

Appendix 5

Summary of issues raised in the Pre-Action Protocol Letter and the Council's response.

Issue Raised	Response	Notes
Predetermination and Improper Purpose	Restate purpose in cabinet report to track congestion and improve bus journey times. This expectation is based on evidence from the implementation of sufficiently comparable previous red route schemes and is consistent with national and local policy on improving bus service provision. The long term expected net income is budgeted to be £50k annually, on an ongoing basis following a short-term spike from PCN issue. The use of an ETRO for Western Road is justified in line with the statutory provisions because it enables the Council to test the effectiveness of the proposed red route in a complex and heavily used urban environment, collect evidence on actual impacts, consider feedback from affected stakeholders, and make quick changes where necessary before deciding whether a permanent Traffic Regulation Order should be introduced. The proposals include warning letters and a period of non-enforcement to address potential early spiking of PCN liability during the initial weeks of the scheme.	Experience with the previous schemes shows a short-term spike in PCN income followed by a fall as compliance improves. £50k net surplus income on an ongoing basis is minimal in relation to the overall parking surplus of £23m.
Failure to consult fairly	There is no statutory duty to consult prior to the ETRO. Officers and Cllr Muten have carried out pre-engagement on the design of the scheme as well as the Your Voice consultation. The statutory consultation of the ETRO starts when the scheme is in place for a period of 18 months. The earlier informal consultation complied with legal requirements.	The consultation shows that a small majority of respondents felt that the proposals would improve safety and bus reliability.
Failure to discharge the Section 122 balancing duty	The Council considers that the section 122 balancing exercise strongly supports implementation of the Western Road ETRO. The primary aim is to improve bus journeys, alongside associated benefits including reduced congestion, improved road safety and more reliable public transport services. The proposed areas for stopping and loading have been designed in conjunction with the Council's Road Safety department and many visits with them have occurred during the design phase. It is a proper conclusion from previous experience and the information available to the Council that	Experience with previous red routes has shown a reduction in congestion and collisions, improved bus reliability and a small increase in footfall.

	introducing a scheme can be expected to increase materially and over time levels of footfall and improve materially and over time air quality as a result of reductions in congestion. The Council is content that issues in relation to access can be addressed by appropriate relaxations of the red route (in relation, for example, to disabled users) and the provision of disabled parking bays and loading bays. In short, the section 122 balance is amply met in this case. The Council considers that it favours the implementation of the ETRO so that a full evaluation of its impacts can take place	
Failure to discharge the public sector equality duty	The cabinet report explains that the EIA is a live document which will continue to be updated, and that the Council has had proper regard to its duties under section 149 of the Equality Act 2010. It states that improving public service provision, while making appropriate allowances and adjustments for disabled people and others who need to access the area, can positively advance equality. The Council highlights engagement and feedback from disabled action groups, which informed the provision of additional disabled parking bays along the route to ensure access to services within a 50-metre radius and will be monitored during the ETRO period.	There are exemptions for passengers to be dropped off on a red route.
Breach of legitimate expectation	The ETRO statutory scheme provides for a formal statutory consultation. That process has not yet started. there will be a further opportunity to be heard during the ETRO operation, should the scheme be made, with the benefit of stakeholders, as well as the Council, being able to fully evaluate the scheme in operation.	The ETRO provides an opportunity to rapidly adjust bays e.g. to improve access as required.
Misclassification as a non-key decision	The Cabinet Member Decision was classed as a non-key decision as it was to approve the plan to start the scheme whereas the key decision to design and implement the scheme was taken in March 2025.	By going back to Cabinet as key decision and including the consultation and other information this legal point is fully met.
Apparent bias	This is being addressed by the cabinet report being an officer report presented by the Corporate Director, rather than lead cabinet member report, and a fresh decision being taken by cabinet as a whole.	