

## **Hatfield v Transport for London (ETA 2170566611).**

This appeal raises an issue as to whether marks forming the boundary of the bay and any legend must be coloured red when placed on a red route where the bay is not available for parking or loading during part of, or all of, the times of operation of the red route.

The Enforcement Authority (TfL) attended and were represented by Mr Clarke. The appellant indicated that he would not attend as he lives a considerable distance from the Tribunal.

### Penalty Charge Notice (PCN)

A PCN dated 17<sup>th</sup> October 2017 was served on the appellant by post as it was alleged that he stopped where prohibited (in a bay on a red route or clearway) at 09:23am on 7<sup>th</sup> October 2017 outside 47-49 Balham Hill SW12.,

### The locus

The bay in which the appellant's vehicle stopped is completely set back from the carriageway and has space for approximately two vehicles. The boundary of the bay is unmarked although it is patently a bay as light grey channel stones separate the bay from the main carriageway. The bay is tarmacked and is the same colour as the carriageway.

The carriageway leading up to the bay is clearly marked with a single red line which ends at the beginning of the bay; this is marked by a transverse termination bar. A sign, facing the oncoming traffic, advises of the no stopping restriction. Located in the middle of the bay is a sign which states that no stopping is permitted Monday-Saturday between 7am and 7pm except between 10am and 4pm when loading for 20 minutes is permitted and disabled parking is permitted for 3 hours. Immediately after the bay a double red line begins.

### The Appellant's case

In broad summary the Appellant's case was that;

- i) The cumulative effect of the road markings (single and double red lines) before and after the bay together with the lack of any markings of the bay itself led the appellant to reasonably conclude that the bay was not part of the red route. The appellant was entitled to rely on the provisions of the Highway Code to inform his judgment. As at July 2017 the Highway Code indicated that bays in red routes would be marked with either white or red dotted lines; white if the bay is available at all times and red if the bay is only available for specified periods. The regulation that TfL relied upon (detailed below) does not appear in the Highway Code and it is not reasonable that a motorist would be aware of it.
- ii) The signage at the location was not in accordance with the statutory specification as it was not facing oncoming traffic but was placed transversely to the road.

- iii) The signage at the location permitted loading except between 10am and 16:00 and thus no contravention was committed as the appellant was loading at 09:23 (not parked as TfL had submitted).

The Enforcement Authority's (TfL) case

- i) Bays may be varied to contrast, in pattern or colour, from the surrounding parts of the road, and any adjoining bays in which case the marking may be omitted. The bay in question was so varied and thus complied with the statutory specification. Traffic Signs Regulations and General Directions 2016 (TSRGD) schedule 7 part 5, paragraph 2(3) is cited in support of this submission. The bay does contrast in colour from the adjoining footway material and light grey channel stones separate the bay from the main carriageway. Specifically TfL submitted;

*"We wishes (sic) to make use of the new Regulations to provide new ways of marking the extent of bays in the interests of providing more pleasant street scenes and reducing street clutter."*

- ii) The signage at the location adequately conveyed the restriction. Loading was permitted between 10am and 16:00.
- iii) Reliance was placed on Herron & Parking Appeals Ltd (on the application of) v The Parking Adjudicator and Sunderland City Council [2011] EWCA Civ 905 in which it was held that the purpose of the signage and/or markings required by TSRGD is merely to convey adequate information to motorists.

Traffic Signs Regulations and General Directions 2016

The Traffic Signs Regulations and General Directions 2016 (TSRGD) have been in force since 22<sup>nd</sup> April 2016. The TSRDG 2016 revoked the TSRGD 2002 and replaced them with an updated, revised and consolidated TSRGD. The TSRGD amendments made in 2004, 2005, 2006, 2008 and 2011 have been revoked and incorporated into the new TSRGD.

Paragraph 2.11 of the Department for Transport's (Dft) Circular 01/2016 sets out a key objective of the TSRGD 2016 as follows;

*"Reducing sign clutter was a key aim of the revision of the Traffic Signs Regulations and General Directions. TSRGD 2016 contains a number of changes which will cut costs, complexity and sign clutter. It provides a modern framework that will mean far fewer signs need to be placed, and gives local authorities the right to remove many of their existing signs."*

Red route signage generally

Signs for red routes, where there is a prohibition on stopping, are prescribed for the first time in TSRGD 2016.

Dft circular 01/2016 sets out the policy context as follows;

*“9.2 Schedule 6 prescribes signs for red routes that are indicated by double or single red lines. The signs that may be used are essentially those described in Chapter 3 of the Traffic Signs Manual, except that more flexibility has been provided for parking bays.*

*9.3 Signs for parking bays are similar to those prescribed in Schedule 4. However, the signs for payment parking have been simplified as drivers need to know quickly whether or not they can stop in the bay without contravening the red route prohibition on stopping. These signs should be placed at the beginning of the bay facing oncoming traffic. Signs prescribed in Schedule 4 for parking payment may be placed within the bay, parallel to the kerb. These will not indicate the stopping prohibition.*

The crux of this appeal is whether the bay itself had to be marked or not, thus schedule 7 is key.

#### Schedule 7 TSRGSD 2016

Schedule 7 provides the relevant statutory specification for “road markings and miscellaneous upright signs that indicate stopping, waiting, loading and parking controls.”

Schedule 7 part 4 contains a sign table in which items 11 and 12 (diagrams 1018.2 and 1017.1) depict the applicable road markings for red routes (single and double red lines).

Schedule 7 part 5 contains “Required or permitted variants.” Paragraph 2 (3) of part 5, upon which TfL relies provides;

*“2.—(1) When reserved for disabled badge holders at certain times (whether or not also reserved for other users)—*

*(a) the length of the bay must be at least 6600 mm; and*

*(b) the width of the bay must be at least 2700 mm (or 3000 mm when placed in the centre of the carriageway) except in a case where, on account of the nature of traffic using the road, the overall width of the carriageway is insufficient to accommodate a bay of that width.*

*(2) The marks and gaps forming the boundary of the bay may—*

*(a) vary in number and length; or*

*(b) be replaced by a continuous white line.*

*(3) The bay may be varied to contrast, in pattern or colour, from the surrounding parts of the road and any adjoining bays, in which case the marking may be omitted.”*

Neither TfL nor the appellant cited schedule 7, part 5 paragraph 5 which provides;

*“5. The marks forming the boundary of the bay and any legend must be coloured red when placed on a red route, but only where the bay is not available for parking or loading during part of, or all of, the times of operation of the red route.”*

#### Submission at the hearing

At the hearing I drew Mr Clarke's attention to paragraph 5 and he submitted that paragraph 5 only applied where the Enforcement Authority had exercised their discretion to use markings to delineate the bay. In this case TfL had lawfully opted not to use traditional road markings and, as the bay was distinguished in accordance with paragraph 2 (3), paragraph 5 was of no application.

Analysis in respect of schedule 7

Whilst schedule 7, paragraph 2 (3) of part 5 allows the use of colour-contrasting surfacing or paving of a different appearance to distinguish such areas from the surrounding carriageway the language used in the legislation is permissive; "may be varied" whereas the language used in paragraph 5 is mandatory; "must be coloured red."

Part 5 of schedule 7 is entitled "Required or permitted variants." The discretion provided to the Enforcement Authority, in paragraph 2 (3), is a permitted variant covering bays in general but must be read as being subject to the "required variant" detailed at paragraph 5 that the bay must be coloured red.

I find that the rationale for the distinction is clear, the restriction is on stopping and therefore the restriction must be clearly conveyed to motorists by clear road markings. Red route contraventions can be enforced by camera whereas parking contraventions cannot thus the legislation imposes a heightened duty on the Enforcement Authority to make the restriction abundantly clear.

I therefore conclude that where a bay is not available for parking or loading during part of the hours in which the red route is in operation (as in the appellant's case) the bay must be coloured red pursuant to schedule 7, part 5 paragraph 5.

This analysis is consistent with the Highway Code, as cited by the appellant, and information on the Enforcement Authority's (TfL) own website which makes no mention of unmarked bays on red routes but refers to bays on red routes being marked with red or white dotted lines as follows;

*"Red bays: If a loading bay is marked out by a red dotted line, it means the bay can be used outside peak traffic hours. However, peak traffic hours often vary in each area and even each road. Red bays have more restrictions so you should always check the signs."*

*"White bays: If a red route loading bay is marked out by a white dotted line, it generally means that the bay can be used throughout the day. However, there is usually a maximum time limit - always check the signs."*

It is beyond argument that a key objective of the TSRGD was reducing sign clutter. However, I am not persuaded by TfL's submission that they opted not to mark this bay in "*the interests of providing more pleasant street scenes and reducing street clutter.*" There are two signs and red lines on either side of this bay and further along the road are several bays that are marked by red dotted lines. I reject the notion that marking this small bay in red would in any way diminish the street scene in Balham Hill or do anything at all to reduce street clutter in the area.

Herron

A failure to substantially comply with the statutory regime is not necessarily fatal to the PCN. In *Neil Herron & Parking Appeals Ltd, R (on the application of) v The Parking Adjudicator & Ors* [2011] EWCA Civ 905 it was held that signage, which includes road markings, had to substantially comply with the statutory specification, and should not mislead or fail to inform the motorist. Absolute and strict compliance with the specification is not essential provided the motorist is adequately informed of the restriction in question.

At the hearing Mr Clarke fairly conceded that if, contrary to his submission, the bay was required to be marked in red pursuant to paragraph 5 then the bay would **not** substantially comply with the statutory specification.

In the absence of any red bay markings I conclude that the bay does not substantially comply with the statutory specification. In any event I find that the restriction was not adequately conveyed to motorists and it would be reasonable for a motorist to conclude that the bay is not part of the red route as the bay is not marked in red, a single red line ends before the bay and is marked as such by a transverse termination bar, double red lines begin immediately after the bay and as the bay is set back from the road stopping in it would not impede traffic on London's main routes, which is the purpose of red routes.

### Conclusion

I allow this appeal as I am not satisfied that the contravention occurred as the bay did not substantially comply with the statutory specification which required it to be marked in red as it was not available for parking or loading during part of, or all of, the times of operation of the red route.

Further motorists are not adequately informed of the restriction owing to the cumulative effect of the lack of bay markings, the position of the bay and road markings on either side of the bay as detailed in this decision.

### Footnote

The case summary in this case ran to 13 pages. Numerous pages were spent reciting the appellant's grounds of appeal which an adjudicator will read in any event. No mention was made of the key statutory provision (schedule 7, part 5 paragraph 5) and, with respect, the summary lacked any coherent structure.

It would assist greatly if, at the very least, TfL placed sub headings in their case summaries and succinctly summarised at the start of the document the parties respective positions.

I am very grateful to Mr Clarke for his succinct and clear submissions at the hearing.