

Adjudicator's Decision

Anthony Child
and
Medway Council

Penalty Charge Notice

MW99753340

£60.00

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 is dated 9 August 2012 and was issued by post in respect of a contravention on 5 August 2012 at 15:02 relating to vehicle LR55CNK in Globe Lane (north west arm) for being in a bus lane. The request to appeal was, in effect, submitted by Mr. Child in an e-mail dated 1 October 2012. He did not specify what type of hearing, if any, he requested and his appeal has been decided on the basis of the documents and written comments that he has made both to the Council and to this Tribunal. The Council has submitted a bundle of evidence and their written comments.

The council has provided a short extract of video which shows, without question, that Mr. Child's vehicle was driven through the bus lane at Globe Lane, north west arm. In his e-mail to the Council of 16 August 2012 it seems that he accepted the fact that the vehicle had driven through the bus lane although he says that he was following a satellite navigation system at the time and did not realise that he was in the bus lane. The council rejected his representations. Certainly, following any form of map, whether electronic or on paper, does not absolve the driver from the general requirement to observe and comply with the relevant instructions and restrictions indicated on road traffic signs. That reason for Mr. Child travelling through the bus lane cannot be accepted as a matter of law as sufficient to set aside the penalty charge.

The second issue arises whether the signage provided of this bus lane is sufficient for a reasonable, prudent and careful motorist to observe and understand the nature of the restrictions. The council's obligations arise under regulation 18 Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996 and are to provide signs which give "adequate information" of the relevant restriction. It is right to say that this particular bus lane has over the

last nine months or so given rise to a great many appeals, almost all of which have challenged the sufficiency of the signs. It is clear from the evidence that there are two ways that a vehicle may approach this bus lane, either coming down Waterfront Way through a different bus lane when the Globe Lane north-western arm bus lane will be straight ahead, or along Medway Street and turning to the left. I have previously concluded that for traffic travelling down Waterfront Way the advance warning signs of the Globe Lane north-western arm bus lane are inadequate because, simply, there are no advance warning signs and no road markings.

Traffic approaching Medway Street passes two advance warning signs which comply with the requirements of the Traffic Signs Regulations and General Directions 2002 which sets out the prescribed form of such signs. What the council has not used, however, is any road marking to warn of the approach of the Globe Lane bus lane or, alternatively, to give traffic a direction it must follow to avoid the bus lane. In reality, a vehicle which comes along Medway Street to the start of the bus lane must turn around and go back to avoid travelling in the bus lane. I have been satisfied in other appeals that there is, physically, sufficient space to do so, especially as there is a short spur of Military Road on the opposite side of the junction which can be used. Those considerations are, however, only appropriate where it is clear the motorist had observed the bus lane and was seeking to avoid contravening the restriction.

In this appeal, Mr. Child maintains that he did not observe the bus lane and did not realise that he was likely to be contravening the regulations. As he points out, he is not a local resident and cannot be assumed to be familiar with the road layout. Equally, he is not a person who is likely to have seen the advertising of this bus lane which the council undertook prior to its implementation or the local press reporting of concerns about the signs, which have been exhibited in other appeals. The signs which the council uses must have in contemplation drivers with the level of unfamiliarity that Mr. Child has when determining the signs to be used. Whilst the blue roundels shown on the video at the commencement of the bus lane (TSRGD diagram 953) are clearly displayed, the Traffic Signs Manual published by the Department for Transport recognises that without equivalent road markings, those signs may not by themselves give adequate information (see Chapter 5, paragraph 1.6 *et seq*).

Chapter 5, paragraph 17.18 gives advice on the use of road markings for bus only streets, such as Globe Lane (north west arm), as follows:

17.18 Where streets are reserved for the use of buses only, or buses and trams, or buses and cycles, the entry should be marked with diagram 1048.3 BUS ONLY, 1048.2 TRAM & BUS ONLY or 1048.4 BUS AND (cycle symbol) ONLY as appropriate.

In chapter 3, paragraph 1.5 the TSM states:

“should” indicates a course of action that is strongly recommended and represents good practice.

On the approach to this bus lane the council has opted not to use any road markings other than a pedestrian crossing immediately after the restriction signs, although that crossing does not have any zigzag lines on the approaches. Although the video shows that there were no pedestrians crossing at the time when Mr. Child approached, there can be no doubt that the positioning of this crossing so close to the commencement of the bus lane when there have been no warning road markings on that approach is likely in certain circumstances to cause confusion to the motorist, particularly in assessing the relevant priorities.

I take into consideration the decision of the High Court in *R v The Bus Lane Adjudicator and another, ex parte Oxfordshire County Council* [2010] EWHC 894 (Admin) which decided that where the local authority had displayed the signs prescribed in TSRGD, had complied with the directions in TSRGD, had acted in accordance with any authorisations given by the Secretary of State for Transport, had complied, so far as possible, with the guidance given by the Department for Transport in the Traffic Signs Manual, and provided the signs have not been placed in positions where they may be obscured by vegetation or other street furniture and are clearly visible, there must be strong reasons for concluding that those signs failed to comply with the council's duty under regulation 18.

I have considered very carefully the available evidence in this appeal and I have previously voiced my concerns directly to the Council in telephone hearings of other appeals. There is no reason in this appeal to doubt the credibility of Mr. Child's explanations and I accept, in particular, his lack of familiarity with the area. I have reached the conclusion that in the absence of any form of road markings either indicating the proximity of the bus lane or directing traffic to take another route, the use of diagram 953 alone in this location without any such additional road marking does not comply with the guidance in the TSM, does not give adequate information to the motorist and does not meet the council's regulation 18 duty.

Accordingly, I find that this contravention did not occur and that this penalty charge notice does not have to be paid. This appeal is allowed.

C J E Nicholls
Adjudicator

23 November 2012