

Miss [REDACTED] H [REDACTED] - v - Swale Borough Council

Appeal Details

Case number:	SW00010-2307	Appeal Raised:	11/07/2023
Vehicle:	[REDACTED]	Hearing:	There was no hearing
Representative:	N/A	Decision:	23/08/2023
Number of PCNs:	1	Adjudicator:	Rhys Williams

Decision - PCN SW01415867

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

You need to pay the penalty charge to Swale Borough Council.

Penalty Charge Amount: £70.00

Issued: 18/02/2023

Contravention: 18/02/2023 16:54

Grafton Road Cpk

87 - Parked in a designated disabled person's parking place without displaying a valid disabled person's badge in the prescribed manner

Please see the next page for the Adjudicator's Reasons

Adjudicator's Reasons

1. This matter is determined without a hearing as neither party has requested that a hearing be held. I have considered the evidence that has been presented and the written representations that have been made in this matter.
2. The appeal is dismissed.
3. There is no dispute that Miss H [REDACTED]'s vehicle was parked in a space reserved for the holders of a disabled badge only at 16.54 on 18th February 2023. The position of the vehicle is shown in the photographs taken by the Civil Enforcement Officer. Miss H [REDACTED] does not possess a blue badge and one was not on display on this date. The CEO issued a penalty charge notice to the vehicle.
4. Miss H [REDACTED] explains that on the day in question she entered the car park and had a problem with her eye. It started to sting and was causing her discomfort. It made her have tears in her eye. She needed to wash her eye in order to alleviate the difficulties she was having. She parked in the position shown. She states that the space was a large one which could accommodate two vehicles. She also states that the sign indicating the disabled bay was far away from her vehicle.
5. I have no hesitation in accepting from Miss H [REDACTED] that she was having difficulty with her eye at the time that she entered the car park. However, she was still able to locate a space and to park her vehicle neatly and correctly within the confines of the space. Therefore, although the need to address her eye was urgent, the situation cannot be described as an emergency. Although low down to the left, on the passenger side of the vehicle, the sign indicating that the bay is reserved for blue badge holders is unobscured, in good condition and conveys the necessary information. Adequate information of the restriction was provided.
6. The matters raised by Miss H [REDACTED] do not amount to a defence to the contravention. They provide mitigation as to why the contravention occurred; they do not negate the contravention itself. Where mitigation for a contravention is advanced by a motorist it is the Council's duty to consider the representations made and then provide to the Appellant a notice indicating whether they accept the representations or not. An Adjudicator does not have the power to interfere with a Council's lawful exercise of discretion in rejecting representations. This is because Parliament has indicated that the discretion to accept or reject mitigation lies solely with the Council.
7. I must be satisfied that the correct process has been followed and that the Council have considered the representations made to them. In Miss H [REDACTED]'s matter I am satisfied that the Council have complied with the duties imposed upon them by the Regulations. They have considered the representations made and in their discretion chosen not to cancel the PCN. That is a lawful decision that they are entitled to make. It is not a decision with which I am able to interfere.
8. For the reasons stated the appeal is dismissed.

Adjudicator's Decision

9. Miss H [REDACTED] is liable to make a payment to the Council within 28 days of receiving this written decision.

Rhys Williams

Adjudicator

23/08/2023