

**PARKING APPEALS SERVICE**

**APPLICATION FOR REVIEW**

**MR G MONTEZEMOLO**

**-v-**

**ROYAL BOROUGH OF KENSINGTON & CHELSEA**

***Parking Appeal 1980114773***

***Penalty Charge Notice KC40041648***

**ADJUDICATOR'S REASONS FOR DECISION**

Mr G Montezemolo ("the appellant") appealed to the parking adjudicator against the refusal of the Council of the Royal Borough of Kensington and Chelsea ("the Council") to accept his representation to the effect that the Council had failed to comply with the duty imposed on it by section 71(6) of the Road Traffic Act 1991. That subsection provides -

*"It shall be the duty of an authority to whom representations are duly made under this section, before the end of the period of 56 days beginning with the date on which they receive the representations -*

*(a) to consider them and any supporting evidence which the person making them provides; and*

*(b) to serve on that person notice of their decision as to whether they accept that the ground in question has been established.*

It is not disputed that the appellant sent his representations to the Council in a letter dated 24 February 1998. Nor is it disputed that the Council received the representations on 27 February 1998. In view of the wording of section 71(6) of the 1991 Act the period of 56 days started on 27 February 1998.

It is not disputed that the Council responded to the appellant's representations in that letter which is dated 21 April 1998 and which it posted on that date. Nor is it disputed that the appellant received that letter on 25 April 1998.

The period of 56 days from 27 February 1998 ended on 23 April 1998. That is two days after the Council posted its letter but two days before the appellant received it.

My decision dated 29 May 1998 was on the basis that the period of 56 days had been exceeded. I accordingly allowed the appeal.

- (a) Section 71(12) of the Road Traffic Act 1991 provides that any notice required to be served under that section may be served by post.
- (b) The Council cites section 7 of the Interpretation Act 1978. That section is a consolidation of section 26 of the Interpretation Act 1889 in respect of which a number of judicial decisions have been made. The section provides as follows -

*“Where an Act authorises or requires any document to be served by post (whether the expression “serve” or the expression “give” or “send” or any other expression is used) then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.”*

- (c) The Council also cites Retail Dairy Co Ltd -v- Clarke 1912 2 KB 388 which it understands to decide that the ordinary meaning of “send” is despatch, unless it is used with other words which make it clear that “delivery” is intended. The word “send” is not used in section 71(6). Therefore I do not consider that this case is material.
- (d) The Council draws the conclusion from the wording of section 71(6) of the 1998 Act that “the subsection requires the authority to “respond” to the person’s representations within 56 days but does not set a date by which those representations must be received.”. The Council contend that the notice was served on 21 April 1998, the date on which its letter of rejection was posted (whether by first or second class post I do not know). The subsection does not use the word “respond”. Nor does it make any provision expressly referring to the notice being received by the person who made the representations, but the relevant rules relating to the meaning of “serve” as used in section 71(6)(b) must apply. I find no ground on which the posting of the notice could be the service of the notice.
- (e) The Council draws attention to the Practice Direction [1985] at 1 All ER 889. They observe that it provides that for the purposes of section 7 of the 1978 Act delivery in the ordinary course of post is effected, in the case of first class mail, on the second working day and, in the case of second class mail, on the fourth working day after posting. For completeness I add that the Direction goes on to provide that “working days” are Monday to Friday excluding any Bank Holiday; 25 April 1998 was Saturday. The Direction relates to the service of writs, summonses, pleadings, etc. I think this includes a Council’s notice of decision under section 71(6) of the 1991 Act.

- (f) Maltglade and Others -v- St Albans Rural District Council 1972 3 All ER 129 was decided with regard to section 26 of the Interpretation Act 1889 as applied to provisions in the special Act. In his judgement Lord Widgery cited with approval a passage from the decision of the Lord Parker in the Court of Appeal in R -v- London Quarter Sessions Appeal Committee ex parte Rossi 1956 1 Orange Badge 682 as follows -

“The first part of section 26 provides that the despatch of a notice or other document in the manner laid down shall be deemed to be service thereof. The second part provides that, unless the contrary is proved, that service is effected on the day when in the ordinary course of post the document would be delivered. This second part, therefore, comes into play and only comes into play, in a case where under the legislation to which the section is being applied the document has to be received by a certain time. If in such a case the contrary is proved, ie the document was not received by that time or at all, then the position appears to be that, though under the first part of the section the document is deemed to have been served, it is proved that it was not served in time”.

- (g) In my view section 71(6) of the 1991 Act requires the Council’s notice of its decision to be received by the person who has made representations within a certain time; that time is the period of 56 days beginning with the date on which the Council received the representations. In making my decision on 29 May 1998 I proceeded on the appellant’s evidence, which was not challenged by the Council, that under the second part of section 7 of the Interpretation Act 1978 it was proved that the notice was not received by the appellant, and therefore service of it on him was not effected, until 25 April 1998. That was after the end of the relevant 56 day period.

For these reasons I refuse the application to review my original decision.

B W James  
Parking Adjudicator

2 July 1998