Neutral Citation Number: [2013] EWHC 2089 (Admin)

Case No: 3325/2011

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22/07/2013

Before :

THE HONOURABLE MRS JUSTICE LANG DBE

Between :

THE QUEEN **on the application of** **DAVID ATTFIELD**	**Claimant**
- and –	
THE LONDON BOROUGH OF BARNET	**Defendant**

Martin Westgate QC & Lindsay Johnson (instructed by **Anthony Gold**) for the **Claimant**
James Goudie QC and Edward Capewell (instructed by **HB Legal**) for the **Defendant**

Hearing date: 2nd July 2013

- -

Approved Judgment

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

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THE HONOURABLE MRS JUSTICE LANG DBE

Mrs Justice Lang:

Introduction

1. The Claimant, who is a resident of the London Borough of Barnet, applies for judicial review of the decision of the Defendant, made on 14th February 2011, to increase the charges for residents' parking permits and visitor vouchers in Controlled Parking Zones ("CPZ") in the Borough. A notice of variation was given on 24th March 2011, bringing the new charges into effect on 18th April 2011.

2. By section 45 of the Road Traffic Regulation Act 1984 ("RTRA 1984"), a local authority has power to designate parking places on the highway, to charge for use of them, and to issue parking permits for a charge. The Claimant's case is that, on this occasion, the increase in charges was unlawful because its purpose was to generate a surplus, beyond the monies needed to operate the parking scheme, to fund other transport expenditure, such as road repair and concessionary fares.

3. The Defendant submits that, under the terms of the RTRA 1984, it is entitled to exercise its powers under section 45 for the purpose of raising a surplus to use for any transport functions, provided that they come within the scope of section 122 RTRA 1984.

4. On 9th November 2011, Lord Carlile QC, sitting as a Deputy High Court Judge, refused the Claimant permission on the papers. The Claimant renewed his application before Mr Robin Purchas QC, sitting as a Deputy High Court Judge, on 8th February 2012. On further renewing his application to the Court of Appeal, the Claimant was granted permission on one ground only by Richards LJ, by order dated 24th April 2012. Richards LJ stated:

> "The grant of permission to apply for judicial review is limited to ground 1 of the grounds for judicial review (that the decision to vary parking charges was outwith the powers conferred by the statute). I take the view that there is an arguable case on that issue.
>
> Permission is refused on ground 2 (inadequacy/irrationality of reasons) and ground 3 (irrationality of the decision) which I consider to be unsustainable."

Facts

5. The Claimant lives in a CPZ in East Finchley in the London Borough of Barnet. He lives in a quiet residential road on which there were no parking restrictions prior to the introduction of the CPZ in 2001. When the CPZ was first introduced its operational hours were limited to 2 pm to 3 pm Monday to Friday, to prevent commuters parking in the streets in order to use the nearby underground station. The cost of a permit for a first car was £20 and visitor vouchers cost 35p each.

6. In 2004, the restrictions were extended from 10 am to 6.30 pm, Monday to Saturday. Charges were increased in about 2006. In 2011, in the decision which is the subject

of this claim, the cost of a resident's permit for a first car was raised from £40 to £100. The cost of visitor vouchers increased from £1 to £4 each. The increases made the Defendant's charges among the highest in London. The charges, combined with the extensive restricted periods, mean that residents suffer considerable inconvenience and financial disadvantage, particularly those with low incomes.

7. At the time that these proceedings were issued, there were some fifteen CPZs in the Borough, covering relatively small areas. 14,483 residents' permits had been issued; 25% of these were for second or third cars in the same household. There were about 138,483 households in the Borough as a whole. I accept the Claimant's estimate that around 8% of households in the Borough had residents' parking permits. However, the percentage of households with resident parking permits has probably increased since that date, as the Defendant has introduced new CPZs.

8. The Defendant is the highways authority for its area and the entire Borough has been designated a "Special Parking Area" for the purposes of the Road Traffic Act 1991, the effect of which is that parking controls are de-criminalised and enforcement is a matter for the local authority and not the police.

9. The Defendant is required under s. 145 of the Greater London Authority Act 1999 to produce a local implementation plan setting out its proposals for implementation of the Major's transport strategy. The relevant plan covers the years 2005/06 to 2010/11. Chapter 7 deals with "parking and enforcement". It states:

> "7.2.5 CPZs are the primary tool for managing parking. However, in areas where CPZs are not introduced but the streets are adversely affected by high volumes of daytime parking as a result of commuting or other pressures, the Council will seek to implement waiting restrictions at appropriate locations leaving other kerbside parking uncontrolled so as to promote safety and assist traffic movement."
>
> "Charges"
>
> "7.3.4 In designating parking the Council sets charges for permits, vouchers and for paid-parking. In setting the former the Council recognises that the ownership of a permit gives the holder a right to use a vacant parking space – a right that a person without a permit does not have. This right has a value and Barnet therefore may set a permit charge that is greater than that required to cover the operational costs of running a permit parking scheme. The same principle applies to vouchers."
>
> "7.3.5 In considering whether permit and voucher charges should vary in different parts of the borough, or for different hours of operation, or different levels of congestion and "useability" the Council considers that the fairest and most equitable methodology is to levy a standardised flat-fee across the borough."

> "7.3.6 The Council recognises that parking charges must not be set for the purpose of raising revenue but, having invested in the parking service such revenue as is considered necessary, will use any surplus generated as a result of its charging strategy for the purposes set out in the RTRA as amended."
>
> "7.3.7 Barnet does not designate specific projects as being funded by the parking surplus – rather the surplus contributes to the overall expenditure on permitted uses. This ensures residents do not feel that any contribution that they may have made to the surplus is being used in an area that does not affect them. The surplus is instead seen as being used throughout the borough. "
>
> ……
>
> "Resident Permit Parking"
>
> ……
>
> "7.6.14. In setting the charge the Council does so on the basis that aside from covering operational costs, the value of a permit to a holder may also be considered. The ownership of a permit gives the holder a right to use a vacant parking space – a right that a person without a permit does not have. Consequently Barnet sets a permit charge that is greater than that required to cover the operational costs of running a permit parking scheme in reflection of this value. Consideration will be given to affirming this by making a policy statement "freezing" the permit value in real terms, increasing it only in line with inflation."

10. Income received from parking charges is paid into a Special Parking Account ("SPA"), to comply with section 55(1) RTRA 1984. The Defendant's SPA has generated a surplus for some years. Any surplus is appropriated into the Defendant's General Fund at the year end. The Defendant's expenditure from the General Fund includes expenditure on matters such as highways investment, roads and footways, highways maintenance, concessionary fares and transport for pupils with special educational needs. The General Fund is funded from a variety of sources, including council tax. Total expenditure on these matters has consistently been greater than the surplus generated on the SPA, creating what Ms Wharfe, Interim Director of Environment Planning and Regeneration, described as a "shortfall".

11. The SRA surplus is shown in the table below:

YEAR	SPA SURPLUS £
2000/1	2,004,549
2001/2	1,797,400

2002/3	3,371,600
2003/4	5,790,814
2004/5	4,858,722
2005/6	5,169,000
2006/7	4,506,321
2007/8	5,263,000
2008/9	4,404,193
2009/10	2,745.000
2010/11 projected	4,709,420
2011/12	5,708,000

12. In November/December 2009 the Defendant commissioned Price Waterhouse Coopers (PwC) to look into all council services, including the parking service and to report on "options and ways to optimise revenue". This was part of an exercise known as Revenue and Income Optimisation, the object of which was, according to Ms Wharfe to "help to address and plug the gaps created by the reduction in SPA surplus and the resulting shortfall to enable the Council properly to pursue the statutory traffic management purposes and fulfil its functions in that regard" (paragraph 4, witness statement). The instructions to PwC did not, however, expressly refer to the SPA. Instead they were asked to look at "all possible areas of revenue" and to produce "high level business cases" for recurring income opportunities that demonstrate the potential for Barnet Council to achieve £7.5m net additional income over a 3 year period" (email dated 4.1.12, Defendant to Claimant).

13. PwC produced a "high level business case" for parking enforcement. It recommended an increase in parking permits in CPZ from £40 to £60 for the first permit, £90 for the second permit and £120 for a third permit. It recommended that visitor permits should increase from £1.00 to £2.00. It provided comparisons with charges in other Boroughs.

14. On 14 June 2010 a paper relating to the SPA was discussed with Councillor Coleman, the Cabinet member with responsibility for the environment. The Defendant has not disclosed the paper but Ms Wharfe described the meeting at paragraph 6 of her statement. She said that "the rules on the SPA were explained to [Councillor Coleman] who expressed concerns about the Council's ability to reach these targets". This is reflected in the minutes. Presumably the targets in issue were targets as to revenue to be raised within the SPA. However, under AOB the minutes of the meeting also note that Councillor Coleman stated "we are opposed to any increase in [parking] charges".

15. A further meeting took place between Councillor Coleman and officers on 9th July 2010 at which officers said that parking charges were under review (paragraph 7, Ms Wharfe's witness statement).

16. On 1st September 2010 a report was presented to the Council's Budget Overview and Scrutiny Committee. Extracts from the report are set out below:

> "**Risk Management Issues**
>
> 4.1 The Special Parking Account is a ring fenced account that makes a surplus each year which is then transferred into the General Fund. It has previously provided £5m per annum into the General Fund. However, in 2009/10 a reduction in income to the SPA meant that a reduced amount was transferred into the General Fund and this is likely to be repeated again this if we fail to maximise income in parking.
>
> **Background Information**
>
> Challenges
>
> The service is currently facing a number of challenges. These include:
>
> • Parking income across London is down by 22%.
>
> • Lack of available funding for signs and lines and the maintenance of pay and display machines, which means that a relatively significant proportion are out of order at any one time.
>
> • High sickness levels among Civil Enforcement Officers (CEOs); in the first quarter of 2010/11 parking lost a total of 379 days to sickness, equivalent to on average of 15.8 sick days each per annum.
>
> • Reduced income to the Specialised Parking Account as a result of the economic conditions, the severe winter and the issues identified above. This has had an impact on the Council's General Fund.
>
> …
>
> **Specialist Parking Account (SPA)**
>
> The SPA is a ring fenced account that makes a surplus which is transferred into the General Fund each year. It has previously provided £5m per annum into the General Fund. However, in 2009/10 a reduction in income to the SPA meant that a reduced amount was transferred into the General Fund and this is likely to be repeated again this year.
>
> …
>
> It is anticipated that regardless of whether the service is delivered in-house or externally this issue of a reduced transfer into the General Fund will remain and will need to be addressed."

17. The report went on to consider options for "maximising income". Among other steps, it referred to an ongoing review of the existing fees and charges for parking as part of a full review of the special parking account and all related income and expenditure.

18. Meetings took place among officers in the latter part of 2010 and these included proposals for generating income from increases to charges for residents' permits and visitors permits. It seems that the increases being discussed at this time were those that had been recommended by PwC (i.e. an increase from £40 to £60 for a first resident's permit and from £1 to £2 for a visitor's permit). However, these were thought to be "not sufficient to plug the gap" and to sustain the "contribution to the general fund" (paragraphs 11 and 12, Ms Wharfe's witness statement). Councillor Coleman was opposed to the proposal to generate a further possible £502,000 in income from fines for traffic violations in bus lanes through the use of additional CCTV cameras and so income had to be generated from another source (email of 23 September 2010, Ms Wharfe to Councillor Coleman and paragraph 17 of Ms Wharfe's witness statement).

19. On 22 November 2010 officers held a meeting with Councillor Coleman and it was decided that parking charges for resident permits would be increased.

20. On 29 November 2010 a report was presented to Cabinet on the "Future of the Parking Service". Paragraphs 9.4.1 and 9.4.2 stated:

> "9.4.1 Special Parking Account (SPA)
>
> The SPA is a ring fenced account that makes a surplus account which is transferred into the General Fund each year. It has previously provided £5m per annum into the General Fund for transportation and highways related work. However, in 2009/10 a reduction in income to the SPA, meant that a reduced amount was transferred into the General Fund and this is likely to be repeated again this year. The reasons for this reduction are currently being investigated and are considered to be in part due to the snow levels last winter, general economic downturn and out of order pay and display machines.
>
> 9.4.2 It is anticipated that regardless of whether the service is delivered in-house or externally, the issue of a reduced transfer into the General Fund would remain. This will need to be addressed through the Parking Service recovery plan, and also through procuring a new supplier."

21. Ms Wharfe stated, in paragraph 14 of her witness statement, that in November 2010 officers completed a benchmarking exercise with other London Boroughs and that options were drawn up to "meet the required shortfall on SPA surplus to the General Fund". These options included an increase to parking permit fees. In an email dated 1 December 2010, Ms Wharfe wrote to Cllr Coleman in the following terms:

> "As discussed yesterday afternoon we have worked out what the consequences would be for parking permits if we looked to recover the £1.3m that we did not want to find from bus lane monitoring.
>
> The original permit proposal produced additional income of £488,740 so the new proposal needs to make £1788,740.

> Option 1 makes £1,203,733 and Option 2 £1818,803 so if we go with option 1 the balance would need to come from pay and display charges.
>
> Can you tell me which of these you want to go for?
>
> **Resident permits**
>
> Current charge £40 Option 1 £80 Option 2 £100
>
> **Visitor permits**
>
> Current charge £1 Option 1 £3 Option 2 £4."

22. On 4th December 2010 Councillor Coleman replied by email, agreeing to option 2. He said that this would bring charges in to the zone for Londonwide charges "as well as addressing the "hole" in the SPA without the need for cameras".

23. On 10th January 2011 Councillor Coleman sent an email to Conservative councillors stating:

> "The only way we are going to be able to spend any money on Highways or pavement repairs (and the next section of potholes are just beginning to appear) is to use any surplus from the parking fund."

24. On 13 January 2011, a Report recommending increased charges was presented to the Cabinet Resources Committee who decided to approve the changes in principle "but for the final decision to be taken by Cabinet on 14 February 2011 following full consideration of the detailed outcomes of the budget consultation and any responses received" and for a fuller explanation of the increased charges to be provided.

25. The increased charges were agreed at a meeting of Cabinet on 14 February 2011. The relevant part of the report to Cabinet read:

> "8.2 Paragraph 3.8 of the Council's Financial regulations requires that the Cabinet Resources Committee (CRC) approves changes to fees and charges that are significantly different from inflation.
>
> 9.1 The fees and charges levied on users of Council services have been reviewed as part of the development for the 2011/12 budget and Council tax setting. Fees and charges are an important element of Council income as they contribute approximately £80m per year to the cost of delivering services, which is not then required to be met from Council tax. The Environment and Operations element of this total is approximately £22.5m, of which, around half relates to parking.
>
> This report seeks approval to any changes that are higher than could be reasonably taken to be in line with inflation."

26. The documents appended to the report included a Revenue Budget for the Special Parking Account 2011-12 which identified an "appropriation to the general fund" and said:

> "The net projected surplus on the SPA is available for the implementation of parking schemes and as a general support for public transport improvement projects that fall within the criteria set out in the Highways Act 1980."

27. On 10 March 2011 the Claimant wrote to the Secretary of State inviting him to exercise his powers under Schedule 9 of the RTRA to prohibit the increase on the basis that the decision was unlawful since it was made with the sole aim of raising revenue. On the same day he wrote a pre-action protocol letter to the Defendant indicating that the decision would be challenged on the same grounds.

28. The Defendant responded on 1st April 2011 stating, inter alia:

> "32. ...Budgeting for a surplus is specifically contemplated and permitted by section 55(4) which also allows an authority to apply the surplus to a wide range of traffic and highways management purposes. That is precisely what the Council is planning to do in the present situation.
>
> …
>
> 34. …the operating surplus on the SPA was £2,745,000 in 2009/2010. The table below shows the Council's actual expenditure on a number of 'traffic management' purposes, together with the section 55(4) purposes under which they fall:

Identified usage	**Actual expenditure**	**Statutory provision**
Safer routes	£104,000	section 55(4)(e)
Highway Investment Programme	£1,970,000	section 55(4)(d)(ii)
Roads/footways programme	£693,000	section 55(4)(d)(ii)
Highways maintenance	£2,676,000	section 55(4)(d)(ii)
Concessionary fares	£8,366,000	section 55(4)(d)(i)
SEN transport	£1,610,000	section 55(4)(d)(i)

	TOTAL: £15,419,000	

> 35. You can therefore see that the amount of money the Council spent last year on traffic management purposes to which the SPA surplus could lawfully be put, exceeded the amount of the surplus on the SPA by some £12,674,000. In 2010/2011 the "gap" between expenditure and the SPA surplus is expected to be around £13,641,000. The gap is met by monies from the general fund, which, as I have explained, is under considerable pressure due to the overall reduction in funding which the council faces. It is lawful, and entirely prudent, for the council to aim to maintain the funding of the SPA so that the account can continue to make a contribution to the costs of the important identified usage listed in the table above.
>
> …
>
> 38. The increased charges are necessary to ensure sufficient investment in the council's road network is wholly in accordance with the Council's duty under section 122 RTRA 1984 and its powers under section 55 of that Act."

29. On the basis of the evidence which I have summarised above, I am satisfied that the Claimant has established that the Defendant's purpose in increasing the charges for resident parking permits and visitor vouchers on 14th February 2011 was to generate additional income to meet projected expenditure for road maintenance and improvement, concessionary fares and other road transport costs. The intention was to transfer the surplus on the Special Parking Account to the General Fund at year end, to defray other road transport expenditure and reduce the need to raise income from other sources, such as fines, charges and council tax. There was no evidence that this increase was required to cover increased running costs of the parking schemes; indeed, the SPA has always been in credit at year end.

30. Mr Goudie, in his written and oral submissions, did not dispute that the increases were introduced in order to meet road traffic expenditure other than parking. The focus of his submissions was that the Defendant had acted lawfully in so doing.

The statutory provisions

31. Parking regulation is governed by Parts IV, VIII and IX of the RTRA 1984. Section 45(1) RTRA 1984 provides a local authority with a power to designate parking places on the highway and make charges for use of them. It provides, so far as is material:

> "(1) A local authority may by order designate parking places on highways…in their area for vehicles or vehicles of any class specified in the order; and the authority may make charges (of

> such amount as may be prescribed under section 46 below) for vehicles left in a parking place so designated…"

32. Section 45(2) further provides for the issuing of permits for which an authority may charge:

> "(2) An order under this section may designate a parking place for use (either at all times or at times specified in the order) only by such persons or vehicles, or such persons or vehicles of a class specified in the order, as may be authorised for the purpose by a permit from the authority operating the parking place…and
>
> > (a) in the case of any particular parking place and any particular vehicle, or any vehicle of a particular class, the authority operating the parking place, may issue a permit for that vehicle to be left in the parking place while the permit remains in force, either at all times or at such times as may be specified in the permit, and
> >
> > (b) …may make such charge in connection with the issue or use of the permit, of such amount and payable in such manner, as the authority by whom the designation order was made may by order prescribe."

33. Section 45(3) provides for the matters to which an authority is to have regard in designating parking places.

34. Section 46(1A) (which applies in respect of parking places in Greater London) provides that such charges as are made in respect of designated parking places are to be prescribed in the designation order or a separate order:

> "(1A) Subject to Parts I to III of Schedule 9 to this Act, where the authority by whom a designation order is made with respect to any parking place in Greater London…impose charges to be paid for vehicles left in a parking place designated by the order, those charges shall be prescribed by the designation order or by a separate order made by the authority."

35. The Council also has power by virtue of section 46A to vary charges published under section 46. In doing so, it must follow the procedure set down in Part V of the Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996.

36. Section 55 makes provision for the monies raised through orders made under sections 45 and 46. It provides for the creation of a ring-fenced account (the SPA) into which monies raised through the operation of parking places must be placed, and for the application of any surplus funds. The material parts of section 55 state:

"(1) A local authority shall keep an account of their income and expenditure in respect of parking places designated for which they are the local authority and which are—

> (a) in the case of…the council of a London borough…parking places on the highway;

…

(2) At the end of each financial year any deficit in the account shall be made good out of the general fund…and (subject to subsection (3) below) any surplus shall be applied for all or any of the purposes specified in subsection (4) below and, in so far as it is not so applied, shall be appropriated to the carrying out of some specific project falling within those purposes and carried forward until applied to carrying it out.

(3) If the local authority so determine, any amount not applied in any financial year, instead of being or remaining so appropriated, may be carried forward in the account kept under subsection (1) above to the next financial year.

…

(4) The purposes referred to in subsection (2) above are the following, that is to say—

> (a) the making good to the general fund…of any amount charged to that fund under subsection (2) above in the 4 years immediately preceding the financial year in question;
>
> (b) meeting all or any part of the cost of the provision and maintenance by the local authority of off-street parking accommodation, whether in the open or under cover;
>
> (c) the making to other local authorities, or to other persons of contributions towards the cost of the provision and maintenance by them, in the area of the local authority or elsewhere, of off-street parking accommodation, whether in the open or under cover;
>
> (d) if it appears to the local authority that the provision in their area of further off-street parking accommodation is unnecessary or undesirable, the following purposes—
>
> > (i) meeting costs incurred, whether by the local authority or by some other person, in the provision or operation of, or of facilities for, public passenger transport services, and
> >
> > (ii) the purposes of a highway or road improvement project in the local authority's area

> (e) in the case of a London authority, meeting all or any part of the cost of the doing by the authority in their area of anything—
>
> > (i) which facilitates the implementation of the London transport strategy, and
> >
> > (ii) which is for the time being specified in that strategy as a purpose for which a surplus may be applied by virtue of this paragraph;
>
> (f) in the case of a London authority, the making to any other London authority of contributions towards the cost of the doing by that other authority of anything towards the doing of which in its own area the authority making the contribution has power—
>
> > (i) to apply any surplus on the account required to be kept under subsection (1) above; or
> >
> > (ii) to incur expenditure required to be brought into that account.
>
> …"

37. Section 122 RTRA 1984 imposes a general duty on local authorities exercising any functions under the Act. It provides, so far as material, as follows:

> "(1) It shall be the duty of every local authority upon whom functions are conferred by or under this Act, so to exercise the functions conferred on them by this Act as (so far as practicable having regard to the matters specified in subsection (2) below) 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 highway…
>
> (2) The matters referred to in subsection (1) above as being specified in this subsection are—
>
> > (a) the desirability of securing and maintaining reasonable access to premises;
> >
> > (b) the effect on the amenities of any locality affected and (without prejudice to the generality of this paragraph) the importance of regulating and restricting the use of roads by heavy commercial vehicles, so as to preserve or improve the amenities of the areas through which the roads run;
> >
> > (bb) the strategy prepared under section 80 of the Environment Act 1995 (national air quality strategy);

> (c) the importance of facilitating the passage of public service vehicles and of securing the safety and convenience of persons using or desiring to use such vehicles; and
>
> (d) any other matters appearing to the local authority to be relevant."

Conclusions

38. It is a general principle of administrative law that a public body must exercise a statutory power for the purpose for which the power was conferred by Parliament, and not for any unauthorised purpose. An unauthorised purpose may be laudable in its own right, yet still unlawful. The issue is not whether or not the public body has acted in the public interest, but whether it has acted in accordance with the purpose for which the statutory power was conferred. Where a statutory power is exercised both for the purpose for which it was conferred and for some other purpose, the public body will have acted unlawfully unless the authorised purpose was its dominant purpose.

39. In *Porter v Magill* [2002] 2 AC 357, Lord Bingham set out the general principle at [19]:

> "(1) Powers conferred on a local authority may be exercised for the public purpose for which the powers were conferred and not otherwise. A very clear statement of this principle is to be found in *Wade & Forsyth, Administrative Law,* 8th ed. (2000), pp 356-357. The corresponding passage in an earlier edition of that work was expressly approved by Lord Bridge of Harwich in *R v Tower Hamlets London Borough Council, Ex p. Chetnik Developments Ltd* [1988] AC 858, 872:
>
> > "Statutory power conferred for public purposes is conferred as it were upon trust, not absolutely – that is to say, it can validly be used only in the right and proper way which Parliament when conferring it is presumed to have intended."
>
> The principle is routinely applied, as by Neill LJ in *Credit Suisse v Allerdale Borough Council* [1997] QB 306, 333 who described it as "a general principle of public law"."

40. How does the court identify the purpose for which the statutory powers were conferred? The established principles were summarised by Lord Nicholls in *R v Secretary of State for the Environment ex parte Spath Holme Ltd* [2001] 2 AC 349, at 396D/E:

> "No statutory power is of unlimited scope. The discretion given by Parliament is never absolute or unfettered. Powers are conferred by Parliament for a purpose, and they may be lawfully exercised only in furtherance of that purpose: "the policy and objects of the Act" in the oft-quoted words of Lord Reid in *Padfield v Minister of Agriculture, Fisheries and Food*

> [1968] AC 997, 1030. The purpose for which a power is conferred, and hence its ambit, may be stated expressly in the statute. Or it may be implicit. Then the purpose has to be inferred from the language used, read in its statutory context, and having regard to any aid to interpretation which assists in the particular case. In either event, whether the purpose is stated expressly or has to be inferred, the exercise is one of statutory interpretation."

41. Where a public body uses its discretionary powers to levy taxes, the courts will strike down demands which are unauthorised by statute. In *Vestey v Inland Revenue Commissioners* [1980] AC 1148, Lord Wilberforce said at 1172D/E:

> "Taxes are imposed upon subjects by Parliament. A citizen cannot be taxed unless he is designated in clear terms by a taxing Act as a taxpayer and the amount of his liability is clearly defined."

42. In *Congreve v Home Office* [1976] QB 629, the Court of Appeal held that demands for an additional £6 for the cost of a television licence were unlawful because:

> "They were made contrary to the Bill of Rights. They were an attempt to levy money for the use of the Crown without the authority of Parliament: and that is quite enough to damn them: see *Attorney-General v Wilts United Dairies Ltd* (1921) 37 TLR 884; (1922) 38 TLR 781." (per Lord Denning at 652).

43. In *R v London Borough of Richmond upon Thames, ex parte McCarthy & Stone* [1992] 2 AC 48, the House of Lords held that no charge could be made for pre-application planning advice in the absence of statutory authority, either express or necessarily implied. Lord Lowry said, at 74F:

> " the Council's interpretation of section 111(1) [Local Government Act 1972] would allow it to charge for the performance of every function, both obligatory and discretionary, which provided a service….Such a construction of the subsection cannot possibly be justified, and I say this before even considering the point that, in the absence of express statutory authority, the power to charge can only be implied, in the words of Atkin LJ in *Attorney-General v Wilts United Dairies Ltd*, 37 TLR 884, 886, "as necessarily arising from the words of a statute".

He added, at 75B:

> "A further point which commended itself to the Court of Appeal … was the argument that, since the council was not obliged to provide the service in question, it could state on a "take it or leave it" basis that it was willing to provide it for a reasonable fee, as if entering into a contract. I consider this to

> be an untenable proposition which, if correct, would justify a local authority in charging for any discretionary service, but which in reality is in conflict with the second principle enunciated by Atkin LJ in *Attorney-General v Wilts United Dairies Ltd*, 37 TLR 884, 887 (already cited)" ["It makes no difference that the obligation to pay the money is expressed in the form of an agreement. It was illegal for the Food Controller to require such an agreement as a condition of any licence…"]

44. In this case, the Defendant has express statutory authority to charge for the issue of parking permits: see section 45(2)(b) RTRA 1984. Although the permit charges generate revenue for the local authority, the RTRA 1984 is not a taxing statute. *Wade & Forsyth: Administrative Law*, 10th ed. explains the distinction at p.100:

> "The revenue which local authorities raise for themselves consists partly of miscellaneous receipts such as rents, fees and charges for services. But, in addition, local authorities have long had limited powers of taxation….Today the non-domestic rate and council tax are the primary sources of locally raised tax revenue for local authorities. In addition local authorities are in receipt of large subsidies from the central government…"

45. Local authority charging powers are extensive: see *Arden, Baker, Manning: Local Government Constitutional & Administrative Law*, 2nd ed. pp 156 – 163. As Mr Goudie pointed out, some are capped at a maximum amount, or subject to an express requirement of reasonableness. The general powers to charge for discretionary services in section 93, Local Government Act 2003 and section 3, Localism Act 2011 are subject to a duty to ensure that, taking one financial year with another, the income from charges does not exceed the costs of provision. These general provisions do not apply to charges under section 45(2)(b) RTRA 1984.

46. In *R v Manchester City Council ex parte King* 89 LGR 696, the Divisional Court (Nolan LJ and Roch J) held that a statutory scheme permitting the local authority to charge "reasonable" fees for street trading licences did not enable a local authority to raise general revenue by way of fees. In the absence of any express statutory authorisation, the fees had to be related to the costs of operating the scheme, and not set at whatever level the market would bear.

47. In *Hemming & Ors v Westminster City Council* [2012] EWHC 1260 (Admin), upheld in part by the Court of Appeal at [2013] EWCA Civ 59, the principle established in *ex parte King* was approved and applied to fees received from the licensing of sex establishments. Paragraph 3 of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 required the applicant to pay "a reasonable fee determined by the appropriate authority". Beatson LJ said, at [50]:

> "it was common ground in the light of inter alia R v Manchester CC ex parte King (1991) 89 LGR 696 that the Council was not entitled to make a profit from the licensing regime."

48. Mr Goudie submitted that, on a proper construction of the RTRA 1984, there were no restrictions on the charging power in section 45(2)(b) RTRA 1984, other than those imposed by the general principles of administrative law. An increase could not be irrationally high, in a *Wednesbury* sense, but aside from irrationality or other public law error, the Defendant was entitled to exercise its charging powers in order to generate a surplus to defray the cost of other transport expenditure, provided it came within the scope of the objects in section 122. By section 55 Parliament had expressly provided for any surplus in the SPA to be used for other road traffic purposes, which confirmed that this was Parliament's intention.

49. In my judgment, Mr Goudie's submission could not stand with the earlier decisions on the scope of the RTRA 1984.

50. *Cran v Camden LBC* [1995] RTR 346 concerned the designation of a CPZ in Primrose Hill. One of the arguments raised by the Applicants was that the Council was, in reality, embarking on a revenue raising exercise. McCullough J set out the issue on this part of the case in the following terms, at 358E/F:

> "What can lawfully be taken into account in considering whether to introduce a controlled parking zone, and if one is to be introduced, in considering what charges should be imposed?"

51. On this issue, the Applicants argued that: "it is unlawful to set charges for on street parking with a view to making a surplus to spend on the matters referred to in s. 55(4)" (at 359G/H). The Respondent Council contended that: "since the whole of section 55(4), like the rest of the Act of 1984, is directed to the purposes referred to in section 122(1), it is lawful for a local authority, when fixing its on-street parking charges, to take into account such needs as there might be to expend money on any of the matters listed in section 55(4)" (at 363F). On the facts of the case the surplus was to be spent on concessionary fares, which were held to fall within section 122.

52. McCullough J held that resolution of the issue depended on the policy and objects of the Act, to be determined considering its terms as a whole (at 360 G/H). He said, at 360J:

> "Doing this makes clear that the Act of 1984 is not a fiscal measure. It contains no provision which suggests that Parliament intended to authorise a council to raise income by using its powers to designate parking places on the highway and to charge for their use. To adapt words used by Nolan LJ in *Reg. v Manchester City Council, Ex parte King* (1991) 89 LGR 696, 712, had this been the intention of Parliament the extent of the fund-raising powers conferred on the council would be enormous, since they have a monopoly over the granting of permits for on-street parking within their area and would have golden opportunities to augment their revenue. The Act of 1984 makes provision for crossings, playgrounds, parking places both off and on the street, traffic signs, speed limits, bollards

> and other obstructions. All its provisions, leaving aside section 55(4) for the moment, are concerned in one way or another with the expeditious, convenient and safe movement of traffic and the provision of suitable and adequate parking facilities on and off the highway. This is reflected in the wording of section 122(1). There is its policy; there are its objects."

53. McCullough J accepted the Applicants' submissions in the following passage, at 364H-L:

> "Mr Cran's submission is much simpler: it is that in setting charges the on-street parking account must be looked at on its own; section 55(4) only comes into play if there happens to be a surplus at the end of the year.
>
> This too has its attractions, not just of simplicity, and I am persuaded that it is right. Mr Hockman's submission leads inevitably to a balancing exercise that leaves undesirable scope for argument. Further, it does not follow that, because section 122(1) refers to the exercise of the 'functions conferred' on local authorities by the Act, every such function must be exercised with reference to every factor which might, however indirectly, secure the expeditious, convenient and safe movement of traffic. One sees that the encouragement of the provision of off-street parking facilities (by which must be meant privately financed facilities) is one of the matters to which section 45(3) requires the local authority to have regard. Section 45(3) is not directed to the determination of charges, only to the determination of what parking places are to be designated. It may perhaps also be said that Mr Cran's interpretation pays more attention to the word 'surplus', which implies an excess and tends to suggest an excess over that which is required.
>
> If Mr Hockman were right in the far-reaching effect which his submission gives to section 122(1), it would logically follow that a local authority could take into account the matters referred to in section 55(4) not only when setting its charges but also when deciding whether or not to make a designation order. Yet, looking at the Act as a whole, it is difficult to believe that Parliament intended, for example, that the desirability of funding concessionary fares for the elderly and disabled, or the desirability of building an underpass, should be taken into account in deciding whether or not to designate parking places, and Mr Hockman has not gone so far as to suggest that this conclusion would be wrong. On his interpretation of the provisions, one would have to say that concessionary fares could lawfully be taken into account but reasonableness required that the weight to be given to them should be nil.

> By contrast Mr Cran's submission gives full recognition to the fact that the Act of 1984 is not a revenue raising Act. Where there is ambiguity the citizen is not to be taxed unless the language of the legislation clearly imposes the obligation.
>
> By analogy, if not indeed direct application, I conclude that the difficulties of interpretation presented by these provisions must be resolved by adopting the narrower construction for which Mr Cran contends: it was the intention of Parliament that local authorities, in determining charges to be made in pursuance of the designation of parking places, should not have regard to the manner in which section 55(4) of the Act of 1984 would permit any resulting surplus to be spent. And manifestly the same would apply to the decision whether or not to make a designation order."

54. Although the Applicants succeeded on the law their claim failed on the facts because the evidence did not justify the conclusion that the decision was influenced by an improper consideration: "although the prospect of this enhanced surplus must have been gratifying, the controlled parking zone was both recommended and decided upon because it was believed that it was required on traffic grounds" (at 366D-G).

55. In my judgment, Mr Goudie's submission on the proper interpretation of the RTRA 1984 was essentially the same as the submission made by Mr Hockman on behalf of Camden Council and rejected by McCullough J. Although Mr Goudie sought to rely upon the broad objects in section 122 and not section 55(4), Mr Hockman also relied unsuccessfully upon section 122.

> I agree with McCullough J's interpretation of the statutory provisions, and their purpose. Having regard to the narrow interpretation which the courts must apply in cases where taxes or fees are imposed, I do not consider that the Defendant was authorised to exercise the charging power in section 45(2)(b), having regard to the objects in section 122, for the purpose of funding the wider transport purposes listed in section 55(4). Expenditure on section 55(4) purposes is only permitted where there is a surplus in the SPA. As McCullough J said, at 364H, use of the term 'surplus' indicates an excess beyond the amount required.

56. *Cran* was applied by the Administrative Court in *Djanogly v Westminster City Council* [2011] RTR 9 (Pitchford LJ and Maddison J). The case involved the introduction of charges for motorcycle parking. As in *Cran,* one of the grounds of challenge was that the authority had acted for an improper purpose namely to raise revenue. It was not in dispute that the law was correctly stated in *Cran*. Pitchford LJ said at [12] – [13]:

> "12 I am content, as were the parties (save in one respect for the defendant), to follow McCullough J.'s construction and interpretation of the statutory provisions. Section 45 is plainly

not intended to provide a general revenue raising power. It must be exercised for the statutory purposes set out in s.122 , namely, "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 highway". If there is not a statutory justification for the exercise of powers, then the fact that they will raise revenue through charging will not render them compliant. I also agree with McCullough J. that the statutory purpose of providing "suitable and adequate parking facilities on and off the highway" applies to the *designation* of parking places on and off the highway. However, s.45 provides, without qualification, that the authority may designate parking places on-street, with or without charges and the production of a surplus is specifically contemplated by s.55 . Accordingly, as it seems to me, the authority is not bound, when setting a charge, to reflect only the immediate statutory purpose of providing sufficient on-street parking or of paying for it. As McCullough J. recognised in Cran, charges may need to be set at a level which has the desired effect, namely to ration the availability of on-street parking with the intention of encouraging the use of off-street parking (which is one of the matters to be considered under s.45(3)). Furthermore, s.45 provides an authority creating a charging scheme with wide powers to differentiate between users of on-street parking facilities, vehicles and periods for charging.

13 Ms Lieven QC, for the defendant, sought to support the Secretary of State's guidance of August 1992 ([10] above) to the effect that raising revenue may be a secondary purpose of the exercise of the s.45 power. In my view, when designating and charging for parking places the authority should be governed solely by the s.122 purpose. There is in s.45 no statutory purpose specifically identified for charging. Charging may be justified provided it is aimed at the fulfilment of the statutory purposes which are identified in s.122 (compendiously referred to by the parties as "traffic management purposes"). Such purposes may include but are not limited to, the cost of provision of on-street and off-street parking, the cost of enforcement, the need to "restrain" competition for on-street parking, encouraging vehicles off-street, securing an appropriate balance between different classes of vehicles and users, and selecting charges which reflect periods of high demand. What the authority may not do is introduce charging and charging levels for the purpose, primary or secondary, of raising s.55(4) revenue. In this aspect too, I agree with McCullough J.'s interpretation of the statutory intention."

57. These paragraphs make it clear that the authority has a discretion to set charges to reflect its parking policies. It is not restricted to levying a charge only to cover the base cost of running the schemes.

58. In my judgment, it is not correct to read paragraphs 12 and 13 of Pitchford LJ's judgment to mean that charges can be levied under section 45(2)(b) for the purpose of raising revenue to expend on any road traffic function provided it is intended to "secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians)" within the meaning of section 122(1). Since the section 55(4) purposes fall within section 122(1), it would be in clear contradiction of Pitchford LJ's conclusion, at the end of paragraph 13, namely, "what the authority may not do is introduce charging and charging levels for the purpose, primary or secondary, of raising s.55(4) revenue". Such an interpretation would also contradict McCullough J's interpretation of the statute which was expressly adopted by Pitchford LJ.

59. As the surplus funds in the SPA may only be used in accordance with section 55, there can be no wider use of the funds under section 122. The purpose of section 122 is to impose a duty on local authorities to exercise their functions under the Act in accordance with the objects set out therein. It is necessarily couched in general terms because it applies to a remarkably broad range of functions in the RTRA 1984, e.g. traffic schemes, pedestrian crossings, school crossings, street playgrounds, speed limits, bollards, traffic wardens, removal and immobilisation of vehicles, as well as different types of parking facilities. I do not consider that section 122 was intended to authorise a local authority to raise a levy on parking permit holders, pursuant to section 45(2)(b), to fund any project which met the objects set out in section 122. Such an intention is not expressly stated, nor can it properly be implied. The RTRA 1984 is not a revenue-raising or taxing statute.

60. In my judgment, the Defendant has also mis-interpreted paragraph 14 of Pitchford LJ's judgment, which stated:

> "At the commencing of the submissions made on behalf of the Claimant by Mr Coppel AC, it was a repeated complaint that the budgeting for a surplus was evidence of an improper purpose. I disagree, and in the course of his submissions Mr Coppel appeared to concede that there was nothing to prevent budgeting for a surplus provided that the designation of parking spaces and the decision to charge were justifiable in pursuit of the s.122 purposes. It follows, in my view, that the authority's decision-making process should be examined for the application of the statutory purposes. The mere fact that the likelihood of a surplus was recognised or that the mandatory application of a surplus under the terms of s.55(4) was acknowledged, is not determinative of the legitimacy of the parking orders."

61. Paragraph 14 dealt with the submission by Mr Coppel for the Claimant that Westminster was introducing the charge for an improper purpose, namely, to generate revenue. The issues were explained more fully in paragraph 48:

> "The claimant set out to establish that the authority had an ulterior motive for the introduction of charging, namely the generation of revenue. This argument the claimant seeks to justify by demonstrating that from the outset the authority had budgeting for a surplus of income over expenditure. …It is plain from the documentary evidence that the objective of the authority was to make the improvement of parking facilities for motorcyclists self-financing. It is not suggested that this was an improper objective. As originally conceived the scheme would provide a comparatively modest year on year surplus. In my judgment, budgeting for a modest surplus does not render the scheme ultra vires, nor does it, of itself, comprise evidence of ulterior motive. It was, and is, accepted by the authority that charging measures may not be introduced for the purpose of increasing, either its general income, or its income to be applied for transport policy purposes. The obvious consequence of the unexpected size of the surplus produced by the experimental orders was that the charge had been set too high and it was, accordingly, reduced. Having regard to the underlying objectives of managing demand and balancing the interests of different categories of motorists, it seems to me that this was an appropriate response."

62. Thus, in paragraph 14, Pitchford LJ was rejecting the submission that budgeting for a surplus was evidence of an improper purpose of generating income for other transport purposes. Westminster had conceded that such a purpose would be unlawful. The claimant failed to establish an improper purpose on the evidence. At paragraphs 45 and 46, Pitchford LJ accepted that Westminster had the legitimate objectives of improving availability of parking spaces for motorcycles and treating motorists and motorcyclists equally. Pitchford LJ found that the size of the surplus was unexpected and accidental and resulted in the charges being reduced for the following year. He found that budgeting for a modest surplus was permissible for the lawful objective of making the improvement of parking facilities for motorcycles self-financing. It may also be prudent to budget for a surplus to allow for unforeseen expenses, shortfalls in other years, and payment of capital charges/debts. But, in my judgment, Pitchford LJ's conclusions do not lend support to the Defendant's submission in this case that it was lawful for them to budget for a surplus at any level which it considered appropriate, in order to generate income for other transport purposes which it wished to fund.

63. *Djanogly* appealed to the Court of Appeal but did not pursue the unlawful purpose challenge.

64. In conclusion, I accept the Claimant's submission that the 1984 Act is not a fiscal measure and does not authorise the authority to use its powers to charge local residents for parking in order to raise surplus revenue for other transport purposes funded by the General Fund. I have already concluded that the Defendant's purpose in increasing the charges for resident parking permits and visitor vouchers on 14th February 2011 was to generate additional income to meet projected expenditure for road maintenance and improvement, concessionary fares and other road transport

costs. The intention was to transfer the surplus on the Special Parking Account to the General Fund at year end, to defray other road transport expenditure and reduce the need to raise income from other sources, such as fines, charges and council tax. This purpose was not authorised under the RTRA 1984 and therefore the decision was unlawful.