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Case No: CO/532/2018

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/07/2018

Before:

THE RIGHT HONOURABLE LORD JUSTICE LINDBLOM AND THE
HONOURABLE MR JUSTICE LEWIS

Between:

The Queen (on the application of Kohler) Claimant

- and -

Mayor's Office for Policing and Crime Defendant

- and -

The Commissioner of Police of the Metropolis Interested Party

Mr David Wolfe Q.C. (instructed by Leigh Day) for the Claimant
Mr Jonathan Swift Q.C and Ms Heather Emmerson (instructed by Transport for London
and Metropolitan Police Service) for the Defendant and the Interested Party

Hearing dates: 6 and 7 June 2018

Approved Judgment

Lord Justice Lindblom and Mr Justice Lewis:

INTRODUCTION

1. This is the judgment of the court to which both members have contributed.
2. This is a claim for judicial review of a decision of the defendant, the Mayor's Office for Policing and Crime ("MOPAC"), dated 31 October 2017, to close 37 police stations in London. The decision would include closing a police station at Wimbledon in the London Borough of Merton and transferring a front counter, open for 24 hours each day, where members of the public can report crimes or otherwise contact the police, to Mitcham, also in Merton.
3. The claimant, Professor Paul Kohler, challenges the consultation and decision-making processes. Initially, permission was granted on four grounds by Ouseley J. The claimant relied on three additional grounds at the hearing. These were set out in the claimant's reply dated 15 May 2018. We grant permission to argue those three additional grounds. In summary, the claimant asserts that the defendant applied unpublished criteria in making the decision, that those criteria were applied inconsistently, that inadequate information had been provided during the consultation process and that the defendant had not conscientiously considered the responses made during that process.

THE BACKGROUND

MOPAC

4. MOPAC is a body created by section 3(1) of the Police Reform and Social Responsibility Act 2011 ("the 2011 Act") to oversee policing in the metropolitan police district. By section 3(3) of the 2011 Act, the Mayor is the person responsible for MOPAC's functions. Section 19(1) of the 2011 Act allows MOPAC to appoint a person as the Deputy Mayor for Policing and Crime and arrange for that person to exercise any function of MOPAC. Section 3 of the 2011 Act provides that MOPAC is to secure the maintenance of the Metropolitan Police Force and its efficiency and effectiveness. Section 6 imposes duties to issue a police and crime plan, that is a plan which sets out, amongst other things, objectives and the financial and other resources to be provided to the chief officer of police. A police and crime plan was made for the 2013 to 2016 period and a further plan was published on 20 March 2017 for the period from 2017.

The Consultation Exercise

5. In July 2017, MOPAC published a draft strategy document entitled "Public Access and Engagement Strategy" for consultation ("the consultation document"). The initial version of the consultation document was published on the MOPAC's web page on 14 July 2017 and on the Metropolitan Police website on 25 July 2017. The consultation period was to run until 5.30 p.m. on 6 October 2017. The consultation document asked 17 questions. It was replaced by an amended, second version on 8 August 2017. The

text of the consultation document remained the same but the wording of the questions was different. There is evidence to suggest that some people continued to respond using the first version of the questions even after the second version was published. The defendant says that it assessed all responses to whichever version of the questions was used.

6. The “Foreword” to the consultation document explained, among other things, that the Metropolitan Police Service had already saved £600 million from its budget and now needed to make another £400 million of savings over the next four years, of which £200 million had been identified, but a further £200 million still needed to be found. The “Introduction” stated that the consultation document set out the current means of public access to, and involvement with, the police. The proposals were intended to bring together proposed new ways of reporting crime on-line, dedicated ward officers in every community equipped to work and engage with the public whilst they were on the move and also at notified times and places, and with one front counter open 24 hours a day, seven days a week in every borough. The “Introduction” noted that central to the proposed changes was the role of the dedicated ward officers. The number of such officers was being increased, and “new technology was to make them more efficient and effective as well as – crucially – more accessible”.
7. The consultation document included a section on “Contacting the Police”. This referred to plans to reduce the size of the Metropolitan Police estate and sell surplus property in order to invest in front line policing. The document noted that it was intended to provide sufficient places for officers to start their shift before being deployed on patrol. Later in the consultation document, it noted that the core of the proposed policing plans (referred to as the “new digital offer”) was the ability of the public to access policing on-line.
8. The consultation document then set out the various questions which the public were invited to comment upon. In the first published version of the Consultation Document, there were 17 questions. The relevant questions for present purposes were as follows:
 - “4. Do you agree that it is right that the Metropolitan Police Service prioritise police officers over poorly-used front counters?”
 5. In the five cases set out in this document, do you agree that it is right to swap which front counter will remain open in order to maximise savings and receipts?
 6. Are there any front counters which should be retained, on the basis of demand, where the impact on budgets, savings and receipts can be limited?
 7. Should we consider low-cost alternatives to front counters for communities over 45 minutes from their nearest front counter? What options should we consider?”
9. The relevant questions in the second version were phrased as follows:
 - “5. To what extent do you agree that flexible opportunities to contact police officers (e.g. Community Contact Sessions) are a suitable alternative to accessing the police via a front counter?”

6. Please include any further comments – about flexible opportunities to contact police officers as an alternative to accessing the police via a front counter.
 7. It is proposed some front counter locations are swapped across London, in order to maximise savings and capital receipts. To what extent do you agree that the following changes should take place?
 8. After reading the draft strategy document, should we consider low-cost alternatives to front counters for communities over 45 minutes from their nearest front counter? What options should we consider?”
10. The structure of the consultation document is incoherent and unhelpful. Text relevant to particular questions is not included next to the question being asked but appears two or more pages earlier, often sandwiched between different questions. By way of example, the text relevant to questions 6 and 7 in the second version, which are the key questions, appears four pages before the questions themselves and immediately follows question 3, which deals with a different issue – namely replacing contact points with community contact sessions. That text itself begins with a discussion on safer schools officers, which is relevant neither to question 3 nor to the remainder of the text in this section. There then follows the discussion of front counters in police stations.
11. The discussion notes that front counters remain an important part of the way in which some members of the public want to contact the police, but their use had declined over recent years, so that crimes reported at front counters had declined by about three quarters over 10 years. Under the heading “Our Future Plans”, the consultation document said this:

“In order to ensure that we continue to provide front counters across London for those people who chose this method of communication with officers, or for those who need to use a front counter – for example to verify their identity, make payments or if they have a legal obligation to attend a front counter – while at the same time prioritise spending scarce resources on front line officers, we will retain one 24-hour police station in each borough. This follows similar decisions taken by many of London’s local authorities to rationalise services into one single location for members of the public to visit.

The front counters being retained are, subject to a few exceptions set out below, generally London’s busiest front counters, with three quarters of all of the crime reports at front counters taking place at 24/7 stations. In fact, no front counter with more than four daily crime reports is being closed. The large majority of those which will shut have fewer than two reports every day.

By closing the front counters at the remaining police stations we can exit the majority of these buildings, raising around £170 million of capital to spend on improving the technology available to officers on the front line and enhancing the remaining estate. We will also save around £10 million on front counter running costs alone, the equivalent of over 170 police officers, allowing us to deliver the Government’s funding cuts without cutting deeper into the front line. Every pound saved by closing a poorly used front counter is a pound of savings that we do not have to find by reducing officers.”

12. There then follows question 4, which deals with suggestions for the way in which community contact sessions could be arranged – again, nothing to do with front counters at police stations. The accompanying text to that question says this:

“In general, the 24/7 front counter being retained in each borough is the current 24/7 front counter. However, there are five places where we propose to swap the opening hours so that the retained 24/7 counter will move to a site which currently only offers daytime access, and the current 24/7 counter will close.

This is generally because the current 24/7 counter is in a building which we would like to dispose of in order to maximise savings and raise extra capital to reinvest in policing. We believe that that these changes will also enable the police to be more operationally effective, while still allowing access to residents. These changes are set out below.”

13. The five police stations where the existing “24/7” front counter was to be moved to another police station, and the police station with the existing “24/7” counter closed, are then listed. These include police stations in the London Boroughs of Barking and Dagenham, Bexley, Hillingdon, and Kensington and Chelsea. The fifth was in Merton, where it was proposed that the existing “24/7” front counter at Wimbledon police station be transferred to Mitcham, and that Wimbledon police station would then be sold.

14. The consultation document then asks question 5 (“to what extent do you agree that flexible opportunities to contact police officers such as community contact sessions are a suitable alternative to accessing the police via a front counter?”). It then says the following in the accompanying text:

“There may be circumstances where demand at a front counter which we are currently expecting to close is sufficiently high, and where it is possible to retain the counter while limiting impact on our expected savings and receipts. We will consider any evidence that local people can provide to us in this regard.”

15. The consultation document then asks questions 6 and 7. The text accompanying question 7 has nothing to do with front counter locations. Although the question asks if people agree with the “following changes”, the relevant changes do not follow in the text. They appear two pages earlier in the text under a different question.

16. There is no evidence that anyone was misled by the structure of the document, and no ground of challenge is based upon it. But the structure of the consultation document is, to say the least, unfortunate, and no explanation was offered in the evidence, or suggested in submissions, as to why it was composed in the way that it was.

Public meetings

17. Public meetings were held at various locations. One was held on 26 September 2017 in Merton. The deputy mayor and others were present at this meeting. The deputy mayor was provided with briefing material in advance of the meeting. The briefing material stated a reason for the proposal to switch the front counter from Wimbledon police

station to Mitcham as being to reduce the running costs. That is correct but the briefing material omitted to mention that the aim was also to sell the police station to raise capital. A reason given in the briefing material for closing Wimbledon police station was that the existing emergency response control team was based in Mitcham police station. This was wrong. The emergency rapid response team was based at Wimbledon police station. The briefing material was an internal document and did not influence or mislead anyone wishing to respond to the consultation. The omissions and errors in it did not mislead the deputy mayor, who took the decision as the matters were known to her when she took that decision (and the correct position was referred to at the public meeting). They are, however, symptomatic of the unsatisfactory way in which the decision-making process was conducted.

18. At the meeting itself, 70 members of the public including the claimant attended. Questions were asked about the capital value and running costs of Wimbledon and Mitcham police stations. Those present were told that the saving in terms of running costs for Wimbledon police station would be about £455,000 per annum and that there would be a potential capital receipt on sale of £6.7 million. The running costs for Mitcham police station were approximately £150,000 per annum. The likely capital value of the police station was smaller than Wimbledon's and might be in the region of £4 million. A number of points were made and concerns expressed by those present, including the needs of the population in Wimbledon given its local economy and, in particular, the annual tennis championships, the building of a new football stadium, and the symbolic importance of Wimbledon police station to the community.

Written responses

19. A large number of responses were made to the consultation document. These included a response written by the claimant on behalf of the Merton Liberal Democrats.
20. The claimant is a senior lecturer in law. He lives in Wimbledon. In August 2014, he was the victim of a serious assault by four men who forced their way into his home, which left him with extensive injuries. He was saved from more serious injury by the bravery of two police officers from his local police station – at Wimbledon – which is about 200 metres from his home. The officers rescued him from an assault which he believes could have resulted in his death. They intervened just as an assailant was about to bring a heavy wooden door down on his head. That experience added to the claimant's concern about the role of local police stations across London. He explains in his witness statement that his immediate concerns focussed on Wimbledon police station. But as someone who was a born and bred Londoner, and the owner of a bar in central London, he knew how important local police were to life in London. He therefore took part in the consultation process and drafted a consultation response on behalf of the local Liberal Democrat party in Merton.
21. The claimant's consultation response is headed "Merton Liberal Democrat submission regarding the proposed closure of Wimbledon Police Station". In paragraph 1, it states that the authors were writing to give their views on the specific proposal to close Wimbledon police station and that the current proposal to close that police station to help address the financial shortfall faced by the Metropolitan Police Service was wrong and "underestimates our police station's practical and symbolic role at the heart of the community".

22. In paragraph 2, the response says:

“Whilst we support the general thrust of the strategy document, to improve the [Metropolitan Police Service’s] on line provision in respect of both the reporting and handling of crime, we strongly believe it is premature to make irreversible decisions with regard to the fabric of the [Metropolitan Police Service] estate prior to establishing whether, and to what extent, the expected efficiencies will be realised. Although the provision of tablets and integrated software are long overdue improvement, there is a danger of overestimating the amount of additional time this will free up to be spent on patrol.... In short whilst we agree that the provision of new technology is likely to improve efficiencies, it is doubtful whether it will have as dramatic an effect as the consultation document seeks to imply, in increasing the amount of time officers will spend in the community.”

23. The response makes a number of specific points about the proposed change, including a comparison of the location of Mitcham and Wimbledon police stations. Paragraph 6 of the response criticises the consultation document for proposing a solution based “solely on financial criteria with no detailed analysis of operational need and buttressed by untested assertions regarding the efficiencies to be gained from the new technology”. Paragraph 7 of the response says:

“7. In the light of these complexities, and doubts over the unproven assumption that a single police station is appropriate for Merton, any decision to close Wimbledon Police Station should be postponed in favour of an evidence-based analysis of the current and future policing needs throughout the borough. The Mayor’s Office for Policing & Crime should then come forward with a range of proposals including: the redevelopment (and partial sale) of the Wimbledon site to include the possibility of a smaller police station being retained on Queen’s Road; a similar analysis regarding Mitcham; relocation of one, or possibly both stations, to a cheaper location, for example around the Plough Lane or Dear Park Business/Industrial Parks; the introduction of DWO hubs/shops; and the development of some form of Wimbledon based super hub with a (possibly 24/7) front counter, as envisaged by the Borough Commander when addressing the Council’s Overview & Scrutiny Committee Commission and the public meeting.”

24. We were shown a number of other responses to the consultation. Some, such as that of the Merton Park Ward Residents’ Association, were specific to Merton. They suggested that there were other alternatives such as the sale or lease of land around Wimbledon police station but retaining the building itself. Similarly, it was suggested that the front of the building could be retained for police use or leasing the whole building to provide an income. We were shown other responses such as that from the Royal Borough of Kensington and Chelsea Council and responses relevant to London as a whole such as those from the Liberal Democrat and the Green Party members on the London Assembly.

The decision-making process

25. The deputy mayor had two meetings to discuss the decisions and the responses to the consultation exercise, one held on 12 and one on 18 October 2017. One lasted for about four hours, the other for two hours. Before the meetings, the deputy mayor was provided with briefing material containing a summary of the consultation responses. That summarises the Merton Liberal Democrats' response in this way:

“Merton Liberal Democrats support the general thrust of the document but opposed the closure of Wimbledon. They feel that the proposal underestimates the police station's practical and symbolic role in the heart of the community. They comment on travel times and lack of accessibility of Mitcham and note the demands of the Borough”.

26. To say the least, that does not fully reflect the thrust of the response. It omits the argument – put forward in paragraphs two, six and seven of the eight paragraph document – that, for the reasons given, it was premature to take a decision to close Wimbledon police station until a proper assessment had been made of the impact of the introduction of new technology. The summary does note, in the section on public responses, that there had been several suggestions to sell both buildings and buy one that was smaller and more centrally located, but other options are not referred to.
27. The rationale given for the switch of the front counter again refers to revenue savings but omits the mention of capital savings. It repeats the error that the emergency response team was based at Mitcham police station; it is based at Wimbledon.
28. A note of the decisions taken at the meeting was also prepared. Under the heading “Borough Analysis” it states:

“The criteria for decision making is as follows:

1. Has any new evidence been presented about demand which we did not originally consider which might lead us to change our plans, subject to limiting the impact on receipts and savings?
 2. Are there any specific equalities issues we didn't consider or which we need to consider further?
 3. Have we had any evidence that shows the proposal is not operationally viable?
 4. Have we had any evidence which means our financial assumptions are no longer correct?
 5. Is there any new or significant evidence about the impact of a loss of front counter on local confidence in policing?
 6. Have we been presented with new information about travel times which might affect our decision?
 7. Have we had another proposal for the borough presented to us that would work operationally and allow us deliver savings which we should consider?”
29. That document notes that, for Barking and Dagenham, a change was proposed to the original proposal. It had been decided to retain Dagenham police station and re-consult on the proposal to transfer the front counter to Barking Learning Centre. The reason for the change was said to be community confidence and a proposal from the borough

council which was more financially viable in the long term. Another change was made for Kensington and Chelsea. It was decided to maintain a temporary front counter at a police station near Grenfell Tower, the reason being to maintain public confidence following the fire there.

30. For Merton, the decision was to approve the proposed change, transfer the existing “24/7” front counter to Mitcham and close Wimbledon police station. The note of the decision says this:

“Key points: high level of local opposition – largely around the symbolic presence of police station in Wimbledon, significantly better operationally than Mitcham.

Other points:

- Concerns raised around town centre and location – i.e. tennis, transport hub, terrorism – need to be clear that tennis and CT are policed separately.
- Need to be clear generally on financial details for retaining a front counter where a building is not being disposed of

Conclusion of discussion: no change

ACTION – Ensure strategy includes detail on funding for CT and tennis.

ACTION – Met to provide financials on retaining a counter where a building is not being disposed of”.

31. We have before us in evidence the witness statements of three of those who attended the meetings, describing what was discussed. The deputy mayor, Ms Sophie Linden, who took the decision, describes the meeting in her witness statement dated 16 April 2018. She says that one of her staff was present with copies of the consultation responses from certain groups, including the one from the Merton Liberal Democrats. Ms Linden says that the feedback, including the response of the Liberal Democrats, was discussed and the meeting considered a proposal to open a central base in the borough, which was dismissed on the basis of cost.
32. We were invited to infer that the deputy mayor had herself read the Merton Liberal Democrats’ response. But, in our judgment, the natural inference from what she says in her witness statement is that she did not read it. We gave her the opportunity to put in a further witness statement clarifying the position. However, on instructions, Mr Jonathan Swift Q.C. for the defendant, told the court that the deputy mayor could not remember whether she had, or had not, read the response. In the circumstances, therefore, we proceed on the basis that there is no evidence before the court that the deputy mayor herself read the response from the Merton Liberal Democrats. Furthermore, it also appears that the deputy mayor would not have known from the written summary of responses to which we have referred (at paragraph 22 above) that the response proposed deferring a decision on the closure of Wimbledon police station to enable the impact of the introduction of new technology to be assessed. There is a reference to a discussion on the feedback but no specific reference to this point being discussed.

33. Mr Martin Tunstall is employed as the Head of the Private Office of MOPAC. In his first witness statement, dated 13 April 2018, he refers to copies of consultation responses, including that from the Merton Liberal Democrats and others, being available and referred to at the meeting. He says this would mean that issues not discussed in the summary document would have been discussed. He does not, however, specifically state that the point made by the Merton Liberal Democrats about deferring the decision on closure of Wimbledon police station pending evaluation of the impact of the new technology was discussed. He does say that the discussion about Merton included a consideration of two of the alternative proposals put forward, namely the suggestion that the Wimbledon site be leased and a smaller part leased back to enable the provision of a front-counter and the proposal that Wimbledon and Mitcham police stations be relocated to a central site.
34. Mr Matthew Punshon also provided evidence about the meeting. He is employed as a consultant by the Metropolitan Police Service. In his first witness statement, dated 13 April 2018, he says that “the various alternatives were considered in relation to Merton both in terms of the local impact, the feedback, the various conceptual ideas and the financial impacts” and that he “also [recalls] that political responses in relation to Merton were discussed”. In correspondence between solicitors before the hearing specifically about that part of the evidence, the defendant’s solicitors say that the financial details of the proposals for Merton were explained to the deputy mayor at the meeting and no further documents were provided. The letter continues by saying that at the meeting, three options were discussed, namely (1) retaining Wimbledon police station and selling Mitcham police station, (2) selling both buildings and finding an alternative site, and (3) keeping a front counter at Wimbledon police station as part of a newly developed site. In his witness statement dated 7 June 2018, Mr Punshon confirms that those three options were discussed at the meeting. Again, however, he does not specifically state that the point about deferring closure pending an evaluation of the introduction of new technology was discussed. There is a reference to a general discussion about the feedback and specific discussion about three particular options, none of which included deferring closure pending the evaluation of the impact of the new technology.
35. In our judgment, having considered the evidence carefully, we find that the position is this. There is no evidence before the court that the deputy mayor herself read the Merton Liberal Democrats’ response, and we cannot infer that she did. The summary of the consultation response did not fully reflect the response, in that it did not refer to one of its main arguments, namely that the decision on the possible closure of Wimbledon police station be deferred pending evaluation of the new technology. There was specific discussion of three specific alternative proposals but there is no evidence that the option of deferral was specifically considered. We do not consider that the general references to discussion of the feedback is sufficient in the circumstances to enable us to infer that a discussion of the merits of the suggestion that the decision on the closure of Wimbledon police station be deferred. Indeed, the evidence that other options were specifically considered, and their financial implications addressed, reinforces the view that the option of deferral was not specifically discussed.
36. For completeness, we note that the decision was embodied in the re-publication of the public access strategy in final form in November 2017. That involved publishing a

document which had the same text as the original draft used as the consultation document, but with the questions removed and specific paragraphs included to reflect the decision. For Merton, the paragraphs that were included says:

“Consultation feedback: Merton

We received feedback through consultation which set out concerns of some local residents about the proposal to close Wimbledon Police Station and move the 24/7 front counter to Mitcham Police Station.

While opposition to this proposal was significant, there was no specific proposal set out by respondents which would allow us to revise our plans whilst also meeting the requirements to make significant savings across the MPS estate, and ensure capital receipts are as high as possible.

Similarly, there was no specific operational issue raised which was considered significant by the MPS operational leaders. In fact, the view of operational leaders is that moving the facilities will have no operational impact on policing in the borough.”

Overall assessment

37. The consultation process in this case was not conducted well. Both the content and the structure of the consultation document were unsatisfactory. It was markedly less helpful than such documents should be if they are to achieve their purpose in informing a decision on a matter of great significance for a large number of people – here the entire population of the metropolis. The internal documents prepared for meetings had omissions and contained errors. The summary of the consultation responses was not adequate. That is all the more surprising given the importance of the issue –policing and public safety in London. The issue for this court, however, is whether the consultation and decision-making process was legally flawed, so that the decision to close one or all 37 police stations was unlawful.

THE ISSUES

38. Against that background, and in the light of the grounds of claim, the additional grounds, and the written and oral submissions, the issues in the case are these:
- (1) Did the defendant apply unpublished criteria in making its decision and if so did the defendant apply them inconsistently (grounds 1 and 2 in the claim form and ground 4 of the additional grounds)?
 - (2) Did the defendant provide adequate information to enable those being consulted to respond (ground 3 in the claim form and grounds 5 and 6 in the additional grounds)?
 - (3) Did the defendant conscientiously consider the consultation responses (ground 4 in the claim form)?

THE FIRST ISSUE – THE USE OF CRITERIA

Submissions

39. Mr David Wolfe Q.C., on behalf of the claimant, contended that the defendant applied additional, or previously unpublished criteria, in making its decision on closures. In particular, he submitted that the defendant rejected a consultation response unless it put forward specific proposals which would meet a requirement to maximise capital receipts. Unless that was done, he submitted, the response would be rejected and proposed closure approved. Yet those criteria or requirements were not published in advance.
40. Mr Wolfe also submitted that the decision was based on unpublished criteria. He referred, amongst other things, to the use of the word “criteria” in the document prepared for the October 2017 meetings. He drew attention to other documents or evidence using that word or words such as “requirement”. He referred, by way of example, to the published public access strategy, which explained, in respect of Merton, that whilst the opposition to the proposal was significant, “there was no specific proposal set out by respondents which would allow us to revise our plans whilst also meeting the requirements to make significant savings ... and to ensure capital receipts are as high as possible”.
41. Mr Wolfe submitted that the consultation exercise was unlawful, relying, in particular, on the decision of Silber J. in *R (on the application of Capenhurst) v Leicester City Council* [2014] EWHC 2124 (Admin) where he said this:
- “46. It is important that any consultee should be aware of the basis on which a proposal put forward for the basis of consultation has been considered and will thereafter be considered by the decision-maker as otherwise the consultee would be unable to give, in Lord Woolf’s words in [*R. v North and East Devon Health Authority, ex p. Coughlan* [2001] Q.B. 213], either “intelligent consideration” to the proposals or to make an “intelligent response” to it. This requirement means that the person consulted was entitled to be informed or had to be made aware of what criterion would be adopted by the decision-maker and what factors would be considered decisive or of substantial importance by the decision-maker in making his decision at the end of the consultation process.
47. I do not think that a consultee would not have been properly consulted if he ought reasonably to have known the criterion, which the decision-maker would adopt or the factors, which would be considered decisive by the decision-maker but that the only reason why the consultee did not know these matters was because, for example, he had turned a blind eye to something of which he ought reasonably to have been aware. Thus, consultation will only be regarded as unfair if the consultee either did not know the criterion to be adopted by the decision-maker or ought not reasonably to have known of this criterion. Of course, what a consultee ought reasonably to have known about the factors, which will be considered decisive by the decision-maker depends on all the relevant circumstances, which may well be different in each case.”

42. He also submitted that the criteria were in any event inconsistently applied as exceptions were made which did not involve the maximisation of capital receipts. That, he submitted, was an unlawful approach.
43. Mr Swift, for the defendant and interested party, submitted first, that it was clear that the proposals were formulated against a background of a need to make significant savings, as appeared from the consultation document itself. Secondly, the defendant did not impose a requirement that any suggested alternative proposal would have to maximise capital receipts.

Discussion

44. On this issue we accept the submissions of Mr Swift.
45. First, in our view, the documentation was not using the word “criteria” in the sense of pre-conditions which had to be met before a response, or a change to the proposals, would be considered. This is clear, for example, from the wording used in the documentation prepared for the October 2017 meetings. The word “criteria” was used in the context of describing how the defendant should approach analysing the consultation responses, and not in the sense of imposing additional conditions to be met, or tests to be satisfied, when considering the responses. This emerges from the wording of the document. The “criteria” were expressed in terms of considering whether “any new evidence”, or “any evidence” had been presented, for example about demand or whether the proposals were operationally viable, or about travel times. The same is true of question 7. The document was inviting the decision-maker to consider whether there had been another proposal that would work operationally and deliver savings. That could, potentially, be a very significant factor in assessing a consultation response. It is not the same, however, as making it a requirement, or condition, that a consultation response must put forward a specific proposal which would result in a maximisation of capital receipts before any change to the proposal could be considered.
46. Secondly, the considerations referred to under the phrase “criteria for decision-making” relate to matters that were either included within the consultation document or would be obvious. In general terms, it was clear that underlying the proposals was the need to bring about revenue savings and that changes in policing methods were, in part at least, to be financed from capital receipts arising from the sale of buildings. This was made clear in the “Foreword” to the consultation document, and in the text describing the future plans for the closure of front counters. It was explained that the proposals would result in savings of around £10 million in revenue costs and would generate capital receipts of around £170 million to be spent on improving the technology available to the police and enhancing the remaining buildings. Question 7 itself said that it was proposed to swap some front counter locations in order to maximise savings and capital receipts, and asked to what extent those responding agreed that those changes should take place. The whole context in which the consultation took place was a desire to effect savings in the revenue budget and to raise capital receipts. This was not a new, or unpublished, criterion applied for the first time at the decision-making stage.
47. As for the specific points listed under the criteria, the first point, by way of example, referred to whether there was any evidence about demand that would enable a change in plans, subject to limiting the impact on receipts and savings. That issue had been

specifically canvassed in the consultation document. The second point asked if there were specific equalities issues raised which had not been considered in the equalities impact assessment. This was not imposing a new criterion; it was raising the question of whether other such issues had arisen in the course of the consultation process. Questions 3 to 6 were addressed to whether the consultation responses revealed new material about the operational viability of the proposals, the financial assumptions, the impact of loss of public confidence, or travel times. Question 7 was simply asking if other proposals had been put forward that would work operationally and still allow for savings. That is not a requirement or precondition. It is a recognition that if people had done that in their responses to the consultation document, the proposal would need to be considered. It was not a new or additional requirement that a specific proposal must have been produced before any change would be considered. When the questions are read as a whole, it is clear that matters other than alternative proposals might result in a change in the proposals.

48. The criteria were, in truth, setting out a structured way of analysing or approaching the consultation responses to assess if they gave rise to any doubt about, or need to consider further, the proposals or particular aspects of them. Put another way, the considerations listed under the criteria were a tool for assessing or analysing the responses to the consultation exercise; they were not conditions which had to be satisfied in order to bring about a change to the proposals.
49. If the consultation document is read in that way, there was no application of unpublished criteria and no failure to inform those being consulted of what criteria were to be adopted. The consultation exercise was clearly delineated. The defendant was seeking to close police stations to make revenue savings and obtain capital receipts to invest in technology and other buildings. That was to be done in part by switching the “24/7” front counters in five police stations to other police stations to maximise capital receipts. The police stations in which the front counters had previously been located would be sold. This was clear from the consultation document. People were being invited to put in submissions about those matters either by using the on-line questionnaire or by e-mail or in writing.
50. There was no illegality arising out of any inconsistent application of criteria. The context was the proposal to bring about closures to effect savings and maximise receipts. As for front counter swaps, in two cases changes were made to the proposals for switching the front counter to another police station. In one case, this was done having regard to the fire at Grenfell Tower and the need to ensure public confidence in the wake of that tragedy. In another, in the London Borough of Barking and Dagenham, the local authority had produced a scheme which might enable the existing “24/7” counter to be retained in the Dagenham police station and that police station itself to be retained. Those changes would result in a reduction in the overall savings and the anticipated amount of capital receipts. The changes, however, arose out of the material put forward during the consultation, and the reasons for the changes were explained. They did not arise out of any inconsistency in the application of criteria. Rather, there was a set of proposals, put forward in a particular context, and with particular underlying aims, and in some cases the proposals were amended in the light of what had been said during the consultation exercise. The fact that the defendant was prepared to modify its proposals in a number of cases, for various reasons, where it thought there was a good reason to do so, reflects the fact that there was no requirement that those

responding to the consultation had to make a specific proposal which would satisfy a requirement that there be the greatest possible savings or capital receipts. On this issue, therefore, the claim fails.

THE SECOND ISSUE – THE ADEQUACY OF THE INFORMATION PROVIDED

Submissions

51. Mr Wolfe submitted that insufficient information was given to enable those consulted to respond meaningfully. This was said to be particularly so given that financial issues – including the maximisation of capital receipts – were very important, and especially so if it were a requirement that had to be met before any of the proposals would be altered. Mr Wolfe submitted that insufficient financial information had been provided about the basis upon which the proposals had been formulated, and what capital receipts and revenue savings were relied upon. Without that information, he argued, people could not respond in a meaningful way to the consultation document. As additional unpublished criteria were being used in the decision-making process, sufficient information should have been, but was not, provided about those criteria to enable those responding to do so in a meaningful way. Mr Wolfe also submitted that the defendant unfairly took into account financial information when those consulted had had no opportunity to comment upon it.
52. Mr Swift submitted that the adequacy of the information provided had to be considered in the context of the fact that there was no requirement or expectation that those who responded would need to put forward specific alternative proposals which would maximise capital receipts. He submitted that the information that was provided was sufficient to enable those who wished to provide an informed response to the consultation and to suggest alternatives. And there was no obligation on the defendant to provide the information used to assess the consultation responses.

Discussion

53. Again we accept the submissions of Mr Swift.
54. First, as we have said, there were no additional requirements applied in the way suggested by Mr Wolfe which would have compelled the provision of information as part of the consultation exercise.
55. Secondly, as to the submission that financial information about the basis of the proposals had to be provided to enable those consulted to respond, the position is this. The information that needs to be provided to enable people to respond to consultation in a meaningful fashion in a consultation depends on the scope of the consultation itself. This was not a statutory consultation, for which Parliament had prescribed the matters that had to be the subject of the consultation. It was a consultation undertaken voluntarily by the defendant. The defendant was able to define the matters upon which it wished to obtain the views of the public and others. Those matters can be discerned, relatively easily, from the questions asked and the consultation document read as a whole. Having chosen to consult on those matters, the defendant had to do so fairly. For present purposes, the basic requirements of a consultation, in general terms, are

sufficiently summarised in the judgment of Lord Woolf M.R. in *Coughlan* (at paragraph 108 and 112):

“108 It is common ground that, whether or not consultation of interested parties and the public is a legal requirement, if it is embarked upon it must be carried out properly. To be proper, consultation must be undertaken at a time when proposals are still at a formative stage; it must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response; adequate time must be given for this purpose; and the product of consultation must be conscientiously taken into account when the ultimate decision is taken: *R v Brent London Borough Council, Ex p Gunning (1985) 84 LGR 168*.

...

112 ... It has to be remembered that consultation is not litigation: the consulting authority is not required to publicise every submission it receives or (absent some statutory obligation) to disclose all its advice. Its obligation is to let those who have a potential interest in the subject matter know in clear terms what the proposal is and exactly why it is under positive consideration, telling them enough (which may be a good deal) to enable them to make an intelligent response. The obligation, although it may be quite onerous, goes no further than this.”

56. Here, the background to the proposal was the need to secure revenue savings and to obtain capital receipts to invest in technology and in other buildings. The total figures involved were set out in the consultation document. As for the front counters, the reduction to one in every borough would enable police stations to be sold. That was expected to result in capital receipts of £170 million and a saving of £10 million in running costs. The consultation document explained in general terms why it was proposed to transfer five existing “24/7” front counters to five other police stations. This was because those existing five front counters were in buildings which the defendant wanted to be able to sell. The consultation document explained where those five front counters would be relocated.
57. Against that background, the public were asked to what extent they agreed that flexible opportunities to contact police officers were a suitable alternative to accessing the police, and whether they had any further comments about flexible opportunities. They were specifically asked to what extent they agreed with the proposals to switch five “24/7” front counters to other police stations. Those responding did have sufficient information to enable them to understand what was being proposed and why, and to respond explaining why they did, or did not, agree with the proposals. Given what they were being asked, and the information they were given, they did not need to be provided with the specific information on the financial assumptions underlying the proposals.
58. The public were told at the meeting on 26 September 2017 what the likely savings in terms of revenue and the likely capital receipts would be, in respect of the police stations both at Wimbledon and at Mitcham. It is true that that specific information was not included in the consultation documentation – and, as we have said, that was not

required. But it was provided to the claimant, and this would in any event have been relevant to whether any remedy should be granted.

59. As to the financial and other information considered by the deputy mayor at the meeting, she was, in our view, entitled to use the information available to her to assess the viability and financial impact of alternatives suggested during the consultation exercise. There is no general requirement on a public body engaged in a consultation exercise to provide its internal workings, or information used to assess the responses to the consultation, as part of the process of consultation.

THE THIRD ISSUE – THE CONSIDERATION OF RESPONSES

Submissions

60. Mr Wolfe submitted that the defendant did not conscientiously consider the responses to the consultation document before reaching its decision. The claim form asserts that the deputy mayor was told that all responses had been considered by officials, but also contends that this was not the same as consideration of the material by her. As to Merton, the claim form asserts that the briefing material prepared for the meetings did not include an adequate summary of the responses to enable the deputy mayor to reach a decision. And it is said that the summary of the Merton Liberal Democrats' response that was provided to the deputy mayor was positively misleading.
61. Mr Wolfe focused on the consideration of the responses to the proposal to close Wimbledon police station and move its "24/7" front counter to Mitcham. He contended that the record of the decision indicated that the deputy mayor did not have the relevant financial information available at the meeting and, in effect, took the decision first with a view to obtaining relevant material later. He drew attention to the second bullet point under the heading "Other points", which said:
- "Need to be clear generally on financials for retraining a front counter where a building is not being disposed of" and the "Action" to be taken – "Met to provide financials on retaining a front counter where a building is not being disposed."
62. On this last point, Mr Swift invited us first to infer that that those comments did not relate to Merton but simply raised general points for future reference. Secondly, he submitted that the defendant did consider the alternative submissions made at the meetings which considered the consultation responses.

Discussion

63. We do not accept that submission of Mr Swift on the proper interpretation of the document recording the decision in relation to Merton. It seems that the reference in the document must, as a minimum, include Merton. It is in the section of the document dealing with Merton. The first bullet point refers to matters – for example, "tennis" – which can only be a reference to Wimbledon. The document itself deals with each borough separately and records the comments and necessary actions relevant to the borough being considered. Reading the comments included in the description of the decision about Merton as applying to Merton is consistent with the structure of the document.

64. On this particular point, it is unclear what the document noting the decision relating to Merton is referring to, and there is no evidence to explain it. But in any event it is clear from the evidence as a whole that the relevant financial information was before the deputy mayor at the meetings. This appears clearly from the first witness statement of Mr Punshon. He says that he had at the meeting the information on footfall numbers, and the use of front counters, “as well as the financial information to provide information on the financial impact”. He makes it clear in his third witness statement that the option of retaining Wimbledon police station and selling Mitcham was discussed, albeit briefly – because the information on the relevant costs had been discussed at the public meeting, which the deputy mayor had attended, and it was decided that this was not affordable. He says that detailed discussion took place on the other two options. We are satisfied that there was sufficient consideration of the three options discussed.
65. To deal with the position of the consideration of responses to the consultation generally: as well as the contemporaneous documentation, there is evidence from the deputy mayor, Mr Tunstall and Mr Punshon about what was discussed at the two meetings in October 2017 when the deputy mayor considered the proposals and the consultation responses. That evidence indicates that the deputy mayor generally did consider the points raised. Save for Merton, which we discuss below, we were not taken to any specific evidence that would justify a conclusion on the other 36 police stations that there was a failure conscientiously to consider the responses to the consultation.
66. As to Merton, the position that emerges is this. The summary of responses prepared for the meeting was inadequate. However, the evidence of Mr Punshon is that the alternatives to closure were specifically considered and assessed. These were retaining Wimbledon police station and selling Mitcham, selling both and finding an alternative, and keeping a front counter as part of a newly developed site at Wimbledon. Those were, essentially, options that had been put forward in the written responses to the consultation or at the meeting in Merton, or variations of those options.
67. We are also satisfied on the evidence, however, that there was one matter raised in the consultation responses relating to Merton that was not discussed or considered at the meeting. This was the proposal advanced by the Merton Liberal Democrats that it was premature to take a decision to close Wimbledon police station, and that any decision to do so should be postponed pending an evaluation of the impact of new technology. That was a clear theme of the document, as appears from paragraphs 2, 6 and 7. It undoubtedly fell within the scope of the consultation exercise, and it has not been suggested otherwise. The questions asked invited comments about opportunities to contact the police as an alternative to via a front counter and asked about the extent to which those responding agreed with the proposed changes of location for five front counters.
68. The summary of consultation responses did not refer to that proposal or suggestion. On the evidence, we cannot be satisfied that the deputy mayor herself read the Merton Liberal Democrats’ submission. The three options relating to alternative sites were discussed at the meeting. Whilst there are general references to discussing the feedback, there is no evidence that this proposal was specifically discussed. This is in contrast to the options relating to alternative sites, where the evidence does establish that those

matters were discussed. We conclude, therefore, that this aspect of the claimant's consultation response was not addressed by the deputy mayor in the course of making her decision. And we are in no doubt that it ought to have been. This amounts, in our view, to a clear error of law.

REMEDY

69. In the circumstances, the deputy mayor failed to ensure that there was consideration of a material matter raised in the consultation responses relating to Merton. We recognise that the point made in that response – the need to test whether the new technology would reduce the amount of time officers needed to spend in the community – could have been made in respect of other police stations. In fact, however, it was firmly made in a consultation response on the proposal to close Wimbledon police station and was to be read with the other arguments as to why that police station should be retained. In the circumstances, therefore, as the point was not made in respect of the other police stations, it would not be right to quash the decisions as it relates to them. Where it concerned Wimbledon police station, however, the decision is legally flawed. The deputy mayor failed to consider one of the material matters raised in response to the proposal to close that particular police station. The appropriate remedy, therefore, is an order to quash the decision to close Wimbledon police station, and that the matter be remitted to the deputy mayor for reconsideration.

CONCLUSION

70. The defendant did not apply additional or unpublished criteria in reaching the decision to close 37 police stations and did not act inconsistently in the way in which the relevant decisions were reached. It did provide sufficient information to enable persons to respond to the consultation document. In general, there is no evidence of a failure to consider the responses made as part of the consultation exercise. In one distinct respect however, which was the proposal to close Wimbledon police station, the defendant did fail to consider a material point raised during the consultation exercise, namely the suggestion that the decision should be postponed pending an evaluation of the impact of new technology. The decision to close the Wimbledon police station is therefore unlawful and cannot be allowed to stand. To this extent the claim for judicial review succeeds.
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