Case No: CO/12635/2012

Neutral Citation Number: [2013] EWHC 1231 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Sitting at:
Manchester Civil Justice Centre
1 Bridge Street West
Manchester
M3 3FX

Date: Thursday, 11 April 2013

Before:

HIS HONOUR JUDGE WAKSMAN QC
(Sitting as a High Court Judge)

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Between:

WILCOCK

Claimant

--and--

LANCASTER CITY COUNCIL

Defendant

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Mr Rothschild appeared on behalf of the **Claimant**
Mr Holland (instructed by Lancashire CC) appeared on behalf of the **Defendant**

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JUDGMENT

HIS HONOUR JUDGE WAKSMAN QC:

Introduction

1. The claimant in this application for judicial review, Mrs Ellen Wilcock, is the holder of a Hackney Carriage Vehicle Licence granted by the defendant local authority, Lancaster City Council, to which I shall refer as "the Council". On 7 November 2012 the Council suspended that licence on the basis that the vehicle in question, a Fiat Scudo registration number PFO8 XPW, displayed unauthorised signage which was admittedly in breach of the Council's own licence conditions. A photograph of the vehicle is to be found at F/123. It is that decision to suspend which is now under challenge.

2. Interim relief in respect of the suspension, in effect to suspend the suspension, was granted by the court on 26 November 2012, and permission to bring this claim was granted on 4 January 2013.

The Statutory Scheme

3. The basic statutory scheme is this: section 47 of the Local Government (MP) Act 1976 ("the Act") governs the grant of licences for hackney carriages -- that is, pertaining to the vehicle not the driver -- and section 47(1) says that the Council may attach to the grant of a licence of a hackney carriage such conditions as it may consider to be reasonably necessary.

4. There is the basic distinction throughout the licensing scheme (which the Law Commission has recently recommended should not be changed) between the licensing and control of hackney carriage cabs on the one hand and private hire vehicles on the other, the key differences being well-known to all. Under the former, the driver can ply for hire on the public highway with a concomitant duty to pick up a fare if free; not so for private hire vehicles, and they cannot carry passengers without being pre-booked, and so on.

The Relevant Licence condition and breach provisions

5. The relevant conditions imposed by the Council here are to be found at F/43 to 46. The one with which I am concerned is paragraph 7, headed "Signs and notices". It says that the display of signs of hackney carriages shall be restricted to the roof and sides of the vehicle. The door signs supplied by the City Council must be affixed to the front doors. Any roof signs should be capable of illumination and be illuminated at all times. That is the only part that I need refer to.

6. There is no public law challenge to those conditions. The enforcement mechanisms in respect of breach of any of those conditions is to be found *prima facie* in two places: first of all section 60 of the Act, which says that a District Council may suspend or revoke or refuse to renew a vehicle licence on any of the following grounds including: "(a) that the hackney carriage or private hire vehicle is unfit for use as a hackney carriage or private hire vehicle". Subsection (2) says:

> *"(2) Where a district council suspend, revoke or refuse to renew any licence under this section they shall give to the proprietor of the vehicle notice of the grounds on which the licence has been suspended or revoked or on which they have refused to renew the licence within fourteen days of such suspension, revocation or*

refusal.

(3) Any proprietor aggrieved by a decision of a district council under this section may appeal to a magistrates' court."

7. It has been accepted before me by Mr Rothschild that if there was a breach of a licence condition, then the appropriate ground for any action by the Council would be section 60(1)(a), unfit for use; that is to say, Mr Rothschild accepts that the word "unfit" there includes a breach of any of the relevant conditions and is not limited, for example, to physical or mechanical unfitness. The second and relevant section and the one that is at the heart of the case before me is section 68. This is headed "Fitness of Hackney Carriages", and says that:

> *"Any authorised officer of the council in question or any constable shall have power at all reasonable times to inspect and test, for the purpose of ascertaining its fitness, any hackney carriage or private hire vehicle licensed by a district council, or any taximeter affixed to such a vehicle, and if he is not satisfied as to the fitness of the hackney carriage or private hire vehicle or as to the accuracy of its taximeter he may by notice in writing require the proprietor of the hackney carriage or private hire vehicle to make it or its taximeter available for further inspection and testing at such reasonable time and place as may be specified in the notice and suspend the vehicle licence until such time as such authorised officer or constable is so satisfied: Provided that, if the authorised officer or constable is not so satisfied before the expiration of a period of two months, the said licence shall, by virtue of this section, be deemed to have been revoked and subsections (2) and (3) of section 60 of this Act shall apply with any necessary modifications."*

8. The effect therefore is this. Under section 68 a licence for a vehicle can be suspended for no longer than two months, and if the relevant matter is rectified before the end of that two-month period, the suspension will end then. The suspension is not capable of extension. If not rectified and two months have expired, it turns into a revocation which will then trigger a right of appeal as if under section 60(2).

9. The only other provision I need refer to at this stage is section 77(2), which is the general provision for appeals for the whole of the Act, which says:

> "If any requirement, refusal or other decision of a district council against which right of appeal is conferred by this Act
>
> (a) involves the execution of any work or the taking of any action; or
> (b) makes it unlawful for a person to carry on business which he was lawfully carrying on up to the time of the requirement,

refusal or decision;

then, until the time for appealing has expired, or, when an appeal is lodged, until the appeal is disposed of or withdrawn or fails for want of prosecution –

(i) no proceedings will be taken for any failure to execute the work..."

So at least in a number of cases where an appeal is lodged it is possible for there to be, as it were, an automatic stay.

Background Facts

10. So much for the basic statutory background. In this case, Mrs Wilcock purchased the vehicle from Rayrigg Motors. It is of a type and model (that is, a Fiat Scudo) which is itself approved for use as a hackney carriage. Prior to the sale Rayrigg applied what it says is a standard signage for those intending to use the vehicle as a hackney carriage, including the unauthorised signage, and it is then marketed as a "Brit Cab". The signage is admittedly in breach of the claimant's conditions of licence for hackney carriages. If one returns to the photographs, which are on page 1, the word "taxi" vertically written at the rear strut to the roof of the vehicle, and under the headlamps in page 2, but also the word "taxi" is put on the glass in the rear section of the vehicle. Finally there are the words "taxi" in the centre of the vehicle in addition to the separate caption "oneAcab". This latter sign I permitted being one sign additional to the Council's own plate (shown on the front doors). So here, all the "taxi" signs were in breach of the condition.

11. It would appear that, following the purchase by Mrs Wilcock of the vehicle, it was then presented to the Council for its first compliance certificate. There is some issue about the sequence of events here. I need not deal with that now, but I will refer to it in context later on.

12. The first certificate of compliance, which is not the licence but effectively the same as an MOT certificate, was dated 20 June and it expired on 19 June 2009. Under this scheme a certificate of compliance would last one year for the first two years but would then reduce to a period of six months, and it is stated to have been issued pursuant to, among other things, section 68 of the Act. It said that the vehicle had been examined and it certified that at the date of the examination the statutory requirements prescribed by the regulations were complied with in relation to the vehicle.

13. The licence conditions to which I have already referred were of course made under the relevant regulations. That was in 2008, and there were successive certificates of compliance dealing with the year from 2009 to 2010, and then a set of six-month periods. The last certificate of compliance was issued on 6 June 2012 to expire on 7 December 2012, and that is the point at which the annual vehicle licence itself would expire and would require renewal.

14. Two spot checks were carried out without incident on 21 April 2011 and on 1 July 2012. Throughout that period, on the Council's current case, there was in fact a breach of its signage condition by virtue of the extra signs to which I have referred, but they were not acted upon.

That was reflective of its policy at the time in respect of the enforcement of that condition. But what happened was that in around the middle of 2012 the Council began to receive complaints by other licence holders, initially another hackney cab vehicle licence holder, to the effect that additional signs such as those on Mrs Wilcock's cab were proliferating. This was raised at the meeting on 7 July of the taxi liaison group which has regular meetings with the Council, though it is a non-statutory body. There were complaints about it. There were suggestions that the policy should be more rigorously enforced, not least because there were other vehicle licence proprietors who had already been asked to remove signage and had done so, and they were then aggrieved to find that there were other operators, perhaps including this claimant, who were still displaying it. It was put to the group that the complaint was about the proliferation of, in particular, the words "taxis" all over the vehicles. There is some detailed evidence about what took place at the meeting, but it is not necessary for me to delve into that or to make any particular findings about it. Miss Peck's note was that the mood of the meeting in general supported the Council's view, or encouraged it, that it should now rigorously enforce that aspect of its licences, although there has been some dissent as well. That is what the Council resolved to do. Mrs Wilcock was not present at that meeting, but on the evidence, and given the promulgation of that decision, it is unlikely that she did not become aware of the position. In any event, what then happened was that her vehicle was subjected to a third spot check. That happened on 31 October 2012, and on this occasion it led to a defect notice, which is a non-statutory notice, but which effectively gives the operator the chance to remedy the problem which would otherwise lead to statutory enforcement action. That document is to be found at page 10, and Mrs Wilcock was given slightly more than five days to remove the unauthorised signage to which I have referred. The deadline was then 7 November and she would have to present it so that it could be seen that it had been removed. Mrs Wilcock did not respond positively to that defect notice.

Ease of removal of the signs

15. At this stage I need to deal with something of a factual issue which has arisen in relation to the ease with which such signage can be removed. Miss Peck deals with this in her first witness statement at paragraph 19, where she says that eight proprietors, apart from Mrs Wilcock, had been requested to remove it. They had done so and there was no report of any damage to their vehicles. She spoke to one of them who said that he used boiling water to heat up the signs which were then easy to remove. He cleaned off any residue with white spirit and then polished. It took him 30 minutes and did not leave any marks or damage. Another proprietor said he paid £60 to have it removed at a garage. Signs were removed using a large hairdryer-type blower. The Council produces signs in-house for other purposes, called Mogo, and there was in fact information on the website about how to remove signs which routinely have to be removed when replaced by other ones, also referring to hairdryers. She gives further evidence about the ease with which such signs can be used in paragraphs 22 and 23.

16. Mrs Wilcock (in her second statement) took something of issue in respect of that, at least to this perhaps limited extent, saying that there was no independent evidence from Ms Peck about such matters. She did not wish to risk damaging her paintwork by pouring near boiling water on it or subjecting it to the mercy of the blower, which she assumed worked somewhat like hot air paint strippers She believed that without a complete respray the wording would still be visible as a result of paint fade. But here Mrs Wilcock did not profer any actual evidence.

17. A point has been taken by Mr Rothschild in respect of Miss Peck's first witness statement and her third that some of the information she gives on this point is hearsay. I follow that, but I do not think that it diminishes the weight of that evidence here. Miss Peck responded in a third statement. She said that all the signage she had previously referred to which had been removed easily had been of the same type as the signage on Mrs Wilcock's vehicle and would have been applied in the same way, in other words, by self-adhesive stickers.

18. She gives further detail about the other proprietors she had spoken to about the unauthorised signage and none of their vehicles needed respraying. That is all backed up, together with more information about door signage, in paragraph 3. In paragraph 10 she said that the issue came up at the meeting, and some members of the trade, including unhappy proprietors, said that there was nothing in this, that the signs were easy to remove with warm soapy water or a hairdryer and those drivers who objected should just do as they were told.

19. That is the state of the evidence. On the basis of that evidence, I am quite satisfied for today's purposes that these unauthorised taxi signs can and could have been removed safely, cheaply, quickly and effectively.

The Suspension and the Dispute

20. However, that did not happen here. Mrs Wilcock was aggrieved in particular by the fact that she regarded the changes required as unnecessary, as cosmetic or silly, and said that in any event no one had complained about it for the last four-and-a-half years. Since the defect notice was not complied with, a suspension notice the subject of this challenge was issued under section 68. It gives notice to the holder of the licence that the unauthorised signage was there and that the vehicle should be made available for further inspection on or before 6 January 2013, the suspension notice being dated 7 November 2012: in other words, two months before the final date for suspension, after which it would turn into a revocation. Mrs Wilcock was sent a covering letter explaining all of that.

21. There was the chance therefore for Mrs Wilcock at that point to comply. She decided not to do so. There were various letters going to and fro between the Council about that, and indeed the Council offered to her that if she would remove them for the time being, then the Licensing Regulatory Committee would convene a meeting at earliest convenience to deal with any application for waiver of those conditions: see for example F67 and 69. That was an offer which Mrs Wilcock decided not to take up.

22. So the suspension notice remained, then these proceedings were issued. Interim relief was sought and granted, as I have mentioned. In the meantime, on 7 December the certificate of compliance expired, as did the vehicle licence. It is common ground that at that point, on any renewal with condition it was open to Mrs Wilcock to appeal the whole question of the condition. That is precisely what she did. The appeal is evidenced by the summons, which is to be found on page 8, where the complaint is said to be against the decision to impose the hackney carriage licence on 8 December because that had the relevant condition imposed. As it happens, because of the interim relief Mrs Wilcock has in fact been able to continue to drive her hackney carriage, and the appeal (to the magistrates) stands adjourned or stayed pending the outcome of

the hearing before me.

The Current Position

23. What all of that means is that the suspension issue in fact has been and gone. The issues before me are now entirely academic as far as Mrs Wilcock is concerned, because in due course the whole question of the imposition of that condition will be debated in full before the magistrates. But in deference to the arguments made, which may still have some significance as far as costs are concerned, and because I am told that one point concerning section 68 is of wider interest, I shall deal with all the grounds that have been advanced before me. They are three:

> (1) Was the suspension notice itself in breach of the claimant's substantive legitimate expectation?
> (2) Was it *ultra vires*, because section 68, properly construed, did not permit a suspension notice to be issued in these sort of circumstances? And/or
> (3) Did the defendant act disproportionately in the circumstances of this case in a human rights sense in seeking to serve a suspension notice on the facts here when it did?

I deal with each of those matters in turn.

Breach of legitimate expectation

24. First, breach of legitimate expectation. The basic point is this: that because of all the previous certificates of compliance, the Council cannot just issue a suspension notice when it did four years later. The expectation would be that the vehicle should be viewed as compliant until at least the end of that certificate in December 2012. Given the suspension notice was only issued on 7 November, this ground was exceedingly limited in scope because on any view the relief claimed on this ground would have expired on 7 December 2012.

25. There was no real dispute between counsel as to the relevant principles to be applied here. Finer points as to whether it is precisely like an estoppel or not do not matter here. The essence is the existence of a representation founding a legitimate expectation and whether in all the circumstances, having regard to that, the action under challenge is unfair or unconscionable.

26. The first point that is made as far as any reliance on the position is concerned is that Mrs Wilcock actually bought the car on the faith of and in reliance upon the first certificate. That appears to be the case in this sense: I have been told that a proprietor such as Mrs Wilcock, who would have a vehicle licence but for a different vehicle which would have its own plate would then need to put it onto a new vehicle and a new plate would have to be manufactured but with the same licence number, because there is a quota on the licences. A bill of sale reflecting the purchase would have to be shown, and once that is done, then and only then would the vehicle be tested. If it tests successfully, a certificate of compliance would be granted and then the new plate would be made and attached. On that footing it would appear that the purchase itself, or the commitment to purchase, must have been before the vehicle is taken into a test, in which case it is very hard to see how the acquisition of the vehicle was based upon the first certificate. I have been told by Mr Rothschild that that is not accepted. I have been referred to the vehicle registration document, which refer to a change of registered keeper. But that of course is not the same as ownership, on 1 July. I do not find that very persuasive.

27. My principal finding is that the acquisition must have taken place before any test and if so reliance as claimed is not made out. But, lest I am wrong about that, I will proceed on the basis that it is the other way wrong, namely that somehow the purchase occurred after the first certificate. The question then is what can properly be read into that first certificate. I can see that it can be said that under the first certificate it can be assumed that the Council's view was that the condition of the car at that time was compliant. But where does that take the claimant? I do not accept that that means clearly and unequivocally that it could never be the case during the life of that certificate, which goes on for one year, that the position on compliance could change. The Council is entitled to change its policy. It is entitled to act more strictly. That is particularly the case here, of course, because it is not suggested that it is unlawful for the council to change its approach and there is no attack on the condition itself. I do not think it can be read into the first certificate into that that the Council will never change its policy in the course or the duration of that certificate.

28. Defects of course can arise during the course of a certificate. Whether it would be unconscionable to change midway, as it were, seems to me to depend on the facts of the particular case. On any view, Mr Rothschild rightly accepts that the best he can hope for here is that there would be no change in the Council's view as to compliance by Mrs Wilcock until the end of the certificate, which would take him no further than December. However, the matter does not end there because it is not possible to find breach of legitimate expectation unless one is also to find that there is overall unfairness or unconscionability in the light of that. Here, in my judgment, there is clearly none.

29. On my factual findings, the first point is that it was very straightforward to remove the unauthorised signage. Once that had been done, there would be no suspension but the whole question would be explored on appeal in a proper forum.

30. Secondly, I find that it is likely that the claimant was in a position to take that step after the July meeting, but, if I am wrong about that, she was certainly in a position to do it after receiving the defect notice. It was put by Mr Rothschild in the different context of disproportionality, but it seems to be relevant here as well, that the Council's actions in making the suspension notice were a sledgehammer to crack a nut. But in my view that nut should not still have been there in November to be cracked. It could easily have been removed and argued about later. On that footing and had that been done, there would have been no impediment to Mrs Wilcock's ability to ply her trade in that vehicle in the usual way. Other drivers were served with similar defect notices and complied without any difficulty.

31. Given, therefore, (a) the timing of this and the earlier notification; (b) the ease with which the matter could be rectified *pro tem*; and (c) the fact that within a month all of this could then be the subject of a proper appeal, I am afraid that I find it quite impossible to see how there is any breach of legitimate substantive expectation here. Ground 1 therefore fails.

Ultra Vires? The interpretation of s68

32. I now turn to ground 2, which concerns the interpretation of section 68. I have already pointed out that it is accepted that the word "fitness" under section 60 includes matters such as breach of licence conditions. I have also pointed out that until a suspension turns into a relocation there is

no statutory right of appeal against a suspension notice, though of course it can always be susceptible to being challenged by way of judicial review.

33. What then is the interpretation of section 68 claimed for by Mr Rothschild? There have been various formulations put forward, but the essence is that where the word "fitness" appears in the second line of section 68 it should be read as "roadworthiness", or "suitable mechanical condition", or, if he is wrong about that, something a rather wider, but which in any event would not catch breach of a licence condition, or perhaps not a breach of this licence condition. If that is right, then of course the first point to make is that it is a construction which is radically narrower than the construction of a similar word which appears in section 60, a few sections earlier in this statute. *Prima facie*, that would be odd, in my view.

34. Secondly, however, the first plank of Mr Rothschild's argument is to rely upon the legislative history. I did not find that of any assistance. He made the point that these parts of the 1976 Act appear to have been drawn from certain local private Acts of Parliament, and in particular a Plymouth piece of legislation which is in very similar form. He says that, as a result of the late introduction, it may be that Parliament did not give these provisions the attention which they deserved, but I do not see anything in that; I do not see how that can seriously affect my construction. Having been faced with the legislative history, it is clear there was no ghastly error being pointed to as to how these sections have emerged as they have. Indeed, what is remarkable about them is that there is a constant theme throughout all the Acts which I was referred to, which included Plymouth, Derby, Manchester to date. This is that there was something like section 60, and then there was a suspensory power without a right of appeal but which was for a very short period, sometimes as little as two weeks. As I observed at the time, it seemed to me that this was the product of a judgment saying that there was a case, as it were for a short summary investigation and remedial process, which would only be for a certain period (having regard to the fact that it would interfere with the trade of the proprietor) of somewhere between two weeks and two months. In the earlier incarnations of section 68, once that suspensory period had reached its limits, that was it; the suspension would end unless action was taken under the other section. The only difference with section 68 is that it has brought into play the transformation of the suspension into revocation, but that would then carry a right of appeal. So I can see nothing curious or odd in the legislative history which impels the construction which Mr Rothschild advances.

35. The next point, he says, is that there should be a difference of interpretation because section 60 carries a right of appeal across the board. He says that because of that, and because there is no right of appeal from that limited two-month period, section 68 should be confined to serious matters, hence roadworthiness.

36. It is important to understand the context here because at the back of Mr Rothschild's submission is the notion that a breach of signage conditions is really trivial or minor or cosmetic, or really has little to do with the objectives of the licensing regime. I do not accept that.

37. I have been reminded by Mr Holland for the Council of the legislative scheme here, and indeed that was all set out in the Wirral case, whereby the objectives of all of this were not limited to passenger safety, but other matters as well. As Glidewell LJ put it in that case, they were there

to ensure that those who wished to use hackney carriages or private hire could readily distinguish one type of vehicle from the other. That is a proper object, and indeed, as I have indicated, the condition itself has not been challenged.

38. Why then should there be a need to ensure that there was not an excessive signage? The point about all of that is the idea that if there are to be distinguishing features between the hackney carriage on one hand and the private hire vehicle on the other, for example allowing one to, say, have an illuminated sign on the top, or another particular kind of plate, then it would be important not to have too much clutter on the vehicle. This then allows for a "blank canvas" so that the features that are meant to distinguish them are clearly to be observed. It may be thought that adding the word "taxi" is not going to make very much difference to that, but I accept that that is an example of the kind of additional clutter.

39. Moreover, it is backed up by evidence. The decision to enforce this policy more strictly was not born on a whim on the part of the Council, but directly in response to the complaints of those who were pointing out the proliferation of these signs. In that context I should also say that I am quite satisfied, having regard to the evidence, that in this context it is impossible to conclude that the word "taxi" can only denote a hackney carriage as opposed to a private hire car.

40. Therefore, to the extent that it affects the issue of interpretation, I reject the notion that this case is a typical example of a piece of trivia that should not fall within section 68 at all, but should only be left to section 60.

41. Why then should it be that section 68 more generally should confine itself more generally to questions of roadworthiness? As it seems to me, the virtue of section 68 is that it provides a swift and summary process, both for the Council and for the operator to deal with and hopefully get rid of problems which arise in the currency of the licence concerning the vehicle which are capable of being disposed of quickly. This would have the virtue of not involving either party in expensive legal proceedings. In that sense it is a different creature from section 60 and has clearly been regarded as such by the legislators for a very considerable period of time.

42. Indeed it actually seems to me that section 68 is technically apposite to <u>less</u> serious matters because those are the kind of matters which ought to be capable of being dealt with very swiftly and without the need for the incentive of a deterrent of a suspension notice. This itself is confined only to a relatively short period, though of course I accept that a period of two months is significant for someone who plies their trade and earns their living in that way, and I do not underestimate that at all.

43. It follows from that that I do not accept that the fact that this matter could have been dealt with under section 60 means that it has to have been dealt with under section 60 or that it is a reason why the word "fitness" should be read down as a matter of interpretation.

44. I have been referred to some comments by the author of the principal work, it appears, on taxis, which is *Button on Taxis*. At 8.150, in passing he refers to section 68 as a convenient means of dealing with unroadworthy vehicles. He was not dealing with the issue before me, and I do not read anything in particular into that. Indeed, there are other parts of his book where he refers to

section 68 in the context of private hire as being useful to ensure the vehicles are in a safe and satisfactory condition. That, therefore, does not assist.

45. Mr Rothschild pointed out that the word "test" has been inserted into section 68. It was not in all of its statutory predecessors. He says that "test" would indicate something to do with mechanical features of the vehicle. That is obviously right, where that is the sort of problem that has occurred. I have little doubt that the reason why "test" was not there originally is because technology has probably moved on and there is a need and a point in having something a little more intrusive than a mere inspection to see whether the car is fit or not. But none of that entails the conclusion that fitness can only be concerned with matters of roadworthiness. In a case like this, of course, testing would not be required, but inspection certainly would.

46. For these brief reasons I am quite unable to see, as a matter of common-law, as it were, that section 68 should be read down. Nor do I see that it should be read down simply because there is no right of appeal in respect of the suspension period. As I have indicated, it is a limited period. It is susceptible of judicial review in any case, and the circumstances where a challenge would be made would, I would have thought in the normal course of things, be rare. But the fact that there is no substantive right of appeal from that suspension notice does not, in my judgment, help Mr Rothschild here.

47. The next strand of his argument is to rely upon Article 1 of the First Protocol so far as the right to enjoy possession of their properties, as imported by the Human Rights Act. What he says here is that, if interpreted in the wider sense, then this provision carries with it at least the risk of amounting to a disproportionate interference with that right if applied in cases such as this. The first question is whether the vehicle licence is the possession or property for these purposes. In the light of the further findings which I shall make, it is unnecessary for me to express a final view about that, but my strong inclination is that it is not. I say that essentially as a result of the penetrating analysis of Sir Christopher Bellamy, sitting as a Deputy Judge, in R (Royden) v Wirral Metropolitan BC [2002] EWHC Admin 2484, which was in fact a case about a hackney carriage licence. The complaint there was made by the holder, not that his own licence was going to be taken away, but that because there was a change so as to make the quota disappear so that there was going to be a derestriction, it would devalue his own right and that there was an infringement of A1P1. I accept the context here is different, but I do not accept that it renders this case irrelevant, because the first question, as here, is whether such a licence was covered by Article 1 in the first place. From paragraph 133 onwards, the learned judge gives a detailed account of why he considers that it does not. One particular point which found favour with him and which drew upon some earlier learning was the fact that, although it has been said that goodwill can amount to property or possession for these purposes, where the value of the question derives not from the building up of the business but the scarcity of the object concerned, that does not amount to goodwill and therefore does not fall for protection. As with that case, in this case there is certainly a value from the vehicle licence, but in truth it has nothing to do with goodwill; it has everything to do with the fact that such licences are limited and scarce. That is the reason why they have a monetary value.

48. Mr Rothschild boldly sought to persuade me that it was nonetheless goodwill, because if there were 109 licences, then each licence is in fact 1/109th of the overall goodwill of the hackney

carriage community. I am afraid I am not persuaded by that at all. That seems to me to be entirely artificial.

49. There is a case called Crompton v Department of Transport Northwestern Area [2003] EWCA Civ 64, which suggests that a licence in this context might be considered to be possession or property, and indeed was by the Court of Appeal in the circumstances in which they viewed that case; that being, I think, a haulage goods vehicle licence. However, a subsequent Court of Appeal authority held that Crompton should not be followed (see the case of Waltham Forest NHS Primary Care Trust and Secretary of State for Health v Malik [2007] EWCA Civ 265, which was decided in 2007). The relevant citation is set out in paragraph 46 of Mr Holland's skeleton argument.

50. It therefore seems to me, having regard to the *Royden* case and *Malik* case, and the analysis of Mr Kenneth Parker QC (as he then was) in Nicholds v Security Industry Authority [2007] 1 WLR 2067, that the preponderance of authority is against holding a licence of this kind as a possession or property.

51. I have of course been referred to European case law, including Tre Traktora v Sweden (1989) 13 EHRR 309. I need not go into that because those cases were in fact considered decided by the domestic courts here as well, so it is not as if they have been overlooked. I do not consider that the European jurisprudence would impel a decision different from those that have been reached in the domestic cases to which I have referred. However, as I have indicated, that is my strong inclination and it is not necessary for me to decide the matter further. That is because of the further findings which I now make.

52. Assume that was wrong and this vehicular licence was a possession or a property under A1P1 so that that provision is engaged, the next question is whether the construction of this Act, which is not limited as Mr Rothschild contends, would then be a disproportionate interference with that right. The first point to bear in mind here, when considering proportionality, is that in a case such as this it would not be correct to characterise the reason for interference as trivial. Secondly, the interference itself is most easily cured, as I have already found.

53. Thirdly, the length of the interference is, at most, two months. Fourthly, there is, in any event, a right to seek judicial review. Fifthly, this is a matter which does not in fact impinge upon the ability of the proprietor to drive. It does not affect the driver's licence; it merely affects the licence pertaining to this vehicle.

54. For the reasons already given, there is clearly a legitimate aim here, and, if Mr Rothschild were right, it means that any use of section 68 by a council for other than roadworthiness matters of necessity renders such use disproportionate, because it is the spectre of those matters occurring which brings it on the wrong side of the line. I simply do not accept that.

55. I notice that Miss Peck in her witness statement has pointed out that it is a provision which is very widely used for all sorts of matters. The Council apparently issue hundreds of defect notices for anything from a balding tyre to a dirty interior. She also makes the point, and I accept it for these purposes, that if a defect notice is issued, it does not put a black mark on someone's record, which was a concern that had been expressed by the claimant.

56. Since this case would (according to Mr Rothschild) be regarded as a paradigm case of disproportionate interference and therefore as an example of why one should aggressively re-interpret section 68 in the manner suggested, since I do not consider this to be a disproportionate interference, it is very difficult to see any other reason why section 68 should be reinterpreted as claimed.

57. On that footing, therefore, I have reached the clear view that the word "fitness" in section 68 means precisely the same as it means in section 60. I have already indicated that, in my judgment, the fact that in some cases the process could be issued under section 60 as opposed to section 68 does not mean that the narrower interpretation has to be given under section 68. There is some issue about the extent to which the Council in fact uses section 60 for cases such as this. It appears that there is delegated power, in fact, at least so far as suspensions is concerned, to go under section 60 and section 68, so that an authorised officer could suspend against either, and I am content to proceed on that basis. I also accept what Mr Holland says, which is that there are a number of cases of suspension which come under section 60, though not always, and there are clearly a large number of notices which come under section 68, but I do not think that that makes any difference here. Ground 2 therefore fails.

Disproportionate Interference by the Council in this case

58. That leaves ground 3, which is that even if the statute is to be interpreted as I have said, the issue of the suspension notice here and when it was issued was a disproportionate interference on the facts. Where the underlying policy is not challenged, and indeed where the change in policy per se is not challenged, and where I found that there was no breach of legitimate expectation, the first point is that the court must obviously give considerable leeway or a margin of appreciation to the Council when it exercises its decision as to whether or not to serve a suspension notice and indeed whether or not to serve one under this section or under section 60.

59. For the factual reasons already given, it is manifestly not disproportionate to serve a suspension notice here when (a) the matter could easily be cured; (b) it is of limited duration; (c) it can be challenged on the merits later on; and (d) there was prior notice not later than the defect notice.

60. I accept that section 60 and 68 are different creatures, as already indicated, and I see no reason why the Council is bound to go under section 60 when there is a short and convenient summary process available under section 68. Nor do I regard the issue of the suspension notice as disproportionate because there is no full right of appeal.

61. The next question is whether it is disproportionate because, to use the expression that I introduced in order to encapsulate Mr Rothschild's argument, has there been a jumping of the gun? Because, after all, the issue could have been left until December 2012, a month later, when the Council would have been entitled to impose a condition on removal, which in fact they did, and anything would come out in the wash then. Superficially that argument has some attraction, but it fails, in my judgment, for these reasons: it seems to me that the Council was well entitled, after having given notice to the liaison group generally in July and then a defect notice to Mrs Wilcock in particular on 31 October, to issue the suspension notice. There had been time given. The defect is readily cured. Other people have been served with defect notices and have

complied without any real difficulty and of course, as would be obvious, it would look a little odd if the Council was then, as it were, hanging back for those individuals who had refused to comply with the defect notices. In a sense, as to the jumping of the gun, to mix my metaphors, the boot is really on the other foot. Instead of saying "Why jump the gun?", one could put it the other way round, "Why did Mrs Wilcock not, as she was invited to do, bite the bullet and remove the stickers, at least *pro tem*?" That would deal with all of this and then the whole matter would be dealt with in the proper forum, namely the appeal which is going to occur shortly.

62. For all of those reasons, in my judgment, there is no way in which it can be said that the issue of the suspension notice was itself a disproportionate act on the part of the Council. Ground 3 therefore fails also.

Conclusion

63. That concludes my analysis of the claim and for those reasons given above I am afraid to say I reject it in its entirety. I am extremely grateful to both counsel for their assistance. I will now hear them on any post-judgment matters.