

Case Name: *City of Westminster, R (On the Application Of) v Transport for London (TfL) & Ors* [2018] EWHC 2402 (Admin) (13 September 2018)

Full case: [Click Here](#)

Commentary: This was a judicial review brought by the City of Westminster ("Westminster") against a decision by Transport for London ("TfL") of 15 March 2018 to begin construction of cycle superhighway 11 (known as CS11) between Swiss Cottage and Portland Place in Westminster. CS11 will run through a part of central London for which Westminster is the statutory highway authority and traffic authority and therefore Westminster needs to agree to those parts of the route. Westminster brought the challenge on the basis that TfL's decision to start construction of CS11 was unlawful as TfL had failed to take account of a legal relevant consideration – namely that Westminster would not agree to the scheme, and therefore CS11 would only be deliverable in part. Mr Justice Cranston quashed TfL's decision to proceed with CS11 on this basis.

Discussions between Westminster and TfL about CS11 began in 2014 and over the next few years a number of workshops and stakeholder meetings were held. At these meetings, and over the course of correspondence, Westminster stated that it could not fully support the proposals for CS11 as modelling outputs were required for Westminster to be able to understand the traffic impacts of the proposals. As late as April 2018 Westminster made it clear to TfL that it would not agree to any documents suggesting that it had taken a final decision supporting CS11. On 7 May 2018, TfL announces that the works on the CS11 at Swiss Cottage would begin in mid-July.

In defending the challenge TfL argued that in light of the statutory background and the long working relationship between TfL and Westminster, TfL was entitled to proceed on the expectation that Westminster would give its agreement to the scheme. Further, TfL claimed, it was not unusual for an authority to embark on a scheme in circumstances where not all the required consents, permits or other steps necessary to implement the scheme have been obtained.

Mr Justice Cranston rejected TfL's arguments and found that as TfL's decision to proceed with CS11, and the cost benefit analysis that accompanied it, contained nothing to suggest that any thought was given to the risk of TfL failing to obtain the necessary consents from Westminster the decision was flawed as it omitted a legally relevant consideration. A legally relevant consideration being one which is so obviously material decision in light of the relevant legislation that it must be taken into account by the decision maker. For this reason the judicial review was granted.