**THE ROYAL BOROUGH OF KENSINGTON & CHELSEA**

**KEITH BARKER-MAIN (Case No: 1950069840)**

**CHRISTOPHER ALEX CREAGH COEN (Case No: 1950048283)**

**CHARLES DONALD CROLE (Case No: 1950042947)**

**ANABELLA FITZMAURICE (Case No: 1950054526)**

**FRANKLYN HESLOP (Case No: 1950073247)**

**NICHOLAS JORDAN (Case No: 1950059279)**

**MOAZZAM KHAN (Case No: 1950062615)**

**DORIS PRICE (Case No: 1950048603)**

**LUANNA SHONFELD (Case No: 1950049366)**

**MARIA STUTTARD (Case No: 1950075526)**

**EVAN SUTHERLAND (Case No: 1950081518)**

**SHAKARCHI TOYFIK (Case No: 195004131A)**

**MARYE SCOTT-WARREN (Case No: 1950062670)**

**DECISION**

All of these cases concern alleged parking in resident permit holder parking places, in the Royal Borough of Kensington & Chelsea. Each case turns on its own facts, and the cases have not technically been consolidated. However, I can usefully make some comments concerning the Borough's residents' parking scheme which apply to all or many of the individual cases, before going on to consider those individual cases in turn.

The Royal Borough of Kensington & Chelsea have a residents' parking scheme, under which residents of the Borough are entitled to a permit which allows them to park in certain places which are designated as residents' parking places, as well as in certain other places not relevant to these cases. Residents' parking places are designated under the Kensington & Chelsea (Parking Places) (Residents' Parking) Order 1994, which came into operation on 4 July 1994. That Order has various supplemental provisions in it. Article 13 of the Order concerns the "power to suspend the use of a parking place" which, insofar as it is relevant to these cases, provides as follows:

> "(3) Any person duly authorised by the Council... may suspend the use of a parking place or any part thereof whenever he considers such suspension reasonably necessary..."

There are then set out the purposes for which a suspension can be made, e.g. the laying or repair of gas pipes, water mains or the electricity supply, or for the removal of furniture to or from a building adjacent to the parking place. The paragraph continues (so far as relevant):

> "(5) Any person... suspending the use of a parking place or any part thereof... shall thereupon place or cause to be placed in or adjacent to any part of that parking place which is not a parking bay and the use of which is suspended, a traffic sign indicating that waiting by vehicles is prohibited.
>
> (6) No person shall cause or permit a vehicle to wait in any part of a parking place... during such period as there is in or adjacent to that part of the parking place a traffic sign placed in pursuance of paragraph (5) of this Article..."

The need to suspend a part or the whole of a residents' parking place from time-to-time is obvious. As indicated above, the reasons for which a place can be suspended are set out in Article 13(3) of the Kensington & Chelsea Order. If a vehicle remains in a parking place during a period of suspension -

because a suspension is made precisely because the place or a part of it is required to be clear - it is very likely indeed that the vehicle will be towed away, to allow the work (for which the suspension was made) to be done.

The formal Kensington & Chelsea Order is supplemented by two documents which (Miss Stroo, the Assistant Parking Enforcement Manager of the Council, informs me) are given to every applicant for a residents' parking permit. The first is a pamphlet, "Residents' Parking Scheme Explanatory Leaflet", which was last reviewed in April 1993. That is a 12-page leaflet which explains, succinctly and clearly in my view, how the residents' parking scheme works. So far as the suspension of parking places is concerned, that is covered by paragraph 5 of the pamphlet, which reads as follows:

> "**SUSPENSION OF RESIDENTS PARKING FACILITIES**
>
> The Director of Highways and Traffic may suspend parking facilities for various reasons. The suspension will normally be initiated before 5.30 pm to take effect at 8.30 am on the following day and, except in the case of emergencies, at least three days notice will be given.
>
> PARKING IN A SUSPENDED AREA IS AN OFFENCE. PERMIT HOLDERS ARE ADVISED TO CHECK DAILY TO ENSURE THAT IN THE BAY WHERE THERE VEHICLE IS PARKED, NO SUSPENSION IS DUE OR HAS TAKEN PLACE. VEHICLES PARKED IN A SUSPENDED BAY ARE LIABLE TO BE REMOVED BY THE METROPOLITAN POLICE.
>
> **FOR FURTHER INFORMATION, PLEASE REFER TO THE PARKING SUSPENSION LEAFLET.**"

In the original, the heading and final paragraph are in bold capitals: the second paragraph is in red capitals.

This section of the leaflet is somewhat dated, because it has been overtaken by the decriminalisation of parking in the Borough. It is no longer an offence to park in a suspended area: it may be a contravention of the decriminalised scheme, for which a penalty can be imposed by the Council and the relevant vehicle can be towed away. Under the new scheme, vehicles are removed, not by the Metropolitan

Police, but by the Council or its private contractors.

The parking suspension leaflet referred to in the pamphlet is the second document given to every applicant for a permit. Miss Stroo says that this leaflet is also given to every applicant for a permit renewal. Insofar as relevant, the pamphlet reads as follows:

> "**IMPORTANT INFORMATION FOR ALL HOLDERS OF RESIDENT PARKING PERMITS**
>
> (Failure to comply with these instructions could result in your vehicle being towed away)
>
> If you are the holder of a Resident Parking permit you are probably aware that parking bays need to be suspended from time to time. Within the governing regulations there is no requirement for the Council to give notice of suspensions. However, the Council is concerned to ensure that Residents have as much notice as possible and has initiated a system whereby at least three days notice is given to Residents of all Residents Parking bay suspensions except in emergencies. To enable this to be done persons requesting a suspension are required to give a weeks notice. This system is designed to try to ensure that, as well as reasonable notice being given, Permit holders will know when and why suspensions are taking place.
>
> In order to improve residents awareness of a suspension, the Council has revised the signing arrangements and has designed a new Suspension sign... A sketch of the sign which is three-sided and highly visible is shown... overleaf. Where resident signs are not attached to poles or lamp columns, a single sided version of the sign will be used.
> The new sign will be erected (except in emergencies) at least three days in advance of the suspension and will be used for whole bay and part bay suspensions, the only difference being that for whole bay suspensions a yellow supplementary plate "No Waiting", "No Loading", "No Unloading" will be affixed over the Resident Permit Holders legend, before 5.30 pm on the day before the suspension becomes operative.
>
> Individual notices (... overleaf) will be placed on any vehicle displaying a Resident Parking Permit which is within the affected area at the time when inspected by an

officer on the day before the suspension becomes operative. (Please note that this will be before 5.30 pm.)

PLEASE NOTE

Unfortunately in a borough as busy as Kensington and Chelsea it is not wise to leave your car in a Resident Parking bay if no one is available to move it if required. It is **important** therefore that if you go **on holiday or away** someone has the **keys** to your car who can make **daily checks** and move it, if necessary. Occasionally an emergency may arise which requires clearance of a bay, in such cases the police will normally be involved and efforts will be made to contact owners.

There is a requirement for the Council to suspend parking bays for access by the gas, electricity and water authorities and British Telecom. In addition, bays may be suspended for removals, access for large deliveries, marriages, funerals, skips, building materials, hoardings, scaffolding, tree works, road works or cleansing operations.

The requirement may be for one or more spaces or for whole bays. Please help us to help you by watching out for signs indicating that a bay is, or is about to be, affected by a suspension...

**IT IS VERY IMPORTANT YOU REGULARLY CHECK THE BAY WHERE YOUR VEHICLE IS PARKED TO ENSURE THAT NO SUSPENSION IS DUE OR HAS TAKEN PLACE**."

Overleaf, there are two figures. The first is the three-sided warning notice, shown immediately above a resident permit holders only sign. The three-sided sign says (on the side facing the road): "WARNING Parking suspended from ...". On the two sides facing the pavement, the sign reads: "WARNING Parking suspension". The second figure - which is the notice to be placed on vehicles the day before the suspension becomes operative - reads:

"**WARNING**

**PARKING SUSPENSION**

The Permit Holders Parking Place on which this vehicle is parked is to be suspended from 8.30 am tomorrow until further notice in order to facilitate necessary work.

Your co-operation is sought and you are asked to remove your vehicle prior to the above time and avoid parking in this bay while the suspension is in force. Police and traffic wardens have the power to ticket, remove or clamp a vehicle left on a suspended parking place."

The notice is dated at the bottom.

With regard to this leaflet and the notices, the emboldening, underlining and capital letters shown above are as in the original.

In my view, these two documents are clear in their message, which can be summarised as follows:

(i) Except in emergencies, resident permit holders will be given three days' notice of the suspension of a particular parking facility.

(ii) The suspension will be notified by signs and individual notices placed on vehicles displaying a resident parking permit in the affected area prior to 5.30 pm on the day before the suspension is due to begin.

(iii) Resident permit holders are told that, if they leave their car in a resident parking place for some time (e.g. when they go away on holiday), they should ensure that someone who can make daily checks is given the keys to the car, so that they can move the car in the event of a suspension. Of course, this is only a suggestion by the Council as to how someone with the benefit of a resident parking permit may avoid being towed away at a time when they themselves are not in a position to check their vehicle on a daily basis.

(iv) Failure regularly to check the parking place - or arrange for it to be checked - could result in a vehicle being towed away, when a suspension becomes operative.

Of course, it could be very inconvenient for the owner of a vehicle to make arrangements for such

checks while the owner is away, but the possible consequences of leaving a vehicle in a residents' parking place and failing to do so (including the possibility of being towed away) are clearly spelled out.

The Council have put into evidence - by way of Miss Stroo - that every resident permit holder is given the two leaflets referred to above, and my decision is based on the premise that each appellant in the appeals referred to below has received each such leaflet.

Generally, bearing in mind the Council's need to suspend parking facilities from time-to-time, I consider their scheme for suspensions - notified to every resident permit holder, by way of the leaflets described above - to be reasonable, although each case will of course ultimately depend on its own facts.

Before dealing with the individual cases, it may be helpful if I deal in more detail with the suspension warning signs referred to above. The evidence of the Council is as follows:

> "Suspension signs are posted on the nearest available post (this is usually a Residents' permit holders post, however, if this is unpractical (sic), it is posted on the nearest street column) to where the actual suspension takes place and they are bright yellow and 1.5 ft by 1 ft in size so they are easily noticed."

As indicated above, by virtue of the Order, the person suspending the use of the parking facility must "place or cause to be placed in or adjacent to any part of that parking place which is not a parking bay and the use of which is suspended a traffic sign indicating that waiting by vehicles is prohibited". My understanding of the conventional terminology used is that a "parking place" is any area of highway designated as a parking place under a parking places order: it may contain one or more bays or spaces. A "parking bay" is an individual bay within a parking place. A parking place may therefore be along a considerable length of highway. It is my understanding that all of the individual cases concern the suspension of parking in the whole or a part of a parking place. (For the sake of completeness, I should perhaps say that it is clear from the context in which the word is used, that in the various Council documents referred to above, that the Council use the word "bay" to mean "place" in the conventional terminology, i.e. an area of highway designated for parking providing parking facilities for one or more vehicles.)

The Order requires at least one suspension notice per place but, in my view, a single sign may not be adequate notice of the suspension. The Order specifies a minimum statutory requirement, but this does

not mean that satisfaction of that requirement necessarily gives sufficient notice. For example, if there is one sign notifying the suspension at the end of a parking place which runs along 100 yds of highway, someone parking at the other end of that place would not be able to see the suspension notice, nor could he or she be reasonably expected to walk the length of the parking place to ensure that no suspension notices were shown at all. In my view, the signing (or marking) of the suspension in such circumstances would be inadequate to render the owner of a vehicle parked at the other end of the parking place in contravention of the parking regulations. Whether signs are adequate is a matter of degree, and will depend upon the facts of an individual case.

Finally, I should say a word about my jurisdiction. For the purposes of these cases, my jurisdiction is limited to determining whether there has been a contravention of the parking regulations. If there has not been a contravention (because, for example, I find that the suspension was not properly and adequately marked), I am empowered to issue directions to the Council, e.g. to cancel the Penalty Charge Notice and Notice to Owner, or to refund any penalty or removal fee which has already been paid. If I find that there has not been a contravention, I am bound to dismiss the appeal. This is so, even if there are "mitigating circumstances", i.e. circumstances which may render the contravention understandable but not (as a matter of law) excusable. The Council can take such circumstances into account: they can decide not to pursue a penalty, or to refund removal fees, because of the circumstances of the contravention. This is a discretion which I do not have. I make this comment at the outset, because there are a number of cases which I deal with below, where I consider there to be compelling mitigating circumstances but, as I have explained, these cannot affect my adjudication as to whether or not there was a contravention of the parking regulations.

Following those introductory remarks, I now turn to the individual cases. There are 13 cases. The appellant in each has asked for a postal decision. I have received no oral evidence in any of the cases: all of the evidence has been in writing. Of course, in coming to my decisions, I have considered and taken full account of everything which has been submitted by and on behalf of the Council and each appellant.

1. **Keith Barker-Main**
   **Case No: 1950069840**
   **PCN No: KC11025954**

The appellant left his car in Trebovir Road on about 8 March 1995, and did not return to where he left it

until 18 March. On 14 March, the Council placed suspension warning signs above the resident permit holders only signs, warning of a suspension from 18 March. On 17 March, a notice (in the term described above) was placed on the vehicle itself. At 8.51 am on 18 March, a penalty charge notice was issued, and shortly thereafter the car was towed away. The appellant recovered it by paying the discounted penalty charge of £30, together with the removal fee of £105.

The appellant accepts that the Council needed to remove the car, because of necessary road works.
He does not dispute the evidence concerning the signing of the suspension. However, he says that he did not in fact have any notice of the suspension: he does not know any of his neighbours, with whom he could leave his car keys, thereby complying with the suggestion of the Council in their leaflet: the removal charge was excessive: and the Council has acted unreasonably.

This is precisely the sort of case which the leaflets referred to above was designed to avoid. Those leaflets make clear that, if a resident permit holder is due to be away and he leaves his car in a resident parking place, he must make arrangements to ensure that the car is checked on a daily basis to avoid the possibility of being towed away because of a suspension: or, of course, make other parking arrangements for his vehicle. The appellant was told exactly what would or might happen, in the circumstances which in fact transpired. The appellant's vehicle being in contravention of the regulations, the Council were perfectly entitled to remove it: and, indeed, the appellant accepts the Council had to remove the car to enable the road works to proceed. Under provisions of the statutory scheme, the removal charge is set by the Parking Committee for London who set it to be in line with the fee for removal by the police. It is not open to the appellant to argue - at least not before me - that the charge is excessive. He does not suggest that the fee has not been properly been set under the relevant statutory provisions. I am not sure that the reasonableness of the Council in this particular case is germane: but certainly I do not consider the Council has acted at all unreasonably in this case.

In all of the circumstances, I refuse Mr Barker-Main's appeal.

2. **Christopher Alex Creagh Coen**
**Case No: 1950048283**
**PCN No: KC15021423**

The appellant's evidence is that, having been away for a few days, he returned to his home road at about 10 pm on 9 March 1995. He lives at 11 Redcliffe Road. He parked outside No.7, and walked with his

wife (who was 8½ months pregnant) to their home. A penalty charge notice was issued at 8.38 am the following day, 10 March: and his vehicle was towed away shortly thereafter.

The Council's evidence is that a warning notice was put up on 3 March 1995, warning of a suspension of the parking place outside Nos. 5-7 from 9 March. The sign was put up on a post -presumably above a resident permit holders only sign - outside No.3. The appellant accepts that the sign was there, but he says that he did not see it. Having parked outside No.7, he walked in the opposite direction from the sign, to his home at No.11. He accepts that he was parked in a resident permit holders' place, during a suspension.

The question I have to decide is whether the signing of the suspension was in the circumstances reasonable. On the evidence, I find that it was and that, with reasonable care, the appellant ought to have seen the large sign that the Council had erected. I appreciate that, at the relevant time, the appellant was no doubt concerned about his pregnant wife's comfort, but this is a matter of mitigation which I cannot take into account.

The appellant gives a second (but very much subsidiary) ground of appeal. He says that, on the suspension warning notice, the date from which the suspension was to take effect (9 March) was in large letters, and the date to which the suspension took place was in smaller letters. I do not find any merit in this ground. The appellant did not, of course, see the sign at all. In any event, he parked in the place on 9 March. Further, the warning notice - understandably and, in my view, reasonably - emphasised the date from which the suspension is to take effect.

In all of the circumstances, for the above reasons, I refuse this appeal.

3. **Charles Donald Crole**
**Case No: 1950042957**
**PCN No: KC34015461**

In his representations to the Council, the appellant says that he parked in Callow Road on about 29 January 1995. He moved his car from outside his house (where there were suspension warning signs) to a place where, he says, there were no signs. However, in his appeal, he appears to accept that there were signs by the place where he parked, although he says that (and these are his grounds of appeal):

(i) Insufficient notice was given.

(ii) The signs were not clearly visible from the pavement level, even when erected.

(iii) After paying £30 reduced penalty and £105 removal fee, he received a Notice to Owner seeking a further £60.

The Council say that two signs were placed on resident permit holder only posts on 26 January, warning of a suspension of the parking place from 31 January. They say that a telephone call was made to the appellant's home on 30 January, but no-one answered. A warning notice was consequently put onto the vehicle that day. The suspension - which was for British Gas works - took effect from 31 January, as the warning notice said.

Insofar as the appellant contests any of this evidence, I accept the evidence of the Council. Four clear days notice of the suspension was properly given and signed, which was in accordance with their leaflets. The signs were the three-sided signs referred to above, and would be clearly visible from the pavement. Consequently, I refuse the appeal.

There are two further matters in relation to this case. First, the appellant has submitted in evidence a letter to him from British Gas dated 30 March 1995, which includes the following:

> "The [British Gas] team considered the car removal contractors somewhat over zealous in removing cars from areas where the suspension had not yet come into force. Neither British Gas, nor their sub-contractors, requested the removal of any vehicle at any time."

I do not fully understand the letter's suggestion that the appellant's car was removed prior to the suspension coming into force. The penalty charge notice was issued at 11.04 am on 31 January, and the car was removed by 11.20 am. This was after the suspension had commenced. The letter may mean that work was not being done by British Gas that day, which meant that the particular space in which the appellant's car was parked needed to be clear at the moment of the removal: and the appellant has put in evidence to that effect. Nevertheless, the suspension having commenced, the Council were perfectly entitled to tow away a vehicle parked in contravention of the Order. They were of course not to know precisely when British Gas would need cleared any particular part of the parking place.

Secondly, Mr Crole has appealed on the basis that, after paying £135 in penalty and removal fees, he still received a Notice to Owner on the face of it requiring him to pay £60. This Notice appears to have been sent to him in error, as the penalty fee had already been settled. The Council ought, by now, to have corrected this administrative error. It would, of course, be entirely wrong of them to pursue any further penalty from the appellant.

For the reasons set out above, I refuse this appeal.

4. **Anabella Fitzmaurice**
**Case No: 1950054526**
**PCN No: KC14020414**

This case also concerns the suspension of parking facilities in Callow Road, because of British Gas works.

The Council say that - following two separate requests from British Gas - two separate suspensions of parking facilities were made. Two separate suspension warning notices were erected. The two notices can be seen on (but not read from) the photograph submitted in evidence by the appellant. The Council say that the first sign indicated that the parking place outside 2-10 and 1-5 Callow Street would be suspended from 27 January 1995: the second sign indicated that the parking place outside 7-13 Callow Street and outside Catherine Court would be suspended from 31 January 1995. The appellant's vehicle was issued with a Penalty Charge Notice at 12.40 pm on 4 February, and was towed away shortly thereafter.

The appellant has two bases of appeal. First, she says that the signs were misleading. She says that the sign had "two dates on it which [she] took to mean quite literally that for those two dates the bay was suspended". However, I am satisfied that the two suspension warning notices were erected as indicated in the evidence of the Council: and that the suspensions were clear, and that the appellant was in contravention of the regulations in parking as she did.

The appellant's real complaint (and the second basis of her appeal) is that she parked in the suspended parking place at a time when British Gas were not actively working (it was a Saturday), and in a line of other vehicles. Both of these matters are evidenced in the photograph she has submitted in evidence. She says:

> "I really feel that you should take a lesson from the Police where traffic offences are discretionary, in the above case I think you have been extremely unfair".

Although this is said in the Notice of Appeal sent to the Parking Appeals Service, it is clearly addressed to the Council. As I have already indicated, mitigating circumstances such as differential enforcement, are not matters of which I can take account in adjudicating as to whether there has been a contravention of the parking regulations. I find that the appellant was parked in contravention of the regulations, and I must therefore dismiss her appeal, which I do.

5. **Franklyn Heslop**
**Case No: 1950073247**
**PCN No: KC1303200A**

The appellant's car was towed away from Courtfield Gardens on 26 April 1995. His evidence is that the had parked there late the night before. When he went back to his vehicle on 26 April, it was not there. He telephoned the police as he thought it had been stolen. He then went back to the location, walked up and down the street, and saw one suspension warning notice for the entire parking place which ran the length of the street. It was at one end of the street. His evidence is that that sign was too far away from his car reasonably to see, although he gives no distance from his car to the sign. He does say that he walked away from his car in the opposite direction from the sign.

The Council say that, if one part of a "bay" (they must mean "place", in terms of conventional usage) is suspended, they usually put up one notice on the nearest available resident permit holders only post. Although they are not clear, they suggest that is what they did in this case. They give no evidence as to the distance from the post to the car which was towed away.

As indicated above, Article 13(5) of the relevant Order requires a person suspending the use of a parking place or any part of a parking place to "place or cause to be placed in or adjacent to any part of that parking place... the use of which is suspended a traffic sign indicating that waiting by vehicles is prohibited." The Council say that is precisely what they did. However, although there is a legal requirement to place at least one notice of the suspension - and it is clearly sensible for the notice of suspension to be placed with the resident permit holders only sign - as indicated above, in my view, such a single sign may not necessarily be sufficient notice. The suspension must be adequately marked and where upon reasonable investigation and inspection such suspension is not reasonably clear, that cannot be an adequate marking. The law cannot require a motorist to make more than reasonable enquiry as to whether a suspension is in force.

In this case, as I indicate above, the appellant's evidence is that the notice was too far away reasonably to see from where he parked. He gives no distance from the sign to where his car was parked. However, the burden in this case is upon the Council to show that the appellant was in contravention, and they too have given no evidence as to distance. Indeed, they have not in evidence suggested that the suspension was marked with reasonable clarity from where the appellant parked: they merely rely upon the fact that one sign was placed against one part of the parking place suspended. In these circumstances, the Council have not satisfied me that the suspension was reasonably and adequately marked so that it could be ascertained upon reasonable investigation and inspection by the appellant, and have consequently not satisfied me that the contravention occurred.
In these circumstances, I allow the appellant's appeal and direct the Council to cancel the Penalty Charge Notice and Notice to Owner, and refund the appellant the £30 penalty charge and £105 removal fee he has already paid. I direct that those sums be paid to the appellant by 22 September 1995.

6. **Nicholas Jordan**
**Case No: 1950059279**
**PCN No: KC86011215**

There is one substantive ground to this appeal, and it is similar to that in Case No. 1950073247 (Franklyn Heslop).

The relevant evidence is not in dispute. Part of a resident permit holder only place in Kensington Place was suspended from 25 November 1994, for the purposes of a removal. The suspension related to the road outside Nos. 42-43 Kensington Place. The appellant parked outside No.43, and obtained a penalty charge notice at 2.27 pm on 25 November (within the period of the suspension). The suspension warning notice was placed on a resident permit holders only post 40 yds from where the vehicle was parked. The appellant's evidence (which is not challenged by the Council) is that, at such a distance, the sign was not visible. Whilst not denying that the sign was 40 yds away, the Council say that that was the nearest residents permit holders only post, and that it was adequate for one warning sign to be placed by the side of the place, part of which was marked for suspension.

For the reasons given above, I consider that the marking of any suspension must be reasonably adequate, as well as strictly complying with the (minimum) requirements of the Order. In the circumstances of this case, I consider the marking of the suspension was inadequate, and I allow the appeal. I direct the Council to cancel the Penalty Charge Notice and Notice to Owner. In this case, I understand that the vehicle was not towed away, nor has any penalty in fact been paid by Mr Jordan.

7. **Moazzam Khan**
**Case No: 1950062615**
**PCN No: KC83021438**

This case turns on a conflict of evidence between the appellant and the Council. The Council say that parking in the relevant resident permit holder only place was suspended from 21 April 1995, in fact just for that day. They say that suspension warning notices were placed on the nearest resident permit holders only post, by the side of the place to be suspended, on 13 April. Mr Khan says that he parked in the place on Monday 17 April, at about 5 pm. He says that there were no warning notices on display, at all. A Penalty Charge Notice was issued to the vehicle at 9.12 am on 21 April, and it was shortly thereafter towed away.

In this case, there is no suggestion by the appellant that warning notices were displayed adjacent to the parking place, but at some distance from where the vehicle was parked. The appellant says that no

warning notices were displayed at all.

In this case, on the evidence I am satisfied that the warning notices for the suspension were adequately marked from 13 April, and the appellant was in contravention of the Order by parking on 17 April through the beginning of the suspension on 21 April.

In the circumstances, and for the reasons set out above, I refuse this appeal.

8. **Doris Price**
**Case No: 1950048603**
**PCN No: KC06021364**

In this case, a Penalty Charge Notice was issued at 10.01 am on 1 February 1995 in respect of the appellant's vehicle, which was parked near her home in Tite Street.

The evidence of the appellant's daughter (Ms Hughes) is that the appellant is 83 years old. She has osteo-arthritis. From the period when the suspension warning notices were put up on 27 January, to the time the suspension started on 1 February, she was too ill to get out of bed, and she did not make arrangements for anyone else to check her car with regard to any forthcoming suspension of the place where she had parked. The Council do not appear to contest any of this evidence which, in any event, I find as fact. Nevertheless, despite these mitigating circumstances, the Council still contest the appeal.

The appellant does not suggest that the suspension of the relevant parking place was not properly marked. The matters she has raised are matters of mitigation - in my view, powerful mitigation - but these are matters which I cannot take into account in my adjudication. I refer to my general comments about such mitigation, above.

The contravention is accepted by the appellant. In these circumstances, I cannot but dismiss the appeal. Nevertheless, in exercising their discretion with regard to enforcement procedures, I would hope that the Council will bear in mind the facts as I have found them.

9. **Luanna Shonfeld**

**Case No: 1950049366**

**PCN No: KC10022520**

In this case, a Penalty Charge Notice was issued to the appellant's vehicle at 9.26 am on 23 February 1995, when the vehicle was parked outside 1 Cranley Gardens. Those details are taken from the PCN itself.

The Council say that the relevant parking place was marked for suspension on 17 February, to be suspended from 23 February, in fact just for that day. The signs were checked on 22 February, and they were still there. A Council officer telephoned the appellant early on 23 February, asking her to remove the vehicle from outside 1 Cranley Gardens.

The appellant bases her appeal on two grounds. First, she says that she parked on 19 February, and at that time there were no suspension warning signs. She says that the signs were put up on the evening of 22 February. This was the only matter referred to by the appellant in her representations to the Council. In her appeal, she adds a second basis. She says that she was not parked outside 1 Cranley Gardens, but outside 38 Cranley Gardens, where there was no suspension.

On the evidence, I find as a fact that the appellant was parked outside 1 Cranley Gardens at the relevant time. Further, I find that the suspension warning notice was put up on 17 February, five clear days before the suspension was due to take effect. I find that those signs were there when the appellant parked her car on 19 February, although she may not have seen them. In all of the circumstances, I find that the Council acted perfectly properly in this case, and gave adequate notice and signing of the suspension.

For these reasons, I refuse this appeal.

10. **Maria Stuttard**

**Case No: 1950075526**

**PCN No: KC11031990**

In this case, the Penalty Charge Notice was purportedly issued at 8.32 am on 11 May 1995, to the appellant's vehicle when it was parked outside 23 The Little Boltons.

The Council say that suspension warning signs were put up on 5 May: they were checked on 10 May, when warning notices were put on vehicles parked in the place: and the suspension commenced on 11 May.

With regard to the dates, the appellant says she in fact parked at about midday on 4 May, and was towed away on 5 May. These are the dates she gives in her Notice of Appeal, and she has written to the Appeals Service (her letter of 10 July 1995) confirming these dates. However, I find as a fact that the date on which the appellant was parked was indeed 11 May. This is the date not only on the PCN, but also on the vehicle receipt which is the document showing the appellant's payment of the removal fee to recover her vehicle after it had been towed away.

The appellant says that she was not parked outside 23 The Little Boltons. She says she was parked in the last bay of the parking place, where there was no house door or number, some metres away from No.23. In her representations to the Council, she says that the notice indicating the suspension was 50m away from where she was parked. She denies it was there when she parked, but she says, even if it had been there, she would not have been able to see it at that distance. The Council do not deny that the sign was 50m away from where the appellant parked. They have put in no evidence of where the sign was in relation to the vehicle, except they say it was "by the side of the resident's bay". As in Case No. 1950073247 (Franklyn Heslop), I believe the Council must mean "place" rather than "bay", in conventional terminology. Furthermore, on the details of the suspension they have put into evidence, there is a note:

> "Please take note of which house the sign was o/s as was it the nearest plate and approx how far away".

There is no other note in response to this.

As I have indicated above, there is a burden on the Council to show that any suspension of a parking facility is adequately marked, so that a motorist can ascertain the suspension upon reasonable enquiry. I do not consider the position of the sign in this case gave reasonable notice of the suspension to a motorist parking where the appellant parked.

In the circumstances, I allow the appeal, and direct the Council to cancel the Penalty Charge Notice and

Notice to Owner and refund the appellant the penalty charge of £30 and removal fee of £105. I direct that these sums are repaid by 22 September 1995.

11. **Evan Sutherland**
**Case No: 1950081518**
**PCN No: KC03033990**

This case turns on a straightforward conflict of evidence.

It seems to be common ground between the appellant and the Council that, at the relevant time, parking was suspended outside numbers 23-27 Penywern Road, and that this suspension was properly marked. However, the appellant says he was parked outside No.29, at least 5m from the suspended area. He says that the Penalty Charge Notice, which indicates the vehicle was 12m from "post 007", supports him in this. He says that 12m from this post is outside No.29. Although he has not put in any witness statements, he says that this can be verified from an (unnamed) independent witness.

The Council say the appellant was parked outside No.25. They have submitted in evidence photographs showing the appellant's car, on the day it was towed away, between two trees. Their evidence is that these trees are either side of No.25, which is a hotel. The Parking Attendant's notes and the PCN also indicate that the appellant was parked outside No.25.

I assume that the appellant has seen the Council's evidence, in the form of the photographs and Parking Attendant's notes, as well as the PCN, as he should have done. (If, contrary to my assumption, the appellant has not - and he wishes to challenge this evidence - then this would be a proper ground for review of my decision.) However, on the basis of the evidence I have seen (particularly that submitted by the Council in the form of the photographs and Parking Attendant's notes), I find that the appellant was parked outside No.25.

On this basis, I refuse the appeal.

12. **Shakarchi Toyfik**
**Case No: 195004131A**

**PCN No: KC31006522**

The appellant says he parked in Gore Street on Thursday 16 February 1995, of course in a resident permit holders only place. He went away for a long weekend, and returned to where the vehicle had been parked at about noon on Monday 20 February. The vehicle had been towed away.

The Council say that suspension warning signs were put up on 16 February 1995 (it is not clear from the evidence whether this was before or after the appellant parked), warning of a suspension from 20 February. The Penalty Charge Notice shows that it was issued at 11.18 am on 20 February, and the vehicle was removed shortly thereafter.

In this case, I find that the Council gave notice of the suspension precisely as they said they would in the leaflets given to each resident permit holder, i.e. three days' notice. There is no suggestion that the signs in this case were not adequate in themselves.

The only other point raised by the appellant is that his was the only vehicle that had been towed away. However, if the appellant's vehicle was parked in contravention of the regulations (as I find that it was), the Council were perfectly entitled to tow his vehicle away. If there was differential enforcement - and I make no finding with regard to this - that has no relevance to the appellant's case, being a matter of mitigation only.

For the above reasons, I refuse this appeal.

13. **Marye Scott-Warren**
**Case No: 1950062670**
**PCN No: KC0703221A**

This case turns on a short point.

The appellant accepts that there was a suspension notice by the parking place where she parked. She parked on Tuesday 25 April, and received a Penalty Charge Notice at 4.19 pm that day. She was shortly afterwards towed away.

However, the appellant says that the suspension sign said that the suspension was "for" Monday 24 April 1995, and consequently did not cover the following day. The Council say that all of their suspension signs read "from" a particular date, even when the suspension is only for a single day. The sign in this case, the Council say, said that the suspension was *from* Monday 24 April 1995, and consequently covered the following day.

In my view, a suspension warning notice would be clearer if it gave an end date, or if it said from a particular date "until further notice". However, that does not mean to say that the sign in this case was not adequately clear. I find as a matter of fact that the sign read "from 24 April 1995". In my view, this was adequate notice that the suspension was from 24 April 1995 until further notice or revocation, and this covered the following day when the appellant parked.

I refuse this appeal.

**G R Hickinbottom**
**5 September 1995**