Neutral Citation Number: [2019] EWHC 2964 (Admin)

Case No: CO/2734/2019

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 6 November 2019

Before :

MRS JUSTICE LANG DBE

- -

Between :

(1) GURPREET SINGH ANAND **(2) JASVINDER SINGH ALG** **(AS TRUSTEES OF THE CENTRAL GURDWARA (BRITISH ISLES) LONDON KHALSA JATHA)**	**Claimants**
- and -	
ROYAL BOROUGH OF KENSINGTON AND CHELSEA	**Defendant**

- -
- -

Nick Armstrong (instructed by **Teacher Stern LLP**) for the **Claimants**
Charles Streeten (instructed by **Legal Services**) for the **Defendant**

Hearing date: 17 October 2019

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Approved Judgment

Mrs Justice Lang :

1. The Claimants seek a statutory review, pursuant to paragraph 35 of schedule 9 to the Road Traffic Regulation Act 1984 ("the 1984 Act"), of a Traffic Management Order (The Kensington and Chelsea (Charged for Parking Places)(Amendment No. 5) Order 2019) ("the No. 5 Order"), which was made by the Defendant ("the Council") on 4 July 2019, and imposed additional parking restrictions in the area of Queensdale Road, London W11.

2. The Claimants are trustees of the Central Gurdwara (Khalsa Jatha) London, a charity which runs a Gurdwara (a Sikh Temple) at 62 Queensdale Road, London W11 4SG. The congregation, many of whom are elderly and less mobile, travel long distances by car to the Gurdwara. If they are unable to park, they may no longer attend, thus threatening the viability of the Gurdwara at its present site.

3. Previously, the controlled hours for residents-only parking operated from 8.30 am to 6.30 pm on weekdays, and from 8.30 am to 1.30 pm on Saturdays. The new controlled hours for residents-only parking will run from 8.30 am to 10.00 pm on weekdays, from 8.30 am to 6.30 pm on Saturdays, and from 1 pm to 5 pm on Sundays.

4. The Claimants applied for an interim order to suspend the operation of the Traffic Management Order ("TMO"). On 15 July 2019, Cutts J. suspended the No. 5 Order pending the determination of the claim. On 26 July 2019, Sir Duncan Ouseley, sitting as a Judge of the High Court, accepted undertakings from the Respondent not to enforce parking restrictions in accordance with the No. 5 Order until after judgment in this claim, and discharged the order made by Cutts J.

Facts

5. The First Claimant's evidence was that the Gurdwara is the oldest established Gurdwara in the UK, and it has occupied the current site since 1969. It is a place of worship, and also a hub for various events which are important to the Sikh community, including meetings, an education programme for children, school visits, and community projects, which help those in need. Regular religious services are held on Wednesday evenings at 6.30 pm - 8.00 pm, and on Saturday and Sunday at 7.00 am – 9.00 am and 4.00 pm – 8.30 pm.

6. As it is the only Gurdwara in central London, members of its congregation (the Sangat) travel long distances across London and its suburbs to attend services and other events, and they find it convenient to travel by car, especially in the evenings and weekends. There is a preponderance of elderly members, who have been attending the Gurdwara for decades. They have formed close bonds with each other over the years, and greatly value the shared experience of worship and participation in the other activities at the Gurdwara. It is estimated that about 65% of members are over 70 years old, some of whom have reduced mobility and anxiety about using public transport. There was evidence that at least one person was giving lifts to disabled and vulnerable members and relied on being able to park near the Gurdwara upon arrival. About 15 members have blue badges. Some 15% of members comprise families with young children, who also find it convenient to drive to the Gurdwara.

7. The new parking restrictions will apply during services and other activities in the evening and at weekends. Members will have difficulty in parking within easy walking distance of the Gurdwara. According to the First Claimant, there are only 3 pay and display parking bays, and a small number of single yellow line parking spaces, within easy walking distance of the Gurdwara. The likely consequence of the lack of suitable parking facilities is that many members will cease to attend the Gurdwara.

8. Even a modest reduction in the number of members would have a catastrophic effect on the Gurdwara's financial position. The Gurdwara requires a minimum income of around £135,000 p.a. to survive. In an average month, the Gurdwara receives £6,000 to £7,000 in donations from the Sangat. About half the Sangat are members who pay a regular subscription. At main religious festivals, such as the Vaisaikhi and gurpurabs, the Gurdwara can expect to receive an additional £10,000 to £15,000 in donations.

9. Weddings and other booked events generate an income of around £35,000 p.a. and so they are an important source of revenue for the Gurdwara. Typically at a Sikh wedding there are 400 or more guests. As they are dressed in heavy traditional clothes for the occasion, public transport is often not practicable. Weddings last from around 9.30 am to 2 pm or later. The new parking restrictions will deter people from holding their weddings at the Gurdwara.

10. Ms Horbury, Transport Policy Manager at the Council, gave evidence that, in the Queensdale Road area, there are 343 residents' parking spaces and 329 permit holders. However, residents from any part of the Borough are permitted to park in any residents' parking space as the borough is not divided into parking zones. She took issue with the First Claimant's evidence, stating that there are 35 pay and display bays and 99 yellow line spaces within walking distance of the Gurdwara, which can be used on weekdays after 6.30 pm, after 1.30 pm on Saturday and all day on Sunday, free of charge. I concluded that there was a difference of opinion between the Council and the Claimants as to what amounted to easy walking distance.

11. The Council issues disabled persons purple badges to those who reside, work or study in the Borough, enabling them to use residents parking bays, and pay and display bays without charge. Those from outside the Borough who hold a disabled blue badge may park in blue badge bays, of which there are four in the Queensdale Road area. Blue badge holders are also granted one hour free parking over and above the paid-for time in pay and display bays, and they may park for 20 minutes on a single yellow line during controlled hours for the purpose of dropping off or picking up disabled passengers. Two disabled residents in the Queensdale Road area have dedicated disabled parking spaces.

12. Following some requests for extended controlled parking from local residents, in March 2018 the Defendant conducted a parking occupancy survey in an area around Queensdale Road. The survey showed that during weekday evenings and Sundays overall occupancy was 80%, and on Saturdays it was 75%. There were a significant number of non-resident vehicles. Ms Horbury explained, in paragraph 3 of her first witness statement, that, unlike pay and display bays, residents' bays are not individually marked out in bays, and occupancy level is calculated on the basis of the number of cars that should theoretically be able to park in a bay. If cars park leaving

large gaps between vehicles, the number of cars that can actually park in the bay is reduced. Thus, a bay with a theoretical capacity of 10 cars might be completely full, even though it has only 8 vehicles parked in it. In such a case, the survey would record an 80% occupancy rate. In light of these results, the Council concluded that the level of parking was high, and it decided to carry out a non-statutory consultation exercise, with residents and business in the area, in accordance with its common practice.

13. On 22 June 2018, the Defendant posted details of the proposed changes to 1,196 properties in the affected area. There were 310 responses from residents, 8 from local businesses, and 4 from other organisations. The original deadline for comments was extended from 23 July to 7 September 2018 to allow more time for comments to be received.

14. On 23 July 2018, the W11 Faith Group, comprising St James Church, Holland Park Synagogue, St Francis of Assisi Church, the Islamic Universal Association and the Gurdwara, sent a joint response to the Council objecting to the proposals. The letter stated that the congregations consisted of a mixture of residents and visitors, and argued that of those visitors "older members, disabled members and families tend to travel in by car and park in available spaces for the duration of the religious service. For both of these groups, the ability to drive into the Royal Borough and park within it for the duration of the religious service is a key facilitator of their ability to worship. To use public transport to attend religious service would be practically and logistically difficult for these members". It asserted that two "scenarios" would flow from extended hours: (1) attendance at religious services would decrease and as a consequence, donations to places of worship would fall "which would impact our funding"; and (2) the institutions would be forced to modify the timings of their religious services. The letter disputed that there was insufficient residents' parking available at evenings and weekends, and argued that the limited use by people attending places of worship was reasonable and proportionate.

15. A total of 84 comments were made in support of the extension of parking controls. In summary:

    i) Some residents are unable to park anywhere near their homes at evenings and weekends, and have to circle and queue to find a space, and double-park outside their homes if they have to unload heavy items. Disabled residents and families with young children find this particularly difficult.

    ii) 48 comments mentioned the impact of Westfield on evening and weekend parking. A significant number of people visiting the shops and cinemas at the Westfield Shopping Centre park in the local streets, to avoid paying to park in the Westfield car parks.

    iii) There were 12 complaints about parking during large attendances at the local Mosque.

    iv) A total of 62 comments were made in opposition to the proposed extension of parking controls at the weekend, of which 27 specifically mentioned the problem that their visitors would have difficulty parking. The Council does not provide visitor permits.

v) There was a considerable variation between the responses in different streets, suggesting some streets were more affected by excessive parking than others. Overall, there was a narrow majority in favour of extending parking restrictions.

16. The Council reviewed the responses it had received, and its officers produced a Key Decision Report, dated 17 January 2019. It referred expressly to the consultation response from the W11 Faith Group and noted that there were a number of places of worship that held services during the affected hours. The Council's equality duties under section 149 of the Equalities Act 2010 were specifically referred to. The report recommended that the Council formally consult with a view to extending the hours of control in residents' bays, but in a smaller area than originally proposed, focussing upon the Queensdale Road area in which about two-thirds of residents were in favour of extending controls. The table below summarises the survey results for the Queensdale Road area:

	Support	Against
Weekday evening controls	203	103
Saturday afternoon controls	215	92
Sunday afternoon controls	213	87

17. In accordance with the Council's Scheme of Delegation, this was a key decision to be taken by a Lead Member. On 31 January 2019, the Lead Member for Streets, Planning and Transport (Councillor Will Pascall) approved the recommendation in the report.

18. Statutory consultation took place, in accordance with the procedure set out in the Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996, between 8 February and 1 March 2019. Consultation letters, with a link to the Key Decision Report, were sent to everyone who had responded to the informal consultation. In addition, the Council posted 91 street notices in the area and placed advertisements in the London Gazette and a local paper.

19. The Council received 429 objections in response to the consultation. 309 objected on the basis that it would limit their ability to worship at the Gurdwara. 78 objected on the basis that it would limit their ability to worship at the Holland Park Synagogue. 3 objected on that it would limit their ability to worship at St James Church. It appears that the Gurdwara contacted congregation members inviting them to respond, and a member of the Sangat who is a solicitor (Mr Rajvinder Jagdev) drafted a pro forma letter to assist them. I observe that the use of a pro forma does not necessarily

detract from the force of their objections, and as many of them live outside the area, they would not have been sent notice of the consultation by the Council.

20. The First Claimant stated in paragraph 27 of his first witness statement that the W11 Faith Group sent a joint letter dated 1 March 2019 to the Council, by post and by email. However, Ms Horbury's evidence was that it was only sent by email on 9 March 2019, after the consultation period had ended. Furthermore, it was not sent to the email account designated for consultation responses, to which the other objections were sent. Instead it was sent to the Council's "traffic" email account. For these reasons it was not considered to be an objection to the consultation proposals.

21. In the letter of 1 March 2019, the W11 Faith Group expressed disappointment at the Council's decision to proceed to a statutory consultation, as they had been assured by Councillor Julie Mills that a public meeting would be convened to discuss the proposals further. They complained that their earlier letter of 23 July 2018 had been reduced to a "glib summary" in the Council's consultation report, indicating that their submissions had not been given appropriate regard or consideration, and that the public sector equality duty had not been complied with. They alleged that the proposed restrictions would fetter the ability of individuals to worship, in breach of article 9 of the ECHR.

22. The Council invited representatives of the W11 Faith Group to a meeting to discuss the concerns raised in the letter of 1 March 2019. The meeting took place on 2 April 2019. Representatives of the W11 Faith Group were the First Claimant and Mr Jagdev from the Gurdwara, and Rev. Alan Everett from St James Church. Representatives from the Council were the Lead Member for Streets, Planning and Transport (Councillor Pascall); his strategic adviser (Richard Plummer); the Director for Transport Highways Leisure and Parks (Mahmood Siddiqi); and the Chief Transport Policy Officer (Mark Chetwynd). The meeting was also attended by several Ward Councillors, namely Julie Mills and David Lindsay (for Norland Ward) and Arien Areti (for Holland Ward).

23. At the meeting the parking problems in the area were discussed, in particular, with reference to the difficulties that would be experienced by those attending religious services if the hours of controlled parking were extended as proposed. There were differing accounts as to what, if any, representations about the next steps were made by the Council at the meeting, which I will consider in the context of the legitimate expectation and consultation challenge.

24. On 3 May 2019, Mr Chetwynd sent an email to the First Claimant which stated:

> "Further to the meeting about parking controls on 2 April I wonder whether a colleague and I might come to visit you at the Gurdwara at your earliest convenience? We would like to discuss some possible next steps with you, and it would be helpful to us to do that on-site. We have pretty good availability next week, after the Bank Holiday, and hope to be able to meet sometime that week…"

25. The First Claimant replied on 8 May 2019, explaining that he had been away for a few days, and saying:

> "Let me reach out to the other faith leaders and find out what days and times they could look to join us for a meeting with you at the Gurdwara."

26. On 13 May 2019, Mr Chetwynd emailed the First Claimant stating:

> "Many thanks for your reply, and for your kind offer to reach out to the other faith leaders. I will wait to hear when might be convenient for them, and of course understand that it will take a little while to find a date that works for all.
>
> In the meantime I wonder whether it would be possible to catch up with you at the Gurdwara to have a look in more detail at your specific local parking situation, particularly the idea of a dropped kerb?"

27. It is clear that Mr Chetwynd was requesting a visit to the Gurdwara to look at parking facilities, separately from the First Claimant's suggestion of a meeting with a group of faith leaders. The First Claimant did not reply, and Mr Chetwynd emailed again on 5 June 2019 explaining that the new lead member was seeking to expedite this matter and hold the meeting in the next fortnight. If that could not be achieved, the lead member and the director would "need to take a view on how to proceed to a resolution". The email stated:

> "…I am writing to make you aware, in case you are not already, that Cllr Will Pascall, whom you met earlier this year, is no longer the Council's lead member for Streets, Planning and Transport. He is now the Council's Mayor). The Council has recently appointed two new lead members to cover Cllr Will Pascall's old portfolio:
>
> Cllr Cem Kemahli is lead member for the Environment (including parking policy and operations) and
>
> Cllr Johnny Thalassites is lead member for Planning and Transport"
>
> Cllr Kemahli is keen for the Council to come to a conclusion on the outcome of the statutory traffic order consultation on extended hours of parking control in the Queensdale Road area. I am sure that you and others who responded to either the informal consultation 10 months ago, or the statutory consultation earlier this year, would like to reach some closure on the subject. Cllr Kemahli has asked me to let you know that he would be pleased to meet with you and the other faith leaders to hear your views directly, and has asked officers to expedite this in the next week or so.
>
> I am conscious that it is now a month since I first emailed you regarding a meeting and we do not yet have a date in the diary. I am hoping that as I know you have kindly been laying the

> ground work for this meeting that it should be possible to find a convenient date by mid-June.
>
> Would you please confirm at your earliest convenience that you would like to meet in the next fortnight and suggest some dates? If that's not going to be achievable, Cllr Kemahli and the Director, Mahmood Siddiqi, will need to take a view on how to proceed to a resolution."

28. The First Claimant did not reply, and so on 11 June Mr Chetwynd forwarded his 5 June email to the entire W11 Faith Group with a covering message stating:

> "Please see below an email sent to Gurpreet at the Gurdwara last week, regarding the possibility of a meeting with the new Lead Member with responsibility for parking, Cllr Cem Kemahli."

29. The First Claimant eventually replied by email on 18 June 2019, at 0929, stating:

> "It has been difficult to try to get everyone together on a mutually convenient date, however 6 pm on Monday 24th June seems to be the best date where most of the faith groups can attend and we would be happy to host the meeting at the Gurdwara…."

30. Mr Chetwynd replied later on 18 June 2019, at 1557, in the following terms:

> "Thank you for your email and for agreeing to meet with us. As you know we are keen to meet you but I'm afraid that Cllr Kemahli has a prior engagement next Monday evening. He offers that he could meet earlier in the day on the 24th, and also has good availability on the 25th. Would either of these suit?
>
> You should also be aware that, as I indicated would happen in my earlier email, the Council has made its decision on the question of the hours of control on residents' bay. Having taken account of the original consultation responses, the representations received during the February consultation on the traffic orders, and also having conducted an Equality Impact Assessment, the Council has decided to extend the hours of control on residents' bays in the area indicated in the February consultation….
>
> …..
>
> Whilst I appreciate that this will be disappointing news, please note that there will still be 134 pay and display and single yellow line spaces which will be available for general visitor parking. We are still keen to meet with you to discuss the opportunities we believe exist to increase the number of blue badge bays in the immediate vicinity of buildings used by the

> faith groups in the affected area and I hope you will be able to meet us on the 24th or 25th June."

31. The First Claimant responded on the same day stating:

> "We are extremely disappointed that the decision has been taken without any regard to the objections made. Can you share a copy of the Equality Impact Assessment?
>
> I will check with the other faith leaders on their availability for the suggested dates and times however this would be without prejudice to our objections to the extended hours and that we reserve our rights to challenge this as appropriate."

32. The First Claimant's email offering a date for a meeting in a week's time was sent to the Council on the same day that the Director of Transport made the decision to extend the resident parking controls. This was more than six weeks from the original request on 3 May 2019. The First Claimant's explanation for the delay was that he did not appreciate that there was any urgency, and at that time the Gurdwara was heavily involved with the community preparations for the second anniversary commemoration of the Grenfell Tower disaster.

33. On 17 June 2019, the Council's Equality Impact Analysis ("EIA") and officer report was completed.

34. In accordance with the Council's scheme of delegation, the decision to extend the resident parking controls was made by the Director of Transport, Mr Siddiqi, on 18 June 2019. He accepted the officer recommendations to extend the hours of residents' parking and to "meet and discuss with each of the faith groups in the proposed area the opportunities we believe exist to increase the number of blue badge bays in the immediate vicinities of their buildings". The report appended the letter of 23 July 2018 from the W11 Faith Group, and set out in the body of the report the main points made by the Faith Group in their objections, and the Council's response.

35. Section 3 of the report summarised the objections received in the statutory consultation. Section 4 set out the Council's response, as follows:

> "4.1 I am mindful of the objections raised by worshippers who travel into the area and appreciate that this will affect their ability to park close to their places of worship during some of their services. I accept that some worshippers may travel some distance across London in order to worship, but the area is well-served by public transport with an Underground station and National Rail station close by at Shepherd's Bush and several bus routes passing along Holland Park Avenue and St Ann's Villas. There are 134 available spaces for general visitor parking in pay and display bays and single yellow line and four existing blue badge bays which will still be available for worshippers to park on ….

> 4.2 I appreciate that some worshippers are disabled and unable to walk long distances, so I propose that we meet and discuss with each of the faith groups in the proposed area, the opportunities we believe exist to increase the number of blue badge bays in the immediate vicinities of their buildings.
>
> 4.3 The full consideration of the faith groups' objections is contained in the Council's Equality Impact Analysis attached as Appendix D.
>
> 4.4 There are older and disabled residents who may have to walk large distances from their parking location to their property outside the current hours of parking control on residents' bays. These older and disabled residents must take priority over older and disabled non-residents, who are likely to be impacted by this proposal for only a small proportion of their regular journeys….
>
> ……
>
> 4.8 Whilst demand for parking from people shopping at Westfield may diminish over time as a result of a decline in retail shopping, this would take many years to have a significant impact on demand.
>
> 4.9 I agree that the extended hours of control on residents' bays will apply equally to visitors to residents as well as to visitors to other attractions in the area. However, it is clear from the response to the July 2018 consultation that the majority of residents in the area were in favour of the extended hours of control and I cannot ignore their wishes."

36. The reference to Westfield Shopping Centre at paragraph 4.8 of the report is relevant in light of Mr Armstrong's complaint that the Council failed to have regard to the possibility of reducing the impact of Westfield shoppers on parking in the area.

37. The Council initially overlooked 61 objections and had to revise the report and the EIA to take account of them. In the light of the revised documents, the Director confirmed his decision of 18 June 2019 on 25 June 2019. The No. 5 Order was formally made on 4 July 2019.

Statutory framework

38. Section 45 of the 1984 Act empowers a local authority to designate, by order, parking places on highways. Section 45(2) permits the local authority to designate a parking place for use (either at all times or at times specified in the order) only by such persons or vehicles, of a class specified in the order, as may be authorised for that purpose by a permit from the authority operating the parking place.

39. Section 45(3) requires the local authority, in determining what parking places are to be designated under that section, to have regard to (a) the need for maintaining the free movement of traffic, (b) the need for maintaining reasonable access to premises; and (c) the extent to which off-street parking accommodation is available or is likely to be encouraged there by the designation of parking places.

40. Section 124 gives effect to Schedule 9 of the 1984 Act in relation to the making, variation, revocation, and validity of orders under the provisions of that Act. Part III of Schedule 9 sets out the procedure for the making of orders.

41. Paragraph 21 of Schedule 9 empowers the National Authority to make regulations setting out that procedure. Insofar as relevant those regulations are the Local Authorities' Traffic Order (Procedure) (England and Wales) Regulations 1996.

42. Regulation 6 requires the local authority, in certain circumstances, to consult prescribed statutory consultees before making a TMO.

43. Regulation 7 requires proposals to be published in a newspaper circulating in the area, and in the London Gazette. It also requires the authority to take such other steps as it may consider appropriate for ensuring that adequate publicity about the order is given to persons likely to be affected by its provisions and says that such steps may include (i) the display of notices in roads or other places affected by the order; or (ii) the delivery of notices or letters to premises likely to be affected by any provision in the order.

44. Paragraph 35 of Schedule 9 provides:

> "If any person desires to question the validity of, or of any provision contained in, an order to which this Part of this Schedule applies, on the grounds –
>
> (a)that it is not within the relevant powers, or
>
> (b)that any of the relevant requirements has not been complied with in relation to the order,
>
> he may, within 6 weeks from the date on which the order is made, make an application for the purpose to the High Court …."

45. Paragraph 35 provides for a statutory review, on judicial review/public law grounds (*Westoby v London Borough of Brent* CO/1670/87 14 February 1989). It does not permit a review of the merits of the decision. Case law on the comparable statutory review procedures in the planning sphere, under sections 288 and 289 Town and Country Planning Act 1990, confirm the scope of a statutory review: see *Newsmith Stainless Ltd v Secretary of State for the Environment* [2017] PTSR 126, per Sullivan J. at [8]-[9]; *Seddon Properties Ltd v Secretary of State for the Environment* (1981) 42 P & CR 26.

46. Paragraph 36 confers on the court power to make interim orders, and on a final determination to quash the order, either generally, or so far as may be necessary for the protection of the interests of the applicant.

Grounds of challenge

47. There were some difficulties in identifying Mr Armstrong's grounds of challenge with precision, as he presented so many different formulations in his written and oral submissions. Understandably, Mr Streeten complained about the difficulties of responding to a moving target.

48. In the Statement of Facts and Grounds, the Claimants pleaded three grounds: (1) failure to consult; (2) failure to discharge the public sector equality duty under section 149 of the Equality Act 2010; and (3) irrationality.

49. On ground 1 (consultation), the Claimants pleaded that:

    i) the Council acted unfairly in deciding to make the No. 5 Order, on 18 June 2019, in breach of the Claimants' legitimate expectation, arising from a promise made to them, by Mr Pascall, on behalf of the Council, at the meeting on 2 April 2019, that before a final decision was made, the Council would consult them further, at a meeting;

    ii) the consultation was inadequate because consultees were not at any stage adequately informed of the potential impact of an extension of parking restrictions on the Gurdwara and other religious institutions.

50. On ground 2 (the public sector equality duty), the Claimants pleaded that:

    i) the Council's data about the age and disability of worshippers was inadequate and the financial consequences for the Gurdwara were not considered;

    ii) it was irrational to conclude that worshippers could use public transport, and that those with limited mobility could be dropped off by third parties, and that there were alternative parking spaces, without any evidential basis in support;

    iii) there had been no proper or conscientious focus on the statutory criteria.

51. On ground 3 (irrationality), the Claimants pleaded that there were "specific irrationalities" in the Council's analysis, namely, that it was irrational to extend the parking restrictions when the parking spaces were 20% to 25% empty at those times, and that two residents with a purple badge but without their own designated parking bay outweighed the needs of a local congregation.

52. In his skeleton argument, Mr Armstrong adopted a narrative approach and made the following further submissions:

    i) that the informal consultation in 2018 was inadequate because it did not seek suggestions for solutions to the parking problems;

ii) that the executive decision report of 17 January 2019 did not include adequate analysis or data about the extent of the impact on the religious institutions, the number of congregants and the extent to which they exhibited protected characteristics;

iii) at the meeting of 2 April 2019, Council members expressed concern about the adequacy of the data obtained by the consultations;

iv) at the meeting of 2 April 2019 the Council promised not to make a decision until further data gathering and assessment had been done, and the Claimants expected that they would have the opportunity to provide more information at the further meeting which had also been promised. Instead the Council "rushed into" making the No. 5 Order, unfairly and in breach of the Claimants' legitimate expectation arising from the Council's promises;

v) the consultation was not sufficient to discharge the common law expectation as it did not ask proper questions and failed to seek further information, enabling a proper decision to be taken;

vi) the Council made its decision without sufficient information about the extent of the impact on the religious institutions;

vii) the Council made its decision without first addressing mitigating measures of the type which have subsequently been discussed with the Council, such as visitor permits, more pay and display bays, and discussions with the Westfield Shopping Centre, whose shoppers parked in the area in the evenings and weekends.

53. As there was no application to amend the Statement of Facts and Grounds, I treated these submissions as supplementary to the Claimants' pleaded case.

54. At the hearing, Mr Armstrong conceded that the statutory consultation was lawful and that he did not seek to challenge it. When asked upon what basis the consultation was unlawful at common law, he stated that he only relied upon the legitimate expectation of further consultation arising from the 2 April 2019 meeting. He considered, on reflection, that his complaints about the adequacy of the consultation were better dealt with as part of his submissions on the public sector equality duty. He did not address the pleaded irrationality ground either in his skeleton argument or his oral submissions.

55. Mr Streeten responded to the grounds of challenge as follows:

i) The Council undertook a lawful consultation and took the consultation responses into account.

ii) There was no representation of sufficient clarity and precision to establish a legitimate expectation of further consultation, in particular a meeting, before the Council made its decision.

iii) Even if a legitimate expectation of a further meeting had arisen (which was denied) the First Claimant failed to co-operate in arranging a meeting. Therefore it was not unfair to proceed to make a decision.

iv) The Council carried out an Equality Impact Assessment which carefully considered the impact of the decision on individuals with protected characteristics. In making its decision, the Council applied the relevant statutory criteria, and there was no breach of the public sector equality duty.

56. Mr Streeten objected to the admission of evidence which related to matters which emerged after the date of the decision under challenge. He submitted that it was wrong in principle to have regard to evidence which was not before the decision-maker, save in exceptional circumstances which did not arise here: see *R (Powis) v Secretary of State for the Environment* [1981] 1 WLR 584. Mr Streeten further submitted that much of this material, such as the survey of congregants organised by the Claimants in August 2019, was directed at the merits of the Council's decision, and so fell outside the scope of this statutory review. I accept Mr Streeten's submissions and so I have not taken into account the post-decision evidence.

Conclusions

Consultation

57. The duty to consult may arise by statute or at common law. In either case, where a public authority consults, it must do so fairly, and provide sufficient reasons for the proposal to enable consultees to consider it: *R (Moseley) v LB Haringey* [2014] 1 WLR 2947, per Lord Wilson, at [23]-[24].

58. It was conceded by the Claimants that the statutory consultation undertaken by the Council was lawful and in accordance with the Procedure Regulations. In my view, that left limited scope for a common law challenge. In *R (Hillingdon LBC) v Lord Chancellor* [2008] EWHC 2684 (QB), the Divisional Court held, per Dyson J. at [38]:

> "…I am aware of no authority for the proposition that, where Parliament has prescribed the nature and extent of consultation, a wider duty of consultation may exist at common law (in the absence of a clear promise or an established practice of wider consultation by the decision maker)."

59. Aside from the complaints about failure to comply with a legitimate expectation and to discharge the public sector equality duty, the Claimants' submission that the consultation was unlawful at common law because the questions and the information provided to consultees was inadequate could not, in my view, succeed. In *R (Greenpeace) v Secretary of State for Trade and Industry* [2007] Env LR 29, Sullivan J. said, at [62]–[63]:

> "62….. Even a consultation exercise which is flawed in a number of respects is not necessarily so procedurally unfair as to be unlawful. With the benefit of hindsight, it will almost invariably be possible to suggest ways in which a consultation

> exercise might have been improved upon. That is most emphatically not the test. It must also be recognised that a decision-maker will usually have a broad discretion as to how a consultation exercise should be carried out….
>
> 63. In reality, a conclusion that a consultation exercise was unlawful on the ground of unfairness will be based upon a finding by the court, not merely that something went wrong, but that something went "clearly and radically" wrong."

60. In this case, the Council had a wide discretion as to how to frame the 2019 consultation document, including how much information to provide to consultees about the position of the Gurdwara and other religious institutions. The consultation document contained a link to the report of 17 January 2019, in which the Council informed consultees of the letter of objection received from the faith groups (which were listed), and explained that differing faiths worshipped on different days, including weekday evenings, Saturdays and Sundays. The Council also pointed out that the proposed times of control were not unusual in the Borough, and there were many places of worship in the area with the same longer controlled parking hours. In my judgment, the Council's decision to summarise the position of the faith groups in this way was not so unfair as to be unlawful, applying the *Greenpeace* test.

61. In so far as the 2018 informal consultation is relevant (it is not the subject of legal challenge, and any such challenge would now be out of time), it was a matter for the Council to decide which questions to ask consultees. In my view, it was appropriate to ask consultees for their views on the proposal, which was to extend the hours of residents' controlled parking. Fairness did not require questions about alternative solutions which the Council were not considering at that time.

Legitimate expectation

Legal principles

62. It is well-established that a legitimate expectation may arise from an express promise given on behalf of a public authority. In *Paponette & Ors v Attorney General of Trinidad and Tobago* [2010] UKPC 32, Lord Dyson summarised the principles to be applied as follows:

> "37. The initial burden lies on an applicant to prove the legitimacy of his expectation. This means that in a claim based on a promise, the applicant must prove the promise and that it was clear and unambiguous and devoid of relevant qualification. If he wishes to reinforce his case by saying that he relied on the promise to his detriment, then obviously he must prove that too. Once these elements have been proved by the applicant, however, the onus shifts to the authority to justify the frustration of the legitimate expectation. It is for the authority to identify any overriding interest on which it relies to justify the frustration of the expectation. It will then be a matter

> for the court to weigh the requirements of fairness against that interest.
>
> 38. …… The Board agrees with the observation of Laws LJ in *Nadarajah v Secretary of State for the Home Department* [2005] EWCA Civ 1363 at para 68: "The principle that good administration requires public authorities to be held to their promises would be undermined if the law did not insist that any failure or refusal to comply is objectively justified as a proportionate measure in the circumstances."

63. In the earlier case of *R v North and East Devon Health Authority ex parte Coughlan* [2001] QB 213, Lord Woolf MR considered that, where there is a legitimate expectation of consultation:

> "… it is uncontentious that the court itself will require the opportunity for consultation to be given unless there is an overriding reason to resile from it (see *Attorney General of Hong Kong v Ng Yuen Shiu* [1983] 2 AC 629) in which case the court will itself judge the adequacy of the reason advanced for the change of policy, taking into account what fairness requires." (at [57]).

64. In this category of case (described as the second category), Lord Woolf explained that "the court's task is the conventional one of determining whether the decision was procedurally fair" (at [58]).

65. In order to found a claim of legitimate expectation, "… it is necessary that the ruling or statement relied upon should be clear, unambiguous and devoid of relevant qualification" (*R v Inland Revenue Comrs, Ex p MFK Underwriting Agents Ltd* [1990] 1 WLR 1545, per Bingham LJ at 1569G). In *R (Bancoult) v Foreign Secretary (No. 2)* [2009] 1 AC 453, Lord Hoffmann approved this test, at [60], and added "the question is what the statement unambiguously promised" (at [62]).

66. In *R (South West Water) v Falmouth and Truro Port Health Authority* [2001] QB 445, Simon Brown LJ emphasised the need for "the clearest of assurances" where it is alleged that a particular procedure must be followed, which is not otherwise required by law:

> "2. Legitimate expectation
>
> Did the letter of 29 April 1998 give rise to a legitimate expectation of consultation? This category of case I identified as follows in *R v Devon County Council, Exp Baker* [1995] 1 All ER 73, 89:
>
>> "(4) The final category of legitimate expectation encompasses those cases in which it is held that a particular procedure, not otherwise required by law in the protection of an interest, must be followed consequent upon some specific promise or practice.

> Fairness requires that the public authority be held to it. The authority is bound by its assurance, whether expressly given by way of a promise or implied by way of established practice. *R v Liverpool Corpn Ex p Liverpool Taxi Fleet Operators' Association* [1972] 2 QB 299 and *Attorney General of Hong Kong v Ng Yuen Shiu* [1983] 2 AC 629 are illustrations of the court giving effect to legitimate expectations based upon express promises; *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 an illustration of a legitimate expectation founded upon practice albeit one denied on the facts by virtue of the national security implications."

Mr Havers for the water undertaker put this case on the basis of an express promise, submitting that the letter at one and the same time both promised and initiated a consultation process. To my mind it did no such thing. It seems to me a very far cry from, for example, the assurance given in *Attorney General of Hong Kong v Ng Yuen Shiu* [1983] 2 AC 629 that each illegal entrant would be interviewed and his case treated on its merits, of which Lord Fraser of Tullybelton giving the judgment of the Privy Council said, at p 638:

> "The justification for [the principle that a public authority is bound by its undertakings] is primarily that, when a public authority has promised to follow a certain procedure, it is in the interest of good administration that it should act fairly and should implement its promise, so long as implementation does not interfere with its statutory duty."

Once one accepts (as the judge did, and as I do too) that consultation was "not otherwise required by law", then only the clearest of assurances can give rise to its legitimate expectation: see *R v Inland Revenue Comrs, Ex p MFK Underwriting Agents Ltd* [1990] 1 WLR 1545,1569-1570, and that is not to be found in this letter"

67. In construing the representation, the question for consideration is how, on a fair reading of the statement, it would have been reasonably understood by those to whom it was made: *R (Association of British Civilian Internees: Far East Region) v Secretary of State for Defence* [2003] QB 1397, per Dyson LJ, at [56]. This is an objective test. The court is not concerned with a claimant's subjective views as to either a representation having been made or its content. Thus, a claimant's subjective assessment of a representation as being a clear and unambiguous promise may be rejected if unsupported by the totality of the evidence.

The representations in this case

68. The Claimants' pleaded case was that the Council acted unfairly in deciding to make the No. 5 Order, on 18 June 2019, in breach of the Claimants' legitimate expectation, arising from a promise made to them, by Mr Pascall, on behalf of the Council, at the meeting on 2 April 2019, that before a final decision was made, the Council would consult them further, at a meeting.

69. Mr Armstrong's supplementary submission in his skeleton argument was that, at the meeting of 2 April 2019, the Council promised not to make a decision until further data gathering and assessment had been done, and the Claimants expected that they would have the opportunity to provide more information at the further meeting which had also been promised. Instead the Council "rushed into" making the No. 5 Order, unfairly and in breach of the Claimants' legitimate expectation arising from the Council's promises.

70. In paragraph 29 of the First Claimant's first witness statement, made on 17 July 2019, he said:

> "At that meeting Mr Pascall informed me that in view of the concerns we had made, he would be directing a "moratorium" (his words) in respect to the New Restrictions until the position had been considered further and there had been further consultation with us (and other members of the W11 group). As far as we were concerned the matter was on hold until RBKC came forward with a compromise solution. We did not appreciate that it was prepared to put in place the New Restrictions despite our objections nor that there was any deadline by which this consultation had to be concluded. I have attached at pages 49 to 50 an email from Mr Jagdev which confirms my recollection of the words used by Mr Pascall."

71. In an email dated 12 July 2019 to the Claimants' solicitors, Mr Jagdev said:

> "At the end of the meeting Councillor Pascal assures is *[us?]* that he would impose a moratorium on the proposed extension of controlled hours and that nothing would happen until the council had considered the proposed extension further. He assured us that we would remain informed at all stages. I was shocked and surprised to learn that the Council has decided to press ahead with the extension of the controlled hours. Although the timeframe of the moratorium was not set out, I would not have expected a moratorium to end within two months of it beginning. There was no indication whatever to the Gurdwara … that the Council had made this decision."

72. Rev. Everett said, in an email dated 16 July 2019 to Mr Anand:

> "My recollection of the meeting on 2 April with the council is that no decisions would be made about the proposed parking restrictions in Norlands Ward in a hurry. The chairman was

> emphatic on this point. The impression I took away was that there would be a further period of reflection and – we hoped – transparent consultation."

73. In my judgment, the Claimants have failed to establish that the Council made a clear and unambiguous promise to them that it would not extend the controlled parking hours without further consulting the Claimants.

74. The evidence adduced by the Claimants was inconsistent on the key point. Although Mr Anand's evidence was that Mr Pascall had said the Council would consult them further, Mr Jagdev made no mention of a promise to consult, and merely said that they would be kept informed. Rev. Everett was careful to distinguish between Mr Pascall's "emphatic" assurance that no decisions would be made in a hurry, and the mere hope on the part of the W11 Faith Group participants that there would be further consultation.

75. All three witnesses on behalf of the Claimants were recalling events some 3 months after the meeting took place. They did not make any contemporaneous notes. In those circumstances, I consider that the contemporaneous notes taken at the meeting by Mr Chetwynd and Mr Plummer, and confirmed by the decision-maker, Mr Siddiqi, were much more likely to be a reliable and accurate account.

76. Mr Chetwynd took contemporaneous notes during the meeting. These identified further issues for consideration by the Council, including exploring the feasibility of creating off-street parking at the Gurdwara by dropping the kerb. The availability of off-street parking is a factor to be considered under section 45(3) of the 1984 Act. However, there was no reference to Mr Pascall imposing a moratorium or further consulting the Claimants. Mr Chetwynd said in his witness statement, at paragraph 7:

> "Councillor Pascall may have suggested that there should be a future meeting on site but he did not make a clear and explicit promise to take no further action absent such a meeting. He simply said that RBKC would consider the matter further. That is what happened."

77. Mr Plummer also made contemporaneous notes of the meeting. At the beginning of the meeting, he recorded a member stating on behalf of the Council (presumably Mr Pascall) saying:

> "1. Members stressed that no firm decision had been made yet regarding how to apply parking charges on Queensdale Rd. It was stressed that officers and Members were keen to look for compromise between the Council and faith groups to ensure fairness."

78. In my view, the opening statement that no decision had yet been made and the Council was looking for a compromise with the faith groups to ensure fairness set out the position as at that meeting. It cannot be elevated into a promise of a further meeting (i.e. beyond the meeting of 2 April) before any decision was made. Nor does it expressly state or even imply a moratorium on the issue of extending resident parking restrictions in the area.

79. Mr Plummer's note shows that the Council explained its position to the Claimants on the supplementary issues which were raised by Mr Armstrong:

    i) Officers had made efforts to contact the Westfield Centre to discuss the issue of parking, but that it had little influence. The Westfield Centre was within the Borough of Hammersmith & Fulham, whose council "also had some issues with Westfield and were potentially acting in the near future to alleviate this issue" (point 6).

    ii) On the basis of the survey results, officers considered the average notional parking occupancy rate of 80% at evenings and weekends to be high, and that significant numbers of non-resident cars had been noted in the initial survey (point 3).

80. Mr Plummer's note shows that the Council identified the following topics for further consideration:

    i) "7. …. It was noted that the greatest support for controls were on weekends and that weekday controls were not as well received. Officers noted that they could bring back consultation results to consider whether weekday controls could be considered separately."

    ii) "9. Officers noted that the right to park is not considered a blocker to worship. Officers did note, however, that it would reassess its report as published to include the issue of human rights and that this is carefully considered as part of decision making process."

    iii) "10. Officers noted that there was <u>a potential</u> to consult <u>other</u> faith groups in areas affected by the parking restrictions to ascertain if there are any major detriments and incorporate this into any future report." *(emphasis added)*

81. The only reference to further consultation was at point 10 above. On my reading, this referred to "other" faith groups, not those present at the meeting whom the Council was already consulting. Furthermore, a "potential to consult" fell well short of a promise to consult.

82. Addressing Mr Armstrong's supplementary submission, the Council's notes do not support the contention that the Council promised not to make a decision until further data gathering had been done. Taking the evidence at its highest, there was a representation that the Council would give further consideration to the issues, before making a decision, which they duly did. Nor do the Council's notes support the contention that there was a promise that the Claimants would be given an opportunity to provide more information at a further meeting. Of course, the Claimants could have submitted further information to the Council of their own volition, following the meeting of 2 April 2019, but they did not do so.

83. The Claimants relied upon the Council's subsequent requests to meet them as evidence in support of a promise to that effect given at the meeting on 2 April 2019. I accept Mr Streeten's submission that the emails from Mr Chetwynd do not support this submission. His email of 3 May did not expressly or impliedly state that a meeting had already been agreed in principle. On the contrary, when he wrote "I

wonder whether a colleague and I might come to visit you at the Gurdwara at your earliest convenience?", he was making a somewhat tentative request which he appeared to think might or might not be agreed to by the First Claimant. Importantly, it is also clear from his emails of 3 and 13 May that the purpose of the proposed visit was to view the parking facilities at the Gurdwara, and the possible off-site parking. The Council was not seeking to have a meeting with the W11 Faith Group to receive further information from them on the proposed extension of residents parking controls. It was the First Claimant who suggested that the Council should meet with the W11 Faith Group. The Council agreed, and Cllr Kemahli (the new lead member) said he would be pleased to meet with them and hear their views. The email of 5 June 2019 indicated that any such meeting would have to take place within a fortnight, as the lead member and the Director for Transport, Highways, Leisure and Parks wished to "come to a conclusion on the outcome of the statutory traffic order consultation". In my view, these emails did not expressly or impliedly state that this was a planned meeting, nor was there any suggestion that Council considered that there was a moratorium in place which prevented it from taking a decision until after a further meeting with the Claimants. Mr Chetwynd stated that, if it was not possible to arrange a meeting within the next fortnight, the lead member and the Director of Transport would proceed to a resolution of the issue. As the First Claimant did not offer a meeting date within the following fortnight, the Council proceeded to make its decision. This chain of events, and the email exchanges, do not lend support to the Claimants' contention that there was a promise of a further meeting before a decision was made.

84. I cannot accept Mr Armstrong's submission that the Council rushed into making the No. 5 Order. The initial occupancy survey was in March 2018 and the Order was not made until July 2019. Following the meeting on 2 April 2019, the Council waited eleven weeks before making its decision.

85. Mr Streeten relied upon the general principle in *R v Hull Visitors ex p. St Germain* [1979] 1 WLR 1401 that "where there is a conflict of evidence as to a point on which the dispute turns, the court will decline to interfere", per Geoffrey Lane LJ at 1410H. In my judgment, in this case, the Claimants' evidence was inconsistent and less reliable than the Council's evidence. I conclude that the Claimants failed to discharge the burden of proof which rests upon them to establish the promise on which their claim for legitimate expectation was based. Therefore the claim for legitimate expectation fails.

Public sector equality duty

86. Section 149 of the Equality Act 2010 provides:

> "**149 Public sector equality duty**
>
> (1) A public authority must, in the exercise of its functions, have due regard to the need to—
>
> > (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

……

(3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;

(b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;

(c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

……

(5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

(a) tackle prejudice, and

(b) promote understanding.

(6) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.

(7) The relevant protected characteristics are—

age;

disability;

gender reassignment;

> pregnancy and maternity;
>
> race;
>
> religion or belief;
>
> sex;
>
> sexual orientation.
>
> ..."

87. The public sector equality duty has been the subject of detailed consideration by the courts over the years. As Elias LJ held in *R (Hurley & Moore) v Secretary of State for Business, Innovation and Skills* [2012] EWHC 201 (Admin) at [78], there must be a proper and conscientious focus on the statutory criteria.

88. In *R (Baker) v Secretary of State for Communities and Local G*overnment [2008] EWCA Civ 141, [2009] PTSR 809, Dyson LJ. said:

> "31. In my judgment, it is important to emphasise that the section 71(1) duty is not a duty to achieve a result, namely to eliminate unlawful racial discrimination or to promote equality of opportunity and good relations between persons of different racial groups. It is a duty to *have due regard to the need* to achieve these goals. The distinction is vital. Thus the Inspector did not have a duty to promote equality of opportunity between the appellants and persons who were members of different racial groups; her duty was to have due regard to the need to promote such equality of opportunity. She had to take that need into account, and in deciding how much weight to accord to the need, she had to have *due regard* to it. What is *due regard*? In my view, it is the regard that is appropriate in all the circumstances. These include on the one hand the importance of the areas of life of the members of the disadvantaged racial group that are affected by the inequality of opportunity and the extent of the inequality; and on the other hand, such countervailing factors as are relevant to the function which the decision-maker is performing."

89. In *R (Brown) v Secretary of State for Work and Pensions* [2008] EWHC 3158 (Admin) [2009] PTSR 1506, Aikens LJ said, at [82]:

> "82…….There must be a proper regard for all the goals that are set out in *[the statute]*, in the context of the function that is being exercised at the time by the public authority. At the same time, the public authority must pay regard to any countervailing factors which, in the context of the function being exercised, it is proper and reasonable for the public authority to consider. What the relevant countervailing factors are will depend on the function being exercised and all the circumstances that impinge

> upon it. Clearly, economic and practical factors will often be important be important. Moreover, the weight to be given to the countervailing factors is a matter for the public authority concerned, rather then the court, unless the assessment by the public authority is unreasonable or irrational: see Dyson LJ's judgment in *Baker's* case para 34."

90. In *Moore and Coates v Secretary of State for Communities and Local Government & Ors* [2015] EWHC 44 (Admin), Gilbart J. provided a helpful summary of the law on the public sector equality duty, at [109] – [111]:

> "109. In *Bracking v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345, para 26 McCombe LJ summarised the principles to be derived from the authorities on s.149, as follows:
>
> > "(1) As stated by Arden LJ in *R (Elias) v Secretary of State for Defence* [2006] EWCA Civ 1293 at 274, [2006] IRLR 934, [2006] 1 WLR 3213, equality duties are an integral and important part of the mechanisms for ensuring the fulfilment of the aims of anti-discrimination legislation.
> >
> > (2) An important evidential element in the demonstration of the discharge of the duty is the recording of the steps taken by the decision maker in seeking to meet the statutory requirements: *R (BAPIO Action Ltd) v Secretary of State for the Home Department* [2007] EWCA Civ 1293, [2006] IRLR 934, [2006] 1 WLR 3213 (Stanley Burnton J (as he then was)).
> >
> > (3) The relevant duty is upon the Minister or other decision maker personally. What matters is what he or she took into account and what he or she knew. Thus, the Minister or decision maker cannot be taken to know what his or her officials know or what may have been in the minds of officials in proffering their advice: *R (National Association of Health Stores) v Department of Health* [2005] EWCA Civ 154 at 26–27] per Sedley LJ.
> >
> > (4) A Minister must assess the risk and extent of any adverse impact and the ways in which such risk may be eliminated before the adoption of a proposed policy and not merely as a "rearguard action", following a concluded decision: per Moses LJ, sitting as a Judge of the Administrative Court, in *Kaur & Shah v LB Ealing* [2008] EWHC 2062 (Admin) at 23–24.

(5) These and other points were reviewed by Aikens LJ, giving the judgment of the Divisional Court, in *R (Brown) v Secretary of State for Work and Pensions* [2008] EWHC 3158 (Admin), [2009] PTSR 1506, as follows:

i) The public authority decision maker must be aware of the duty to have “due regard” to the relevant matters;

ii) The duty must be fulfilled before and at the time when a particular policy is being considered;

iii) The duty must be “exercised in substance, with rigour, and with an open mind”. It is not a question of “ticking boxes”; while there is no duty to make express reference to the regard paid to the relevant duty, reference to it and to the relevant criteria reduces the scope for argument;

iv) The duty is non-delegable; and

v) Is a continuing one.

vi) It is good practice for a decision maker to keep records demonstrating consideration of the duty.

(6) [G]eneral regard to issues of equality is not the same as having specific regard, by way of conscious approach to the statutory criteria.” (per Davis J (as he then was) in *R (Meany) v Harlow DC* [2009] EWHC 559 (Admin) at 84, approved in this court in *R (Bailey) v Brent LBC* [2011] EWCA Civ 1586 at 74–75.)

(7) Officials reporting to or advising Ministers/other public authority decision makers, on matters material to the discharge of the duty, must not merely tell the Minister/decision maker what he/she wants to hear but they have to be “rigorous in both enquiring and reporting to them”: *R (Domb) v Hammersmith & Fulham LBC* [2009] EWCA Civ 941 at 79 per Sedley LJ.”

110. McCombe LJ went on to identify three further principles, which may be summarised as follows:

(8) It is for the Court to decide for itself if due regard has been had, but providing this is done it is for the decision maker to decide what weight to give to the equality implications of the decision (following *R*

> *(Hurley & Moore) v Secretary of State for Business, Innovation and Skills* [2012] EWHC 201 (Admin), per Elias LJ at [77]-[78]).
>
> (9) "[T]he duty of due regard under the statute requires public authorities to be properly informed before taking a decision. If the relevant material is not available, there will be a duty to acquire it and this will frequently mean that some further consideration with appropriate groups is required" (*R (Hurley & Moore) v Secretary of State for Business, Innovation and Skills* [2012] EWHC 201 (Admin), per Elias LJ at [89]).
>
> (10) The duty to have due regard concerns the impact of the proposal on all persons with the protected characteristic and also, specifically, upon any particular class of persons within a protected category who might most obviously be adversely affected by the proposal (*Bracking, per* McCombe LJ at [40]).
>
> 111. As to the importance of the second principle, McCombe LJ stated at [60]-[61]:
>
> > "it seems to me that the 2010 Act imposes a heavy burden upon public authorities in discharging the PSED and in ensuring that there is evidence available, if necessary, to demonstrate that discharge. It seems to have been the intention of Parliament that these considerations of equality of opportunity (where they arise) are now to be placed at the centre of formulation of policy by all public authorities, side by side with all other pressing circumstances of whatever magnitude" and "In the absence of evidence of a 'structured attempt to focus upon the details of equality issues' (per my Lord, Elias LJ in *Hurley & Moore*) a decision maker is likely to be in difficulties if his or her subsequent decision is challenged"."

91. Failure to discharge the duty of inquiry led to a breach of the duty in *R (Ward) v London Borough of Hillingdon* [2019] EWCA Civ 692, per Underhill LJ at [71] – [74]. In *R (JM) v Isle of Wight Council* [2011] EWHC 2911 (Admin), I held that the Council did not gather sufficient information to enable it to discharge the public sector equality duty (at [122], [123], [140]).

92. Compliance with the duty is an essential preliminary to a decision: *R (BAPIO Action Ltd) v Secretary of State for the Home Department* [2007] EWCA Civ 1293, per Sedley LJ, at [3]. However, in *R (Unison) v Lord Chancellor* [2015] EWCA Civ 935, [2016] ICR 1, Underhill LJ observed "I can see nothing wrong in making a reasonable judgment and then monitoring the outcome with a view to making any adjustments that may seem necessary: the section 149 duty is ongoing" (at [121]).

93. Mr Armstrong submitted that age and disability were the relevant protected characteristics in this case. He acknowledged that the EIA recognised the impact of the extended restrictions on the elderly and disabled attending places of worship. However, he submitted that the EIA did not assess the extent of that negative impact because it did not have data on the number of congregants who were elderly or disabled, nor how many had blue badges.

94. Mr Armstrong relied upon the passage in the EIA which stated that a decision had been made on the information available as at the meeting of 2 April 2019. The Council had asked for a further meeting at which further information could have been submitted, however, it did not receive dates for a meeting in time. It concluded that it would still meet the faith groups later on to discuss disabled parking further.

95. Based upon Mr Plummer's note of the meeting of 2 April 2019, Mr Armstrong submitted that Council members had concerns about the quality of the data provided for the consultation, expressing the view that work undertaken was not sufficient to gain an accurate snapshot and was not enough to quantify weekdays. I accept Mr Streeten's submission that, on a proper reading of Mr Plummer's and Mr Chetwynd's notes, it was clear that this point was only made by Councillor Julie Mills, on behalf of her constituents in Norland Ward. It was rebutted by the officers present who explained that the survey was sufficient, covered a good snapshot and provided robust datasets, without causing undue strain on resources which a significantly more expansive study would require.

96. Mr Armstrong contended that the Council had not adequately addressed the part played by Westfield Shopping Centre in generating visitor parking. However, Westfield was raised extensively in the consultation responses; discussed at the meeting on 2 April 2019; and referred to in the report on 18 June 2019 when the decision was made.

97. In my judgment, it is apparent from the report of 18 June 2019 and the EIA that the Council understood the nature of the duty and applied the statutory criteria. The report set out and responded to the issues raised at the meeting of 2 April 2019 and the letter of 23 July 2018 from the W11 Faith Group in detail, at section 3.3, based upon the findings in the EIA. The EIA analysed with care the impact upon the elderly, and the disabled. It took into account, as it was required to do by law, the impact upon residents, as well as congregants. It concluded, at page 8:

> "There are older and disabled residents who may have to walk long distances from their parking location to their property outside the current hours of parking control on residents' bays. These older and disabled residents must take priority over older and disabled non-residents because:
>
> 1) Residents have to make more trips to and from the Proposed Area than visitors, on average.
>
> 2) Older and disabled residents are less likely to be able to deal with a shortage of parking by being dropped off close to their home by a third party than disabled and older visitors.

> 3) Older and disabled residents who have difficult making car trips because of parking problems will find that all of their car trips outside the hours of control will be affected whereas for visitors its likely to be only a proportion of all their car trips."

I accept Mr Streeten's submission that this was a rational conclusion which the Council was entitled to reach.

98. In my view, the Council was entitled, in the exercise of its discretion, to conclude that the information which the W11 Faith Group provided in the letter of 23 July 2018, the individual consultation responses from congregants, and at the meeting of 2 April 2019 did provide it with sufficient information upon which it could properly discharge the public sector equality duty. Having recognised and assessed the impact on elderly or disabled congregants, it was not necessary to know their precise number. This case was readily distinguishable on the facts from the *Hillingdon* and *Isle of Wight* cases relied upon by Mr Armstrong. By way of mitigation, the decision on 18 June 2019 was that further dedicated parking provision would be made for disabled congregants with blue badges in discussion with each of the faith groups. It was legitimate to make the decision before the location and extent of the further blue badge provision had been finalised, bearing in mind the delay on the part of the First Claimant and the W11 Faith Group in offering dates for a meeting with the Council in May and June 2019.

99. Finally, both parties referred me to the case of *Hammett v Essex County Council* [2014] EWHC 246 (Admin), [2014] 1 WLR 2562, in which Singh J. dismissed a challenge by a blue badge holder to the authority's decision to move blue badge parking spaces to a less convenient location. Singh J. held:

> "67. There is no doubting the importance of the public sector equality duty. It was originally enacted in part as Parliament's response to the sort of concerns that had been highlighted by the Stephen Lawrence Inquiry, in the Race Relations (Amendment) Act 2000. Subsequently the concept was extended to other contexts such as sex discrimination and disability discrimination. Now it applies more generally in the scheme of the Equality Act.
>
> 68. However, important as the duty is, it also needs to be recalled that it is a procedural duty and does not control the substance of a public authority's decisions. At times it appeared to me that Mr Hogan's submissions on behalf of the Claimant risked straying into the area of substantive decision-making. For example he eloquently submitted that, although the Defendant had rightly decided to provide more designated parking spaces for disabled people, it had put them in the wrong place. He submitted that the Defendant had simply not asked itself whether the alternative provision could in practice be used by people such as the Claimant.

> 69. I do not accept those submissions. In my judgment, the Defendant did, in conjunction with Colchester Borough Council, have due regard to the various matters required of it in section 149 of the Equality Act.
>
> 70. The Defendant carried out two equality impact assessments, the first in September 2011 and the second in July 2012. Although strictly speaking a public authority is not required to carry one out, the fact that it was provides some support for the view that the public sector equality duty was taken seriously and was performed. Clearly this was no cosmetic exercise, since changes were made by the Defendant in its proposals between the two assessments. …
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> …
>
> 76. This was classically a polycentric decision-making context. It was one for the public authority to which Parliament has entrusted such functions, provided of course that it complied with its legal duties. Although the outcome was no doubt disappointing to the Claimant and to others who support the campaign which she chairs, it is important to recall that the public sector equality duty does not require any particular outcome to be achieved by a public authority; rather it imposes a procedural duty (and an important one) to have due regard to various matters in the process by which an outcome is reached."

100. In my view, Singh J. was right to emphasise that the public sector equality duty does not require any particular outcome, and does not enable a disappointed party to challenge the merits of the decision. Just as in the case of *Hammett*, this was "classically a polycentric decision-making context" which was entrusted by Parliament to the Council.

101. In my judgment, the Council was not in breach of the public sector equality duty when deciding to make the No. 5 Order.

Irrationality

102. The Claimants pleaded that there were "specific irrationalities" in the Council's analysis, namely, that it was irrational to extend the parking restrictions when the parking spaces were 20% to 25% empty at those times, and that two residents with a purple badge but without their own designated parking bay outweighed the needs of a local congregation.

103. In my judgment, the Council was entitled, in the exercise of its judgment, to conclude that the occupancy rate of about 80% in the evenings and weekends was high, and the proportion of non-resident vehicles was significant. Council officers can be assumed to have experience of typical occupancy rates in the course of their work. Ms Horbury explained in her witness statement that occupancy rates were notional and

did not necessarily mean that there were available parking spaces. Moreover, occupancy rates were just one aspect of the evidence which the Council took into account when making its decision.

104. I consider it is a misrepresentation of the Council's decision to suggest that two residents with a purple badge but without their own designated parking bay outweighed the needs of a local congregation. The Council did not limit its consideration to two residents. The Council weighed up the competing demands for the use of the available car parking space, and decided to prioritise the needs of residents above non-residents. This was a judgment which they were entitled to make, and whilst some may disagree with the Council's approach, it cannot be characterised as irrational.

Final conclusion

105. For the reasons set out above, the claim is dismissed.