

Adjudicator's Decision

Nigel Rhodes
and
York City Council

Penalty Charge Notice YR10031451

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

I direct the Council to cancel the Penalty Charge Notice.

Reasons

The PCN is dated 28 August 2013 and was issued by post in respect of a contravention on 21 August 2013 at 09:22 relating to vehicle T890 ONV in Coppergate for being in a bus lane.

1. Mr Rhodes attended a personal hearing of this appeal in York at which the Council was not represented. This is one of a large number of appeals relating to the Coppergate bus street although Mr Rhodes was the only appellant who elected to have a hearing. Because of the large number of appeals which have arisen in relation to this restriction and the one Lendal Bridge I conducted a site visit of both locations. Mr Rhodes did not, because of work commitments, have time to attend the site visit but I was accompanied by two Council representatives.
2. Following that visit I permitted the Council to submit further written evidence dealing with the questions I had put to them about the signing.
3. The two restrictions have resulted in the issue of a substantial number of PCNs. I had requested information from the Council as to the exact number issued but this has not been received. From anecdotal evidence in the appeals which are to be decided without a hearing the number will run into many hundreds and the early newspaper reports suggested that a thousand PCNs a week were being issued immediately following the commencement of camera enforcement.
4. I am aware from the correspondence in all the appeals that the two restrictions have given rise to considerable public and media interest in the York area so that I consider it appropriate to issue a consolidated decision dealing with the generic issues common to both restrictions and the particular issues about the signing at each of them.
5. I am aware that there is always speculation in this type of case that the outcome of any particular appeal could and should, if allowed, result in a

repayment of the penalty charges collected by the Council to date. However I must point out to all parties that my role as an Adjudicator is only to consider whether a penalty charge is payable by any particular Appellant. That decision must be made on the basis of the grounds of challenge which are set out in Regulation 9 of the Bus Lane Contraventions (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2005 [“the 2005 Regulations”]. Essentially these are limited to a decision as to whether a contravention occurred, whether any appellant was the owner or hirer of a vehicle who was responsible to pay any penalty charge which was due and whether the amount of the penalty charge exceeded that which was applicable in the circumstances of the case.

6. The question of whether the contravention has occurred does include consideration of the signing at the location to see if it was adequate so as to bring the terms and the extent of the restriction to the notice of the approaching driver. The Council has a duty under the provisions of Regulation 18 of the Local Authorities Traffic Orders Regulations 1996 to provide “adequate” signing which properly reflects the terms of the relevant Traffic Order. It is the issue of signing which is the central theme in nearly all the appeals which I have to consider.
7. The dictionary definition of “adequate” includes reference to “enough or satisfactory for a particular purpose”. That in my view represents a relatively low threshold but in relation to signing for this type of restriction the test will inevitably be different depending on the circumstances and road layout at the particular location. One type of sign or combination of signing may be adequate at one location but not at another.
8. The use by the Council of signs will be lawful if they are prescribed in the Traffic Signs Regulations and General Directions 2002 (Schedules 5 and 6) or if they have been approved by the Department for Transport on application by the Council. However the fact that the DfT may have approved the use of a non-prescribed sign does not prevent a challenge based on its location or how visible it is to the approaching driver.
9. The DfT has given guidance to all councils about the use of bus lane signing in Part 3 of the Traffic Signs Manual [TSM] last revised in 2008. Chapter 15 of the guidance includes diagrams for the layout of standard bus restrictions including of relevance in these appeals, a bus only street. The guidance is based on the signs in the 2002 Regulations. Both the restrictions which I am considering are streets from which general traffic is excluded with a large number of exceptions which include buses and local buses.
10. The guidance in the TSM does not have the force of statutory regulation but Paragraph 1.1 in Chapter 3 states:

“The Traffic Signs Manual is intended to give advice to traffic authorities and their agents on the correct use of signs and road markings. Mandatory requirements are set out in the current version of the Traffic Signs

Regulations and General Directions. Nothing in the manual an override these..... It is for Traffic Authorities to determine what signing is necessary to meet those duties although failure to follow the manual's guidance without good reason might well lead to enforcement difficulties. In particular Adjudicators might consider such failure to be evidence that the signing was unclear. Traffic Authorities should always remember that the purpose of regulatory signs is to ensure that drivers clearly understand what restrictions or prohibitions are in force".

11. The DfT has also given guidance about the enforcement process in the document "Provisional Guidance on Bus Lane Enforcement in England outside London". Despite the title the guidance has not been replaced and was last revised in February 2008. The guidance does not have the force of statute but clearly it is expected that it will be considered and observed unless there is a good reason for not doing so since it is intended to promote a degree of consistency.
12. The procedure for challenging a PCN under the 2005 Regulations is designed to be straightforward and proportionate to the modest amount of the civil penalty charge in issue. It is therefore not surprising that there have been few cases where the High Court has been asked to make a more definitive ruling but of particular relevance to the issues in this case is the decision by Mr Justice Beatson in *The Queen on the application of Oxfordshire County Council v. The Bus Lane Adjudicator* [2010] EWHC 894 (Admin).
13. This judgment includes the following:

"The Defendant's submission that the fact that signs are described as authorised does not mean that they are sufficient for securing adequate information as to the effect of an order is made available to road users is clearly correct. If the signs do not in fact provide adequate information no offence is committed..... Where signs have not been placed in positions where they cannot be seen or easily seen, are not obscured by vegetation or other street furniture and are clearly visible and comply with departmental guidance there must be strong reasons for concluding that they do not provide adequate information"

The judgment also places emphasis on the importance of the guidance in the TSM.

14. One issue which arises in this type of appeal is that of multiple PCNs relating to a single vehicle over a short period of time. Typically a driver who regularly uses the same route and in error does not understand the terms of the restriction will receive more than one PCN for alleged contraventions on consecutive days, or even separated by a short period of time on the same day.
15. The very nature of camera enforcement means that there will be a delay in issuing the PCN, usually between 14-21 days. In most cases this will mean

that the driver is not served with the first PCN before the subsequent contraventions have occurred and so does not have the opportunity of realising the error before it is repeated. If a PCN is issued by a Civil Enforcement Officer or a Fixed Penalty Notice by a Police Officer the driver will immediately understand what has happened and have the opportunity of avoiding repeated contraventions. A recipient of a PCN in the post does not have that opportunity and so if that situation arises my recommendation to the Council is that where a number of PCNs have been issued before the driver had been served with the first in time the subsequent PCNs should be withdrawn so that enforcement only relates to the first contravention. My recommendation is also that the Council does not seek to enforce more than one PCN arising out of contraventions on the same day within a short period of time since this can result in a penalty charge which is disproportionate to the error made by a driver.

16. With regard to the enforcement process generally I would draw the Council's attention to paragraph 4.12 in the Bus Lane Guidance which states:

"Authorities may also wish to consider whether in the interests of good public relations a warning letter rather than a PCN should be issued the first time that a vehicle is detected contravening bus lane regulations irrespective of when civil enforcement was introduced".

17. I understand the Council did publicise the introduction of the scheme and at one stage may have issued warnings when enforcement began. I did not, however, consider it appropriate to continue to issue individual warnings for a first contravention. Compliance with the guidance is a matter for the Council but the DfT was clearly sending a message that the purpose of enforcement is to improve traffic flow and particularly the need to retain public support, in part through flexible enforcement. However because the Guidance is not statutory I cannot allow an appeal on the basis of any failure to comply with it and it is to be noted that the 2005 Regulations do not include the concept of "*procedural impropriety*" on the part of the Council which is only included in the Regulations relating to parking enforcement.
18. I have also considered very carefully whether I should take into account an apparent failure by the Council to implement the guidance on the location of the road side cameras. The images provided by the cameras at both locations only show a vehicle once it has passed the beginning of the restriction. The picture is therefore of the vehicle in what appears to be an entirely unrestricted city centre street and it is only by referring to the additional photographs provided by the Council in its evidence once an appeal has been made that the recipient of the PCN can understand the contravention, particularly if visiting the city. The Council has adopted the good practice of putting photographs onto the PCN so that the recipient will have some idea of what has happened but the images do not assist in a general understanding or the decision as to whether the penalty charge should be paid within the discount period. It is only when the recipient

requests further information or makes an appeal that additional photographs will be provided.

19. The Code of Practice issued by the Home Office in June 2013 includes:
 - "5.1.1 *the camera shall have an angle of view sufficient to ensure that the offending vehicle is clearly identified in relation to the measuring zone and other vehicles that may be nearby and to include all possible extenuating circumstances that may cause a vehicle to be in the bus lane*".
20. The Bus Lanes (Approved Devices) (England) Order 2005 states at paragraph 2(c) that the camera should be capable of producing:
 - "(ii) *a wide angle image of the carriageway such as will enable information to be provided about the circumstances which may have caused the vehicle to be in the bus lane or the selected area*"
21. Whilst I accept that it is not always possible to site cameras to show vehicles passing through the beginning of a restriction it is necessary, before the PCN is issued, for a suitable qualified council officer to consider the CCTV film and make a decision as to whether the contravention has occurred. Any decision based on the photographs of these locations could not take into account the prevailing traffic conditions at the start of the restriction and whether or not on any particular occasion a driver was forced or directed to drive into the restriction.
22. However because I recognise that the Guidance does not have statutory force and the lack of clear information provided by the camera is essentially an evidential issue so that the Council may not be able to contradict representations made about the circumstances in any particular case, I have not decided any of the appeals on the basis of poor position of the cameras.
23. The Council says that the Guidance is a matter of interpretation and that in its opinion the camera positions cannot physically adhere to it in the specific circumstances of either location. However the fact remains that the choice of camera positions means that the recipient of the PCN will not have the information about the location of the start of the restriction or the relevant signing.

The Enforcement Process

24. I do not accept the suggestion of some appellants that the Council has decided to enforce these restrictions with cameras as a source of additional revenue. Clearly the local police would not have the resources to regularly enforce the restrictions and Parliament has given Councils the power to undertake Civil Enforcement under the Transport Act 2000.
25. It is likely that when a new traffic scheme is introduced that there will initially be a substantial number of contraventions whilst drivers adapt to the

new regime and become more familiar with traffic routes avoiding the restrictions. There should be a reduction in the number of PCNs issued as time passes and if this does not happen the Council might be expected to undertake a review in order to improve compliance, recognising in fact that the information given to drivers may not be adequate. This is obviously particularly relevant in a city such as York which attracts large numbers of visitors throughout the year. I am aware from the photographs and the Council's submissions that after the enforcement process began it did put in place additional signing and I will consider the relevance of these changes at each of the locations later in this decision. I will of course consider each appeal on the basis of the signing as it appeared to be at the time of the alleged contravention and as shown in the photographs which have been provided in each case.

26. One aspect of the Council's enforcement process which is particularly concerning is the way in which, because of available resources, it has considered the representations received after the issue of the PCN and the appeals made to the Tribunal.
27. The Council has stated that although the appeals process is an essential element of the operation of the scheme and that it is important for there to be the opportunity to challenge any PCNs issued it does not believe that this process has any relevance to the "deterrent" effect of the scheme or its ability to maximise compliance with the restrictions. Therefore it does not consider it essential that every case put before the TPT is defended and that providing sufficient staffing to ensure that appeals can be contested is not a good use of the Council's resources.
28. It is stated that:

"The Council operates an ad hoc system whereby appeals to the TPT are not contested when sufficient resource to deal with them is not available. This is determined simply on a workload basis and when more TPT cases require attention than the available staff can deal with a batch of them will be returned as not contested.

As it was always likely to be the case that more appeals would be received than could be resourced consideration was given to formal mechanisms to determine which to contest and which to not contest. It was concluded that any such mechanism would be arbitrary to some extent and unless extremely complex, open to accusations of bias or unfairness. Therefore the system we operate whereby batches of appeals are not contested randomly based on workload commitments was considered to be the fairest, most understandable and least corruptible system possible".

29. However, whatever the practicalities, it is unacceptable that the Council commenced the bus street scheme in the knowledge that sufficient resources to deal with challenges and appeals would not be available despite

the statutory obligation to consider each of the representations fairly and based on the general principles of public law.

30. The process in effect introduces a "lottery" where an important criteria for deciding whether a penalty charge should be enforced is the level of available staffing. This inevitably means that a recipient of a PCN who advances mitigating circumstances or indeed a statutory ground of challenge may well not have those representations considered properly at the first stage of the process. A Notice of Rejection would then be issued and the individual would have to decide whether to pay the penalty charge but without the knowledge that if an appeal was pursued to the Tribunal there would be a significant chance that the case would not be contested depending on the staffing levels available to the Council at the time. This in my judgement does not represent a fair way of dealing with challenges and cannot be properly considered as a process which is sufficiently compliant either with the principles of public law, the duty in the Regulations or the recommendations set out in Chapter 7 of the Guidance on Bus Lane Enforcement issued by the Department for Transport in 2008.

Signing

31. At both locations the Council has used a sign in the form of diagram 619 in Schedule 2 of the 2002 Regulations (a motorcycle and car symbol inside a red circle) which is to be used where "*motor vehicles prohibited*".
32. This sign is used with a variation of diagram 620 (an exception plate) which has, as I will discuss further, been approved by the DfT.
33. At Lendal Bridge the original exception plate stated:
"Except local buses and taxis 10.30 am – 5.00 pm".
34. In January 2014 the plate was changed so that it read:
"10.30 am – 5.00 pm except local buses and taxis".

The later sign was considered to be closer to the form of diagram 620.

35. At Coppergate the approved variation was:
"Except local buses and taxis 7.00 am – 7.00 pm and for loading 10.00 am – 4.00 pm".
36. The decision to use the 619 signs is said to have been taken with Paragraph 15.29 in the TSM in mind. This states:
"Where access to premises is required for other vehicles or where the bus only restriction does not apply at all times a sign to diagram 619 (No Motor Vehicles) with an exception plate to diagram 620 should be used".

37. The power for the Council to issue PCNs based on camera evidence is derived from Regulation 3(2) of the 2005 Regulations:
- "A penalty charge may be imposed only on the basis of a record produced by an approved device".*
38. Other moving traffic contraventions including a contravention of the 619 sign remain enforceable only by a Police Officer issuing a Fixed Penalty Notice. That is because Part 4 in Schedule 7 of the Traffic Management Act 2004 (TMA) has not been introduced.
39. The question then is whether the Council has correctly established a bus lane or street at either location so that camera enforcement is permissible.
40. The judgment in the Oxford case was that because of the guidance in the TSM the use of the 619 sign did create a bus lane.
41. However the situation in Oxford High Street might be considered to be rather different to that at either of the locations which I am now considering. The exception plate in the Oxford case stated *"7.30 am – 6.00 pm except local buses, taxis and licensed private hire"* which are all reasonably standard and well understood exceptions to a bus restriction. The relevant Oxford Traffic Order extended the exception to emergency vehicles, public utility vehicles and security vans.
42. The York (Coppergate) (Local Bus Priority) Traffic Order 2013 provides at Article 3:
- "(i) a person shall not cause or permit a vehicle to proceed between 7.00 am and 7.00 pm on any day in a road designated a local bus lane in column 1 of the second schedule unless that vehicle*
- (a) comes within an exemption from the designation of which is set out in column 2 against that road; or*
- (b) displays a permit".*
43. There are 14 exemptions set out in the Schedule including between the hours of 10.00 am and 4.00 pm vehicles being used in connection with the delivery or collection of goods to or from premises or where necessary for the purposes of horticulture or silviculture on or adjacent to the road. Permits are issued to persons undertaking operating a bus as a work person carrier.
44. The York (Station Avenue/Lendal Bridge/Museum Street) (Local Bus Priority) (Experimental) Traffic Order 2013, in force from 27.08.2013 to 26.02.2015, includes a total of 21 exemptions which include vehicles being used for access to premises adjacent to the restriction and those displaying a valid disabled person's badge which is used in connection with the carriage of the disabled person to or from premises on or adjacent to the road.

45. In my judgement notwithstanding the designation in the Traffic Order neither Coppergate nor Lendal Bridge can sensibly be described as a bus lane, street or gate but rather the roads are part of a general traffic scheme from which non-exempt vehicles are restricted at certain times and where buses are just one of the excepted categories or classes of vehicle.
46. Clearly the Council has power to impose those restrictions but because Schedule 7 of the TMA has not been fully implemented civil enforcement does not apply and there is no power to issue a PCN.
47. I am reinforced in this view by the response from the DfT to the Council's application for approval of the exception plates.
48. This was:

"We have considered legal precedents (particularly Oxford) and design issues bearing in mind this is a sensitive location and conclude:

This is not a bus lane scheme but a prohibition of motor vehicles so you need to remove the top panel "Coppergate Bus Lane" from the four advance signs"
49. The DfT went on to say that

"The plate beneath the entry sign to diagram 619 is hard to design and if normal rules are followed it ends up huge. We have therefore taken on board the sensitivity of the site and would exceptionally authorise the plate attached"
50. Therefore the Council is authorised to use the exception plate in connection with a traffic scheme for the prohibition of motor vehicles and not for a bus gate/street. The real nature of the scheme is emphasised by the Council's decision to use the carriageway marking "Restricted Access". As can be seen in some of the photographs this was not originally part of the signing but was added later because it was thought that it would improve drivers' understanding.
51. In my judgement it is likely to have the opposite effect and certainly does not promote understanding of a bus restriction.
52. The point of all the guidance in the TSM is that the terms of the restriction should be clear but at both locations the driver cannot know that it is considered to be a bus street or of the wide exceptions included in the TROs but not referred to on the signs.
53. The fact that the DfT has authorised the use of a plate which is not prescribed in the 2002 Regulations is not an endorsement either of the traffic scheme as a whole or that the use of the sign at the particular location is sufficiently clear. The decision was taken because of all the information to be included on the sign to permit use of a smaller font but

this in my judgement was unwise given the location at a busy junction and the need it to be understood from a moving vehicle.

54. The exception plate for the Lendal Bridge restriction is more compliant with diagram 954.3 in the 2002 Regulations because the restriction does not apply for two distinct time periods. Nevertheless the comments by the DfT in relation to Coppergate are relevant because of the large number of excepted vehicles. I find that neither location can properly be described as a bus lane or street with the result that PCNs should not have been issued on the basis of evidence from the roadside cameras.

The Coppergate Signing

55. A prohibition on vehicles using the street at certain times of the day had been in force since the 1960s although previously camera enforcement had not been used.
56. However it is a common theme raised in many of the appeals that the times of the restriction had been altered by the 2013 TRO. The original times were 8.00 am to 7.00 pm so that the Order extended the operation of the restriction by one hour in the morning. Whilst I accept that the Council had advertised the changes in the local press that cannot replace the need for signing which is sufficiently clear, recognising the important change that had been made.
57. The exception plate used at Coppergate is complicated because of the amount of the information on it. The times when the restriction is in force 7.00 am – 7.00 pm, are included towards the middle of the sign without any additional highlighting and there is then another reference to the times, 10.00 am – 4.00 pm, when loading is permitted.
58. All this information has to be seen and understood from a moving vehicle. The photographs of either end of Coppergate show that they are busy junctions as confirmed by my site visit.
59. On the approach from Nessgate a driver is likely to be distracted by the traffic lights and pedestrians crossing the road. The two roadside signs at this junction must be viewed against the background of a pedestrian crossing point immediately behind them which because of the large number of visitors to the city is busy throughout the day.
60. There are advance signs on Nessgate and Clifford Street but these only include the 619 symbol without any information as to the times when the restriction is in force. A driver may therefore be alerted to the fact that some care has to be taken at the junction ahead but is then faced with the exception plate and the need to work out whether the restriction is in force and if an exception could apply.
61. The exception plates can only be read once a vehicle has crossed the junction into the beginning of Coppergate by which point if the driver

decides that the route ahead is not permitted the only possible manoeuvre is to stop and reverse which in busy traffic conditions may not be practicable.

62. The access to the other end of Coppergate is from Piccadilly and the site visit demonstrated, as confirmed in some of the Council's photographs, that for drivers approaching along the Ouse Bridge, and turning left into Coppergate, the 619 signs and exception plates are difficult to see.
63. On the approach to the junction a driver is faced with a direction board which includes the 619 sign but without times. On its own this suggests that the restriction applies at all times but that is not correct.
64. At the entrance to Coppergate there is one 619 sign together with an exception plate which is only partially facing the oncoming driver and is fixed to a lamp post on a traffic island on the far side of the junction. A similar sign on the nearside is obscured by the direction board.
65. The words "*Restricted Access*" on the carriageway are marked at right angles to the driver approaching from this direction and would not be clearly visible until the vehicle makes the left turn by which time there is no practical way of avoiding the restriction.
66. The obvious distraction for the driver is the pedestrian crossing point, marked with beacons, at the junction.
67. In my judgement it would be extremely difficult to see and understand the information on these signs from a moving vehicle in the short time available for the driver to make a decision as to whether to follow the road round to the right or to make the left hand turn.
68. There is a further complication in that beyond the offside signs on the central reservation, there is another 619 sign with the exception plate fixed to a post next to the building on the far side of the carriageway for vehicles emerging from Coppergate onto Piccadilly. Because the sign on the nearside of the junction is obscured by the direction board the layout of the signing might suggest to a driver that the immediate left hand turn is not subject to the restriction.
69. There is advance signing but that does not include the times and does not, assist a driver in understanding the terms of the restriction at the Coppergate junction.
70. For vehicles approaching from the other direction making the right hand turn into Coppergate from Piccadilly, none of the signs at the junction are facing and the legend "*Restricted Access*" on the carriageway would again not be visible, because of the curve of the central reservation, until the driver had begun to make the turn.
71. Therefore considering the signing at either end of Coppergate as a whole I find that it was not adequate to reasonably alert the driver to the terms of

the restriction. In my judgement the signs are poorly located and the exception plates, particularly the information about the times when the restriction operates, are not reasonably understandable from a vehicle negotiating the busy junctions.

72. There are also circumstances, as I have witnessed during the site visit, when one or more of the 619 signs and exception plates are obstructed by buses turning into Coppergate from both directions.
73. The clarity of the times when the restriction is in force is particularly important in circumstances where there was an alteration of the times which had applied for the previous 50 years.
74. Because I find as a fact that the signing was not adequate I am not satisfied that the restriction at either end of Coppergate can be enforced.

The Lendal Bridge Signing

75. The restriction over the bridge can be approached from Station Road on the one side and Museum Street on the other. Before the experimental traffic order this was clearly a busy route used by both local drivers and visitors.
76. The signing of the restriction has changed substantially since it was first put up as part of the Council's review following the introduction of the scheme.
77. In November 2013 the 619 signs and the exception plate were put on a yellow backing board to make them more prominent against the background of the adjacent buildings. Then in January 2014 the legend "*Lendal Bridge*" was placed at the top of the backing board.
78. The legend was included because the advisory signing on route to the bridge referred to "*Lendal Bridge Closed 10.30 am – 5.00 pm*". Whilst that may well have meant something to local residents visitors would not readily be able to understand the location and extent of the restriction ahead.
79. In fact in my judgement there is an inherent ambiguity in the advance signing on both sides of the bridge because although there was reference to closure of the bridge between the hours stated the direction sign, which included the 619 symbol, did not include those times. The impression is therefore that the two restrictions were entirely separate, the first being a closure of Lendal Bridge, without any reference to a bus or general traffic restriction, and the second a prohibition of motor vehicles at all times. Further on some of the signing the route diagram appears to give the impression that the approach to Lendal Bridge was straight ahead whilst the prohibition on vehicle entry related to the left hand turn.
80. The appearance of the signs before the introduction of the backing board can be seen in the photographs which have been provided by the Council. It is clear as confirmed by the site visit that the 619 signs and exception plates would not have been readily noticeable to oncoming drivers because on the

Museum Street side they had to be viewed against the background of the adjacent buildings on the nearside and the trees on the offside.

81. On the approach from Station Road the restriction begins at a point where the carriageway divides and the approach to the bridge is a sharp left hand turn. The signs are located on the bend and again have to be viewed against the background of the adjacent buildings. The photographs provided show that the sign on the nearside was set back from the edge of the carriageway and was at one point partially obscured by a metal post which has since been removed.
82. Another change to the signing appears to be that the words "*Restricted Access*" were originally placed on the carriageway well behind the line of the roadside signs so that the words would not have been visible until the driver was committed to the turn by which time there was no practical way of avoiding the bridge.
83. At some point a second "*Restricted Access*" legend has been added in front of the signs so that it is more visible. I have already said that I am not persuaded that the words adequately convey the extent or nature of the restriction to the approaching driver but if they are intended to be part of the signing regime before the second legend was added the first would not have been readily visible.
84. There is also the distraction for the approaching driver of the traffic lights and the pedestrian crossing immediately at the point where the restriction begins. There is less information on the exception plates than at Coppergate but nevertheless they would not, in my judgement, have been easy to understand from a moving vehicle.
85. One feature of the road layout on the approach from Station Road which only became apparent at the site visit is that there was already a with-flow bus lane in place along the length of the nearside lane but which is not subject to camera enforcement. This was signed with diagram 953 in the 2002 Regulations which includes a white bus symbol on a blue background. There is also a solid white line dividing the bus lane from the offside lane.
86. There is no sign to indicate that the with-flow bus lane ends before the Lendal Bridge restriction begins but I take into account that the presence of the bus lane makes it less likely that vehicles would have been in the nearside of the two lanes when approaching the 619 signs.
87. There is however no information on the carriageway on the approach to the 619 signs that the road to the left is restricted or that unauthorised traffic should use the offside lane.
88. In my judgement on the Station Road side before the introduction of the backing boards, the Lendal Bridge legend, the removal of the post partially

obstructing the nearside sign and the repainting of the carriageway marking the signing taken as a whole would not have been sufficiently clear.

89. The improvements to the signs have, I accept, made a difference but before January 2014 I find that they were not adequate.
90. Before that date I also find that the signing at the start of the restriction on the Museum Street side was not adequate because it was not sufficiently prominent.
91. It is also a feature of this approach that there are no signs showing the route for unauthorised vehicles either at the roadside or on the carriageway. By the time a vehicle approaches the beginning of the restriction the only way of avoiding it is to do a "U" turn in what is clearly a narrow road. It is not unreasonable for a driver to expect signing not only of the restriction ahead but how to avoid it. The final advance warning sign is only 25 yards ahead of the beginning of the restriction and there is then no alternative route.
92. Even after January 2014 it remains the case that there is potential for a misunderstanding of the advance signs but I am persuaded that the signs could then be regarded as adequate because the backing boards made them far more prominent and the legend allows drivers to better understand the context of the advance signing.
93. However even though the signing can be regarded as adequate after January 2014 it remains the case that the Council should not be permitted to issue PCNs on the basis of the evidence from the roadside cameras because the restriction was not on any reasonable view a bus street.

Mr Rhodes

94. Mr Rhodes approached the Coppergate restriction from Piccadilly. He is a resident of the city and at the time was undertaking voluntary driving work for an organisation known as "York Wheels" which provided transport for the elderly and infirm. He says that he was unaware that Coppergate was a bus street and because he was acting as a taxi he submits his car should have been exempt from the restriction.
95. Whilst I accept that Mr Rhodes had made an error on this occasion the vehicle cannot be exempt from a properly marked restriction only because it was being used to carry passengers. It was not licensed even as a Private Hire Vehicle and the 2002 Regulations include a very limited definition of a "Taxi" which can only be a licensed Hackney cab.
96. Nevertheless for all the reasons I have set out above I am not satisfied either that the Council was entitled to issue the PCN in the first place or that the signing of the restriction from the Piccadilly approach was adequate.

97. The appeal is therefore allowed and Mr Rhodes is not liable to pay the penalty charge.

Stephen Knapp
Adjudicator

28 March 2014