Neutral Citation Number: [2006] EWHC 1590 (QB)

Case No: CO/8815/2005

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30/06/2006

Before :

MR JUSTICE WILKIE

- -

Between :

SARDAR and Others	**Claimant**
- and -	
WATFORD BOROUGH COUNCIL	**Defendant**

- -
- -

James Dingemans QC (instructed by **Clyde and Co**) for the **Claimants**
James Findlay (instructed by **Watford Borough Council Legal Services**) for the **Defendant**

Hearing dates: 23 June 2006

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE WILKIE

Mr Justice Wilkie :

1. This is an application by Shujait Ahmed Sardar, on his own behalf and on behalf of the Watford Hackney Drivers Association, Tariq Aziz and Shafiq Ahmed, for judicial review of decisions taken by Watford Borough Council on 5 September and 20 October 2005 to delimit with immediate effect licences for hackney cabs in the defendant's area. The remedies sought are an order prohibiting the Council from issuing new hackney carriage licenses until the completion of full and adequate consultation and an order quashing the decisions complained of and remitting the matter to the licensing committee of the defendant for reconsideration in the light of full and adequate consultation.

2. The first applicant is a self employed hackney carriage driver. He has held a licence since 1975 and is currently chairman of the Watford Hackney Carriage Drivers Association. The second and third claimants are hackney carriage cab drivers. They obtained their licenses by purchasing the vehicle plus licence from their previous owners in 2005 respectively for a total sum of £37,000 and £34,500.

3. The issue in this case concerns the decision of the defendant no longer to limit the numbers of hackney carriage licenses to be issued and henceforth to issue licenses to all who satisfy the other requirements regardless of the number of licences in place.

4. The power to issue hackney carriage licenses is contained in two statutory provisions. Section 37 of the Town Police Clauses Act 1847 provides that, the Council, "may from time to time license to ply for hire….such number of hackney coaches or carriages of any kind or description adapted to the carriage of persons as they think fit."

   Section 16 of the Transport Act 1985 provides that these provisions should have effect "as if they provided that the grant of a license may be refused, for the purpose of limiting the number of hackney carriages in respect of which licenses are granted, if, but only if, the person authorised to grant licenses is satisfied that there is no significant demand for the services of hackney carriages (within the area to which the licence would apply) which is unmet."

5. The effect of these two statutory provisions is that the Council has power to limit by number the hackney carriage licences issued but only if it is satisfied that there is no significant demand for such services which is unmet.

6. The history of the Council's approach to its exercise of this power is conveniently summarised in the report of its officers to the licensing committee meeting on 20 October 2005. The only way in which to gauge whether or not there is an unmet demand for licenses is by way of regular independent survey. The Council last commissioned one in 2001 and was about to appoint consultants to conduct a further one within the next few months. For many years the Council had adopted a policy of restricting the number of licenses it issued. Until 1995 this stood at 61 licenses when it was increased by 2 wheelchair accessible London style vehicles. Following the unmet demand survey in 2001 a policy of managed growth was adopted on 10 March 2003 resulting in an additional 10 licenses being issued in 2003 to 2004. The policy then in place would have seen an additional 6 licences issued during 2004 – 5, the commissioning of a further survey in 2005 – 6 and, subject to the results of that

survey, a further 6 licences in 2005-6. In 2003 the question of complete delimitation had arisen but on that occasion was rejected by the Council in favour of the policy of "managed growth" already referred to. This conclusion had been reached following a full consultation. One of the parties consulted was the Police and it is recorded that the Police, on that occasion, expressed a view against complete delimitation but in favour of a policy of "managed growth," the type of policy which the Council then decided to continue.

7. Hackney carriage and private hire vehicles were the subject of an Office of Fair Trading report in November 2003. It recommended the removal of the power of local authorities to restrict numbers of licences. The government response to this, on 18 March 2004, was that it agreed that consumers should enjoy the benefits of competition in the taxi market and considered that it was detrimental to those seeking entry to a market if it was restricted. The government, thereafter, strongly encouraged all those local authorities who still maintained quantity restrictions to remove them as soon as possible. It indicated its view that restrictions should only be retained if there were a strong justification that removal of the restrictions would lead to significant detriment as a result of local conditions. However, the government considered that, ultimately, local authorities remained best placed to determine local transport needs and should be given the opportunity to assess their own needs in the light of the OFT findings rather than the government imposing a legislative solution. On 16 June 2004 the government wrote to all local authorities operating quantity control policies. It restated the government's action plan previously published on 31st March 2004 that quantity control should only be retained where there is a clear benefit to the consumer, that Councils should publicly justify their reasons for the retention of restrictions and on how decisions on numbers have been reached. The government's view was that, unless a specific case could be made, it was not in the interests of consumers for hackney carriage vehicle licences to be limited in number.

8. In January 2004 Silverlink Train Services Ltd, as operators of Watford Junction train station, designated the station forecourt a "private hire waiting area" and excluded hackney carriage drivers. This changed local position resulted in the licensing committee, on 3 March 2005, adopting a recommendation that officers conduct a consultation exercise before the next meeting of the licensing committee to inform a decision whether or not to suspend the existing policy of issuing a further 6 hackney carriage vehicles in the then current financial year and to engage an appropriate consultant to conduct a survey into any significant unmet and latent demand for hackney carriage services in the borough in line with government guidance issued on 16 June 2004.

9. Following upon that decision a report was prepared for the licensing committee meeting on 5 September 2005. The recommendations of the officers to that meeting included alternative recommendations:

> "(a). That no further hackney carriage vehicle licenses be granted pending the result of an unmet demand survey /or
>
> (b) that the existing policy of "managed growth" be maintained notwithstanding the Council's decision to undertake a survey into unmet demand."

The report described the consultation exercise which had been conducted. It included two postal surveys. At that stage officers had advertised for a consultant to conduct an unmet demand survey by the end of the calendar year. Seven tenders were being evaluated by officers with a view to appointing one of them. The report to the committee contained the following paragraph:

> "Since the last committee meeting, the Council received 56 applications for hackney carriage vehicle licenses from existing private hire vehicle drivers. Those applications were refused by officers in accordance with current policy and appeals have been lodged at St Albans Crown Court. The results of the unmet demand survey will be available to either justify subsequent policy decisions or to support the defence of those appeals "

10. The report also stated the opinion of the monitoring officer that "before changing a policy, full and effective consultation must take place with all those likely to be affected. This would include for example existing licensees and those with a legitimate expectation of having been granted a licence." It was reported that, in the view of the author, such consultation had taken place in respect of the recommendations being made in that report.

11. It is clear from the evidence that on Saturday the 3rd September the majority group of councillors met and had had "a robust discussion" on the existing quantity limit on the number of hackney carriage vehicle licences the Council issues. Councillor Crout, the vice chair of the licensing committee, who was to be chairing the committee on the 5th, asked Mr Gough, the head of environment health and licensing at the Council, to draw up a document entitled "amendment" to replace the existing recommendations with new recommendations. It is clear that the wording of the amendment was Mr Gough's but that he discussed it with Mr Crout before it was circulated, apparently on the date of the meeting. The "amendment" states as follows:

> "As it is the intention of the council to delimit the number of hackney carriage vehicle licences that are available, the recommendations contained in this report are to be deleted and replaced by:
>
> Recommendation:
>
> That officers prepare a detailed report for the meeting of this committee to agree the manner under which delimitation will take effect. This will include the provision of options for the committee to consider in relation to vehicle specifications and standards, vehicle livery, and changes to pre-licensing requirements for first time holders of Watford Borough Council driver's licences.
>
> That any applicants for hackney carriage vehicle licences between now and the next meeting be informed of the Council's intentions and asked to withdraw their application.

> Should they not withdraw then the Council will defer any determination until after the next meeting,
>
> That those persons currently with appeals against the Council's refusal to grant a hackney carriage vehicle licence be informed of the Council's intentions."

12. At the meeting of 5 September the committee carried the following resolution:

> "1. That officers prepare a detailed report for the next meeting of this committee to agree the manner under which delimitation will take effect. This will include the provision of options for the committee to consider in relation to vehicle specification and standards, vehicle livery and changes to pre-licensing requirements for first time holders of Watford Borough Council driver's licenses…"

13. A report was prepared for the meeting of 20 October. At its commencement the report stated, by way of summary and recommendations, the following:

> "1. Under the Transport Act 1985 the Council has the power to limit the number of hackney carriage vehicle licences that it issues within the borough subject to satisfying itself that having set the limit there is no unmet demand. The Council has exercised this power to restrict the number of licences that have been issued and, save for a small increase in 1995, has adopted a policy of managed growth since March 2003. The Council now wishes to remove the limit on the number of licences it issues.
>
> Recommendations
>
> 1. That the council no longer exercises its discretion under section 16 of the Transport Act 1985 to limit policy outlined in policy LC23 of 10 March 2003 and limits on the number of hackney carriage vehicle licences that it issues and that the current policy outlined in minute LC23 of 10 March 2003 be ended with immediate effect… "

14. The report then went on to set out the policy background, the rationale for delimitation, the attitude of central government, and a description of the consultation process which took place between the 5th September and 20th October. That consultation included: a letter to all existing hackney carriage vehicle drivers on 9th September; a press release; a public advertisement and an entry on the Council's website inviting comments from the public. It involved the retention of consultants to conduct focus group meetings, to write to around 20 other stakeholders, to conduct 400 public attitude surveys, and to conduct separate focus groups held on 27 and 28 September with representatives from 7 identified stakeholders, (invitations having been issued to 4 others who did not attend). The report went on to summarise the feedback from the focus groups and attached the consultant's detailed report together with a written representation from the Watford Private Hire Drivers Association. The

report then set out the implications of increasing the hackney carriage fleet addressing issues such as: increased congestion; lack of rank space; potential reduced custom for existing licence holders; financial impact on existing licence holders who have invested in their licence; benefits to the public of additional hackney carriages; enforcement; the experience of neighbouring authorities to be gleaned from the consultant's report; opportunities for others to become involved in trade; the costs of commissioning a survey; the costs of defending the extant appeals; the waiting list; fares; and the impact on the council licensing team. The report also sets out the implications for finance, staffing and includes sections dealing with legal issues, accommodation, equal opportunities, community safety, sustainability and risks.

15. There was an addendum to that report setting out the best professional advice of the officers in relation to the removal of the limit on a number of hackney carriage vehicle licenses. Under the heading "Background" this addendum states amongst other things as follows:

> " 1.1 The council has made the statement that it intends to remove the quantity restriction on the number of hackney carriage vehicle licenses it grants. This is commonly called delimiting…
>
> 1.2 At a meeting of the licensing committing on 5 September 2005 officers advised that it would be premature to delimit immediately as had been proposed as time was needed to consider vehicle and driver matters and so it was resolved…(there then appears the resolution referred to above)"

There was then a reference to a meeting on 14 September 2005 and a statement by the Mayor in response to questions from the floor. The report then goes on:

> "1.3 The above makes it clear that the licensing committee on 5 September accepted that the council was going to delimit and that it wanted on 20 October 2005 sufficient information to agree the manner under which delimitation would take effect"

The addendum then set out a series of possible decisions and outcomes with the officer's recommendations and reasons. Those possible decisions and outcomes were as follows:

> "The committee can finalise its decision to delimit, to take effect next working day – this is recommended for the following reasons…
>
> The Committee can finalise its decision to delimit to take effect at a date in the future (such as 1st February 2006) – this is not recommended for the following reasons…
>
> The Committee can agree not to delimit or can defer the decision to delimit for several months – this is not recommended for the following reasons…"

16. At the meeting of 20 October 2005 a Mr Percival, a representative of the private hire trade, was invited to speak to the committee about the proposal as was Mr Sardar. There was then a full discussion within the committee during which a number of issues were raised which, in my judgment, addressed the principle of delimitation as well as the timing of the decision and other relevant matters. A Councillor moved an amendment to the first recommendation to postpone delimitation to 31 December 2005. That was lost. The committee then voted on the substantive motion which was carried. The resolution carried was "that the Council no longer exercises its discretion under section 16 of the Transport Act 1985 to limit policy outlined in Minute number LC23 of 10th March 2003 and limits on the number of hackney carriage vehicle licenses it issues and that the current policy outlined in Minute LC23 of 10th March 2003 be ended with immediate effect…".

17. It is not in dispute that there could be no change of policy without consultation. Equally it is not in dispute that there was no consultation prior to 5 September 2005 on delimitation.

18. It, therefore, follows that if, and to the extent that, there was a decision on 5 September 2005 to delimit the number of hackney carriage licenses to be issued then that decision was taken unlawfully.

19. Further, it is said by the claimants that, even if the effective decision to delimit was taken on 20 October 2005, the consultation which took place between 5 September and 20 October was ineffective as it was not undertaken at a time when proposals were still at a formative stage. The policy to delimit had got beyond the formative stage having already been decided, even if only as a matter of principle, on 5 September. It is also said by them that the way in which the Council itself expressed itself after the 5 September to prospective consultees gave the impression that the question of principle on delimitation had been decided so that any consultation would not be on that aspect of the matter as the decision had already been taken. It is said that it can be inferred that this had an adverse effect on the consultation itself. In particular it is said that the Police, who had expressed a view on delimitation on a previous occasion when consultation was conducted at a stage when all options were open, did not respond on this issue on this occasion as they said it would be "inappropriate" for them to do so, though they did respond on a number of other issues upon which consultation was taking place. It is said that the inference may be drawn that the Police were unwilling, on this occasion, to express a view on an issue which had already been decided. It therefore follows, according to the claimants, that the decisions made on 20 October must be quashed as not being preceded by a genuine consultation addressing the issue of principle which, they say, had already been determined on 5 September by an unlawful decision.

20. The defendant contends that the effective decision was taken on 20 October. The meeting on that date did, they say, consider the merits of the policy of delimitation having had the benefit of a full consultation which encompassed that issue. In effect, the defendant characterises the claimant's complaint as one that the decision taken on 20 October was "pre-determined" by the decision of 5 September and says that the Court should follow the approach identified by Mr Justice Richards, as he then was, in *Georgiou v Enfield 2004 LGR 297* at para 31:

> "The Court needs to consider …whether, from the point of view of the fair minded and informed observer, there was a real possibility that the planning committee or some of its members were biased in the sense of approaching the decision with a closed mind and without impartial consideration of all relevant (licensing) issues. That is a question to be approached with caution, since it is important not to apply the test in a way which will render local authority decision making impossible or unduly difficult."

The defendant says that an examination of the minutes of the meeting of 20 October demonstrates that there were no closed minds but a full and proper debate on the issue without any pre-emption of the decision on delimitation.

21. There has been considerable debate in the various affidavits as to the nature of the committee's decision on 5 September 2005. The claimants say that, in effect, the decision to delimit was taken on 5 September and only the details of the implementation and, in particular, its date, remained to be decided on 20 October. The claimants argue that the consultation exercise was, though itself genuine, somewhat of a futile exercise on the issue of delimitation as the decision had already been taken. The defendant, on the other hand, has asserted in its evidence that the committee, on 5 September, was only formulating a proposal for delimitation and that its resolution directed the officers to carry out all the necessary steps and consultations in order to enable the committee on 20 October to take a fully informed decision whether to adopt the proposal to delimit.

22. The document entitled "Amendment" is central to this debate. It is in two parts. The first part is by way of a preamble and states it to be the intention of the council to delimit. As a consequence, the recommendations contained in the existing report are to be deleted and replaced by the resolution which is set out and to which I have already referred. The second part of the "amendment" comprises the resolution actually carried by the committee. That resolution does not, in itself, constitute a decision to delimit the number of hackney licences but requires officers to prepare a detailed report on the manner in which delimitation will take effect. Thus, the defendant is correct in saying that, until 20 October, no decision was taken to delimit the number of hackney licences. The claimant argues that, whilst this may be accurate, it is clear that the decision in principle had been taken on 5 September so that the policy to delimit as a matter of principle had gone beyond the formative stage.

23. In my judgment the best evidence of the nature of the decision taken on 5 September lies in the document which was before the committee. In my judgment, on its face, the document makes it clear that the council was being asked on 5 September to make a decision in principle to delimit and to resolve to receive a report at its next meeting to deal with the manner in which delimitation would take effect.

24. The public statements made by or on behalf of the Council thereafter also constitute compelling evidence as to what the Council believed it had done on 5 September. Of particular importance is what is contained in the various documents inviting responses from the public at large and particular interest groups. The principal of these is what was placed on the Council's website inviting the public to respond to the consultation exercise. In my judgment that document is wholly consistent with the decision of 5

September having been a decision made in principle to delimit and not with it having been a decision to consult about a proposal to delimit on the footing that no decision had yet been made. This much is also made clear by the letter written by the Mayor on 9 September to all hackney carriage drivers and vehicle owners inviting them to an informal meeting on delimitation and strongly urging them to take part in the consultation on the issue. That letter is consistent only with a decision in principle having been taken on 5 September to delimit the number of hackney carriages.

25. On the other hand, the public notice inviting response to the consultation says in terms "on 20 October 2005 Watford Borough Council will be deciding whether to remove the limit on the number of hackney carriages in the borough and would like your views". That public notice then goes on to state that the Council is, in particular, considering seven specific matters none of which raises the issue of principle but each of which concerns matter of detail on the assumption that there is delimitation. The invitation to the public is to comment on "these and any aspect of taxi and private hire vehicle licensing".

26. Equally important is the basis upon which the consultation exercise was conducted on behalf of the Council by Halcrow Ltd. The introduction to the Halcrow report sets out at paragraph 1.1.2 the following:

> "Watford Borough Council has made a decision in principle to remove the policy of limiting the numbers of hackney carriages."

At paragraph 1.2 under the heading "Objectives" the report says:

> "The prime objective of the study is to consult with a wide range of interested parties regarding the changes in policy…"

In paragraph 1.3.3, the report sets out the immediate context as being the appeal of 56 applicants for hackney carriage licences refused by the Council to the Crown Court. The report says "Watford Borough Council made the decision to remove the numerical limit as it was unlikely to be able to defend its current policy of restriction based on the 2001 evidence". The report proceeds in part 3 to describe the consultation. The introductory paragraph states as follows at 3.1.1:

> "The consultation exercise sought to gain an understanding of the views from the trade, local stakeholders and the public regarding the removal of the numerical limit and potential changes to the Borough's licensing policies."

It then sets out how the consultation was structured and it includes discussion by focus groups on a number of issues, including de-restriction. The report then sets out the responses of the various focus groups and interested parties on each of the subjects consulted upon. The defendant relies upon the fact that Halcrow Ltd saw fit to seek the views of those whom it consulted on the principle of de-restriction as well as on the issues of detail which would need to be addressed in order to carry the decision into practice but that has to be viewed in the light of what the report says about the background.

27. A certain amount of the evidence and the argument focussed on a demonstration conducted by a number of hackney carriage drivers and vehicle owners on 9 September in protest as to what they saw as a decision to de-limit without adequate consultation. It appears there was a confrontation in the car park at the Council offices in the course of which the directly elected Mayor, who was not a member of the committee and within whose remit this issue did not lie, was asked to respond to the demonstrators. Some reliance is placed on the words in which she did so in which she stated her personal view that de-limitation was the correct course to follow and that the decision in principle had been taken. In my judgment this episode is of limited assistance to me in assessing what was decided on 5 September. It is clear that words spoken in an heated situation expressing a personal view and a personal response to a difficult situation are not words which should necessarily be given huge weight in deciding an issue such as this. This is to be contrasted with the greater weight to be given to her deliberate language when writing in an official capacity to the hackney carriage drivers and owners in the letter of 9 September already referred to.

28. The defendant points out that in the report of 20 October there is an appearance of ambivalence in one passage in the report to councillors. In paragraph 3.6 the following statement appears:

> "At its meeting on 5 September 2005, the committee made an in principle decision to cease to exercise its power under section 16, to consult with interested parties on this proposal and it asked officers to prepare a detailed report to enable the council to consider the manner under which proposed de-limitation would take place."

They point out that within this paragraph the writer appears to face both ways on the issue whether there has been a decision in principle or whether what was at that stage under consideration was simply a proposal. They also rely on the fact that, within the minutes of the meeting of 5 September, the committee directed officers to seek the views of various groups and that an advertisement was to be placed in the Watford Observer inviting people to give their views about de-limitation. The defendant relies upon each of these passages as indicating that the decision on 5 September was to consult upon a proposal rather than to take a decision in principle and thereafter to consult on the manner of implementation of that decision.

29. In my judgment, having had regard to the totality of the evidence, the Council on 5 September took a decision in principle to de-limit. Further, in my judgment, the policy of delimitation, by virtue of that decision, ceased to be a policy which was at the formative stage. The description "a formative stage" may be apt to describe a

number of different situations. A Council may only have reached the stage of identifying a number of options when it decides to consult. On the other hand it may have gone beyond that and have identified a preferred option upon which it may wish to consult. In other circumstances it may have formed a provisional view as to the course to be adopted or may "be minded" to take a particular course subject to the outcome of consultations. In each of these cases what the Council is doing is consulting in advance of the decision being consulted about being made. It is, no doubt, right that, if the Council has a preferred option, or has formed a provisional view, those being consulted should be informed of this so as better to focus their responses. The fact that a Council may have come to a provisional view or have a preferred option does not prevent a consultation exercise being conducted in good faith at a stage when the policy is still formative in the sense that no final decision has yet been made. In my judgment, however, it is a difference in kind for it to have made a decision in principle to adopt a policy and, thereafter, to be concerned only with the timing of its implementation and other matters of detail. Whilst a consultation on the timing and manner of implementation may be a proper one on these issues it cannot, in my judgment, be said that such a consultation, insofar as it touches upon the question of principle, is conducted at a point at which policy on that issue is at a formative stage.

30. The question arises in this case, however, what is the position where, as here, there has, after the decision in principle has been taken, been a full blown consultation in the course of which views were invited, and were expressed, on the issue of de-limitation, where the report to the committee, on 20 October, set out in full the outcome of that consultation, including the question of principle, where the report to the committee presented a series of possible decisions including deciding not to de-limit, where the report to the committee set out in full the various arguments for and against de-limitation, and where it is apparent that the debate in the committee dealt fully with the question of de-limitation and debate was not foreclosed on the footing that a decision in principle had already been taken?

31. The defendant has submitted a powerful argument that, in those circumstances, whatever may have been the muddle and deficiencies in the decision taking process on 5 September, those who were minded to express their views on the issue of principle have had the opportunity to do so and, for the most part, have taken it, the committee has confronted the issue of principle in substance with an open mind, and, accordingly, the decisions of 20 October have been taken after full and proper consultation and should be allowed to stand.

32. It is common ground that the principles applicable to consultation are set out in the decision of the Court of Appeal in *R v North and East Devon HA ex parte Coghlan 2001 QB 213* at para 108 in the following terms:

> "It is common ground that, whether or not consultation of interested parties and the public is a legal requirement, if it is embarked upon it must be carried out properly. To be proper, consultation must be undertaken at a time when proposals are still at a formative stage; it must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and intelligent response; adequate time must be given for this purpose; and the product of consultation must be

> conscientiously taken into account when the ultimate decision is taken *R v Brent London Borough Council ex parte Gunning 1985 84 LGR 168.* "

33. In my judgment, of these four conditions, the second and third have manifestly been satisfied. I am also satisfied that the product of the consultation was conscientiously taken into account when the decision was made on the 20 October. In so deciding I bear in mind the approach to bias, in a different context, referred to by the defendant and described in the decision in *Georgiou.* The problem, however, is with satisfying the first principle and whether the conscientious consideration of the consultation was applied, in effect, to the question whether to reverse a decision which had already been made rather than taking a decision untrammelled by any prior decision. In my judgment, the requirement that the decision taking process, where consultation is required, has to be both substantively fair and have the appearance of fairness, is of such importance that, even though what was done after 5 September was done professionally and in accordance with the requisite standards, there must remain a residual feeling that the decision to delimit has not been taken in a fair way. On the crucial issue of principle the sequence has been - decision first, consultation later. It is a different matter to decide to reverse a previous decision rather than to take one in the first place and, in my judgment, the consultation exercise and its fruits went, on the issue of principle, to inform a decision of the first type rather than one of the second Further, the claimant has identified one particular aspect of the matter which, it says, highlights this problem. That is the fact that the Police who, in 2003, did express a view on the issue of principle, on this occasion decided that it was inappropriate to do so. There are a number of possible reasons why that may have been so. The defendant suggests that it might reflect a change of personnel in the Police, or the fact that, on this occasion, by reason of the dispute at Watford Junction railway station, the matter was thought too sensitive for them to express any view. The claimant contends that it may be that the Police did not wish to express a view on a decision which had already been taken but were content to express their views, as they did, in connection with outstanding issues yet to be determined. It is a matter of speculation what the reason may be as there is no evidence from the police as to why they chose this course on this occasion. However, the fact that an important voice in the debate has deliberately chosen to remain silent on this occasion on the issue of principle whereas, on an earlier occasion, it did not does, in my judgment, underscore the risk that the unlawful mode of proceeding on 5 September to a decision in principle had the effect that, in the consultation process carried out thereafter, one of the important views for consideration was denied the Council.

34. Furthermore, in advance of 20 October the claimants' solicitors wrote a letter pursuant to the pre-action protocol pointing out that a decision in principle had been taken in advance of any consultation so as to render unlawful that which thereafter followed. Unfortunately, the contents of that letter were not made known to the committee on 20 October apparently, I have been told, because it was thought that knowledge of threatened litigation might inflame the members of the committee against the point of view of the claimants on the substance of the issue. In my judgment, that was an unfortunate course for the officers to have taken. Their reply to the claimants' solicitors on the question of consultation was, in part, based on an argument which, though strictly accurate, I have concluded was insufficient to meet the point namely that no decision to delimit was taken on the 5 September and was, in

part, based on an assertion which has now been abandoned namely that "the trade has known for some time of the Council's ultimate intention to pursue total delimitation and consultation has taken place".

35. With some hesitation I have come to the view that, notwithstanding all that happened between 5 September and 20 October, the failure on the part of the defendant to consult prior to taking a decision in principle on the issue of de-limitation was fatal to their ability to take, on 20 October, a decision to delimit the number of hackney carriage licences with immediate effect. Had they acknowledged what had gone wrong on the 5 September, decided to proceed on the basis that delimitation was one of the options it was considering, albeit a preferred one, and consulted on that basis, then it would have been open to them to decide to delimit. Mr Findlay has not, however, sought to persuade me that the issue is so cut and dried that a decision to delimit is the only one open to the defendant so as to make a further consultation exercise, followed by a decision taken on a proper basis, a foregone conclusion. Accordingly, in my judgment, this application for Judicial Review must succeed. I will hear the parties on the form of the remedy and on any other ancillary matters when this judgment is handed down.