

**GT Tours -v- Macclesfield Borough Council**

**Case No 3631133**

**Judgement of the Magistrates: 7 March 2007**

Mr Trevena appeals a decision of Macclesfield Borough Council made on 17 May 2006 to apply conditions to a licence in respect of an eight-seater VW minivan intended for use as a hackney carriage.

The Licensing Committee determined that the vehicle should not be licensed for eight passengers. It could be licensed for seven passengers, and for that purpose one of a middle row of seats should be removed.

Mr Trevena appeals to us on the grounds that these conditions are not reasonably necessary.

We hear this appeal by way of a re-hearing of evidence as we put ourselves in the shoes of the Borough Council, as licensing authority in determining this appeal.

We had the benefit of a number of relevant legal authorities, skeleton arguments provided by the appellant and respondent, and we heard evidence in person from the council's licensing officer and their Health and Safety adviser.

Mr Trevena gave evidence, as did his co-director Rebecca Hilton.

We considered full written statements tendered in advance of the hearing. We also inspected the vehicle.

We thank Mr Hercock and Mr Maddox for the clear and succinct way in which they presented their cases.

In essence, Mr Trevena says that the conditions imposed by the Council are unacceptable. His vehicle is a new, modern purpose-built multi-person carrier with modern safety features. He also argues that the Council's current policy and its detailed specifications are unclear, out of date, and have been superseded by more up-to-date guidance from Government. He also points to an inconsistency in the Council's

approach to licensing other vehicles, whose safety may be less well-developed than the VW vehicle which he wishes to have licensed.

The Council argues that their principal and over-riding consideration is public and user safety and, to a lesser extent, passenger comfort. They had a clear duty of care to ensure that passengers and [others?] were appropriately protected and their policy was designed to do this.

We note that the detailed specification for vehicles for private hire do not appear to have been formally reviewed by the Council since at least 1994 and - as per Mr Janes' evidence - somewhat longer.

Such material as is published does not appear to address the most up-to-date MPV vehicles. That original specification appears to be based upon an estate vehicle converted to seat more passengers. Their approach also places great weight on guidance from RoSPA, confirmed in 1999 and subsequently re-confirmed in 2003 and 2006.

It appears that Mr Janes exercises delegated authority to determine licence applications, and tests each case on its merits against, inter alia, the specification of the RoSPA guidelines. He gave evidence that from time to time he exercised his own discretion in applying the detailed policy and was, therefore, flexible in the way in which he applied it, this subject to an appeal to the relevant Council Committee.

However, in October 2006 the Government consulted and adapted new guidance covering the essence of this appeal, namely MPVs. Significantly, RoSPA were formal consultees.

We can take account of this latest Guidance; the Council could not when they heard Mr Trevena's first appeal. The new guidance from the Department for Transport specifically refers to MPVs.

In Para 20 it is clear that the Department say that it may be too restrictive to automatically rule out considering MPVs or to license them for fewer passengers than their seating capacity (provided of course that the capacity of the vehicle is not more than eight passengers).

The VW Transporter is a modern purpose-built vehicle which provides a number of alternative methods of egress or access to the vehicle at its full capacity of eight seats. It has received UK and EU Type Approval. It is a standard production vehicle.

In the light of this new guidance, our finding is that the vehicle which Mr Trevena seeks to license does meet all reasonable specifications and therefore should be licensed as such for eight passengers.

We would expect the Council to complete the urgent review of its policy which it called for in May 2006. Having agreed such a policy, it should be made available publicly to all who are interested, in a clear and comprehensive form.

*Transcript of handwritten Judgement from Magistrates: 7 March 2007*