

TO:

Doreen Forrester-Brown, Head of Governance, Southwark Council
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CC:

Cllr Kieron Williams, Leader of the Council
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Cllr James McAsh, Climate Emergency, Clean Air and Streets
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Cllr Jasmine Ali, Deputy Leader
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Proposed Expansion of CPZ Area

Dear Ms Forrester-Brown,

We, the undersigned, live or work in or visit wards in Southwark where Controlled Parking Zones (“CPZs”) have either already been implemented against the wishes of residents; or the wards for which implementation is in progress or pending, such as Peckham, Old Kent Road, Nunhead & Queens Road, Peckham Rye, Champion Hill, Goose Green, Dulwich Village, Dulwich Hill & Dulwich Wood. We write to express our collective concerns regarding the proposed imposition of Borough-wide CPZs by Southwark Council (“Southwark”). We believe that these Proposed CPZs are unjust and in violation of the relevant statutory provisions and authorities governing Southwark's powers to impose CPZs.

We have learned that Southwark is proposing to impose further controlled parking zones (“CPZs”) across the remaining areas of Southwark not currently controlled allegedly with the object of achieving a “Borough-wide CPZ” in the name of fairness to all.

We have looked at the materials produced by Southwark to explain this proposal, and considered the further explanations and reasons provided by our Councillors. We have also taken Leading Counsel's advice on the relevant statutory provisions and authorities concerning Southwark's powers to impose CPZs, which together clearly establish the law in relation to these matters.

In this light of this advice, we believe it is plain, beyond any serious debate, that Southwark did not have the right to impose the CPZs in the rolled- out areas, and does not have the power to impose the CPZs in the present remaining areas; that Southwark has done and is doing so for clearly improper purposes; and moreover, has entirely failed to carry out the proper mandatory consultation required by the relevant Regulations in those areas.

A. The Law

The law concerning the basis for and limit of a local authority's power to impose CPZs is clearly stated:

1. A local authority's power to impose CPZs derives from Section 45 of the **Road Traffic Regulation Act 1984** ("the Act"). This permits a local authority to impose a CPZ only for the limited purposes specified in Subsection 45(3), namely having regard to:
 - a. the need for maintaining the free movement of traffic;
 - b. the need for maintaining reasonable access to premises; and
 - c. the extent to which off-street parking accommodation, whether in the open or under cover, is available in the neighbourhood or the provision of such parking accommodation is likely to be encouraged there by the designation of parking places under the Section.

2. Under Section 55(1) of the Act, the local authority must keep a separate account of their income and expenditure in relation to parking spaces. As to which:
 - a. If there is a surplus, the local authority can spend that surplus for the purposes specified in Subsection 55(4).
 - b. However, the Act is **not** a fiscal measure, and it is therefore unlawful for the local authority **"to introduce charging and charging levels for the purpose, primary or secondary of raising money"**: per Lang J in *R (Attfield) v Barnet LBC [2013] RTR 33* at [56], quoting from the judgment of *Pitchford LJ in Djanogly v Westminster City Council [2011] R.T.R. 9* at [12].
 - c. Furthermore, for the same reason it is not permissible for the local authority deliberately to budget to achieve a surplus from its parking income, apart from a modest surplus to ensure the provision of parking spaces is self-financing and a modest amount to allow for unforeseen shortfalls etc.: per Lang J in *R (Attfield) v Barnet LBC [2013] RTR 33* at [63], referring to and adopting the reasoning of *Pitchford LJ in Djanogly v Westminster City Council [2011] R.T.R. 9*.

3. As to the duty of consultation:
 - a. In addition to the local authority's general public law duty to consult those affected by a proposed decision, in relation to proposed CPZs the local authority has a specific, mandatory obligation to consult, **"in all cases"**, with **"organisations representing persons who use any road to which the order relates or are likely to be otherwise affected by any provisions of the order"**, before making any order: Regulation 5 of *The Local Authorities' Traffic Orders (Procedure)(England and Wales) Regulations 1989 (SI 1989 No.1120)* ("the Regulations").

- b. Such a consultation:
- i. must be fair, effective and genuine (i.e., the local authority must actually consider the issue with a receptive and open mind);
 - ii. has to take place while proposals are still at the formative stage; and
 - iii. the local authority must consult, with the representative organisations of each individual area potentially affected, about both the principle of whether to impose a CPZ in those streets as well as the detail. *Regina v Camden London Borough Council Ex Parte Cran and Others: QBD 25 Jan 1995* (“*Cran*”) at pp. 374, 381 and 397.
- c. In particular, the local authority cannot avoid its obligation to consult all the relevant organisations identified under Regulation 5, and genuinely to consider whether a CPZ is needed in the relevant area in accordance with the limited statutory criteria in Section 45(3), by device of relying on a borough-wide policy to introduce CPZs. Such an approach is **contrary to Regulation 5 and unlawful**: *Cran*, p. 397C-D.
- d. In addition, Regulation 5 requires a two-way process with the relevant organisations: it is not sufficient for the local authority simply to receive and consider representations. It is obliged to “*consult with*” the organisations, and at a sufficiently formative stage of the proposals for those consultations to be genuine and meaningful: *Cran*, p.375K-L. It is therefore not sufficient for the local authority simply to go through a sham exercise of receiving representations. Here Southwark seeks to cloak their CPZ decision with some appearance of democracy by leaving a few specific local details still open for representations - but still no active participation in the actual final decision.

B. The Present Case

1. Southwark's Reasons for the Proposed CPZ

As a starting point, it should be noted that it is difficult to find **any of the statutory reason** for the Proposed CPZ which falls within the limited, permitted purposes set out in Section 45(3) of the Act. Where there is ample parking, especially but not limited to the southern areas: a cursory inspection of the streets for the example Dulwich Wood or Nunhead wards, at almost any time of the day or night shows that there are almost always large stretches of the roads with parking available. We presently do not have any major problem with people from outside the area parking in order to commute (even near a railway station the situation is tolerable). Nor has Southwark either gathered or presented any evidence that there is any such problem far less a significant problem. There is no need for a CPZ to maintain “the free movement of traffic”, or “reasonable access to premises”, or to encourage off street parking. There is, quite simply, no problem with parking in the proposed CPZ areas, and no justification for a CPZ for any of these permissible, statutory reasons.

Next turning to Southwark's stated reasons for imposing the Proposed CPZ, these have not been clearly articulated with detailed locations anywhere - which is unfortunate and in itself renders any purported consultation defective. However, from Southwark's consultation documents and Councillors' explanations, both in email form and in person in response to Council meeting delegations and questions, the reasons include the following:

- a. A CPZ will enable Southwark to *“reclaim space for our communities to connect, socialize and play”*.
- b. The **cost of the permit** *“will be used to help maintain and improve our streets”*.
- c. Any *“surplus income”* will be used to *“support [Southwark's] work on improving air quality and road safety and tackling the climate emergency, including funding local improvements”*.
- d. The *“postcode lottery”* caused by the fact that 70% of Southwark is covered by a CPZ whereas the remainder is not *“has meant **some residents are contributing** to the maintenance, upkeep and improvements to our streets **through the cost of their permit**, whilst others were not”*.
- e. With the majority already paying for parking, it is an *“anomaly”* to *“have the wealthiest part of the borough left not paying, especially given that car ownership in cities is itself linearly correlated to wealth”*.
- f. *“This is a boroughwide policy and if we were to ask residents in the nearly 70% of our streets that currently have to pay for parking whether our areas should get the same service for free, I suspect that they would probably not agree with you. Meanwhile, our roads budget is paid for*

out of general taxation, meaning that the carless majority are effectively subsidising wealthier car owners in areas like Dulwich. This does not seem right.”

- g. “Our approach has evolved: we are now taking a more holistic view of how we can use our street space for the benefit of all. Most Southwark residents, not owning a car, potentially miss out because of others’ free private use of public space. Residents have consistently told us that they want fewer cars on the roads, cleaner air, more trees, and for us to help tackle the climate emergency. Reclaiming space from parking to use for the things we all value is a part of this process: community interaction, safe and healthy journeys, a thriving local economy, and our natural world.”
- h. “We are also mindful of the fact that if you provide a big free carpark you will inevitably encourage people to drive. At the moment, Dulwich is that big free carpark. If we want to discourage people from travelling by private motor vehicle and encourage them to use instead more sustainable modes of travel, we need carrots and sticks.”

Three key points emerge from this rather confused list of reasons:

- 1) **None** of the reasons given by Southwark, or by the Councillors on Southwark’s behalf, are proper purposes for imposing the Proposed CPZ, within the scope of Section 45(3) of the Act. In fact, these matters do not appear to have been considered at all.
- 2) **All** of the reasons which have been provided are impermissible reasons for imposing a CPZ, and demonstrate that Southwark is motivated by a series of improper purposes. These consist of a jumbled mixture of:
 - a. an ideological objection to cars and/or car ownership and/or car owners generally;
 - b. a notion that because parts of the Borough with parking stress pay for parking, the residents in our areas should be forced to do so out of “*fairness*”;
 - c. a wish to punish car owners with substantial parking charges in order to reduce car ownership and driving in general;
 - d. vague and entirely unformulated suggestions that Southwark wants to use the highways for “*connecting, socialising or playing*” or some other nebulous and unspecified purposes;
 - e. a fundamental misconception that, rather than having to justify the imposition of restrictions on parking for the stated statutory purposes, Southwark is entitled to impose them because otherwise it is “*providing a free car park*” – which is, of course, putting things completely backwards.
- 3) In particular (and without limitation) it is clear that at least one of Southwark’s reasons for imposing the Proposed CPZ is to force our residents to “*contribute*” to Southwark’s funds for various other projects – i.e., to raise revenue, which is, of course, **a yet further entirely**

impermissible and unlawful purpose. Yet in February 2023 there was a much publicised, funding deficit in Southwark, the recent publication of the APCOA Contract extension for £4.46 million, including 48 new wardens and a “stockpile” of parking cameras, is a relevant and noteworthy example warranting scrutiny.

In addition to this, Southwark has failed to have regard to several other consequences which it should have considered. These include (amongst many others) the substantial inconvenience to residents and their visitors, the damage to the appearance of the many conservation areas resulting from the ugly road painting and urban clutter that a CPZ necessarily entails, and the effect on residents on private roads, who would be forced to erect their own parking barriers if they are faced with the inevitable spillover parking by escapees from the CPZ. And not all those who will use the proposed CPZ area are fit adults without children. The elderly, mothers with children, the disabled will all suffer from inability to use a car freely. Local shopkeepers will find parking restrictions drive custom inexorably to the supermarkets which have parking. There are not even vague proposals, far less promises, to provide adequate free parking which will overcome these problems (yet these problems must have become quite apparent in the earlier CPZs).

In the circumstances, it is clear beyond serious debate, based on Southwark’s own statements and admissions, that it is not **acting for any of the proper statutory purposes**, but rather is avowedly acting for a range of plainly improper, and politically motivated purposes, and the Proposed CPZ is **accordingly unlawful**.

2. Southwark’s Failure to Consult.

In addition to Southwark’s unlawful and improper purposes as set out above, the Proposed CPZ is also unlawful for the further reason that Southwark has ignored its mandatory, statutory obligations to carry out consultations in accordance with Regulation 5 of the Regulations, and its wider duties properly to consult all those potentially affected under public law.

Firstly, there are numerous Residents’ Associations and local businesses within the affected areas. Southwark has not consulted with any of these prior to making its proposal. Many of the local businesses we have spoken to have a serious concern for their continued downturn in trade and their voices have been totally ignored.

Secondly, and in any event, the limited consultation which has been proposed is **fundamentally defective** because Southwark has made it clear in the consultation documents that it will impose a CPZ **in any event** and is only consulting about the details of how the CPZ will be imposed (such as

hours of operation). It is like asking a condemned man what method of execution he would prefer. This is straightforward violation of Southwark's duty to carry out a genuine and proper consultation, with the affected organisations – and the affected residents, businesses, and other parties - as to both **the principle of whether a CPZ should be imposed at all**, as well as the details.

C. Further Information Requested

It is surprising that Southwark appears to have set about this process in seeming ignorance – or possibly defiance - of the relevant law, and its statutory obligations in this area.

As you will be aware, under the **Southwark Code of Conduct**, which was implemented pursuant to Southwark's statutory obligations under Sections 27(2) and 28 of the **Localism Act 2011** and is applicable to all Council members or co-opted members, the members are required (amongst other things) to:

1. Be accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
2. Be as open as possible about all the decisions and actions that they take, give reasons for their decisions and restrict information only when the wider public interest clearly demands.
3. Behave in accordance with all their legal obligations.

We therefore ask the following questions:

1. Have the Councillors involved in this project, and the officers of Southwark who are assisting them, sought external specialist legal advice concerning the relevant statutory provisions and authorities applicable to the powers and obligations of Southwark in relation to the imposition of CPZs? If so, under your obligation of transparency please provide a copy of this advice.
2. If you refuse the above request, will you state whether you have received advice that the Proposed CPZ is lawful in all respects, and if so, when did you receive it? If otherwise, can you explain the basis on which Southwark believes that it is permitted to act in the way that it has.
3. By whom and on what date was the decision taken now to impose CPZs on the remainder of the Borough?

4. If the Councillors have not received advice on either or both of these matters, please explain why this was not done.
5. Under Subsection 55(1) of the Act, Southwark is required to keep an account of its income and expenditure in respect of parking places. Under Subsections 55(3A) and (3B) of the Act, it is required to send a report to the Mayor, as soon as reasonably possible after the end of each fiscal year, of any action taken with a deficit or surplus of that account for the year. Given Southwark's statements set out above, we are concerned that Southwark has seriously disregarded its statutory obligations in this regard, and is deliberately, and unlawfully, running a surplus on its Parking account in order to fund other expenditure. A Freedom of Information Request on this topic made some weeks ago by one of our residents was met with no response and no information was provided on the website. Please therefore provide copies of the Accounts under subsection (1), and (b) the Reports under subsections (3A) and (3B), for each of the last five fiscal years.
6. Southwark appears to have already entered into contracts for the supply of goods and services destined solely for the CPZ expansion. Could we therefore please have your unqualified assurance that these contracts simply enable Southwark to order these goods and services but do not constitute a fixed obligation to do so, or to order a minimum quantity of any type?

It will be appreciated that we are considering applying for a Judicial Review of the expansion decision, and therefore the time scale is most relevant. **Could we therefore please have full and detailed answers to all the questions posed above by 15th August 2023**, which failing, any failure to do so will fall to be treated as a refusal to answer.

Yours faithfully,

See Attached Signatures