



BRIEFING NOTE TO WITHAM AREA COMMITTEE 26 APRIL 2006

Airborne Particulate Matter on Freebournes Road Industrial Estate, Witham

The Council's Environmental Services Department has been aware of this problem for some time and officers have been conducting investigations (ongoing) in an effort to resolve the situation.

However, according to case law, this type of problem does not constitute a *statutory nuisance*. Consequently formal action through the courts is not an option and any action on the Council's part has and will continue to be on an informal basis.

The attached correspondence from the Council to the Managing Director of the Tyco Electronics and to Brooks Newmark MP fully explains the circumstances and action taken in relation to this complaint.

Peter Tattersley
Operations Director

12 April 2006

Our ref: PT/CC/446
Ask for: Peter Tattersley
Direct Dial: 01376 552525 Ext. 2200
E-mail: petta@braintree.gov.uk
Date: 21 March 2006

Brooks Newmark M P
House of Commons
LONDON
SW1A 0AA

Dear Mr Newmark

Complaint about Airborne Debris
Mr. P. McManus, Tyco Electronics UK Ltd., Freebournes Road, Witham

Thank you for your letter of 6 March (received 13th) and the copy correspondence and petition from Tyco Electronics. We are consulting with Cabinet and Ward Members to establish how they wish to deal with the petition.

My Department has been in correspondence with Mr. McManus on this matter for a considerable period and our investigations are ongoing. I enclose a copy of my letter dated 16 September 2005 which provides some background to the issues pertaining to the investigation.

We have had some difficulty in establishing the source of the material, but we are now reasonably confident that this is coming from a local animal feed processing factory. (A nearby factory producing similar material has recently closed and so we have been able to discount this as a potential source.)

The complaints we have received relate to inconvenience rather than any associated health effects, however, to allay any concerns, I can advise that the material from the suspected source is a food product, non-toxic in nature, and the particles are too large to be inhaled, so they do not constitute a health hazard.

Whilst we are satisfied that there have been no breaches of legislation, we are working with the company to secure a reduction in the particulate emissions by requiring a stricter emission level to be achieved over a period of time, based on experimentation, and hopefully this will minimise the nuisance.

Case law determines that this issue cannot be treated as a *statutory* nuisance, which means that a formal action through the courts is not an option and we will have to rely on the cooperation of the factory to achieve improvements. I quote below from case law arising from *Wivenhoe Port v. Colchester Borough Council (1985)* at Chelmsford Crown Court in relation to alleged statutory nuisance by dust arising from the handling of soya meal, the circumstances of which appear similar to those being complained of by Tyco Electronics:-

“To be within the spirit of the Act a nuisance to be statutory nuisance had to be one interfering materially with the personal comfort of the residents, in the sense that it materially affected their wellbeing although it might not be prejudicial to their health. Thus, dust falling on motor cars might cause inconvenience to their owners; it might even diminish the value of their motor car; but this would not be a statutory nuisance.”

It is questionable how far the reference to “the spirit of the Act” is relevant, but if the above statement of the law is accepted, the use of the provisions to effect environmental quality improvements would, in the absence of interference with human comfort, be limited and unlikely to be supported in court.

Under the circumstances, I believe there is little scope for securing a formal resolution insofar as the employees of Tyco Electronics are concerned, although as I have said above, my officers will continue to work with the animal feed processing factory to try and secure a reduction in the particulate emissions.

If you require any further information please let me know.

Yours sincerely

Peter Tattersley
Operations Director

Enc.

Copy to: Cllrs M G Gage, M C M Lager and P R Barlow

Our ref: PT/CC/269
Ask for: Peter Tattersley
Direct Dial: 01376 551414 ext. 2200
E-mail: petta@braintree.gov.uk
Date: 16 September 2005

Mr P McManus
Tyco Electronics UK Limited
Freebournes Road
WITHAM
Essex
CM8 3AH

Dear Mr McManus

AIRBORNE PARTICULATE MATTER ON FREEBOURNES ROAD INDUSTRIAL ESTATE, WITHAM

Thank you for your letter dated 15 August 2005 relating to the above, a copy of which has been passed to me by the Chief Executive for reply. I apologise for the delay in responding which is due to my absence from the office.

I am sorry that you feel that the Council has not pursued the complaint as vigorously as you would have liked and I have therefore reviewed action taken to date to see if my staff have been sufficiently thorough in their investigation of the problem.

The records indicate that responses have been made to all contacts with the Council and that, from the outset, it has been explained that the deposits are considered to be an inconvenience rather than a statutory nuisance. This opinion is based on current legislation and precedents set through case law. Despite this, attempts have been made to identify the substance and to isolate the source of the problem.

Due to the sporadic nature of the emissions, it is difficult to ensure that my staff visit when the problem is occurring without notification from yourselves. I appreciate that it is equally difficult for your staff to monitor the problem, but there has certainly been no suggestion that your staff conduct hourly observations as indicated in your letter. We did, however, anticipate that your staff would cooperate with our investigation and provide completed diary sheets so that we have some idea of the frequency of the problem and are able to relate wind direction to the location of the premises that is responsible.

We have made numerous efforts to try to determine the source, but the nature of the material is such that it could be from one of several factories in the locality. Analysis of samples taken has proved inconclusive and therefore it is only through reports from those staff affected that any pattern may be established and the matter pursued. Clearly no enforcement action can be taken unless a statutory nuisance or a breach of air pollution permit conditions can be identified from specific premises.

I believe that you have been kept informed of action taken to date and I am satisfied that your complaint has been pursued as far as is reasonably practicable under the circumstances. Whilst I appreciate your concern at the apparent lack of progress, the response from the Council has been reasonable and appropriate given the limited cooperation from your staff and the nature of the problem.

It would certainly help if you and your staff assist in the investigation by completing the diary sheets as requested. This should help in establishing any patterns or wind directions to enable us to trace the source of the material. In the meantime, if you become aware of deposits occurring at any time during the day, please advise Miss Sharp who will try to visit at the time if at all possible.

Once again, my apologies for the delay in responding to you.

Yours sincerely

Peter Tattersley
Operations Director