

## Miss [REDACTED] F [REDACTED] - v - South Tyneside Council

### Appeal Details

Case number:	TY00014-2211	Appeal Raised:	14/11/2022
Vehicle:	[REDACTED]	Hearing:	There was no hearing
Representative:	N/A	Decision:	07/12/2022
Number of PCNs:	1	Adjudicator:	George Lubega

Decision - PCN TY09852108

**Miss [REDACTED] F [REDACTED], you have lost this appeal.**

You need to pay the penalty charge to South Tyneside Council

Penalty Charge Amount: £70.00

Issued: 08/08/2022

Contravention: 28/07/2022 15:07

Camera 4 - Edinburgh Rd Near The  
Junction To A194

34 - Being in a bus lane

Please see the next page for the Adjudicator's Reasons

## Adjudicator's Reasons

1. Miss F [REDACTED] appeals because she says that she was following her sat nav, does not recognise the term bus gate, which she assumed did not apply to her, and that the signage and carriageway markings for the bus gate were inadequate.
2. This location has produced a number of appeals, two of which have been decided by me. In TY00005-2203 I recorded as follows:

I have considered previous adjudication decisions by this tribunal and it is fair to say that appeals have been both dismissed and allowed. One key recent decision, following argument from the Council's senior engineer in a telephone hearing, is TY00013-2009. For convenience I have reproduced the reasoning of Adjudicator Mr Solomons in that appeal below:

- “1. Mr R requested a telephone hearing for this appeal and this took place this morning. South Tyneside Council were represented by Mr [REDACTED] B [REDACTED], Senior Engineer.
2. It was not in dispute that the vehicle, a car, had been driven at the time, date and location identified on the penalty charge notice (PCN). The council said that in doing so it had been driven in contravention of a bus lane restriction.
3. Mr R appealed on the basis that the signage of the restriction was unsatisfactory. He said that he was unfamiliar with the term “Bus Gate” as written on the road surface marking. He was in an unfamiliar area and had not, so far as he was aware, driven in a bus lane. He relied on newspaper reports indicating a large number of PCNs being issued at this site.
4. On behalf of the council Mr B [REDACTED] said that the signs beside the road and the road surface markings were consistent with the requirements of national Regulations and there was advance signage in addition to make clear that “other traffic” should turn into Sterling Avenue, prior to the commencement of the restricted area of road. He said that the number of PCNs being issued had reduced.
5. I asked him why there were no interrupted line road surface markings drawing traffic into Sterling Avenue as recommended in figure 9-26 of Chapter 3 of the Department for Transport's Traffic Signs Manual (TSM). He responded that the traffic flow from the A194 into Edinburgh road in the opposite direction was such that this might lead to traffic backing up onto the main road, which might be unsafe. He was unable to provide traffic flow figures at the hearing.
6. I have reviewed the documents and photographs and have seen a significant number of other appeals relating to signage at this location.
7. Edinburgh road used to be the main exit from a housing estate onto the A194. A short distance prior to the main road junction the council has installed a bus gate. A bus gate is a short section of bus only street and falls within the legal definition of a bus lane. Whilst I accept that Mr R may be unfamiliar with the term Bus Gate, this road surface marking is required by the Regulations and so the council are not to be criticised for using it. On the other hand, the roadside sign meaning local buses and cycles only is included in the Highway Code, and has been for many years and so drivers may reasonably be taken to understand them.
8. Where a bus gate is located midway along a straight section of road, and not at a junction, it is of particular importance that signage is clear to indicate to drivers that they should not simply continue along the same section of road. That may be a particular importance where the road leads to a main junction.
9. The TSM recommends a number of means to assist drivers to realise there is a Bus Gate restriction ahead. There must be advance signage, and I recognise that the signage used is consistent with the type recommended. At paragraph 9.7.3 it is recommended “that

*part of the carriageway reserved for buses should be separated from the opposing flow traffic by a traffic island...". No such traffic island has been provided.*

10. The paragraph continues *"If a bus gate is placed on a road that was previously a signed route or was used by significant through traffic, consideration should be given to providing or changing directional signing to guide prohibited traffic to use the preferred alternative route...". No such directional signing has been provided, notwithstanding this was a main exit from the estate leading to a major road.*
11. Figure 9-26 recommends the use of interrupted lines to draw traffic into the "other traffic" route. None have been provided. It may well be that the council are justified in their view that this would be undesirable if there is substantial traffic flow from the A194 in the opposite direction, but firstly traffic flow figures have not been provided to me and secondly if that is right then traffic flow in the opposite direction is likely to be substantial and the need for additional signing making clear that traffic should turn into Sterling Avenue is enhanced.
12. Overall, whilst it is not for me to dictate to the council what further measures should be taken, I am not satisfied that the signage at this location meets the required standard of adequacy and for that reason this appeal is allowed.

The Council relied on the same map based photographic evidence in this appeal as it did in TY00013-2009. It therefore does not appear that any changes have been made to the signage and carriageway markings in place since that appeal. I am not bound to follow the decision of another adjudicator in a previous appeal. However, I find Adjudicator Mr Solomon's reasoning to be persuasive, particularly as he had the benefit of oral submissions and argument from the Council's senior engineer when making his decision. I would add that, whilst the term "bus gate" cannot be criticised, the co-location of a "bus gate" carriageway marking and the signage for the bus gate with the markings for a bus stop (evidence tab 1) could cause confusion.

For these reasons I am not satisfied that a motorist would be given adequate information of the restriction. That means that there was no contravention.

3. See also TY00006-2204.
4. The Council's evidence in this appeal is substantially the same as in the previous appeals I have mentioned, with the addition of traffic flow figures (evidence tab 10). However, in previous appeals I had made the point that I did not have the benefit of submissions from the Council. The Council now makes extensive written submissions both to address Miss F [REDACTED]'s comments about the term bus gate and to address the points which had arisen in the previous appeals (evidence tab 11). The key points made by the Council are that (i) it is for the Council to decide on the signing regime, with TSM in particular acting only as guidance; and (ii) it would not be safe or practicable to adopt the suggestions (a) of a traffic island or (b) a changed priority with the interrupted lines on the carriageway drawing traffic into Stirling Avenue (noting that the Council says that it considered the example given in TSM figure 9-26 but that the road layout at this location is different to that example).
5. First, I agree with the Council's position that lack of familiarity with the term bus gate is not a defence. The term is in TSRGD and guidance and applies to a short length of bus lane or bus only road. It is also no defence for a motorist to follow their sat nav into a restriction. The onus is on the motorist to follow signage and carriageway markings in place.
6. In relation to the signage the question for an adjudicator is whether, viewing the situation as a whole, the signage gives adequate information of the restriction to a motorist. Guidance is helpful but (as the Council effectively says) is not determinative. Whilst Adjudicator Mr Solomons made reference to traffic flow figures, they may explain the reason why a Council has chosen a particular road layout, but that does not mean that the signage is adequate.
7. However, it is not for an adjudicator to denude a restriction of its effect in circumstances where the Council has considered guidance and concluded that there are reasons why the preferred approach would not work. Whilst the traffic figures provided by the Council do not provide a full picture because

they do not indicate how much traffic would have to wait at an altered junction between Edinburgh Road and Stirling Avenue (which presumably would depend on the volume of traffic heading into or out of Stirling Avenue) I accept the broad thrust of the Council's submission that it had concluded that the alternative road layout would introduce safety concerns at that junction and on the A194. The Council also makes the point that traffic flow improvements would be reduced with the alternative layout. It appears therefore that the road layout is the most sensible available, and there are legitimate reasons for not following the preferred example in TSM guidance.

8. The Council makes the point that the width of the carriageway is not sufficient to accommodate a traffic island at the bus gate.
9. Having explained the Council's position in response to the points made by Adjudicator Mr Solomons at paragraphs 9 - 11 of his decision quoted above, it seems to me a simple exercise of determining whether the signage in place would give adequate information, recognising that it is not perfect. There is (as the Council says) two sets of advanced warning signage, with the signage closest to the bus gate including directional information for other traffic. There are bus gate and camera warning signs at the bus gate itself and the carriageway has a differentiated carriageway colour and "bus gate" marking. The Council's photographs show these to be clearly visible and, viewing the situation as a whole, I am satisfied that they would give adequate information, notwithstanding the objections which can be taken to them.
10. It follows that by using the bus gate Miss F [REDACTED] contravened the bus gate restriction and the Council was entitled to issue and serve the PCN. I dismiss Miss F [REDACTED]'s appeal and she must now pay the penalty charge to the Council.

George Lubega

Adjudicator

07/12/2022