

Case Name: *Sheakh, R (On the Application Of) v London Borough of Lambeth (Rev1)* [2021] EWHC 1745 (Admin) (28 June 2021)

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Commentary:

In this decision the Court dismissed two legal challenges to the validity of experimental traffic orders made by Lambeth London Borough Council which sought to establish Low Traffic Neighbourhoods (“LTNs”) in Brixton Oval and Streatham. LTNs generally seek to promote walking and cycling and discourage limit or prohibit the use of motor vehicles – particularly to deter “rat running” (the practice of motorists cutting through residential side streets to avoid busy main roads). The LTNs were introduced in the wake of central government statutory guidance which urged local traffic authorities to make urgent changes to encourage green active travel particularly in the temporary window available as a consequence of the pandemic, before people had begun to restart their regular travel patterns.

The primary ground of challenge alleged that Lambeth had breached its public sector equality duty under section 149 of the Equality Act 2010, with particular objection to Lambeth’s approach of taking a light touch approach to equality impact assessment prior to implementation of the traffic orders, and the “rolling” approach proposed in respect of ongoing monitoring of any adverse equalities impacts during the 6 month period following the initial making of the orders. The Court found on this ground that what amounts to “due regard” for the purposes of the 2010 Act is fact sensitive. If the equality objectives are properly considered and put in the balance, it is for the decision maker to decide how much weight they should carry. In this case the Court found that it was the coronavirus epidemic and the resulting statutory guidance that led to abandonment of that conventional and leisurely approach to introducing LTNs which would normally require additional research to be carried out at the outset. The Court stated that the Secretary of State had urged local authorities to take radical and almost immediate measures to enhance walking and cycling and pointed to their power to do so using temporary and experimental traffic orders. The Court did however caution the “rolling” approach to equality impact assessments in respect of experimental traffic orders in normal circumstances, and that decision makers who decide to proceed on this would be doing so “at their peril”. The Court made clear that the facts of this case were “unusual” and were the reason for acceptability of this approach in this case, however, had they not existed it may well not have passed to the “due regard” test. The ground was dismissed on this basis.

The other grounds including the complaint that the experimental orders were not genuinely experimental in nature; that Lambeth had carried out a balancing exercise under section 122 of the Road Traffic Regulation Act 1984; and that inadequate consultation had taken place (with particular reference to failure to consult a local disability charity) were also all dismissed by the Court - finding that no evidence existed to suggest the order was not experimental; that ample evidence demonstrated that the section 122 balance had been undertaken by

Lambeth; and that there was no duty to consult the charity in question nor did any legitimate expectation arise.

Case summary prepared by Chris Todman