

CAMBERWELL CONSERVATION SOCIETY
110 Grove Park
London SE5 8LE

Head of Highways
Environment and Social Regeneration
Southwark Council
160 Tooley Street
London SE1 2QH

By recorded delivery

10 January 2018

Dear Sir or Madam

Proposed Controlled Parking Zone
Grove Park SE5

Camberwell Conservation Society is a charity whose object is the advancement of environmental protection including specifically the preservation and conservation of the natural environment of the geographical area of Camberwell (including the areas within associated SE5 and SE15 post codes), the promotion of sustainable development within the above geographical area and the prevention of any measures taken by local or national government which would in the reasonable opinion of the directors of the charity cause the degradation of the environment within the above area.

The directors of the charity have obtained legal advice in relation to the arrangements currently proposed by the Southwark Borough Council (the **Council**) in relation to the above proposed Controlled Parking Zone (**CPZ**) and are of the view that the implementation of those arrangements in the manner currently proposed would amount to:

- breach by the Council of its statutory duties under the Road Traffic Regulation Act 1984;
- failure of the Council to comply with its public sector equality duties pursuant to the Equality Act 2010; and
- failure of the Council to comply with the requirements which the Council has stated must be complied with in relation to the Camberwell Conservation Area.

1. Road Traffic Regulation Act 1984 (or RTRA).

The key objective of any local authority in making Traffic Management Orders which are intended to manage parking is to reduce and control non-essential parking and to assist residents, short-term visitors and local businesses. The CPZ currently proposed to be implemented in relation to Grove Park does none of these things.

In addition the implementation of the CPZ in its current form would appear to be a clear breach of the Council's statutory duty under the RTRA.

Section 122(1) of the RTRA provides that *"It shall be the duty of every ... local authority ... to exercise the functions conferred on them by this Act as (so far as practicable having regard to the matters specified in subsection (2) below) to secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians) and the provision of suitable and adequate parking facilities on and off the highway."*

Section 122(1) imposes the statutory duty on the Council to make provision for suitable and adequate parking facilities in Grove Park. It also **requires** the Council to implement this obligation so far as practicable in relation to the matters set out in Section 122(2). The Council is not merely obliged to **consider** the Section 122(2) matters but is required to **implement** them **so far as practicable**.

The matters required by Section 122(2) to be implemented by the Council include the following:

- “(a) the desirability of securing and maintaining reasonable access to premises;*
- (b) the effect on the amenities of any locality effected ... so as to preserve or improve the amenities of the areas through which the roads run;*
- ...*
- (d) any other matters appearing to ... the local authority to be relevant”.*

2. Suitable and adequate parking facilities.

According to the information provided by the Council there are 276 households in Grove Park but if the proposed CPZ is introduced in Grove Park, parking facilities will be available for only 161 cars across the whole of Grove Park. If each household owned one car the proposed CPZ would therefore create a shortfall of 115 parking spaces.

Many households in Grove Park own more than one car. Our best estimate is that the average number of cars owned by residents is 1.5 per household. If this is correct there will be a shortfall of 172 parking spaces. We are currently conducting a survey of all residents in order to establish:

- (a) how many vehicles are owned by households in Grove Park;*
- (b) how many vehicles are able to park off the highway; and*
- (c) how many vehicles will be able to park in the parking spaces in the proposed CPZ.*

In failing to assess the extent of the parking facilities which are required to meet the needs of Grove Park residents the Council is acting in an unreasonable manner.

In the absence of any such assessment the Council will not be able to demonstrate that its proposed CPZ will provide secure and adequate parking facilities as it is required to do by law.

For the reasons set out above the arrangements currently proposed by the Council would if implemented amount to a serious breach by the Council of its statutory obligation under Section 122(1) RTRA *“so far as practicable ... to secure ... the provision of suitable and adequate parking facilities on and off the highway”* in Grove Park.

3. Full-day parking dormitory and free short-term casual parking.

A further problem with the Council's CPZ proposals is that they fail to recognise that Grove Park is currently being used as a full-day free parking dormitory by non-residents who work in King's College Hospital and other local facilities and businesses.

This is the problem which has caused some residents of Grove Park to suggest that the Council should introduce parking restrictions in Grove Park. However, far from solving the problem, the Council's proposed solution actually exacerbates it.

The proposed CPZ will still enable non-residents to use Grove Park as a full-time parking dormitory. This will continue to prevent Grove Park residents from being able to park in Grove Park. The only difference to the present regime is that under the proposed CPZ system full-day parking will cost non-residents a fee of £5.60. This is a substantial reduction on the cost of parking in King's College Hospital. This will ensure that Grove Park remains an attractive place for non-residents to obtain subsidised full-day parking.

The recent introduction of residents-only parking controls on Camberwell Grove and other neighbouring roads has resulted in an addition to the Grove Park dormitory problem. These parking controls have caused a marked increase in the use of Grove Park by non-residents for free short-term casual parking after 09:30 and before 17:30. This has meant that many Grove Park residents find it difficult or impossible to park their vehicles in Grove Park if they leave the road during the day as a result of non-residents using Grove Park for free short-term casual parking.

Economic impact of proposed CPZ on full-day dormitory parking and short-term casual parking.

The introduction of the proposed CPZ does not solve the full-day dormitory parking problem. Nor does it resolve the short-term casual parking problem caused by the introduction of residents-only parking in

neighbouring roads. The proposed Grove Park CPZ is likely to ensure the continuance and extension of both these current problems.

The full-day dormitory parking problem is likely to continue. This is because the payment of a £5.60 fee for a full day's parking in Grove Park represents a considerable saving on the fees currently payable in order to park in King's College Hospital, which is a short and pleasant 10-minute walk away. This saving will be paid for by Grove Park residents. By way of contrast they will be required to pay the Council £125 per year per vehicle for the privilege of having their own ability to park in their own road altogether eliminated or seriously impaired.

The short-term casual parking problem is likely to be considerably worsened as the proposed CPZ restrictions will only apply for a two-hour period. Outside these two hours Grove Park is a free parking area which is available to non-residents free of charge. By way of contrast Grove Park residents will be required to pay the Council £125 per year per vehicle for the privilege of having their own ability to park in their own road altogether eliminated or seriously impaired.

Cost-benefit analysis of impact of proposed CPZ on Grove Park residents.

The annual cost of the proposed CPZ to Grove Park residents is easy to assess. The calculation is the number of households (276) multiplied by the average number of cars per household (estimated 1.5) multiplied by the amount of the annual parking fee per vehicle. The annual cost is therefore £51,750.

The cost of implementing the entire Dog Kennel Hill CPZ over an area roughly five times larger than Grove Park has been estimated by the Council at £50,000. The entire Dog Kennel Hill CPZ will cost the Council £20,000 in annual staff costs.

The annual parking fees payable by Grove Park residents for the first year of operation of the proposed CPZ will therefore cover 100% of the cost incurred by the Council of establishing the entire Dog-Kennel Hill CPZ – over an area five times larger than Grove Park.

For the second and every subsequent year of operation the Council can expect to recover from the residents of Grove Park more than 250% of the costs of operating the entire Dog Kennel Hill CPZ.

The economic effect of the proposed CPZ is to create within Grove Park a free / heavily subsidised parking zone for the use and benefit of non-Grove Park residents – paid for by Grove Park residents.

By way of contrast to the significant benefits to be obtained by non-residents of Grove Park the residents of Grove Park will obtain no benefit whatever from the proposed CPZ which appears to be materially detrimental to their interests for the reasons set out in paragraphs 2 to 8.

4. Desirability of securing and maintaining reasonable access to premises.

As stated in paragraph 1 above before making any Traffic Management Order the Council is required to ensure so far as practicable that reasonable access to premises is secured and maintained.

The proposed CPZ involves the extensive use of double yellow lines along the majority of the north side of Grove Park. This will prevent residents of the north side from parking along the affected areas **at any time**. The CPZ will not therefore operate so as to secure and maintain reasonable access. It will operate to exclude or restrict any access at all.

The double yellow lines will also prevent or severely impair access of trade-persons' vehicles to premises in Grove Park. This access is required in order to permit Grove Park residents to maintain their homes and the gas appliances and other utility services which are in them. Any prevention or impairment of access is therefore likely to have safety issues as well as affecting the appearance of the neighbourhood.

There is no valid basis to suppose that the use of double yellow lines, as opposed to single yellow lines, would enhance road safety in Grove Park, as has been suggested by the Council.

Although it is sometimes necessary to introduce double yellow lines in places where safety, access and sight lines are compromised such as at junctions and at locations along roads where parking would impede passing vehicles, none of these safety concerns arise in relation to the north side of Grove Park.

Far from improving safety the introduction of double-yellow lines along the majority of the north side of Grove Park is likely to reduce road safety. This is because their introduction will create a clear stretch of road which will encourage drivers to speed instead of obliging them to progress at a slower speed in order to accommodate vehicles coming from the other direction.

The Council has justified its proposed use of double-yellow lines on the ground that it is "Council policy". This is not adequate. There is no statutory provision in the Road Traffic Regulation Act 1984 and no regulation in the Traffic Signs Regulations and General Directions 2016 which empowers the Council to impose double yellow lines in the current situation. Any such proposal would therefore be unreasonable and will be strenuously opposed.

As noted above the Council is **required** when discharging its duty to provide suitable and adequate parking facilities to do so in a manner which pays regard to "*the desirability of securing and maintaining reasonable access to premises*".

Not only do the Council's proposals fail to pay regard to these matters but their implementation would altogether exclude or seriously restrict the access of Grove Park residents to their own homes in breach of the Council's statutory obligation to secure and maintain reasonable access for residents to their homes.

5. Effect on the amenities of the locality.

The proposed parking restrictions are likely to encourage residents to apply to the Council for permission to lower the kerbs outside their homes to create crossovers for driveways. This is likely to result in the demolition of walls and fences, the uprooting of hedges, the cutting down of trees and the loss of lawns and shrubs.

This in turn will lead to a loss of wildlife in the road which enjoys the presence of a wide range of birdlife and insect life including bees, beetles, moths and butterflies whose habitat in the road itself will be seriously depleted.

A number of residents have made applications to the Council to create "crossovers" for driveways or have stated that they intend to do so if the CPZ proposals are put into effect.

This will have a serious adverse impact on the amenities of the locality as it will result in the loss of those very elements which make Grove Park such a pleasant and agreeable road to live in.

The paving-over of front gardens will degrade the visual appearance of the road to a significant extent and risks turning Grove Park into something resembling the North Circular Road.

As has already been noted the proposals will also encourage vehicles to exceed the speed limit increasing noise and pollution in what is a peaceful and relatively unpolluted neighbourhood.

In addition, the paving over of front gardens will increase the amount of run-off rainwater into the road and will place further strain on the drainage system in the road. This has a marked tendency to flood when there is heavy rainfall causing inconvenience to pedestrians and car users alike and further degrading the appearance of Grove Park.

As noted above the Council is **required** when discharging its duty to provide suitable and adequate parking facilities to do so in a manner which pays regard to "*the effect on the amenities in the locality so as to preserve or improve those amenities*".

Not only do the Council's proposals fail to pay regard to these matters but their implementation would endanger, damage or destroy the amenities in breach of the Council's statutory obligation to preserve or improve them.

6. Other matters appearing to the local authority to be relevant.

The Council is also **required** when discharging its duty to provide suitable and adequate parking facilities to do so in a manner which pays regard to *“any other matters appearing to ... the local authority to be relevant.”*

Grove Park is an important part of the Camberwell Grove Conservation Area which was specifically established by the Council so as to conserve and protect the character and appearance of the area in accordance with the provisions and guidelines laid down by the Council in the Camberwell Grove Conservation Area Appraisal which was formally approved and adopted by the Council in August 2003.

The fact that the Council has established a Conservation Area which includes Grove Park is a clear indication that the Council considers that it has a duty to conserve and enhance the area of which Grove Park forms part. That duty **must** also be a relevant factor to which the Council has the statutory duty to pay regard when implementing any parking proposals.

Not only do the Council's proposals fail to pay regard to the Council's own guidelines as set out in the Council's Conservation Area Appraisal but their implementation would amount to a breach of its own guidelines for the reasons set out in paragraph 8 below.

7. Equality Act 2010 public sector duty.

Section 149 of the Equality Act 2010 imposes on public sector bodies the duty to pay due regard to the protected characteristics defined in Section 4 of the Act when exercising their public functions. This duty is therefore required to be performed in relation to the exercise by the Council of any function under the RTRA.

Part of the Council's duty to pay “due regard” is the obligation to take steps to mitigate the impact of any action on persons who have the “protected characteristics”. The Council is under a legal obligation to demonstrate that this has been done and is required to be able to justify any decision which it has made on the ground that it is a proportionate means of achieving a legitimate aim.

The Council's duties in this regard are required to be discharged at a time any particular policy is being considered and before any decision is taken. Accordingly, there is an expectation that where any decision of the Council is likely to affect persons who have protected characteristics the Council will explore other means which have less impact on such persons.

The CPZ proposed by the Council in relation to Grove Park is likely to have a negative impact on persons having no fewer than 3 of the 9 protected characteristics namely (1) disability (2) age and (3) pregnancy/maternity.

Many residents of Grove Park are in their 60s or 70s. Any impairment by the Council of their ability to gain easy access to their vehicles will impair their mobility and be a breach of the Council's public-sector duty owed to such persons. The Council therefore needs to demonstrate that it has taken steps to mitigate the impact of its proposals on such persons. At present it seems it has not taken any steps to do so.

A number of the residents of Grove Park suffer from disabilities. Any impairment by the Council of their ability to gain easy access to their vehicles will also impair their mobility and be a breach of the Council's public-sector duty owed to such persons. The Council therefore needs to demonstrate that it has taken steps to mitigate the impact of its proposals on such persons. At present it seems it has not taken any steps to do so.

The third category of protected characteristics to which the Council owes the statutory duty to pay regard is the characteristic of pregnancy or maternity. The Equality Act 2010 does not contain any definition of *“maternity”*. Therefore, following the normal rules of construction of statutes the term falls to be construed in accordance with the ordinary English language meaning of the word. The Oxford English Dictionary defines *“maternity”* as *“1. The quality or condition of being a mother; motherhood. 2. The qualities or conduct characteristic of a mother; motherliness.”*

The legal definition of a child is a person of less than eighteen years. There are a number of mothers with children living in the road. The Council owes them the public-sector duty to have due regard to their protected characteristics. Any impairment of their ability to gain easy access to their vehicles will also impair their ability to perform their duties as mothers and be a breach of the Council's public-sector duty owed to such persons. The Council therefore needs to demonstrate that it has taken steps to mitigate the impact of its proposals on such persons. At present it seems it has not taken any steps to do so.

8. Camberwell Grove Conservation Area Appraisal

The Council has established a number of conservation areas in the borough. One of these is the Camberwell Grove Conservation Area of which Grove Park forms an important part.

The Council has prepared the Camberwell Grove Conservation Area Appraisal (referred to in paragraph 6 above) following guidance given by English Heritage. This contains a series of statements which provide a clear indication of the Council's approach to the preservation and enhancement of the Camberwell Conservation Area, including specifically Grove Park.

In accordance with its commitment to preserve and enhance the Conservation Area the Council has given precise indications of the changes which it will not permit to be made to the Conservation Area.

Having made a public statement both of the actions the Council is proposing to take in the Conservation Area and of the actions the Council will not permit to be taken in the Conservation Area the Council has created the legitimate expectation on the part of persons living or working in the Conservation Area that the Council will act in accordance with the public statement which it has made.

Accordingly, the Council is legally required to observe and maintain the standards it has set in the Camberwell Grove Conservation Area Appraisal and is not free to act in a manner which is in any way inconsistent or incompatible with the Camberwell Grove Conservation Area Appraisal.

We would draw the Council's attention to the following statements contained in the Camberwell Grove Conservation Area Appraisal (where underlined, the emphasis being added).

"The purpose of this statement is to provide an account of the [Camberwell Grove] Conservation Area and a clear indication of the Borough Council's approach to its preservation and enhancement. It is intended to assist and guide all those involved in development and change in the area and will be used by the Council in assessing the design of development proposals.

(Paragraph 1.1.1)

The Council is obliged to implement its CPZ traffic proposals in a manner that is consistent with the public statement. If they are inconsistent with such statement, the Council must amend them so as to make them consistent. The persons who are involved in the development of the CPZ proposals are required to be guided by the statement and must apply it in assessing and modifying the CPZ proposals in order to ensure that they are consistent with the statement.

"The statutory definition of a Conservation Area is an "area of special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance." Conservation Areas are normally centred on listed buildings and pleasant groups of other buildings, open space or an historic street pattern. ... It is, however, the character of areas rather than individual buildings that such a designation seeks to preserve or enhance."

(Paragraph 1.1.2)

The Council has correctly identified that it has the duty to preserve or enhance the character and appearance of Grove Park, and specifically its general character rather than any individual buildings. Any proposals which are incompatible with achieving that aim must not therefore be implemented.

"Grove Park is now characterised by late 19th / early 20th century speculative development, although it too derives from a taste for a greener, more spacious, more "English" environment, with building styles and garden planting that deliberately evoke the native countryside rather than the city."

(Paragraph 3.4.1)

The Council has provided an accurate description of the character and appearance of Grove Park. The Council has a duty to preserve this character and appearance.

“Since a key characteristic of the development form [implemented in Grove Park] is ordered and mature front gardens and boundaries, where they break down they are potentially very detrimental to the character of the area. Front fences in Grove Park (between nos. 80 and 37 particularly) are a prime example.”

(Paragraph 3.4.5)

The Council has identified the seriously detrimental effect that the breaking down of front gardens will have on the character of Grove Park. If this is permitted it will have an irreversible effect upon the key characteristic of Grove Park which the Council is legally obliged to preserve.

“The importance of front gardens and boundary walls has been emphasised but there are examples of front gardens that have been turned into parking areas to serve converted flats. Widespread changes of this nature would severely detract from the mature green character of street frontages and should be resisted. In general, there has been degradation over many years of the quality of front boundaries through the replacement of front boundaries with fencing and poorly designed brick walls. The retention of a cover of garden shrubs and trees is a mitigation of these effects and the reinstatement of boundary walls should be encouraged.”

(Paragraph 5.2.9)

Here again the Council has emphasised the need to maintain front gardens and boundary walls and the need to retain the cover of garden shrubs and trees in order to preserve the mature green character of street frontages. The Council has also identified that it has the obligation to resist any changes to this character and to take steps to encourage its retention,

“Loss of garden space and trees should be resisted as they provide an important green backdrop visible between and above groups of houses.”

(Paragraph 5.2.11)

The Council has stated that its policy is to resist any proposal which would lead to a loss of garden space and trees. The Council must therefore ensure that this policy is implemented by its officers.

“Use of front gardens as forecourt car parking has a resultant detrimental effect on the appearance of buildings and the Conservation Area. The loss of garden spaces walls and vegetation is particularly unfortunate and further losses will be resisted wherever possible. The Council will encourage reinstatement of front gardens when the opportunity arises.”

(Paragraph 5.3.16)

The Council has once again emphasised that the loss of front gardens for use as forecourt car parking has a resultant detrimental effect on the appearance of the Conservation Area. It has also again emphasised that the loss of garden spaces and vegetation is particularly unfortunate. In view of the fact that the Council has created the legitimate expectation that it will resist further losses of this type the Council has a duty to do so.

9. Camberwell Conservation Society consultation.

Camberwell Conservation Society has consulted widely with the residents of Grove Park. The Society is in the process of completing a detailed survey of Grove Park residents. The survey will collect and compile the following information on each household:

- the number of cars and other vehicles in the household;
- the availability of off-street parking for such vehicles;
- the protected characteristics of the members of the household;
- the number of children in the household;
- any plans for the household to convert front garden space into off-street parking if the proposed CPZ is introduced; and
- any resultant loss of trees shrubs and other vegetation if the proposed CPZ is introduced.

The results of the Society's survey will include a calculation and supporting data demonstrating the likely shortfall in the number of available parking spaces in Grove Park if the proposed CPZ is introduced.

The survey will also contain details of the type of Traffic Management Order relating to Grove Park which Grove Park's residents will support.

The Council will be aware that some residents of Grove Park have requested the Council to introduce a CPZ and there now appears widespread acceptance among Grove Park residents that some form of parking management must be introduced – but not in the form proposed by the Council.

It is not the intention of the Society to thwart the Council's desire to introduce parking controls.

Rather the Society supports such controls but would like to see them implemented in a way which:

- (a) preserves and enhances the character of the Camberwell Grove Conservation Area; and
- (b) meets the needs and supports the protected characteristics of Grove Park Residents.

10. Invitation

In order to avoid formal opposition to the Council's proposal and to avoid the resultant delay and cost to the Council of a public enquiry or Judicial Review Proceedings the Society would politely request the Council to defer the commencement of the statutory consultation on its proposals for a further 28 days.

The results of the Society's survey will be made known to the Council before the end of this period.

In the meantime, the Society formally invites the Council to give careful consideration to the matters set out above with a view to reformulating the Council's proposals for Grove Park in such manner as to comply with the Council's statutory and other obligations.

The Society should be grateful if the Council would therefore submit to the Society the Council's reformulated proposals for Grove Park by no later than Wednesday 7 February 2018 with a view to meeting the directors of the Society and its representatives shortly after this date in order to agree upon the terms of a CPZ which are acceptable to the Society, the residents of Grove Park and the Council and to enable the Council's reformulated proposals to be adopted and implemented.

For the avoidance of doubt this communication is to be treated by the Council as a formal objection to the making of the proposed Traffic Management Order constituting a Controlled Parking Zone in the Dog Kennel Hill Area within the meaning of paragraph 8(1) of the Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996.

We look forward to hearing from you.

Yours faithfully

Andrew Harris

Director

for and on behalf of

Camberwell Conservation Society

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