

## **The Ombudsman's final decision**

Summary: Mr F complained about the Council's introduction of two experimental road traffic orders as part of its response to COVID-19. We upheld the complaint, finding fault in how the Council introduced these measures. We considered Mr F was caused some uncertainty as a result, although this was limited because one scheme was subsequently stopped and the other amended. The Council accepts our findings and will provide an apology to Mr F as well as reflect on what lessons it can learn.

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## **The complaint**

1. I have called the complainant 'Mr F'. He complains that in June 2020, the Council introduced two experimental road traffic orders (ERTOs) providing for traffic restrictions on Turnham Green Terrace and Devonshire Road as part of its response to the COVID-19 pandemic. Mr F says this was disproportionate and followed an inadequate process of consultation. He complains the Council also failed to provide adequate reasons for its decision or show it had properly considered the Public Sector Equality Duty.
2. Mr F says the resulting closure of the roads to through traffic caused him to make longer journeys when travelling to the vicinity of Chiswick High Road or beyond. He says the Council has failed to take proper account of the needs of older residents who were more likely to use their cars for travel during the pandemic because of concerns about using public transport. Mr F also says for this group of residents it may not always be practical to walk or cycle, for example when carrying shopping. He also questions the extent of analysis undertaken by the Council which led it to understand these changes would achieve broader policy aims and objectives including the reduction of airborne pollution in the Borough.

## **The Ombudsman's role and powers**

3. We investigate complaints of injustice caused by 'maladministration' and 'service failure'. I have used the word 'fault' to refer to these. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)
4. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)

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5. This complaint involves events that occurred during the COVID-19 pandemic. The Government introduced a range of new and frequently updated rules and guidance during this time. We can consider whether the Council followed the relevant legislation, guidance and our published “Good Administrative Practice during the response to COVID-19”.
  6. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

## How I considered this complaint

7. Before issuing this decision I considered:
  - Mr F’s written complaint to the Ombudsman and any supporting information he provided including that gathered in telephone calls and emails;
  - correspondence between Mr F and the Council about the matters complained about, pre-dating our investigation;
  - further information provided by the Council in response to our written enquiries or else published on its website;
  - relevant law or guidance as referred to in the text below.
8. Mr F and the Council were also given opportunity to comment on a draft decision statement. I took account of any comments received before I issued this final decision.

## What I found

### Legal & Administrative Background

#### Government Guidance

9. In May 2020, the Government issued statutory guidance to local authorities on making changes to road layouts and usage, in response to the COVID-19 pandemic. The introduction to the guidance noted an increase in the use of cycling during the pandemic. It said the Government wanted to promote “*active travel*” and this was “*a once in a lifetime opportunity*” to change to how people made short journeys in towns and cities. The introduction also noted the need for social distancing.
10. The guidance said local authorities should “*take measures to reallocate road space to people walking and cycling, both to encourage active travel and allow social distancing during restart*”. It said councils should aim for measures to take effect “*within weeks*”. Among measures encouraged were:
  - using cones and barriers to widen footways;
  - introducing pedestrian and cycle zones through preventing other traffic using certain roads either permanently or at certain times of day;
  - creating bus, cycle and ‘access only’ corridors on key routes.
11. The Government allocated additional funds to councils to introduce such schemes. Its guidance said measures could be introduced on a temporary basis. This could include the use of Experimental Traffic Regulation Orders (ETROs) used to trial schemes which can later be made permanent. Councils must have consultation running alongside implementation for a period of six months.

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12. The statutory guidance said: *“The public sector equality duty (PSED) still applies, and in making any changes to their road networks, authorities must consider the needs of disabled people and those with other protected characteristics. Accessibility requirements apply to temporary measures as they do to permanent ones.”*
  13. In November 2020, the Government expanded the statutory guidance to also include a passage on ‘*engagement and consultation*’. This said local authorities should consider the impact of changes on *“all road users, taking into account the need to provide for increased walking and cycling”*. It said: *“effective engagement with the local community, particularly at an early stage, is essential to ensuring the political and public acceptance of any scheme. The department advises engagement as good practice even where there is no legal requirement to do so for the measures being proposed”*.
  14. The updated guidance also provided more advice on how authorities should take account of the PSED saying: *“Accessibility requirements apply to all measures, both temporary and permanent. The Public Sector Equality Duty still applies, and in making any changes to their road networks, authorities must ensure that elements of a scheme do not discriminate, directly or indirectly, and must consider their duty to make reasonable adjustments anticipating the needs of those with protected characteristics, for example by carrying out Equality Impact Assessments on proposed schemes.”*

### **The Equality Act**

15. The Equality Act 2010 provides a legal framework to protect the rights of individuals and advance equality of opportunity for all. It offers protection, in employment, education, the provision of goods and services, housing, transport and the carrying out of public functions.
16. Organisations carrying out public functions cannot discriminate on any of the nine protected characteristics listed in the Equality Act 2010. They must also have regard to the general duties aimed at eliminating discrimination under the Public Sector Equality Duty. The ‘protected characteristics’ referred to in the Act include age and disability.
17. The Public Sector Equality Duty requires all local authorities to have due regard to the need to:
  - eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010;
  - advance equality of opportunity between people who share a protected characteristic and those who do not;
  - foster good relations between people who share a protected characteristic and those who do not.
18. The broad purpose of the public sector equality duty is to consider equality and good relations in the day-to-day business and decision making of public authorities. It requires equality considerations to be reflected into the design of policies and the delivery of services, including internal policies, and for these issues to be kept under review.

### **Ombudsman guidance**

19. In 2018 the Ombudsman published a guidance document setting out the standards we expect from bodies in jurisdiction “Principles of Good Administrative Practice”. We issued an addendum in response to the COVID-19 pandemic;

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“Good Administrative Practice during the response to Covid-19”. This shows we expected similar standards from councils, even during crisis working. The following points are relevant in this case:

- the basis on which decisions are made and resources allocated, even under emergency conditions, should be open and transparent; we said there should always be a clear audit trail of how and why decisions were made, particularly summarising key reasons for departing from normal practice;
- decision reasons should be clear, evidence based and where necessary explained in the particular context and circumstances of that decision;
- the normal expectations on the need to consult service users and stakeholders may not be feasible or appropriate.

### **Council policy**

20. In response to the COVID-19 pandemic the Council introduced its ‘streetscape’ programme. On its website the Council says the programme takes account of the statutory guidance set out above and guidance issued by the London Mayor. Its aims are to:
  - enable social distancing for those using shops and services, and those travelling around the borough on foot or by bike;
  - create safer and more attractive spaces for walking and cycling (known as ‘active travel’ modes);
  - reduce congestion and air pollution from vehicular traffic given decline in public transport use;
  - reduce through traffic on residential roads, to prevent ‘rat-running’.
21. The Council said the programme would have three phases:
  - phase one comprised “*immediate emergency response measures that could be implemented quickly to accommodate requirements for social distancing and deliver improvements for walking and cycling*”;
  - phase two involved “*further borough-wide measures to improve the safety of the network for those walking and cycling and create space for business to safely reopen in our town centres. This phase was largely informed by feedback received from residents, local business owners, and other key stakeholders such as our schools*”;
  - phase three was a “*strategic review of the network using the latest data to identify other locations where Streetspace measures could be implemented in future, and determination of whether any of the trial measures introduced in phases 1 and 2 should be made permanent*”.
22. The Council also set out how measures falling under the programme would be identified and implemented as follows:
  - First, officers would identify schemes. This would either be on their initiative or through contacts from elected members, stakeholders or ‘borough wide consultation’.
  - Second, officers would review proposals for compliance with statutory guidance, technical feasibility, potential impacts (including consideration of the PSED) and cost.

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- Third, any schemes found viable would be discussed with Lead Members for Transport, Highways and Climate Emergency/Air Quality and a decision made as to whether to proceed to trial.
  - Fourth, there would be ‘engagement’ with local ward councillors.
  - Followed by fifth, consultation with statutory consultees such as the emergency services.
  - After that, the sixth step would be a decision to progress to trial implementation, either through a temporary or experimental traffic order. The Council would publish decisions with reasons.
23. The Council described the following process for reviewing measures introduced:
- First, a period of *“monitoring and collation of feedback provided by residents and stakeholders responding to consultation”*. The Council said it would make *“emergency changes”* if required.
  - This would be followed by an *“interim review”* after approximately three months by an independent consultant who would produce a report.
  - Officers would then review that report and draw up recommendations to be shared with Cabinet members. Recommendations would state whether to modify, approve or withdraw the scheme in question.
  - After approximately six months the Council would carry out a final review. It said: *“at this point a decision is made as to whether the trial continues, is removed (entirely or in part) or made permanent. This decision will be taken by the relevant Lead Member either as a single member decision or in discussion with the Chief Officer”*. Elsewhere the Council also said that local Councillors would be consulted on any review before the Council took any final decision on a scheme.
24. The Council said when reviewing schemes it would take account of:
- general compliance with national, regional and local transport and environmental policy;
  - feedback from the community, including those with protected characteristics under relevant equalities legislation;
  - reductions in traffic flow and/or speed on residential roads;
  - any positive evidence of modal shift to walking and cycling;
  - a review of any relevant road safety implications, including collision data where available;
  - relevant wider environmental changes, including air quality implications.

## **Key Facts**

### **Background**

25. The Council introduced ERTOS in respect of both roads at the centre of Mr F’s complaint in June 2020, to take effect from early July. Turnham Green Terrace is part of the classified B409. It has various shops, restaurants and other businesses and links to the main shopping area on Chiswick High Road. Devonshire Road lies to the south of Chiswick High Road and it too contains various shops and restaurants before becoming residential in character. Both roads provided some on street parking before the events covered by this complaint.

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26. Mr F lives around half a mile from Chiswick High Road. He is in his seventies and describes himself as in good health. He walks and cycles but will use his car to make shopping trips. He uses the shops and local businesses on Turnham Green Terrace and Devonshire Road. He says while he sometimes walks or cycles to Chiswick High Road area, he will also use his car on occasion as he cannot otherwise carry heavy shopping bags home. He also crosses the Chiswick High Road on occasion for longer car journeys and says the diversions required by the ERTOs added around one mile each way.

### **Council introduction of ERTOs – first officer decision**

27. In May 2020, the Council published online a paper which said it was proceeding with a ‘phased transport response to COVID-19’ including “*a borough wide set of traffic management measures which help provide space for social distancing and support road safety for vulnerable road users*”. The paper said the Council was also implementing a “*borough wide engagement exercise*” to identify other potential locations for action.
28. The paper set out the Council’s reasons for implementing these measures including:
- to support social distancing; the Council foresaw that when retail premises re-opened following the first national lockdown they may have queues outside; this could cause crowding on pavements;
  - to help those travelling on foot or bicycle; the paper said creating safe space for these journeys would support this activity;
  - that there was also a shift away from public transport; if more people used private cars as a result this would add congestion with negative impacts;
  - encouraging active travel would help meet the Council’s policy for wanting to improve air quality and its climate emergency action plan;
  - that the policy would also support the policy aims of Transport for London.
29. The paper set out the Council’s preference for using ERTOs as this would enable schemes to be put in place quickly with consultation on the effectiveness beginning immediately. The Council said this could include feedback from those with protected characteristics. The report did not otherwise reference or allude to the PSED.
30. The paper said the Council would not use these measures to close ‘major roads’. In answer to our enquiries the Council has said it considers major roads as those with an ‘A’ or ‘B’ classification.
31. An appendix to the paper recorded details of specific projects, including plans to create additional space for pedestrians on Turnham Green Terrace. The Council has sent us background papers showing that it was contacted in late April by someone expressing concerns at the ability for pedestrians to observe social distancing on this road. Its officers had sent out emails within a few days to local Ward Councillors discussing removing parking bays to create wider pavements. It is evident from those emails they shared concerns about potential crowding on pavements.

### **Second officer decision**

32. The Council published a second paper recording further decisions made by officers at the end of May 2020. This discussed the impact of the new statutory guidance issued by Government I set out above. The report said the Council was



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required by Government to act at speed to implement measures to support those travelling on foot or by bicycle. The report said this approach precluded “*widespread engagement*” or detailed consideration of options.

33. The report then discussed how the Council had used the ‘commonplace’ platform to identify potential locations for projects. Commonplace is an online consultation tool. Visitors to the website could identify areas where they considered traffic restrictions might benefit other road users. Visitors could also express ‘likes’ for where others had left comments or where the Council had already proposed a scheme. The report said following analysis of the ‘commonplace’ responses they had identified further schemes.
34. The Council told me it considered the merits of any proposed scheme which generated five or more ‘likes’ via commonplace. The Council says it discussed the proposals at weekly officer meetings, which were not minuted. The Council sent me an internal email from May 2020 which said its officers had considered 70 proposals in this way. It had decided to support around ten of these including the closure of Turnham Green Terrace and Devonshire Road to through traffic. The email said the Council supported schemes “*that were considered feasible without detailed optioneering*” and could be put in place straight away. I understand this means the measures could be put in place without complex changes to existing road layouts or the need to model impacts.
35. The paper published in late May 2020 included proposals to close Turnham Green Terrace and Devonshire Road to through traffic and “*reallocate road space to those accessing the town centre by foot and bike*”. The decision said access would be limited to buses and essential services. Closures would be by signs and there would be no barriers to avoid preventing emergency vehicle access. The Council would also retain some blue-badge disabled parking bays and loading bays.
36. The Council noted that it must consider the PSED. It said officers “*would review proposals to understand potential impacts on those with protected characteristics*”. It said: “*feedback received from these groups during the duration of the trial will also be reviewed and made available to decision makers prior to determination of whether the scheme should be made permanent*”.
37. The Council proceeded to make the ERTOS which took effect at the beginning of July 2020. The statement of reasons with the order said the Council restricted road traffic access to “*reduce the amount of through traffic to prioritise the safety of pedestrians and cyclists*”, and to also aid businesses to re-open safely and comply with social distancing rules.

### **Cabinet decision & review**

38. In October 2020 a paper went to Council Cabinet on the Council’s Streetscape Programme, which it approved unanimously. Amongst other matters, the paper asked Cabinet to note the implementation of schemes under Phases 1 and 2 of the programme and to approve a process for undertaking interim and final reviews of Streetscape schemes. This encompassed the ERTOS introduced above.
39. The report said the Council would ask an independent consultant to review the schemes. The terms of the review were described in similar terms to that at paragraph 24.
40. The report said interim reviews would take place between three and four months after a scheme’s introduction and final reviews between six and seven months

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after introduction. The report explained the Council had set up an online platform to collect comments on schemes introduced and officers also received and considered comments on schemes made direct by email.

41. The report considered various implications of the Streetscape policy with comments from legal services, financial implications and so on. It also included a section on the PSED. The report commented the Council must have regard to this in how it implemented changes. The report said “*an initial assessment of potential equalities impacts has been developed*” and was “*considered during the development stage for individual schemes and has informed scheme design*”. It gave as an example the retention of blue badge disabled parking where other car parking spaces were removed. It said the Council would keep its equalities assessment under review throughout the duration of trial schemes.
42. The report noted the Council had already received thousands of comments on the schemes including multiple expressions of dissatisfaction. The Council said it had sought to respond to all such objections and stressed the trial nature of the schemes.
43. In November 2020 the Council’s Overview & Scrutiny Committee considered the Cabinet decision following two separate ‘call-in’ requests made by groups of individual Councillors. The call-in requests cited concerns the Streetscape measures involved inadequate consultation before introduction of schemes; inadequate evidence used to support schemes and potential challenges under the Equality Act. The call-in requests cited concerns at the closures of Turnham Green Terrace and Devonshire Road.
44. The Overview & Scrutiny Committee passed a motion requiring the Cabinet to reconsider its decision on reviewing the schemes and proceeding with Phase 3 of the Streetscape programme. It gave its reasons as:
  - inadequate consultation prior to decisions under the Streetscape programme. “*The Committee considered that ward councillors had not been consulted properly nor had stakeholders, people who are digitally excluded and people with protected characteristics*”;
  - inadequate evidence on which to base decisions. The Committee believed modelling should have been done prior to decisions taken;
  - a potential equalities or human rights challenge. Based on the evidence they received, the Committee considered the equality impact assessment inadequate.
45. The Cabinet therefore reconsidered the Streetscape scheme at its next meeting in December 2020. In response the Council said that it would carry out further engagement with the public and would use independent consultants to review the scheme and an ‘Equalities Design Group’ to ensure best practice. Cabinet members also stressed the trial nature of the ERTOs and the Government expectation it act at pace. The Cabinet therefore upheld its earlier decision but agreed to consider the concerns of the OSC when considering future projects.
46. I note that at the end of October 2020 the Council temporarily suspended the ERTO in effect on Turnham Green Terrace preventing through traffic. It did this following the need for emergency roadworks on another nearby road where traffic had been diverted. The roadworks lasted for several weeks. The Council did not subsequently reinstate the ERTO.



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### **Mr F's complaint and correspondence with the Council**

47. Mr F first contacted the Council in July 2020 expressing concern at the introduction of the ERTOS. He queried the need for restrictions to aid social distancing on Devonshire Road. He said COVID-19 had not increased pedestrian footfall or cycling and the Council had not advanced reasons for its closure to through traffic.
48. In a second email sent later in July 2020 Mr F expressed dissatisfaction with the ERTOS affecting both Turnham Green Terrace and Devonshire Road. In this Mr F also set out his belief the closures would displace traffic to other roads and potentially lead to congestion elsewhere. Mr F stressed his concern there was a lack of reasoning to support the road closures. The Council said it would treat Mr F's second email as a complaint.
49. The Council replied at Stage One of its complaint procedure in August 2020. It said the decisions it had taken were consistent with its Streetscape policy and Government guidance. It stressed the road closures were trials and encouraged Mr F to respond to the ongoing consultation. The Council said the closures complemented its overall transport strategy and air quality plan. It had needed to act quickly and so could not have consulted more widely before their introduction. It told Mr F that its review of the schemes would look at any displacement of traffic to other roads.
50. Dissatisfied with this reply Mr F escalated his complaint to Stage Two of the Council's complaint procedure. Mr F maintained the Council had not provided sufficient reasoning for the closures. He said the Council should have consulted more widely and modelled the impact of closures before implementing them.
51. In its further response, in September 2020, the Council said that it considered the quieter roads would lead more people to use a bicycle or walk for journeys. It emphasised again the use of ERTOS required the Council to consider objections and that it would do so when reviewing the schemes.
52. I note that in November 2020 Mr F entered into separate correspondence about the use of the 'commonplace' platform. Mr F said this was flawed because while respondents could 'like' proposals to introduce traffic restrictions the only way they could express dissatisfaction was to enter free text. The Council responded saying the tool was used to identify potential locations for restrictions and "*it was not a referendum*". The Council explained more about the background for why it had considered closing Devonshire Road to traffic.

### **Review of the schemes**

53. In May 2021 the Council published the findings of reviews into various schemes introduced as part of its Streetscape programme, including those impacting on Turnham Green Terrace and Devonshire Road.
54. The outcome of the review of Turnham Green Terrace was the Council confirmed it would not seek to reintroduce the ERTOS preventing through traffic. But it would continue to restrict any parking to loading bays and disabled parking only as an ongoing trial measure.
55. The Council delayed publishing the outcome of its review of Devonshire Road to undertake further 'local engagement'. Then in June 2021 the Council said it would modify the ERTOS to amend the scheme for Devonshire Road. It would no longer prevent through traffic. It would keep the suspension of some parking spaces to allow room for local businesses to provide outside dining.

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## Findings

56. The Ombudsman's role is to review the procedure followed by councils when making decisions. If a council has followed the correct process, considered all relevant information, and given clear and cogent reasons for its decision, we usually cannot criticise it. We do not make decisions on councils' behalf, or provide a route of appeal against their decisions, and we cannot uphold a complaint simply because a person disagrees with what a council has done.
57. In this case I note at the outset the context in which the Council made the decisions on changes to road layout, which Mr F complains about, was that of the COVID-19 pandemic. Government guidance told local authorities to respond by introducing measures that would favour cyclists and pedestrians over other road users. It also put councils on notice that it expected them to act quickly. The Government did not expect proposed schemes to be consulted on for any length of time. And it is notable its initial guidance gave minimal advice to councils on consultation and engagement with communities.
58. Taking this into account I consider the Council's Streetscape policy provided a sensible framework at short notice for how it would identify and implement schemes designed to achieve the Government's objectives. I do not find fault in the limited consultation envisaged as part of the policy.
59. I also do not consider the Council at fault for using the 'commonplace' tool which identified Turnham Green Terrace and Devonshire Road as potential locations for road layout changes. I recognise the website may have had an inbuilt bias towards encouraging people to express a desire for changes to road layouts rather than expressions indicating a preference for 'no change'. But the Government expected councils to actively look for opportunities to make changes to roads that might influence a change in road-use habits. I find no fault therefore in the use of a tool that reflected a bias towards actively seeking out such schemes.
60. I am satisfied the Council received sufficient representations that both Turnham Green Terrace and Devonshire Road may benefit from changes that it was reasonable for its officers to scrutinise proposals. We accept that during the early weeks of the pandemic, councils were adapting to new ways of working and often coping with high levels of staff absence. They had also to move quickly. Reasonably therefore, Council record-keeping will not always have met a best practice standard. However, in this case the Council policy still promised that officers would look not just at the technical feasibility of introducing changes but also their potential impacts including in respect of the PSED. I find this consistent with our expectation that local authorities kept some audit trail of the reasons for significant decisions taken in direct response to the pandemic.
61. In scrutinising the audit trail in this case, I find there is clear reasoning to show why the Council decided to expand the footways of both roads, through removing most parking bays. In both cases emails and reports show a concern by officers that customers to businesses may have begun queuing on pavements and made it hard for pedestrians to comply with social distancing rules. There is a clear record to show why officers supported the changes.
62. However, I do not consider the same applies to the decision to close both roads to through traffic. I have three specific concerns here.
63. First, while I recognise the Council provided some reasons I note these were general in nature, saying the closures were considered beneficial to pedestrians

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and cyclists. I do not consider these statements alone adequately explain the decision to close the roads in question to through traffic.

64. I expected to see some evidence to show that officers considered the potential impact of these proposals. But there is no record of what consideration the Council gave to various factors which may have been relevant to its decision. For example, it is not recorded:
- what consideration officers gave to how much vehicular or bicycle traffic was thought to use these routes;
  - why cyclists would benefit from these short stretches of road closed to most other traffic given they did not form part of any integrated bicycle corridor;
  - why pedestrians may further benefit from closing the road to through traffic given the decision to already widen the footways;
  - what officers thought would happen to vehicles if they could not transit directly. This is especially surprising in the case of Turnham Green Terrace which is a classified 'B' road and acknowledged a 'major road' by the Council. One of the stated aims of the Council's policy was to prevent residential roads being used as 'rat runs' – a term understood to refer to residential roads being used as an alternative to major roads. So, to divert traffic from a major road on to other residential roads would appear contradictory.
65. This is not a checklist, and it could be the Council would not have needed to consider in detail each of the matters above. But these are the sort of issues I expect Council officers discussed. Their decisions to close these roads to through traffic followed such discussions. I would not have expected to see extremely detailed reasoning or full modelling of traffic impacts of the kind the Council referred to when it said it would not carry out 'detailed optioneering' before going ahead with a trial scheme. But I would still have expected the Council to keep some record of its thinking. I consider the lack of record keeping to explain how the Council decided to close these roads to through traffic justifies a finding of fault.
66. Second, there is also no record of how the PSED was considered in respect of each road closure. I find the Council was conscious of the need to have regard to its PSED in respect of each decision. It referenced this in the second officer report issued in May 2020. It is also inferred by its decision to retain access to both roads for parking for blue badge users.
67. However, it is evident from the October 2020 paper to Cabinet that its consideration of the PSED was general and cursory. While we would not have expected it necessarily to carry out a full PSED assessment, there is no record to suggest that it considered the potential impact of the closures on groups other than those with disability but who might have other protected characteristics, particularly that of age. This is a section of the population less likely to cycle or walk significant distances.
68. It is also a section of the population more likely to be reliant on public transport yet also reluctant to use public transport during the pandemic. Again, I would expect to find some record that officers considered this section of the population in its decision making. But none has been provided. That too justifies a finding of fault.
69. Third, there is the contradiction between the paper the Council published in early May 2020 and its action in using the Streetscape measures to close Turnham Green Terrace to through traffic. That paper explicitly said the Council would not

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use this policy to close major roads. Yet three weeks later that is what it proposed to do. There is no explanation for this change in position. That was a fault.

70. I note next the Council took longer to review these schemes than suggested when it set up the review process. It said that it aimed to review the schemes three to four months after implementation and complete final reviews after six months. This implied it hoped to complete interim reviews before the end of 2020 and completed final reviews in early 2021. Yet it did not complete the interim reviews until May 2021.
71. It is unfortunate the Council did not complete the reviews sooner, especially in the wake of the criticisms of its OSC which coincided with the Government issuing more advice on the level of consultation it expected around these schemes. However, I recognise the Council only ever set aspirational timescales for the reviews. Its timetable was also disrupted by the second national lockdown. And, when they took place the interim reviews were undertaken by an independent consultancy and were comprehensive. A quicker interim review may not have led to such a thorough review nor necessarily the same outcome (and I also note here that to all practical intents the closure of Turnham Green Terrace to through traffic stopped at the end of October 2020 because of the coincidental need for roadworks elsewhere). So, I do not find fault here.
72. I have considered next the consequence of the faults set out at paragraphs 63 to 69. I accept Mr F was personally inconvenienced by these changes. However, I do not consider that I could find that if these faults had not occurred the schemes would not have still been pursued by the Council. But the Council's failure to keep more thorough records and show it considered the potential impact of the decision to close these roads to through traffic in May 2020, creates uncertainty. It is this uncertainty, not the inconvenience caused to Mr F, which I therefore consider is his injustice.
73. I consider the injustice to Mr F is therefore limited to any distress arising from this uncertainty and this is reflected in action the Council has agreed to remedy the complaint which I set out below. Although I note finally that Mr F is clearly only one of many residents of the Borough aggrieved at the Council's introduction of these schemes. While not a formal representative or spokesperson for any resident association or group opposed to these changes, I am confident Mr F spoke for many in expressing his concerns. We hope the publication of this decision will therefore also serve as part of the remedy to Mr F's complaint, reflective of the wider public interest in this investigation.

### **Agreed action**

74. The Council accepts these findings. To remedy the injustice caused to Mr F it has agreed that within 20 working days of a decision on this complaint it will apologise to him, accepting the findings of this investigation.
75. The Council has also agreed what lessons it can learn from this complaint and it will include consideration of our findings as part of its 'COVID-19 evaluation framework' which will include a review of its decision making and record keeping during the pandemic. It anticipates publishing this in November 2021 and the document will be considered at Cabinet level.

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## **Final decision**

76. For reasons set out above I uphold this complaint finding fault by the Council causing injustice to Mr F. The Council accepts these findings and has agreed action that I consider will remedy the injustice caused to Mr F. Consequently, I can now complete my investigation satisfied with its response.

### **Investigator's decision on behalf of the Ombudsman**