Neutral Citation Number: [2020] EWHC 3357 (Admin)

Case No: CO/1631/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 8 December 2020

Before :

MRS JUSTICE LANG DBE

- -

Between :

RICHARD WILLIAM TOMKINS	**Claimant**
- and -	
CITY OF LONDON CORPORATION	**Defendant**

- -
- -

The Claimant appeared in person
Cain Ormondroyd (instructed by **Comptroller and City Solicitor**) for the **Defendant**

Hearing dates: 6 & 8 October 2020

- -

Approved Judgment

Mrs Justice Lang :

1. The Claimant has brought a statutory challenge, pursuant to paragraphs 35 and 36 of Schedule 9 to the Road Traffic Regulation Act 1984 ("RTRA 1984"), to the validity of an experimental traffic order ("ETO"), made on 2 March 2020, which restricts motor vehicle traffic along Beech Street, Barbican, London EC2Y 8AD. Only zero emission motor vehicles are permitted to travel along Beech Street, other than for access. All types of motor vehicles are permitted access to the buildings whose vehicle entrances are on Beech Street. The junctions between Beech Street and Golden Lane and Bridgewater Street have also been closed to motor vehicles.

2. The Claimant is a leaseholder of a flat in Lauderdale Tower in the Barbican estate, where he and his family have resided for many years. The Claimant is a member of the Barbican Association which is the tenants' association for Barbican residents. The Claimant is the Chair of the Lauderdale Tower House Group, which is also a recognised tenants' association, though he brings this claim in a personal capacity. It sends a representative to the Council of the Barbican Association, along with each other House on the estate.

3. The Defendant (hereinafter "the City") owns and manages the Barbican estate (hereinafter "the Barbican"). The City is the local authority for the area, and it is the traffic authority under the RTRA 1984 for all roads in the City, other than major strategic routes.

Facts

Beech Street and the impact of the ETO

4. The Barbican includes a cultural centre, roads and walkways, green spaces, car parks for visitors and residents, a school, and over 2,000 dwellings which the City leases directly to residents. The majority of residents live in apartment blocks, though there are also some houses and maisonettes.

5. Beech Street is a two-way covered street, about 350 metres in length, which runs under a raised section of the Barbican, and has the appearance of an underpass or tunnel. The vision of the Barbican's architects was to separate people and traffic, and so the residential parts of the estate were built on an elevated podium with vehicles running at street level beneath. Volume IV of the Barbican Estate Listed Building Management Guidelines contains a substantial section on Beech Street describing it as "the principal estate vehicular road" and "an intrinsic part of the Barbican experience". Beech Street is listed Grade II* in common with the rest of the estate's landscape.

6. Prior to the ETO and the Covid 19 pandemic, Beech Street was heavily used by through traffic (approximately 9,500 vehicles a day on weekdays), as it forms part of the B100 route. It is also used by pedestrians. When traffic levels were high, it suffered from poor air quality, exacerbated by inadequate ventilation in the tunnel. The ETO has closed Beech Street to through traffic, other than zero-emission vehicles. Objectors have argued that the effect of closing this major route to most

vehicles is that the traffic and the problems which it causes will simply be displaced into other streets, including residential streets.

7. The ETO has closed the junctions between Beech Street and two side roads - Golden Lane and Bridgewater Street - which has created access difficulties for both residents and non-residents in the nearby areas.

8. Beech Street is the only means of vehicular access to some parts of the Barbican. The entrance to the residents' car parks for two apartment blocks (not Lauderdale Tower) is on Beech Street. The main entrance to Lauderdale Tower for non-resident vehicles (e.g. taxis, delivery vans, service engineers and other visitors) is on Beech Street. Although the ETO permits access for all vehicles to these entrances, those who are unfamiliar with the ETO are now deterred from driving into Beech Street because of the prominent no-entry signs at the entrance to the underpass, and the fact that Google Maps and satellite navigation devices no longer recognise it as open. The Claimant and other residents of Lauderdale Tower have experienced disruption and inconvenience as a result.

9. The Claimant owns a petrol vehicle (a Ford Fiesta) and leases a car parking space in the underground Lauderdale Tower car park. The main entrance to the car park is in Aldersgate Street, close to the entrance to Beech Street. Previously the Claimant approached it from Beech Street but he can no longer do so. He cannot enter the car park from the northbound carriageway of Aldersgate Street because a central reservation prevents it. Alternative access to the car park is circuitous and difficult.

10. The City leases allocated car parking spaces to residents. Only a handful of spaces have charging facilities for electric cars. The City has informed residents that it does not have funding for further private charging points in residents' car parks. Therefore a switch to a zero emission vehicle is not practicable for the Claimant as he is not able to charge it when his car is parked in the car park. After the hearing, in a schedule of its proposed amendments to my draft judgment, the City's solicitor commented on the actual and potential availability of charging points elsewhere in the Barbican. The City should have raised these matters at the hearing if they wished to rely upon them. In any event, I consider that the only practicable place for the Claimant to charge an electric car regularly is in the residents' car park for Lauderdale Tower.

The introduction of the ETO

11. In 2017, the City announced the creation of a cultural zone called Culture Mile, aimed at transforming the City of London into a city of culture as well as a city of commerce. The Culture Mile would be a linear zone connecting the City's existing and proposed cultural assets, such as the Barbican Centre, the Museum of London and a proposed new Centre for Music. By an accident of geography, Beech Street found itself as the main axis or backbone of Culture Mile and therefore the City identified the transformation of the street as a priority.

12. A report entitled "Beech Street Transformation" was approved by the City's Policy and Resources Committee at its meeting on 7 June 2018. The report set out a "vision" whereby the Barbican Exhibition Halls on the north side of Beech Street would be converted into "retail, cultural and learning" accommodation with frontages onto

Beech Street that would "fundamentally change the vibrancy, activity and experience of this street". To create enough pedestrian space for these new facilities, it would be necessary to eliminate the street's northern carriageway, meaning Beech Street would become one-way. The consequent diversion of traffic, although detrimental to the surrounding area, would improve air quality in Beech Street and help create a more pedestrian-friendly environment.

13. The Policy and Resources Committee delegated responsibility for implementation of this project to the Streets and Walkways Sub-Committee, which is a Sub-Committee of the Planning Committee.

14. The project proved to be complex. The minutes of the Streets and Walkways Sub-Committee on 4 September 2018 meeting show that members were concerned about the length of time it would take to complete, as the target date was 2024.

15. At a meeting on 22 July 2019, members of the Streets and Walkways Sub-Committee decided to adopt an interim scheme, while work continued on the development of a permanent scheme. It was agreed that an ETO would be used as a means of introducing a zero emission scheme, to improve air quality in Beech Street.

16. The proposed ETO was approved by the Streets and Walkways Sub-Committee at its meeting on 3 December 2019. Option 2 was selected which maintained Beech Street as a two-way street and closed Beech Street to all vehicles except (a) zero emission vehicles and (b) vehicles requiring access to premises within Beech Street. It also closed Golden Lane and Bridgewater Street at their junctions with Beech Street.

17. The officer's report to the Streets and Walkways Sub-Committee set out a number of risks attached to the proposal, including impact on journey times, congestion, and the impact on surrounding streets resulting from increased traffic and air pollution.

18. Under the heading "Next Steps", the report advised that the ETO was planned to take effect in mid-March 2020. Prior to that, statutory parties would be notified of the proposal, as required by regulation 6 of the Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996. Any responses from the statutory parties which raised significant or unexpected concerns would be reported back to Members for decision. The Director of the Built Environment ("the Director"), in consultation with the Chair of the Streets and Walkways Sub-Committee, would decide whether to proceed with the ETO after considering any responses from the statutory parties. Once the ETO came into force, a six month statutory public consultation period would begin and the scheme impacts would be monitored. After 8 to 12 months, a further report with recommendations on making the scheme permanent would be presented.

19. Under the heading "Scheme design – key points", the report stated that a "list of exempted vehicles will be established and include residents and emergency vehicles".

20. On 12 December 2019, the funding for the proposed ETO was approved by the City's Resource Allocation Sub-Committee.

21. On 16 December 2019, the City announced the proposed scheme to the national media as "the UK's first 24/7 zero emission street". It generated a high level of media interest.

22. The press coverage prompted complaints from local residents as they had not been informed that a closure of Beech Street was under consideration, nor consulted about the proposed ETO, until they read about it in the media.

23. On 17 December 2019, the Claimant, acting in his capacity as Chair of the Lauderdale Tower House, emailed the members for the relevant electoral ward, informing them of the astonishment and concern felt by residents, and asking for an emergency leafleting of every home in the Barbican to provide information about the proposals.

24. On 18 December 2019, the Director sent an email to the Claimant and others saying:

> "I am hugely embarrassed that this has happened and would like to make a personal apology.
>
> ….
>
> The scheme was approved in a public committee report and followed up by a press release, resulting in the residents reading about the scheme in the press which is clearly not acceptable.
>
> This has highlighted that there should have been communication with the residents much earlier, as part of the early stakeholder engagement.
>
> … an article was sent today to ... residents …. The article includes an apology to residents as well as information about the scheme.
>
> In the New Year, and once we have certainty about the start date for the scheme, this will be followed up with a leaflet drop to residents and businesses providing detailed information on the scheme and offering drop in sessions … in February.
>
> …
>
> The formal public consultation will take place during the first six months operation of the experimental scheme and the results will be reported to Members with the results of tariff and air quality monitoring."

25. On 18 December 2019, the City sent an email to all Barbican residents on its email list publicly apologising and telling residents about the proposed ETO.

26. On 19 December 2019, the Claimant emailed the Director asking for confirmation that residents' cars would be exempted, as stated in the officer's report.

27. On 7 January 2020, the City sent a Briefing Note to elected members which provided details of the proposed ETO and stated *inter alia*:

> "The scheme will initially be implemented under an experimental traffic order which will run for a maximum of 18 months. During the time of the experiment there will be extensive monitoring undertaken…
>
> For an experimental traffic order public consultation is undertaken for the first six months of the order. A report will be brought back to Committees towards the end of 2020 summarising the outcomes of the monitoring and the public consultation exercise for members to take a decision on whether the scheme becomes permanent or not."

28. On 14 January 2020, the Claimant received a reply to his email of 19 December 2019 stating that only residents whose car parks were in Beech Street would be exempted.

29. On 28 January 2020, the City's Planning and Transportation Committee considered the proposed ETO, and some Members expressed concerns about the procedure which had been adopted. On the issue of consultation, officers informed Members of the steps which were being taken to inform local residents of the proposals.

30. On 5 February 2020, the City sent a mailing to about 10,000 local businesses and residents, explaining how the scheme would work and giving dates for drop-in sessions. On 12 February 2020, an open meeting for residents was arranged by the Barbican Association at which City officers spoke. Concerns were raised about the lack of consultation prior to the decision to make the ETO and the difficulties which residents would have accessing their car parks. According to the Claimant, officers said that they had been advised by the City Solicitor that exempting local residents could create a legal difficulty because other people or groups might demand a similar exemption.

31. On 18 February 2020, the Claimant attended a drop-in session. On 26 February 2020, the Claimant wrote to the Chair of the Streets and Walkways Sub-Committee, setting out a detailed case for exempting Barbican residents from the Beech Street restrictions. The Chair replied, saying that he had passed the Claimant's representation on to the relevant officer.

32. The proposed ETO, and the feedback from Barbican residents, were considered by the Streets and Walkways Sub-Committee at its meeting on 25 February 2020.

33. The Director's report dated 2 March 2020 listed the concerns raised by Barbican residents in feedback: see the report of 2 March 2020. Members decided that these issues should be reviewed during the operation of the ETO and any changes implemented if needed.

34. The ETO was made by the Director under delegated powers on 2 March 2020. It came into effect on 18 March 2020.

35. On 9 March 2020, the City published the notice of making of the ETO in a local free newspaper. It stated that the relevant documents could be inspected "during normal office hours on Mondays to Fridays inclusive… at the Planning Enquiry Desk, North

Wing, Guildhall, London EC2P 2EJ". Further information could be obtained by email or telephone. It advised of the right to make objections in the following terms:

> "If the provisions of the Order made under section 9 continue in operation for a period of not less than six months, the Council will consider in due course whether the provisions of the Order should be reproduced and continued in force indefinitely by means of an Order made under section 6 of the Road Traffic Regulation Act 1984. Persons desiring to object to the making of an Order under section 6 of the said Act of 1984 for the purpose of such reproduction and continuation in force may, within the aforementioned period of six months send a statement in writing of their objection and the grounds thereof to the Traffic Orders Officer, City Transportation, City of London, PO Box 270, Guildhall, London EC2P 2EJ …."

36. On 9 March 2020 the relevant documents were uploaded to the City's Beech Street webpage. A technical issue prevented the upload of an accessible version of the ETO to the webpage until 23 April 2020. The Claimant confirmed that he was unable to access the ETO when he attempted to do so on 23 March 2020. Subsequently, between 6 and 14 July 2020, the relevant documents relating to the Beech Street scheme disappeared from the Beech Street webpage because of a technical problem.

37. On 9 March 2020, the City sent a mailing to business and residential addresses in the area informing them of the making of the ETO. It stated that the public consultation would start when the scheme launched and would last for six months. Objections to the ETO could be made during the consultation period.

38. In February and March 2020, the Covid 19 pandemic escalated in the UK. On 16 March 2020, the Prime Minister advised people to avoid non-essential travel and contact with others. On 23 March 2020, a lockdown was announced requiring people to stay at home, other than for essential journeys. Vehicle use in the City decreased hugely as workers stayed at home.

39. On 19 March 2020, the Claimant wrote, in his capacity as Chair of Lauderdale Tower House Group, to the elected members for the ward, to request a suspension of the traffic experiment because the volume of traffic had fallen in the City in response to advice to stay at home. On 19 March 2020, the Barbican Association sent an email to City officers and elected members in similar terms.

40. On 18 March 2020, the City closed many of its office and facilities, including the Built Environment inquiry desk and post room. On 23 March 2020, public access to the Guildhall was withdrawn altogether.

41. On 23 March 2020, the Claimant went to the address specified in paragraph 3 of the notice of making and asked to inspect the relevant documents but he was told by a security guard that no documents were available for inspection, that the building was empty and there were no staff available to assist him.

42. On 27 March 2020, the Claimant sent a letter by recorded delivery to the address for objections given in paragraph 7 of the notice of making. He asked for urgent

confirmation, by email, letter or telephone, that if he sent a written objection to this address, it would be seen and considered. He did not receive a response.

43. On 22 April 2020, the relevant documents were posted in the windows of the Guildhall, in the light of guidance dated 21 April 2020 that authorities should seek alternative ways of publishing information.

44. On 13 May 2020, the City decided not to revoke or suspend the ETO. The Director's report noted that it was not currently possible to monitor air quality or traffic impacts on the surrounding road network. However, it was considered likely that there would be a sufficient period of time to monitor before the 18 month maximum experimental period came to an end. The report also referred to possible confusion about the status of the restrictions if they were withdrawn and then re-introduced. It was also stated that it might be in the public interest to proceed to make the restrictions permanent without delay if the experiment demonstrated air quality improvements.

45. On 14 May 2020, at a meeting of the Planning and Transportation Committee, the Beech Street scheme was discussed. The minutes state:

> "…Officers were cognisant of the fact that, due to lockdown, there had been a huge reduction in traffic volumes in the City and that it was therefore not possible to truly monitor the impact of this experimental traffic order on either air quality or traffic on surrounding streets. The public were also not able to accurately feedback on how this experiment was impacting on them all of which would be very important when evaluating how successful the experiment is and making a decision as to whether it would be retained or not. Members were further advised that a decision had been made … to extend the public consultation period and the objection period beyond the initial six months previously agreed…."

46. On 15 May 2020, the Mayor of London announced an increase in the congestion charge and longer hours of operation, with effect from 22 June 2020. The press release said that these measures were expected to reduce journeys by a third.

47. On 14 May 2020 and on 2 June 2020, the City's Planning and Transportation Committee approved an extensive programme of temporary road closures and alterations in the City. Whilst its aim was said to be to increase the amount of space available for walking and cycling, its effect was to make vehicle journeys in the City very difficult.

48. As a result of the continuing pandemic and these road measures, traffic levels in the Barbican area were much lower than usual.

Statutory framework

The RTRA 1984

49. The RTRA 1984 confers order making powers on “traffic authorities”. By section 121A(2) RTRA 1984, the City is the traffic authority for all roads in the City, other than those major strategic routes under the jurisdiction of Transport for London, the Secretary of State for Transport or Highways England.

50. In exercising its powers under RTRA 1984, the City is under the general duty set out in section 122 RTRA 1984, which provides:

> “(1) It shall be the duty of every strategic highways company and local authority upon whom functions are conferred by or under this Act, so to exercise the functions conferred on them by this Act as (so far as practicable having regard to the matters specified in subsection (2) below) 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 or, in Scotland, the road.
>
> (2) The matters referred to in subsection (1) above as being specified in this subsection 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 strategic highways company or the local authority to be relevant.”

51. RTRA 1984 makes provision in section 9 for the making of “experimental traffic orders” (“ETO”). By section 9(1)(b) such an order may make any such provision as a traffic authority for a road in Greater London could make by way of a permanent order “for controlling or regulating vehicular and other traffic (including pedestrians)” under section 6 RTRA 1984.

52. Pursuant to section 6(1)(b), provision may be made for any purpose listed in section 1(1), including "(g) for any of the purposes specified in paragraphs (a) to (c) of subsection (1) of section 87 of the Environment Act 1995 (air quality)". Section 87 deals with the making of regulations to implement 'the strategy' (i.e. the national air quality strategy: section 80(1)) and international obligations of the United Kingdom, and also by section (1)(1)(c) "otherwise with respect to the assessment or management of the quality of air". By section 6(1)(a) and Schedule 1 para 2 provision may be made for "prescribing streets which are not to be used for traffic by vehicles, or by vehicles of any specified class or classes, either generally or at specified times".

53. An ETO must be made "for the purposes of carrying out an experimental scheme of traffic control" (section 9(1)). Thus, "for there to be a valid experimental order there must be an experiment and the traffic authority must be able to explain what it is": *UK Waste Management v West Lancashire DC* [1997] RTR 201, per Carnwath J. at p. 208. The selection of the appropriate experiment is a matter for the traffic authority, subject to the requirements of rationality: *Trail Riders Fellowship v Peak District NPA* [2012] EWHC 3359 (Admin), per Ouseley J., at [35].

54. Section 10(2) RTRA 1984 makes provision for the modification or suspension of all or part of an ETO by the authority on specified grounds.

The 1996 Regulations

55. The procedural provisions relating to ETOs are set out in RTRA 1984 and the Local Authorities' Traffic Orders (Procedure)(England and Wales) Regulations 1996 ("the 1996 Regulations").

56. Parts I to IV of the 1996 Regulations apply generally to ETOs by regulation 4(1). However, regulation 22 of the 1996 Regulations disapplies regulation 7 (publication of proposals) and regulation 8 (objections) of the 1996 Regulations, and makes alternative provision.

57. Regulation 6 of the 1996 Regulations sets out in a table the consultation requirements before an order is made. In all cases, item 7 in the table requires that the following are consulted: "(a) The Freight Transport Association (b) The Road Haulage Association (c) Such 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".

58. Regulation 9(1) of the 1996 Regulations provides that the authority must cause a public inquiry to be held in certain circumstances, which are not applicable here. In all other cases it has a discretion, and "may" cause such an inquiry to be held.

59. Once the order has been made, the authority must publish a notice of making (regulation 17(2) of the 1996 Regulations) stating that the order has been made and containing the particulars listed in Parts I and III of Schedule 1 to the 1996 Regulations. By paragraph 7 of Schedule 1, these include a "statement that documents giving more detailed particulars of the order are available for inspection and a statement of the places at which they are so available and of the times when they may be inspected at each place."

60. The order may not come into force before seven days have expired from the publication of the notice of making: regulation 22(2) of the 1996 Regulations. By regulation 22(3) and (4), documents must be deposited and made available for inspection whilst the order is in force according to the requirements of Schedule 2 to the 1996 Regulations which provides (so far as is material) as follows:

> "1. Subject to paragraph 3, the documents specified in paragraph 2 shall, so far as they are relevant, be made available for inspection at the principal offices of the authority during normal office hours and at such other places (if any) within its area as it may think fit during such hours as it may determine for each such place.
>
> 2. The documents are-
>
> (a) a copy of the relevant notice of proposals and, if the order has been made, of the relevant notice of making;
>
> (b) except where the order is one to which paragraph 3 applies, a copy of the order as proposed to be made or as made (as the case may be);
>
> (c) except where the order is one to which paragraph 3 applies, a map which clearly shows the location and effect of the order as proposed to be made or as made (as the case may be) and, where appropriate, alternative routes for diverted traffic;
>
> (d) a statement setting out the reasons why the authority proposed to make the order including, in the case of an experimental order, the reasons for proceeding by way of experiment and a statement as to whether the authority intends to consider making an order having the same effect which is not an experimental order;"

61. An ETO may not continue in force for more than 18 months: section 9(3) RTRA 1984. If its provisions are not then continued in force by another order, it will cease to have effect.

62. Regulation 23 of the 1996 Regulations applies where an authority seeks to replace an ETO with a permanent order in the same terms. It provides as follows:

> "23. Orders giving permanent effect to experimental orders
>
> (1) This regulation applies where the sole effect of an order ("a permanent order"), which is not an order made under section 9 of the 1984 Act, is to reproduce and continue in force indefinitely the provisions of an experimental order or of more than one such order ("a relevant experimental order"), whether or not that order has been varied or suspended under section 10(2) of the 1984 Act.

> (2) Regulations 6 (consultation), 7 (notice of proposals) and 8 (objections) shall not apply to a permanent order where the requirements specified in paragraph (3) have been complied with in relation to each relevant experimental order.
>
> (3) The requirements are that-
>
> (a) the notice of making contained the statements specified in Schedule 5;
>
> (b) deposited documents (including the documents referred to in sub-paragraphs (c) and (e)) were kept available for inspection, subject to Part VI, in accordance with Schedule 2 throughout the whole of the period specified in regulation 22(4);
>
> (c) the deposited documents included a statement of the order making authority's reasons for making the experimental order;
>
> (d) no variation or modification of the experimental order was made more than 12 months after the order was made; and
>
> (e) where the experimental order has been modified in accordance with section 10(2) of the 1984 Act; a statement of the effect of each such modification has been included with the deposited documents.
>
> (4) In the application of regulations 10, 11 and 13 and Schedule 3 to a permanent order to which regulations 6, 7 and 8 do not apply by virtue of paragraph (2)-
>
> (a) the notices of making published in respect of each relevant experimental order shall be treated as the notice of proposals published under regulation 7(1)(a) in respect of the permanent order;
>
> (b) any objection made in accordance with the statement included by virtue of paragraph (3)(a) in the notice of making published in respect of a relevant experimental order shall be treated as an objection duly made under regulation 8 to the permanent order."

63. Schedule 5 to the 1996 Regulations sets out the statements to be included in a notice of making relating to an ETO, in the following terms:

> "1. That the order making authority will be considering in due course whether the provisions of the experimental order should be continued in force indefinitely.
>
> 2. That within a period of six months-

> (a) beginning with the day on which the experimental order came into force, or
>
> (b) if that order is varied by another order or modified pursuant to section 10(2) of the 1984 Act, beginning with the day on which the variation or modification or the latest variation or modification came into force,
>
> any person may object to the making of an order for the purpose of such indefinite continuation.
>
> 3. That any such objection must-
>
> (a) be in writing;
>
> (b) state the grounds on which it is made; and
>
> (c) be sent to an address specified for the purpose in the notice of making."

64. The Traffic Orders Procedure (Coronavirus) (Amendment) (England) Regulations 2020 make provision for alternative arrangements for publication and inspection of deposited documents where it is not reasonably practicable to comply with paragraph 1 of Schedule 2 to the 1996 Regulations because of the Covid 19 pandemic. However, it was conceded by the City that these provisions did not apply to the ETO which is challenged in this claim as it was made before the date when the amendments took effect, which was 23 May 2020.

Challenge to an ETO

65. The validity of an ETO may be challenged under the provisions in paragraphs 35 and 36 to the Schedule 9 to the RTRA 1984, which provide as follows:

> "35. If any person desires to question the validity of, or of any provision contained in, an order to which this Part of this Schedule applies, on the grounds—
>
> > (a) that it is not within the relevant powers, or
> >
> > (b) that any of the relevant requirements has not been complied with in relation to the order,
>
> he may, within 6 weeks from the date on which the order is made, make an application for the purpose to the High Court or, in Scotland, to the Court of Session.
>
> 36. (1) On any application under this Part of this Schedule the court—
>
> > (a) may, by interim order, suspend the operation of the order to which the application relates, or of any provision

> of that order, until the final determination of the proceedings; and
>
> (b) if satisfied that the order, or any provision of the order, is not within the relevant powers, or that the interests of the applicant have been substantially prejudiced by failure to comply with any of the relevant requirements, may quash the order or any provision of the order.
>
> (2) An order to which this Part of this Schedule applies, or a provision of any such order, may be suspended or quashed under sub-paragraph (1) above either generally or so far as may be necessary for the protection of the interests of the applicant."

66. The phrase "relevant powers" is defined as meaning "the powers with respect to such an order conferred by this Act": paragraph 34(2)(a). The 'relevant requirements' are "any requirement of, or of any instrument made under, any provision of this Act with respect to such an order" – primarily, therefore, the requirements in the 1996 Regulations. "Substantial prejudice" to "the interests of the applicant" is an essential prerequisite to quashing of the order if these requirements are said to have been infringed.

Grounds of challenge

67. The Claimant's grounds of challenge may be summarised as follows.

68. **Ground 1:** The City failed to undertake a non-statutory consultation of Barbican residents before deciding to proceed with the ETO at the meeting of the Streets and Walkways Sub-Committee on 3 December 2019. This was in breach of the common law duty of fairness. Residents had a legitimate expectation that they would be consulted in advance about an experimental traffic scheme which would have such a significant impact upon them.

69. **Ground 2:** The City unlawfully failed to consult the Barbican Association and the Lauderdale Tower House Group under regulation 6 of the 1996 Regulations when it was appropriate to do so.

70. **Ground 3:** The City failed to hold, or consider holding, a public inquiry, pursuant to regulation 9 of the 1996 Regulations.

71. **Ground 4:** The City did not properly carry out the balancing exercise required under section 122 RTRA 1984 as it failed to consider a less restrictive approach which would achieve the same benefits with fewer disbenefits. In the absence of any public consultation, the City also failed to take into consideration the concerns of those who would be affected by the scheme.

72. **Ground 5**: The City failed to comply with the procedural requirements in regulation 23(3) of the 1996 Regulations to make the relevant documents available for public inspection.

73. **Ground 6:** The City failed to provide an adequate statement of reasons, as required by paragraph 2(d) of Schedule 2 to the 1996 Regulations.

74. **Ground 7**: From the outset, the Beech Street zero emissions scheme was not a genuine experiment, as required by section 9 of the RTRA 1984. Once traffic levels diminished, due to the Covid 19 pandemic, it was no longer possible to monitor traffic levels and so no experiment could be conducted.

75. **Ground 8**: the public's statutory right to object was substantially prejudiced by procedural errors and omissions. The reduction in traffic meant that it was not possible to experience the impact of the ETO under normal conditions.

Conclusions

Ground 1

76. The Claimant submitted that the Barbican residents had a legitimate expectation that there would be a non-statutory consultation before the ETO was made, and it was procedurally unfair not to consult them. In the light of his oral submissions, and bearing in mind that he was without legal representation, I allowed the Claimant to further submit that the Barbican Association had a legitimate expectation of consultation on behalf of residents.

77. The Claimant relied upon Lord Reed's summary of the law in *R (Moseley) v Haringey LBC* [2014] 1 WLR 3947, at [35]:

> "35. The common law imposes a general duty of procedural fairness upon public authorities exercising a wide range of functions which affect the interests of individuals, but the content of that duty varies almost infinitely depending upon the circumstances. There is however no general common law duty to consult persons who may be affected by a measure before it is adopted. The reasons for the absence of such a duty were explained by Sedley LJ in *R (BAPIO Action Ltd) v Secretary of State for the Home Department* [2007] EWCA Civ 1139; [2008] ACD 20, paras 43–47. A duty of consultation will however exist in circumstances where there is a legitimate expectation of such consultation, usually arising from an interest which is held to be sufficient to found such an expectation, or from some promise or practice of consultation. The general approach of the common law is illustrated by the cases of *R v Devon County Council, Ex p Baker* [1995] 1 All ER 73 and *R v North and East Devon Health Authority, Ex p Coughlan* [2001] QB 213, cited by Lord Wilson JSC, with which the BAPIO case might be contrasted."

78. The Claimant submitted that the legitimate expectation in this case arose from (a) the benefit which he previously enjoyed of driving along Beech Street to and from his home and (b) representations which were either express promises of consultation or implied by a past practice of consultation. His case fell within categories 2 and 4 in

Brown LJ's analysis of legitimate expectation in *R v Devon County Council ex parte Baker* [1995] 1 All ER 73, at 88a to 89g.

79. The Defendant submitted that there was no benefit or promise or practice of consultation upon which a legitimate expectation of consultation could be founded. He relied upon the summary of the case law by the Divisional Court in *R (Plantagenet Alliance) v Secretary of State for Justice* [2014] EWHC 1662, per Hallet LJ at [97] - [98]. At the hearing, I was also referred to the duty to carry out a sufficient inquiry (the *Tameside* duty) at [99] – [100] and the duty to have regard to relevant considerations at [100].

Benefit

80. In *ex parte Baker*, the Court of Appeal held that Durham County Council owed the permanent residents of a care home a duty to act fairly in making the decision to close the home, which included a duty to consult over the proposed closure. This fell into the second category of Brown LJ's classification of legitimate expectation cases.

81. Brown LJ described the second category of legitimate expectation cases in the following terms, at 88j:

> "Perhaps more conventionally the concept of legitimate expectation is used to refer to the claimant's interest in some ultimate benefit which he hopes to retain (or, as would argue, attain). Here, therefore, it is the interest itself rather than the benefit that is the substance of the expectation. In other words the expectation arises not because the claimant asserts any specific right to a benefit but rather because his interest in it is one that the law holds protected by the requirements of procedural fairness; the law recognises that the interest cannot properly be withdrawn (or denied) without the claimant being given an opportunity to comment and without the authority communicating rational grounds for any adverse decision. Of the various authorities drawn to our attention, *Schmidt v Secretary of State for Home Affairs* [1969] 1 All ER 904, [1969] 2 Ch 149; *O'Reilly v Mackman* [1982] 3 All ER 11124, [1983] 2 AC 237 and the recent decision of Roch J in *R v Rochdale Metropolitan BC, ex p. Schemet* [1993] 1 FCR 306 are clear examples of this head of legitimate expectation."

82. Brown LJ added, at 90e to j:

> "As stated, the second category of legitimate expectation comprises those interests which the law recognises are of a character which require the protection of procedural fairness. What then is the touchstone by which such interests can be identified? It cannot be merely that the law insists they be not unfairly denied else there would be no point in introducing the concept of legitimate expectation in the first place; one would

> simply look at the decision in question and ask whether the administrator acted fairly in taking it.
>
> I turn to the well-known passage in Lord Diplock's speech in *Council of Civil Service Unions v Minister for Civil Service* [1984] 3 All ER 935 at 949, [1985] AC 374 at 408 where he describes the two situations in which, by reference to their consequences, decisions will be held susceptible to review, the second situation (class (b)) being the one involving what he called a legitimate expectation. Class (b) arises, he said, when a decision affects someone:
>
>> 'by depriving him of some benefit or advantage which ... he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment...'
>
> (I cite only class (b)(i). Class (b)(ii) depends upon an assurance and is therefore my category 4.)
>
> Thus the only touchstone of a category 2 interest emerging from Lord Diplock's speech is that the claimant has in the past been permitted to enjoy some benefit or advantage. Whether or not he can then legitimately expect procedural fairness, and if so to what extent, will depend upon the court's view of what fairness demands in all the circumstances of the case. That, frankly, is as much help as one can get from the authorities. Lord Diplock's analysis supersedes, as I believe, all earlier attempted expositions of this doctrine such as that found in *McInnes v Onslow Fane* [1978] 3 All ER 211, [1978] 1 W.L.R.1520."

83. In my judgment, the Claimant's "benefit" of being able to drive along Beech Street to and from his home is no more than a conditional right to use the public highway, subject to any traffic restrictions put in place from time to time by the highways authority. It is reasonable to assume that he must at all times have been aware that new or different traffic restrictions might be put in place. Whilst he has a particular interest in the decisions which the City makes in respect of access to Beech Street, because he lives nearby and he will be inconvenienced by any restrictions, the ETO is a temporary measure only, and he has been given the opportunity to object to the making of a permanent order. In all those circumstances, procedural fairness did not require that the City consulted him prior to making the ETO.

Representations

84. The Claimant submitted that the letter dated 18 December 2019 from the Director amounted to an admission of fault in failing to consult Barbican residents prior to the

making of the ETO. On my reading of the letter, the Director was apologising for the failure to keep residents informed, rather than a failure to consult them. Although she said they would be kept informed in future, she did not offer to conduct a belated consultation on whether the ETO should be made, and if so, on what terms. The only reference to consultation was to the formal public consultation due to take place after the ETO came into force. Although the City then did engage in meetings with residents and the Barbican Association in January and February 2020, and also received written representations from residents, it did not purport to conduct a formal non-statutory consultation procedure. The decision to make the ETO had already been made, and the evidence does not indicate any intention on the part of the City to re-open it, in the light of the views of residents.

85. The Claimant submitted that the City made explicit promises of consultation on any proposals for the future of Beech Street in a press release in 2017 and in Proposal 29 of its transport strategy in 2019.

86. As Lord Hoffmann said in *R(Bancoult) v Secretary of State for Foreign and Commonwealth Affairs (No. 2)* [2008] UKHL 61, [2009] AC 453, at [60]:

> "a claim to a legitimate expectation can be based only upon a promise which is "clear, unambiguous and devoid of relevant qualification": see Bingham LJ in *R v Inland Revenue Commissioners, Ex p MFK Underwriting Agents Ltd* [1990] 1 WLR 1545, 1569."

87. I agree with Mr Ormonroyd's submission that neither of the statements relied upon by the Claimant is sufficiently clear and precise to generate a legal requirement of consultation on the making of the ETO. Both relate to larger projects (the permanent transformation of Beech Street and the development of a zero emission zone covering the whole Barbican/Golden Lane estate). They cannot be construed as a promise to consult at every stage of every proposal which form a part of one or both of those projects.

88. The Claimant also submitted that a promise of consultation was established by the making and publication of the Barbican Consultation Protocol, subtitled "A guide to consulting on schemes in and around the Barbican Estate." The purpose of this protocol was to ensure that those affected by such schemes should be given a say in the development of proposals before decisions were taken.

89. However, the protocol stated in terms that it was intended to apply to situations where there was no "statutory mandated form of consultation", such as changes to seating, planting and lighting in the Barbican which were referred to in the accompanying report, and would not require a statutory order or consultation. In contrast, the RTRA 1984 and the 1996 Regulations do provide for statutory consultation before an ETO is made.

90. During the course of the hearing, the Claimant referred in general terms to occasions when the City had consulted the Barbican Association over proposed road changes which would affect residents. In particular, he produced documents relating to a proposed ETO for a low emission scheme in Moor Lane (a forerunner to the Beech Street scheme) which showed that the City had undertaken a public consultation prior

to making the ETO. In the light of the responses, the Streets and Walkways Sub-Committee decided to postpone the proposal, at a meeting in January 2019, and later in the year it was decided not to proceed with it. The Barbican Association was a consultee in that consultation. The City had not disclosed any information regarding a past practice of consultation, and as a litigant in person, the Claimant had not realised that he could or should request disclosure. Therefore at the end of the oral hearing, I directed the City to disclose the relevant records and gave both parties an opportunity to make written submissions on them, which I have carefully considered.

91. Tables of the records disclosed by the City are in Appendix 1 to this judgment. The Claimant added some further items which were not included in the City's tables and his table is at Appendix 2. On examination, I have concluded that although the City did consult the Barbican Association on a number of occasions, often as part of a public consultation which also included Barbican residents, there was insufficient evidence to demonstrate a clear, unequivocal and settled practice of consultation, sufficient to found a legitimate expectation that the Barbican Association would be consulted prior to the making of the ETO. Essentially, the City has exercised its discretion to consult on some occasions and not others. Whilst many may think it would have been good practice for the City to undertake a non-statutory consultation of residents prior to deciding to make the ETO, I do not consider that it was a legal requirement.

92. Therefore ground 1 does not succeed.

Ground 2

93. Regulation 6 of the 1996 Regulations sets out in a table the consultation requirements before an order is made. In all cases, item 7 in the table requires that the following are consulted: "(a) The Freight Transport Association (b) The Road Haulage Association (c) Such 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".

94. This provision has recently been considered in the case of *Trail Riders Fellowship v Wiltshire County Council* [2018] EWHC 3600 (Admin) where Swift J. said as follows:

> "16. This ground is advanced on two bases. The first is that the Council failed to comply with regulation 6 of the 1996 Regulations because it did not consult the TRF before making the 2018 Order. What is in issue is whether the Council complied with the requirement in line 7(c) of the table at regulation 6 – i.e. did it comply with its obligation to consult with "*such 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"*? Compliance with this obligation requires the local authority to have turned its mind first to whether any such organisations exist, and then to whether it should consult with them (or any of them). As to the latter, although the local authority has a discretion, the decision must be able to withstand scrutiny by reference to the

> ordinary Wednesbury principles (i.e. of rationality, relevance and proper purpose).
>
> 17. In his submissions for the TRF, Mr. Pay contended that it would normally be appropriate for a local authority to consult any organisation that represents any persons likely to be affected by the proposed order. I consider this puts the matter too highly. There is no presumption in the Regulations that all such organisations will be consulted. Rather, regulation 6, line 7(c), as made, assumes that a local authority may exercise choice – subject always to the usual Wednesbury controls.
>
> 18. Mr. Pay also contended that because for an experimental order regulation 8 is disapplied, and because the right to object will only arise after the event, under regulation 23 and Schedule 5 to the Regulations if the local authority's intention is that the experimental order may become permanent, this means that the ambit of the discretion not to consult should be more strictly confined. I do not agree. There is nothing in the way in which regulation 6 line 7(c) is drafted to suggest that the discretion not to consult is more constrained or ought to be subject to a different level of scrutiny where it applies for the purposes of a section 9 experimental order than for a section 1 order. More importantly, this submission confuses the purposes of the consultation and the purposes of the objection procedure. Regulation 6 is about consultation with specific interested parties or organisations rather than consultation at large. Where regulation 6 applies in the context of a proposal to make a section 9 experimental order, the subject matter of the consultation will be whether or not the experimental order should be made. By contrast any objections made in accordance with the provisions of Schedule 5 may be made by any person, and will be objections to a possible subsequent order which would make the experiment permanent. Thus, the consultation and the objections provisions are directed to different issues, and for that matter also, to different audiences. The fact that the time for observations comes only after the experiment has commenced says nothing as to any enhanced need for consultation under regulation 6 before the experimental order is made."

95. The Claimant submitted that the Lauderdale Tower House Group, which is a recognised tenants' association, should have been consulted under item 7(c) in the table under regulation 6, as the entrance to Lauderdale Tower is on Beech Street so its residents were demonstrably affected by the ETO. It was irrational not to consult them, via their tenants' association. In the light of the way in which the case developed, I have also considered whether the Barbican Association was an organisation which ought to have been consulted.

96. Mr Khan, the City's Director of the Transport and Public Realm Division in the Department of the Built Environment, explained the City's approach to the consultation under regulation 6 of the 1996 Regulations in the following terms:

> "11. In advance of the making of the ETO, the City of London Corporation has engaged widely with statutory consultees including the emergency services as well as neighbouring Highway Authorities, (the London Boroughs of Camden and Islington) including consulting as required pursuant to Regulation 6 of the Local Authorities Traffic Orders (Procedure) (England and Wales) Regulations 1996. As the proposed ETO impacted Aldersgate Street (part of TfL's SRN) the City of London Corporation was also required to obtain TfL's approval prior to making the ETO pursuant to Section 121A Road Traffic Regulation Act 1984. TfL Approval for the scheme was granted by TfL on 20 December 2019 in the form of a Traffic Management Act notification approval. Evidence of this approval is exhibited as **EXHIBIT COL/05**.
>
> 12. Other parties that have been informed of the City of London Corporation's intention to undertake the traffic experiment include the taxi and private hire trade, the freight industry and GPS navigation companies.
>
> 13. The City of London Corporation did not find it appropriate to include individual residential groups such as the Lauderdale Tower House Group in the statutory consultation before making the ETO because (i) of the sheer number of similar groups and (ii) it did not consider that these residents would be adversely affected to a significantly greater degree than other local residents. This was because following the implementation of the ETO, residents who could only access their residential carpark from Beech Street would be able to use Beech Street for access as normal and those with carpark access from an alternative street could make use of that. The general inconvenience caused by not being able to drive along Beech Street was considered to apply to a much wider group than just the residents of individual Barbican groups and so it was considered more appropriate to consult with these groups along with other local residents once the ETO had been made."

97. In my judgment, Mr Khan's evidence is a complete answer to this ground of challenge. It is apparent that the City did turn its mind to the relevant question under regulation 6. Under regulation 6, it was an exercise of judgment for the City to decide which organisations it was appropriate to consult. Its decision not to consult any residents' associations, for the reasons Mr Khan gave, does not disclose any public law error such as irrationality.

98. Therefore ground 2 does not succeed.

Ground 3

99. The Claimant submitted that the City failed to hold, or consider holding, a public inquiry before making the ETO, pursuant to regulation 9 of the 1996 Regulations.

100. The City concedes that it did not consider whether or not to hold a public inquiry. This amounts to an error of law, and therefore ground 3 succeeds.

101. However, on the evidence before me, I have no doubt that the City would have decided against holding a public inquiry if it had turned its mind to regulation 9. It viewed the ETO as a temporary measure, to be introduced as speedily as possible. It did not even consider that a public consultation was required before making the ETO, let alone a public inquiry. If it had decided not to hold a public inquiry, in the exercise of its broad discretion under regulation 9, I consider it is unlikely that its decision would have been held to be unlawful on grounds of irrationality or any other public law ground (see *AA and Sons Ltd v Slough BC* [2014] EWHC 1127 (Admin) at [60]).

102. Therefore, applying the approach in the case of *Simplex GE (Holdings) Ltd v Secretary of State for the Environment* [2017] PTSR 1041, it is not appropriate to quash the decision on this ground as the result would have been the same even absent the error of law complained of.

Ground 4

103. The Claimant submitted that the City did not properly carry out the balancing exercise required under section 122 RTRA 1984 as it failed to consider a less restrictive approach which would achieve the same benefits with fewer disbenefits, for example, options such as improving ventilation and reducing the volume of traffic by restricting use of the street during peak hours.

104. In the absence of any public consultation, the City also failed to take into consideration the concerns of those who would be affected by the scheme, in particular, the difficulties which residents would have with access which is an express consideration under section 122(2)(a) RTRA 1984. The City also failed to take into account the fact that most Barbican residents had no option to switch to zero emission vehicles because of the lack of charging points in the car parks, and the inability of the City to provide them.

105. The duty set out in section 122 RTRA 1984 has been considered in a number of authorities which were reviewed by Sir Ross Cranston, sitting as a Judge of the High Court, in *Trail Riders Fellowship v Hampshire CC* [2018] EWHC 3390 (Admin) and summarised at [37]. The Court of Appeal [2019] EWCA Civ 1275 at [39] approved the Judge's summary, except for the last part of [37](iv). Omitting that part, the summary approved by the Court of Appeal is as follows:

> "It seems to me that on the current state of the authorities, the position with section 122 is as follows:
>
> (i) The duty in section 122(1) when exercising functions conferred by the Act to secure the expeditious, convenient and

> safe movement of traffic extends not only to vehicles but includes pedestrians;
>
> (ii) The duty of securing the expeditious, convenient and safe movement of traffic is not given primacy but is a qualified duty which has to be read with the factors in section 122(2), such as the effect on the amenities of the area and, in the context of making a traffic regulation order, with the purposes for this identified in section 1(1) of the Act;
>
> (iii) The issue is whether in substance the section 122 duty has been performed and what has been called the balancing exercise conducted, not whether section 122 is expressly mentioned or expressly considered;
>
> (iv) In the particular circumstances of a case compliance with the section 122 duty may be evident from the decision itself."

106. In *Trail Riders Fellowship v Peak District National Park Authority* [2012] EWHC 3359 (Admin) Ouseley J. said:

> "51. **Ground 4**: the gravamen of Mr Pay's submission is that s122 means that the paramount consideration was the "expeditious, convenient and safe movement" of all users, so far as that aim was practicable having regard to the various considerations listed in the Act and other relevant ones. I agree with what Carnwath J said about the construction of this provision in *UK Waste Management Ltd v West Lancashire County Council* [1996] RTR 201 at 209G, and with what HHJ Behrens said about it in *Wilson v Yorkshire Dales National Park Authority* [2009] EWHC 1425 (Admin). Mr Pay submitted that this required the Order-making authority to make an Order which involved the least restriction on vehicular movement having regard to the relevant factors, even if it meant that the authority's objectives could not necessarily be achieved. Mr Green submitted that the touchstone of the operation of the section was rationality and not proportionality. The primacy of the general duty in s122 did not resolve the conflict between convenience and safety for different classes of users.
>
> 52. I do not think that either submission is entirely right on the approach to the least restrictive order. S122 does not require the experimental Order-making authority to proceed in stages starting with the least restrictive possible experiment, and moving by stages to the experiment which the NPA really wants to assess. If the experiment is rational, it is that which has to be assessed against the requirements of s122. If there is a less restrictive experiment which may achieve all that the NPA wishes, that is no more than a factor to be considered. If it will do so, it is difficult to see how rationally a more restrictive Order could be justified under s122. The balance under s122

> between an experiment which falls short of providing all that the NPA seeks to know and one which achieves it all but is very much more restrictive, is one for the rational assessment of the NPA. But the possibility of a less restrictive ETRO , with whatever that may achieve, is in principle a factor which the NPA should consider within s122. Here, the NPA was not required to restrict the ban on MPVs to 4 wheeled MPVs in the first place if it had a reasonable basis for banning them all for the purpose of the experiment. On the basis of the report and Mr Prendergast's evidence it did. Mr Green is right that the primacy of the general duty in s122 cannot resolve all conflicts in its application."

107. The officer's report for the meeting of the Streets and Walkways Sub-Committee on 3 December 2019 expressly considered the duty in section 122 RTRA 1984, and the access issues. Between December 2019 and February 2020, the City received feedback from Barbican residents about the problems with access. These were considered by the Streets and Walkways Sub-Committee at its meeting on 25 February 2020, and by the Director and members prior to the making of the ETO on 2 March 2020: see the report of 2 March 2020. Members decided that these issues should be reviewed during the operation of the ETO and any changes to be implemented if needed.

108. In my judgment, the evidence indicates that the factors identified in section 122 RTRA 1984 were considered by the City's officers and members and the balancing exercise was carried out lawfully. There was no less restrictive option available which would secure all the City wished to achieve, namely, the benefits of a restriction on all through traffic, other than zero emission vehicles.

109. Therefore ground 4 does not succeed.

Ground 5

110. The Claimant submitted that the City failed to comply with the requirement in Schedule 2 to the 1996 Regulations and regulation 23(3)(b) of the 1996 Regulations to make the relevant documents available for public inspection.

111. The deposited documents which are listed in Schedule 2 to the 1996 Regulations (including the notice of making, the ETO, a map, the statement of reasons) should have been made available for inspection at the stated address from the date of publication of the notice of making (9 March 2020) for as long as the ETO remained in force.

112. In breach of this requirement, the deposited documents were not available for inspection from 23 March 2020, when the City closed its offices for lockdown, to 22 April 2020 when the City posted the documents in the windows of the Guildhall, following government guidance.

113. This breach was made worse by the fact that the City failed to make the ETO available on its website between 9 March 2020 and 23 April 2020, due to technical

faults. The other deposited documents were available during this time. There was a further technical fault in July 2020, as a result of which none of the relevant documents were available on the website between 6 and 14 July 2020.

114. In my view, there was a significant failure to comply with the statutory requirements. However, my powers to quash the ETO because of a failure to comply with any of the relevant requirements only arise if I am satisfied that the Claimant has been substantially prejudiced by the failure to comply (paragraph 36(1)(b) of Schedule 9 to the RTRA 1984). I do not consider that the Claimant was substantially prejudiced by being unable to inspect the deposited documents, or see the ETO online because he closely followed the making of the ETO and was able to source the information which he needed to make his objection and this claim in good time.

115. Nonetheless this was a significant breach of the statutory requirements which could well have prejudiced others. Therefore, I propose to make a declaration stating that the City failed to comply with the requirement in Schedule 2 to the 1996 Regulations to make the deposited documents available for public inspection, and therefore the requirement in regulation 23(3)(b) of the 1996 Regulations has not been met. This will prevent the City from relying upon the truncated procedure for making an ETO permanent, as that is conditional upon the requirements in regulation 23(3) being met.

Ground 6

116. The Claimant submitted that the City failed to provide an adequate statement of reasons, as required by paragraph 2(d) of Schedule 2 to the 1996 Regulations, which provides:

> "(d) a statement setting out the reasons why the authority proposed to make the order including, in the case of an experimental order, the reasons for proceeding by way of experiment and a statement as to whether the authority intends to consider making an order having the same effect which is not an experimental order;"

117. The City's statement of reasons was in the following terms:

> "Beech Street
>
> "The restriction of motor vehicles to only those with zero emissions will improve the air quality in Beech Street which is a fully enclosed tunnel-like street which does not allow traffic fumes to ventilate to the atmosphere."
>
> Bridgewater Street and Golden Lane
>
> "The closure of these junctions will allow improvements to the streetscape in Beech Street to compliment *[sic]* the anticipated improvement in air quality that the motor vehicle restriction will deliver. A very low number of vehicles would be expected

> to use these junctions with the restriction in place in Beech Street."”

118. Statements of reasons under the National Parks Authorities' Traffic Orders (Procedure)(England) Regulations 2007 were considered in *Trail Riders Fellowship v Peak District National Park Authority* [2012] EWHC 3359 (Admin) where Ouseley J. said:

> "30. Crucial to this ground, and of importance for the other grounds, is whether the ETRO was made for an experimental purpose. The statutory provisions clearly require that an experiment should underlie the ETRO, and that it should be identified in the Statement of Reasons. It would be difficult, for these purposes, to explain that an experiment was being undertaken without explaining, or it being obvious from the description of the experiment, what the purpose of the experiment was. If no experiment is identified and no purpose for it is given, the draft Statement of Reasons would fail in its function of providing adequate information for the purpose of consultation, and the final Statement would fail in its function of enabling those affected to decide whether what was proposed was lawful or not. Whatever may be the limits on considering further material when deciding whether there was an experiment and, if so, what it was, the primary place to expect to find the answers is the draft and then final Statement of Reasons. In this case, the two did not change.
>
> …
>
> 43. There is a statutory obligation to provide reasons for the making of the Order in a prescribed document. It is necessary for the purposes of genuine public consultation. It enables those affected to see if the Order is susceptible to legal challenge. I have very considerable reservations about whether any document, other than the Statement of Reasons and those incorporated in it, should be referred to for the purposes of ascertaining the experiment which it envisages. There should be no need for such additional material: the Statement of Reasons should say enough, and it is scarcely a difficult task to ensure that it does. If extraneous material is permitted, which I doubt, to aid the resolution of a genuine ambiguity, that is as far as in my judgment it should go, and such material should not be permitted for the purposes of creating an ambiguity. One of the reasons for my doubt is that it seems to me likely that such extraneous material would show that there was an underlying failure in the consultation process since its very admission shows that the experiment was not adequately and clearly described in the Statement of Reasons. The decision of Richards J in *Decra Plastics Ltd v London Borough of Waltham Forest* [2002] EWHC 2718 (Admin) is not concerned with the statutory duty to give reasons in or simultaneously with the

Order at issue. His judgment on the admissibility of reasons for the refusal to hold an Inquiry in a witness statement made for the purposes of judicial review does not deal with the position at issue here.

44. In this case, it is in my judgment clear that this further material could only be admitted with the effect of contradicting the conclusion to be drawn from the Statement of Reasons as to what the experiment was. It is not elucidatory, nor resolving of ambiguities. Had the report been part of the Statement of Reasons, it would have created a real uncertainty as to what experiment was being described and consulted upon. The NPA Press Release of 10 December 2012 announcing the public consultation does not suggest an experiment as described in the officer's report. In so far as it describes an experiment at all, it describes the one I deduce from the Statement of Reasons.

45. On that basis, the officer's report cannot be admitted to contradict the Statement of Reasons without revealing a further unlawfulness, in the failure to consult adequately. I do not think that consultees would have appreciated the nature of the experiment from the Statement of Reasons, which is where they should be entitled to look. The consultation responses do not support the notion that the consultees understood that the experiment was to be as described in the report or as described by Mr Prendergast. This is not a separate ground of challenge but rather a legitimate means of testing whether the experiment as described in the Statement of Reasons is different from the one intended, and whether the evidence which contradicts the Statement should be admitted.

46. The subsequent evidence of Mr Prendergast is not admissible since it too would contradict the Statement of Reasons, on the most limited application of *R v Westminster City Council ex parte Ermakov* [1996] 2 All ER 302 CA. At page 315h, Hutchinson LJ said:

> "(2) The court can and, in appropriate cases, should admit evidence to elucidate or, exceptionally, correct or add to the reasons; but should, consistently with Steyn LJ's observations in Ex p Graham , be very cautious about doing so. I have in mind cases where, for example, an error has been made in transcription or expression, or a word or words inadvertently omitted, or where the language used may be in some way lacking in clarity. These examples are not intended to be exhaustive, but rather to reflect my view that the function of such evidence should generally be elucidation not fundamental alteration, confirmation not contradiction. Certainly there seems to me to be no warrant for receiving and

> relying on as validating the decision evidence – as in this case – which indicates that the real reasons were wholly different from the stated reasons. It is not in my view permissible to say, merely because the applicant does not feel able to challenge the bona fides of the decision-maker's explanation as to the real reasons, that the applicant is therefore not prejudiced and the evidence as to the real reasons can be relied upon. This is because, first, I do not accept that it is necessarily the case that in that situation he is not prejudiced; and, secondly, because, in this class of case, I do not consider that it is necessary for the applicant to show prejudice before he can obtain relief. Section 64 requires a decision and at the same time reasons; and if no reasons (which is the reality of a case such as the present) or wholly deficient reasons are given, he is prima facie entitled to have the decision quashed as unlawful."
>
> 47. The principles he enunciated are not confined to the particular context of s64 Housing Act 1985.
>
> 48. For those reasons, the Order must be quashed. It might be said that it has only a few months to run, but if not quashed, it could act as the springboard for a truncated procedure to make it permanent."

119. Ouseley J. was considering a different set of regulations, which require the statement of reasons to be displayed at the start of the consultation period, before the order is made, and where the consultation was wider in its scope. The challenge was made on the basis that the order was not within the relevant powers, rather than a failure to meet procedural requirements. However, similar principles apply here. The statement of reasons had an important function in providing members of the public with the information which they needed in order to decide whether to lodge objections to a proposed permanent order, and the content of any such objections. The statutory purpose would not be met if members of the public also had to conduct a paper chase to find the relevant officer reports and minutes of committee meetings in order to understand the true reasons for the ETO.

120. In my judgment, the statement of reasons in this case was clearly inadequate and did not meet the statutory requirements. Closure of a road to petrol and diesel vehicles was an extreme measure that needed to be explained and justified. The nature of the experiment had to be explained, particularly since it was not consistent with the planned transformation of Beech Street in 2024 which is dependent on the closure of the northern carriageway to provide more pedestrian space. There should also have been a statement indicating whether the City intended to consider making a permanent order in the terms of the ETO. I do not consider it is permissible to seek to make good the failings of the statement of reasons by reading words into it, in the way Mr Ormondroyd suggested.

121. However, my powers to quash the ETO because of a failure to comply with any of the relevant requirements only arise if I am satisfied that the Claimant has been substantially prejudiced by the failure to comply (paragraph 36(1)(b) of Schedule 9 to the RTRA 1984). Because the Claimant had closely followed the City's decision-making process, researching the committee reports and minutes, he was well-informed about the reasons why the City made the ETO. I do not think that the inadequate statement of reasons impeded him in making his objection to the permanent scheme or bringing this claim.

122. Nonetheless, in my view, this was a significant failure to comply with the statutory requirements, which may well have prejudiced others. I propose to make a declaration stating that the statement of reasons was unlawful as it was inadequate and did not comply with the statutory requirements in paragraph 2(d) of Schedule 2 to the 1996 Regulations. Therefore the requirement in regulation 23(3)(c) of the 1996 Regulations has not been met. This will prevent the City from relying upon the truncated procedure for making an ETO permanent, as that is conditional upon the requirements in regulation 23(3) being met.

Ground 7

123. The Claimant submitted that the Beech Street zero emissions scheme was not a genuine experiment, as required by section 9 RTRA 1984. It was not set up "for the purposes of carrying out an experimental scheme of traffic control" but to serve as a temporary means of curbing air pollution in Beech Street while the City continued work on its future permanent scheme, as approved by the Policy and Resources Committee on 7 June 2018. The City did not have the grounds upon which to make a temporary traffic order and so chose to make an ETO instead.

124. Alternatively, even if it was intended to be an experiment, once traffic levels reduced, due to the Covid 19 pandemic, it was no longer possible to continue with it in any meaningful way. The City could not monitor air and traffic displacement, and the public could not accurately assess the impact of the ETO.

125. It was common ground between the parties that the validity of the ETO is conditional on there being a genuine experiment. In *UK Waste Management Limited v West Lancashire District Council* [1996] QB 201, Carnwath J. said "for there to be a valid experimental order there must be an experiment and the traffic authority must be able to explain what it is" (208F). In *Trail Riders Fellowship v Peak District National Park Authority*, Ouseley J. said "[t]he statutory provisions clearly require that an experiment should underlie the ETRO, and that it should be identified in the Statement of Reasons" (at [30]).

126. I accept Mr Ormondroyd's submission that the scheme is an experiment as to the benefits and disadvantages of restricting vehicle access to Beech Street, in order to improve air quality. In my view, this is not necessarily inconsistent with the longer term plans to re-develop Beech Street in 2024, and the outcome of the experiment may inform the development of Beech Street, particularly with the changing targets for switching to zero emission vehicles.

127. As to the Claimant's alternative submission, Mr Ormondroyd is correct in his submission that this challenge under paragraph 35 of Schedule 9 to the RTRA 1984 has to be directed at the validity of the making of the ETO. The impact of the pandemic on traffic levels in Beech Street could not reasonably have been foreseen by the City when it decided to make the ETO at the meeting on 3 December 2019, nor when it actually made the ETO on 2 March 2020.

128. The Claimant's challenge to the continuation of the ETO should have been brought by way of a separate judicial review challenge to the City's decision not to revoke or suspend the ETO, by way of a further order, once the impact of the lockdown became apparent. The City made this decision on 13 May 2020. He cannot pursue a challenge to that decision in this claim. However, it is open to him to invite the City to re-consider its decision, in the light of the second phase of the pandemic and the further lockdown which may not have been anticipated at the time of the decision in May 2020.

129. Therefore ground 7 does not succeed.

Ground 8

130. The Claimant submitted that the public's statutory right to object was substantially prejudiced by procedural errors and omissions, and because the reduction in traffic meant that it was not possible to experience the impact of the ETO under normal conditions.

131. In addition to the procedural errors already identified under grounds 5 and 6, the Claimant identified a failure to give effect to the public's right to make objections under Schedule 5 to the 1996 Regulations, which are to be treated as objections to the permanent order, by regulation 23(4)(b) of the 1996 Regulations.

132. In accordance with Schedule 5, the notice of making stated that objections had to be sent to the Traffic Orders Officer, City Transportation, City of London, PO Box 270, Guildhall, London EC2P 2EJ. On 27 March 2020, the Claimant sent a letter by recorded delivery to the address for objections in the notice of making. It was not a substantive objection. He asked for urgent confirmation, by email, letter or telephone, that if he sent a written objection to this address, it would be seen and considered. He has never received a response. His understanding is that the post room at Guildhall closed during the lockdown and did not re-open during the statutory objection period. He was prejudiced because he was left with no means of making a statutory objection in accordance with the 1996 Regulations.

133. The City's response was that there was no prejudice because it had extended the period for lodging objections as well as the consultation period. However, at the hearing, Mr Ormondroyd appeared to accept that there was no power in the 1996 Regulations to extend the time for lodging objections.

134. In my draft judgment, which was circulated to the parties, I accepted that the post room was closed for a period of time, but I found, on the balance of probabilities, that the City would have re-opened the post room when the first lock down was lifted, and any letters of objection which had been posted would have been processed within the

six month period from the coming into force of the ETO order on 18 March 2020. Therefore I was not satisfied that the Claimant's ground of challenge was made out.

135. In response, Mr Tomkins filed representations submitting that the post room for the Department of the Built Environment had never re-opened, referring to a notice from the Planning Department posted on the City's website in support. He relied upon this point in his grounds of appeal.

136. The City replied to Mr Tomkins by email in an incomplete way and so I directed the City to file a witness statement to clarify matters. Ms Cluett, Assistant City Solicitor (Public and Corporate Law), filed a witness statement on 1 December 2020, explaining that the post room was closed between 24 March and 20 April 2020, save for a sorting day on 6 April 2020. From 20 April 2020, the post room was open for part of each week; incoming mail was sorted into departmental pigeon holds; and nominated departmental staff were able to collect it.

137. As regards postal responses to the Traffic Orders Officer, at the beginning of June, two sacks of post for the Department of the Built Environment (containing the backlog of mail), were delivered to the District Surveyor's office and his PA opened, scanned and distributed the post to the appropriate recipients electronically. From 10 June 2020, the PA to the District Surveyor went to the Guildhall once a week to collect and then distribute post from the departmental pigeon hole in the post room, including post addressed to the Traffic Orders Officer and the Transportation and Public Realm Team.

138. No postal responses to the ETO were received, but a number of responses were received electronically. According to the Traffic Orders Officer, the absence of postal responses is largely consistent with the limited volume of postal responses received for other orders. For example, in 2019, there were consultations in respect of 14 Traffic Management Orders and only 2 postal responses were received.

139. As at 1 December 2020, the Claimant's letter dated 27 March 2020 could not be found. However, on 2 December 2020, the City produced his letter, together with a "signed for" slip. Ms Cluett said, in her covering email of 2 December 2020, that when a further search of the post room was carried out, it was discovered that his letter had been mistakenly placed in the departmental pigeon hole for the Highways Team, instead of the Transportation team, and so it had not been collected by the District Surveyor's PA. It appears that the Highways Team was not collecting mail from its pigeon hole.

140. Mr Tomkins was given the opportunity to comment on Ms Cluett's witness statement (before his letter had been found), and said:

> "I accept that efforts have been made to clear the backlog of post as set out in the defendant's witness statement. The fact that my objection letter was neither received nor returned to me as undelivered does raise a question about the efficacy of these arrangements. However, on the point at issue, I do accept that the post room reopened and would not wish to make any further representations on this matter."

141. On the basis of this further material, my conclusions are that the post room was closed for a period of time, because of the lock down, but it re-opened on a part-time basis from 20 April 2020 onwards. The Department of the Built Environment had arrangements in place to collect post which was addressed to the Traffic Orders Officer, in response to the ETO, including the backlog which built up during the time the post room was closed. No postal responses were received, though there were some electronic responses. I accept as plausible the City's explanation that most responses to traffic orders are now sent electronically. The fact that the Claimant's letter was misfiled by the post room staff, and so was not received by the Traffic Orders Officer within the 6 month objection period, demonstrates that there were weaknesses in the City's arrangements. However, I do not consider that this single human error is sufficient to establish that the City failed to give effect to the public's statutory right to make objections.

142. The Claimant's submission that the reduction in traffic during lock down meant that it was not possible to make a meaningful objection is a matter which he can pursue in response to proposals for a permanent order or in any challenge which may be made to a further refusal to revoke or suspend the ETO. It does not come within the scope of this claim, for the reasons I have explained at paragraph 127 above.

143. Therefore ground 8 does not succeed.

Final conclusion

144. The claim is allowed on grounds 3, 5 and 6 only. No relief is granted on ground 3. Relief in the form of declarations will be granted on grounds 5 and 6.

145. The Claimant's application for the City to pay his costs is refused. Although he succeeded on three of the eight grounds, he did not succeed in quashing the ETO. The Council succeeded on five of the grounds, and the issues on which the Council succeeded occupied the majority of the hearing, and the post-hearing submissions. The City incurred significant costs in preparing and presenting those issues. Their costs far exceed the Claimant's claim for costs in respect of the grounds on which he was successful. The City is not pressing for its costs, but has instead proposed that there should be no order for costs. In all the circumstances I consider that this is a just and appropriate order.

Appendix 1

List of schemes in the Barbican Area requiring a Traffic Regulation Order or an Experimental Traffic Order (2015 - 2020, excluding Beech Street)

Date of Committees	Date of Making of Traffic Order	Scheme Name	Description	Advance consultation with BA	ETO	TRO	Comments	Documents included
1. 7 August 2018 (delegated decision) 2. 25 Feb 2020	18-Sep-18	Fann Street - Traffic Increase (Aldersgate Street)	Experimental removal of a U-turn ban on Aldersgate Street	N	Y		This was approved under Delegated Authority and was only taken to Committee for a decsion on whether to make permanent.	1. Delegated Authority email 070818 2. Signed Delegated Authority 3. Copy of ETO 4. Committee Report 250220 5. Committee Minutes 250220
1. 13 June 2018 2. 22 January 2019	N/A	Moor Lane ULEV	Proposed experimental scheme for Ultra Low Emission Vehicles only on Moor Lane	Y	Y		The Barbican Association was consulted through a non-statutory public consultation on options to deliver the scheme objectives. This was prior to the traffic order being advertised. Note the project did not progress to delivery.	6. Committee Report 130618 7. Committee Minutes 130618 8. BA Letter of support for LEN 9. BA Letter of support for Moor Lane ULEV 10. Committee Report 220119 11. Committee Minutes 220119

N/A	N/A	Fore Street - Coach Parking	Relocation of coach parking on Fore Street to address anti-social and privacy complaints	Y		Y	The BA was consulted through a non-statutory consultation on a proposal to relocate the coach parking bays on Fore Street. This was not supported and the project did not progress any further.	12. CoL Informal BA Consultation email 13. Response from BA
26-Sep-16	20-Nov-17	London Wall Place - St. Alphage Gardens	Relocation of parking bays on Fore Street and traffic restriction on St. Alphage Gardens	N		Y	A representative of the BA was on a working party for the project	14. Invitation to public meeting 15. Committee Report 260916 16. Committee Minutes 260916 17. Notice of Making
21-Jun-16	05-Sep-16	Cycle Quietways	Measures to introduce cycleways including cycles lane on Beech Street	Y		Y		18. Committee report 21062016 19. Committee minutes 21062016 20. Consultation letter 062016 21. Notice of proposal 21062016 22. Notice of making 08092016

15-Oct-19	13-Mar-20	Quietway 11 Improvements	Measures to improve cycling including loading restrictions	Y		Y		23. Committee report 5102016 24. Committee minutes 15102016 25. Consultation emails 20092019 26. Notice of proposal 18112019 27. Notice of making 03042020
06-Mar-20	17-Aug-20	City wide Anti-Idling Traffic Order	Proposal to enable enforcement of motorist who leave their engine idling	N		Y		28. Committee report 06032020 29. Committee minutes 06032020 30.Consultation letter 1103020 31.Notice of proposal 13030202 32.Notice of making 21082002
16-Jan-16	21-Nov-16	Anti-Terrorism Traffic Regulation Order	Proposal to enable City Police to close streets for the purposes of anti-terrorism	N		Y		33.Committee report 21012016 34.Committee minutes 21012016 35.Consultation letter 062016 36.Notice of proposal 07062016 37.Notice of making 25112016

List of schemes in the Barbican Area requiring a Traffic Regulation Order or an Experimental Traffic Order (2010 - 2015, excluding Beech Street)

Date of Committees	Date of Making of Traffic Order	Scheme Name	Description	Advance consultation with BA	ETO	TRO	TTRO	Comments	Documents included
Jul-10	25-Nov-11	City-wide loading review - Phase 2	Experimental traffic order to gauge the effectiveness of loading restrictions on Aldersgate St, Beech St, London Wall, Moorgate	No	Y			See description for streets impacted in Barbican area	1. Committee Report 210610 2. Signed Delegated Authority for traffic order 3. Consultation email 4. BA Consultation response
Jul-10	05-Oct-12	City-wide loading review - Phase 3	Waiting and loading restrictions on Golden La, Milton St, Moor La, Moor Pl, Ropemaker St, Silk St, Whitecross St, Wood St	No		Y		Relatively minor changes for streets impacted in Barbican area	5. Signed Delegated Authority for traffic order

Jul-10	08-Feb-13	City-wide loading review - Phase 4	Loading restrictions on Moorfields	No		Y		Relatively minor changes for streets impacted in Barbican area	6. Signed Delegated Authority for traffic order
Delegated report January 2014	10-Oct-14	Silk Street junction improvements	Compulsory left hand turn at junction from Silk Street into Beech Street	Yes		Y		Junction and street enhancement scheme. TRO required to prevent a turning movement which would otherwise have been dangerous owing to reduced sightlines.	7. Committee Report 0114 8. Signed Delegated Authority for traffic order 9. Consultation letter 10. Traffic order
Delegated report Feb 2014	28-Feb-14	Beech Street - Permit pedal cycles to turn right	Introduce gaps in the central reservation to allow pedal cycles to turn right from Bridgewater Street and Golden Lane into Beech Street	Yes		Y		Cycling improvement scheme	11. Signed Delegated Authority for traffic order 12. Consultation email

List of schemes in the Barbican Area requiring a Temporary Traffic Regulation Order (2010 - 2020)

Date of Committees	Date of Making of Traffic Order	Scheme Name	Description	Advance consultation with BA	ETO	TRO	TTRO	Comments	Documents included
N/A	N/A multiple over 10 years	193 x TTROs for temporary works in the vicinity of the Barbican in the last 10 years	Temporary works undertaken by Statutory Utility companies and by the City Corporation in the vicinity of the Barbican	N			Y	Consultation is not required in relation to temporary traffic orders, however in accordance with the legislation a notice of intention & a notice of confirmation is placed in the local Gazette, and an information notice is placed on street in advance of the closure where possible. This excludes emergency 14(2) TTROs Contractors are requested to carry out a letter drop to premises directly impacted by the closure at least two weeks prior to date of closure	N/A

N/A	Mar-18	Beech Street Tunnel Visions	1 TTRO for this event arranged by the Barbican Centre	Y (by others)			Y	Ticketed public event with closures to allow for setup and take down of lighting, sound and Traffic Management. Consultation was carried out by the Barbican Centre	N/A
N/A	• Silk St - GHSM Conference • Parts of Barbican Highwalk – Gt Fire 350 celebrations • City Wide – Lord Mayors Show • Race for Life • Standard Chartered	5 x TTROs for on-street events in the vicinity of the Barbican	Temporary events only	N			Y	Temporary traffic orders for events in the vicinity of the Barbican.	N/A

Appendix 2

Traffic schemes in and around the Barbican Estate, 2010 to 2020

Number	Year	Scheme	Consultation
1	2018	Fann Street - Traffic Increase (Aldersgate Street) This minor measure was to stop vehicles doing three-point turns in Fann Street by removing the ban on U-turns in Aldersgate Street. It consisted of the removal of a single traffic sign at residents' request and no public consultation was called for. The ETO was made on 18 September 2018.	No
2	2019	Moor Lane ULEV This experimental scheme was a pilot for the Beech Street scheme. An extensive, non-statutory public consultation was held before making the ETO and produced a negative response. The project did not proceed.	Yes
3	2017	London Wall Place - St. Alphage Gardens This was a package of highway and public realm improvements to accommodate a new development. The Barbican Association sat on a working group and there was a public consultation for residents. The TRO was made on 20 November 2017.	Yes (Defendant says No)
4	2016	Cycle Quietways This was the creation of Cycleway (formerly Quietway) Route Q1 part of which passed through the Barbican Estate via Beech Street. There was an extensive public consultation in late 2015 which included meetings with the Barbican Association. The TRO was made on 5 September 2016.	Yes
5	2020	Quietway 11 Improvements This consisted of improvements to Cycleway Route Q11 which borders the Barbican Estate along Wood Street, Fore Street and Moor Lane. The Barbican Association was consulted well in advance in a detailed email sent on 20 September 2019. The TRO was made on 30 March 2020.	Yes

6	2014	Silk Street junction improvements This was a package of enhancements to Silk Street and its junction with Beech Street. A public consultation was held during November 2012 and the making of a traffic order was approved on 8 November 2013.	Yes
7	2018	Beech Street Tunnel Visions This sound and light installation closed Beech Street to all through traffic for five days in March 2018. It was subject to extensive consultation with Barbican residents from the outset through a working group including Barbican Association and Lauderdale Tower representatives.	Yes
8	2012	**NOT INCLUDED IN THE DEFENDANT'S SCHEDULE** Beech Street/Aldersgate Street junction improvements In 2012 a package of measures was introduced to improve safety at the Beech Street junction with Aldersgate Street. An extensive public consultation was held in which residents were presented with options. Implemented on 31 January 2012.	Yes