To whom it may concern,

I am appealing against parking charge notice 33360281 on the following grounds:

**1. No evidence of Landowner Authority - the operator is put to strict proof of full compliance with the BPA Code of Practice**

As this operator does not have proprietary interest in the land then I require that they produce an unredacted copy of the contract with the landowner. The contract and any 'site agreement' or 'User Manual' setting out details including exemptions - such as any 'genuine customer' or 'genuine resident' exemptions or any site occupier's 'right of veto' charge cancellation rights - is key evidence to define what this operator is authorised to do and any circumstances where the landowner/firms on site in fact have a right to cancellation of a charge. It cannot be assumed, just because an agent is contracted to merely put some signs up and issue Parking Charge Notices, that the agent is also authorised to make contracts with all or any category of visiting drivers and/or to enforce the charge in court in their own name (legal action regarding land use disputes generally being a matter for a landowner only).

Witness statements are not sound evidence of the above, often being pre-signed, generic documents not even identifying the case in hand or even the site rules. A witness statement might in some cases be accepted by POPLA but in this case I suggest it is unlikely to sufficiently evidence the definition of the services provided by each party to the agreement.

Nor would it define vital information such as charging days/times, any exemption clauses, grace periods (which I believe may be longer than the bare minimum times set out in the BPA CoP) and basic information such as the land boundary and bays where enforcement applies/does not apply. Not forgetting evidence of the various restrictions which the landowner has authorised can give rise to a charge and of course, how much the landowner authorises this agent to charge (which cannot be assumed to be the sum in small print on a sign because template private parking terms and sums have been known not to match the actual landowner agreement).

Paragraph 7 of the BPA CoP defines the mandatory requirements and I put this operator to strict proof of full compliance:

7.2 If the operator wishes to take legal action on any outstanding parking charges, they must ensure that they have the written authority of the landowner (or their appointed agent) prior to legal action being taken.

7.3 The written authorisation must also set out:

a the definition of the land on which you may operate, so that the boundaries of the land can be clearly defined

b any conditions or restrictions on parking control and enforcement operations, including any restrictions on hours of operation

c any conditions or restrictions on the types of vehicles that may, or may not, be subject to parking control and enforcement

d who has the responsibility for putting up and maintaining signs

e the definition of the services provided by each party to the agreement

**2. The signs in this car park are not prominent, clear or legible from all parking spaces and there is insufficient notice of the sum of the parking charge itself**

The signs in this car park are not prominent, clear or legible from all parking spaces and there is insufficient notice of the sum of the parking charge itself.

There was no contract nor agreement on the 'parking charge' at all. It is submitted that the driver did not have a fair opportunity to read about any terms involving this huge charge, which is out of all proportion and not saved by the dissimilar 'ParkingEye Ltd v Beavis' case.

In the Beavis case, which turned on specific facts relating only to the signs at that site and the unique interests and intentions of the landowners, the signs were unusually clear and not a typical example for this notorious industry. The Supreme Court were keen to point out the decision related to that car park and those facts only:

http://imgur.com/a/AkMCN

In the Beavis case, the £85 charge itself was in the largest font size with a contrasting colour background and the terms were legible, fairly concise and unambiguous. There were 'large lettering' signs at the entrance and all around the car park, according to the Judges.

Here is the 'Beavis case' sign as a comparison to the signs under dispute in this case:

http://2.bp.blogspot.com/-eYdphoIIDgE/VpbCpfSTaiI/AAAAAAAAE10/5uFjL528DgU/s640/Parking%2Bsign_001.jpg

This case, by comparison, does not demonstrate an example of the 'large lettering' and 'prominent signage' that impressed the Supreme Court Judges and swayed them into deciding that in the specific car park in the Beavis case alone, a contract and 'agreement on the charge' existed.

Here, the signs are sporadically placed, indeed obscured and hidden in some areas. They are unremarkable, not immediately obvious as parking terms and the wording is mostly illegible, being crowded and cluttered with a lack of white space as a background. It is indisputable that placing letters too close together in order to fit more information into a smaller space can drastically reduce the legibility of a sign, especially one which must be read BEFORE the action of parking and leaving the car.

Photograph 1 show the parking sign at the entrance of the car park in question viewed from the car window. Photograph 2 provides a close-up of the same sign:


BATH
P
West Car Park
FIRST
BATH
Permit
Holders Only
23 Feb 2017 12:00:49
Bath


It is vital to observe, since 'adequate notice of the parking charge' is mandatory under the POFA Schedule 4 and the BPA Code of Practice, these signs do not clearly mention the parking charge which is hidden in small print. Areas of this site are unsigned and there are no full terms displayed - i.e. with

the sum of the parking charge itself in large lettering - at the entrance either, so it cannot be assumed that a driver drove past and could read a legible sign, nor parked near one.

This case is more similar to the signage in POPLA decision 5960956830 on 2.6.16, where the Assessor Rochelle Merritt found as fact that signs in a similar size font in a busy car park where other unrelated signs were far larger, was inadequate:

''the signage is not of a good enough size to afford motorists the chance to read and understand the terms and conditions before deciding to remain in the car park. [...] In addition the operators signs would not be clearly visible from a parking space [...] The appellant has raised other grounds for appeal but I have not dealt with these as I have allowed the appeal.''

From the evidence I have provided (see photograph 2), the terms appear to be displayed inadequately, in letters no more than about half an inch high, approximately. I put the operator to strict proof as to the size of the wording on their signs and the size of lettering for the most onerous term, the parking charge itself.

The letters seem to be no larger than .40 font size going by this guide:

http://www-archive.mozilla.org/newlayout/testcases/css/sec526pt2.htm

As further evidence that this is inadequate notice, Letter Height Visibility is discussed here:

http://www.signazon.com/help-center/sign-letter-height-visibility-chart.aspx

''When designing your sign, consider how you will be using it, as well as how far away the readers you want to impact will be. For example, if you are placing a sales advertisement inside your retail store, your text only needs to be visible to the people in the store. 1-2” letters (or smaller) would work just fine. However, if you are hanging banners and want drivers on a nearby highway to be able to see them, design your letters at 3” or even larger.''

...and the same chart is reproduced here:

http://www.ebay.co.uk/gds/Outdoor-Dimensional-Sign-Letter-Best-Viewing-Distance-/10000000175068392/g.html

''When designing an outdoor sign for your business keep in mind the readability of the letters. Letters always look smaller when mounted high onto an outdoor wall''.

''...a guideline for selecting sign letters. Multiply the letter height by 10 and that is the best viewing distance in feet. Multiply the best viewing distance by 4 and that is the max viewing distance.''

So, a letter height of just half an inch, showing the terms and the 'charge' and placed high on a wall or pole or buried in far too crowded small print, is woefully inadequate in an outdoor car park. Given that letters look smaller when high up on a wall or pole, as the angle renders the words less readable due to the perspective and height, you would have to stand right in front of it and still need a stepladder (and perhaps a torch and/or magnifying glass) to be able to read the terms.

Under Lord Denning's Red Hand Rule, the charge (being 'out of all proportion' with expectations of drivers in this car park and which is the most onerous of terms) should have been effectively: 'in red letters with a red hand pointing to it' - i.e. VERY clear and prominent with the terms in large lettering, as was found to be the case in the car park in 'Beavis'. A reasonable interpretation of the 'red hand rule' and the 'signage visibility distance' tables above and the BPA Code of Practice, taking all information into account, would require a parking charge and the terms to be displayed far more transparently, on a lower sign and in far larger lettering, with fewer words and more 'white space' as background contrast. Indeed in the Consumer Rights Act 2015 there is a 'Requirement for transparency':

(1) A trader must ensure that a written term of a consumer contract, or a consumer notice in writing, is transparent.

(2) A consumer notice is transparent for the purposes of subsection (1) if it is expressed in plain and intelligible language and it is legible.

The Beavis case signs not being similar to the signs in this appeal at all, I submit that the persuasive case law is in fact 'Vine v London Borough of Waltham Forest [2000] EWCA Civ 106' about a driver not seeing the terms and consequently, she was NOT deemed bound by them.

This judgment is binding case law from the Court of Appeal and supports my argument, not the operator's case:

http://www.bailii.org/ew/cases/EWCA/Civ/2000/106.html

This was a victory for the motorist and found that, where terms on a sign are not seen and the area is not clearly marked/signed with prominent terms, the driver has not consented to - and cannot have 'breached' - an unknown contract because there is no contract capable of being established. The driver in that case (who had not seen any signs/lines) had NOT entered into a contract. The recorder made a clear finding of fact that the plaintiff, Miss Vine, did not see a sign because the area was not clearly marked as 'private land' and the signs were obscured/not adjacent to the car and could not have been seen and read from a driver's seat before parking.

I submit that full terms simply cannot be read from a car before parking and mere 'stock examples' of close-ups of the (alleged) signage terms will not be sufficient to disprove this.

**3. This charge is unconscionable and offends against the penalty rule which was 'plainly engaged' in the case of ParkingEye Ltd v Beavis**

The operator makes much of the Beavis case, yet they are well aware that the circumstances of the Beavis case were entirely different. Essentially, that case was about the abuse of a free, time-limited public car park where signage could be used to create a secondary contract arising from a relevant obligation and where there was a 'legitimate interest' flowing from the landowner, in charging more than could normally be pursued for trespass.

In this case, we have an authorised user using the car park appropriately and there has been no loss nor detriment caused to the owner. While the courts might hold that a large charge might be appropriate in the case of a public car park, essentially as a deterrent, there is nothing in the case to suggest that a reasonable person would accept that this 'fine' is a conscionable amount to be charged under these circumstances.

At the Supreme Court in Beavis, it was held at 14: ''…where a contract contains an obligation on one party to perform an act, and also provides that, if he does not perform it, he will pay the other party a specified sum of money, the obligation to pay the specified sum is a secondary obligation which is capable of being a penalty… ''

This is NOT a 'more complex' case by any stretch of the imagination. At 32 in the Beavis decision, it was held that a trader, in this case a parking company: ''...can have no proper interest in simply punishing the defaulter. His interest is in performance or in some appropriate alternative to performance. In the case of a straightforward damages clause, that interest will rarely extend beyond compensation for the breach, and we therefore expect that Lord Dunedin's four tests would usually be perfectly adequate to determine its validity.''

Therefore, any putative contract needs to be assessed on its own merits. Consumer law always applies and no contract "falls outside" The Consumer Rights Act 2015; the fundamental question is always whether the terms are fair:

http://www.legislation.gov.uk/ukpga/2015/15/schedule/2/enacted

- Schedule 2: 'Consumer contract terms which may be regarded as unfair':

’’A term which has the object or effect of inappropriately excluding or limiting the legal rights of the consumer in relation to the trader or another party in the event of total or partial non-performance or inadequate performance by the trader of any of the contractual obligations…’’

''A term which has the object or effect of requiring a consumer who fails to fulfil his obligations under the contract to pay a disproportionately high sum in compensation.''

This charge is clearly punitive and is not saved from breaching the 'penalty rule' (i.e. Lord Dunedin's four tests for a penalty) by the Beavis case, which does NOT supersede other defences. It turned on completely different facts and related only to that car park with its own unique complexity of commercial justification. This case is not comparable.

In this case the specific question is whether a reasonable person would agree to a term where parking in a place that they enjoy rights of way and easements and pay a significant rent for the privilege of peaceful enjoyment would also accept a further unknown/not agreed liability. I would suggest that a court would not accept this is at all reasonable.

Sincerely,

George Adye