

Case Name: *Venuscare Ltd v Cumbria County Council* [2019] EWHC 3268 (Admin) (29 November 2019)

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Commentary: A statutory challenge seeking to quash a traffic regulation order "TRO" made by the Council as traffic authority in respect of an unadopted highway was dismissed.

Ground 1 was that there were no or no sufficient traffic management reasons under s.1 of the Act either for making the TRO or taken into account when making the TRO. The Court held that although the reports did not make express reference to particular danger arising from the unrestricted use of the highway, it was clear that the committee was advised of the need to be satisfied that it was expedient to make the TRO for the purposes specified and identified as falling within s.1(1) of the Road Traffic Regulation Act 1984 and by reference to the overall evidence which was before the committee, it was obvious that the purposes behind the restrictions fell within section 1(1). The judge was "extremely reluctant to hold that a failure to include, in reports addressed to a specialist committee with local knowledge, reference to the factual justification for making the TRO in what was a straightforward case should invalidate their decision. I would also be extremely reluctant to hold that a simple failure to include in the minute a reference to the fact that there was some consideration and discussion of the reports should invalidate their decision."

Grounds 2 and 3 were that the reasons for making the TRO were irrational and that there had been a mistake of fact and regard to irrelevant matters. These were both dismissed.

Ground 4 was that the defendant failed properly to undertake the balancing exercise required by s.122 of the Act. S.122 requires that the traffic authority to secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians) and the provision of suitable and adequate parking facilities on and off the highway so far as practicable having regard to various matters including maintaining reasonable access to premises, the effect on the amenities of any locality affected and any other matters appearing to be relevant. Although the report did not specify in terms that it was necessary to conduct this balancing exercise, the court held it had been carried out in substance.

The final ground was that the defendant had insufficient regard to the claimant's rights, especially given the impact upon them, when making the TRO including the claimant's interest as prospective redeveloper. It was held that the traffic authority was under no obligation to consider the commercial impact upon the claimant of making the TRO, particularly insofar as it related to future use which was not the subject even of any application for planning permission and which had not been adverted to in the objections raised. If the claimant subsequently obtained planning permission for redevelopment and was able to demonstrate a proper basis for revocation then that would afford it a sufficient remedy.

Case summary prepared by Susannah Herbert