

IN THE HIGH COURT OF JUSTICE
KING’S BENCH DIVISION
PLANNING COURT

BETWEEN:

ANDREW ROBERTS

Claimant

-and-

BATH AND NORTH EAST SOMERSET COUNCIL

Defendant

Claimant’s Grounds for Questioning the Validity of the Lower Lansdown ETRO

(Page references given refer the Witness Statement of Andrew Roberts dated 30 July 2024 in the form AR Tab
* pages * - */*

Introduction

1. On 18 July 2024, Bath and North East Somerset Council purported to make an experimental traffic regulation order (“**ETRO**”) under section 9, Road Traffic Regulation Act 1984 (“**RTRA 1984**”), namely (Catharine Place, Gay Street, Winifred's Lane, Lower Lansdown) (Bath) (Prohibition of Motor Vehicles) (Prohibition of Right Turn) (Prohibition of Parking and Waiting) (Experimental) Order 2024 (“**the Lower Lansdown ETRO**”).
2. The Claimant (acting on his own behalf and on behalf of a group of objectors known as the Lansdown ETRO Objection Group) questions the validity of the Lower Lansdown ETRO under Part VI of Schedule 9, RTRA 1984.
3. The validity of the Lower Lansdown ETRO is justiciable as a matter of entitlement without having to meet any “arguability” threshold: see e.g. Kerr J in **R (Sheakh) v Lambeth** [2021] EWHC 1745 (Admin) at paragraph [103] (affirmed on appeal on the

“public sector equality duty” ground, being the only ground for which permission granted [2022] EWCA Civ 457, [2022] PTSR 1315). The grounds for quashing a traffic regulation order are **“broadly, conventional public law grounds applicable in judicial review cases”**: **R (Sheakh) v Lambeth** [2021] EWHC 1745 (Admin) at paragraph 22.

Grounds for review in summary

4. In summary, the Claimant’s grounds (in so far as they can be formulated at this stage of the proceedings and in the timescale required) for questioning the validity of the Lower Lansdown ETRO include:
 - (1) whether the Lower Lansdown ETRO was validly made by DocuSign;
 - (2) whether BANES give any adequate reasons for the decision to make the Lower Lansdown ETRO;
 - (3) whether the reasons stated by BANES for proposing to make the Lower Lansdown ETRO were capable of founding a rational decision;
 - (4) whether the Lower Lansdown ETRO was made for a collateral and/or improper purpose;
 - (5) whether the Lower Lansdown ETRO was *ultra vires*;
 - (6) whether BANES decision to make the Lower Lansdown ETRO took account of all relevant matters and/or took into account of irrelevant matters (including meeting its obligations under the ECHR);
 - (7) whether BANES failed to identify a proper experiment to trial with an ETRO;
 - (8) whether BANES allowed its decision whether or not to make the Lower Lansdown ETRO to be fettered by earlier decisions taken by Single Member;
 - (9) whether BANES failed to comply with relevant requirements in relation to the order.

Formal validity of the Order

5. The Claimant does not accept that a Local Authority can make an order electronically using DocuSign.

Adequate reasons

6. The Defendant has failed to give any adequate reasons for the decision to make the Lower Lansdown ETRO.
7. If a public body does not give reasons for its decision, then that may in itself justify the inference that BANES has not lawfully exercised its powers - De Smith's Judicial Review 9th Ed. paragraph 9-147.
8. In this case there is a statutory obligation to give reasons under regulation 22(3) and paragraph 2(d) of the Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996 ("**the Regulations**"), namely:

“a statement setting out the reasons why the authority proposed to make the order including, in the case of an experimental order, the reasons for proceeding by way of experiment and a statement as to whether the authority intends to consider making an order having the same effect which is not an experimental order”

9. A “*‘principal justification’ for imposing a duty to give reasons was the need to reveal any such error as would entitle the court to intervene and so make effective the right to challenge the decision by judicial review*” - De Smith's Judicial Review 9th Ed. paragraph 9-133, citing **R. (on the application of Help Refugees Ltd) v Secretary of State for the Home Department** [2018] EWCA Civ 2098; [2018] 4 WLR 168 at [122]. What are sufficient reasons was considered in the well-known passage in **South Buckinghamshire DC v Porter** [2004] UKHL 33; [2004] 1 WLR 1953 at [36], Lord Brown:

“The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was

decided as it was and what conclusions were reached on the “principal important controversial issues”, disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds.”

and see **Trail Riders Fellowship v Hampshire CC** [2018] EWHC 3390 (Admin) at [39] – [40].

10. Further, a statement of the reasons why the authority proposed to make the order, must be prepared in advance of the decision to make the order and is required in order for the Council to take the decision or supervise any delegated decision, which has already been taken, before making the order.
11. The purported statement of reasons (an officer decision report, dated 20 May 2024, and delegated decision, dated 27 June 2024) among the deposited documents is exhibited by the Witness Statement of Andrew Roberts at [**AR6 Tab * pages 3 – 7**].
12. The only discernible stated reasons why the authority proposed to make the Lower Lansdown ETRO appear to be, by way of a “tick-box exercise”, in the Officer Decision Report by reference to the order making authority granted by section 1, RTRA 1984 that the Lower Lansdown ETRO should be made:

“(a) for avoiding danger to persons or other traffic using the road or any other road or for preventing the likelihood of any such danger arising, or. . . .
(c) for facilitating the passage on the road or any other road of any class of traffic (including pedestrians), or
(d) for preventing the use of the road by vehicular traffic of a kind which, or its use by vehicular traffic in a manner which, is unsuitable having regard to the existing character of the road or adjoining property, or
(e) (without prejudice to the generality of paragraph (d) above) for preserving the character of the road in a case where it is specially suitable for use by persons on horseback or on foot, or
(f) for preserving or improving the amenities of the area through which the road runs;
. . . . ”

without identifying which of such objects encapsulated the purposes for which the Lower Lansdown ETRO (or each of the 3 linked elements of the ETRO), was in fact made.

13. In the Background section of the Officer Decision Report [**AR6 Tab * pages 5 – 6**] it is stated that the aim is “*to reduce overall vehicle use, rather than divert traffic elsewhere*” and that officers had identified three areas “*which feature shortlisted measures suitable for trialling from Spring 2024. Potential (and variations on these trials/measures) have been assessed using the following criteria:*”
- *Broad estimates for the cost of trial implementation (based on previous projects)*
 - *Their overall suitability for implementation as a trial scheme*
 - *How long the trial would take to implement (priority given to those that can be implemented quickly)*
 - *To what extent the proposed intervention addresses the feedback from the initial consultation and co-design workshops.”*

The decision was taken by the Head of Highways Delivery with a *pro forma* statement that he had had due regard to the Council’s public sector equality duty.

14. Such reasons are neither intelligible nor adequate, and in particular do not address the particular circumstances of each the roads in each of the 3 linked schemes, in respect of which the orders are made, nor the particular objects identified in section 1, RTRA 1984 by which the powers of the traffic authority to make orders are limited. Consequently, they do not enable to the court to discern the true reasons for the decision and the court should infer that they were unlawful.

Irrationality

15. The reasons for the proposed order were set out in a report dated 20 May 2024 to the decision maker for the purposes of making the decision, as might be expected, but being neither intelligible nor adequate could not have formed the basis of a rational decision.

Collateral and/or improper purpose

16. It is the primary duty of a traffic authority exercising its powers under sections 1 and 9, RTRA 1984 “to secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians)” – section 122(1), RTRA 1984. This reflects the highway authority’s obligation, transferred to local authorities from parishes under

the Highway Act 1835, to maintain certain public highways (the ultimate responsibility for the maintenance of the highway network being that of the Crown): see Halsbury's Laws of England, Highways (Volume 55 (2024)) paragraph 278 for the historical background. The common law obligation as to the maintenance of common highways transferred to highway authorities is to maintain such roads so that they are safe and "*reasonably passable for the ordinary traffic of the neighbourhood at all seasons of the year*": see Halsbury's Laws of England, Highways (Volume 55 (2024)) paragraph 303. Such obligation is also reflected in the express objects of section 1, which include "*facilitating the passage on the road or any other road of any class of traffic (including pedestrians)*"; preserving the character of the road and neighbouring properties by preventing unsuitable traffic; and "*preserving or improving the amenities of the area through which the road runs*".

17. The amenities of an area appears to mean the "**pleasant circumstances or features, advantages**": Re Ellis & Ruislip-Northwood Urban District Council [1920] 1 KB 343 at 370, CA, Scrutton LJ (dissenting) and, it is maintained, includes ease of access by road.
18. The traffic authority is responsible for preserving or improving the amenities the whole of their local authority area, see e.g. section 2(4) RTRA 1984 and Freight Transport Association v. Berkshire CC [1981] RTR 95, Denning MR at 101L:

"It is the job of the county council to look over the whole of their county to see what are the areas which need preserving in their amenities, and to make orders accordingly."

19. A stated objective for making the Lower Lansdown ETRO mentioned in the deposited statement of reasons is "*Modyfing [sic] travel behaviour and car ownership levels*". It is a collateral and/or improper purpose for a traffic authority (which may include a strategic highways company: sections 142(1) and 121A, RTRA 1984) to attempt to change residents' behaviours and/or change the character of an area through which the road runs.

Ultra vires

20. The making of the Lower Lansdown ETRO will in fact degrade the amenity of areas into which vehicular traffic is diverted, whereas the traffic authority only has statutory authority to exercise its powers so as to preserve or improve the amenities of its area and/or the areas affected by the ETRO.

Failure to take into account relevant matters or the taking into account of irrelevant matters

21. In complying with the primary duty under section 122(1), RTRA 1984 must do so “so far as practicable having regard to the matters specified in subsection (2) below”. For a recent consideration of the sort of matters which ought to be taken into account in making such orders: see e.g. **Bouchti v London Borough of Enfield** [2022] EWHC 2809 (Admin), which concerned an area bounded by A roads and regulations for the purpose of preventing through traffic; and **Wesson v Cambridgeshire County Council** [2024] EWHC 1068 (Admin), closure of part of Mill Road in Cambridge.

Safety of other road users (including pedestrians)

22. The stated reasons for making the order do not disclose that BANES has made any assessment as to whether the linked schemes or any of them increase the dangers to other road users.
23. In particular:
- a. the decision did not take into account the issues raised by a Road Safety Audit dated 18 June 2024. The officer’s report was prepared on 20 May 2024 and did not refer at all to the Road Safety Audit and no further consideration is stated to have been given to such matters at the time of the delegated decision on 27 June 2024. In particular, and among other things the decision did not take into consideration:
 - i. in relation to problem 3.6.2 the recommendation that the modal filter alignment at Gay Street/George Street had been amended so that the southernmost island was reduced in size to accommodate all vehicle movement with the Give Way line being repositioned to afford protection to vehicle waiting at the Give Way Line;

- ii. in relation to problem 3.8.1 the observed pedestrian desire line across George Street (to the east of the Gay Street junction), which involved a few near misses with pedestrians crossing George Street from/onto Gay Street and vehicles travelling along George Street leading to concerns that if the design does not provide facilities to accommodate this well used pedestrian movement, the likelihood of pedestrian injuries occurring may be heightened; and.
 - iii. problem 3.11.1 namely that the proposals install bollards to prevent vehicles travelling from Winifred's Lane onto Lansdown Road. However, advanced signage has not been proposed to inform drivers travelling on Cavendish Road of this change. This may result in confusion for vehicles wanting to use this route and lead to possible unsafe or illegal manoeuvres on approach to the bollards. This is exacerbated further by unclear diversion routes to route vehicles correctly onto Lansdown Road.
- b. the decision did not take account of possible unsafe or illegal manoeuvres as a result of delivery vehicles and other visiting vehicles to Holywell House which fronts the lower part of Winifred's Lane in order to exit Winifred's Lane if unable to turn at Holywell House or when meeting oncoming traffic.
- c. the decision did not take account of any risks caused by diverted traffic, in particular:
 - i. traffic will be diverted along Sion Hill, up Sion Road and through Sion Hill Place endangering pedestrians and other road users, particularly in the vicinity of Kingswood School;
 - ii. traffic will be diverted along Julian Road and Lansdown Road increasing the risk of accidents on Julian Road and Lansdown Road, there already having been 14 accidents in the past 5 years; and diverting traffic past St Andrew's School to which parents walk their children at drop-off and pick-up times.
- d. the decision did not take account of the safety of cyclists using Winifred's Lane and, in particular, that it did not meet the guidance for safe cycle infrastructure in LTN1/20: the lower part of Winifred's Lane is too steep and/or the junction has extremely poor visibility.

Maintaining reasonable access to premises

24. The stated reasons do not take account or adequate account of the interference by the proposed ETRO with residents and other frontagers rights to vehicular access to their homes and properties.
25. The common law right of access was summarised by Lord Atkin in Marshall v Blackpool [1935] AC 16 namely that:

“The owner of land adjoining a highway has a right of access to the highway from any part of his premises. This is so whether he or his predecessors originally dedicated the highway or part of it and whether he is entitled to the whole or some interest in the ground subjacent to the highway or not. The rights of the public to pass along the highway are subject to that right of access: just as the right of access is subject to the rights of the public, and must be exercised subject to the general obligations as to nuisance and the like imposed upon a person using the highway.

..... Moreover the ordinary traffic on any highway is always likely to be increased by the exercise of the adjoining owner of this right of access. A building estate may be developed, or a theatre, concert hall, cinema, or hotel erected on premises which will necessarily involve incalculable increase of traffic.”

26. The stated reasons take no account of such private rights of access and no compensation is provided for in so far as the Lower Lansdown ETRO substantially interferes with such rights of access.
27. BANES has further failed to have regard to or meet its obligations not to do anything incompatible with the Claimants' rights and fundamental freedoms under Article 8 and Article 1 Protocol 1 of the European Convention on Human Rights

The effect on the amenities of any locality affected

28. The stated reasons take no account of the detrimental effect of the Lower Lansdown ETRO on areas whether within the Liveable Neighbourhood area or outside of it by diverted traffic.

Any other matters appearing to the local authority to be relevant

29. The stated reasons do not demonstrate that any real consideration has been given to BANES's public sector equality duty, the acknowledgement of which appears to have been an afterthought.
30. BANES has not undertaken any Environmental Impact Assessment.
31. BANES has failed to make any assessment of the effects of diverted traffic on the safety of other road users, including pedestrians, or on the amenity of areas affected.
32. The stated reasons do not give any consideration to the removal of the one way restriction on Winifred's Lane and/or the reasons why such a restriction was imposed.
33. The stated reasons take no account of the matters raised by the Claimant and other objectors after the preparation of the officer's report on 20 May 2024 both in correspondence and at meetings held by BANES with objectors on 9 July 2024 and 19 and 22 July 2024.

Failure to identify proposed experiment

34. An ETRO must identify a proper experiment to test in the trial. This at a minimum requires the Council to make an assessment of the relevant matters and make a prediction, which if correct will properly justify the making of a TRO. Any ETRO will then be designed to test that prediction: see **Trail Riders Fellowship v Peak District National Park Authority** [2012] EWHC 3359 (Admin).

Failure to make unfettered decision

35. BANES stated in its letter dated 2 May 2024 that "*the decision to use the ETRO process has been taken via a Single Member Decision and will proceed*" and the Council consequently failed to give consideration to all relevant matters when in fact

taking the decision to make the Lower Lansdown ETRO, being fettered by the earlier Single Member decisions.

Failure to comply with relevant requirements in relation to the order

36. BANES failed to prepare a full or adequate statement of the reasons why it proposed to make the Lower Lansdown ETRO.
37. BANES failed, among other things, to deposit a copy of the order restricting traffic to passing one way on Winifred's Lane which is revoked or varied by the Lower Lansdown ETRO.

Conclusion

38. The Claimant (and any other claimant, who the Claimant proposes to represent in the proceedings or who has a sufficient interest in the matter and may be joined in the proceedings) reserves the right to add to or supplement these grounds in light of any further information or material provided by BANES.
39. In the circumstances, there are substantial grounds for questioning the validity of the Lower Lansdown ETRO.

Guy Adams

New Square Chambers

5 August 2024