In the High Court of Justice
Queen's Bench Division
Administrative Court

CO Ref:
CO/5054/2019

In the matter of an application for Judicial Review

The Queen on the application of IMPERIAL LONDON HOTELS LIMITED
Claimant

versus

THE LONDON BOROUGH OF CAMDEN
Defendant

Application for permission to apply for Judicial Review
NOTIFICATION of the Judge's decision (CPR Part 54.11, 54.12)

Following consideration of the documents lodged by the Claimant and the Acknowledgement of service filed by the Defendant

Order by the Honourable Mrs Justice Knowles

Permission is hereby refused.

Reasons:

1. Ground One: this is simply not arguable. Contrary to the Claimant's assertion, Members were told that the auditing process of the VISSIM and One modelling was ongoing.

2. Ground Two: this is not arguable. There was no need to give Members guidance on this issue. Assessment of what should go into the Report was a matter for officers, exercising their own expert judgment on the material before them.

3. Ground Three: the Claimant states that a sentence at paragraph 2.15 of the Report was factually incorrect. It is plain from reading the paragraph as a whole that a comparison was being made with the eastbound scheme and not with the former traffic scheme which existed prior to November 2015. In any event, the Claimant itself had contended there would be an increase in traffic under the westbound scheme as the inspector's report in May 2018 makes clear [paragraph 4.44].

4. Ground Four: the Claimant further contended that inclusion of a reference to views expressed about traffic volumes was irrelevant and prejudicial to the decision. I disagree. Those views were potentially relevant to the weight which Members might give to the consultation responses.

5. Ground Five: the Claimant asserted that Members were not informed that, on the modelling predictions, there would be significantly less traffic on half the Corridor using the westbound scheme. Members were informed of this as the detailed material in Appendix E of the Report makes plain.

6. Ground Six: It is alleged that Members were not informed in the Report of locations in the wider area where traffic flows would be greater under the eastbound scheme and conversely lower under the westbound scheme. Careful perusal of Appendix E and the Report demonstrates that Members were given detailed information about differences in traffic flow.

7. Ground Seven: the Claimant alleges a sentence in paragraph 2.18 of the Report was factually inaccurate and misleading as regards cyclists. Members were informed of the differences in junction capacity results. The witness evidence relied on by the Claimant as to the impact on cyclists was not shared by the Defendant's own traffic consultants. None of these matters were raised in the Claimant's letter to Members dated 11 November 2019.

8. Ground Eight: It is accepted that there are two minor errors in one sentence of paragraph 2.18 and the Claimant pointed these out in the letter to Members on 11 November 2019. It is not arguable that this error had a material effect on the conclusions of the Report and its Appendices, thereby significantly misleading Members about material matters.

9. Ground Nine: the Claimant contended that there would be a significantly lower level of service to cyclists together with delay and this did not feature in the Report. In fact, Appendix C contained information about the impact on cyclists. The Defendant's own traffic consultant was not of the view that cyclists would be disadvantaged, and officers were reasonably entitled to take that advice on board.

10. Ground Ten: it is accepted that there was an error in one sentence of paragraph 2.20 of the Report. It is simply not arguable to suggest that this error had a material effect on the Report, its Appendices, its recommendations or ultimately the Decision.

11. Ground Eleven: the Claimant alleged that there was no evidence to support a statistically insignificant difference in road safety impact between the eastbound and westbound scheme. This is inaccurate as can be seen from the witness statement of Mr Russell, the Claimant's own traffic consultant, and Appendix F of the Report. The difference in view between the Claimant's expert and that of the Defendant is not material given that officers were reasonably entitled to rely on their own expert.

12. Ground Twelve: This is simply not arguable given the misreading of the relevant diagrams by the Claimant's expert.

13. Grounds Thirteen to Sixteen: These grounds complain about alleged defects in a consultation leaflet and associated material provided in a public consultation which ran from 14 November 2018 to 6 January 2019. They are all out of time.

14. Even if these grounds had been in time, sufficient information was provided to enable members of the public to give intelligent consideration and response to the consultation. In those circumstances, the Gunning criteria are satisfied. With the benefit of hindsight, it is always possible to conceive of a consultation process which might improve on that under scrutiny but this is not the yardstick by which the process in this case is to be evaluated.

15. Finally, even if I had been satisfied that any of the grounds were realistically arguable, none of them went to the main substance of the information contained in the consultation materials or the substantive recommendations made in the Report. To be blunt, it is highly likely that the decision would have been the same if the errors (if any) complained of in the grounds had not occurred.

- The costs of preparing the acknowledgment of service are to be paid by the claimant to the defendant, in the sum of £41,751.50. This is a final order as to costs unless within 14 days the claimant notifies the court and the defendant, in writing, that it objects to paying costs, or objects to the amount now ordered to be paid, in either case giving reasons. If it does so, the defendant has a further 14 days to respond to both the court and the claimant, and the claimant the right

to reply within a further 7 days, after which the defendant's claim for costs and any submissions in relation to it will be put before a judge to be determined on the papers, or at a hearing to reconsider the application for permission.

- Where the claimant seeks a reconsideration of the application for permission the above order now made as to costs will be final unless the Claimant files the written representations referred to above or further order is made by the Court either at a permission hearing or as a consequence of the parties settling the claim and reaching agreement as to costs.

*delete where not applicable

Signed Gwynneth Knowles 4/3/2020.

The date of service of this order is calculated from the date in the section below

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Sent / Handed to the claimant, defendant and any interested party / the claimant's, defendant's, and any interested party's solicitors on (date):
Solicitors:
Ref No.

04 MAR 2020 04 MAR 2020

Notes for the Claimant

If you request the decision to be reconsidered at a hearing in open court under CPR 54.12, you must complete and serve the enclosed FORM (86B) within 7 days of the service of this order. A fee is payable on submission of Form 86B. ***For details of the current fee please refer to the Administrative Court fees table at*** https://www.gov.uk/court-fees-what-they-are. Failure to pay the fee or submit a certified application for fee remission may result in the claim being struck out. The form to make an application for remission of a court fee can be obtained from the Justice website https://www.gov.uk/get-help-with-court-fees

Louise or Michael Smith

planning