Case Name: *Keyhole Bridge User Safety Group, R (On the Application Of) v Bournemouth, Christchurch and Poole Council* [2021] EWHC 3082 (Admin) (18 November 2021)

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Commentary:
By way of an application for judicial review, the Claimant, the Keyhole Bridge User Safety Group, challenged the decision made by Bournemouth, Christchurch and Poole Council ("the Council") to revoke an experimental traffic order ("ETO") made pursuant to section 9 of the Road Traffic Regulation Act 1984. The ETO prohibited vehicle access (apart from bicycles) on Whitecliff Road where it runs under Keyhole Bridge. The Council indicated that the ETO would be in place for six months and welcomed comments from the public, which would be considered once submitted prior to 21 February 2021. The Council decided to revoke the ETO on 27 January 2021 and refused to accept any comments after that date.
The Claimant brought four grounds of challenge:

1. The Council breached the Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996 ("the 1996 Regulations") by curtailing the statutory 6 month period for representations;
2. The Council's promise that the closure would operate for six months and then be reviewed and that responses to a public consultation received by 21 February 2021 would be taken into account in the review, gave rise to a procedural legitimate expectation, which the Council breached without justification;
3. When deciding whether or not to revoke the ETO, the Council failed to take into account material considerations, namely consultation responses which might have been lodged in the remaining weeks of the consultation period had it not been curtailed;
4. The Council acted irrationally when deciding whether or not to revoke the Order, by relying on unevidenced assumptions about the detrimental effect of the ETO on air quality.

The challenge succeeded on Ground 2 and on Ground 3 (in part).
On Ground 1, Mrs Justice Lang held that the statutory consultation procedure was not breached by the Council. First, the objections procedure in Schedule 5 of the 1996 regulations did not prevent the Council from revoking the ETO before the end of six months. The purpose of that procedure is to enable members to object to the ETO becoming permanent under the same terms as the ETO. It follows that only where a traffic authority is seeking to introduce a permanent order, the six month period for objections must be allowed to run its course. Where the authority seeks to revoke the ETO, the Schedule 5 procedures ceases to be relevant. Secondly, the thrust of the Claimant's complaint was that supporters of the Order were deprived of the opportunity to make representations because of the curtailment of the statutory objections period – however, as Schedule 5 only provides for the making of objections, the Court held that

the Claimant suffered no prejudice.
On Ground 2, the Court accepted the Claimant's argument in relation to the non-statutory consultation carried out by the Council. An 'Information Document' issued by the Council described the effect of the ETO and welcomed public comments. Mrs Justice Lang found that on a fair reading of this document, the Council made clear and unambiguous representations to the effect that:

a) the ETO would operate for at least six months as a trial;
b) that the public would be able to make consultation representations on the ETO during the six-month trial; and
c) any consultation responses received by 21 February 2021 would be taken into account at the six-month review.

Mrs Justice Lang further found that the public consultation period was curtailed by the early decision to revoke (even though the ETO in fact operated for longer than six months). Moreover, from 27 January 2021 onwards (the date of the decision to revoke), the Sedley consultation requirements, (which require proposals to be at a formative stage and consultation responses to be taken into account conscientiously when finalising any proposals) were no longer met. Finally, the reasons provided by the Council for its decision did not amount to a countervailing public interest to justify the requirement that public authorities should honour assurances that they have given to the public. Accordingly the Claimants succeeded on Ground 2.
As for Ground 3, Mrs Justice Lang found that the Claimant succeeded in part – a response made on 30 January 2021 was not considered by the Council, and in light of the conclusion on Ground 2, it should have been. However, relief was refused on this Ground on the basis that the outcome was unlikely to be substantially different had that representation been taken into account.
Finally, Mrs Justice Lang rejected the Claimant's submissions on rationality (Ground 4) as it essentially amounted to a disagreement with the merits of the Council's decision rather than a demonstration that it was perverse.
Accordingly, the application was successful. By way of relief, Mrs Justice Lang ordered that there should be a further non-statutory consultation exercise to enable the public to give their views on the changes implemented by the ETO, after which the Council should conduct a review taking into account all the responses received.

Case summary prepared by Stephanie Bruce-Smith