



CHIEF EXECUTIVES OFFICE

11 MAR 2014



Appendix A

Cllr Peter Fleming
Leader Sevenoaks District Council
Leader's Room
Council Offices
Argyle Road
Sevenoaks
Kent
TN13 1HG

10th March 2014

Dear Cllr Peter Fleming,

I refer to your letter of 5th February 2014 in which you set out your reasons for denying Westerham Town Council and all other Town and Parish Councils in the Sevenoaks District any element of Council Tax Support Funding. As SDC did not meet until 18th February 2014 to pass the "no funding for Town and Parish Councils" resolution we do not know what authority you claim to have for the decision in your letter of 5th February.

Be that as it may, having taken advice, we are now taking the steps necessary in order to be able to seek a Judicial Review of your decision. This letter is the first step in the Judicial Review process under the heading of pre-action protocol. As such a response from SDC is expected within fourteen days.

The reasons we consider a judicial review appropriate to quash your Council's decision are as follows:

1. The letter from Brandon Lewis MP dated 24th December 2013 clarifies that the Department for Communities and Local Government (DCLG) expects billing authorities (such as Sevenoaks) to "pass down" to local Councils some of the funding provided to the billing authorities "to mitigate the impact of localised council tax support schemes on the council tax base" in 2014 – 2015.

Your letter of 5th February 2014 does not refer to that expectation. Instead, it refers to the fact that a specific sum for that purpose was ring-fenced last year (2013–2014), and concludes that "if this funding wasn't identifiable in our grant settlement [this year] we wouldn't be in a position to pass anything on".

This "no ring-fence no money" excuse is inconsistent with the letter of 20th December 2012 from SDC official, Roy Parsons who wrote to all Town and Parish Councils stating "Indications are that in future years the funding will be included in the Council's overall Rate Support Grant settlement. You should be aware that, if future years RSG settlements are lower, this will affect the level of grant that the District passes on."

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This position has not been adhered to in subsequent communications from SDC officials where the above reference to levels of support has been replaced by "no support."

You go on to say that "Ministers are unwilling or unable to identify the money and therefore we have to take the position that the money isn't there" and "The District Council would always pass 100% of monies clearly identified for another authority on to that authority, as we did last year, unfortunately the government has made this impossible for us to do this year."

The DCLG has clearly passed on its expectations to billing authorities and both DCLG and Sevenoaks knew full well that the grant funding to local councils at Town and Parish levels would not be ring-fenced. Notwithstanding the absence of ring-fencing, however, there was a clear expectation that some funding would be passed down.

2. You have acted as if your hands were tied, ignoring the fact that you have discretion to give grants to local Councils where you could have:

- i) kept the funding for local Councils at the same level as last year;
- ii) reduced the level of grants to local Councils to reflect the proportion of the cut to your own funding levels;
- iii) phased out grant support over a number of years.
- iv) utilized the Budget Stabilisation Reserve to mitigate the reduction in your RSG and thereby provide Council Tax Support Funding to Town and Parish Councils. After all this is exactly what that reserve is there to do as set out in the Cabinet minutes of the 10/1/2013 meeting, page 22, point 67. "Chairman reported that a Minister in DCLG stated further 8.5% reduction in funding affecting 13/14. This would impact SDC and Towns and Parishes - it was important that the Council had a healthy budget stabilization fund in order to mitigate against the impact of future proposals." The Budget Stabilisation Reserve is indeed healthy at £4,051,000.

Instead of pursuing the above, you decided to off-set the cuts to your funding by cancelling all grants to local Councils.

3. Your decision has been based upon irrelevant considerations, i.e. that funding for local Councils had not been ring-fenced.

Your decision ignored relevant considerations, namely that funding had been made available by DCLG for grants to local Councils and that the DCLG expected such grants to be made.

The decision is irrational ("if this funding wasn't identifiable in our grant settlement [this year] we wouldn't be in a position to pass anything on").

You have failed to exercise, or even acknowledge, your discretion.

You have used your powers for an ulterior motive to nullify the effect of the cuts in your overall budget.

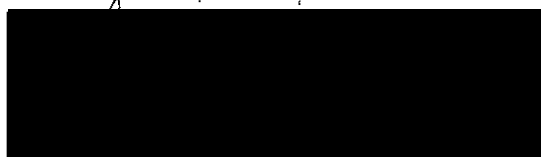
You failed to consult your local Councils in an appropriate manner to determine their views and the impact of your stated decision. Further your officials communicated that decision to local Councils before your Council considered the matter in session as you did in your premature letter of 5th February 2014

You have apparently failed to consider your public sector equality duties as, inter alia, this decision fails to foster good relations between SDC and Town and Parishes.

4. We are supported in this application by many affected Sevenoaks District Town and Parish Councils.

I would suggest a meeting with you to discuss the foregoing prior to your written response. Given the level of concern generated by this perverse decision, I suggest also in attendance should be a representative number of Towns and Parishes as referred to in point 4 above.

Yours truly

A large black rectangular redaction box covering the signature of Alan Wesley.

Alan Wesley
Chairman

cc The Rt Hon Michael Fallon MP
The Rt Hon Brandon Lewis MP



Councillor Alan Wesley
Westerham Town Council
Russell House,
Market Square,
Westerham,
TN16 1RB

Tel No: 01732 227475
Ask for: Legal Services
Email: leslie.roberts@sevenoaks.gov.uk
My Ref: PL11 517
Your Ref:
Date: 13 March 2014

Dear Councillor Wesley

COUNCIL TAX SUPPORT FUNDING

I have been instructed by the Council Leader Peter Fleming to deal with your pre action protocol letter of the 10th March 2014 the receipt of which I acknowledge.

I am in the process of considering the documentation relating to this matter and I hope to be able to respond in detail by the 24th March 2014. If I am not able to do so before that time I will advise you and if necessary request any necessary extension of time.

I note you have suggested a meeting with the Council Leader Peter Fleming as potential means of resolving the matter. I consider that such a meeting would be a political rather than a legal meeting and as such I will leave it to Councillor Fleming to decide if that might move matters forward in a useful way.

Yours sincerely



Leslie Roberts. Solicitor
Legal Services Manager
DX 30006 SEVENOAKS



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Councillor Alan Wesley
 Westerham Town Council
 Russell House,
 Market Square,
 Westerham,
 TN16 1RB

Tel No: 01732 227475
 Ask for: Legal Services
 Email: leslie.roberts@sevenoaks.gov.uk
 My Ref: PL11 517
 Your Ref:
 Date: 28 March 2014

Dear Councillor Wesley

COUNCIL TAX SUPPORT FUNDING

I am now responding to your pre-action protocol letter dated the 10th March 2014.

Adopting the numbering in your letter

- 1 I note the Governments stated intention as regards funding as set out in the letter from Brandon Lewis MP. The Council's Leader Councillor Peter Fleming has written seeking clarification of how this intention has been translated into action. He has asked but has yet to receive a reply as to what sum if any has been provided to Sevenoaks District Council to pass down to Parish and Town Councils.

While not directly referring to the expectation in the letter of the 5th of February Councillor Peter Fleming does refer to the "mantra the districts have your money" and there is no intention in the letter to deceive you as to the position.

The 2012 email from Mr Parsons to which you refer has clearly been superseded by events. I would refer you to the various letters and emails sent during 2013 advising you of the Council's position on this matter. These allowed you to prepare your budget accordingly and increase your precept which I note you have in fact done. In any event as an officer of the Council Mr Parsons has no authority to bind the Council to any future course of action in such matters.

- 2 The Council has prepared its budget in accordance with its Constitution. It has carefully considered how to deal with Council Tax Support funding through a series of budget reports prepared by officers, debated and as necessary amended by Cabinet and debated and as necessary amended in full Council on the 18th February 2014.

The Council has not previously provided Council Tax Support funding to Parish and Town Councils merely passed on money clearly identified for that purpose.

- 3 The failure of the Government to clearly identify any sum of money or a

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percentage of Council Tax Support funding as being money for Parish and Town Councils is entirely relevant to this issue. It is denied that the Council has acted irrationally, has ignored relevant considerations, has failed to exercise discretion or used any of its powers for an ulterior motive.

The Council did consult Town and Parish Council's along with others in the preparation of its budget as it is required to do in accordance with the Constitution. Town and Parish Council's were advised in writing during 2013 of the situation and were given the opportunity to adjust their budgets via their precepts. Your Town Clerk attended a forum meeting on the 14th January 2014 when the position was extensively explained the Council's Chief Executive and the Council's Chief Finance officer.

The public sector equality duty was considered during the process of preparing the budget.

4 The support you set out is noted

I trust this explanation is sufficient for your purposes but should you feel the need to take the matter further any proceedings should be addressed to Legal Services at the Council.

Yours sincerely



Leslie Roberts. Solicitor
Legal Services Manager
DX 30006 SEVENOAKS

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10 April 2014

Councillor P. Flemming
Sevenoaks District Council
Council Offices
Argyle Road
Sevenoaks
Kent
TN13 1HG

Dear Councillor Fleming,

I refer to our meeting on the 3rd April 2014. I did request that you write confirming your agreement to bring before Council, at the next meeting, this matter again. Would you please do so as it is relevant to the limited timescale for a judicial review and should be disclosed by us in our application for permission.

Since we met, the small number of billing authorities refusing to pass on tax support to Towns and Parishes has become clear with only 17 out of 241 who are "parished," remaining in the "no" category.

Had I possessed that information on the 3rd April I would have asked the question, "how can 93% of billing authorities identify funds to pass on but SDC can't?" Perhaps you can answer that question now.

Hearing your repeated unwillingness to pass on the funds in question, our advisers say we need to ask three specific questions for written replies from you. These are;

1. Have you been allocated specific funding in respect of the local council tax support scheme for 2014-2015?
2. If so, the amount of that allocation and
3. the total amount of the funding in respect of the local council tax support scheme you received, (i.e. including the amount of £274,000 passed down to local councils), for the 2013-2014 year.

Also, in correspondence with Charles Merritt of DCLG, I am told that the total local government funding to SDC has only fallen by 0.8% as compared with an England average reduction of 2.9%. These broader definition funds include Business Rates, Council Tax and any New Homes Bonus, as well as your RSG. Would you please validate these figures, or otherwise as we intend to use them in our evidence.

Turning to your May meeting, the question arises as to the content of your briefing documentation to Members given Cabinet's previous stance.

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I have spoken to a number of District Councillors who believed SDC's decision to refuse to "pass on" was in line with other billing authorities. Will you therefore include;

1. full reference to the content of my prior to action letter,
2. the minority position SDC now finds itself in,
3. the lack of equality in denying us any money whereas your RSG continued to be paid to you, albeit at a lesser level of the previous year's provision
4. and that your overall local government funding shows only a 0.8% reduction.

We are advised that your decision to examine the matter again is irrelevant to the timetable for a Judicial Review and your May 13th date is outside the three months limit so if we are not to fall at the first hurdle we must press on.

Councillor Fleming, at the end of the day the legal costs are for the taxpayers' account and with a Protective Costs Order, whatever the outcome, more for your coffers than ours and our supporters. There is also the very serious damage to the relationship between District and Towns and Parishes, something which I think has been forgotten by SDC.

I expect you have seen the recent Press Release from NALC urging the 17 remaining Councils to rethink their "short-sighted" decision and demanding further action by Government. We support those comments and await your prompt reply to the points in this letter.

Yours truly,

Alan Wesley
Chairman Westerham Town Council.

Councillor Peter Fleming
Leader of the Council



Alan Wesley
Chairman Westerham Town Council
Westerham Town Council
Russell House
Market Square
Westerham
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Tel No: 01732 227180
Ask for: Cllr Fleming
Email: Cllr.Fleming@sevenoaks.gov.uk
My Ref: PF/kd
Your Ref:
Date: 14 April 2014

Dear Mr Wesley

I acknowledge receipt of your letter of the 10th of April.

I confirm it is my intention to bring a further report on the council tax support funding for Parish and Town Councils to Council in May. As explained in the meeting of the 3rd April the content of the report is a matter for this Council but all relevant correspondence will be appended to the report. The report will where appropriate respond to the questions raised by you and others.

Given this assurance that the decision is to be reconsidered, I would venture that judicial review would now be pointless. A successful judicial review could only require the Council to reconsider the decision taken in February and this is to be done.

Yours sincerely



Cllr Fleming
Leader Sevenoaks District Council

