



Neutral Citation Number: [2025] EWHC 881 (Admin)

Case No: AC-2024-CDF-000102

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

Bristol Civil & Family Justice Centre
2 Redcliff Street
Bristol BS1 6GR

Date: 15/04/2025

Before :

HHJ RUSSEN KC

(Sitting as a Judge of the High Court)

Between :

STEPHANIE CROFT
- and -
(1) DEVON COUNTY COUNCIL
(2) TORRIDGE DISTRICT COUNCIL
(3) BAKER ESTATES

Claimant

Defendants

ANDREW PARKINSON (instructed by **Richard Buxton Solicitors**) for the **Claimant**
TIMOTHY LEADER (instructed by **Devon County Council**) for the **First Defendant**
JONATHAN WARD (instructed by **TorrIDGE District Council**) for the **Second Defendant**
The Third Defendant did not appear and was not represented

Hearing dates: 27th and 28th February 2025
Draft judgment circulated 4th April 2025

Approved Judgment

This judgment was handed down remotely at 10.30am on [date] by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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HHJ RUSSEN

HHJ Russen KC :

Introduction

1. This is my judgment following the hearing of the claimant’s statutory challenge, to quash the decision of the First Defendant (“**the Council**”), dated 8th May 2024 (“**the Decision**”) to make a Traffic Regulation Order (“**TRO**”) to “*Prohibit Motor Vehicles on Pitt Lane, Appledore from 90 metres northeast of Wooda Road to 168 metres northeast of that junction and from 16 metres northeast of Wooda Road to 37 metres northeast of that junction*” under the Road Traffic Regulation Act 1984 (“**the RTRA**”). The Council is the traffic authority for the relevant area within the meaning of section 1 of the RTRA.
2. I have delivered this judgment at the same time as and alongside my judgment in Claim No. AC-2024-CDF-000081 (“**the Related Claim**”). That is the claimant’s claim for judicial review to quash the decision of Torridge District Council (“**the District Council**”), dated 8th April 2024, to grant planning permission for 2 dwellings on land adjacent to Pitt Lane. That challenge is based on the contention that the decision was unlawful as the District Council misinterpreted the Local Plan as permitting a further, separate point of vehicular access to the development site from Pitt Lane. I heard both claims together at a hearing on 27 and 28 February 2025. By my judgment of today in the Related Claim the claimant has succeeded in her challenge to that decision.
3. The claimant’s challenge is made under paragraph 35 of Schedule 9 to RTRA. The claim, issued on 18 June 2024, was brought within the 6 week period from the making of the TRO specified in paragraph 35.
4. Paragraph 35 of Schedule 9 provides for a timely challenge to the TRO by an application made on the grounds that it is not within the relevant powers of the decision-maker or that any of the “*relevant requirements*” has not been complied with in relation to the TRO. Paragraph 36(1)(b) of Schedule 9 gives the court power to quash the TRO if the TRO is not within the relevant powers or the interests of the applicant have been substantially prejudiced by a failure to comply with any of the relevant requirements.
5. The claimant challenges the TRO on two grounds. In summary:
 - i) She says the decision to make the TRO is unlawful since the Council failed to consider the safety impacts of increased traffic on the nearby Estuary Avenue. In particular, it unlawfully concluded that the impact on children’s safety arising from the location of the local area of play (“**LAP**”) in close proximity to Estuary Avenue was “*not relevant*”. She says the impact of the TRO in safety is a mandatory material consideration under section 122 of the RTRA.
 - ii) She says the Council failed to have regard to two obviously material considerations. The first, she says, is that the TRO creates a new safety issue arising out of the restricted forward visibility when traffic exits Estuary Avenue and enters Pitt Lane, on a blind bend, to go north. The second is that the effect of the TRO would be to remove vehicular passing places on Pitt Lane. She says

the consequence of this is that the Council has not lawfully carried out the “balancing exercise” required by section 122 of the RTRA 1984.

6. The Council disputes these grounds. In summary, again, the Council says:
 - i) Section 122 is concerned with the safe *movement* of all kinds of *traffic* (including pedestrians): i.e. vehicular and pedestrian traffic transiting the public highway. It is not concerned with the safety of the environment more generally either as it exists, is authorised by the planning process, or as is proposed by applicants for planning permission. In fact, the Officer’s Report to the relevant committee (“**the OR**”) indicated that a risk assessment in relation to the LAP was carried out by stating “*No design hazards were identified*”.
 - ii) The issues raised by the claimant’s second ground were neither sufficiently obvious or material for the Claimant (through her solicitors) to have raised them in her objections to the making of the TRO by a letter from her solicitors, Richard Buxton Solicitors, dated 10 August 2022 (“**the Objection Letter**”) Nor were they clearly identified in the ‘Transport Objection on behalf of Local Residents’, prepared by Mr Bruce Bamber of highway engineers Railton TPC Limited in June 2022, enclosed with the Objection Letter. In any event, the Council’s duty to consider the impact of the TRO on the safety of traffic required the exercise of technical judgment on the scope and reporting of that assessment. That exercise of discretion is only reviewable on traditional *Wednesbury* grounds and the fact that these are new points raised by the Claimant shows she does not come close to demonstrating that magnitude of error on the Council’s part.
7. The District Council (which is the defendant to Claim No. AC-2024-CDF-000081) adopts the argument advanced by the Council.
8. At the hearing the argument focused upon the claimant’s first ground of challenge relating to the LAP.

Background

9. Pitt Lane (also known as Pitt Hill and Pitt Hill Road and access from which is at the heart of the claimant’s challenge in the Related Claim) is a lane running from Wooda Road in the south to the village of Appledore to the north. It is a very narrow lane, dating back to 1069, notable for its classic “Devon hedges”. The absence of footways or lighting identifies it as an historic rural country lane.
10. The location of Pitt Lane is shown on the aerial photograph reproduced at Annex 1 to this judgment.
11. Pitt Lane runs through an allocation under Policy NOR07 of the District Council’s adopted Local Plan for a development of 130 dwellings.
12. Land to the west of Pitt Lane has planning permission (granted in June 2023) for 27 dwellings (“**the bunnyhomes development**”). Access into the bunnyhomes

development is via a new access onto Pitt Lane. Land to the south-eastern side of Pitt Lane has planning permission for 88 dwellings (ref: 1/1343/2018/OUTM) (“**the Baker Estates development**”) which was granted in 2020; with reserved matters approval (ref: 1/0717/2021/FULM) being granted in March 2022. Outline planning permission for an addition to the Baker Estates development (a further 36 dwellings) to the west of Pitt Lane (and south of the bunnyhomes development) was granted in March 2022 (1/0205/2022/OUTM). Planning permission was also granted for two dwellings to the north-west of the allocation on 8th April 2024 (“**the Triangle Site**”). The Related Claim has challenged, successfully, the decision to grant planning permission for the Triangle Site.

13. The TRO was made one month after the decision to grant planning permission for the Triangle Site, though as mentioned below the Council’s proposal to make the TRO was advertised in July 2022.

14. The planning officer’s report for the Baker Estates development noted:

“The main access into the site is from a new junction formed onto Wooda Road. There is also a small vehicular access to the pumping station to the east of the site. The existing arrangement from Pitt Hill is proposed to be closed off to vehicles between the point of connection to the northern boundary of the site and Wooda Road. This section would then become a pedestrian/cycle link only. There is a network of footways that will ensure permeability.”

15. Condition 4 attached to the outline permission (110 dwellings) for the Baker Estates development in November 2019 provided as follows:

“As part of the first reserved matters application a detailed phasing plan for the whole site shall be submitted to the local planning authority for approval in writing. The phasing plan shall include details of:

a) intended number of market and affordable dwellings for each phase;

b) general locations and phasing of key infrastructure including, surface water drainage, green infrastructure, and access for pedestrians, cyclist, buses and vehicles;

c) Timing and delivery of the road improvements and closure of Pitt Lane; and

d) Timing and delivery of the footway improvements. The development shall be carried out in accordance with the approved phasing plan. Reason: To enable the development to be delivered in controlled phases.

Advisory note: The developer is advised that the works to close Pitt Lane to vehicular traffic will first require the determination of a Traffic Regulation Order.”

16. It was Condition 4(c) and the ‘Advisory note’ which flagged the need for a TRO to close Pitt Lane to vehicular traffic.

17. The Baker Estates development has created a second principal access route onto Wooda Road to the south known as Estuary Avenue. Estuary Avenue is shown by the blue marking on the plan at Annex 2 (i.e. the “*Alternative route*”).
18. In these proceedings, the Council relied upon witness statements of Mr Robert Richards, the Deputy Director of Highways and Infrastructure Development at the Council. In his first witness statement Mr Richards explained:
 - “15. Pitt Lane has previously been closed through a Temporary Traffic Regulation Order (TTRO) (Exhibit RR18) in order for Baker Estates to carry out works on Pitt Lane in a safe manner. During these closures traffic was diverted onto Estuary Avenue to provide a safe alternative. The permanent TRO would result in the same situation.
 16. Pitt Lane was closed under the permission of the TTRO between 1 November 2021 and 28 January 2022, and between 27 February 2023 and 6 April 2023. With traffic diverting through Estuary Avenue.”
19. The Council advertised its proposal to make the TRO on 21 July 2022. It invited any objections and other comments in writing by 11 August 2022. That proposal prompted the Objection Letter supported by the technical note of Mr Bruce Bamber of Railton TPC Limited.
20. The OR to the Council’s Highways and Traffic Orders Committee (**HATOC**) was prepared by the Council’s Director of Climate Change, Environment and Transport and presented to the HATOC on 31 October 2022. It recommended the making of the TRO. That recommendation was “*subject to consideration and determination by the Committee before taking effect.*” It noted that the Baker Estates development is “*not conditional on the TRO being approved. The reason for the TRO is to take the opportunity to improve road safety and active/sustainable travel by transferring through traffic to a new road which is more suitable.*” The recommendation referred to the need to comply with section 122 of the RTRA and stated: “*[i]t is considered that the proposals comply with section 122 of the Act as they practically secure the safe and expeditious movement of traffic.*” It concluded:

“11. Reasons for Recommendations

The proposals encourage more active/sustainable travel choices and prioritise pedestrians and other vulnerable road users in the highway.

The proposals contribute to the safe and expeditious movement of traffic in the area and therefore comply with Section 122 of the Road Traffic Regulation Act 1984.

The development application was assessed and no adverse, significant traffic or highway issues identified which could justify refusal.

The proposal is an opportunity to achieve a road safety gain.”

21. Paragraph 3 of the OR referred to the claimant's objections to the TRO (and those of the Appledore Residents Association) and the Council's response to them in an appendix. I refer to that appendix below in addressing the parties' rival contentions.
22. At its meeting on 31 October 2022, HATOC (Councillors Hellyer, McGeough and Saywell and Councillor Wiseman of the District Council) referred to that appendix to the OR and resolved that the proposed Prohibition of Motor Vehicles Order be implemented as advertised.
23. The formal decision to make the TRO (the subject of the claimant's challenge) was made on 8 May 2024.
24. The TRO came into force on 15 July 2024 so that (with the exception of cycles) "*no person shall cause or permit a motor vehicle to proceed in the lengths of the road specified in the schedule.*" The schedule identified the relevant lengths of Pitt Lane as (a) from a point 90 metres north-east of the junction with Wooda Road to a point 168 metres north-east of that junction and (b) from a point 16 metres north-east of its junction with Wooda Road to a point 37 metres north-east of that junction.
25. The effect of the TRO over that combined 99 metres of Pitt Lane is shown by the red shading on the plan at Annex 2. [This plan accompanied the Council's proposal to make the TRO, dated 21 July 2022.] The gap between the two sections of Pitt Lane identified in the TRO is to enable the use of the vehicles in the "crossover access" which connects the two parts of the Baker Estates development on either side of Pitt Lane. The first 16 metres of Pitt Lane from its junction with Wooda Road was to permit vehicular access to the show home on the Baker Estates development which has since been sold (but which does not benefit from vehicular access off Estuary Avenue).
26. The location of the LAP can be seen on Annex 2 at the triangular piece of land around the midway point of Estuary Avenue on its eastern side. However, only at the hearing did it become clearer, including to the claimant and her counsel Mr Parkinson, that the LAP (in its true technical sense) will not take up the whole of that triangle but will instead be a fenced play area within it. This was explained by reference to the witness statement of Robert Richards addressed below (in his paragraph 38 and his exhibit RR23 which was a section 106 'Open Space Scheme' report that includes a drawing of the LAP, within the triangle, and details of the fencing.)
27. The Council has yet to implement the TRO because of the claimant's statutory challenge.

The Legal Framework

28. Under section 1 of the RTRA, a local authority outside Greater London is empowered to make a TRO where it appears to the authority that it is expedient to make the order for various specified purposes, which are set out at sub-paragraphs (a) – (g). With two exception, those matters relate to the road (or the amenity or air quality of the area through which it runs) in respect of which it is "expedient" to make the TRO. The exceptions are in section 1(1)(a) and (c) which respectively refer to the subject matter road "*or any other road*" in connection with the purposes of avoiding or reducing

danger or facilitating passage. Section 2 of the 1984 Act sets out what a traffic regulation order may provide. It covers such matters as whether the restriction upon vehicular traffic is to be general or subject to exceptions or certain limitations.

29. Under section 122(1) of the RTRA the local authority, when exercising the power to make a TRO, is under the duty “*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*”.
30. The matters in 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;
 - bb) the strategy prepared under section 80 of the Environment Act 1995 (national air quality strategy);
 - (c) 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
 - (d) any other matters appearing to the strategic highways company or... the local authority ... to be relevant.”
31. In *UK Waste Management v West Lancashire District Council* [1996] RTR 201, at 209, (as approved by the Court of Appeal in *Trail Riders Fellowship v Hampshire County Council* [2019] EWCA Civ 1275 at [32]) Carnwath J observed that the words “*so far as practicable*” in section 122(1) qualify the duty to secure the expeditious convenient and safe movement of traffic rather than the duty to have regard to the factors in section 122(2)
32. Section 124 of the RTRA gives effect to Schedule 9. Schedule 9 provides:
 - “35. If any person desires to question the validity of, or of any provision contained in, an order to which this Part of this Schedule applies, on the grounds—
 - (a) that it is not within the relevant powers, or
 - (b) that any of the relevant requirements has not been complied with in relation to the order,he may, within 6 weeks from the date on which the order is made, make an application for the purpose to the High Court or, in Scotland, to the Court of Session.

36. (1) On any application under this Part of this Schedule the court—

(a) may, by interim order, suspend the operation of the order to which the application relates, or of any provision of that order, until the final determination of the proceedings; and

(b) if satisfied that the order, or any provision of the order, is not within the relevant powers, or that the interests of the applicant have been substantially prejudiced by failure to comply with any of the relevant requirements, may quash the order or any provision of the order.

(2) An order to which this Part of this Schedule applies, or a provision of any such order, may be suspended or quashed under sub-paragraph (1) above either generally or so far as may be necessary for the protection of the interests of the applicant.”

37. Except as provided by this Part of this Schedule, an order to which this Part of this Schedule applies shall not, either before or after it has been made, be questioned in any legal proceedings whatever.”

The Parties’ Rival Contentions

Claimant’s case

33. The claimant does not contend that the OR failed to have regard to section 122 of the RTRA 1984. Rather, the issue is over its alleged failure to weigh relevant considerations of safety in applying the section.

Ground 1

34. The claimant says that, because of the way the OR addressed the matter, the HATOC failed to consider the safety implications of the TRO so far as the LAP adjacent to Estuary Avenue (and the resulting increased traffic on that road) was concerned.
35. The claimant says that, by reference to the OR, the HATOC, unlawfully concluded that the impact on children’s safety arising from the location of the LAP in close proximity to Estuary Avenue was “*not relevant*”.
36. Appendix 2 to the OR sets out in two columns the objections and observations received in response to the advertisement of the proposed TRO (“*Submission Comment*”) and the Director’s response (“*Devon County Council Response*”). The section addressing the claimant’s concern about the LAP (quoting from the Objection Letter) states as follows:

“Submission Comment

Child safety

The TRO will force all traffic approaching from the South from Wooda Road through the Baker Estates new access, Estuary Avenue. It appears that the TRO officer is unaware of a significant safety risk to young children with these arrangements. The Baker Estates play area situated on Central Green (known as a LAP and shown on the attached approved drawing) is adjacent to Estuary Avenue. It strikes us that development of a play area adjacent to the main access road is a terrible idea and the risk to young people and other vulnerable users is compounded by shifting traffic from Pitt Lane to Estuary Avenue. Before any TRO is approved there must be a safety risk assessment in relation to young and vulnerable people arising from the increased traffic on Estuary Avenue.

Devon County Council Response

The development scheme has been approved by the Local Planning Authority. The traffic and highway impact was considered under the planning process and was found not to be significant. No design hazards were identified. This is not relevant to the proposed TRO. The proposal will divert motor vehicles from the lane onto a more suitable purpose-built road and presents an opportunity to improve road safety.”

37. The claimant points to the response “*This is not relevant to the proposed TRO*” in saying that the impact on the safety of children, as pedestrians coming off the LAP onto Estuary Avenue, was therefore unlawfully excluded from consideration by the HATOC. The fact that the Baker Estates development was found to be acceptable in highways safety terms, as part of the planning process, did not mean it did not fall to be considered as factor required to be considered in the discharge of the duty under section 122 of the RTRA. Further, the OR had (in its summary of the background) noted that Baker Estates development was “*not conditional upon the TRO being approved*” (see paragraphs 14 and 15 above) and, therefore, there was no formal decision made through the planning process that the TRO should be implemented.
38. Mr Parkinson for the claimant submitted that children running on to the road from the LAP, or its surrounding green, would become “*pedestrians*” (and therefore “*traffic*”) for the purposes of section 122(1) of the RTRA.
39. The better understanding, at the hearing, of the fact that the LAP will be contained by a fence within the triangle of open space (itself to be separated from the road by a hedge) did not, he submitted, mean that the risk of them running from the open space on to the road had been eliminated. It is clear from the Objection Letter that the claimant was referring to the entire triangle under the heading ‘Child Safety’.

Ground 2

40. As noted above, the claimant also relied upon a second ground of challenge, not abandoned but also not pressed at the hearing, that the HATOC further failed to have regard to two obviously material considerations under section 122.

41. The first of those considerations was that the TRO creates a new safety issue (or issues) arising out of traffic exiting Estuary Avenue at its norther junction with Pitt Lane at what is a bend which the claimant describes as a blind bend. As noted by the Council, this was not a point raised by in the Objection Letter. By a letter dated 19 December 2022, and therefore sent after the HATOC meeting on 31 October 2022 but before the making of the TRO, the claimant's solicitors said (in addition to other points about the OR):

“Although the Agenda Report is premised on creating a safe and sustainable section of roadway closed to vehicle traffic it is also clear the committee failed to understand that not only was the context of the TRO limited to an overall closure of 99m, i.e., only 7.6% of the whole lane, but that this 99 m is broken into two sections. In the first section pedestrians, cyclists and horse riders will enjoy only 21 m of ‘safe and sustainable’ roadway from Wooda Road in the south, (although even this isn’t truly ‘non-motorised’ since the owners of the Baker Estates ‘show home’ and it’s service vehicles will retain vehicular access in this first section), before having to run the gauntlet of two-way residential traffic and service vehicles crossing west to east across Pitt Hill at the inter-junction linking the two Baker Estates sites, followed by traffic from the proposed Bunny Homes development.

Thereafter, having navigated these motorised sections of Pitt Hill, pedestrians will enjoy only a further 78 metres of non-vehicular road, before emerging into two-way traffic again, on a blind bend at the new Estuary Lane/Pitt Hill junction with no pedestrian footways.

The proposed new Estuary Lane/Pitt Hill junction comes out into the single car width Pitt Hill on a blind bend, with two-way traffic approaching from the north and from Estuary View, and with pedestrians, cyclists and horse riders being introduced to this traffic on the blind bend as they approach from the 78m of closed lane to the south. These matters should be known to the Council’s highway officers, but this was not advised to the committee.”

42. The Details of Claim quoted the above passages in support of the case that the Council had failed to consider a “*clearly a significant risk of increased conflict between vehicles, and between vehicles and pedestrians*” at the junction between Estuary Avenue and Pitt Lane.
43. The second consideration forming part of Ground 2 was expressed in the letter dated 19 December 2022 as follows:

“Further the TRO brings into play new and very serious safety concerns with the new Estuary Lane/Pitt Hill junction since there are no passing places, for two-way traffic on the approach to the proposed new junction from the north and moreover, the existing passing places on the approach to the junction from the south, will be lost, as this is the section of road that is proposed for closure.”

44. The Details of Claim (focusing upon the language of section 122(2)(a) and (b)) said the effect of the TRO would be to remove the main natural passing place for vehicles on Pitt Lane. This would mean that vehicles would have to rely on residential driveways to the north to provide passing spaces for vehicles and heavy construction traffic – directly impacting on residential amenity. Should residents prevent their driveways being used for this purpose, traffic traveling from the north to the south will have nowhere to reverse. This will mean that traffic emerging from Estuary Avenue into the lane will have to reverse back into the new housing estate, past the new residential homes, past the parked cars on each side of Estuary Avenue and, critically, reverse past the LAP.

Council's case

45. The Council relied upon witness statements by Robert Richards whose first statement I have already quoted from in paragraph 18 above in relation to the TTRO. That statement was lengthy and had many exhibits. Mr Roberts said he had made it following discussions with the officers involved in dealing with matters giving rise to the claimant's challenge.
46. There is a lot of detail in that 70 paragraph witness statement and its 34 exhibits but the key points made in response to the claimant's grounds of challenge (and relied upon by Mr Leader for the Council) are illustrated by the following quotes from it:

"8. [The OR] was simple as the matter is considered a simple matter of common sense, considered in a practicable manner and not to add to the burden of bureaucracy that Councillors and officers of the Council face. Decisions were made with considerable local knowledge, site visits, knowledge of the planning applications and lack of realistic alternative."

"17. During [the dates when the TTRO was in operation] no negative impacts associated with traffic diverting onto this route were recorded. No incidents were recorded by Baker Estates in their incident log."

"18. The claimant has not provided any evidence that there were any safety issues during the considerable time that the TTRO was in operation."

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"20. In the event that the TRO was not implemented and the various developments continue as expected, it is recognised there would be potential highway safety issues. Specifically, the junction of Estuary Avenue with Pitt Lane, which is currently open to traffic, but with temporary build out on Estuary Avenue to provide better forward visibility. If traffic continues to use Pitt Lane, there is minimal to no visibility for vehicles travelling north on Pitt Lane approaching Estuary Avenue. With Bunny Homes building a footway here, and widening their eastern frontage with Pitt Lane, this could be 'made safe' with adequate visibility splays."

“24. As can be seen in the responses to the various planning applications, road safety has been considered on balance alongside other aspects of highway design and transport matters.”

“29. Turning to the response to application 1/0871/2020/REMM which included the detailed layout of the Baker Estates site, the details of the new road, Estuary Avenue, and the details of the LAP (“Local Area for Play”) (see Exhibit RR07) this considered pedestrian safety, including inter alia the use of the LAP:

“In regards to the desire line of pedestrians and paths not shown at all, the road frontage of plots 76 and 88 on the crossroad needs to have a path around the bend down to the build out on what is currently shown as grass verge and beyond to join to the LAP. The build out should be either removed, or the road narrowed to 3.5m so that two vehicles do not attempt to pass through it at the same time. This build out must also be of hard surface, as any planting will not be cut and will grow high enough to remove required forward visibility of oncoming vehicles. The path labelled FW4 at the back of the LAP requires better visibility of passing vehicles, so that children do not run out into the road without being seen by passing traffic. A staggered barrier on the path should also be considered here. Path FW7 does not appear to have adequate visibility of vehicles passing on Pitt Lane.”

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30. While DCC in its role as the Highway Authority has kept its considerations within its remit (considering only impacts on users of the highway), the decision maker, Torridge District Council, has made balanced decisions on each application weighing the highway matters as one material consideration amongst many others in the planning process.”

31. The proposals made by developers were not accepted by DCC uncritically. As set out in a number of the responses to the planning applications.”

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“38. Moreover, plans showing the LAP being fenced and gated were submitted as part of the reserved matters application 1/0871/2020/REMM in an ‘Open space scheme’ report, attached hereto as Exhibit RR23. On page 25 there is drawing 11340/P09 which confirms a 1m high fence will be built around the LAP and there will also be a hedge between the entire open space area and the main road. See also table 1.5 in the document which confirms this.

39. From the above it is clear that officers were aware of the location and situation with the LAP being created and considered the implications of the new road being next to the LAP.

40. Councillors of the HATOC meeting making the decision on the TRO were also aware of the presence of the LAP.”

41. Although the minutes are relatively short on this item, officers at the meeting state that discussion was had at the meeting about the issue of the safety of the new

road and LAP. The second page of Appendix 2 of the HATOC report, attached hereto as Exhibit RR24, includes a layout plan of the development including the LAP in the centre, and therefore members were aware of this aspect of the proposal in their consideration of the TRO.

42. Furthermore, Councillors McGeough and Wiseman, and possibly others, were aware of the various planning applications. These two Councillors specifically by virtue of their consideration of these applications at the TDC Plans Committees. Councillor McGeough was and is the Devon County Councillor for Northam (including the site in Appledore) and at the time of this decision (21 [sic] October 2022) was a TDC Councillor. Councillor Wiseman was at this time a TDC Councillor, one of two district appointees to the HATOC meeting along with all DCC Councillors for the Torridge area.

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“59. In addition to the consideration given to the planning layout within the reserved matters application (1/0871/2020/REMM) as described above, the Baker Estates site was subject to a stage 2 road safety audit, and designer’s response provided. This can be seen in Exhibit RR32. The audit considered the proposed works to the existing highway in terms of safety to users, not compliance with design standards. This is only part of the road safety audit process, with a stage 3 audit being carried out before works are completed and opened to the public, and a stage 4 audit typically 12 months later when collision data becomes available. As part of this process the auditor may make recommendations for the highway layout to be amended, if necessary, for safety reasons.

60. Therefore, if highway safety issues arise, even after professional design and careful consideration at technical approval stage, there is a process which could make amendments as necessary to correct any future issues.”

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47. Mr Leader for the council emphasised the point that Councillors Wiseman and McGeough of HATOC were also members of the Torridge District Council Plans Committee which was responsible for determining the planning applications described in paragraph 12 above. Mr Richards’s exhibit RR25 showed that, on 7 November 2019, Councillors McGeough and Wiseman attended a site visit in connection with the Baker Homes development. The Objection Letter had noted that Councillor McGeough had advised a planning committee meeting that the TRO was proceeding and asked that he play no part in the determination of the TRO given his previous involvement. At the meeting on HATOC on 31 October 2022, Councillor D McGeough declared a personal interest by virtue of his membership of the District Council (as the Local Planning Authority).
48. Therefore, Mr Leader said, the decision to make the TRO was made by councillors with a specialist knowledge and full acquaintance with the matter in hand. He said the OR highlighted the close connection between the planning and TRO processes. This went back to at least 2019 and provided the members of HATOC with a deep understanding

of the relevant characteristics of the local highways network and the particular contribution the TRO would make to local amenity and safety once the schemes had been built out.

49. On that basis, he submitted that where (a) road safety considerations are clearly material to the determination of a planning application; (b) in the course of the planning process the local highway authority represents that, for road safety (and other) reasons, it is desirable to make a TRO to secure the safety of users of the highway; and (c) the requirement for a TRO is indicated on the face of a notice of decision granting planning permission, then it will usually be *Wednesbury* unreasonable for a highway authority to refuse to make that TRO. In support of this he relied by analogy upon the decision in *R v Warwickshire County Council Ex p. Powergen Plc* [1998] P & CR 89 (relating to the Highways Act 1980 and the Road Traffic Regulations).
50. Focusing upon the language of the Objection Letter (“development of a play area adjacent to the main access road is a terrible idea”, with his emphasis) Mr Leader said that the ship had already sailed. The LAP had already been approved as part of the Baker Estates development (compare paragraph 29 of Mr Richards’s statement which quoted from the highway authority’s consultation reply dated 11 November 2020) which expressly contemplated the TRO: see paragraph 15 above. He pointed out that condition 4(c) to the outline permission for that development was included on the recommendation of the Council as the local highway authority in its consultation reply dated 21 October 2019. This had fed through to the planning officer’s recommendation dated 7 November 2019. The Council’s Grounds of Defence say “[i]n making the TRO the First Defendant was not required to and could not properly reopen the planning process that provided the rationale for the Order.”
51. Mr Leader said that the comment “*this is not relevant to the proposed TRO*” response in the OR (see paragraph 36 above) had been taken by the claimant out of context. It clearly related to the idea and design of the LAP.
52. Mr Leader also submitted that it is (“*probably*”) only pedestrians crossing Estuary Avenue who are to be treated as “traffic” for the purposes of section 122(1) of the RTRA and, therefore, a child running on to the pavement (or even the road) – eg. to chase a runaway ball – was not within the scope of section 122(1).
53. In any event, he submitted it was simply wrong for the claimant to suggest that children escaping from the LAP (or its surrounding open space) was a material risk from the perspective of the duty under section 122(1) of the RTRA.
54. So far as the claimant’s (twin-limbed) Ground 2 is concerned, Mr Leader’s submissions were to the effect that this was an afterthought, and something of a makeweight, which had not been flagged in the Objection Letter. However, he relied upon Mr Richards’s evidence to show that, in the consideration of the planning application for the additional site within the Baker Estates development, the District Council had invited the observations of the Council, as the Highway Authority, upon Mr Bamber’s report accompanying the objection letter.
55. Although those observations did not focus upon the effect of a TRO, Mr Leader said they showed an understanding of the cumulative impact of all the developments on the local highways network. By an email dated 9 June 2022, the Council’s highways officer

wrote to the planning manager at the District Council saying: *“My assessment of Pitt Hill is that it is narrow in places, has a lack of forward visibility, is substandard in horizontal and vertical alignment, steep and banked by hedges on both sides in places. However, I have no evidence to support a reason for refusal of the application on highway safety grounds based on its lightly trafficked nature and alternative routes available.”*

Decision

56. In my judgment the claimant has made good her claim that the TRO should be quashed. I have reached this conclusion by reference to Ground 1.
57. In my judgment, Ground 2 has not been established. The decision in *Trail Riders*, at [33]-[35], confirms that the court looks to the substance behind the decision to make a TRO, as opposed to it being necessary to establish that all relevant or potentially relevant boxes in section 122(2) have been ticked. At the meeting on 31 October 2022 the HATOC was not aware of how Ground 2 (relating to the blind bend at the junction of Pitt Lane and Estuary Avenue and the loss of vehicular passing places on Pitt Lane) would later be expressed in the letter of 19 December 2022. However, so far as that ground is concerned, I am not satisfied there can be said to have been a section 122 oversight, or a failure to carry out a balancing exercise in relation to the safety and movement of traffic, when the minutes of the meeting record the following:

“The Committee considered the Report of the Director of Climate Change, Environment and Transport (CET/22/61) on the submissions in response to the statutory consultation on the Traffic Regulation Order (TRO) restrictions proposed in Pitt Hill, Appledore, to provide a safe and sustainable route through a new residential development. The proposed TRO followed approval of a residential development by the Local Planning Authority at Wooda Road/Pitt Lane, Appledore.

The planning application had included a proposal to introduce a prohibition of motor vehicles restriction on a short length of Pitt Hill. This would remain adopted public highway and become a traffic-free route for pedestrians, cyclists and horse riders through the new development, with a vehicle crossing approximately halfway along to provide access to a small number of dwellings alongside the lane. Traffic travelling between Wooda Road/Pitt Lane would use the new length of road through the development.

Plans of the development and TRO were available in Appendix 1 of the Report. The reason for the TRO was to take the opportunity to improve road safety and active/sustainable travel by transferring through traffic to a new road which was more suitable.

Details of the objections received to these proposals, and the County Council’s response were shown in Appendix 2 to this Report.”

58. However, my reasoning in support of the conclusion that the TRO should be quashed by reference to Ground 1 is as follows:

- i) I do not disregard the evidence of Mr Richards, as Mr Parkinson in his skeleton argument submitted I should by reference to the observations in *Timmins v Gedling Borough Council* [2014] EWHC 654 (Admin), at [110]-[111], per Green J, about the court's reluctance to accept "*ex post facto* explanations and justifications which risk conflicting with the reasons set out in the decision" under challenge. As I think Mr Parkinson was prepared to recognise in his oral submissions, when saying the evidence was of limited value, Mr Richards's witness statement in the main (perhaps contrast his paragraphs 39 and 40 quoted in paragraph 46 above for what might be regarded as *ex post facto* justification) provides useful context for the court in addressing both the HATOC's consideration of the OR in October 2022 and the decision of 8 April 2024 which is under challenge.
- ii) However, although this is not a case where that evidence suggests further or better reasons for that decision in a way that only serves to highlight the deficiencies in the *reasons* behind the decision (see *Timmins*, at [110] and *R. (on the application of United Trade Action Group Ltd) v Transport for London* [2021] EWCA Civ 1197, at [125(5)]), it does on my assessment of it prompt an obvious question as to whether there was crucial oversight in the decision. The Council relies upon councillors' general awareness, through the planning process, of the need for a TRO and its consequences: see paragraphs 14, 16 and 46 above. Yet the advisory note in relation to condition 4(c) of the outline permission for the Baker Estates development reflected what the Council, as the highway authority, had also said in its consultation reply of 21 October 2019: "*Traffic Regulation Orders required for the works to Pitt Lane including any downgrading or stopping up shall be determined by the relevant authority prior to the commencement of the development hereby approved.*" If the HATOC (i.e. the 4 councillors present on 31 October 2022. including Councillors Wiseman and McGeough) either assumed or believed that the case for a TRO had been established through the planning process then this raises the obvious question as to whether a proper "*determination*" about making one in effect fell between two stools (i.e. committees).
- iii) I am not persuaded by Mr Leader's submission that this is a *Powergen* situation. The principle in *Powergen* is to the effect that, where a competent public authority has made a formal decision on a particular subject matter or issue affecting individual rights, that decision will be regarded as binding on other authorities directly involved unless and until circumstances change in such a way which can be reasonably found to undermine the basis of the original decision. That proviso shows that the question, as applied to this case, as to whether it would be irrational not to make "a TRO" (which is not just a binary decision as the particular attributes of the actual TRO identified in paragraphs 24 and 25 above only serve to illustrate) in the light of the earlier decision is a fact-sensitive one. However, the premise for the argument based on *Powergen* is absent: there has been no such prior formal decision. The OR correctly informed the HATOC that the Baker Estates development is "*not conditional on the TRO being approved.*" Any stopping up (referring again to the language of

the 21 October 2019 consultation reply) as part of the phasing plan under the outline permission was reserved to the HATOC. When the HATOC considered the making of the TRO on 31 October 2022 it was the first (and only “*relevant authority*” to quote again from that reply) to do so and it was doing so by reference to the circumstances existing, and objections made, as at that time. The *Powergen* principle might begin to have a place in this case if the claimant was challenging only the decision-making in May 2024 (when the TRO was made, apparently without any further deliberation by HATOC after 31 October 2022), and not also that of October 2022, but that is not the position.

- iv) In *Trail Riders*, at [40], Longmore LJ addressed the “*not particularly difficult or complicated exercise*” required of a local authority when making a TRO. It needs to have in mind the qualified duty under section 122(1) of the RTRA in conducting what he described as “*the balancing exercise*” required by the section when read as a whole (including by reference to the factors identified in section 122(2)). The safe movement of pedestrians (as “*traffic*”) is something the authority must have in mind under section 122(1) even though (allowing for the possibility that an injured pedestrian might possibly fall within the scope of section 122(2)(d)) their safe movement is not further identified as a factor and indeed may be compromised by the other factors in section 122(2), as the qualified nature of that duty recognises.
- v) The Council did not contend that, on the true construction of section 122, the pedestrian traffic in question is only that on the road to be stopped up; Pitt Lane, which is the primary subject matter of the power under section 1 of the RTRA (recognising as I do that section 1(1) of the RTRA might justify a TRO in respect of Pitt Lane by reference to the aim of *reducing* danger or facilitating passage for pedestrians using *another road*). Instead, and as noted above, Mr Leader’s submission (in summary) was that the safety of pedestrians on Estuary Avenue had already been properly considered through the planning process.
- vi) As also noted above, the issue between the parties on the meaning of section 122(1) is whether children running from the LAP (or its surrounding open space) onto Estuary Avenue (i.e. the road) would become pedestrian traffic for the purpose of section 122(1); and indeed what their status would be (for that purpose) if they did not stray beyond the pavement next to it. So far as the latter point is concerned, as I indicated during exchanges with counsel, the phrase “*on and off the highway*” in the subsection would appear to relate only to the provision of parking facilities. That still leaves the question as to whether, and if so at what point, a child straying onto the road from the open space – e.g. to chase a ball – becomes part of the pedestrian traffic on the road. The discussion of that issue, as a matter of law and principle, did not really go beyond the language of section 122 (and the guidance in *Trail Riders*). However, I have been persuaded by the submission of Mr Parkinson on this point. He said that, even if the child did not become “*traffic*”, as a pedestrian, the action of running into the road (and possibly suddenly emerging on to the pavement from the open space without running on to the road itself) would jeopardise the safe movement of vehicular traffic on Estuary Avenue. Accordingly, the duty under section 122(1) is engaged on that basis.

- vii) Proceeding on that same basis, the key question then becomes whether or not the HATOC discharged that duty on 31 October 2022 by following the relatively straightforward process outlined in *Trail Riders*.
- viii) In my judgment, the committee did not. The OR said “[t]he traffic and highway impact was considered under the planning process and was found not to be significant. No design hazards were identified. This is not relevant to the proposed TRO.” That was the response to the claimant’s objection based upon child safety in connection with the LAP (as she then understood the entirety of the triangular area to be). It is correct, as Mr Leader said, that the court should not be overly analytical in its interpretation of the OR and should instead consider the overall effect of that response: see *R. v Selby District Council, ex parte Oxtan Farms* [2017] PTSR 1103, at pp. 1110F-1111B per Pill and Judge LJ. However, adopting that approach, I do not accept the Council’s submission that it can fairly be read (and would have been read by the members of the HATOC) as relating only to the design of the LAP. Instead, it gave the clear impression that the particular issue of safety identified by the claimant was not a matter for the HATOC. It was therefore materially misleading, when that was a matter the HATOC was required to consider under section 122(1), and there is no reason to conclude that its members were not misled into proceeding on the basis they need not do so: see *R. (Mansell) v Tonbridge & Malling BC* [2017] EWCA Civ 1314; [2019] PTSR 1452, at [42(2)-(3)] per Lindblom LJ.
- ix) It follows that the HATOC that in October 2022 the HATOC failed to have regard to a mandatory consideration which (in the absence of any further consideration in the meantime) resulted in the later decision of 8 May 2024 to make the TRO being unlawful.
- x) Mr Leader, in a submission which chimed with his reliance upon *Powergen*, and also the experience gained by Councillors Wiseman and McGeough through the planning process, urged me nevertheless not to exercise the discretion to quash the TRO: see the terms of paragraph 36(1)(b) of Schedule 9 (“*may quash the order*”) set out in paragraph 32 above. However, this is not a situation where I can safely conclude that no purpose is to be served by quashing the TRO because it is highly likely it would still have been made: compare the language of section 31(2A) of the Senior Courts Act 1981 which does not apply to this statutory challenge. In particular, I note that, even if Councillors Wiseman and McGeough could somehow be assumed not to have been materially influenced by the OR in October 2022, they did not comprise the majority of the HATOC but instead one half of it. In my judgment it would be wrong to assume that, if the HATOC had been advised differently by the OR, the outcome would still have been the same.

Disposal

- 59. The decision to make the TRO was therefore unlawful and it should be quashed.
- 60. I invite the parties to address the consequential matters arising out this judgment. If they are able to agree a form order reflecting my decision and disposing of all matters

on the claim (a draft of this judgment having been provided in advance) then that should be filed by 1pm on the day before its handing down. If there are consequential matters outstanding between them then a draft order should be filed, within that same deadline, which identifies those matters and the proposed method of their determination by me (including whether they should be determined by reference to written representations or at a further hearing). The latter form of order should, if required, reflect the fact that the handing down of this judgment is adjourned for the purpose of preserving the time for filing any appellant's notice and that I will specify the time for filing one, in accordance with CPR 52.12, upon that further determination.

Annex 1



Annex 2

