

# DAVIES V LONDON BOROUGH OF ENFIELD

CASE No. : 2070153498

PCN NUMBER: EN13479817

**Parked with one or more wheels on any part of an urban road other than a carriageway  
(footway parking)**

**Decision: Refused; decision upheld on review**  
**Decision date: 21 May 2007; 31 July 2007 (Review)**

## **Statutory Register entry:**

Regulation 11 of the *Road Traffic (Parking Adjudicators) (London) Regulations 1993* provides the following grounds for a review: -

(1) The adjudicator shall have power on the application of a party, to review and revoke or vary any decision to dismiss or allow an appeal or any decision as to costs on the grounds (in each case) that-

(a) the decision was wrongly made as the result of an error on the part of his administrative staff;

(b) a party who had failed to appear or be represented at a hearing had good and sufficient reason for his failure to appear;

(c) where the decision was made after a hearing, new evidence has become available since the conclusion of the hearing the existence of which could not have been reasonably known of or foreseen;

**(d) where the decision was made without a hearing, new evidence has become available since the decision was made, the existence of which could not reasonably have been foreseen; or**

**(e) the interests of justice require such a review.**

The Appellant has sought a review on grounds of new evidence and that the decision was wrong - the grounds being (d) and (e) above. He makes three points in support:

(1) That the sketch plan produced by the parking attendant was wrong in where it placed his vehicle - effectively at the wrong end of the street.

(2) The termination sign for the footway parking was defective in that the cross through line was white and not red.

(3) The charge notice refers to "being parked on a footway outside the marked bay" - this is in effect the wrong contravention.

I am not satisfied that any of this amounts to new evidence [that] has become available since the decision was made, the existence of which could not reasonably have been foreseen.

Was the original Adjudicator's decision wrong to the extent that **the interests of justice require such a review** ? My answer is no.

The sketch plan drawn by the parking attendant was clearly wrong, but his photo of the Appellant's vehicle together with the plan supplied correctly placed the vehicle facing the sign that indicated the commencement of the area of permissible footway parking and outside that area. The original Adjudicator's observations about the road markings - their necessity, presence and whether they were misleading, are respectively correct (as a matter of law - Traffic Signs Regulations & General Directions 2002 ) and a reasonable conclusion based on the evidence.

I agree with the Appellant that the termination sign (fig. 667.2) was defective in that the cross through line was white and not red. However, there was no suggestion that the Appellant had been influenced or misled by the defective sign, or indeed he had even seen it. If the Appellant had parked beyond the termination sign, passing beyond it, then he would have a case for arguing that as the sign was defective and it had misled him it had not in effect terminated the permissible footway parking area and his vehicle was still within it. However, here the Appellant parked before the commencement sign, outside the area and had mistakenly, albeit innocently, wrongly assumed that the area was before the sign rather than beyond it.

As the default position is that footway parking is prohibited save where expressly allowed with a sign (fig. 667), it would not be open for the Appellant to argue that a defective sign per se means that footway parking is allowed. This contrasts with the position where there is a defective sign of a restriction ( e.g. yellow line) which would mean the restriction cannot be enforced regardless. In other words, the actual influence of the defective sign is relevant where it permits something that is otherwise not permitted, but not of a restriction - so that whether or not he saw the sign or passes it or it misleads would be relevant with regard to this defective sign.

The Penalty Charge Notice does not describe the contravention as the Appellant maintains - "being parked on a footway outside the marked bay" - that is a description in the parking attendant's written contemporaneous note book, not shown to the Appellant at the time. The Penalty Charge Notice, issued at the time, correctly describes the contravention as "Parked with one or more wheels on any part of an urban road other than a carriageway (footway parking)".

For these reasons the Appellant 's request for a review is refused.

### **Original Decision Subsequently Reviewed Under Regulation 11 of The Road Traffic (Parking Adjudicators) (London) Regulations 1993**

The Parking Attendant noted all the details of Mr Davies' car and recorded that this Penalty Charge Notice (PCN) was issued because the car was "parked on the footway outside marked bay".

Mr Davies says that he saw and relied on a sign which indicated parking with two wheels on the footway was permitted. He says the bay markings were obscured by a parked van at the time, and that in any event they were extremely worn, and not visible on the road. The pavement had the same tarmac surfacing throughout its length so that there was no visual distinction between the areas where footway parking was permitted or prohibited. He has also reproduced diagrams of footway parking signs from the Department of Transport website which include the words "in marked bays", and complains that the Council's signs were not in that format.

The sign showing a car parked with two wheels on the footway on which Mr Davies relied is intended to indicate to a driver approaching on that side of the road that footway parking is permitted *beyond* that point. The corresponding sign in the same format, but with a diagonal red line through it, signifies the point at which the exempted area ends, i.e. footway parking is *not* permitted *beyond* that sign.

Although it is certainly true that bay markings make the meaning of the signs much clearer, they are not a mandatory accompaniment to these signs. Consequently the fact that Mr Davies did not see any, or that when he did see them he considered they were in poor condition, does not mean that the restrictions were not properly signed. If the respective commencement and termination signs are in place, the signing of the exemption is compliant with the

requirements of the *Traffic Signs Regulations and General Directions 2002*. The additional elements of arrows or the words "in marked bays" in the signs which Mr Davies has reproduced with his Notice of Appeal are optional, and are only used where the signs are parallel to the kerb, rather than perpendicular as in this case.

I have no doubt that Mr Davies parked in good faith on reliance on the sign he saw, but unfortunately he misinterpreted its effect. His account does not give him any ground of appeal, but amounts only to mitigation. However as an Adjudicator I have no power to take mitigating circumstances into account, or to direct the Council as to the exercise of their discretion to cancel a penalty charge.

I must therefore refuse this appeal.