

**Date:** 19 March 2015  
**Your Reference:** L69015/L/LTDA  
**Our Reference:** ABrookes/West End Project /LBC  
**Enquiries to:** Aidan Brookes

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Dear Sirs

### **RESPONSE TO LETTER BEFORE CLAIM IN RELATION TO THE WEST END PROJECT**

1. This letter sets out the response of the London Borough of Camden (“the Council”) to your letter before claim dated 5 March 2015. The proposed claim relates to the decision of the Council’s Cabinet dated 21 January 2015 to approve the detailed design and implementation of a project to redevelop Tottenham Court Road (“TCR”), as part of a wider programme of environmental and highways management (the “West End Project”). The TCR component of the project includes imposition of traffic restrictions to some parts of TCR during particular periods. This response is written in accordance with the pre-action protocol for Judicial Review.
2. In summary, your proposed claim is without merit for the reasons set out at (a) to (d) below. Please be aware that undertaking proceedings in the absence of substantive grounds of challenge may have serious cost implications for your clients.
  - a. Whilst you characterise your claim as a challenge to the Council’s consultation exercise, your letter does not identify any proper grounds for impugning the consultation exercise undertaken by the Council. We note that none of the five grounds of challenge set out in your letter in fact relate to the consultation exercise conducted by the Council. The consultation exercise conducted by the Council plainly complies with the principles set out in *R v North and East Devon Health Authority ex parte Coughlan* [2001] QB 213, recently endorsed by the Supreme Court in *Moseley v London Borough of Haringey* [2014] 1 WLR 3947.
  - b. Rather, your proposed grounds of challenge seek to impugn the merits of the Council’s proposal to impose restrictions on taxi access to parts of TCR during restricted

**Andrew Maughan**  
**Borough Solicitor**

periods. References to taxis here and later in this letter include reference to private hire vehicles which are also affected by the restrictions of which your client complains. The fact that your client may disagree with the Council's reasons for seeking imposing restrictions on taxi access is not a valid ground for judicial review. Your letter does not identify any points which come close to establishing that the decision taken by the Council is irrational.

- c. Further, many of the points made in your letter proceed on an incorrect factual basis. We invite you to re-read the report to Cabinet and its appendices (including the consultation report and EIA) which can be found on the Council's website: <http://democracy.camden.gov.uk/ieDecisionDetails.aspx?AllId=16860>
- d. Without prejudice to the above, any challenge to the proposed taxi restrictions is premature. Any traffic restrictions in relation to the redeveloped TCR will only take legal effect following the making of a traffic regulation order made under the Road Traffic Regulation Act 1984 in accordance with the statutory requirements specified therein and any challenge prior to such any such order being made is premature.

#### **THE CLAIMANT**

3. Your letter before claim does not identify your client, the proposed claimant. We assume that your client is the Licensed Taxi Drivers Association ("the LTDA"). However, if this is not the case please clarify this point by return.

#### **From**

4. Legal Department  
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#### **Reference details**

**Aidan Brookes**

**Andrew Maughan  
Borough Solicitor**

5. Aidan Brookes has conducted this matter on behalf of the Council. Any further correspondence or service of documents in relation to this matter should be addressed to him at the above address.

### **The details of the matter being challenged**

6. Your proposed challenge relates to the Cabinet's decision giving approval to officers to proceed with detailed design and implementation work in respect of the redevelopment of TCR in so far as this relates to what you describe as "restrictions of taxis from the whole length of TCR at all times and their restriction to short sections of TCR via side streets from 8am to 7pm Monday to Saturday".
7. We note at the outset that you appear to have misunderstood the nature of the proposed restrictions on taxi use of TCR. The Council does not propose to "restrict taxis from the whole length of TCR at all times". In fact, the proposals would restrict the ability of taxis to access approximately 40% of TCR between 8am and 7pm Monday to Saturday. Approximately 60% of TCR would be open to taxis in at least one direction from 8am to 7pm Monday to Saturday. Outside of these periods, there will be no restrictions on the ability of taxis to use TCR. Further, taxi ranks and stopping locations will remain/be placed at a number of key locations on TCR and the restrictions do not impact on the ability of taxis to serve these locations.

### **Response to the proposed claim**

#### Background

8. The West End Project is a large-scale, strategically important project to transform TCR and the surrounding area through the creation of new public spaces and the implementation of a new traffic system. The project seeks to reduce traffic and congestion, improve road safety, and make the area more attractive and safer for residents and visitors.

#### Public consultation

9. There has been extensive public and stakeholder consultation by the Council in relation to its proposals for the West End project. A public consultation ran from 9 June 2014 until 1 August 2014 and this was primarily conducted through the publication of material and a questionnaire online ([www.camden.gov.uk/westendproject](http://www.camden.gov.uk/westendproject).) Leaflets and a survey were

distributed to 7,990 addresses and face-to-face surveys were also carried out. As you accept in your letter, there was significant consultation by various methods.

10. The online questionnaire included two questions about the proposed traffic restrictions on Tottenham Court Road:
  - a. *“Q1b: Do you agree with removing the one-way system, making Tottenham Court Road two-way (for buses and cyclists), and Gower Street two-way (for all other traffic)?”*
  - b. *“Q8a: Do you agree with the proposals for Tottenham Court Road to widen pavements, plant new trees, provide better pedestrian crossings and make the street two-way for buses and cyclists only from 8am-7pm, Monday to Saturday (general traffic would not be allowed during this time except for access and loading in certain areas)?”*
11. It is clear that both of these questions included a reference to the proposal to restrict taxi access to parts of Tottenham Court Road. Q8b makes explicit reference to the proposal to restrict taxi access to TCR from 8am - 7pm Monday to Saturday. These questions did in fact elicit responses in relation to the desirability of restricting access to taxis during these periods (as summarised in Appendix A, Section C at paragraphs 1.5 onwards and 8.1 onwards).
12. A hard copy survey distributed to 7,990 households and used for face-to-face interviews included a further question dealing solely with the proposed restrictions on taxis in the following terms :*“Q8d: Do you agree with the proposal to restrict access for Taxis on Tottenham Court Road, Monday to Saturday 8am - 7pm? Taxis will still be able to cross Tottenham Court Road via side streets but won't be able to drive the length of Tottenham Court Road.”*
13. The LTDA responded to the consultation exercise, and the comments made in relation to the proposed taxi restrictions (together with officers' comments) are included in Appendix C to the report to Cabinet. A number of other consultees responded to both the consultation questionnaire and the survey with comments in relation to the proposals in relation to taxis.
14. A consultation report was drafted setting out the responses to the consultation exercise (see Appendix A to the report to Cabinet). Paragraph 8.32 – 8.41 of the report deals in detail with issues relating to the restriction on taxi access.

Decision of Cabinet 21 January 2015

15. The Cabinet report was published on the Council's website on 13 January 2015. The Cabinet meeting was a public meeting and people were able to make deputations. A number of organisations did make deputations to Cabinet, however no deputation was received from the LTDA or any other representative of taxi drivers/owners. The Cabinet report clearly set out that the recommendation to restrict taxis was not supported by the majority of response to the public consultation (see paragraph 4.5).
16. The relevant decision of the Cabinet is a resolution that *"approval be given to proceed to detailed design and implementation of the project as described in the report, specifically agreeing those matters listed in Appendix D, subject to achieving funding from various contributing partners and compliance with statutory requirements as the project is progressed". Appendix D refers to the proposal to "approve making Tottenham Court Road bus and cycle only in certain sections between 8am and 7pm, Monday to Saturday, subject to a review 12 months after implementation" (paragraph 18) and to "approve the proposed restrictions on taxi access on the basis of reduced road danger, less traffic congestion, improved air quality and a more attractive environment to walk and cycle" (paragraph 21).*
17. The proposed traffic restrictions will take legal effect through a traffic regulation order made by the Council in due course pursuant to the provisions of the Road Traffic Regulation Act 1984. The procedure to be adopted by a local authority for making permanent or experimental orders is set out in the Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996 (SI 1996/2489) as amended. As and when it becomes appropriate for the Council to consider making an order under these regulations, the Council will do so in accordance with those regulations. We therefore consider that any challenge brought at this stage would be premature.
18. We now address each of your five proposed grounds of challenge in turn.

Proposed Ground 1 – Conclusions on congestion and pollution

19. You assert that "the proposal irrationally concludes that the restriction of taxis will reduce pollution and congestion". No explanation is given in your letter as to why you say the Council's conclusion is irrational.
20. In fact, detailed traffic modelling has been undertaken by the Council to assess the impact of restrictions on taxi access to TCR on traffic flow on (i) TCR itself, (ii) side streets in the

vicinity of TCR and (iii) the wider area of central London. The Council used an approved TfL traffic model which predicted that the proposed restrictions on taxis would lead to an overall reduction in the amount of traffic in the area, and reduce congestion (as demonstrated by improved journey times for buses) and did not show wider displacement across central London. Table 8.1 of Appendix A to the Cabinet report summarises the modelling evidence by comparing traffic flow in the morning peak hour as between (i) the proposal to restrict taxis access to TCR and (ii) the alternative option to allow taxis to use TCR. The evidence illustrates that significantly higher volumes of traffic for all of TCR and the majority of linked roads will occur if taxis are permitted to use TCR. Restricting taxis from TCR would reduce traffic levels on TCR by up to 160 vehicles an hour (a reduction of up to 23% of traffic compared to allowing taxis full access).

21. Road transport is one of the main sources of PM10 and NOX emissions. Reducing and controlling the mix and volume of traffic will directly affect air quality as fewer traffic emissions will be produced in the vicinity of TCR. The Council has a responsibility under the Environment Act 1995 to reduce all pollutants and despite the reductions in the majority of the pollutants, levels of PM10 and NO2 continue to exceed the national air quality standards and objectives in some areas of London. In 2011, Tottenham Court Road was recorded as one of the worst sites in the borough (after Euston Road) for NO2 concentrations. This is explained in Appendix A to the Cabinet report.
22. In short, it is self-evident that restricting the volume of traffic on TCR during particular hours is likely to lead to a reduction in traffic congestion and pollution. The detailed modelling undertaken by the Council establishes a clear evidence base for the Council's conclusion in respect of reduced congestion.
23. Further, you state that the Council "failed to recognise the impact on pollution by the Mayor's requirement that by 2018 when the development will be completed taxis will be zero emission". This is incorrect. The Council has expressly addressed the potential impact of the Ultra-Low Emission Zone in Appendix A to the Cabinet report, which clearly sets out that if the Ultra-Low Emission Zone project is approved and implemented, taxi restrictions would be reviewed having regard to air quality, traffic congestion and road safety. This point is also made in Appendix C to the Cabinet report in addressing comments made by the LTDA.
24. In any event, your letter fails accurately to represent the current position as to the proposal put forward by the Mayor and TfL in respect of the Ultra-Low Emission Zone. It is currently proposed that within the Ultra-Low Emission Zone additional requirements will be imposed in

respect of the emissions for TfL buses, taxis (black cabs) and private hire vehicles. The proposal is that all taxis and new private hire vehicles presented for licensing from 2018 would need to be zero emission *capable*. It is important to note that the proposal does not entail a requirement to use zero emission fuel, it only applies to new vehicles presented for licensing and does not address those taxis with existing licenses. A public consultation has recently been carried out in respect of this proposal and no final decision has yet been taken.

Proposed Ground 2: Conclusions on road safety

25. You assert in relation to the road safety issue that the Council has “combined private hire vehicles with taxis in order to condemn taxis as a potential cause of serious injury to cyclists” and that “Camden has not considered the collision statistics for TCR.”
  
26. You fail to explain why it is impermissible for the Council to have regard to data or evidence which demonstrates that taxis and PHVs are responsible for a disproportionately large number of collisions with cyclists resulting in fatalities or serious injuries compared with the number of taxis and PHVs on the road. The Mayor of London’s Cycle Safety Action Plan 2014 considers taxis and PHVs together when considering their impact on cycle safety as data is recorded by the police on this basis. Council officers used this study to inform the recommendations to restrict both taxis and PHVs from TCR during particular periods. Further, collision statistics for TCR have been considered and were one of the main reasons why the scheme is required. The TCR / Gower Street location is one of the worst ten locations in the borough for collisions, with 259 casualties in the three year period from 1 August 2011 to 31 July 2014. This is specifically referred to in the Cabinet report at paragraph 2.2. It is also noted that the Metropolitan Police responded to the public consultation to the effect that permitting taxis to use TCR during daytime hours would increase the collision risk, particularly through U-turning of taxis.
  
27. In short, the Council has carefully considered a range of evidence in order to consider the impact on road safety of restricting taxi access to TCR, as summarised in Appendix A of the report to Cabinet under the heading “Road Safety”. In light of that evidence, the Council concluded that allowing unrestricted taxi access on TCR would increase the potential for conflict with cyclists and pedestrians and increase the likelihood of serious casualties. Any challenge to this conclusion would be bound to fail.

Proposed Ground 3: Conclusions on air quality

28. You assert that “in relation to air quality the report combines the effect of taxis and private hire vehicles.” Further, you state that the proposal does not consider “the proposals to require taxis to be zero emission by 2018” or that “during much of the day buses run with few passengers”. Each of these criticisms is without merit.
29. The evidence considered by the Council in respect of air quality is summarised in Appendix A. This includes TfL’s Health Safety and Environment Report 2012/2013 which indicates that taxis and PHVs account for 78% of PM10 of all TfL fleet emissions. There is no reason why officers were not permitted to have regard to this evidence when considering the impact on air quality, nor do you articulate any such reason in your letter. When pollution has been assessed per passenger km on a site-specific basis, taxis emit more PM, NOx and CO2 than buses. Pollution levels per passenger kilometre takes into account vehicle occupancy. We have already addressed your point in relation to the proposals to introduce the Ultra-low Emission Zone above.

Proposed Ground 4: Impact on disabled, elderly and shoppers

30. You contend that the analysis of the impact on the disabled, elderly and shoppers carrying parcels is flawed. However, this point is without merit as the Council carefully considered the impact of the proposed restrictions on taxi access in respect of the disabled and the elderly, and further considered other user groups of TCR. These matters are all addressed in the documents which accompanied the report to Cabinet.
31. An Equality Impact Assessment (EIA) of the proposals was undertaken and the details of this assessment can be found in Appendix J to the report. The evidence base for the EIA included an assessment of the use of different forms of public transport by disabled and elderly persons (see pages 10 and 11 of the EIA for the appraisal of Taxicard and Freedom Pass data). Taxicard data and Freedom Pass usage data was used to consider the number of journeys taken by Camden residents using particular methods of transport and highlighted that the volume of trips made by Taxicard users is far lower than Freedom Pass users (a ratio of 1:200). Analysis of the data supported the findings of other wider studies and research that elderly and disabled people use buses more often than taxis.
32. As is explained at paragraph 5.12 of the report to Cabinet, the impact on protected groups (including in relation to age and disability) of restricting taxi access to TCR has been



assessed and the Council considers that the positive impacts of the scheme outweigh the negative impacts. Some aspects of the scheme will benefit those with protected characteristics, for example improvements to bus journey times and reliability will benefit a far larger number of disabled and older people than those who are going to be affected by the taxi restrictions and wider pavements will benefit those using mobility scooters. Following the EIA and other discussions, mitigation measures were included as part of the amendments to the proposals, such as providing additional taxi ranks on side streets, more seating on TCR itself and more Blue Badge disabled parking and pay and display parking in the vicinity of UCLH.

33. Further, paragraph 1.22 of Appendix A expressly addressed the issue of accessibility for disabled people and people with prams and heavy luggage and notes that taxis would still be able to operate in the area with taxi ranks and stopping locations at key locations, and 60% of the street will be open in one or both directions between 8am and 7pm.

Proposed Ground 5: University College London Hospital patients

34. You assert that as a result of the Council's proposals it will not be possible for patients to hail a taxi on leaving UCLH. This is factually incorrect. UCLH currently has entrances on Euston Road and Grafton Way and as part of the A&E redevelopment there will be a new entrance on Gower Street. Taxi access to these streets will not be adversely affected by the West End Project proposals. Further, in response to the public consultation, a taxi rank is now planned for the section of Grafton Way between Tottenham Court Road and Gower Street, in the vicinity of the hospital.

Other matters raised in your letter

35. In so far as your letter refers to criticisms of the Council's decision-making process which are not dealt with in your proposed grounds of challenge, the Council notes the following:
  - a. Your assertion that the impact of the restrictions on business has not been addressed is incorrect. Consultation on the proposals included consulting individual businesses and organisations representing businesses, such as London First, InMidtown and The Fitzrovia Partnership and surveys undertaken by community researchers included a sample view from businesses. The needs of and the impact on businesses has been considered as part of the development of the project and in the recommendations to Cabinet. For example, some businesses were concerned about the impact of customers not being able to make collections on Sundays if the taxi restrictions applied

and this was one of the reasons that Sundays were not included in the timed restrictions.

- b. It is unclear what “important issues” your client asserts have not been addressed at this stage but rather have been left for post-development monitoring. We are unable to respond fully to this point without further explanation, but note that monitoring and ongoing assessment are key phases of any project and monitoring the scheme will ensure that the project is delivering against the Camden Transport Strategy, project objectives and the expected outcomes.

#### Response to requests for information

36. In your letter you request disclosure of two categories of information:
- a. Reports of meetings involving officers and/or Cabinet members in which proposals in relation to a policy of restricting taxis in favour of walking and cycling have been discussed.
  - b. The traffic modelling evidence referred to in the report.
37. In relation to a. we draw your attention to the Camden Transport Strategy (CTS) which sets out the objective to seek to reduce the impact of vehicles on the environment and to encourage sustainable and active modes of transport such as walking, cycling and using public transport. The Council has a road user hierarchy that places pedestrians and cyclists at the top (Policy 1.3). The Strategy is available to view on the Council’s website: <http://camden.gov.uk/ccm/content/transport-and-streets/transport-strategies/camdens-local-implementation-plan/>. To the extent that your request requires the Council to search for and disclose any information recording discussions between officers and/or Cabinet members in relation to transport policies for an unlimited period, we consider this to be disproportionate and do not propose to action it.
38. In relation to b, we are content to provide you with copies of the outcome of the traffic modelling evidence which is referred to in Appendix A and copies are attached.

### **Details of any other interested parties**

The Council considers that relevant interested parties in relation to your proposed claim are Transport for London and the City of Westminster. Camden Cycling Campaign has also specifically asked to be treated as an interested party. This response has been copied to each of these bodies. Please note copies of this letter will also be sent to the other parties referred to in the letter as matter of courtesy.

39. This response has been copied to them.

### **Address for further correspondence and service of court documents**

40. Any future correspondence on this matter should be sent to the address above.

Yours sincerely



Aidan Brookes  
Principal Lawyer  
Head of Planning, Property and Contracts Team  
Legal Services  
London Borough of Camden