

Justices Reasons

S. Barlow and others -v- Pembrokeshire County Council
Haverfordwest Magistrates' Court 17^h March 2009

Previous magistrate's courts accepted jurisdiction as the correct process of appeal under Section 47(3) and 48(7) of the Local Government Miscellaneous Provisions Act 1976. We heard these appeals by re-hearing evidence and putting ourselves in the position of the Borough Council, the licensing authority in determining the appeals.

It is agreed this morning by both parties that this court can confirm, amend or remove conditions. It was also agreed by both parties that in arriving at such decisions due consideration should be given as to whether each is reasonably necessary in accordance with Local Government Miscellaneous Provisions Act 1976 s.47(l) and 48(2).

We would like to thank Mr Spackman and Mr Maddox for their presentation of the case and all witnesses. Arguments were provided by appellants and respondent and a number of relevant legal authorities were quoted. Minutes of Local Authority Licensing Committees, Trade meetings and Best Practice Guidelines were provided and these have also been considered.

We have heard evidence from Mr Tulley, Miss Telford , Mr Barlow, Mr Slack. Mr Jenkins, Mr Wilson, Mr Lemon, and considered written evidence by Mr Hollins.*. We also inspected the seating arrangement of a VW Sharan.

We then considered the three conditions separately.

*We do not agree that Miss Telford had no grounds for appeal since she is affected by both age and rear access conditions.

Age Limit

The evidence justifying the age limit seemed to suggest this decision was largely based on the assumption that vehicles over five years of age would have less safety features and be in a worse condition. No specific evidence was produced that would justify this assumption and indeed many older vehicles have the inbuilt safety features mentioned. We consider that each vehicle should be fit for purpose, irrespective of age and the relevant authority testing procedure should determine this.

Although not the subject of these appeals we do endorse the Council in its condition for

MOT tests for vehicles over eight years of age. However, we do not consider condition 5 (h) reasonably necessary but do consider it reasonable and necessary to amend this to insist that any vehicle between 5 and 8 years of age must be tested twice per year in accordance with government guidelines.

Rear Access

The argument to justify the removal of a seat seems to be based on safety and convenience. The evidence seems to be somewhat lacking, other than one incident some 20 years ago referred to by Mr Davies on an unrelated vehicle.

On the other hand we did hear evidence from at least two appellants that there was an increased risk to passengers where a seat was removed.

The vehicle complies with UK Construction and Use Requirements and EU regulations for the number of passengers it was designed to hold. We believe it is reasonable for the vehicle to be licensed for the number of seats for which it is designed.

Furthermore on our personal experience in inspecting the VW Sharan we do not consider on convenience grounds that there is any unreasonable hardship in entering or leaving the vehicle with its full complement of seats as designed.

Therefore we do not consider this condition 5 (g) reasonably necessary and we are going to remove this condition.

Trailer Requirement

No evidence was produced to explain why the amended condition was introduced. The reason proposed is public safety but no examples of difficulty or complaints have been reported.

We agree in essence with the stringent conditions imposed by the Licensing Authority in Appendix 2 of the standard conditions including the provision that luggage should be insured whilst in a trailer. Our exception is the requirement stipulated under 15.0 regarding the braking system appendix 2,15.1.

Trailers are covered by Construction and Use Regulations and regulations are laid down by a vehicles' manufacturer.

Therefore we find the braking system condition not reasonably necessary providing regulations as above are adhered to by both vehicle and trailer.

We therefore remove condition 15 under appendix 2.

In relation to these appeals before us we apply as appropriate our findings detailed above to all appellants.

Whilst we have not considered in detail the appeals of Mr Mayhew and Mr King the evidence submitted to us was such that we believe our findings should also apply to them.

To summarise we have done the following:

1. Amended the age condition
2. Removed the rear access condition
3. Amended the trailer condition

In view of our decisions we recommend the Local Authority Licensing Committee reconsider their policies