

MOHAMUD HASSAN MOALIM

-v-

London Borough of Ealing
(the Enforcement Authority)

Mr Murray-Smith represents the Appellant at the video hearing. The Authority was not represented.

The Appellant stated in his representations that he relied on his formal representations and denies the contravention. The formal representations stated:

"The alleged contravention did not occur, I refer to the attached footage." The Appellant appeared to have provided three .mov files. He has also provided U Tube links to the three footages.

Mr Murray-Smith submits that the Authority had clearly not viewed any of the Appellant's video evidence. It has therefore made a misrepresentation when it implied in the Notice of Rejection that these have been viewed. Alternatively, the Authority failed its obligation under Paragraph 1 (7) (a), Schedule 1 to the London Local Authorities and Transport for London Act 2003 to consider the representations and any supporting evidence which the person making them provides".

Mr Murray-Smith is therefore making a challenge to the Authority's failure to comply with a legislative procedure. The point was not taken in the Notice of Appeal, nor was the point taken when Mr Murray-Smith served his evidence more than two months after the service of the Notice of Appeal and less than a week before the scheduled hearing date. Mr Murray-Smith suggests that the last-minute submission does not cause prejudice, or even if it does, it can be cured by an adjournment.

This Tribunal does not require parties to provide pleadings. The informality of the proceedings seems to be exploited to gain "tactical" advantage so that it has an effect which is opposite to what is intended by Parliament. It is now not uncommon for represented Appellants to provide the briefest of statement in their Notices of Appeals and then months later serve their substantive case, often by way of lengthy "skeleton arguments."

While one can understand that the Authority's service of evidence and its submissions may require amendments to the Appellant's case, the routine withholding of an Appellant's case can be viewed as sharp practice.

First, it has essentially extended the time limit for making an appeal. Secondly, the Authority, or at least a diligent Authority, will have to prepare its case twice. Thirdly, and the occurrence is on the increase, an Authority may need to seek an adjournment to re-serve a substantial case. This is then often followed by the Appellant asking for time to serve a response.

Adjudicators have attempted to curtail these excesses by issuing a Practice Direction on the use and length of skeleton arguments. Compliance is at best patchy.

While this Tribunal is not strictly bound by the overriding objective of civil proceedings, there is every reason for adjudicators to give effect to the overriding objective and dealing with a case justly and at proportionate cost includes, so far as is practicable -

An independent tribunal for environment, parking and traffic penalty appeals

(a) ensuring that the parties are on an equal footing and can participate fully in proceedings, and that parties and witnesses can give their best evidence;

(b) saving expense;

(c) dealing with the case in ways which are proportionate -

- to the amount of money involved;
- to the importance of the case;
- to the complexity of the issues; and
- to the financial position of each party.

(d) ensuring that it is dealt with expeditiously and fairly;

(e) allotting to it an appropriate share of the Tribunal's resources; and

(f) enforcing compliance with rules, practice directions and orders.

The parties are expected to assist the adjudicator to put into effect the principles. They are not expected to, unless there are good reasons, to lengthen the proceedings and escalate costs to the other party and to the Tribunal.

I asked Mr Murry-Smith why he did not raise the process point in the Notice of Appeal. I did not receive a meaningful response.

Paragraph 9(2), Schedule 1 of the 2003 Act empowers me conduct the hearing of an appeal in such manner as I consider most suitable to the clarification of the issues before him and generally to the just handling of the proceedings. I do not find that the consideration of a last-minute argument to be just handling of the proceedings. I shall restrict myself to a consideration as to whether a contravention occurred.

The basis of the Appellant's case was that there was no signage. Mr Murray-Smith said that the Appellant had provided three videos which he had uploaded on U Tube.

The Tribunal has provided the following guidance to parties:

"If you are submitting your appeal on-line then you must submit viewable versions of any documents through the internet portal. You can do this either at the time of submitting your appeal or later, so long as this is not less than 5 days before the date of your hearing or expected date of the postal decision.

If you have sent in your appeal form in the post and wish to submit in evidence photographs in electronic format or moving images, please do so on CD, or DVD."

It follows that moving images must be submitted by uploading to the portal as an electronic file, or by sending them as CD or DVDs. If a party has not presented the evidence in an acceptable format, the evidenced will not be considered.

I asked Mr Murray-Smith if he had seen the videos and whether he could describe their contents which I may accept as oral evidence. Mr Murray-Smith fairly accepted that he was not able to satisfy me that the videos were taken at the location identified in the Authority's images.

I am satisfied that the contravention occurred. I refuse the appeal.

Anthony Chan
Adjudicator
14th April 2025

An independent tribunal for environment, parking and traffic penalty appeals

Environment and Traffic Adjudicators are supported by London Tribunals, a service provided by London Councils

Calls to London Tribunals may be recorded