

Adjudicator's Reasons

By letter dated 1st February 2008, the Appellant made an application for costs in the sum of £176.80 following the appeal being allowed on 30th January 2008.

The Appellant says that the local authority were well aware of the flawed design of the junction (having ceased monitoring operations on 4th July 2007) at which the alleged contravention occurred, the inadequacy of the videotape evidence on which the local authority case rested which was pointed out to them by the Appellant in an email (a copy of which I have seen) dated 12th October .

The application was listed for hearing on the papers, and the local authority were issued with an invitation to respond to the application, which they have not done.

Having considered the evidence filed, and the arguments raised, I allow the application for costs. I do consider that the Appellant raised with the local authority the flawed nature of the junction and the evidence on which they relied, in good time for the local authority to consider the position and to avoid the hearing. The local authority failure to consider this on receipt of the Notice of Appeal or prior to the hearing, I consider to be wholly unreasonable. Particularly so in the light of the cessation of enforcement in mid 2007.

I am satisfied that this is a case in which I should make an order for costs, being aware that the Regulations provide that I shall not normally make an order for costs.

I therefore make an order for cost. I consider that the sum claimed fairly reflects the costs incurred by the Appellant, and which were directly caused by the local authority unreasonableness.

I therefore allow the application and direct that costs be paid by the local authority to the Appellant within 28 days.

Joanne Oxlade

Adjudicator appointed under Section 73(3) of the *Road Traffic Act 1991* acting in exercise of powers conferred by Paragraph 10(1) of Schedule 1 to the *London Local Authorities and Transport for London Act 2003*.

Register Kept Under Regulation 20 of the Road Traffic (Parking Adjudicators)(London) Regulations 1993, as amended

Case Reference: 2070453822
Appellant: Mr Jonathan Greatorex
Authority: Lambeth
VRM: A6JGX
PCN: LH30426221
Contravention Date: 15 May 2007
Contravention Time: 17:16
Contravention Location: Salters Hill
Penalty Amount: £100.00
Contravention: Failing to comply with a give way to oncoming vehicles sign
Decision Date: 30 Jan 2008
Adjudicator: Joanne Oxlade
Appeal Decision: Allowed
Direction: cancel the Penalty Charge Notice.
Reasons: The issues in the case are whether a defence or exemption arose.

The local authority case is that the Appellant's vehicle failed to comply with a give way to oncoming vehicles sign, and so a Penalty Charge Notice was issued by postal service.

The local authority rely on the contemporaneous videotape of the alleged contravention and photographic stills derived there from.

The Appellant made detailed submissions in the Notice of Appeal and supplemented them by oral submissions at the hearing which I detail under the following heading:

The Junction

The Appellant says that the signage is located at the bottom of a hill, within a 30 mph area, and a motorist approaches the sign with no advanced notice of the restriction ahead. The stopping time needed at 30mph, would carry the vehicle past the signage, and the driver would not be able to comply with the signage without slamming on his brakes.

The Appellant says that it is possible for the driver to commit himself to going through the junction, before it is apparent that there are oncoming vehicles, which may be affected by the decision to commit.

Evidence

The Appellant says that videotape and photographic evidence do not show the vehicle parallel with the signage, and so it is not possible to see what the state of the incoming traffic is, and so what the Appellant should have seen at the point that he passed the signage. The local authority are therefore unable to show that at the relevant time, the motorist has failed to comply with the signage. The local authority say that it is not always possible to have the photograph and vehicle in the same shot.

Further, the still photographs when compared with the videotape, amply illustrate the effect of "zoom" which is to distort the picture so that the vehicles at the junction appear to be together.

I adjourned the appeal, to consider whether or not to undertake a site visit, in view of the issues raised. However, in view of the findings made below, I do not consider that it is in the interests of justice to do so.

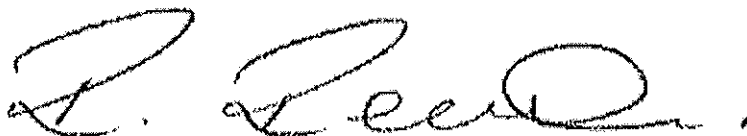
I am satisfied that the Appellant's arguments have considerable force. Firstly, it is crucial to the local authority case, so show that the vehicle has failed to comply with the sign at the point that the vehicle is parallel with the sign. The evidence adduced does not do so. The local authority are therefore unable to establish the drivers state of knowledge at that time.

Secondly, I do consider the arguments as to the inadequacy of the signage in the light of the layout of the junction, have considerable force.

I therefore allow the appeal.

I would also add that the Appellant has a fair point as to the distorting effect of the zoom function which results in the stills being produced.

I certify this to be a true copy of an entry in the register

A handwritten signature in black ink, appearing to read 'R. Reeve', with a flourish at the end.

Mr R Reeve Proper Officer