

Case Name: *HHRC Ltd v Hackney Borough Council* [2021] EWHC 2440 (Admin) (03 September 2021)

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Commentary:

The case concerned an application for judicial review in relation to Hackney Borough Council's decision in September 2020 to adopt an emergency transport plan entitled "Rebuilding a Green Hackney – Emergency Transport Plan: responding to the impacts of COVID-19 on the transport network" (the "ETP"). The claim was brought on four grounds concerning (1) the duty under section 16 of the Traffic Management Act 2004; (2) breach of the public sector equality duty; (3) failure to investigate or have regard to the impact on air quality; and (4) breach of common law consultation requirements. The challenge was unsuccessful on all four grounds.

The ETP outlined the creation of a new network of Low Traffic Neighbourhoods (LTNs) across the borough. It was made in the context of the guidance published by the Secretary of State for Transport in response to the COVID-19 pandemic entitled "Traffic Management Act 2004: network management in response to COVID-19". ("the COVID-19 Guidance") which stated "The government therefore expects local authorities to make significant changes to their road layouts to give more space to cyclists and pedestrians. such changes will help embed altered behaviours and demonstrate the positive effects of active travel." The Mayor of London had also published the "London Streetspace plan – Interim Guidance to Boroughs" which included guidance on LTNs.

Ground 1 concerned the network management duty under section 16 of the Traffic Management Act 2004 which provides that it is the duty of a local authority to manage their road network "with a view to achieving, so far as may be reasonably practicable having regard to their other obligations, policies and objectives, the following objectives: (a) securing the expeditious movement of traffic on the authority's road network; and (b) facilitating the expeditious movement of traffic on road networks for which another authority is the traffic authority." The claimant submitted that discharge of the duty should be evidence-led, and in the present case the defendant had little or no evidence to support the assertions that were being made in the ETP, and no analysis of the impacts outside the LTNs which would arise as a consequence of their introduction.

There were some important elements of context: firstly that the terms of section 16 of the 2004 Act provide the authority with broad parameters within which to act consistently with the duty; secondly that "traffic" under section 16 includes pedestrians and cyclists; and thirdly the COVID-19 Guidance which had been issued pursuant to section 18 of the 2004 Act specifically for the purpose of enabling highway authorities to deliver their network management duty so it was reasonable to conclude that the measures identified in the COVID-19 Guidance, and the injunction to act urgently was regarded by the Secretary of State for Transport as being consistent with the discharge of the network management duty. It was important to recognise the extremity of the circumstances of the COVID-19 pandemic and that the COVID-19 Guidance itself contemplated action being taken urgently to

reallocate road space to walking and cycling both so as to provide space for social distancing, but also so as to accommodate and embed altered behaviours in relation to active travel. The guidance contemplated experimental schemes which would upon installation be monitored and the subject of ongoing consultation. The ETP was consistent with the COVID-19 Guidance and the Mr Justice Dove had no difficulty in concluding that the measures contemplated by the COVID-19 Guidance did not breach the network management duty. The requirements of the duty were addressed by the approach which was taken to the COVID-19 Guidance, the consideration given to the management of the present and future needs of the various modes of travel using the road network, and the use of ETOs with the opportunities which they provided for monitoring, survey and review of the performance of the proposed measures. This ground was dismissed.

Ground 2 concerned the public sector equality duty (PSED). The claimant submitted that the defendant wholly failed to assess properly or at all the impacts of the proposals of the ETP upon people with protected characteristics. It was held that bearing in mind the circumstances and the context of the Equality Impact Assessment undertaken by the Council in relation to the ETP, Mr Justice Dove was satisfied that due regard was paid in the preparation of the ETP to the PSED. The ETP is part of a continuum and its focus upon equality impacts was sufficient and proportionate for the stage within the process which it occupied so the ground was also dismissed.

Ground 3 concerned air quality and the Claimant argued that the defendant failed to address the impact on poor air quality of the implementation of the LTNs, and instead of focusing upon the congested main strategic roads which it was acknowledged suffered the poorest air quality, focused instead upon the areas away from those main roads which were not a problem in respect of air quality. The issue of air quality, and particularly worsening of air quality in those part of the borough already significantly affected by poor air quality, was clearly a material consideration to be considered by the defendant in formulating the ETP proposals. The question which arose is whether or not it was lawfully open to the defendant to approach the impact of the LTNs on air quality in the by imposing the LTNs and, thereafter undertaking traffic surveys and monitoring and surveying and modelling air quality impacts. Although Section 82 of the Environment Act 1995 requires local authorities to undertake air quality reviews, the duty is broad and to be discharged by periodic review so provided little support to the claimant's arguments. For the reasons given in relation to Ground 1 concerning the nature of the COVID-19 pandemic and the need for an urgent response to it in the light of the additional specific statutory guidance given by the Secretary of State for Transport, Mr Justice Dove was unable to accept that it was unlawful for the defendants to treat the issue of air quality in the way in which they did.

The final ground 4 concerned consultation. The Claimant relied on the 2004 Guidance on the Network Management Duty which expected that an authority would carry out consultation when deciding on policies in relation to the network management duty. The Claimant also contended that in accordance with the Sedley principles consultation should occur at a stage when proposals are being formed. Whilst the COVID-19 Guidance did not replace the 2004

Guidance, it provided additional advice on techniques for managing roads to deal with COVID-19 response related issues. This additional guidance, specifically contemplates the approach to consultation taken by the Council, namely that it is undertaken in respect of the ETOs alongside their operation during the experimental period for which they have been introduced. None of this gave rise to an entitlement to, or expectation of, additional consultation in relation to a policy document like the ETP: in short there was no legal duty to consult with the public in relation to the decision to adopt it, bearing in mind the particular factual context with which this case is concerned. The ground was dismissed.

Case summary prepared by Susannah Herbert