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**Your reference**

**Our reference**

ET/ET/344082/11  
UKM/48338597.2

1 March 2013

Dear Sir

**THE CENTRAL BEDFORDSHIRE COUNCIL (POYNTERS ROAD AND  
LEAGRAVE HIGH STREET AREA DUNSTABLE AND LUTON) (WEIGHT  
RESTRICTION) ORDER 201\* ("ORDER")  
PROPOSED APPLICATION FOR JUDICIAL REVIEW OF THE TRAFFIC  
MANAGEMENT MEETING'S DECISION MADE ON 5 FEBRUARY 2013**

We are writing to you in connection with the above decision concerning the above Order. Please treat this letter as a letter before claim pursuant to the Pre-Action Protocol for Judicial Review.

**The proposed defendant**

The proposed defendant is the Central Bedfordshire Council (the "Council").

**The proposed claimant**

The Proposed Claimant is A. S. Watson (Health & Beauty UK) Limited (the "Company").

**Reference details**

The Council's reference for this matter is 'the Central Bedfordshire Council (Poynters Road and Leagrave High Street Area Dunstable and Luton) (Weight Restriction) Order 201\*' and the matter has previously been dealt with on behalf of the Council by Mr Gary Baldwin at Bedfordshire Highways.

**Details of the matter being challenged**

The Company seeks to challenge the decision of the Traffic Management Meeting made on 5 February 2013, recorded in the minutes issued on 7 February 2013, by which the Traffic Management Meeting of the Council made the following resolution:

- 1 *That the 7.5 tonne weight limit on Poynters Road will be implemented in line with the Councils adopted Freight Strategy.*
2. *That prior to the implementation of the 7.5 tonne weight limit the following take place:-*

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A list of members is open for inspection at its registered office and principal place of business, 3 Noble Street, London, EC2V 7EE and at the address at the top of this letter. Partner denotes member of a limited liability partnership.

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## 2.1 Information

2.1.1 *The provision of satisfactory air quality monitoring reports on Luton Road and Poynters Road (post busway completion);*

2.1.2 *An economic impact assessment which resolves the issues raised by A. S. Watson;*

2.1.3 *A reassessment of the impact of reduced traffic on Luton Road following the reopening of the Busway.*

## 2.2 Interim Remedial/ Mitigation Measures:

2.2.1 *Poynters Road resurfacing with noiseless drain covers/ set back drainage*

2.2.2 *Advisory freight route signage on Luton Road Westbound at Skimpot Roundabout and at appropriate locations on the Woodside and adjacent industrial estates.*

2.2.3 *Boscombe Road gyratory/ traffic signals to be remodelled*

3. *That Implementation of the scheme take place when the above satisfactory information is reported to the Executive Member /Traffic Management Meeting and the above interim remedial measures have been completed but **not later than the opening of the Woodside Link.**" (the "Revised Decision")*

The Revised Decision was taken following the decision of the Traffic Management Committee on 7 January 2013 which resolved the following:

*"That the following be agreed:-*

1.
  - (i) *the refurbishment and improvement of Boscombe Road Traffic controlled junction to allow traffic to move more freely;*
  - (ii) *Poynters Road be resurfaced;*
  - (iii) *Preferred HGV routes be signed on Boscombe Road and the A505;*
  - (iv) *air quality to be monitored for both Poynters Road and Boscombe Road*
  - (v) *to note that the proposals for the implementation of the Woodside Link are progressing.*
2. *the proposed 7.5 tonnes goods vehicle weight restriction **will not be implemented and the decision will be deferred** to allow the impact of the above to be considered." (the "Original Decision")*

The Original Decision was called-in by the Sustainable Communities Overview and Scrutiny Committee following a request for a call-in from Cllr Nigel Young made on

11 January 2013. Cllr Young gave the following reason for his call-in request: "*To clarify the Portfolio Holders decision.*"

The Call-In Request Form set out the alternative recommendation proposed to the Portfolio Holder to revise his decision. On 17 January 2013 the Sustainable Communities Overview and Scrutiny Committee resolved that the Original Decision is referred back to the Traffic Management Committee for consideration at their next scheduled meeting with the alternative recommendation proposed by Cllr Young. The Revised Decision follows the wording of the resolution proposed by the the Sustainable Communities Overview and Scrutiny Committee.

### **The issues**

We consider that the Council's decision raises three main issues:

- (1) Material change;
- (2) Procedural irregularity and unfairness; and
- (3) Failure to consider the impact of the proposals/Pre-determination.

We propose to address each of these issues in turn.

#### **(1) Material change**

The Original Decision was clear. It stated that 'the proposed 7.5 tonnes goods vehicle weight restriction will not be implemented and the decision will be deferred to allow the impact of [various issues identified] to be considered'. Essentially, this is a negative decision. Until the impact of the various issues listed in the resolution can be considered the weight restriction will not be implemented and the decision will be deferred.

Cllr Young gave the following reason for the call-in: 'to clarify the Portfolio Holder's decision' and proposed the following recommendation that the 7.5 tonne weight limit on Poynters Road will be implemented in accordance with the Council's adopted Freight Strategy.' This contradicts the outcome of the previous meeting, rather than clarifying its terms.

On any view, changing the wording of the resolution from '*will not be implemented and the decision will be deferred*' to '*will implement*' the proposed weight restriction order is a material, substantive change. It cannot be described as a *clarification* of the Executive Member's decision only. Accordingly, the basis of the call-in and any subsequent decision is unsafe and unlawful.

#### **(2) Procedural irregularity and unfairness**

As explained above, the reason given for the call-in was 'to clarify the Portfolio Holder's decision'. Consequently, Officers of the Council told objectors to the proposed order that they had not informed them about these proposals because it was

considered that the alternative recommendation *'is not expected to result in a material change to the earlier decision'*<sup>1</sup> and that the Committee only made a *small change* to the previous recommendation ... the revised recommendation has had *four words added* to the last recommendation<sup>2</sup>.

Describing the change as non-material, 'small', and as only adding four words to the last recommendation is misleading, incorrect and unreasonable. Importantly, as a consequence of this unreasonable interpretation about the materiality of the proposed change, none of the objectors were informed about what is a substantive change to the resolution. At the outset of the Traffic Management Meeting on 5 February 2013, Cllr Spurr announced that he alone would decide whether to accept the decision of the Scrutiny and Overview Committee and then announced that he had so decided. Accordingly, no objector to the Order has had the ability to address either the Scrutiny and Overview Committee or the Traffic Management Committee before its decision to reverse its previous decision. The ability of objectors to participate in the democratic process has been significantly compromised. The proposal is procedurally flawed and therefore unlawful.

### **(3) Failure to consider the impact of the proposals/Predetermination**

The Traffic Management Meeting by its Original Decision resolved 'not to implement the proposed 7.5 tonnes goods vehicle weight restriction and to defer the decision to allow the impact of [various issues identified] to be considered'. This allows the public and businesses to take part and the Council to reassess the considerations and outcome based on the new information and representations from the public.

The Revised Decision is materially different. The decision is no longer deferred to enable the Council to take into account material considerations such as the various impacts of the proposed weight restriction but it is replaced with a much less onerous obligation. The decision pre-judges the items at 2 of the Revised Decision since there is no possibility of the decision to implement being changed. Further, the mitigation is pre-judged as its effectiveness (or otherwise) is not known at the time of the decision. This is reinforced by the wording of the last paragraph of the Revised Decision which adds a deadline for the implementation of the weight restriction: *'The implementation of the scheme take place ...not later than the opening of the Woodside Link'* regardless of the outcome of the surveys, and whether the mitigation measures are effective.

The Council has already failed to have regard to material considerations and to carry out a fair balancing exercise between the different interests of the various road users, as evidenced by the content of the Reports to Committee and the Original Decision and the requirement to carry out further surveys. Further dilution of the Council's duties and, in particular, the duty to consider material considerations beforehand would make the decision unreasonable, unsafe and irrational. It would be unlawful.

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<sup>1</sup> Email dated 4 February 2013 from Gary Baldwin

<sup>2</sup> Email dated 4 February 2013 from Martha Clampitt

This resolution changes the Council's position from a decision not to do something until another event to a decision to do something with checks taking place. The Revised Decision is a positive decision to implement, made without completing the steps required to be taken before the decision can be made lawfully.

The Courts have held this approach to be unlawful as the outcome is no longer subject to public involvement or influence.

#### **Details of the action that the proposed defendant is expected to take**

In light of the above, the Council's decision is unlawful and is liable to be quashed. Accordingly, it should withdraw the Revised Decision and return to the Original Decision.

#### **Details of the legal advisors dealing with this claim**

This matter is being dealt with on behalf of the Company by DLA Piper UK LLP, of 3 Noble Street, London EC2V 7EE. Our reference is ET/DAB/344082/1. The solicitor with conduct of the matter is Esther Thornton and she may be contacted on 020 7153 7679 or by e-mail at [esther.thornton@dlapiper.com](mailto:esther.thornton@dlapiper.com).

#### **Details of any interested parties**

We consider that, should it be necessary for the Company to make an application for judicial review, it would not be necessary to name Luton Borough Council as either a defendant or an interested party to such a claim, as it is the Council who proposes to make the Order but no doubt you will inform us if this understanding is incorrect.

#### **The details of any information sought**

Without prejudice to the issues set out above, we seek details of the Council's correspondence, including Cllr Nigel Young's correspondence and meetings with residents along Poynters Road and Luton Road supporting and objecting (respectively) the proposed Order.

#### **The details of any documents that are considered relevant and necessary**

At this stage we do not consider that we require any specific documentation from the Council.

#### **The address for reply and service of court documents**

Any reply should be sent to Esther Thornton at the above address. We have authority to accept service of any court documents on behalf of the Company.

#### **Proposed reply date**

In accordance with the normal practice under the Pre-Action Protocol for Judicial Review, we require a reply to this letter within 14 days, i.e. by 4 pm on 18 March 2013.



Yours faithfully

*DLA Piper UK LLP*

**DLA PIPER UK LLP**

cc: Martha Clampitt, Clerk to the Traffic Management Meeting CBC

Richard Carr, Chief Executive CBC

ITEM	DECISION	REASON FOR DECISION / ALTERNATIVES CONSIDERED	Alternative Options Considered and Refused
<p><b>2. CALL-IN FROM SUSTAINABLE COMMUNITIES OVERVIEW AND SCRUTINY COMMITTEE</b></p>	<p>1. that the 7.5 tonne weight limit on Poynters Road will be implemented in line with the Council's adopted Freight Strategy.</p> <p>2. that prior to the implementation of the 7.5 tonne weight limit the following take place:-</p> <p>2.1 Information</p> <p>2.1.1 the provision of satisfactory air quality monitoring reports on Luton Road and Poynters Road (post busway completion);</p> <p>2.1.2 an economic impact assessment which resolves the issues raised by A.S. Waton;</p> <p>2.1.3 a reassessment of the impact of reduced traffic on Luton Road following the reopening of the Busway.</p> <p>2.2 Interim Remedial / Mitigation Measures:</p> <p>2.2.1 Poynters Road resurfacing with noiseless drain covers / set back drain</p> <p>Advisory freight route signage on Luton Road Westbound at Skimpot Roundabout and at appropriate locations on the Woodside and adjacent industrial estates.</p> <p>Boscombe Road gyratory / traffic signals to be remodelled.</p> <p>3. that implementation of the scheme take place when the above satisfactory information is reported to the Executive Member / Traffic Management Meeting and the above interim remedial measures have been completed but not later than the opening of the Woodside Link.</p>	<p>Reason for Decision: Response to Call-in</p>	<p>None</p>
<p><b>5. MEADWAY LANGDALE LOWTHER AREA DUNSTABLE</b></p>	<p>1. that the proposals to install traffic calming measures in Meadway, Langdale Road and Lowther Road area of Dunstable be implemented with the following modification:-</p> <p>(a) discussions to be had with a resident of Oldhill to arrange appropriate location of ramp to prevent obstruction of his collection.</p> <p>2. that the proposals to introduce waiting, stopping and loading restrictions in the Meadway, Langdale Road, Lowther Road and Beech Road area of Dunstable be implemented as amended due to waiting times.</p> <p>(a) on Meadway between West Street and Pipers Croft – regularisation of vehicles parked on driveways between sidewalk and road by marking of parking bays on driveways across verges. Residents to be advised that available length of parking bay may not be able to accommodate long vehicles and that they should be accommodated on their property if they cannot fit within the space provided.</p>	<p>Reason for Decision: Objections Received</p>	<p>None</p>