

**BURROWS – LONDON BOROUGH OF WANDSWORTH
REALE– V - LONDON BOROUGH OF TOWER HAMLETS
GRIEVES –V- LONDON BOROUGH OF TOWER HAMLETS**

ONCE LAWFULLY PARKED, ALWAYS LAWFULLY PARKED?

These cases raise interesting and not altogether easy points as to whether, and if so in what circumstances, a vehicle that is initially parked lawfully can subsequently become unlawfully parked by virtue of the imposition of temporary parking restrictions by a local Authority under the provisions of s.9 London Local Authorities Act 1995; and what notice of any impending exercise of those powers has to be given.

BURROWS – LONDON BOROUGH OF WANDSWORTH

In the case of Mr Burrows the brief facts (which do not appear to be substantially in dispute) are as follows. The Appellant resides at in Putney which is a residential street running down to the embankment of the Thames. He regularly parked his car in that road where there are normally no parking restrictions of any kind whether in the form of bays, yellow lines, or otherwise. On the 19th March 1998 the Appellant left his car parked in Rotherwood Road and was away for the next two days. On his return on the 21st – a Saturday - he was surprised to find that a PCN had been attached to his vehicle and that it was in the process of being removed. The reason for this was that on the 21st March a special temporary waiting prohibition (“STWP”) was in force imposed under the provisions of s.9 London Local Authorities Act 1995 for the purpose of facilitating the movement of traffic, (particularly racing boats and trailers) connected with the annual Head of the River Race which was taking place on that day. The STWP was made by the Borough on the 16th March; notices warning motorists of the impending prohibition had been erected on the 19th March; warning notices had been attached to vehicles parked in the vicinity on the 20th March; and yellow “no waiting” cones had been positioned on the 21st. However, as the Appellant had been away from home at the time he was unaware of any of this.

The Appellant’s case can be summarised as follows: That at the time he parked the vehicle it was legally parked; that at the time of parking he did not know, and in the absence of any notice had no means of knowing, of the impending prohibition; and that it is wholly unjust to penalise him for unlawful parking when as far as he was concerned he parked perfectly lawfully.

The Local Authority’s case is equally clear. The Borough maintains that it had the legal powers under the London Local Authorities Act 1995 to impose this STWP; that it complied strictly with the requirements of s.9; and that the restriction was therefore in force. As the Appellant’s vehicle was parked whilst the restriction was in force it was at that time unlawfully parked and therefore the issue of a PCN and subsequent attempted removal were lawful.

On the face of it the Appellant’s argument that having parked lawfully in a street at the time subject to no restriction he should not thereafter be penalised is an attractive one. If it is correct, however, it means that once a motorist has parked in a place free of parking restrictions the vehicle can remain there with impunity indefinitely subject only to the local authority’s (or Police) powers of removal. If there is to be a principle “once lawfully parked, always lawfully parked” this could mean for example that a motorist who parks lawfully on a yellow line or a meter bay outside restricted hours could never be unlawfully parked even if the vehicle is left there into controlled hours. Or a motorist who parks in a residents bay

cannot be unlawfully parked if the bay is later suspended. As a general statement of principle this seems too wide

The correct approach to be applied here is, it seems to me, illustrated by the case of *James - v - Cavey* [1967] 1 All ER 1048 In that case a motorist parked at 6.00 am in a street in Brighton where a restriction came into force at 9.00 for that particular side of the street only on that particular day of the week. At the time the motorist parked there was nothing to suggest that at 9.00 he would be in breach of a parking restriction. It was only after he had left the vehicle that the Local Authority altered certain signs to make the restriction clear. The High Court allowed the motorist's appeal against conviction of a parking offence on the basis that the Local Authority had failed to comply with its duty to give notice of the restriction as set out in Regulation 15, Local Authorities Traffic Orders (Procedure)(England and Wales) Regulations 1961 which required them to

Forthwith take all such steps as are reasonably practicable to cause to be erected on or near to the said roads traffic signs in such positions as the Local Authority may consider to be requisite for the purpose of securing that adequate information as to the effect of the Order is given to persons using the said roads

The High Court found that the Local Authority was clearly in breach of this requirement and that therefore the restriction was unenforceable

The correct test is therefore to ask whether the restriction is in force and whether it has been properly indicated by lines, plates, notices or whatever as required by law. Normally the requirements for signage/notice etc will be clear enough and set out in the relevant legislation.(usually the successor to Regulation 15 above i.e Local Authorities Traffic Orders (Procedure)(England and Wales) Regulations 1996) Once the Local Authority have complied with the notice requirements the fact that the motorist was not aware of the restriction, will not affect its validity. This will be the case whether the lack of awareness arose either through oversight, or because the motorist has put himself in that position by virtue of a long period of absence from the vehicle

The notice requirements in this case are contained in Section 9 London Local Authorities Act 1995 which provides as follows:-

9. —(1) A participating council may, by notice, make a special temporary waiting prohibition in respect of a road or part of a road within a special prohibitions. parking area in the borough of that council.

(2) While a prohibition is in force the waiting of vehicles on the part of the road to which it relates shall be prohibited and that prohibition shall be enforceable as if it had been imposed by an order under section 6 of the Act of 1934.

(3)A prohibition may not—

(a) be made unless the participating council are satisfied that waiting should be prohibited for the purpose of—

- (i) facilitating the holding of a special event; or*
- (ii) enabling members of the public to watch a special event; or*
- (iii) reducing the disruption to traffic likely to be caused by a special event; or*

(b) last longer than three days.

(4) A notice under this section shall be displayed in a prominent place in the vicinity of the part of the road to which the prohibition relates for a period of not less than one day before the prohibition comes into effect and for the duration of the prohibition and shall –

(a) *state that whilst the prohibition is in force the waiting of vehicles is prohibited in the part of the road to which the prohibition relates; and*

(b) *state the maximum duration of the prohibition.*

(5) *Subject to subsections (3) and (4) above, the Secretary of State may make regulations with respect to the procedure to be followed in connection with the giving of notice under this section including provision for notifying the public of the exercise, or proposed exercise, of the powers conferred by this section and the effect of notices made in the exercise of those powers.*

(6) *Any regulations under this section may make different provisions for different circumstances; and where this section or any regulations thereunder require a participating council to post a notice in a road, the council may take such steps for that purpose as they think fit, including the use for that purpose of any lamp-post, traffic sign or other structure whatsoever in the road, whether or not belonging to that authority.*

(7) *Regulations under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.*

It appears that no regulations have been made by the Secretary of State under subsection 5. The Borough has been unable to trace any and my own researches lead to the same conclusion. I therefore proceed on the basis that, perhaps regrettably, none have been made.

Under the provisions of s.9 itself, therefore the only notice of the impending restriction that is required is that set out in subsection (4) i.e. not less than one day's display of the notice. I am satisfied the Borough adhered to this in that the notices were displayed on the 19th 2 days ahead. The Borough would no doubt say that that is the end of the matter but it seems to me that the fact that Parliament included subsections (5) and (6) is a strong indication that it considered that more would be required than a mere 24 hours advance display of the notice itself for the purpose of "*notifying the public of the exercise or proposed exercise of the powers conferred by this section and the effect of notices made in the exercise of those powers*". If 24 hours notice were to be all that is required, why this provision for further notification to the public?

It seems to me that Parliament was alert to the obvious point that it would often be grossly unfair to the motoring public to impose such restrictions without proper notice. In the unfortunate absence of any regulations in my view it is incumbent upon the Local Authority to give at least reasonable notice of the exercise or proposed exercise of these powers particularly as they may result, as in this case, in the imposition of a quasi-criminal penalty. In addition

What is reasonable will of course vary depending on the circumstances of the particular case. The Borough's view is that in this case it has indeed made "every reasonable effort to inform the motorist". On the facts of the present case I find it impossible to agree. We are dealing here with a prohibition imposed in connection with a well known *annual* sporting event the date of which would be readily ascertainable months if not years, in advance; and there is nothing to suggest the traffic difficulties the prohibition seeks to alleviate would vary from year to year. It seems to me there is no good reason why, in these circumstances, the period of notice should not be measured in weeks, rather than days or hours, and should be a period sufficient in the ordinary course of events to draw the restriction to the attention of both the public, and residents who might reasonably be going away for a week or two on holiday or on business. The Borough has not supplied any convincing reason why only two or three days notice was given and in the absence of any emergency situation I find that the notice given in this case was decidedly inadequate.

The Borough appears to place some weight on the fact that the Appellant's vehicle was parked on the public highway. Although the Borough says he is not entitled to do this, it seems to me that there is no authority to suggest that a motorist who parks his vehicle normally in a residential street is automatically guilty of causing an unnecessary obstruction or any other offence; and so to say he is not "entitled" to park in the sense that it suggests that parking on the highway is ipso facto illegal may be misleading. What it is true to say is that a motorist who chooses to leave his vehicle on the public highway must be taken to do so subject to, and in the knowledge of, the numerous powers and duties Local Authorities can by law exercise over the highway, including the imposition of temporary parking prohibitions. However although all motorists are presumed to know the law they are not presumed to be endowed with psychic powers: and in my view the fact that a motorist ought to be aware that temporary prohibitions could be imposed from time to time does not affect the duty of the Local Authority to give proper notice of impending temporary restrictions according to law.

I would observe that had longer notice been given in this case in the way suggested above it would in all probability have come to the Appellant's attention and he would have acted on it. At the very least neither he or anyone else would have much to complain of if they received a PCN having left their vehicle on the public highway for several weeks, and beyond a substantial notice period, without making arrangements to have it checked periodically

I therefore allow this appeal and quash the Penalty Charge Notice and Notice to Owner.

**REALE- V - LONDON BOROUGH OF TOWER HAMLETS.....
GRIEVES -V- LONDON BOROUGH OF TOWER HAMLETS.....**

In these cases the Appellants parked their respective vehicles on the 18th April 1999 in Ferry Street which was subject to a temporary prohibition under s.9 London Local Authorities Act 1995 in connection with the London Marathon. In this case there is no dispute that at the time of the parking the restriction was in force and that, as they subsequently found out, a notice indicating the restriction was in place on a nearby post having been posted the previous Wednesday. The Appellants were fortunate enough to persuade a passing Police Officer to take a Polaroid photograph of the notice which has been produced to me in evidence. It shows a notice wrapped tightly round the post with nothing at all to make it conspicuous or to suggest that it might be a notice affecting parking. It might on first sight be mistaken for some sort of planning notice. It seems to me the positioning of the notice here does not comply with subsection (4) in that it is neither "displayed" (which connotes making the notice clear for all to see) nor located in a "prominent place". Although subsection (6) allows the local authority to make use of, inter alia, lampposts to display notices the fact that a lamppost is so used is of course of itself insufficient to meet the requirements of subsection (4). It follows that the restriction was not properly indicated for this reason alone and the absence of any cones or other traffic signs merely adds to the unsatisfactory and confusing absence of proper signing

I therefore allow both these appeals and quash the Penalty Charge Notices and Notices to Owner.

**Edward Houghton
Parking Adjudicator
4/1/2000**