

# Adjudicator's Decision

XXXX XXXXXX

and

North Yorkshire County Council (with Scarborough)

**Penalty Charge Notice**

**YNXXXXXXXX**

**£50.00**

**Appeal allowed on the ground that the alleged contravention did not occur.**

**I direct the Council to cancel the Penalty Charge Notice and Notice to Owner.**

## Reasons

The PCN was issued on 6 December 2015 at 10:08 to vehicle XXXXXXX in East Terrace, Whitby for being parked in a disc parking place without clearly displaying a valid disc. Neither Mr XXXXXX nor the council has requested a face-to-face or telephone hearing of this appeal. This decision is therefore made without a hearing upon consideration of the written arguments from both parties together with review of the documents and photographs.

Mr XXXXXX does not deny that the vehicle was parked in the place shown in the photographs taken by the CEO and identified on the PCN, nor does he deny that the disc was unfortunately left face down. It is his case that the signage of the restrictions does not make clear the effects of the Traffic Regulation Order (TRO) that is in force. He says that the zone entry sign and the repeater sign beside the bay do not make clear that there is an alternative to use of a disc, namely the display of a residential parking permit (although he does not suggest that the vehicle displayed such a permit). He notes that the council has stated that the Department for Transport has permitted the use of the signage with a zone identifier and contends that the DFT has in this respect made a mistake because there is no reference to a zone identifier on the working drawing. He relies upon the decision of Adjudicator Mr Williams in case number YN05385F.

The council resist the appeal. They say that the vehicle was observed parked in a disc zone parking bay. The disc was displayed face down and so the CEO could not see the time set. That was the reason that the PCN was issued. They accept that photographic evidence of the zone entry signs was not provided to the adjudicator in the previous case but say that they consider that the relevant signs do meet the requirements of the regulations. They say that the regulations do permit zone entry or bay signs to include a symbol, logo, number letter or letters

or name identifying a parking zone or parking identification, but do not require, or even permit, such signage to mention the word "permits".

I have reviewed the documents, the photographs and the previous adjudicator's decision. It is clear from the plan at page 22 of the Council bundle book they consider this to be a controlled parking zone, as indeed a disc zone must be. The plan shows the locations where they say the disc zone entry signs were placed. The next following page is a working drawing showing the design of various proposed signs. It appears that this document will have been prepared when the scheme was in preparation. The photographs taken by the CEO include at page 25 a copy of the bay repeater sign. There is no photograph of a zone entry sign within the bundle or otherwise provided to me.

In his decision dated 17 November 2015 Adjudicator Mr Williams made the point in that case that the council had not included any evidence in the evidence bundle of the actual controlled parking zone entry signs erected in this area. He said "*No library photographs or other photographic evidence is produced to substantiate the... statement that*" there were zone entry signs at all vehicle entrances to the CPZ. Whilst I am provided with a plan identifying the locations of the signs, I am still not provided with a photograph of the type of signage finally used. The council cannot prove that restrictions within a CPZ are enforceable if they do not provide a photograph of at least an example of the CPZ sign actually in use. For that reason I find that they cannot prove the contravention in this case and the appeal will be allowed.

I should say also that it is apparent that in the previous appeal the council produced to the Adjudicator evidence of a specific DfT authorisation for the signage used. No such evidence has been provided to me in this appeal.

Notwithstanding my finding above I feel that I should make clear to the benefit of Mr **XXXXXX** that I cannot accept his general proposition that zone entry signs and repeaters may not have the name of the zone or a zone identifier. There is precise guidance that such may be included in the Department for Transport Traffic Signs Manual (TSM) chapter 3 at the foot of the left-hand column of page 96. The statutory authority for this may be found in item 39 to schedule 16 of the Traffic Signs Regulations and General Directions 2002 (TSRGD), which set out permitted variants to sign 663.1. Similarly I cannot accept his argument that the bay signage must specifically contain a reference to use by permit holders. The guidance to the contrary may be seen at paragraph 12.5 of chapter 3 of the TSM.

In summary therefore, if the council had provided photographic evidence of an example zone entry sign and I had been satisfied that it complied either with the TSRGD or a specific authorisation from the DfT, I should have felt obliged to dismiss this appeal: but in the absence of such evidence the appeal must be allowed. The council must cancel the PCN and Notice to Owner. There is nothing for Mr **XXXXXX** to pay in respect of this penalty charge.

**EB Solomons**  
**Adjudicator**

**27 March 2016**