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our ref: LS/21/VC/462/92  
your ref:  
date: 14 March 2016

Dear Madam

### **The Tonbridge and Malling Borough Council (Off Street Parking Places) (Amendment No.1) Order 2014 ("the Order").**

We are instructed by West Malling Parish Council ("WMPC") in relation to the above Order. The purpose of the Order is that it intends to introduce a scale of charges to the West Malling Short Stay Car Park ("the Car Park") between the hours of 08:00 to 18:00 Monday – Saturday (excluding Sundays and Public Holidays).

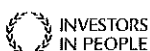
The purpose of this letter is not a formal response as part of the consultation procedure (we appreciate that period has now lapsed) but to highlight WMPC's concerns as to the legal basis and procedure making process of the Order. With this in mind this letter should be presented to your Council's Cabinet Committee on the 22<sup>nd</sup> March 2016 where it will be asked to formally approve the Order as per the officers recommendations in their report to the Planning and Transportation Advisory Board 12 January 2016 ("the Report").

### **The legal basis for making the Order**

In setting car park charges councils must comply with the Road Traffic Regulation Act 1984 ("RTRA") and the Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996 ("LATOPR 1996"). The power to make charges for parking is defined by law to be for "*relieving or preventing congestion of traffic*". We have reviewed your council's draft Order and whilst it states that it is made under s.32 of the RTRA nowhere within it or the accompanying Statement of Reasons does it make reference to this power.

Both the Statement of Reasons and the Report focus on the fact that there is an alleged breach of the current "*take and display*" system and that it is subject to "*regular abuse*". This is despite the council taking a "*strong enforcement line against this practice with the support of the West Malling Steering Group, but has since lost appeals at the Traffic Penalty Tribunal Service*" as mentioned in the Report. We are instructed that the Tribunal cases establish that out of all 602 drivers issued

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with PCNs, **only 4 appealed** and out of these 4 **only 2 were contested** by your council. We would argue that not only is this not the correct legal basis for imposing charging on this Car Park but this is extremely misleading.

In addition to the above, local authorities are not allowed to set the level of charges in order to raise money to fund them. You can only use the surplus that results as a by-product of setting the level of charge that is necessary for "relieving or preventing congestion of traffic". Again, neither the Statement of Reasons nor the Report alludes to this. In fact, the latter appears to suggest that the whole point of introducing these charges is to *"secure a financial return to support the cost of the parking service"*. We are sure you are aware that there have been recent cases where district councils have been found to be acting unlawfully when increasing parking fees to support other services (**North Dorset District Council 2015**).

### Procedure basis

WMPC are concerned about the minimal consultation that your officers have carried out through this process. The statutory consultation requirements make it clear that before making the Order the authority must consult with any other organisation representing people likely to be affected by the TRO, which the traffic authority thinks appropriate to consult. We would argue that this should have included WMPC, the Steering Group, the Chamber of Commerce, West Malling Church of England Primary School and the medical centres. In addition, it would have been appropriate to have consulted with Parish Councils in the surrounding areas as they represent 75% of customers (WMPC can demonstrate this through surveys and advice given to the Steering Group). All of these are key groups who, if they had the chance, would have given valuable feedback which may have resulted in different proposals being put forward altogether.

In addition to the above, we are sure you are aware of your obligations under s.149 of the Equality Act 2010. The Report states *that "the decisions recommended through this paper have a low or remote relevance"*...and that *"there is no perceived impact on end users"*. We argue that the end user may not have had a fair chance to take part in the consultation process due to the fact that it was insufficient for reasons set out above.

We would also like to remind you of the case of **R v London Borough of Brent ex parte Gunning [1985]**. Bearing in mind the limited consultation that has taken place we would argue that the Cabinet cannot satisfy themselves at this stage that:

- Consultation took place at a time when proposals were still at a formative stage;
- Sufficient reasons for the proposal were given to permit intelligent consideration and response;
- Sufficient time was allowed for consideration and response; and
- Responses from the public were conscientiously taken into account in finalising the statutory proposal.

We would draw to your attention of the importance of **Regina v Camden London Borough Council. Ex Parte Cran and Others (1995) (RTR 346)**. In this case the judge ruled that the Council had failed to consult with an open mind and that there had been inadequate consultation with and consideration of representations by a local group.

Finally, the draft Order through the digital link to the website is incomplete It says .....*"hereby makes the following Order: Citation and commencement"* and after "Order:" is blank. There is no inclusion of any operational details at all.

Bearing the above concerns in mind and the fact that WMPC remains committed to working with your council, we would respectfully ask that you remove and temporally suspend approval of the Order from the Cabinet's agenda on 22<sup>nd</sup> March for a period of up to 6 months, to allow for alternatives to be constructively discussed and explored. This time can also be used for rectifying the legal basis and procedural inadequacies we refer to above. Considering the impact these charges could have on the community and local businesses, WMPC may be forced to look other options of recourse including the merits of judicial review if their concerns are not taken seriously.

Yours faithfully

**Victoria Clothier**  
**Team Leader - Senior Solicitor**

CC: Trudy Dean – Chairman of West Malling Borough Council

Robert Styles – Director of Street Scene, Leisure and Technical Services – Tonbridge and Malling Borough Council

Sharon Shelton, Director of Finance and Transformation. - Tonbridge and Malling Borough Council

Andy Edwards – Head of Technical Services - Tonbridge and Malling Borough Council

