

This case may be of interest.

ANNETTE ATKINS v EALING LONDON BOROUGH COUNCIL (2006)

[2006] EWHC 2515 (QB)

QBD (Teare J) 17/10/2006

NEGLIGENCE - LOCAL GOVERNMENT - ROAD TRAFFIC

DEFENCES : HIGHWAY MAINTENANCE : LOCAL AUTHORITIES' POWERS AND DUTIES :
TRIPPING AND SLIPPING : CLAIMANT STEPPING ON UNSTABLE MANHOLE COVER :
HIGHWAY AUTHORITY'S LIABILITY : s.41 HIGHWAYS ACT 1980 : s.58
HIGHWAYS ACT 1980

In a case where a pedestrian had sustained injuries after stepping on an unstable manhole cover located in a shopping street, the highway authority had failed to show by its system of purely visual inspections that it had taken such care as in all the circumstances was reasonably required to secure that the manhole cover was not dangerous.

The appellant highway authority (E) appealed against a decision giving judgment in favour of the respondent (R) in respect of her claim for personal injuries. While walking down a shopping street, R had injured her ankle after stepping on a manhole cover which tilted, causing her foot to fall into the manhole. There was no dispute that by reason of the tendency of the manhole cover to tilt when stepped on, the highway was dangerous such that E had failed to maintain it pursuant to the Highways Act 1980 s.41. However, E asserted that, pursuant to s.58 of the Act, it had taken such care as in all the circumstances was reasonably required to secure that the manhole cover was not dangerous. Rejecting E's defence under s.58, the judge held that a reasonable system of inspection required E to inspect manhole covers to check that they were secure and that E's purely visual inspection, which was carried out once a month, was not a reasonable system of inspection. E argued that the judge had placed too high a burden on it and that he had failed to strike the balance between public and private interests which the courts had indicated was necessary in the field.

HELD: It could not be said that the judge had placed too high a burden on E or that he had failed to strike the necessary balance between public and private interests. The judge had noted that the owner of the company which had carried out inspections on E's behalf had agreed that if a manhole cover tipped, the consequences could be "rather catastrophic" and that it could be reasonable for there to be a closer inspection of the manhole covers than the one provided for. The judge therefore had to weigh, on the one hand, private interests, namely the risk of very serious injury caused to a person who stood on a manhole cover which tilted, and, on the other hand, the public interest, namely the burden on E in terms of cost or impracticality in inspecting manhole covers to check that they were secure.

The judge had borne in mind the public interest and had observed that E had adduced no evidence to suggest that a system of checking manhole covers to ensure that they were secure would be so difficult or impractical that the burden should not be placed on it. Manholes which

were liable to tip if stood on by a pedestrian in a shopping street were situations where maintenance and repair were urgently required because of the risk of serious injury to a person who might fall down the manhole. E had no system at all for checking whether manhole covers were secure and not liable to tilt if stood on. Further, E had adduced no evidence, in an attempt to discharge the burden of proof which lay upon it, to prove that loose or tilting manhole covers were so rare that it was unreasonable to expect highway authorities to have a system of inspection designed to check whether such covers were secure and not liable to tilt if stood on.

Moreover, the judge had had regard to the matters in s.58(2) to which he had been obliged to have regard. As to s.58(2)(a), the street where the accident happened was a shopping street, so it could be expected that many pedestrians would use it, Jackson v Gloucestershire CC (Unreported, March 24, 2004) distinguished. As to s.58(2)(b), the standard of maintenance appropriate for a manhole cover on a pavement in a shopping street was a standard which ensured, so far as was reasonable, that pedestrians were not at risk of falling into a hole which might be large and contain pipes, cables and other items.

Appeal dismissed.

Counsel:

For the appellant: Steven Snowden

For the respondent: Giles Mooney

Solicitors:

For the appellant: Barlow Lyde & Gilbert For the respondent: Hallam-Peel & Co

LTL 24/10/2006 (Unreported elsewhere)

Judgment: Approved - 6 pages

Document No. AC0111958

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Deellir na fydd unrhyw safbwyntiau, na chynghorion, na chasgliadau nac unrhyw wybodaeth arall yn y neges hon, nad ydynt yn berthnasol i waith swyddogol Cyngor Sir y Fflint, yn cael eu cynnig na'u cadarnhau ganddo nac ar ei ran, ac felly ni fydd Cyngor Sir y Fflint yn derbyn unrhyw gyfrifoldeb am y rhannau hynny o'r neges.
