Neutral Citation Number: [2026] EWHC 695 (Admin)

Case No: AC-2025-LON-004392

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

Tuesday, 24th March 2026

Before:
MR JUSTICE FORDHAM

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Between:
R (OPEN ROADS FOR OXFORD LTD) **Claimant**

- and –
OXFORDSHIRE COUNTY COUNCIL **Defendant**

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Charles Streeten (instructed by Bates Wells) for the **Claimant**
Kelvin Rutledge KC (instructed by Legal Services, OCC) for the **Defendant**

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Hearing date: 24.3.2026

Judgment as delivered in open court at the hearing

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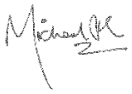
Approved Judgment



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FORDHAM J

Note: This judgment was produced and approved by the Judge, after authorising the use by the Court of voice-recognition software during an ex tempore judgment.

FORDHAM J:

Introduction

1. This is a renewed application for permission for judicial review. The claim for judicial review impugns the Oxford Congestion Charging Order 2025 which was a charging scheme made on 27 October 2025 and came into effect from 29 October 2025. It does so by challenging, as its target, the decision made by the Cabinet to the County Council at its meeting on 10 September 2025. The claim for judicial review was commenced on 5 December 2025. Three further witness statements were filed on 12 December 2025. There had been pre-action correspondence, from the Claimant's side on 7 October 2025, and from the County Council on 21 October 2025.

Open justice

2. An important question relating to open justice arose at the start of the hearing. It was dealt with promptly and properly by agreement between the parties. The position was this. The Court had received skeleton arguments from both sides, which their advocates were adopting in open court. The Court had also received a permission hearing core bundle (pages C1-C282), a very substantial permission hearing supplementary bundle (pages S1-S1310), together with a permission hearing authorities bundle (pages A1-A489). The contents of all of those bundles were being ventilated in open court today. Nobody who was present in the courtroom needed to access anything that they did not already have. But the parties agreed that it would be appropriate for both of the skeleton arguments and all of the bundles to be available in the public domain. That was so that any member of the press or public, who might wish to understand more about this case and the materials that were before me today as the Judge, could see the materials. I was told that steps would be taken during the day which would involve all of those materials being uploaded to the County Council's website, at the relevant location for this charging scheme. That was a welcome agreed step, so far as the Court is concerned. It also explains why I have included bundle page references.

Context

3. In November 2022 the County Council had decided (S514) that it was going to proceed to implement a scheme involving 6 trial filter points within Oxford. What they meant was that, unless you had an entitlement to drive your vehicle through the filter point because of an exemption or a permit or pass, you would be penalised for doing so and would have to pay a fixed penalty charge. The trial filter points scheme was intended, in the minds of the local traffic authority decision makers, to address traffic congestion in Oxford. Mr Streeten, in his oral submissions for the Claimant, has been complimentary about the material produced in conjunction with that 2022 decision, or at least the Equalities Impact Assessment (S422) which preceded it.

4. In the event, implementation of those trial filter points was to be delayed until November 2024, because of Network Rail's work at Botley Road in Oxford. That work was itself then delayed. An announcement was made that it was now not going to finish until around August 2026. The interim idea became this. At the identical 6 locations there would be, not the 6 trial filter points but instead 6 charging points. That would mean that, unless exempt or the holder of a permit or pass, a vehicle could go through each of those 6

charging points, but only on paying a £5 charge. And if you were required to pay the charge and failed to do so, then you would be the subject of a potential penalty.

5. One of the differences between those two approaches is this. Under the charging scheme, if I am not permitted (by exemption or permit or pass) to pass through in my vehicle free of charge, I could still pass through – rather than face a longer journey to get to my destination in Oxford – but provided that I pay the charge. Another of the implications, because of the ongoing closure of Botley Road, is that the interim arrangement – if it had involved filter points rather than charging points – would have meant some parts of the city centre would not be accessible by vehicle at all.

Three grounds

6. There are three grounds for judicial review which have been put forward by the Claimant, together with some sub-grounds. Everybody agrees that the third ground is parasitic on the first two and cannot stand alone from them.

The consultation duty

7. The first ground for judicial review concerns public consultation. The statutory duty to consult the public is found in s.170(1A) of the Transport Act 2000 (A13), a provision which came into force from 9 February 2009. By s.170(1A), Parliament has imposed a duty on the local traffic authority to consult "about the charging scheme". There are later provisions about inquiries (s.170(2)) and about making and varying and revoking schemes (see eg. s.170(1C)).

The consultation design arguments

8. The first limb of this first ground for judicial review (consultation) involves, in essence, the following argument.

    i) The legally correct interpretation of the s.170(1A) statutory duty means that the local traffic authority cannot confine its consultation to the questions of "how" to have a charging scheme, having already reached its crystallised decision that it is going to have a charging scheme. It follows that the consultation needs to allow a fair opportunity for informed representations not just on questions about "how", but also on the more fundamental question about "whether", to have a charging scheme. That, in turn, means that consultees need to be in a sufficiently informed position to know broadly what other options have been considered and rejected by the County Council, in coming to their proposal for the charging scheme. And a consultee, in having their voice heard, needs to be able to say that there should be no charging scheme. They need to be able to say that something else should happen instead of a charging scheme, or that nothing should happen instead of a charging scheme.

    ii) That statutory duty was completely misunderstood within the County Council. That is betrayed by the way the case has been pleaded in this judicial review (C253 §55). It can be seen from the design of the consultation documents. The public was only being asked about "how". It was not being asked about "whether". That means there was an error of law, or alternatively there was a breach of the statutory duty, or alternatively there was a material unfairness.

iii) What needed to happen was adherence with the same public law requirements as the Supreme Court identified, in the context of a council tax reduction scheme and a statutory duty to consult, in R (Moseley) v Haringey London Borough Council [2014] UKSC 56 [2014] 1 WLR 3947 (A241). The statutory duty in Moseley is set out by Lord Wilson at §8. The public law requirements are described by him at §§29-31, and by Lord Reed at §§36-41. Lord Kerr agreed with Lord Wilson. Lady Hale and Lord Clarke agreed with them both (at §44). It is at least arguable that the consultation breached the applicable duties when you look, in particular, at the way that the consultation survey (S700-S713) was designed.

9. Johnson J thought this first argument had no realistic prospect of success and I agree with that conclusion. This is why:

i) I certainly think that it is at least arguable that the features that were identified in Moseley apply to the s.170(1A) statutory consultation duty. Bearing in mind that this is a consultation duty "about" a charging scheme, but inviting the views of the public ("local persons") – and bearing in mind it is a duty alongside other powers as to an inquiry (s.170(2)), and as to variations and revocations (s.170(1C)) – it would in my judgment be surprising if it were not required to be open to a consultee to say "you should not be having a charging scheme at all" or, for that matter, "you should not be revoking the charging scheme at all". It is at least arguable, in my judgment, that the standards identified in Moseley are equally applicable here.

ii) That does not mean that there has not already been a decision identifying a "proposal" for a scheme. But it does mean that that decision is not a "fixed" decision. It cannot be. It also means that there needs to be a fair opportunity for a consultee to have their voice heard, including if they wish to say "there should not be a charging scheme at all", or if they wish to say "there should be some alternative to a charging scheme". It also means, at least arguably, that consultees should be given at least "brief reference" in the consultation document to other options "and to the reasons why [the County Council] had concluded that they were unacceptable" (Moseley per Lord Wilson at §19: A253).

iii) For these reasons, I cannot accept Mr Rutledge KC's first invited knockout blow about what, beyond argument, is all the statutory duty actually requires. But I do accept Mr Rutledge KC's second knockout blow. It is this. Looking in substance at what the County Council did in this case, beyond argument, it acted compatibly with the Moseley public law requirements on the premise that they arose.

iv) Mr Streeten rightly accepts that he cannot point to any contemporaneous document that reflects any misdirection so far as the statutory duty – as he interprets it – is concerned. There is no document in which officers say to Cabinet members "do not think about 'whether' you should be having a charging scheme". Members were not told: "you have already made that decision; it is already fixed; you cannot go back on it now". Members were not told: "do not worry about alternative options". Members were not told: "do not worry about consultation responses that say you should not be having a charging scheme at all". There is nothing of that kind, in my judgment. Quite the contrary.

v) Nor, in my judgment, is it necessary to place weight on the survey Question 12 (S708). That question talked about "suggestions for other ways to reduce traffic

and tackle congestion in and around Oxford". Question 12 needs to be viewed in the context of the consultation documents, read fairly and as a whole, and read as they would have been read by an ordinary member of the public, or group, wishing to assist the thinking of the County Council.

vi) In my judgment, it really starts at Question 7 and the fourth response option from the following (S705):

> Q7 - We are proposing a single charge of £5 to allow cars without a day pass or permit to go through all of the temporary charge locations on one day. What do you think of the level of this charge?
> Too low ☐
> About right ☐
> Too high ☐
> There should be no charges at all ☐

vii) I do not accept that this is a question whose asking reflects a disinterest in knowing where consultees oppose there being a charging scheme at all. It is true that the question arises under a heading about "charging levels". But the design of this consultation has specifically included four options. Of these, the fourth one is that "there should be no charges at all". That is a clear opportunity for someone who wishes to say "there should not be a charging scheme" to make their voice heard, on that very point. Having their voice heard on that is also the consequence of that question.

viii) Within the consultation survey there is then a series of text boxes (S706-S708). It includes a text box after this catchall question 11 (S707):

> Q11 – Do you have any other comments about the proposal for six temporary congestion charge locations in Oxford for cars that you have not already shared in this survey?

That text box, in my judgment, is a perfect opportunity – for someone who wants to go further than saying "there should not be a charging scheme at all", and wants to say "do this instead" or "do nothing instead" – to have their voice heard.

ix) In my judgment, it is not arguable that this questionnaire would be taken by a consultee as meaning "we are not interested in hearing from you if you oppose any kind of charging scheme, or if you want to tell us why you oppose any kind of charging scheme, or if you want to tell us what it is that you say we should do instead of a charging scheme".

x) That leaves the Moseley point about identifying, at least in broad terms ("brief reference"), alternative options and communicating "the reasons why" it was decided not to put those alternatives forward and instead to propose the charging scheme. In my judgment that, beyond argument, is adequately covered by the consultation documents when they are read fairly and as a whole. The consultation (S691-S699) makes clear that there is a bundle of materials for consultees to consider. There is referenced (S696-S697) a very straightforward set of FAQs (frequently asked questions) which are posed and answered. Those questions include a heading: "questions about reasons for this proposal" (S697, S1307). Under a question "Why are you proposing the temporary congestion charge" (S1307) there is a description of the purpose and the objectives that have led to it

being proposed (S1307-S1308). Then there are further questions asked and answered. These include (S1308):

> Why can't we just wait until Botley Road reopens and the traffic filters are implemented?

There is then a question about how to set the daily charge, but the next question asked and answered is this (S1308):

> Have you considered any alternatives to a congestion charge and why were those rejected?

Finally, the next question asked and answered is this (S1309):

> Why can't you introduce [the] traffic filters trial while Botley Road is closed?

Those pages in the FAQ (S1308-S1309) are, in my judgment and beyond argument, doing precisely what the Supreme Court was describing in Moseley. There is a description of options. There is a description of the reasons why those options were not pursued and why, instead, the charging scheme was.

xi) In light of all of this, it does not matter whether someone reading the consultation survey would have taken question 12 (S708) – "Do you have any suggestions for other ways to reduce traffic and tackle congestion in and around Oxford?" – as meaning other ideas "alongside" rather than other ideas "instead of" this proposed charging scheme. The point is that there were ample opportunities, beyond argument, for a consultee to have their say, fairly, on the questions about "whether" and the questions about alternatives to a charging scheme.

xii) That is the end of it so far as this ground for judicial review is concerned. But, in my judgment, the position is strongly reinforced when the Court considers the other materials which show what happened next. There were responses to the consultation. They included the fourth response option in Q7: "there should be no charges at all". There were reports, on all of the consultation responses, for Cabinet members. There was the main body (S767-SS772) of a 25-page main report by the Director of Environment and Highways (S754-S778). That report told Cabinet members at §69 (S768) that 66% or 4,715 of those who responded to Q7 said: "there should be no charges at all". There is within the Report at §65 (S767) a paragraph that addresses the question of "whether" in the context of the consultation responses, before turning at §66 (S767-S768) to questions about "how". There is then a description for Cabinet members at §76 (S770-S771) of "key objections and concerns" raised "in free text fields of the survey". These include "whether" points regarding scepticism about the scheme and points about impacts of the scheme. Then later the report turns at §79 (S772) to those "free text responses" which made "suggested amendments to the scheme", being points about "how".

xiii) There were very well-organised and publicised consultation responses (S772 §§80-82), several of which attracted freestanding annexes to the Director's report (S772 §81). And alongside those freestanding annexes, there was a separate annexed consultation report on the consultation responses as a whole (S843-S898).

xiv) There was in my judgment, beyond argument, a full and fair opportunity for consultees to raise their objections to having a charging scheme, and to tell Cabinet

members what the County Council should be doing instead. Nowhere were Cabinet members advised simply to focus on the question of "how" to do something that they had already decided to do. What consultees had was a proposal and it was on that proposal that they were consulted. That, in my judgment, is what the pleaded grounds of defence were saying when the County Council was making points (C253 §§54-55) about a "scheme specific" consultation. But what matters is the substance the contemporaneous documents and Mr Rutledge KC's alternative argument, which in my judgment is a clean knockout blow.

The fair information arguments

10. On the consultation-design argument, I have explained the position as I see it in some detail, because of its importance. There is then a second limb to the Claimant's consultation ground for judicial review. In turn, it has two parts to it. I am going to take these points more quickly. They arise from the Gunning principles of legally adequate consultation (see Moseley at §25: A251-A252) and, in particular, the second requirement: a sufficiency of information so that consultees have a fair opportunity to make informed responses. Cabinet members were told about these governing principles and duties by the Director (S776 §103). That means they were also alerted to the other aspect of Gunning which has featured in this case: the need to give conscientious consideration to the consultation responses.

11. So far as the adequacy of information is concerned, Mr Streeten has been able very effectively, at today's hearing, to take me to the heart of the two points that he advances regarding fair information.

    i) One of the points involved taking me to combined figures of 287,785 and 261,514 in an October 2022 traffic forecast document (C166), discussed by Dr Gwinnett (C149 at §11) and compared with figures of 229,245 and 209,617 in a June 2025 report (S961). All of this is available to anyone who is interested in the public domain. Mr Streeten's point was this. He says that what can be seen from those materials is that there had already been a reduction in traffic, notwithstanding that no measure had yet been implemented. He then makes a linked point about bus times which he says have not got shorter. He then links all of that to a point about a response that could have been made by consultees.

    ii) The other point related to a technical note dated June 2025 (S988-S991) about business impacts. He showed me what is said in that assessment. He showed me the criticism which is made, that "it is unclear … how the assessments have been calculated" (S1028). What is said is that there is no adequate explanation of the methodology that led to the results within that impact assessment. It is then said that, in the absence of this undisclosed methodology, it was impossible fairly for consultees to respond during the consultation.

12. The answer, in my judgment, to these points has been set out within the County Council's summary grounds of resistance at §§60-61 (methodology) and §§64-65 (traffic figures) (C255, C256). In my judgment, it is impossible to identify from these two points or either of them a vitiating ground for judicial review rendering the Cabinet's decision unlawful. That is because it is not arguable that there was a failure to provide a legal sufficiency of information within the consultation documents for consultees. The joining of the dots as to traffic figures could be undertaken and indeed the Claimant in its detailed consultation

response made that very point, for it and others no doubt to see. The point about the methodology was a criticism that could be advanced, and it was in the Claimant's consultation response. But, in my judgment, it was not arguably unfair or unlawful for the County Council and its officers to fail to give further information or details to consultees, on either or both of these aspects of this consultation, viewed in the context of the materials as a whole, and the nature of the consultation exercise as a whole. Consultees, in my judgment, had a full, fair and informed opportunity to have their voices heard and they took it.

The EqIA arguments

13. The second ground for judicial review concerns equality impact assessment. It involves a contrast. On the one hand, there is what Mr Streeten says was an excellent equality impact assessment document (EqIA) undertaken for the 2022 filter scheme decision, dated 11 November 2022 and written by the consultants Steer (S422-S459), where Steer described their approach (S424). On the other hand, there is the updating work done to that existing analysis, for the impugned 2025 charging scheme decision.

14. The Claimant's argument runs, in essence, as follows. The public sector equality duty (Equality Act 2010 s.149) is an important process duty. It requires a rigour and discipline, to ensure that "due" regard has been given to all of the relevant features. The EqIA document that was produced for the charging scheme (S899-S935) betrays an absence of rigour. It amounts, in substance, to a box-ticking exercise. It is, in substance, the "unthinking" blocking-and-pasting from the previous EqIA (S422). That can be seen linguistically, in the fact that the writer conspicuously forgets at various times to update even the language from speaking about six "filter points" (2022) to six "charging points" (2025). It can also be seen from points of substantive contents. For example, in the fact that repeated references are made to the disadvantage of having to make a longer journey around Oxford to get from A to B (apt for filter points), without adding in any reference and therefore any consideration to going from A to B by the same shortest route but by paying the charge or charges for that more expensive journey (apt for charging points). It is at least arguable that the inadequacies of the EqIA 2025 document mean there was not here the conscientious addressing – with the rigour the law requires – of the important equality impacts and considerations. Nor can it be said, at least not beyond argument, that the charging scheme is so similar to the filtering scheme that the previous 2022 assessment could simply be adopted.

15. Johnson J, on the papers, considered that this second ground for judicial review had no realistic prospect of success. My role at this renewal hearing, as with all the points, has been to consider, afresh for myself, whether I think the points are arguable. But, as with the ground relating to consultation, I have reached the same view that he reached.

16. There is, in my judgment, no realistic prospect that this Court at a substantive hearing would decide that there has been a breach of the public sector equality duty by reference to the way in which the EqIA document (S899-S935) was produced for Cabinet members.

    i) It is important, in my judgment, to look at the document fairly and as a whole. It is a 37-page assessment. It is transparent about what it has done. It identifies (S903) that it was "completed by Steer (for traffic filters)" and "updated by Martin Kraftl". The earlier Steer EqIA was published. As I have said, that earlier assessment of the filter points scheme has been praised by the Claimant.

ii) It is right to say that there are obvious examples of blocking-and-pasting within the Steer "completed" document as "updated". It is right to say that there are obvious examples where inapt terminology has been retained. It is also right to say that, as a matter of substance, at various points within the 2025 EqIA the focus remains on longer journeys (because of filter points), and has not included more expensive but same-distance journeys (because of paying the charge at a charging point). That, really, is the high watermark of the Claimant's argument on this part of the case, as I see it. There are therefore certainly identifiable weaknesses within the EqIA 2025 document. But that is not a basis for a Court to grant judicial review. It would not be, at a substantive hearing.

iii) The 2025 EqIA document describes the charging scheme (S903). It sets out expressly the "main differences" between the filtering scheme and the interim charging scheme (S903). It emphasises, not surprisingly, the similarities between the two schemes, using the same 6 points but taking different (filtering and charging) approaches to vehicles being able to pass through or being deterred from doing so. The assessment document expresses the view that there is an expectation of "broadly similar impact", in terms of "traffic reduction" and "bus journey time improvements" (C901). That, in my judgment and beyond argument, is all written and approached with a consideration of the 2022 filtering scheme on the one hand, and the 2025 charging scheme on the other hand, viewed in terms of equality impacts. Then, taking the most obvious example of a theme that one would expect to find – namely that charging at charging points will impact adversely on those less able to afford it than it will on those better able to afford it – that key theme is brought out by the writer of the EqIA 2025 report. It is brought out at the start (S902): "It is acknowledged that the temporary congestion charging scheme may inconvenience drivers or increase the cost of travel by car, especially those who rely on cars; eg., older and/or disabled people and people from certain ethnic groups. Several additional disproportionately negative impacts have also been identified in this assessment, with varying implications". It is brought out again at the end (S932): "People on lower incomes will be less able to pay the charge than people on higher incomes". In fairness to the updating writer of the EqIA 2025 report, and the use of language, it is also right to recognise that although there are times which use the language "charging points" and other times which say "filter points", there is at least one occasion (S905) which uses the phrase "six filter charging points". A fair reading of the report would recognise that the writer is describing, throughout, the same six points in the city where access is to be restricted and charges are to be imposed.

iv) Viewed fairly and as a whole there is, in my judgment, no realistic prospect of this Court concluding that any weaknesses in the 2025 EqIA report places the County Council in breach of the statutory duty, so as to vitiate the Cabinet's decision. But it is important, in addition to the EqIA report, to remember that what was before Cabinet members was also the Director's report. It had a separate section on the topic "equality and inclusion implications" at §§25-31 (S760-S761). And so, for example, the point of substance about facing the prospect of a longer journey or paying the charge was made explicit for Cabinet members at §28, are then relevant points about discounts and permits were made at §29, and then relevant points about the intended benefits for public transport and bus journeys at §30, all of

which was summarised in the context of equalities impacts and therefore the public sector equality duty.

Other points

17. I emphasise that I am not rejecting this claim on the basis that the evidence was put in shortly after the claim was filed. Indeed, I give permission to rely on those three witness statements. I have read them. Nor does my decision turn on the statutory materiality duty (highly likely: no substantially different outcome). It turns, instead, on my analysis of the prospects of the substantive legal arguments. Nor have I decided this case on the basis of delay. It can be perilous for a judicial review claimant to wait till near the end of 3 months. In this case, that was in the context where the scheme decided upon on 10 September 2025 was due to come into force, and did come into force, at the end of October 2025. Moreover, it was only envisaged to be running perhaps until August of 2026. But I have not needed to grapple with the question of promptness and delay. It would be artificial to do so, for this reason. One consideration, to which a Court may wish to be able to have close regard when considering delay, is the potential strength of the claim. That would be alongside any question of prejudice or injustice. It would be alongside other considerations, like whether the County Council's letter of response contained any particular alert based on any particular need for promptness. I am not going to consider delay by positing the artificial alternative position of this being an arguable claim, or a strongly arguable claim, when in my judgment it is neither of those things. I am going to leave the question of delay as one which it is not necessary for me to decide, but which I emphasise I am not holding against the Claimant for the purposes of my ruling on permission today.

Conclusion

18. My decision, with the assistance of everything that I was given in writing and the submissions that I have heard orally, is that there is not a viable claim for judicial review, on any of the grounds put forward. None of them has a realistic prospect of success. It is for that reason, in agreement with Johnson J who reached that view when he considered the papers, that I am dismissing this renewed claim for permission for judicial review. There was a costs order made on the papers by Johnson J and it is agreed by the parties that, in the light of my decision, that costs order stands and no further consequential matter arises. Finally, I express my appreciation for the assistance I have had from the teams on both sides, in their presentation and preparation of the materials and arguments in the case.