

Mr [REDACTED] H [REDACTED] - v - Torbay Council

Appeal Details

Case number:	TB00035-2304	Appeal Raised:	03/04/2023
Vehicle:	[REDACTED]	Hearing:	The Appellant did not attend
Representative:	N/A	Decision:	16/05/2023
Number of PCNs:	1	Adjudicator:	James Richardson

Decision - PCN TB51661773

Mr [REDACTED] H [REDACTED], you have lost this appeal.

You need to pay the penalty charge to Torbay Council.

Penalty Charge Amount: £70.00

Issued: 22/08/2022

Contravention: 22/08/2022 16:31

Garfield Road

2 - Parked or loading / unloading in a restricted street where waiting and loading / unloading restrictions are in force

Please see the next page for the Adjudicator's Reasons

Adjudicator's Reasons

1. Mr H [REDACTED] was unavailable for his telephone hearing at 2:30pm on 12th May 2023 when called by the Tribunal. He has not responded to the voicemail message left. In his absence I have deemed it appropriate to proceed and to deliver a written determination based on the evidence from each party. The Council did not take part.
2. On 22nd August 2022 at 16:31, Mr H [REDACTED]'s motor vehicle was parked on Garfield Road.
3. The front of the vehicle was parked within a marked bay. The rear of the vehicle, approximately halfway along its length, was parked outside the bay and was on a double yellow line.
4. The double yellow line is the required form of signing for a no waiting at any time restriction. There is in addition to the waiting prohibition imposed by the Traffic Order a restriction on loading at any time. The required signing is a double yellow kerb mark.
5. Mr H [REDACTED] says he parked to unload outside his home. He says the kerb markings are not clear.
6. I have studied the photographs provided by the CEO. While the markings are worn and weathered it can nonetheless be seen. It is not required that the marking remain in its original condition. The test is whether on making reasonable enquiry a motorist could determine there was a restriction and to where it applied.
7. In addition to the kerb marking which I find was adequately in place and there to be seen, there was beside the vehicle an upright sign indicating the loading ban. While the sign is no longer legally required, taken together I find a motorist could not be in any reasonable doubt about the restrictions in place and upon which the motor car was parked.
8. While a Blue Badge will provide a concession to a waiting restriction it does not enable parking where a loading ban is in operation.
9. Because a loading ban was in operation, Mr H [REDACTED] was not permitted to park where and as he did for the purpose of unloading. I find a contravention of the restrictions occurred.
10. Were it the case that the circumstances relating to parking amounted to mitigation, the appeal could not be allowed for that reason, because mitigation is not one of the statutory grounds of challenge listed by the 2022 Regulations to a parking penalty. Mitigation was something for the Council to consider when exercising discretion based on the particular facts of the case whether it is necessary to enforce the penalty charge. It is not a decision that I have the power to make.
11. This appeal has been lost.

James Richardson
Adjudicator
16/05/2023