

A Sanaul Haque and others v. The London Borough of Ealing
(Re: Connell Crescent)

1. **Introduction**

- 1.1 It became apparent to Adjudicators that a large number of appeals have been lodged over the prohibition on motor vehicles entering Connell Crescent between 3 p.m. and 7 p.m. from Mondays to Fridays and that there have been differing decisions as to the enforceability of the restriction.
- 1.2 On 22 March 2016, having caused the tribunal staff to produce a list of all those cases concerning this contravention, I held a preliminary hearing in relation to the large number of scheduled appeals (both postal and personal), as well as a large number of review applications. Mr Shetty, a Parking Officer, attended on behalf of the Council. No Appellants attended all represented.
- 1.3 Although individual decisions of Adjudicators cannot bind another Adjudicator, it seemed to me clearly desirable - both in the interests of the Council and the Appellants who are pursuing appeals or review applications - that all outstanding cases are heard together by one Adjudicator. I considered that the consolidation of all the cases would therefore be in the interests of justice and a proportionate use of the tribunal's resources. Mr Shetty, on behalf of the Council supported such an approach.
- 1.4 Accordingly, exercising my powers under paragraph 13 of The Road Traffic (Parking Adjudicators) (London) Regulations 1993, I made a direction that all appeals (and applications for reviews) listed at paragraph 2 below be considered together. This was because common questions of law or in fact arose in all appeals (including the adequacy of the signage, its compliance with the regulations and the location of the contravention) and because it was desirable from the viewpoint of consistency of decisions and certainty for motorists that the issue be determined by one Adjudicator.

1.5 I also make consequential directions in relation to the submission of skeleton arguments and legal authorities and directed the Council to attend the hearing of the matter on 18 May 2016. All Appellants and/or their representatives were invited to attend or be represented.

1.6 Given the detailed contentions as to the location and the signage, I attended a view of the location on 18 May 2016. While all parties were free to attend the view, only the Council did so, but no representations were received at the view.

2. **The Appeals**

2.1 Accordingly, on 18 May 2016, the following appeals were listed before me:

Sanaul Haque v. The London Borough of Ealing

Xiaoxia He v. The London Borough of Ealing

Karan Anand v. The London Borough of Ealing

Citroen London West v. The London Borough of Ealing

Brett Logan v. The London Borough of Ealing

Fatemah Nejad v. The London Borough of Ealing

Javaid Ashraf v. The London Borough of Ealing

Mohamed Balal v. The London Borough of Ealing

Dante Fs Group v. The London Borough of Ealing

Mangala Thalawinna v. The London Borough of Ealing

Sanjay Chauhan v. The London Borough of Ealing

Perry Naylor v. The London Borough of Ealing

Oleg Shnaiderman v. The London Borough of Ealing

Margaret Figueria v. The London Borough of Ealing

Bhavini Patel v. The London Borough of Ealing

Paul Bawden v. The London Borough of Ealing

Arman Denli v. The London Borough of Ealing

Mandeep Kullar v. The London Borough of Ealing

Harish Chande v. The London Borough of Ealing

Dipesh Modha v. The London Borough of Ealing

Thermo Technology Control v. The London Borough of Ealing

2.1 In addition, the following cases were listed before me as applications for review:

Nicholas Srebic v. The London Borough of Ealing

Sasha Chandar-Seale v. The London Borough of Ealing

Kathleen Farci v. The London Borough of Ealing

Nico Micillo v. The London Borough of Ealing

TNT v. The London Borough of Ealing

Sudhakar Kamalakannan v. The London Borough of Ealing

Adam Drakard v. The London Borough of Ealing

3. **Representation**

3.1 Mr. Haque and Ms He, Appellants, appeared before me in person.

3.2 Mr. Dishman appeared on behalf of the following Appellants:

Mr. Modha

Mr. Kullar

Mr. Chande

Miss Patel

Mr. Denli

and Mr. Bawden.

He also appeared on behalf Mr Drakard in relation to his review case.

3.3 The Council were represented by:

Ms. Zeb, solicitor

Mr. Shetty, Parking Officer, Parking Department

Mr. Cargill, Traffic Order Maker, Highways Department

Mr. Rayatt, Interim Engineer, Highways Department

Mr. Morris, Business Processing Officer, Parking Department.

3.4 In relation to those Appellants who have not attended, I am satisfied that it is just and proportionate to proceed in their absence.

4. **The Tribunal's Approach**

4.1 As a large number of the appeals raise similar issues – primarily as to the legality, enforceability and adequacy of the signing – I have considered and determined these at the outset of this decision.

4.2 I have then considered the merits of each appeal separately.

4.3 I have then decided the applications for review made by the Council.

5. **The Contravention**

5.1 In each case, the contravention pursued by the Council was:

"Failing to comply with the prohibition on certain types of vehicle (motor vehicles) in Connell Crescent, Ealing W5"

6. **The Traffic Management Order**

6.1 The relevant traffic management order establishing this contravention is the *Ealing (Prescribed Routes) (No 136) Traffic Order 2015*.

6.2 Paragraph 3 of this order states:

"No person shall cause any motor vehicle proceeding in Hanger Green in the London Borough of Ealing between the hours of 3 p.m. to 7 p.m. on Mondays to Fridays inclusive to enter Connell Crescent at its junction with Hanger Green."

7. **Background**

7.1 The location is adjacent to the A 40 (also known as "Western Avenue") which at this point has three lanes in a westerly direction that lead up to the Hanger Lane gyratory. Hanger Green is a short crescent-shaped road which leads from the A40, past Park Royal underground station and the mouths of two roads (Corringway and Heathcroft) and then past the entrance to Connell Crescent on its left, and then back onto the A40. Hanger Green is one way until Corringway and then two-way back to the A40.

7.2 The Council maintained that in order to avoid heavy congestion on the A40, traffic would exit onto Hanger Green and then use Connell Crescent as a "rat run". They contended that this had a direct impact on the "safety and quality of the residential environment". As a result, in early 2015, the Council undertook a public consultation following concerns raised by residents and councillors as to whether to restrict entry into Connell Crescent from Hanger Green. The Council produced the responses they received from the public consultation exercise, which showed they had received 66 responses from the 200 addresses in Connell Crescent, which was a response rate of 33%. The Council relied upon the fact that 89% of those responding indicated that they were in favour of a no motor vehicles restriction at certain hours of the day.

7.3 Accordingly, the Council decided to proceed and the Order was made on 2 July 2015 and came into operation on 10 July 2015. For two weeks from the 10 July 2015, the Council did not issue any penalty charge notices but sent warning letters to those motorists breaching the restriction. Enforcement commenced on 24 July 2015.

8. **The signage at the location**

8.1 On either side of the carriageway of Connell Crescent, the Council erected the motor vehicles prohibited sign, detailed in diagram 619 of the Traffic Signs Regulations and General Directions 2002 . Both signs were illuminated and reflectorised. Beneath both signs, the Council erected a time plate carrying the legend "Mon-Fri 3-7pm". I refer to these as the "left-hand sign" and "right-hand sign" respectively.

8.2 In late January 2016, the Council erected an advance warning sign indicating the restriction in Hanger Green.

9. **Issues raised in the appeals**

9.1 The following are the main issues that have arisen in the appeals:

a. *The location of the contravention*

9.2 There has been confusion as to where Hanger Green and Connell Crescent commence.

9.3 The Traffic Order is clear that the prohibition is on motor vehicles entering Connell Crescent at its junction with Hanger Green.

9.4 The Council has produced both its "consultation drawing" and its "as-built drawing" as well as their road adoption maps indicating when the relevant roads were adopted by the Council for their statutory obligations (for example, Connell Crescent appears to be adopted since 22 July 1938). These show Hanger Green, Connell Crescent and a small road, which is being described as the "access road" leading to the rear of the currently closed public house.

9.5 The Council maintain that the boundary between Hanger Green and Connell Crescent runs from the kerb on the western side of the access road to the kerb opposite on the other side of the carriageway. Their "consultation drawing" indicated this boundary by placing give way road markings at this point. However, as the "as-built" drawing shows the give way markings were not painted on the carriageway at the junction of Hanger Green and Connell Crescent, but rather fully within Hanger Green – beyond the access road and, in effect, in line with the crescent shape of Hanger Green. The Council state that the give way lines were placed in this position "to convey to

vehicular traffic exiting from both Connell Crescent and from the access road to give way to traffic on Hanger Green".

- 9.6 Some previous cases before the tribunal, where Adjudicators had thought that the junction between the two roads was marked by the give way lines, led to the conclusion that the left-hand sign was as much as 20 metres behind the commencement of the restriction.
- 9.7 In support of his detailed submissions, Mr Dishman has produced a variety of maps including, copies of the ordnance survey map, a 1935 copy of Land Registry map, and a 1938 Kelly's Directory for Ealing. He contended that the disused public house (which used to be called the Park Royal Hotel) serviced by the access road, has always had its address as 24 Western Avenue, and that as it is directly opposite where the Council says the restrictions starts, the location is not Connell Crescent at all, but Western Avenue.
- 9.8 Having carefully considered all the evidence before me, I am satisfied and find as a fact that Connell Crescent meets its junction with Hanger Green at a notional line between the opposite kerbs on the western side of the access road. I am satisfied that the Council adopted Connell Crescent in 1938 and that this point was its boundary, from at least that time on, with Hanger Green. I have no doubt that Western Avenue was smaller and saw considerably less traffic in the 1930s and that the identification of the public house's address as being in Western Avenue in no way alters the fact that it actually abuts and straddles Hanger Green and Connell Crescent.
- b. *The signage is not compliant with Direction 8 of the Traffic Signs Regulations and General Directions 2002 ("TSRGD 2002")*
- 9.9 The position of the junction between Hanger Green and Connell Crescent is clearly material as it is the start of the restricted area and must be adequately signed.
- 9.10 Direction 8(2) of the TSRGD 2002 states that in relation to the sign shown in diagram 619, it:
- "...shall be placed to indicate the point at which a restriction... begins"*

- 9.11 Thus, unsurprisingly, the TSRGD requires signs to be placed to indicate the start of the restriction.
- 9.12 Direction 8(3) states that where the relevant road has only one carriageway (as here) the signage be placed on each side of the carriageway "at or as near as practicable" to the point referred to in Direction 8(2) – i.e. where the restriction begins.
- 9.13 It is contended by many of the Appellants that the left-hand sign is neither "at" the start of the restriction nor "as near as practicable" to the start of the restriction.
- 9.14 In response, the Council conceded that the left-hand sign was not placed exactly at the junction between Hanger Green and Connell Crescent. The parties agreed that the left-hand sign was placed about 21 feet (6.6 m) back from the start of the restriction.
- 9.15 The Council contended that the left-hand sign was "as near as practicable" to the point at which the restriction begins. They asserted that there were environmental, financial and practical factors why this was so. They had chosen to site the sign on an existing lamppost which had electrical power cabling already in place. Using this lamppost avoided having to dig up the pavement with consequent inconvenience to pedestrians and also avoided the cost of having to erect a new post.
- 9.16 Mr Dishman argued that the Council "were there to dig up pavements" and while this always caused some inconvenience, their obligation was to site "at" the commencement of the restriction or "as near as practicable" to its commencement. He suggested it was inappropriate to include financial arguments in the concept of practicability and, in any event, cost objections were "risable" given by March 2016 this restriction had raised some £529,000 in penalties for the Council.
- 9.17 I am mindful that the Court of Appeal in *The Queen (on the application of Herron) v. The Parking Adjudicator and Sunderland City Council* confirmed that strict compliance with the statutory specification is not required and that substantial compliance is sufficient as long as it does not mislead or fail to inform the motorist.
- 9.18 I have carefully considered all the photographic evidence and maps and, as indicated above, I had the benefit of attending the location for a view on 18 May 2016. I am satisfied that the left-hand sign is about 21 feet (6.6 m) back from the start of the restriction. It would be possible to site it about 3 feet (1 m) from the western kerb of the access road (and thus within about 3 feet of where the restriction starts). I note that

the right-hand sign is about 3 feet back from the edge of the kerb and accept that signposts should not be placed right at the edge of a kerb for reasons of pedestrian access. However, whether it is "possible" is not the test under Direction 8(3). I am satisfied that environmental and financial reasons can properly be taken into account in determining practicability. I conclude, in the circumstances, that the left-hand sign is cited "as near as practicable" to the start of the restriction and is therefore compliant – or at least substantially compliant – with Direction 8.

9.19 Further, and in any event, it has not been contended by any party that the right-hand sign is not in compliance with Direction 8. While Direction 8(3) a) requires a sign on either side of the carriageway, (i.e. there should be two signs) the Council have a Special Direction from the Secretary of State for Transport, dated 17 October 2011, which authorises them to have one sign only at this location "notwithstanding the provisions of Direction 8(3)". Accordingly, I am satisfied that to comply with the law, the Council needed only to erect one sign at this location. They chose to erect two - no doubt from the sensible motive of attempting to provide additional clarity for motorists. I am satisfied that both the left and the right-hand sign are substantially compliant with Direction 8. Even if I am wrong about that and the left-hand sign is not compliant with Direction 8, this would not, in my judgement, invalidate the restriction. The right-hand sign is Direction 8 compliant and the left-hand sign remains there to be seen by motorists. In my judgment it does nothing but add to the warning given of the approaching restriction.

9.20 I would add that I was referred by the parties to the Traffic Signs Manual and the parties were not agreed as to the interpretation of the guidance contained therein as to whether if there was only one sign, whether this should be placed on the left or right hand side of the road. I find these arguments otiose as, in fact, there were two signs in this road.

c. *Other arguments on the signage*

i. *Sign clutter*

9.21 Mr Dishman submitted that the right-hand sign, when viewed by the approaching motorist, was amongst "a forest of signs". He referred to the camera enforcement sign on the same post, the clearway sign behind that relating to traffic on the A40 and also a green directional sign on the A40.

9.22 It is agreed by the parties that it is a question of fact for me as the Adjudicator whether or not the presence and position of the other signs renders the signage indicating the restriction unclear or confusing such that the signage overall cannot be said to be adequate.

9.23 Having carefully considered all of the photographs provided by both parties and having had the benefit of a view of the location, I am not persuaded that the presence of the other signs in the vicinity detract from the visibility and overall clarity of the signage of the restriction.

ii. *Height of the signs*

9.24 It was not disputed by the Council that the right-hand sign was 2.8 m above the level of the carriageway and the left-hand sign 2.9 m.

9.25 The Traffic Signs Manual states that where possible the lower edge of the sign should be between 900 mm and 1500 mm above the highest point of the carriageway alongside and that "in built-up areas signs may have to be higher for various reasons where they are erected on footways and transverse to them they must obviously allow sufficient clearance for pedestrians: 2100 mm is the absolute minimum recommended but 2300 mm is preferable" (paragraph 1.49).

9.26 Both these signs are placed on the footway and both are sited at a height greater than the absolute minimum recommendation in the Traffic Signs Manual of 2100 mm. I am satisfied that the heights chosen for the signs are in accordance with the guidance, and are at an appropriate height to be seen by approaching motorists.

iii. *Size of the signs*

9.27 Both the left hand and right hand signs are 750 mm in diameter. As the speed limit is 20 mph, the Council maintain that a diameter of 450 mm would have been permissible, but that they have chosen to use bigger signs than they are required to do in an attempt to highlight the restriction. Mr Dishman accepted that the signs used are larger than required.

iv. *Type of sign used*

9.28 Mr Dishman contended that the 619 sign was not the correct sign to use at this location. He submitted that the Council ought to have used sign shown in diagram 616

– the universally known "no entry for vehicular traffic" sign of an all-white horizontal line on a red background. He referred to paragraphs 5.9 and 5.10 of the Traffic Signs Manual, where the commentary states that diagram 619 is likely to be used to keep motor vehicles out of "certain roads or a length of road". He maintained that it was not clear that the sign restricted a length of road location as Connell Crescent's extent was unclear.

9.29 The Council maintained that sign 619 is the appropriate sign and that it properly reflects the prohibition contained in the Traffic Management Order. They stated that the prohibition contained in the order cannot be indicated by the 616 no entry sign as it is not permitted to combine with that sign a time plate. Therefore a no entry sign would prohibit traffic at all times, whereas the Council was only authorised in law to prohibit traffic on Mondays to Fridays between 3pm and 7 pm – which is indicated by the time plate beneath the 619 sign.

9.30 I accept the Council's argument and am satisfied that the appropriate sign to indicate the restriction in the Traffic Management Order is the 619 sign used.

v. *Overall Adequacy of the signage*

9.31 I have been careful to direct myself not to consider the arguments raised against the signage in isolation alone, but also to consider the arguments cumulatively as to whether together they undermine the adequacy of the signage.

9.32 Further, I have had careful regard to the persuasive authority provided by previous decisions of fellow adjudicators on the signage at this location. There are conflicting decisions as to whether or not the signage is adequate and compliant.

9.33 I have had my attention drawn to decisions of adjudicators, who held the signage to be inadequate and/or non-compliant. These include the decision of Ms Adjudicator Shepherd, in *Capital Housing Associates v. London Borough of Ealing case number 2150390250* who, on the information before her, reasonably concluded that the left-hand sign was set back 20 m from the start of the restriction as she had understood the give way road markings to indicate the junction between Connell Crescent and Hanger Green. This formed the core reason for her concluding that the signage was not substantially compliant. On the information before me, I am satisfied that the learned Adjudicator was in error as to the location of the junction of the two roads.

Ms Adjudicator Shepherd's reasoning was followed by other adjudicators including Ms Adjudicator Oxlade, Mr Adjudicator Raynor and Ms Adjudicator Brennan. I note that Mr Adjudicator Cooper allowed a review application by the Council in *Capital Housing Associates*) on the basis that Ms Adjudicator Shepherd had made a mistake of fact as to the position of the boundary between Hanger Green and Connell Crescent. However, in the review application in the case of *Jacqueline Plumb v. London Borough of Ealing case number 2150403217* Mr Adjudicator Cooper refused a review application by the Council. He observed that the original Adjudicator was entitled to conclude that the left-hand sign was not compliant even if the correct distance by which it was set back (6.6 m) was not before that Adjudicator. I note that Mr Adjudicator Cooper specifically emphasised however that his decision to refuse the review application did not "represent a conclusive view of whether the signage scheme was adequate".

- 9.34 On the other hand, I have also had regard to decisions of other adjudicators, who found the signage to be "substantially compliant, clear and adequate" (Mr Adjudicator Burke), "substantially compliant with the regulations and clearly visible" (Ms Adjudicator Parekh) and "clear and unambiguous and sufficiently prominent for enforcement purposes" (Mr Adjudicator Styles).
- 9.35 I am further mindful that large numbers of motorists have contravened these signs since July 2015 and of the evidence submitted by the Appellants in the form of complaints against the restriction. These include statements such as those of Mr Colin Thomas, a retired officer of HM Diplomatic Service, dated 11 April 2016. Mr Thomas states that he has stood at this junction on several occasions during the hours of operation with the purpose of warning "unsuspecting motorists" and that he has successfully warned a large number of motorists – of whom at least four was serving Metropolitan police officers, none of whom, he reports, had seen the signs.
- 9.36 While I can readily accept that some motorists may have not seen the signs or realised that the restrictions were in force, I am satisfied that the Council has discharged the burden upon it to prove that overall the signage at the restriction is substantially compliant with the legislative requirements and, moreover is adequate to convey the restriction to the objective motorist.

d. Validity of the penalty charge notice

9.37 Mr Dishman contends that the penalty charge notices issued by the Council for this contravention are not compliant because the contravention description is too vague. The penalty charge notices state that the contravention is "*Failing to comply with the prohibition on certain types of vehicles (motor vehicles) in Connell Crescent, Ealing W5...*". He contends that in order to reflect properly the prohibition set out in the Traffic Management Order and so that the motorist knows what is alleged against him, the wording should refer to "entering" Connell Crescent when prohibited.

9.38 The Council maintain that the form of words used to summarise the contravention is the standard description composed by London Councils and has been in use for many years.

9.39 Section 4(8) of the London Local Authorities and Transport for London Act 2003 lists what a penalty charge notice for a moving traffic contravention must contain. This includes "the grounds on which the Council or, as the case may be, Transport for London, believe that the penalty charge is payable with respect to the vehicle". I am satisfied that the form of words used on these penalty charge notices properly and fairly indicates to motorists the grounds on which the Council believes a penalty is payable – failing to comply with a prohibition on motor vehicles. The location date and time are detailed. I therefore reject Mr Dishman's argument.

e. Camera Enforcement

9.40 Mr Dishman made criticism in relation to the frame numbers of the CCTV images in Mr Khullar's case. I am not persuaded that these arguments undermine in any way the reliability of the evidence. Camera enforcement is permitted in law and there is no requirement for the camera device in moving traffic contraventions to be approved by the Secretary of State.

10. Individual Appeals

10.1 While I have detailed my findings on the general issues above, and apply them where appropriate to the individual cases, I have considered the merits of each case

separately and whether or not the Council has proved the contravention separately in each case.

11. **Sanaul Haque v. The London Borough of Ealing**

11.1 Mr Haque appeared before me in person, accompanied by his wife, who was also his witness.

11.2 The Council's case is that Mr Haque's vehicle drove into Connell Crescent at 1612 hours on 30 July 2015.

11.3 Mr Haque, told me he is 79 years of age and a blue badge holder, who has lived in Ealing for over 30 years, and has always driven along Connell Crescent. He had just dropped his wife who was going shopping and maintained that the signage of the restriction, was not visible and that it was too high. He stated that there was only one sign in place at the time. Mrs Haque gave supporting evidence.

11.4 The CCTV footage shows Mr Haque's vehicle driving through the restriction during prohibited hours and the backs of both 619 signs can be seen.

11.5 I am satisfied that the contravention was adequately signed and that the signage is substantially compliant with the Traffic Signs Regulations and General Directions 2002 for the reasons set out above. I am further satisfied on the evidence that the contravention occurred and that the penalty charge notice was validly issued.

11.6 While therefore this appeal must be refused, I am satisfied that Mr Haque made a genuine error and I note that the date of the contravention was only just after enforcement had started. I note that the Council has indicated that in the circumstances of this case they would exercise their discretion not to enforce the penalty should the appeal be refused. I commend them for this approach in this case.

12. **Xiaoxia He v. The London Borough of Ealing**

12.1 Ms He appeared before me in person.

12.2 The Council's case is that Ms He's vehicle drove into Connell Crescent at 1534 hours on 5 January 2016.

12.3 Ms He told me that she is a resident of Connell Crescent and maintains that the restriction is "wrong, unreasonable and harmful to local residents". She maintained

that neither she nor her two witnesses (Mr Lam and Mrs Ohabuiys) received any warning notices of enforcement. Further, she submitted a petition she had collected from 46 signatories who live in 45 flats in Connell Crescent. The petition stated they had not received advanced warning and were unhappy that the restriction applied to them as residents of Connell Crescent. They add that the alternative routes suggested by the Council are impractical and cause them unreasonable "hassle". In addition, Ms He adopted Mr Dishman's arguments.

- 12.4 The Council referred me to their survey responses and asserted that notification was sent to 200 residents in Connell Crescent and that all those who responded to the consultation indicated a problem with through traffic in Connell Crescent. Further, the Council stated that they had considered whether or not to grant residents of Connell Crescent an exemption and that this had been tried in relation to another location in Acton. The Council's experience was that it rendered the restriction unenforceable because they were unable to ascertain who was a resident and who was not.
- 12.5 The CCTV footage shows Ms He's vehicle driving through the restriction during prohibited hours.
- 12.6 Irrespective of whether Ms He and her neighbours received advanced warning of the restriction, I am satisfied that the contravention was adequately signed and that it is substantially compliant with the Traffic Signs Regulations and General Directions 2002. For the reasons set out above, I have rejected each of Mr Dishman's arguments that Ms He adopted. I am further satisfied on the evidence that the contravention occurred and that the penalty charge notice was validly issued.
- 12.7 Therefore this appeal must be refused. While I can accept that for the residents of Connell Crescent access to their road being restricted from Hanger Green during prescribed hours is an inconvenience, this fact is not a defence to the contravention and does not entitle residents to breach it. Ms He will understand that my jurisdiction is limited to determining whether the restriction is lawful and whether the contravention occurred.
13. **Dipesh Modha v. The London Borough of Ealing**
- 13.1 Mr Modha did not attend but was represented by Mr Dishman. Mr Modha has three appeals before me.

- 13.2 The Council's case is that Mr Modha's vehicle drove into Connell Crescent at 1556 on 1 September 2015, at 1653 on 3 September 2015 and at 1706 on 4 September 2015.
- 13.3 I have viewed the CCTV footage and this shows Mr Modha's vehicle driving through the restriction on each of these occasions.
- 13.4 I am satisfied that the contravention was adequately signed and that it is substantially compliant with the Traffic Signs Regulations and General Directions 2002. For the reasons set out above, I have rejected each of Mr Dishman's arguments.
- 13.5 On the evidence before me I am further satisfied that the contravention occurred and that the penalty charge notice was validly issued.
- 13.6 Accordingly, each of these appeals are refused.
- 13.7 I note that the penalty charge notices were dated 8th, 9th and 10th September and thus the first penalty charge notice in time would not have been received by Mr Modha until the 9th or 10th September, by which time he had committed all three contraventions. Given that I accept Mr Modha did not deliberately flout the prohibition, he therefore had had no extra warning (other than by the signage which I have found to be adequate) until he received the first penalty charge notice. I note the Mr Dishman has made arguments about proportionality and discretion in multiple PCN cases – but these are matters for the sole discretion of the Council alone. As the Adjudicator I have no power to direct the cancellation of penalties on the basis of mitigation and I have no power to make formal recommendations in moving traffic contraventions. Nonetheless, in the circumstances, I invite the Council to re-exercise their discretion and enforce only the discounted penalty in relation to each appeal.
14. **Ashok Anand v. The London Borough of Ealing**
- 14.1 Mr Anand did not attend and was not was represented.
- 14.2 The Council's case is that Mr Anand's vehicle drove into Connell Crescent at 1544 on 14 August 2015.
- 14.3 I have viewed the CCTV footage and this shows Mr Anand's vehicle driving through the restriction on this occasion.

14.4 Mr Anand gave permission for Karan Anand to make representations on his behalf. These were to the effect that the signs in place were "inadequate to warn of the prohibition in question, primarily due to poor visibility which makes it difficult to notice, process and understand the signs, before the decision to turn into Connell Crescent, whilst moving, has been made." Annotated photographs of the signage were submitted and submissions made included those as to the sharpness of the bend, the "cluster of signs, which naturally requires time and attention to correctly decipher" as well as the height difference between the signage. I note in relation to the latter, Karan Anand has stated the "prohibited access signs being considerably higher compared to the signs surrounding it, allowing for them to catch the driver's attention more readily and for a longer duration..." This comment seems to me to be inconsistent with his argument that it reduces the available time to notice and decipher the prohibited access signs and consistent with the Council's explanation for why the signs were placed at this height.

14.5 For the reasons set out above, I reject the Appellant's arguments and I am satisfied that the contravention was adequately signed and that it is substantially compliant with the Traffic Signs Regulations and General Directions 2002.

14.6 On the evidence before me I am satisfied that the contravention occurred and that the penalty charge notice was validly issued.

14.7 Accordingly, Mr Annan's appeal must be refused.

15. **Citroen London West v. The London Borough of Ealing**

15.1 Miss Zveryuk, a Sales Executive for the Appellants, who are the owners of the vehicle, made representations on their behalf and I accept, with their consent. Neither Miss Zveryuk nor the Appellants attended or were represented. Miss Zveryuk also was the driver at the material time.

15.2 The Council's case is that the Appellants' vehicle drove into Connell Crescent at 1816 on 3 December 2015.

- 15.3 I have viewed the CCTV footage and this shows the Appellants' vehicle driving through the restriction on this occasion during the hours of darkness. I note that both the left and right hand prohibition signs are illuminated.
- 15.4 Miss Zveryuk states that she had received another penalty charge notice in relation to the contravention, dated 23 November 2015 and she paid this "even though the signage is very unclear and not visible ...". She states that she was only aware of the prohibition when she received the first penalty charge notice, which was after 3 December 2015 and the second contravention.
- 15.5 Miss Zveryuk refers to both signs being "very high" (2.8 m and 2.9 m) and the right-hand sign being placed "amongst a small forest of other signs, which against the backdrop of the A40 and vehicles travelling along both Connell Crescent and Hanger Green in two directions, compromises the driver's ability to see it...". Further she contends that neither sign is placed at the junction "but back from it again compromising visibility". She has submitted annotated photographs in support of her arguments.
- 15.6 For the reasons set out above, I reject the Appellant's arguments and I am satisfied that the contravention was adequately signed and that the signage is substantially compliant with the Traffic Signs Regulations and General Directions 2002.
- 15.7 On the evidence before me I am satisfied that the contravention occurred and that the penalty charge notice was validly issued.
- 15.8 Accordingly, the Appellants' appeal must be refused.
- 15.9 Nonetheless, I accept Miss Zveryuk did not deliberately flout the prohibition, and that she had committed the second contravention before receipt of the first penalty charge notice. This is a matter of mitigation. As the Adjudicator I have no power to direct the cancellation of penalties on the basis of mitigation and I have no power to make formal recommendations in moving traffic contraventions. Nonetheless, in the circumstances, I invite the Council to re-exercise their discretion and enforce only the discounted penalty in relation to this appeal.

16. **Brett Logan v. The London Borough of Ealing**

16.1 Mr Logan did not attend and was not was represented.

16.2 The Council's case is that Mr Logan's vehicle drove into Connell Crescent at 1813 on 15 December 2015.

16.3 I have viewed the CCTV footage and this shows Mr Logan's vehicle driving through the restriction on this occasion during the hours of darkness. It appears to be a foul night with heavy rain. I note that both the left and right hand prohibition signs are illuminated.

16.4 Mr Logan stated that he considered the signage "inadequate and unfit for purpose"; refers to the left-hand sign being positioned more than 50 feet beyond the junction and therefore not being noticeable to the driver of a moving vehicle "until it is too late" and that the right-hand sign is also setback and "has the appearance of being an instruction to traffic waiting to join the A40". He refers to the decisions of adjudicators who have allowed appeals for these reasons and to which I have referred above at paragraph 9.33.

16.5 For the reasons set out above at paragraphs 9.1 to 9.40, I reject Mr Logan's arguments and I am satisfied that the contravention was adequately signed and that it is substantially compliant with the Traffic Signs Regulations and General Directions 2002.

16.6 On the evidence before me I am satisfied that the contravention occurred and that the penalty charge notice was validly issued.

16.7 Accordingly, Mr Logan's appeal must be refused.

17. **Fatemah Ansari-Nejad v. The London Borough of Ealing**

17.1 Miss Ansari-Nejad did not attend and was not was represented.

17.2 The Council's case is that Miss Ansari-Nejad's vehicle drove into Connell Crescent at 1758 on 6 August 2015.

17.3 I have viewed the CCTV footage and this shows Miss Ansari-Nejad's vehicle in a queue of traffic in Hanger Green and then being the fourth in a line of vehicles to turn into Connell Crescent and drive through the restriction.

- 17.4 In her original representations, Miss Ansari-Nejad contended that there was "no sign posting to state the breaching of any contravention" and that the description on the penalty charge notice was "too general" and (perhaps, somewhat inconsistently) that the signs were not parallel to each other. In her notice of appeal, she indicated that she would like to pay the "original amount of £65 and not the increased amount of £130".
- 17.5 For the reasons set out above at paragraphs 9.1 to 9.40, I reject Miss Ansari-Nejad's arguments and I am satisfied that the contravention was adequately signed and that it is substantially compliant with the Traffic Signs Regulations and General Directions 2002.
- 17.6 On the evidence before me I am satisfied that the contravention occurred and that the penalty charge notice was validly issued.
- 17.7 Accordingly, Miss Ansari-Nejad's appeal must be refused.
- 17.8 The Council are obliged in law to accept the discounted penalty of £65 if payment is received by the Council within 14 days of the date of the penalty charge notice. Thereafter, it is a matter for the Council's discretion whether to extend the period within which they will accept the discounted penalty. The Council seek the full penalty of £130. As the Adjudicator I have no power to direct them to accept the discounted penalty at this stage.

18. **Javaid Ashraf v. The London Borough of Ealing**

- 18.1 Mr Ashraf did not attend and was not was represented.
- 18.2 The Council's case is that Mr Ashraf's vehicle drove into Connell Crescent at 1621 on 22 December 2015.
- 18.3 I have viewed the CCTV footage and this shows Mr Ashraf's vehicle driving through the restriction at this date and time during the hours of darkness. I note that both the left and right hand prohibition signs are illuminated.
- 18.4 Mr Ashraf explained that this was the first time he had driven through Connell Crescent was not aware of any restrictions until it was too late. His arguments include an assertion that the right-hand sign was confusing and "hidden against the backdrop of the traffic of the A40" and that the left-hand sign was only noticeable after entering

Connell Crescent. He stated that the location and clarity of the signs meant that he was unaware of the restriction "until it was too late to avoid". He emphasises that he applied his brakes to slow down "to acknowledge the signs, but they were not clear and too late as I had already passed and entered Connell Crescent". He contended that the Council needed to review the sign locations and road markings and should improve the signage to help motorists.

- 18.5 For the reasons set out above at paragraphs 9.1 to 9.40, I reject Mr Ashfar's arguments and I am satisfied that the contravention was adequately signed and that it is substantially compliant with the Traffic Signs Regulations and General Directions 2002.
- 18.6 On the evidence before me I am satisfied that the contravention occurred and that the penalty charge notice was validly issued. While I accept that this was an unintentional breach of the restriction and that this was the first time Mr Ashraf had driven along Connell Crescent – these are matters of mitigation only and, as the Adjudicator, I have no power to cancel penalties on the basis of mitigation.
- 18.7 Accordingly, Mr Ashraf's appeal must be refused.

19. **Mohamed Balal v. The London Borough of Ealing**

- 19.1 Mr Balal did not attend and was not represented.
- 19.2 The Council's case is that Mr Balal's vehicle drove into Connell Crescent at 1649 on 29 December 2015.
- 19.3 I have viewed the CCTV footage and this shows Mr Balal's vehicle driving through the restriction at this date and time during the hours of darkness. I note that both the left and right hand prohibition signs are illuminated.
- 19.4 Mr Balal explained that at the time his wife was nine months pregnant and for that reason they were looking for a larger property. He had booked an appointment to view the property on Connell Crescent and entered the road because he was not aware of the restriction "as we live in a different borough and also because my wife was not able to walk long distances and so I had no other option to park elsewhere and walk to the property." He has produced his son's birth certificate, which confirms his son was

born on 18 January 2016 as well as confirmation of his viewing appointment at 5 p.m. from a firm of estate agents.

19.5 While I accept Mr Balal was unfamiliar with the area, had a viewing appointment to attend and his account as to his wife's condition, none of these matters amount to a defence to the contravention. As I am satisfied that the restriction was adequately signed, the Council are entitled to enforce the penalty. Mr Balal's error and the matters he relies upon are matters of mitigation only. As the Adjudicator, I have no power to cancel penalties on the basis of mitigation.

19.6 On the evidence before me I am satisfied that the contravention occurred and that the penalty charge notice was validly issued.

19.7 Accordingly, Mr Balal's appeal must be refused.

20. **Dante Fs Group v. The London Borough of Ealing**

20.1 The Appellant company did not attend and was not was represented. The Appellant had two appeals before me.

20.2 The Council's case is that two of the Appellant's vehicles drove into Connell Crescent at 1618 on 12 November 2015, one immediately following the other.

20.3 Mr Roberts, on behalf the Appellant, stated in a letter dated 12 January 2016, that they had two operatives, one who was following a satellite navigation system, and the second travelling behind him, who were making their way to the Premier Inn in Hanger Lane, where they spent the night . He states that the navigation system directed them along Connell Crescent to the car park, and that there was no intention to gain an advantage over the traffic on the A40. In addition, the Appellant has submitted a tracker report to show the vehicle was travelling at a slow speed and disputes that they have contravened the purpose of enforcement – namely to prevent vehicles avoiding congestion of the Hanger Lane roundabout.

20.4 I have viewed the CCTV footage and this shows the Appellant's two vehicles, one following the other, through the restriction on each of this occasion.

20.5 I am satisfied that the restriction was adequately signed and that it is substantially compliant with the Traffic Signs Regulations and General Directions 2002.

- 20.6 While I accept that the Appellant's drivers were not seeking to avoid congestion on the A40 – the traffic does look relatively light on the footage on the A40 – and were following a satellite navigation system while looking for their hotel, these facts do not amount to a defence to the contravention or establish any exemption. Motorists must be cautious about following satellite navigation systems and cannot use their directional guidance to overcome lawfully signed restrictions. On the evidence before me, I am satisfied that both contraventions occurred and that the penalty charge notices were validly issued.
- 20.7 Accordingly, each of these appeals must be refused. While I have no power to direct the Council to accept the discounted penalty, given that I accept the Appellant's account and innocent error and that there were two penalties incurred by one vehicle following another, I invite the Council to consider exercising their discretion to enforce the discounted penalty in relation to each contravention.

21. **Mangala Thalawinna v. The London Borough of Ealing**

- 21.1 Mr Thalawinna did not attend and was not represented.
- 21.2 The Council's case is that Mr Thalawinna's vehicle drove into Connell Crescent at 1732 on 21 December 2015.
- 21.3 I have viewed the CCTV footage and this shows Mr Thalawinna's vehicle driving through the restriction at this date and time during the hours of darkness. I note that both the left and right hand prohibition signs are illuminated.
- 21.4 In his representations dated 8 January 2016, Mr Thalawinna states that he was driving from North Ealing hoping to turn into Western Avenue A40, when just before turning left "some dirt went into my right eye therefore I need to stop the car in a safe place and clear my eye". He stated that he knew if he turned into Western Avenue there was no stopping and therefore had "no choice" but to turn into Connell Crescent. He repeats these points in his notice of appeal.
- 21.5 The Council assert that the CCTV footage does not support Mr Thalawinna's version of events, as the vehicle is seen to enter the junction "at some speed" and there is no attempt to stop shown on the footage. The Council state that there are parking bays

available immediately as Connell Crescent is entered and these were not used by the Appellant.

- 21.6 The footage does not appear consistent with Mr Thalawinna's account, but even if it was this occasion that the Appellant had some dirt in his eye, I am not persuaded that he has established that such an occurrence reached the threshold of an emergency, such that he had no option but to transgress the restriction.
- 21.7 I am satisfied that the contravention was adequately signed and that it is substantially compliant with the Traffic Signs Regulations and General Directions 2002.
- 21.8 On the evidence before me I am satisfied that the contravention occurred and that the penalty charge notice was validly issued.
- 21.9 Accordingly, Mr Thalawinna's appeal must be refused.

22. **Sanjay Chauhan v. The London Borough of Ealing**

- 22.1 Mr Chauhan did not attend and was not was represented.
- 22.2 The Council's case is that Mr Chauhan's vehicle drove into Connell Crescent at 1658 on 17 December 2015.
- 22.3 Mr Chauhan states that as this occurred during the evening there was "no way you can see the sign clearly at night, let alone be aware of any prohibition on that road". He maintained that the signs were completely in the wrong position and not fit for purpose and that the Council has not done enough to publicise the new rules. I note that he took this route following his satellite navigation system and that he was "in a rush" to attend his grandmother's funeral in Birmingham.
- 22.4 I have viewed the CCTV footage and this shows Mr Chauhan's vehicle driving through the restriction during the hours of darkness. Both the left and right hand sign are illuminated. The Appellant's vehicle is one of three vehicles seen breaching the restriction – one after the other.
- 22.5 For the reasons set out above at paragraph 9 of this decision, I am satisfied that the restriction was adequately signed and that the signage is substantially compliant with the Traffic Signs Regulations and General Directions 2002.

- 22.6 While a motorist has to be even more vigilant during the hours of darkness, I am satisfied that the signs were there to be seen and there was adequate signage. While it may have been that the Appellant was lulled into a false sense of security by the other vehicles, or he may have been in a rush, this is not a defence to the contravention.
- 22.7 On the evidence before me I am further satisfied that the contravention occurred and that the penalty charge notice was validly issued.
- 22.8 Accordingly, this appeal must be refused.

23. **Perry Naylor v. The London Borough of Ealing**

- 23.1 Mr Naylor did not attend and was not was represented.
- 23.2 The Council's case is that Mr Naylor's vehicle drove into Connell Crescent at 1756 on 26 January 2016.
- 23.3 In representations dated 3 February 2016, Mr Naylor disputes "the efforts made to communicate this prohibition giving the motorist a reasonable chance comply and avoid incurring a penalty charge." He stated that the change in road usage was not well advertised – especially for non-Ealing residents like himself and that in darkness, at that time of year, the signage is not adequate. He contended that both signs were too high; not placed either side at the entrance to Connell Crescent; the right-hand sign was amongst a number of other signs against the backdrop of the A40, and that the sign on the left was placed 50 m back from the entrance to Connell Crescent. The latter meant that the driver was committed to turn before he could do anything about it. He contended that the sign is needed to be at the entrance to the road and positioned much lower so that the driver can see it and have enough time not to turn left. He referred to successful appeals of other motorists. He repeated his contentions in his notice of appeal and contended that the successful cases have set a precedent. He also refers to the penalty automatically doubling if the motorist appeals.
- 23.4 I have viewed the CCTV footage and this shows Mr Naylor's vehicle driving through the restriction during the hours of darkness. Both the left and right hand sign are illuminated.

- 23.5 For the reasons set out above at paragraph 9 of this decision, I am satisfied that the restriction was adequately signed and that the signage is substantially compliant with the Traffic Signs Regulations and General Directions 2002. I reject Mr Naylor's arguments as to the signage.
- 23.6 I have referred to the previous decisions of other adjudicators at paragraph 9.33 to 9.35 above and repeat that while these are of persuasive authority (and there are decisions going either way) I am not bound by them and have reached my own conclusion as to the adequacy of the signage. Mr Naylor will appreciate that the test is "adequacy", not perfection.
- 23.7 I am further satisfied that the consultation and notification exercise that the Council embarked upon and the grace period it gave, was reasonable and while motorists from other boroughs or indeed other parts of the United Kingdom might well have no previous knowledge of this restriction, all motorists have to comply with the restrictions that they encounter - whether for the first time or not.
- 23.8 The penalty for this contravention is £130. This has been approved by London Councils and the Mayor of London. The statutory scheme allows for payment of the discounted penalty if it is received within 14 days of the date of the penalty charge notice. This is no doubt designed to encourage prompt payment, but is not a fetter on the right to appeal and the penalty does not "double", if the motorist having received the notice of rejection chooses to appeal.
- 23.9 On the evidence before me I am further satisfied that the contravention occurred and that the penalty charge notice was validly issued.
- 23.10 Accordingly, this appeal must be refused.

24. **Oleg Shnaiderman v. The London Borough of Ealing**

- 24.1 Mr Shnaiderman did not attend and was not was represented.
- 24.2 The Council's case is that Mr Shnaiderman's vehicle drove into Connell Crescent at 1619 on 4 December 2015.
- 24.3 In representations dated 21st of December 2015, Mr Shnaiderman stated that he has regularly used this road over the years and never previously encountered "any such

problem". He stated the only possible explanation is that "something has recently changed and I am not aware of and missed my attention on the date in question". He asked the Council to take this into consideration and that as this was his first penalty charge notice, it should be cancelled. He promised to pay more attention in future to any changes in signs and rules. He repeated his observations in his notice of appeal and referred to allowance for "a genuine oversight".

- 24.4 I have viewed the CCTV footage and this shows Mr Shnaiderman's vehicle driving through the restriction during the hours of darkness. Both the left and right hand sign are illuminated. I also note that there are four vehicles stopped on the A40 at this junction. The first two vehicles are police vehicles, which have all their police lights, as well as their hazard lights, flashing. In addition, the two civilian vehicles have their hazard lights on and the police officers are in yellow high visibility jackets standing adjacent to the right-hand sign – although on the A40 side.
- 24.5 For the reasons set out above at paragraph 9 of this decision, I am satisfied that the restriction was adequately signed and that it is substantially compliant with the Traffic Signs Regulations and General Directions 2002.
- 24.6 On the evidence before me I am further satisfied that the contravention occurred and that the penalty charge notice was validly issued.
- 24.7 While I accept Mr Shnaiderman's account and explanation, this does not amount to a defence to the contravention and is mitigation only. As the Adjudicator, I have no power to cancel penalties on the basis of mitigation. Accordingly, the appeal must be refused. Nonetheless, given my acceptance of Mr Shnaiderman's account and what I consider to be the additional distracting effect of the police vehicles, I invite the council to reconsider their discretion not to enforce the penalty on this occasion.

25. **Margaret Figueria v. The London Borough of Ealing**

- 25.1 Mrs Figueria did not attend and was not was represented.
- 25.2 The Council's case is that Mrs Figueria's vehicle drove into Connell Crescent at 1633 on 18 August 2015.
- 25.3 In representations, dated 28 September 2015, Mrs Figueria states that she was taking an elderly person, who finds it very difficult to walk unaided, to an address in Connell

Crescent. She attempted to access the road at the other end of Connell Crescent (at its junction with the A40) but there were a number of trucks delivering and taking away building materials that caused the road to become blocked. She waited for more than half an hour with a passenger who needed to get home to take medication but the trucks did not clear that entrance. With the notice of appeal she has supplied photographs of the other end of Connell Crescent which he says was obstructed by the trucks at the time.

- 25.4 I have viewed the CCTV footage and this shows Mrs Figueria's vehicle driving through the restriction at the time alleged.
- 25.5 For the reasons set out above at paragraph 9 of this decision, I am satisfied that the restriction was adequately signed and that it is substantially compliant with the Traffic Signs Regulations and General Directions 2002.
- 25.6 On the evidence before me I am further satisfied that the contravention occurred and that the penalty charge notice was validly issued.
- 25.7 While I accept Mrs Figueria's account of the difficulties she experienced at the other end of Connell Crescent and her explanation, this does not amount to a defence to the contravention and is mitigation only. As the Adjudicator, I have no power to cancel penalties on the basis of mitigation. Accordingly, the appeal must be refused. Nonetheless, given my acceptance of Mrs Figueria's account, I invite the council to reconsider their discretion not to enforce the penalty on this occasion.

26. **Bhavini Patel v. The London Borough of Ealing**

- 26.1 Miss Patel did not attend but was represented by Mr Dishman.
- 26.2 The Council's case is that Miss Patel's vehicle drove into Connell Crescent at 18.41 20 January 2016.
- 26.3 I have viewed the CCTV footage and this shows Miss Patel's vehicle driving through the restriction on this occasion.
- 26.4 I am satisfied that the contravention was adequately signed and that it is substantially compliant with the Traffic Signs Regulations and General Directions 2002. For the reasons set out above, I have rejected each of Mr Dishman's arguments.

26.5 On the evidence before me I am further satisfied that the contravention occurred and that the penalty charge notice was validly issued.

26.6 Accordingly, this appeal must be refused.

27. **Paul Bawden v. The London Borough of Ealing**

27.1 Mr Bawden did not attend but was represented by Mr Dishman. Mr Bawden appeals against two penalty charge notices.

27.2 The Council's case is that Mr Bawden's vehicle drove into Connell Crescent at 1632 on 14 December 2015 and 1850 on 21 December 2015.

27.3 Mr Dishman states that in neither of the two CCTV clips is he able to make out the registration number of the vehicle and therefore contends that the contraventions are not made out.

27.4 I have viewed the CCTV footage as well as the still images taken from the CCTV footage on the face of the penalty charge notices that the Council has provided in relation to each date. The still images show the vehicle registration mark on each occasion and I am satisfied on the balance of probabilities that this was the Appellant's vehicle that drove through the restriction.

27.5 Mr Dishman referred to the representations that Mr Bawden submitted himself, dated 11 January 2016, before Mr Dishman commenced acting for him. He states these were sent by e-mail and contended that the ones exhibited by the Council were dated 1 April 2016 and that this is a failure to serve a true copy in accordance with Paragraph 3 (3) of Part 2 to the Schedule to the Appeals Regulations 2007 and amounts to a procedural impropriety.

27.6 Enforcement of moving traffic contraventions is pursuant to the London Local Authorities and Transport for London Act 2003. There is no procedural impropriety ground under the Act and the Appeals Regulations 2007 apply to parking contraventions. Accordingly, Mr Dishman's argument on this point is misconceived. In any event, I would add that I note that the Council's "Evidence Checklist" contains a declaration that they submitted to the Appellant copies of all the evidence in accordance with the Adjudicators' requirements on 1 April 2016. It appears that when printing out Mr Bawden's e-mail dated 11 January 2016, the date of 1 April 2016 has

been transposed in error. It is clear that the representations are identical, save for this typographical error.

- 27.7 In relation to Mr Dishman's arguments about the signage, I repeat my reasoning set out above and reject them. I am satisfied that the contravention was adequately signed and that it is substantially compliant with the Traffic Signs Regulations and General Directions 2002.
- 27.8 On the evidence before me I am further satisfied that the contravention occurred and that the penalty charge notice was validly issued.
- 27.9 Accordingly, both of these appeals are refused.
- 27.10 I note that the first penalty charge notice was dated 17 December and would have been received by Mr Bawden before the second contravention date of 21 December 2015. Accordingly, following the approach I have taken in relation to multiple PCN cases in this consolidated hearing, I invite the Council to consider exercising their discretion to enforce the discounted penalty in relation to each contravention.

28. **Arman Denli v. The London Borough of Ealing**

- 28.1 Mr Denli did not attend but was represented by Mr Dishman.
- 28.2 The Council's case is that Mr Denli's vehicle drove into Connell Crescent at 1609 on 14 December 2015.
- 28.3 I have viewed the CCTV footage and this shows Mr Denli's vehicle driving through the restriction on this occasion.
- 28.4 The Council serve the penalty charge notice on the registered keeper, Erac UK Ltd, having ascertained their identity from the DVLA. By a letter dated 4 January 2016, Enterprise Rent a Car, the trading name of Erac UK Ltd, confirmed that the vehicle was on hire to Mr Denli. They supplied a copy of their hire agreement. By letter dated 26 January 2016, the Council confirmed to Erac UK Ltd that they had transferred liability to Mr Denli. The Council sent him a penalty charge notice dated 21 January 2016.

- 28.5 Mr Dishman contended that the Council had no right to transfer liability to the hirer in this case because the hire agreement provided did not comply with the requirements set out in Schedule 2 of the Road Traffic (Owner Liability) Regulations 2000. In particular, he stated that the hire agreement did not contain details of the make and model of the vehicle hired.
- 28.6 In their case summary, the Council asserted "[a]lthough Schedule 2 The Road Traffic (Owner Liability) Regulations 2000 sets out requirements in a hire agreement, it only states "required" rather than "must have". They accepted that the make of the vehicle was not recorded in the hire agreement, but asserted that the hire agreement was "substantially compliant with the regulations and therefore should be considered valid".
- 28.7 I find no difference between "required" and "must have". The requirements of the regulations are strict and it is a required particular that the hire agreement contains the make and model of the vehicle. The hire agreement supplied does not contain this required particular and I find it is not compliant (substantially or strictly) with the regulations. Mr Dishman referred to a decision I made in *Leonidou v. The London Borough of Barnet (case reference 216002809A)*.
- 28.8 I am persuaded to follow the approach I took in that case and am satisfied that liability should not have been transferred to the Appellant and the appeal is allowed on that basis. I would add that had liability been correctly transferred to the hirer I would have refused the appeal for the reasons set out above in relation to the signage.
- 28.9 Accordingly, the appeal is allowed with the direction to cancel the notice to owner.

29. **Mandeep Kullar v. The London Borough of Ealing**

- 29.1 Mr Kullar did not attend but was represented by Mr Dishman. Mr Kullar has appeals in relation to six penalty charge notices before me.
- 29.2 The Council's case is that Mr Kullar's vehicle drove into Connell Crescent at 1729 on 8 December 2015; 1732 on 9 December 2015; 1736 on 11 December 2015; 1723 on 15 December 2015; 1726 on 17 December 2015 and 1723 on 21 December 2015.

- 29.3 Mr Dishman stated that in none of these six CCTV clips is he able to make out the registration number of the vehicle or the contents of the signs and therefore contended that the contraventions were not made out.
- 29.4 I have viewed all the CCTV footage and considered the six separate penalty charge notices as well as the still images, taken from the CCTV footage that the Council has provided in relation to each date. The still images show the vehicle registration mark on each occasion and I am satisfied that this was the Appellant's vehicle. Further, the Council rely on the location images they have provided in relation to the signs. I have no hesitation in concluding that the signage was in place on these dates and that on each occasion Mr Kullar's vehicle drove through the restriction.
- 29.5 Mr Dishman repeated his other arguments in relation to Mr Kullar's case, including those detailed above as to the signage.
- 29.6 I am satisfied that the contravention was adequately signed and that it is substantially compliant with the Traffic Signs Regulations and General Directions 2002. For the reasons set out above, I have rejected each of Mr Dishman's arguments.
- 29.7 On the evidence before me I am further satisfied that the contravention occurred and that the penalty charge notice was validly issued.
- 29.8 Accordingly, each of these appeals are refused.
- 29.9 I note that the first penalty charge notice in time related to a contravention on 8 December 2015, and was dated 14 December 2015. Before Mr Kullar would have received this, he had committed the second and third and fourth contraventions on 9, 11 and 15 December 2015. Following the approach, I have taken in Mr Modha's case above, I invite the Council to reconsider exercising their discretion to accept the discounted penalty for the contraventions on 8, 9, 11 and 15 December 2015. I do not make this invitation in respect of the penalty charge notices for 17 and 21 December 2015, as he would have received the first penalty charge notice by then. I emphasise that I invite the Council to take this course not because there is any defence to the contraventions or because the signage is not adequate, but simply on the basis of mitigation, as I am prepared to accept that there was no deliberate flouting in relation to the first four contraventions. I note Mr Dishman has made arguments about proportionality and discretion in multiple PCN cases – but these are matters for the

sole discretion of the Council alone. As the Adjudicator I have no power to direct the cancellation of penalties on the basis of mitigation and I have no power to make formal recommendations in moving traffic contraventions. Nonetheless, in the circumstances, I invite the Council to re-exercise their discretion and enforce only the discounted penalty in relation to the first four penalties.

30. **Harish Chande v. The London Borough of Ealing**

30.1 Mr Chande did not attend and was not was represented.

30.2 The Council's case is that Mr Chande's vehicle drove into Connell Crescent at 1701 on 14 December 2015.

30.3 In representations, dated 12 January 2016, made by Mr Manoj Chande on Mr Harish Chande's behalf, the same series of arguments in relation to the signage, I have seen in relation to other appeals has been adopted. Indeed, it appears that he along with other Appellants may have adopted a "cut-and-paste" approach from internet sites in relation to signage arguments at this location. While I consider the merits of each of the arguments advanced by Mr Chande, I caution Appellants about over-reliance on such an approach.

30.4 Mr Chande's arguments include the inadequacy of the signage overall; placement of the signage "so far back" from the junction; the practicality of moving the left-hand sign closer to the junction; the Direction 8 argument and the "small forest of other signs...against the backdrop of the A40".

30.5 Further, in an e-mail dated 18 January 2016, Mr Harish Chande states that he was away on holiday from 18 December 2015 until 8 January 2016 and sought to be able to pay the discounted penalty, if representations were refused. I note that in the Council's notice of rejection dated 3 February 2016, they did extend the period within which the discounted penalty could be paid to 14 days from the date on which the notice of rejection was served on him.

30.6 I have viewed the CCTV footage and this shows Mr Chande's vehicle driving through the restriction at the time alleged. It is dark and the signs are illuminated.

30.7 For the reasons set out above at paragraph 9 of this decision, I am satisfied that the restriction was adequately signed and that the signage is substantially compliant with the Traffic Signs Regulations and General Directions 2002.

30.8 On the evidence before me I am further satisfied that the contravention occurred and that the penalty charge notice was validly issued. Accordingly, the appeal must be refused.

31. **Thermo Technology Control v. The London Borough of Ealing**

31.1 The Appellant company did not attend and was not was represented.

31.2 The Council's case is that the Appellant's vehicle drove into Connell Crescent at 1819 on 8 October 2015.

31.3 In representations, dated 17 November 2015, made by Mr Hanifi, a director of the Appellant company, Mr Hanifi states that he has lived in this area for many years and has a business nearby. He complains that there was no advanced warning of the restriction and that he made an innocent error.

31.4 I have viewed the CCTV footage and this shows the Appellant's vehicle driving through the restriction at the time alleged. It is dark and the signs are illuminated.

31.5 For the reasons set out above at paragraph 9 of this decision, I am satisfied that the restriction was adequately signed and that the signage is substantially compliant with the Traffic Signs Regulations and General Directions 2002.

31.6 On the evidence before me I am satisfied that the contravention occurred and that the penalty charge notice was validly issued. While I accept that Mr Hanifi made an innocent error, this is mitigation and not a defence to the contravention. As the Adjudicator I have no power to direct the cancellation of penalties on the basis of mitigation and I have no power to make formal recommendations in moving traffic contraventions. Accordingly, the appeal must be refused.

32. **The Reviews**

32.1 The following cases were listed before me as applications for review:

Nicholas Srebic v. The London Borough of Ealing

Sasha Chandar-Seale v. The London Borough of Ealing

Kathleen Farci v. The London Borough of Ealing

Nico Micillo v. The London Borough of Ealing

TNT v. The London Borough of Ealing

Sudhakar Kamalakannan v. The London Borough of Ealing

32.2 In each case, the application was made by the Council, the appeal having being previously allowed.

32.3 For me to be able to conduct a review of any decision, I must be satisfied that one of the grounds set out in Paragraph 11 of the Road Traffic (Parking Adjudicators) (London) Regulations 1993, applies.

32.4 The grounds relied upon by the Council in each case are either:

i. "that new evidence has been made available, the importance of which could not have been foreseen"

ii. the interests of justice require a review

or both.

32.5 In relation to their purported first ground, the Council appears to have misinterpreted the Regulations. These refer (at Paragraph 11(1)(c) and (d)) – whether the case was a personal or postal one – to the situation where new evidence has become available since the conclusion of the case, "*the existence of which could not reasonably have been known of or foreseen*". It is not a ground for review under the Regulations that the importance of evidence could not have been reasonably foreseen, but rather its existence.

32.6 Accordingly, I am not persuaded that the Council has established the right to have any of the cases reviewed on the basis of their purported first ground. Further, I accept Mr Dishman's argument (he represents only one case the subject of an application to

review – that of Mr Drakard) that the Council has not identified any new evidence the existence of which could not reasonably have been known or foreseen so as to entitle me to review those decisions.

- 32.7 In relation to the second ground for a review advanced by the Council (the interests of justice require it), the Council referred to the large number of appeals this location has generated and the conflicting decisions of previous adjudicators on the adequacy of the signing, its enforceability and the correct location of the boundary between Hanger Green and Connell Crescent.
- 32.8 I have also considered the arguments of Mr Dishman against granting a review on this ground and the observations against granting a review made by the unrepresented Appellants - in particular those of Mrs Farci in a letter dated 11 May 2016.
- 32.9 I readily accept that decisions from this tribunal are intended to be final and that reviews of any decision can only be granted if one or more of the grounds specified in the Regulations are made out. There is certainly no basis for granting a review merely because the applicant (be that the losing Appellant or losing Council) seek to re-argue the case or in Mr Dishman's phrase "have a second bite of the cherry".
- 32.10 However, in each of these review applications by the Council, I am persuaded that the Council has established that the interests of justice requires a review. This is because I am satisfied that there is a clear interest in having one decision, after detailed arguments from all parties on the extent of the junction and the enforceability and adequacy of the signage at the location. I have had the benefit of detailed submissions from the Council, Mr Dishman and other Appellants as well as sight of maps and plans that were not before my colleague adjudicators. In addition, I have had the benefit of a view of the locus. While, of course, my decision cannot bind other adjudicators, I therefore conclude that having had these evidential benefits not available to others, that it is in the interest of the Council, and, in particular, motorists and would be Appellants, to attempt to provide a definitive decision on the location. Ensuring consistency and certainty by reconsidering cases that might otherwise mislead motorists into pursuing appeals that are without merit, is in my judgment, in the interest of justice.

32.11 I further note that in relation to each of the applications for review, the Council has sensibly indicated that if the applications are granted and the appeals refused, they would not seek to enforce any penalty against any of those Appellants.

32.12 I am therefore satisfied that the Council has established the interest of justice ground to enable me to review the merits of each of the listed reviews and I consider the merits of each appeal afresh.

33. **Nicholas Srebic v. The London Borough of Ealing**

33.1 Mr Srebic did not attend and was not was represented.

33.2 The Council's case is that Mr Srebic's vehicle drove into Connell Crescent at 1533 on 29 July 2015.

33.3 In detailed representations, supported by annotated photographs, Mr Srebic's arguments included that the signage was inadequate; that the left-hand sign was not at the entry point of the junction, but "metres back from the junction"; that the right-hand sign is not visible when a van is queueing to turn onto the A40 and that there was a high sided van obscuring his view in this case. He also refers to a post supplied with electricity approximately 6 m from the junction which should have been chosen for the signage. Mr Srebic states that he has driven along Connell Crescent to his local post office in Ashbourne Parade for over 20 years and states that there was no advance signage about the change of restrictions ahead.

33.4 I have viewed the CCTV footage and this shows Mr Srebic's vehicle driving through the restriction at the time alleged. As he stated, immediately in front of his vehicle, before he turned into Connell Crescent, there was a high sided white van.

33.5 I repeat my findings set out at paragraph 9 above. I am satisfied that Connell Crescent does not in fact start until beyond the access road, and that the marked giveaway signs do not indicate the junction between Hanger Green and Connell Crescent. The post supplied with electricity to which Mr Srebic refers, is east of the access road and is before the start of Connell Crescent, and thus before the restricted area.

33.6 Although Mr Screbic's view of the right-hand sign may have been briefly obscured by the presence of the white van, the view of the left-hand sign would not have been obstructed and I am satisfied that the signage was substantially compliant with the Traffic Signs Regulations and General Directions 2002 and was adequate to convey the restriction to motorists. Since the date of this incident the Council has, in addition, erected advanced warning signage.

33.7 On the evidence before me I am satisfied that the contravention occurred and that the penalty charge notice was validly issued. Therefore the appeal must be refused.

33.8 I emphasise to Mr Screbic that given the Council's indication that they will not seek to enforce the penalty. I hold them to that and there is nothing to pay.

34. **Sasha Chandar-Seale v. The London Borough of Ealing**

34.1 Miss Chandar-Seale did not attend and was not was represented.

34.2 The Council's case is that Miss Chandar-Seale's vehicle drove into Connell Crescent at 1631 on 10 August 2015.

34.3 Miss Chandar-Seale contended that this new restriction "is not the most visible thing". She stated she often drives down this road for work and that she was undertaking a viewing in Connell Crescent at the time and was not using the road as a "cut-through".

34.4 I have viewed the CCTV footage and this shows Miss Chandar-Seale's vehicle driving through the restriction at the time alleged.

34.5 While I have no hesitation in accepting Miss Chandar-Seale's account as true, it does not amount to a defence to the contravention. I repeat my findings set out at paragraph 9 above as to the adequacy of the signing, its compliance with the legal requirements and its enforceability.

34.6 On the evidence before me, I am satisfied that the contravention occurred and that the penalty charge notice was validly issued. Therefore the appeal must be refused.

34.7 I repeat to Miss Chandar-Seale that given the Council's indication that they will not seek to enforce the penalty, I hold them to that, and there is nothing to pay.

35. **Kathleen Farci v. The London Borough of Ealing**

35.1 Mrs Farci did not attend and was not was represented.

35.2 The Council's case is that Mrs Farci's vehicle drove into Connell Crescent at 1801 on 4 September 2015.

35.3 In her e-mail dated 11 May 2016, Mrs Farci repeated the arguments that she made in her appeal. She emphasised that the right-hand sign is obscured as soon as any vehicle is in front of the motorist, particularly buses and referred to the photographs she had taken from a driver's position and perspective. She added that the advanced warning sign erected in January 2016 was not in place in September 2015 and maintained that the left-hand sign was "20 m plus" from the "junction entry point".

35.4 I have viewed the CCTV footage and this shows Mrs Farci's vehicle driving through the restriction at the time alleged.

35.5 While I note that there was no bus obstructing the right-hand sign when Mrs Farci made her turn, I accept from her photographic evidence, taken from the driver's perspective, that the right-hand sign can be obscured by buses or even high sided vehicles. Nonetheless, the left-hand sign is not obscured even if this occurs. I am satisfied that in cases where the right-hand sign is temporarily obscured, the left-hand sign alone would be adequate signing of the restriction. Further, for the reasons I set out in paragraph 9 above, the left-hand sign is not 20 m from the junction entry point - but more like 6.6 m. The restriction does not start until after the access road on the left. There is time and space for a motorist to reverse into the access road, even if they have crossed the marked give way lines. I repeat my findings set out at paragraph 9 above as to the adequacy of the signing, its compliance with the legal requirements and its enforceability.

35.6 On the evidence before me, I am further satisfied that the contravention occurred and that the penalty charge notice was validly issued. Therefore the appeal must be refused.

35.7 I repeat to Mrs Farci that although I have refused her appeal on the review, she has nothing to pay given the Council's indication that they will not seek to enforce the penalty.

36. **Nico Micillo v. The London Borough of Ealing**

36.1 Mr Micillo did not attend and was not was represented, but submitted a detailed letter dated 6 February 2016 in relation to the review hearing.

36.2 The Council's case is that Mr Micillo's vehicle drove into Connell Crescent at 1845 on 9 September 2015.

36.3 Mr Micillo repeated that he did not see the prohibition sign soon enough to avoid entering the road and contended that the sign is not in the right place. He argued that the signage is non-compliant and that the Council's suggestion of being able to make reversing manoeuvre was "frankly dangerous". He had also raised with Ms Adjudicator Brennan at the December hearing, which he attended with his passenger, that his passenger had become unwell and that he urgently needed to calm his friend and not travel on the very busy road (the A40). The Adjudicator had the benefit of seeing and hearing Mr Micillo and his passenger and accepted his evidence to the effect that his friend was unwell and he was distracted and did not see the signs. She was not persuaded however that the Appellant had no choice but to drive his car past the restriction. I accept Ms Adjudicator's Brennan's findings on these matters. The appeal was allowed on a different point - the signage being inadequate and "because both signs and particularly the left sign are located after the commencement of the prohibition".

36.4 I have viewed the CCTV footage and this shows Mr Micillo's vehicle driving through the restriction at the time alleged.

36.5 I am satisfied that the signing of the restriction was lawful and adequate to convey the position to motorists. I repeat my findings set out at paragraph 9 above as to the adequacy of the signing, its compliance with the legal requirements and its enforceability.

36.6 Accordingly, on the evidence before me, I am satisfied that the contravention occurred and that the penalty charge notice was validly issued. Therefore the appeal must be refused.

36.7 I repeat to Mr Micello that although I have refused his appeal on the review, he has nothing to pay given the Council's indication that they will not seek to enforce the penalty.

37. **TNT v. The London Borough of Ealing**

37.1 The Appellant company did not attend and was not was represented.

37.2 The Council's case is that the Appellant's vehicle drove into Connell Crescent at 1722 on 5 August 2015.

37.3 Mr Barry, the Appellant's Operations Manager, and driver of the vehicle, stated he had been travelling down this road for many years and that he turned off the A40 and parked in the Hanger Green to check his vehicle, as it had been just involved in a low speed collision. Having done this he entered Connell Crescent, and only realised that there were two signs on either side of the road after he had passed them. He states he would never have gone down the road had he known of the restriction. Mr Adjudicator Rayner upheld his previous findings that the signage was unlawful.

37.4 I have viewed the CCTV footage and this shows the Appellant's vehicle driving through the restriction at the time alleged.

37.5 For the reasons set out at paragraph 9 above I am satisfied as to the adequacy of the signing, its compliance with the legal requirements and its enforceability and I respectfully disagree with the decision of my colleague Mr Adjudicator Rayner.

37.6 On the evidence before me, I am further satisfied that the contravention occurred and that the penalty charge notice was validly issued. Therefore the appeal must be refused.

37.7 I repeat to the Appellant company that given the Council's indication that they will not seek to enforce the penalty, I hold them to that and there is nothing to pay.

38. **Sudhakar Kamalakannan v. The London Borough of Ealing**

38.1 Mr Kamalakannan did not attend and was not was represented.

38.2 The Council's case is that Mr Kamalakannan's vehicle drove into Connell Crescent at 1714 on 19 August 2015.

- 38.3 Mr Kamalakannan's contentions were that the signs were inadequate and in particular, the sign on the left was placed "way back from the junction" and that the signage was therefore illegal.
- 38.4 I have viewed the CCTV footage and this shows Mr Kamalakannan's vehicle driving through the restriction at the time alleged.
- 38.5 I am satisfied that the signing of the restriction was lawful and adequate to convey the position to motorists. I repeat my findings set out at paragraph 9 above as to the adequacy of the signing, its compliance with the legal requirements and its enforceability.
- 38.6 Accordingly, on the evidence before me I am further satisfied that the contravention occurred and that the penalty charge notice was validly issued. Therefore the appeal must be refused.
- 38.7 I repeat to Mr Kamalakannan that although I have refused his appeal on the review, he has nothing to pay given the Council's indication that they will not seek to enforce the penalty.

39. **Adam Drakard v. The London Borough of Ealing**

- 39.1 Mr Drakard did not attend, but was represented by Mr Dishman. Mr Drakard had appeals in relation to five penalty charge notices.
- 39.2 The Council's case is that Mr Drakard's vehicle drove into Connell Crescent at 1729 on 3 August 2015; 1732 on 4 August 2015; 1718 on 6 August 2015; 1724 on 10 August 2015 and 1758 on 11 August 2015.
- 39.3 I have viewed all the CCTV footage and am satisfied that Mr Drakard's vehicle was driven through the restriction on five occasions during prohibited hours between the 3 and 11 August 2015. Sometimes Mr Drakard's vehicle was in a line of vehicles going through the restriction (for example, on 4 August – first of three vehicles – and 11 August – third of three vehicles) and on 6 August 2015 Mr Drakard's vehicle was stationary in a line of traffic in Hanger Lane for some seconds before crossing the give way line and driving towards and then through the restriction.
- 39.4 Mr Dishman repeated his arguments in relation to signage and also contended that the refusal to cancel multiple PCNs was "entirely wrong" and that five penalties were

disproportionate. Ms Adjudicator Oxlade had allowed the appeals on the basis that the signage was so far back from the junction it was not adequate to communicate prohibition.

- 39.5 I am satisfied that the contravention was adequately signed and that the signage is substantially compliant with the Traffic Signs Regulations and General Directions 2002. For the reasons set out above at paragraph 9, I have rejected each of Mr Dishman's arguments and I respectfully disagree with the conclusion reached by Ms Adjudicator Oxlade, given, in particular my finding as to the commencement point of the restriction.
- 39.6 On the evidence before me I am further satisfied that the contraventions occurred and that the penalty charge notices were validly issued.
- 39.7 Accordingly, each of these appeals are refused.
- 39.8 Given the Council's concession that they will not seek to enforce the penalties, Mr Drakard has nothing to pay.

40. **Summary**

- 40.1 I am satisfied that the signage at the location is adequate to convey the restriction to motorists and is substantially compliant with the Traffic Signs Regulations and General Directions 2002.
- 40.2 While there is no requirement in law for the Council to have a sign on either side of the carriageway, they have chosen to erect two signs at this location and the fact that the left-hand sign is positioned some 22 feet (or 6 m) behind the start of the restriction does not in my judgment in any way render the signage overall inadequate. The positioning of the left-hand sign may in fact give the motorist more time to see the restriction on his approach from Hanger Green. Further, the Council conceded that they would never issue a penalty charge notice unless a motor vehicle had passed both signs.
- 40.3 Motorists – and in particular those and well used to using a certain route – need to bear in mind that parking and traffic restrictions are not set in stone and need to be

alert to the possibility of new restrictions and changed signage particularly in familiar locations.

- 40.4 Appellants to this tribunal would be well advised to exercise caution when adopting a cut-and-paste approach in relation to challenges that may be detailed on the Internet so as to ensure that they advance matters relevant to their own appeal.

Alastair McFarlane

Adjudicator