

HIGH COURT OF JUSTICE CO/2073/2023 KING'S BENCH DIVISION
ADMINISTRATIVE COURT

IN THE MATTER OF AN APPLICATION FOR PERMISSION TO APPLY FOR JUDICIAL

REVIEW BETWEEN:

THE KING
(on the application of TRANSPORT ACTION NETWORK LIMITED)

Claimant

-v-

SECRETARY OF STATE FOR TRANSPORT

Defendant

DEFENDANT'S
SUMMARY GROUNDS OF DEFENCE

References are made to the claim bundle and supplementary bundles in the following form [CB or SB/ page number/ paragraph number where relevant]

References are made to the Claimant's Statement of Facts and Grounds in the following form

[SFG,§]

INTRODUCTION

1. These are the Secretary of State for Transport's ("D") summary grounds of defence in relation to the Claimant's ("C") application for permission to apply for judicial review of D's decision, communicated in his written ministerial statement to Parliament of 9 March 2023 ("the WMS") **[CB/203-204]** ("the Decision") to reduce funding for active travel ("AT") (the principal elements of which are cycling and walking). D resists all grounds as being unarguable.

FACTUAL BACKGROUND

2. Prior to 2015, funding for AT was piecemeal. This changed with the coming into force of the Section 21 of the Infrastructure Act 2015 ("the IA 2015") which required the Government to set out a Cycling and Walking Investment Strategy ("CWIS"). The IA 2015 prescribed various requirements for a CWIS including that it should set objectives for cycling and walking to be achieved during the period to which it relates and the financial resources to be made available by the Secretary of State for the purpose of achieving those objectives. The IA 2015 also set out a process that had to be followed before the Secretary of State set or varied a CWIS, including that the Secretary of State should consult such stakeholders as he saw fit.

3. Since 2015, there have been two statutory CWISs. The first ("CWIS1") covered the period

2016/2017 to 2020/2021 and was published in April 2017 following public consultation. The second (“CWIS2”) was published in July 2022 and covered the period 2021/22 to 2024/25.

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4. Between CWIS1 and CWIS2, the Government also published in July 2020 a new Cycling and Walking Plan for England, known as the “Gear Change” plan. This was not a statutory CWIS, but a policy statement which set out a long-term vision for a new “golden age” of cycling and walking, building on the changes in behaviour seen during the COVID lockdown. Elements of Gear Change, including its 2030 target for 50% of all short journeys to be walked or cycled, were later incorporated into CWIS2.

5. CWIS1 and CWIS2 have each been broadly aligned with a Spending Review period as a way of providing as much certainty in relation to funding as possible. The 2021 Spending Review (“SR21”) considered the amount of dedicated funding that should be made available for AT over the years 2022/23 to 2024/25, taking into account, among other things, the 2020 Gear Change commitments and also the amount of funding that had already been spent on AT in the first two years of the Parliament. The outcome of SR21 was published in the autumn of 2021, and confirmed that a total of £710 million of dedicated funding would be made available for AT over the following three years. This figure informed the statement of financial resources in CWIS2.

6. The DfT undertook a process of targeted consultation on the development of CWIS2 with a range of organisations between June 2021 and February 2022. This included workshops with key AT stakeholders, as well as with a range of other stakeholders including local authority transport and public health officials, disability organisations and the private sector.

7. A full public consultation was not carried out. This was because the Government’s policies and approach to AT had been clearly set out in Gear Change. The DfT had also carried out other public consultations since CWIS1, including on a 2018 CWIS Safety Review and on the changes to the Highway Code that came into effect in 2022. It had also regularly engaged with key cycling and walking stakeholders at quarterly meetings of the CWIS Stakeholder Advisory Group since 2017. This approach was discussed with and agreed by the CWIS Stakeholder Advisory Group. The responses to the focused consultation informed CWIS2.

8. CWIS2 states with regards objectives to be achieved:

“Our ambition for England

We want to make walking and cycling the natural choices for shorter journeys, or as part of a longer journey by 2040.

This ambition was set out in CWIS1 in 2017 and remains the overarching ambition for this second CWIS. To complement this, the Prime Minister’s Gear change plan (2020) set out a vision for walking and cycling:

Our objectives for walking and cycling

This strategy aligns with the Spending Reviews 2020 and 2021, covering the period from April 2021 to March 2025. We have set a number of objectives over that period to measure progress towards our longer-term ambition for 2040. The financial resources to support these objectives are set out in Section 2.

The objectives, aims and target in CWIS1, alongside the vision set out in Gear Change (2020), have informed our revised set of 4 objectives to 2025 to:

- increase the percentage of short journeys in towns and cities that are walked or cycled from 41% in 2018 to 2019 to 46% in 2025*
- increase walking activity, where walking activity is measured as the total number of walking stages per person per year, to 365 stages per person per year in 2025*
- double cycling, where cycling activity is measured as the estimated total number of cycling stages made each year, from 0.8 billion stages in 2013 to 1.6 billion stages in 2025*
- increase the percentage of children aged 5 to 10 who usually walk to school from 49% in 2014 to 55% in 2025*

These objectives reflect our ambitions to boost overall levels of walking, wheeling and cycling across England while undertaking targeted investment to enable more walking, wheeling and cycling in our towns and cities.

The objective for walking is more ambitious than the 300 stages per person per year set in CWIS1 and reflects the generally higher overall levels of walking that we have seen in recent years other than during the coronavirus (COVID-19) pandemic.

We have also retained an objective to increase the percentage of primary school children walking to school, as converting these often short-distance journeys will have multiple benefits for children's health and safety.

Beyond 2025, the following further objectives reflect commitments originally set out in Gear change, the Transport decarbonisation plan and the Net zero strategy to:

- increase the percentage of short journeys in towns and cities that are walked or cycled to 50% in 2030 and to 55% in 2035*
- deliver a world-class cycling and walking network in England by 2040." [CB/149-150]*

9. As to financial recourses the CWIS provides:

"Investment principles

The Prime Minister's Gear change plan has led to a radical transformation of the walking and cycling sector in England, with £2 billion of dedicated investment and the creation of ATE, an organisation resourced to ensure future investment in active travel infrastructure is delivered to a high standard and supported by evidence led behaviour change programmes.

The strategic investment principles below will guide how ATE, DfT and government more widely invests dedicated and ring-fenced funds over the course of the CWIS2 period.

...

*Investment will maximise impact on wider government objectives
Walking, wheeling and cycling play a crucial role in achieving a wide range of priority*

government objectives.

Following the publication of Gear change, accelerating mode shift to walking and cycling (as well as to public transport) was identified in the Transport decarbonisation plan and the Net zero strategy as a vital strategic priority in setting the transport sector on the path to net zero by 2050.

At a time of rising costs for households and government, walking, wheeling and cycling can provide a cost-effective way to reduce transport emissions and both the Transport decarbonisation plan and Net zero strategy set out commitments to support their increased uptake.” [CB/150-152]

10. CWIS2 also refers to the potential for walking and cycling to play a part in meeting the government’s air quality targets.

11. As to the amount of resources available, it states:

“Total government funding for active travel

Table 1 provides an estimate of the total financial resources across government that may be invested in active travel over the 4-year CWIS2 period between April 2021 and March 2025. Many of the decisions on the allocation of these funds will be made by the relevant local body in line with local priorities, while ATE will ensure that relevant quality standards are met.

The projected investment has been calculated using a range of evidence and data sources. This includes funding allocations previously announced, successful funding proposals from local bodies, previous research, historical trends and an assessment of the proportion of investment into active travel projects and programmes from wider government funds.

This follows previous approaches to estimating the financial resources available in CWIS1 and the CWIS report to Parliament published in February 2020.

These figures will be updated in future statutory reports to Parliament to reflect further investment from a range of emerging funding streams from policy areas including public transport, housing and sport.” [CB/154-155]

12. It is clear from this text that what is provided is an estimate based on projections which will be updated in reports to Parliament. Two such reports to have been published to date, the first in February 2020 and the second in July 2022. They are based on the best information available at the time of publication, including estimates of the proportion of the wider (non-dedicated) funding programmes that is spent on AT.

13. Funding for AT is complex. It comes from a wide range of dedicated and non-dedicated funds from across Government, with the dedicated funding (the subject of the changes in the WMS) making up only a relatively small percentage of the total. In practice the overall quantum of funding fluctuates over the period of a CWIS as new funding competitions are announced either by the DfT or other Government Departments or as it becomes clearer how much funding from existing wider funding streams is being spent on AT.

14. For example, the statement of financial resources in CWIS1 turned out to be a significant underestimate of what was, in fact, spent on AT over the CWIS1 period. CWIS1 projected that

around £1.2 billion would be spent on cycling and walking: in the event, the actual total spent was about £3 billion.

15. CWIS2 was reissued on 10 March 2023. This was to remove an error in the amount of funding available which had included a £225 million double counting error. On 2 March 2023 a Ministerial For Information Note was sent to Minister Norman which outlined this error and sought approval to correct it. Approval was given and CWIS2 was accordingly updated on 10 March 2023. This was not a substantive change but a correction. The fact that this was done at or around the same time as the publication of the WMS was co-incidental and the two are not related.

16. Following the correction, Table 1 in CWIS2 provides a projected investment figure for the four years from April 2021 for AT revenue and capital funds (i.e. the Dedicated Funding for AT) of £1,073 million and total funding of £3,549 million.

17. On 22 November 2022 the Chancellor announced in his Autumn Statement that Government Departments, including the DfT, would be required to identify savings to manage inflationary and other pressures. In response the DfT commenced a comprehensive review of all its future spending plans.

18. The review process included a number of Ministerial meetings between December 2022 and March 2023 at which options for savings across different parts of the DfT's portfolio were discussed.

19. On 6 December 2022 the Secretary of State and Minister Norman attended a "decarbonisation finance deep dive" with officials. The deep dive expressly considered air quality and AT in the context of decarbonisation. It was explained that the Joint Air Quality Unit¹ funding "*is primarily used to award grants to local authorities for them to develop and implement local air quality schemes to reduce NO2. Examples include traffic management, speed limits, retrofit buses, active travel measures and Clean Air Zones.*" This is additional to and separate from AT funding.

20. D was shown a slide entitled "*Active travel schemes have impact and can be delivered quickly*". This showed an AT budget of £154 million in both 2023/24 and 2024/25 in addition to £200m in 2022/23 from AFT4, a total of £508 million. This money was to support 78 local transport authorities to deliver walking and cycling schemes. The slide recognises that cycling and walking improves health, productivity and plays a key role in decarbonisation and that schemes for cycling and walking provide very high value for money. The slide stated: "*The only way to maintain BCR with reduced funding, is to cancel 50% of the schemes in 44 LTAs (of 78) that are less likely to deliver value for money schemes.*"

21. An option was put to D of a 13% reduction in funding for AT which totals £40 million across the two remaining years of the spending period. The relevant slide ("*Local Transport saving options 3 (20% of Local budget)*") stated "*Impacts GLUE, REI, ITfU. We will focus funding on authorities that maximise our ability to achieve the targets set out in the statutory CWIS.*"

22. The read out from the decarbonisation deep dive records that D was given an overview of the largest proposed interventions and told that the general picture was that "*reducing funding would mean less carbon reduction.*" D specifically asked about AT. The main areas and types of scheme were explained to D and he was told about the commitment in the Transport

¹The Joint Air Quality Unit is a joint DfT/ Defra unit which works across both Departments to improve air quality through funding and policies.

Decarbonisation Plan (“TDP”) to AT journeys. He was also told about the health benefits of AT schemes and the high BCR of and ability to deliver AT schemes quickly.

23. AT was also considered in a Local Transport Deep Dive held on the same day which contained similar information. In a slide entitled *“Impact of saving options on £2bn active travel commitment”* reference was made to the commitment to invest £2 billion in walking and cycling over the next five years (i.e. to 2025, the end of this spending review) in the 2020 Gear Change plan. The £2 billion is made up of a number of sources including dedicated AT funding and the City Region Sustainable Transport Settlements (“CRSTS”).

24. The slide stated: *“The savings option on Slide 22 to cut CRSTS funding by 18% explains that this would lead to a c.25% cut in funding for new transport infrastructure. If this leads to a 25% reduction in the £700m of active travel investment expected from CRSTS, it would reduce active travel investment by £175m which is likely to lead to a shortfall on the £2bn funding commitment. The two saving options for dedicated active travel funding on slide 23 would also have an impact on the £2bn funding commitment for active travel. The saving options to reduce funding for the National Cycling Network by 40% (first row on slide 23) and the option to cut funding for Local Authorities with lower levels of capability (second row on slide 23) would each reduce funding by £20m (£10m in both 23/24 and 24/25). Reductions to SR21 funding will also impact on our ability to meet the 2030 target (50% of journeys walked and cycled in towns and cities) set out in the statutory CWIS, necessitating higher levels of funding in 2025 onwards to make up shortfalls.”* (my emphasis). D was told that a 13% reduction in AT funding would lead to lost carbon savings of 0.009 MtCO₂e.

25. In parallel with the review of future years’ funding, Ministers had also sought and obtained HM Treasury approval for an announcement in February 2023 of a £200 million Active Travel capital funding competition for local authorities (Active Travel Fund 4 (“ATF4”)) for the year 2022/23. There were discussions, including with HM Treasury and No 10 officials about the case for launching the funding competition before the conclusion of the review of future years’ funding. In the end it was agreed that the ATF4 funding competition could go ahead without any reference to funding in future financial years. This was announced on the 6 February 2023.

26. A submission dated 13 February 2023 to D considered greater savings in AT funding than those proposed in the deep dives in December 2022. The submission was accompanied by slides entitled *“DfT CDEL Scenario Options to address DfT pressures”*. They set the context as follows:

“The Department has significant CDEL pressures in the next two financial years of £5.6bn (23/24) and £5.1bn (24/25). These are primarily driven by high inflation across the economy, and particularly in the construction sector. HS2 presents the largest pressure to the Department, driven by a combination of inflationary and non-inflationary pressures.

At Autumn Statement 2022, the Chancellor confirmed that Departments must live within existing control totals for the SR period and beyond, although the budget for the post SR period (25/26 – 27/28) are yet to be set through a formal SR. Given the significant HS2 pressures, this new position would require the stopping or deferring of planned expenditure.

In the Autumn Statement, the Chancellor committed to building HS2 to Manchester, East West Rail and the core Northern Powerhouse Rail. He has also reiterated commitments to build HS2 to Euston.”

27. Three scenarios were put before D. Option 3 considered cutting all DfT funding for AT for 2023/24 (£154 million) and 2024/25 (£154 million). The slide stated:

“Stopping Active Travel England will mean stopping funding to Local Authorities, reducing the quality of integrated cycling and walking networks and not meeting the public commitments for half of all journeys in towns and cities being cycled or walked by 2030. Stopping Active Travel England will not be in line with previously stated Government ambitions on sustainable transport, reduces visible upgrades to local infrastructure in the next 2 years and compromises the sustainable transport strategy by reducing modal shift to more environmentally sustainable modes of transport.”

28. The final submission was dated 9 March 2023. It noted that the DfT faced very significant pressures across a number of its programmes over the next two financial years. The submission advised that a way forward had been found following discussions with HM Treasury which reduced the total amount of pressure on DfT funding through additional funding in relation to HS2 Phase 1 but which required savings to be made across a number of other DfT programmes, principally in relation to strategic roads, rail and other phases of HS2, but which also included AT.

29. Annex A to the submission set out the full package of proposed savings. It included £100 million capital savings against AT funding in the years 2023/4 and 2024/25. The total DfT wide savings identified in the submission over those two years was just over £3 billion.

30. On AT the submission noted that it would be reduced by 65% and said:

“This is difficult due to the high VfM of the schemes and lack of support from the Commissioner, in particular given the Government’s Net Zero moment at end March. We are working through the implications of this (as other active travel funding may also be reduced) and the final saving figures for SR21 years will be agreed through business planning. There will be a minimum savings amount of £50m per annum in SR21 years.”

31. The reference to £50 million should have been £100 million, as was correctly shown in Annex A to the submission.

32. On the Public Sector Equalities Duty (“PSED”) the submission said:

“The saving options presented to date across rail, road and HS2 have been considered in line with the PSED. The legal risks of cancelling or delaying schemes have also been considered - including, for example on HS2, the risks of delaying construction of 2a, but not delaying compulsory purchase of land. Further advice can be provided for each mode, where required. There has been a limited opportunity to make assessments on the additional saving options from HMT.”

33. D set out his future funding plans in the WMS. He made clear that a number of factors, including inflationary pressures caused by the war in Ukraine and supply chain disruption, had made it difficult to deliver on the Department’s capital programmes. He said that the Department would refocus its efforts to deliver the rest of its capital programme, as a way of placing the DfT’s

transport investments on a sustainable footing and allowing it to support the Government's priorities of halving inflation, growing the economy and reducing debt.

34. D outlined reductions in spending on, and deferrals of, many schemes and programmes across a wide range of departmental spending programmes, in particular, in relation to strategic roads, rail and HS2.

35. On Active Travel, D said:

"We remain committed to supporting all forms of transport and have invested over £850m in active travel between 2020/21 and 2022/23. Despite the need to deliver efficiency in all areas of our budget, we will still commit to spend at least a further £100m capital into active travel over the remainder of the spending period, as part of a total of around £3bn investment in active travel over this Parliament, including from City and Region Sustainable Transport settlements and National Highways. We will review these levels as soon as practically possible."

Revenue funding

36. The DfT's revenue funding budgets were under particular pressure in March 2023 as a result of the support package for the bus sector which was announced at that time. This support package comprised a three-month extension to the £2 bus fare initiative and to the Bus Recovery Grant programme. The DfT had to identify other revenue funding programmes that could be reduced to pay for this, and AT was one of several areas that saw its revenue budget reduced. AT funding was reduced by £25 million.

Total funding reduction

37. Taken together, the reduction of up to £200 million in dedicated capital funding for AT over the two years 2023/24 and 2024/25 and the reduction of £25 million in dedicated revenue funding for AT in the year 2023/24, amounted a total reduction in dedicated funding for AT of up to £225 million compared to the Spending Review 2021 ("SR21") baseline. However, at the start of the financial year 2022/23, budgets had evolved across the DfT. This included a £40 million uplift to capital funding that the DfT 'flexed' from 2021/22 into 2022/23 through the annual budget management process. Taking this with the changes announced by D on 9 March 2023 and the reduction in revenue funding needed to meet the unforeseen pressure caused by the extension in support for the bus sector, the total reduction in funding across the three remaining years of the SR21 period compared to the baseline was £179 million. This is shown in the Tables below.

38. The dedicated active budget in the SR21 baseline is set out in table 1 below:

Table 1: SR21 baseline

Financial year	Capital (£m)	Revenue (£m)	Total
2022/23	160	87	247
2023/24	150	96	246
2024/25	150	67	217

Total	460	250	710
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39. The position following the 9 March 2023 WMS was as set out in Table 2. Table

2: active travel budgets across SR21 period after changes announced in 2023

Financial year	Capital (£m)	Revenue (£m)	Total
2022/23	200	73	273
2023/24	54	58	112
2024/25	54	92	146
Total	308	223	531

40. The difference in total funding between £710 million in Table 1 and £531 million in Table 2 is the £179 million reduction. The DfT has committed to reviewing the Active Travel capital funding as soon as possible as part of its normal budgetary processes, and the actual size of the reduction will therefore depend on whether it is able to identify further funding for active travel over the course of the current financial year.

LEGAL FRAMEWORK

41. Section 21 of the IA 2015 is headed “*Cycling and Walking Investment Strategies*” and provides, so far as relevant:

“(1) *The Secretary of State may at any time—*

- (a) set a Cycling and Walking Investment Strategy for England, or*
- (b) vary a Strategy which has already been set.*

...

(3) A Cycling and Walking Investment Strategy must specify—

- (a) objectives to be achieved during the period to which it relates, and*
- (b) the financial resources to be made available by the Secretary of State for the purpose of achieving those objectives.*

(4) The objectives to be achieved may include—

- (a) activities to be performed;*
- (b) results to be achieved;*
- (c) standards to be met.*

(5) Before setting or varying a Cycling and Walking Investment Strategy the Secretary of

State must consult such persons as he or she considers appropriate.

(6) In considering whether to vary a Cycling and Walking Investment Strategy the Secretary of State must have regard to the desirability of maintaining certainty and stability in respect of Cycling and Walking Investment Strategies.

...

(8) Where a Cycling and Walking Investment Strategy has been published the Secretary of State must from time to time lay before Parliament a report on progress towards meeting its objectives.

(9) If a Cycling and Walking Investment Strategy is not currently in place, the Secretary of State must—

(a) lay before Parliament a report explaining why a Strategy has not been set, and (b) set a Strategy as soon as may be reasonably practicable.

SUBMISSIONS

Ground 1: Decision unlawfully inconsistent with the CWIS2

42. The decision the subject of this challenge is a department wide funding decision in the light of budget pressures. Dedicated AT funding is a small part of the DfT overall budget and the £179 million AT savings, a small part of the £3 billion in savings identified in the WMS over the years 2023/24 and 2024/25.

43. The impugned decision is not the CWIS2 itself (which was published in July 2022 and any challenge to which is now out of time) but the DfT budgetary decision communicated in the WMS.

44. The ground is predicated on the Decision being inconsistent with CWIS2, but it is not. CWIS2 is very clear that the financial resources that it sets out is an estimate which may be invested in AT up to March 2023.

45. The estimate is a “projection” based on “funding allocations previously announced, successful funding proposals from local bodies, previous research, historical trends and an assessment of the proportion of investment into active travel projects and programmes from wider government funds.” “This follows previous approaches to estimating the financial resources available in CWIS1 and the CWIS report to Parliament published in February 2020.” The figures will be updated in future reports under section 21(8) of the IA 2015 to Parliament. As explained above, the financial resources in the CWIS1 period far exceeded the projection in CWIS1 itself.

46. It is self-evident funding over a medium-term period such as the CWIS2 period might change. This is recognised in CWIS2 itself. Accordingly, a change in the level of funding is not inconsistent with CWIS2. Given that there is no inconsistency, the statutory scheme in relation to variation is not engaged.

Ground 2: available funding inconsistent with Strategy

47. Ground 2 does not materially add to Ground 1 or Ground 3(a). Ground 2 is that the available funding is inconsistent with the CWIS2. That is not so given that CWIS2 provides an estimate based

on projections to be updated in reports to Parliament.

48. Moreover, given the relatively modest extent of the reduction (c.5.0% of total AT funding) (£179 million out of a total of CWIS2 funding of £3,549 million); the fact that the funding is an estimate; the fact that D has said he will review AT funding as soon as possible; as well as the historic example of CWIS1 funding far exceeding the CWIS1 projection, there is no evidential basis on which to conclude that the available funding is inconsistent with CWIS2 and its objectives.

49. Whilst it will be true that less funding will make meeting objectives more difficult, that is not the same as making the objectives unobtainable. C bases Ground 2 on a “*stark and inevitable inconsistency between the objectives and the resources to be made available*”. That is just assertion.

Ground 3: failure to take into account obviously material considerations

50. Context is important. The impugned decision was a department wide funding decision where the largest decisions and funding cuts lay outside of AT.

51. Further, where a decision maker takes a matter into account it is for the decision maker to decide upon the extent of the inquiry, subject only to the supervisory jurisdiction of the court (R (Khatun) v Newham London Borough Council [2004] EWCA Civ 55 [35]). The extent and intensity of an inquiry undertaken by a decision-maker can only be challenged on a Wednesbury basis (Flintshire County Council v Jayes [2018] EWCA Civ 1089 at [14]).

52. It is clear from the above that D considered the impacts on AT in the context of a range of options from a cut of 13% to a total cut in dedicated AT funding.

53. In the context of the 13% proposed reduction, it was explained to D that such a reduction would lead to cutting 50% of the schemes in 44 local transport authorities. He was told that funding will need to focus on authorities that “*maximise our ability to achieve the targets set out in the statutory CWIS*”. At the same time and in the context of proposed reductions to AT funding outside of the dedicated AT funding, D was told that: “*Reductions to SR21 funding will also impact on our ability to meet the 2030 target (50% of journeys walked and cycled in towns and cities) set out in the statutory CWIS, necessitating higher levels of funding in 2025 onwards to make up shortfalls.*”

54. D was told in the context of a proposal to cut all dedicated AT funding that: “*Stopping Active Travel England will mean stopping funding to Local Authorities, reducing the quality of integrated cycling and walking networks and not meeting the public commitments for half of all journeys in towns and cities being cycled or walked by 20230. Stopping Active Travel England will not be in line with previously stated Government ambitions on sustainable transport, reduces visible upgrades to local infrastructure in the next 2 years and compromises the sustainable transport strategy by reducing modal shift to more environmentally sustainable modes of transport.*”

55. The final position was in between the above two scenarios and was described as difficult. D plainly did take into account the impact of the reduction of funding on CWIS2 objectives. The extent of inquiry was for him.

56. As to TDP and NZS, D was expressly advised that the more spending reduction, the less carbon reduction. He was given specific numbers for the option of reducing AT by 13% and told that reducing it by 100% would not meet the public commitments for half of all journeys in towns and cities being cycled or walked by 2030 and would not in line with the Government’s ambitions on sustainable transport and would compromise the sustainable transport strategy by reducing modal

shift to more environmentally sustainable modes of transport. D clearly had in mind the potential adverse impacts in relation to climate change. Indeed, the decarbonisation deep dive in December 2022 was into this consideration and included consideration of AT.

57. Similarly, the Decarbonisation deep dive expressly took into account air quality and D was advised that some air quality funding is available for AT. It was an issue that was understood and taken into account.

58. The PSED was taken into account as recorded above in the submission dated 9 March 2023.

59. Accordingly, the considerations at SFG, §42 (a)-(d) were taken into account.

COSTS

60. D accepts that this is an Aarhus claim but not that the cost cap should be reduced. C has net current assets of £59,000. Although these funds are ring-fenced for certain purposes, this is ultimately a decision by C as to how to manage its funds. Further, C is currently fund-raising to support this litigation and that is not factored into the figures given. The fair balance between the protection of the public purse and access to justice under the Aarhus claim is appropriately struck by the standard cap.

CONCLUSION

61. For the reasons given above, the Court is respectfully invited to refuse permission to apply for judicial review and to award D his costs for acknowledging service in the amount set out in the attached schedule of costs subject to the cap of £10,000.

MARK WESTMORELAND SMITH

30 June 2023

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