



For the attention of: Maria Price, Director of Legal &
Democratic Services
Devon County Council
County Hall
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Date: 21 May 2024

Our ref: SJA/QUE00006/00001

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Sent by post and emailed to:
maria.price@devon.gov.uk

Dear Ms Price

Proposed Traffic Regulation Order to pedestrianise Queen Street – Devon County Council (Queen Street Area, Newton Abbot) (Traffic Regulation) Order

Introduction

We are instructed by the Queen Street Traders and Residents Association (QSTAR), who have concerns regarding the consultation carried out on the proposed order to implement the pedestrianisation of Queen Street, Newton Abbot (“the Order”).

Having reviewed the matter with QSTAR, we note that there are several notable weaknesses in the Council’s consultation. In particular, we have identified failings in the consultation relating to the Council’s duty under section 122(1) of the Road Traffic Regulation Act 1984 (“the 1984 Act”) which sets out the Council’s duty to:

exercise the functions conferred on them by this Act as (so far as practicable having regard to the matters specified in subsection (2) below) 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

We also understand that not all pertinent information about the Order was made clear (or available) to the public at the time of consultation, concerns are also raised about the Council’s handling of its public sector equality duty (PSED) and the potential that predetermination has played a part in the decision to make the Order.

The Council’s s.122, 1984 Act duties

Section 122(2) of the 1984 Act goes on to set out the matters to which the Council must, so far as practicable, have regard when making the Order, which are as follows:

- (a) the desirability of securing and maintaining reasonable access to premises;

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- (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 local authority to be relevant
- relate to the Council's duty to have regard under Regulations 122(2)(b) and 122(2)(bb) of The Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996.

We consider the Council has failed to consider the true impact of the Order on local amenity, having failed to have regard to the likely impacts on local businesses and the impacts that have resulted from comparable traffic regulation orders in neighbouring towns such as Torquay, Barnstaple and Paignton, despite these concerns having been raised with the Council by Town, District and County Councillors and local traders. There appears to be a disparity between the consultation responses from the public and traders, including national and local businesses, and the issues addressed in the Officer reports.

Air Pollution

Furthermore, we consider that consultees' concerns, which they raised with the Council during the consultation process regarding air pollution implications of the pedestrianisation scheme have not been addressed by the Council, despite the requirement for the Council to have regard to the national air pollution scheme. The officer report dated 1 June 2023 ("the 2023 Report") fails to address the displacement of traffic issue raised during the consultation or provide any evidence as to why it is considered that the proposals are expected to 'cut carbon and deliver air quality benefits, towards the Newton Abbot and Kingsteignton Air Quality Management Area, which is included in the scheme extent'. The 2023 Report recognises that:

'some local traffic may have to divert creating longer journeys, however it is also expected that some users will switch modes rather than simply changing driving route'.

Having accepted that many car journeys will be made longer by the Order, no explanation is given as to why it is considered that 'some users will switch modes' of transport.

The 2023 Report refers to concerns that some local traffic will have slightly longer journeys as a result of the diversion off of Queen Street however they anticipate that some road users will switch modes of transport rather than changing route. The report states that 'alternative parking facilities are on the edge of the town centre ...may represent [a] shorter travel distance for many drivers', overall they conclude that there will be more active travel users as a result of the pedestrianisation of Queen Street, which will contribute to the Newton Abbot and Kingsteignton Air Quality Management Area, of which Queen Street forms part. However, the Council does not detail how this conclusion has been reached or what evidence these assumptions are based on.

Similarly, the statement of reasons for the Order is brief and reads as generic, without any detail to identify the particular site or specific or measurable benefits, this suggests that insufficient thought has been given to determining whether the Order is justified. Consultation responses which drew attention

to the risks to the locality as a result of pedestrianisation have been entirely overlooked as demonstrated by the lack of mention of them in the officer reports and SOR.

Public Sector Equality Duty

It is noted that it has not been possible to access the Council's Equality Assessment which is referred to within the 2023 Report but is not available to view. A copy has not been provided and so we reserve the right to comment on this further.

Information available during the consultation

In addition, we note that the Council continues to, after the consultation has closed, provide new material details, which were not knowledge within the public domain at the time of the consultation and therefore could not be meaningfully consulted on.

For instance, in the 2023 Report, the Sixteenth respondent Newton Abbot Town Council raised concerns that:

Disabled drivers will access Queen Street, then hold up buses etc. when they find they have nowhere to park.

Businesses will have to make onerous arrangements to service their premises by rear service areas, and the traffic movement through Newton Abbot will suffer massively.

The Council's response at the time read:

There have been no objections lodged by business users regarding the adequacy of the loading facilities.

Not only was the Council's response inaccurate as local businesses, during the consultation period and subsequently have expressed concern about the loading bays and how they would receive deliveries, it has also been brought to our attention, at the time of writing this letter that the Council has only clarified in an email to the Town Council dated 15 May 2024, which significantly post-dates the consultation, that the loading bays on Queen Street will be available for use by Blue Badge holders. A detail not made available to the Town Council, QSTAR and other consultees during the consultation process. This will impact severely on the already limited loading bay facilities. We consider this to be further evidence that the consultation was flawed and should be carried out afresh, setting out accurately the proposals on which consultation is required.

Predetermination

We understand that the grant funding arrangement played a part in the Council's handling of the Order. During an interview with the BBC on 12 February 2024 Councillor Wrigley who is a member of HATOC accepted that the Councils had not carried out the consultation as they would have liked as a result of time pressures of the funding arrangement. This indicates that the Council took into account a consideration they ought not to have when deciding to make the Order and that a decision may have been pre-determined by the concerns regarding funding, furthermore it shows that the Council too would favour a more robust consultation process, which would be welcomed by our clients.

Whilst we do not accept that the Council were correct in taking the funding arrangements into account when taking the decision to make the Order, we also note that the funding is no longer impacted by the making of the Order and as such this reason the Council has given for not carrying out the consultation as it would have wished to has been removed and can no longer be seen by the Council as a driving force to implement an Order which has been inadequately consulted upon. So, there is time to reconsult.

Furthermore, we note that the Officer reports indicate that alternatives to the pedestrianisation of Queen Street, such as pursuing only a 20 mph zone or greening without losing parking spaces (as suggested by a prominent local business owner), appear to have been disregarded out of hand and the Council focused on the removal of vehicles from Queen Street to the exclusion of alternative measures, which might be more appropriate for the area, accordingly we consider that the judgement in *R. (on the application of Montpeliers and Trevors Association) v Westminster City Council* [2005] EWHC 16 (Admin) may be of relevance to this matter. Mr Justice Mumby in paragraph 25 of his judgement said that 'the process of consultation was vitiated by the fact that one of the options...had already been excluded from further consideration.' Consequently, he quashed the order.

It is also noted that councillors at Teignbridge District Council at the full District Council meeting of 27 February 2024 debated an amended motion to pause and request a fresh consultation for the Order, a motion which was subsequently voted on in a named vote. District Councillors then voted on the original motion to reaffirm support for delivery of the Queen Street pedestrian enhancement scheme without the opportunity for full debate on that motion.

Understandably, our clients feel that there have been instances throughout the process where attempts to question the Order and feedback have been curtailed, despite such a significant proportion of local people and groups, such as the QSTAR, the Town Council and Newton Abbot District and Civic Society, to name a few, having raised concerns and dissent to the scheme.

Conclusion

In light of the above, we respectfully invite the Council to put a halt to the making of the Order to consider alternative options that might be better suited to Queen Street to ensure its future for all users. If the Council continues to consider the scheme viable, we invite the Council to carry out a new consultation process, which complies with the 1996 Regulations, thereby allowing an informed and meaningful consultation to take place and to avoid the risk of a successful statutory challenge being brought by local traders and residents who feel they have been ignored and misled.

We should be grateful if you would confirm receipt of this letter by return by post or email to the address below and direct your response to us as the representatives of QSTAR.

Yours sincerely



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Senior Associate

For and on behalf of Ladders Solicitors LLP

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