

Appendix 6: Legal response to campaign email submitted October 2024

16 October 2024

Dear Resident,

We have received your correspondence and your document which outlines objections to the New Sydney Place and Sydney Road Experimental Traffic Regulation Order and a list of support signatories.

All these observations and objections will now be considered alongside individual survey responses and traffic and air quality data, as part of our decision-making process.

Once we have analysed the feedback and monitoring data, we will prepare and publish reports.

A single member decision will then be taken to decide whether the scheme should be made permanent (or not) under a Traffic Regulation Order.

We expect a decision to be reached in the New Year. As you will be aware, from the 3rd of October 2024 the consultation period ended, but the trial will remain in place until a decision is made. In accordance with statute, a decision must be made within 18 months of the start of the trial.

Meanwhile, we would like to clarify the process around ETRO consultations.

Your objection has referenced Statutory Instrument 1996 No.2489, regulation 8.

This Statutory Instrument is now in legislation as The Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996.

Regulation 8 does not apply to an ETRO by virtue of Regulation 22 which states:

22.— (1) The provisions of regulations 7 (publication of proposals) and 8 (objections) shall not apply to an experimental order.

(<https://www.legislation.gov.uk/ukSI/1996/2489/regulation/22>)

The council's making of an experimental order (i.e. our procedure) can be legally challenged for six weeks from the publication of the ETRO. But outside of that window, it is no longer possible to challenge procedural errors.

However, an ETRO gives people the right to raise objection during the first 6 months the order is in operation, there being no right to object before the order is in operation, under schedule 5 of The Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996:

That within a period of six months—

(a) beginning with the day on which the experimental order came into force, or

(b) if that order is varied by another order or modified pursuant to section 10(2) of the 1984 Act, beginning with the day on which the variation or modification or the latest variation or modification came into force,

any person may object to the making of an order for the purpose of such indefinite continuation.

3. That any such objection must—

(a) be in writing;

(b) state the grounds on which it is made; and

(c) be sent to an address specified for the purpose in the notice of making.

<https://www.legislation.gov.uk/ukxi/1996/2489/schedule/5>

We review consultation feedback regularly, to see if the ETRO trial should be (for example) modified. Otherwise, all feedback, including objections, is considered once the consultation is closed and before any decision is made to make the ETRO permanent or not.

Residents in Lansdown challenged our ETRO process for three trials in the Lower Lansdown area within the statutory six-week period. To be clear, the Council did not withdraw the ETRO due to the scheme's design being un-sound. Rather, the Council considered the points raised in this challenge and then withdrew the ETRO to resolve procedural errors and ensure compliance with all statutory requirements. The intention is to re-issue a new ETRO and continue with the installation of the Lansdown trials.

Procedural errors were brought to our attention of which we were unaware, and which are now being remedied. The same procedural errors existed for notices for the New Sydney Place and Sydney Road trial, but the time for challenging it has lapsed. Had they been challenged, we would have corrected any errors and continued with the trial as it now stands.

As mentioned above, we will consider all feedback and objections as part of our decision-making process. Should a decision be made to make it permanent, with consideration of all objections, it would be made under a new TRO addressing any original procedural errors in the ETRO.

In the New Year, should the single member decision be to make the scheme permanent, the Council will make any permanent order (which gives effect to the ETRO) in accordance with Regulations 6,7,8,16 and 17 of The Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996, as opposed to the abridged procedure set out in Regulation 23 in relation to ETROs.

This means that any person wishing to object to the permanent order can do so in accordance with Regulation 8 and/or bring a Judicial Review claim within six weeks of the Traffic Regulation Order being made under Part IV Schedule 9 Paragraph 35 of the Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996.

It is no longer possible to challenge any LN schemes that were made permanent in 2024 due to the six-week statutory period for challenging the procedure having already expired.

(<https://www.legislation.gov.uk/ukpga/1984/27/schedule/9/part/VI>)

With regards,

Cathryn Brown

Senior Project Manager

The email/letter received from resident/campaign group in October 2024

We have been reviewing the relevant provisions of the Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1995, and in particular Regulation 23.

Regulation 23 deals with orders giving permanent effect to experimental orders.

In particular, Regulation 23 disapplies the provisions regarding Consultation (Regulation 6), Notice of Proposals (Regulation 7) and Objections (Regulation 8) where certain requirements have been complied with in relation to an experimental order.

These requirements are set out in section 3 of Regulation 23 - and include the following:

- (c) that the deposited documents included a statement of the order making authority's reasons for making the experimental order (as required by part 2 of Schedule 2).

As you aware, the Council withdrew its defence to the claim regarding the Lower Lansdown ETRO on the basis that it did not include a valid statement of reasons in the deposited documents. Your LTN team colleagues have accepted that the purported statement of reasons for the New Sydney Place ETRO is in substantially the same format as the Lower Lansdown ETRO, and is therefore also legally deficient. However when challenged, you chose to rely on the 6 week limitation of a legal challenge to the ETRO.

It follows however from the requirements of Regulation 23 that B&NES can only make an order under Regulation 23 if it has included a valid statement of reasons in the deposited documents for New Sydney Place ETRO.

As B&NES did not include a valid statement of reasons in relation to the New Sydney Place ETRO, it cannot comply with Regulation 23, and therefore any order seeking to give effect to the New Sydney Place ETRO must comply with the provisions regarding consultation, notice of proposals and objections as would apply to a normal Traffic Regulation Order. (In other words, the process would need to start again for any permanent order; or B&NES would need to issue another ETRO with a legally compliant statement of reasons).

Of course, if B&NES were to seek to rely on Regulation 23 to make the New Sydney Place ETRO permanent, a challenge to the legality of that order could be brought within six weeks of the purported notice of making, as the challenge would be to the permanent order and not the experimental order.

Given B&NES' acceptance of its deficiencies regarding the statement of reasons for the Lower Lansdown ETRO, we believe that the chances of success of such a challenge to any permanent order for New Sydney Place would be high.

In our view, it follows that at the end of the experimental period for the New Sydney Place ETRO, B&NES is legally required to remove the traffic interventions, or seek to implement another (legally compliant) ETRO, or a full TRO (again, with a legally compliant statement of reasons) with the required full consultation and objection process before the order is made.

I would be interested in your view on this point. Please consider this as a formal objection to the New Sydney Place ETRO being made permanent, on grounds which are distinct from the separate objection I have made on behalf of Bathampton residents.

I am also waiting to see whether B&NES intends to conduct a public enquiry regarding the New Sydney Place ETRO under section 9 of the Regulations.