



Neutral Citation Number: [2024] EWHC 1405 (Admin)

Case No: AC-2023-LON-001745

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 11/06/2024

**Before :**

**MR JUSTICE KERR**

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**Between :**

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

**Claimant**

**- and -**

**SECRETARY OF STATE FOR TRANSPORT**

**Defendant**

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**David Forsdick KC and Charles Bishop (instructed by Leigh Day) for the Claimant**  
**Hugh Flanagan (instructed by Government Legal Department) for the Defendant**

Hearing date: 30 April 2024  
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**Approved Judgment**

This judgment was handed down remotely at 10.00 am on 11 June 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE KERR

**Mr Justice Kerr :**

**Introduction and Summary**

1. The claimant (**TAN**) challenges a decision of the defendant (**the SoS**) to reduce funding for investment in “active travel” schemes, i.e. schemes to promote walking and cycling. The decision was made in a written ministerial statement to Parliament on 9 March 2023. Jay J granted permission to apply for judicial review at an oral hearing in October 2023, after refusal of permission on the papers by Lang J in July 2023.
2. TAN submits that a statutory “Cycling and Walking Investment Strategy” (**CWIS**) made under the Infrastructure Act 2015 enacts a mandatory framework for making or varying such decisions, including setting objectives and making available resources sufficient to meet them. TAN says the decision was unlawful because it “was made outside the framework provided for the setting and varying of the CWIS ... and was contrary to ... CWIS2 (as updated) for the period to 2025” and without regard to “necessarily material considerations”.<sup>1</sup>
3. Those disregarded material considerations according to TAN are, first, the objectives of CWIS2; second, the statutory public sector equality duty (**the PSED**); third, air quality targets, specifically a kind of harmful particulate matter called PM2.5; and fourth, certain policy documents setting “carbon budgets”, published from 2021 onwards, namely “Decarbonising Transport - a Better, Greener Britain”, also called the Transport Decarbonisation Plan (**the TDP**); “Net Zero Strategy: Build Back Greener”, also called the Net Zero Strategy (**the NZS**); and the Carbon Budgets Delivery Plan (**the CBDP**),
4. The SoS maintains (and Lang J accepted) that funding levels in a CWIS are estimates based on projections and that funding over the CWIS2 period could change. A change in the level of funding does not mean there is inconsistency with CWIS2; thus the statutory scheme is not engaged, the SoS says. Nor does the decision mean the CWIS2 objectives necessarily cannot be met. The considerations referred to were, apart from the PSED, not mandatory but were properly taken into account. The PSED, i.e. the duty to have “due regard” to the statutory equalities considerations, was properly performed, the SoS says.

**The Facts**

5. Active travel, sometimes abbreviated to “AT”, is the term used to describe walking and cycling. It may also include travel by other self-propelled means such as a wheelchair or scooter. Until the Infrastructure Act 2015 (**IA 2015**) was passed, public funding for active travel was unstructured and ad hoc. Then Parliament enacted section 21 of the IA 2015, as follows:

**“21 Cycling and Walking Investment Strategies**

- (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.

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<sup>1</sup> Quotes are from the parties’ skeleton arguments where the context so indicates, as here.

- (2) A Cycling and Walking Investment Strategy is to relate to such period as the Secretary of State considers appropriate; but a Strategy for a period of more than five years must be reviewed at least once every five years.
  - (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.
  - (7) A Cycling and Walking Investment Strategy must be published in such manner as the Secretary of State considers appropriate.
  - (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.”
6. After a spending review in 2015, covering the financial years 2016-17 to 2020-21, the first CWIS (**CWIS1**) was published in 2017. The aim was explained on the cover sheet: “to make cycling and walking the natural choices for shorter journeys, or as part of a longer journey”. It set various aims, objectives, targets and ambitions; for example, to increase cycling and walking, while reducing death and injury to cyclists; to double cycling from 0.8 billion “stages” (a “stage” being a trip or part of a trip) in 2013 to 1.6 billion stages in 2025; and to increase the proportion of children aged five to ten who usually walk to school from 49 per cent in 2014 to 55 per cent in 2025.
7. Five sources of funding were identified: Department for Transport (**DfT**) cycling and walking specific programmes; DfT local transport programmes; other central government programmes supporting cycling and walking; local body programmes; and initiatives led by business and the third sector. Figures for expected expenditure were included in CWIS1. The funding needed was further considered in a modelling exercise leading to a DfT report in February 2020, with an analysis “conducted to assess the level of action needed to meet the 2025 cycling and walking target and aims, as set out in [CWIS1]”.
8. In July 2020 (i.e. during the first year of the Covid pandemic), a non-statutory “Gear Change Plan” gave voice to the government’s enthusiasm for a “golden age” of cycling and walking, with the ambition that by 2030 half of all urban journeys would be walked or cycled. A year later in July 2021, the DfT published the TDP, supporting the government’s efforts to satisfy its duties under the Climate Change Act 2008 (**CCA 2008**) and stating proposals and policies to meet “carbon budgets”. These are described in the introduction as “amounts by which greenhouse gas emissions must come down, and by when”.

9. As you would expect, part of the strategy involves increasing journeys by public transport, walking and cycling; and using cars “differently and less often”, as explained in the “strategic priorities” section of the TDP. Thus, “Priority 1” of five strategic priorities was to accelerate “modal shift to public and active transport”. The benefits would be improved health and wellbeing and reduced carbon emissions. The targets and objectives in CWIS1 were repeated. The “commitment” was to invest £2 billion in active travel over five years, to realise the aim that half of all urban journeys would be walked or cycled by 2030.
10. In October 2021, the NZS was presented to Parliament. This was produced to comply with the duties under sections 13 and 14 of the CCA 2008. Holgate J later held that it fell short of compliance in the respects stated in his judgment in *R (Friends of the Earth Ltd) v. Secretary of State for Business, Energy and Industrial Strategy* [2023] 1 WLR 225; but he did not quash it. The NZS again stressed the contribution of active travel towards achieving the statutory net zero target set by section 1 of the CCA 2008. Policies in the field of transport included, again, “£2 billion investment which will help enable half of journeys in towns and cities to be cycled or walked by 2030”.
11. Also in October 2021, a further spending review, covering the three year period up to the end of the 2024-25 financial year (i.e. to March 2025), stated that £710 million of dedicated funding would be made available for active travel over that period. Against that background, work on a second CWIS (**CWIS2**) to replace CWIS1 was undertaken. CWIS2 was published by the DfT on 6 July 2022, to comply with the duties enacted by IA 2015, section 21. It applies to England.
12. In the Foreword, the Minister responsible for active travel, Ms Trudy Harrison MP, mentioned that government had “committed an unprecedented £2 billion of funding for active travel over 5 years”; repeated the target that half of all urban journeys would be walked or cycled by 2030; and reiterated the target that 55 per cent of primary school aged children would normally walk to school by 2025. In the first section (“Strategy”), CWIS2 noted that increased active travel would help reduce carbon emissions from transport and improve air quality while reducing noise and air pollution on the roads.
13. Reference was made to the TDP and the NZS. England would be “a great walking and cycling nation”. A revised set of four objectives for walking and cycling up to 2025 were set out (omitting certain footnotes):
  - “increase the percentage of short journeys in towns and cities that are walked or cycled from 41% in 2018/19 to 46% in 2025;
  - increase walking activity to 365 stages per person per year in 2025;
  - double cycling from 0.8bn stages in 2013 to 1.6bn stages in 2025; and
  - increase the percentage of children aged 5 to 10 who usually walk to school from 49% in 2014 to 55% in 2025.”
14. The next sub-heading was “Investment Principles”. Equality and inclusion were “golden threads” running through previous policy documents including “Gear Change”. An equality impact assessment had been carried out as part of the development of CWIS2. Its principles were also important for achieving “a wide

range of priority government objectives”, such as those set out in the TDP and the NZS. More walking and cycling would “play a significant part in meeting the government’s air quality targets, including our proposed targets on reducing population exposure to particulate matter 2.5 (PM2.5), the air pollutant with the greatest harm to human health”.

15. Section 2, “Financial resources, performance monitoring and governance”, stated that section 21(3)(a) of the IA 2015 “requires the government to set out the financial resources available to deliver the objectives of a CWIS”. (This is in fact the impact of section 21(3)(a) and (b) combined). The investment period included the 2020 spending review and the 2021 spending review settlements. It was pointed out that CWIS1 had originally projected spending of £1.2 billion over the five years to March 2021; that had been updated to £2.4 billion in February 2020; and was now estimated at £3.245 billion; i.e. actual spending on active travel had far outstripped what had been projected in CWIS1.
16. Sources of funding were then identified in CWIS2. These are multifarious. They include dedicated DfT funding (for things such as cycle training, infrastructure, the National Cycle Network and e-cycle support); wider DfT programmes with an active travel element; other central government funding which helps promote active travel, e.g. the levelling up and future high streets funds. A more detailed explanation was given by Ms Jessica Matthew, the Co-Director for Local Transport at the DfT, in her witness statement:

“18. Funding for active travel comes from a wide range of dedicated and non-dedicated funds from across Government, with the dedicated funding making up only a relatively small percentage of the total. Dedicated funding is solely allocated to active travel and has been the responsibility of the Department's active travel team and more recently, of Active Travel England [*note: a dedicated DfT body established in August 2022*]. Non-dedicated funding refers to wider funding streams - where the primary purpose of that funding may be to improve local transport, improve health, ‘level-up’ the economy or other policy objectives. Non-dedicated funding is normally the responsibility of other teams across Government and only part of that funding is allocated to active travel. This is outlined in the National Audit Office's report of 7 June 2023 [*entitled Active Travel in England*].

*‘1.8 DfT currently estimates that central government will provide around £6.6 billion in funding for active travel to local authorities and other delivery partners between 2016 and 2025, the period of its two cycling and walking investment strategies ... . This comprises:*

- 20 dedicated DfT funds which are ring-fenced and spent solely on active travel interventions, including for cycle training, new infrastructure and walk to school outreach;*
- 10 wider DfT funds which are not ring-fenced and may be spent on a variety of transport interventions, including active travel; and*
- 6 wider government funds which are not ring-fenced and may be spent on a variety of projects, including active travel. These funds are overseen by other central government departments, primarily the Department for Levelling Up, Housing & Communities (DLUHC).*

*1.9 Funding from government sources that are not ring-fenced is uncertain because active travel will be one of several ways to deliver against the priorities of these wider funds. For example, projects funded by government's Levelling Up Fund (first round) include regeneration and community hubs alongside some active travel schemes.' ...*

19. In practice the overall quantum of funding is bound to fluctuate over the period of a CWIS as new funding competitions are announced by other parts of the Department for Transport and other Government Departments, or as it becomes clearer how much funding from existing wider funding streams is being spent on active travel. (For example, if a funding stream relies on competitive bids from local authorities, it cannot be known at the outset what proportion will be spent on active travel, as that will only be clear once the bids are evaluated.) The projections in each CWIS have been based on the best information available at the time of publication, including estimates of the proportion of wider funding programmes that is spent on active travel.”

17. Returning to the CWIS2 document, it went on to state under the sub-heading “Total government funding for active travel”, as follows:

“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 authorities, while ATE [*Active Travel England*] 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.

...

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.”

Table 1: total government funding

<b>Funding Source</b>	<b>Projected Investment from April 2021 to March 2025</b>
Active Travel Revenue and Capital Funds	£1,298 million [ <i>note: later adjusted down by £225 million to: £1,073 million</i> ]
Wider DfT Programmes [ <i>footnote 8</i> ]	£1,328 million
Other central government funding [ <i>footnote 9</i> ]	£1,158 million

Total	£3,784 million [ <i>note: adjusted figure after downward adjustment: £3,559 million</i> ]
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.....”

18. The overall figure of (as later adjusted) £3,559 million included the £710 million allocated in respect of the three year period up to the end of the 2024-25 financial year. There followed a section on performance monitoring, which mentioned the intended use of “supporting metrics to monitor the impact of objectives on those with protected characteristics as well as geographic breakdown where data allows [*footnote 10*]”.
19. I should explain what was in footnotes 8, 9 and 10. Footnote 8 (on “wider DfT programmes”), stated that these included National Highways Designated Funds and estimates of the proportion of spend on active travel from the “CRSTS” fund (City Regional Sustainable Transport Settlements, also known as “City Funds”), Integrated Transport Block (11 per cent) and Highways Maintenance Fund (9 per cent).
20. Footnote 9 on “other central government funding” stated that the figure included “estimates of the proportion of spend on walking and cycling from other central government funding sources including the Levelling Up Fund, Future High Streets Fund and Towns Fund.”
21. Footnote 10 described the “supporting metrics” to monitor performance. These “include frequency of activity, urban / rural split, geographical breakdown, trip purpose breakdown and breakdown by sex, age, ethnicity and disability”.
22. About four and a half months later, on 22 November 2022, the Chancellor of the Exchequer made his Autumn Statement in Parliament. Government departments including the DfT would have to identify savings to manage inflationary and other pressures. The government, he explained, was launching an “Efficiency and Savings Review” which should include “reprioritising spending away from lower-value and low-priority programmes and reviewing the effectiveness of public bodies”.
23. The deadline was March 2023 when a Spring Statement would be made. The DfT started its review accordingly. Ms Matthew explains in detail the process of re-examining projected expenditure from the transport budget, including on active travel. It was one of the areas within the DfT budget vulnerable to spending reductions, since in large infrastructure projects such as roads or railways (unlike active travel) spending may be already legally committed under procurement contracts; and infrastructure cannot easily be left half built.
24. A series of meetings involving Ministers and civil servants across the DfT and other departments took place from December 2022 to March 2023. On 6 December 2022, two “deep dive” meetings took place within the DfT, on local transport and decarbonisation respectively. The subaquatic metaphor denotes an examination that is the opposite of superficial. The two deep dive sessions overlapped because active travel, at least, was relevant to both. The documents considered at the deep dive meetings are before the court, though heavily redacted. The process was complex and detailed; I need not set out the detail.

25. As Ms Matthew explains, in the local transport and carbonisation deep dives, officials advised the SoS that a 13 per cent reduction in active travel spending (from the baseline figure of £710 million in the period up to March 2025) could be achieved by a £40 million budget reduction, of which £20 million would be taken from funds allocated for upgrade work on the National Cycle Network; and the remaining £20 million would be saved by withholding it from 44 local authorities (cutting their allocation by half) who had expected to use their share for local new or shared use cycle pathways or upgrade work on the same.
26. The biggest impact, the SoS was advised, would be on connectivity between rural communities and accessibility of the network to people with disabilities. Reduced funding would also reduce the quality of integrated cycling and walking networks (shared use pathways). The SoS was reminded of the target in CWIS2, that half of all urban journeys would be walked or cycled by 2030. A modest loss of carbon emission reductions was also noted (the figure cited was 0.009 MtCO<sub>2</sub>e); as was the need to make up the lost ground by higher levels of spending on active travel later, from April 2025 onwards.
27. On 30 January 2023, while these deliberations were taking place, the Secretary of State for the Environment, Food and Rural Affairs (**SSEFRA**) made the Environmental Targets (Fine Particulate Matter) (England) Regulations 2023 (**the PM2.5 Regulations**). Made under powers conferred by the Environment Act 2021 (**the EA 2021**), they entered into force the next day. The PM2.5 Regulations addressed the problem of PM2.5 by setting targets, reducing the presence of PM2.5 and the exposure of the population to it.
28. Section 2 of the EA 2021 required the SSEFRA to set a target in respect of the annual mean level of PM2.5 in ambient air. Regulation 4 of the PM2.5 Regulations set that target, as follows: “[t]he annual mean concentration target is that by the end of 31st December 2040 the annual mean level of PM2.5 in ambient air must be equal to or less than 10 µg/m<sup>3</sup> (‘the target level’).” Other targets were also set in the 2023 Regulations, together with measurement and reporting obligations so people could judge whether the targets had been met.
29. On 31 January 2023, the government published its Environmental Improvement Plan (**the 2023 EIP**), pursuant to the EA 2021. Among other things addressed in it, PM2.5 was recognised as the worst air pollutant and the greatest danger to health and wellbeing. The 2023 EIP repeated the PM2.5 targets set by the 2023 Regulations, with an interim target for 2028 of 12 µg/m<sup>3</sup>. It recognised the importance of reducing emissions from road vehicles as the biggest source of PM2.5 emissions. Investment in decarbonisation under the TDP would reduce those emissions. The contributing policies included promotion of active travel.
30. I return to the DfT’s efforts to reduce its budget as required by the Chancellor in the Autumn Statement. On 13 February 2023, officials presented a document to the SoS called “DfT CDEL Scenarios - Options to Address DfT Pressures”. CDEL stands for capital departmental expenditure limit. Much of the content is redacted out, but in a part of the document dealing with the impacts of “Scenario 3”, officials advised:

“**Cycling & Walking (Local Transport)**: 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 commitment 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.”

31. Ms Matthew explains in her witness statement that this was the stated consequence of a scenario in which there would be a 100 per cent reduction in dedicated active travel funding; hence the reference to “[s]topping Active Travel England and funding to Local authorities”. That would obviously be a lot more draconian than the 13 per cent reduction considered in early December 2023. Both options, and others, were on the table and were considered by the SoS in the second half of February 2023 and in early March 2023.
32. The required contribution of the DfT towards savings in public expenditure was considered alongside that of other departments, across government, in the days leading up to the ministerial statement of 9 March 2023, the decision challenged in this judicial review. The process is described thus by Ms Matthew:

“... it was initially thought that it would not include active travel and would solely outline reductions in other, larger Departmental spending programmes. However, as the WMS was reviewed across Government, in the days immediately before the announcement was made, it was felt that the funding reductions were still insufficient. It was therefore suggested that the active travel reductions were included in the statement, reducing active travel by c£200m, leaving £100m capital for active travel over the next two years. This amounted to a 65% reduction in each of the two years in question.

... Therefore, following a number of internal Departmental and wider Whitehall discussions, including with Ministers, on the morning of 9th March 2023 a submission from Departmental officials was sent to the Secretary of State outlining the final savings proposals, as agreed with other government departments, and recommending that he both agree to these savings, and include them in the Written Ministerial Statement. This included the active travel reduction. It stated that the implications of these savings would be considered through the forthcoming business planning process. The submission recognised that spending for high value for money active travel schemes would be reduced:

*‘10. Active Travel: HMT [His Majesty’s Treasury] asked for Active Travel England’s CDEL to be reduced by 65% per annum. This is difficult due to the high VfM [value for money] 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 [note: this is an error and should read £100m] per annum in SR21 years.’”*

33. On 9 March 2023, the written ministerial statement informing Parliament of that decision was delivered by Baroness Vere, Parliamentary Under-Secretary of State for Transport, on behalf of the SoS. She referred to high levels of expenditure on rail and road projects, the effects of Covid on the global economy, the war in Ukraine and consequent “headwinds from inflation”. Many schemes would still be funded, she explained. On active travel, she 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.”

34. Counsel for the SoS, and Ms Matthew in her statement, explained that the latter decided on 27 (not 9) March 2023 to reduce active travel revenue funding for the financial year to March 2024 by a further £25 million, over and above the £200 million over the two financial years ending in March 2025 set out in the ministerial statement. This decision was made in the “finance business plan for the 2023/2024 financial year”, Mr Flanagan explained in his skeleton argument. The total reduction in dedicated active travel funding is therefore £225 million to March 2025, compared to the baseline set in the 2021 spending review.

35. Counsel for the SoS, Mr Flanagan, has further explained, again based on Ms Matthew’s evidence:

“... 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 the Defendant 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 [2021 spending review] period compared to the baseline was £179 million.

... The DfT has committed to reviewing the AT 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 2024/25 financial year.”

36. On 30 March 2023 the government published its “Carbon Budgets Delivery Plan” (**the CBDP**), in response to the judgment and declaration of Holgate J (in July 2022) in the 2022 *Friends of the Earth* case. The CBDP was then itself the subject of a successful judicial review claim heard in February 2024 (see the judgment of Sheldon J given on 3 May 2024 in *Friends of the Earth v. Secretary of State for Energy Security and Net Zero* [2024] EWHC 995 (Admin)).

37. One of the policies in the CBDP is policy 140 on active travel. TAN relies on it as the only policy in the CBDP which supports “priority 1” in the TDP. Policy 140 is named in the CBDP as “High Annual Investment in Cycling and Walking Infrastructure and Policy”; and described as a policy to accelerate “modal shift” to public and active transport. It cites the CWIS2 and “Gear Change” plan to:

“include delivery of a range of capital and revenue funded projects to enable more cycling and walking in line with the July 2021 [TDP] commitment to ‘deliver a world-class cycling and walking network in England by 2040’”.

38. The timescale for policy 140 in the CBDP is from “2020” onwards. Expected annual reductions in carbon emissions across three “carbon budgets” (**CBs**), expressed in MtCO<sub>2</sub>e per annum, are recorded as, respectively, 0.045 (CB4), 0.1 (CB5) and 0.2

(CB6). These figures are described in accompanying notes within the CBDP (in Appendix B) as “separate, assumed UK figures, representing estimated projections for ongoing carbon savings for CB4, CB5 and CB6”. Carbon budget 6 is due to end in 2037, i.e. 13 years before 2050 when net zero is required by law to be achieved.

39. That completes the tortuous and technical narrative of the documents, policies, targets and decisions. After that, the matter became litigious as between TAN and the SoS. Pre-action protocol correspondence was exchanged. The claim was issued on 7 June 2023 and permission to apply for judicial review eventually given by Jay J following an oral hearing on 26 October 2023.

### **Grounds 1 and 2: decision inconsistent with section 21 IA 2015**

40. For TAN, Mr Forsdick KC submitted that while a decision maker enjoys a wide margin of appreciation in respect of high level resource allocation decisions – and this was such a decision – where Parliament has conferred powers or duties to do a particular act, it must be done under and in accordance with the statutory scheme. The SoS had unlawfully departed from the statutory scheme set out in section 21 IA 2015, TAN submitted.
41. Mr Forsdick drew parallels with *R. v. Secretary of State for the Home Department ex p. Fire Brigades Union* [1995] 2 AC 513, where the Secretary of State could not lawfully use the prerogative to make a criminal injuries compensation scheme at odds with the statutory one that had not been brought into force; and *Westminster City Council v. Great Portland Estates plc* [1985] 1 AC 661, where the council could not lawfully develop non-statutory guidelines for the use of land, outside the statutory regime which required a written statement of its proposals for the development and use of land.
42. The purpose of section 21 IA 2015 was, TAN submitted, to achieve certainty and stability in the funding of active travel and end the piecemeal character of expenditure on it; putting in place a structured approach embodied in the publication, periodically, of a statutory CWIS. Section 21(3) uses the word “must” and creates obligations to specify both the “objectives to be achieved” and the “financial resources to be made available” to achieve them. To reduce funding, TAN argues, the SoS must go through the process of varying the CWIS under section 21(1)(b), requiring, by section 21(5), a consultation exercise.
43. The direct correlation between the objectives of the CWIS and the financial resources to be “made available” to meet them, precludes any change to the level of funding without operating the variation procedure, Mr Forsdick submitted. He did, however, accept that the *overspend* that occurred in the case of CWIS1 was not unlawful. The additional expenditure was outside the CWIS but lawfully incurred, while an underspend would breach the CWIS requirements and, it followed, the statutory duty to “make available” the required resources.
44. This was no mere target duty, Mr Forsdick submitted. The provisions went far beyond merely requiring arrangements to be made or formulating a high level strategy. Section 21 did require publication of a “strategy”, but it must be a strategy defining the objectives to be “achieved”, not merely aspired to. The objectives and the resources to meet them are both tied to the period of the CWIS, which is to March

2025. The resources had to be made available within that period; they could not be delayed until after the end of the period.
45. TAN contended that the setting of objectives and allocation of funding in CWIS2 was in accordance with the requirements of section 21 IA 2015. The objectives were set down to the end of the CWIS2 period, i.e. to March 2025 and not later. The allocation of “Active Travel Revenue and Capital Funds” of £1,298 million in line 1 of the table in CWIS2 was “a ring-fenced allocation” made in the light of the 2021 spending review. It was not “an estimate or projection”, TAN submitted.
  46. The decision to reduce dedicated funding by 65 per cent over the last two years of the CWIS2 period was not balanced by any announcement that the funding would be made up from other sources, Mr Forsdick pointed out. Nor was it suggested that the projections in the other lines of the table (wider DfT programmes and other central government funding) underestimated what had been or would be spent from those sources down to the end of the CWIS2 period, i.e. to March 2025.
  47. It follows, TAN submitted, that £225 million had straightforwardly been taken from the statutory allocation of £1,298 million, without using the variation process, without the statutory objectives being changed and without any suggestion that the objectives could be achieved without the £225 million being available. The highest it is put by Ms Matthew is that she speculates in her witness statement that the DfT’s estimates of funding from other sources “may well turn out to be underestimates”.
  48. The reason for the abrupt cut in active travel dedicated funding under CWIS2 was clearly the demand by HM Treasury resulting from the Autumn Statement. The outcome was a return to the ad hoc piecemeal allocation of funds without the need to have regard to the need to maintain certainty and stability in respect of CWISs, provided for in section 21(6) IA 2015. The decision challenged therefore runs directly counter to the statutory purpose of the legislative reform. The allocated figure for dedicated funding is a fixed sum, not a projection. Only the second and third lines express projections of funding from other sources.
  49. Further, Mr Forsdick submitted, it would be wrong to treat the decision as lawful on the basis that the £225 million might be returned to the CWIS2 allocation later in the period down to March 2025, when the CWIS2 period will end. There is no evidence of more than a vague aspiration that this could happen, without any solid evidence that it will happen. The original allocation of £1,298 million in dedicated funding was decided upon after careful and detailed modelling and has not been reviewed since. Even the lesser reduction of 13 per cent was recognised as likely to have an impact on the target of half of all urban journeys being walked or cycled by 2030.
  50. TAN accepted in written argument (albeit relegated to a footnote) that the second ground of challenge is “probably simply a different way of putting Ground 1”. The second ground is that there is now an inconsistency between the objectives to be achieved and the resources to be made available to achieve them. I do think that this way of putting TAN’s objection to the decision stands or falls with the first ground of challenge, namely unlawful departure from CWIS2 and from the statutory scheme.
  51. For the SoS, Mr Flanagan emphasised that the decision was a high level resource allocation exercise attracting a wide margin of appreciation and a “low intensity of

review” with a “light touch” (per Holgate J in *Friends of the Earth* [2023] 1 WLR 225, at [194]). The reduction of £179 million in active travel expenditure was a small proportion of the overall £3 billion of savings from the DfT’s budget announced in the ministerial statement of 9 March 2023.

52. Mr Flanagan noted that section 21(4) allowed the “objectives to be achieved” to include activities to be performed, results to be achieved or standards to be met. It did not create an absolute obligation that every project must be carried out (cf. in relation to investment in roads under section 3 of IA 2015, Holgate J’s observations in *R (Transport Action Network Ltd v. Secretary of State for Transport* [2022] PTSR 31, at [126]).
53. The prescriptive element of section 21, said Mr Flanagan, is that the strategy must state objectives and resources required to achieve them. The prescriptive element does not extend to an obligation to carry out any activities, achieve any results or meet any standards. There is no statutory obligation to comply with the strategy, unlike in the case of investment in roads (see section 3(6) IA 2015). Section 21 does not preclude funding decisions other than through the mechanism of the section. It does not require a mandatory programme of works. The language is akin to that of a target duty rather than an absolute duty.
54. TAN’s reliance on *R. v Home Secretary ex parte Fire Brigades Union and Great Portland Estates v Westminster City Council* was misplaced, the SoS argued, because those decisions turned on the effect of the statutory schemes which were far removed from the present one concerning the setting of an investment strategy. Here CWIS2, which is unchallenged, does specify the resources to be made available to meet the objectives to be achieved. It described as “[p]rojected investment” the dedicated funding figure of £1,298 million which includes designated National Highways funds and estimates of amounts to come from the other cross-departmental funding sources stated in footnote 8.
55. Consequently, the 2022 report to Parliament on CWIS2, under section 21(8) IA 2015, referred to the DfT having “worked closely with other government departments to ensure that relevant place-based funds can be used to support walking and cycling, as well as assisting with assessing bids for funding to ensure proper consideration is given to these elements of the bids”. Funding of active travel is by its nature complex, cross-departmental, unpredictable (e.g. where bids for funding have to be assessed) and multifarious, submitted the SoS.
56. There was no inconsistency between the ministerial statement of 9 March 2023 and CWIS2 and the statutory framework, Mr Flanagan submitted, once the nature of the section 21 regime and the nature of active travel funding is correctly appreciated. It is impossible and unrealistic to suppose that available funding levels may not be subject to change during the period of a CWIS. That happened in the case of CWIS1 where the amount spent was £3.245 billion against a projected expenditure figure of £1.2 billion.
57. While TAN accepts that the figures in the second and third entries in the CWIS2 table (stating non-dedicated funding sources and anticipated amounts from them) could change during the period of CWIS2, it does not accept as much in the case of the dedicated funding element. That, said Mr Flanagan, is inconsistent reasoning; if the

amounts in the second and third entries can fluctuate, necessarily the total figure will do so and there is no good reason for requiring the first entry (denoting dedicated DfT funding) to be rigid and fixed.

58. In my judgment, the SoS's construction of section 21 IA 2015 is much to be preferred, for a number of reasons. First, a strategy for investing in cycling and walking is not the same as a series of projects or a programme of works. A strategy for investment can include as one of its objectives the encouragement of others to invest. TAN accepts this. The second and third lines of the original CWIS 1 funding allocation are not fixed. The first line stating funding direct from the DfT therefore should not, in principle, need to be a fixed amount.
59. I think the most natural reading of section 21(3) is that in the phrase "the financial resources to be made available" to meet the objectives of the CWIS, the words "to be made available" bear the meaning "intended to be made available"; rather than "which must be made available as a minimum". The latter interpretation would condemn an underspend but not an overspend, without any obvious reason for differentiating. And it would mean the adequacy of expenditure could not be judged until the end of the period of the CWIS.
60. As Mr Flanagan pointed out, while the "objectives" must be specified under subsection (3), any "activities", "results" and "standards" (subsection (4)) need not be specified. A specified objective can therefore, in principle, be quite general or even vague. For example, it could be expressed as the establishment of a trend such as a rise in walking and cycling year on year. While such vagueness could be criticised, the criticism would be political and would not mean the CWIS fell short of what was required under section 21.
61. The purpose of section 21 is, I accept, to produce a structured and coherent approach to active travel funding, to replace the previous practice of piecemeal ad hoc spending. It does not follow that section 21 requires rigid adherence to a costed programme of works and projects. That would be difficult to deliver, for the reasons given by Ms Matthew. The amount to be spent on a particular project may depend on the outcome of a competition for funding. The minister's political accountability is secured by periodic reporting to Parliament on progress towards meeting the objectives; see section 21(8).
62. I also think the rigidity of TAN's proposed interpretation of section 21 could have adverse consequences. For example, CWIS2 provides for performance monitoring, to judge the effectiveness of the strategy and any disparate impact based on geographical location or on those with protected characteristics. A minister should be able to change her or his mind about how much to spend in an area that may turn out to be benefitting disproportionately, or suffering disproportionately, compared with others. TAN's interpretation would make that difficult: the amount of dedicated funding down to the end of the CWIS period would have to remain constant, even if the rationale for the resourcing decisions at the start of the period had materially changed.
63. I agree with Lang J's view that the resources "to be made available" under section 21(3)(b) are estimates or projections and not ring-fenced spending commitments. The variation procedure does not need to be used to make changes to available funding levels dictated by changes of circumstances without any changes in the objectives to

be achieved. The variation procedure would be apt where, for example, the minister wished to change the direction of government policy, e.g. by downgrading lanes for bicycles and diverting expenditure to electric car charging points instead, or something of that kind.

64. For those reasons, I see nothing incompatible with section 21 IA 2015 about the decision stated in the ministerial statement to reduce the active travel budget by 65 per cent, for obvious reasons of financial stringency. Even if TAN were correct in describing the funding allocation as a ring-fenced expenditure commitment, the commitment still might be met by the end of March 2025 if (which seems unlikely, but is possible in principle) the £225 million is restored to the active travel budget by a future decision in, say, August 2024, a decision TAN would no doubt welcome but of which others (e.g. supporters of projects from which funds are diverted) might complain.

### **Ground 3: disregard of necessarily material considerations**

65. The legal principles were not in dispute and do not require extensive citation of authority. A decision maker must take account of considerations so obviously material that it would be irrational to disregard them. If the decision maker decides to take into account a voluntary material consideration, it is for him or her to decide what weight to give it and how far to enquire into it, subject to rationality. A minister cannot be taken to know about matters omitted from officials' briefing materials relating to a compulsory material consideration, but need not personally read all materials distilled by officials on that issue.
66. TAN relies on four matters it says were not properly considered: the objectives set by CWIS2; the PSED; air quality targets, specifically those relating to PM2.5; and the risk of an adverse impact on carbon emissions undermining achievement of the goals set in the NZS and CBDP. Of these, only the second is a statutory duty, requiring the SoS to have "due regard" to the equalities considerations in section 149 of the Equality Act 2010. The court is the arbiter of whether that duty has been performed.

#### The CWIS 2 objectives

67. TAN's contention is that "[e]ven if Ground 1 and 2 fail, the totality of the material shows that the SoS did not take into account the implications of the Decision for the achievement of the CWIS2 objectives – a necessarily material consideration". Mr Forsdick did not elaborate in his skeleton argument but repeats the points made in support of the first and second grounds of challenge. The SoS submits that the CWIS2 is his own strategy and he can be taken to be aware of it and to have taken it into account and, in any case, its objectives were expressly considered at the two deep dives attended by the SoS personally.
68. I do not think the quality of TAN's arguments is improved by re-casting them in the form of a failure to take account of the CWIS2 objectives. The premise of the present argument is that changing the level of dedicated funding available to meet those objectives is, in principle, capable of being lawful, as I have just decided; contrary to TAN's submissions on the first two grounds of challenge. The argument then is that the SoS unlawfully disregarded those objectives and, by extension, the amount of money required to meet them.

69. I cannot see merit in this argument. The reason the SoS agreed to a 65 per cent cut in dedicated funding for active travel was not that he overlooked what that funding was for. It was that he accepted the Treasury's suggestion, prompted by the 2022 Autumn Statement, that something had to give. In deciding where the budget cuts should fall, he examined the DfT budget as a whole including its other component parts and including, as part of the total budget for local transport and decarbonisation measures, the active travel budget.
70. The two deep dive sessions and the 13 February 2023 options paper all included considerable discussion about the impact on active travel of cutting its dedicated funding by 13 per cent or, indeed, 100 per cent. It is unreal to say that the SoS did not take into account the likely effect of cuts of that order on the viability of the objectives set in CWIS2.

*The public sector equality duty: section 149 of the Equality Act 2010*

71. The principles from the case law are well known and I will not unnecessarily repeat them here. What performance of the duty requires is fact specific and context specific. The duty is to have "due regard" to the specified goals, not to achieve a particular outcome. The consideration must be rigorous and conscientious. It must not be a tick box exercise. There is no exception for high level "polycentric" decisions involving allocation of resources.
72. Mr Forsdick cited from certain guidance for public authorities emanating from the government's Equalities Office (not among the materials before the court): in relation to "high-level strategic decisions"; if a full impact assessment is not practicable "you should take a pragmatic approach and acknowledge the known impacts, even if you are unable to provide more detailed consideration".
73. The equality implications of active travel were already well recognised, TAN submitted. The impact assessment undertaken for CWIS2 had identified numerous potential impacts on those with protected characteristics; for example the weighting of expenditure "towards areas with higher levels of deprivation and poor health" which "therefore disproportionately benefits some ethnic minority groups". TAN submitted that the SoS's consideration of equalities issues in advance of the ministerial statement was cursory and inadequate.
74. Mr Forsdick submitted that the SoS could not rely on the brief consideration given to equality issues at the two deep dive sessions on 6 December 2022. Those discussions did not embrace the idea of a 65 per cent cut in dedicated active travel funding. That came later, at the behest of the Treasury. The reduction under consideration at the deep dives was more modest, of the order of 13 per cent. The duty applies to the actual decision, not some prior inchoate or lesser version of it.
75. A funding cut of 65 per cent, Mr Forsdick pointed out, could impact on specific projects in a different manner from a lesser reduction of, say, 13 per cent. That in turn could mean that the impact on those with protected characteristics would be different from the impact perceived at the stage of setting the CWIS2 objectives. It was no answer to say that the impact assessment for CWIS2 had envisaged that further impact assessments would be carried out locally when considering specific active



travel schemes and projects. Those would not address what Mr Forsdick called the “whole-nation impacts” existing “at a macro level as well as an individual level”.

76. For the SoS, Mr Flanagan relies on paragraph 14 of the ministerial submission of 9 March 2023:

“**14. Public Sector Equalities Duty (PSED):** 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.”

77. Mr Flanagan submitted that the consideration of equalities issues in that passage referred to the DfT budget savings as a whole, which within the reference to “road” in the phrase “across rail, road and HS2” included the active travel element of expenditure on “road” projects. While there was no impact assessment in respect of active travel funding reductions (nor in respect of the DfT budget cuts as a whole), equalities issues had been touched on during the two deep dive sessions. In those sessions, Mr Flanagan pointed out, reference had been made to accessibility for disabled road users.

78. One of the presentation slides was headed “[a]ctive travel schemes have impact and can be delivered quickly”. Of proposed expenditure in the two financial years to March 2025, £258 million was earmarked for “[k]ey capital projects / funding streams”, which included “tackling 5,000 critical issues to address accessibility for disabled road users”. I interject that there was no breakdown of these 5,000 issues nor of the reason why each was “critical”. Further, the SoS was advised during the decarbonisation deep dive that the biggest impact of a 13 per cent cut in active travel funding would be on connectivity between rural communities and accessibility of the network to people with disabilities.

79. Mr Flanagan disagreed that those propositions and considerations were invalidated by the supervening decision to cut active travel more deeply, by 65 per cent rather than only 13 per cent, up to March 2025. He pointed out that what degree of regard was “due” depended on the context; it was the degree of regard that was appropriate in all the circumstances. Here that context included, importantly, the equality impact assessment that, as explained in CWIS2 itself:

“has been carried out as part of the development of CWIS2 in tandem with an EqIA for the creation of ATE [*Active Travel England*]. These EqIAs consider equality and inclusion at the national scale, while ATE will oversee the development and application of EqIAs at the local level as part of its remit to examine applications for funding and inspect finished schemes.”

80. A locally based impact assessment of an actual proposal for local expenditure would be more detailed and informative than is possible in the case of a high level decision making exercise such as the formulation of a CWIS or, indeed, a decision to reduce the funding available to achieve its objectives, the SoS submitted. That weighed in favour of no more being required at the stage of making the funding decision.

81. I have considered these rival contentions and come to the conclusion that the SoS did have “due regard” for the equalities considerations set out in section 149 of the Equality Act. The issue is one for the court to decide, not by applying a *Wednesbury* standard of review but by determining directly whether the degree of regard had was sufficient to meet the standard of “due” regard in the factual circumstances of the case. My reasons are, briefly, as follows.
82. First, the broad context was encouragement of walking and cycling. It is not a particularly contentious area of government policy. The benefits of the policy had been articulated in depth and detail in the various policy documents already mentioned. Most people agree, across political party lines, including most of those enjoying the protected characteristics defined in the Equality Act, that reducing carbon emissions and reducing air pollution is a good thing; and that encouraging active travel is a reasonable way to tackle those objectives.
83. That may be subject to exceptions in the case of, for example, enthusiastic users of cars; but, subject to any such exceptions, there is no obvious group of natural opponents of active travel; still less, it would seem, any such group disproportionately made up of people with a particular protected characteristic. With the possible exception of some people with disabilities, encouraging active travel is likely to be regarded as a benign phenomenon in the view of most people and across the spectrum of those with protected characteristics.
84. Subject to considering with care the impact on people with a disability, who may be physically unable to engage in walking and cycling, there is no obvious disparate impact on the various protected groups, as there could be if the issue were different and more controversial: for example, a proposal to impose cuts in social care or midwifery services in deprived areas, or to close local libraries.
85. Such was broadly the unsurprising conclusion when a full equality impact assessment for CWIS2 was done. It is before the court and is not criticised by TAN, any more than CWIS2 itself is criticised. A further assessment was carried out in relation to the creation of Active Travel England in mid-2022. I have not seen that one but it is not suggested its conclusions were radically different.
86. In the CWIS impact assessment, those with the protected characteristics were thought broadly likely to benefit from funding to meet the CWIS2 active travel objectives. The author noted that the weighting of expenditure towards areas with higher levels of deprivation and poor health actually benefits some ethnic minority groups; but did not conclude that there was any stark disparate and detrimental impact on any protected group.
87. A reduction in available funding would, obviously, reduce the benefits from active travel. While in principle the reduction might reduce the benefit differentially as between protected groups, there is nothing in the evidence to suggest that it would do so. Other things being equal, the reduced benefit from reduced funding is likely to impact on the protected groups in the same manner and to the same extent as conferring the benefit in the first place would do.
88. A related point is that this was an urgent high level “across the board” decision which had to be formulated and reasoned under financial and time pressure. As was

remarked at the time, the opportunity to carry out further impact assessment was limited (see paragraph 14 of the ministerial submission of 9 March 2023). But the equalities considerations were not overlooked. CWIS2 itself had included (in footnote 10) reference to “performance monitoring” by reference to protected characteristics as well as geographical location.

89. Equalities issues were touched upon in the two deep dive sessions. The position of “disabled road users” was specifically discussed, as was “connectivity between rural communities and accessibility of the network to people with disabilities”, which would be the subject of the biggest impact of the 13 per cent cut in active travel funding then under consideration. CWIS2 also included the noted intention that Active Travel England would “oversee the development and application of EqIAs at the local level as part of its remit to examine applications for funding and inspect finished schemes.”
90. Significantly, the manner in which the funding cuts would be imposed was not yet known at the point when the ministerial decision to cut the budget by 65 per cent was made. Whether and if so how the protected groups would be differentially impacted is something that cannot be fully tested until it is decided which specific active travel projects will have to be cancelled in consequence of the 65 per cent budget cut. Cancelling specific projects was not the subject of the decision; it will be a consequence of it that will have to wait till later and at that point project specific assessment is intended to be carried out.
91. In my judgment, those features of the present case are enough to conclude that due regard was had to the equalities considerations in section 149 of the Equality Act 2010. I therefore reject TAN’s submission to the contrary and move on to consider its next criticism.

#### Air quality targets

92. Mr Forsdick, for TAN, made clear in oral argument that the focus of his challenge related to the absence of specific consideration of pollution caused by PM2.5. TAN accepted that air quality targets more widely were considered at a high level of generality. The contention is that PM2.5 is the worst air pollutant and that it was mandatory, on pain of irrationality, to have regard to the likely impact on levels of PM2.5 of the decision challenged.
93. Developing this line of argument, Mr Forsdick referred to the duty of the SSEFRA under the EA 2021 to set long term targets including specifically in respect of PM2.5. I have already mentioned that the 2023 EIP, published pursuant to the PM2.5 Regulations, came at the end of January 2023, while the DfT and other government departments were considering budget cuts at the behest of HM Treasury, following the 2022 Autumn Statement.
94. Mr Forsdick submitted that although called “targets”, these are targets that must, under the EA 2021, be met. The duty to meet the PM2.5 target is, thus, not a “target duty” in the administrative law sense of the term. It is a duty to secure the outcome that the level of PM2.5 is reduced to the “target” level; and as such, as he put it, “a duty of result not a duty of process”. The required future PM2.5 levels were more

ambitious than previous “targets” set in regulations dating from 2010, made under a 2008 EU directive.

95. It followed from the setting of the PM2.5 targets and the duty to ensure that they are met, that the need to meet them is a compulsory material consideration in relation to the decision to cut funding for, among other things, the DfT’s spending on CWIS2 objectives. The targets were necessarily material and had to be considered, either because the statutory scheme implicitly so required, or because of their “obvious materiality”.
96. Mr Forsdick contended that this analysis was supported by the reasoning of Holgate J in *R (Wildfish Conservation) v. Secretary of State for Environment, Food and Rural Affairs* [2024] Env LR 15, at [223], recognising the obvious materiality of the “species abundance target” in the context of the statutory “Storm Overflows Discharge Reduction Plan”, also governed by provisions in the EA 2021. While the judge rejected the submission that the SSEFRA had not had regard to that target, he implicitly recognised its obvious materiality.
97. Returning to the factual context here, Mr Forsdick reminded me that CWIS2 itself recognised that a modal shift towards walking and cycling would contribute to meeting air quality targets and in particular to combatting the main culprit, PM2.5. The only consideration of air quality had been generic, at a high level of abstraction, without addressing specifics and without dealing with mandatory reductions in levels of and exposure to PM2.5, he submitted.
98. Mr Flanagan, for the SoS, returned to the presentation slide from the local transport deep dive headed “[a]ctive travel schemes have impact and can be delivered quickly”. The commentary included the observation:

“BCR [*benefit-cost ratio*]: Investment is very high value for money, with a BCR of 4.3 for the £508m cycling and walking programme (CDEL). The majority of benefits are health benefits from increased life years and reduced absenteeism, followed by improved journey quality and benefits from mode shift such as reduced greenhouse gas emissions, traffic congestion, and improved air quality.”
99. In the decarbonisation deep dive, Mr Flanagan referred me to the mention of air quality in the context of a cross-departmental DfT and DEFRA body called the Joint Air Quality Unit (**the JAQU**). It was explained to the SoS that funding from the JAQU is:

“primarily used to award grants to local authorities for them to develop and implement local air quality schemes to reduce NO2 [*nitrogen dioxide*]. Examples include traffic management, speed limits, retrofit buses, active travel measures and Clean Air Zones”.
100. As for the narrower criticism that the impact on PM2.5 targets and levels was not taken into account, the SoS said the argument was without merit because CWIS2 “does not quantify the contribution of [active travel] to existing or new air quality targets. ... the Claimant produces no evidence to show that any new targets are dependent on CWIS2 and as explained in the witness statement of Jessica Matthew, they are not”. When CWIS2 was published in July 2022, consultation on air quality targets had only just closed and the government’s response to the consultation did not come until December 2022.

101. As for the *Wildfish Conservation* case, Mr Flanagan said that while there is a close link between storm overflows and species abundance, there is no parallel here, i.e. no direct and close link between active travel funding and the meeting of air quality targets (nor, specifically, targets relating to PM2.5). Reliance on that authority was therefore misplaced and did not assist TAN. Holgate J did not need to determine whether the species abundance target was a mandatory relevant consideration because the SSEFRA had considered that target.
102. In my judgment, the statutory PM2.5 targets were not a mandatory relevant consideration. The SoS was entitled but not bound to consider PM2.5 levels or air quality more widely. The DfT had to cut some £3 billion from its overall budget for the two financial years ending in March 2025. The reduction of £200 million (as adjusted later) in active travel funding was a small part of that exercise, without any obvious, immediate and probable impact on PM2.5 levels. There was no quantified relationship between active travel projects and PM2.5 levels. A perceived correlation between storm overflow levels and the abundance of particular species cannot be read across to the present case.

*Adverse impact on carbon budgets: the TDP, the NZS and the CBDP*

103. In TAN’s skeleton argument, there is said to have been a “[f]ailure to take into account the risk that a policy on which the NZS and CBDP relies could not be delivered”. I understand this to mean that the SoS failed to take into account the risk that the carbon emission levels and budgets referred to in the NZS and CBDP would be adversely affected by the decision to reduce funding for active travel; that this was a compulsory material consideration, i.e. one that it was irrational to disregard; and that the SoS failed to have regard to it.
104. I have already referred to the CCA 2008, which Holgate J considered in the 2022 *Friends of the Earth* case. Pursuant to the CCA 2008 the Secretary of State for Energy Security and Net Zero (**the SSESNZ**) published the NZS and the CBDP – the latter also in response to Holgate J’s judgment. Mr Forsdick submits that the reduction in funding will adversely affect the deliverability of the target that half of all urban journeys will be walked or cycled by 2030. Failure to meet that target will in turn adversely affect the ability of government to meet the carbon budgets referred to in the NZS and CBDP.
105. No modelling or calculations have been done to assess the likely extent of that adverse impact, TAN submitted; yet the decision was to reduce funding by 65 per cent over the remaining two years. The matter should at least have been the subject of enquiry, in accordance with the *Tameside* duty. The two deep dives do not assist the SoS because they predate the decision challenged and are predicated on a much more modest reduction in CWIS2 funding than the 65 per cent demanded of the DfT at a late hour by HM Treasury.
106. Mr Flanagan submits that the SoS may be assumed to be fully aware of the TDP, which is his own plan. Decarbonisation was the subject of a deep dive session on 6 December 2022, in which the relation between active travel and decarbonisation was looked at; the subsequent “read out” from that session records that the SoS was told the “general picture” was that “reducing funding would mean less carbon reduction”; and that on the same day at the other deep dive session on local transport, the SoS was

told that a 13 per cent reduction in active travel funding would lead to lost carbon savings of 0.009 MtCO<sub>2</sub>e.

107. Further, the ministerial submission acknowledged that a 65 per cent cut in dedicated active travel funding was “difficult” because active travel delivers high value for money and the government would have a “Net Zero moment” at the end of March 2023, when various announcements on net zero would be made. Neither the TDP nor the NZS depend on a particular level of active travel funding. The contribution of active travel to decarbonisation is small, as Ms Matthew explains: “the entire dedicated active travel programme represented less than 0.5% of all domestic transport savings for CB6”. The issue received a rational level of consideration, proportionate to its impact, the SoS argued.
108. The NZS, Mr Flanagan pointed out, refers to the intention that half of all urban journeys would be walked or cycled by 2030 (in Table 10, “[d]eployment assumptions underpinning pathway”, under the “domestic transport” heading); but the text preceding Table 10 cautioned that it was illustrative; given “ongoing uncertainties”, the “policy mix” to meet carbon budgets were “subject to change” and “should not be interpreted as government targets”. As for the CBDP, it postdated the decision challenged by a few weeks and also included a caveat that there is “considerable fluidity in the final delivery”, a point which Holgate J acknowledged in the 2022 *Friends of the Earth* case, at [165].
109. In my judgment, the impact of proposed transport measures on carbon budgets and the path to Net Zero by 2050 is, in general, likely to be a mandatory relevant consideration because of its obvious materiality. Transport of various kinds not involving self-propulsion is a well known source of carbon emissions and is undergoing a thorough re-examination for that reason.
110. However, I accept Mr Flanagan’s submission that the SoS adequately considered the impact on carbon budgets of the decision presently under challenge. There is, as the policy documents recognise, a relationship between increased walking and cycling and reduced carbon emissions because walking and cycling does not emit carbon, while driving in vehicles instead does. But the relationship is indirect and I accept that meeting the CWIS2 targets would not lead to a swift, dramatic and measurable reduction in emissions.
111. Furthermore, the SoS did consider the impact on carbon emissions of a 13 per cent reduction in active travel dedicated funding. I do not accept TAN’s submission that he was obliged to revisit the carbon budget modelling looked at in the deep dive sessions by reference to a 65 per cent reduction in funding. The consideration given to the issue was, as Mr Flanagan submitted, proportionate to its likely impact, which was small. I therefore reject this ground of challenge.

## **Conclusion**

112. For all those reasons, the claim must fail and I dismiss it. I am grateful to counsel for their very full and erudite submissions.