

ABERDEEN CITY COUNCIL

COMMITTEE	Audit, Risk and Scrutiny
DATE	19 February 2026
EXEMPT	No
CONFIDENTIAL	No
REPORT TITLE	Lessons learned following the Decision of the Court of Session: Norman Esslemont v Aberdeen City Council
REPORT NUMBER	CR&E/26/035
EXECUTIVE DIRECTOR	David Dunne
CHIEF OFFICER	Mark Reilly/ Claire McArthur/ Jenni Lawson
REPORT AUTHOR	Vycki Ritson
TERMS OF REFERENCE	6.1

1. PURPOSE OF REPORT

- 1.1 To present lessons learned following a review of process and internal controls relating to the Court of Session on Case: XA15/25 Norman Esslemont v Aberdeen City Council.

2. RECOMMENDATIONS

That the Committee:-

- 2.1 notes the changes made to Standing Order 29.1 by Council on 16th April 2025, which requires proposed motions and amendments to be submitted to the Clerk two working days prior to the meeting rather than one;
- 2.2 notes the processes now put in place to ensure structured engagement with Legal Services to support clearer assessment of risks and capacity requirements;
- 2.3 notes the improved guidance for officers, to be presented to Council on 4th February 2026, when managing delegated authority matters that have the potential to be politically sensitive, engaging with Members to mitigate reputational risks, where appropriate; and
- 2.4 recognise the lessons learned which will be reflected within the Council's Annual Governance Statement for 2025/26.

3. CURRENT SITUATION

- 3.1 In Autumn 2023, "The Aberdeen City Council (City Centre, Aberdeen) (Traffic Management) (Experimental) Order 2023" was implemented to achieve the safe and efficient movement of active travel and public transport users through

the city centre. The Order introduced, on an experimental basis, bus priority and local access only restrictions on Market Street, Guild Street and Bridge Street; pedestrian and cycle priority measures on Schoolhill and Upperkirkgate; and introduced a right-turn ban (except cycles, buses and taxis) from Union Terrace to Rosemount Viaduct. A summary of all the measures established can be viewed in the “Statement of Reasons” in Appendix 1. During the experimental period, the measures were subject to public consultation (six months), monitoring and evaluation.

3.2 At Net Zero, Environment and Transport Committee on the 11th June 2024 “The Aberdeen City Council (City Centre, Aberdeen) (Traffic Management) (Experimental) Order 2023 - Statutory Public Consultation - CR&E/24/169” was reported, including all objections received to the order. A recommendation was made to make the order permanent. At the subsequent “Requisitioned Meeting, on the 16th July 2024”, Council instructed the Chief Officer - Strategic Place Planning, using funding from the Bus Lane Enforcement reserve, to report as soon as possible on:

- the feasibility and impact of reopening Bridge Street to all vehicles in one or both directions; and
- the feasibility and impact of removing the ban on right turns from Union Terrace onto Rosemount Viaduct.

3.3 At a meeting of the Council on [11 October 2024](#), in response to report “City Centre Transport Measures - CR&E/24/287”, Members resolved to adopt the motion which instructed:

“(xii) therefore, agree, subject to the removal of the ban on right turns from Union Terrace onto Rosemount Viaduct, to approve the making of The Aberdeen City Council (City Centre, Aberdeen) (Traffic Management) Experimental Order 2023 as a permanent Order, with continued monitoring in terms of the ongoing City Centre Masterplan. The cost of undertaking these works is estimated to be approximately £3,000 and is to be funded from the General Fund Capital Programme contingency budget in 2024/25. Noting the Chief Officer - Finance’s advice above there is a risk of up to £8m of Bus Partnership Fund grant being reclaimed by Transport Scotland and agreeing if this has to be repaid (in part or whole) the capital grant will have to be replaced by borrowing at a cost to the General Fund Revenue Budget of up to approximately £480,000 per annum for the next 30 years, which will increase the budget gap in the Medium Term Financial Strategy from financial year 2025/26;

(xiii) instruct the Chief Officer - Operations to commence the procedure for the Order to be made permanent;”

3.4 Officers had reviewed this motion prior to the original date of the Council meeting 2nd October 2024, alongside 10 other motions to be considered at the same meeting. When reviewing the motion, officers were of the view that Regulation 13 of the Local Authorities’ Traffic Orders (Procedure) (Scotland) Regulations 1999 (“the 1999 Regulations”) could be applied. As such, it was considered that a modification to remove the said right turn ban could be made

as it did not extend the application of the order nor increase the stringency of any prohibition or restriction contained within the order.

- 3.5 Subsequently the Council received a letter challenging the legality of implementing the instruction from Council on the 11th October 2024 (as given in 3.3 above). The challenge focused primarily on the Council's ability to make modifications to the Experimental Traffic Regulation Order in accordance with Regulation 20B of the 1999 Regulations.
- 3.6 Advice was sought from King's Counsel due to the complexity of the Regulations. King's Counsel did not conclude that the intended modification (i.e. removal of the right turn ban) was incompetent - rather that it was an area within the 1999 Regulations that was open to interpretation. As such, risk mitigation might be the most appropriate way forward.
- 3.7 Officers reported to the Urgent Business Committee on 18th December 2024, highlighting the challenge and recommending the most appropriate route to mitigate risk of future challenge.
- 3.8 The Chief Executive agreed at the meeting that there were lessons to be learned to improve scrutiny, particularly around complex statutory processes, and that officers would explore with the Governance Reference Group ways in which improvements can be made to the advice given on amendments and motions.
- 3.9 In January 2025, Aberdeen City Council made the Aberdeen City Council (City Centre, Aberdeen) (Traffic Management) Order 2025 (a redacted copy of the Order is available to view at Appendix 2). The Order made permanent all the measures provided within the original Experimental Traffic Regulation Order.
- 3.10 A legal challenge was subsequently brought against the 2025 Order by local retailer Norman Esslemont on behalf of local businesses, objecting to the making of the permanent order. In response to this, on 11 November 2025 a hearing was held at the Court of Session. The decision of this hearing is available to view in Appendix 3.
- 3.11 The decision was made in favour of Aberdeen City Council meaning that, in the judgement of the Court, the permanent Order was lawfully made. In line with the commitment made at the Urgent Business Committee in December 2024, officers have sought to identify lessons for the future and improvements which can be made to internal process and controls. An update on these, including implementation status, is outlined below.

Lessons Learned

- 3:12 Directors, Chief Officers, Roads and Legal teams have reflected on the process leading to the legal challenge and subsequent Court decision. While the Court determined that the permanent Traffic Regulation Order was lawfully made, the circumstances have provided an opportunity to identify learning points to further strengthen governance, assurance and risk management arrangements for future complex statutory decisions.

Committee Process

- 3.13 A review of the timeline associated with motions and amendments to the Council meeting on 2nd October 2024, which subsequently went to the reconvened meeting on 11th October 2024, noted a high volume of motions and amendments were submitted close to the deadline permitted under Standing Order 29.1 at that time.
- 3.14 Ten of the eleven motions and amendments were submitted the evening of 30th September or morning of 1st October 2024. The compressed timescales significantly reduced the time available for officers across the Council to assess the legal competency and potential statutory implications of the motions and amendments, particularly where matters involved complex and technical areas of law.
- 3.15 It is noted that colleagues across the Council were involved in reviewing all the motions and amendments, with an amendment specific to the report referenced in 3.2 above not being finalised until the day of the re-convened meeting on 11th October.
- 3.16 Allowing additional time for officer review supports a more robust assessment process, clearer articulation of legal risk, and enhanced assurance to Members.
- 3.17 In this instance, although this compressed timeline was not ideal, it should be recognised that – as borne out by the advice from King’s Counsel - this is a complex area of law that is open to interpretation. Where the law is open to interpretation, and the matter is one of public interest, there will be a particular risk of legal challenge – irrespective of how long officers have to consider competency.
- 3.18 The amendment to Standing Order 29.1 approved by Council on 16 April 2025, requiring proposed motions and amendments to be submitted two working days in advance, reflects this learning and provides a proportionate safeguard to mitigate future risk.
- 3.19 The case demonstrated the importance of clearly distinguishing between legal competence and legal risk when advising Members on motions and amendments. Where legislation is open to interpretation, it is helpful for advice to articulate areas of uncertainty and potential challenge, enabling Members to make informed decisions with a clear understanding of associated risks. Whilst Standing Orders do not refer to, or stipulate mitigation of, risk in determination of competency, it is the responsibility of officers to bring such risks to the attention of members where these risk factors are clear.

Governance, Legal Risk and Assurance

- 3.20 A review of the statutory process followed in relation to the Experimental Traffic Regulation Order and the subsequent permanent Order confirmed compliance with legislative requirements. However, the challenge highlighted differing legal

views over interpreting the legislation and where the ultimate recourse was to have the Court of Session make a definitive judgement on the matter.

- 3.21 The experience reinforced the importance of early identification and escalation of legal risk where statutory powers are subject to interpretation and where decisions are high profile or likely to attract public or stakeholder challenge.
- 3.22 While Roads Service officers have significant expertise in managing Traffic Regulation Orders, it was recognised that earlier and more structured engagement with Legal Services in complex or novel cases supports clearer assessment of risk, capacity requirements and whether external legal advice should be sought at an earlier stage. Legal Services have developed an assurance map detailing all the existing controls in place to mitigate the risk of legal challenge across the three lines of defence. This reflects the agreed Risk Appetite Statement which states that the Council is averse to any risks that will result in non-compliance or breaches in statutory obligations, regulations, and law. Whilst this risk is owned by Governance, all services contribute to the overall set of controls in place to manage this risk. Gaps identified as part of this process are now positioned in a risk register entry which will be reported to the Finance and Resources Committee in May.
- 3.23 The development of structured checklists for complex and/or high-profile Traffic Regulation Orders will provide a consistent audit trail, support professional judgement, and help ensure that legislative changes, consultation requirements and legal risks are considered systematically. This is one of the mitigations in place within the assurance map referred to above.

Supporting Effective Decision-Making

- 3.24 Council on 4th February was asked to approve guidance for officers when managing matters which have the potential to be politically sensitive. This acknowledges that there is scope for delegated matters to cause reputational damage to the Council and that engagement with elected members is advisable in these types of situations.
- 3.25 In addition, as part of the Scheme of Governance review in April 2024, guidance was prepared for members on their rights to access information, including legal advice. This included a process to be followed when such information was sought.
- 3.26 Finally, the Council's Annual Governance Statement (AGS) for 2025/26, which will be reported to this Committee in May, seeks to provide assurance on the Council's internal controls and any significant governance issues which have arisen during the year. Consideration is being given to how the lessons learned from this process can be reflected in the AGS, which will be subject to audit from our external auditors.

Conclusion

- 3.27 This Committee is responsible for undertaking scrutiny of matters, process or practice which have been the subject of a report to Council or another committee, to ensure good practice and the effectiveness of decision making.
- 3.28 The experience has highlighted the value of learning from the process of legal challenge itself, regardless of outcome. Understanding how decisions may be perceived externally supports continual improvement in transparency, communication and public confidence in statutory decision making.
- 3.29 Collectively, these lessons have informed improvements to Standing Orders, guidance to officers and elected members on matters of potential political sensitivity, reinforced controls around the risk of legal challenge, and supported the introduction of enhanced governance and assurance measures for future complex statutory processes.

4. FINANCIAL IMPLICATIONS

- 4.1 The addition of legal checks and checklist preparation to the traffic regulation order process will require further staff time resource costs from Roads and Legal Teams. These will vary dependant on the volume of complex/ "out of the ordinary" orders being delivered. It is not anticipated to impact business as usual projects.

5. LEGAL IMPLICATIONS

- 5.1 Aberdeen City Council made the Experimental Traffic Regulation Order in exercise of the powers conferred on them by sections 9 and 10 of the Road Traffic Regulation Act 1984 and of all other enabling powers and after consultation with the Chief Officer of Police Scotland in accordance with Part III of Schedule 9 to said Act and having complied with the statutory requirements of the Local Authorities' Traffic Orders (Procedure) (Scotland) Regulations 1999 ("the 1999 Regulations"), as amended.
- 5.2. The Experimental Traffic Regulation Order (ETRO) was brought into effect on 1 August 2023 and, in terms of the Road Traffic Regulation Act 1984, could not continue in force for longer than 18 months. The Council therefore made the Aberdeen City Council (City Centre, Aberdeen) (Traffic Management) Order 2025 on 17 January 2025, which came into operation on 31 January 2025.
- 5.3 The Council received a Petition for Statutory Appeal on 5 March 2025, under Paragraph 35, Schedule 9 of the Road Traffic Regulation Act 1984. The Statutory Appeal sought to challenge the decision of the Council dated 17 January 2025 to make The Aberdeen City Council (City Centre, Aberdeen) (Traffic Management) Order 2025. The judgement of the Court was published on 9th December 2025 and is available to review in Appendix 3.
- 5.4 Following a period of statutory consultation the said right hand turn ban has been removed. The Traffic Regulation Order was made on 1st April 2025.

6. ENVIRONMENTAL IMPLICATIONS

6.1 There are no direct environmental implications arising from the recommendations of this report.

7. RISK

Category	Risks	Primary Controls/Control Actions to achieve Target Risk Level	*Target Risk Level (L, M or H) *taking into account controls/control actions	*Does Target Risk Level Match Appetite Set?
Strategic Risk	Risk that successful legal challenge impacts on delivery of strategic outcomes.	Legal Challenge Risk Register in place to ensure all services have controls in place. Advice for members and officers on managing matters that have the potential to be politically sensitive.	L	Yes
Compliance	Insufficient time for officers to consider the competency of motions and amendments.	Standing Orders have been amended to allow officers additional time to undertake this task. Legal Challenge Risk Register in place to ensure all services have controls in place.	L	Yes
Operational	Time pressure on officers when reviewing motions and amendments for competency	Standing Orders have been amended to allow officers additional time to undertake this task. Officers have a responsibility to alert members to risks arising from motions and amendments, albeit it is the member's responsibility to take this on board.	L	Yes
Financial	There are financial risks	Standing Orders have been amended as	M	Yes

	associated with potential legal challenges.	mentioned above to reduce the risk of legal challenge. Legal Challenge Risk Register in place to ensure all services have controls in place.		
Reputational	There is reputational risk associated with potential legal challenge.	Standing Orders have been amended as mentioned above to reduce the risk of legal challenge. Legal Challenge Risk Register in place to ensure all services have controls in place.	M	Yes
Environment / Climate	None	N/A		

8. OUTCOMES

The recommendations in the report do not impact on the Council Delivery Plan.

9. IMPACT ASSESSMENTS

Assessment	Outcome
Integrated Impact Assessment	No assessment required. I confirm this has been discussed and agreed with Mark Reilly, Chief Officer Operations on 23th January 2026.
Data Protection Impact Assessment	Not required
Other	N/A

10. BACKGROUND PAPERS

- 10.1 The Aberdeen City Council (City Centre, Aberdeen) (Traffic Management) Experimental) Order 2023 – Statutory Public Consultation – CR&E/24/169 and supporting documents can be viewed at Item 15 on this page <https://committees.aberdeencity.gov.uk/ieListDocuments.aspx?CId=685&MId=9062&Ver=4>
- 10.2 ETRO2 Bus Priority Measures Report CRE21169 and supporting documents can be viewed at Item 2 on this page <https://committees.aberdeencity.gov.uk/ieListDocuments.aspx?CId=122&MId=9483&Ver=4>

10.3 City Centre Transport Measures – CR&E/24/287 and supporting documents can be viewed at Item 4 on this page

<https://committees.aberdeencity.gov.uk/ieListDocuments.aspx?CId=122&MId=9644&Ver=4>

10.4 The Aberdeen City Council (City Centre, Aberdeen) (Traffic Management) (Experimental) Order 2023- Implementation – CR&E/24/360 can be viewed at Item 5 on this page

<https://committees.aberdeencity.gov.uk/ieListDocuments.aspx?CId=334&MId=9729&Ver=4>

11. APPENDICES

11.1 Appendix 1 – Statement of Reasons - THE ABERDEEN CITY COUNCIL (CITY CENTRE, ABERDEEN) (TRAFFIC MANAGEMENT) (EXPERIMENTAL) ORDER 2023

11.2 Appendix 2 - THE ABERDEEN CITY COUNCIL (CITY CENTRE, ABERDEEN) (TRAFFIC MANAGEMENT) ORDER 2025 (copy with signatures redacted)

11.3 Appendix 3 – Opinion of the Court – XA15/25

12. REPORT AUTHOR CONTACT DETAILS

Name	Vycki Ritson
Title	Team Leader
Email Address	vritson@aberdeencity.gov.uk

**Appendix 1: - Statement of Reasons - THE ABERDEEN CITY COUNCIL (CITY CENTRE, ABERDEEN)
(TRAFFIC MANAGEMENT) (EXPERIMENTAL) ORDER 2023**

ABERDEEN CITY COUNCIL

ROAD TRAFFIC REGULATION ACT 1984

**THE ABERDEEN CITY COUNCIL (CITY CENTRE, ABERDEEN) (TRAFFIC
MANAGEMENT) (EXPERIMENTAL) ORDER 2023**

STATEMENT OF REASONS

Bus priority measures in the form of Bus Gates / Lanes are being established in the city centre to enhance bus reliability and travel time, with access also maintained for pedal cycles, and the public transport modes of taxis and local hire vehicles. Goods vehicles will also be exempt in terms of access for the loading / unloading of goods and burden. The removal of general through traffic will establish an improved environment for pedestrians and cyclists, while facilitating future streetscape improvements.

There will be a north-eastly one-way established for vehicles on Trinity Street, this with consideration to the operation of the new bus priority measures.

A general prohibition on motor vehicles, except for the purpose of access, on certain city centre roads will support the operation of the 'Bus Gates / Lanes'. Also supporting the 'Bus Gates' will be certain prohibitions on specific turns from nearby junctions.

The prohibition of right turn from Union Terrace to Rosemount Viaduct (except for buses, pedal cycles, taxis and authorised vehicles) is to discourage through traffic routing via Union Street.

The 'Pedestrian and Cycle Zone' on Schoolhill / Upperkirkgate establishes an enhanced environment for pedestrians and cyclists, while facilitating future streetscape improvements. Access for the purpose of loading will be maintained for motor vehicles from midnight to 11am, and from 4.30pm to midnight, on any day. A section of eastbound one way for vehicular traffic, except cycles, will also manage vehicle flow on this corridor. There will also be a dedicated facility for goods vehicle loading and disabled parking established within the layby on Schoolhill, just east of its junction with Belmont Street.

There will be wider provision of disabled parking facilities, with bays established on Carmelite Lane, Exchange Street, Flourmill Lane and Stirling Street. The purpose of these bays being to provide close proximity parking for disabled persons visiting nearby city centre facilities.

In the interests of road safety, particularly when considering vulnerable road users, a mandatory 20mph speed limit is being established on lengths of Bridge Street, Carmelite Street, College Street, Guild Street and Wapping Street.

A length of prohibition of waiting and loading will be established on the south side of Guild Street, between its junctions with the accesses that serve the Bus Station and the Railway Station. This restriction is to allow a certain length of the road to function as an area where vehicles can only stop to allow passengers to actively board or alight.

Appendix 2: - THE ABERDEEN CITY COUNCIL (CITY CENTRE, ABERDEEN) (TRAFFIC MANAGEMENT) ORDER 2025 (redacted copy)

ABERDEEN CITY COUNCIL

ROAD TRAFFIC REGULATION ACT 1984

THE ABERDEEN CITY COUNCIL (CITY CENTRE, ABERDEEN) (TRAFFIC MANAGEMENT)
ORDER 2025

Aberdeen City Council, in exercise of its powers under the Road Traffic Regulation Act 1984, as amended (hereinafter referred to as "the 1984 Act"), and of all other enabling powers, and after consultation with the Chief Constable of Police Scotland in accordance with Part III of Schedule 9 to the 1984 Act, and having complied with the requirements of The Local Authorities' Traffic Orders (Procedure) (Scotland) Regulations 1999, hereby makes the following order:-

CITATION

1. This order may be cited as "The Aberdeen City Council (City Centre, Aberdeen) (Traffic Management) Order 2025" and shall come into effect on 31 January 2025.

DEFINITIONS IN RELATION TO SUBSEQUENT ARTICLES

2. In this order, unless the context requires otherwise, the following interpretations shall apply.

"authorised vehicle" has the same meaning given to that expression in the eleventh schedule to this order;

"bus" shall have the same meaning as in Schedule 1 "Definitions" of the Statutory Instrument 2016 No.362 "The Traffic Signs Regulations and General Directions 2016";

"bus lane" shall have the same meaning as in Schedule 1 "Definitions" of the Statutory Instrument 2016 No.362 "The Traffic Signs Regulations and General Directions 2016";

"disabled person's badge" means —

- (a) a badge issued under section 21 of the Chronically Sick and Disabled Persons Act 1970 (c. 44),
- (b) a badge issued under a provision of the law of Northern Ireland corresponding to that section, or
- (c) a badge issued by any member State other than the United Kingdom for purposes corresponding to the purposes for which badges under that section are issued;

"disabled person's vehicle" means a vehicle lawfully displaying a disabled persons' badge;

"motor vehicle" has the same meaning as in the "Road Traffic Regulation Act 1984";

"pedal cycle" shall have the same meaning as in Schedule 1 "Definitions" of the Statutory Instrument 2016 No.362 "The Traffic Signs Regulations and General Directions 2016";

"private hire vehicle" – shall have the same meaning as in section 23(1) of the Civic Government (Scotland) Act 1982;

"taxi" - shall have the same meaning as in section 23(1) of the Civic Government (Scotland) Act 1982;

DISABLED PARKING BAY (SCHOOLHILL)

3. Upon the coming into effect of this order, from midnight to 7.00am, and from 11.00am to midnight, on any day, the length of road specified in the first schedule hereto shall have been taken to be added to the first schedule of "The Aberdeen City Council (Disabled Persons' Parking Places) (Ref 1/16) Order 2016".

LOADING BAY (SCHOOLHILL)

4. Save as provided in Articles 5, 6, and 7 of this order, no person shall, except upon the direction or with the permission of a police constable in uniform, cause or permit any vehicle to wait on the length of road in Aberdeen specified in the first schedule hereto between 7.00am and 11.00am on any day.
5. Nothing in Article 4 of this order shall apply to any goods vehicle being used to load or unload goods or burden at premises accessible only by use of that length of road.
6. Nothing in Article 4 of this order shall prevent any person from causing or permitting a vehicle to wait on any of the length of road referred to in that article for so long as may be necessary:
 - (a) to enable a person to board or alight from the vehicle;
 - (b) when the person in control of the vehicle is:
 - (i) required by law to stop; or
 - (ii) obliged to stop in order to avoid an accident; or
 - (iii) prevented from proceeding by any circumstances beyond their control, where the said circumstances relate directly to the movement or otherwise of traffic on the road.
 - (c) if the vehicle is in material use in connection with a funeral undertaking;
 - (d) If the vehicle is in the service of, or is being employed by, a security company and is in actual use while currency or other valuables:
 - (i) are being unloaded from the vehicle; or
 - (ii) having been unloaded from the vehicle, are being delivered; or
 - (iii) are being collected from premises adjacent to that road for loading onto the vehicle; or
 - (iv) having been collected from such premises, are being loaded onto the vehicle.
7. Nothing in Article 4 of this order shall prevent any person from causing or permitting a vehicle to wait in any of the length of road referred to in that article for so long as may be necessary:
 - (a) to enable a vehicle in actual use or materially necessary for such purpose (provided that the vehicle cannot conveniently be used for the same purpose in any other road) to be used in or adjacent to that road in connection with any:
 - (i) building operation;
 - (ii) demolition;
 - (iii) laying, erection, alteration, or repair of any sewer or of any main, pipe or apparatus for the supply of gas, water, or electricity, or of any electronic communications apparatus; or

- (iv) excavation, provided that, in the case of any of the operations described in sub-paragraphs (iii) and (iv) above, the said operation or operations are to be conducted within the extents of the road.
- (b) to enable a vehicle in actual use or materially necessary for such purpose (provided that the vehicle cannot conveniently be used for the same purpose in any other road) to be used in connection with the:
 - (i) cleansing or lighting of any road;
 - (ii) removal of any obstruction to traffic on any road;
 - (iii) maintenance or improvement or reconstruction of any road; or
 - (iv) placing, maintenance or removal of any traffic sign or parking meter on any road.
 - (c) if the vehicle, being a liveried vehicle, is in the service of, or is being employed by, a universal service provider, and is in actual use while postal packets:
 - (i) addressed to premises adjacent to that road are being unloaded from the vehicle;
 - (ii) addressed to premises adjacent to that road and having been unloaded from the vehicle, are being delivered;
 - (iii) are being collected from postal boxes or premises adjacent to that road for loading onto the vehicle; or
 - (iv) having been so collected, are then being loaded onto the vehicle.

PROHIBITION OF MOTOR VEHICLES

8. Save as provided in Articles 10, 11, 12 and 13 of this order, no person shall, except upon the direction or with the permission of a police constable in uniform, drive or permit to be driven, any motor vehicle on the lengths of road in Aberdeen specified in the second schedule hereto.
9. Save as provided in Article 8 of this order, no person shall, except upon the direction or with the permission of a police constable in uniform, drive or permit to be driven, any motor vehicle on the lengths of road in Aberdeen specified in the third schedule hereto.
10. Nothing in Article 8 of this order, shall prevent any person, from driving, or causing or permitting to be driven, any motor vehicle on any day, from midnight until 11.00am, and from 4.30pm until midnight, for the purpose of loading goods or burden to or from premises only accessible from that road.
11. Nothing in Article 8 of this order shall apply to a motor vehicle being used for police, ambulance, or fire and rescue purposes in pursuance of statutory powers or duties, and in any regard for those emergency purposes specified in Item 3 (4), Part 4, Schedule 3 of the Statutory Instrument 2016 No.362 "The Traffic Signs Regulations and General Directions 2016".
12. Nothing in Article 8 of this order, shall prevent any person, from driving, or causing or permitting, to be driven on that road any motor vehicle in actual use or materially necessary for such purpose (provided that the vehicle cannot conveniently be used for the same purpose in any other road):
 - (a) to be used in connection with the:
 - (i) cleansing or lighting of the road;
 - (ii) winter road maintenance purposes;
 - (iii) removal of any obstruction to traffic on any road;

- (iv) maintenance or improvement or reconstruction of any road; or
 - (v) placing, maintenance or removal of any traffic sign or parking meter on any road.
- (b) if the vehicle, being a liveried vehicle, is in the service of, or is being employed by, a universal service provider, and is in actual use while postal packets:
- (i) addressed to premises adjacent to that road are being unloaded from the vehicle;
 - (ii) addressed to premises adjacent to that road and having been unloaded from the vehicle, are being delivered;
 - (iii) are being collected from postal boxes or premises adjacent to that road for loading onto the vehicle; or
 - (iv) having been so collected, are then being loaded onto the vehicle
- (c) If the vehicle is in the service of, or is being employed by, a security company and is in actual use while currency or other valuables:
- (i) are being unloaded from the vehicle; or
 - (ii) having been unloaded from the vehicle, are being delivered; or
 - (iii) are being collected from premises adjacent to that road for loading onto the vehicle; or
 - (iv) having been collected from such premises, are being loaded onto the vehicle.
13. Nothing in Article 8 shall apply to a vehicle being used in the service of the local roads authority in pursuance of statutory powers or duties relevant to the specified length of road.
14. Nothing in Article 9 of this order, shall prevent any person, from driving, or causing or permitting to be driven, any motor vehicle for the purpose of local access to the lengths of road specified in the third schedule.

ONE WAY RESTRICTION (EXCEPT FOR PEDAL CYCLES)

15. Save as provided in Article 17 of this order, no person shall drive, or cause or permit to be driven, any vehicle on Schoolhill, Aberdeen, between its junctions with Belmont Street and Upperkirkgate, other than in an easterly direction.
16. Save as provided in Article 17 of this order, no person shall drive, or cause or permit to be driven, any vehicle on Upperkirkgate, Aberdeen, between its junctions with Schoolhill and Flourmill Lane, other than in an easterly direction.
17. Nothing in Articles 15 and 16 of this order shall apply to a pedal cycle.

ONE WAY RESTRICTION

18. No person shall drive, or cause or permit to be driven, any vehicle on Trinity Street, Aberdeen, other than in a north-easterly direction.

ROUTE / LANES FOR USE BY BUSES, GOODS VEHICLES, PEDAL CYCLES, TAXIS AND AUTHORISED VEHICLES ONLY

19. Save as provided by Articles 21 and 24, no person shall, except upon the direction or with the permission of a police constable in uniform, drive, or cause, or permit to be driven, any vehicle, on the lengths of road specified in the fourth schedule hereto.

20. Save as provided by Articles 21, 22, 23 and 24, no person shall, except upon the direction or with the permission of a police constable in uniform, drive, or cause, or permit to be driven, any vehicle, on the lengths of road specified in the fifth schedule hereto.

21. Nothing in Articles 19 and 20 shall apply: -

- (a) to a bus;
- (b) to a goods vehicle;
- (c) to a pedal cycle;
- (d) to a taxi;
- (e) to an authorised vehicle; or
- (f) to a motor vehicle being used for police, ambulance, or fire and rescue purposes in pursuance of statutory powers or duties in an emergency situation, and in any regard for those emergency purposes specified in Item 3 (4), Part 4, Schedule 3 of the Statutory Instrument 2016 No.362 "The Traffic Signs Regulations and General Directions 2016";

22. Nothing in Article 20 of this order, provided a driver as soon as reasonably practicable causes the vehicle to leave the bus lane thereafter, shall prevent any person from causing or permitting a vehicle to enter the lengths of road referred to in that article for so long as may be necessary:

- (a) to enable a person to board or alight from the vehicle;
- (b) to enable goods or burden to be loaded onto, or unloaded, from the vehicle;
- (c) when the person in control of the vehicle is:
 - (i) required by law to stop; or
 - (ii) obliged to stop in order to avoid an accident; or
 - (iii) prevented from proceeding by any circumstances beyond their control, where the said circumstances relate directly to the movement or otherwise of traffic on the road.
- (d) if the vehicle is in material use in connection with a funeral undertaking;
- (e) if the vehicle is in the service of, or is being employed by, a security company and is in actual use while currency or other valuables:
 - (i) are being unloaded from the vehicle; or
 - (ii) having been unloaded from the vehicle, are being delivered; or
 - (iii) are being collected from premises adjacent to that road for loading onto the vehicle; or
 - (iv) having been collected from such premises, are being loaded onto the vehicle.

23. Nothing in Article 20 of this order, provided a driver as soon as reasonably practicable causes the vehicle to leave the bus lane thereafter, shall prevent any person from causing or permitting a vehicle to enter the lengths bus lanes referred to in that article for so long as may be necessary:

- (a) to enable a vehicle in actual use or materially necessary for such purpose (provided that the vehicle cannot conveniently be used for the same purpose in any other road) to be used in or adjacent to that road in connection with any:

- (i) building operation;
 - (ii) demolition;
 - (iii) laying, erection, alteration, or repair of any sewer or of any main, pipe or apparatus for the supply of gas, water, or electricity, or of any electronic communications apparatus; or
 - (iv) excavation, provided that, in the case of any of the operations described in sub-paragraphs (iii) and (iv) above, the said operation or operations are to be conducted within the extents of the road.
- (b) to enable a vehicle in actual use or materially necessary for such purpose (provided that the vehicle cannot conveniently be used for the same purpose in any other road) to be used in connection with the:
- (i) cleansing or lighting of any road;
 - (ii) removal of any obstruction to traffic on any road;
 - (iii) maintenance or improvement or reconstruction of any road; or
 - (iv) placing, maintenance or removal of any traffic sign or parking meter on any road.
- (c) if the vehicle, being a liveried vehicle, is in the service of, or is being employed by, a universal service provider, and is in actual use while postal packets:
- (i) addressed to premises adjacent to that road are being unloaded from the vehicle;
 - (ii) addressed to premises adjacent to that road and having been unloaded from the vehicle, are being delivered;
 - (iii) are being collected from postal boxes or premises adjacent to that road for loading onto the vehicle; or
 - (iv) having been so collected, are then being loaded onto the vehicle.
24. Nothing in Articles 19 and 20 of this order shall prevent any person from causing or permitting a vehicle to enter the lengths of road referred to in that article for so long as may be necessary:
- (a) to enable a vehicle in actual use or materially necessary for such purpose (provided that the vehicle cannot conveniently be used for the same purpose in any other road) to be used in or adjacent to that road in connection with any:
- (i) building operation;
 - (ii) demolition;
 - (iii) laying, erection, alteration, or repair of any sewer or of any main, pipe or apparatus for the supply of gas, water, or electricity, or of any electronic communications apparatus; or
 - (iv) excavation, provided that, in the case of any of the operations described in sub-paragraphs (iii) and (iv) above, the said operation or operations are to be conducted within the extents of the road.
- (b) to enable a vehicle in actual use or materially necessary for such purpose (provided that the vehicle cannot conveniently be used for the same purpose in any other road) to be used in connection with the:
- (i) cleansing, or lighting of any road;
 - (ii) winter road maintenance purposes;
 - (ii) removal of any obstruction to traffic on any road;
 - (iii) maintenance or improvement or reconstruction of any road; or
 - (iv) placing, maintenance or removal of any traffic sign or parking meter on any road.

PROHIBITION OF TURNS

25. Save as provided by Articles 29 and 30, no person shall, except upon the direction or with the permission of a police constable in uniform, drive, or cause, or permit to be driven, any motor vehicle on Union Terrace, Aberdeen, so as to make a right turn onto Rosemount Viaduct.
26. Save as provided by Article 30, no person shall, except upon the direction or with the permission of a police constable in uniform, drive, or cause, or permit to be driven, any motor vehicle on Flourmill Lane, Aberdeen, so as to turn left onto Upperkirkgate.
27. Save as provided by Articles 29 and 30, no person shall, except upon the direction or with the permission of a police constable in uniform, drive, or cause, or permit to be driven, any motor vehicle on any of the roads specified in Column 1 of the sixth schedule to this Order so as to make a right turn onto the road specified opposite to such road in Column 2 of the said schedule.
28. Save as provided by Articles 29 and 30, no person shall, except upon the direction or with the permission of a police constable in uniform, drive, or cause, or permit to be driven, any motor vehicle on any of the roads specified in Column 1 of the seventh schedule to this Order so as to make a left turn onto the road specified opposite to such road in Column 2 of the said schedule.
29. Nothing in Articles 27 and 28 shall apply: -
 - (a) to a bus;
 - (b) to a taxi; or
 - (c) to an authorised vehicle.
30. Nothing in Articles 25, 26, 27 and 28 shall apply to a motor vehicle being used for police, ambulance, or fire and rescue purposes in pursuance of statutory powers or duties in an emergency situation, and in any regard for those emergency purposes specified in Item 3 (4), Part 4, Schedule 3 of the Statutory Instrument 2016 No.362 "The Traffic Signs Regulations and General Directions 2016".

DISABLED PARKING PLACES

31. Upon the coming into effect of this order, the length of road in Aberdeen specified in the eighth schedule hereto shall be added to the first schedule of "The Aberdeen City Council (Disabled Persons' Parking Places in Aberdeen City Centre) (Regulatory Parking Places) Order 2015".

PROHIBITION OF WAITING AND LOADING

32. Save as provided in Articles 33 and 34 of this order, no person shall, except upon the direction or with the permission of a police constable in uniform, cause or permit any vehicle to wait at any time on the length of road specified in the ninth schedule hereto.

33. Nothing in Article 32 of this order shall prevent any person from causing or permitting a vehicle to wait on any of the lengths of road referred to in that article for so long as may be necessary:
- (a) to enable a person to board or alight from the vehicle;
 - (b) when the person in control of the vehicle is:
 - (i) required by law to stop; or
 - (ii) obliged to stop in order to avoid an accident; or
 - (iii) prevented from proceeding by any circumstances beyond their control, where the said circumstances relate directly to the movement or otherwise of traffic on the road.
 - (d) if the vehicle is in material use in connection with a funeral undertaking;
 - (e) If the vehicle is in the service of, or is being employed by, a security company and is in actual use while currency or other valuables:
 - (i) are being unloaded from the vehicle; or
 - (ii) having been unloaded from the vehicle, are being delivered; or
 - (iii) are being collected from premises adjacent to that road for loading onto the vehicle; or
 - (iv) having been collected from such premises, are being loaded onto the vehicle.
34. Nothing in Article 32 of this order shall prevent any person from causing or permitting a vehicle to wait in any of the lengths of road referred to in that article for so long as may be necessary:
- (a) to enable a vehicle in actual use or materially necessary for such purpose (provided that the vehicle cannot conveniently be used for the same purpose in any other road) to be used in or adjacent to that road in connection with any:
 - (i) building operation;
 - (ii) demolition;
 - (iii) laying, erection, alteration, or repair of any sewer or of any main, pipe or apparatus for the supply of gas, water, or electricity, or of any electronic communications apparatus; or
 - (iv) excavation, provided that, in the case of any of the operations described in sub-paragraphs (iii) and (iv) above, the said operation or operations are to be conducted within the extents of the road.
 - (b) to enable a vehicle in actual use or materially necessary for such purpose (provided that the vehicle cannot conveniently be used for the same purpose in any other road) to be used in connection with the:
 - (i) cleansing or lighting of any road;
 - (ii) removal of any obstruction to traffic on any road;
 - (iii) maintenance or improvement or reconstruction of any road; or
 - (iv) placing, maintenance or removal of any traffic sign or parking meter on any road.
 - (c) if the vehicle, being a liveried vehicle, is in the service of, or is being employed by, a universal service provider, and is in actual use while postal packets:

- (i) addressed to premises adjacent to that road are being unloaded from the vehicle;
- (ii) addressed to premises adjacent to that road and having been unloaded from the vehicle, are being delivered;
- (iii) are being collected from postal boxes or premises adjacent to that road for loading onto the vehicle; or
- (iv) having been so collected, are then being loaded onto the vehicle.

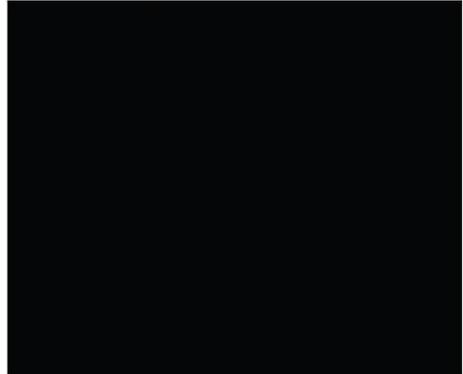
MANDATORY 20MPH SPEED LIMIT

35. No person shall drive, or cause or permit to be driven, any vehicle at a speed exceeding 20mph on the lengths of road specified in the tenth schedule hereto.

AMENDMENT

36. Upon the coming into effect of this order Articles 26 and 27 of "The Aberdeen City Council (Central Union Street / Belmont Quarter, Aberdeen) (Traffic Management) Order 2023" are hereby revoked.

Given by Aberdeen City Council on this Seventeenth Day of January in the year Two Thousand and Twenty-five.



First Schedule
(Loading Bay / Disabled Bay)

Schoolhill

South side, from 19 metres or thereby east of its junction with Belmont Street, eastwards for a distance of 27 metres or thereby.



Second Schedule

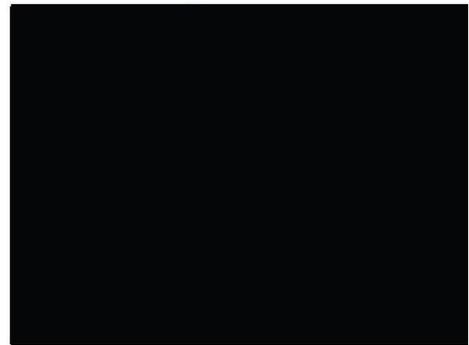
(‘Pedestrian and Cycle Zone - Prohibition of motor vehicles at any time, except for loading from midnight to 11.00am, and from 4.30pm to midnight)

Upperkirkgate

Between its junctions with Schoolhill and Flourmill Lane.

Schoolhill

Between its junctions with Back Wynd and Upperkirkgate



Third Schedule

(Prohibition of motor vehicles, except for access)

Unless otherwise stated, the length of road concerned is in its entirety.

- **Bath Street**
- **Bridge Place**
- **Bridge Street** – southbound carriageway between its junctions with Union Street and Bath Street.
- **Bridge Street** – northbound carriageway between its junction with Union Street and a point 36 metres or thereby south of its junction with Bath Street.
- **Broad Street** - between its junctions with Union Street and Queen Street.
- **Carmelite Lane**
- **Carmelite Street** – from its junction with the Green, southwards for a distance of 78 metres or thereby.
- **Carmelite Street** – inner two lanes, between its junction with Trinity Street and Guild Street.
- **Castle Street**
- **Concert Court**
- **Guild Street** – westbound carriageway between its junction with Exchange Street and its junction with the access that serves Aberdeen Railway Station.
- **Guild Street** – eastbound carriageway between its junctions with Carmelite Street and Stirling Street.
- **Exchange Lane**
- **Exchange Street**
- **Exchequer Row**
- **Green**
- **Hadden Street**
- **Imperial Place**
- **King Street** – between its junctions with Castle Street and East North Street.
- **Lodge Walk**
- **Marischal Street**
- **Market Street** – between its junctions with Guild Street and Union Street.
- **Queen Street**
- **Union Street** – between its junctions with Castle Street and the Adelphi.
- **Shiprow**
- **Shoe Lane**
- **Shore Brae**
- **Stirling Street**
- **Trinity Lane**
- **Trinity Street**



Fourth Schedule

(Bus Gates – Route for use by buses, goods vehicles, pedal cycles, taxis and authorised vehicles only)

Bridge Street

The southbound carriageway, between its junctions with Bath Street and Wapping Street.

Guild Street

The eastbound carriageway, between its junctions with Stirling Street and Exchange Street.

The eastbound carriageway, between its junctions with Exchange Street and Market Street.

The westbound carriageway, between its junctions with Exchange Street and Market Street.

Market Street

The northbound carriageway, between its junctions with Hadden Street and Union Street.

Union Street

The westbound carriageway, between its junctions with Market Street and Adelphi.

The westbound carriageway, from its junction with Market Street, westwards for a distance of 20 metres or thereby.

The eastbound carriageway, from its junction with Union Terrace, eastwards for a distance of 26 metres or thereby.



Fifth Schedule

(Bus Lanes - Lanes for use by buses, goods vehicles, pedal cycles, taxis and authorised vehicles only)

Bridge Street

Inside lane of the northbound carriageway, between a point 36 metres or thereby south of its junction with Bath Street and a point 19 metres or thereby north of its junction with College Street.

Outside lane of the northbound carriageway, from a point 11 metres or thereby south of its junction with Union Street, southwards for a distance of 18 metres or thereby.

Union Street

Central lane of the eastbound carriageway, from a point 15 metres or thereby west of its junction with Union Terrace, westwards for a distance of 17 metres or thereby.

Market Street

Inside lane of the northbound carriageway, from a point 18 metres or thereby south of its junction with Guild Street, southwards for a distance of 45 metres or thereby.

Trinity Quay

Outside westbound lane of Trinity Quay, from its junction with Market Street and a point 72 metres or thereby east of its junction with Market Street.



Sixth Schedule

(Prohibition of right turn – except for buses, goods vehicles, pedal cycles, taxis, and authorised vehicles)

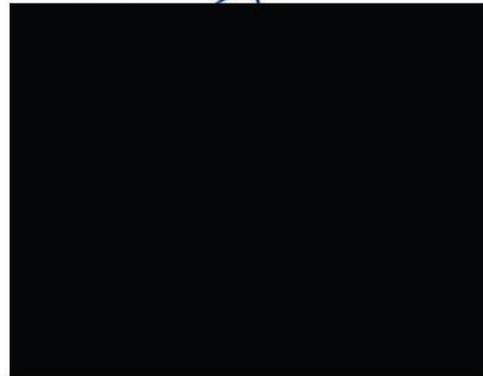
Column 1 (from)	Column 2 (to)
Bath Street	Bridge Street
St Catherine's Wynd	Union Street



Seventh Schedule

(Prohibition of left turn – except for buses, goods vehicles, pedal cycles, taxis, and authorised vehicles)

Column 1 (from)	Column 2 (to)
Adelphi	Union Street
Exchange Street	Guild Street
Market Street	Guild Street



Eighth Schedule
(Disabled Parking Bays)

Flourmill Lane

East side, from 2 metres or thereby north-west of its junction with Netherkirkgate, north-westwards for a distance of 18 metres or thereby.

Carmelite Lane

West side, from 12 metres or thereby south of its junction with Stirling Street, southwards for a distance of 7 metres or thereby.

Stirling Street

East side, from 7 metres or thereby south of its junction with Hadden Street, southwards for a distance of 7 metres or thereby.

Exchange Street

West side, from 8 metres or thereby south of its junction with Hadden Street, southwards for a distance of 7 metres or thereby.



Ninth Schedule

Guild Street

South side, between its junctions with the accesses that serve the Aberdeen Bus Station and the Aberdeen Railway Station.



Tenth Schedule
(Mandatory 20mph Speed Limit)

Unless otherwise stated, the length of road concerned is in its entirety.

- Bridge Street
- Carmelite Street
- College Street – from its junction with Bridge Street / Guild Street, southwards for a distance of 50 metres or thereby.
- Guild Street
- Wapping Street.



Eleventh Schedule

(Definition of an authorised vehicle)

A vehicle is an authorised vehicle for the purposes of this Order if it is –

- a private hire vehicle.





FIRST DIVISION, INNER HOUSE, COURT OF SESSION

[2025] CSIH 31
XA15/25

Lord President
Lady Wise
Lord Clark

OPINION OF THE COURT

delivered by LORD PENTLAND, the LORD PRESIDENT

in the appeal under paragraph 35 of Schedule 9
to the Road Traffic Regulation Act 1984

by

NORMAN ESSLEMONT

Appellant

against

ABERDEEN CITY COUNCIL

Respondent

Appellant: Burnet KC, Sutherland, sol adv; Burness Paull LLP
Respondent: Byrne KC; Morton Fraser MacRoberts LLP

9 December 2025

Introduction

[1] The appellant has been a retailer in Aberdeen City Centre for about 60 years. He is a partner in a retail business, Esslemonts, which has premises on Thistle Street. He was formerly managing director of Esslemont and Macintosh, a well-known department store on Union Street.

[2] The appellant challenges the respondent's decision of 17 January 2025 to make a traffic regulation order: the Aberdeen City Council (City Centre, Aberdeen) (Traffic Management) Order 2025 ("the TRO"). In broad outline, the effect of the TRO is to prohibit private vehicles from using certain defined sections of public roads in Aberdeen city centre. The TRO continued indefinitely the effect of an experimental order made two years previously. The appellant contends that it was not within the respondent's powers to make the TRO and that certain procedural requirements for making it were not complied with.

Background

[3] The respondent issued the Aberdeen City Centre Masterplan in 2015. One of the key aims of the Masterplan was to improve transport infrastructure in Aberdeen. This included the introduction of bus priority measures within the city and on its approaches. The Masterplan envisaged that some streets in the city centre would be reserved for bus, cycle and taxi use only. This was to be achieved, in part, by the installation of bus gates at key intersections of the city centre to ensure that buses were not adversely affected by traffic congestion.

[4] In February 2021, the respondent submitted a bid to the Scottish Government's Bus Partnership Fund. On 18 June 2021, the Scottish Ministers offered the respondent a grant of £12,030,000 to assist in the implementation of the bus priority measures in Aberdeen city centre, which included £10,000,000 for improvement works in the vicinity of South College Street. The grant was to be payable over the financial years 2021/2022 and 2022/ 2023.

[5] Subsequently, the respondent used the powers conferred on it by sections 9, 10 and 14 of the Road Traffic Regulation Act 1984 ("the RTRA") to make the Aberdeen City Council (City Centre, Aberdeen) (Traffic Management) (Experimental) Order 2023 on 24 July

2023 (“the ETRO”). An ETRO allows a local authority to introduce new traffic measures while simultaneously receiving feedback from the public and interested stakeholders on their effect. The ETRO came into force on 1 August 2023. Under section 9(3) of the RTRA, the ETRO had a testing period of 18 months. The respondent used the grant funding from the Scottish Government to carry out various street works to implement the bus prioritisation measures. These included the creation of bus priority and local access only restrictions on Union Street, Market Street, Guild Street and Bridge Street.

[6] The operation of the ETRO was strongly opposed by several stakeholders in the Aberdeen business community between 2023 and 2024. Those sections of the business community considered that the ETRO had led to a reduction in footfall and sales for businesses in the city centre.

[7] With the end of the testing period approaching, the respondent had to consider whether to make the ETRO permanent. Its officers submitted a report on the operation of the ETRO to the Net Zero, Environment and Transport Committee for consideration at its meeting on 11 June 2024. The report recorded that over 500 objections had been received to the ETRO. Notwithstanding those objections, the respondent’s officers recommended, following a review of all the relevant factors, that the committee should vote to make the ETRO permanent. The committee voted on the proposal and, by a majority of 6 to 3, it resolved to make the ETRO permanent, subject to two changes. The minority insisted, as they were entitled to do, that the vote be referred to a full sitting of the Council for determination.

[8] On 11 October 2024 the meeting of the full Council took place. Before the meeting, the respondent’s officers produced a second report: it maintained the recommendation to make the ETRO permanent. Officers were concerned that, if the ETRO was not made

permanent, there would be: (i) a detrimental impact on the improvements which had been experienced in bus journey times; and (ii) a risk that the grant might have to be repaid. The second report also responded to the "Common Sense Compromise". That referred to a compromise proposal put forward by local media, a consortium of businesses in the city centre and business representatives, including the appellant. Key amongst their suggestions was for the bus gates, which had been installed as part of the ETRO, to be removed. The respondent's officers considered that the "Common Sense Compromise", if implemented, would fundamentally undermine the purpose of the ETRO being made permanent.

[9] By a majority of 21 to 15, the recommendations of the respondent's officers in the second report were accepted by the full sitting of the Council: the ETRO was to be made permanent, subject to a modification removing the prohibition on right turns from Union Terrace to Rosemount Viaduct.

[10] That modification was, however, to prove problematic. In October 2024, the respondent's officers notified the Urgent Business Committee that the modification was incompetent. The committee met on 18 December 2024 to consider the officers' concerns. It allowed Adrian Watson, Chief Executive Officer of Aberdeen Inspired, who was also appearing on behalf of the Aberdeen & Grampian Chamber of Commerce, the Federation of Small Businesses and Our Union Street, to make representations against the ETRO being made permanent. Mr Watson requested that the council reconsider its position on making the ETRO permanent. Notwithstanding his submission, the committee, by a majority of 4 to 3, voted to remove the modification proposed in October while still making the ETRO permanent.

[11] The respondent formally made the TRO on 17 January 2025 and it came into effect on 31 January 2025.

[12] In January 2025, the appellant instructed his solicitors to write to the respondent contending that it could not convert the ETRO into a TRO unless it had obtained the consent of the Scottish Ministers. He also submitted that the respondent's decision to convert the ETRO into a TRO was outwith its powers. The respondent did not agree. This led to the appellant bringing this appeal.

The statutory framework

[13] Insofar as it applies to Scotland, section 1 of the RTRA permits the traffic authority for a road to make a TRO where it appears to the authority making the TRO that it is expedient to make it to achieve one or more of the purposes prescribed in sub-paragraphs (a) to (g). These purposes include facilitating the passage on the road or any other road of any class of traffic (including pedestrians) and preventing the use of the road by vehicular traffic of a kind which, or its use by vehicular traffic in a manner which, is unsuitable having regard to the existing character of the road or adjoining property.

[14] Section 9 permits a traffic authority to make an order "for the purposes of carrying out an experimental scheme of traffic control".

[15] In terms of section 122 the local authority has a duty to exercise its functions as traffic authority to "secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians) and the provision of suitable and adequate parking facilities on and off ... the road". In doing so, the authority should, so far as practicable, have regard to the matters set out in subsection (2)(a) to (d); these include "(a) the desirability of securing and maintaining reasonable access to premises".

[16] Paragraph 13(1) of Schedule 9 to the RTRA provides *inter alia* as follows:

“Where in the case of any order proposed to be made by a local authority ... under or by virtue of ... [section] 1 ... it is proposed to include in the order any provision—

(a) so prohibiting or restricting the use of a road as to prevent, for more than 8 hours in any period of 24 hours, access for vehicles of any class to any premises situated on or adjacent to that road or any other premises accessible for vehicles of that class from, and only from, that road...

then (except in a case to which sub-paragraph (2) ... applies ...) the order shall not be made without the consent of the [Scottish Ministers].”

[17] Sub-paragraph (2) provides *inter alia* as follows:

“This sub-paragraph applies where—

...

(b) ...

(i) no owner, lessee or occupier of premises such as are mentioned in sub-paragraph (1)(a) above has submitted to the authority any objection to the inclusion of that provision in the order...”

[18] Paragraph 34 of Schedule 9 provides *inter alia* as follows:

“(1) This Part of this Schedule applies—

(a) to any order made under or by virtue of any of the following provisions of this Act, namely, [section] 1...

...

(2) In this Part of this Schedule—

...

(b) “the relevant requirements”, in relation to any such order as is mentioned in sub-paragraph (1)(a) above, means any requirement of ... any provision of this Act with respect to such an order...”

[19] Paragraph 35 of Schedule 9 provides *inter alia* as follows:

“If any person desires to question the validity of, or of any provision contained in, an order to which this Part of this Schedule applies, on the grounds—

(a) that it is not within the relevant powers, or

(b) that any of the relevant requirements has not been complied with in relation to the order,

he may, within 6 weeks from the date on which the order is made, make an application for the purpose to the ... Court of Session.”

[20] Paragraph 36 of Schedule 9 provides *inter alia* as follows:

“(1) On any application under this Part of this Schedule the court —

...

(b) if satisfied that the order, or any provision of the order, is not within the relevant powers, or that the interests of the applicant have been substantially prejudiced by failure to comply with any of the relevant requirements, may quash the order or any provision of the order.”

[21] The Local Authorities' Traffic Orders (Procedure) (Scotland) Regulations 1999 prescribe the procedure to be followed in Scotland for making the main types of traffic and parking orders under the RTRA. The Regulations applied to the ETRO and the TRO.

[22] Regulations 4, 5, 6 and 7 govern the procedure to be followed before an order is made; they contain rules governing consultation, publication of proposals, giving notice of proposals and the making of objections to proposals.

[23] Regulation 8(1)(c) provides that before making any order to which the Regulations apply, the authority must hold a hearing where *inter alia*:

“...the order is one which requires the consent of the [Scottish Ministers] under paragraph 13 of Schedule 9 to the [RTRA], and [they have] notified the authority that [they] will not be willing to consider giving [their] consent to the making of the order until a hearing has been held by the authority in connection with it.”

[24] Regulation 8(2) provides that hearings are to be conducted by an independent reporter appointed by the Scottish Ministers.

[25] In terms of regulation 17(1)(b), the authority is obliged *inter alia* to notify in writing each person who has objected to the order in accordance with regulation 7 and has not withdrawn his objection, of the authority's reasons for making the order in spite of the objection.

[26] Regulation 20B(5) provides that any objection to the making of an experimental order is to be treated as if it was an objection to the order being made permanent where the effect

of the permanent order is to reproduce and continue in force indefinitely the provisions of a relevant experimental order.

The appellant's submissions

[27] These may be summarised as follows. The appellant has been substantially prejudiced by the respondent's procedural breach. The requirement to show substantial prejudice for the purposes of paragraph 36(1)(b) of Schedule 9 to the RTRA should not be construed too rigidly (*Walton v Scottish Ministers* [2012] UKSC 44; 2013 SC (UKSC) 67, 111 and 154). An applicant's interest may be established through his participation as a member of a campaign group (*Bruce v Moray Council* [2023] CSIH 11; 2023 SC 197, [29]).

[28] The respondent failed to comply with paragraph 13(1)(a) of Schedule 9. It required to seek the Scottish Ministers' consent before making the TRO, given that it prohibits, restricts and prevents access for more than 8 hours in a period of 24 hours to Union Street, Bridge Street, Guild Street and Market Street. Having failed to comply with that condition, the TRO ought to be quashed.

[29] The perceived risk of having to repay grant funding to the Scottish Ministers was an irrelevant consideration in making the TRO (*R (on the application of East Bergholt Parish Council) v Babergh DC* [2019] EWCA Civ 2200, 82 and 87). Separately, the making of the TRO to avoid such a risk was an improper purpose. The grant funding did not relate to any of the statutory purposes for making a TRO.

[30] The respondent did not act fairly in balancing the relevant considerations and attached undue weight to the benefits of making the TRO. Separately, the ETRO had not been experimental. The correspondence between the local public transport operators and the Chief Officer of Strategic Place Planning for the respondent demonstrated that he sought to

influence a particular outcome. The respondent had attached no (or insufficient) weight to the evidence and representations on economic impact stemming from the decline in footfall.

[31] Regulation 17 of the 1999 Regulations required the respondent to give reasons for its decision. Those reasons required to be adequate and intelligible. Notwithstanding that requirement, the respondent failed to explain: (i) the basis for the making of the TRO on 11 October 2024; and (ii) the basis upon which it had decided that it was expedient to include the modification for the TRO on 11 October 2024 and then subsequently remove it in December 2024.

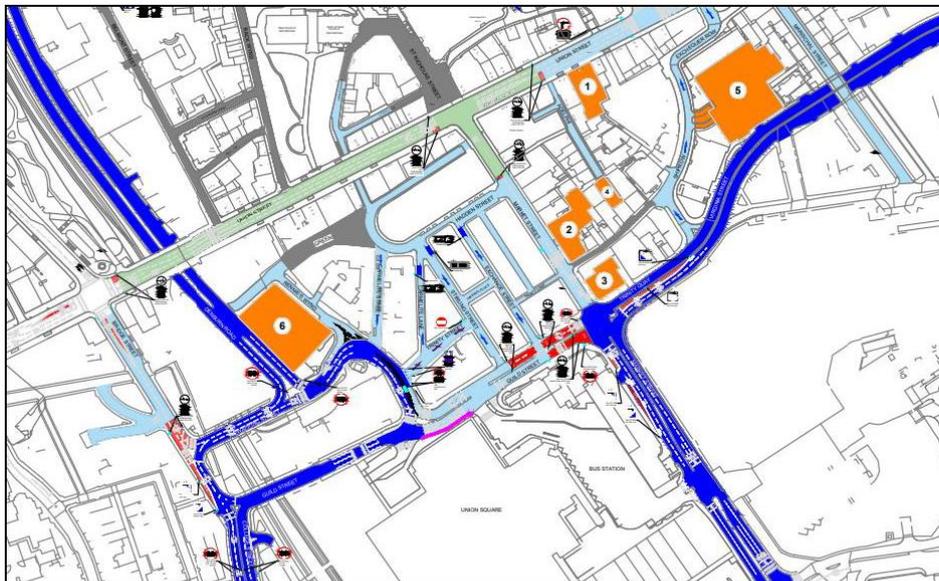
The respondent's submissions

[32] The following is a summary. The appellant failed to identify any substantial prejudice that he had suffered because consent had not been obtained from the Scottish Ministers. Substantial prejudice to the interests of the appellant was an essential prerequisite to the quashing of the TRO if any relevant requirements had been infringed (*Tomkins v City of London Corporation* [2020] EWHC 3357 (Admin), 66).

[33] The TRO restricted access to parts of Union Street, Bridge Street, Guild Street and Market Street for certain and specific times during the day. The appellant purported to represent the interests of several objectors on these roads. Paragraph 13(1)(a) of Schedule 9 requires an objector to be "on or adjacent" to the road subject to TRO and not located beyond the road affected by TRO. The use of the words "on or adjacent" emphasised the need for properties to be directly at the road subject to the restriction. In any event, it remained possible to access the premises of these objectors, notwithstanding the restrictions

of the TRO. The respondent provided the following table and plan illustrating and explaining how access remained viable:

1	Annie Mo's	39 Union Street	Kerbside can be accessed travelling west along Union Street with vehicles progressing through the bus gate if permitted or turning at Adelphi and heading eastbound along Union Street, if not.
2	Douglas Hotel	43-45 Market Street	Kerbside can be accessed by vehicles accessing the area through the Merchant Quarter, Hadden Street onto Market Street, and exiting south, down Market Street, while the same applies to that route vice versa.
3	Gamola Golf	53 Market Street	As above.
4	Core Citi Lets	19 Adelphi	Access travelling west along Union Street with vehicles turning in Adelphi and exiting towards the east.
5	NCP	6 Shiprow	Access from Shiprow with exit onto Virginia Street.
6	Q Park	Wapping Street	Access from Wapping Street onto Rennie's Wynd with exit onto Carmelite Street (B983)."



Excerpt of the TRO Plan. Objectors shown in orange and numbered. Traffic restrictions shown in red.

As all the premises upon which the appellant relied were unaffected by the TRO, the respondent did not require the consent of the Scottish Ministers.

[34] The TRO was made for a legitimate statutory purpose. Section 1 of the RTRA provided a traffic authority with a discretion to make an order where they considered it to be expedient for one of the purposes described in section 1(a) to (g). The purpose of making the TRO was to enhance bus reliability, travel time and to create an improved environment for pedestrians and cyclists. It was expedient for the respondent to have regard to the financial implications of making a TRO to promote amenity. What was a relevant consideration was a matter for the respondent, subject to the choice of consideration not being excluded by statute or being intrinsically irrational.

[35] The balancing of the various considerations over whether to make the TRO was a matter for the respondent, operating in the political field, and amenable to challenge on the basis of *Wednesbury* unreasonableness alone (*St Modwen Developments Ltd v Secretary of State for Communities and Local Government* [2017] EWCA Civ 1643, 6). Section 1 of the RTRA did not mandate the factors to be considered by the respondent (*R (Hurst) v London Northern District Coroner* [2007] UKHL 13; [2007] 2 AC 189, 57 – 58). The respondent had regard to the economic implications of the TRO and considered that it would promote business and the economy. What weight it gave to that consideration was a matter for the respondent, not the court. The TRO was issued further to a decision of a full sitting of the Council.

[36] The purpose of the ETRO was clearly explained. It was to trial the effect of bus priority routes. The respondent had regard to the objections made to the ETRO. The respondent explained its reasons for rejecting those objections. Likewise, the respondent had given cogent reasons in its email to objectors on 17 January 2025 to explain the basis for: (i) making the TRO; and (ii) the removal of the prohibition on right turns from Union

Terrace onto Rosemount Viaduct from the TRO. The respondent had complied with its duty under regulation 17(1)(b) of the 1999 Regulations.

Analysis and decision

[37] Under his first ground of challenge the appellant complains that the respondent failed to comply with a “relevant requirement” in relation to the Aberdeen City Council (City Centre, Aberdeen) (Traffic Management) Order 2025 because it did not seek the consent of the Scottish Ministers to the making of the order. The court is empowered to quash the TRO only if satisfied that the appellant has been substantially prejudiced by the failure (paragraph 36(1) of Schedule 9 to the Road Traffic Regulation Act 1984). The respondent contends that the appellant has not been substantially prejudiced because he has no legitimate interest in any property affected by the TRO; he is not an owner, lessee or occupier of any property on or adjacent to any of the roads whose use is restricted by the TRO. Moreover, he did not object to the making of the TRO.

[38] In our opinion, this argument takes too narrow and legalistic a view of the requirement to show that the appellant is substantially prejudiced by the alleged procedural failure. The reality is that the appellant has played a central role in organising and leading opposition to the making of the TRO on behalf of significant sections of the business community in Aberdeen. He was actively engaged in attempting to persuade the respondent to adopt the “Common Sense Compromise”. Acting on behalf of a significant number of local traders, he instructed solicitors to make representations to the respondent in opposition to the TRO. He used his profile as a person of standing in the business community to launch and promote a successful crowdfunding campaign; this attracted support from many local businesses. The appellant has a strong local connection and claims

that the TRO has adversely affected footfall and sales in the city centre where he has retail premises.

[39] In a not dissimilar manner to the appellant in *Bruce v Moray Council* [2023] CSIII 11; 2023 SC 197 he has demonstrated a genuine concern about what he contends is an illegality in the making of the TRO: *Bruce* [29]; and *Walton v Scottish Ministers* [2012] UKSC 44; 2013 SC (UKSC) 67, 86 – 89. Had the respondent sought the consent of the Scottish Ministers to the making of the TRO they might well have ordered a hearing before a reporter in which the appellant would have had the opportunity to participate in his capacity as a leading member of the local business community and the coordinator of the crowdfunding campaign. Given the nature and extent of the appellant's involvement in leading the campaign of opposition to the making of the TRO, we consider that he can properly claim to have been substantially prejudiced by the alleged procedural failure to obtain the consent of the Scottish Ministers to the making of the TRO. It cannot be said that his interest is trivial or minimal. On the contrary, it is substantial and undoubtedly genuine. For similar reasons we consider that the appellant is entitled to complain that there has been inadequate notification of the reasons for making the TRO.

[40] The requirement to obtain ministerial consent does not arise where no owner, lessee or occupier of premises such as are mentioned in sub-paragraph (1)(a) of paragraph 13 of Schedule 9 to the RTRA has submitted any objection to the inclusion of a provision of the type referred to in sub-paragraph (1). The type of provision referred to there is one:

“so permitting or restricting the use of a road as to prevent, for more than 8 hours in any period of 24 hours, access for vehicles of any class to any premises situated on or adjacent to that road”.

[41] The owners, lessees and occupiers of premises who are said to have submitted relevant objections for the purposes of sub-paragraphs (1) and (2) of paragraph 13 are

agreed to be those listed in the table set out in paragraph [33] above. Ultimately, the appellant did not dispute that each of those businesses could obtain access to their premises by the means described in the table.

[42] Paragraph 13(1)(a) is best understood by identifying that it contains several different elements, each of which requires to be satisfied before the provision is engaged. First, it covers provisions included in an order which prohibit or restrict the use of a road. Secondly, it applies to prohibitions or restrictions on the use of a road which prevent for more than 8 hours in any period of 24 hours access for vehicles. Thirdly, it makes clear that it refers to prohibitions or restrictions preventing access to any premises situated on or adjacent to the road or any other premises accessible to vehicles only from the road.

[43] There is no dispute that the TRO prohibits or restricts vehicular access to the roads specified therein for the requisite period. The respondent does not accept that any of the premises listed in the table set out in paragraph [33] above are on or adjacent to a part of a road which is affected by a restriction, but the argument can be tested on the hypothesis that at least some of them are so situated. The pivotal question then resolves itself into whether it can be said that access is prevented to any of the premises, the operative word in the provision being “prevent”. The appellant argued that any reduction in access was sufficient to amount to access being prevented within the meaning of the sub-paragraph. We do not agree that this is a tenable construction of the word “prevent” in the context of the statutory provision. The word should be given its ordinary meaning, which is to stop something from happening or someone from doing something. The *Oxford English Dictionary* (2nd ed. 1989) defines prevent as meaning: “to stop, keep, or hinder a person or other agent from doing something”. The normal meaning of the word does not extend to reducing the ability of a person to do something. The appellant’s construction would mean that any reduction in

access, however minor, would require the authority to obtain ministerial consent before making an order. This would be unrealistic and would impose excessive and disproportionate burdens on central government. It seems highly unlikely that the legislature intended that every TRO having any degree of impact on access to premises on or adjacent to an affected road would require ministerial consent before it could be made. We consider that the appellant has failed to show that access to any of the premises identified as relevant for the purposes of the appeal has been prevented. It follows that there has been no failure on the part of the respondent to comply with a relevant requirement. The first ground of appeal must, therefore, fail.

[44] The second ground of appeal concerns the appellant's contention that it was unlawful for the respondent to take account of the possibility that grant funding awarded by Transport Scotland for improvement works to South College Street might have to be repaid. It was argued that this was an irrelevant consideration and that the respondent pursued an improper purpose by resolving to make the TRO to avoid this perceived risk. To take account of this possibility was said to be inconsistent with the overarching statutory duty to secure the expeditious, convenient and safe movement of vehicular traffic.

[45] In our opinion, there is no merit in this ground of appeal. The respondent's reasons for making the TRO were set out in a statement of reasons. This explained that bus priority measures in the form of bus gates/lanes were being established in the city centre to enhance bus reliability and travel time. The removal of through traffic would establish an improved environment for pedestrians and cyclists. The key reasons for making the TRO were obviously to improve amenity and improve the city centre environment. The appellant's argument that in making the TRO the respondent was pursuing an improper purpose is fatally undermined when the true reasons for making the TRO are understood.

[46] In any event, the respondent had a wide discretion under the statutory scheme to do what it considered to be expedient in the public interest. Section 1(1) of the RTRA provides that the authority may make an order where it appears to it that making the order is expedient for a wide range of purposes concerned with improving and preserving amenity and promoting suitable use of the road by what the authority considers to be suitable and appropriate types of traffic. The use of the term “expedient” emphasises the width of the authority’s discretionary powers. The word implies no more than that the authority’s action should be appropriate in all the circumstances (*R (HSE) v Wolverhampton City Council* [2012] UKSC 34; [2012] 1 WLR 2264, 24 – 26). It is for the authority to consider for itself what it regards as expedient in this context and its decision on the point will only be capable of being interfered with where it can be demonstrated to be irrational (*R (Hurst) v London Northern District Coroner* [2007] UKHL 13; [2007] 2 AC 189, 57, citing *CREEDNZ Inc v Governor General* [1981] 1 NZLR 172, 183).

[47] As part of its decision on 11 October 2024 to make the TRO the respondent agreed that in accepting grant funding for the South College Street project, there was an expectation from the Scottish Ministers that bus priority measures would be installed within the city centre and, should this not be the case, the conditions of the grant award letter explicitly provided for Transport Scotland to recover funding from the respondent. The respondent noted that should the bus prioritisation measures implemented following the South College Street improvements change, there was a risk that Transport Scotland would seek to recover funding they had provided for the project. The Chief Officer of Finance advised that a contingent liability would have to be recorded in the respondent’s financial performance reports and that if the matter was not resolved by 31 March 2025 provision would have to be

made in the draft annual accounts for the repayment of grant funding. This would not be in accordance with the respondent's approved risk appetite statement.

[48] Given the width of the respondent's discretionary power to make an order if it appeared to it expedient so to do, there can be no doubt that it was at least reasonable for the respondent to have regard to the possibility that the grant funding might have to be repaid if the TRO was not made. Where a public authority has to consider whether to exercise a discretionary power to achieve a public objective, it is entitled and usually required to take into account the cost to the public of so doing, at least to the extent of considering whether the cost is proportionate to the aim sought to be achieved. The weight to be attached to cost considerations is a matter on which the authority should reach its own judgement. There is nothing at all surprising or in any sense improper about the respondent taking account of the financial implications for the public purse when considering whether to make the TRO. The respondent was entitled to have regard to the possibility that the grant funding might have to be repaid if the TRO was not made. This was quintessentially a matter for it to address in the exercise of its broad discretionary powers. It follows that the second ground of appeal must fail.

[49] Grounds 3 and 4 were only faintly argued at the summary roll hearing. They can be disposed of briefly. At its meeting on 11 June 2024 the respondent's Net Zero, Environment and Transport Committee gave detailed consideration to and rejected the "Common Sense Compromise" put forward by opponents of the bus priority measures. They considered the points made about decline in footfall. They had regard to the changing nature of city centres. They accepted officers' advice that, subject to two modifications, the Aberdeen City Council (City Centre, Aberdeen) (Traffic Management) (Experimental) Order 2023 should be made permanent. The respondent concluded that the TRO would promote business and the

local economy. It would support delivery of the Aberdeen City Centre Masterplan, contribute to regeneration of the city and maintain sufficient access for business and industry. These were all conclusions that the respondent was entitled to reach based on the wide range of evidence before it. The weight it chose to give to the various considerations was entirely a matter for the respondent.

[50] There is no substance in the point taken by the appellant to the effect that the Chief Officer of Strategic Place Planning actively sought to weight the June 2024 consultation report in favour of the benefits of making the ETRO permanent in order to influence a particular outcome. The point is immaterial. The challenged decision was taken by a committee of the respondent. There is no suggestion that the committee had regard to inaccurate information from bus operators. The appellant did not seek to argue that the statistical data provided by the bus operators was inaccurate to the extent that the respondent was misled into making an erroneous decision.

[51] As to the point that the ETRO was not truly experimental, this too must be rejected. The respondent explained the purpose of the ETRO when it came into force. In summary, its purpose was to trial in practice the effect of the bus priority routes. The report prepared for the June 2024 committee meeting explained that an experimental order was a method of introducing traffic management measures and simultaneously carrying out consultation on them. The respondent had regard to the objections arising from the experiment. As it was entitled to do, it elected not to accept the points made by the objectors.

[52] Ground 5 challenges the adequacy of reasons given by the respondent. The email sent to objectors explained that the decision to make the TRO was principally made at the meeting of the respondent on 11 October 2024. It stated that, after consideration of the objections via reports of 11 June and 2 October 2024 (to which hyperlinks were provided),

the respondent had resolved to make the TRO. The June report set out in detail the various objections and gave consideration to them. Any objector, on reading the email and the linked documents, would have appreciated that the objections had been rejected for the reasons given in the report.

[53] Separately, the respondent issued a statement of reasons to the public explaining why the TRO had been made and its effect. In particular, the statement of reasons explained that the prohibition of the right turn from Union Terrace to Rosemount Viaduct (except for buses, pedal cycles, taxis and authorised vehicles) was to discourage through traffic from routing via Union Street. Having regard to the totality of information made available to the objectors, the reasons for the respondent's decision to make the TRO were adequately explained.

[54] The appellant argued that the respondent had failed to explain the basis on which it decided that it was expedient to include the modification in the TRO in October 2024 but subsequently to decide in December that it was not necessary or expedient to do so. The email sent to objectors explained that the respondent's Urgent Business Committee on 18 December 2024 instructed that a modification be made to the decision taken on 11 October 2024, "to procedurally meet the [respondent's] decision" to consider the removal of the prohibition on right turns from Union Terrace onto Rosemount Viaduct. The email continued as follows:

"Accordingly, the proposal to remove the 'no right turns' prohibition at Union Terrace/Rosemount Viaduct from the permanent order will be subject to a statutory public consultation process in the first quarter of 2025, where any objections received against its removal will be reported to a relevant Council committee for consideration."

[55] We consider that this explanation would have been perfectly intelligible to any informed reader.

[56] For the reasons we have given, there is no merit in any of the grounds of appeal. The appeal is accordingly refused.