

THE LONDON BOROUGH OF RICHMOND UPON THAMES V COOPER

REVIEW DECISION

This case is a review of a decision made by my colleague Mr. Brian James made on the 8th December 1999. I have approached the case de novo and heard submissions from the Appellant, Mr. Cooper and Mr. Gordon Bell an officer of the London Borough of Richmond upon Thames. In addition I have had the benefit of a visit to the road in question in the presence of both parties

There is no material dispute as to the facts. In summary The appellant has been issued with a large number of Penalty Charge Notices of which 30 are the subject of these proceedings. In each case his vehicle, a London taxi, was parked in a residents bay either outside his house or further down the road . In each case the Appellant was not displaying a residents permit but maintains he was nevertheless entitled to make use of the bays as they were not correctly signed. In particular he states that there was no plate in position by either of the bays where he parked; and that although there were plates further down the road they appeared to apply to another bay. The Borough has always maintained the residents bays were correctly marked according to the regulations applicable at the time It has therefore been necessary for me to consider whether or not the parking places in which there is no doubt the Appellant's vehicle was positioned was or was not correctly marked

I have been provided with a full copy of the relevant Traffic Management Orders which are as follows

The London Borough of Richmond upon Thames (Hampton Wick) (Parking Places) Order 1987

Revoked by

The London Borough of Richmond upon Thames (Hampton Wick) (Parking Places) Order 1991

Which was amended by

The London Borough of Richmond upon Thames (Hampton Wick) (Parking Places) (Amendment No.1) Order 1991

And later revoked by

The London Borough of Richmond upon Thames (Hampton Wick) (Parking Places) Order 1994

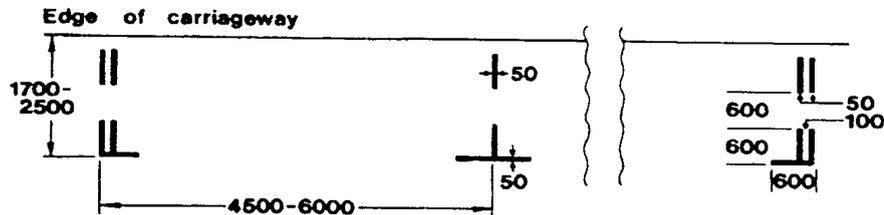
Which is the current Order consolidating all previous ones

I have also been referred to the Traffic Signs Regulations and General Directions 1994 ("the 1994 Regs") and its predecessor the Traffic Signs Regulations and General Directions 1981 ("the 1981 Regs")

The last of these Orders came into force on the 31st January 1994. The 1994 Regs did not come into force until the 12th August 1994 and it therefore follows that it is the 1981 Regs that apply to the signing of the parking places in question, with their effect preserved by the saving provisions of Regulation 3 of the 1994 Regs

The parking places in question here are number 7/22 and 7/23 in Schedule 7 to the London Borough of Richmond upon Thames (Hampton Wick) (Parking Places) Order 1994 referred to below and are as indicated as such on the helpful plan provided by the Borough annexed to this

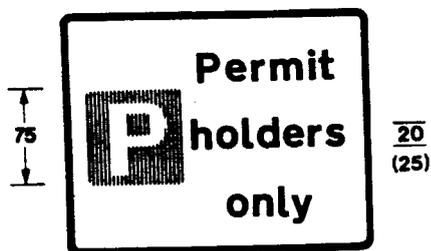
decision. Each of them is a single parking place as is emphasised by the Borough in its representations seeking this review.



To indicate to vehicular traffic parking places, subject to such conditions, if any, as may be in force
 Permitted variant: The lines between individual car parking spaces may be omitted
 (See Direction 6)
 1032

THE ROAD MARKINGS/PLATES

The parking place is marked on the surface of the carriageway in general terms by white lines which follow Diagram 1032 in the 1981 Regs. (see above). There are intermittent white lines running parallel to the footway along the length of the parking place in place. There are parking space markings within the parking place (although it is by no means clear in the absence of accurate measurements that all of these comply with the prescribed dimensions); and between many of these, at the dropped kerb where private driveways join the carriageway, are short stretches of single yellow line inserted, so it would appear, to prevent residents using the parking place from obstructing these entrances. I shall refer to these yellow lines as "loading gaps" following established custom although the term does not appear anywhere in the regulations and they have no more significance for loading/unloading than any other yellow line. It is important to note that the loading gaps are positioned between the parking spaces and not the parking places. So far as plates are concerned there are plates which appear to comply with diagram 660 of the 1981 Regs – see below in place at roughly the 30 metre spacing recommended in the Traffic Signs Manual 1986 Para.9.2.10 - although there are none in the particular parking spaces where the Appellant parked.



Parking place reserved for permit holders
 Permitted variants: "Card holders", "Doctor permit holders", "Large or slow vehicles", "Business permit holders", or "Resident permit holders" may be substituted for "Permit holders" and up to three code letters coloured black and corresponding with details in the permit may be added to the sign to identify parking places
 (See Direction 6)
 660

P Overall the impression on the ground is that of a parking place chopped up into shorter segments of parking space separated by yellow lines. To a casual observer the effect of the yellow lines is certainly to give a far greater sense of separation of the parking spaces than would be the case if the lines were absent and I do not find it surprising that the Appellant came to the conclusion that what he had before him was a series of individual (or short) residents bays, some of which had a plate and some of which did not.

So far as the residents bay road markings and plates go it seems to me that *in themselves* they correctly indicate the parking place prescribed by the Order. Both markings and plates have been placed on the road to “.. indicate the effect of an ..Order...which prohibits or restricts the use of the road by traffic.”(Direction 6(1) 1981 Regs).In contrast to the position under the 1994 Regs there appears to be no restriction on using sign 660 in conjunction with the road markings in diagram 1032. This is confirmed by the Traffic Signs Manual 1986 (“the TSM”)(which of course deals with signage under the 1981 Regs) where the recommendation at Para 9.12.13 states

“Where parking places are reserved ...they should be signed with the road markings described in paragraph 9.2.4” (includes 1032) “and signs to diagram 660...”

The precise use of plates and road markings, and their relationship appears uncertain. There would seem to be no requirement in terms in the 1981 Regs (as opposed to the 1994 Regs) to the effect that where there is a parking place there must be a plate or vice versa; although it is difficult to see how a parking place could be clearly marked without the presence of both.. Nor is there any guidance in the TSM which refers specifically to residents parking places. The Borough submitted that its plates complied with the recommendation of the TSM in Chapter 9 in that they were positioned at 30m intervals which is the recommendation for Disc parking places at para 9.2.10; and the context suggests to me that the author had it I mind that this should apply to all types of parking place - no doubt the Borough took the same view in following this guidance. There seems no reason to doubt as a fact that the plates are near enough 30m apart. It is, however worth noting that the recommendation in the TSM seems clearly intended to cover the positioning of plates within a *continuous* parking place undivided into spaces which are, as the note to diagram 1032 makes clear, entirely optional. – se Figs 9.1 and 9.2.

THE YELLOW LINES

What makes this particular case more complex is the fact that the parking place is interrupted by yellow lines and I now turn to consider their legality or otherwise ..On the face of it the diagrams in the 1981 Regs (and, for that matter, the 1994 Regs) make no provision for including yellow lines anywhere within a parking place. The authority relied on by the Borough for putting down these loading gaps is the London Borough of Richmond upon Thames (Waiting and Loading Restriction) (Special Parking Area) Order 2000 consolidating earlier orders of 1996.This order provides for a vast number of streets throughout the Borough to be restricted streets; and Seymour Road is listed among them in Schedule 1 It also provides as follows (para 3 on page 5)

“...the expression “restricted street” shall not, for the purposes of this Order, include:
(a) any area of the highway or any place within the London Borough of Richmond upon Thames for the time being designated or described as a parking place by any Order made or having effect as if made under Section 6 or Section 45 of the Road Traffic Regulation Act 1984.....

This provision is of a type recommended by Colin Chick, *.On Street Parking A Guide to Practice* (1996)(“Chick”)at para 6.4.6 and may well be a common inclusion in order to avoid the inconvenience of otherwise having to define restricted streets around each parking place.

Seymour Road is therefore clearly a restricted street only insofar as it is not, as it were, occupied by designated parking places. Within the designated parking places there is *no* restricted street; and it therefore follows that the placing of the yellow line indicating that any part of the street is a restricted street must be unlawful since Direction 7 of the 1994 Regs (and its predecessor

Direction 6 of the 1981 Regs) states that the yellow line (and other signs) can only be placed on the road *only* to indicate the effect of an “Act, order regulation byelaw or notice which prohibits or restricts the use of the road by traffic”

This position is entirely consistent with the Directions applicable to CPZs which read as follows

23.—(1) *Subject to paragraph (2) markings shown in a diagram whose number appears and is in the form (if any) in an item in column (2) of the Table may be placed on the carriageway only in conjunction with, and on the same side of the road as, a sign shown in a diagram whose number appears and is in the form specified (if any) in column (3) of that item.*

Table

(1017 637.2,639, 639.1A or 640.....)

(2) *Paragraph (1) shall not apply to a road marking placed on a road within a controlled parking zone, except where the road marking is placed to indicate restrictions different from the restrictions indicated on a sign shown in diagram 663 or 663.1 placed at the entrances for vehicular traffic into the zone.*

(3) *In this direction and direction 24, “controlled parking zone” means either—*

(a) *an area—*

(i) *in which, **except where parking places have been provided** every road has been marked with one or more of the road markings shown in diagrams 1017, 1018.1,1019 and 1020.1; and*

(ii) *into which each entrance for vehicular traffic has been indicated by a sign shown in diagram 663 or 663.1;*

(emphasis added)

In other words within a CPZ plates are not necessary provided every road is marked with either yellow lines or with parking places. The fact that the two are put as alternatives clearly suggests once again, consistently with the TMO, that they are mutually exclusive. Assuming as I do in the Borough’s favour that at all material times the CPZ was correctly marked its presence alone will not plug the gap and authorise the insertion of the loading gaps. A road can only be marked with a yellow line (diagram 1017) under the authority of a TMO. All the CPZ does is remove the requirement for plates.

In my view therefore the yellow lines are unlawful in that their presence is unsupported by any Order or Regulation.

It seems to me that it must follow from this that these parking places are not correctly indicated. There is simply no provision in the 1994 or 1981 Regs for yellow lines (particularly unlawful ones) to appear in the middle of parking places (whether between spaces or otherwise). Had the legislature intended that such a thing should be possible it is surprising that there is no hint of the possibility in a Statutory Instrument which on the face of it attempts to define comprehensively what signs are permitted and all possible variants.. It seems to me that it was generally assumed (certainly by the draftsman of the Borough’s TMO and the draftsman of the 1994 Regs) that restricted streets and parking places were two entirely different creatures.

The Borough points out that under the TMO not all the parking place is obliged to be occupied by parking spaces. Clearly some gaps are permitted (which would allow for spaces at crossovers to

be kept free of parking spaces) but it seems to me quite impossible to argue from that some authority for the insertion of yellow lines particularly yellow lines which are themselves unlawful. I note that *Chick* - a work to which the Borough referred me- in describing at para 6.4.4 the standard cartogram for these bays to be used on the plans, refers to a “*length not occupied by parking bays (loading gap)*”. There may be a source of confusion here as the term “loading gap” is not a statutory one. Many such gaps may well be indicated by (lawful) yellow lines but it does not follow that merely because an unoccupied length of carriageway can be so described that it generates the power to mark it with a yellow line. The diagrams in the 1981 (and, for that matter, the 1994) Regs are in my view perfectly clear and do not permit addition or variation; no doubt, one might add, to avoid exactly the type of confusion on the part of the motorist that has arisen in this case

Even if, contrary to my firm view, those parts of the parking place untouched by the yellow line remain legally valid I would nevertheless come to the conclusion that they were not marked sufficiently clearly for it to be said that the restriction was correctly indicated and therefore no contravention could occur.

The procedure to be followed by local authorities in signing restrictions is set out in The Local Authorities’ *Traffic Orders (Procedure) (England & Wales) Regulations 1996* (SI 1996 No.2849). Regulation 18 (1) provides:

‘Where an order relating to a road has been made, the order making authority shall take such steps as are necessary to secure:

a) *before the order comes into force, the placing on or near the road of such traffic signs in such positions as the order making authority may consider requisite for securing that adequate information as to the effect of the order is made available to persons using the road;*

b) *the maintenance of such signs for as long as the order remains in force*

Although on the face of it this authorises the Local Authority to set up any type of sign in any position it pleases it does not place the positioning of signs beyond the scope of consideration by an Adjudicator as to whether the information is in fact adequate; the Local Authority must, therefore, install and maintain signs and road markings which accord with the concept of fairness to the motorist and the need in unusual locations to ensure that the motorist is fully informed of the relevant traffic restrictions.– see *Bladon – v – City of Westminster PAS1980047552* where the law was reviewed.

As noted above the 30m recommendation in the TSM envisages an undivided parking place. Here the place has been divided up into segments with each segment having the appearance of a separate parking place (which is effectively how it was treated by the Borough by the insertion of the yellow lines). Having visited the location I do not find it surprising that a reasonable motorist should be left in a state of uncertainty as to the restrictions applicable to those parking spaces that looked as though they had simply been left without a plate. In the particular circumstances of this case the signage was inadequate.

For these reasons it seems to me that Mr. James' decision in allowing these appeals was correct. I too would allow them on the grounds set out above and his decision to quash the Penalty Charge Notices and Notices to Owner should stand.

Edward Houghton
Parking Adjudicator
18th July 2000

