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IN THE CROWN COURT
AT WINCHESTER
(APPEALS)

APPEAL NUMBER U20070006/20070007

The Law Courts
Winchester
Hampshire
S023 9EL

B

Friday, 27th April 2007

Before:

C

HIS HONOUR JUDGE BARNETT
(And a Bench of Justices)

D

BASINGSTOKE AND DEAN BOROUGH COUNCIL RESPONDENT

-v-

E

JOHN GREENHOUGH
And
ANDREW JOHN MULLEY APPELLANTS

F

MR P SAVILL appeared on behalf of the Respondent

MR P MADDOX appeared on behalf of the Appellants

APPROVED JUDGMENT
(For Revision)

G

(11.57 am to 12.14 pm)

Tape Transcript of **Mendip-Wordwave Partnership**
(Official Shorthand Writers to the Court)
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APPROVED JUDGMENT

JUDGE BARNETT: This is an appeal by two Appellants Andrew Mulley and John Greenhough who trade as Oak View Station Cars, and we have taken the two appeals together for that reason. They are appealing the decision of District Judge Bawington-Brown made on 6th December 2006 when the Learned District Judge dismissed their appeal, which was originally against conditions attached to the private hire vehicle licences requiring the display of permanent signage.

The background to this case very shortly is as follows, that the Basingstoke and Dean Borough Council, who are the Respondents to this appeal, are the Local Authority who are responsible with regard to their Licensing Department, to the licensing of not only hackney carriages but also private hire vehicles, and the Appellants, as I have said, are in partnership and run a firm which operates a fleet of such private hire vehicles, and the position legally is that such vehicles have to be licensed by the Local Authority under the Local Government Miscellaneous Provisions Act 1976, and indeed all these vehicles the subject of the Appellants' firm are. But under section 48 of that Act, sub section (2):

> "A District Council may attach to the grant of a licence under this section such conditions as they may consider reasonably necessary, including conditions requiring the display of signs on vehicles to which the licence relates",

I quote the relevant part of the sub section.

And the issue in this case is really this, the Council have decided after consultation - and indeed I should say no point is taken on the lack of consultation by the Appellants in this - that all private hire vehicles should display a sign setting out the Basingstoke and Dean crest in large blue letters the fact that it is a licensed private hire vehicle, and in larger letters on a distinctive yellow background the words, "No booking no ride".

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The point of insisting that such notices are displayed – and they should be displayed we are told on both sides of the vehicle, generally speaking on the doors, the front doors. of each vehicle – the point of the insistence of that condition is to avoid any confusion between private hire vehicles and hackney cabs, but also, much more to the point, between licensed private hire vehicles and those unlicensed which may well be run by unscrupulous persons who take the opportunity of picking up passengers possibly in a sense of inebriation or under the influence of drugs against whom they can commit various offences, whether of a sexual nature or not.

As far as that topic is concerned, that lies very much at the heart of the rationale of this case, that there must be an element of protecting the public so that the public know, firstly, that the vehicle is a licensed private hire vehicle and has been monitored and so licensed by a Local Authority; secondly, that such a vehicle cannot be hailed in the same way as a hackney cab can and there must be a booking in fact through the office.

Now that misapprehension, and indeed the risk to the public, has indeed been a factor in the Basingstoke scene. Featuring in the evidence in this case has been a nightspot called Liquid outside which a number of people congregate and it is accepted by both sides in this appeal that in the past there have been difficulties both with the misapprehension by the public of what sort of vehicle it was, whether they could hail it or not, and in particular with the use of vehicles by, as I have said, the unprincipled or unscrupulous operator who takes advantage, and indeed one such allegation of indecent assault I think culminated from the incident, one such incident has been drawn to our attention.

But it is worthy of note it is common ground between the Appellants and the Respondents that there is a need for such signs and the Respondents do not quarrel with the wording and indeed the presentation of the sign. Both Mr Greenhough, who gave evidence, confirmed that such signs were needed, and indeed did Mr Mulley who gave evidence today

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A that safety of the passenger is a proper consideration; indeed he was adamant that he agreed with that aspect.

Now we have to consider in the basis of this appeal, as I have said, whether the condition that there should be permanent signs – in other words vinyl signs of which we have B an example – which are permanently affixed to the side of the vehicle, is reasonably necessary as opposed to what is suggested by the Appellants would amply meet the conditions and that is the magnetic signs. And the Appellants case – and this is obviously the case of both of C them – is that the magnetic signs would be adequate and therefore as far as what is reasonably necessary would meet that requirement, because obviously they would contain the same information, and the advantage to the Appellants would be that the magnetic signs could be removed. That means that a vehicle that was used not just for the private hire but also for D private purposes could be taken out of the controlled area, the signs removed, could be taken abroad, taken to Ireland – we have been given an example by Mr Greenhough – it would not attract attention in the same way that Mr Mulley tells us his car did, and indeed was E vandalised in another part of the country where he was mistaken for a football supporter, and also they say that the removal of magnetic signs, apart from obviously being easier, does not cause damage to their vehicles.

There is a further point that is made particularly by Mr Greenhough and that is that the F inability to remove the signs means that when the car is parked outside his private home – he lives we have heard in Hartley Wintney, a village near Fleet – he and his wife will not be bothered by callers in the early hours of the morning who think that his car is for hire at that G moment.

Well we can appreciate that is an inconvenience but I think Mr Greenhough accepts it does not happen every night and indeed as far as Hartley Wintney is concerned, although as I

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signs do fall off or blow off, and so that is the state of the evidence as far as the signs are concerned.

We have listened carefully, as I have indicated, both to Mr Greenhough and today to Mr Mulley and, as I have said, we are sympathetic to the personal pleas, we understand well the sentiments expressed by particularly Mr Greenhough that he does not see why the Basingstoke Council should treat private hire drivers like children, there should be a degree of trust and responsibility given to them, and therefore, he argues, and Mr Mulley agrees with this argument, the drivers should be allowed to use magnetic signs and be trusted to replace the signs as and when so required.

Against these facts there is the legal background, which I think is summarised in the case of Benson and Boyce of which we have regard, of which we have a transcript in our papers. This was a case heard on 20th January 1997 in the Queen's Bench Division Crown Office List, and the essence of that case was when and whether a private hire vehicle ever ceased to be a private hire vehicle, and the decision, judgment given, in that case by Manse, J, as he then was, was this, that as far as under section 80 of the Local Government Miscellaneous Provisions Act 1976, to which I have already referred, the wording provided for hire related to the nature of the vehicle as opposed to the nature of the activity. That means that the vehicle once licensed for private hire remained such a vehicle regardless whether, as in this case, it was being driven not for hire for a private hire enterprise, and it followed from that, because this case arose out of a prosecution, that the Local Authority, the prosecution, did not have to prove an actual hiring over the vehicle in question in order to obtain a conviction, in other words again underlining the principle which we have very much in the background that a private hire vehicle once licensed remains such and cannot in effect be used or driven by anybody other than a licensed driver.

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have said it is near Fleet, we take the view that the interference with his personal life is comparatively infrequent, but it is a consideration that we take into account.

As against that the Respondents, the Council, through their officer Mrs Cannon, whose evidence we found measured and punctuated with a degree of understanding and common sense, which is refreshing to find in a Local Authority officer, she says that with regard to the magnetic strip approach firstly they will often come off either in the wind or through natural usage, or indeed they will be forgotten to be put on if they are taken off, and therefore there is an appreciable risk that a number of the licensed vehicles in what she refers to understandably as the Basingstoke fleet, meaning those that are of course subject to the licence control of the Council, will be in a condition where they are not displaying this important notice, which as I have said all agree should be displayed, and therefore there will be a lack of control, there will therefore be the possibility of the risk to the public, and there will be the need to police and enforce the provisions which of course will be draining upon the resources of the Council, which is a proper consideration in our view.

We have also heard from Mrs Jodie O'Connor who is a private hire company operator running and she being a partner in Elite Cars, and her evidence to some extent is anecdotal but we take into account in this respect, that she tells us that prior to the imposition of the signs there was the confusion, as I have set out, with regard to the nature of the car and the nature of the booking, once the signs had been introduced and indeed the permanent stickers applied, that improved considerably. As far as she is concerned she had no problem with the permanence of the sign, she told us, and we accept, the sign can be removed with hot water and a hair dryer, but it is not designed to be removed frequently, and indeed she gave us an example I think of one driver, Mr Hickey, in cross-examination who had been using a magnetic sign and has now changed it. She confirmed what Mrs Cannon said, that magnetic

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That, as I say, we put into the consideration by way of background, but essentially what we have to consider is what I hope I have now set out clearly, and that is the question of what is reasonably necessary in all the circumstances. As I have said, we are sympathetic to the Appellants in the personal difficulties and inconveniences that they say they have suffered, but when those are weighed against the important considerations – which they accept are important – the important considerations of public safety and the good and proper monitoring of private hire vehicles generally by the Basingstoke and Dean Borough Council we find on the balance of probabilities, which is the appropriate test in this case, that it is reasonably necessary to insist upon permanent display of signs by permanently affixed signs, in other words the vinyl sign, that is not in our view unreasonable or unnecessary, to put it the other way about, and that the balance tips firmly in favour of the Respondents and in those circumstances for the reasons that I have set out we have no alternative but to dismiss the appeals in this case and the original order of the Council is upheld.

(12.14 pm)

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We hereby certify that the above is an accurate and complete record of the proceedings, or part thereof.

Signed : Mendip-Wordwave Partnership

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IN THE BASINGSTOKE & ANDOVER MAGISTRATES COURTS Case no: 4291611

2 MAR 2007

Between

ANDREW MULLEY & JOHN GREENOUGH t/a OAKVIEW STATION KARS Appellants (Oakview)

And

BASINGSTOKE & DEAN BOROUGH COUNCIL Respondent (the council)

This matter concerns appeals by Oakview :

a) against a condition imposed by the council upon the grant or renewal of private hire vehicle (phv) licences requiring that permanent signs informing the public of the need to pre-book phvs
b) the suspension of a phv licence for one of Oakview's vehicles deemed by the council to be in an unfit condition
c) the suspension of a phv licence for one of Oakview's vehicles seen by an officer of the council to be in contravention of a) above and in respect of which vehicle failed to be brought to the council's offices for an inspection

And an appeal by Mr. Radbourne as per a) above.

There were also notices of appeal filed by T.Kyle, G. Michaels and E. Morgan. Mr. Morgan's appeal was withdrawn, his licence having expired; Mr. Michael surrendered his on the 30th October 2006 and Mr. Kyle's appeal pre-dates the renewal of his licence on which the condition referred to will appear. Neither party attended and their appeals are therefore treated as abandoned.

Although Mr. Radbourne's appeal is technically out of time, since the council failed, as they are required by S.300 (3) of the Public Health Act 1936, to advise Mr. Radbourne of the period of time within which he must file his appeal, and since his appeal relates to the substantive issue indicated above, it matters not to the extent that the substantive issue must be decided in any event. At this point I do not need, therefore, to determine the status of his appeal.

In this case both sides served and filed extensive bundles of evidence and skeleton arguments, which I have read in advance of the hearing. On the 4th & 5th of December, I heard oral evidence from:

1) Mrs. Cannon (the Licensing Manager)
2) Andrew Wake (a Licensing Officer)
3) Michael Lyons (West Sussex Borough Council) and
4) Alan Craft (Head of EH, Licensing & parking)

On behalf of the council, and:

1) John Greenaugh (Oakview)
2) Zainool Ebrahim (phv holder from Crawley)
3) Malcolm Haycox (car body painter & repairer)
4) Andrew Mulley (Oakview)
5) Ian Bowers (phv holder – Alpha cars) and
6) I. Radbourne (appellant)

On behalf of the appellants.

Submissions were made by both Mr. Maddox for Oakview and Mr. Savill for the council.

The granting of licences for phvs is regulated by the Local Government (Miscellaneous Provisions) Act 1976. S.48 deals specifically with phv licences, S48 (2) enables the imposition of conditions upon the grant of a licence which are reasonably necessary. Specific mention is made in this sub-section of a requirement to display or the prohibition of signs.

The notices the subject of these appeals are designed to introduce a degree of uniformity by carrying both the message at the heart of this requirement and the council's logo and name. The message is "NO BOOKING NO RIDE". The purpose is to enable members of the public (mops) to distinguish phvs both from Hackney carriages (which may be hailed) and unlicensed or bogus taxi drivers. The objective stated by the council is the protection and education of the public. Protection both from being carried in a vehicle which is not insured to carry fare paying passengers, and protection from assault by bogus drivers.

There is no dispute that the notices are reasonably necessary, the issue is whether it is reasonably necessary for them to be permanently attached to the vehicles.

The appellants complain, inter alia, that:

1) Permanent signs encourage mop to approach them when they are not working and present difficulties in this regard
2) They are prevented from using the vehicle in accordance with S75 (1) (c), (cc) and (d) (ii) without signage
3) The requirement offends Article 1 of the 1st protocol of the convention on Human Rights, and consequently S.6 of the HRA 1998, since, in addition to (1), upon removal, for whatever reason, damage is caused
4) In any event, the signs can be removed under the right conditions by thieves or unscrupulous drivers
5) The council's objective can be achieved by the use of temporary signs applied when a driver is working
6) There is no evidence to suggest that the public are concerned about the type of vehicle that takes them home e.g. from a late night at the pub or nightclub – they just want to get home, and
7) The consultation process undertaken by the council was inadequate and fails to demonstrate therefore "reasonable necessity"

In response, the council say that:

1) Benson & Boyce establishes that a phv is a phv at all times and for all purposes, must be driven by a phv licence holder at all times and therefore should be easily identifiable as such
2) S.75 (1) (c), (cc) and (d) (ii) do not apply to licensed vehicles – they are sections enabling any vehicle other than a phv to be used for certain types of work without the need for a phv
3) Benson & Boyce applies and the balance of interests weighs most heavily in favour of protecting the public. High mileage and the use of a vehicle for phv work more substantially affect its re-sale value than marks left by signage, added to which, many phvs have their own permanent signage indicating, as do Oakview the name and other details of their company
4) The right conditions require the application of heat; otherwise the signs will be damaged and thus not re-usable. It is unlikely that these signs could be removed under the right conditions without a very high likelihood of detection
5) Evidence of vehicles seen without the required signage is sufficiently frequent to negate this complaint
6) The council has a duty to protect the public from foreseeable harm
7) Consultation was carried out and the trade continue to be invited to air their grievances.

The appellant's bundle includes the case of Sardar –v- Watford BC, which, in turn, sets out the criteria for effective consultation extracted from the Court of Appeal case of R-v-North & East Devon. Of those four criteria, the first appears to have been met, and, from reading the summary of the responses, despite the fact that copies of the questionnaire are no longer available, the second has probably been met. The third was most certainly not met – an attendee at the September Council meeting complains that only one week was allowed for responses and that part of that week was a bank holiday. It is difficult to say the extent to which the fourth criterion was addressed, if at all. The minutes refer to the Director of Planning's report when recording the committee's decision but not the questionnaires or the summary thereof, nor the oral representations made by representatives of the trade. What may have been overwhelmingly persuasive is paragraph 3.3 of the Director's report:-

"There have been instances in other Boroughs where passengers have been the subject of serious physical assaults as a result of getting into unlicensed vehicles presuming them to be legitimate private hires (copies of relevant news coverage have been placed in the group rooms for members inspection, headed "News Coverage on Bogus Taxi Drivers"). More locally, officers receive regular reports of the public trying to access people's private cars at night when waiting for friends or relatives on the assumption that they are private hire vehicles."

It is agreed that the lack of adherence to the consultation process is not fatal to the council's case but, say the appellants, this factor fails to support their need to demonstrate "reasonable necessity".

It is regrettable that the council failed in this regard. It is equally regrettable that the minutes of the council's meetings do not indicate the degree to which or the fact that, before resolutions are made, interested parties views, where they do not accord with those of the committee or the reporting officer, have been considered and, where this applies, why they have been rejected.

I do not accept, as has been suggested, that the council have picked on certain phv holders out of malice. It is clear from the evidence that Oakview have been determined to challenge the authority of the council – and not simply by bringing theses appeals. Of 37 vehicles between 28th June 2006 and the 9th September 2006, seen without their stickers, 27 were Oakview vehicles and Mrs Cannon observed Mr. Michaels twice in June without his stickers.

Between 22nd September 2005 and 16th March 2006, 61 allegations were made of phv drivers plying for hire, thus exposing the public to the risk of being carried in an uninsured vehicle. In October of 2005 the police contacted Mrs Cannon about an indecent assault carried out in October when two females had entered an unmarked vehicle masquerading as a phv at Festival Place – the main shopping area in Basingstoke. The driver was apprehended after he again visited Festival Place and was spotted by Mr. Wake.

Mrs. Cannon told the court that 94% of phv holders have fully complied with the council's requirement to affix prescribed permanent stickers.

I conclude that these issues as balanced against the points raised by the appellants are sufficient to support the council's contention that it is reasonably necessary to introduce permanent signage to achieve their legitimate objective of protecting the public. It goes without saying that their efforts to educate the public should continue as should their demonstrated willingness to listen to the trade about future proposals.

In relation to Mr. Mulley's and Mr. Greenaugh's appeals against suspensions, I have already commented on their attitude to the council. Mr. Mulley only has himself to blame for failing to take in the vehicle the subject of the suspension for failure to display signs. He ignored Mr. Wake's letter. So far as the damaged vehicle is concerned, it matters not whether the door could not be opened because the driver had the wrong key or due to damage. The fact is that it could not be opened. I found Mr. Mulley's attitude to be belligerent. I found that Mr Greenaugh demonstrated a lack of due regard for issues of personal safety of the public showing more concern about potential damage to his vehicles and personal inconvenience. In any event, I preferred the evidence of Mr.Wake.

I dismiss all of the appeals.

Mr. Radbourne's appeal would have failed for the reason's I have set out above.

Judge Babington-Browne (DJ/MC)
Andover Magistrates' Court
6th December 2006.

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