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Kent Legal Services
Sessions House
Maidstone
ME14 1XQ

Your ref LS/21/VC/462/.92
Our ref TM-P2-3
Date 17 March 2016

Attn: Victoria Clothier, Team Leader – Senior Solicitor

Dear Sirs,

**Re: The Tonbridge & Malling Borough Council (Off Street Parking Places)
(Amendment No.1) Order 2014**

I refer to your letter of 14 March on behalf of the West Malling Parish Council.

I note your request that your letter be presented to Cabinet on 22 March in connection with this matter. Whilst it is not usual practice for letters from legal representatives to be placed before Cabinet, I confirm that on this occasion a copy of both your letter and this response will be included in the supplementary papers for that meeting.

Legal Basis for Orders Under s.32 Road Traffic Regulation Act 1984

Your client will be well aware that off-street parking places have been provided by this Authority in the West Malling Car Park for a number of years, by virtue of an existing s.32 Order. It is simply incorrect to state that the “power to make charges for parking is defined by law to be for relieving or preventing congestion of traffic”. It is the power to make available off-street parking places which is required to be for the purpose of relieving on preventing congestion of traffic. That was the basis upon which the original Order was made, and that situation has not changed.

The power to impose charges on such an Order is contained separately in s.35 and is subject to no such similar requirement.

There is of course no requirement for the Statement of Reasons to refer to the power being exercised, and the draft Order is clear on its face that it is made *“in exercise of [the Council’s] powers under sections 32, 35 and 124 of the Road Traffic Regulation Act 1984.”*

Director of Central Services: Adrian Stanfield LL.B (Hons) Solicitor
Email: adrian.stanfield@tmbc.gov.uk
Gibson Building Gibson Drive Kings Hill West Malling Kent ME19 4LZ



INVESTOR IN PEOPLE

There is a clear evidential base for the statements made in both the Statement of Reasons and the Report to Cabinet with regard to abuse of the existing system. The report simply highlights that there have been cases which have not been upheld by the Tribunal. This is far from misleading; rather it is a simple statement of fact.

We are not aware of any reported legal cases involving North Dorset District Council in 2015- regarding parking charges or indeed otherwise. We assume you are referring to the audit report of Grant Thornton issued in May 2015 in relation to their audit into the use of monies raised by North Dorset District Council from off-street parking charges on general services.

In any event, there is no suggestion in either the Statement of Reasons or any Cabinet, Council or Board report which suggests that the parking fees are being introduced to “support other services”. As is clear from all of the documentation, the charges are being introduced as a way of increasing turnover of vehicles in the car park, to enable effective enforcement and to sustain the management and maintenance of the car park financially (see, for example, cabinet report paragraph 1.8.2). This is entirely proper.

Consultation

As is standard practice in such matters, the Council followed the statutory consultation process. Your client was in any event made aware of the proposals even in advance of the consultation. The issue was raised at the Steering Group meeting on 29th January 2016. Indeed, the Parish Council was able to hold a meeting and set out its formal position in an email dated 4th February, the day before the consultation even opened.

I note that, in substance, the Parish Council’s formal response to the consultation (undated, but reproduced at Annex 2 to the Cabinet Report), is very similar to that earlier letter.

To suggest that somehow the Parish Council might not have had a full opportunity to take part in the consultation is simply incorrect.

We are of course aware of the principles established in the Gunning case. However, your letter fails to evidence how you believe any of these principles have been offended. In any event, there is no basis whatever to make such a case:

- The consultation took place well before any formal decision was to be made by Cabinet, and it is fully open to Cabinet to revise the proposals in light of the consultation responses;
- The Statement of Reasons gives a clear indication as to the purpose of introducing charges;
- The Council ran the consultation for the statutory consultation period and there can be no suggestion that the proposal is so complex that any longer period would be necessary for a consultee to properly formulate a view and to respond;
- The report to Cabinet is clear that Cabinet must take into account the views raised in consultation and the petition.

The situation is far removed from the facts of *Cran*. A fair and effective consultation has been carried out, there is no suggestion that the Council has failed to recognise the status of any party as a consultee, and it is entirely apparent from the report to Cabinet that the responses have been presented objectively (as indeed was the case for the report to Council dealing with the petition), and that the comments must be considered by Cabinet with a receptive mind.

I have reviewed the text of the draft Order on the website. The document is, of course just that- a draft order. It is entirely clear on the face of that order and its Schedule what is being proposed.

Conclusion

Considering all of the above, there appears to be no defect in any part of the Council's process in this matter. There is nothing in any of the matters you raise on behalf of your client which could sustain a claim for judicial review: the points raised appear to be wholly without merit.

Please note that I am away from the office 18 March – 21 March inclusive. Should you need to correspond further with the Borough Council during that period please address your correspondence to Julie Beilby, Chief Executive (julie.beilby@tmbc.gov.uk).

Yours sincerely



**Adrian Stanfield LL.B (Hons) Solicitor
Director of Central Services & Monitoring Officer**