

Appendix H – Legal Implications – Fitzjohn’s Avenue Safe and Healthy Streets

Statutory duties / Legislation

1.1 The recommendations in this report are being considered in the Council’s capacity as the Local Highway/Traffic Authority for the Borough.

Highways Act Powers

1.2 Part V (Improvement of Highways) of the Highways Act 1980 contains a general power of improvement, which – subject to certain limitations – permits a highway authority to carry out improvement works not covered by specific improvement works within Part V.

Road traffic powers

1.3 Parts I and II of the Road Traffic Regulation Act 1984 (“RTRA”) empower the Council to regulate or restrict traffic on roads, and Part IV to designate or provide parking places, including providing stands or racks for devices for securing bicycles, within the Borough by Traffic Regulation Order for a range of purposes.

1.4 Section 4 of the Cycle Tracks Act 1984 (provision of barriers in cycle tracks, etc) empowers a highway authority to provide and maintain, in any cycle track constituting or comprised in a public highway, such barriers as they think necessary for the purpose of safeguarding persons using the cycle track; and, where a cycle track is adjacent to a public footpath or footway, provide and maintain such works as they think necessary for the purpose of separating, in the interests of safety, persons using the cycle track from those using the footpath or footway. The highway authority may alter or remove any works provided by them under section 4 of the 1984 Act.

1.5 Under section 6(1) of the RTRA1984 (orders similar to traffic regulation orders), as a traffic authority within Greater London the Council may make an order for controlling or regulating vehicular and other traffic (including pedestrians) on roads within the Borough for which it has responsibility. Such an order may be for any of the purposes or with respect to any of the matters mentioned in Schedule 1 to the RTRA and for any of the purposes mentioned in paragraphs (a) to (g) of section 1(1) (traffic regulation orders outside Greater London) of that Act. Such an order may be made only where it appears to the authority that is expedient to make the order for the purpose(s) in question.

1.6 Section 122(1) of the RTRA confers a duty on the Council to exercise its functions under that Act (so far as practicable having regard to the matters specified in section 122(2)) to secure the expeditious, convenient, and safe movement of vehicular and other traffic (including pedestrians) and the provision of suitable and adequate parking facilities on and off the highway. Based on case law applicable to another

RTRA power, it is considered that “safe” in section 122 (1) means “not at risk of accident”, rather than “free from ill health. The matters specified by section 122(2) are:

- “(a) the desirability of securing and maintaining reasonable access to premises;*
- (b) the effect on the amenities of any locality affected and (without prejudice to the generality of this paragraph) the importance of regulating and restricting the use of roads by heavy commercial vehicles, so as to preserve or improve the amenities of the areas through which the roads run;*
- (c) the strategy prepared under section 80 of the Environment Act 1995 (national air quality strategy);*
- (d) the importance of facilitating the passage of public service vehicles and of securing the safety and convenience of persons using or desiring to use such vehicles; and*
- (e) any other matters appearing to ... the local authority ... to be relevant.”*

Road Traffic Act 1988

1.7 Section 39 of the RTA 1988 requires the Council to prepare and carry out a programme of measures designed to promote road safety, to carry out studies into accidents arising out of the use of vehicles on roads in its area, and – in the light of those studies - to take such measures as appear to the Council to be appropriate to prevent such accidents, including giving advice and practical training to road users, the construction, improvement, maintenance, or repair of roads for which they are responsible, and other measures taken in the exercise of its powers for controlling, protecting, or assisting the movement of traffic on roads.

The network management duty

1.8 Under section 16 of the Traffic Management Act 2004 (the network management duty), the duty of a traffic authority is to secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians) and the provision of suitable and adequate parking facilities on and off the highway. Under section 17(5) of the Traffic Management Act 2004 the network management duty includes obligations on traffic authorities to monitor the effectiveness of the implementation of their decisions and assess their performance in managing their network.

1.9 The Council, as highway authority, must have regard to statutory guidance issued by the Secretary of State under section 18 of the Traffic Management Act 2004 when delivering their network management duty under the RTRA 1984.

1.10 The Network Management Duty Guidance was published in November 2004. In terms of public consultation it states that the local traffic authority should seek the

views of residents, local businesses and the different road users both when deciding which policies on network management to adopt and when monitoring whether these policies are delivering the required outcomes. Such consultation should preferably be part of the authority's overall public consultation programme.

- 1.11 In March 2024, the Secretary of State issued supplementary statutory guidance under section 18 of the Traffic Management Act 2004 specifically addressing Low Traffic Neighbourhoods (LTNs). This guidance reinforces the importance of meaningful consultation and ongoing review. It advises that local traffic authorities should only implement schemes where there is clear evidence of local support, engage residents and businesses early and transparently, and regularly monitor impacts to ensure objectives are met without disproportionate effects on accessibility or emergency services.

The Mayor of London's Transport Strategy

- 1.12 The Mayor's Transport Strategy 2018 was issued under Part V of the Greater London Authority Act 1999 (Transport), specifically section 144(1) which empowers the Mayor to issue guidance to London borough councils, among other bodies and persons. Under section 144(1) London borough councils are to have regard to the guidance in exercising any function.

Statutory Consultation

- 1.13 In *R (on the application of Moseley) v London Borough of Haringey* [2014] UKSC 56, the Supreme Court approved a list of four legal requirements relating to public consultation, which had previously been approved by the Court of Appeal in *R v Brent London Borough Council ex parte Gunning* (1985) 84 LGR 168—and therefore often referred to as the 'Gunning' or 'Sedley' requirements. These are that:

1. consultation must be at a time when the authority's proposals are still at a formative stage;
2. the proposer must give sufficient reasons for any proposal to permit of intelligent consideration and response;
3. adequate time must be given for consideration and response; and
4. the product of consultation must be conscientiously taken into account in finalising any proposals.

- 1.14 In terms of the fourth point, the decision maker must consider consultation responses with 'a receptive mind' (*R v Camden London Borough Council ex parte Cran* [1995] EWHC 13 (Admin)) and be prepared to change course if persuaded (*R v London Borough of Barnet ex p B* [1994] ELR 357). But there is no duty to adopt the views of consultees (*R (Smith) v East Kent Hospital NHS Trust* [2002] EWHC 2640 (Admin)). This last point is sometimes expressed by saying that a consultation is not a referendum.

The Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations

1996 (SI 1996/2489) (“the 1996 Regulations”)

- 1.15 The procedure for making experimental or permanent traffic orders is set out in the 1996 Regulations. Before making a traffic order, the authority must consult any relevant bus operator, Transport for London, the chief officer of the appropriate NHS trust (or foundation trust), the fire and rescue authority, the Freight Transport Association, the Road Haulage Association and “such other organisations (if any) representing persons likely to be affected by any provision in the order as the order-making authority thinks it appropriate to consult”. The authority must also consult with the chief officer of police of any area in which the road in question is situated.
- 1.16 The 1996 Regulations also set out a number of procedural requirements such as a requirement to publicise the Council’s intention to make the Order before actually making it and making a copy of the proposed order available for inspection. Public notification must also draw attention to the right to object in writing. There are further publication/notification requirements which come into play if and when an Order is made. A permanent Order can only be made after considering objections.

Equality

- 1.17 The Council must, when carrying out the Council’s functions (which includes making decisions), have due regard to section 149 of the Equality Act 2010 (the Public Sector Equality Duty - PSED). This duty includes having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic (including people with a disability) and persons who do not share it. The Council must comply with the duty, which requires rigorous consideration and an open mind, and is personal to decision makers. In order to assist the Council to comply with section 149, an Equality Impact Assessment (EQIA) is attached as Appendix B to this report. The relevant decision-maker must carefully consider the EQIA as applicable to the scheme they are asked to approve.
- 1.18 In summary, the PSED requires the Council, when exercising its functions, to have ‘due regard’ to the need to:
1. Eliminate discrimination, harassment and victimisation and any other conduct that is prohibited by or under the Act (which includes conduct prohibited under section 29);
 2. Advance equality of opportunity between people who share a relevant protected characteristic and those who don’t share it;
 3. Foster good relations between people who share a relevant protected characteristic and those who do not (which involves having due regard, in particular, to the need to tackle prejudice and promote understanding).

- 1.19 The relevant protected characteristics are: age, disability, gender reassignment, pregnancy and maternity, race, religion, sex, and sexual orientation. In respect of the first aim only (i.e., reducing discrimination, etc) the protected characteristic of marriage and civil partnership is also relevant.
- 1.20 In addition, with reference to disability, the Council has a duty under section 29 of the Equality Act 2010 (set out in the EQIA) not to do anything that constitutes discrimination (or victimisation or harassment) in the exercise of a public function, and a duty to make reasonable adjustments. The EQIA is also important material in this regard.
- 1.21 The Council should also bear in mind relevant parts of the United Nations Convention on the Rights of Persons with Disabilities and the United Nations Convention on the Rights of the Child. Some of those parts relate to (as regards persons with disabilities) the physical environment, transportation, personal mobility and sporting and leisure activities (UNCRPD), and (as regards children) self-reliance and active participation in the community of disabled children, standards of health, dangers and risks of environmental pollution, and recreational and leisure activities (UNCRC).
- 1.22 Further, section 149 provides that the steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities. Compliance with the PSED may involve treating some persons more favourably than others, but that is not to be taken as permitting conduct that would otherwise be prohibited under the Act (which includes breach of an equality clause or rule, or of a non-discrimination rule).
- 1.23 The Council should be aware that the PSED is not a duty to achieve the objectives or take the steps set out in section 149. Rather, the PSED requires the authority to take the specified needs into proper consideration when carrying out its public functions. There must be a proper appreciation of the potential impact of the decision on the equality objectives set out in section 149 and of the desirability of promoting them. "Due regard" means the regard that is appropriate in all the particular circumstances in which the authority is carrying out its functions. Provided due regard is had in this way, including considering mitigation measures as described below, it is for the Council to decide, taking into account all relevant factors (which may, depending on the circumstances, include the requirement upon the Council to operate within its budget) how much weight to give to the equality implications of the decision.
- 1.24 In exercising its road traffic and highway powers, the Council is exercising a "public function": Under section 29 of the Equality Act 2010, it must not, when exercising a public function, "do anything that constitutes discrimination, harassment or victimisation" (section 29(6)) and it must make reasonable adjustments (section

29(7)). The duty to make reasonable adjustments arises in relation to disabled persons and under section 20 of, and Schedule 2 to, the Equality Act 2010.