Neutral Citation Number: [2024] EWHC 963 (Admin)

Case No: AC-2023-BHM-000100

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Birmingham Civil and Family Justice Centre
33 Bull Street,
Birmingham, B4 6DS

Date: 26/04/2024

Before:

MR JUSTICE EYRE

- -

Between :

The KING **on the application of** **(1) MICHAEL JAMES DAW** **(2) JAMES EDWARD STARTIN** **(3) FLEUR ELIZABETH CAROLINE BOULTON**	**Claimants**
- and – **STAFFORDSHIRE COUNTY COUNCIL**	**Defendant**
-and-	
HIGH SPEED TWO (HS2) LTD	**Interested Party**

- -

Killian Garvey (instructed by **Shakespeare Martineau)** for the **Claimants**
Robin Green (instructed by **Weightmans**) for the **Defendant**

Hearing date: 26th March 2024

- -

Approved Judgment

This judgment was handed down remotely at 10.00 am on 26th April 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Mr. Justice Eyre:

Introduction.

1. The Defendant is the Highway Authority for Staffordshire.

2. On 18th August 2020 the Defendant made the Staffordshire County Council (Yoxall, King's Bromley & Rileyhill) (Prohibition of Right/Left Turn Except for Vehicles under 7.5t) Order 2020 ("the 2020 Order"). This traffic regulation order superseded an experimental order in the same terms and prohibited vehicles over 7.5 tonnes from making turns on to the A515 at specified locations. The purpose of the 2020 Order was to restrict the use of the A515 by heavy goods vehicles which had been using it as a route to the major A38 and A50 roads.

3. The Claimants all live close to the locations affected by the 2020 Order. The First and Second Claimants are farmers and the Third Claimant is engaged in equestrian activities. They all use or would wish to use the A515 with agricultural vehicles and/or horseboxes and their ability to do so is affected by the prohibition on turning at the specified locations. They and others, including representatives of the National Farmers' Union ("the NFU"), had pressed unsuccessfully for the inclusion in the 2020 Order of an agricultural exemption whereby farm vehicles over 7.5 tonnes would be included amongst the categories of vehicles which were exempted from the turning restriction.

4. The Interested Party has taken no part in the proceedings.

5. In 2022 the Defendant was considering a variation of the 2020 Order to make changes to facilitate construction works in relation to the High Speed 2 Railway line. As part of that exercise the Defendant engaged in an informal consultation (described as running from 5th – 26th August 2022) both as to the variation for the HS2 construction traffic but also as to whether there should be a variation to include an agricultural exemption. The Claimants took part in the consultation. The Second and Third Claimants made individual representations and the First Claimant caused the NFU to make a representation on his behalf. In each case they again pressed for the inclusion of an agricultural exemption.

6. On 7th February 2023 the Defendant notified those who had taken part in the consultation that it had decided not to include any agricultural exemption in the revised order ("the Decision") although, as will be seen, there is dispute as to when the Decision was made. The Claimants challenge the Decision on four grounds pursuant to the permission I gave on paper.

The Grounds and the Issues.

7. The four grounds give rise to a number of sub-issues.

8. There are issues of fact as to who in fact made the Decision and as to when and on what basis it was made. The resolution of those issues will determine the outcome of many of the grounds of challenge. The Defendant says that the Decision was made in February 2023 by Timothy Heminsley, the Head of Projects and Technical Services in its Highways Department. The Claimants say that in fact it was made on 17th August 2022 and was made jointly by Mr Heminsley and two local councillors. Alternatively, they say that Mr Heminsley made the Decision but did so on the basis of the views of

those councillors. On that footing the Claimants say that the Decision was made before the end of the consultation period and was made either by those with a pre-determined stance or on the footing of giving the councillors involved a veto. The Defendant says that the Decision was made by Mr Heminsley acting alone after the end of the consultation period and taking account of the representations received.

9. The second ground of challenge is that the Decision was *ultra vires*. Consideration of this logically precedes the other grounds because if the Decision was *ultra vires* it will be liable to be quashed regardless of the other grounds. This ground involves two sub-issues both turning on the correct interpretation of the Defendant's Constitution. The first is the question of whether the power to make the Decision was lawfully delegated to Mr Heminsley and/or to him and the two councillors. On this issue the Claimants say that there was no lawful delegation either to Mr Heminsley alone or to him acting with the councillors. The Defendant says that the Decision was made by Mr Heminsley alone and that, properly interpreted, the Constitution gave him power to make the Decision. On the second issue the Claimants say that, properly interpreted, the Constitution required the question of the variation to be referred to the Defendant's Planning Committee. This was because councillors had objected to the proposed inclusion of an agricultural exemption. The Claimants say that when there were such objections which were not withdrawn then the matter had to go to the Planning Committee for determination even if the council officers were minded to agree with the objections. The Defendant says that the Constitution only required a matter to be referred to the Planning Committee if the intention was to proceed with a proposal to which councillors objected. Where, as here, the relevant officer was not minded to proceed despite the objection then there did not have to be reference to the Planning Committee.

10. Grounds 1 and 4 can conveniently be considered together. Ground 1 alleges that the consultation was unfair because of a failure conscientiously to take account of the representations made in the consultation. Ground 4 is put forward as apparent bias but in reality is an allegation that there was improper pre-determination and that Mr Heminsley and the councillors approached the matter with closed minds. Both grounds depend on the findings made as to when, by whom, and on what basis the Decision was made. If the Decision was made before the end of the consultation period or without in reality taking account of the consultation responses then it would be vitiated. Conversely if it was made after the end of the consultation period and after proper consideration of the responses then these grounds will fail.

11. Ground 3 alleges a failure to provide accurate and adequate reasons for the Decision. There are two separate issues to be considered here. The first is the accuracy of the reasons. The Claimants say that the true reason for the Decision was the opposition of the two local councillors involved and that this was not stated as being the reason. The Defendant says that this is a mischaracterisation of the process which led up to the Decision and that the reasoning was both accurate and adequate. The second issue is whether the reasons given satisfied the test of adequacy laid down by Lord Brown in *South Bucks District Council v Porter (No 2)* [2004] UKHL 33, [2004] 1 WLR 1953. The Claimants say that the reasons given were not adequate because they failed to engage with the circumstances of this particular location and to explain why it was inappropriate for there to be an agricultural exemption at this location.

The Approach to be taken to the Interpretation of the Evidence.

12. The factual material before the court consists of two witness statements from Mr Heminsley and sundry documentation from the Defendant's records. The latter consist mainly of contemporaneous email exchanges.

13. It will be necessary for me to make findings of fact as to the identity of the maker of the Decision and as to the date of the Decision. Those are matters which are crucial to the issues of *vires;* of the fairness of the consultation process; and of whether there was bias or an improper predetermination. In approaching those questions I have regard to and apply the approach which was set out by Chamberlain J in *R (F) v Surrey County Council* [2023] EWHC 980 (Admin), [2023] 4 WLR 45 at [46] – [50].

14. There was no application for Mr Heminsley to be cross-examined. In assessing the weight to be given to Mr Heminsley's evidence I approach matters on the footing that his evidence was given in good faith and that it was an accurate account of his current understanding of matters (the contrary was not suggested). However, I have to be conscious that the statements were written with hindsight and necessarily from a particular viewpoint. I have to consider the extent to which those matters and the fact of the challenge may have influenced the contents of the statements. As a consequence the contemporaneous documents are to be seen as the best guide to what was done and why it was done. Moreover, I have in mind that, as explained by Green J (as he then was) in *Timmins v Gedling Borough Council* [2014] EWHC 654 (Admin) at [110], the court will only exceptionally accept explanations or justifications for decisions which conflict with the reasons given at the time of the decision under challenge.

The Background in more Detail.

15. The history has become clearer as the case has progressed. In the course of the proceedings the Defendant has provided more of its internal exchanges than were provided initially. Moreover, some of the material initially provided to the Claimants contained redactions and the response to the Claimants' pre-action correspondence was in markedly defensive terms. I am satisfied that there was no malign intent behind this and it was an understandable response. However, it had the consequence that the Claimants' concerns and suspicions were heightened rather than assuaged and that the full history was not initially apparent.

16. Lobbying for an agricultural exemption had continued after the making of the 2020 Order. On 13th December 2021 Mr Heminsley and two of his colleagues had a Teams meeting with representatives of the NFU and with local farmers and residents including the Third Claimant. Following that meeting Mr Heminsley sent an email report to two of his colleagues indicating that he and the two colleagues who had attended the meeting were now supportive of an agricultural exemption albeit one limited to vehicles transporting livestock and to slow moving agricultural vehicles designed for use in fields rather than for road travel.

17. Further exchanges followed and it is apparent that Richard Rayson, the relevant Strategic Community Infrastructure Manager, was not supportive of an agricultural exemption. On 14th December 2021 Mr Heminsley replied to Mr Rayson saying that he felt the Defendant could "now justify the exemptions" and setting out the reasons why he had come to that view.

18. There then followed internal exchanges about the potential wording of an exemption and about whether it could be formulated in sufficiently precise terms.

19. Amey Consulting provided design and other technical services to the Defendant doing so through a team embedded in the Defendant's operation. Mr Heminsley instructed that team to begin an informal consultation with a view to amending the 2020 Order so as to provide exemptions for vehicles engaged in HS2 construction works and for agricultural vehicles. Mr Heminsley says that at stage he believed that the local councillors would be supportive of an agricultural exemption.

20. The consultation began on 5th August 2022 when Henna Kalathingal (an Amey employee based in the Defendant's design hub) sent out an email to selected recipients. These included local councillors, the Staffordshire Police, the fire and ambulance services, potentially affected district and parish councils, and the NFU. The email contained a link to an online survey which was to be completed by 26th August 2022. The email began by saying:

> "As part of the Council's Integrated Transport Strategy and High Speed 2 (HS2) programme, Staffordshire County Council working in partnership with Amey, have been commissioned to amend an existing turning ban Traffic Regulation Order (TRO) on A515 (TR47/18 Yoxall, Kings Bromley and Rileyhill).
>
> The scheme aim is to allow exemptions for HS2 HGV construction traffic and to exempt slow moving agricultural vehicles and livestock transport from the existing turning ban TRO. This will enable HS2 Ltd and its contractors to carry out their construction works legally for construction and support road safety and animal welfare..."

21. Cllr Julia Jessel is a county councillor whose division includes some of the locations covered by the 2020 Order. Cllr Jessel was one of the recipients of the 5th August 2022 email and she responded in polite but somewhat peremptory terms to Miss Kalathingal on 8th August 2022. Cllr Jessel asked for a meeting "to discuss the rationale for these changes" and asked why matters had progressed to the stage of the consultation without advance discussion with herself and Cllr Cox, whose division also included locations covered by the 2020 Order.

22. On 17th August 2022 Mr Heminsley and other council officers met with Cllrs Jessel, Cox, and Eagland. Mr Heminsley says that at the meeting Cllr Jessel made clear her opposition to an agricultural exemption. Mr Heminsley says that this surprised him because he had previously been told that she was supportive of an exemption. As a consequence of that meeting Mr Heminsley sent an email to Miss Kalathingal. In this he said:

> "To clarify what was discussed at yesterday's meeting with Councillors Jessel, Cox and Eagland:
>
> An amendment to include an exemption for HS2 Phase 2a construction traffic in the A515 Turning Bans TRO was accepted by the Members present. Please proceed to amend the TRO accordingly. Sarah Mallen can assist with the wording required.
>
> An amendment to include exemptions for some categories of agricultural traffic was not accepted by the Members. Please do not proceed with these exemptions in the TRO."

23. Mr Heminsley says that this was an instruction for the Amey team to suspend work on the drafting of an agricultural exemption. It was, he says, intended to avoid work continuing on that drafting and design and consequent expense being incurred which would be wasted if the exemption was not approved. Mr Heminsley characterises this as an instruction in relation to the drafting/design work and denies that a final decision on the inclusion or exclusion of the agricultural exemption had been made at that stage.

24. Miss Kalathingal replied to Mr Heminsley 15 minutes later. She said that she would "proceed works accordingly". Miss Kalathingal then reported on the work done by the Amey team to that date. She listed those who had been consulted and summarised the responses which had been received. Miss Kalathingal concluded by referring to the "U&A [undertakings and assurances] information" which was to be included in the consultation letter. In that context she asked whether she should "repeat the initial engagement process again or go ahead with the formal public consultation". Mr Heminsley replied saying that the informal consultation process should not be repeated but that there should be engagement with the objectors to address their concerns with a view to preventing them objecting "during the formal consultation period". I am satisfied that Miss Kalathingal's query and Mr Heminsley's response about repeating the initial engagement process related to matters in connexion with the HS2 construction traffic and not to the potential agricultural exemption. This follows from the facts that the undertakings and assurances were being given as part of the HS2 process and that Mr Heminsley suggested that there be reference to the HS2 team to obtain the information needed to assuage the objectors' concerns.

25. On 23rd August 2022 Simon Spencer, the group secretary of the local NFU branch, wrote to Miss Kalathingal asking for confirmation that responses from local farmers to the consultation had been received. Miss Kalathingal forwarded that email to Mr Heminsley telling him that of the 16 responses received to the consultation 13 had been from members of the NFU and had supported "our initial scheme brief". She then asked:

> "...However, following recent elimination of farming vehicles from the TRO modification, please can you advise how we tackle the email below and concerns raised by the farmers in their response forms? I understand you are aiming to organise a meeting with the NFU to update on this scheme. Should I hold the response until after the meeting? Please inform."

26. Mr Heminsley did not respond to that email from Miss Kalathingal and does not comment on it in his statements.

27. On 6th September 2022 Mr Heminsley was due to meet Cllrs Jessel and Cox. On 5th September 2022 and in anticipation of that meeting he sent them an email. In that email Mr Heminsley set out the history of the requests for an agricultural exemption. He listed five considerations in favour of including such an exemption in the forthcoming variation of the 2020 Order. He then attached the comments received in the course of the consultation. Mr Heminsley concluded by apologising for not keeping Cllrs Jessel and Cox as "involved or updated" as he should have done and then said:

> "Secondly, any TRO amendments require the support of the county councillors affected and we will take your steer on this matter. The TRO process has been paused to allow further internal discussion. I think a meeting with the NFU would be helpful to try to resolve this matter."

28. It appears that Cllr Cox did not attend the meeting on 6th September 2022 but instead met Mr Heminsley in October 2022. However, Cllr Jessel did attend the earlier meeting and maintained her opposition to the exemption. Cllr Jessel confirmed that position in an email of 12th September 2022 where she said:

> "Further to our meetings on the 17th August and 6th September 2022, to discuss a review of the A515 no left/no right turning restrictions, I confirm that my opinion is that they should remain in place without modifications. This comment obviously relates to those restrictions in place within Needwood Division. Cllr Richard Cox will need to confirm his views as I cannot speak on his behalf.
>
> My reasons for this decision are based on:-
>
> 1. The restrictions have made a significant improvement to the quality of life for many residents living close by and alongside the A515, by reducing the HGV traffic 24/7. Whilst I appreciate the restrictions cause some inconvenience to some operators, these I believe are outweighed by the significant benefits.
>
> 2. Prior to the restriction being brought in to effect as experimental orders, as you know consideration was given to introducing a permit system for agricultural vehicles. Due to the wide geographical area over which some farmers operate, this was considered impractical.
>
> 3. Within the Needwood Division I have received complaints from one resident who uses a large vehicle to transport horses, which is equestrian not agricultural activity. There is also another business who uses a HGV vehicle to transport motor sport vehicles. This highlights the difficulty in defining which vehicles could be exempt and which are not.
>
> 4. Diversification of farms also adds another complication. Some farms now utilise their premises for a range of operations, including logistics and storage. Again the complications in separating these vehicles into exempt and non-exempt would I believe give rise to continuing complaints and challenges"

29. Miss Kalathingal had sent the initial consultation letter to the Staffordshire Police but the latter had not responded. A chasing email was sent on 21st November 2022 forwarding the earlier email and saying:

> "We would greatly appreciate your comments in this matter, specifically on the proposed exemption of local agricultural vehicles from the existing turning ban TRO on Wood End Lane, Kings Bromley and Yoxall, which would help us aid the impending discussions we are aiming to arrange with the National Farmer's Union and the relevant County Councillors."

30. That email triggered a response from the Police and on 19th December 2022 Mr Heminsley met with Police Sergeant Kirkland. As a result PS Kirkland sent an email on 21st December 2022 which was broadly supportive of the proposed agricultural exemption subject to a suggestion that it be a temporary measure to enable the impact on accidents to be monitored.

31. On 2nd February 2023 Mr Heminsely emailed Cllrs Jessel and Cox saying:

> "Following discussions with you both, and considering feedback from officers and stakeholders, I propose that we continue with the HS2 Phase 2a HGV exemption (which

> we have to comply with) and that we **do not** pursue an exemption for slow moving agricultural vehicles and livestock vehicles."

32. Having said that Mr Heminsley added that he had drafted a response to the NFU and set out the text of a proposed response. He ended the email to Cllrs Jessel and Cox by saying "please feel free to contact me regarding the above".

33. Cllr Jessel replied to Mr Heminsley on the same day saying:

> "I support the outcome of your review, which concurs with my views and those of local residents who have spoken to me."

34. On 7th February 2023 Mr Heminsley wrote to Mr Spencer of the NFU in the following terms (which had been foreshadowed in his email of 2nd February 2023 to the two councillors):

> "Thank you for coordinating the representations made regarding potential agricultural exemptions to the existing A515 weight restricted turning bans Traffic Regulation Order (TRO). I am writing to update you on the outcome of the informal consultation process.
>
> After much consideration and deliberation, the Council has decided not to include agricultural exemptions when revising the existing TRO. I realise that this will be a disappointing decision for the NFU and its members. Following representations from the NFU and its members, the Council reassessed its original decision to not include agricultural exemptions and carried out an informal consultation with key stakeholders that included the police, county councillors, parish councils, the NFU and others, over whether agricultural exemptions should be added to the TRO. Whilst there was general support for the exemptions in principle from those who were consulted, the practical enforcement of the TRO, the potential reduction in the effectiveness of the TRO, and potential misuse of the exemptions remains a significant concern for the Council. The Council must consider the differing needs and desires of all stakeholders. The increasing numbers of HGVs using the A515 has been a significant issue for communities on the A515 for many years. Since the implementation of the experimental TRO in 2019 (which became permanent in 2020) the restrictions have been successful in significantly reducing the number of HGVs on the A515 and they have been met with the widespread support of communities. There are still those who would like to see a full 7.5 tonne weight restriction on the A515, something the Council has strongly resisted due to the impact on businesses, and there are others who would like to have the restrictions removed altogether. As a result of this review, it is felt that the best possible outcome in the circumstances has been reached."

The Defendant's Constitution.

35. Paragraph 4 of Section 10 of the Defendant's constitution provided as follows under the heading "Powers Exercisable by Officers":

> "4.1 Officers may exercise functions of the Council, the Cabinet and committees of the Council to the extent and subject to the conditions specified in the Scheme of Delegation to officers set out in Appendix 1
>
> 4.2 The Chief Executive's, Directors' and other officers' powers conferred by this Section and its Appendices, including any proper officer functions, may be exercised by other officers designated in writing by the Chief Executive, relevant Director, or other officer, either generally or in specific circumstances"

36. The appended Scheme of Delegation was accompanied by a number of tables. As paragraph 1.6 of the Scheme explained "Tables 2 – 7 set out the specific delegations to individual Senior Leadership Team members relating to their areas of responsibility". Table 4 set out the delegations to the Director for Economy, Infrastructure and Skills. That table is attached as Annex 1 and the powers exercised by Mr Heminsley fell under boxes 2 and/or 3 of that table.

When and by Whom was the Decision made and on what Basis?

37. As noted above the Defendant says that the Decision was made by Mr Heminsley in February 2023 exercising his own judgement albeit giving considerable weight to the views of Cllrs Jessel and Cox. The Claimants say that the contemporaneous documents show that the Decision was made on 17th August 2022 and was made by Mr Heminsley jointly with Cllrs Jessel and Cox or, if made by Mr Heminsley alone, was made on the basis that the views of the councillors were decisive and that they had an effective veto.

38. The Claimants' interpretation is supported by Mr Heminsley's email of 18th August 2022 to Miss Kalathingal saying that she is not to proceed with the agricultural exemption. Further support comes from Miss Kalathingal's email of 23rd August 2022 where she talks of the "recent elimination of farming vehicles from the TRO modification". It is of note that Miss Kalathingal made that comment in the context of seeking advice on responding to an email from the NFU about the consultation. The only credible explanation of this email is that Miss Kalathingal believed that there was no longer any prospect of the inclusion of an agricultural exemption in the modified order and that she regarded consultation responses about such an amendment as irrelevant. There is no statement from Miss Kalathingal and, as I noted above, Mr Heminsley did not address this email in his evidence. However, Mr Heminsley's interpretation of his email of 18th August 2022 as being about the advance drafting work is supported by the paragraph in that email relating to the HS2 exemption. The reference there to assistance being obtained on the wording does suggest that Mr Heminsley was concerned with the drafting work. I conclude that his intention had been to stop drafting work rather than to stop the consultation or to shut down the option of an agricultural exemption. To the extent that Miss Kalathingal understood matters differently (as it appears she did) then that was a misunderstanding of what Mr Heminsley had intended.

39. The concluding remark in Mr Heminsley's email of 5th September 2022 to Cllrs Jessel and Cox saying that any amendments to the 2020 Order require their support is also a factor in favour of the Claimants' contention that the councillors were given a veto. However, that comment and the balance of the email is a potent indication that a final decision had not been taken before then (and in particular on 17th August 2022). The email sets out the history and identifies factors in favour of an agricultural exemption while saying that "the TRO process has been paused to allow further internal discussion". If the decision not to proceed with an agricultural exemption had already been taken there would have been no point in this email. The reference to requiring the councillors' support does bolster the Claimants' case. However, it can be seen as a recognition of the weight to be given to the councillors' views and of the political reality that approval would be unlikely to be forthcoming if they were to oppose the exemption.

40. Consideration of the dealings with the Staffordshire Police in November and December 2022 is also a potent indication that the Decision was not taken until February 2023. It is significant that in November 2022 Miss Kalathingal pressed the police for a response

to the consultation. Moreover in doing so she asked in particular for comments on the proposed agricultural exemption. Not only was that email sent but a meeting with the police followed and a response directed to the agricultural exemption came from the police. As Mr Green for the Defendant said if the Decision had already been made these and the other actions after August 2022 were not only pointless but amounted to a charade.

41. I have already noted that the terms of the 5th September 2022 email support the Defendant's position and further support comes from the terms of Cllr Jessel's email of 12th September 2022. That followed the meeting of 6th September 2022. The email shows Cllr Jessel setting out her reasons for urging a particular course (namely the exclusion of an agricultural exemption) and it is read most naturally as arguing for that course to be adopted. This does not fit readily with an interpretation that Cllr Jessel regarded herself as having a veto and as being the person who needed to be persuaded by submissions from others. The email is also inconsistent with any decision having already been made. If the Decision had already been made there would have been no point in the reference to Cllr Cox needing to confirm his views.

42. The terms of Mr Heminsley's email of 2nd February 2023 are strongly supportive of the Defendant's interpretation of the dealings. For the Claimants Mr Garvey argued that the use by Mr Heminsley of "we" in the phrases "we continue" and "we do not pursue" following "I propose" indicated that a joint decision was being made and that Mr Heminsley was making a proposal to Cllrs Jessel and Cox for their joint agreement. I do not accept that interpretation of this email. Account is to be taken of the fact that Mr Heminsley was clearly seeking to use diplomatic language in his correspondence with the councillors in circumstances where he was conscious of having ruffled feathers earlier. What is more significant is that Mr Heminsley is setting out the course which he proposes and that he concludes the email by saying that the councillors should "feel free to contact" him. I am satisfied that the email is properly to be interpreted as Mr Heminsley informing the councillors of a decision which he had made. This interpretation is supported by Cllr Jessel's response to Mr Heminsley's email. Cllr Jessel's statement in that email that she supports the outcome of Mr Heminsley's review is most properly read as being her favourable reception of a decision made by Mr Heminsley.

43. I am satisfied that when the contemporaneous correspondence is seen as a whole and in context the position is clear. The Decision was made by Mr Heminsley in February 2023 and was made as the result of his own judgement. It is clear that Mr Heminsley attached very considerable weight to the views expressed by Cllrs Jessel and Cox and I will consider the significance of this below but that weight was being attached to those views in the context of a determination being made by Mr Heminsley acting alone.

Was there lawful Delegation to Mr Heminsley?

44. Section 101(2) of the Local Government Act 1972 empowers a local authority to delegate to an officer or officers any of its functions which could be discharged by a committee of the authority. However, an officer to whom such a function has been delegated may not sub-delegate the performance of that function to another officer (see *Pemberton International Ltd v London Borough of Lambeth* [2014] EWHC 1998 (Admin) at [41]). As Lewis J explained in *Pemberton* at [42] there is a further category of circumstances in which the nature of the function is such that even in the absence of

express delegation "one officer may be regarded as having authority to act on behalf of another officer who is authorised to exercise the function". Neither side suggested that the Decision fell into that further category.

45. I have set out above and in Annex 1 the relevant terms of the Defendant's constitution and of the Scheme of Delegation. The Defendant has not put forward any designation of Mr Heminsley under paragraph 4.2 of Section 10 of the Scheme. It follows that any authority which Mr Heminsley had to make the Decision had to be derived from paragraph 4.1 of that Section together with paragraph 1.6 of Appendix 1 of the Scheme and the terms of Table 4. The question resolves itself into one of the proper interpretation of that table and in particular of sections 2 and 3 thereof. The interpretation exercise requires consideration of the language used reading the same realistically and in context.

46. As Head of Projects and Technical Services in the Defendant's Highways Department Mr Heminsley was a member of the Operational Management Team and so in Band C for the purposes of Table 4. The Defendant says that the column headed "Sub-Delegated to" in that table was to be read as setting out the lowest point of the delegation. It says that all officers in a higher band than that stated in the relevant section of the table were to be regarded as also having authority to perform the function in question. Thus the fact that sections 2 and 3 of the table stated that there was delegation to "D Highways and Built County" meant that officers in Bands A, B, and C could also exercise the relevant functions.

47. The Claimants advance a different interpretation of Table 4. They say that sections 2 and 3 provide for delegation to specified post-holders and to no one else. The officers in question were the Highways and Traffic Regulation Manager (for section 2) and the Highways and Built County Manager with responsibility for function (for section 3). Mr Heminsley did not hold either of those posts and so there was no delegation to him. The Claimants say that the fact that Mr Heminsley was in a higher band than those officers was irrelevant.

48. In favour of the Claimants' interpretation it is to be noted that Band D is defined as being "other specified posts". This supports the view that only the particular or specified officers are contemplated as being the recipients of the delegated authority. It might be thought that only certain officers would have the necessary expertise or knowledge to undertake the function in question. The fact that a different officer was in a higher band than the specified officer did not necessarily mean that the higher-ranking officer had that expertise or knowledge. In addition Table 4 could have been drafted so as to include in the sub-delegation column the words "A, B, C, and D" which would have made the position clear and which would have accorded with the Defendant's interpretation.

49. Mr Green contended that the Claimants' reading of the table led to what he characterized as a bizarre consequence that an officer at a higher level and with more authority than the specified officer could not exercise a function which someone junior to that officer was authorized to exercise. That is not a complete answer to the question because as I have just explained it might be thought that particular post-holders had knowledge or expertise which a senior officer would not necessarily have. However, the point does have real force when it is remembered that the functions are those of the Council itself. In the absence of the delegation the function would have to be performed

by the Council or by a committee of the Council. It is also to be noted that the functions in question are substantially matters of judgement. But for the delegation the members of the Council (or of a relevant committee) would have to determine whether and how to exercise the function. They would do so by considering the material put before them (which would include the reports of specialist officers but also representations from others) and forming a judgement. The functions were not simply a matter of applying technical expertise. In those circumstances there is force in the point that the more senior the officer in question the more likely that it was appropriate for him or her to undertake the function and to exercise the necessary judgement on behalf of the Defendant.

50. The table is entitled as "Delegations to the Director for Economy, Infrastructure and Skills". That when combined with the setting out of the bands of officers in descending order of seniority is suggestive of the delegation being seen in the context of the structure of that director's department. This also accords with the context of this being delegation of a function of the Defendant made in the context of a hierarchical structure. Indeed, the Claimants' interpretation would have the consequence that none of the delegated powers could be exercised either by the director him or herself nor by any member of the Wider Leadership Team.

51. A further factor in favour of the Defendant's interpretation is the presence of the fifth column on the table which is headed "Authorised officer(s)/Comments". On the Claimants' interpretation this column was unnecessary because the material there identifying the sole officer to whom the function in question was being delegated could have been included in the fourth "sub-delegated to" column.

52. Table 4 is not drafted as precisely as, with hindsight, would have been desirable. As has just been seen arguments can be advanced in favour of each of the competing interpretations. I am, however, persuaded that the Defendant's interpretation best accords with the purpose of the Scheme of Delegation when regard is had to the context of the structure of the Council and to the nature of these functions.

53. It follows that the Scheme of Delegation was effective to delegate power to make the Decision to Mr Heminsley provided that he exercised that power in accordance with the restrictions set out in the Scheme and I will now turn to those.

Did Mr Heminsley act in accordance with the Scheme as properly interpreted?

54. This issue also turns on the proper interpretation of section 3 of Table 4 of the delegation scheme. Again the language used is to be the starting point reading the same realistically and in context.

55. The Claimants contend that the effect of this provision is that if an objection from a councillor is made and not withdrawn then the matter has to go to the Planning Committee. An officer is not only unable to make a traffic regulation order to which a councillor objects but is also unable to accept a councillor's objection and to abandon a proposal to which a councillor has objected. It is said that this is a consequence of the language used and in that regard the Claimants place particular emphasis on the reference on the words "to determine objections". They say that an officer who accepts an objection is determining the objection and that the table expressly provides that an officer may not determine an objection from a councillor. Mr Garvey submitted that

this provision had the important purpose of protecting officers from having to make decisions on matters where a councillor had objected. He accepted that it was a consequence of this interpretation that even if all the consultees in respect of a particular proposal were unanimous in opposing the proposal then the matter would still have to be referred to the Planning Committee if those consultees had included a councillor and even if the consultation responses had persuaded the officers that the matter should not be pursued.

56. For its part the Defendant emphasised the need to read the provision realistically and in context. It said that the purpose was to give a councillor the right to have a proposal referred to the Planning Committee where the officers were minded to proceed with it notwithstanding the objection from the councillor. The provision meant that an officer could not override the objection from a councillor but it did not preclude the acceptance of arguments against a proposal advanced by councillors and others.

57. I prefer the Defendant's interpretation. The Claimants' reading of the provision is a possible one grammatically and linguistically but that advanced by the Defendant does not do violence to the language used. More significant is the fact that the Claimants' interpretation leads to an artificial and unrealistic result while that of the Defendant accords with the context and purpose of the provision. As noted above it would mean that the Planning Committee would have to consider a proposal to which there had been unanimous opposition and which the relevant officers no longer supported just because the opposition had included a councillor. It would also mean that an officer could decide to abandon a proposal to which a member of the public had objected but not one to which a councillor had objected. When read in context the purpose and effect of the provision is clear. An officer can override objections which come from members of the public but not those from a councillor. An officer can also choose not to proceed with a proposal and can do so whether the objections causing the change of heart come from a councillor or a member of the public or both. It follows that Mr Heminsley was entitled to proceed as he did and to accept the councillors' objections provided he was persuaded of their merits.

58. For completeness I add that I do not accept the analogy which Mr Garvey drew with the commonplace provisions which prevented a council officer from determining a planning application under delegated powers where a councillor had objected to the application. The situation is not truly analogous to that here because here the proposal was initiated by the Defendant which can decide not to proceed with the proposal whereas a planning application will typically be made by a third party. Unless the applicant in such a case withdraws the application a determination will be necessary.

Conclusion on Ground 2.

59. The consequence is that ground 2 fails.

Grounds 1 and 4: Was there Fair Consultation? Was the Decision tainted by Bias or Pre-Determination?

60. The applicable principles are not in dispute and can be stated shortly.

61. Where a public body chooses to consult in advance of a decision then the consultation must be genuine, properly conducted, and fair. Fairness is to be judged by reference to the *Gunning* criteria as applied to the particular circumstances (see *R (Mosley) v*

Harringay LBC [2014] UKSC 56, [2014] 1 WLR 3947 and *R (Coughlan) v North & East Devon Health Authority* [2001] QB 213). In the context of this case the key *Gunning* criterion is that of taking account of the product of the consultation when making the relevant decision. That necessarily requires that no decision be taken until after the end of any consultation period.

62. Ground 4 was advanced on the basis of apparent bias by reference to the *Porter v Magill* test as explained by Richards J (as he then was) in *Georgiou v LB of Enfield* [2004] EWHC 779 (Admin). As I indicated when giving permission for this ground bias in decision making by council officers or elected members is now to be considered in the light of the Court of Appeal's analysis in *R (Lewis) v Redcar & Cleveland BC* [2008] EWCA Civ 746, [2009] 1 WLR 83 as summarised by Dove J in *R (Legard) v Kensington & Chelsea Royal LBC* [2018] EWHC 32 (Admin), [2018] PTSR 1415 at [133] – [136]. The crux is the point made by Dove J at [133] that:

> "…councillors may have a predisposition in relation to a particular decision, but that will not amount to predetermination provided they approach the decision with a mind which is willing to grasp all of the merits to be considered, and which is not closed to making a decision amounting to a departure from their predisposition."

63. In the circumstances here this means that ground 4 is really an aspect of ground 1 because fair consideration of the consultation responses entails approaching the matter with an open mind and without pre-determination. In addition the conclusion on both grounds will flow from the finding as to when and by whom the Decision was made.

64. I have explained above my conclusion that the Decision was taken by Mr Heminsley in February 2023. The Decision was, therefore, taken after the end of the consultation period and I am satisfied that due regard was had to the consultation responses.

65. It cannot be suggested that Mr Heminsley approached the matter with a closed mind or that there had been a pre-determination of the question on his part. If anything it is apparent that he was predisposed in favour of including an agricultural exemption. He had been the mover of the initial proposal that this should be included in the variation of the 2020 Order. He had been instrumental in persuading his colleagues that such an exemption was practicable and should be considered. In addition his email of 5th September 2022 to Cllrs Jessel and Cox was an attempt to persuade them of the case for an exemption. At the very least Mr Heminsley was in that email putting the factors in favour of an exemption before the councillors in clear terms.

66. The councillors, and in particular Cllr Jessel, were strongly opposed to the proposed agricultural exemption. However, they were entitled to take that stance. In light of my findings as to what happened the councillors were taking part in the process as consultees rather than decision makers. They were entitled to take account of their knowledge of the circumstances and interests of their divisions and to exercise their own judgement as to what was in the best interests of their constituents as a whole. There is no reason to believe that Cllr Jessel's comment on 5th February 2023, that the Decision to refuse the agricultural exemption was in accordance with the views which had been expressed to her, was anything other than an accurate portrayal of the representations she had received.

67. It is to be noted both in considering the views of the councillors and in considering the weight which Mr Heminsley attached to those views that the position set out by Cllr

Jessel was a reasoned and coherent one. In her email of 12th September 2022 Cllr Jessel acknowledged that the restriction on turning on to the A515 caused inconvenience to some and made it clear that she saw the matter as a balancing exercise. She set out the matters which caused her to believe that the balance fell against the inclusion of an agricultural exemption. The points which she made had force and cannot be characterised as being irrelevant, irrational, or unconsidered. Opinions could differ as to where the balance should fall but Cllr Jessel's contentions were neither unprincipled nor unconsidered. The fact that Cllr Jessel in particular advanced a reasoned case indicates, as noted above, that she was not purporting to exercise a veto but was setting out a reasoned case why a particular decision should be made. This supports the assessment that it was Mr Heminsley who was making the Decision.

68. In assessing the consultation responses and in considering what decision to make Mr Heminsley was entitled to attach very considerable weight to the views of the local councillors. That is not only because if the councillors' objections were maintained the matter would have to go to the Planning Committee (where the views of the local councillors would again carry considerable weight). It is also because of their positions as the elected representatives for the area in question. Mr Heminsley was entitled to proceed on the basis that the councillors had a good understanding of the needs and interests of those they were elected to represent. It is to be remembered that the Decision necessarily involved a balancing exercise between the harm to those in the position of the Claimants caused by the absence of an exemption and the impact on the lives of others which would result from use of the A515 by large agricultural vehicles if there were an exemption. Moreover, it is again significant that Cllr Jessel advanced a reasoned case. If the councillors had resisted the proposed exemption by way of an unreasoned and unconsidered response there might have been scope for criticism in an acceptance by Mr Heminsley of such a response. That, however, was not the case and weight clearly had to be given to the considered views of the councillors.

69. In those circumstances the facts that Mr Heminsley gave considerable weight to the views of the councillors and that he found that the matters they advanced outweighed the factors in favour of the proposed exemption do not mean either that there was any unfairness in the consultation nor that there was bias or determination on the basis of a closed mind in the making of the Decision.

70. It follows that grounds 1 and 4 both fail.

Ground 3A: the Truthfulness of the Reasons.

71. In ground 3 the Claimants challenge both the truthfulness and the adequacy of the reasons given for the Decision in the email of 7th February 2023. Those are two distinct but closely related points and I will consider them separately.

72. The Claimants say that the reasons set out in the email were not the true reason for the Decision. The true reason should have been stated to be either (a) the fact that the local councillors' opposition had determined the matter or (b) the fact that in light of that opposition Mr Heminsley had a choice between abandoning the exemption or taking the matter to the Planning Committee and that he had decided to abandon the exemption rather than go to the Committee. The reason given was, the Claimants say, false because it did not draw attention to the crucial significance of the involvement of Cllrs Jessel and Cox. The Claimants do not allege bad faith on the part of Mr Heminsley as the

author of the email but this contention amounts to saying that Mr Heminsley deliberately gave a reason which (at the least) he knew to be incomplete and inaccurate.

73. I reject this argument. The Claimants' challenge has to be seen in the light of my conclusion that the Decision was made by Mr Heminsley as an exercise of his judgement albeit attaching considerable weight to the representations from the councillors. Those representations were in reasoned terms and were part of the consultation. The conclusion was reached by reference to the matters advanced in the consultation and so was a conclusion reached having regard to particular factors. The 7th February 2023 email set out those factors and so gave the true reason for the Decision. In that regard it is of note that the factors set out in the email draw heavily on the matters set out in Cllr Jessel's email of 12th September 2022. That is an indication not that the councillor was seen as having a veto but that account was taken of the considerations which she had raised and that it was those considerations which caused the Decision. The 7th February 2023 email did not conceal the true reason nor did it give a false reason for the Decision.

Ground 3B: the Adequacy of the Reasons.

74. The test to be applied is that set out by Lord Brown in the *South Bucks DC v Porter (No 2)* at [36] namely:

> "The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the "principal important controversial issues", disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision.

75. The Claimants characterize the reasons as being those set out in the paragraph of the 7th February 2023 email which begins "Following representations …". They say that the factors listed at the end of that paragraph namely "practical enforcement", "potential reduction in effectiveness", and "potential misuse of exemptions" are generic considerations which would apply to any exemption from any traffic regulation order. They were, moreover, considerations which would not always preclude the making of an agricultural exemption to such an order. It is in that context and for that purpose that the Claimants point to a different instance of a traffic regulation order made by the Defendant where there was an agricultural exemption. The Claimants say that for the reasons to be adequate it was necessary for the Defendant to spell out why the generic difficulties to which it had referred precluded the particular exemption sought in the particular location. It was necessary to show why an agricultural exemption was not acceptable at the actual locations subject to the 2020 Order.

76. I do not accept that contention. The challenge is based on a failure to read the 7th February 2023 email as a whole. It is that email read as a whole which informed the Claimants of the reasons for the Decision. When the email is read as a whole the reasons are adequately expressed. In particular the paragraph on which the Claimants focused must be read alongside the immediately following paragraph beginning "the Council must consider". When that is done the reasons are both clear and related to the locations in question.

77. When read as a whole the email set out matters which would be of concern if there were to be an exemption (and thereby explained that an exemption would not be a problem-free course) and then explained the particular factors which went into the balance in these locations. It is possible to criticise the drafting of almost any set of reasons when the same are subjected to detailed analysis by teams of lawyers after the event. The requirements are, however, intelligibility and adequacy and the reasons given here were both intelligible and adequate. A recipient of the email was able to understand that the Defendant had identified factors in favour of and factors against the making of an exemption (with the problems as to enforcement and the like being factors against) and that it had taken account of the benefits and the disadvantages of reducing heavy vehicle movements on the A515. That was clearly explained as being a balancing exercise and the email said that the Defendant had concluded that the appropriate balance fell at the point of allowing HGV movements along the road but forbidding all turns at the prohibited points without any exemption. The Claimants would have reached a different conclusion as to the appropriate balance but it cannot be said that the email did not provide an intelligible or adequate explanation of the Defendant's reasons.

78. Ground 3, therefore fails.

Conclusion.

79. In those circumstances the claim is to be dismissed.

ANNEX 1

Home

Table 4 - Delegations to the Director for Economy, Infrastructure and Skills

Delegation Table

Band	Definition
A	Director of Economy, Infrastructure and Skills
B	Economy, Infrastructure and Skills Wider Leadership Team (WLT)
C	Economy, Infrastructure and Skills Operational Management Team (OMT)
D	Other specified posts

No.	Delegation	Overall Responsible Body	Sub-Delegated To:	Authorised Officer(s) / Comments
HIGHWAYS				
1	To exercise all the powers and duties of the County Council under the Highways Act 1980 (other than Sections 90A to 90I), and the Traffic Management Act 2004 in relation to roads and highways open to all traffic and to serve all notices and take all steps as the Acts may require in connection with the exercise of such powers and duties	Council	C Highways and Built County	
2	After seeking the views in each case of the local member(s) of the County Council affected thereby and the relevant District Council and Parish Council, and provided the local member(s) of the County Council so consulted do not object thereto, to exercise the powers and duties of the County Council under Sections 90A to 90I of the Highways Act 1980 (Road Humps and other Traffic Calming Works); and under the Road Traffic Regulation Act 1984 (as amended) or any subsequent re-enactment thereof	Council	D Highways and Built County	Highways and Traffic Regulation Manager
3	To determine objections to proposed Traffic Regulation Orders under paragraph 2 above (other than those made by the local members of the County Council affected thereby) *Objections made by Local Members of the County Council which cannot be resolved to be referred to the Planning Committee for consideration*	Council	D Highways and Built County	Highways and Built County Manager with responsibility for function
4	After seeking the views in each case of the local member(s) of the County Council affected thereby and provided the local member(s) so consulted do not object thereto, to authorise: Neighbouring Authority to discharge the County Council's Highway functions and powers on 'cross boundary' contiguous sections of road To authorise the County Council to discharge a neighbouring Authority's Highways functions and powers on 'cross boundary' contiguous sections of road	Council	D Highways and Built County	Highways and Built County Manager with responsibility for function
5	To approve District Councils' proposals under Sections 23 (market places) and 38 (cycling in pedestrian areas) of the Staffordshire Act 1983	Council	C Highways and Built County	Highways and Built County Manager with responsibility for function
6	To approve District Councils' applications for Orders to amend charges for parking places in accordance with the powers contained in Section 35 of the Road Traffic Regulation Act 1984	Council	D Highways and Built County	Highways and Built County Manager with responsibility for function
7	To take action on behalf of the County Council, after consultation where appropriate with District Councils, under Sections 5 (traffic signs), 6 (damage to footways), 7 (plans of new streets), 8 (vesting of former highway land) & 10 (grass verges etc) of the Staffordshire Act 1983	Council	C Highways and Built County	Highways and Built County Manager with responsibility for function
8	To grant street works licences under the New Roads and Street Works Act 1991	Council	D Highways and Built County	Commissioned Service Manager with responsibility for that function
8.1	Following consultation with the Cabinet Member, to develop, implement and monitor a programme of on-street charges for parking schemes.	Council	B Highways and Built County	
9	To issue charges and Fixed Penalty Notices under Section 95 of the New Roads and Street Works Act as amended by Section 41 of the Traffic Management Act 2004 including waiver of fines and charges against agreed guidelines	Council	D Highways and Built County	Commissioned Service Manager with responsibility for that function
10	To deal with individual cases where an altered highway produces a significant and obvious hardship either by the alteration directly or by a substantial increase in traffic which has been triggered by the alteration and where the total cost of providing discretionary noise insulation does not exceed the stipulated amount as calculated by index linked increases to the original threshold of £5000 when the scheme was introduced. (Annual index linked increases are based on the national GDP).	Council	C Highways and Built County	