



Neutral Citation Number: [2021] EWHC 2265 (Admin)

Case No: CO/802/2021

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10 August 2021

Before :

MRS JUSTICE LANG DBE

Between :

THE QUEEN

Claimant

on the application of

RICHARD WILLIAM TOMKINS

- and -

CITY OF LONDON CORPORATION

Defendant

The Claimant appeared in person

Stephen Whale (instructed by Comptroller and City Solicitor) for the Defendant

Hearing dates: 29 & 30 June 2021

Approved Judgment

Mrs Justice Lang :

1. The Claimant seeks judicial review of the decision of the Defendant (“the City”), not to revoke the City of London (Beech Street) (No. 1) Experimental Order 2020 (“the ETO”) at the meeting of its Streets and Walkways Sub-Committee, on 18 February 2021.
2. The ETO, which was made on 2 March 2020, 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.
3. 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.
4. 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 Road Traffic Regulation Act 1984 (“RTRA 1984”) for all roads in the City of London, other than major strategic routes.

Grounds of challenge

5. The Claimant submitted, in the Statement of Facts and Grounds, that the City acted unlawfully in refusing to suspend or revoke the ETO in circumstances where no genuine experiment has been possible because of the huge reduction in the volume of traffic in the City of London, as a result of the Covid 19 pandemic (“the pandemic”), and therefore the ETO has been unlawful since the day it came into effect. He relied upon the case of *Trail Riders Fellowship v Peak District NPA* [2012] EWHC 3359 (Admin).
6. In his skeleton argument, the Claimant raised a number of additional grounds which were not in his Statement of Facts and Grounds. Mr Whale objected on the basis that they had been raised far too late. They were not pleaded and the City had not had an opportunity to respond to them. In a preliminary application at the beginning of the hearing, I ruled that the Claimant could not rely on the additional grounds, though I indicated that some of the points made could be referred to in support of the pleaded “no genuine experiment” ground.
7. The Defendant’s defence was as follows:
 - i) In the previous statutory challenge, the Court held that the ETO was an experiment to assess the benefits and disadvantages of restricting vehicle access to Beech Street, in order to improve air quality, which could inform the planned future development of Beech Street. The impact of the pandemic on traffic levels could not have reasonably been foreseen either on 3 December 2019 when

the relevant Committee decided to make the ETO or on 2 March 2020 when the ETO was actually made.

- ii) There is no authority to support the proposition that the experiment must be “meaningful”. But in any event, it has been possible to conduct a meaningful experiment during the currency of the ETO.
- iii) Unlike the experiment in the *Trail Riders* case, this experiment has a rational basis and it has not become incapable of answering the question it was set up to test.

Facts

Beech Street and the impact of the ETO

- 8. 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.
- 9. 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.
- 10. Prior to the ETO and the 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.
- 11. 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.
- 12. 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.

13. 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.
14. The City leases allocated car parking spaces to residents. Only a handful of spaces have charging facilities for electric cars. 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.

The introduction of the ETO

15. 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.
16. 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.
17. Responsibility for the highways aspects of this project fell to the Director of the Built Environment and to the Streets and Walkways Sub-Committee, which is a sub-Committee of the Planning and Transportation Committee.
18. The project proved to be complex. The minutes of the Streets and Walkways Sub-Committee meeting on 4 September 2018 show that members were concerned about the length of time it would take to complete, as the target date was 2024.
19. 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.

20. 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.
21. The officer's report to the Streets and Walkways Sub-Committee set out the benefits and disbenefits of the proposed ETO, including impact on journey times, congestion, and the impact on surrounding streets resulting from increased traffic and air pollution.
22. 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.
23. 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.
24. 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. On 18 December 2019, the Director sent an email to residents apologising for the unacceptable failure to inform residents about the scheme before it was announced in the press.
25. 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."
26. 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.

27. 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.
28. 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.
29. 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. The Director's report dated 2 March 2020 listed the concerns raised by Barbican residents in feedback. Members decided that these issues should be reviewed during the operation of the ETO and any changes implemented if needed.
30. The ETO was made by the Director under delegated powers on 2 March 2020. It came into effect on 18 March 2020. The City's statement of reasons for the making of the ETO 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.””

31. 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”

32. 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.
33. Initially, motorists who disregarded the new restrictions were warned but not penalised. Enforcement with penalties was introduced from late July 2020.
34. In February and March 2020, the 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 of London decreased hugely as workers stayed at home.
35. 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 of London 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.
36. On 18 March 2020, the City closed many of its office and facilities, including the Built Environment enquiry desk and post room. On 23 March 2020, public access to the Guildhall was withdrawn altogether. 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.
37. 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.
38. 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....”

39. 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.
40. 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 of London. 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 of London very difficult.
41. As a result of the continuing pandemic and these road measures, traffic levels in the Barbican area were much lower than usual. The City could not monitor the negative impacts of the experiment on neighbouring streets because the results would not have been meaningful. The City also cancelled the series of 9 public consultation sessions which had been due to take place in the community during the first six months of the experiment.
42. After judgment was given in the Claimant’s statutory challenge to the ETO (which I consider in detail below), the Claimant wrote to the City on 10 December 2020, asking it to consider revoking the ETO, in the light of the second wave of the pandemic and the further lockdown which may not have been anticipated at the time of the earlier decision to revoke in May 2020. He reminded them that the report to the Streets and Walkways Sub-Committee in December 2019 stated that approximately 9,000 vehicles a day would be displaced on to the surrounding road network as a result of the ETO, but this had not occurred because of the severely depressed traffic levels during the pandemic.
43. Ms Cluett, Assistant City Solicitor, replied on 23 December 2020 explaining that a revocation of the ETO would have to be authorised by the Streets and Walkways Sub-Committee. Its next meeting was on 18 February 2021. An update on the experiment, and the ongoing monitoring, was already scheduled to be reported to that meeting. Officers proposed to evaluate and advise on the monitoring, and the Claimant’s request, in their report to the Sub-Committee.
44. The Claimant questioned the lawfulness of the City’s approach, in an email on 24 December 2020, and a pre-action protocol letter dated 30 December 2020. He argued, among other matters, that the decision ought not to be delayed until February 2021, and could be taken by an officer exercising delegated authority. Ms Cluett responded by letter dated 14 January 2021.
45. At the meeting of the Streets and Walkways Sub-Committee on 18 February 2021, Members were presented with three options, described in the Officer’s Report (“OR”) as follows:
 - i) Option 1: approve the conclusion of the ETO and report on the outcomes.

- ii) Option 2: approve the continuation of the ETO until September 2021 with the changes to the central reservation made immediately. Continue to monitor the impacts while working towards consultation on a permanent scheme, based on the experiment as amended.
 - iii) Option 3: approve the conclusion of the ETO. Develop and consult on traffic and public realm options for an alternative type of traffic restriction in Beech Street that also delivers the objectives of the Beech Street Transportation and Public Realm project in the medium to longer term (i.e. move on to Phase 2).
46. Option 2 was recommended by officers, and adopted by Members. The Sub-Committee delegated authority to the Deputy Director (Transportation and Public Realm), in consultation with its Chairman, to proceed with a non-statutory consultation on whether a permanent order should be made. The Sub-Committee agreed that a provisional meeting should be arranged for early September 2021 to consider any objections to the statutory consultation on the permanent traffic order. The Deputy Director was also given delegated authority to make amendments to the existing traffic order to create a gap in the central reservation, to improve access to a car park.
47. The OR explained the outcome of the statutory challenge to Members, and requested them to note and consider the subsequent request from the Claimant to revoke the ETO and the threat of legal action (see paragraphs 12(1), 35, 98-103). The OR advised Members that, although it was not possible to gather data based on observation of normal traffic volumes, some informative data had been gathered and it was expected that further useful data to inform future proposals would be obtained. In the view of officers, Option 2 was based on sound reasons not to revoke or suspend the ETO, primarily that the continuation of the experiment allowed a useful opportunity for modifications to be introduced, consulted upon and evaluated, and that this would help inform future consideration of a permanent order. The legal advice was that Option 2 was open to the Committee. At the request of the Claimant, the OR also attached an Addendum Report correcting inaccuracies in paragraph 35 of the OR.
48. At paragraphs 116 and 117, the OR advised that the timeline for the development of a permanent scheme to be in place in time for the expiry of the ETO, in September 2021, was “very challenging”. There was a risk that unrestricted traffic would return to Beech Street from mid-September if a permanent scheme was not in place. The last Streets and Walkways Sub-Committee meeting prior to the expiry of the ETO was on 8 July 2021, just 4 months away. There was sufficient time to undertake a non-statutory public consultation on a permanent scheme and prepare a decision report on whether to make the order permanent, for consideration by the Sub-Committee at the July 2021 meeting.
49. The OR requested, at paragraph 122, that “approval is given to go out of sync to Project sub-committee in June ahead of Streets and Walkways sub-committee if required to, to remain on programme for delivering a permanent traffic order before the expiration of the experimental order”. Paragraph 123 advised that a report would be brought to the Sub-Committee’s meeting on 8 July 2021, with outputs from the monitoring strategy and the public consultation for members to make a decision on whether to proceed with promoting an order making the Zero Emission Scheme permanent.

50. At paragraphs 124-126, officers advised that if the Sub-Committee decided that it wished to proceed with a permanent order at the meeting on 8 July 2021, the statutory consultation procedure would commence, and would take a minimum of 6-8 weeks if no objections were received. If, as was likely, there were objections, these would have to be determined and a decision made as to whether to hold a Public Inquiry. A further claim for judicial review, challenging a decision to proceed with a permanent order, was possible. Any delay in determining the permanent scheme increased the likelihood of a break in traffic control on Beech Street, as the ETO could not be extended beyond its expiry date. Therefore, it might be prudent to arrange a meeting of the Streets and Walkways Sub-Committee in early September 2021 to consider any unresolved objections to the statutory consultation on the permanent order and to authorise the making of a permanent order.
51. The Claimant filed this claim on 26 February 2021, together with an application for urgent consideration seeking an expedited hearing and an interim order preventing the Defendant from continuing or replacing the current ETO with a further order before his claim was heard. He said that the Streets and Walkways Sub-Committee intended to make a decision on a permanent order at its meeting on 8 July 2021.
52. On 15 April 2021 I granted the Claimant permission to apply for judicial review. In the light of the Claimant's concerns about the Defendant's intention to make a decision on a permanent order on 8 July 2021, I expedited the hearing and granted interim relief in these terms:
- “The Defendant shall not take any further steps in respect of the making of any traffic order, which has the effect of continuing in force or replicating the provisions of the City of London (Beech Street) (No. 1) Experimental Order 2020 prior to the final determination of this claim for judicial review or further order.”
53. The City interpreted this order as prohibiting it from continuing to collect data or holding meetings or discussions on the operation of the current ETO, as well as preventing it from undertaking a non-statutory consultation procedure on a prospective permanent order. Some 6 weeks later, on 28 May 2021, the City applied for an order seeking clarification of the scope of the order. The application was issued on 1 June 2021, but it was only sent to me as part of the papers for the hearing on 29 June 2021. At the hearing, I explained to the parties that the order of 15 April 2021 was a response to the Claimant's interim application to prevent the City from making a further order; it did not affect its work in respect of the current ETO. On 30 June 2021, I made an order to that effect, for the avoidance of doubt.
54. On the second day of the hearing, Mr Whale disclosed in response to questions that the City no longer expected to be able to make a permanent traffic order, to replace the ETO upon its expiry on 18 September 2021. Any permanent order would probably not take effect before February 2022 or the autumn of 2022. Therefore a seamless transition between the ETO and any permanent order would not be feasible and normal traffic would return to Beech Street in September 2021. He stated that this only became apparent after the Streets and Walkways Sub-Committee meeting on 18 February 2021.
55. The Claimant made a complaint after the hearing that the City had failed to comply with its duty of candour in not disclosing this information at an earlier stage in the

proceedings. In response, Mr Hughes, Deputy Director of the Transportation and Public Realm Division in the City's Department of the Built Environment, filed a further witness statement. He explained that on 23 March 2021, officers completed a detailed update of the programme estimate spreadsheet (which was referred to at the hearing). Taking into account the steps which had to be taken before a permanent order could be made and take effect, the likelihood of objections being lodged, and possibly a legal challenge, officers concluded that the earliest date at which a permanent order could take effect would be October 2021. On 21 April 2021, officers advised the Chairman and Deputy Chairman of the Streets and Walkways Sub-Committee that there was likely to be a delay of more than one month between the expiry of the ETO and the coming into effect of any permanent order.

56. On or about 28 April 2021, after the City decided to suspend its non-statutory consultation in respect of a permanent order, in response to the court's order of 15 April 2021, officers concluded that there would be a further delay in making a permanent order, beyond October 2021. At the meeting of the Streets and Walkways Sub-Committee on 29 April 2021, Members were informed of the Claimant's claim challenging the decision not to revoke the ETO, and the City's decision to suspend the non-statutory consultation, in the light of the interim order. The impact on the timing of any permanent order was not referred to.
57. Mr Hughes made witness statements in support of the City's defence to the claim on 14 May and 22 May 2021. Detailed Grounds of Resistance were filed on or about 14 May 2021. In my judgment, the City ought to have disclosed in its evidence that it had concluded that the provisional timetable considered by the Streets and Walkways Sub-Committee in the OR for the meeting on 18 February 2021 could not be implemented, for the reasons described by Mr Hughes in his third witness statement. It was relevant because the Court made its interim order and ordered expedition on the basis of the provisional timetable which had now changed. It was also potentially relevant to the issues in the claim. The provisional timetable was addressed in some detail in the OR for the Sub-Committee's meeting on 18 February 2021, and so the changes raised questions about the advice given to Members at the meeting. The duty of candour requires disclosure of all relevant information which either supports or undermines the case of either party. Now that I have had the benefit of the submissions and evidence from the City on this issue, I am satisfied that Members were properly advised as to the likely timetable, based on the information available at the date of the meeting. It was made clear to them that the timescales for making a permanent order were uncertain, and that the process could be delayed for a number of reasons.

The Claimant's statutory challenge in 2020

58. On 8 April 2020, the Claimant made a statutory challenge, pursuant to paragraphs 35 and 36 of Schedule 9 to the RTRA 1984, to the validity of the ETO on a number of grounds, based on the requirements of the RTRA 1984 and the Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996 ("the 1996 Regulations").
59. I handed down judgment on 8 December 2020. I allowed the claim on the following grounds:

- i) ground 3 (failing to consider whether to hold a public inquiry under regulation 9 of the 1996 Regulations);
 - ii) ground 5 (failing 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);
 - iii) ground 6 (failing to provide an adequate statement of reasons as required by paragraph 2(d) of Schedule 2 to the 1996 Regulations).
60. I refused the Claimant's application to quash the ETO, as I was not satisfied that the Claimant had been "substantially prejudiced" by the failure to comply with these requirements, but I granted declarations in the following terms:
- i) In respect of its Experimental Traffic Order made on 2 March 2020 the Defendant failed to comply with the requirement in Schedule 2 to the Local Authorities' Traffic Orders (Procedure)(England and Wales) Regulations 1996 to make the deposited documents available for public inspection. The requirement in regulation 23(3)(b) of those regulations has therefore not been met in relation to that order.
 - ii) The statement of reasons provided in connection with the Defendant's Experimental Traffic Order made on 2 March 2020 was unlawful as it was inadequate and did not comply with the requirements in paragraph 2(d) of Schedule 2 to the Local Authorities' Traffic Orders (Procedure)(England and Wales) Regulations 1996. The requirement in regulation 23(3)(c) of those regulations has therefore not been met in relation to that order.
61. The effect of the declarations was that the City was prevented from relying upon the truncated procedure set out in regulation 23 of the 1996 Regulations for making a permanent order in the same terms as the ETO (i.e. without consultation under regulation 6, notice of proposals under regulation 7 and the opportunity to make objections under regulation 8), as that procedure is conditional upon the requirements in regulation 23(3) being met.
62. In ground 7, 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.
63. Alternatively, the Claimant submitted that, even if it was intended to be an experiment, once traffic levels reduced, due to the 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.
64. In my judgment, I held as follows:

“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 ETO, 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.”

65. The Claimant’s application for permission to appeal was refused by the Court of Appeal on the papers on 26 February 2021.

Statutory framework

The RTRA 1984

66. 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 of London, other than those major strategic routes under the jurisdiction of Transport for London, the Secretary of State for Transport or Highways England.
67. 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.”
68. RTRA 1984 makes provision in section 9 for the making of “experimental traffic orders”. 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.

69. 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”.
70. Section 10(2) RTRA 1984 makes provision for the modification or suspension of all or part of an experimental traffic order by the authority on specified grounds.

The 1996 Regulations

71. The procedural provisions relating to experimental traffic orders are set out in RTRA 1984 and the Local Authorities’ Traffic Orders (Procedure)(England and Wales) Regulations 1996 (“the 1996 Regulations”).
72. Parts I to IV of the 1996 Regulations apply generally to experimental traffic orders 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.
73. Regulation 6 of the 1996 Regulations sets out in a table the consultation requirements before an order is made.
74. 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.”
75. 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.
76. An experimental traffic order 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.
77. Regulation 23 of the 1996 Regulations applies where an authority seeks to replace an experimental traffic order 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.”

78. Schedule 5 to the 1996 Regulations sets out the statements to be included in a notice of making relating to an experimental traffic order, 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.”

Conclusions

79. The ETO was made in March 2020, pursuant to section 9 RTRA 1984, and its validity cannot be challenged in these proceedings. Once it has been validly made, an experimental traffic order can only come to an end either because of effluxion of time (either as specified in the experimental traffic order or by operation of section 9(3) RTRA 1984 which provides that an experimental traffic order may only remain in force for a maximum period of 18 months) or because it has been suspended or revoked. It was common ground between the parties in the statutory challenge that the provisions in section 10 RTRA 1984 for modification or suspension of an experimental traffic order were not applicable here, but that the City has power to make a revocation order to revoke the ETO, if it considers it appropriate to do so, having regard to its statutory duties.
80. An experimental traffic order must be made “for the purposes of carrying out an experimental scheme of traffic control” (section 9(1) RTRA 1984). 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.
81. In *Trail Riders Fellowship v Peak District National Park Authority* [2012] EWHC 3359 (Admin), the National Park Authority made an Experimental Traffic Regulation Order (“ETRO”) under the RTRA 1984 which prohibited all vehicles along a Byway Open to All Traffic (“a BOAT”) which had become damaged by vehicles, particularly by motorcycles. The Statement of Reasons set out the aim of preserving the amenity and

conservation of the natural beauty of the BOAT and stated that it was “considered necessary to introduce these proposals on an experimental basis so that the effect of the order on the condition of the route can be assessed and to ascertain whether this prohibition on mechanically propelled vehicles should become permanent”. Acting independently of the National Park Authority, the highway authority made an order for repair of the BOAT and duly repaired its surface.

82. The ETRO was quashed by the High Court on the ground, *inter alia*, that the “experiment became incapable of answering the question it had been purportedly set up to test” because of the repair carried out by the highway authority. Ouseley J. held:

“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

....

34. The experiment, such as it is, is to see what effect a prohibition on MPVs using the BOAT would have on its surface condition. A secondary purpose was to see what effect there would be on the usage of other recognised routes to which the MPVs might divert

35. Mr Pay’s criticisms of that as an experiment are to my mind well founded in law. I accept Mr Green’s point that it is not for the Court to decide whether the experiment is a valuable one, or whether a more sophisticated one would be better. But the criticisms go rather beyond that. First, I accept that it is irrational to have an experiment to see what effect the prohibition would have, when the surface of much of the BOAT has been repaired to some degree, since the ETRO came into force. This experiment cannot test what effect the prohibition will have, because MPVs have not used the repaired surface..... The experiment became incapable of answering the question it had been purportedly set up to test. The fact that the surface would be repaired early on in the period of prohibition introduced by the ETRO did not change the express justification for the ETRO; the draft and final Statements of Reasons are identical in this respect. If, on the other hand the experiment was intended to be independent of the repair to the surface, it is impossible to discern from the Statement of Reasons what that experiment might be. The experiment which I discern from the Statement of Reasons has no rational basis.

36. Second, ignoring the repairs, it is impossible to avoid the conclusion that the NPA was already very well aware of the harmful effect which the MPVs had had on the surface of the BOAT; that usage had been going on for a number of years over which time the damage had become evident, albeit exacerbated by the effect of water draining down the surface. The serious

rutting is caused by the tyres of MPVs rather than pedal bicycles. There is no indication that this was an experiment to see if the surface could regenerate itself naturally if MPVs were banned, and it would not make much sense to do so if it were repaired anyway. So again, the experiment described can clearly be seen to be no experiment at all.”

83. In *R (Sheakh) v LB Lambeth* [2021] EWHC 1745 (Admin), the High Court held that experimental traffic orders which restricted traffic within a “Low Traffic Neighbourhood”, were genuine experiments. After considering the authorities, Kerr J. said, at [121]:

“I accept that the monitoring exercise is not at an advanced stage and there is only sparse evidence at present of its fruits. But the experiment is real enough. The monitoring policy published in December 2020 set out what so far have turned out to be, I agree, aspirations rather than achievements; but there has been some progress....”

84. In the statutory challenge, I accepted the City’s submission that the ETO was a genuine experiment to assess the benefits and disadvantages of restricting vehicle access to Beech Street, in order to improve air quality, and the outcome of the experiment could inform the future development of Beech Street. Although I found the Statement of Reasons to be inadequate, I was also able to discern the reasons for the experiment from other contemporaneous evidence. Neither party invited me to exclude such evidence, and I did not share Ouseley J.’s view in *Trail Riders*, (at [43]), that the Court ought not to consider any document other than the Statement of Reasons.
85. This claim was only concerned with the Claimant’s alternative ground, namely, once traffic levels reduced, due to the pandemic, it was no longer possible to continue with the experiment 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.
86. The Claimant relied upon the case of *Trail Riders* in which a supervening event – the repair of the track – made the experiment incapable of answering the question which it was set up to test. On my reading of *Trail Riders*, Ouseley J. applied a *Wednesbury*¹ test to the experiment, at [35], finding that it was “irrational” and had “no rational basis”. He accepted that “it is not for the Court to decide whether the experiment is a valuable one, or whether a more sophisticated one would be better”. In my judgment, this was the correct approach. A genuine experiment will not become unlawful merely because the court considers that its implementation is inadequate or ineffective for its intended purpose. The Claimant must be able to demonstrate that it is irrational for the authority to conduct, or to continue to conduct, the experiment in its current form. This is a high hurdle to overcome.
87. In this case, the officer’s report to the Streets and Walkways Sub-Committee meeting on 3 December 2019 stated in section 10 (Success criteria):

¹ *Associated Provincial Picture Houses Ltd. v Wednesbury Corporation* [1948] 1 KB 223

“The scheme will be monitored for a minimum of six months after it has been implemented, with the project’s success criteria agreed with TfL and Islington Council as follows:

- Significant improvement in air quality – a measured reduction along Beech Street, with the wider monitored area not being any worse than predicted in the model
- Maintain current access and servicing arrangements – residents, visitors and businesses are not negatively impacted by the scheme
- Traffic or bus journey times on the surrounding routes identified in the monitoring strategy are not unreasonably impacted.

In addition to measuring how well the scheme is meeting its key objectives, the following will also be monitored:

- Noise levels...
- Public perception
- Compliance rate
- Taxis ...
- Safety at surrounding junctions
- Vehicle volumes on surrounding streets ...”

88. The OR for the meeting of the Streets and Walkways Sub-Committee on 18 February 2021 summarised the purpose of the ETO as follows:

“The Zero Emission Street (Phase 1) was implemented on 18 March 2020 to improve air quality (NO₂), with the coming into force of the ...(ETO) restricting vehicle access other than for zero emission vehicles. The ETO was made in order to determine the impacts of the restriction with a comprehensive monitoring strategy for measuring the impact on air quality, traffic flows, noise and perception.”

89. The OR advised Members on the impact of the pandemic, as follows:

“4. Issue Description

Impact of COVID-19 pandemic

24. The experiment has been impacted in various ways by the COVID-19 pandemic, including reduced traffic levels and the subsequent improvement in general air quality across Central London. The background picture is also influenced by the on-

street traffic management measures implemented by the City Corporation and Transport for London (TfL) in response to COVID-19.

25. Many people have not been in the City since the experiment began, pedestrian volumes are down by 76% and many residents will have been isolating. For these reasons people generally have not been able to experience the full benefits and disbenefits of the scheme. We have also been unable to host public consultation events that would ordinarily be held. Instead we have liaised with resident association groups and have used letter drops to direct residents to our online survey as well as ongoing communication with user and trade representatives. Nevertheless, there were over one hundred consultation responses from the public on the ETO, indicating that some stakeholders have felt able to reach some views on the scheme.

26. Despite the lower traffic volumes in the City overall, the experiment has already yielded some useful data on compliance rates with the restriction NO₂ levels in Beech Street and on the surrounding streets; and road users' understanding of the restrictions to access properties and make deliveries.

27. The monitoring of the positive impacts and disbenefits of the scheme was set out in the agreed Monitoring Strategy which was prepared in consultation with TfL, London Borough Islington and the Barbican Association. A summary of the current status of the monitoring elements is included in **Appendix 5**.

28. No traffic counts on the surrounding road network have been undertaken to date. During summer 2020, while traffic levels were increasing it was anticipated that near normal levels would return well within the experimental period and counts would be best done at that stage. Traffic levels are not now anticipated to normalise for some time, and potentially, not until after the experimental period ends in September 2021.

29. In response to the pandemic a number of alterations have been made to streets in the City to provide space for social distancing. These changes are likely to have impacted on traffic movement on the streets surrounding Beech Street.

30. Traffic volumes and travel patterns are likely to fluctuate in the City in the short-medium term due to a combination of factors (i.e. workplace behavioural change; traffic interventions in response to COVID-19 taken by the City Corporation and TfL; and a decline/recovery in economic activity).

31. Nevertheless, it is considered that some useful data regarding traffic patterns can still be obtained even while traffic levels are depressed. By measuring the vehicle movements made by the

reduced number of vehicles currently using the road network, the likely movements of greater vehicular traffic volumes can be extrapolated.”

90. The OR then set out the “Key findings” gained from the ETO to date:

“EXPERIMENTAL TRAFFIC ORDER – Key findings to date

Traffic

37. Traffic volumes on Beech Street have declined significantly due to the combined effects of the ETO and the pandemic.

38. Average weekday traffic volumes for through traffic on Beech Street are ~ 350 per day, less than 5% of the pre- scheme flows (approximately 9500 vehicles). In addition, approximately 200 vehicles per day access the carparks and forecourts from Beech Street.

39. The very low volumes of through traffic on Beech Street do suggest a good level of compliance with the restriction.

40. There has been some feedback from residents who feel that traffic has increased on Moor Lane and Fore Street. This will be checked by traffic counts. This was anticipated in the modelling undertaken before the scheme was implemented but may also be due to other traffic routes in the City being restricted through temporary COVID-19 Transportation schemes.

41. In September 2020 traffic had returned to over 66% on key City routes, though traffic volumes on local access streets were lower. In January 2021 TfL reported traffic remained over 50% on key City routes but local City streets appear very quiet.

42. Traffic counts are planned to be undertaken during March at the previously agreed locations set out in the Monitoring Strategy.

43. If Option 2 is agreed it would be proposed to carry out traffic counts both before and after the proposed ETO amendments, from which likely future traffic patterns could be reasonably well understood and assessed. With up to seven months left that the ETO can remain in force, there is a reasonable expectation that traffic levels could increase to more normal levels. This could potentially allow for additional counts to provide further data to be gathered regarding likely impacts the Beech Street restriction has on adjacent streets and for the public (residents, visitors, workers) to experience a more representative scenario.

44. The data collected and the public consultation outcomes can then be used to help inform Members' decision making on whether to make a new permanent order in the same terms as the ETO (with or without the proposed amendments) in July.

Air Quality

45. The main objective for Phase 1 of the project is for the improvement in levels of NO₂ in Beech Street. The World Health Organisation guidelines for NO₂ recommend a maximum annual average of 40 µm³. The annual average level of NO₂ measured in 2019 was 55 µm³. Since March 2020, measured air quality measured by the continuous monitor in Beech Street has significantly improved to an average of 25 µm³. This 55% reduction is due to reduced vehicle volumes created by both the experimental restriction and the overall improved in NO₂ levels in the City attributed to the COVID-19 lockdown and restrictions on movement (see Appendix 4).

46. NO₂ levels at 26 sites around Beech Street have been measured using diffusion tubes. As would be expected due to the reduced traffic volumes, most of these locations have seen an improvement of between 2-30%. The only exception in the City is Aldersgate Street which has seen a slight increase. Two locations in Islington, Fortune Street and Bunhill Row also show slight increases and require further investigation. (Note that the 2020 diffusion tube data is still preliminary and likely to change slightly following standard annualisation and bias adjustment).

47. It is difficult to accurately attribute how much of the air quality improvement is due to the Zero Emission Scheme restriction and how much is due to the impact of the pandemic as there are many factors which influence NO₂ levels in the City such as traffic, meteorological conditions and the time of year. But it is a fair assumption that air quality in Beech Street has improved by more than the surrounding streets during the pandemic, implying that the restriction has helped improve air quality in the tunnel.

48. The relationship between traffic volumes and NO₂ in Beech Street is not linear due to the influences of background air pollution and the enclosed tunnel factor. The air quality data that has been gathered from the experiment will be used to calibrate the air quality model for the area.

49. This air quality model will then be used to forecast:

- the approximate volumes of traffic that could be accommodated in Beech Street whilst keeping NO₂ within the WHO guidelines.

- the likely air quality measurements at locations around Beech Street based on different traffic volume scenarios

50. In the event traffic volumes do begin to return to more normal levels, further useful air quality measurements will be available from both the continuous monitor and the diffusion tubes.

Legibility (understanding of restriction)

51. This was the first implementation of a Zero Emission Street in England. Guidance for local Zero Emission Zones is provided by Transport for London (TfL) and the criteria has been followed for the scheme design. Approval of the restriction signage was granted by the Department for Transport in early 2020.

52. From 18 March until the 2 August, the restriction was enforced passively. In this time warning notices were issued to raise awareness of the restriction. Active enforcement with the issues of Penalty Charge Notices began on 27 July.

53. Of the through traffic using Beech Street, an average of 150 PCNs are being issued each day. With new traffic restrictions we usually experience an improvement in compliance over time. Because traffic volumes have been low during large parts of the experiment it is expected that this number would initially increase as traffic volumes return at the end of lockdown restrictions, before motorists become more aware of the restriction. This is likely to also impact on the air quality measurements for a short period of time.

54. It is difficult to accurately estimate what the percentage level of compliance with the restriction would be if the pandemic had not occurred. Due to the longer warning notice period and the very prominently placed signing, a reasonable assumption is that compliance should eventually reach similar levels to Bank Junction. This is 96%. If the same percentage of traffic was to contravene the restriction, and if vehicle numbers in the City return to pre-COVID levels, this number of compliant vehicles may increase.

Access to properties

55. Generally, it appears that residents in the wider area now understand the restriction and how to access their property.

56. Residents whose properties are not on Beech Street have not yet experienced the possible longer journey times that were expected from using the alternate routes, due to lower traffic volumes. The majority of enquiries received about access issues have come from the Barbican Estate area, comparatively much

fewer have been from the Golden Lane Estate area and Bunhill Ward area in Islington.

57. Some businesses have yet to experience the true impact of the restriction on their normal business operations.

58. One of the key design features of the scheme was to continue to allow access to properties within the area of restriction on Beech Street. To do this, a sign plate below the main sign was provided “Except for zero emission vehicles and for access to off-street premises”. This allows all vehicles to access:

- The Virgin Active service area
- Cromwell Tower forecourt and ground floor car park
- Barbican Centre Car Park (no. 5)
- Refuse collection area
- Defoe House/Shakespeare Tower
- Lauderdale Place

59. Vehicles must access these locations in the correct direction due to the central reservation. Some residents for Defoe House and Shakespeare Tower coming from Aldersgate Street have traditionally travelled through Beech Street eastbound and then performed a U-turn or turn around via Silk Street. This has meant a technical infringement as they have travelled along Beech Street without accessing an off-street premise and have activated the entry and exit camera trigger. The exception to this rule is access to Cromwell Tower forecourt which can be made as there has been a gap in the central reservation for some years and the right turn is able to be performed before the camera trigger point. There is a U-turn ban at this location, which prevents drivers wishing to access the Defoe / Shakespeare carpark or Lauderdale Place from performing this manoeuvre.

60. There have been clear issues with some taxis and delivery drivers not understanding the restriction. On occasion this has resulted in the driver refusing to enter Beech Street. This is acknowledged as a frustrating situation for a number of residents. Following discussions with the Barbican Association, additional temporary signing has been deployed to reinforce the message that access to Beech Street is permitted for **any** vehicle with a legitimate off-street activity i.e. parking, loading, drop-off, pick-up.

61. Determining the quantum of scale of the access issue to residential properties is a challenge as not every resident will write to the Project team each time their delivery or taxi does not arrive. The Barbican Association has also been handling some enquiries about missed deliveries from Barbican residents. However, it is acknowledged that over 250 enquiries and

complaints have been received from residents in relation to access issues.

62. The view of the Barbican Estate Office Car Park Manager is that the vast majority of deliveries are made successfully. The number of deliveries has increased during the pandemic.

63. The electric taxi fleet has grown to 1 in 4 taxis, people seeking to hail a taxi on Beech Street are still able to do so. Due to the lack of frontage, there is modest demand for hailing taxis on street compared to other City locations, mostly from residents exiting their properties at street level. The reduced numbers of taxis may mean it now takes longer to hail a taxi from the footway.

64. Officers have endeavoured to communicate to a wide range of taxi, private hire and delivery organisations about the details of the restriction. The success of this has been mixed due to the varied nature of these (often national) companies and how they cascade the information. Officers also meet regularly with representatives of the taxi trade. There is a perception from some residents that taxis avoid the area and refuse to enter Beech Street, however the trade representatives do not report any confusion amongst their members. Officers will continue to push this message.

65. The access issue is likely exacerbated by the fact that many delivery and private hire vehicles use Google maps as their default Satnav (which shows no access on Beech Street), as it lacks the functionality to allow for electric vehicles and those vehicles accessing off-street premises. This awareness has provided a useful outcome of the experiment to date. Officers are considering how this can be further mitigated and if Option 2 is agreed the continued experimental period will provide a useful opportunity to explore mitigations and evaluate their effects.

Equalities Impact assessment

66. An Equalities Assessment was undertaken on the proposals for a Zero Emissions Street prior to the Gateway 3-5 being submitted. We have reviewed the outcomes from this assessment against comments received via the online public consultation portal as an interim review which is set out in Appendix 7. We are undertaking mitigation measures as set out in this appendix, particularly around ensuring taxi access remains available to residents and visitors. Communication with the taxi trade is ongoing, and there will be a communication push once people return to the city after this national lockdown as this is likely to coincide with an increase in taxis in the City overall. We are also liaising with online mapping providers such as Google as to how

they can more accurately represent the restriction on their navigation products.

67. The restriction and subsequent significant improvement in NO₂ levels also provides a benefit for pedestrians and cyclists who are impacted by poor air quality.

68. If members choose to proceed with Option 2 we will seek consultancy support from Transport for All to advise and assist the developing design and support the public consultation and engagement exercises. Transport for All work as an advocacy group representing various disability groups and provide consultancy support as a not for profit organisation. Their input will help us to understand varying needs of different disabilities and whether mitigation can be included within the design and/or operation of the scheme as we work towards a permanent proposal. They will also help to qualify the impact if it is not possible to mitigate the issue so that this can be fully considered as part of the decision report.

Amendments to the experiment

69. The changes to the central reservation on Beech Street, which were approved in the October Issues Report have been designed and safety audited. These will create gaps in the central reservation to allow vehicles entering Beech Street from Aldersgate Street to turn right into both Lauderdale Place and the Defoe House/Shakespeare Tower car park. This does not require a change to any traffic orders. The removal of part of the central reservation may be carried out under S.64(3) Highways Act 1980.

70. If members decide to approve Option 2 then these changes could be made within 4 weeks from the date of approval.

71. Following the implementation, these measures should improve access for residents and deliveries to the Barbican Estate. It is considered to be in the interests of the expeditious, safe and convenient movement of traffic.

72. The continuation of the ETO will provide an opportunity to implement and monitor this change. The outcome will help inform consideration of any permanent order, the scope of potential future restrictions, and the evaluation of its likely impacts. It will not be possible to test, monitor and evaluate the changes if the ETO is revoked. It is considered that this would be a lost opportunity to build on the experiment to date, to allow stakeholders to evaluate the changes and to gather useful data for future decision-making.

73. This is considered a sound ground for the continuation of the experiment.

74. Work will need to be continued with Satnav companies to ensure this change is reflected in route planners, and the continuation of the experiment will also allow for monitoring of such information-sharing initiatives. This will also help inform future practise in implementing any further scheme.

75. Recent discussions with the Barbican Centre have raised concerns about there being a lack of parity for access to the Beech Street carpark (number 5) from Beech Street. There is an engineering design issue to resolve, but it does require revocation of the traffic order banning a right hand turn and a safety audit to determine if there any implications for cyclists who use this pocket to turn north to travel along Golden Lane.

76. If Members were minded to choose Option 2, approval is sought to undertake this feasibility and design work to enable the right hand turn into the Barbican Centre car park from the west. It is proposed that any further modification of the current traffic order banning this right turn be delegated to the Deputy Director of Transportation and Public Realm in consultation with the Chairman and Deputy Chairman so that there would be a reasonable opportunity for stakeholders to assess the impacts during the remaining experimental period.

77. The work to investigate the feasibility of allowing exemptions for local residents to drive through Beech Street is in progress. Whilst no firm conclusions have yet been drawn, initial analysis is that this is likely to be complex and resource intensive to establish. The nature of the streets, one-way systems and intricacies of access in the area is complex. Determining eligibility and establishing and administering the necessary database may well be unachievable within the experimental period. The criteria for deciding who would be eligible would need to be developed including with regard to traffic management considerations, taking into account the impacts and proportionality of more circuitous routes required due to the restrictions. The work will continue and be reported to Members.

Fortune Street

78. The impacts of the restriction affect adjacent areas in LB Islington and City and Islington Officers have met regularly on the detail. Pre-scheme traffic flows from Golden Lane into Beech Street would have reassigned to Fortune Street and Whitecross Street and come back down to the Silk Street junction. To protect the amenity of residents on Fortune Street and the Golden Lane school campus, LB Islington introduced an

experimental restriction on Fortune Street (which is also a one-way street).

79. The management of the scheme has been somewhat problematic for Islington and has taken up more staff time than estimated. If Members opt for Option 1 or 3, Islington would need to take a decision on whether to continue with Fortune Street experiment. For Option 2 Islington will continue with their experiment and expect to be consulted if Members decide to promote a new permanent order in respect of the Beech Street restriction.

80. The combined restrictions on Beech Street and Fortune Street are understood to be a challenge for the Golden Lane Campus, which comprises the Richard Cloudesley Primary School, Prior Weston Primary School and Golden Lane Children's Centre. It has access points on Whitecross Street, Golden Lane and from Fortune Street Park. Officers have offered to meet with the Richard Cloudesley Primary school, but a meeting has not yet taken place.

Public Consultation feedback (to date)

81. Members of the public are able to share their views of the experiment via the online consultation portal.

82. 10,000 letters were sent out before the experiment began to inform residents and business of the consultation, and to notify them that the consultation period has been extended and will be kept open to allow feedback during more normal conditions.

83. There have been over 120 responses to the online public consultation. Of these, 62% have been from residents, with the remainder made up from businesses, visitors, workers, commuters and taxi drivers.

84. 62% support the principle of traffic restrictions to improve air quality and feel that there have been positive benefits from air quality improvements in Beech Street.

85. However, 63% of respondents also feel that the scheme has impacted negatively on them, which is consistent with the 63% of respondents who feel that motor vehicles journeys have been negatively impacted.

86. Overall, 54% of respondents support the scheme as it is or with further changes, and 45% do not support the scheme.

87. The relatively low number of overall responses may be explained by the fact that many workers and visitors have simply not been in the area for many months.

88. A summary report of the public consultation report can be found in Appendix 6.

89. If Option 2 is agreed further communications would be prepared to update stakeholders on the changes and encourage further consultation responses to aid in the evaluation of their impacts. Dependant on the COVID-19 restrictions in place we would also anticipate holding drop-in public consultation sessions during the scheme public consultatory for the permanent traffic order. If it is not possible these will be substituted with online sessions.”

91. The officers’ “Evaluation and Conclusion” was summarised at paragraphs 104 to 111, as follows:

“Evaluation and Conclusion

104. There have been many issues to consider, balancing the needs of stakeholders with the project objectives in an area where the local infrastructure and street network is particularly complex. The timing and impact of the pandemic has been an additional complicating factor.

105. It is clear that despite reduced traffic in the City, the decision to continue with the experiment has enabled useful data to be gathered on air quality and traffic volumes in Beech Street. A further beneficial outcome is a higher level of understanding of the impact on access to properties and successful deliveries. Many lessons have been learned on how people interact with and understand the restriction. This could not have been modelled as a desktop exercise.

106. Despite the issues detailed in this report, the experiment to date is considered a qualified success. Air quality in Beech Street has significantly improved and now meets WHO limits.

107. There is a reasonable possibility, based on the national picture of the vaccine rollout effort, that restrictions will be eased over the coming months and activity and movement in the City may increase as workers return. This will allow for additional data to be gathered during more normal traffic conditions.

108. Even if traffic volumes do not return to more normal levels, useful traffic and air quality data can still be gathered during the remaining duration of the experiment, particularly on the impact of the modifications, which will assist in decision making on any new permanent order. If the experiment was concluded, an opportunity to consult on the modifications and collect relevant data will have been missed.

109. Traffic and air quality modelling tools can be used to provide estimates based on extrapolations from observations of depressed traffic patterns to guide decision making and public consultation.

110. The anticipated benefits and adverse impacts have been reconsidered since the evaluation carried out in the report provisionally recommending the ETO in December 2019. This has included consideration of consultation feedback and equalities impacts (see Appendix 7). Regard has been had to the City's traffic management duties relating to the convenient, safe and expeditious movement of traffic and to the City's equalities duties. The conclusion of the further evaluation is that (subject to the proposed mitigations of adverse impacts summarised in Appendix 7 and referenced in this report) the benefits of continuing the experiment in order to assess proposed changes to access arrangements, while working towards consultation on a permanent scheme, and the potential medium/long term air quality benefits of a permanent scheme justify Option 2.

111. On balance the continuation of the experiment under Option 2 is recommended."

92. At the hearing, I examined the supporting evidence appended to the OR in some detail, in particular, the Monitoring Summary at Appendix 5 and the air monitoring results at Appendix 4.
93. In his first witness statement, made on 14 May 2021, Mr Hughes described (at paragraphs 65-68) the traffic surveys set up in March 2021 at over 30 locations in the vicinity of Beech Street, featuring both camera and automatic traffic counters. These will collect traffic data for analysis. The results will be used to determine traffic reassignment impacts, if more levels of traffic are measured. If traffic volumes do not return to more normal levels, the data will still be useful for informing future proposals.
94. Mr Hughes also described the installation of traffic survey cameras in March 2021 designed to record entry and exit movements in and out of the buildings with entrances on Beech Street, for specified periods. These will monitor usage, and enable the City to assess the effectiveness of the central reservation gaps which have been introduced to assist with entrance to these locations.
95. The Claimant relied on the submission made to the City by the Barbican Association which supported the experiment but considered that, since it had been impossible to collect meaningful data on traffic flows and pollution levels during lockdown, the experiment should have been postponed until normal traffic levels resumed. The Barbican Association also complained about problems of access both for residents and service vehicles and the displacement of traffic along Fore Street and Moor Lane, which was not being monitored by the City.
96. The Claimant submitted that, as at 18 February 2021, no traffic counts had been conducted on streets other than Beech Street; most elements of the monitoring strategy had not been implemented; and the Streets and Walkways Sub-Committee had no way

of knowing what impact the displacement of 9,000 vehicles a day would have on the surrounding streets.

97. The Claimant was critical of apparent contradictions and anomalies in the air monitoring data, as set out in paragraphs 66 to 68 of his skeleton argument, and submitted that any data could not be disaggregated from the steep decline in background nitrogen dioxide from vehicles and buildings in the City of London during the pandemic.
98. The Claimant also considered that no meaningful consultation could take place during the pandemic because traffic was at an abnormally low level; residents were absent or staying at home; offices were closed; and public meetings and on-street surveys had to be cancelled. The online survey had a low response.
99. Mr Whale submitted, and I accept, that some (though not all) of the Claimant's assertions were ill-founded. In particular:
 - i) Air monitoring has taken place throughout. Although staff were unable to retrieve monitoring tubes between March and May 2020, the data was unaffected, given Defra-approved methodologies to account for missing data. The 2019 air quality data for Beech Street provided a baseline, and from June 2020 onwards, data was collected for 21 additional locations.
 - ii) The graph in Appendix 4 to the OR showed that the level of nitrogen dioxide in Beech Street reduced by 53% whereas the reduction on Walbrook Wharf only reduced by 38%. Moreover, each site is different, with multiple variables contributing to nitrogen dioxide levels.
 - iii) In the Monitoring Summary in Appendix 5 to the OR, air quality data, penalty charge notice ("PCN") data, public consultation data and modelling data was obtained before 18 February 2021. Casualty data will be unavailable until 2022, owing to the nature of its compilation by the police. Car park counts could not commence until the central reservation gaps were constructed. Traffic counts were scheduled for March and April/May 2021. PCN data has been collected since enforcement commenced at the end of July 2020.
 - iv) There has been an effective public consultation with large numbers of responses from local residents. This has provided the Beech Street project team with a much better understanding of the impact of its restrictions on access to properties, and lessons learned on how to address the problems which have arisen.
100. On considering the evidence as a whole, it is clear that, as a result of the pandemic, and the reduction in the volume of traffic in the City of London, it has not been possible to undertake the comprehensive monitoring and analysis which was originally intended when the ETO was approved by the Streets and Walkways Sub-Committee on 3 December 2019. In particular, it has not been possible to monitor the effects of displacing the pre-pandemic level of traffic (around 9,000 vehicles each weekday) away from Beech Street into surrounding streets.

101. However, in my judgment, the decision not to revoke the ETO, based on the OR, cannot be characterised as irrational, in the *Wednesbury* sense. Despite the pandemic, it has been possible to gather useful data on air quality and traffic volumes, and modelling tools can be used to provide estimates based on extrapolations from the data. The City has gained insight into levels of compliance from the compliance data. Moreover, as at February 2021, there was a prospect of traffic levels returning to more normal levels before the ETO expired, which would have increased the usefulness of the monitoring. By allowing the ETO to continue, the City has gained a much better understanding of the considerable adverse impacts of the restrictions, through public consultation and the Equalities Impact Assessment, and observing the impact on neighbouring streets in the London Borough of Islington.
102. In my judgment, the Streets and Walkways Sub-Committee was entitled to conclude, at its meeting on 18 February 2021, that the genuine experiment to assess the benefits and disadvantages of restricting vehicle access to Beech Street was continuing, and that “the continuation of the experiment is likely to allow a useful opportunity for modifications to be introduced, consulted upon and evaluated and that this will help inform future consideration of a permanent order” (paragraph 102 of the OR). Thus, this case was clearly distinguishable from the *Trail Riders* case, on the facts.
103. For these reasons, the claim is dismissed.