

PENALTY CHARGE NOTICE; DEFECTIVE; DUPLICITOUS STATEMENT OF GROUNDS

H F Owen Transport v London Councils (formerly ALG) TEC

Case No. : LB377
PCN Number: LB00128570
Contravention: Failed to produce documentary evidence, in accordance with Permit Condition 6 / Documents produced failed to substantiate the need for the vehicle being on a restricted road at any particular time and place, in accordance with Permit Condition 6.
Adjudicator: Hugh Cooper
Decision: Allowed
Decision date: 13 December 2007

Statutory Register entry:

An ALG TEC Senior Traffic Enforcement Officer saw the Appellants' vehicle in Edith Grove (J/W Cremorne Road) London SW10 at 06:35 hours on 25 September 2007. It was established that the vehicle in question had a lorry ban permit. ALG TEC therefore sent a letter to the Appellants on the same day requiring them to produce documents "to substantiate that the need for the vehicle being there complied with Permit Conditions 4 or 5".

Not having received a response, on 11 October 2007 ALG TEC issued an Operator's Notice to H F Owen Transport alleging a contravention of the Lorry Ban Order in the following terms:

"Failed to produce documentary evidence in accordance with Permit Condition 6 / Documents produced failed to substantiate the need for the vehicle being on restricted road at any particular time and place, in accordance with permit condition 6".

There followed a statement that the Appellants' vehicle had been seen in Edith Grove (J/W Cremorne Road) London SW10 at 06:35 hours on 25 September 2007.

In fact the Appellants did respond to ALG TEC's letter of 25 September 2007 in a letter dated 4 October 2007, but this did not reach ALG TEC until 16 October 2007, i.e. after the Operator's Notice had been issued. The Appellants explained why their vehicle was seen at the above location and produced supporting documentation. ALG TEC issued a Notice of Rejection stating that they did not consider that the documentation provided substantiated the need for the vehicle to have been at the location.

I have not recited the representations made by the Appellants or the reasons given by ALG TEC for rejecting them, because I do not have to determine whether the vehicle needed to be at the location or not. The reason for this is that the Operator's Notice was inherently defective.

An Operator's Notice is defined in Section 4(17) of the *London Authorities and Transport for London Act 2003* as a Penalty Charge Notice served on the person appearing to be the operator of a vehicle. Under Section 4(8) of that Act a Penalty Charge Notice must state, among other things, "the grounds on which the council or, as the case may be, Transport for London believe that the penalty charge is payable with respect to the vehicle".

The passage recited above in italics contains two allegations, or grounds. The first is that the Appellants had failed to produce documentary evidence. However the second allegation is

clearly based on the premise that documentary evidence *had* been provided. Whilst either allegation, if proved, could constitute a breach of the standard lorry ban permit conditions, the same Operator's Notice cannot simultaneously contain two mutually inconsistent grounds. It was duplicitous and hence invalid.

I must therefore allow this appeal.