

Appendix D

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
CROWN OFFICE ROW

CO/ 3551 | 2000

THE QUEEN

-v-

WEST BERKSHIRE DISTRICT COUNCIL
ex parte RODNEY JAMES NEMETH

NOTICE OF APPLICATION FOR PERMISSION
TO APPLY FOR JUDICIAL REVIEW AND AN INTERIM INJUNCTION

The Applicant

RODNEY JAMES NEMETH

Judgment , order , decision ,
or other proceeding in
respect of which relief is
sought , and the date
thereof

The decision / resolution of the
Respondent on 3rd July 2000 to :

(a) re-affirm its commitment to the
removal of limits to the number of
licences issued in the town and
district zones ;

(b) approve Option Five as the way
forward – to phase out limits in both
zones over a three and a half year

period by allowing dual plating, a period of derogation for existing licence holders and transferees to switch to vehicles " suitably adapted or designed for ease of use by disabled passengers " (SAVs), and impose a requirement for persons who were not West Berkshire Council taxi licence holders as at 6th June 2000 to provide an SAV within a specified period

Relief sought

- (1) Certiorari to quash the decision
- (2) An interim injunction restraining the Respondent from issuing any hackney carriage licences pursuant to its resolution dated 3rd July 2000

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Kearns & Co

Dated

September 2000

Sun Alliance House

166 / 167 St Helen's Road

Swansea

SA1 4DQ

DX 39552 Swansea

Ref : KJ

Tel : 01792 463111

Fax : 01792 463888

Grounds upon which relief is sought

1. The issue in this case is whether the Respondent acted lawfully and reasonably in dealing with unmet demand for hackney carriages in the town zone of Newbury by resolving to :
 - (a) re-affirm its commitment to the removal of limits to the number of licences issued in the town and district zones ;
 - (b) approve Option Five as the way forward – to phase out limits in both zones over a three and a half year period by allowing dual plating, a period of derogation for existing licence holders and transferees to switch to vehicles " suitably adapted or designed for ease of use by disabled passengers " (SAVs), and impose a requirement for persons who were not West Berkshire Council taxi licence holders as at 6th June 2000 to provide an SAV within a specified period

2. As to the Applicant :
 - (1) He has a sufficient interest , being a hackney carriage driver licensed to ply for hire in the Newbury town zone. Further, the Applicant was granted his licence in 1996 to deal with previously identified unmet demand, but prior to being granted a licence he had to provide a wheelchair accessible vehicle.
 - (2) He has no alternative remedy .

3. The Respondent has powers to licence hackney carriage vehicles pursuant to the Town Police Clauses Act 1847 (hereinafter referred to as " the 1847 Act).

4. The Respondent has 2 zones in which hackney carriages can ply for hire in the Newbury area. One zone covers the town of Newbury (" the town zone ") and the other covers the more rural areas (" the district zone ").

5. The respondent has a discretion as to whether or not to issue a hackney carriage licence to an applicant pursuant to its powers under the 1847 Act. The exercise of this discretion is affected by Section 16 of the Transport Act 1985 which provides that a licence can only be refused for the purposes of limiting the number of licences issued if there is no significant unmet demand for hackney carriages in the area.
6. In order to assess the extent of unmet demand the Respondent has commissioned surveys from Transport Consultants. In 1996 a survey identified significant unmet demand in the town zone which could be dealt with by the issue of 5 new licences. The Respondent resolved that 5 new licences should be issued, but only in respect of wheelchair accessible vehicles. The Applicant was issued with one of these licences in 1996.
7. In the circumstances, in order to obtain a licence in 1996 the Applicant had to make a substantial financial investment by purchasing a wheelchair accessible vehicle.
8. In early 2000 the Respondent commissioned a further survey to assess unmet demand. The survey, which is dated May 2000 identified unmet demand in the town zone which could be dealt with by the issue of 14 additional licences.
9. On 6th June 2000 the Respondent's Public Protection Committee considered the survey and the options available to them. Members were informed that consultation had taken place with the taxi trade, disabled groups, the police and others. The Committee resolved as follows to :
 - (1) adopt, in principle, the following proposals and instruct officers to consult with interested parties, including parish councils and trade associations :

- (a) In the town zone

- (i) remove quantity control on the number of taxi licences issued
- (ii) introduce a requirement that all new licences issued have a condition that vehicles be suitable for wheelchair users and other people with disabilities
- (iii) all existing licence holders to continue to use saloon cars as long as the legislation allows
- (iv) require all transferred licences to change to wheelchair-accessible vehicles the next time the vehicle is changed

10. The resolution " in principle " was consistent with the 1996 resolution in the context of disabled access vehicles and the forthcoming requirements of the Disability Discrimination Act 1995.

11. Further consultation took place and the matter was considered again by the Public Protection Committee on 3rd July 2000. The Report to Committee put forward 5 options for consideration, Option 3 being to confirm the previous decision in principle. The Committee resolved as follows to :

- (a) re-affirm its commitment to the removal of limits to the number of licences issued in the town and district zones ;

- (b) approve Option Five as the way forward – to phase out limits in both zones over a three and a half year period by allowing dual plating, a period of derogation for existing licence holders and transferees to switch to vehicles " suitably adapted or designed for ease of use by disabled passengers " (SAVs), and impose a requirement for persons who were not West Berkshire Council taxi licence holders as at 6th June 2000 to provide an SAV within a specified period

12. The decision / resolution of the Respondent dated 3rd July 2000 warrants the intervention of the Court in the exercise of its supervisory jurisdiction.

- (a) The decision / resolution was irrational in that it departed from the Respondent's requirement in 1996 that further licences should only be

issued to applicants who provided wheelchair accessible vehicles, with no cogent reason for so doing.

(b) The decision / resolution of the Respondent in 1996 that the 5 further licences to be issued at that time would only be issued to applicants who provided wheelchair accessible vehicles gave rise to a substantive legitimate expectation on the part of the Applicant that, in the absence of any other over-riding consideration any further licences issued in the future to deal with unmet demand would be issued subject to the same condition. The decision / resolution dated 3rd July 2000 thwarted the Applicant's substantive legitimate expectation.

(c) The decision / resolution dated 3rd July 2000 was irrational in that it was not consistent with the forthcoming requirements of the Disability Discrimination Act 1995, on which the Respondent had in part based its 1996 decision / resolution.

(d) In resolving as it did on 3rd July 2000 the Respondent took into account irrelevant considerations and / or failed to take into account relevant considerations as follows :

(i) the resolution / decision in 1996 to only issue the 5 new licences to applicants who could provide wheelchair accessible vehicles

(ii) the legitimate expectation on the part of the Applicant that, in the absence of any other over-riding considerations, the same condition would be imposed on the grant of future licences

(iii) the provisions of the forthcoming Disability Discrimination Act 1995

(iv) the significant financial investment that the Applicant had made to provide a wheelchair accessible vehicle in 1996 to obtain his licence

(v) the issue of dual licences to existing licence holders will not necessarily increase vehicles available for hire, but if it does it will have the effect of increasing the supply of hackney carriages in the town zone to the detriment of the district zone.

(vi) the resolution makes no immediate provision for further wheelchair accessible vehicles to be available for hire

(vii) the existence of unmet demand identified in the survey relies upon an arbitrary waiting time of 5 minutes

(vii) the Respondent has provided a specification for wheelchair accessible vehicles despite the fact that no government specification has been provided.

(e) The decision / resolution of the Respondent dated 3rd July 2000 was unreasonable in the Wednesbury sense.

13. In the event that the Applicant is granted permission to seek a Judicial Review, he seeks an interim injunction as set out above to prevent the Respondent from issuing licences pursuant to its decision / resolution dated 3rd July 2000.

12. This application is brought within 3 months of the decision / resolution. The Applicant, through his solicitors, has raised matters of complaint in respect of the resolution dated 3rd July 2000 with the Respondent in detailed and lengthy correspondence. Instructions have been taken in respect of the Respondent's answers, and in the circumstances the application has been brought promptly.

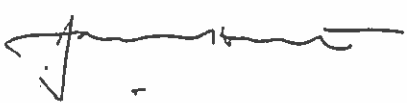
PETER MADDOX

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Kearns & Co

Dated September 2000

IN THE HIGH COURT
 APPLICATION FOR LEAVE TO APPEAL
 TO THE COURT OF APPEAL (CIVIL DIVISION)

Title of case/action <p style="text-align: center;">NEMETH</p>	Action/case no. <p style="text-align: center;">CO/3551/00</p> File no.
Heard/tried before (insert name of Judge) <p style="text-align: center;">HUNT J.</p>	Court no. <p style="text-align: center;">10.</p>
Nature of hearing: <p style="text-align: center;">JUDICIAL REVIEW</p>	
Date of hearing/judgement <p style="text-align: center;">8 DECEMBER 2000</p>	
Results of hearing (attach copy of order): <p style="text-align: center;">Dismissed</p>	
Applicant's/Appellant's/Respondent's * application for leave to appeal	Allowed /refused*
Reasons for decision (to be completed by the Judge): <p style="text-align: center;">No basis for appeal was advanced. I could see no prospect of success.</p>	
Judge's signature: 	Note to the Applicant: When completed this form should be lodged in the Civil Appeals Office on a renewed application for leave to appeal or when setting down an appeal

* Delete as appropriate

AND UPON READING the witness statement of John Ewart Parfitt signed the 10th day of November 2000 together with the exhibits referred to therein filed on behalf of the Defendant

AND UPON HEARING Counsel for the parties Mr Maddox (Mr C Lim for judgment) on behalf of the Claimant and Mr P Harrison (Mr R Banwell for judgment) on behalf of the Defendant

IT IS ORDERED that this application / claim be dismissed

IT IS FURTHER ORDERED that the costs of this application summarily assessed in the sum of £7,540.00 be paid by the Applicant to the Respondent's solicitors

[This matter occupied the time of the Court from 10:30 to 13.00 and 14.00 to 15.50 on the 6/12/00 and from 10.00 to 10.15 on the 8/12/00]

By the Court

DATE 8th December 2000

IN THE HIGH COURT OF
JUSTICE

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

MR JUSTICE HUNT

O R D E R

CO/3551/2000

Claimant's Solicitors

Kearn And Co
DX 39552 Swansea
Ref: PMX/Kearns

Respondent's Solicitors

West Berkshire District Council
Legal And Democratic Services
DX 30825 Newbury

Ref: ALG/JM L300066