

Case Number: LB47
PCN: LB00007601

Carboclass Ltd

-v-

Association of London Government Transport & Environment Committee (ALG-TEC)

Case Number: LB74
PCN: LB00019065

Pardeep Singh Grewal

-v-

Association of London Government Transport & Environment Committee (ALG-TEC)

Case Number: LB78
PCN: LB00007292

Mam Transport Services Ltd

-v-

Association of London Government Transport & Environment Committee (ALG-TEC)

Case Number: LB138
PCN: LB00033281

Euroway Express

-v-

Association of London Government Transport & Environment Committee (ALG-TEC)

Consolidation

On 1st April 2005, pursuant to Regulation 13 of The Road Traffic (Parking Adjudicators) (London) Regulations 1999 a direction was made that four appeals bearing the numbers LB47, LB74, LB78 and LB138 be consolidated. Each Appellant had raised as an issue the adequacy of signage of the London Wide Lorry Ban scheme – albeit that each Appellant raised slightly different points on adequacy about locations relevant to the place of each alleged contravention.

By 1st April 2005, 3 out of 4 Appellants had attended personal hearings to advance their appeals, each in the absence of the Enforcing Authority, ALG TEC (“the enforcing authority”). At that stage the position of the Enforcing authority had been that there was:

- (a) no legal requirement on the enforcing authority to erect signs to warn of the restrictions at all
- (b) in fact 98% coverage of the London Boroughs (quantification of compliance not defined)

Directions

Directions were made for the Enforcing Authority to:

- (i) submit evidence of adequate signage
 - (a) generally, and
 - (b) to address the specific points raised by the Appellants on the question of signage, and
 - (c) as to the compliance with the Traffic Signs and General Directions 2002, and to
- (ii) make further representations to support their view that they were not required to erect or maintain any signage to indicate that the roads were restrictions and to meet the provisional view of the law expressed at appendix C of the directions.

The Enforcing Authority have made further representations, adduced further evidence, and argued their position on the law.

Summary of the Enforcing Authorities Position on the duty to sign

The Enforcing Authority have now refined their argument on signage, and now concede that there is a duty to sign the restrictions.

By virtue of paragraph 4 of the document headed "Further Representations of ALG TEC" the Enforcing Authority assert that they are not required to erect prohibitory signs on each and every restricted road, provided the entry point to the restricted road or series of road is clearly signed.

In effect the Authority seek to rely on a method of signage akin to a Controlled Parking Zone signage.

The Enforcing Authority concede that Regulation 18 of the Local Authorities Traffic Orders (Procedure)(England and Wales) Regulations 1984 creates a mandatory obligation to sign restrictions, because the lorry ban is the creation of a traffic management order and the Regulations provides that "where an order relating to any road has been made, the "order making authority shall take such steps as are necessary to secure:

- (a) before the order comes into force, **the placing on or near the road of such traffic signs in such positions as the order making authority may consider requisite for securing that adequate information as to the effect of the order is made available to the person using the road**
- (b) the maintenance of such signs”.

The Enforcing Authority appears to accept that the Regulations do not permit them to decide if signs should be put in place.

The Enforcing Authority refer to section 65 of the Road Traffic Regulation Act 1984, and rely on section 65(1) which provides that “the authority may cause or permit traffic signs to be placed on or near a road, subject to and in conformity with authorisation and directions as may be given by the Minister or Secretary of State”.

The Enforcing Authority have adduced copies of the authorisations made by the Secretary of State on 14th February 1986 for Greenwich and Hounslow. Maps are attached to the authorisation, which appear to indicate the exact location of placement. The Authority say that these form 2 of a raft of such orders (which have not been produced), which cover each relevant London Borough.

As I understand it, the effect of the authorisations is to create a zone around London, and that each entry point to the zone should be signed as a result.

The Enforcing Authority say that the effect of these authorisations waives the need for prohibitory signs to be placed on each and every road and that as long as there is signage at the entry point to a restricted road or series of roads, that this is sufficient. At paragraph 4 of the Enforcing Authorities submissions I am invited to conclude that signage in compliance with these Orders discharges the obligation to adequately sign.

The Enforcing Authority have not adduced the entire raft of Orders. I have been simply told that they exist and that they create a zone. Further, the local authority have not made any reference to exit signs: it seems obvious to me that there must be a provision for signage to indicate where the zone ends.

However, in view of the terms of Regulation 65(1) it does appear that if the Secretary of State has authorised the placement of signage which has the effect of creating a zone, then in principle the Enforcing Authority are absolved of the need to sign each and every restricted road. I should add that this does not:

- (a) absolve the Enforcing Authority of considering whether each and every sign does in fact adequately advise the motorist of the restrictions taking into account local factors (signage potentially being obscured by trees, other signage, being placed in such a way that a driver in fast moving traffic could not see it, and so on)
- (b) absolve the Enforcing Authority of ensuring that the signage gives accurate information (as to tonnage and the hours) of restriction

- (c) absolve the Enforcing Authority of a duty to prove in every case where signage is an issue, that the signage is adequate
- (d) preclude an Adjudicator from considering in any case whether the signage is adequate.

In my view the status of the authorisation is to provide a minimum standard of what is adequate to convey information as to the effect of the Traffic Management Order. It does not absolve the Enforcing Authority of the responsibility under Regulation 18 to the considering in respect of each and every sign whether the signage is adequate to convey the restriction.

In view of the Enforcing Authority's evidence of 98% coverage (which inevitably means 2% is not covered), and the photographic evidence showing signage with differing weight restrictions, the Enforcing Authority can expect that an Adjudicator in any given case may expect photographic evidence of signage, a map of the zone, and copies of the Secretary of States authorisations as showing a complete zone.

I should add one further point: the conditions of a permit require that a permit holder must plan his route to minimise use of restricted routes, and so must ensure that the driver of the vehicle has documents with him showing clearly planned stopping places which shall be produced on request; a non-permit holder must plan his route to ensure that he does not use restricted roads. This all requires advanced planning - which highlights the need for a source of information as to which roads and routes are restricted independent of the signage on the road. The maps supplied by the Enforcing Authority express in clear terms that reliance should not be placed upon it. Despite being invited to specifically address this point raised in appeal LB74, the Enforcing Authority have not done so. Whilst it is not my function to instruct or direct that the Enforcing Authority do so, this point may be something that needs to be looked at. For my part I would be reluctant to uphold a penalty charge notice based on a breach of a condition that was predicated on advanced planning of a route, where the Authority had not provided a means of the user obtaining the information.

I had contemplated adjourning this appeal further for the local authority to adduce all of Secretary of States authorisations which create the zone, a map of the zone, to answer the point about exit signs, to indicate what Regulations prescribe signage or what guidance is given, and what clear and up-to-date public information is available. However, I have decided not to do so, because there has already been considerable delay, and doing so is not necessary for the determinations on the consolidated appeals. I would make the point that in any future case it will be open to an Adjudicator to put the local authority to proof on these points.

Reasoned Decisions

I now turn to considering each one of the four appeals in turn.

I should record that the Enforcing Authority have indicated that they not longer wish to contest two appeals: LB 47 and LB 138, and have explained that the reason for doing: namely "that although the principle of erecting prohibitory signs at each entry point to a restricted area is considered sound, a detailed investigation and site inspections have revealed that in both these cases not all requisite signs at all possible

entry points to the area where the vehicles were observed have been erected or maintained”.

Case No. LB 47

Carboclass v ALG TEC

An Operators Penalty Charge Notice dated 28th June 2004 was issued to Carboclass, alleging that the subject vehicle was being used on a restricted road during prescribed hours without a valid permit on 17th June 2004 at 06:28.

The Enforcing Authority relied on the evidence of Enforcement Officer Hewitt who said that he had seen the subject vehicle on Kensington High Street at the junction with Addison Road, London W14, and caused a Penalty Charge Notice to be issued to the Operator.

Mr Patel on behalf of Carboclass, made representations in response to the Penalty Charge Notice explaining that his vehicle travelled from Goodhall Street NW10 to Kings Road SW3 and he explained the route taken. He made the point that the delivery had to be made before the loading restrictions came into operation at 7.30am and that he had no alternative route. He adduced in evidence a delivery note in support of his case.

A Notice of Rejection was issued on 10th August 2005, in which the Appellant's representations were rejected on the basis that the vehicle was on a restricted road, without a permit and that no exemption arose on the facts.

A Notice of Appeal was filed, again asserting that the reason for the vehicle being in this location was that the vehicle was being used to make a delivery and that this needed to take place before parking restrictions came into force. The Appellant also added that the nearest sign in place was some ¾ of a kilometre away on Holland Road which gave no indication of where the zone begins and ends.

Mr Patel attended a personal hearing listed on 13th October 2004. Mr Patel attended the hearing, and repeated his grounds of appeal. The Enforcing Authority relied on written statements.

The Enforcing Authority did not at the date of the hearing, adduce any evidence of the signage in place or meet the Appellant's arguments as to adequacy of signage.

Subsequent to the appeals being consolidated, a direction was made which invited the Enforcing Authority to adduce evidence to address the specific points made by the Appellant(s) in evidence as to adequacy of signage.

The Enforcing Authority have not adduced any evidence on the question of adequacy of signage. Indeed in respect of this appeal the Enforcing Authority have indicated that they no longer contest the appeal because when they recently inspected the possible points of entry they discovered that the signage was not in place and cannot assert with any confidence that it was in place on the date of the alleged contravention.

I am satisfied that the Enforcing Authority have a duty to adequately sign the lorry ban restrictions, that once the issue of adequacy has been raised, that they have the burden of proving adequacy. They have not done so. Further, they concede that they cannot prove that the signage was in place at the material time and consent to the appeal being allowed.

I allow the appeal and direct that the Penalty Charge Notice be cancelled.

Case No. LB 74

Grewal v ALG TEC

An Operator's Penalty Charge Notice dated 8th September 2004, was issued to Pardeep Grewal alleging that the subject vehicle was being used on a restricted street (Woolwich Manor Way) during restricted hours at 14:50 on 4th September 2004, without a valid permit.

The Appellant made representations in response to the Penalty Charge Notice, by letter dated 10th September 2004. He disputed that his vehicle was in the place alleged at the time, that a Penalty Charge Notice was issued at the time, and asserted that he always checks restrictions prior to a journey.

A Notice of Rejection was issued and the local authority asserted that the road taken by the Appellant ran from Albert Road to the A13, and clarified that the location of the contravention had the same name as a cul-de-sac.

The Appellant asserted in an email dated 8th December 2004 that the area in question was not sign posted as a restricted road and so he did not require a valid permit. Further in the Notice of Appeal the Appellant indicated that the area in question was not sign posted with any restriction at all.

The Appellant attended the hearing in person on 13th January 2005. The Enforcing Authority relied on the written evidence of their enforcement officer. The dispute as to where the contravention occurred was resolved. It appears that Woolwich Manor Way is both a main thoroughfare and a cul-de-sac and that the Appellant's route from South London to North London would take him along this main thoroughfare (but not into the Cul-de-sac).

The Appellant adduced photographs of the route taken leading to the Woolwich Ferry from the South to the North. Neither revealed the presence of any signage, which indicated that the road was restricted to heavy vehicles, although the Appellant's evidence was that side roads were signed to indicate the restriction – but not the one that he was travelling along.

He also adduced in evidence a map produced by the Enforcing Authority in which it was stated that "the information on this map is subject to change without notice. Always check signs on road if you are driving heavy or high vehicle". The Appellant made the point that the Enforcing Authority have contradicted themselves: they invite the driver to rely on road signs yet say that they have no obligation to sign the

restrictions. A case in point he says is the junction of A40 and A312 Church Road from A40 to M40, which the Appellant says is signed as a restricted road by virtue of signage on the road - but according to the Enforcing Authority map is not a restricted road.

The Enforcing Authority resisted the appeal, asserting in a case summary that they conceded that there were no road signs showing that Woolwich Manor Way was a restricted road, but says that the vehicle would have driven past signs in South London before getting onto the Woolwich Ferry. The Enforcing Authority have not specifically challenged the account given by the Appellant - that signage is selective in that the side roads are marked as restricted but the main roads are not – and have not explained how a driver is supposed to distinguish between restricted and unrestricted routes. That there is signage in South London to suggest that a particularly road is restricted does not then define every road off it as restricted.

In any event in the case summary , it was asserted by the Enforcing Authority that road signs were not necessary for the Penalty Charge Notice to stand.

The Enforcing Authority had not adduced evidence as to where the signs were located nor how the driver would know that they related to Woolwich Manor Road.

Materially the Enforcing Authority asserted that “road signs are not necessary for the Penalty Charge Notice to stand”.

I adjourned the appeal, inviting the local authority to explain how Operators/Drivers (either permit holders or non-permit holders) could obtain clear up-to-date information as to which roads were restricted.

The local authority have answered the Appellant evidence by asserting that a recent inspection at each point that the Appellant could have approached the Woolwich Ferry along unrestricted roads shows that a sign is in place showing the boundary point where the restrictions commence.

However, the assertions are not evidence: there are no photographs submitted; there is no site report has been submitted. Neither has the Enforcing authority addressed the point that a vehicle approaching via restricted roads further out may continue without there being any signage.

The Enforcing Authority have not met (a) the Appellant’s point about the map suggesting that the driver rely on signage, but that signage wither not being in place or conflicting with the map, nor (b) met my question, as to how a driver/operator could obtain clear up to date information.

I am satisfied that the Appellant has properly raised the issue of adequacy of signage and that the Enforcing Authority have the burden of showing that it was adequate. They have not done so, and so I cannot be satisfied on the evidence that the signage was adequate.

I therefore ALLOW the appeal and direct that the Penalty Charge Notice be cancelled.

Case No. LB 78

Mam Transport v ALG TEC

The Enforcing Authority issued a Penalty Charge Notice asserting that the vehicle was seen to be using a restricted road (Harlington Road at the junction with Hereford Road) during restricted hours without a permit and served a Penalty Charge Notice dated 28th June 2004.

The Appellant made representations asserting that the lorry ban restrictions were not everywhere in Hounslow and that there were no visible signs for the North.

A Notice of Rejection was issued on the basis that the Appellant was using a vehicle on a restricted road without a permit. It did not meet the Appellant's point at all about the lack of signage.

In a statement dated 6th July 2004, signed by Mr Hewitt enforcement officer it was asserted that there are signs located at the exits from excluded roads i.e A312 at the junction with A315. Materially the Officer indicated that there was no obligation on ALG to erect sign but across the London Boroughs there is almost 98% coverage. The statement does not indicate how this figure of 98% was arrived at.

In the Notice of Appeal the Appellant indicated that the driver took the route daily, did not know that a permit was required, and indicated that there was no signage in place.

Subsequent to the adjourned hearing, the Enforcing Authority filed a map, indicating the point at which the signage is located: namely at the junction with Faggs Road, and the Staines Road, and Staines Road and the A30. The Enforcing Authority say that they cannot envisage that at the location of the contravention, that it could have got there without passing a sign.

However, the authority have not filed a site report, submitted photographs of the signage, nor specifically related the location of the signage to the point of alleged contravention.

In my view the Enforcing Authority have an obligation to sign the restrictions and the burden on them is to meet the point made by an Appellant. On the evidence adduced I am not satisfied that the local authority have satisfactorily proved the existence or location of signage and so I ALLOW the appeal and direct that the Penalty Charge Notice be cancelled.

Case No. LB 138

Euroway Express v ALG TEC

A Penalty Charge Notice was issued as the Appellant's vehicle was seen to be travelling on a restricted road, during prescribed hours without a permit on 10th

December 2004 at 5:28 and so a Penalty Charge Notice was served dated 15th December 2005.

The Appellant made representations, without addressing the issue of signage and so the Notice of Rejection did not address the point either, neither did the Notice of Appeal – although it did refer to another case which points were taken in that case.

The Enforcing Authority relied on the written evidence of an Enforcement Officer that the vehicle displayed not permit and so a contravention occurred.

The Appellant attended the hearing and gave evidence that the signage was sometime patchy, sometimes confusing that it is not apparent which roads are restricted and which are not. Materially, he adduced evidence in the form of photographs in relation to his depot, where there appeared to be signs showing that different tonnage was restricted, some apparently restricted roads signed and others not.

The appeal was adjourned for the Enforcing Authority to specifically comment on the Appellant's photographs and to address the question posed which was to specify which Regulations prescribe the signage (if any).

The Enforcing Authority have indicated that they do not contest this appeal, do not offer evidence in rebuttal, and have not answered any of the points raised by the Appellant.

On the evidence I am satisfied that the signage is inadequate and inconsistent.

I ALLOW the appeal and direct that the Penalty Charge Notice be cancelled.

It is not my function to make directions or to advise the Enforcing Authority on how to sign the restrictions. However, the photographs submitted by the Appellant amply illustrate that the signage in this location is confusing and inadequate and that it should be changed.

Joanne Oxlade

Adjudicator appointed under Section 73(3) of the *Road Traffic Act 1991*
acting in exercise of powers conferred by paragraph 10 of Schedule 1 to the
London Local Authorities Act and Transport for London Act 2003

Date: 13 October 2005