

### Decision

#### Background

1. On 02/07/16 the original Adjudicator allowed an appeal in relation to a PCN issued for the alleged contravention of being parked in a special enforcement area adjacent to a footway, cycle track or verge lowered to meet the level of the carriageway or where the carriageway has been raised. The PCN was issued at 11.27pm on 12/03/16 at Harrow Place.
2. The original Adjudicator allowed the appeal on the basis that there was a single yellow line across the area of the dropped footway which he considered to be misleading to the motorist as it suggested that parking was permitted outside of controlled hours.
3. The Enforcement Authority (EA) requested a personal review of the decision to allow the appeal. The hearing was conducted before me on 29/09/16. The EA was represented by Mr. McGregor and Mr. Walker. The appellant did not attend and was not represented. By letter dated 06/09/16, the appellant indicated that he would not attend as the EA had undertaken not to pursue the penalty against him and merely sought a declaration on review concerning the applicable law. At the outset of the hearing I obtained clarification from the representatives of the EA that this was the correct position and I proceeded on that basis.

#### The Facts

4. There is no dispute about the relevant facts. The only issue is whether the original Adjudicator's finding that the presence of a single yellow line next to the dropped footway (or in this case a raised carriageway) provided a valid ground of appeal.

#### The Law

5. It is settled law that there is no legal obligation to indicate a dropped kerb (or raised carriageway) with any sign or road marking. There is however a disagreement amongst Adjudicators as to the question of whether the presence of a single yellow line next to a dropped footway (or raised carriageway) provides a valid ground of appeal because the presence of a single yellow line may mislead a motorist and therefore be unfair.
6. The EA have quoted a multitude of previous decisions by Adjudicators that indicate that the presence of a single yellow line next to a dropped footway (or raised carriageway) does not provide a valid ground of appeal.
7. The appellant in written representations has referred to one decision of a previous Adjudicator dating back to 2011 which supports the position that a single yellow line next to a dropped footway (or raised carriageway) does provide a valid ground of appeal. The original Adjudicator in the matter before me did not refer to any previous decisions of fellow Adjudicators.
8. In its written representations (and as repeated at the hearing) the EA submitted that the majority of decisions articulated by Adjudicators supports the interpretation of the law that the presence of a single yellow line next to a dropped footway (or raised carriageway) does not provide a valid ground of appeal. The EA submits that there must be certainty in the law and that the interpretation favoured by the majority of Adjudicators should have been followed by the Adjudicator whose decision is the subject matter of the review before me.

#### The General Principles of Review

9. The general principles of review are that findings of fact and law are generally final. One Adjudicator will not overturn the findings of fact or law of another unless there are compelling reasons for doing so, such as where the findings are not compatible with the evidence before the original

Adjudicator or the law. The question is whether the original Adjudicator was entitled to come to the conclusions that he or she did and that they are reasonable when looked at by reference to the law and the facts.

10. Unless the original Adjudicator can be shown to have taken into account some immaterial matter or to have overlooked or misapprehended some material matter that undermines his or her decision, or that decision was perverse in the sense that no reasonable Adjudicator could have reached it, or it was plainly wrong as a matter of law about which there is no alternative view or interpretation, his/her decision is final and cannot be reviewed.

### Analysis

11. The EA has a duty to act fairly. Following *R -v- The Secretary of State for the Home Department ex parte Doody* [1994] 1 AC 531 at 560, per Lord Mustill: "Where an Act of Parliament confers an administrative power there is a presumption that it will be exercised in a manner which is fair in all the circumstances". An EA must therefore ensure that the layout of a road and all associated signage is such as to ensure that a reasonable motorist taking reasonable care is able to ascertain where he or she may park their vehicle and on what conditions.

12. I conclude that a reasonable motorist taking reasonable care would have realised that the place in question in the case before me constituted a raised carriageway or dropped kerb. This was entirely self-evident. Moreover, in my judgement, an EA is entitled to presume that a reasonable motorist taking reasonable care is aware of their obligations under the Highway Code. I conclude that a reasonable motorist taking reasonable care can be expected to be cognizant of Rule 243 of the Highway Code which states (as far as relevant) the following: "Rule 243. DO NOT stop or park: [inter alia]...where the kerb has been lowered to help wheelchair users and powered mobility vehicles." I am satisfied that it is obvious that this rule applies equally where the carriageway has been raised.

13. In addition, in identifying what can be expected of a reasonable motorist taking reasonable care, I conclude that an EA is entitled to take into account the ratio of the preponderance of the previous decisions of Adjudicators to the effect that the presence of a single yellow line next to a dropped footway (or raised carriageway) does not render the decision to pursue a PCN issued in such circumstances as unfair or unlawful. In particular I conclude that (bearing in mind the previous decisions of fellow Adjudicators, the contents of the Highway Code and applying general principles of fairness and proportionality) the presence of a single yellow line does not in the factual circumstances pertaining in the case before me provide a valid ground of appeal.

### Conclusion

14. The original Adjudicator in the matter before me fell into error by not considering the question of the fairness of the overall signage through the prism of the multiple factors set out above. Although there is no applicable doctrine of precedent in this Tribunal, none the less I conclude that his decision was per incuriam and therefore amenable to review. This is because (through no fault of his) he was not referred to the aforementioned previous decisions of fellow Adjudicators or to the applicable rule in the Highway code which would have together assisted him in coming to a valid decision concerning the fairness of the signage. I must therefore allow the review and respectfully reverse the decision of the original Adjudicator.

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