



Francis Taylor Building

TRAFFIC CONTROL AND THE CLIMATE EMERGENCY: LOCAL AUTHORITY POWERS AND PITFALLS

Cain Ormondroyd and Daisy Noble
Barristers, FTB

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

INTRODUCTION AND CONTEXT

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

**NATIONAL NET
ZERO TARGET**

**AIR QUALITY
(AQMAs, NEW
WHO
GUIDELINES)**

**COUNCILS'
DECLARATION
OF CLIMATE
EMERGENCY**

**TRAFFIC
CONTROL**

**TRAFFIC
CONGESTION**

**TRANSPORT
AS SOURCE
OF GHGs**

TECHNOLOGY

**COVID-19
PANDEMIC AND
CHANGING
BEHAVIOURS**

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

**LOCAL
RESIDENTS**

**LOCAL
HOSPITALS &
EDUCATION
INSTITUTIONS**

**TAXI
DRIVERS**

**IMPACTS
OF
TRAFFIC
CONTROL**

**LOCAL
BUSINESSES**

**CYCLIST
GROUPS**

ENVIRONMENTALISTS

CHARITIES

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building



OVERVIEW OF LOCAL AUTHORITY POWERS



Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

TYPES OF MEASURE

- Speed
- Cycle lanes
- Re-routing types of traffic
- Clean air / congestion zones and charging
- Pedestrian / cycle only routes / zones
- Parking restrictions



Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

OVERVIEW STATUTORY CONTEXT: DUTIES

- 'Network Management Duty' under section 16, Traffic Management Act 2004
- Duty under section 122 Road Traffic Regulation Act 1984
- Public Sector Equality Duty under section 149, Equality Act 2010

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

OVERVIEW STATUTORY CONTEXT: POWERS

- (Permanent) Traffic Regulation Orders
 - Power
 - Section 1 (outside London) RTRA 1984
 - Section 6 (in London)
 - What TRO may provide
 - Section 2 (or section 7 for London)
 - Restrictions
 - Section 3
- Note: Inside v outside London

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

OVERVIEW STATUTORY CONTEXT: POWERS

- Experimental Traffic Regulation Orders
 - Power
 - Section 9 RTRA 1984
 - What ETRO may provide / restrictions
 - In essence: what may be achieved by a TRO
 - See: section 1 / section 6
- Provision for both inside and outside London
- Note: Local Authorities Traffic Orders (Procedure) (England and Wales) Regulations 1996

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

OVERVIEW STATUTORY CONTEXT: POWERS

- Temporary Traffic Regulation Orders
 - Power
 - Section 14
 - What TTRO may provide / restrictions
 - Section 14

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

OVERVIEW STATUTORY CONTEXT: POWERS

- Charging powers
 - Power
 - Off street - section 35, RTRA 1984
 - On street – section 46
 - Power to vary
 - Off street - section 35C
 - On street – section 46A

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

STATUTORY CONTEXT: PROCEDURE

- Procedural requirements differ between types of TRO
- Local Authorities Traffic Orders (Procedure) (E&W) Regulations 1996; Road Traffic (Temporary Restrictions) Procedure Regulations 1992;
- CHECK the procedure required by statute
- ... But don't forget requirements imposed by public law principles too!

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

SOME PITFALLS

- s122 factors
- PSED
- Raising money
- Consultation
- Experimental orders
- Statement of reasons



Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

S122 Factors

- Duty to “secure” movement of traffic and provision of parking
- Subject to matters specified
- **Guidance:** *TRF v Hampshire CC* [2018] EWHC 3390 (Admin) at [37] approved at [2019] EWCA Civ 1275 at [39]
- Beware of...



Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

S122 Factors

- Duty to “secure” movement of traffic and provision of parking
- Subject to matters specified
- **Guidance:** *TRF v Hampshire CC* [2018] EWHC 3390 (Admin) at [37] approved at [2019] EWCA Civ 1275 at [39]
- **Beware of... less restrictive alternatives:** *TRF V PDNPA* [2012] EWHC 3359 (Admin) at [52]

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

PSED

- Disabled/elderly people likely more dependent on private car/taxi
- Natural tendency to be positive in approval recommendation
- Beware of...
- Beware of...

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

PSED

- Disabled/elderly people likely more dependent on private car/taxi
- Natural tendency to be positive in approval recommendation
- Beware of... downplaying the negatives: *Bishopsgate JR*, overturned in CA [2021] EWCA Civ 1197.
- Beware of...

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

PSED

- Disabled/elderly people likely more dependent on private car/taxi
- Natural tendency to be positive in approval recommendation
- Beware of... downplaying the negatives: *Bishopsgate JR*, overturned in CA [2021] EWCA Civ 1197.
- Beware of... “rolling review” *R (Sheakh) v Lambeth* [2021] EWHC 1745 (Admin) at [164]-[167]

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Raising money

- Charges may be set to disincentivise car use
- Traffic measures may lawfully generate a surplus
- Authority may lawfully budget for a surplus
- But not aim for a surplus: *Djanogly v Westminster* [2010] EWHC 1825 (Admin) at [13]-[14], [48]; confirmed on appeal [2011] EWCA Civ 432 [27]-[30].
- Beware of...



Francis Taylor Building

Raising money

- Charges may be set to disincentivise car use
- Traffic measures may lawfully generate a surplus
- Authority may lawfully budget for a surplus
- But not aim for a surplus: *Djanogly v Westminster* [2010] EWHC 1825 (Admin) at [13]-[14], [48]; confirmed on appeal [2011] EWCA Civ 432 [27]-[30].
- Beware of... revenue raising



Francis Taylor Building

Consultation - statutory

- Statutory minimum requirements are meagre
- But see 1996 Regs, reg 6 item 7(c)
- Need to 'turn your mind' to existence of relevant organisations and whether to consult: *TRF v Wiltshire CC* [2018] EWHC 3600 (Admin) at [16]
- Beware of...

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Consultation - statutory

- Statutory minimum requirements are meagre
- But see 1996 Regs, reg 6 item 7(c)
- Need to 'turn your mind' to existence of relevant organisations and whether to consult: *TRF v Wiltshire CC* [2018] EWHC 3600 (Admin) at [16]
- Beware of... ignoring those affected

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Consultation – non-statutory

- ‘Failure to consult’ a very common complaint
- Objection is like water
- Forewarned is forearmed
- Advantages to extra-statutory consultation
- Promise or practice may generate a requirement:
Tomkins 1 [2020] EWHC 3357 at [84]-[91]; *Keyhole Bridge* [2021] EWHC 3082 [48]-[59]
- If consulting, do it properly
- Beware of...

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Consultation – non-statutory

- ‘Failure to consult’ a very common complaint
- Objection is like water
- Forewarned is forearmed
- Advantages to extra-statutory consultation
- Promise or practice may generate a requirement:
Tomkins 1 [2020] EWHC 3357 at [84]-[91]; *Keyhole Bridge* [2021] EWHC 3082 [48]-[59]
- If consulting, do it properly
- Beware of... under/over consulting

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Experimental orders

- Procedural advantages: speed and ease of making permanent
- But there must be an experiment: *UK Waste Management v West Lancashire DC* [1997] RTR 201 , per Carnwath J. at p. 208
- Reg 23 provisions must be strictly complied with: *Tomkins 1* [2020] EWHC 3357.
- Beware of...

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Experimental orders

- Procedural advantages: speed and ease of making permanent
- But there must be an experiment: *UK Waste Management v West Lancashire DC* [1997] RTR 201 , per Carnwath J. at p. 208
- Reg 23 provisions must be strictly complied with: *Tomkins 1* [2020] EWHC 3357.
- Beware of... insufficiently experimental orders

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Statement of reasons

- A necessary formality
- May be treated as an afterthought
- But if challenged may have to stand alone: *TRF v PDNPA* [2012] EWHC 3359 (Admin) at [30]-[48], considered in *Tomkins 1* at [119]
- Complex statement may suggest alternatives
- Beware of...

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Statement of reasons

- A necessary formality
- May be treated as an afterthought
- But if challenged may have to stand alone: *TRF v PDNPA* [2012] EWHC 3359 (Admin) at [30]-[48], considered in *Tomkins 1* at [119]
- Complex statement may suggest alternatives
- Beware of... poorly drafted reasons

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Questions?

cain.ormondroyd@ftbchambers.co.uk

daisy.noble@ftbchambers.co.uk



Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Disclaimer

The oral presentation including answers given in any question and answer session (“the presentation”) and this accompanying paper are intended for general purposes only and should not be viewed as a comprehensive summary of the subject matters covered. Nothing said in the presentation or contained in this paper constitutes legal or other professional advice and no warranty is given nor liability accepted for the contents of the presentation or the accompanying paper. Cain Ormondroyd, Daisy Noble and Francis Taylor Building will not accept responsibility for any loss suffered as a consequence of reliance on information contained in the presentation or paper. We are happy to provide specific legal advice by way of formal instructions.

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk