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Case No: CO/4957/2011

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13 October 2011

Before :

MR JUSTICE OUSELEY

- -

Between :

MARGARET BAILEY & OTHERS	**Claimant(s)**
- and -	
LONDON BOROUGH OF BRENT COUNCIL	**Defendant**
- and -	
ALL SOULS COLLEGE	**Interested Party**

- -
- -

Ms H Mountfield, QC, Mr G Facenna and Mr E Craven (instructed by **Bindmans LLP**) for the **Claimants**
Miss E Laing, QC and Miss J Clement (instructed by **London Borough of Brent**) for the **Defendant**

Hearing dates: 19th, 20, & 21st July 2011

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Judgment Approved by the court for handing down (subject to editorial corrections)

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Mr Justice Ouseley:

Introduction

1. On 11 April 2011, the executive of the Brent London Borough Council decided to adopt part of the "Libraries Transformation Project" or LTP, as recommended by officers. Part of the project it adopted was the closure of six of the Borough's twelve public libraries. The decision was called in for examination by the Council's Overview and Scrutiny Committee which, on 27 April 2011, reviewed and then endorsed the decision, subject to ensuring that the existing libraries remained open throughout the 2011 public examination period for young people.

2. In anticipation of budgetary cuts and building on earlier work, officers had presented a report to the executive on 15 November 2010 recommending public consultation on changes proposed to the public library service in the Borough; these included the closure of the six libraries. There was opposition to that report from various deputations. The report was approved. An extensive process of public consultation followed over a three month period. An Equality Impact Assessment or EIA was prepared under the Equality Act 2010, taking into account the results of the public consultation. The budgetary cuts came much as feared. A careful report, with the EIA, was presented to the executive for its meeting on 11 April 2011, leading to the decision now challenged.

3. The Claimants are Borough residents who use three of the libraries to be closed; their supporters use the other three to be closed. No issue over their standing in relation to all six libraries is now pursued. They claim that the Council either misdirected itself on the true scope of its duties under s7 of the Public Libraries and Museums Act 1964, or closed its mind to a fair consideration of whether its duties might be fulfilled by joint arrangements with voluntary groups who wished to keep one or more of the six libraries open on some basis. It also failed to inform itself properly of the needs of Borough residents, and then to analyse those needs rigorously, in particular by reference to the needs of children. It needed to do this in order to meet its s7 duties.

4. The public consultation had been unfair since the Council had not told the public what it needed to know about the running costs of libraries so that groups could make informed responses in support of voluntary arrangements, and had not been told the basis upon which the Council would appraise their alternative proposals.

5. It had also failed to comply with the public sector equality duties in s149 of the Equality Act 2010. It had not carried out these duties when the proposal was at a formative stage, and it had failed to ask the questions required by the Act.

6. The application for permission and the substantive application were dealt with at a "rolled up" hearing.

The statutory framework: the Public Libraries and Museums Act 1964

7. S7(1) provides so far as material:

> "It shall be the duty of every library authority to provide a comprehensive and efficient library service for all persons desiring to make use thereof…."

The omitted words confine the duty to those who live, work or study full time in the authority's area.

8. S7(2) provides:

> "(2) In fulfilling its duty under the preceding subsection, a library authority shall in particular have regard to the desirability-
>
> "(a) of securing, by keeping of adequate stocks, by arrangements with other library authorities, and by any other appropriate means, that facilities are available for the borrowing of, or reference to, books and other printed matter, and pictures, gramophone records, films and other materials, sufficient in number, range and quality to meet the general requirements and any special requirements both of adults and children; and
>
> (b) of encouraging both adults and children to make full use of the library service, and of providing advice as to its use and of making available such bibliographical and other information as may be required by persons using it;"

9. "Library service" is not defined, let alone the elastic concept of one which is both "comprehensive" and "efficient". "Library facilities" are referred to but not defined; they are not the same as "library premises" which are defined in s8 (7) as:

> "(a) any premises which are occupied by a library authority and are premises where library facilities are made available by the authority, in the course of their provision of a public library service, to members of the public;
>
> (b) any vehicle which is used by a library authority for the purpose of providing such a service and is a vehicle in which facilities are so made available;"

10. Clearly a library service does not have to be provided from fixed premises, commonly called a "library".

11. S9 permits a library authority to make contributions towards the expenses of another library authority "or of any other person providing library facilities for members of the public".

12. S20 permits a local authority which holds premises under this Act to use or permit them to be used for meetings and exhibitions, film shows, concerts and other events of a cultural or educational nature, for which it may charge. It is far from clear that those activities can be part of the library service, given that particular provision has

been made and not just for the purpose of enabling a charge to be made for that use; but the point was not argued either way.

13. The Secretary of State for Culture Media and Sport has a duty under s1 to "superintend and promote the improvement of the public library service…and to secure the proper discharge" by local authorities of their library functions. That is supported by the default power in s10 whereby, on complaint to the Secretary of State that a library authority has failed in its duties under the 1964 Act, he can cause a public inquiry to be held and, if satisfied as a result that there has been a failure by the library authority in its duties, he can make an order "declaring it to be in default and directing it for the purpose of removing the default to carry out such of its duties, in such manner and within such time, as may be specified in the order."

14. Several complaints have been made by Brent residents affected by its decisions, but the Secretary of State has yet to decide what to do about them. Although the Claimants did not therefore accept that the LTP did or could comply with the requirements of s7 as a "comprehensive and efficient" service, the focus of their argument was not on persuading the court to decide what was or was not such a service, but was instead on the way in which the Council had gone about its assessment that the LTP would in fact be such a service.

15. Ms Mountfield QC, for the Claimants, also relied on the general powers in s2 of the Local Government Act 2000. These enable an authority to do anything likely to achieve the promotion or improvement of the economic or social well being of its area, and for that purpose to incur expenditure, under s2 (4)(b) to "give financial assistance to any person", (c) to "enter into arrangements or agreements with any person" and (d) to "co-operate with, or facilitate or co-ordinate the activities of, any person".

The statutory framework: the Equality Act 2010

16. This Act featured as a ground of challenge in its own right but it also affected the arguments in relation to the way in which the 1964 Act duties were performed, so I set it out at this stage. The relevant parts of the Act came into force on 6 April 2011. No issue arose over its applicability to the executive decision. It replaced duties to have due regard to the need to eliminate sex, race and disability discrimination in predecessor Acts, and the Council had treated it as in substance applying to the way in which it considered the evolving LTP; and so no issue arose over the date on which the 2010 Act took effect. S149 provides:

> "(1) A public authority must, in the exercise of its functions, have due regard to the need to-
>
> (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
>
> (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

(3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to -

(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;

(b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;

(c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

(6) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.

(7) The relevant protected characteristics are-

age;

disability;

gender reassignment;

pregnancy and maternity;

race;

religion or belief;

sex;

sexual orientation."

17. Ms Mountfield developed an argument related to indirect discrimination for which purposes it is necessary to set out certain parts of chapter 2 of the Act dealing with prohibited conduct. S19 (1) and (2) read:

> "(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.
>
> (2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if-
>
> (a) A applies, or would apply, it to persons with whom B does not share the characteristic,
>
> (b) It puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
>
> (c) It puts, or would put, B at that disadvantage, and
>
> (d) A cannot show it to be a proportionate means of achieving a legitimate aim."

18. S.29 in Part 3 provides:

> "s.29(1) A person (a "service-provider") concerned with the provision of a service to the public or a section of the public (for payment or not) must not discriminate against a person requiring the service by not providing the person with the service.
>
> s.29(2) A service-provider (A) must not, in providing the service, discriminate against a person (B)—
>
> (a) As to the terms on which a provides the service to B;
>
> (b) By terminating the provision of the service to B;
>
> (c) By subjecting B to any other detriment."

19. But by s28(1), Part 3 does not apply to the protected characteristic of-

> "(a) age, so far as relating to persons who have not attained the age of 18;
>
> (b) marriage and civil partnership."

20. It is not necessary to refer to the parts of the Children Acts 1989 and 2004 which appeared in her skeleton argument since, as her oral argument developed, Ms Mountfield's points in relation to the needs of children were sufficiently made, as she recognised, by reference to other more general duties under the 1964 Act and under the Equality Act.

The facts

21. On 15 November 2010, Ms Harper, the Council's Director of Environment and Neighbourhood Services, presented a report to the executive entitled "Libraries Transformation Project". It summarised its purpose in this way:

> "1.1 The Libraries Transformation Project is a One Council project to improve the quality of library provision in Brent, while contributing to the Council's need to meet efficiency targets in response to reductions in funding. The number of library buildings in the borough will be reduced, enabling resources to be concentrated on the best located libraries. An enhanced core library offer for residents will be established that provides value for money and reflects the needs of all customers. Online and digital services will be expanded to widen access and comparable services will be provided to those who are unable to visit a library. Libraries will be co-located with council services and local agencies to provide community hubs with cultural activity. In order to do this the project will deliver:
>
> - Modern, multi functional, library buildings
> - A realignment of resources to achieve both improvements and efficiencies
> - A clear definition of what residents can expect from their library service, wherever they live, based on an assessment of user needs
> - A review of digital provision and online services in libraries
> - Staff training to equip a multi skilled workforce
> - Savings to the Council in the region of £1 million"

The first sentence shows the relationship between the anticipated budgetary problems and the need to improve the service anyway.

22. The report described the current library service. Half of the annual £6m budget went on staff and only 9%, £550,000 was spent on books. "Brent has 12 library buildings, some within short walking distance of each other. Half are badly located and in need of substantial updating". Two town centre library refurbishments had proved extremely popular. The "drivers for change" included impending public sector spending cuts, "12 library buildings not sustainable: need to concentrate resources on successful ones". After staff costs, premises costs were the next most expensive item in the library service budget.

23. The report referred to a Library Strategy which Brent had adopted in January 2008 for the period 2008-12. An initial officer recommendation that the Borough would be

better served by fewer but better resourced libraries with some closures, had not been agreed by members who instead had agreed to provide additional revenue to keep all twelve open. But now there were new factors: amongst others, efficiency savings of £90m planned across the Council's functions, and a new "organisational vision" for five proposed localities with libraries there playing a major role in accessing council services and as community hubs.

24. The proposed new strategy, which Members were asked to note and on which the public were to be consulted, was:

> "1. Rationalisation of resources by closing six library buildings that are poorly located and have low usage: Barham Park, Cricklewood, Neasden, Tokyngton, Kensal Rise and Preston.
>
> 2. A commitment to ensuring that residents have high quality library facilities in accessible locations.
>
> 3. A review of staffing and development of a staff training programme to ensure that staff are equipped to meet customer needs.
>
> 4. The development of a clear offer to residents of what they can expect from their library service, regardless of where they live, in terms of the loan of books and other items, downloads, e-books and online services, accessibility and community engagement.
>
> 5. A review of back office processes and development of proposals to share functions with other London boroughs.
>
> 6. The development of a strategy to ensure that, where libraries are proposed for closure, residents are offered alternatives to regular activities where possible. The strategy will also address the issue of partner organisations who deliver services in libraries scheduled for closure.
>
> 7. The development of a clear approach to voluntary organisations who wish to present a robust business case for running library services in vacant buildings (subject to agreement of building owners and at no cost to the Council)."

25. Of the six libraries proposed for closure, five had the lowest number of annual visits, and the greatest costs per visit. The sixth, Neasden was a little cheaper per visit and had a few more visitors than Kilburn, which was not suggested for closure and to which particular community considerations applied.

26. The report said this of community involvement in running library services, as was reiterated at the meeting of the executive, which the public attended:

> "We will develop a clear approach to voluntary organisations who wish to present a robust business case for running library services in vacant buildings (subject to agreement of building owners and at no cost to the Council)"

27. The executive was advised in the report that it "is crucial that the council consults the public since their views need to feed into decisions on the future shape of library services in the borough". A full Equality Impact Assessment "is being carried out and will be included in the final report to Executive once consultation has taken place."

28. There were three recommendations: that Members note the proposals of the LTP as set out in the report, that the public should be consulted on those proposals, and that a further report be submitted to the executive in April 2011 setting out the results of the consultation and "final recommendations" on the future of the library service. These recommendations were accepted at the meeting of the executive, at which deputations attended to speak against the officers' proposals.

29. There was a three month consultation period, during which an extensive and elaborate process of consultation was carried out. Its stated purpose went beyond finding out what people thought of the LTP, and included finding out what people wanted from the future library service, accessing library services other than in the library buildings, and the scope for community involvement. The consultation document set out the proposals and their justification, and carried the same point in the same language about community involvement and the need for a robust business case as in the report for 15 November 2010.

30. The wide range of approaches used was set out in the report on consultation presented to the executive on 11 April 2011:

> - "All consultation documentation including the questionnaire was available on Brent Council's consultation Tracker website
>
> - A LTP specific email address was provided to deal with any requests for information or to log supplementary comments. All correspondence has been logged and has served to inform this report.
>
> - Detailed enquiries, e.g. requests for financial calculations, were responded to directly by the Head of Libraries, Arts and Heritage and logged as above.
>
> - A letter outlining the proposals and providing details of how to access consultation documentation was sent to more than 125,000 stakeholders including community organisations, the voluntary sector and the Brent Citizens' Panel.

- Paper copies of the documentation were distributed upon request and were available at all Brent Libraries, Sports Centres and One Stop Shops. Alternative formats and languages of background documentation were available on request

- A feature on the consultation was published in the December edition of the Brent Magazine and the programme was published in the December edition of the Brent Magazine and the programme was widely publicised in the local press.

- Two borough-wide public meetings were held at Willesden Green Library Centre and Brent Town Hall.

- An open day was held at Willesden Green Library Centre

- LTP proposals were outlined by the Lead Member and the Head of Libraries, Arts and Heritage at the Area Consultative Forums.

- Council officers attended Service User Consultative Forums to present the LTP proposals and participate in a Q and A session

- Specific consultation was undertaken with Brent schools on the provision of the class visits programme

- Council officers and the Lead Member met with community groups and individuals on request to discuss the proposals in more detail and/or to explore options for alternative models of service delivery."

There was also extensive media coverage.

31. The questionnaire obtained information about which services people used, how often and why, although the Council already had a deal of data about the use of its libraries. It recognised that the respondents would be a self-selecting group and partial, since non-users and those least affected would be less likely to become involved.

32. Before the consultation period ended, the Council had had to set its budget. On 28 February 2011, for the year 2011-2012, spending was reduced by £42m and was estimated to reduce by a further £24.6m for the following year. The Council was obliged to set a balanced budget.

33. On 11 April 2011, the executive considered a further report from the Director of Environment and Neighbourhood Services. Members were recommended to agree a "transformed library service" which contained a variety of detailed service proposals, and the closure of the six libraries identified in the November 2010 report. The report described the services and stock in some detail, the six library buildings which it

thought to be of high quality in accessible locations, all open seven days a week, online and digital services, support for children, young people and families, learners, older people and those who found it difficult to access library services, people with disabilities, community engagement, and cultural offer.

34. The "drivers for change" were summarised as follows:

- "*Statutory duties:* the Council has a legal responsibility to provide a comprehensive and efficient library service to facilitate the borrowing of books. It has several other relevant legal responsibilities, including that of setting a balanced budget, and to assess the impact of its service proposals on communities who may be disproportionately disadvantaged.

- *Strategic influences:* the Council's own 2008-2010 Library Strategy recognised the need for change as new investment becomes more difficult while customer expectations grow. The One Council programme closely influences the service. The project has also considered the broader pattern of provision in London, and the DCMS Future Libraries Programme. Officers have also surveyed the complex changes driven by new technologies and the new possibilities and challenges they create.

- *Needs assessment:* the Project has drawn on national and local research and the strategic thinking embodied in the investigation into Wirral Library proposals, as well as the comprehensive analysis embodied in the Equalities Impact Assessment (para 10 and Appendix Four).

- *Resources*: this report is contextualised by the very difficult financial settlement for the Council both in 2011/12 and future years, and the importance of setting a balanced budget.

- *Performance:* the proposals also consider the current performance of the twelve libraries and how this has informed the new Library offer.

- *Partnerships and shared services:* the Project has reviewed a range of existing partnerships and consortia as well as ongoing discussions about future joint working.

- *Buildings:* this report reviews the current library premises and in particular usage figures, costs and issues of location and access."

35. Officers had "closely considered" the responses to the three month consultation process, the Equality Impact Assessment which was appended to the report, and the opportunities for alternative uses for the six library buildings to be closed, including community run libraries.

36. The duties in the 1964 Act were considered as follows:

> "In considering whether the service delivered by the Library Transformation Project is comprehensive, officers have had regard to a wide range of information about the borough's population, the active borrowers, people who are not library users, participants in consultation, the result of research and needs assessment, opportunities offered by a range of different forms of distribution and access, the differing needs of people with a range of characteristics, and other related factors, all of which are addressed in different parts of the main report and appendices.
>
> In considering whether the service is efficient officers have had regard to detailed information and analyses of the costs of the existing service, the resources available to the Council for delivering library services, the balance between costs of different parts of the service, particularly the proportion available for spend on stock, alternative means of distribution and access and opportunities (some already well established) for savings through joint procurement and alternative provision."

37. Officers expressed the view, in a more detailed Appendix, that the new library offer met the Council's statutory duties under the 1964 Act. The section on the legal implications of the decision proposed advised:

> "6.3 A Local Inquiry into the Public Library Service Provided by Wirral MBC undertaken by the Secretary of State dated September 2009 concluded that in deciding how to provide a 'comprehensive and efficient library service' the council must assess and take into account local needs. The Secretary of State set out the matters to be considered when undertaking that assessment, including the needs of various adults and of children and the need for a strategic plan. Although the 'Wirral report' does not have the force of law, it indicates the circumstances in which the Secretary of State may intervene under his/her default powers set out in section 10 of the Act.
>
> 6.4 Members must have regard to the assessment of need incorporated in Appendix One in deciding whether they are satisfied that the proposals will provide a "comprehensive and efficient" library service for the persons referred to above."

No complaint can be made of that advice.

38. The duties in the Equality Act 2010 were then dealt with in a way of which no complaint could be made. It applied to the performance of duties under the 1964 Act. I set out part of the advice:

> "6.13 The council's duty under Section 149 of the Act is to have 'due regard' to the matters set out in relation to equalities when considering and making decisions on the provision of library services. Accordingly due regard to the need to eliminate discrimination, advance equality, and foster good relations must form an integral part of the decision making process. Members must consider the effect that implementing a particular policy will have in relation to equality before making a decision.
>
> 6.14 There is no prescribed manner in which the equality duty must be exercised. However, the council must have an adequate evidence base for its decision making. This can be achieved by means including engagement with the public and interest groups, and by gathering details and statistics on who uses the library service and how the service is used. The potential equality impact of the proposed changes to the library service has been assessed, and that assessment is found at Appendix Four and a summary of the position is set out in paragraph 9 of this report. A careful consideration of this assessment is one of the key ways in which members can show "due regard" to the relevant matters.
>
> 6.15 Although the information on equalities issues relating to libraries was gathered before the new duty came into force, officers anticipated the change in the legislation and accordingly the information is sufficient to enable compliance with the new duty.
>
> 6.16 Where it is apparent from the analysis of the information that the policy would have an adverse effect on equality then adjustments should be made to avoid that effect (mitigation). The steps proposed to be taken are set out in paragraph 9 of the report and in more detail at Appendix Four.
>
> 6.17 Members should be aware that the duty is not to achieve the objectives or take the steps set out in s.149. Rather, the duty on public authorities is to bring these important objectives relating to discrimination into consideration when carrying out its public functions (which includes the functions relating to libraries).

> "Due regard" means the regard that is appropriate in all the particular circumstances in which the authority is carrying out its functions. There must be a proper regard for the goals set out in s.149. At the same time, Members must also pay regard to any countervailing factors, which it is proper and reasonable for them to consider. Budgetary pressures, economics and practical factors will often be important, which are brought together in Appendix One. The weight of these countervailing factors in the decision making process is a matter for members in the first instance."

39. The financial implications were that a net saving of £800,000 would be made on a full year basis, after allowing for additional costs of nearly £200,000 for improvements to the service. The majority of the savings would come from reduced staff and premises costs.

40. The responses to consultation were discussed. First, officers warned that there were "serious challenges within the consultation feedback as to how representative it is of library users, of non-users, or the borough's population as a whole". This could affect the weight to be given to them when set against the assessment of needs, resources, and the EIA. 87% of respondents used a library once a month whereas only 23% of the Borough's population had used a Brent library in the last year; it was difficult to get the views of non-users. The respondents had focussed almost exclusively on the proposals to close six libraries: 58% used two of the six, and 83% of respondents used one or other of the six, whereas visits to those libraries represented less than 25% of total library visits. The respondents were not representative of the Borough's "population of active borrowers", especially by ethnicity, (higher percentage of white respondents). The main issues which respondents raised were then discussed: poor stock, the need for more online services and access to PCs, "we love our local libraries" and others.

41. Diversity and equality implications were analysed next, by summarising the EIA. Its sources were noted. It continued:

> "9.3 A wide range of potential adverse impacts were identified for analysis and possible mitigation as a result of the assessment. The management of the information and presentation of the analysis was made more complex by the clear overlap of impacts between different communities, even if the mitigation might be different. In undertaking the analysis, four impacts were particularly identified as potentially affecting several equalities strands. The first three annexes to the EIA look at the analysis of impact by equality strand, then look at the analysis of issues raised and then address proposed mitigation of those potential impacts. The four shared issues are:

- Accessibility and affordability
- Impact on educational standards
- Impact on social cohesion
- Impact on lifelong learning and associated employment figures.

9.4 Detailed mitigation has been considered for these potential adverse impacts. These are shown in detail in Annexe 4.3, and it is also important to note that these are reflected in the new Library offer, set out at paragraph 4 above. That offer has been expressly designed to address these points.

9.5 The EIA shows that the identified adverse impacts are mitigated by proposed actions, in particular through targeted activities, specific outreach services and stock management. The financial constraints on the Council do not permit even further mitigation, although the reinvestment within the Transformation Project has ensured a wide range of measures. Introducing further bus services is outside the Council's powers.

9.6 The EIA shows that there is a restricted number of library users, particularly in the Cricklewood area (where the PTAL rankings are the poorest), who will experience the worst impact in relation to access to libraries either because they cannot use public transport, cannot walk to nearby public transport or alternative libraries, or cannot afford transport. Across all equality strands where a potential adverse affect due to issues of access and affordability has been identified, a range of mitigation measures have been established including outreach services, online and digital services, home delivery and home visits, books by mail and monthly outreach deposit collection to specific centres. These mitigations, which are considered sufficient to address the impact, will be particularly tailored to those areas and communities most affected.

9.7 Officers have carefully considered the potential adverse impacts which may remain after all the mitigating measures are taken into account, and how these should be evaluated given the other drivers for change within the Library Transformation Project. In this context, the EIA has considered:

- "Numbers of users
- Known information about transport and access difficulties particularly relating to age, ethnicity, gender and disability
- The access of relevant sections of the community to free or subsidised transport
- The other mitigations for difficulties of access and affordability
- The costs of maintaining the current service and the potential impact on delivery of the broader Transformation project
- The costs and difficulty of introducing public transport improvements
- The acute financial challenge facing the authority

9.8 Officers therefore consider that the potential adverse impact on a small group of residents which is not completely mitigated by other steps is justified by the benefits of the Transformation Project and the tight financial restrictions on the Council."

42. The report's analysis of alternative proposals included a paragraph upon which Ms Mountfield rested her first ground of challenge:

> "12.1 As set out in this report, the Libraries Transformation Project will deliver a service that is comprehensive and efficient, and fulfils the Council's duties. This judgement is based on a detailed assessment of need and analysis of the impact of the changes proposed, including closing 6 library buildings. Any organisations, groups or individuals who delivered a private or community library, whether or not they used buildings currently or previously used by the Council as libraries, would be doing so in addition to the Council's provision and not as a contribution to the Council's fulfilment of its statutory duties."

43. The report, after reminding members of what had been in the consultation document about the need for a robust business case, continued:

> "12.2 Members were clear, in public consultation meetings and through correspondence, that they would consider proposals from the community, but that they needed to meet the Council's concerns around enabling a balanced budget, and not represent either ongoing costs or risks to the Council.

> 12.3 Cllr Powney, as Lead Member, and officers met with a number of groups and organisations, and provided a significant amount of detailed information about local libraries, including analyses of central costs (eg for ICT, insurance etc). It was agreed, and widely circulated, that the cut-off date for proposals was the same as the closing date of the consultation, namely 4 March 2011."

44. Nine proposals, and a tenth belatedly, had been received, and these were appraised in an Appendix. The basis of the appraisal was summarised, along with the conclusions:

> "12.5 Before receiving these submissions, officers reviewed the complex financial, legal and risk issues surrounding this emerging process. Officers then prepared a detailed guidance note for apprising proposals, which is at Annexe 1 to the Appendix. In particular, it must be noted that this does not constitute a formal procurement exercise.
>
> 12.6 It was clear in apprising these proposals, as the reports in Annexe Two to the Appendix spell out, that none of them represent viable business cases. All of them rely on ongoing subsidy from the Council, none of them relieve the Council from all risk relating to buildings and assets, some of them would require formal procurement processes and very few of them come from groups who can show relevant expertise or longevity. Officers therefore do not recommend further engagement with any of these proposals."

45. The Appendix said that seven "key factors" had been identified for the appraisal; they were elaborated in the form of further questions which officers would use to inform their professional judgment of "the overall robustness" of any proposal. I summarise the seven factors: viability of the group making the proposal, viability of the proposal, quality of the proposal, support for diversity and inclusion, delivering the Council's targets, acceptable contract terms and risks to the Council's procurement process. The nine proposals were then assessed in the Appendix against those seven factors. The non-disclosure of those factors, or criteria as Ms Mountfield described them, was part of the Claimants' challenge that the consultation was unfair and unlawful.

46. Appendix 1 contains the User Needs Assessment. This is said to be so inadequate an assessment of library needs, which the fulfilment of the duties in s7 of the 1964 Act it is agreed impliedly requires, that the duty could not be fulfilled by the proposals in the April 2011 report.

47. After setting out the statutory duties in the 1964 Act, in the manner which I have already cited, Appendix 1 described the strategic influences on the development of the LTP and the new offer. The Library Strategy 2008-2010 was influenced by consultation showing certain needs of users: opening hours better suited to the user, improved access to and locations of library services, improved IT facilities, more space for study and homework, more books, refurbished buildings, and services to meet the needs of all the community. It had recognised that a "step change" was required in the quality of library service delivered to Brent residents. Since then, key

developments had led officers to reconsider the viability of the service especially in view of the number of buildings, and the percentage of the budget actually being spent on books. It commented:

> "All of these documents and analyses highlight the current pattern of service is not sustainable. The service is seeing declining numbers of visitors and loans in older and poorly located buildings, growing expectation is for stock and equipment (particularly digital services including wifi), and hence a need for increased investment in the service alongside increasing maintenance requirements in ageing buildings."

48. A further influence, again relevant to the assessment of needs, was a DCMS policy statement "Modernisation Review of Public Libraries" published in March 2010. This and the DCMS "Future Libraries Programme" made much of the internet revolution, digital technology, "the current economic climate", and the public's expectations. Library closures might be necessary but only as part of a strategic approach to service provision and after consultation with the community.

49. In the section entitled "User Needs Assessment", the report referred to evidence of what users wanted, using the Council's own research and that of others. The Museums Libraries and Archives report of December 2010 showed that book stock and reading were still key factors; libraries failed to market themselves properly, user needs varied; good quality, safe, neutral space was important; study space was in demand; and there were different types of users whose needs had to be accommodated. There was a tension between these competing demands. In October 2010, the Council had commissioned Red Quadrant to do some research on current usage trends in Brent and potential strands for development; this research had the advantage of not being dominated by the closure issues. This had identified a range of twenty one areas of user need; these were not identified as current deficiencies.

50. The April 2011 report then turned to the DCMS Inquiry in 2010, under s10, into complaints that Wirral BC was not complying with its statutory duties under s7. The ensuing report is regarded as a good template for the proper assessment of library needs. The Wirral report adopted non-exhaustive criteria for the assessment of library needs which the April 2011 report set out in sequence; in respect of each it gave its brief conclusion, sometimes by reference to the report on consultation responses (Appendix 3 to the April report), the EIA, (Appendix 4 to the April report), and other relevant reports identified as background papers. There is a considerable level of detail about users, usage and their needs in both the report on consultation and in the EIA.

51. I note that in its analysis of the suitability of the library buildings, the report commented on the success of the previously agreed programme of refurbishments linked to shared services in town centres in increasing usage, the figures for which it set out. These are the same as I have set out earlier. But the report then added:

> "It should also be noted that several of the older library buildings cannot be made compliant with the Disability Discrimination Act (DDA) and fully accessible for people living with mobility disabilities except at extraordinary cost.

> This has already resulted in the effective closure of upper floors at Cricklewood, Kensal Rise and Tokyington libraries, meaning that the libraries become small and much less efficient."

Those three are among those proposed for closure.

52. It commented in relation to demand for services in the way in which they were currently being offered:

> "The assessment of visits (see section 6 below) shows that there is a wide disparity in the use of existing buildings. A number of reasons have been hypothesised for this, but a key factor is location (high street, transport links), as the increased usage after Kingsbury library was relocated demonstrates. There have been vocal community campaigns against closure of specific buildings, but usage remains consistently low. Although demand is there, it is not at a level that is sustainable in the current financial context."

53. The Wirral criteria included the question of whether a library building was necessary; the April report pointed out:

> "The future six library buildings will be supplemented by the enhanced home visit service, the outreach service and our online offer. These are set out in detail in the new library offer at paragraph 4 of the main report. In particular, as more material is available through digital routes, delivering a comprehensive service is less reliant on physical buildings. Marketing of all these services will promote access to the library offer for all residents, wherever they live in the borough.
>
> It is also noteworthy that, although inevitably consultation focuses on closure, many residents across the borough have not lived close to a library building while the Council has run twelve sites."

54. Overall, officers said that they recognised:

> - "a comprehensive service cannot mean that every resident lives close to a library. This has never been the case. 'Comprehensive' has therefore been taken to mean delivering a service that is accessible by all residents using reasonable means, including digital technologies
>
> - an efficient service must make the best use of the assets available in order to meet its core objectives and vision, recognising the constraints on Council resources
>
> - decisions about the Service must be embedded within a clear strategic framework which draws upon evidence

> about needs and aspirations across the diverse communities of the Borough."

55. Section 4 of this Appendix covered the available resources for the Council overall and the Environment and Neighbourhood Services budget. The Council, it said, was not obliged to approve the LTP in order to effect the intended savings, but were it not do so, savings would have to be found from other budgets. Not all of the savings from the LTP would go to satisfy the need for cuts to the budget; some would be used to improve aspects of the library service through longer opening hours and improvements to the on-line service. The absolute sum invested in stock remained unchanged. Various options for saving costs were explained, but the main costs were in staff and buildings.

56. The performance of the service measured by usage of the different library buildings was discussed in section 5. The data sources available included electronic counting of visitors, the library management system for books borrowed, a national survey of customer satisfaction, resident surveys and feedback from customer panels. This established the cost per visit for the twelve libraries, as set out earlier, and updated for 2010/11. Brent usage was compared with some other London boroughs.

57. Buildings and their location were dealt with in section 7. The general point was made that older buildings were often not best designed or placed to serve the population now. Usage in Brent was best where the libraries were in the best condition and locations. Two examples in Brent were given of library moves or a new library better placed in relation to shops or other services and public transport which had led to significantly increased usage. In deciding which libraries to recommend for closure, usage levels and cost per visit had been factors, but location had also been important:

> "A reasonable geographical spread across the borough was also important. High street locations and proximity to public transport were preferable to ensure maximum footfall.
>
> 7.5 Libraries such as Cricklewood, Kensal Rise, Barham Park and Tokyngton are limited by their position and their proximity to better located buildings such as Willesden Green, Kilburn, Ealing Road and Harlesden.
>
> 7.6 Issues of deprivation and community access were also considered, particularly in relation to the three libraries at Preston, Neasden and Kilburn. Key issues relate to the access to libraries for younger people (under 19) older people (over 60) and people with disabilities. Population centres for these communities have been mapped, and are shown at the annexes to Appendix Four (the Equalities Impact Assessment.) Looking at these maps, it is clear that populations of all three of these groups are disproportionately centred around Kilburn, and therefore this library building was prioritised for the future Library service. (It is much easier to understand this issue by reference to the maps than by purely numerical presentation.)

> 7.7 Long term viability of buildings has also been considered and the fact that long term repairs of some of the underused libraries [are required]. Refurbishment of libraries over the past three years has been achieved through both external funding (such as Big Lottery), prudential borrowing and partnerships with other council services. The current financial climate means that many of these sources are now unavailable."
>
> [My insertion, to give the sense intended]

58. I now turn to the EIA. This described the LTP, the purpose of the EIA as being to determine the impact of the closures of the six libraries on the eight statutory equality strands as they affected users and potential users, the data sources, and the external public consultation on the LTP proposals. The public consultation responses did not reflect the diversity of the active library users nor of the Borough's population.

59. The EIA identified the key issues:

> "In summary, 4 key issues emanated from the public consultation and needs assessment exercises which in effect will impact on 4 of the equality strands namely gender, disability, age and BME.
>
> The 4 key issues identified through the consultation process are:
>
> 1. Accessibility and Affordability
> 2. Negative impact on educational attainment and standards
> 3. Negative impact on social cohesion
> 4. Negative impact on lifelong learning and interlinked unemployment rates.
>
> Whilst these are common issues across the equality strands, the nature, extent, challenge and proposed mitigation varies. Equality strands are analysed in Annexe 4.1 and the issues have been explored in Annexe 4.2 and the proposed mitigation cited in Annexe 4.3. Mitigation has been applied where possible within the confines of restricted budgets."

60. Detailed mitigation had been considered for the potential adverse impacts, and this was reflected in the new library offer proposed. Financial restrictions did not permit yet further mitigation:

> "The EIA shows that there is a restricted number of library users, particularly in the Cricklewood area (where the PTAL

> rankings are the poorest), who will experience the worst impact in relation to access to libraries either because they cannot use public transport, cannot walk to nearby public transport or alternative libraries, or cannot afford transport. Across all equality strands where a potential adverse affect due to issues of access and affordability has been identified, a range of mitigation measures have been established including outreach services, online and digital services, home delivery and home visits, books by mail and monthly outreach deposit collection to specific centres. These mitigations, which are considered sufficient to address much of the impact, will be particularly tailored to those areas and communities most affected. "

61. The remaining potential adverse impact on a small group of users, which had not been completely mitigated, was said to be justified by the benefits of the LTP and the tight financial restrictions faced by the Council.

62. The justification for taking the measures was put in this way:

> "The current economic situation and its impact on local government necessitate a review of all services at local, regional and national level. Brent's library service is looking to transform service delivery. The aim of this project is to both secure efficiencies and to deliver a better focused, more transparent and better supported Library service, offering better facilities and services in 6 locations."

63. The active borrowers at the six libraries earmarked for closure would be actively targeted with the new services, and their take up by reference to the relevant equality strands would be monitored.

64. There then followed a detailed analysis of the equality strands, the four key issues which the main EIA summarised and which arose across a number of strands, and the proposed mitigation. The mitigation section considered among other matters the accessibility of alternative libraries from the ones which would be closed.

65. It is, in my view, on the face of it at least, a careful and full analysis of the issues, and provides a deal of data on needs and how they could be affected. The key issues are the obvious ones which library closures could give rise to.

66. Alternative proposals for library services were dealt with in Appendix 6 to the April report. I have already set out the seven factors which the officers had identified as "particularly important in appraising these proposals." The Appendix states that they were not evaluation criteria, had not been shared with community groups, and were not scored nor treated as gateways through which a proposal had to pass. Rather, they acted as a guide for a structured discussion by officers. Each proposal was reviewed by a panel of officers. Each was allocated to a particular category of outcome, the four of which had been set beforehand. These were: 1, that the proposal did not and could not meet service, financial or risk implications, and should not be further proceeded with; 2, that the proposal did not but with further work might meet Council

expectations; 3, that it did meet them and could be implemented within realistic timetable, and 4, that it would require some sort of procurement exercise.

67. The Appendix contained a detailed appraisal of the 9 proposals then received. None were in category 2 or 3. Three were in category 4 and officers advised against any further consideration of them. Two were given a special category "1 starred" since they were not proposals for running the service but argued that the Council should consider alternative ways of saving money, and so save a branch threatened with closure. They were mistaken as to how the Council's finances worked. The other four were category 1. The six in category 1 did not achieve the savings of, or were less satisfactory than, the LTP. The four unstarred in category 1 did not meet any element of the seven factors. The late tenth proposal, related to the Preston branch, would have been in category 1, also without meeting any of the Council's requirements, as I read the analysis in the supplementary report. The reviewing panel also took the opportunity which these proposals created of seeing whether they generated new ideas or options for the Council to consider, even if the actual proposal was not to be pursued.

68. Before the executive reached its decision on 11 April 2011, it heard representations from a number of residents wishing to keep one or more of the six libraries open. Ward councillors were also able to address the executive. After debate, the proposals were accepted.

Ground 1: unlawfully ignoring the role which community libraries and groups could play in fulfilling the s7 duties

69. This was put in a variety of ways: the Council treated the duty as one which could only be fulfilled by council funded libraries and closed its mind to or ignored the way in which a council subsidy to a community library could assist the fulfilment of the duty. This fettered its discretion. The Council ignored the possibility of keeping further libraries open, with a subsidy covering part of the costs and community resources making up the difference; the Council closed its mind to such proposals.

70. The Council had ignored guidance in a letter from the DCMS dated 24 February 2011, about the role which community managed libraries could perform.

71. The Council does not in fact take issue with the proposition that the requirement in s7 (2), when fulfilling the duty in s7 (1), to have regard to the desirability of securing that the relevant facilities are available by arrangements with other library authorities and "by any other appropriate means", is broad enough to encompass a library which is wholly provided by a community or private group or partly provided by such a group and the library authority.

72. In my judgment, the Claimants' arguments fail to grapple with the reality of the Council's reasoning on why community proposals were not pursued. It was not because of some misconstruction of s7, nor a prior determination that such arrangements would not be pursued.

73. The case that the Council misconstrued the Act depends on paragraph 12.1 in the April 2011 report set out in paragraph 41 above. But paragraph 12.1 depends on the premise that the LTP, as proposed, would in fact fulfil the statutory duty in s7. That is,

I appreciate, a contentious issue. But if that premise is lawful, I see no answer to Ms Laing QC's point for the Council that further provision, however desirable, would not be part of the fulfilment of the duty. I also recognise that the duty to provide a library service which is both comprehensive and efficient gives considerable leeway for judgment as to whether the service in any particular council area meets the test, and then as to whether an additional library could not make it more comprehensive even if less efficient without the duty being breached. But, for all that, if the premise for the Council's point is correct, the conclusion shows no error of law. I deal with the lawfulness of the premise when dealing with ground 3.

74. The Claimants next are wrong, on the facts, to say that the Council closed its mind to the possible role of community groups in providing or assisting in the provision of libraries, and started out from the position that there would have to be six closures, regardless of any community input into their running.

75. Of course, the LTP, on which the public were consulted, included the proposal for the closure of six libraries, since officers and members had formed the provisional view that that was the better overall course, subject to what the processes of consultation and analysis started in November 2010 might produce. I accept that making savings to the library budget, which would obviously mean savings in staff and buildings costs because of their scale in the budget, would impel a council towards closure of some libraries. It would follow that a continuing subsidy for some of the libraries, which would otherwise be closed, would diminish the extent of possible savings. The report of November 2010, and it was emphasised by a councillor at the executive meeting which the public attended, pointed out the need for a robust business case to be presented by any community group wishing to provide a service, and at no cost to the Council, because the current costs were not sustainable. I accept that Councillors were firm in responses discouraging any belief that the library budget could be increased by making more money available in subsidies.

76. However, none of that could amount to or demonstrate a fetter on the Council's discretion to consider what groups might come up with. It obviously did not rule out working with community groups. The Council had not by this time concluded that the LTP would meet the s7 duty and so it was examining what ways there might be of saving money but keeping various parts of the existing service. Its approach in November was a little more flexible than in April, and in November the library budget had not been fixed, and could have been reduced by less albeit at the expense of other budgets.

77. I cannot see that it is unlawful for the Council to start the process by warning the groups, as in effect it did, that its approach would be that alternatives had to achieve the same level of savings for the same level of service as the Council's own proposals.

78. The subsequent consultation and decision-making process refute the Claimants' contention that the Council misconstrued s7 or closed its mind to working with groups, as well. There was extensive consultation about the LTP; alternatives were put forward; a considerable amount of effort was expended by the Council in providing information to groups who requested it and in answering their questions. The evidence about that is clear from section 8 of the consultation report and the consideration in Appendix 6 to the April report.

79. These proposals were then considered in detail in the April report. They were not ruled out on the grounds that they were from community groups, or on the grounds that such groups could not in law contribute to the provision of the library service. They were not ruled out simply because they required a subsidy: they failed, to the extent that they were an alternative form of provision at all, on the ground that the business case was not robust for a variety of reasons. This included but was not confined to the continuing cost to the Council. The panel also considered whether the proposals could be improved with further work, and whether, although not accepted, they created any other ideas which the Council could usefully pursue. It cannot be suggested that the actual appraisal of the alternatives in that respect is unlawful.

80. The Claimants do not say that all of this was a sham yet, if the Council did approach this with a closed mind on the involvement on community groups or on a subsidy for community groups, that is what it must have been. I simply do not accept that. The Claimants' real contention is that the Council was not prepared to go along with alternatives which cost it money. That was not the only basis for its conclusion on the alternatives. But even if it had been, there is nothing unlawful under s7 in that respect. The duty is to have regard to the "desirability" of securing provision of services by other "appropriate means". The Council did just that. It concluded for sound and legitimate reasons that it was not desirable, and the alternative means were not appropriate. S7 contains no duty to consider providing a subsidy if the Council do not consider that to be desirable or appropriate. The Council's approach was entirely consistent with the requirement in s7(2) that the provision of library services by other means be "appropriate". The Council was entitled to judge that, in dealing with a service the costs of which needed to be cut, some other means of provision was not appropriate if it cost the Council money over and above that which the Council was prepared to spend, or if it was unlikely to provide the service required.

81. It is the approach which the Council warned of, without closing its mind to the consideration of such proposals, as its overall evaluation of just such proposals in April showed. It is the view that the Council reached after considering all the relevant issues in April 2011. But by this decision-making stage, the Council would have been entitled to say that the savings required could not be achieved with the community group proposals, and was entitled to say that there was no case for them to be part of the service run in the manner it was proposed they would be and at cost to the Council.

82. The detail of the facts in *R (Hajrula) v London Councils* [2011] EWHC 448 (Admin), relied on by the Claimants, is not entirely straightforward, but the crucial factor behind the decision was that there was a two stage decision-making process, the nature of the decision at the first stage closed off consideration of options which yet had to be considered for the purposes of the precursor to s149. They could still have been reconsidered but in fact were not. That is not the position here. Nothing was closed off before April 2011.

83. Allied to this argument, was a further contention that the Council had not considered means of saving money other than by closures. That is simply wrong. Such other means were considered, and not just in a few lines, in Appendix 1 to the April report: reducing opening hours, cutting support costs, not cutting the budget or making savings elsewhere.

84. The Claimants' arguments gain nothing here from the effect of the DCMS letter of 24 February 2011. Working with community groups is no more than one of a number of ideas being investigated for delivering more efficient library services emerging from the Future Libraries Programme 2010/11 which the Minister was keen to learn more about. The Council did investigate it.

Ground 2: unlawful failure to consult

85. It is convenient here to deal with a later ground raised by the Claimants, namely that the consultation was so unfair as to be unlawful. There are two related aspects: a failure to provide sufficient information to consultees for them to make specific representations as to which libraries should be closed, if any were to be closed, and for them to make "meaningful" proposals on community support to keep or help keep open any proposed for closure. On the first point, those consulted should have been told what the specific savings aimed at by the proposed six closures amounted to, and how and why the course of action being consulted on had been arrived at, so that alternative ways of making such savings could be considered by consultees. On the second point, those consulted should have been told how the Council proposed to appraise alternatives put forward by consultees; in particular the seven factors, or criteria, used in their appraisal should have been notified to consultees. Quite apart from the Council's intention of developing a "clear approach" to voluntary organisations who wished to present a robust business case for running library services in vacant buildings, the consultees would have wished to comment on the use of the seven criteria, as well as to adjust their submissions to take account of them. Of course, this ground of challenge focuses on those parts of the consultation which dealt with the LTP and the involvement of voluntary groups; other parts of the consultation sought views on various aspects of the library service, for example user needs, more IT, and the need for physical buildings.

86. Both submissions raise the question of whether the Council gave consultees sufficient reasons for and information about the proposals to permit of intelligent consideration and response. If it did not, the consultation process would be legally flawed. In my judgement, it was not flawed in either respect.

87. The proposals for closures of what the Council saw as the six poorer performing libraries, concentrating resources on the other six, against a background of budget constraints and strategic aims, was adequately set out in the consultation document: the relatively low usage and poorer location of those to be closed were explained, as was the strategy of concentrating on the better six, which were or were to become community hubs, along with other changes to the service. The November 2010 report was also available and set out the overall savings aimed at, and costs per visit of the twelve libraries. There was ample knowledge of what the proposal was, in relation to closures and of its rationale. Of course, there is always scope for more detail to be provided, but in my judgment there was enough for intelligent responses on savings, the rationale for the closure of these six to be made, and for an alternative strategy or the closure of others or fewer to be proposed instead.

88. There was then a very extensive consultation programme over three months using a variety of well–publicised forms of communication with the public at large, users and specific groups; there was ample opportunity for anyone who was concerned to find out more about the financial background, the costs of each library, and the basis for

their selection for closure, to seek further information. There was a dedicated email address through which people could seek further information. Appendix 3, the report on consultation, summarises at paragraph 8.3 the range of requests for information received, some specific to particular libraries, and some more general. Not all were answered to the questioner's satisfaction, but there was a very real willingness to provide further information, as Ms Harper's first witness statement shows. She said that officers always responded to these requests as soon as possible. None of the alleged deficiencies in response could come close to showing that the consultation was unlawful. Elected members also made requests for information. In January 2011, the Council published a document which dealt with a number of questions raised in consultation meetings. This contained financial calculations for seven different options for the library service, including the retention of more and fewer libraries than the Council proposed. More financial detail on the costs of running the service were provided. This was then placed on the consultation website and referred to at meetings with community groups.

89. Ms Laing also makes the fair point that the scale and nature of responses shows that the information provided was sufficient for the consultation to be lawful. Although many respondents focused on the benefits they gained from the individual libraries which they used and which were proposed for closure, there were three proposals which did not involve library closures at all; they were not rejected by the Council as irrelevant. The Willesden Area Consultative Forum and Save Preston Library Campaign raised the question of reducing opening hours to save costs rather than extending them; this was considered and rejected in the April report.

90. I see no conflict between the Council keeping an open mind and its consulting on the preferred route identified by officers and approved by the executive for consultation in November 2010. I accept Ms Laing's submission that the Council was entitled to consult on the proposals which it had approved for consultation, rather than on a series of options which it did not propose. A lawful consultation process does not require that all the anterior phases in the selection of a preferred course be formally and specifically opened to consideration. There was no evidence that the Council was unwilling to reconsider its proposals in the light of the consultation process if a strong enough case had been made. The Council was not obliged to consult on alternative means of achieving the same ends; there is no such general principle and such a requirement would make consultation inordinately time-consuming and complex. Nor could the absence of such consultation show that the council had pre-determined the issues: *Vale of Glamorgan Council v Lord Chancellor* [2011] EWHC 1523 (Admin).

91. The second point concerns the use of the seven factors or criteria for a robust business case, which were not declared to the public in the consultation process. This is untenable as a basis for asserting the consultation to be unlawful: it is obvious that such a case will include the nature and experience of the group in running such a venture, the financial resources available to such a group, the cost to the Council in the light of its warnings that there was no financial support if the savings envisaged were to be made, and its prospects of delivering a worthwhile contribution to the library service. The factors or criteria are not, save for one, more than an elaboration of the test which was fully notified to consultees, and of which I accept any group capable of making a worthwhile contribution would have been aware, without it having to be spelled out to them. The goalposts were not moved. The contribution to

diversity and inclusion is not one of which the need to promote a robust business case would necessarily have forewarned a group looking to make a contribution to running a library. But the Claimants should have been aware that any failing in the public sector equality duty, such as that with which they charge the Council, would have been a failing on their part as well. No proposal failed on that one ground anyway: they failed because they were not a viable proposal run by viable groups. Considerable detail on the process whereby groups sought and were provided with information which they sought for their proposals was set out in the documents and brought together in a speaking note from Ms Laing, along with detail on the basis for the rejection of the alternative proposals in Appendix 6 to the April 2011 report. They contend that had they known that the groups needed to show that they were capable of running a library, they would have been able to demonstrate that. I am satisfied that any group wishing to run a library, whether at its own expense and even more so if at public expense to some degree, should have realised that its experience and financial capability was an issue to be addressed in the consultation process. I do not think that any failing on the part of proposers to know what case they had to meet can fairly be laid at the door of the Council, nor were negotiations with proposers required on their proposals in order for the consultation process to be fair. There is nothing in this point.

Ground 3: an unlawful failure to assess needs

92. It is the Claimants' contention that the LTP involves a breach of s7 on its merits, regardless of the information gathered by the Council. That contest is not before me, and it will be for the Secretary of State to decide what to do under ss1 and 10 about the complaints made by the Claimants and others in that respect. Before me, their allegation is a more limited one concerning the way in which the Council obtained information and then analysed it when carrying out its assessment of needs. This, they contend, was irrational or failed to meet the necessary standards.

93. There was a degree of common ground as to the legal framework. The duty in s7 could not be fulfilled unless an assessment of the needs which the library service should meet had been undertaken. The library authority could not form a lawful or rational view of whether the service was comprehensive and efficient unless it had properly informed itself about those needs. This implication from s7 itself is no more than a particular application of the general public law principle found in *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1977]AC 1014 at 1065B, Lord Diplock: "…the question for the court is, did the Secretary of State ask himself the right question and take reasonable steps to acquaint himself with the relevant information to enable him to answer it correctly?" Ms Laing rightly emphasises that it is "reasonable steps" which are required, and no more.

94. She also submits that, since the Secretary of State has the duty of superintendence of the performance by authorities of their s7 duties with the advice of advisory councils, and in s10 a default power, with scope for a full factual inquiry by an independent person, as happened in response to complaints about the library service in the Wirral, this court ought to intervene only in a clear case: a complete failure by a library authority to assess need, or an irrational approach to its assessment. The Claimants have in reality accepted just such an approach in relation to the question of whether the LTP breaches s7 on its merits, which they are content to leave to the Secretary of State. I accept that submission: I would put it on the basis that if the Claimants can

show that something has gone seriously or obviously wrong in law in the information gathering or analysis process, they should have their remedy in this court. Otherwise, it should be left to the Secretary of State.

95. This alternative course of action, invoked through complaints, can examine not just whether the proposed library service and closures breach s7, but it can also examine whether the information gathering processes of the Council, and its analysis of what information it did gather, enabled it to reach a lawful conclusion on whether its proposals met s7. So there is an alternative remedy, and one rather better suited to the sort of debate which underlies the Claimants' arguments than the process of judicial review. I am influenced in that by the nature of the Claimants' contentions about what the Council had done or failed to do, which did not strike me, as I shall come to, as involving serious or obvious errors of law, (or any errors for that matter), as opposed to giving rise to differences of opinion about what had been done in fact: the significance of what had been done, for what inferences which could be drawn from the available information, and the quality of the analysis which followed. I recognise that the Secretary of State might decide that there was no need for him to intervene under ss1 and 10; but that would not mean that the alternative remedy was nugatory. Rather, it would mean that there was no breach to be remedied.

96. The Claimants' contentions cannot be substantiated in my judgment, still less can they be substantiated to the degree necessary to succeed in the light of the ss1 and 10 duties. Indeed, I should make it clear that on the material I saw, I could see no breach anyway. The User Needs Assessment in Appendix 1 needs to be read with other relevant documents, notably the consultation report, the EIA, and the other background documents referred to in the April 2011 report. The need for the Council to inform itself and to analyse the material it has, does not require it all to be in the one document or in documents to which Appendix 1 refers. The collation of the material in one document simply makes it easier to prove compliance with the assessment duty. The citation from the Wirral report, even if it were a source of legal obligation, that "a separate or specific review of the Library Service and the needs of …communities in relation to it" is not describing the format required of a report. Fundamental to the Wirral failings was that the library service was reviewed as part of a "Strategic Asset Review", a largely property based assessment of assets which could be better utilised or sold off as too expensive to keep. The library service was not really considered as a separate service to meet the needs of Borough residents. That was the failing to which the quotation was addressed.

97. The detailed grounds of defence summarise the information relied on as follows:

> "(1) Library management system data, including detailed data about existing library usage across the borough over a number of years, such as data about the number of visits to each library, the number of "issues" and the cost per issue.
>
> (2) Recent surveys about library use, conducted as part of the national model for surveying users of public libraries. The most recent Adult Public Library User Survey ("PLUS") was carried out in 2009; and the Children's PLUS in 2010.

(3) Strategic trends in the development of library services, as set out in national policy documents about the future of libraries provision (e.g. the Museums Libraries and Archives report, "What People want from Libraries").

(4) Research carried out by Red Quadrant consultants about what people in Brent wanted from their library service; and

(5) Information obtained through the consultation process, which specifically sought to obtain information about what people "want and need from their library service for the future"

(6) Demographic data about the Brent population as a whole (including non library users) obtained from the latest census figures and Mayhew reports; and

(7) The equality impact assessment."

98. The factual accuracy of this summary is borne out by the content of the User Needs Assessment, the consultation report, and the data sources referred to generally in the EIA and then specifically referred to as needs and impacts are addressed. Ms Harper's witness statement evidences it. I do not doubt that the Council used the data from its electronic library visitor counting system; it would have been bizarre if it had not. The challenge does not take account of the other sources to which the User Needs Assessment directs the reader.

99. Indeed, if Ms Harper's first witness statement shows that the Council had regard to further data not listed directly or indirectly in the report, that may be a failing in other respects but, accepting what she says as a matter of fact, as I do, that further data forms part of the assessment of needs. I do not accept however that a proper reading of the assessment, the documents it refers to and the background papers supports the Claimants' contention in that respect.

100. The Claimants do not identify any existing source of data which the Council had not used, or any further research which the Council should have undertaken in order to have taken reasonable steps to obtain relevant information. So in terms of obtaining sufficient information to make a lawful assessment of needs, the Council has plainly acted lawfully.

101. The Claimants contend that the information acquired had certain deficiencies, which meant that various parts could not form part of a lawful assessment of needs and so the assessment was unlawful. The electronic counters, situated at the entrances to the library facilities, could not record groups entering the libraries; but the Claimants provide no evidence to suggest that that has any statistical significance, let alone such as to make the needs assessment unlawful.

102. They point to what they assert is a discrepancy between "only 23% of Brent's population" being users of the library service in the previous year, as reported to the executive, and the Council's Libraries, Arts and Heritage Service Plan 2010-2012 which stated that nearly 57% of "adults" used a library service in 2008/9 with an

increased target for the succeeding year. On the face of it, the two percentages relate to different groups, and it is far from obvious that they are significantly at odds. Ms Harper's second witness statement painstakingly disposes of the point anyway. Two different data sources are involved, one dealing with the computerised library records of the Council which record active borrowers who can be adults or children, the other a national telephone survey of adults with a small sample size at borough level and a risk of overstatement of library use in the questions. The two had always been at odds and the national indicator drawn from the latter has now been withdrawn. The suggestion that this "discrepancy" meant that the Council "lacked the basic information necessary to enable it to discharge its duty under section 7" was misconceived.

103. The Red Quadrant report was criticised as unreliable since it was impressionistic, yielding partially contradictory views from library users, and was never intended to provide concrete information on specific needs, including the needs of non-users. Those surveyed had not been told of the closure plans, and instead were asked what improvements could be made; it was not available for consultees to comment on, and was not circulated to members, yet was relied on "heavily" asserted the Claimants. Even if all those points were sound, they do not come close to showing that the overall assessment of needs was so deficient as to be unlawful. The Red Quadrant report was one of a number of sources relied on. I think it difficult to say from the material whether it was a major influence or not. One of its obvious values, compared to the consultation responses, is that it was not influenced by closure issues. Partially contradictory responses are not altogether surprising. The report used focus groups of library users and staff, desk research and library visits to investigate current trends and ways in which the service could be developed. Fifteen areas of user needs were identified, including a better range of books, internet access and study areas, improved home delivery service and outreach service, and improved online resources. The report was available on the Council's library related microsite, after the April 2011 meeting.

104. The Claimants contend that the consultation responses were not representative of library users as a whole, as the Council realised. It is obvious that the Council was aware that they were dominated by respondents dealing with closures to which they objected. The Council was entitled to reach its conclusions in the light of that. But the fact that the responses were not a representative sample of views and needs across the Council cannot mean that the whole of the exercise was incapable of adding to the understanding of needs throughout the Borough, and especially in the areas which were to be affected by closures. I deal with the flaws asserted in the EIA as a tool for understanding needs when I deal with that topic, but for present purposes, it is sufficient to say that in my judgement it provides useful data, and an analysis of needs and the impact of closures on the users and residents likely to be affected.

105. The Claimants next take issue with the approach adopted by the Council to the information which it had acquired. The Council specifically directed itself in accordance with strictures of the Wirral report, an approach about which of itself the Claimants cannot complain. I have dealt above with the misjudged complaint about the absence of a "separate needs assessment". Although the comments in the needs assessment in relation to the Wirral report factors are expressed in quite general terms,

they are based on the more detailed data to which the needs assessment refers. In reality, the specific consideration of the Wirral questions shows that the Council's approach was entirely lawful. There are also, I accept, very significant differences between the circumstances which led to the Wirral report and those here; quite apart from the data obtained and analysis carried out, the whole purpose of Brent's assessment was to obtain and analyse the information necessary for an informed judgment about user needs, the effect of the LTP and the impact of closures. It was not an adjunct to a different task.

106. There are no other standards to which the Council had to have regard which show that the needs assessment was unlawful, let alone that the LTP was itself unlawful. There is no requirement that all residents of an urban area should have access to a library within 1 mile of their homes; that is not a measure of a "comprehensive" service. Such a measure could readily have been enshrined in statute. And whatever may have been the guidance of government years ago for example in the Bourdillon report of 1962, it does not now represent the measure of a comprehensive service. Nor is there a requirement that, in an Outer London Borough, 99% of residents should live within 1 mile of a library. The DCMS Public Library Service Standards, which included such guidance, were withdrawn in 2008, and even when extant, non-compliance was not treated by Government as a measure of a necessary breach of statutory duty. Accessibility, and the advantage of good accessible central locations with shared services, was recognised by the Council as necessary for the proper performance of the duty, but it did not have a precise mathematical measure as in the PLSS guidance. The Claimants make a bad point when suggesting that the Council had erred in looking at the current needs of the users rather than future needs, alleging that meant that the Council had ignored the needs of those who as they got older might have changed needs. But all this means is that the Council is not looking at the way in which the needs, say, of children or the elderly disabled may change in the future; of course it does not mean that the individuals' needs will not change as children are born and others age to become the disabled elderly, but there are already children and disabled elderly whose needs were considered.

107. The availability of resources is relevant to what constitutes a comprehensive and efficient service; the library service and s 7 duty are not exempt from resource issues and were not entitled in law to escape the budget reductions faced by the Council. The Council plainly did consider how the overall budgetary decisions would fall. It then considered the basic alternatives which the structure of the library service costs entailed: reduced staff costs which required closures or reduced opening hours, and reduced building costs which required fewer libraries.

108. The Claimants next contend that various relevant questions were not addressed in a rational manner. The first was the accessibility of the remaining libraries to those whose nearest one would be closed. It was argued that the Council had carried out no "meaningful" analysis of the proportion of the users of each of the libraries proposed for closure who were likely to migrate to one of the remaining ones, what barriers they faced in doing so, and what alternatives there might be for those who were unable to do so. The EIA, on which the Council relied for the detail of its response to this issue of accessibility, did not quantify those who might be unable to migrate or who might use the libraries less; it could not know what it asserted, namely that all

but a very small minority would migrate. It did not carry out any cross-over analysis of the possible combinations of protected characteristics which could be affected.

109. The Council, however, did have considerable detail about the profile of the users and population around the libraries to be closed, including youth and age, disability, social deprivation, and ethnicity. It obviously knew where the libraries were in relation to each other. It carried out quite a detailed analysis of accessibility from the closed libraries to the nearest open ones, including car ownership and public transport accessibility. The Council obviously did conclude, as it was reasonably entitled to do, that most users would go to the nearest remaining library, albeit at some cost in time or travel. It recognised that some could not do so, and for them other services would be provided. The Council was entitled to draw the conclusions it did; certainly they were not unlawful or unreasonable. I could not readily reconcile the Claimants' assertions of unlawfulness with the detailed consideration which the Council had given to this obvious issue when closures are contemplated. There is no requirement in law that there be a mathematically quantified expression or basis of the judgment required. Its spurious accuracy would then have been attacked. I am not entirely clear either how the answer could reliably be more quantified. Asking the users opposed to closure whether they would use the nearest library is not obviously reliable.

110. Allied to the general issue about accessibility, was the Claimants' concern about the consideration given to the needs of children, who could not travel alone, or who needed quiet study places after school hours, and two of whose schools relied on the libraries as the school library. There is nothing of substance in this: the April 2011 report identifies services which children would have, specific support measures for children, young people and families, a key issue in the needs assessment was stated to be access to libraries for those under 19, and the specific impact on them was considered in the EIA. Of course, specific concerns were raised during the consultation process. The EIA describes the use made by children and young people of the six libraries proposed for closure, and the key issues of accessibility and impact on educational standards and social cohesion to which closures could give rise. Consultation with schools and English Language Co-ordinators identified specific needs. Head teachers and English Subject Leaders at all Brent schools were especially consulted. There was a wider and more elaborate consultation on schools' needs as well, which Ms Harper describes in her first witness statement. Nursery schools too were notified via the Extranet, which, as she says, is the common way of communicating with them. The Council's Children's Department was aware of the proposals, and its Director agreed them.

111. The mitigation measures addressed the problems. The accessibility of the nearest open libraries was described. Specific measures for children and young people, including those with disabilities were set out to address both accessibility, and for those who could not use free public transport to get to the nearest library, other measures were proposed such as enhanced outreach, virtual homework help, and outreach services to schools. The specific problems at Preston which a local school used as its school library and at Barham Park which was used as a children's centre were known to the Council and covered by its general mitigation proposals for outreach to schools, and indeed to homes as well.

112. When addressing accessibility and affordability, the specific problems which certain groups faced, such as mothers with children, and young people from certain ethnic

groups who might fear to travel further or were at a greater risk of increased road accidents in doing so, were considered. They did not specifically address the fact that there would be some children, who were entitled to travel free themselves but who would have to be accompanied by someone who would not necessarily fall into the categories who received free travel. But they are in the same position as adults who have to travel further for their own needs in that respect; the existence of some disadvantage was recognised. If the degree became too severe, other measures such as home delivery were to be employed. Likewise, educational attainment and social cohesion were addressed in some detail. I do not consider that the variety of possible combinations of affected characteristics required to be addressed, in the absence of any specific material emergent from the information gathered, which suggested that such an analysis would reveal what the Council's examination of protected characteristics could not reveal. I accept that the analysis in the User Needs Assessment is expressed at a fairly high level of generality but that reflects the conclusions not the data justifying them, which included the consultation and the EIA which went into considerable detail, and the other data sources which the Council had. The conclusions in the report on consultation and the EIA are more detailed.

113. I have no doubt that there is room for legitimate debate about the effectiveness of these measures, and whether every point raised has been addressed, but that is not a measure of the lawfulness of the needs assessment.

114. The reliance by the Council on mitigation measures which relied on "virtual services" was further said by the Claimants to show that the needs assessment was unlawful, reaching decisions without obtaining the necessary information. This was because it had made no assessment of the number or proportion of library users who did not have internet access at home or broadband internet. They criticised the one line statement by the Council that 90% of its population had internet access at home, up from 58% in 2005. The basis for that assertion was criticised as coming from a 2007 survey about which little was known, and which produced what they thought to be a suspiciously high figure compared to the national average of 75%, bearing in mind that Brent had a higher level than the national average of lower income households; it was likely that those who used the internet at the libraries did not have access to it at home. There was no analysis of how many of the 10% were in other disadvantaged groups. Access to the internet at home would not help those who relied on the library for non-internet IT such as word processing.

115. I see no reason why the Council should not rely lawfully on the figure derived from the local survey rather than being suspicious of it; that may be an area of legitimate disagreement but it is not an area which shows an error of law. There are other mitigation measures for those who cannot get to the next nearest library, including home visits and delivery, books by mail and collections deposited at specific centres. There may be some who go to a library proposed for closure who cannot get to the next nearest, but the Council is entitled to conclude that they are a small minority, and if there are some of those for whom the mitigation measures leaves a need unmet, say for word processing, the implication is that they would be fewer still. This does not begin to show that the assessment of needs was unlawful. The suggestion that the Council ought to have ascertained the proportion of the 90% with home internet who used the library for human contact is going far beyond the requirement of a statutory library service; it exemplifies the endless detail which could in theory be collected

without really advancing relevant knowledge reasonably required for a decision on whether s7 is satisfied, as does the suggestion that the assessment ought to have included the needs of the children of single parents who had study needs.

116. The Council's reliance on mitigation measures which included the use of the internet was criticised as falling outside the scope of s7 which focussed on "facilities for borrowing books and other material". Of course, if provision of facilities such as the use of IT and the internet fall outside the scope of s7, then some of what the Council's service currently provides would fall outside the scope of s7, and complaint could not be made were those facilities dropped. I do not see that as the Claimants' case. In reality, a service which includes the provision of books and other materials by technology and goes beyond the loan of books or other physical items, or the provision of reading facilities on the printed page, falls within the scope of s7, which is not confined to the loan or use of physical items. Besides, as the description of mitigation measures in the EIA shows, as set out above, they encompassed rather more than the substitution of a physical presence with whatever could be done "virtually" over the internet.

117. I do not regard the Claimants' points as capable of showing that the needs assessment was irrational or obviously seriously deficient to the extent necessary for this court to hold that the Council's judgment under s7 was unlawful. Rather they amount to the sort of issues which go to a factual debate about the merits of the assessment. I have no doubt that the Council has obtained the information required in relation to these users, and has dealt with the relevant questions which these closures give rise to in relation to them at least sufficiently for its judgment on the performance of its s7 duty not to be challengeable by judicial review. What it has done actually seems to me to be obviously lawful anyway.

Ground 4: breach of the public sector equality duty

118. The Claimants contend that this was breached in a number of ways. As the Claimants' arguments developed, they took on a different shape in relation to indirect discrimination. They relied upon *R (Brown) v Secretary of Work and Pensions* [2008] EWHC 3158 (Admin), paragraphs 90-96 for its general elaboration of the nature of the duty in s149 of the Equality Act 2010. These are however but a "tentative" discussion of "general principles", all deduced from earlier decisions but voided of their context; they are not additional statutory requirements. Care is needed with them, and the warning note that they are tentative should not be overlooked; the sixth principle is good advice rather than a statement of legal principle. Some overlap, notably the second and third "principles", and they are together particularly capable of being misunderstood when addressing the point at which, in relation to any decision, the duty to have due regard to the duty in s149 must be fulfilled.

119. The Claimants submitted that there was an obligation to have the necessary due regard required by the s149 duty at a "formative" stage in the decision-making process. This draws on *Brown,* which draws on other decisions, which are in turn reflected in the Equality and Human Rights Commission guidance in "Using the equality duties to make fair financial decisions". This makes the point, as do the cases relied on in *Brown,* that any assessment of impact must be carried out "at a formative stage so that the assessment is an integral part of the development of a proposed policy, not a later justification of a policy that has already been adopted."

These cases, including *R (Elias) v Secretary of State for Defence* [2006] 1 WLR 321, [2006] EWCA Civ 1293, and *R (Kaur and Shah) v London Borough of Ealing* [2008] EWHC 2062 (Admin), Moses LJ sitting at first instance, highlight the contrast between consideration given to such a duty "as a rear-guard action", after the decision has been taken or to justify a policy decision arrived at already, and consideration at the formative stage. Those are the two contrasting poles, with no unapportioned middle ground.

120. Ms Mountfield submitted that it was too late to consider s149 for the first time in April 2011 since the proposal under consideration had already passed the formative stage. I asked her to say when the formative stages were. She submitted that the stages were in September 2010, when officers were drawing up the proposals for cost savings and the LTP which required them to look broadly at potentially significant equality issues, then in November 2010 when the worked up proposals were put to members for approval for public consultation, again after the consultation responses were in and finally at the April 2011 meeting. It was not sufficient to have due regard, if due regard had in fact been had at all, at that latter stage alone. There is a contradiction in her submissions as to whether the April 2011 stage was too late to be relevant at all. If that was still a formative stage, it is difficult to see why it should not suffice by itself.

121. When read in the context of the decisions, which is clearly what the guidance draws on, it is clear that the formative stage ends when the decision at issue is made; the distinction they draw is between performance of the duty in the process of reaching a decision and consideration of s149 needs after the decision has been made, in purported but legally ineffective performance of the duty. That was the problem in *Elias* and *Kaur and Shah,* and to which the guidance is addressed. In the former, the duty had simply not been performed after it had come into force, and as Arden LJ said, paragraph 274, the predecessor duty in s71 of the Race Relations Act 1976 required advance consideration to be given to issues of race discrimination "before making any policy decision that may be affected by them." In the latter, there was no full race equality assessment until after the decision at issue was made, and there had been a decision to adopt a policy contingent on the absence of any adverse assessment; both of those aspects were unlawful.

122. The formative stage at which the duty must be performed, in the sense meant by the guidance and decisions, is not one or all of the earlier stages when the officers or Council are contemplating and working up various options. It must be performed before the decision is made and be part of the decision-making process, rather than as a justification for the decision after it has been taken. The issue has to be addressed in the exercise of the functions, using the statutory language rather than judicial exegesis. The point at which the Council here exercised its functions under s7 was when it decided, at the April 2011 meeting, that the LTP should proceed, including the six closures. That is not to say that contemplation of the duty cannot usefully or lawfully form part of the approach to the development of options and their evolution to a preferred but provisional course of action. But the point at which the library authority would have been in breach of the s149 duty, if in exercising its functions it failed to have due regard to the needs in s149 (1), is when it exercised a function in deciding that the LTP including the six closures was the course it would pursue, taking it beyond a preferred or provisional course to be considered through

consultation. The formative stage did not end at some earlier stage leaving a stage which was not formative but which preceded any actual decision. The formative stage continued up till then. If it continued up to then, there is nothing unlawful about the duty being performed at a later stage in the process rather than at an earlier stage as well. There is no legal reason for earlier stages to be burdened with the quite onerous task of undertaking an EIA for proposals which had not been defined or which could well change and develop. Although the proposals were more evolved by April 2011 than in September or November 2010, they remained at a formative stage for the purposes of the performance of the duty in s149. I do not see how it can be said that, if they were still at a formative stage before the decision was made at that April 2011 meeting, as they obviously were, there was any breach of s149 because the issues were not considered in anything like the same detail at earlier stages.

123. So I reject this first contention. I add that it was very much bound up with the contention that the Council approached the issues of equality and closures in April 2011 with a closed mind, since it had already resolved on the course of action it accepted at that meeting. The Claimants cannot show that the Council had, or to a reasonable and informed observer in possession of all the facts, would have appeared to have, a closed mind. The fact that the decision was whether or not to proceed with the LTP and six closures cannot mean, contrary to the assertions of the Claimants, that the Council could not help but approach its decision with a closed mind. That assertion is simply not borne out by the facts: the decision to have a consultation process, the way in which that was conducted, the consideration given in the EIA, and the consideration of these issues given in and to the report in April 2011. Nor is there any other evidence to support what is a serious allegation about the way in which the Council conducted itself. Nor is there anything in the EIA itself to support it since, whatever criticisms the Claimants may make of it, it is on its face a conscientious and thorough effort to grapple with the duty in s149, in substance and with rigour. It set out to ask and answer the relevant questions which library closures give rise to in relation to the equality duty. The EIA was genuinely in my judgment a core part of the decision-making process. It cannot fairly be said that the decision to adopt the LTP and to close six libraries, and which ones, had already been taken; there really was no factual basis for that submission, which ran as a leitmotif through many of Ms Mountfield's points.

124. Ms Mountfield also submitted that the Council ignored its own policy on how the duty in s149 should be fulfilled: this required an initial assessment of the likely equality impacts of the LTP at the stage before policy options were drawn up for public consultation, and before those other options were effectively ruled out, as she contended had happened before the final decision in April 2011. A further assessment was required by the policy when officers considered alternative proposals. The policy was not mentioned in the relevant report.

125. I reject this submission. The body which took the decision and to whom the Council's Single Equality Scheme required the EIA to be addressed was the executive, as happened. The Council's Corporate Guidelines for Equality Assessments provide, where a predictive EIA is required as here, for an initial assessment as a screening process, to ascertain whether the potential for impact is such as to require a full EIA. Here, the officers recommended after consideration, and the executive decided in November 2010 that a full EIA was required anyway. So no more than a brief initial

or screening assessment in the terms of the policy was required, and that is what happened. The guidelines contain a template for EIAs which was used, as the EIA shows, so officers were aware of the Guidelines. The Council was aware of the duty from the outset, of the potential for adverse impacts, and decided that it would meet the duty through a full EIA, which was factored into the decision-making timetable, and available and considered before the decision was made in April 2011.

126. The Guidelines require consideration of changes to what is proposed if there are adverse effects on particular groups, consideration of mitigation measures, consideration of alternative means of achieving the same ends, and consideration of the justification for the proposal with whatever adverse impacts are left. The EIA, whatever other criticisms may be made of it, did go through the process required by the Guidelines.

127. The Claimants' next contentions related to the substance of the EIA. I point out that there is no legal obligation to conduct an EIA as a single formal analysis embodied in a single document, though it is a wise task to undertake since it both provides a structure within which the duty is actually performed, and provides a record of what was done. But an EIA is neither lawful nor unlawful. It is the underlying duty in s149 which it may show was or was not performed; nor is the Council confined to its EIA in showing that it performed the duty in fact. As Ms Mountfield submitted, drawing on *R (Harris) v London Borough of Haringey* [2010] EWCA Civ 703, it is the substance of the analysis and not its form which matters. The right questions have to be asked if the duty is to be performed and the subsequent decision is to be lawful. I also accept that the detail of data and length of assessment in an EIA cannot of itself show that the relevant questions have been asked and answered; the issues have to be identified, dealt with in substance, and not glossed over.

128. The Claimants submit that the Council failed "properly" to analyse the consequences of the six closures for people with protected characteristics: in particular, it failed "adequately" to analyse whether such people would be disproportionately affected by the closures, their ability, willingness and likelihood of migrating to the remaining libraries, nor what steps would be effective mitigation for any disproportionate impact if the closures.

129. Two themes underlie most of these points. The Claimants submit that it was unlawful for the Council not to carry out an assessment of the relative equality impacts of other courses of action which the Council had not put forward for consultation as its preferred or proposed course, such as keeping libraries open for fewer hours, or closing other libraries or community involvement. Without this sort of relative impact analysis, the Council could not tell whether the preferred course had a greater relative effect than the closure of other libraries or different means of achieving the budget savings would have. It ought to have carried out an assessment of the effects of keeping libraries open for fewer hours.

130. There was, however in my judgment, no obligation to conduct such an analysis; S149 contains no such obligation; it is not inherent in the performance of the duty in s149 that such a relative impact study be undertaken. The authorities cited do not suggest that such an analysis of a whole range of possible options is required. Changes can be considered, but do not have to be, as part of a mitigation process for any adverse effects which are found to exist. The duty in s149 can be performed by focussing on

the effect of the decision or policy which is proposed. What the EIA shows may or may not cause a Council to adjust, to think again or on different lines. It is thus the identified and unmitigated impacts which could provide the basis for argument that a Council has not had due regard to the needs in s149, if proposals remain unchanged in the light of them. But that would be a matter of fact and degree in each case. The EHRC guidance to which I have referred contemplates that a proposal with adverse effects can continue if sufficient thought is given to the justification and the ways of reducing impact; it counsels stopping to rethink where the EIA shows potential unlawful discrimination.

131. A second theme behind the Claimants' criticisms of the EIA is that the data and analysis did not compare the proportions of those with protected characteristics who were adversely affected with the proportions of those who were not adversely affected. This point is good in point of fact but unsound as point of legal criticism.

132. The Council is not required to achieve particular outcomes by s149, but to have due regard to the need to achieve those listed in s149(1). It does not have to devise policies which achieve those outcomes. The Council's regard can duly focus on the effect of the proposal on the protected characteristics of those who are adversely affected by it rather than on those who are not and whose position is essentially unchanged - except here for an increased number of users migrating to the remaining libraries. Moreover, having "due regard" also entitles the Council to a degree of leeway in how it approaches its consideration of the listed needs; the EIA makes the Council focus on the impact of the decision on the listed needs and on steps in mitigation and permits it to make a proportionate analysis of those effects, by focussing on those adversely affected. EHRC guidance states rightly that an "impact assessment is not an end in itself and should be tailored to and proportionate to the decision that is being made". A lawful analysis does not require a comparison between the proportions or absolute numbers of individuals with protected characteristics who are adversely affected and not adversely affected.

133. The Council's overall response makes the fair point that the legal analysis of the s149 duty in the EIA and report were not challenged at all. Ms Laing also submitted, as I have accepted, that on the face of it the EIA was informed, thorough, conscientious and timely. Unless the Council was obliged to carry out an analysis of the relative impacts of options it was not proposing or to compare the position of those adversely affected with that of those not affected by closures, it addressed the issue in substance and with rigour. It identified the important issues for protected characteristics, of which mobility and accessibility to the nearest remaining library is obviously crucial, along with education in the broadest sense and social cohesion. Those were analysed in detail, along with mitigation. No analysis of a topic of that nature, raised in relation to library closures in the second most ethnically diverse Borough in the country, could avoid some areas of debate, but that is far from showing any legal error. I note in particular the common use in the Claimants' submissions of words such as "inadequate" or not "meaningful" or not "proper" which are not apt descriptors of any sort of legal error, and suggest that the argument in reality is one of fact, degree and detail.

134. The Claimants illustrate what they say are numerous flaws in the following ways: (1) there was a significantly higher proportion of users with mobility problems at Tokyngton, proposed for closure, than at the Town Hall, which was not, yet the

Council did not address whether the closure of the particular six libraries would have a disproportionate effect on those with mobility problems; (2) there was no analysis of whether the closure of some libraries but not others might indirectly discriminate against particular racial groups in terms of travel time or thereby affect equality of opportunity; since it did not analyse the racial make-up of those in wards which were not affected by closures it did not realise that the increased journey times would fall disproportionately on Asians; (3) it did not have regard to the differential impact of closures on black and ethnic minorities since it only examined the impact on those in wards affected by closures and not the make-up of those in wards which were not so affected; it did not have the data for that analysis; (in fact it did have the data, it did not use it in that way); (4) it was contradictory over the existence of adverse gender impacts or the impact on pregnant women of the closure of local libraries; (5) mitigating measures were considered but not alterations to the proposals to deal with adverse effects; (6) there was no "meaningful" consideration of the impact of library closures on the fostering of good relations between those sharing a protected characteristic and those who did not share it, such as the isolating effect on disabled persons of receiving books at home rather than at a public library.

135. Taking these points of criticism briefly, and they are not all of those in the Claimants' grounds, there is nothing showing that the EIA was not a lawful fulfilment of the duty in s149. (1): the percentage differences only matter on a relative impact analysis, but the absolute numbers of those less mobile may well be somewhat higher at the Town Hall since it has some two and a half times as many visitors; (2) the ethnic make-up of those who would experience travel time disadvantage in areas affected by closures was not compared with the ethnic make-up of those who were not affected; but the nature of the disadvantage to certain ethnic groups of longer travel times was considered; it did not treat this specifically as an equality of opportunity issue but clearly treated it as a disadvantage to be mitigated, and that in my view is not unlawful; (3) this is correct but not a legal flaw, for the reasons I have given; (4) I accept that officers did consider the impact on pregnant women, but concluded that there would be no adverse impact on gender equality since they concluded that this was a transient condition; I do not think that that is irrational; they would anyway be among the less mobile to whom the accessibility of the remaining libraries was a crucial issue for consideration and it does not seem to me to matter greatly if they were not considered separately as less mobile if the needs of the less mobile were considered as they were; (5) there was no need to consider alternative proposals rather than mitigation in the light of the conclusions reached on impact which showed that due regard had been had to the listed needs; (6) this complaint is not really about the consideration given to fostering good relations between those with a protected characteristic and those who do not have it; it is about the isolation of those less mobile who can get out of their homes, but would no longer do so to go to the library, notwithstanding the mitigation measures; there is no evidence to suggest that this would be a number or consequence of any significance, and it is more an example of the sort of level of hypothesis and detail to which an EIA does not need to go into to enable an authority to fulfil the duty in s149.

136. Ms Mountfield developed orally an argument in relation to indirect discrimination which went somewhat beyond what had been foreshadowed. This led to written submissions at my request from Ms Laing and then in reply from Ms Mountfield in the course of which this subsidiary argument took on a life of its own. She did not

initially say that the Council's decision involved indirect discrimination, but rather that defects in its analysis of data meant that obvious potential indirect discrimination had not been analysed and without that it could not have given due regard to the s149 duty. This failure prevented the Council saying that its EIA had been done with rigour and with due regard to the needs in s149. It was obvious that there would be greater travel time and cost for those who used the libraries to be closed and who would now have to travel further to those remaining open. This would obviously impose particular disadvantages for the very young, very old or disabled, which it was accepted had been analysed. It was also obvious that the diversity of ethnic minorities spread through the Borough could cause a particular closure to bear disproportionately on a particular ethnic or religious group numerous in its vicinity. These potential disadvantages were said to be "so obvious" that due regard to the "need to avoid unlawful indirect discrimination required structured analysis of them" to identify if they existed and to what extent, but no such analysis had been carried out.

137. Three examples were given said to demonstrate the point. (1) 42.5% of the users at all Brent libraries were aged 19 or under; but they made up 50.4% of the users at those six proposed for closure; (2) 27% of all Brent library users were Hindu, 18% Muslim; but at three of the libraries proposed for closure Hindus were 40% or more of users and at two others Muslims were 34 or 36%; (3) 43% of all Brent library users whose ethnicity was recorded were Asian but 49.3%, by the Claimants' calculation, of those at the libraries to be closed, and over 50% at three of them were Asian.

138. The Council accepted that the April 2011 report did not analyse indirect discrimination, but Ms Laing submitted that it did not have to do so and that this involved no unlawfulness unless, after a proportionate investigation of the issue, a reasonable public body would have concluded that the LTP created an obvious risk of unlawful conduct. There was nothing on the facts of this case to warrant such a conclusion. First, unlawful indirect discrimination could only arise under s29 through a "provision, criterion or practice" within s19. However widely that was read, and Ms Mountfield pointed to authority on the width of the expression, it did not cover the location of a library or a decision to close one. She riposted that if the Council had adopted the stance of its advocate, it had erred in law in its assessment of indirect discrimination. In my view, changes in the library service can involve a provision or practice, but those words, however widely they are defined, are not intended to encompass all public authority decisions, otherwise that would have been one of the words used. My inclination is that a decision to close six libraries falls outside the section but I do not decide against Ms Mountfield on that basis; nor do I think that a Council can be fixed with all the arguments by which in later litigation its position may hopefully be defended.

139. Second, even if the library closure decision or the change in location of the libraries fell within the scope of a "provision, criterion, or practice", it did not put persons who shared the relevant characteristic at a disadvantage compared with those who do not. All users of the libraries to be closed have to travel further, irrespective of their protected characteristic or none. No issue of justification for indirect discrimination on race or religion therefore arose. The Council contended that indirect discrimination on race or religion was not shown simply if a greater proportion of Hindu library users were affected by library closures than non-Hindu library uses.

Accessibility was the issue to which library closures gave rise, and that affected the aged, young and disabled, Hindu or not. The EIA did consider the effect on those who were less mobile, including walk, car and public transport modes and their cost for various income groups. The EIA did consider overlap between protected characteristics where it was thought to arise: it considered road accidents for certain ethnic groups and the risk of gang related problems with longer journeys for them.

140. The Claimants in contrast contended that there was a risk of indirect discrimination where the proportion of Hindu users affected by library closures was significantly greater than the proportion of Hindu users of all twelve libraries. The very essence of indirect discrimination was a policy which in its effects fell disproportionately on one group with protected characteristics. So if closure caused disproportionately more library users, say Asians, as members of a group with protected characteristics to travel further than others, that evidenced indirect discrimination. There was no need for it to be the fact that they were Asians which created the extra travel difficulties for them; obviously it did not.

141. The answer to this lies in s19 (1)(b), and not in (a). The provision, if the six closures were such, was applied to say non-Hindus as it was to Hindus. Did it put Hindus at a "particular disadvantage" when compared with non-Hindus? This appears to me to require an examination of the effect on Hindus; the concern is not simply whether proportionately they have been more affected, but whether there is some unintended but real relationship between that disproportionate effect and the protected characteristic, as Ms Laing submits. There is none, nor with Muslims or Asians, nor can any sensibly be suggested. Disproportion in impact may evidence indirect discrimination, and require its examination but it is not of itself proof of it.

142. But even if that is wrong, the analysis of disproportion cannot be confined to an analysis of the effect of the change, regardless of the effect of the remaining service. The question is not whether Hindus are more adversely affected by the change than non-Hindus, but whether the service is now disproportionately adverse to them compared to non-Hindus. I do not think that a council can be said to discriminate indirectly against a group with protected characteristics when it closes a facility among the users of which that group is disproportionately represented, unless all those who share the same protected characteristic are adversely affected in their use of the facilities which are left.

143. More specifically, there was no duty to avoid indirect discrimination against those under 18 since by s28(1)(a) of the Equality Act, Part 3 of the Act, which prohibits discrimination in the provision of services, does not apply to the protected characteristic of age for persons under 18. That in my view disposes of the bulk of the first of the three examples of potential unlawful indirect discrimination, leaving nothing which is so obvious as to require examination or which could lead a reasonable authority to conclude that there was an obvious risk of unlawful discrimination.

144. Ms Mountfield replied that this still showed that there was no adequate consideration to the effect of the changes on equality of opportunity as between adults and children: 74% of those aged under 16 were under 10 and could not be expected to travel independently to a different library. Whatever the nature of the concept of equality of opportunity between adults and children in this context, I do not think that the

Council failed to appreciate in its judgment of the impact on and mitigation for younger library users and the accompanying older person that some children moving from the closed libraries would need an adult to accompany them, which would involve increased time and cost for them, which free travel would not wholly avoid.

145. Ms Laing's note provided a detailed analysis of the statistics of Muslim and Hindu users of the libraries. I am firmly of the view that the Council's analysis of the figures with which it is obviously familiar and understands is to be preferred to the work produced by Ms Mountfield. The Claimants' response to this note did not take issue with its workings, but simply explained how they had come to make the errors they had. The figures Ms Mountfield used derive from a survey which is unreliable for these purposes, from a rather less than 10% questionnaire sample overall which become far too small to be used at the local level. For example at Neasden 70 people (36% of the sample) out of 2366 active users filled in the questionnaire, saying that they were Muslim and that cannot be taken as showing that 36% of the 2366 were Muslims.

146. On the Council's analysis of the Demographic Data book, which was part of the report in April 2011 and is publicly available on its website, Hindus are comparatively less disadvantaged than those who have not declared themselves to be Hindus, (15% of Hindu users are disadvantaged, 25% of non-Hindu users are disadvantaged); the same is broadly true for Muslims. More Hindu users are in fact advantaged by the LTP: 85% of Hindu users use the libraries that are to remain open, whereas 75% of non-Hindu users use them; the same is again broadly true of Muslim users. Even if the high numbers of active borrowers who declared no faith are ignored, the broad picture does not greatly change. That deals with the second example.

147. The third example, Asian users, was based on comparing two different data sets, so a difference in proportions was not surprising. In any event, since Asians are the largest ethnic group among the users of Brent libraries, it would be expected that they would be the most numerically disadvantaged. But the Asian users of the libraries were not proportionately more disadvantaged or indeed advantaged than non-Asians. 76% of Asian users and 76% of non-Asian users use the libraries that remain and 24% of Asian users and 24% of non-Asian users use the libraries that will close. Moreover, once accurate figures were used, and the effect removed of using rounded figures for the purpose of further calculations which magnified the effect of the roundings, the Claimants' analysis showed that the percentage of users of all Brent libraries who were Asian and the percentage of users of the six to be closed who were Asian differed by 0.04. That deals with the third example.

148. On that basis, and taking Ms Mountfield's submission at their highest, there is no evidence of the risk of indirect discrimination which the Claimants have unearthed to show that the Council failed in its s149 duty.

149. Ms Mountfield's response is that it is for the Council to show compliance and not for the Claimants to show breach. It has admitted that it carried out no assessment of indirect discrimination and the Claimants have produced enough evidence anyway to show that this want of rigour is not merely theoretical. I do not regard that as an accurate assessment of what the Council did and of what the Claimants' evidence shows. No criticism was levelled at how the report set out the nature of the public sector equality duty. The Council identified the potential adverse effects, and whether

those who would be affected had protected characteristics. It then had to consider mitigation measures. It was thus in a position to give due regard to the needs in s149. But if that does not produce any evidence of a potential risk of indirect discrimination such as to make further consideration the step which any reasonable public body would then take, the Council does not have to conduct a pointless analysis. I do not consider that the Claimants have shown that it ought to have reached such a conclusion on the material which it did analyse or that, if it had analysed that data somewhat further or other data, it should have concluded that there was a potential for indirect discrimination. It is for the Claimants to show that the Council has failed in its duty; and it can do that by showing that on the material it had or ought to have had, it should have concluded that there was such potential, and subjected it to a fuller analysis.

150. But the Claimants selected their targets for this point, and the correct analysis of the data does not show any reasons for such a conclusion. However one analyses the data, there is simply no basis for the conclusion that Asian, Hindus or Muslims are disproportionately affected whether by comparing the proportions of each of those groups at the libraries to be closed with others not in that group, or by comparing the proportions at the ones that remain open, and whether or not those who declared no religion or ethnicity are included. (Obviously however they should be, and they represent a large proportion of the active users: 34524 out of 49391 did not declare whether they were Muslims, Hindus or not).

151. So although Ms Mountfield subjects the EIA to a demanding audit, she is in the end quite unable to show that there was any "due regard" which was omitted. There is a real danger, as Ms Laing submitted, of courts being asked to micro-manage EIAs. If there is no reality behind the suggestion that there was a real potential for indirect discrimination, there is no want of due regard in not analysing it.

152. There are also almost any number of equality strands which can overlap in a case such as this, and the obligation to have due regard to the needs listed in s149 can be met by a proportionate analysis of them, that is those which appeared on this level of examination to be the significant effects; that did not require the pursuit of all that could arise in theory or to a marginal degree. Nor did they have to be pursued in order to show that they were not significant.

Overall conclusions

153. Although I am by no means satisfied that all the points raised are genuinely arguable, I grant permission to apply for judicial review but refuse the substantive applications for relief. This claim is dismissed.