

Case Name: *Tomkins v City of London Corporation* [2020] EWHC 3357 (Admin) (08 December 2020)

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Commentary:

This was a successful challenge to an Experimental Traffic Order ("ETO") restricting vehicle traffic along Beech Street, which runs beneath the Barbican Estate within the City of London, to zero emission vehicles only (other than to access vehicle entrances on Beech Street). The challenge was brought by a local resident who is the leaseholder of a flat and car parking space in the Barbican.

The statutory framework for the case comprised the Road Traffic Regulation Act 1984 ("RTRA 1984") and the Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996 ("the 1996 Regulations"). The decision is a reminder for Local Authorities to comply with the relevant procedural regulations when granting an ETO, and in particular to give an adequate statement of reason, especially one that relates to such a significant proposal.

The Claimant could no longer access his car parking space from Beech Street in his petrol car due to the ETO (it was now only accessible via a circuitous and difficult route). Further, there are not sufficient charging points for electric vehicles in the Barbican's resident parking spaces. The ETO had also caused confusion for vehicles seeking to legitimately access vehicle entrances on Beech Street.

Eight grounds of challenge were brought by the Claimant. Grounds 1 and 2 related to the failure of the City to consult, under common law and the 1996 regulations respectively. Grounds 3, 4, 5 and 6 related to other failures to comply with procedural requirements set out in the 1996 regulations. Grounds 7 and 8 related to how the abnormally low traffic levels during the Covid 19 pandemic meant that the experiment could not be properly conducted nor experienced.

The claimant succeeded on Grounds 3, 5 and 6.

Ground 3 was that the City failed to hold, or consider holding, a public inquiry before making the ETO, pursuant to regulation 9 of the 1996 Regulations. The error of law found by the court was that the city had not considered whether or not to hold such an inquiry. However, the court found that, had there been consideration, such an inquiry would not have taken place, and therefore the decision was not quashed on this ground.

Ground 5 was that the City failed to comply with the requirement in Schedule 2 to the 1996 Regulations and regulation 23(3)(b) of the 1996 Regulations to make the relevant documents available for public inspection. The relevant documents were not available for inspection from 23 March 2020 to 22 April 2020, due to lockdown; this was made worse by a concurrent failure for the ETO to not be available on the City's website between 9 March 2020 and 23 April 2020, and in addition for none of the relevant documents to be available there between 6 and 14 July 2020, due to technical faults. The City had failed to comply with the requirement and regulation but this was not sufficient to quash the decision on the basis of

substantial prejudice to the Claimant, "because he closely followed the making of the ETO and was able to source the information which he needed to make his objection and this claim in good time" (paras 114-115).

Ground 6 was that the City failed to provide an adequate statement of reasons, as required by paragraph 2(d) of Schedule 2 to the 1996 Regulations and regulation 23(3)(c) of the 1996 Regulations. The statement of reasons given was:

"Beech Street

"The restriction of motor vehicles to only those with zero emissions will improve the air quality in Beech Street which is a fully enclosed tunnel-like street which does not allow traffic fumes to ventilate to the atmosphere.

"Bridgewater Street and Golden Lane

"The closure of these junctions will allow improvements to the streetscape in Beech Street to compliment [sic] the anticipated improvement in air quality that the motor vehicle restriction will deliver. A very low number of vehicles would be expected to use these junctions with the restriction in place in Beech Street."

Referring to the consideration of statements of reasons under the National Parks Authorities' Traffic Orders (Procedure)(England) Regulations 2007 in *Trail Riders Fellowship v Peak District National Park Authority* [2012] EWHC 3359 (Admin), the Court found that the City's statement of reasons in this case was clearly inadequate and did not meet the statutory requirements. In finding this, the Court gave regard to the consequence of the ETO in question, namely the closure of a road to petrol and diesel vehicles, which "was an extreme measure that needed to be explained and justified" (para 120). Again, this was not found to have substantially prejudiced the Claimant, who was regardless well-informed of the reasons.

Relief was granted on grounds 5 and 6 in the form of declarations that the City had not complied with the statutory requirements of Schedule 2 of the 1996 Regulations.

Case summary prepared by Tom Brooks