduction of road congestion or other disruption to the movement of traffic on their road network or a road network for which another authority is the traffic authority;
>
> and may involve the exercise of any power to regulate or co-ordinate the uses made of any road (or part of a road) in the road network … ."

12. The powers of a traffic authority to make traffic regulation orders are found in sections 1-4 of the ROTRA for roads outside Greater London. By section 6, orders "similar to"

traffic regulation orders can be made for roads within Greater London. The orders in this case were made under section 6. Section 7 regulates their content, while section 8 makes it an offence to contravene one.

13. Section 9 allows the making of experimental traffic orders (**ETOs**), which may not last longer than 18 months and may be continued from time to time during the period of up to 18 months from the date the order first came into force. It is an offence to contravene an ETO (section 11 of the ROTRA).

14. By section 14, a traffic authority may, subject to certain conditions, make orders often called temporary traffic orders (**TTOs**), temporarily restricting or prohibiting use of a road or part of one by particular types of vehicles or pedestrians. This can be done for, among other reasons, protection of the public. A TTO may normally not last more than 18 months if it is in respect of a road, or six months for footpaths, cycle tracks and the like (section 15). It is an offence to contravene a TTO (section 16).

15. By section 122(1) of the ROTRA, a local authority must exercise its functions under the ROTRA:

> "(so far as practicable having regard to the matters specified in subsection (2)…) to secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians) and the provision of suitable and adequate parking facilities on and off the highway … ."

16. The "matters specified" in subsection (2) are:

> (a) the desirability of securing and maintaining reasonable access to premises;
>
> (b) the effect on the amenities of any locality affected and (without prejudice to the generality of this paragraph) the importance of regulating and restricting the use of roads by heavy commercial vehicles, so as to preserve or improve the amenities of the areas through which the roads run;
>
> (bb) the strategy prepared under section 80 of the Environment Act 1995 (national air quality strategy);
>
> (c) the importance of facilitating the passage of public service vehicles and of securing the safety and convenience of persons using or desiring to use such vehicles; and
>
> (d) any other matters appearing to the …. local authority to be relevant."

17. By paragraphs 34-36 of Schedule 9 to the ROTRA (in Part VI of that Schedule), a person may "question the validity of" (among other types of traffic regulation order) an ETO or part of one only on the grounds that it is not within "the relevant powers" (as defined) or that any of the "relevant requirements" (as defined) has not been complied with.

18. A challenge to a traffic regulation order must be brought in the High Court within six weeks of the date the order is made. The court cannot extend that time limit. By paragraph 37 of Schedule 9:

> "Except as provided by this Part of this Schedule, an order to which this Part of this Schedule applies shall not, either before or after it has been made, be questioned in any legal proceedings whatever."

19. The procedures that must be followed before making a traffic regulation order are set out in the Local Authorities Traffic Orders (Procedure) (England and Wales) Regulations 1996 (**the 1996 Regulations**). By regulation 6, various bodies such as affected transport providers and the local fire brigade must, normally, be consulted.

20. There is no requirement to consult the general public but where the order may affect passage along any road the authority must consult, among others:

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

21. Further, under regulations 7 and 8 a notice stating the proposals must be published in the London Gazette. Members of the public may object and their objections must be considered. In some cases a public inquiry must be held, under regulation 9.

22. Although the grounds of challenge to a traffic regulation order are framed as cases where the order is not within "the relevant powers" or where "relevant requirements" are not complied with, it is agreed that the grounds for quashing a traffic regulation order using the statutory review procedure are, broadly, conventional public law grounds applicable in judicial review cases.

23. An ETO must be genuinely experimental in nature. It cannot be in truth and substance permanent though made under the guise of an experiment: it must be "an operation designed to glean information about the workings of the scheme in practice" (per Carnwath J, as he then was, in *UK Waste Management Ltd v. West Lancashire DC* [1997] RTR 201, at 208E-F). "[F]or there to be a valid experimental order there must be an experiment and the authority must be able to explain what it is" (*ibid.* at 108F-G).

24. The function conferred by section 122 of the ROTRA was considered by Carnwath J in *UK Waste Management* and by the Court of Appeal in *Trail Riders Fellowship v. Hampshire CC* [2020] PTSR 184, [2019] EWCA Civ 1275. After reviewing other first instance decisions, Longmore LJ at [35]-[37] referred to a balancing exercise:

> "On the one hand regard must be had to the duty set out in section 122(1) … it is significant that pedestrians are included. On the other hand, regard must be had to the effect on the amenities of the locality affected and other matters appearing to the traffic authority to be relevant … This is not a particularly difficult or complicated exercise for the traffic authority to conduct."

25. The functions being exercised here are "functions" within section 149(1) of the Equality Act 2010 (**the 2010 Act**), attracting the duty to have "due regard" to the legislative goals set out in sub-paragraphs (a) to (c) of section 149(1). The section enacts what is known in shorthand as the public sector equality duty and is too well known to require setting out in full here.

26. The claimant emphasised, in the present context of the claimant's disability, the need to advance equality of opportunity (section 149(1)(b)) and by subsection (3) the need in particular to:

> "(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
>
> (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it; … ."

27. The parties referred me to a few of the many cases on section 149 of the 2010 Act. The claimant, through Mr Tim Buley QC, relied in particular on McCombe LJ's influential judgment in *R (Bracking) v. Secretary of State for Work and Pensions* [2013] EWCA Civ 1345, at [26], where he set out eight propositions, some of which I will come back to when considering the parties' submissions.

28. For Lambeth, Mr Tim Mould QC emphasised the importance of the factual and legal context in determining the content of the public sector equality duty in a particular case, well illustrated by the Divisional Court's decision in *R (Hollow) v. Surrey CC* [2019] EWHC 618 (Sharp LJ and Andrews J) and within it the passage at [80]:

> "… what constitutes 'due regard', will depend on the circumstances, particularly, the stage that the decision-making process has reached, and … the nature of the duty to have 'due regard' is shaped by the function being exercised, and not the other way round…. ."

29. Mr Mould further emphasised by reference to the judgment of Andrews J (as she then was) in *R (Law Centres Federation) v. Lord Chancellor* [2018] EWHC 1588 (Admin) at [97] the observations of Elias LJ in *R (Hurley) v. Secretary of State for Business Innovation and Skills* [2012] EWHC 201 (Admin) at [78]:

> "the concept of due regard requires a proper and conscientious focus on the statutory criteria …. the decision maker must be clear precisely what the equality implications are when he puts them in the balance, and he must recognize the desirability of achieving them, but ultimately it is for him to decide what weight they should be given in the light of all relevant factors."

Facts

30. On 18 November 2019, Lambeth's cabinet approved its "Transport Strategy and Implementation Plan" (**TSIP**), a lengthy document of which extracts were provided to me. The TSIP is still Lambeth's principal transport policy document.

31. The officers' report presenting the strategy to cabinet included a summary of an equality impact assessment and the assessment itself in an appendix to the report. The summary stated that the assessors had found "broadly positive outcomes for specific groups", with negative factors comfortably outweighed by the positive ones.

32. The assessment itself was dated 4 October 2019, after several revisions. In respect of disability, the impact of the strategy as a whole (of which LTNs formed only a part) was described as "positive" because of increased provision of step free access to public transport and other measures such as increased disabled car parking provision and

increased participation in "sustainable travel" by increased bus ridership and "inclusive cycling initiatives".

33. The TSIP identified five "guiding principles" and "associated high level objectives", with examples of projects to support these. The introductory background section spoke of "neighbourhood traffic reduction interventions" including LTNs, to deter "rat running" and improve air quality and help Lambeth become carbon neutral by 2030.

34. The five guiding principles are: "sustainable growth"; "efficient and connected"; "inclusive and accessible"; "active and safe"; and "clean air and carbon neutral". Within the second of the five ("efficient and connected"), LTNs were identified as a "first iteration" project, with the note: "[m]apping showing how prioritisation criteria apply across the borough, identification of first tranche, engagement approach".

35. The planned LTNs were covered in more detail in appendix B to the TSIP. Some early incarnations of what have since become the LTNs at issue in this case were discussed. The appendix ended by noting that initial assessment work had begun on the "first tranche" of LTNs and this work would now "accelerate"; but:

> "It is difficult to specify an exact timescale … given the need to fully understand the impact of the interventions and the views of the community in each area to make sure we get it right. In some areas trials / demonstrations may be appropriate before proposals are finalised and in others traffic modelling will be necessary which can extend timescales. We will proceed as quickly as possible, working with the community, and expect the first three neighbourhood areas to be complete within the next 3 years. The sequencing of projects will be related to timescales for changes to the main road network where we need to prioritise between projects. During that period we will also begin working on further LTN areas so that they are ready to go when the first tranche has been completed."

36. From January to March 2020, as is well known, the coronavirus called Covid-19 took hold in England, to the point where a general lockdown was declared from 23 March 2020. Travel generally decreased but cycling increased; use of public transport diminished greatly. Many temporary changes to legislation were made.

37. On 9 May 2020, the Secretary of State for Transport issued guidance under section 18 of the Traffic Management Act 2004 to which traffic and highway authorities must have regard. The foreword was ambitious: the moment was a "once in a generation opportunity to deliver a lasting transformative change in how we make short journeys in our towns and cities". It concluded:

> "Active travel is affordable, delivers significant health benefits, has been shown to improve wellbeing, mitigates congestion, improves air quality and has no carbon emissions at the point of use. Towns and cities based around active travel will have happier and healthier citizens as well as lasting local economic benefits.
>
> The government therefore expects local authorities to make significant changes to their road layouts to give more space to cyclists and pedestrians. Such changes will help embed altered behaviours and demonstrate the positive effects of active travel. I'm pleased to see that many authorities have already begun to do this, and I urge you all to consider how you can begin to make use of the tools in this guidance, to make sure you do what is necessary to ensure transport networks support recovery from the COVID-19 emergency and provide a lasting legacy of greener, safer transport."

38. Under the heading "Reallocating road space: measures" the document stated: "Measures should be taken as swiftly as possible, and in any event within weeks, given the urgent need to change travel habits before the restart takes full effect." The suggested measures included pop up cycle facilities, cones and barriers to widen footways, encouraging walking and cycling to school, introducing a 20 mph speed limit, creating pedestrian and cycle zones and "modal filters" closing roads to motor vehicles to create "neighbourhoods that are low traffic".

39. On 15 May 2020, Lambeth's deputy leader and the portfolio holder for transport matters, Councillor Claire Holland, exercising delegated powers, approved Lambeth's Covid 19 transport programme and authorised the relevant strategic directors to "amend and develop" the programme as necessary.

40. The accompanying report recognised (paragraph 2.2) the "profound implications" for the transport network of the need to constrain public transport to enable social distancing. Consequently, to encourage cycling and walking:

> "we must remove road danger caused by motor vehicles and protect road users who are at risk from this threat. We will need to go further and move much faster than envisaged in the [TSIP], but the measures this identifies will form the building blocks of our response".

41. The authors noted (paragraph 2.3) "inequalities" needing to be reduced: "[n]ot everyone will be able to walk and cycle and some may still need to rely on private cars". Legal obligations were mentioned, including section 16 of the 2004 Act and section 149 of the 2010 Act. Statutory consultation requirements, the authors stated (paragraph 5.1) would be met, including notices to affected residents and businesses; "inclusive engagement materials (paragraph 5.2) would be placed on "[a] single engagement and information website".

42. A risk register was included in the report. Equalities impact assessment was the next heading. The authors noted that the measures taken were "intended to reduce inequality …". Planned further assessments were then described (paragraphs 7.2 and 7.3):

> "Key stakeholders, including representatives of disability groups, will be included in discussions around scheme development and asked to advise on and review interventions. Temporary measures will be designed to be inclusive and accessible to all.
>
> The [TSIP] 2019 was subject to a full EIA …. And any measures brought forward … will either be a) already included in the agreed strategy and / or b) consistent with the Guiding Principles and Actions set out in the Strategy. All Traffic Orders required as part of the Response will be subject to EIA. It is acknowledged that the Covid-19 restrictions will make meaningful engagement with disabled and elderly people more challenging."

43. Appended to that report was the "Lambeth Covid-19 Transport Strategy Programme" (the **TSP**). The interventions envisaged were similar to those suggested in the Secretary of State's guidance, including in relation to LTNs: "[a]ccelerating and expanding the planned TSIP programme to remove through motor traffic from local areas."

44. Since the amount of available funding grant was not yet known, a "Baseline Scenario" described the least ambitious programme of interventions, which included LTNs at the Oval, Railton, Ferndale and Streatham Hill. A more ambitious scenario called

"Baseline +" added three further proposed LTNs, at Streatham Wells, Brixton Hill and Tulse Hill.

45. The most ambitious form of the proposals, called "Max" was said to represent "the full programme that we intend to implement over the next six months provided TfL / DfT funding is made available for this. That would involve including in the programme "up to five additional LTN areas". These would be "prioritised based on expected changes to the TfL road network".

46. There was then a map showing the proposed LTNs and an explanatory passage explaining the "scheme evidence base". This referred to something called "Floow reports" which Lambeth had commissioned as part of the development of the LTNs programme. Among other things, these reports:

> "provide insight into traffic patterns by analysing vehicle GPS and telematics sensors to provide estimates for both total traffic volumes and, critically, whether those vehicles ended their journey within a neighbourhood area. Using that data officers are able to gauge the volume of through traffic within any defined geographical area. In this instance that area within the periphery roads of each LTN [sic].
>
> Also included are the baseline traffic flows for key roads within the [LTN] that could, with lower traffic volumes, serve as key routes for walking, scooting, wheeling, cycling. These figures are taken directly from data collected across the borough… ."

47. The first of Lambeth's traffic regulation orders made under the new TSP was a TTO made on 22 May 2020 relating to the Oval Triangle area. This created a new LTN in that area. It is not directly relevant in these proceedings because a subsequent attempt to challenge an ETO relating to the same area was not brought within the required six week period running from the date when the order was made. I shall return to this point a little later in this judgment.

48. The Secretary of State's statutory guidance was reissued on 23 May 2020, with minor immaterial amendments. From the same date, the procedure for making documents available for public inspection was temporarily (until 30 April 2021) modified by the Traffic Orders Procedure (Coronavirus) (Amendment) (England) Regulations 2020.

49. The temporary amendments added a new Part VI to the 1996 Regulations, enabling an authority to make "alternative arrangements" (regulation 27(5)) where the authority did not consider it practicable (because of restrictions) to make a document available for inspection at "various locations" (regulation 27(4)). Lambeth used this temporary power to make arrangements for inspection of documents about the LTNs online and, on request, by telephone.

50. On 4 August 2020, Lambeth officers completed a draft equality impact assessment (**EQIA**) in relation to a plan to create a new LTN in the Railton area, called the Railton LTN (or Railton and St Matthew's LTN when St Matthew's was not treated as separate). The EQIA would be reviewed and updated at "key milestones", as stated in it. Vehicle traffic would be able to reach properties within the LTN but not to drive into it and then out the other side.

51. Under the heading "Disability", the draft EQIA stated as follows:

> "Much of current public realm / road network has the effect of excluding disabled people and the proposal seeks to address this by creating a more inclusive street environment. Reducing road danger also has the potential to enable more people to participate in active travel. For example, cycles can improve mobility and access for disabled people, many of whom do not have access to motor vehicles. For those that do have access to a car, in some cases journey times may be increased for some trips. All areas will remain accessible, however, and reduced traffic on the local streets is expected to result in a safer, less stressful and more convenient trip making for local journeys by car for those that need to drive."

52. On the subject of monitoring, the draft EQIA stated that the analysis "does not identify any significant equalities risks for the proposed changes"; but "ongoing monitoring of the scheme will be important to update this analysis". A description of how that monitoring would take place then followed, using techniques such as collating traffic flow reports, telematics and a comparison using pre-Covid data.

53. Three days later, on 7 August 2020, a TTO was made in respect of the Railton LTN. Traffic restrictions came into effect which were later, as we shall see, continued or adapted into three of the ETOs that are the subject of challenge in these proceedings.

54. On 16 September 2020, four ETOs were made for the purpose of maintaining and continuing the Oval Triangle LTN. They replaced the TTO of 22 May 2020 in respect of that area. The four Oval Triangle ETOs were to enter into force from 28 September 2020. A notice to that effect was published in the London Gazette on 16 September 2020.

55. The four Oval Triangle ETOs are:

- The Lambeth (Free Parking Places) (Disabled Persons) (No. 1) Experimental Traffic Order 2020;
- The Lambeth (Kennington) (Parking Places) (No. 2) Experimental Traffic Order 2020;
- The Lambeth (Prescribed Routes) (No. 5) Experimental Traffic Order 2020; and
- The Lambeth (Waiting and Loading Restriction) (No. 4) Experimental Traffic Order 2020.

56. An accompanying statement of reasons explained that the general effect of the orders would be to ban all vehicles except pedal cycles from entering or leaving certain roads; introduce certain contra-flow cycle lanes; and makes changes to parking arrangements. The measures were being introduced "as an experiment in the first instance so the effect can be assessed before a decision is made about whether to continue the scheme permanently".

57. A similar but more detailed explanation of the measures was included with the notice in the London Gazette, which invited any objections to be put in writing, stating the grounds, and sent to a named Lambeth officer within six months of the date of entry into force of the orders, 28 September 2020. This procedure is ordained by regulation 23 of and Schedule 5 to the 1996 Regulations.

58. On 9 October 2020, Lambeth's strategic director, resident services, Mr Bayo Dosunmu, authorised what was described in the report of the decision (**the October report**) as "a series of experimental measures .. across the borough to create [LTNs], assist social distancing and improve the cycling environment". The LTNs approved by the director were listed: the Oval Triangle LTN, the Railton LTN, the Ferndale LTN and the Streatham Hill East LTN.

59. The October report referred to the Secretary of State's guidance, Lambeth's TSIP and the Mayor of London's London Streetspace Plan dating back to 6 May 2020. The latter document, published by Transport for London (**TfL**) was subsequently quashed in this court by Lang J but the Court of Appeal has (since the hearing before me) allowed the Mayor's appeal, for reasons to be given later.

60. Since neither party addressed me orally on the first instance decision nor contended that it was of other than indirect relevance; and since this case is some urgency and of considerable importance to many living in or near the Lambeth LTNs, it seems to me right not to await the Court of Appeal's reasons but to proceed to release of this judgment now.

61. The approval of the Oval Triangle ETOs was necessarily retrospective, in that those ETOs had already been made on 16 September 2020, as just explained. ETOs were not yet in place for the other LTNs (Railton, Ferndale and Streatham Hill East). The October report sets out Lambeth's reasoning in support of the ETOs challenged in these proceedings.

62. The heart of that reasoning, beneath the heading "Proposals and Reasons", is worth setting out in full, at paragraphs 2.1 to 2.5:

> "Officers in the Transport Strategy and Highways teams have used elementary traffic modelling techniques to identify where and what traffic controls are most likely to achieve the objectives described in the new Statutory Guidance. However, narrow road widths and competing demands for kerbside space preclude the creation of significantly widened footways or physically segregated cycling lanes on most of Lambeth's roads. Yet annual attitudinal surveys undertaken by TfL evidence how people will only change their mode of travel to cycling if the road environment feels sufficiently safe to them. Whilst, in the manner of London's Quietways, this can be achieved by restricting motor traffic in roads signposted as cycle-routes, in a dense urban area such as Lambeth, this route-based approach risks generating higher traffic levels on parallel routes. Unless these routes are designed for through traffic (which is generally only the case with classified roads), this outcome is at odds with the revised Network Management Duty. Consequently, it is recommended that rather than pursuing route-based traffic reduction, the Council pursues traffic reduction across areas bounded by roads that the Transport Strategy identifies as being suitable to carry through-traffic. Each of these areas would then become a Low Traffic Neighbourhood (LTN).
>
> The priority for assessing which potential LTNs should be included in the first tranche of schemes is as stated in the TSIP. These schemes have been reviewed by ward councillors and emergency services to establish that any operational or social issues forecast to arise are not disproportionate to the scheme objectives described in paragraph 1.2.
>
> The speed of delivery demanded by the Secretary of State's Guidance is incompatible with the timeframe required to collaboratively develop and agree a traffic management scheme with road users, members of the community and other stakeholders. Accordingly, officers

> consider that introducing such interventions by means of an experimental traffic order is the most appropriate legislative mechanism.
>
> At the request of the emergency services, all physical restrictions to effect any road closures should, at least initially, include the ability for a fire appliance to pass through without the need to stop. Recognising that a physical gap will significantly lessen drivers' and motorcyclists' self-enforcement of the signed restrictions, automatic number plate recognition (ANPR) cameras will be used to carry out enforcement if necessary. Exemptions will be made for emergency vehicles and refuse vehicles when undertaking street collection.
>
> The resultant traffic management proposals are described as follows."

63. A description followed of the measures for the five proposed LTNs, at Oval Triangle (already implemented), Railton, Ferndale, Streatham Hill East and St Matthew's (here treated separately from Railton). The financial implications were then discussed, followed by references to relevant law and guidance including the ROTRA and the 1996 Regulations. Section 149 of the 2010 Act was also referred to, with the comment that the equality duty cannot be performed by "justifying a decision after it has been taken" (4.17).

64. The director had earlier noted (4.10) that the 1996 Regulations do not require public consultation where an ETO is made provided the public notice mentions the right to object within six months of its entry into force. A further passage under the heading "Consultation and Co-Production" referred (5.1) to the "inherent uncertainty" about changes to traffic patterns and car use, which:

> "has informed the recommendation to proceed by way of an [ETO] whereby full public consultation on the precise design of scheme is carried out after installation."

65. During the first six months of operation, "ongoing formal public consultation shall be undertaken to inform whether the changes should be withdrawn, modified or made permanent" (5.2). The six month periods have now expired, except in the case of the Railton and St Matthew's LTN orders, to which I am coming in a moment.

66. A risk management table then followed, setting out some possible downsides to the proposals, how likely they were to arise, how serious the impact would be if they did and what "mitigation" measures could obviate that impact. The four areas of risk there identified all in one way or another envisaged that the LTN scheme could backfire through lack of public support or unacceptable displacement of traffic to areas outside the LTNs. Consultation and further traffic modelling were suggested as mitigation measures to help avoid that.

67. The October report returned to the topic of equality impact assessment near the end (7.1 and 7.2):

> "A separate Equalities Impact Assessment has not been completed for this decision but prior to making the recommendations detailed in this report, regard has been given to the Public Sector Equality Duty and the relevant protected characteristics (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation).

> The Assistant Director for Highways, Capital Programmes & Sustainability has approved the project team's assessment that there is a reasonable expectation that the measures will not disproportionately affect people with one or more of the above protected characteristics. The veracity of this conclusion will be explored as part of the six-month post-implementation consultation period."

68. On 14 October 2020, two ETOs were made for the purpose of creating the Streatham Hill LTN. They were to come into force on 26 October 2020. The accompanying statement of reasons explained that the orders would ban vehicles from using the various roads affected as through roads, as an experiment, as part of a borough wide experiment to create LTNs to encourage walking and cycling. After the experimental period, Lambeth would consider whether to make the ETOs permanent.

69. The two Streatham Hill ETOs are:

- The Lambeth (Waiting and Loading Restriction) (No. 5) Experimental Traffic Order 2020; and

- The Lambeth (Prescribed Routes) (No. 6) Experimental Traffic Order 2020.

70. Once again, a more detailed explanation was included as part of the required notice in the London Gazette; written objections, with grounds, were invited and the public were directed to send any to the relevant officer within six months of the date of entry into force of the orders, 26 October 2020.

71. On 21 October 2020, Lambeth officers completed a draft EQIA, to be updated in the future, in respect of the Oval Triangle LTN. After describing the measures, the rationale for them and their intended beneficial effects, the impact on groups with protected characteristics was considered. Under the heading of disability, the following passage appeared:

> "Much of current public realm / road network has the effect of excluding disabled people and the proposal seeks to address this by creating a more inclusive street environment. Reducing road danger also has the potential to enable more people to participate in active travel. For example, cycles can improve mobility and access for disabled people, many of whom do not have access to motor vehicles. For those that do have access to a car or rely on taxis or carers, in some cases journey times may be increased for some trips and routes may need to change."

72. This reasoning, and the wording, were similar to that used in the draft EQIA relating to the Railton LTN, the first version of which had been completed in early August 2020, as I have mentioned above. However, the section on monitoring had developed. The authors noted:

> "potential negative impacts on deliveries to retail business and on some people with disabilities who may be affected by longer journey times or altered routes. Initial mitigations for these risks include communication and engagement to notify people of the changes, and direct to advice and information where necessary. Ongoing monitoring of the scheme will be important to update this analysis and to develop more specific mitigations where necessary."

73. Also on 21 October 2020, a draft EQIA was completed by Lambeth officers relating to the Streatham Hill LTN. Its content was materially the same as the draft EQIA for the

Oval Triangle LTN. Monitoring was to be undertaken; but the main equalities impacts were considered to be positive. The outcome at the end of that draft EQIA and the others produced at the time was the same:

> "The analysis above does not identify any significant equalities impacts for the proposed changes. Ongoing monitoring of the scheme will be important to help identify any potential negative impacts arising from the development of the proposals and will provide key information to update this analysis."

74. On 13 November 2020, the Secretary of State issued an amended and updated version of the statutory guidance first issued on 9 May 2020, as explained above. The words "[m]easures should be taken as swiftly as possible, and in any event within weeks, given the urgent need to change travel habits before the restart takes full effect", were amended to: "[m]easures should be taken as swiftly as possible, but not at the expense of consulting local communities."

75. In keeping with that new emphasis, a section was added at the end, headed "Engagement and Consultation". This set out further advice on seeking the views of various groups.

76. On 19 November 2020, the claimant applied for permission to bring her judicial review claim. In it, she sought to challenge the legality of the four Oval Triangle ETOs; the two Streatham Hill ETOs; a TTO made on 18 September 2020 in relation to an LTN in the Tulse Hill area of Lambeth (not mentioned above and not now relevant to these proceedings); and the delegated decision of Mr Dosunmu, the director, set out in the October report.

77. On 30 November 2020, an updated version of the EQIA relating to the Railton and St Matthew's LTN was produced by Lambeth officers. Under the heading of disability, new text was added as follows, on the subject of disabled people who rely on motor transport:

> "Feedback gathered since the trial scheme was launched indicates some individuals have had to change their routes to access essential services and support. This includes parents and carers of disabled children accessing schools and disabled people and carers accessing shops, pharmacies and GP services for essential goods, presciptions and appointments. We have received feedback from disabled people who rely on motorised transport, and from SEND providers about the impact that the LTN has had on their journeys. Further data is being collected and mitigations developed and implemented accordingly.
>
> …. Disability is a broad category and ongoing engagement and monitoring will be needed to identify impacts on different groups."

78. Phased monitoring was again proposed, plus a new specific proposal for "those reliant on vehicles": an exemption for SEND (special educational needs and disabilities) transport providers would be put in place for all LTNs and "[f]urther measures" could be needed to address further "unforeseen negative impacts". Those suggested were a readiness to implement rapid change, use removable barriers to vehicles so they could be removed at short notice and an extended "grace period" before full enforcement is introduced.

79. The next day, 1 December 2020, Lambeth officers updated the EQIA relating to the Oval Triangle LTN, the first version of which was dated 21 October 2020, over a month after the four Oval Triangle ETOs had (on 16 September) been made and several weeks after they had (on 28 September) entered into force. The updated EQIA was put into almost the exact same textual form as that relating to the Railton and St Matthew's LTN completed the previous day.

80. Also on 1 December 2020, officers updated the EQIA for the Streatham Hill LTN. The text was put into the same or virtually the same form as that of the EQIAs for the Oval Triangle and Railton and St Matthew's LTNs. The commitment to continued feedback, engagement and monitoring and the introduction of mitigating measures to counteract any negative impacts was embedded in the EQIAs for each of the three LTNs relevant in this case.

81. A monitoring strategy document for LTNs was then published by Lambeth on 4 December 2020. Its full title was "Covid-19 Transport Strategy Programme; Low Traffic Neighbourhoods Monitoring Strategy". The plan is to use "a range of before and after data sets to assess the impact of our LTN programme. Data will be collected inside LTN areas as well as on the immediate boundary roads that surround an LTN area …".

82. The data to be used include traffic counts, traffic speeds, air quality monitoring, ANPR [automatic number plate recognition] camera compliance levels, feedback via councillors, the online consultation platform, public enquiries and business engagement. Lambeth commits to monitoring the effect, if any, on bus journey times and emergency service response times.

83. The data will be compared with the "initial baseline". The EQIAs for each LTN are to be updated "as the project evolves through the review stages …considering data and feedback to understand the benefits, impacts and adjustments required to ensure the best possible outcomes. The review reports and updated EQIAs will be published on the online consultation platform."

84. On 30 December 2020, a further delegated decision was made, specifically to introduce the Railton and St Matthew's LTN. It had, indeed, already been authorised by the strategic director, residents services, Mr Dosunmu, by means of the October report.

85. In line with the increased emphasis on public engagement in the November 2020 version of the Secretary of State's guidance and with the monitoring strategy document just mentioned, the record of the "delegated decision" made on 30 December 2020 included a commitment to "undertake a non-statutory consultation exercise with local stakeholders prior to any decision being made moving to a permanent traffic order".

86. The EQIA for the Railton and St Matthew's LTN was attached to the decision document. And, under the heading "Equalities Impact Assessment", the following passage appeared:

> "A scheme equalities impact assessment was conducted in September 2020 and revised in October 2020. The latest assessment concludes that the analysis does not identify any significant equalities impacts for the proposed changes. It will be important to monitor the

> impact of the scheme once the experimental order is in place and develop mitigations if required."

87. On 6 January 2021, three ETOs were made for the purpose of maintaining and continuing the Railton and St Matthew's LTN, initially introduced by a TTO made on 7 August 2020. That TTO was replaced. The three Railton and St Matthew's ETOs were to enter into force on 18 January 2021.

88. The three Railton and St Matthew's ETOs are:

- The Lambeth (Waiting and Loading Restriction) (No. 1) Experimental Traffic Order 2021;

- The Lambeth (Poets' Corner) (Parking Places) (No. 1) Experimental Traffic Order 2021; and

- The Lambeth (Prescribed Routes) (No. 1) Experimental Traffic Order 2021.

89. The statement of reasons explained that these orders would ban vehicles except pedal cycles from entering certain roads in the Brixton area and from using them as through roads and ban waiting of vehicles in parts of Coldharbour Lane and Shakespeare Road, as an experiment.

90. The purpose of the orders, it was explained, was to reduce through traffic and air pollution and encourage walking and cycling. Lambeth would consider making them permanent after assessing the position during the experimental period.

91. Following the same pattern as previously, a more detailed but similar explanation was given in the required notice published in the London Gazette, which invited any written objections, stating the grounds, to be sent to the relevant officer within six months of the date of entry into force of the orders, 18 January 2021.

92. On 26 January 2021, the claimant's application for permission to apply for judicial review came before me for consideration on the papers. I directed a rolled up hearing and that the matter should proceed as if it were a challenge brought under Schedule 9 to the ROTRA.

93. It was evident that parts of the claim were in time, in that they sought to challenge the two Streatham Hill ETOs made less than six weeks prior to the permission application; while other parts appeared to be out of time as they challenged decisions and ETOs – notably the ETOs relating to the Oval Triangle LTN - made more than six weeks previously.

94. On 10 February 2021, just before a directions hearing in her judicial review claim (and several other claims relating to LTNs in other parts of London), the claimant brought a separate claim under Part 8 of the CPR, challenging under Schedule 9 to the ROTRA the three ETOs Railton and St Matthew's LTN. That challenge was in time, as it was brought less than six weeks after those ETOs were made. By agreement, that Part 8 claim was joined to the judicial review.

95. For completeness, I record that on 25 February 2021, the Secretary of State issued a further revised version of the statutory guidance originally dating from 9 May 2020. The impact of Covid-19 had, as is well known, gone through numerous twists and turns since then. The further revised version does not affect the issues in this case.

96. On 24 March 2021, a further decision was made under delegated powers relating to a different LTN in Lambeth, the Ferndale LTN. Certain ETOs were made by Lambeth to maintain that LTN. I mention it for completeness because it has since been challenged by this same claimant in a further claim (brought on 4 May 2021) under Part 8 of the CPR, but that challenge is stayed by consent and not before me in this case.

97. I also mention, for completeness, that two further ETOs were made on 14 May 2021 which supplement but do not supersede the two ETOs relating to the Streatham Hill LTN which are challenged in these proceedings. As far as I am aware, no separate challenge to the two new Streatham Hill ETOs has been brought. Their validity is not a live issue in these proceedings, but presumably they are closely linked to the Streatham Hill ETOs that are challenged here.

98. The six month periods during which statutory objections in writing may be made in accordance with the procedure in the 1996 Regulations have now expired in the case of the Oval Triangle ETOs and the Streatham Hill ETOs. The six month period will expire, in the case of the Railton and St Matthew's ETOs, on 5 July 2021.

99. There is evidence before me of written objections being posted on Lambeth's dedicated website, but none of any general public consultation at present. The court is not apprised of any outcomes to the monitoring exercise described above, which I would expect to be ongoing.

100. There is no evidence that SEND transport providers have permission to drive through the LTNs or otherwise observe different rules from everyone else. Nor is there evidence of any other "mitigation" measures being developed and implemented. The ETOs can last for up to 18 months from the date when each was made. We are in the middle of those 18 month periods now.

Preliminary Matters

101. There are two separate claims before me. The first in time is an application for permission to apply for judicial review brought on 19 November 2020. It was not framed a statutory review challenge under Schedule 9 to the ROTRA. It was framed as a conventional judicial review permission application. As I have said, the claimant sought to challenge certain orders, some made more than and some made less than six weeks before the bringing of the claim.

102. The effect of that was that the claimant would be entitled at least to advance her challenge to some of the traffic orders, i.e. those made less than six weeks before 19 November 2020. To do so, she would not need to show that her grounds were arguable, for there is no permission requirement where a statutory review challenge is brought.

103. The claimant could not circumvent the six week deadline by using the judicial review procedure; that would be contrary to the prohibition in paragraph 37 of Schedule 9 against questioning the validity of a traffic regulation order other than by a timely

statutory review challenge. But traffic orders made less than six weeks before her claim would be justiciable in this court, without any "arguability" threshold.

104. To avoid prejudging the arguability or otherwise of the challenge to orders made less than six weeks prior to the bringing of the claim, I ordered (on 26 January 2021) a rolled up hearing of the judicial review claim and directed that it be treated as if brought under Schedule 9. The claimant then brought a statutory review challenge on 10 February 2021, using the CPR Part 8 procedure.

105. That challenge was to the three Railton and St Matthew's ETOs and was brought less than six weeks after those three ETOs were made. It was, therefore, in time. As further noted above, in early May 2021 a few weeks before the hearing before me, she brought a further Part 8 statutory review challenge to certain further ETOs relating to the "Ferndale LTN". That matter is stayed by consent.

106. To add further complexity, the parties had agreed a draft consent order inviting me to quash the orders constituting the Oval Triangle LTN on the ground that they were made without authority. But when Mr Mould considered the matter, he pointed out that the challenge to those orders had not been brought within six weeks of them being made and questioned the power of the court to quash them.

107. Mr Buley, rightly, did not seek to persuade me that I had the power to quash those orders. I do not. They are valid and must be respected. The absence of authority when they were made is regrettable but even during the six week period before they became impregnable against challenge, the want of authority objection was technical: Lambeth clearly intended them to be made and intended the director concerned to have authority to make them.

108. Mr Mould was prepared to contemplate that the court could, on the judicial review claim, grant limited relief in connection with the challenged traffic orders, provided it was confined to a declaration that the public sector equality duty was breached (if, contrary to his case, it was). Mr Buley agreed. He did not suggest the judicial review could yield any separate relief beyond that.

109. The correctness of Mr Mould's concession depends on whether or not a declaration that the public sector equality duty was breached when making traffic orders not challenged within six weeks of being made amounts to questioning those orders in legal proceedings. I regard as arguable the proposition that such a declaration would not infringe that prohibition, though I have some doubts about it.

110. I am also prepared to accept as arguable the contention that the public sector equality duty was breached. I grant permission to the claimant to bring the judicial review claim, which I will consider shortly. I would not have granted permission without accepting that the judicial claim is potentially capable of delivering some relief for the claimant over and above quashing the relevant orders (i.e. those challenged in time) on a statutory review.

Grounds of Challenge

The complaint that the orders are not experimental

111. I will deal with the grounds of challenge in a slightly different order to that adopted by the claimant in her submissions to the court. It is convenient to deal first with the contention that the ETOs are invalid because they are not in truth and in substance experimental at all.

112. If that is right, the relevant ETOs would stand to be quashed on that ground alone, applying the reasoning of Carnwath J (as he then was) in the *UK Waste Management* case. Conversely, Lambeth's defence of its performance of the public sector equality duty, considered below, relies heavily on the experimental nature of the ETOs under challenge.

113. It is therefore useful to examine first whether the claimant is right to say they are not truly experimental. Mr Buley submits that either there is no genuine experiment, or that in so far as there is any experiment it is flawed because Lambeth is only considering impacts on traffic within the LTNs and on the boundary roads; it is not looking at the more difficult issue of the impact of the LTNs on the parts of the borough that lie outside them.

114. Mr Buley relies on the point that the Oval Triangle and Railton LTNs were created not by ETOs but by earlier TTOs and that Lambeth did not monitor the effects of the TTOs while they were in place. Furthermore, the October report does not refer to an experiment but, rather, emphasised the need for swift delivery of LTNs in accordance with the Secretary of State's guidance.

115. The claimant asks the court to find that Lambeth has, under the guise of ETOs, used them as a mechanism to bring about permanent changes to traffic in the area and in such a way as to avoid having to engage in proper public consultation.

116. I do not think there is any merit in these arguments. I am not prepared to draw the inference that the experimental nature of the LTNs and the ETOs made to maintain them, is other than genuine.

117. First, the ETOs are not shown to be other than genuine by the fact that two of the three LTNs began life as the product of TTOs rather than ETOs. The former are a recognised way of introducing urgent change and the government specifically commended the use of TTOs as a way to respond to the urgency of the situation in May 2020 when public transport was largely shunned and cycling and walking in need of encouragement.

118. Lambeth's documents, referred to above, are replete with references to the experimental nature of the LTNs. I am content to take those documents at face value and to believe that they mean what they say. The factual position is completely different from the position in the *UK Waste Management* case. There, the defendant traffic authority intended permanently to block access from within its area to a waste management site outside its area.

119. That case concerned access to a single site. It had nothing to do with LTNs, travel restrictions, central government guidance or a pandemic. I do not find it of assistance on the facts here. In this case, the nature of the experiment is clear and the traffic authority is able to explain it and has done so. The experimental period may last up to 18 months from the date of ETO is made.

120. The objections period of six months has expired in the case of all the ETOs except those relating to the Railton and St Matthew's LTN. There is probably quite a lot of material already for Lambeth to assess, and little evidence that it has done much assessing so far. And there should be ongoing monitoring of traffic flows inside and outside the LTNs.

121. I accept that the monitoring exercise is not at an advanced stage and there is only sparse evidence at present of its fruits. But the experiment is real enough. The monitoring policy published in December 2020 set out what so far have turned out to be, I agree, aspirations rather than achievements; but there has been some progress; for example, feedback resulting in, so far, an expressed intention to exempt SEND transport providers from some of the LTN rules.

122. I therefore reject the complaint that there is no genuine experiment or a flawed experiment; and I go on to consider the three further grounds of challenge.

The public sector equality duty

123. Mr Buley, for the claimant, contended that Lambeth breached the duty to have "due regard" to the legislative goals in section 149 of the 2010 Act in the case of all the ETOs under challenge. His main arguments, as I paraphrase them, were as follows.

124. First, he complained that the equality assessment carried out for the purpose of approving Lambeth's TSIP in November 2019 said nothing specific about LTNs; they were not expressly mentioned in it, though the creation of LTNs did form part of the TSIP.

125. Next, he submitted that when the Oval Triangle and Streatham Hill LTNs were created, Lambeth did not engage in any further specific equality assessment work. There should have been a bespoke impact assessment for each new LTN. Instead, EQIAs were carried out piecemeal after the Oval Triangle and Streatham Hill ETOs had been made, by way of a "rearguard action" which came too late (see McCombe LJ's fourth proposition in *Bracking* at [26]).

126. Furthermore, said Mr Buley, Mr Dosunmu as the director exercising delegated powers was responsible for the October report. He had not worked on earlier draft EQIAs for the Railton and St Matthew's and Oval Triangle LTNs. The October report does not show that he had knowledge of and took account of that work by other officers; see McCombe LJ's third proposition, that the duty is personal to the decision maker.

127. And, said the claimant, the October report is the only record of the decision to make the Oval Triangle and Streatham Hill ETOs; yet, in it the director does not consider equality impacts at all. The report merely records advice to the decision maker that other officers had concluded that the equality impacts were acceptable and a more senior officer, the assistant director for highways, capital programmes and sustainability, had approved that assessment.

128. Mr Buley argued that even if the EQIAs "signed off" after the October report could legitimately be taken into account as part of the "due regard" duty, those EQIAs were inadequate because they addressed the needs only of disabled people living within the

LTNs, not those such as the claimant living outside them but adversely affected by them.

129. Mr Buley submitted that this specific fault demonstrated a broader failing in Lambeth's approach to the public sector equality duty; it had not carried out the necessary "*Tameside*" enquiries needed to equip itself with the knowledge and understanding required for a legally compliant performance of the duty (see McCombe LJ's proposition 8(ii) in *Bracking* at [26]).

130. He criticised the earlier versions of the EQIAs as not including any mention of disabled persons dependent on motor transport; while the later versions, postdating the October report, treated their position as "an afterthought". Lambeth had failed to consult with any local bodies representing the needs and interests of disabled persons in Lambeth; they had only consulted a body called "Wheels for Wellbeing", a national charity that encourages cycling by disabled people but cannot assist those of them who like the claimant are unable to cycle.

131. Mr Buley objected that a "wait and see" approach, using monitoring as the preferred strategy, was not adequate to perform the public sector equality duty. He accepted that the steps required to perform it depend on the facts and context, but contended that the circumstances here were in no way comparable to those in *R (Hollow) v. Surrey CC*, where the decision was to approve budget line items with no direct and immediate consequence for the level of service provision.

132. Here, by contrast, Mr Buley argued that the impact of the LTNs was immediate and adverse for persons such as the claimant. It was not good enough to adopt a strategy of implementing the LTNs first and then monitoring their adverse impact and decide whether to mitigate it by further measures after the event.

133. In any case, submitted Mr Buley, the evidence of monitoring and evidence gathering since the introduction of the LTNs is thin and no mitigation measures have been adopted. Lambeth is still not equipping itself with the knowledge it would need to perform the public sector equality duty adequately.

134. For Lambeth, Mr Mould emphasised the unusual context in which the challenged decisions had to be made. While the policy of creating LTNs was firmly rooted in the pre-Covid TSIP of November 2019, the May 2020 statutory guidance required virtually immediate and accelerated implementation of the policy.

135. Mr Mould submitted that the speed of delivery required by the statutory guidance had to be balanced against the need to understand the risks arising from displacement of traffic. The guidance required the creation of LTNs within a matter of weeks. In practice, that precluded prior research and modelling; instead, TTOs and ETOs had to be put in place quickly and their impact measured, monitored and mitigated afterwards.

136. As for the October report, Mr Mould submitted that while separate EQIAs had not yet been carried out, regard had been had to equalities and the project team had a reasonable expectation that the proposed LTNs would not disproportionately affect people with one or more of the protected characteristics. That assessment would be further explored during the six month period following the making of the ETOs.

137. That, submitted Mr Mould, was sufficient performance of the duty to have "due regard" to the matters set out in section 149 of the 2010 Act. In the light of that evidence from the October report, it could not be said that the director had *no* regard to those matters; the only issue was whether the regard had was sufficient to amount to "due" regard.

138. In Lambeth's submission, in the factual context here, it was sufficient. The decision recorded in the October report was made, as set out in paragraphs 4.16 and 4.17, with full awareness both that the public sector equality duty existed and that it had to be performed at the time of the decision and could not be performed by *ex post facto* consideration of the equalities implications.

139. Lambeth agrees with the claimant that at the time of the October report, full EQIAs had not been carried out but, it submits through Mr Mould, it does not follow that it has acted in breach of the public sector equality duty. The duty is not to carry out an assessment but to have due regard to the matters set out in the subsection.

140. The intensity of the obligation, Mr Mould pointed out, is conditioned by the factual context. As observed in *R (Hollow) v. Surrey CC* at [80], "the nature of the duty to have 'due regard' is shaped by the function being exercised, and not the other way round". The experimental nature of the project meant there would inevitably be uncertainty about its impact on those with protected characteristics, such as the claimant.

141. Mr Mould submitted that there was no failure of performance of the duty merely because the full impact of LTNs on those with protected characteristics could not be known without them first being operated on an experimental basis, followed by monitoring and consultation and subsequent adjustments to mitigate adverse impacts. The six month post-ETO objection period points against full impact assessment being required before the experiment can start.

142. The evolution of the EQIAs after the director's decision made on 9 October 2020 is not relied on by Lambeth as having informed that decision but, rather, as evidence of continued consideration of the impact of the experiment. The subsequent EQIAs, submitted Mr Mould, serve to demonstrate that the approach envisaged by the director at the time of the decision was indeed followed.

143. Lambeth says it is thereby increasing its understanding of the effect of traffic displacement caused by the LTNs, including their effect on those with protected characteristics. The public sector equality duty being a continuing one, that process will inform future decisions on what refinements to the LTNs may be needed and, indeed, whether they or some of them should be made permanent.

144. Finally, Mr Mould submitted that if, contrary to his primary case, the public sector equality duty was breached, the court should withhold relief in the exercise of its discretion, in the light of the subsequently completed EQIAs and the evidence that the process of assessment will continue during the period of the experiment.

145. I turn to my reasoning and conclusions on this ground of challenge. I have already accepted that the ETOs were made by way of a genuine experiment. I therefore accept that the function being exercised when the decision of 9 October 2020 was taken was

the function of initiating the experiment. It was not a decision to introduce the LTNs on a permanent basis.

146. The duty under section 149 of the 2010 Act is often described, inaccurately, in terms such as "a duty to have due regard to the PSED", or in similar phraseology. In fact, it is a duty to have due regard to the need to fulfil the ambitions set out in section 149(1)(a), (b) and (c): in shorthand, eliminating unlawful discrimination, advancing equality of opportunity and fostering good relations between the relevant groups.

147. I discern no inconsistency in the approach to the duty found in McCombe LJ's eight propositions in *Bracking* at [26], and that approach of the court in other cases such as *R (Hollow) v. Surrey CC*, *R (Law Centres Federation) v. Lord Chancellor* and *R (Hurley) v. Secretary of State for Business Innovation and Skills*. What amounts to "due regard" is fact sensitive. If the equality objectives are properly considered and put in the balance, it is for the decision maker to decide how much weight they should carry.

148. Next, I accept Mr Mould's submission that the duty is not a duty to carry out an assessment. It is a duty to have due regard to what can be called the equality objectives. Assessment is the tool used to create the evidence base to show performance of the duty. It is not the performance of the duty itself. There is no necessary breach of the duty where no formal assessment has been done.

149. With those observations in mind, I return to the evidence. My starting point is that in the TSIP, adopted in November 2019, Lambeth was contemplating measures which, it had reason to believe, would promote and enhance the equality objectives overall; for instance, by increasing step free access to public transport.

150. The measures envisaged were wide ranging and they included LTNs as part of the "efficient and connected" guiding principle. The appendix dealing with LTNs in more detail stated that traffic modelling, trials, demonstrations and the like would be needed as well as ascertaining the views of the community. A timescale of around three years was anticipated for introduction of the first three LTNs.

151. This approach, had it been maintained, involved doing the research and consultation beforehand, rather than using the statutory ETO procedure followed by the six month objection period and subsequent consideration of permanent traffic regulation orders before expiry of the ETO after, at the most, 18 months.

152. In my judgment, the evidence is clear: it was the coronavirus epidemic and the resulting statutory guidance that led to abandonment of that conventional and leisurely approach to introducing LTNs. The Secretary of State urged local authorities to take radical and almost immediate measures to enhance walking and cycling and pointed to their power to do so using TTOs and ETOs.

153. Lambeth responded by adopting the TSP less than a week after the statutory guidance was published. Equality issues were not overlooked; the report to which the TSP was attached noted that the TSIP had been "subject to a full E[Q]IA"; and stated that "[a]ll Traffic Orders required as part of the Response will be subject to E[Q]IA".

154. Lambeth then began working, under the conditions of the pandemic, on the creation of the LTNs that are the subject of these proceedings. It did not follow the leisurely course

envisaged in the TSIP. A brief draft EQIA was prepared in early August 2020 for the Railton LTN, in advance of its introduction by TTO three days later.

155. That draft EQIA referred to disability and did not pick up the point recognised later, that some disabled people rely on car transport and could be adversely affected. Rather, it included the point, not relevant to the claimant but relevant to other disabled people, that journey times could increase for "those that do not have access to a car".

156. That draft EQIA stated an intention to adopt the approach subsequently confirmed by the director in the October report, of "ongoing monitoring of the scheme" to "update this analysis". The position thus far was, therefore, that Lambeth officers had the public sector equality duty in mind and had given some consideration to how they intended to perform the duty.

157. It is clear from the later October report that the director, Mr Dosumnu, was aware of this, though not of the detailed findings recorded by officers in the draft EQIA; that he himself had in mind the duty; that he knew it could not be performed on a retroactive basis, after the event; and that he intended that it should be performed in the same manner as envisaged in the draft EQIA from early August 2020; namely, by monitoring and updating the analysis.

158. That method of proceeding accorded with the statutory procedure for making an ETO. Four such ETOs had already been made, for Oval Triangle LTN, using that procedure. The statutory context was that the traffic authority is *not* equipped with all the knowledge it needs to decide whether a traffic order should be made permanent.

159. The claimant's assertion of a lack of adequate *Tameside* enquiries is correspondingly weakened. I do not accept that it is made out by reason of inadequate consultation. I will consider the adequacy of consultation separately later in this judgment, as that is a ground of challenge in its own right.

160. In my judgment, Mr Mould is right to submit that the director incontestably had some regard to the equality objectives and the question is whether the regard he had was sufficient to qualify as due regard. He was not aware of the detailed findings made up to that point but I do not think that unawareness is sufficient to condemn his regard for equality objectives as less than what was due.

161. In my judgment, there was enough consideration of equality objectives in the October report to qualify as due regard to those objectives. That included, legitimately, consideration of the point that the same equality objectives would be looked at further, in much more detail and with a sharpened focus, at later stages in the statutory process.

162. That does not mean, as the claimant would have it, that performance of the duty was put off to another day, when it was too late to perform it because the relevant function had already been exercised. In the present context, I find that the duty was performed at the time of the October report and that part of the performance was the director's acknowledgment of his expectation that there would be detailed future EQIAs before any decision about permanence.

163. There is nothing in section 149 of the 2010 Act which prevents, in an appropriate case, performance of the duty by means of a conscious decision to undertake equality

assessment on a "rolling" basis. A decision to do that is not, as a matter of law, contrary to the pre-requisites of performance identified in McCombe LJ's judgment in *Bracking* at [26].

164. However, a decision maker who decides to proceed with equality impact assessment on a rolling basis, does so at their peril. The legislation and case law does not preclude rolling assessment as a matter of law; but neither do they legitimise it for all cases. The more "evolutionary" the function being exercised, the more readily a rolling assessment approach may be justified. Conversely, for a "one off" function, it is hard to see how it could be justified.

165. So that this judgment is not misunderstood, I should make it clear that I am not deciding that equality impact assessment on a rolling basis is always acceptable where the function being exercised is to initiate an experiment, as in the case of a decision to make an ETO. It may or may not be on the facts, depending in each case whether such regard (if any) that was had to the equality objectives in section 149(1) of the 2010 Act was sufficient to pass the test of being "due regard" to those objectives.

166. Here, it was acceptable because of unusual factual features: the urgency expressed in the statutory guidance, the near stasis of public transport and the need to restrain vehicle traffic in residential areas to allow walking and cycling to flourish. Those factors (all caused by the prevalence of the virus) propelled Lambeth to curtail its research and truncate the timescale, using ETOs. Had those factors been absent, Mr Dosunmu's approach to equality assessment might well not have passed the "due regard" test.

167. For those brief reasons, I prefer Lambeth's submissions to those of the claimant. She has demonstrated that her particular problem of dependence on car transport with increased journey times and stress, was not identified until after the operative decision in October 2020; but she has not demonstrated that Lambeth thereby, or at all, breached the public sector equality duty.

168. I therefore dismiss that ground of challenge. If I had found a breach of the duty, I would have considered making a declaration to that effect but I would not, in all the circumstances, have been willing to condemn outright and quash the relevant ETOs. They are not yet set in stone and consideration of them is, or should be, ongoing and subject to further assessment, over and above the EQIAs that have been carried out since the decision in October 2020.

Section 122 of the Road Traffic Regulation Act 1984

169. The claimant's next ground of challenge is that Lambeth did not have regard to the matters set out in section 122(1) and (2) of the ROTRA. Mr Buley refers again to the judgment of Longmore LJ in the *Trail Riders* case and maintains that Mr Phillips, Lambeth's witness and officer, says nothing about Lambeth's reasoning in his evidence; nor could he, since Mr Dosunmu and not Mr Phillips was the decision maker.

170. Nor, Mr Buley says, does the October report contain any balancing of traffic movement considerations, on the one hand, and the effect on local amenities and other relevant matters, on the other. He accepts that the October report makes reference to the duty under section 122 but submits that, just as failure to make reference to it is not fatal,

nor, conversely, does reference to the provision necessarily prove performance of the required balancing exercise.

171. According to the claimant's submissions, the October report contains no more than a mere description of the characteristics of the LTNs, without any assessment of how they would impact on the matters to be weighed against each other in the balancing exercise.

172. Mr Mould counters those arguments, first, with the observation that drawing the balance is an inherent and inevitable component of the decision to introduce LTNs, since their effect is to favour, to some extent, local amenities and local communities over passing through traffic and users of the wider road network.

173. He submitted that the decision to favour LTNs in the TSIP of 2019, the exhortation in the statutory guidance of May 2020 to encourage walking and cycling and the acceptance of that invitation in the TSP of May 2020, were all examples of those matters (which are section 122 matters) being weighed in the scales and given enough weight to favour them over motor vehicle users' countervailing interests in using the LTNs as through traffic routes.

174. As for the October report, Mr Mould relied on the passages at paragraphs 2.1 to 2.5, which I have quoted in full above. They included a discussion of the pros and cons of what was called a "route based approach", encouraging traffic to use certain routes; for example "restricting motor traffic in roads signposted as cycle routes"; as against "traffic reduction across areas bounded by roads that the Transport Strategy identifies as being suitable to carry through-traffic".

175. Mr Mould submitted that the favouring of the latter, in the form of LTNs, over the former, was direct evidence in the October report of performance of the balancing exercise ordained by section 122 of the ROTRA. The description that followed of the planned LTNs was of "resultant" LTNs, in which the exact way in which the balance was being struck in each case could be seen.

176. On this ground, I found Lambeth's submissions compelling and unanswerable. While it is possible that an LTN could be introduced without the section 122 factors being properly weighed against each other – for example, if only the pro-neighbourhood amenity factors were considered and the pro-vehicle traffic factors ignored and left out of account – that certainly did not happen here.

177. There is ample evidence of the balancing exercise being performed, in the passages in the extracts to which I was taken by Mr Mould from the TSIP, the TSP and the October report, the latter two documents responding positively to the strong steer from the Secretary of State to draw the balance in a particular way owing the unusual circumstances of the coronavirus epidemic.

178. I agree with Mr Mould that it is difficult to have a discussion of the advantages of LTNs at all unless in the course of the discussion you measure their virtues against the interests of motor vehicle users. Thus, for example, the very act of prohibiting rat running is intended to inconvenience the rat runners by keeping them out of the LTN, thereby probably lengthening their journey.

179. I conclude that the claimant is wrong to say there is no evidence of the balance being struck; there is plenty of evidence of it being struck; and the unusual circumstances in which these LTNs came into being makes that not in the least surprising. I dismiss this ground of challenge.

The complaint of inadequate consultation

180. The claimant makes a free standing complaint that the degree and type of consultation undertaken was not adequate and that in consequence the ETOs for the Streatham Hill LTN and the Railton and St Matthew's LTN are unlawful and should be quashed.

181. Mr Buley accepts that there is no express duty in the statutory provisions to consult members of the public, but relies on the duty to consult under regulation 6 of the 1996 Regulations to consult "[s]uch other organisations (if any) representing persons likely to be affected by any provision in the order as the order making authority thinks it appropriate to consult".

182. The claimant says it was irrational to consult Wheels for Wellbeing but not groups such as "dasl" (which stands for Disability Advice Service Lambeth) specifically representing disabled people in Lambeth. The nature of Wheels for Wellbeing is such that it cannot reflect the full spectrum of interests among Lambeth's disabled people, who are of many kinds with varying disabilities and transport needs. Lambeth in fact also consulted two charities for blind people.

183. Mr Buley further submitted that a legitimate expectation to be consulted arose in the case of the claimant and other residents or disabled persons, from a letter of 16 October 2020 from the Secretary of State to local authorities warning against "hastily introduced schemes which will create sweeping changes to communities without consultation, and ones where the benefits to cycling and walking do not outweigh the dis-benefits for other road users".

184. In similar vein, Mr Buley relied on the amendment to the statutory guidance made on 13 November 2020 stating that while measures should be taken "as swiftly as possible", this should not be "at the expense of consulting local communities". However, he accepts that the legitimate expectation on which he relies can only apply in the case of the Railton and St Matthew's ETOs, made on 6 January 2021, since the two communications postdate the other ETOs.

185. In his skeleton, Mr Mould respectfully submitted that this ground of challenge is "hopeless". He contended that the extent of Lambeth's obligations to consult were delineated by the 1996 Regulations, i.e. the objections procedure, which, the October report indicated, would be followed. It is by that means that opponents of LTNs such as the claimant can have their say.

186. The Secretary of State cannot, he submitted, have intended to rewrite the statutory regime so as to impose a more onerous consultation obligation. It was rational for Lambeth to consult and discuss the proposed measures with the persons and organisations of its choice. A list of them appears in the witness statement of Mr Simon Phillips of Lambeth, though conversations with them occurred both before and after the introduction of the LTNs.

187. I agree with Lambeth that this ground of challenge is without merit. The claimant cannot fashion from a supposed legitimate expectation an obligation to consult going above and beyond the limited obligations imposed under the 1996 Regulations. The two communications from the Secretary of State do not begin to support such an expectation.

188. Nor do I accept that the claimant can complain of an irrational choice of organisations with which to consult. There is nothing irrational about consulting a cycling organisation about measures to encourage cycling. The omission to consult the charity dasl is not actionable; there was no obligation to consult that organisation and it was not irrational to omit it from the list; it can contribute to the debate via the objections procedure if it wishes to do so.

189. I therefore dismiss that remaining ground of challenge, along with the others.

Conclusion: Disposal

190. For those reasons, I grant permission to bring the judicial review claim but dismiss that claim; and I dismiss the claim brought under Part 8 of the CPR for statutory review.