Neutral Citation Number: [2024] EWHC 1068 (Admin)

Case No: AC-2023-LON-002285

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 7 May 2024

Before :

Mr James Strachan KC sitting as a Deputy Judge of the High Court

- -

Between :

PAMELA WESSON,
CHAIR OF FRIENDS OF MILL ROAD BRIDGE

Claimant

- and -

CAMBRIDGESHIRE COUNTY COUNCIL

Defendant

- -
- -

Ms Stephanie Bruce-Smith (instructed by **Fortune Green Legal Practice)** for the **Claimant**
Mr Charles Streeten (instructed by **Pathfinder Legal Services**) for the **Defendant**

Hearing date: 1 February 2024

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Approved Judgment

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Mr James Strachan KC (sitting as a Deputy Judge of the High Court):

Introduction

1. This is an application by the Defendant for summary judgment dismissing, or alternatively an order striking out, all or parts of the Claimant's statutory claim under paragraph 35 of Schedule 9 to the Road Traffic Regulation Act 1984 ("the 1984 Act") challenging the Defendant's decision to make the Cambridge (Mill Road) (Bus Gate) Order 2023 dated 14 June 2023 ("the Order").

2. The effect of the Order is, subject to specified exceptions, permanently to prohibit vehicular use of Mill Road in Cambridge from its junction with Headly Street to its junction with Great Eastern Street except for buses, taxis, bicycles and authorised vehicles (as those vehicles are defined in the Order). The length of highway affected includes Mill Road Bridge. The prohibition in the Order is intended to apply at all times and on all days. It was intended to take effect from 16 October 2023.

3. The Order also seeks to authorise the carrying out of physical works to the highway layout to facilitate that closure (such as realignment of the carriageways, the provision of traffic islands and the provision of advance warning signage).

4. The Claimant is a resident of the area. She is also Chair, and acting on behalf, of the Friends of Mill Rod Bridge, an unincorporated association. Both she and the association oppose the making of the Order.

5. It is clear from the evidence before the Court that the Order is controversial. There are strongly held competing views as to the merits, or otherwise, of the closure of Mill Road Bridge and the effect on the area. On a statutory claim of this kind, however, the Court's function is limited to considering whether the Order or any of its provisions are within the relevant powers of the Defendant under the statutory scheme and the relevant requirements imposed on the Defendant for the making of such an order have been complied with.

6. Paragraph 35 of Schedule 9 to the 1984 Act provides:

> "35 If any person desires to question the validity of, or any of the provisions 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 ..."

7. It is that context in which the Defendant's application for summary judgment or an order striking out all or part of that claim falls for determination.

8. Unlike a claim for judicial review under CPR Part 54, or a statutory claim or appeal

under sections 288 and 289 of the Town and Country Planning Act 1990, a claimant bringing a statutory claim under paragraph 35 of Schedule 9 to the 1984 Act is not required to obtain the permission of the Court. There is therefore no "permission stage". In the ordinary course, such a claim would therefore proceed to a substantive hearing under the relevant provisions governing a CPR Part 8 claim. Both parties agree, however, that either party is still entitled to make an application for summary judgment under CPR Part 24.3, or an application strike out a statement of case under CPR3.4, as the Defendant has done here. I agree.

9. That said, in making the order dated 1 December 2023 providing for the listing of the Defendant's application, Mr Dan Kolinsky KC (sitting as a Deputy High Court Judge) observed that in making such an application, the Defendant is asking the Court to consider the grounds of challenge against a lower threshold than if the Court were determining the claim at the substantive stage. The Deputy Judge observed that there are risks in taking that course. If the application fails, even in part, there is a danger that additional costs will be incurred and more time spent, as compared with the matter proceeding to a substantive hearing directly.

10. The Deputy Judge therefore suggested that the Defendant may wish to reflect on whether, in such circumstances, it wished to pursue the application, rather than proceeding directly to a substantive hearing, and that if the Defendant changed its position, the parties could agree directions as to how the matter should proceed directly to a substantive hearing.

11. In the event, the Defendant did not change its position. The application came before me for determination at a hearing listed for 2.5 hours (reflecting the time estimate given by the Defendant originally). That time estimate proved to be significantly inadequate. The parties' submissions extended significantly beyond that time. It left no time for the giving of judgment, particularly given the other cases in the list. Given my conclusions on the Defendant's application itself, coupled with the other elements of the procedural history dealt with below, the risks foreshadowed by the Deputy Judge have manifested themselves.

Procedural Background to the Defendant's Application

12. That procedural history is already somewhat complex.

13. The Claimant's claim as filed on 26 July 2023 originally identified six grounds of challenge:

    a. Ground 1 – a failure by the Defendant to provide adequate reasons for proposing the Order;
    b. Ground 2 – a failure by the Defendant to provide adequate reasons for making the Order;
    c. Ground 3 – a mistake of fact as to an exemption under the Order for use of Mill Road by carers of 'Blue Badge' holders;
    d. Ground 4 – (a) a failure to carry out the Defendant's public sector equality duty under s.149 of the Equality Act 2010; and (b) a failure to consult on the impact of a two vehicle restriction for Blue Badge holders;
    e. Ground 5 – erroneously taking into account the potential to attract funding;
    f. Ground 6 – a failure to consider consulting other organisation as part of the

consultation on the Order;

14. The Claimant also sought: (1) a protective costs order on the basis that it was an Aarhus claim; (2) an interim order under paragraph 36 of Schedule 9 to the 1984 Act suspending the operation of the Order.

15. The Defendant filed Summary Grounds of Defence dated 15 August 2023 opposing the claim. The Defendant accepted it was an Aarhus Claim, but resisted the imposition of a cap on the costs recoverable by the Defendant from the Claimant on the basis of a lack of detail as to the financial resources of the Claimant and the Friends of Mill Road Bridge and lack of details as to the unincorporated association.

16. By Application Notice dated 16 August 2023, the Defendant made applications for: (1) security for costs; and (2) summary judgment dismissing, or an order striking out, of all or parts of the claim. The Defendant gave a time estimate of 2.5 hours for the hearing of that application.

17. By Order of Mr Ockleton (Vice President of the Upper Tribunal and sitting as a Judge of the High Court) dated 15 September 2023, the Court ordered that the Claimant's application for an interim order and a protective costs capping order, along with the Defendant's application for security for costs and for summary judgment be listed for hearing with a time estimate of 3 hours as soon as possible, but no later than 6 October 2023. The hearing was listed for 11 October 2024.

18. On 5 October 2023 the Claimant made an application to amend her grounds of claim.

19. All of the applications came before Mr Tim Smith (Sitting as a Deputy High Court Judge) at a hearing on 11 October 2023 with a time estimate of 3 hours. As set out in his Judgment subsequently delivered on 13 October 2023 ([2023] EWHC 2801 Admin), the Deputy Judge had identified from pre-reading that it was very unlikely that a 3 hour hearing would be sufficient to deal with all five applications. In answer to the Deputy Judge's enquiries, the Defendant had indicated that it was unable to extend the hearing beyond the three hour listing.

20. At the hearing, the Deputy Judge declined to hear the Claimant's application to amend, given the absence of sufficient notice for the Defendant to respond, along with the Defendant's application for strike out/summary judgment, given the interrelationship between the two.

21. The Deputy Judge heard the interim relief application, but much of it was resolved by the Defendant giving an undertaking on the morning of the hearing not to carry out a significant part of the works authorised. The Deputy Judge refused the remaining part of the interim relief sought. The Deputy Judge heard, but declined to decide the Claimant's application for a costs capping order, but gave directions as to how it should be dealt with. The Judge heard and refused the Defendant's application for security for costs.

22. Following that hearing, having received further written representations from the parties pursuant by directions, the Deputy Judge made an Order dated 8 November 2023. This gave effect to his decisions on the interim order, recording the terms of

the undertaking provided by the Defendant, and on security for costs. Additionally, the Deputy Judge made an order capping the costs liability of the Claimant to the Defendant at £10,000 and that of the Defendant to the Claimant at £35,000.

23. The Deputy Judge granted the Claimant permission to amend her grounds of claim in include a further Ground 7, an allegation that the decision to make the Order was tainted by apparent bias or predetermination by Councillors Beckett and Shailer. The Defendant was given permission to rely upon witness statements from those Councillors in response to it.

24. The Deputy Judge gave directions on the Defendant's application for strike out/summary judgment providing for a response from the Claimant and any reply by the Defendant. He also made various costs orders, but reserved the question of the costs of the Defendant's application for strike out/summary judgment for the Judge dealing with that application.

25. By Order of Mr Dan Kolinsky (sitting as a Deputy High Court Judge) dated 1 December 2023, the Court ordered the Defendant's application to strike out the claim and for summary judgment to be listed for hearing with a time estimate of 2.5 hours on or after 15 January 2024. Directions were made for filing of skeletons, a hearing and a bundle of authorities. In making that Order the Deputy Judge made the observations I have already identified above.

26. At the consequential hearing of the Defendant's application before me, the Defendant was represented by Charles Streeten of Counsel and the Claimant was represented by Stephanie Bruce-Smith of Counsel. Both filed skeleton arguments and made oral submissions. I record my gratitude to both of them for the clarity of their helpful submissions.

27. In determining the Defendant's application, I have considered all of the accompanying documents and evidence variously relied upon by the Claimant and the Defendant in the voluminous application bundle, along with all of the authorities in the equally voluminous authorities bundle to which the parties referred, which has taken considerably longer than the time that was identified by the parties for an application of this kind.

Legal Framework

The 1984 Act

28. Section 1 of the 1984 Act (as amended) enables a traffic authority for a road outside Greater London, such as the Defendant, to make a traffic regulation order in respect of that road. It provides, so far as material, as follows:

> "1. **Traffic regulation orders outside Greater London**
> (1) The traffic authority for a road outside Greater London may make an order under this section (referred to in this Act as a "traffic regulation order") in respect of the road where it appears to the authority making the order that it is expedient to make it-
>
> (a) for avoiding danger to persons or other traffic using the road or any

other road or for preventing the likelihood of any such danger arising, or

(b) for preventing damage to the road or to any building on or near the road, or

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

(d) for preventing the use of the road by vehicular traffic of a kind which, or its use by vehicular traffic in a manner which, is unsuitable having regard to the existing character of the road or adjoining property, or

(e) (without prejudice to the generality of paragraph (d) above) for preserving the character of the road in a case where it is specially suitable for use by persons on horseback or on foot, or

(f) For preserving or improving the amenities of the area through which the road runs; or

(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).

…"

29. Section 2 of the 1984 Act deals with what provision may be made in such an order. It includes the following:

"(1) A traffic regulation order may make any provision prohibiting, restricting or regulating the use of a road, or of any part of the width of a road, by vehicular traffic, or by vehicular traffic of any class specified in the order,—

(a) either generally or subject to such exceptions as may be specified in the order or determined in a manner provided for by it, and

(b) subject to such exceptions as may be so specified or determined, either at all times or at times, on days or during periods so specified.

(2) The provision that may be made by a traffic regulation order includes any provision—

(a) requiring vehicular traffic, or vehicular traffic of any class specified in the order, to proceed in a specified direction or prohibiting it so proceeding;

(b) specifying the part of the carriageway to be used by such traffic proceeding in a specified direction;

(c) prohibiting or restricting the waiting of vehicles or the loading and unloading of vehicles;

(d) prohibiting the use of roads by through traffic; or

(e) prohibiting or restricting overtaking.

…"

30. There is no direct challenge by the Claimant to the Order on the basis that it falls outside the Defendant's powers of sections 1 and 2 of the 1984 Act.

31. Paragraphs 20-22 of Part VI of Schedule 9 to the 1984 Act, in conjunction with s.124 of the 1984 Act provide for the ability of the Secretary of State for Transport to make regulations providing for procedure to be followed in connection with the making of an order under section 1 of the 1984 Act. Under those provisions, regulations may make provision as to the publication of any proposal for an order, the making and consideration of objections to any such proposal, and the publication of the notice of the making of the order and of its effect.

32. Part VI of Schedule 9 to the 1984 Act deals with the validity of certain orders under the 1984 Act. Paragraph 34 identifies, so far as material:

"(1) This Part of this Schedule applies-

(a) To any order made under or by virtue of any of the following provisions of this Act namely, sections 1 …
(b) …

(2) In this Part of this Schedule -

(a) "the relevant powers", in relation to any such order as is mentioned in sub-paragraph (1)(a) above, means the powers with respect to such an order conferred by this Act …

(b) "the relevant requirements", in relation to any such order as is mentioned in sub-paragraph (1)(a) above, means any requirement of, or of any instrument made under, any provision of this Act with respect to such an order …"

33. As set out already, paragraph 35 of Schedule 9 to the 1984 Act sets out the right of any person who desires to the question to validity of an road traffic regulation order on the grounds that: (a) it is not within "the relevant powers"; or (b) any of "the relevant requirements" for such an order have not been complied with, to make application to the High Court within 6 weeks of the Order being made.

34. Paragraph 36 of Schedule 9 to the 1984 Act provides:

"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 had 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."

35. For the purposes of its application, the Defendant places particular emphasis on the terms of paragraph 36(1)(b). This identifies that the power to quash an order, or any provision of it, if the Court is satisfied is not within the relevant powers requires the applicant to have been substantially prejudiced by any failure to comply with the relevant requirements. The Defendant submits that where a challenge relies on such a failure, the prospects of that part of the challenge succeeding are necessarily affected by whether the failure has resulted in substantial prejudice. By contrast, the Claimant submits that is only a matter that goes to the question of relief.

36. Paragraph 37 of Schedule 9 to the 1984 Act states:

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

The Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996 ("the 1996 Regulations")

37. The 1996 Regulations made under the 1984 Act set out relevant requirements for the making of an order under s.1 of the 1984 Act.

38. Regulation 6 sets out certain consultation requirements. In light of the Claimant's withdrawal of reliance on Ground 6 (which had alleged a breach of this Regulation), it is unnecessary to set it out.

39. Regulation 7 deals with the publication of proposals before the making of an order. Regulation 7(1) sets out minimum requirements for publication of a "notice of proposals" before making an order. Regulation 7(2) deals with the requirement to send the notice of proposals to specified consultees. Regulations 7(3) and (4) provide:

> "(3) The order making authority shall comply with the requirements of Schedule 2 as to the making of deposited documents available for public inspection.
>
> (4) Deposited documents shall be made so available at the times and at the places specified in the notice of proposals throughout the period beginning with the date on which the notice of proposals is first published and ending with the last day of the period of 6 weeks which begins with the date on which the order is made or, as the case may

be, the authority decides not to make the order.

40. Regulation 8 of the 1996 Regulations deals with objections and includes the following:

> "(1) Any person may object to the making of an order by the date specified in the notice of proposals or, if later, the end of the period of 21 days beginning with the date on which the order making authority has complied with all the requirements of regulation 7(1) to (3).
> (2) …
> (3) An objection under paragraph (1) or (2) shall -
>
> (a) be made in writing;
> (b) state the grounds on which it is made; and
> (c) be sent to the address specified in the notice of proposals,
> …

41. Regulation 9 deals with when an inquiry is to be held.

42. Regulation 16 restricts the making of an order until after the last date by which any person may object under Regulation 8 and also deals with bringing it into force.

43. Regulation 17 deals with action required after the making of an order. It provides, amongst other things:

> "(1) As soon as practicable after an order has been made, the order making authority shall include among the deposited documents a copy of the order as actually made.
>
> (2) The order making authority shall, within 14 days of the making of the order-
>
> (a) publish in a newspaper circulating in the area in which any road or place to which the order relates is situated, a notice (in these Regulations called a "notice of making")-
>
> (i) stating that the order has been made; and
> (ii) containing the particulars specified in Parts I and III of Schedule 1; …
>
> (3) Within 14 days of making an order, the order making authority shall notify the making of the order in writing to any person who has objected to the order under regulation 8 and has not withdrawn the objection and, where the objection has not been wholly acceded to, shall include in that notification the reasons for the decision.
>
> (4) The order making authority shall take such other steps of the kinds referred to in regulation 7(1)(c) as it considers appropriate for the purposes of ensuring that adequate publicity is given to the making of the order."

44. Schedule 2 of the 1996 Regulations makes provision in respect of the "deposited documents" referred to earlier in the Regulations, as follows (so far as relevant):

> "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 …
>
> …"

The Equality Act 2010

45. Section 149(1) of the Equality Act 2010 sets out the public sector equality duty ("PSED") as follows:

> "(1) A public authority must, in the exercise of its functions, have due regard to the need to—
>
> (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
>
> (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
>
> (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

46. The concept of "due regard" requires the court to ensure that there has been a proper and conscientious focus on the statutory criteria, so there has been "rigorous consideration of the duty" in section 149 of the Equality Act 2010; an authority must be "properly informed" before taking a decision and if the relevant material is not available there will be a duty to acquire it; and the relevant duty is upon the decision-maker personally, and so what matters is what the decision-maker took into account and what they knew and a decision-maker cannot be taken to know what his or her

officials know, or what may have been in the mind of officials in proffering their advice: see *R (Bracking) v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345; [2014] Eq LR 60. The decision-maker must "be clear precisely what the equality implications are when [it] puts them in the balance " - see *R (Hurley and Moore) v Secretary of State for Business, Innovation and Skills* [2012] EWHC 201 (Admin) [2012] HRLR at [78].

47. The public sector equality duty is not a duty to achieve a particular result: *R (Baker) v Secretary of State for Communities and Local Government* [2008] EWCA Civ 141; [2009] PTSR 809 at [31]. It is a duty to have regard to the need to pursue the policy goals affirmed in the 2010 Act. If an authority subject to the public sector equality duty properly considers the relevant matters, it is for the authority, and not the court, to decide how much weight to accord to each factor relevant to the decision: *R (Hurley & Moore) v Secretary of State for Business, Innovation and Skills* [2012] EWHC 201 (Admin); [2012] HRLR 13, and *Tchenguiz v Westminster City Council* [2022] EWHC 469 (Admin).

Civil Procedure Rules - Striking Out and Summary Judgment

48. CPR 3.4(2) sets out the Court's power to strike out a statement of case in certain circumstances.

49. The Defendant's application is made under CPR3.4(2)(a), namely:

> "(a) that the statement of case discloses no reasonable grounds for bringing … the claim".

50. CPR 3.4(1) identifies that reference to a statement of case includes reference to part of a statement of case. In this case, the Defendant's application is made in respect of all of the grounds of claim, but in the alternative, in respect of any part of them.

51. CPR 24 sets the procedure by which the Court may decide a claim or issue without a trial by way of summary judgment: see CPR 24.1. The Court may give summary judgment against a claimant in any type of proceedings: see CPR 24.2(a). The grounds for summary judgment are set out CPR 24.3 as follows:

> "The Court may give summary judgment against a claimant or defendant on the whole of a claim or on any issue if-
>
> (a) it considers that the party has no real prospect of succeeding on the claim … or issue; and
>
> (b) there is no other compelling reason why the case or issue should be disposed of at trial."

52. The Claimant refers to principles applicable to applications for summary judgment formulated by Lewison J (as he then was) in *EasyAir Ltd v Opal Telecom Ltd*, as approved by the Court of Appeal in *AC Ward & Sons Ltd v Catlin (Five) Ltd* [2009] EWCA Civ 1098, [2010] Lloyd's Rep IR 301 which are identified in the notes on CPR 24 in the *White Book*. In summary:

    a. The Court must consider whether the claimant has a "realistic" as opposed to a "fanciful" prospect of success: *Swain v Hillman* [2001] 1 All ER 91.

    b. A "realistic" claim is one that carries some degree of conviction. This means the claim is more than merely arguable *ED&F Man Liquid Products v Patel* [2003] EWCA Civ 472 at [8].

    c. In reaching its conclusion the court must not conduct a "mini-trial": see *Swain v Hillman*.

    d. This does not mean that the Court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases, it may be clear that there is no real substance in factual assertions made, particularly if contradicted by the contemporaneous documents: *ED&F Man Liquid Products* at [10].

53. The Defendant submits there is a significant overlap between the Court's power to strike out a statement of case under CPR 3.4(2)(a) and the power to give summary judgment under CPR 24.3(a), given that the former provides that the Court may strike out a statement of case (or a part of it) "if it appears that the statement of case discloses no reasonable grounds for bringing or defending the claim", and the latter identifies the Court may give summary judgment on the whole of a claim or an issue where a party "has no real prospect of succeeding" on that issue.

54. In this respect, the Defendant refers to *Kasongo v CRBE Limited* [2023] EWHC 1464 (KB) and submits that in that case Choudhury J quoted with approval:

    a. The White Book notes to CPR 3.4.2 which provide that "Statements of case which are suitable for striking out on ground (a) include those which raise an unwinnable case where continuance of the proceedings is without any possible benefit to the respondent and would waste resources on both sides (*Harris v Bolt Burdon* [2000] CP Rep 70, [2000] CPLR 9]" (see para. 23); and

    b. The White Book notes at 3.4.21 which explain that "The rules give the court two distinct powers which may be used to achieve the summary disposal of issues which do not need full investigation at trial… Many cases fall within both r.3.4 and Part 24 and it is often appropriate for a party to combine a striking out application with an application for summary judgment. Indeed, the court may treat an application under r.3.4(2)(a) as if it was an application under Part 24… A party may believe that they can show without a trial that an opponent's case has no real prospect of success on the facts, or that the case is

> bound to succeed or fail, as the case may be, because of a point of law (including the construction of a document). In such a case the party concerned may make an application under r.3.4 or Part 24 (or both) as they think appropriate" (see para. 24).

55. The Defendant submits that under both powers, the Court may summarily dismiss the claim, or parts of the claim, which it regards as having no real prospect of success, i.e. which are not "better than merely arguable" (see *ED&F Man Liquid Products Ltd v Patel* [2003] EWCA Civ 472 per Rix LJ at para. 8). The Defendant also submits that where an issue turns on a point of law, the Court should grasp the nettle and decide that point, provided it is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, noting that it is not enough to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question, relying upon what was stated in *AC Ward & Sons Ltd v Catlin (Five) Limited* [2009] EWCA Civ 1098 per Etherton LJ (as he then was) at para. 24(vii)).

56. As a matter of principle on the question of overlap between the two powers, I agree with the Claimant that some caution needs to be exercised in treating the two as equivalent. Although an application to strike out may also often be accompanied by an application for summary judgment, they engage two distinct procedural rules which can have different consequences. The Court may sometimes need to focus on those differences, as explored in *Kasongo* itself. Whilst recognising a substantial overlap, Choudry J explained at [36] onwards that the focus of the Court on an application under CPR 3.4(2)(a) is on the statement of case (referring to what Lord Woolf had stated in *Swain v Hillman* at 92H). Referring to the notes in the *White Book* on CPR 3.4(2)(a) which suggest that strike out is concerned with statements of case which are unreasonably vague, incoherent, vexatious, scurrilous or obviously ill-founded, Choudry J identified that in the generality of cases, such questions ought to be capable of being determined by the statement of case alone.

57. The Judge referred to what Chadwick LJ had stated in *Independents' Advantage Insurance Company Ltd v Cook* [2004] PNLR 44 at [8] in considering the question of overlap and stated at [38]:

> "Thus, where an applicant on an application under CPR 3.4(2)(a) accepts that the claimant will be able to establish all the facts pleaded and does not seek to rely on any additional facts in support of the application, there is no scope for recourse to CPR 24.2. The application can be determined by considering whether the particulars of claim disclose reasonable grounds for bringing the claim. That might suggest that where an applicant does seek to rely on additional facts that go beyond those set out in the statement of case, the appropriate course would be to make the application under CPR 24."

58. The Judge then turned to consider the decision of the Court of Appeal in *Harris v Bolt Burdon* [2000] CPLR 9. That was an application to strike out a claim for non-compliance with an order in circumstances where it had become apparent by the time the matter was heard that the claim was considered to be unwinnable. It was in that context that Sedley LJ referred at [27] to the case being "absolutely unwinnable" and

Stuart Smith LJ referred at [33]–[35] to the case being "manifestly weak, although perhaps not entirely hopeless" being relevant to the strike out application for non-compliance, when the applicant had not made an application for summary judgment (which might have been preferable). Choudry J took the view that the observations of Stuart-Smith LJ in his judgment suggested that the Court should be proactive, in the circumstances, in dealing with the matter under the appropriate rule.

59. Choudry J continued in *Kasongo* at [42]-[43] to state as follows:

> "42. The question here is whether .. the focus under CPR 3.4 on the statement of case precludes consideration of anything other than the statement of case. In other words, does the fact that the statement of case on its face discloses a coherent cause of action mean that it cannot be struck out pursuant to CPR 3.4(2)(a)? In my judgment, such a rigid interpretation of the rule would not be correct. The statement of case cannot be read in a vacuum. The fact that the statement of case must disclose reasonable grounds for bringing the claim, imports an objective assessment, which may take account of factors known to the Court even if not acknowledged in or obvious on the face of the statement of case. Thus, a statement of case that is reliant on an allegation of fact that is plainly and unarguable unsustainable (perhaps because it is contradicted by an unambiguously contradictory contemporaneous document) might be said not to disclose reasonable grounds for bringing the claim. The notes to the rule which refer to a case as falling within (a) if it is "obviously ill-founded" are consistent with such approach.
>
> 43. However, the extent to which and the circumstances in which the Court should look to matters beyond the statement of case on an application under CPR 3.4(2) are limited. If that were not so then the distinction, deliberately drawn, between the two powers would reduce to nothing. The Court are warned against being drawn into a mini trial on an application for summary judgment, where the test is whether there is a realistic, as opposed to a fanciful, prospect of success. That warning carries even more force on an application under CPR 3.4(2)(a) where the focus of the analysis is generally on the statement of case."

60. In that context, Choudry J considered the particular significance of the distinction between the two tests in the case before him. Having noted that in most litigation it will not matter to parties whether the application is brought under CPR 3.4 or CPR24, because a successful application will generally entitle the winning party to its costs, the Judge identified that was not the position in respect of personal injury claims to which the Qualified One-Way Cost Shifting regime applied. Where proceedings are struck out under CPR 3.4, that costs protection afforded to a claimant is lost, whereas that is not the case where summary judgment is entered under CPR24 (see *Kasongo* at [44]). The distinction between the rules was therefore identified as important and that given that significance, the courts should be especially astute in personal injury claims in ensuring that an application that is made under CPR 3.4(2), but which ought properly to have been brought under CPR 24, is dealt with as if brought under the latter (see *Kasongo* at [47]).

61. In the present case, neither party has identified any such equivalent point of

significance in the distinction between the two powers in issue here. On the application before me, and on the facts that have been presented, I have not been able to discern any significant point of distinction myself.

62. In the circumstances, I consider that the appropriate starting point is the Defendant's application for summary judgment, and the test of whether there is a real, rather than fanciful prospect of success in respect of the Claimant's grounds of challenge in the claim, applying the principles summarised in *EasyAir*, cognisant of the warning that the court should not conduct a mini-trial.

63. Looking at it another way, if the Defendant is unable to make out its application for summary judgment on the Claimant's grounds of challenge, I cannot see how it could separately be able make out its application to strike out the Claimant's statement of case, or parts thereof, particularly given what was stated by Choudry J in *Kasongo* at [43] : the warning against conducting a mini-trial applies with even more force to the court's consideration of an application under CPR 3.4(2)(a), given its particular focus on the statement of case.

64. As to the Defendant's emphasis on the need for the Court to "grasp the nettle" where an issue turns on a point of law, and to decide such points, there is a danger in not recognising limits to that principle which flow from that Etherton LJ stated in *AC Ward*. In particular:

    a. First, the Court has to be satisfied that it has before it all the evidence necessary for the proper determination of the question. This must be seen in light of the procedures applicable to a statutory claim of this type. As it happens, the parties should have filed the evidence on which they intend to rely, or at least should have made any application to adduce any further evidence.

    b. Second, the parties must have had an adequate opportunity to address the legal point in argument. In circumstances where the time estimate given for the hearing of this application was inadequate and the time for argument was constrained, this requires some careful consideration.

    c. Third, linked to the preceding point, points of law raised in a statutory claim of this kind (as in judicial review proceedings) are an inherent feature of such proceedings, given the limited grounds on which such a statutory claim or a judicial review claim can be made. In judicial review proceedings, a point of law may pass the threshold of arguability to justify the grant of permission to bring a claim for judicial review. That can sometimes be after an oral hearing of a renewed application for permission to claim judicial review. By the same token, a point of law can have a "realistic prospect of success" (assuming, for present purposes that represents a higher threshold). I do not read the exhortation to "grasp the nettle" on points of law as requiring a Court to decide definitively <u>all</u> points of law, despite the realistic prospect of success threshold, no matter how nuanced the point may be, or where there may be benefit in hearing more detailed argument than a summary judgment application allows, at a substantive hearing. This is probably

no more than amplification of the second point, but is particularly relevant to statutory challenges of this kind, as with judicial review proceedings.

d. Fourth, some care needs to be taken in identifying the circumstances when an issue does in fact turn on a short point of law in a statutory challenge of this kind, as opposed to the application of the law to particular facts. An issue can sometimes require resolution of a disputed point of law, but also then a disputed application of the law to the particular facts. Thus, for example, in relation to the "relevant requirements" for the making of an order under the 1984 Act, a claim may require the court to resolve a dispute as to what those relevant requirements are, as a matter of law; the court may then also need to resolve a dispute as to whether such requirements were in fact met on the facts; the court may also then need to decide whether a person has been substantially prejudiced by any failure to comply with the relevant requirements in any particular case (having regard to any evidence on such prejudice) . In such cases, the warning against conducting a mini-trial on an application of this kind may become particularly relevant, particularly when time is constrained.

The Background Facts

65. Between June 2020 and early August 2021, the Defendant closed Mill Road Bridge and parts of Mill Road to private motor vehicles in exercise of its powers under the 1984 Act to make an experimental traffic regulation order ("the ETRO"). The ETRO restricted vehicular traffic over Mill Road Bridge except for buses and emergency vehicles.

66. At a meeting of its Highways & Transport Committee on 27 July 2021, the Defendant reviewed the ETRO. It decided to re-open Mill Road to traffic and to carry out a public consultation seeking the public's views on the future of Mill Road.

67. On 4 November 2021 the Defendant resolved to request that the Greater Cambridge Partnership ("GCP") undertake the work to review, and consult on, options for Mill Road. GCP carried out a consultation in Spring 2022. It received 1,986 responses in total and provided a consultation report on that feedback.

68. The Defendant's Highways & Transport Committee met again on 12 July 2022 to consider the results of that consultation. Officers were of the view that respondents to the public consultation "clearly supported a re-instatement of the Mill Road filter but with important caveats such as allowing exemptions for disabled residents and taxis." The Defendant's Committee agreed to progress with next steps to implementation of a modal filter by way of consultation on a permanent traffic regulation order ("TRO") restricting vehicular use of Mill Road Bridge to buses but "with exemptions including disabled residents and taxis".

69. The Defendant's subsequent committee report identifies that in Autumn 2022, a series of meetings was held to discuss the nature of the exemptions which involved Council officers from Parking Operations, Traffic Management, Policy and Regulation,

Transport Strategy, Blue Badge team and the Project team as well as local Councillors, Councillor Bird and the City Council Disability Panel.

70. The Defendant states that the consequential proposed Order was advertised on 28 November 2022 proposing the restriction of vehicular traffic over the railway bridge "but with a greater numbers of exemptions than the earlier Bus Gate scheme: local buses, cyclists, pedestrians, taxis/PHVs, blue badge holders and authorised vehicles would all be exempt."

71. On the basis that the Order as made does not differ from that which was in fact advertised, I note the basic structure of what was advertised as the proposed Order as follows.

72. Part 1 of the Order identified that it was to come into operation on 16 October 2023.

73. Part 2 sets out certain definitions as used in the Order. Of particular relevance to the issues before me, there is a definition of "Authorised Vehicle" in the following terms:

> "Authorised Vehicle" means an individual, party or organisation:
>
> who is a Disabled Person's badge holder;
>
> a vehicle that is a disabled tax class;
>
> an NHS tax-exempt vehicle;
>
> or any other specific individual, party or organisation;
>
> granted authorised user status by Cambridgeshire County Council's Traffic Manager."

74. This definition needs to be seen in the context of the core prohibition in Part 3 of the Order which is in the following terms:

> "PART 3 PROHIBITIONS
> Bus Gate
>
> 4. Save as provided in Part 4 of this Order no person shall cause or permit any vehicle except for a Local Bus, Pedal Cycle, Taxi or Authorised Vehicle to be in the roads or lengths of roads specified as a Bus Gate in the Schedule to this Order during the hours of operation specified."

75. Part 4 of the Order sets out certain conditions and exemptions, including those relating to emergency vehicles. Part 5 of the Order makes provisions for contraventions of the prohibition and enforcement by way of Penalty Charge Notices in relation to a vehicle that contravenes the Order. Schedule 1 to the Order identifies that the prohibition in the Order applies "AT ALL TIMES ON ALL DAYS".

76. I pause here to note that, on the face of it, the definition of "Authorised Vehicle" and its use in the prohibition potentially appears to present some challenges in

interpretation.

77. Somewhat counter-intuitively, the definition begins by defining an "Authorised Vehicle" as meaning "an individual, party or organisation". The colon used after that phrase suggests that there are four sub-categories of an "individual, party or organisation". The first and fourth are potential types of "individual, party or organisation" namely: a "Disabled Person's Badge holder"[sic] and "any other specific individual, party or organisation". By contrast, the second and third are types of vehicle, rather than types of "individual, party or organisation". The natural grammar of the definition is therefore immediately challenging. The subsequent qualifying requirement applicable to all of the sub-categories is that they must be "granted authorised user status" by the Defendant's Traffic Manager.

78. There does not appear to be anything else in the proposed Order, or the deposited documents advertised with it, that would have shed additional light on the way that this particular part of the definition is intended specifically to operate, particularly in respect of authorisation of use of the road by a person who is a "Disabled Person's Badge holder" or "any other specific individual, party or organisation" granted authorised user status.

79. It seems clear from the Defendant's submissions to the Court on this application, that the Defendant is treating this definition to mean that a holder of a Disabled Person's badge can be granted authorised user status, and the effect of that status will mean that a vehicle in which such an authorised user is travelling will be an "Authorised Vehicle"; but that the Defendant is imposing a limit on that user status by requiring the holder of the Disabled Person's badge to register two specific vehicles only, and it is only those vehicles that will then be authorised and only if they are carrying the holder of the Disabled Person's badge at the time. That is the interpretation that seems to be expressed in the Officer's Report to the Defendant's Committee when subsequently deciding to make the Order. But it is perhaps little wonder that a different interpretation of the effect of the Order in relation to carers for Blue Badge holders was expressed by the Chair of the Defendant's committee (as dealt with further below).

80. In my judgment, it is fair to say that the interpretation the Defendant advances does not leap off the face of the page. One might, with linguistic benevolence, overlook the obvious infelicity of a person being described as an "Authorised Vehicle", and go on to construe the definition in a pragmatic way as meaning that it is intended to cover a vehicle being driven by, or carrying, the holder of a Disabled Person's Badge. It is potentially more challenging to be sure that the "authorised user status" necessarily means that it is a specific vehicle that has to be registered and granted "authorised user status", rather than an individual. If the pragmatic approach to construction involves, for example, treating the wording "individual, party or organisation" before the colon as in fact only intending to relate to the first and fourth sub-categories (in order to make better grammatical and actual sense of the second and third sub-categories that are in fact vehicles), then this potentially strengthens an argument that "authorised user status" relates to an individual, triggered when present in any vehicle, rather than such "authorised user status" being limited to a specific vehicle. An interpretation that authorised user status relates to an individual, rather than a vehicle, would also potentially sit more naturally with the usual position that a Blue

Badge relates to an individual, rather than a specific vehicle.

81. Even if these interpretational challenges are overcome, there is no wording at all that expressly articulates a limit on the number of vehicles that can be so authorised, let alone indicating that it will be limited to two, as the Defendant has subsequently stated in the Officer's Report and attached Equality Impact Assessment when deciding to make the Order. It therefore seems clear that no one reading the proposed Order could reasonably have known about that intended limitation at the time from its terms.

82. Uncertainty in these respects is unfortunate in at least four respects in this case. First, this is intended to be an Order capable of application and enforcement - there is therefore an obvious interest in it being free from such ambiguities. Second, the exemption in question is one that relates to disabled persons, where there is an understandable identified concern as to the specific effect of the Order on them, given the consequential restrictions on the ability for them or their carers to use Mill Road Bridge. Third, for the purposes of carrying out an effective consultation on the proposed Order, it is clearly desirable that the effect of the proposed Order is clearly understood, particularly in respect of its impact on disabled persons. Fourth, for the purposes of the Defendant's subsequent decision on whether to make the Order, it is also important that the Defendant's Committee members should themselves have a clear understanding of the effect of the Order they are making. This is of particular relevance to the Claimant's Ground 3 and the Chair's clarification (addressed further below).

83. I make it clear that in making these observations about the potential challenges in interpreting this part of the Order, I am not expressing any concluded view on its true meaning. Interpretative difficulties of this kind are the sort which I consider would potentially benefit from more detailed argument, particularly given the lack of focus on this issue during the summary judgment hearing. Although the Claimant has raised an issue as to whether the proposed limitation on the number of vehicles flows from the Order as drafted, the true meaning of this definition was not explored to any extent by either party at the hearing before me. Any uncertainty over that meaning, however, does inevitably have some bearing on the Defendant's application for summary judgment on some of the grounds of challenge the Claimant is pursuing.

84. Returning to the procedure for proposing the Order, one of the deposited documents made available was described as a 'STATEMENT OF REASONS'. This stated (amongst other things):

> "THE AUTHORITY'S REASONS for proposing to make the above mentioned Order are as follows:
>
> For avoiding danger to persons or other traffic using the road or any road for preventing the likelihood of any such danger arising
>
> For facilitating the passage on the road or other road for any class of traffic (including pedestrians)
>
> For preserving or improving the amenities of the area through which the road

runs."

85. This wording therefore reflects three of the statutory purposes for making an order, as contained in Section 1(1)(a), (c) and (f) of the 1984 Act.

86. The Defendant states that the notice period for the proposed Order took place between 28 November 2022 to 6 January 2023. During that time the Defendant received 690 objections to the proposed Order and 291 comments supporting it. The representations were received from both individuals and different groups and organisations. The Defendant states that 316 objections and 244 of the supporting comments were submitted with detailed feedback.

87. The proposed Order was considered by the Defendant's Highways and Transport Committee at a meeting on 7 March 2023 in light of the representations received. An officer's report was prepared for that meeting ("the Officer's Report"). I have read that report and its Appendices in full. I do not set out it out extensively here.

88. Amongst other things covered in the report, Paragraph 2.6 included the following as being one of the next steps if the Order were approved:

> "If the TRO is approved by the Committee, the next steps would be:
>
> From 8 March 2023, blue badge holders would be able to register two vehicles for exemption via an online application form. The application would then be processed an email sent to the blue badge holder confirming the exemption is in place. Blue badge holders should allow up to three working days for their application to be processed."

89. The Claimant points out that receipt of the Officer's Report was the first time that the Claimant was made aware that the exemption for Blue Badge holders was going to be limited to registration of two vehicles. As noted, this is not a limitation which appears on the face of the Order nor, so far as I am aware, in the deposited documents.

90. The Officer's Report appended a table as Appendix 1 setting out an officer response to the key objections that had been received. The Officer's Report also appended an 'Equality Impact Assessment' as Appendix 2 (as referenced in paragraph 4.4 of the Officer's Report).

91. It is fair to say that the Equality Impact Assessment reflected the same position that officers had set out in paragraph 2.6 of the Report. Thus, for example, the Equality Impact Assessment stated:

> "**What is the significance of the impact on affected persons?**
> People with protected characteristics will be able to travel through the Bus Gate on foot, by bicycle, by bus, by taxi/PHV and, if they are Blue Badge holders, by one of two vehicles they can register. All Blue Badge holders are eligible to register two vehicles – this has not been limited to only those Blue Badge holders living in the local area because it was felt this could be discriminatory to those who live outside the local area who regularly travel to work, or use the amenities, on Mill Road.

> … The Bus Gate may negatively impact those people with protected characteristics who are not eligible for a Blue Badge but it would be very difficult to provide or administer a system that would allow some people who have no Blue Badge over the bridge and not others."

92. The Defendant's Committee heard representations from members of the public and then debated the making of the Order. As part of her evidence, a witness for the Claimant has produced a transcript of the committee meeting proceedings. The Defendant has not disputed the accuracy of that transcript, but rather its relevance and use. The Claimant seeks to place particular reliance on those parts of the transcript where participants were expressing concerns about the effect of the Order not just on Blue Badge holders, but also carers. That includes the Claimant's specific reliance upon a statement made by the Chair of the Committee immediately before calling for a vote on the making of the Order.

93. Despite what is stated in paragraph 2.6 of the Officer's Report and the Equality Impact Assessment, the Chair stated as follows:

> "BECKETT [the Chair]
> Can I just clarify on that, on the carers as well, the current policy exemptions allows blue badge holders to register two vehicles, it doesn't require them to be in the vehicles, they're allowed to register two vehicles, so therefore a blue badge holder that had a carer could potentially give one of those registrations to the carer's vehicle and then they would be allowed to pass so there are some provisions in that.
>
> KING [A Councillor]
> That you chair, that's good to know.
>
> BECKETT:
> Okay so can I call it to the vote …"

94. In the vote that followed, the members of the Committee voted by 8 votes to 7 to approve the Order. It was therefore a finely-balanced decision.

95. Minutes of the meeting of 7 March 2023 were subsequently produced and considered for approval by the Defendant's Committee at a meeting on 25 April 2023. These Minutes include a summary of the debate that had taken place on 7 March 2023 in a series of bullet points. One bullet point on which the Claimant relies is as follows:

> "-Noted the concerns regarding exemptions for carers and ability of people to apply for an exemption. However, this was a process that would be monitored and evolve as a result. Following the decision of the Committee at its July 2021 meeting, the Council lost funding as a result and the Department of Transport had advised that it would welcome the reintroduction of the closure. …

96. The final bullet point entry before the vote is addressed is expressed as follows:

> "-Noted comments that it was possible for arrangements to be made by blue badge holders that would allow their carers to use a badge without the holder being in the vehicle*
>
> * following the meeting it was confirmed that Blue badge holders can register up to a maximum of two vehicles. The exemption to use the bridge would apply to Blue Badge holders present in the vehicle …".

97. This bullet point is therefore consistent with the transcript in recording the Chair's clarification. The asterisk note to this part of the Minutes, however, provides a subsequent correction to that understanding. It identifies that after the meeting, it was confirmed that Blue badge holders would be required to register a maximum of two vehicles and that the Blue badge holders had to be present in the vehicle. Consequently the Minutes are expressing the position that the clarification by the Chair (that carers would be able to use the vehicles registered by the Blue badge holder without the Blue badge holder present in them) was wrong.

98. The Claimant's submitted evidence now also includes a transcript of the meeting at which the Minutes were discussed. The Claimant seeks to place reliance on what transpired in that discussion. In simple terms, the Claimant submits that the transcript shows that members of the Committee raised specific concerns about the asterisk note, and the basis upon which the decision to make the Order had been made, but the Chair closed down any opportunity to re-open discussion of the Order in light of the corrected information.

99. The Minutes of the 25 March 2023 meeting state:

> "The minutes of the meeting held on 7 March 2023 were agreed as a correct record subject to the amendment of minute 131 to include the subject of Councillor Sharp's amendment and the inclusion of the Conservative substitutes in the attendance list.
>
> Concern was expressed regarding comments made during the debate of minute 131 at its March meeting regarding Blue Badges and their use. Members noted that a correction to the comments was included within the minutes that clarified the position.
>
> The action log was noted."

100. On 14 June 2023, the Council made the Order. Andhika Caddy for the Defendant has provided evidence in an undated witness statement as to the publication of the proposed Order, but also as to notification provided to objectors of the decision to make the Order on 14 June 2023. His evidence is that this was done "by linking them to the Highways and Transport Committee decision summary and website as well as informing them that the TRO will be operative from the 16th October 2023". A copy of the email has been exhibited. This notifies the recipient that the Order has been made and the date it is to come into effect and then states:

> "For a link to the report and the decision summary for the TRO please use this:
> Link to Committee report and decision summary"

101. A printout of the webpage at which one would arrive by clicking the link has been provided. This took one to a documents page for the meeting of the Defendant's committee meeting of 7 March 2023. It seems that one could then further click on the links provided to the various documents relating to that meeting, including the Agenda, Agenda Documents Pack, the Officer's Report and Appendices (including the Equality Impact Assessment) relating to the Order, as well as all other documents for items on the Agenda for that meeting. Under the heading "Additional Meeting Documents" there is a link to a document entitled "Decision Summary – 7 March 2023".

102. There is a document provided which is entitled "Decision Statement" relating to the meeting on 7 March 2023. Under item 4 the Order title is set out and it states:

> "It was resolved to:
> a) Approve the proposed modal filter on Mill Road bridge, as advertised; and
> b) Inform the objectors accordingly."

103. As a result of the making of the Order, it was due to come into force on 16 October 2023. Following the undertaking provided by the Defendant on 11 October 2023, the main operational provisions of the Order namely, including the prohibition on vehicles from crossing the bridge unless exempt will not come into force until final determination of these proceedings.

The Defendant's Application

104. Having identified what I consider to be the relevant starting point for consideration of the Defendant's application in terms of the principles applicable to summary judgment, I consider the Defendant's application as against each of the Claimant's amended grounds of claim that are being pursued in turn.

105. In that respect, it is important to note the Claimant originally advanced six grounds of challenge. The Claimant was permitted to amend her grounds of claim to include a seventh. The Claimant has confirmed, however, that she is not relying upon what is described as Grounds 4(a) and Ground 6 of her amended details of claim. She says this has been clear since 1 September 2023, and that it was reiterated in her written submissions dated 17 November 2023. The Defendant disputes it was clear, given the Claimant's amended details of claim provided on 13 November 2023 still referred to those grounds. Putting that dispute on one side, the fact remains that Claimant is not pursuing Grounds 4(b) and 6. I have proceeded on that basis. In so far as it necessary for me to do so, I give permission for the Claimant to withdraw those part of its grounds of challenge.

106. In written and oral argument, the Defendant explained that whilst it had provided fuller reasons for defending the claim on each of the grounds, it was not repeating all of that detail as part of its application. Instead, it was focusing on what it considered

to be "knock out blows" for which the Claimant had no good answer and which justified the Court entering summary judgment, or striking out the ground.

107. That was a helpful way to proceed. I have therefore relied on this approach as reflecting the way the Defendant is pursuing application based on the arguments it set out in its skeleton argument, as clarified orally, rather than invoking any wider arguments that may be expressed in its grounds of defence.

Ground 1 - Alleged failure to provide adequate reasons for proposing the Order.

108. Ground 1 of the Claimant's claim is an allegation of a failure by the Defendant to provide adequate reasons for proposing the Order. This amounts to an allegation of a failure by the Defendant to comply with a "relevant requirement" reflected in paragraph 2(d) of Schedule 2 to the 1996 Regulations, namely the requirement on the Defendant to deposit a statement setting out the reasons why the authority was proposing to make the order.

109. In making its application for summary judgment / strike out on this issue, the Defendant submitted that there was no dispute that it had in fact produced and deposited the document entitled "Statement of Reasons". The Defendant submits this set out the reasons why the authority proposed to make the Order in accordance with paragraph 2(d) of Schedule 2 to the 1996 Regulations and it identifies the relevant statutory reasons for proposing to make the Order in a way which was "common practice".

110. The Defendant submitted that the Claimant's challenge is in fact to the adequacy of the reasons given, and there is no real prospect of the Claimant's challenge succeeding on that point. In his written submissions, Mr Streeten for the Defendant advanced three reasons for this.

111. First, Mr Streeten argued that regardless of whether or not there was a failure to comply with the procedural requirement under paragraph 2(d) of Schedule 2 to the 1996 Regulations, the Claimant was not substantially prejudiced by any non-compliance. He argued: the Claimant fully understood what was being proposed and why; she was able to, and did, fully participate in the Defendant's decision-making process, making no complaint regarding the adequacy of the statement of reasons in her objection (a copy of which was provided to the court), or otherwise prior to the making of the Order; she did not, nor did any other member of the Friends of Mill Road Bridge, ever suggest that they were unable to understand what was being proposed and why, or adequately to respond to the Defendant's statutory consultation. To the contrary, Mr Streeten submitted, Ms Wesson specifically explained why she disagreed with the Council's rationale for the Order, stating: that "there is occasional congestion on Mill Road… Otherwise it flows well"; that the "pollution you claim you're eliminating is merely moving to different roads and streets cars will have to take…Closing the bridge will actually increase pollution in Cambridge"; as well as that "shops will suffer" such that she fully set out her objections to the Order.

112. On this basis, Mr Streeten submitted that even if the Claimant were right that the

Council's Statement of Reasons failed in some way to accord with the procedural requirement under paragraph 2(d), this was not a case where she was substantially prejudiced. He referred to the decision in *Tomkins v City of London* [2020] EWHC 3357 (Admin) at [114] and [122] where the High Court, having found a breach of the very same regulation relied upon by the Claimant in this case, ultimately concluded that the claimant in that case had not been impeded by that failure in making an objection, and had not been substantially prejudiced (see paras. 114 and 122). Mr Streeten argued that there is no material distinction in this case.

113. The Defendant submitted that the Claimant had not put any evidence before the Court to suggest she was impeded in making her objection, or to demonstrate that she was otherwise substantially prejudiced by what she alleges was a failure to comply with para. 2(d). It was said she had not identified any matter which she would otherwise have sought to raise in relation to the proposals had more information been provided. The Defendant submits that is fatal to her case, having regard to the approach adopted in *R (Midcounties Co- operative Limited) v Wyre Forest DC* [2009] EWHC 964 (Admin) at [94] – [96] and *R (Better Streets) v RBKC* [2023] EWHC 536 (Admin) at [70]. The Defendant also submitted that substantial prejudice is a necessary condition of a successful cause of action under paragraph 36(1)(b) of Schedule 9 to the 1984 Act; in the absence of substantial prejudice, a statutory challenge under paragraph 35 of the 1984 Act cannot succeed, and in those circumstances Ground 1 has no real prospect of success.

114. The second and third points that the Defendant identified I can summarise much more briefly. The second point, as expressed in the Defendant's skeleton argument, was that the Claimant was seeking to apply the wrong standard of reasoning to the requirement for a statement of reasons when relying upon *South Bucks v Porter (No 2)* [2004] UKHL 33 at [36]. The Defendant submitted that the reasons only needed to be sufficient to permit of intelligent consideration and response by consultees, referring to *R (Gunning) v LB Brent* (1985) LGR 168 at p.189 as approved by the Supreme Court in *R (Moseley) v LB Haringey* [2014] UKSC 56 at [25], and that they met that test. The third point was a submission that there was substantial compliance with the procedural requirement (referring to *R v Soneji* [2005] UKHL 49 at [23]), on the basis that a statement of reasons was provided and the Claimant was not prejudiced by the standard provided and any non-compliance had not material adverse consequences for the Claimant.

115. Taking the third point first, the reason I can deal with it shortly is that is essentially raising the same argument already raised as the first point which I will address in more detail shortly.

116. The reason I can deal with the second point briefly is that Mr Streeten did not press it at the hearing. Correctly in my judgment, albeit belatedly, Mr Streeten recognised the difficulty in meeting the summary judgment test of showing that there was no realistic prospect of the Claimant's challenge to the adequacy of the Statement of Reasons succeeding, in light of *Tomkins* (the same case on which he was relying for the purposes of his submissions on substantial prejudice). That case had found a deficiency in the statement of reasons provided which was arguably more extensive than the statement provided here.

117. In any event, I am satisfied that the Claimant has a real prospect of success in her challenge to the adequacy of the Defendant's statement of reasons and compliance with the requirements paragraph 2(d) of Schedule 2 to the 1996 Regulations. Mr Streeten was not able to produce any authority in support of the submission that the form of the statement of reasons provided by the Defendant in this case was "common practice" or "entirely conventional", whether in relation to the 1984 Act or any other statutory scheme where a statement of reasons may be required (such as when proposing a compulsory purchase order).

118. The Defendant's Statement of Reasons simply identifies three of the statutory purposes for which a road traffic regulation order may be proposed. It does not provide any reasons as to how, or why, the Defendant considered those purposes to be engaged for the particular Order proposed. Whatever test is ultimately the correct one to assess the adequacy of the reasons required under this particular statutory scheme, I consider the Defendant is unable to show that the Claimant has no realistic prospect of success of establishing the inadequacy of the reasons provided. The statement only refers to the bare statutory purposes for which an order of this kind may be made, without providing any further explanation of how those particular purposes relate to what is being proposed.

119. It is self-evident from the statutory scheme that one of the basic purposes of requiring a statement of reasons to be deposited with a notice of the proposed order is to inform those potentially affected of the reasoning of the traffic authority for proposing the order. This is to enable them to provide representations in response. There is a realistic prospect of success of establishing that this requires more reasoning than simply identifying three of the bare statutory purposes that are being invoked. This does provide <u>some</u> very limited explanation of the traffic authority's thinking, in the sense that a reader can understand which of the statutory purposes are being relied upon. But it provides no further explanation as to why, or in what respect, those statutory purposes apply to the location affected by the proposed Order.

120. I also agree with the Claimant that the particular factual context in which this permanent Order was being proposed, namely following a decision to re-open Mill Road Bridge after the ETRO had originally been imposed, is relevant. There is at least a realistic prospect of succeeding in the contention that the Statement of Reasons needed to provide more by way of explanation as to the Defendant's reasons for proposing a permanent closure to inform the consultation on the proposal in those circumstances.

121. Again, I stress that in applying the test for the summary judgment application, I am not expressing a definitive view on what is required under this statutory scheme to meet the requirement in paragraph 2(d) of Schedule 2 to the 1996 Regulations. But I do consider the Claimant has a realistic prospect of succeeding in her challenge that more was required than provided in this case.

122. That does not dispose of the Defendant's application for summary judgment on this ground. Under the first and third reasons the Defendant has advanced for seeking summary judgment, the Defendant still pursues the argument that even if a breach of

the requirement under paragraph 2(d) of Schedule 2 of the 1996 Regulations can be established (and I will assume for the purposes of this part of the argument that it can), the Claimant has no realistic prospect of succeeding under Ground 1 because of an inability to show any substantial prejudice by reason of that breach.

123. The Claimant's response to this is succinct. Ms Bruce-Smith on the Claimant's behalf submits: first, that the existence or otherwise of substantial prejudice goes to remedy, not as to whether the ground of challenge is (i) reasonable or (ii) arguable; second and any event, the Claimant would clearly have been prejudiced; although the Claimant was able to lodge an objection to the Order, without a clear understanding of the true reasons for promoting it, the Claimant was deprived of an opportunity to direct her objection to those reasons. In relation to the question of remedy, attention was drawn to the fact in that in *Tomkins*, whilst the claimant did not succeed in having the relevant order quashed on the basis of procedural non-compliance with this particular requirement given the Court's conclusion on the lack of substantial prejudice, the Court made a declaration about the non-compliance.

124. In response, Mr Streeten submitted that the Claimant is wrong to suggest that the question of substantial prejudice merely goes to remedy. He reiterated his submission that the requirement of substantial prejudice is part of the statutory cause of action. As to the submission that the Claimant was prejudiced by the lack of reasons in the objection she was able to pursue, Mr Streeten again relied on the fact that the Claimant was able to object to the Order on all the grounds she did, and did not complain about any lack of particularity in the reasons at the time, nor does she do so now in a way which shows what she might have said had more detailed reasons been given.

125. In my judgment, the Defendant's analysis is ultimately correct on this point. As a matter of general principle, it is generally the case that there is no such thing as a technical breach of natural justice and there is normally a requirement to find substantial prejudice as a result or mistake or error made: see *George v Secretary of State for the Environment* (1979) 77 LGR 689 per Lord Denning MR and *Malloch v Aberdeen Corporation* [1971] 1 WLR 1578 at 1595, as cited and applied by Holgate J in *R(Clientearth) v Secretary of State for Business, Energy and Industrial Strategy & Another* [2020] EWHC 1303 (Admin) at [241]-245].

126. In this case, that principle is expressly reflected in the statutory scheme. Although the Defendant was under an obligation to comply with the "relevant requirements" before making the Order it did, and there is a realistic prospect of demonstrating that it did not so in respect of the statement of reasons it produced for proposing the Order, paragraph 36(1)(b) of Schedule 9 to the 1984 identifies that the Court's ability to quash the Order, or any of its provisions, for failure to comply with any of the relevant requirements only arises if the interests of the applicant have been substantially prejudiced.

127. The Claimant categorises this is as simply a matter of relief. In my judgment, however, it is relevant to the question that arises on a summary judgment application such as this. In deciding whether or not the Claimant has a realistic prospect of succeeding in her claim under Ground 1 to quash the Order with which she is concerned, the Court is entitled, if not obliged, to consider the question of substantial

prejudice, given the terms of paragraph 36(1)(b) of Schedule 9, just as it would be if considering a question of a breach of the rules of natural justice under the common law. The question of substantial prejudice is one which also arises in relation to the assessment of the adequacy of reasons in the case of *South Bucks v Porter* on which the Claimant is seeking to rely.

128. Put another way, if the Claimant has no realistic prospect of establishing that her interests have been substantially prejudiced by an assumed failure to meet the requirement to provide a statement of reasons for proposing the Order, then she has no realistic prospects of succeeding in her claim under Ground 1 to quash the Order. This would ordinarily entitle the Defendant to summary judgment on that issue.

129. That leaves the Claimant's submission that the Claimant has in fact clearly been prejudiced because, although able to lodge an objection to the Order, she was deprived of an opportunity to direct her objections to it without a clear understanding of the true reasons the Defendant was promoting it.

130. Having considered that submission carefully against the evidence the Claimant has produced as to her own objections, and those of the association she represents, I am not persuaded by it. I consider that on the specific facts of this case, the Defendant has shown that the Claimant has no realistic prospect of establishing any <u>substantial</u> prejudice.

131. The Claimant and the association did participate in the statutory process. She did submit comprehensive objections to the making of the Order. There is no apparent sense that the making of the objections was inhibited by the absence of further reasoning in the statement of reasons. Nor was this a point raised by the Claimant or the association in their representations.

132. This is very much a conclusion I reach on the particular facts of this case, and for this Claimant, having regard to the objections that were made and the way in which the merits of the Order were subsequently considered and debated. It is not intended to represent a wider conclusion that an individual who does object to an order of this kind, notwithstanding the potential absence of a satisfactory statement of reasons, will not be substantially prejudiced by that potential absence. Such prejudice could potentially arise even in cases where someone has participated in the process, despite a deficiency in the statement of reasons, where the reasons would potentially have disclosed something about which the objector might have wished to address further. In this particular case, I have not been able to identify, and the Claimant has not identified, matters that feature in the reasoning subsequently expressed in the Officer's Report which she contends should have been in a statement of reasons, and about which she would have made further representations had she known about them earlier.

133. I have given careful consideration to the question of whether it is appropriate to give summary judgment on this issue, where it is predicated on a potential breach of an important relevant requirement under the statutory scheme. It is necessary to be satisfied that there is no other compelling reason why the issue should be disposed of at trial. Although this is not how the Claimant advanced her case in response to this application, it occurs to me that the potential for the Court to consider the question of

what the relevant requirement requires in a case of this kind and the potential for a declaration to be given, if a breach were found to have occurred could be a compelling reason for the issue to be heard. In the end, however, I do not consider there to be such a compelling reason on the facts of this case for four main reasons:

a. The Claimant has not submitted there is a compelling reason of this kind in this case.
b. The Claimant is not seeking a declaration as part of the claim.
c. The reasons that were given for making a declaration in the *Tomkins* case do not arise in the same way here. In that case the breach of the relevant requirement that was found to have arisen was of relevance to the potential validity of a further order being made after the experimental order had been made.
d. On the evidence before me, the Claimant and the association she represents do appear to have had the opportunity to have participated fully in the process without any identified hindrance arising from a potential failure in the statement of reasons. They have not identified what further points or objections they could or would have made had further reasoning been included in the statement of reasons itself (such as the further reasoning that appears subsequently in the officer's report for making the Order).

134. For these reasons, I give summary judgment for the Defendant on Ground 1. It should already be clear from my reasons that this is not intended to be any form of endorsement of the adequacy statement of reasons provided by the Defendant in this case. I consider there is a realistic prospect of establishing they were not adequate. Nor is it a conclusion that a potential failure to comply with a relevant requirement under the statutory scheme is not of significance, nor that a claimant will never be able to show substantial prejudice arising from such a failure merely because the claimant took part in the objection process, despite a potential deficiency in the statement of reasons.

Ground 2 – Alleged Failure to provide objectors with reasons for making of the TRO

135. Under Ground 2, the Claimant alleges that the Council failed to provide objectors with adequate reasons for the decision to make the Order, as required under Regulation 17(3) of the 1996 Regulations.

136. In its application for summary judgment on this Ground, the Defendant submits that:

a. The Council's reasons were those set out in the Officer's Report and the Claimant's attempts to argue against that proposition are contrary to authority and have no real prospect of success; and

b. The Claimant has not, in any event, been substantially prejudiced.

137. As to the Defendant's reliance on the Officer's Report, the Defendant submits that it is well established that where a committee follows the recommendation of officers, its reasons are taken to be those as set out in the Officer's Report to Committee: see *R(Palmer) v Hertfordshire CC* [2016] EWCA Civ 1061 at [7] and *R (Shasha) v Westminster CC* [2016] EWHC 3282 (Admin) at [32].

138. The Defendant submits that the Committee resolution was entirely in accordance with, and indeed in precisely the same terms as, the recommendation of officers in the Officer's Report; and, in those circumstances, the reasons for the Committee's decision are taken to be those given in the Officer's Report. The Defendant argues that the fact that the Officer's Report represented the Defendant's reasons for making the Order is put beyond doubt by the e-mail notifying objectors of the decision and the link provided to the Officer's Report and decision summary. The Defendant relies on the fact that the link then contained under the heading "Key Decisions" and next to the relevant agenda item number, a downloadable PDF of the Officer's Report. The Defendant submits that the reasons set out in the Officer's Report were more than adequate, and it contends that the Claimant takes no issue with the standard of reasoning within it, which it says comfortably satisfied the standard required by Lord Brown in *South Bucks* at [36].

139. As to the Claimant's argument that Officer's Report cannot be relied on as an adequate statement of reasons for the decision on the basis of alleged inconsistency with the debate between members at the Committee hearing, the Defendant contends that submission is bound to fail. The Claimant's case, the Defendant submits, reflects a fundamentally flawed understanding of the nature of local authority decision-making as addressed in *R (Bishop's Stortford Civil Federation) v East Herts DC* [2014] 348 (Admin) per Cranston J at [41]. Furthermore, the Defendant submits that the High Court has recently reiterated in *R (Cook) v Pickett* [2024] EWHC 42 (Admin) at [80] that, "where a Planning Committee follows the advice of its planning officer, the reasons for its decision will be taken to be those set out in the planning officer's report. It is wrong to seek to attribute significance to what is said by individual members of a committee during debate, and prior to any vote".

140. The Defendant submits that principle accords with a long line of previous authority relating to local authority decision making (eg *R (London County Council* [1951] 2 K 471 per Buckley and Pickford LJ at 489) which creates "an insuperable problem" for the Claimant in seeking to raise the argument it advances under Ground 2. The Defendant refers to *Scottish Widows PLC v Cherwell DC* [2013] EWHC 3968 (Admin), Burnett J at [21]-[22].

141. As to the question of prejudice, the Defendant submits that the Claimant has not in any way been substantially prejudiced, as she has been able to understand the Defendant's decision and to bring proceedings challenging that decision in time. It is said that in those circumstances, she cannot satisfy the threshold condition for the grant of relief under paragraph 36(1)(b) of Schedule 9 to the 1984 Act, relying upon *Tompkins* [114] and [122] and the approach that I have already explored under

Ground 1.

142. By contrast, the Claimant submits that Regulation 17(3) of the 1996 Regulations requires the order-making authority to notify a person who has objected to the order, where the objection has not been wholly acceded to, the reasons for the decision.

143. The Claimant argues that the statutory purpose of that requirement is not met if members of the public have to conduct a paper chase to find the relevant officer reports and minutes of committee meetings in order to understand the true reasons for making the Order (see *Tomkins* at [119]). The Claimant argues that:

    a. The provision of a link to all the meeting details does not comply with the requirement in Regulation 17(3) of the 1996 Regulations to provide objectors with reasons for the decision, in circumstances where the provision of such a link amounts to the digital equivalent of a paper chase.

    b. In any event, the Officer's Report and decision summary did not provide objectors with reasons for making the Order that were intelligible, adequate and enabled the reader to understand what conclusions were reached on the principal issues (with reference to the principles in *South Bucks v Porter* [2004] 1 WLR 1953).

144. As to the Defendant's reliance on the reasoning in the Officer's Report, the Claimant submits that the Defendant has failed to address its argument, supported by *Tomkins* at [119], that in the context of a statutory requirement to provide objectors with the reasons for the decision, a link to all the decision documents, in which the Officers Report may be found as part of the report to the committee, does not satisfy the procedural requirement in Regulation 17(3) of the 1996 Regulations.

145. As to the authorities on which the Defendant relies, the Claimant submits that its argument on the requirements of the 1996 Regulations is not contrary to those authorities. The Claimant places emphasis on the following underlined phrases in the judgment of the Court of Appeal in *Palmer* at [7]: "..in examining the reasons given by a local planning authority for a decision, it is a <u>reasonable inference</u> that, <u>in the absence of contrary evidence</u>, they accepted the reasoning of an officer's report, at all events where they following the officer's recommendation." The Claimant submits that no such reasonable inference can be drawn in light of what it contends is contrary evidence.

146. In relation to *Scottish Widows,* the Claimant submits that the claimant in that case alleged that the committee had misunderstood the sequential test due to comments made by members during the debate. The Claimant argues that not only was the decision in this case made in a different context, but also that the Court did not find that it was "wrong" to attribute significance to what is said by individual members during a debate, but rather that "one must be cautious of attributing too much significance to the speeches of only a few of the voting majority" (see Burnett J in *Scottish Widows* at [21]).

147. The Claimant argues her challenge under this ground is entirely consistent with both authorities, as she is arguing that the Officer's Report cannot be taken to be the reasons of the Committee because of clear evidence that the Committee made its decisions for reasons that were not contained in the Officer's Report. In this respect, she seeks to rely upon what she says was the Committee's incorrect understanding that the Order included an exemption for use of vehicles by carers (as addressed further under Ground 3), and what she submits was the Committee's reliance upon funding considerations as a reason to grant the Order (as addressed under Ground 5). The Claimant refers to the Chair's clarification before voting in respect of the issue (as developed under Ground 3), and the statement made by the Council's officer on funding in presenting the Officer's Report (as advanced under Ground 5).

148. The Claimant further argues that even if the Committee should be understood to have accepted the conclusions in the Officer's Report, then the Officer's Report cannot be taken as a record of the reasoning of the Committee for the purposes of satisfying the obligation in Regulation 17(3) of the 1996 Regulations in these circumstances.

149. As to the question of prejudice, the Claimant makes a similar submission to that under Ground 1, namely the question of prejudice is not relevant to the summary judgment application, but rather a question of what relief a Court would ultimately grant if the Ground is made out.

150. The Claimant also submits that, in any event, there is real prospect of success in the argument that the Claimant has been prejudiced because the provision of reasons is an intrinsic part of the procedure essential to ensure effective public participation (referring to *R(CPRE Kent) v Dover District Council* [2018] 1 WLR 108 at [48]). She submits that she remains unable to understand the reasons for making the Order, in the context of multiple documents setting out different reasons for the Order, along with what she considers to be stark differences between reasons given in the debate and the Officer's Report for approving the Order. She contends that this failure further prejudices the Claimant's interests by weakening the trust that she and the public are likely to place in the Defendant going forward.

151. As with Ground 1, I consider that Ground 2 can conveniently be considered in two stages, namely whether the Claimant has a realistic prospect of success in showing: (1) a breach of Regulation 17(3) of the Regulations on the facts here; and (2) (if so) substantial prejudice. But in so doing, for the reasons I have already given under Ground 1, I consider that it is wrong for the Claimant to treat the second stage as irrelevant to the question of summary judgment. To the contrary, as with the requirement to give reasons in the planning context, the question of any procedural failure to give proper reasons, and the question of substantial prejudice arising from that failure, are indivisible in terms of the ability to succeed on a claim.

152. As to a potential breach of Regulation 17(3) of the 1996 Regulations by the Defendant providing its reasons in the way it did (by email with link to various documents, including the Officer's Report), I am not satisfied that the Defendant has demonstrated that the Claimant has no realistic prospect of success in its contention that this does not satisfy the requirements of Regulation 17(3) of the 1996 Regulations.

153. The Defendant makes some powerful points that where a committee in this sort of decision-making sphere adopts the recommendation put forward by officers in an officer's report, without specifically dissenting from the reasoning, the reasoning in the officer's report can be taken to represent the reasoning of the decision-making committee. In my judgment, however, there is a realistic argument that can be made for distinguishing the automatic application of that principle in the present context, where there is a specific requirement to provide reasons to objectors of the type that exists under Regulation 17(3). It seems unlikely that this express requirement, particularly when read with the requirement to have produced a statement of reasons when proposing an Order, was intended to be capable of discharge simply by referring objectors to an Officer's Report.

154. In some of the cases on which the Defendant is relying, a duty to give reasons for granting planning permission did not exist, or did not exist in the same way that is articulated in this statutory scheme. Accordingly, I consider that there is at least a realistic basis for contending that the question as to the adequacy of reasons that are required to be given does not necessarily arise in the same way.

155. Even if the same assumption that the reasons expressed in an Officer's Report are necessarily the reasons of the Committee applies (for which is there is clearly a powerful argument), there is a realistic argument that this is not good enough to discharge the requirement under Regulation 17(3) and, in any event, that principle needs to be treated cautiously where there is at least a realistic question as to whether the Committee were in fact adopting all of the reasoning in the Officer's Report at the time they made their decision.

156. In this respect, I consider that the question that arose as to the effect of the Order in terms of carers, the clarification by the Chair, and the subsequent issue that arose over the approval of the Minutes at a later meeting, raise a sufficient question as to whether the normal assumption as to the adoption of reasoning in an Officer's Report necessarily applies in this case. Again, whilst recognising the force of the Defendant's submissions as to the use of the transcript as to what transpired in a debate at a committee meeting, and need for particular caution in treating comments made in debate as affecting the reasons given a local authority, I consider the Claimant's has raised realistic arguments that reference to the clarification statement made about carers, just before the vote, and where it was not contradicted by officers, are relevant in this case, along with the need for a subsequent correction to be expressed in the Minutes of the meeting after the event.

157. I also consider that the Claimant has a realistic prospect of arguing that Regulation 17(3) cannot be discharged if it involves a "paper-chase" exercise of the type that was potentially faced by an objector in this case in having to follow the links provided. There is a realistic argument that Regulation 17(3), particularly when read with the requirement to provide a statement of reasons when proposing an order, requires a more formal identification of reasons which can then be provided to an objector in discharge of the duty.

158. Again, I am not purporting to reach any definitive views, but I consider that the Claimant does have a realistic, rather than a merely fanciful, prospect of challenging whether Regulation 17(3) was met in this case.

159. I reach that conclusion separately from the concerns that I have also expressed as to the potential interpretative difficulties with the terms of the Order relating to "Authorised Vehicle". This interpretative difficulty may well have prompted the Chair's desire to express a clarification, but which then led to the absence of any contradiction of his clarification by the officers at the time. I have raised a question as to how certain one can be that the subsequent correction of that clarification does itself flow from the definition of "Authorised Vehicle". There may be an important question as to whether the reasons the Defendant relies on as being expressed in the Officer's Report do satisfactorily explain the interpretation issues that arise on the definition of "Authorised Vehicle" for Blue Badge holders and their carers. However, those are freestanding concerns which do not affect my earlier conclusion on the prospects of the Claimant's prospects on this Ground in the way she has put it forward.

160. As with Ground 1, however, that does not dispose of the Defendant's application for summary judgment, given the need to consider the question of substantial prejudice. For the reasons I have already expressed, I reject the Claimant's argument that this is only a matter of relief which is not relevant to the summary judgment question. I consider that it is relevant to consider whether the Claimant has a realistic prospect of success in showing substantial prejudice. In this respect, in contrast to the position under Ground 1, I consider that she does.

161. The requirement to provide reasons under Regulation 17(3) is presumably to ensure that an objector has a fair understanding of the reasons why the Order has been made and the objections not accepted. Whilst recognising the force of the submissions made about adoption of the reasoning in the Officer's Report, and the fact that the Minutes as corrected were themselves also subsequently adopted, and recognising that such arguments may ultimately prevail, I consider that the Claimant does have realistic prospects of success at this stage of establishing substantial prejudice in relation to the failure to comply with Regulation 17(3). If the Regulation requires more formal reasoning to be expressed, there is a realistic prospect that the reasoning might have dealt more clearly with issues over which the Claimant and others are expressing concern including: (1) the Defendant's ultimate understanding of the exemptions as they relate to Blue Badge holder holders and carers; (2) the relevance, if any, to the issue of funding to the decision.

162. On the particular facts of this case, where there was a clarification on an important exemption which then had to be corrected after the event, and where the officer presenting the Order to the Defendant did refer to the benefits of funding, the discipline of formulating reasons for making the Order after the debate might have led to different or at least more nuanced reasons than those which are articulated in the Officer's Report to which the Claimant and the public are arguably entitled. In this respect, I consider there to be a distinction between Ground 1 and Ground 2. As to the former, the potential failure to provide reasons for the proposed Order did not on the face of it prevent the Claimant from participating fully in the objection process. As to the latter, a potential failure to provide reasons as required Regulation 17(3) may potentially have caused substantial prejudice to the Claimant, and the association, in understanding how issues that were raised in consequence of those objections, and the debate that ensued, have been fully resolved. This is in circumstances where the statutory scheme entitles objectors to reasons. I therefore

refuse Defendant's application for summary judgment or the striking out of Ground 2.

Ground 3 – Alleged Mistake of Fact

Ground 5 – Alleged Irrelevant Consideration

163. The Defendant made some general submissions on Grounds 3 and 5 together, on the basis that one of the Defendant's reasons for arguing that they cannot succeed are similar, involving the application of similar principles deployed under Ground 2. The Defendant argues that both Grounds must fail because they involve inappropriately and impermissibly relying upon comments made by individual members in the course of debate, contrary to the approach addressed by the authorities the Defendant relies upon under Ground 2.

164. As to Ground 3, and the allegation that the Committee made a material error of fact as a result of the Chair's comments regarding the ability to exempt carers of blue badge holders during the course of debate, the Defendant submits that the true position is that: blue badge holders may register two vehicles that are automatically exempt from the Order when the badge holder is in the vehicle in question; but carers may apply to the Defendant's Traffic Manager for authorised user status (as a result of which their vehicle would be exempt). The Defendant submits that there is no dispute that the Officer's Report contained no inaccuracy on this point, also identifying as an adverse impact of the proposal in the appended Equality Impact Assessment that "community nurses, agency care workers, and informal carers would in some instances have longer journeys". The Defendant states the Claimant's claim on this ground rests entirely upon the statement of the Chair in the course of debate.

165. The Defendant argues that as with Ground 2, the Claimant cannot rely upon such comments to found a public law challenge to the Committee's decision. It submits that seeking to do so is inappropriate and impermissible (referring to *Cook* at [80]). The Defendant relies on what Pickford LJ stated in *London County Council* at p.490-491: "With regard to the speeches of the members which have been referred to, I should image that probably hardly any decision of a body like the London County Council dealing with these matters could stand if every statement which a member made in debate were to be taken as a ground of the decision. I should think that there are probably few debates in which some one does not suggest as a ground for decision something which is not a proper ground, and to say that, because somebody in debate has put forward an improper ground, the decision ought to be set aside as being founded on that particular ground is wrong".

166. The Defendant therefore submits that the Claimant's attempt to mount a contrary argument flies in the face of what the Defendant regards as the numerous authorities it has cited in dealing with Ground 2, and is fundamentally misconceived. For good measure, the Defendant contends that the only authority relied upon by the Claimant in its written submissions, namely *R (March) v Secretary of State for Health* [2010]

EWHC 765 (Admin) at [20], has nothing to do with decisions made by local authority Committees and in no way suggests that the decisions of such committees can be reviewed on the basis of comments made by individual members in the course of debate. On the contrary, it does no more than set out conventional principles relating to challenges of decisions taken by Ministers. The Defendant submits that it is of no relevance in this case.

167. The Claimant submits that it is well-established that an authority's decision is unlawful if it is based on a material mistake of fact, referring to *R(Manydown Ltd) v Basingstoke & Deane Borough Council* [2012] EWHC 977 (Admin) at [95]. The Claimant notes that in the meeting to approve the Order on 7 March 2023, Councillor Gerri Bird expressed concern about the need for an exemption for carers who may need to get to the other side of the bridge to attend someone with a disability; and immediately prior to the vote the Chair of the Committee, Councillor Beckett gave the clarification which is set out above.

168. The Claimant places reliance on the fact that the Order was passed with 8 votes in favour, 7 votes against. Following the meeting, it was clarified in the minutes that the exemption for blue badge holders to use the bridge would only apply to vehicles registered by the blue badge holder where the blue badge holder was present in the vehicle. The Claimant therefore submits that contrary to what was indicated by Councillor Beckett, blue badge holders would be required to be in the vehicles and could not give one of those registrations to a carer coming to visit them.

169. The Claimant argues that was a mistake as to an existing fact and this mistake played a material part in the decision-maker s reasoning: *E v Secretary of State for the Home Department* [2004] EWCA Civ 49 at [66].

170. As to the Defendant's argument that this ground ..inappropriately and impermissibly.. relies upon comments made by individual members during the course of debate, the Claimant repeats its submission that neither *Scottish Widows* nor *Palmer* are authority for the Defendant's proposition; nor did they consider circumstances, where, as here, the Claimant is alleging that a purported "clarification" gave rise to a mistake of fact, where the same Committee considered it necessary to record in the minutes that this "clarification.. was incorrect, and where the Committee subsequently debated whether to hold a further vote in light of this error.

171. I do not consider the Defendant to have established that the Claimant has no realistic prospect of success under Ground 3. As to the overarching point the Defendant makes as to the use of the transcripts of debates at committee meetings, I have well in mind the need for great caution in approaching challenges based on comments made during the course of a debate, which cannot be taken to reflect the Defendant's ultimate view or reasoning. The observations by Pickford LJ in *London County Council* emphasise the dangers of that approach which could potentially open the floodgates to challenges of a similar kind, if it were legitimate to infer that any comment made in a debate by members is capable of vitiating the lawfulness of the Defendant's ultimate decision. However, I do not consider the authorities establish an absolute prohibition on considering what transpired at a committee meeting and, a

restriction that one can only examine the Officer's Report and resolution from the meeting in every case. Although great caution must be exercised in considering comments in a debate, in this particular case I consider there is a realistic prospect of establishing that: (1) it is legitimate to consider what was identified to be a clarification from the Chair of the committee on the meaning of the Order under debate, which was not then corrected or contradicted by officers present, and where that clarification was made immediately before a vote and related to an important exemption; and (2) one can consider contributions made by officers presenting a proposal to a Committee which may potentially be treated as an update or supplement to an Officer's Report (relevant to Ground 5).

172. I therefore do not agree with the Defendant that Ground 3 must necessarily fail because it relates to the Chair's clarification statement. As to the contention that there was a mistake of fact in consequence of the Chair's statement, that will necessarily have to be scrutinised in light of the subsequent correction of the statement in the approval of the Minutes that occurred at a later meeting. The Defendant is able to submit forcefully that approval of a Minute with a correction represents a form of ratification of the earlier decision in light of that correction. However, on the facts of this case, where there is clearly an important dispute as to that approval process and whether it did constitute a ratification, I am unable to accept that the Claimant has no realistic prospect of success of establishing that the Defendant acted on a potential mistake of fact when making the effective decision.

173. Separately, and as already expressed, I have some misgivings as to the correction itself, given the definition of "Authorised Vehicle" and the actual effect of the Order, but it is unnecessary for me to explore that for the purposes of this application.

174. For these reasons, I reject the Defendant's application for summary judgment or strike out of Ground 3. Whilst the Defendant has raised forceful points, in my judgment they do not meet the relevant test to give summary judgment or to strike out for this issue.

175. As to Ground 5, the Defendant argues that Ground 5 is unarguable for essentially the same reason advanced under Ground 3. The Defendant submits that the Claimant is relying upon comments made two members of the Committee during the course of the debate, namely Councillor McDonald and Councillor Shailer, regarding securing funding from the Department of Transport, but there is no dispute that the Officer's Report did not contain any material error on this issue. The Defendant therefore submits that for the same essential reasons advanced in relation to Ground 3, Ground 5 has no real prospect of success and should be dismissed.

176. In response, the Claimant submits that a traffic authority may only make an order under section 1(1) of the RTRA 1984, where it appears to that authority it is expedient to make it for one of the purposes set out in s.1(1)(a) to (g) of the 1984 Act, and that the securing of funding to make wider public realm improvements or otherwise is not a basis on which a TRO can be made. The Claimant relies upon the comments of the Defendant's officer, David Allett, at the Committee meeting on 7 March 2023 that "based on the DFT feedback we've had, we do consider that the modal filter will improve our likelihood of attracting future Sustainable Transport funding", and the fact that this statement was then referred to by Councillor Maguire and Councillor McDonald, and Councillor Shailer explicitly referenced the need for departmental funding as a reason for reinstating the bus gate. The Claimant also relies on the Minutes of the meeting of the 7 March 2023. These also record reference to the potential for departmental funding, should the Order be reintroduced. The Claimant therefore argues that in taking the potential for departmental funding into account, the Defendant made the Order for improper purposes and/or took into account irrelevant considerations.

177. As to the Defendant's argument that Ground 5 is unarguable because it relies upon comments made by two members of the Committee during a debate, the Claimant repeats its submissions that it is not correct as a matter of law that statements made in the course of a debate cannot be relied upon to found a public law challenge to a Committee's decision; and, in any event, it is highly relevant that the person making the statement to the committee was in fact the Defendant's officer, and author of the Officer's Report. The Claimant submits that statements made by the Defendant's officer in the course of presenting an Officer's Report are materially different from comments made by councillors as part of a general debate. The fact that Mr Allet's comments were reiterated and repeated by several councillors and included in the minutes shows that weight was placed on them by the councillors as part of the decision-making process.

178. In my judgment, had Ground 5 depended solely upon reliance upon the comments of Councillors Macguire, McDonald and Shailer during the course of debate to which the Claimant refers, I would have had little hesitation in granting summary judgment to the Defendant in light of the principles to which the Defendant refers, and the caution expressed in relying upon debates of this kind. The mere fact that Councillors may have averted to the potential funding benefits in the course of debate would not, in my judgment, have provided a realistic basis for impugning the decision in light of the Officer's Report.

179. I also have some doubt as to whether or not the starting premise for this Ground is necessarily correct, namely that taking account of potential funding in making a decision of this kind is necessarily unlawful if the decision is principally being made for reasons that flow from Section 1 of the 1984 Act. However I do not express any further view on that, because it is not the basis upon which the Defendant has sought summary judgment. To the contrary, the Defendant does not appear to dispute that if the Defendant had taken into account the potential for such funding, that would be potentially unlawful. The Defendant's case is that it is not realistic to argue that

funding was taken into account at all.

180. In this case, however, the issue of funding was not simply one raised in debate by members, but specifically addressed by the Defendant's officer during the course of the meeting. In such circumstances, I consider that the Claimant has a realistic prospect in contending that such a contribution to a meeting of this kind is of a different character to that of comments made during a debate. It potentially represents advice from the officer to the Committee. In circumstances where: (1) the Defendant appears to accept that taking into account funding of this kind could vitiate the decision; (2) the officer referred to the potential for such funding if the Order were made; (3) members then referenced that funding, as the Minutes themselves confirm; and (4) there was no qualifying direction or advice that members should not take account of the funding position making their decision, I am unable to accept the Defendant's case that summary judgment should be entered, or that an order striking out this ground should be made.

Ground 4 (a) : the public sector equality duty ("PSED")

181. The Defendant argues that the Claimant's contention that the Defendant failed to comply with the PSED is totally without merit. The Defendant relies on the fact that the Defendant undertook what it regards is a detailed Equality Impact Assessment which specifically addressed the issue raised by the Claimant in its ground of challenge.

182. The Defendant refers to the principles summarised by Lang J in *Tchenguiz v Westminster CC* [2022] EWHC 469 (Admin) at [40]-[44]. It submits that what is required of the Court when a breach of the PSED is alleged is a realistic and proportionate approach to evidence of compliance with the duty, not micro-management or a detailed forensic analysis by the Court. The duty, despite its importance, is concerned with process not outcome and the court should only interfere in circumstances where the approach adopted by the relevant public authority is unreasonable or perverse and the standard is thus one of irrationality: see *R (Clarke-Holland) v Secretary of State for the Home Department* [2023] EWHC 3140 (Admin) per Thornton J at [106].

183. Against these principles, the Defendant submits that there is nothing whatsoever in the Claimant's submissions on this Ground. It relies upon: the fact that the Equality Impact Assessment was before the Committee (as Appendix 2 to the Officer's Report); it specifically referred to the fact that blue badge holders could only register two vehicles (the point the Claimant alleges was not taken into account); a submission that there was nothing irrational or perverse about its approach. It submits that the Equality Impact Assessment provides realistic and credible evidence of compliance with the duty, such that it is simply not credible to suggest there was any breach of the PSED. It argues that the Claimant's claim relies on the sort of

hypercritical and legalistic analysis which the Courts deprecate, referring to *Mansell v Tonbridge and Malling BC* [2019] PTSR 1452 at [42] and [62]-[64]

184. The Claimant does not dispute the relevant legal principles to be applied. But she submits that in order for due regard to be had to the impact of the Order on those with a protected characteristic, there must at the very least be a recognition that it will have such an impact. Her criticism is that the Equality Impact Assessment failed to recognise, discuss or indeed mention any potential impact of the proposed two-vehicle restriction on blue badge holders. She refers to the fact that under the assessment of impacts, the Equality Impact Assessment states that as blue badge holders will be "exempt", the impact is neutral. She argues this not only fails to recognise that blue badge holders are subject to a two vehicle limit but also fails to recognise that such a limit may have an impact. As to the Defendant's reliance on the Equality Impact Assessment identifying that blue badge holders can only register two vehicles, the Claimant submits that this is not an assessment of the impact of that upon them; what is missing is any reference to whether or how this two vehicle restriction might affect them. The Claimant refers to the fact that in the underlying evidence as to discussions about the Order, the Council's Blue Badge operational manager had expressed a preference for holders to be able to register up to 5 vehicles.

185. Not without some considerable degree of hesitation, I do not consider the Defendant has made out its application for summary judgment on this ground. I have in mind the limited and focused scope of the Ground of challenge when properly understood. I agree with the Defendant, in light of the well-established principles, that the Court must recognise that the PSED is not a duty to achieve a particular result. It is also a matter for the authority as to what weight it attaches to all relevant factors. Any judgment reached by the Defendant is subject to challenge only on rationality grounds. I consider that the Equality Impact Assessment does show the Defendant turning its mind to the public sector equality duty and, moreover, the Assessment set out the same understanding of officers that Blue Badge holders would be limited to registration for two vehicles and elsewhere that carers would need to apply for their own authorised user status.

186. However, in light of the Grounds 2 and 3 I consider that it is difficult to conclude that there are no realistic prospects of establishing a potential defect in what the Defendant considered when performing the PSED, if it were to be established that the Defendant's committee did act under a mistake of fact as alleged under Ground 3. If the Defendant's committee proceeded on the basis that carers would be able to benefit from the exemption in the way the Chair appeared to clarify, then there is at least a realistic basis for contending that they must have approached their consideration of the PSED at the same time on that basis.

187. For these reasons, recognising that in this respect Ground 4 may well be parasitic on the success and failure of Ground 3, I am unable to accede the Defendant's application for summary judgment, or for an order for strike out, on this issue.

Ground 7: Predetermination/ Apparent Bias

188. Ground 7 is an allegation that statements made by Councillors Shailer and/or Beckett on a WhatsApp group named Coldham's Lane, Romsey Residents Association ("the RA:), and/or their position as members/officers of that RA, give rise to an appearance of bias or predetermination as a result of their membership of the Defendant's Committee that made the Order.

189. The Defendant submits the allegation is without merit on the basis that:

a. Both councillors complied with the Council's Code of Conduct and the Claimant does not allege otherwise. The Defendant accepts that may not be determinative, but submits it is highly relevant and the fact is that the Councillors did not do anything wrong under the Code which governs their conduct as elected officials.

b. It contends that the RA is little more than a WhatsApp group where members discuss matters including traffic in the area as well as other local issues including lost cats, litter, Christmas advent projects, and other matters of daily life (referring to the witness statement of Councillor Beckett at paragraph 5). It contends that the RA does not have, and has never had, any adopted position on the Order, or on traffic reduction in the area generally (referring to Councillor Beckett's statement at paragraphs 6 and 9). It suggests that whilst many of its members do support measures to reduce traffic in the area, others do not and the Claimant is wrong to assert that the RA "had an interest in the Order". It says the Claimant's reliance on various statements made on the WhatsApp group does no more than indicate the views of the individuals making those statements at the time, but it is not evidence of any "interest" on behalf of the RA.

c. Councillor Beckett, at least, raised the question of his living on Coldham's Lane and participation in the RA with the Council's monitoring officer before the meeting on 7 March 2023 (referring to Councillor Beckett's statement at paragraph 11), and the monitoring officer stated that participation in the RA did not preclude members from voting on this issue.

d. The Claimant's reliance on statements made by the Councillors to allege that the members appeared to be bias or had predetermined the issue flies in the face of section 25 of the Localism Act 2011. That states that where, as a result of an allegation of bias or predetermination, there is an issue about the validity of a decision, a decision-maker is not to be taken to have had or appeared to have a closed mind when making the decision just because "the decision-maker had previously done anything that directly or indirectly indicated what view the decision-maker took,

or would or might take, in relation to a matter and the matter was relevant to the decision". The Defendant submits this is a complete answer to her claim.

e. As Lane J stated in *R (Webb) v LB Bromley* [2023] EWHC 2091 (Admin) at [36]-[39], councillors will inevitably be bound to have views on issues of the public interest and may well have expressed them, but the informed observer will have well in mind that members of the committee will come to a meeting with views deriving from their membership of political parties and will also bring with them considerations of a wider nature whether arising from their own interests and concerns or from what they take to be the interests and concerns of local residents. On this basis, the Defendant submits there is nothing unusual in the councillors having made the statements they have made, and they are just the sort of statements elected members who have just voted on an issue (in this case the removal of the ETRO) could be expected to make. The Defendant submits they are an ordinary part of local political life. The Defendant submits that were the Claimant's claim to succeed on this ground it would fundamentally undermine the ability of local members to perform their functions.

190. By contrast, the Claimant argues that given the close involvement of Councillor Shailer and Councillor Beckett with the RA, and the statements they made in those meetings and on the WhatsApp group, a fair fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the Committee was biased, applying the test in *Porter v Magill* [2001] UKHL 67, [2002] 2 AC 357 at [103] (Lord Hope). Further, and additionally, the Claimant submits that the circumstances of the comments made by both councillors give rise to such a real risk of closed minds that the decision, in the public interest, ought not in the public interest to be upheld (referring to *R(Lewis) v Redcar & Cleveland BC* [2008] EWCA Civ 746 at [71]).

191. In support of these submissions, the Claimant notes that Coldhams Lane is a road situated to the north of Mill Road in Cambridge and the RA is a residents' association for those living on or near Coldhams Lane, Cambridge. At the time of the Defendant's 7 March 2023 meeting, Councillor Shailer was the appointed Treasurer of the RA, and the Defendant's Committee Chair, Councillor Becket, was a member of the RA. The Claimant submits it is clear from the discussion of the Order in the RA's committee meeting dated 24 July 2021 that it had an interest in the Order and the Claimant relies on:

a. a comment of Councillor Baigent to the effect that if *"M[ill] R[oad] is reopened then nobody will get anything"*.

b. a statement made by Councillor Beckett in the RA meeting of 24 July 2021 that *"Need to have low-traffic neighbourhoods for residents. There will be some pain, but people will adapt quickly"*. **[HB/411]**.

c. a WhatsApp message from Councillor Shailer to the RA WhatsApp group chat stating that "*We will get it back*", referring to the ETRO on Mill Road that had just been removed.

192. The Claimant has responded to the Defendant's five main reasons for its application in turn in its written submissions. The Claimant also submits that, save for the Defendant's argument in respect of the Localism Act 2011, the Defendant has not sought to demonstrate that the Claimant's challenge is unreasonable or unarguable, but instead has been inviting the Court to make an assessment of the evidence and this is not the correct approach on an application for strike out or summary judgment.

193. As to section 25 of the Localism Act 2011, the Claimant submits that this simply clarifies that prior indications of view of a matter do not, without more, amount to predetermination or bias. The Claimant, however, does not merely rely on prior indications of views but a combination of things including:
    a. Statements made by two Councillors to their local RA, at meetings or by WhatsApp;
    b. The fact that the RA clearly had an interest in a certain outcome, namely the reinstatement of the TRO;
    c. Councillor Beckett's membership of the RA;
    d. Councillor Shailer's position as Treasurer of the RA;
    e. The failure on the part of Cllr Shailer to declare any interest prior to the debate;
    f. The manner in which Cllr Beckett made his declaration of interest, omitting any reference to his membership of the RA;
    g. The inconsistent positions taken by Cllr Beckett and Cllr Shailer regarding their involvement, participation and knowledge of the RA. This includes Cllr Shailer's denial of any constitution despite being present at the meeting where the draft constitution was discussed and Cllr Beckett s statement that he is unsure if he had ever been a formal member of the RA, despite listing himself as Member Coldhams Lane Residents Association on his list of non-statutory disclosable interests.

194. The Claimant also seeks to rely upon what it considers to be the Defendant's failure to disclose the information requested by the Claimant as providing a further reason for full investigation at an oral hearing with all the relevant evidence: see *Sky Blue Sports & Leisure Ltd v Coventry City Council* [2013] EWHC 3366 (Admin) at [26]. The Claimant argues that until the Defendant has provided the Claimant with the communications sent by the councillors concerning a TRO or ETRO on Mill Road, Ground 7 should not be struck out nor summary judgment ordered.

195. In so far as the Claimant is suggesting that it is inappropriate for the Court to review the evidence on this issue in order to decide whether or not to grant summary judgment, I disagree. Given the well-established principles that have emerged to apply when considering of questions of apparent bias and predetermination by locally-elected members who can reasonably be expected to have views on local issues, without necessarily giving rise to apparent bias or predetermination, I consider the Court can and should scrutinise such allegations against the evidence when raised on an application for summary judgment. I have sought to do so here,

with particular regard to the evidence provided by Councillors Beckett and Shailer in response. That said, I am also wary that this is a summary judgment application and care needs to be exercised in not carrying out a mini-trial of the issue. In most cases of this kind, questions as to whether any apparent bias arises involves a detailed consideration of all the facts.

196. In this case, given how balanced the split of votes on the Committee was (8:7), any potential issue of the type raised under Ground 7 is capable of being particularly problematic for the outcome. The Claimant's case is directed at two members. If I take the allegations made against Councillor Shailer in principle, and again recognising the force of the submissions the Defendant makes about the RA and what it says is the absence of any particular articulated position on the Order, I consider it difficult to say at this stage that the Claimant has no realistic prospects of success of showing a potential appearance of bias by reason of: (1) Councillor Shailer's position as a Treasurer of the RA; (2) the contrasting position that Councillor Beckett considered it appropriate to register mere membership of the RA in his register of interests, whereas Councillor Shailer has not registered his status of treasurer; (3) the Claimant's submissions about the potential differences of account in attendance at meetings; and (4) some of the comments that have been made in the context of the RA (whether at meetings or on WhatsApp groups). I agree with the Claimant's submissions on s.25 of the Localism Act 2011 that this does not preclude the arguments she is making.

197. I recognise, in light of the robust approach that needs to be taken before concluding apparent bias exists in relation to local political issues of this kind, where members may be expected to have an interest in local issues, the Defendant has forceful arguments to deploy. They include whether the RA has a particular position on the Order. These arguments may well be even stronger for Councillor Beckett, given his declarations of interest. However, on the facts before me, I am unable to say that the Claimant has no realistic prospects of success on this ground. I therefore reject the Defendant's application for summary judgment or strike out of this ground.

198. For the reasons given above, I give summary judgment in favour of the Defendant against the Claimant on Ground 1, and therefore dismiss Ground 1 as a basis for challenging the Order. I refuse the Defendant's application for summary judgment or for an order striking out the Claimant's grounds of claim on Grounds 2, 3, 4(a), 5 and 7, where Grounds 4(b) and Grounds 6 are no longer pursued by the Claimant.