

PARKING APPEALS SERVICE

LONDON BOROUGH OF WANDSWORTH

KEVIN JAMES BEATT (CASE NO. 1950092219)

MATHEW CANNON (CASE NO. 1950071321)

REVIEW OF THE DECISIONS OF THE PARKING ADJUDICATORS

(REVIEW CASE NO. 1960067171)

This consolidated review concerns business permit holder only bays in Atney Road in Putney, SW15. It is accepted by the original appellants, Dr Beatt and Mr Cannon, that the bays are properly designated as business permit holder only bays under Schedule 11 of the Wandsworth (Putney) (Parking Places) Order 1992: and I understand that they also accept that the bays are properly signed and marked as such. (Insofar as Mr Cannon suggested the bays were not clearly marked, on the evidence I have seen, I am quite satisfied that the signs and markings complied with the relevant Regulations, and were at least reasonably clear.) The parking restriction in these bays is such that, between 8.30am and 6.30pm Monday to Saturday, business permit holders only may park. Dr Beatt and Mr Cannon accept that they were parked in such a bay on a Saturday (7 January 1995 and 10 December 1994, respectively), during the restricted hours, and that they did not have the requisite permit. However, they each say that the respondent local authority (the London Borough of Wandsworth) ("Wandsworth") should be prohibited from pursuing a penalty based upon the contravention, because to allow them to rely upon the contravention would be unfair.

Dr Beatt's appeal came before the Parking Adjudicator Monica Hillen on 15 September 1995. Mrs Hillen dismissed the appeal, for these reasons:

"The bay where Dr Beatt left his vehicle on a Saturday was a business permit bay. I am satisfied that the bay was correctly marked and in order. The Council had notified the residents that they are reviewing the matter, but at the time of this Penalty Charge Notice it remained a valid bay. Therefore, on the evidence I find the fact that the contravention occurred. I note what Dr Beatt says but it is not a matter that I may take into account in deciding this appeal."

Dr Beatt now seeks to review that decision, and he has been given leave to do so by the Chief

Adjudicator.

Mr Cannon's appeal came before the Parking Adjudicator Barbara Mensah on 4 September 1995. She allowed the appeal, giving the following reasons:

"Mr Cannon states that for about 15 months prior to the contravention he and other neighbours had parked in the alleged bays having been given express permission to do so on Saturdays by those then operating the parking services. The Council speak of some Notice which they say were proposals only. I do not appear to have a copy of that Notice before me. In the circumstances I accept the appellant's evidence. However, I would advise that he must from now have regard to the present situation."

Miss Mensah directed Wandsworth to cancel the Penalty Charge Notice ("PCN") and the Notice to Owner ("NTO"). Wandsworth now seek to review that decision, and have been given leave to do so by the Chief Adjudicator.

Wandsworth have undertaken that they will not pursue any penalty from either Dr Beatt or Mr Cannon, whatever the result of this review. They want the matter reviewed as a matter of principle.

In seeking to review the decision against him, Dr Beatt has indicated that he considers that, in the circumstances, one of the decisions of the Parking Adjudicators must be wrong. On this review, I will consider matters *de novo*: but I would here say that it is clear from the reasons given by the respective Parking Adjudicators that they had different evidence before them in coming to their decisions. Whatever my findings, I do not agree with Dr Beatt that one of the Parking Adjudicators must necessarily have erred on the evidence before each of them.

Dr Beatt, Mr Cannon and Wandsworth each put in to me written evidence and submissions, and I heard all three parties (including Mr Clark for Wandsworth) on 9 July 1996. At that hearing, Mr Cannon indicated that he wished to consider putting in further written evidence, and I asked him to do so by the end of 10 July, if he wished. In the event, no further evidence was received.

On the face of it, both Dr Beatt and Mr Cannon accept that they were in contravention of the parking regulations (i.e. they accept that they were parked in a business holder only bay, during restricted hours, without the requisite permit), but they say Wandsworth have acted in such a way that they should now

not be allowed to pursue a penalty in respect of that apparent contravention.

In my view, it is certainly possible for an authority to act in such a way as to be so unfair and prejudicial to the owner of a vehicle in issuing a PCN or NTO that it would not be proper for that authority to pursue a penalty based upon the PCN or NTO, if this is what they sought to do. In these circumstances, in any appeal, a Parking Adjudicator could make directions under Paragraph 5(2) of Schedule 6 to the Road Traffic Act 1991, to prohibit that authority relying upon such a PCN and/or NTO.

Have Wandsworth acted in such a way, in this case? Dr Beatt and Mr Cannon say they did. The appellants relied upon two grounds, formulated by Dr Beatt. First, he said that it had become an established practice that parking attendants did not enforce the business holder only restriction on bays in Atney Road so far as resident permit holders were concerned, on Saturdays. They did not enforce that restriction for at least several months prior to December 1994, when (he said) the policy changed, and the restriction was enforced. In addition to the simple lack of enforcement, Dr Beatt said that on one occasion some time ago he had been told specifically by a parking attendant that they were not issuing PCNs in respect of resident permit holders who parked in business holder only bays in Atney Road on a Saturday. Second, it was clear from what Dr Beatt said that one of his primary complaints was that there were (in his view) inadequate parking places for resident permit holders in that area. He said he had written to Wandsworth over three years ago about this, and they had agreed to undertake a review of the relevant parking restrictions. Such matters are, of course, matters of policy for the Council, and not matters that fall to be considered by Parking Adjudicators. However, Dr Beatt told me that the review resulted in the restriction on a number of business permit holder only bays being changed, to allow resident permit holders to park on a Saturday. He said that resident permit holders were entitled to assume that they could park in business permit holder only bays on a Saturday whilst that review was taking place.

Mr Clark for Wandsworth said that the parking service contractor (which changed in about September 1994) had at all times been instructed by Wandsworth to enforce all regulations, and he said PCNs had been issued regularly in respect of misuse of business permit holder only bays in Atney Road. He denied any change in policy. With regard to the second point, he said there was no suggestion that resident permit holders could park in business permit holder only bays on a Saturday whilst the review as to what should be done was proceeding.

With regard to Dr Beatt's second point, I do not consider there is any force in it. Simply because Wandsworth indicated they were reviewing parking restrictions in the area, I do not believe anything

Wandsworth did in this regard should reasonably have led any resident permit holder to believe that he or she could park in a business permit holder only bay prior to the conclusion of the review.

With regard to the first point, having heard their evidence I am satisfied that both Dr Beatt and Mr Cannon genuinely believed that they would not be penalised for parking as they did. There is no question of either pursuing an appeal frivolously: and Wandsworth have not suggested otherwise. However, even on the basis of the evidence put forward by Dr Beatt and Mr Cannon, I do not consider Wandsworth should be restrained from pursuing any penalty as a result of the contraventions of the parking regulations which have taken place. Even if, prior to December 1994, parking attendants did not rigorously issue PCNs to resident permit holders when parked in business permit holder only bays on a Saturday, I do not consider any such earlier failure to enforce the regulations should prevent Wandsworth from enforcing the admittedly valid regulations from December 1994. This is a matter in respect of which I have to take into account all of the circumstances, based on all of the evidence which has been submitted to me: and, in coming to my view, I have done so. In particular, I have taken into account the single conversation with a parking attendant, "some time ago", which Dr Beatt recalls. There is a dispute as to whether that conversation took place but, for the purposes of this review, I will assume that it did, in the circumstances outlined by Dr Beatt. Nevertheless, a parking attendant had no authority to allow a car without a business holder permit to park in the relevant bays in Atney Road and, in the circumstances, I do not consider a single conversation with a parking attendant as outlined by Dr Beatt should prohibit Wandsworth from enforcing valid parking regulations. If the residents in Atney Road had wished to avail themselves of the use of business permit holder only bays on a Saturday (for example, pending the outcome of a policy review with regard to parking in the area), then it was open to them to correspond with Wandsworth. If Wandsworth had confirmed in writing that the residents could indeed use the bays at that time, then (in my view) it would not have been open to Wandsworth to renege upon such a letter and seek to enforce penalties as a result of contravention. Such a course would have been quite improper, and unfair. But there is no evidence that any of the residents - including Dr Beatt and Mr Cannon - sought such confirmation, yet alone that such confirmation was given.

In circumstances in which a car owner accepts a contravention of the parking regulation, if he alleges that it would be improper for the authority to rely upon that admitted breach to pursue a penalty, then the burden of showing that rests on him. That burden is a heavy one. In this case, I do not consider that Dr Beatt or Mr Cannon have satisfied it.

Therefore, in each of these cases, I find there was a contravention of the parking regulations, and

Wandsworth's conduct was not such as to deprive them of the opportunity to pursue penalties in respect of those contraventions. In the circumstances, I confirm the decision of the Parking Adjudicator in Dr Beatt's case and vary the decision in Mr Cannon's case to refuse his appeal. As I have indicated above, Wandsworth have undertaken not to pursue a penalty against either appellant, in any event.

Of course, my jurisdiction in these matters is limited by the terms of the relevant statutes. It is not open to me to take into account merely mitigating circumstances, no matter how compelling these might be. An enforcing authority is of course allowed to take into account such circumstances in deciding whether to pursue a penalty. I understand that there may be other outstanding cases involving similar facts to those in these reviews. Prior to pursuing penalties, in these cases, I have no doubt that Wandsworth will take into account all of the representations they have received, as they are obliged by statute to do, and the mitigating circumstances relied upon.

G R Hickinbottom

16 July 1996