



SOUTH EASTERN AND METROPOLITAN TRAFFIC AREA

DECISION OF THE DEPUTY TRAFFIC COMMISSIONER

**PUBLIC INQUIRY HEARD AT IVY HOUSE, IVY TERRACE, EASTBOURNE ON 31
OCTOBER 2018**

OK0175616 STUART LYONS (HAULAGE) LIMITED

Decision

Breach of Section 26(1) (a) and (f) of the Goods Vehicles (Licensing of Operators) Act 1995 found.

Formal warning issued

Repute of transport managers Stuart Lyons and Lisa Davis retained.

Background

1. The operator Stuart Lyons (Haulage) Limited is the holder of a standard international licence authorising 59 vehicles and 55 trailers granted on the 16 December 1993. The directors of the company are Stuart David Lyons, Stuart Michael Lyons and Andrew David Jenner. The transport managers are Lisa Davis and Stuart David Lyons.
2. The original authorised operating centres under the licence are at Pond Lane, Worthing where 7 vehicles and 4 trailers are authorised and Windroos Nursery, Littlehampton where 48 vehicles and 47 trailers were authorised. An application to authorise an additional operating centre at Land to the rear of John Turners Phorniums, Lake Lane, Barnham, West Sussex for 37 vehicles and 38 trailers was granted on the 3 September 2015 subject to a number of pre-use conditions including the grant of planning permission by the local authority being met.
3. A site at Old Lake Nurseries, Lake Lane, Barnham is used by the operator as a "distribution centre" where vehicles and trailers are loaded and unloaded, the cargo usually being fresh food produce. A public inquiry was held on the 2 November 2011 before DTC Dorrington when it was alleged that the site had been used as an unauthorised operating centre. Having

heard the evidence presented the Deputy Traffic Commissioner decided to take no action. Detailed written reasons for this decision were not given.

4. A separate application was made to authorise the site as an operating centre in 2011 which, following local opposition was refused by me on environmental grounds after a public inquiry held on the 9 May 2012. Full reasons were given for the decision and are a matter of public record.
5. As a result of ongoing concerns set out by a resident of the area and communication with the Office of the Traffic Commissioner an informal meeting was held by me on the 14 December 2015 with the aim of trying to mediate between the neighbour and the operator and reach an accord acceptable to both sides. The outcome of this meeting was set out in a number of documents which were included in the current case papers.
6. As a result of ongoing complaints about the alleged use of Old Lake Lane Nurseries as an unauthorised operating centre a covert surveillance operation was carried out by officers from the DVSA between the 29 January and 5 February 2018. Detailed logs were kept of vehicle movements and time periods when it was believed vehicles and trailers were parked at the site.
7. In addition to the surveillance operation, DVSA officers requested tachograph data for 12 randomly selected vehicles. Analysis of this data revealed a few occasions when drivers had remained at the Old Lake Lane Nurseries overnight and additionally showed that infringements had been committed by drivers without disciplinary action being taken. A DVSA maintenance investigation was also undertaken. Director Andrew Jenner and transport manager Lisa Davis were interviewed under caution on the 16 May 2018 in relation to the allegations of unauthorised use of the site and other pertinent matters.

The Public Inquiry

8. Directors Stuart David Lyons, Stuart Michael Lyons and Andrew David Jenner attended the public inquiry as well as transport manager Lisa Davis. Whilst the operator was unrepresented at the inquiry prior discussion had taken place with solicitor Philip Brown who had sent a written submission to the inquiry.
9. At the outset of the inquiry, Mr Jenner informed me that the operating centre to the rear of John Turners Phorniums, Lake Lane, Barnham, West Sussex had been in use since June 2018 following compliance with the pre-use conditions set by me in September 2015. It was accepted that there had been a breakdown in communication and that the records should be amended to show that site as an authorised centre and to delete the previous site at Windroos Nursery, Littlehampton. It was also stated that there is an application pending to increase the authorisation at the "John Turner's" site to 52 vehicles and 52 trailers.

10. DVSA officer Clare Ashford gave evidence and confirmed that she had been responsible for the covert surveillance operation conducted between the 29 January 2018 and 5 February 2018. She had submitted a full report and it is unnecessary for me to repeat the contents in my decision. It was accepted that the logs of vehicle and trailer movements compiled as a result of the surveillance were difficult to reconcile as a consequence of the trailers all having the same livery and it being impossible to identify the precise trailer numbers. After further discussion on this point it was agreed as “common ground” that between 1 and 3 trailers had been parked at the Old Nurseries site on each night but it could not be shown that these were the same trailers every time. It was also agreed that on two occasions during the observation period tractor units had arrived during the night-time hours to collect trailers from the site.
11. Traffic Examiner Cox confirmed the contents of his report and said that he had analysed tachograph data for 12 vehicles over a 3 month period. He had found 5 occasions when authorised vehicles (as opposed to trailers) had been left on site at Old Nurseries when not in use. In response to Mr Jenner he accepted that the explanations given for three of these occasions were acceptable. He also accepted that actions taken by the transport managers in relation to the general compliance regime had dealt with the other concerns raised.
12. Vehicle Examiner Wakeling had submitted his report as part of the case file and confirmed that the outcome of his investigation had been mostly satisfactory and that subsequent actions taken by the operator had answered any concerns raised.
13. Director Andrew Jenner gave evidence and said that it was accepted that some trailers were left at the Old Nurseries site on occasions. The trailers were sometimes loaded awaiting collection by another tractor unit or were empty waiting to be loaded. The period they remained on site was not excessive, 12 to 15 hours maximum, and the practice was common in the industry. The inquiry before DTC Dorrington had held that the practice did not constitute unlawful use of the site and this was still the case. The operator had tried over the years to minimise the detrimental impact of activity on the site on neighbours.

Findings and Decision

14. The key question for me to determine in this case is whether the admitted practice of the operator in leaving between one and three trailers overnight at Old Lake Nurseries amounts to using an unauthorised operating centre and is therefore a breach of Sections 26 (1) (a) of the Goods Vehicles (Licensing of Operators) Act 1995.
15. In making my decision I have considered initially whether there is a distinction between tractor units and trailers in relation to their use and where they are kept. Section 58 of the 1995 Act defines a goods vehicle as “a motor vehicle constructed or adapted for the carriage of goods or a

trailer so constructed or adapted” and Section 7 defines an operating centre as “the base or centre at which vehicles are normally kept”. I conclude from those two sections that trailers are included in the definition of authorised goods vehicles and an operating centre is where they should normally be kept.

- 16.** Section 14 of the 1995 Act sets out the grounds on which an application to authorise a place as an operating centre can be refused on environmental grounds and these include when “the parking of vehicles used under the licence at or in the vicinity of the place in question would cause adverse effects on environmental conditions in the vicinity of that place”. This was, in fact, part of the reason why the application to authorise Old Lake Nurseries as an operating centre was refused in 2012 and confirms that where vehicles are parked is a key consideration.
- 17.** It is apparent that it is not the same trailers being kept at Old Lake Nurseries each night and I have asked myself whether this is a relevant factor to weigh in the decision. I have decided that it is not relevant because to do so would in effect circumvent the legislation i.e. it would mean that an operator could always keep vehicles away from an operating centre provided the vehicles so kept were rotated between sites.
- 18.** I have also considered whether the duration of the parking period of the trailers is a relevant factor and have decided that it is. Clearly if a vehicle, including a trailer, is being unloaded and/or loaded at a distribution centre it needs to be present and parked whilst that activity is taking place. The issue is therefore whether once that activity has ceased the vehicle needs to be moved either to a new destination or to an authorised operating centre? My answer to that question is generally yes but it may depend on the circumstances of each situation i.e. each case is determined on its’ own facts.
- 19.** Turning to the facts of this particular case the situation is now that the main operating centre is located a short distance away in the same road as the distribution centre at Old Lake Nurseries. It is at the operating centre that vehicles should be normally parked and it is my finding that all vehicles including trailers left overnight, whether loaded or unloaded, should be moved and parked there. Mr Jenner said that this would prove to be commercially difficult and may result in more disruption for residents but I fail to see that this is the case. Whilst commercial difficulty is not a material consideration for me in any event, it was said that there was a “shunter” tractor unit at Old Lake Nurseries used to move trailers around the site and it should be possible for this vehicle to be used to move them instead to the authorised operating centre along the road. It is also unclear to me how this change of practice will result in additional disruption to local residents when it should result at a minimum, in a reduction in the chances of tractor units arriving in the early hours of the night to pick up loaded trailers.

20. As regards the occasions when it was found through the tachograph analysis that tractor units had been parked at Old Lake Nurseries I am prepared to accept that the occasions were minimal and merely to point out to the operator that all possible steps should be taken to prevent this happening in the future.
21. In relation to the general compliance regime I note the low level failings noted by Traffic Examiner Cox and the remedial action taken by the operator. I also note the positive findings by Vehicle Examiner Wakeling.
22. Taking all the above into account I find that there have been breaches of Sections 26(1) (a) and (f) of the Goods Vehicles (Licensing of Operators) Act, 1995 in relation to the use of an unauthorised operating centre and the breach of undertakings in relation to drivers hours compliance and driver walk round checks. Having made those formal findings I also identify a number of positive features in relation to the overall compliance regime and the actions taken by the operator since the investigations by the DVSA officers. In respects of the unauthorised use of Old Lake Nurseries the operator says that it was believed that the decision in 2011 sanctioned this use and I accept that this was the belief at that time. However, I also note that in my decision of 30 September 2015 a footnote is recorded stating in unequivocal terms that the practice of keeping trailers overnight at the site had been raised and that “all vehicles and trailers must be kept at one of the existing operating centres”. This statement was not challenged by the operator at the time.
23. Having balanced all the factors I have decided that this case can be dealt with by a formal warning and no other regulatory action is required. Nevertheless the operator should be in doubt whatsoever that the practice of leaving trailers overnight at Old Lake Nurseries must cease immediately and if the practice is found to have continued much more serious action would be taken. I find that the reputations of the transport managers is retained and no adverse finding is made against them.



John Baker
Deputy Traffic Commissioner

12 November 2018