



**Appeal No.: NT/2019/62  
NCN: [2020] UKUT 97(AAC)**

**IN THE UPPER TRIBUNAL  
ADMINISTRATIVE APPEALS CHAMBER  
TRAFFIC COMMISSIONER APPEALS**

**IN AN APPEAL FROM THE DECISION OF:  
THE TRANSPORT REGULATION UNIT OF THE DEPARTMENT FOR  
INFRASTRUCTURE  
DATED 9<sup>th</sup> JULY 2019**

**Before:**

**Elizabeth Ovey, Judge of the Upper Tribunal  
George Inch, Specialist Member of the Upper Tribunal  
Andrew Guest, Specialist Member of the Upper Tribunal**

**Appellants: SPIE LIMITED**

**Attendance:** The Appellants' company secretary was heard on behalf of the Appellants.

**Heard at: Royal Courts of Justice, Belfast BT1 3JF**

**Date of hearing: 20<sup>th</sup> February 2020**

**Date of decision: 19<sup>th</sup> March 2020**

### **DECISION OF THE UPPER TRIBUNAL**

IT IS HEREBY ORDERED that the appeal be dismissed.

**SUBJECT MATTER:** Revocation of licence following material change of circumstances; invalid surrender form

**CASES REFERRED TO:** *Bradley Fold Travel Ltd & Peter Wright v. Secretary of State for Transport* [2010] EWCA Civ 695; *Hughes v. Department of the Environment in Northern Ireland* [2013] UKUT 0618 (AAC)

## **REASONS FOR DECISION**

### **Summary**

1. This is an appeal by the Appellants, SPIE Limited, against the decision of the Department for Infrastructure (“the Department”) communicated by a letter dated 9<sup>th</sup> July 2019 to revoke the Appellants’ operator’s licence ON1141926 on the ground that there had been a material change of circumstances, namely, that the licence holder no longer appeared to be operating goods vehicles.
2. The grounds of appeal make clear that the Appellants do not require the licence any longer. Indeed, they had sought to surrender it prior to the revocation decision, but the surrender form sent to the Department was not correctly signed. The appeal is brought because the Appellants are concerned that the revocation of the licence will blemish their record.
3. Unfortunately, the failure to submit a correctly signed surrender form was the last in a series of errors and omissions as explained below. In all the circumstances, while we recognise the technical nature of the mistake made, we conclude that the decision to revoke the licence was not wrong and dismiss the appeal.

### **The facts**

4. It became clear at the hearing of the appeal, as explained in paragraph 18 below, that the Appellants had not received the bundle for the hearing. We therefore set out the facts in some detail, with extracts from relevant documents.
5. The Appellants applied for a restricted licence by an application dated 28<sup>th</sup> October 2015 seeking authorisation for six vehicles. The application gave as the correspondence contact address CBA House, Sandfold Lane, Levenshulme, Manchester M19 3BJ (“the Manchester address”) and as the establishment address 33 Gracechurch Street, London EC3V 0BT (“the London address”). The director signing the application gave the standard undertakings, including an undertaking to ensure that the traffic commissioner was notified within 28 days of “any other changes” (there being an earlier undertaking to notify the traffic commissioner of convictions). It also appeared from the application that within the last 12 months the Appellants had purchased the assets or shareholding of two other (related) companies which had previously held operator’s licences and those licences had been surrendered. Licence ON1141926 was duly granted in response to the application.
6. On 31<sup>st</sup> October 2018 Keltbray Aspire Limited applied for a restricted licence seeking authorisation for 18 vehicles. Of those vehicles, six were to be parked at the operating centre specified by the Appellants in their application. The application stated that Keltbray had purchased the Appellants’ assets.
7. This prompted a letter dated 26<sup>th</sup> November 2018 from the Department of Infrastructure to Keltbray. In relation to the proposed operating centre, it was noted that the Appellants had declared they would surrender their authority to use the premises as part of Keltbray’s application and a direction was made under paragraph 2 of Schedule 1 to the Goods Vehicles (Licensing of Operators) Act (Northern Ireland)

2010, which permits advertising requirements to be dispensed with in appropriate circumstances where the premises are already being used as an operating centre. The letter went on to ask Keltbray to provide certain supporting documentation, including the date of purchase of the Appellants' assets, and to complete a further application in the form currently in use.

8. The revised form was sent to the Central Licensing Office under cover of a letter dated 7<sup>th</sup> December 2018, which gave the date of purchase of the Appellants' assets as July 2018. The form itself included a list of operator's licences held by the Keltbray group companies, which were not to be surrendered and a list of operator's licences held by the Appellants, in relation to which there was no statement about surrender.

9. On 21<sup>st</sup> February 2019 the Department wrote to the Appellants at the Manchester address in the following terms:

"I refer to an application made by Keltbray Aspire Limited. It noted on that application that this licence would be surrendered following the grant of the new application. I can confirm that the new application has been granted and that this licence must now be surrendered.

To enable me to deal with the surrender you must complete the enclosed form SUR(NI)1. The form must be fully completed and returned along with your operator's licence ...

As the licence is held by a company, the SUR(NI)1 form may be signed by all directors or by one director with the authority of the others.

..."

10. No reply was received to that letter. On 13<sup>th</sup> May 2019 the Department wrote again to the Manchester address in the following terms:

"I refer to your goods vehicle operator's licence and my recent correspondence (copy enclosed) dated 21 February 2019.

I do not appear to have received a response and you must now give this matter your urgent attention and respond by no later than **27 May 2019**.

**Failure to comply with the above request within the stated deadline will leave me no option but to refer your case to the Head of the Transport Regulation Unit to consider taking regulatory action against the licence."**

11. Again no reply was received. On 12<sup>th</sup> June 2019 the Department wrote again, this time sending the letter both to the Manchester address and to the London address. An attempt was also made to send it by e-mail to a Lee Dolby, but delivery failed. The letter referred to the previous letters and continued:

"The Department is therefore considering making a direction under Section 23(1) of the [2010] Act to revoke the company's operator's licence on the following grounds:

- Section 23(1)(g) that since the licence was issued or varied there has been a material change in any of the circumstances of the licence-holder that were relevant to the issue or variation of the licence; namely that the licence holder no longer appears to be operating goods vehicles and is no longer fit to hold a licence in view of an apparent failure to respond to communications from the Department or to comply with its declaration that the licence would be surrendered

In accordance with Section 26(1) the Department is serving notice on you that it is considering making a direction **to revoke the company's operator's licence** on the grounds detailed above ...”

The letter went on to offer the Appellants the opportunity to make written representations and to request a public inquiry. It also informed the Appellants that they could still apply to surrender the licence “which can be done digitally using the self-service system for which it is registered”. The Appellants were given until 4<sup>th</sup> July 2019 to respond.

12. On that occasion the Appellants did respond, by sending a paper surrender form signed by the company secretary and not by either one or all of the directors. It is dated 14<sup>th</sup> June 2019. We note that the form contains the following immediately below the signature box:

“Position in business – please tick one below.

Owner  Partner\*  Director\*

Delegated officer of any other organisation (please state, e.g. Trustee)

\*This form may be signed by all partners/directors or by one with the authority of the others.”

13. The decision letter of 9<sup>th</sup> July 2019 was sent both to the Manchester address and to the London address. It reads:

“I refer to our letter of 12 June 2019 proposing to revoke the company's operator's licence in view of a material change. The company had been given a final opportunity to surrender the licence and an application was received on 20 June 2019. However, it was not signed by a director of the company and could not therefore be accepted.

The Department considers that the company has failed to continue to meet the requirements for holding an operator's licence and has decided to **revoke the company's licence with effect immediate effect** (*sic*) under the provisions of Section 23 of the 2010 Act on the following grounds:

- Section 23(1)(g) that since the licence was issued or varied there has been a material change in any of the circumstances of the licence-holder that were relevant to the issue or variation of the licence; namely that the licence holder no longer appears to be operating goods vehicles.

...”

14. The bundle of documents before us contains internal notes on the Vehicle Operator Licensing System which record that page 4 of a form GV(NI)72 relating to Schedule 1 of the 2010 Act and completed by the Appellants confirmed that the licence would be surrendered on the grant of the Keltbray application. That form does not appear in our bundle.

15. The bundle also includes the following internal exchanges leading up to the letter dated 9<sup>th</sup> July 2019:

**“Recommendation: Revoke**

A [propose to revoke] letter was issued on 12 June 2019. The company was given the option to surrender the licence digitally and in response we received a paper application but it was signed by the company secretary, who is not an authorised signatory. The application cannot therefore be accepted.

Our letter of 21 February originally requesting surrender of the licence clearly stated that the form may be signed by one or all of the directors.

No other response has been received and given the number of attempts it has taken to get a response from the operator, I see no benefit in requesting that the surrender form is signed by a director, especially as the company was made aware that the form required a director’s signature. I therefore recommend that the licence is revoked with immediate effect as the company no longer appears to be trading.” [5<sup>th</sup> July 2019]

**“Decision reason: Agree**

As the operator has been given a number of opportunities to surrender the licence and has failed to comply then I agree that the licence is now revoked with immediate effect as it is apparent that the company no longer require this licence.” [8<sup>th</sup> July 2019]

**The appeal**

16. The Appellants responded with the present appeal, which was lodged on 31<sup>st</sup> July 2019. The grounds of appeal are as follows:

“The business (SPIE Ltd) formally and in good faith submitted an application to surrender Operator Licence ON 1141926 on 20/06/2019.

The original submission of surrender dated 20<sup>th</sup> June 2019 was signed by our Company Secretary as listed at Companies House who was acting with the full authority of the board of statutory directors of SPIE Limited and as detailed of

the form of submission we believed that it was acceptable for the Company Secretary to sign the form of submission.

This application was received by the Central Licensing Office in Leeds and all requested information was received within all relevant timescales.

The application to surrender Operator Licence ON 1141926 was signed in good faith and in accordance with the guidance provided by Northern Ireland Department for Infrastructure by the Company Secretary as listed at Companies House namely Mr Benjamin Hancock.

No further correspondence or communication was received until the letter of 09/07/2019 notifying the business of the decision to revoke the licence.

We therefore believed that we had followed all the required steps and complied with process and thus we were disappointed to receive a letter of 9<sup>th</sup> July 2019 informing us that Goods Vehicle Operator Licence ON 1141926 had in fact been revoked, particularly as we had received no indication of an issue from the Central Licensing Team in Leeds.

As a responsible, compliant operator we are concerned that this will blemish our record and as such wish to appeal the revocation.

It is still our wish to surrender Operator Licence ON 1141926 and therefore submitted a formal letter of appeal in accordance with the required process together with a further form of submission signed by myself as Chief Financial Officer and Statutory Director.”

17. Mr. Hancock attended the hearing and explained that the Appellants had always intended to surrender the licence but the vehicles had been dealt with separately on the acquisition of assets and the failure to surrender was an oversight.

18. When he was asked about the letter dated 21<sup>st</sup> February 2019, which is at p.73 of the bundle, it emerged that he had not received a copy of the bundle. What he had were copies of the letters dated 12<sup>th</sup> June and 9<sup>th</sup> July 2019 addressed to the London address. He told us that the Manchester address was a leasehold property and the lease had been surrendered. It appeared that the Appellants had not received any communications sent to that address. (We assume that the bundle of documents went there also, although the point is not material to our decision.) He accepted that it seemed that the Appellants had failed to notify the change of correspondence address.

19. Mr. Hancock said that he would have seen the letter dated 12<sup>th</sup> June 2019 and passed it to the fleet manager to deal with. It would have been the fleet manager who chose to use the paper form. Mr. Hancock was asked about the reference in that letter to earlier correspondence and said he would not have followed it up. He had simply signed the document the fleet manager produced and had not observed the directions about signature.

20. Mr. Hancock summarised the Appellant’s position as being that they tried to comply with the requirements of the regulatory system but things sometimes slipped.

He apologised for the mistakes made and repeated that the Appellants wished to have an unblemished record.

### Discussion

21. The legislative background to the case is as follows.

22. Under section 1 of the 2010 Act, a licence is required, broadly speaking, for the use of a goods vehicle over a certain size for the purposes of trade or business.

23. Section 23 of the Act provides:

“(1) Subject to the following provisions of this section and the provisions of section 26, the Department may direct that an operator's licence be revoked, suspended or curtailed (within the meaning given in subsection (9)) for any reasonable cause including any of the following—

(a) ...

...

(g) that since the licence was issued or varied there has been a material change in any of the circumstances of the licence-holder that were relevant to the issue or variation of the licence;

(h) ...”

24. Section 26 obliges the Department to inform the operator if it is considering revoking a licence under section 23 and to give the operator the opportunity of making representations and requesting a public inquiry.

25. Regulation 23 of the Goods Vehicles (Licensing of Operators) Regulations (Northern Ireland) 2012, S.I. 2012 No. 261, provides that if a correspondence address ceases to be an effective address, the licence-holder must notify the Department of an effective address within 28 days.

26. It is well established that the task of the Upper Tribunal when hearing a traffic appeal is to consider whether the decision appealed against is plainly wrong. That is the test applied in Great Britain following the decision of the Court of Appeal in *Bradley Fold Travel Ltd & Peter Wright v. Secretary of State for Transport* [2010] EWCA Civ 695 and affirmed in Northern Ireland in *Hughes v. Department of the Environment in Northern Ireland* [2013] UKUT 0618 (AAC). The burden of showing that the decision is plainly wrong is on the appellant.

27. We remind ourselves that the power to revoke under section 23 is a discretionary power, by contrast with section 24 which provides for mandatory revocation in certain circumstances. Before the power can be exercised, the Department must be satisfied not only that one of the circumstances specified in section 23(1) exists but also that it constitutes reasonable cause for the revocation of the licence.

28. We note that the letter dated 12<sup>th</sup> June 2019 proposed to revoke the licence on the ground of a material change of circumstances consisting of:

- (1) the fact that the licence-holder appeared no longer to be operating goods vehicles;
- (2) the fact that the licence-holder was no longer fit to hold a licence, in view of its apparent failure to respond to communications from the Department or to comply with its declaration that the licence would be surrendered.

The decision itself, however, was made solely on the basis of the first ground. It was not on the basis that the licence-holder was no longer fit to hold a licence.

29. We therefore have to decide whether the Department was plainly wrong in exercising its discretion to revoke the licence solely on the ground that the licence-holder appeared no longer to be operating goods vehicles.

30. It is clear from the facts we have set out that the Appellants are no longer operating goods vehicles and do not seek to retain the licence. It is clearly a material change of circumstances that when the licence was issued the Appellants were carrying on a trade or business in connection with which they operated goods vehicles, giving rise to a requirement for a licence under section 1 of the 2010 Act, and that they no longer carry on the activity which gave rise to the requirement. Further, the fact that the licence was no longer required is clearly a basis for concluding that the change of circumstances constitutes a reasonable cause for revocation. We therefore have no hesitation in concluding that the power to revoke under section 23(1)(g) had arisen.

31. It follows that in order to succeed on the appeal, the Appellants had to persuade us that the way in which the Department exercised its discretion was plainly wrong.

32. On the information available to the Department at the time the decision was made, the Appellants had expressed their willingness to surrender their licence on the grant of the Keltbray application but had not done so. They had apparently failed to respond to two reminders and when they did respond they had completed the form wrongly despite the instructions given in earlier correspondence. On those facts it cannot be said that it was plainly wrong to proceed to revoke a licence which the Appellants did not want rather than to give the Appellants a further opportunity to produce a correctly signed form.

33. It is now apparent that the lack of response prior to 20<sup>th</sup> June 2019 was because the Appellants had not received the earlier correspondence. We accept what Mr. Hancock said about the surrender of the lease of the Manchester address. It is also apparent, however, that the reason why the Appellants did not receive the earlier correspondence is because they failed to comply with the undertaking in the application for the licence to notify changes and they were in breach of the specific requirements of reg. 23 of the 2012 Regulations. Further, even when they received the letter dated 12<sup>th</sup> June 2019 they made no inquiries about the previous correspondence referred to, did not take the suggested course of surrendering digitally and provided a surrender form which had not been read with sufficient care for the Appellants to observe the signature requirements.



34. Turning to the grounds of appeal, we accept that, as there stated, the surrender form was submitted in good faith and that the Appellants believed it was acceptable for the company secretary, acting with the full authority of the board of directors, to sign it. That, however, is not what the form itself says it requires, and if the Appellants had notified the change of correspondence address they would no doubt have received the earlier correspondence which spells out that the signature of at least one director is required. We do not accept the submission in the grounds of appeal that the surrender form was signed in accordance with the guidance provided by the Department.

35. The grounds of appeal make no reference to the fact that the licence ought to have been surrendered months earlier, as the Appellants had agreed to do on the grant of the Keltbray application.

36. We accept that after the submission of the surrender form, which took place before the cut-off date specified in the letter dated 12<sup>th</sup> June 2019, no further communication was received until the letter of 9<sup>th</sup> July 2019 and that the Appellants had received no indication of an issue from the Central Licensing Team. It does not seem to us, however, that there is anything unreasonable in the fact that a period of 19 days elapsed between the receipt of the surrender form and the letter of revocation. Clearly some time would be taken in processing the form and deciding how to act in the light of the fact that it was not properly signed. This is not a case in which the Appellants were in any way prejudiced by the lapse of the comparatively short period between the receipt of the form and the sending of the letter revoking the licence.

37. We have no reason to suppose that during the currency of the licence, until the grant of the Keltbray application, the Appellants were not in general responsible and compliance operators, although we do not know at what date the Manchester address was surrendered. It is, however, clear that there was a failure in compliance in the failure to notify an effective correspondence address, that the Appellants failed to take steps to surrender the licence as they had said they would do until prompted several months later by the Department and that when prompted they failed to deal carefully with the matter. To that extent, it is neither unreasonable nor unfair that there should be a blemish on their record.

38. In the above circumstances, the additional information which has emerged since the Department made its decision does not lead us to the conclusion that the Department's decision was plainly wrong. It appears to us to have been a perfectly proper decision.

39. Having reached that conclusion, it is nevertheless appropriate for us to record that the primary cause of the revocation of the licence was the technical defect that the surrender form was signed by the company secretary rather than one or all of the directors. The degree of blemish on the Appellants' record should be assessed accordingly.

(signed on the original)

**E. Ovey**  
**Judge of the Upper Tribunal**  
**19<sup>th</sup> March 2020**