

((D,3;2;C,1))

Your reference:

Our reference: 44561.1 SEG

Date: 3 October 2003

Department of Local Democracy  
London Borough of Haringey  
Civic Centre  
High Road, Wood Green  
London N22 8LE

**FAO Ms C McLean**

By courier

Dear Sirs

**Highgate Controlled Parking Zone**

We act for the Highgate No CPZ Campaign. Our clients have instructed us to write to you about the decisions, made by the Executive on 16 September 2003, to

- 2.1.1 Note feedback from consultations set out in the report put to the Committee.
- 2.1.2 Authorise statutory consultation on a CPZ scheme as detailed in Section 10.0 and shown in Appendix V of the report.
- 2.1.3 If there are no valid objections, delegate the making of the Traffic Management Order and all necessary related action to the Director of Environmental Services.
- 2.1.4 If there are valid objections, refer the decision as to the making or modification of the Traffic Management Order to the Executive Member for Environment and request the Leader to agree this referral.

These decisions have been called in and will be placed before the Overview and Scrutiny Committee when it meets on 7 October. The purpose of this letter is to set out the reasons why decision is

unlawful and invite the Committee to refer the matter to the full Council with a view to reversing the decision. We are also asking for some further information from you.

### **Lawfulness of the decision**

We have the following concerns about the lawfulness of the decision.

#### *The Director's report*

Haringey Council conducted a non-statutory consultation process in July 2002, in order to establish whether there was support for controlled parking zones in various western parts of the borough. There appears to have been strong opposition to the proposals.

In June 2003, the Council consulted about the establishment of a CPZ in about 75 streets in the Highgate area. The Director of Environmental Services reported the outcome of the consultation exercise in his report to the Executive dated 1 September. The report was inaccurate in many important respects.

First, in recommending Statutory Consultation in Highgate High Street and Cromwell Avenue with its cul-de-sacs, the Director at 8.5 presented the results of consultation in a way which was likely to mislead Members. In particular:

- The percentages in favour and the percentages against for Cromwell Avenue were reversed, giving Members a false summary of the result.
- Highgate Hill, including The Bank was recommended for inclusion for Statutory Consultation, on the basis that there was less than 10% difference between votes against and votes for. In fact, however, the report omitted the results of the Bank vote from the relevant table. In fact, had the Bank consultation result been included, it would have shown that there was a vote against any CPZ by 70% to 30%.

- The report conceded that both Highgate Hill and Cromwell Avenue voted "No", but stated that the margin of difference between the No and Yes votes was less than 10% in each. This conclusion was arrived at by halving the actual differences, thereby further misleading the Executive.

Second, the consultation period terminated on 4th July (para 7.2). At para 9.5 (page 7) the Director referred to "over 50 letter received from Cromwell Road, Cromwell Place, Winchester Road and Winchester Place strongly requesting ... controlled parking".

Residents were denied access to examine these letters as the Member for Environment determined that they were private. However, at para 9.5 the last sentence shows that these letters influenced the Director in putting forward his recommendation to the Executive. As the letters were material to, and influential in, the recommendation and decision, they should have been available for public scrutiny. **We shall be grateful if you will now let us have copies.** If your concern is the identification of the authors of the letters, consideration could be given to disclosing them in an anonymised form.

Councillor Williams examined those letters and has informed our clients of the following matters:

- there were just 50 letters, not "over 50";
- 5 of the 50 argued against an CPZ;
- 17 of the remainder duplicated consultation voting forms and so should not have been counted again;
- a substantial number were undated and may have been received after the close of the consultation period;
- at least 4 were in the same handwriting and from the same address though possibly from different residents.

- a substantial minority were form letters and should be treated with some caution.

For these reasons, our clients strongly urged Members to disregard the Director's observations on these letters in favour, and to seek an explanation for their misleading presentation.

In reaching its decision the Executive was obliged to take all relevant matters into account. One aspect of that obligation is that officers' reports must accurately communicate matters to which Members must have regard. Plainly, the Executive had to take proper account of the results of the consultation process conducted in June 2003. There is no point consulting interested parties if the Council then ignores what those parties have to say; and the results were crucial to the decisions which the Executive had to make.

Although such reports may summarise consultation responses, the summary must be fair and balanced and ensure that regard is had to all material matters: *R -v- South Glamorgan CC ex p Harding* [1998] COD 243. The Director's report was sufficiently misleading, in the respects mentioned above, to conclude that the Executive reached its decision on an inaccurate basis.

For that reason, the decision needs to be revisited by the full Council. In addition, the Director of Environmental Services needs to revise his report to remove the inaccuracies set out above. The revised report - rather than the original - then must be placed before the Council.

*The decision in para 2.1.3*

In paragraph 2.1.3 the Executive delegates to the Director of Environmental Services the power to make the Traffic Management Order "if there are no valid objections". We are puzzled by the import of the words in inverted commas. The concept of validity could import the exercise of a value judgment on the part of the Director. Given that the obligation to consider objections rests with the Council itself, it would be wrong to delegate the making of any value judgment to the Director.

We shall be grateful if you will clarify what the Executive intended, and ensure that the decision of the full Council makes clear the limits of the Director's authority.

*The decision in 2.1.4*

In paragraph 2.1.4 the Executive delegates to the Executive Member for Environment the consideration of valid objections and the decision as to the making or modification of the Traffic Management Order in the light of such objections.

We have two concerns about this decision. First, we question whether the Executive can properly delegate to one person the function of considering and passing judgment upon the objections made in response to the consultation. In order to assist us, **we shall be grateful if you will let us have a of the Council's scheme of delegation.**

Our second concern is the identity of the person to whom the decision has been delegated, Cllr Ray Dodds. We have been shown two articles in the Hornsey Journal - one is certainly dated 3 September 2003, and the other is either 3 or 5 September 2003 - in which Cllr Dodds is quoted. In the longer of the two pieces, his comments are set out at length. In view of their content, we set them out here:

"...Councillor Ray Dodds, Haringey's lead member for environment, told Broadway this week that with Camden due to start work on a Highgate CPZ this month it would be 'ridiculous' not to have similar parking controls in the Haringey side of the village.

He said "We are under a duty to consult but we are also under a duty to implement the best solution. I do not think anybody in their right mind could consider a high street with controls on one side and not on the other as a sensible way of managing traffic."  
(emphasis added)

These statements make Cllr Dodds' role under 2.1.4 problematic, to say the least. The regime relating to CPZs requires that the authority

consults and takes account of the fruits of that consultation. General public law sets out the requirements of proper consultation where, as here, the statutory obligation is not particularised (and therefore in effect is supplemented by the common law requirements of procedural fairness), or where the obligation itself arises solely under the common law. In a nutshell:

"To be proper, consultation must be undertaken at a time when proposals are still at a formative stage; it must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response; adequate time must be given for this purpose; and the product of consultation must be conscientiously taken into account when the ultimate decision is taken."

See *R v. North East Devon Health Authority ex parte Coughlan* [2001] QB 213 citing Sedley J as he then was in *R v Brent LBC ex parte Gunning* [1986] 84 LGR 168.

Moreover, it is a basic principle that the decision-maker should come with an open mind not have predetermined the application (as explained by, for example, Sedley J in *R -v- Secretary of State for the Environment ex p Kirkstall Valley* [1996] 3 All ER 304 at 321-322).

Besides, in the light of Cllr Dodds' statements, a fair-minded and informed observer could well conclude that there was a real possibility, or a real danger, that Cllr Dodds was biased (*Re Medicaments (No 2)* [2001] 1 WLR 700). Indeed it is hard to see how he can fairly consider objections to a CPZ given his stated opinion as to the sanity of opponents to such a scheme. No one, reading his statements, could imagine that he would accept such objections as well-founded.

In these circumstances we invite the Council to rescind the decision delegating to Cllr Dodds the authority which the Executive purported to delegate to him in paragraph 2.1.4.

*Consideration of the views of residents of neighbouring streets*

Our clients inform us that Cllr Dodds and Cllr Makaanji Narendra made public statements to the effect that the Council will take much more notice of the views of those in the streets for which they are proposing CPZs than those in the neighbouring streets. Although this does not appear in the minutes of the Executive, we understand that it will appear in the detailed notes of the discussion at the Executive which Council officials took. **We shall be grateful if you will let us have copies of the notes taken by officers at the meeting.**

Such statements cast further doubt on the propriety of Cllr Dodds evaluating the results of the consultation. Moreover, they raise other issues of lawfulness.

Section 45(3) of the Road Traffic Regulation Act 1984 **requires** the authority to consider both the "interests of traffic" and those of the owners and occupiers of adjoining properties, in particular in relation to the need for maintaining the free movement of traffic, the need for maintaining reasonable access to premises and the extent to which off street parking is available locally. Section 122(1) of the same Act requires the authority to take into account, among other things, the desirability of securing and maintaining reasonable access to premises, along with the effect on the amenities of any locality affected. Introduction of a CPZ will have an effect not only on the residents of the streets included in the Order, but also on those in adjoining streets. The statements referred to above appear to evidence an intention improperly to discount the views of residents of streets adjoining the proposed CPZ. We will consider this matter further once we have seen the notes of the meeting.

**Other relevant matters**

We are also instructed to draw the following matters to your attention at this stage.

*Hornsey Lane residents*

Our clients are also concerned that the Council's planned approach would be particularly disadvantageous to residents in Hornsey Lane. We are instructed that some 70 households in Hornsey Lane would not be allowed residents' permits for the proposed CPZ and, because of 'traffic calming' in Hornsey Lane itself, they cannot park there either. They will thus have to park at least 700 yards from their homes.

The interests of this group of people fall four square within the factors which the Council are required to take into account. If the Council makes no provision for them, it will be placing a disproportionate burden on them by singling them out, in the whole of the borough, as people who cannot park in front of or even near their homes. This would amount to an interference with their right to respect for their homes. There is nothing in the scheme as proposed to suggest this interference would be justifiable.

*Publication of notice of consultation*

Our clients are concerned that the Council propose to publish notice of the consultation in the Hornsey Journal but not in the Hampstead and Highgate Express. We are instructed that it is well known that people in Highgate are significantly more likely to read the Ham & High than the Journal. **Our clients therefore invite you to place the notice of consultation in the Hampstead and Highgate Express.**

Paragraph 7 of the Local Authorities Traffic Orders (Procedure) (England and Wales) Regulations 1996 (SI 1996/2489) obliges the Local Authority publish details in newspapers circulating in the area to which the order is to apply. It must also take "other steps as it may consider appropriate" for ensuring that adequate publicity about the order is given to people who are likely to be affected by its provisions. This could include, for example, publication of a notice in the London Gazette, display of notices in roads or other places affected or delivery of notices or letters to premises occupied by those who are likely to be



affected. Residents in the affected roads, including adjoining roads, clearly fall into this group.

Plainly, the notice should be published in such a way as to ensure that it reaches the widest possible audience. This will be in the Ham & High, and our clients can see no justification for publishing such the notice only in the Hornsey Journal. If the only consideration is one of cost, it may be that our clients would themselves be willing to meet the additional cost of placing the notice in the Ham & High.

Our clients have also asked us to make clear that they expect to be directly consulted as part of any future consultation process. The Regulations require the consultation of particular bodies and persons depending on the likely impact of the designation order. Most significantly, in all cases, the authority must consult "such other organisations (if any) representing persons likely to be affected by any provision in the order as the order making authority thinks it appropriate to consult". Our clients clearly fall into this category.

#### **Action to be taken**

If, as we submit it should, the Committee refers the matter to the full Council, our clients will want to send a deputation to address the meeting, raising the points in this letter and/or other points on the merits.

Before any such meeting, the Director of Environmental Services should issue a revised report to members, in which he has corrected the inaccuracies in his report to the Executive.

Before any such meeting we would expect to have received from you an explanation of the meaning of the decision in 2.1.3, and copies of the 50 letters referred to above. We should also have received a copy of your scheme of delegation and the notes taken at the meeting of the Executive on 16 September.

Yours faithfully

BINDMAN & PARTNERS