

The Camden (Torrington Place to Tavistock Place) (Prescribed Routes, Waiting and Loading Restrictions and Loading Places) Traffic Order [2017]

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**Notes for Closing on behalf of  
Officers of the London Borough of Camden**

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**Introduction**

1. LBC Cabinet will, in due course, make a decision on whether to make the Trial permanent or not. In slightly more formal language, it will address the question whether the ETO should be allowed to lapse, or should the Proposed Order be made (with or without modifications)? That decision will, as a number of objectors have also emphasised <sup>1</sup>, plainly be a decision which strikes a balance. And to aid their future assessment of that balance, Members instigated this PI.
2. I ventured to distil the essence of the factors which led LBC officers to recommend that the Proposed Order be made in the short opening statement. I incorporate that here by reference and nominally repeat it.
3. There were some who appeared at the PI to press objections to the Proposed Order on the basis that Cabinet should decide to allow the Trial to lapse. That is to say that the Corridor should be returned to its pre-Trial state (albeit including WEP).
4. But many if not most of those who pressed an objection to the Proposed Order did so on the basis that some other and different Order should be made (or trialled). Put another way, a substantial body of evidence was presented in order to show
  - (i) that some intervention was required within the Corridor;

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<sup>1</sup> Eg BRAG, ILHL.

- (ii) that whilst the Proposed Order was not the right intervention, some other intervention should be made;
- (iii) which in every case was claimed to improve conditions for pedestrians and cyclists.

These alternative interventions took the form of

- (a) restoring 2-way motor traffic but with altered and improved cycling lanes (eg BRAG) or
- (b) adopting much of the form of the Proposed Order but with a 2-way motor section in the middle (eg LTDA and now, it seems, RMT over a shorter stretch) or
- (c) retaining the general form of the Proposed Order - but standing it on its head (often called the 'Trial reversed' or W/B scheme) (eg ILHL).

5. Plainly, those alternatives are as inconsistent with each other as they are with the Proposed Order – as well as with permitting the Corridor to return to its pre-Trial state (with WEP). But whilst LTDA offered its proposal as a fall-back position, they all share the common characteristic of being pressed by those who say that 'something should be done' or, in LTDA's case, that the fall-back could be justified on that basis. Or, in the language, that an 'intervention' of one form or another is justified.

### **Statutory and Policy Context**

6. The statutory and policy context will underlie and need to be taken into account in making whichever decision comes to be made: be it to allow the ETO to lapse, to make the Proposed Order (with or without modifications), or to allow the ETO to lapse for the express purpose of embarking upon a new and different Trial with all the upheaval which that would involve.
7. It was ILHL which emphasised the provisions of the Traffic Management Act 2004<sup>2</sup>. Mr Russell sets out the provisions of s.16<sup>3</sup> in his proof, but then ILHL appears to apply it as if the duty was to maximise convenience to motor traffic. Not so. The first (and obvious) point to note is that that 'headline' duty is a qualified duty. Second, the manner of exercising that duty is demonstrably wide as shown by s.16(1) itself and s16(2). But

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<sup>2</sup> CD1/21, Russell p162 §1.20 (as well as GMT).

<sup>3</sup> Russell ILHL/16 pp 6-7, §1.20.

nowhere does the Act command that this or any authority must give priority to motor traffic.

8. The expression 'traffic' as used in the legislation is a convenient word for encapsulating the movement of persons and goods. Pedestrians and cycles are as much 'traffic' as motor vehicles. The authority is obliged to manage its network, but can (and some may say 'must') address relative priorities when addressing that function.
9. LBC has other statutory responsibilities as summarised in the CabRep and LMcB's proof<sup>4</sup>. Among them are matters relating to safety, air quality and 'equality' aspects as well. The (qualified) duty under the RTRA 1984<sup>5</sup> to secure the expeditious, convenient and safe movement of vehicles, pedestrians and cyclists requires (as is largely if not wholly common ground) that a balance needs to be struck. But there has been a suggestion by ILHL to the effect that the public health benefits of walking and cycling are nothing to the point in this context. LBC officers disagree. The fact that there are public health benefits of 'active travel' is one factor which lends support to the importance which should be attributed to active travel modes in that overall balance. And it is relevant to whether or not it is 'expedient' to further the objectives for which an Order may be made.
10. There are also differences in the level of understanding of the equalities legislation. ILHL (for example) has misinterpreted the legislation and, so far as can be divined from Mr Massett's proof, so has the LTDA (or has misapplied it, or both). The equalities 'angle' has been pressed by a number of other parties, with BRAG also bringing the topic into sharp focus with a direct and unbridled claim that LBC is acting in breach of a specific duty<sup>6</sup> (the Public Sector Equality Duty – addressed later, below).
11. It is important to approach the legislation on the correct footing. Mrs McBride flagged the main points in the Response<sup>7</sup>, but none of the parties corrected or adjusted their evidence or submissions in order to reflect a correct interpretation of the legislation. So I need to return to the topic (later below) by reference to a more detailed collection of Annexes which shows (i) how the legislation applies to LBC (as a public authority)

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<sup>4</sup> CabRep CD6/2 and LMcB p7 *et seq* section 2.

<sup>5</sup> CD1/22.

<sup>6</sup> See eg Nicky Coates at BRAG/\*\* p\*\* §\*\* relying on s.149 of the Equality Act 2010.

<sup>7</sup> Response p9 §3.2 – 3.6.

and (ii) where different but parallel responsibilities lie in relation to LBC and to those such as ILHL and to the taxi driver members of the LTDA.

12. The relevant National, Mayoral and Local policies which will guide the ultimate decision all pull in the same direction (or in the case of objectives relating to 'active nodes' of travel it may be fairer to say that they all push in the same direction). Louise McBride summarises their effect<sup>8</sup> together with other related objectives. There was little, if any, suggestion made at the PI to the effect that McBride had mischaracterised the drive of policy objectives. These policies and their underlying objectives were essentially treated as a 'given' at the PI.

### **Equality Duties**

13. Various generalised and some plainly erroneous specific claims that LBC had (or by making the Proposed Order would) infringe equality duties were made by objectors at the PI. I will touch on them briefly below, but we attach a series of 'legal annexes' which show in more detail how the various duties arise. In relation to LBC's duties, the Annexes set out in some detail the message encapsulated in the Response<sup>[1]</sup> and set the context for what is already a clear distillation provided in the CabRep [qv]<sup>[2]</sup>. The Annex also describes the duties owed by the Tavistock Hotel and by taxi drivers.
14. The Annex is in 4 parts:
  - Annex A: submissions relating to the Equality Act;
  - Annex B: extracts from the Equality Act 2010 (also at CD/1/19 in full);
  - Annex C: s.20 as amended in its application by schedule w; and
  - Annex S: *Hamnett v Essex County Council* (Singh, J) [2014] 1WLR 2662
15. The various duties are described in Annex A by reference first to the duties owed by public authorities (such as LBC). It then describes duties owed by persons providing services to the public (such as the Tavistock Hotel and taxi drivers), and then the relatively new and specific duties owed by taxi drivers to assist passengers in wheelchairs. By way of compressed shorthand, those various duties can be signposted in this way:
  - (i) LBC owes the procedural PSED duty under s.149;

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<sup>8</sup> McBride p10 *et seq.*

<sup>[1]</sup> Response p9 §3.2-3.5.

<sup>[2]</sup> CD6/2

- (ii) LBC and ILHL, taxi drivers etc have substantive duties not to discriminate; including
- (iii) duties to make reasonable adjustments for disability; and
- (iv) taxi drivers have specific duties to assist wheelchair users.

16. In relation to the general 'reasonable adjustment' duty, where public functions (LBC) or the provision of services are concerned (Hotel, taxi), the Act operates by way of carrying back various revisions to s.20 from its schedule 2. So, in order to make it simpler to read the section and the schedule together, Annex C shows a 'tracked' version of s.20 which picks up those revisions so far as material to these adjustments for disabled persons<sup>[3]</sup>. Annex C also highlights the material passages of that consolidated text to aid navigation.
17. Although Annex A gives further analysis of the statutory duties of various parties, I first remind the Inspector that the CabRep incorporated a detailed Equalities Impact Assessment<sup>[4]</sup>. Amongst other matters it set out a list of positive and negative impacts, and described potential mitigation. There was no criticism as to how LBC officers had identified the impacts in that EIA. They were after all, (generically) much the same as the impacts described in evidence by objectors such as BRAG. But BRAG, LTDA (and others) fall into fundamental error when they claim that because negative impacts are identified, or that the negatives exceed the positives, then the Proposed Order puts LBC in breach of its Public Sector Equality Duty under s.149 (the PSED, for short).
18. As a matter of detail, ILHL claims (wrongly) that the PSED applies to ILHL in its operation of the hotel. It has different duties not to discriminate, which include a duty which I might call the 'reasonable adjustment duty' as a shorthand, but does not have the PSED duty which is claimed. The extent of its duties is analysed in Annex A.
19. LTDA failed to mention the specific duty owed by its members as taxi drivers<sup>[5]</sup>, but nevertheless claims that it would be discriminatory for LBC to expect black cab users to alight or set down in Bedford Way.

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<sup>[3]</sup> NB, the 'deletions' are not tracked – simply the replacement words.

<sup>[4]</sup> CabRep A<sup>x</sup> E (annexed to LBC SoC) and at CD/6/2/E.

<sup>[5]</sup> Equality Act 2010 s.165.

20. There are various other complaints which refer to discrimination without further particularity. The Annex addresses the various substantive duties summarised above (not to discriminate, including making reasonable adjustments) and shows why (however such complaints might be formulated) the Council would not be in breach if it were to make the Proposed Order. All of these claims founder because of an inaccurate understanding of the Equality Act. Annex A also highlights the duties owed by eg the Hotel and taxi drivers in order to show the Inspector the parallel duties which the Inspector (and the Council) might properly assume would be discharged.
21. With that short overview of key relevant provisions, I turn to address the effects of the Trial / Proposed Order and the Alternatives offered - where a number of parties raise 'equality' issues which I will address along the way.

### **Effects of the Trial / Proposed Order / Alternatives**

22. Before summarising an overview of the Proposed Order and what it would facilitate, I make two introductory points.
23. In light of some of the observations made (eg by Mr Walker and Mr Tugnut) as to some of the physical details I should leave the reminder that the Proposed Order is a proposed Road Traffic Order. It would facilitate a number of further physical improvements – such as widened pavements, possible stepped kerbs and revised signal settings, but those items of detail design are essentially for later once (and if) the Proposed Order is made. Mr Russell, for example, explained that he would expect the finer detailed design and configuration of most or all junctions would be revisited<sup>9</sup>, along with signal settings, stop lines and the like if a 'permanent' Order is made. So too, it is proposed that the 'median' kerb separating the cycle lane along the north side would be removed.
24. The expectation is that stepped kerbs or some other edge and boundaries treatment would follow – with the details subject to a further access audit, discussion and consultation where necessary<sup>10</sup>. So that, whilst I will come to the question of pick up / drop off along the Corridor below, it is anticipated that, in the future, the edges of the

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<sup>9</sup> Russell XX LBC Day 8.

<sup>10</sup> See eg EIA at page 30.

Corridor will likely be different. Some possibilities as to the detail were outlined in the consultation material.

25. Secondly, whilst this is a Proposed Order, its effects in terms of the management of traffic can be seen today and have been observed ever since the Trial was initiated in November 2015. Two short videos gave at least an insight into how the Corridor operated in the pre-Trial days<sup>11</sup>. So if the Order is made, what can be seen today will continue (subject to the effects of the committed WEP and decisions yet to be made relating to Brunswick and Judd Street). If the ETO is allowed to lapse, then the pre-Trial arrangements will be experienced (subject to the effects of the committed WEP and decisions yet to be made relating to Brunswick and Judd Street). So the crucial comparison is, in officers' view, between the 'as is' seen today and the position if a decision were made to allow the trial to lapse: the Corridor would then revert to the pre-Trial conditions (noting WEP, Brunswick etc). ILHL appear to question that approach, and that comparator, and I return back to that aspect later.

### Walking

26. The observed effects on walking are much as the ETO was designed to achieve<sup>12</sup>. By reducing the amount of motor traffic along the Corridor by taking out a lane (and its motor traffic), it is possible to reallocate space to active modes. Thus far, the physical changes have related to cycle lanes. But the reduction in traffic flow and the separation of the 2-way cycle lane into two improved lanes has made the pedestrian environment and amenity more attractive. There is scope for further improvement by widening footways and rationalising street furniture which will bring particular benefit to protected groups such as those with wheelchairs and walking aids, those with prams and pushchairs and those with impaired vision by giving greater clear space unobstructed by street furniture. There is scope to improve footways at junctions as well.
27. In terms of safety, not only have consultees spontaneously reported an increased sense of safety<sup>13</sup>, but the recorded collision data shows a reduction in collisions involving pedestrians since implementing the Trial<sup>14</sup>. Yes, a few claim that the

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<sup>11</sup> One from LBC (Ref Torrington Trial07) and one from CCC (Ref 3-2-4A CCC)

<sup>12</sup> See McBride p18 *et seq* and Shah p31.

<sup>13</sup> McBride p20 §§.8.

<sup>14</sup> Shah p26 §4.8-4.10.

pedestrian experience is worse, and one or two came to the PI to say as much. So clearly there is a range of views amongst pedestrians, but officers share the view of the high number of consultees, that the pedestrian environment is improved. That seems also to be the view of ILHL (which promotes a 'reverse Trial').

28. If the Trial were abandoned, the Corridor would revert to the old 2-way vehicle layout with the single 2-way cycle lane – thus losing the benefits to all cyclists including those with protected characteristics. The benefits seen today would be lost, and so too would the potential related improvements which offer improvements which would benefit protected groups as well as others. The indications are that there would be a comparative reduced level of pedestrian safety, and the Corridor would be expected to feel a less safe and less pleasant place to walk.
29. I note Diana Scarrott's alternative approach to accident figures - comparing them to essentially random events which ought to be capable of reduction to statistical analysis and even prediction if many years data were analysed<sup>15</sup>. The usual approach is, of course, to review 3 (or sometimes 5) years past but no more. Beyond that, it is difficult to be confident that confounding factors are not skewing the results. So, whilst it is true that there are not 3 years' data after the Trial was implemented, that is the nature of a Trial of this kind. The indications are nevertheless favourable – and expected. The environment is conducive to reduced risk of collisions and, with reduced motor vehicles, also conducive to reduced risk of the more severe injuries.
30. If either BRAG's 2-way alternative (or LTDA's partial 2-way scheme) were to be promoted, neither would offer the same level of pedestrian improvement. As to BRAG, we will see later more detail about motor traffic, but BRAG recognises the need for one-way cycle lanes. Given the need to provide for 2-way motor lanes, both would be at the narrow end of acceptable widths. But in the context of effects on pedestrians, BRAG's alternative would reinstate the severance effect of 2-way motor traffic, and remove the prospect for making pedestrian footway improvements<sup>16</sup>.
31. LTDA's primary case is for the Trial to be abandoned. But whilst its partial scheme would retain the benefits of the Proposed Order at each side of the central section of

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<sup>15</sup> BRAG/5.

<sup>16</sup> McBride X and Shah X.



the Corridor, it would leave that section as poorly affected as per the BRAG alternative. It would also leave a marked inconsistency of provision along the Corridor.

32. The ILHL alternative of 'reversing' the Trial is (for pedestrians) considered unlikely to be significantly different in provision from the Proposed Order, although ambience and amenity will be affected by the greater motor traffic flows inherent in that alternative.

### Cyclists

33. For cyclists, whilst there has been an increase in the number of collisions since the introduction of the Trial, the severity of injury has reduced. The improvements in conditions have resulted in the CLoS score more than doubling<sup>17</sup> with potential additional improvements facilitated by the Proposed Order giving prospects of the score rising yet further<sup>18</sup>.
34. Taken together, of all the 15,000+ responses to consultation, some 25% voluntarily added a comment to the effect that since the implementation of the Trial, the Corridor felt safer and more pleasant to cycle and walk<sup>19</sup>. That comes as no surprise to officers, and is what they expect.
35. The comparative effects of BRAG's, LTDA's and ILHL's alternatives on cyclists can be described in much the same way as for pedestrians. The BRAG scheme would give cyclists one-way lanes, but narrower and next to two lanes of motor traffic. The margins between cyclists and vehicles (and wing mirrors) would be tight – with effects not only on ambience, but also on the risks of side-swipe collisions and potential injury. It would re-introduce additional motor turning movements and potential conflicts at junctions, and would reduce the ambience and attractiveness of the Corridor to cyclists of all abilities compared with the Proposed Order. Just as with the effects on pedestrians, the ILHL alternative of 'reversing' the Trial is (in relation to provision for cyclists) considered unlikely to be significantly different from the Proposed Order except again as to ambience and relative increase in turning movements.
36. Mr Russell sought to bolster the case for bringing more vehicles back to the corridor (see later) by claiming that the collision records during the Trial showed a marked

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<sup>17</sup> See McBride p20 §3.9 and Shah p38 §4.39 *et seq.*

<sup>18</sup> See McBride p20 §3.9

<sup>19</sup> McBride p1 §3.12, Strelitz p15 §6.6.

pattern of right-turning vehicles being a common factor<sup>20</sup> and that a 'reverse trial' would reduce the number of right turns. We explored those claims in XX. Without being ultra-precise about it, the only 'pattern' which could be deduced was that 1/3 of collisions involved left-turning vehicles, 1/3 involved straight ahead and 1/3 involved right-turners. And we also established that with a 'reverse trial' the number of right-turn conflicts would be broadly the same<sup>21</sup>.

### General Motor Traffic

37. For general motor traffic, this has reduced along the Corridor itself by the removal of some 60% of the 2-way flow. Inevitably, much or even most of this traffic will find alternative routes and add motor traffic to other roads. Mr Carter (of Systra) assesses that a proportion of that 60% is through traffic which has re-assigned to Euston Road and Grays Inn Road. Mr Russell suggests that much or most of it is 'local' traffic which is finding other 'local' roads to find 'local' destinations (or departing from 'local' origins). Either way, there is traffic data presented in (revised) Schedule 3 showing the results of traffic counts which have been undertaken. Mr Russell has provided alternative figures<sup>22</sup>.
38. The PI also has, as Mr Russell noted, conflicting anecdotal reports of congestion and journey times after the introduction of the Trial<sup>23</sup>. I can add to the mix the results of the survey carried out for LTDA which also showed mixed perceptions<sup>24</sup>. I will return to these, but it is common ground with ILHL and LTDA (at least) that this is a busy, frequently congested urban area<sup>25</sup> and LTDA points to material which indicates that general congestion within London has been on the rise since 2015. With the natural volatility of road traffic in busy central London and the confounding effects of local road works and the like, it is not possible to say that the Trial itself has caused any unacceptable congestion. The extra displaced traffic will, of course, have rerouted, but there is no clear pattern of queuing or congestion which shows that the Trial itself is responsible for any marked change. BRAG itself emphasised that there has been no

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<sup>20</sup> Russell ILHL/16 pg256 §7.15.

<sup>21</sup> Russell XX.

<sup>22</sup> Russell ILHL/16 page 2.11 table 4.1.

<sup>23</sup> Russell ILHL/16 X.

<sup>24</sup> See LTDA Ax\*\* p\*\*.

<sup>25</sup> Russel X

clear pattern to the congestion, although still it blames the Trial<sup>26</sup>. The fact that congestion or queuing is seen after implementation of the Trial does not – as has commonly been supposed – mean that the trial has caused those effects. All participants at the PI will have seen Judd Street for some or more of the days over the past weeks and, unlike the illustrations given by BRAG, there has been no untoward queuing behind the Euston Road lights. The video shown by BRAG which did show congestion on Judd Street also revealed the ‘men at work’ road sign which may well offer a clue as to the reason for conditions at the time of the video (or even videos) was taken.

39. Recorded anecdotal measurements of journey times and delays are also subject to the vagaries of congestion varying day by day (or for longer periods depending on the cause). LBC officers conducted simulated timed runs using the ever-popular Google maps app (regularly used by members of the public planning journeys)<sup>27</sup>. That analysis indicated that the comparatively extreme extended journey times blamed on the Trial probably had some other cause – be it inaccuracies in measuring or road or traffic conditions elsewhere which no longer obtain. That exercise also caused Diana Scarrott to question the times given in the UCLH correspondence upon which BRAG (and a number of others) had relied<sup>28</sup>. To her credit, she herself timed the runs to double-check. Where the UCLH letter had reported long journey times she found that it took very considerably less. She postulated that the times may have included time getting ready for the trip or other unexpressed elements of the overall times which had not been brought into account or overlooked in the message<sup>29</sup>.
40. But Diana Scarrott makes the same point as did LBC officers – some routes will, inevitably, be longer or take longer to travel or both. But for ‘local’ trips’ these are trips which make use of the ‘local’ network and there is no reason in principle why that is unacceptable if it is seen as part of an overall balance. Mr Camacho of BRAG<sup>30</sup> describes this local traffic diverting on to other local roads as ‘rat running’, but it isn’t. It is (on the hypothesis) local traffic using one local route instead of another local

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<sup>26</sup> BRAG 18/2/8

<sup>27</sup> LBC Response Document page 8 Section 2

<sup>28</sup> See eg BRAG 18/2/8 p4 *st seq.*

<sup>29</sup> Scarrott X and XX.

<sup>30</sup> BRAG/18/2/8.

route. Mr Rees of BRAG<sup>31</sup> also referred to rat-running – by which he meant no more than finding an alternative route along local roads for his local trip.

41. Yes, there will have been some motor traffic re-routeing (and some who have retimed their journeys or even switched mode), but there is no clear pattern of marked increases in journey times or regular pattern of queuing which is such as to show that the Trial (and Proposed Order) has caused it, still less to show that it is in any appreciable way different in nature or kind from that which might be expected in such an area of Central London. As we have seen from Louise McBride's e.mail referred to by RMT, LBC officers have been monitoring and responding to 'complaints' over the period of the ETO.

### Modelling

42. In order to help to gauge the effects of any decision to abandon the Trial, Systra has asked the model to project the likely effects of a decision so to do. The model is recognised as being 'fit for purpose' by Systra, by TfL<sup>32</sup> and now also by ILHL<sup>33</sup>. Given that the WEP is a commitment, the 'no-Trial world' will not now be the same as the pre-Trial world. It will include the WEP. So, the model needs to reflect that. Carter summarises the main likely effects of abandoning the Trial by reference to his figures 3 and 4<sup>34</sup>.
43. Mr Russell was critical of this approach. He claimed that the modelling work presented should have showed the likely effects of instituting the Trial compared with the pre-Trial network (both with WEP). Mr Carter does not resist such an exercise for those who wish it, but that is not the central test. The test is one of assessing (within the limits of modelling) what would happen if a decision is made to allow the ETO to lapse. But, we have seen that Systra had also modelled a wide variety of various permutations and set that out in a report which Russell now produces<sup>35</sup>. He, Russell, does not want to draw attention to any of the dozen or so permutations except the

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<sup>31</sup> BRAG/10.

<sup>32</sup> Dichev X.

<sup>33</sup> Russell X Day 7.

<sup>34</sup> Carter p17 and 18.

<sup>35</sup> ILHL Response Document appx 3

one which tests the Trial (+WEP) against no-Trial (+WEP) (and the 'reverse trial (+WEP) against no-Trial (+WEP)<sup>36</sup>.

44. For those who wanted an assessment of pre-Trial (+WEP) against post-Trial (+WEP), the material already existed in Carter figs 3 and 4: all that was required was the modest agility to 'reverse' the colours: the two equivalent figures 'match' in that sense. So, too, would Carter's language of where the model shows an increase / decrease occurs by substituting the language of decrease / increase.
45. But that is not, says Carter, the helpful exercise for those wanting to address what the likely effects of deciding to abandon the Trial would be. He thinks it right (in his language) to 'pivot' comparative assessments against what is on the ground now (+WEP), not what once was once the ground (+WEP). In other words, the prime comparator should be the point from which the assessor is starting: which is the Trial in place. That is the decision which the Cabinet will face: do we keep it or do we decide to abandon it? And if the latter, what effects will flow from our decision?

#### Alternatives – motor vehicles

46. BRAG proposes an intervention in the Corridor so as to reinstate two-way motor traffic in narrower lanes than pre-Trial and to adjust the cycle lanes to make them narrower than in the Trial, but as two one-way lanes. The motor traffic effects of this proposal have been modelled by Systra and compared with what is 'on the ground' today (+WEP). Mr Carter has, again distilled the main differences for motor vehicles. There would be expected to be a reduction in flows in Endsleigh Street and Gardens, but increases in what he described orally as the reciprocal or 'paired' movements shown in his figures: what I might call reciprocal knight's moves in that area. Figures 7 and 8 also show that in the AM peak, trips would be attracted back from Grays Inn Road and Euston Road into the local area (with a smaller diversion off a section of Euston Road in the PM peak)<sup>37</sup>.
47. LTDA offers intervention by way of a partial 2-way scheme (as a fall-back compared to its preferred choice which is to revert to pre-Trial conditions (+WEP). It is paraded as

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<sup>36</sup> ILHL Response Document Appendix 3

<sup>37</sup> See Carter Summary p5 §2.4.3 and Figs 7 & 8.

driven by the needs of protected groups, but as Mr Massett's Summary reveals<sup>38</sup>, a powerful driving force is the determination to secure access through the area to and from Euston Station. Plainly re-introduction of 2-way traffic would negate the benefits of having one-way traffic only along that section and bring trips back to the connecting roads.

48. LTDA addressed protected groups more widely than some objectors, but as its publicity film starring Anthony and Charlie<sup>39</sup> and its survey<sup>40</sup> demonstrated, its main focus was on the disabled and wheelchair users in particular. Mr Massett also sought to persuade the PI that the act of embarking or disembarking a wheelchair user could be expected to take 7 minutes: the clear inference being a net additional 7 minutes compared with an ambulant passenger. We looked at a video illustrating the process. It indicated that the operation would add, at most, perhaps 2½ minutes at what appeared to be a relatively leisurely pace. The Inspector will recall Mr Massett's riposte to the video which was to observe (i) that the operator in the video appeared to be well-versed in the equipment and (ii) that his members would not really be sure how to work it, so would take longer. The equipment shown in the video was hardly complex. Further elucidation from Mr Massett revealed that his 7 minutes started from the moment when the black cab was hailed in the street. We accept, of course, that embarking or disembarking a wheelchair will add to the time, but invite the Inspector to treat Mr Massett's 7 minutes with extreme caution. Indeed, taken together with the Anthony and Charlie show, the Mr Massett's evidence should be approached with considerable caution.
49. LTDA also suggested that the taxi rank outside the Tavistock Hotel was on the wrong side of the road for an E/B one-way scheme. We did not much explore that because of a misunderstanding during Mr Russell's evidence. He had thought that I was referring to an option of putting the rank to the north of the southern cycle path, when I was contemplating one to the north (as opposed to south) of the road much as a mirror image of Russell ILHL/16. We resolved the position outside of the PI. It was the option of going to the north of the southern cycle path which the safety auditors had frowned on. But in any event, we heard from Simi Shah that ILHL had resisted such a suggestion to have that appraised (TfL would need to be involved).

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<sup>38</sup> Massett Summary X page 1 §2.

<sup>39</sup> RM2.

<sup>40</sup> RM11

50. ILHL proposes a 'reverse trial' scheme. It is common ground that that could deliver generally similar benefits to pedestrians and cyclists but there would, of course, be more traffic left on the Corridor with attendant differences in degree as to matters such as severance, and effects on overall amenity along the Corridor. Systra has modelled the effects of a comparison with the Proposed Order. As Mr Carter explains and, perhaps unsurprisingly, the model reports that the effects would be to divert trips from Grays Inn Road and Euston Road to the Corridor<sup>41</sup>. He also speaks of more trips eastbound through alternative routes to the Corridor such as Russell Square and Bernard Street. There would be increases in flow in Byng Place and Torrington Place on the westbound approach to the Gower Street junction which overlaps with the WEP. As to Endsleigh Street / Gardens the model indicates a net overall increase compared with 'as is' (+WEP).
51. Having resisted a suggestion that the taxi rank might be moved to the other side of the road, Mr Russell, aided and abetted by TC, was invited to embark on an a theatrical assault course illustrating alighting a wheelchair into the cycle lane. This was, of course, in support of promoting the 'reverse Trial' where all traffic would be turned round so that it faced the way most convenient to what the hotel doubtless regards as its own taxi rank. What this oral display failed to include was, of course, the step at the hotel's own entrance. Mr Russell told the PI that the hotel had no need to ease the step because there was a concierge always on hand to assist all guests and their luggage – including wheelchair guests for whom a ramp would be produced (although Mr Massett recalled seeing no such person<sup>42</sup>).
52. There is, we suggest, no compelling reason why the hotel and any taxi driver between them (or even individually) could not provide assistance to a wheelchair user alighting from or embarking into a taxi stopped at the kerb in Bedford Way. We heard from Mr Russell that wheelchair users are invited to telephone before booking and any travel arrangements could be discussed then and anticipated on the day of arrival. Even easier for departure: the concierge could call the taxi and assist with any luggage. Unless, of course, the wheelchair user elected to use a PHV with a rear ramp, in which

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<sup>41</sup> See Carter p19 et seq and Figs 5 & 6.

<sup>42</sup> Massett XX.

case he/she could alight or embark the vehicle against the kerb immediately behind the taxi rank.

53. Taxis do, says Mr Walduck (a director of the Hotel), typically now use Bedford Way in any event<sup>43</sup> and doubtless the concierge will be on hand to assist any and all passengers. The short point is that any black cab which has a nearside ramp can continue to use Bedford way. Other PHVs with a rear ramp could use space in front of the hotel or Bedford Way if they chose. Either way, passengers could be picked up or dropped off within the recommended 50m. Which, in turn, is rather less than the distance to the bus stops which the Hotel prides itself as offering as an attraction to draw in disabled guests<sup>44</sup>.
54. ILHL also made much of the difficulty (Mr Russell said) of picking up or setting down along the rest of the corridor. It is, of course, generally permitted and would be eased on the northern side if the median kerb is lifted: this is not a clearway. If a black cab is (uniquely) constrained by its nearside-only ramp, it can pick up / drop off on the opposite side of the road near to the closest safest place (eg a crossing) chosen by an embarking passenger or suggested by the driver for a disembarking passenger. If the passenger is in a wheelchair, the driver can be expected to offer appropriate further assistance as may be required. That would be inherent in whichever direction a one-way scheme ran (LBC and ILHL) or a mostly one-way scheme (LTDA) operated and is not a feature peculiar to the E/B Trial scheme and resolved if the Order is reversed.

### **Air Quality**

55. We recall that with ILHL's Reverse Trial how the model suggests that there would be more net traffic on Endsleigh Gardens / Street than 'as is' (+WEP). That does rather invite me to turn to the topic of Air Quality.
56. We can set a further context to this topic in that John Russell 'urged' the Inspector to recommend (i) making the Proposed Order, but (ii) with a modification whose effect would be to reverse the motor flows and bring the Order into effect straight away. (I come later to address whether or not that is a 'modification' which the legislation would contemplate, but I am addressing the effect of what he urges upon the

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<sup>43</sup> ILHL/18 §§ 6 & 7.

<sup>44</sup> Russell XX.



Inspector.) The effect of making the 'Reverse Order' would be to bring about its positive and its negative effects. And it would bring about whatever consequences followed. Mr Russell was keeping abreast with the drift of Prof Laxen's evidence as the two were preparing for the PI<sup>45</sup>. Prof Laxen was critical on a numbers of fronts. He didn't like the monitors which Adam Webber was using. He said that extensive and bespoke monitoring should have taken place for some little time prior to the Trial, and he was critical of a scheme which had (apparently) raised measured kerbside NO<sub>2</sub> levels in Endsleigh Gardens.

57. Mr Russell's preference – urged as it was on the Inspector – is expressed on behalf of ILHL. It takes account of at least the drift of Prof Laxen's complaints. ILHL (through Mr Russell) has already made it plain that the Inspector's analysis and ultimate decision will be a matter of striking a balance. He, Russell, plainly sees Prof Laxen's erudite criticisms as carrying insufficient overall weight to prevent him (Russell) saying that we should proceed to a 'reverse trial' by decision at the Cabinet Meeting .which next considers what decision should be made.
  
58. But what, in the end (or the beginning) was Prof Laxen's target in any event? LBC officers had not claimed that the Trial / Proposed Order would cure the acknowledged failings in the area (as with much if not all of Central London) relating to AQ objectives. We saw how Prof Laxen took issue with Adam Webber's choice of monitoring locations used for analysis, and reworked Adam Webber's figures. Adam Webber accepted some of the criticism where he had made a small slip in the calculation. There were exchanges between them of regression analyses and other neat mathematics. Adam Webber then (by invitation from Prof Laxen) reworked his figures to incorporate and compare the results from Prof Laxen's chosen sites. Using regression analyses as part of that exercise, Adam Webber's results took him back close to his original conclusions: that pollution in the Trial area has reduced by more has been the case elsewhere in the Borough. The Inspector will have noted that at that stage Prof Laxen (who had instigated the carrying out of analyses based on regression analyses and 'best fit' gradients) then brushed aside the conclusions which emerged at his invitation by distancing himself from the analysis on the basis that the data revealed a general 'scatter'.

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<sup>45</sup> Russell XX.

59. I invite the Inspector to look again at Adam Webber's uncomplicated and straightforward analysis and conclusions. It is common ground that AQ along the corridor will be bound to have improved as a result of the Trial<sup>46</sup>. Webber notes that, further improvements in air quality can be expected both within and outside the Corridor as a result of national and Mayoral interventions such as the T-Charge, the forthcoming ULEZ and improvements to engine emissions, even if these improvements will occur later than we would wish. As the forthcoming new regime for newly registered black cabs begins to show its effects, then the disproportionate emissions from their diesel fleet will also begin to fall making a further valuable contribution. In that context, Adam Webber puts the relatively small contribution which the Trial / Proposed Order would make to improving air quality into context. The Trial / Proposed Order is simply one of a number of 'active mode' initiatives which are, collectively, expected to contribute to reducing air pollution / improving air quality. And, yes, redistributing motor traffic can be expected to redistribute emissions, but they are, for the reasons summarised, expected to fall.
60. But then Jason Strelitz brings a new dimension. In an equally careful and straightforward analysis, he demonstrates how the positive health effects of exercise from 'active travel' will (except at the extremes beyond what is at issue here) more than offset adverse effects from reduced air quality.
61. Yes, LBC officers accept that there will be those who live alongside streets where local traffic has been reassigned, but the improvements offered by improved active travel infrastructure for all abilities also needs to be weighed as an important factor to be considered.
62. But if and to the extent that ILHL points to potential effects in Endsleigh Gardens area as result of additional motor trips, the traffic model indicates that whilst the net difference is not great, if anything the model indicates a projected net increase with the 'reverse trial' compared with the Trial / Proposed Order (+WEP) and ILHL urges early adoption of that alternative. It is an alternative which we have seen can be expected to concentrate additional trips brought back to the area into fewer local roads

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<sup>46</sup> Laxen ReX.

in any event (compare again Carter Figs 5/6 with 3/4, the Response table at page 45 and Systra's Trial and Reverse Trial Vehicle Kilometres Information Note).

## **Consultation**

63. I did not touch on consultation in opening. It is not obvious how the various complaints made assist the Inspector in guiding the decision whether to make the Proposed Order or to allow (or make) make the ETO lapse. The Inspector will have read the Consultation Report which was annexed to the CabRep which was itself annexed to the LBC Statement of Case (it is also at CD6/2/C). Nevertheless, I do offer a few words on the topic.
64. LBC officers carried out an extensive public consultation that went beyond the statutory requirements of the road traffic legislation. Responses were informed by the Trial which had been implemented "on the ground" pursuant to the ETO. And I do respectfully invite the Inspector to reread, at an early stage, the Consultation Report in full.
65. Some Objectors at the PI have made what we can group together as five generic complaints, namely that:
- (1) The consultation was not adequately publicised because some addresses did not receive leaflets
  - (2) The questionnaire only asked for direct responses on two options – making the Trial permanent or reverting to the Pre-Trial layout, and did not ask a specific question about any of the possible permutations of different schemes.
  - (3) Consultation materials did not spell out any negative aspects of the proposal.
  - (4) The Consultation did not cover local needs for deliveries, collections, hospital access and journeys:
  - (5) The Council took into account to the views of people who were not resident in the immediate WC postcodes, or within the Council's area
66. These complaints are without merit, and can be addressed in turn.

### (1) Publicising the Consultation

67. The very full scope of the steps taken by LBC's officers to publicise and engage people in the Consultation are set out in detail at pages 4-7 of the Consultation Report. These steps have been selectively ignored by those criticising publicity at this PI.

### (2) Specific questions on two options; permutations of alternative schemes

68. The ETO was necessarily subject to an expiry date. On or by that date, a decision would have to be made either (i) to allow it to lapse (or to make it lapse) and the implementation on the ground would be removed to allow the pre-Trial status to be restored, or (ii) to make it permanent. Any consultation had to focus on those two alternatives. It also needed to be clear and easy to understand, as pointed out in Louise McBride's evidence and the Response document. However, as para 1.8 of the Response document states, respondents were also asked to comment, which included identifying and giving their views on alternative options, and they did so: see pages 18, 42, 46 and the whole of Appendix D which discusses the alternative schemes.

69. I invite the Inspector also to note that out of over 15,000 respondents, *only 21 respondents* favoured a reversal of the Trial to westbound only (p 46 of Appendix C).

70. *A mere 54* out of over 15,000 respondents, favoured two-way motor traffic with two single-direction cycle lanes (one on each side of the motor lanes).

71. Clearly, the voices of ILHL (and LTDA) and BRAG at this PI calling for these alternatives are disproportionately loud in relation to those - including in particular local residents (see pages 13-14 of Appendix C) - who responded to the Consultation, and clearly felt free to give their views and comments privately. These assertions should be treated with caution.

### (3) Identifying in advance and setting out negative aspects of the Proposal

72. The Response Document explains at para 1.6:

“..as with many transport schemes, the objective was to present the information in such a way that was clear, concise and readily understandable to all and in a format that would encourage participation”.

73. Further, this was consultation on a Trial which people had experienced for themselves for several seasons already - as para 1.5 of the Response Document says. They could properly be expected to have formed a view as to whether they considered any negative impacts to arise.

(4) The Consultation did not cover local needs for deliveries, collections, hospital access and journeys

74. Persons providing delivery services were expressly identified (Appendix C, table at top of page 9) and the majority of them were in favour of retaining the Trial (page 13 table at top of page).

75. Those concerns expressed by respondents about deliveries and servicing, with officers' responses, were set out on page 38 of Appendix C.

76. Hospital access and journeys: hospital patients' concerns were taken into account (see Consultation Report (Appx C) page 15, first 2 paragraphs. See also the evidence of Louise McBride and Simi Shah, confirming what is said in Appendix C, that one cannot attribute all delay to the Trial. There were construction and development sites with associated traffic and road closures which caused significant delay. See for example the lengthy closure of the north side of Gordon Square.

77. I invite the Inspector to note too the concerted steps the officers took to raise a response from the Ambulance and Fire Services - even after the formal Consultation ended. Simi Shah presented the informed and up-to-date position to the PI, namely that the ambulance service says it has adapted (and in any event can where necessary travel in either direction along the Corridor), the fire brigade emergency response times have (if anything) gone down and the police, who approved the design of the Trial, have expressed no concerns. (Mr Massett is wrong to compare (at para 17 on page 20 of his Proof) 7 minutes target emergency response time with 45 minute non-emergency patient transport between hospitals and then say emergency response falls short. And later in the same para 17 he ignores the fact that in a major incident the relevant roads would be closed to all traffic save emergency vehicles. If there is a point to be made here at all it is, surely, that with one lane of motor traffic and two cycle lanes, the emergency services would be likely to have a clearer run than if the carriageway was filled with 2 lanes of rather solid motor vehicles.)

(5) The Council took into account to the views of people who were not resident in the immediate WC postcodes, or within the Council's area

78. A cyclist "passing through" - even one who lives outside London and gets on a bike at (say) Paddington may properly be expected to have a highly relevant view as to whether any particular traffic layout may, or may not, increase their risk or perception of risk from a safety perspective.
79. Plainly such views (whether positive or negative) are properly to be accorded weight. The objectors at this PI who say that those passing through should be disqualified from having their views taken into account, are asking the Inspector to ignore the views of legitimate users of the highway.
80. Further, wholly inconsistently with this complaint (aired principally by BRAG and the LTDA), it is said that those travelling to the specialist hospitals in this area should have weight accorded to their views (and LBC officers do not disagree, as their painstaking analysis at Appendix C shows). Those respondents may well not be resident in the immediate area or within the Council's area as a whole, but BRAG and LTDA rely on their needs as BRAG and LTDA see them.
81. But LTDA goes further. It says that significant weight should be accorded to the views of those arriving at mainline stations and Heathrow or London City Airports, including those from abroad, with their luggage and those with hotel and theatre bookings (see eg Massett p4 §3). A long way from all of them will be local residents though.
82. LTDA even says that the views of cyclists should be discounted because they "can be expected to support the scheme" (see for example Massett §12 (lines 13-19). Yet LTDA does not apply that prohibition to, say, taxi driver respondents who (by parity of reasoning), might be expected to oppose it (an expectation reinforced by the predominant aim revealed by Mr Massett in his Summary Proof for securing easy access to Euston station's taxi rank). Clearly a view should not and cannot be discounted merely because it is a view held by the person expressing it.

83. This inconsistency of approach only has to be noticed to show that LBC's officers' careful analysis of the expressed reasons for respondents' interest in the proposal, their means of travel to, through and in the area (pages 8-11 and the WC1 postcode table on page 13) was wholly appropriate, consistent and fair.
84. As to the WC1 postcode table, it is particularly noteworthy that out of the Postcodes closest to the Trial scheme (WC1 H, N, X, E and B) the sole postcode recording more resident respondents against the Trial than in favour of the Trial (WC1B) produced the smallest number of resident respondents compared to the others (12 plus 26). This does tend to suggest that BRAG's position is less than representative of those in the Postcode.

#### Conclusion on Consultation

85. The Consultation Report shows that not only was a thorough and effective consultation exercise embarked upon, but the material gathered was carefully analysed and reported. Those who criticise the details, are often the unwitting recipient of their own criticisms.

#### **Is the Proposed Order for a qualifying Purpose?**

86. LBC's officers say 'yes'. They listed the purposes which they consider to be engaged in the CabRep. It is otiose to remind the Inspector that there is no obligation to satisfy all the objectives, nor even all of the ones relied upon – but I do!
87. And I pray in aid also the undeclared analysis of those who proffer alternative schemes: not least ILHL who must be presumed to see at least one qualifying purpose from pressing the Inspector to recommend making a modified Order to give more or less immediate effect to its 'reverse trial'. The 'reverse trial' would essentially replicate the waiting and loading restrictions and adjustments to parking inherent in the Proposed Order. That rather sidelines ILHL's complaints on servicing provision, and shows that ILHL shares the LBC officers' views as to the adequacy of provision made by the Proposed Order.
88. Whilst BRAG does not have the experience of one such as Russell, they must also realise that their 2-way alternative squeezed into space which is too narrow for optimal lane widths (both for motors and for cycles) would have significant consequences for

waiting and loading restrictions which, again, puts an overall context to the ostensible strength of complaints in that regard levelled at the Proposed Order.

89. But LBC needs some persuading that it would be possible for it to make the Proposed Order, but modified so as to turn it on its head as Russel urges on the Inspector: that appears to go beyond even the sometimes grey area between modification and a new Order.

**Wherein lies the balance?**

90. LBC officers advice to Members and to the Inspector is that the balance lies in favour of making the Proposed Order and that it is expedient so to do.
91. They have recognised that there are disadvantages (such as extra traffic on some roads and apparent localised worsening of air quality), but they point to many advantages ranging from providing a facility which is available to cyclists of all abilities, to encouraging mode shift and a Corridor with much enhanced overall amenity brought about by reducing motor traffic in the Corridor by more than half.

David Smith  
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2<sup>nd</sup> November 2017