Case Name: *United Trade Action Group Ltd & Anor, R (On the Application Of) v Transport for London & Anor* [2021] EWCA Civ 1197 (30 July 2021)

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Commentary: This was an appeal against a judgment handed down on 20 January 2021, by which Lang J allowed two consolidated claims for judicial review brought by trade bodies representing licensed taxi drivers (the United Trade Action Group and the Licensed Taxi Drivers Association). The trade bodies had challenged the London Streetspace Plan ('the Plan'), the Interim Guidance to Boroughs ('the Guidance') and the creation of a bus, walk and cycle only corridor at Bishopsgate (the 'A10 Order') on the basis that they failed properly to consider the interests of licensed taxi drivers. As a result of their successful challenge, Lang J quashed the Plan and Guidance in their entirety and the A10 Order.

TfL and the Mayor brought five grounds of appeal:

1. That the judge's ruling on admissibility of parts of the TfL's witness evidence was erroneous;
2. That she was wrong to hold that the appellants had failed to have regard to the distinct status of taxis as a form of public transport or to the needs of people with mobility difficulties when preparing the Guidance;
3. That she was wrong to find that the appellants failed to have due regard to the public sector equality duty;
4. That she was wrong to find that the appellants breached the respondents' legitimate expectation that taxis would be allowed to drive in all TfL bus lanes except where to do so would cause significant delay to buses or materially worsen the safety of road users; and
5. That she was wrong in law to apply an "anxious scrutiny" test on the question of rationality, and that her conclusion that the Plan, Guidance and A10 Order were all irrational was in any event plainly wrong.

The appeal succeeded on Grounds 2, 3, 4 and 5. Accordingly the appeal was allowed.

On material considerations (Ground 2), the Court considered the respondents' argument to be unsound for three main reasons. First, it was not necessary in a high-level policy announcement such as the Plan, to recite what factors have and have not been taken into account – nor was it necessary in the Guidance, which was addressed to policy-makers aware of the different functions and characteristics of taxis. Second, as the Plan and Guidance had barely changed the position of taxis, it was difficult to understand what the decision was that failed to take the position of taxis into account. Third, in any case, any modest reduction in taxi access to bus lanes was part of a difficult balancing exercise.

On the public sector equality duty (Ground 3), the Court emphasised that the circumstances and context of the pandemic in March-May 2020 were critical to understanding whether the Plan and Guidance complied with this duty. It found that the Guidance was sufficient and

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lawful as it referred boroughs to the public sector equality duty, explained what should be done and stated that the proposals should be carefully assessed for their impact on those with protected characteristics. Similarly, regarding the A10 Plan, the Court found the equality impact assessment process to have been 'at least adequate'.

On legitimate expectations (Ground 4), the Court rejected any argument that TfL's policy for bus lanes, TfL's 'Taxis and Bus Lanes: Policy Guidance' or the Mayor's statements in support of the special status of taxis, gave rise to a legitimate expectation that no bus lane anywhere in London could be closed to them. In the absence of such a promise, the claim on this ground failed.

Regarding the Plan and Guidance, the Court held that Lang J's findings on irrationality (Ground 5) could not stand for several reasons taken together. First, it found that it would be 'extraordinary' and 'not right' for a court to condemn plans to widen pavements and create new cycle lanes as extreme or ill-considered, especially during the pandemic. Second, it criticised the judgment of Lang J for coming close to a finding of bad faith, when this was not alleged by the respondents, and where her rulings on admissibility of evidence would have had excluded TfL or the Mayor from giving a response in evidence to such claims. Third, it found that that the rationality test should not have been applied with 'anxious scrutiny', as Lang J had done, since the claim based on Article 1 Protocol 1 of the European Convention of Human Rights had been rejected. Fourth, it found that the judge erred in giving no or almost no weight to the fact that the impugned decisions were made at a time when the duration and future course of the pandemic were wholly unpredictable (in May 2020).

As for the finding that the A10 Order was irrational, the Court further noted that Lang J's conclusions were based in part on (i) the proposition that traffic levels had remained well below pre-Covid levels and (ii) a critical comparison of the comparatively high level of non-bus and cycle traffic in Bishopsgate compared to other areas in London. On the former, it held that this proposition missed the question of a rational concern on the part of experienced officers as to a future rise in car journeys in the event that lockdown would be loosened. On the latter, the Court held that it was difficult to see how a very high level of taxi use compared with other parts of central London would operate to make a scheme excluding taxis in Bishopsgate irrational. For these reasons, along with those for rejecting the finding of irrationality in the case of the Plan and Guidance, the Court upheld the appeal on this ground.

Case summary prepared by Stephanie Bruce-Smith