



NCN: [2021] UKUT 113 (AAC)
Appeal No. T/2021/13

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

ON APPEAL from the DECISION of the TRAFFIC COMMISSIONER

Before: M Hemingway: Judge of the Upper Tribunal

Appellant: A-Tech Scaffolding Specialists Limited

Reference: OC2039289

Considered on the papers: 11 May 2021

DECISION OF THE UPPER TRIBUNAL

This appeal to the Upper Tribunal is dismissed.

SUBJECT MATTER

Finance.

CASES REFERRED TO

Bradley Fold Travel Ltd & Anor v Secretary of State for Transport [2010] EWCA Civ 695.

REASONS FOR DECISION

1. This appeal to the Upper Tribunal has been brought by A-Tech Scaffolding Limited (“the appellant”), from a decision of the Traffic Commissioner for the North West of England (“the TC”) embodied in a letter of 27 January 2021 refusing to grant its application for a restricted goods vehicle operators licence.

2. The applicant, through one of its officers Mr Paul Short, asked for the appeal to be decided on the papers by a Judge sitting alone. I have concluded it is in the interests of justice for me to do so. The appeal does not raise any technical issues such as to require the

input of Specialist Members and it is not apparent that the holding of a hearing would take matters any further.

3. The licence application was made on 20 November 2020. On 25 November 2020 the Office of the Traffic Commissioner (“OTC”) wrote to the appellant requesting further information and evidence concerning a range of matters. As to the appellant’s financial circumstances, it was asked to provide evidence that it had available to it the sum of £3,100 over a 28 day period the last date of which was not more than 2 months from the date of receipt of the application. Bank statements were requested “*in the applicant’s name*”. The applicant provided, by electronic means, a Lloyds Bank statement which did not cover a 28 day period and did not specify the account holder.

4. On 22 December 2020 the OTC again wrote to the appellant concerning finance. The point was made that the bank statement previously sent did not name the account holder and it was said “*The finances should be in the name of the limited company*”. The appellant responded by providing a bank statement in the name of Paul Short. On 27 January 2021 the OTC wrote to the appellant informing it that its application had been refused with reference to section 13 and section 13D of the Goods Vehicles (Licensing of Operators) Act 1995 (“the 1995 Act”). The appellant, through Paul Short, appealed to the Upper Tribunal.

5. In the written grounds of appeal it was asserted that the appellant had provided to the OTC, by electronic means, “*a full bank statement*”. There is attached to the grounds a copy of that bank statement. It shows a credit balance for the period from 25 November 2020 to 24 December 2020 in excess of the sum sought by the OTC but it is in the name of Paul Short.

6. Paragraph 17(1) of Schedule 4 to the Transport Act 1985 provides:

“The Upper Tribunal are to have full jurisdiction to hear and determine on all matters (whether of law or of fact) for the purpose of the exercise of any of their functions under an enactment relating to transport”.

7. Paragraph 17(3) of that Schedule provides that the Upper Tribunal may not take into consideration any circumstances which did not exist at the time of the determination which is the subject of the appeal. The Upper Tribunal’s jurisdiction was examined by the Court of Appeal in *Bradley Fold Travel Ltd & Anor v Secretary of State for Transport* [2010] EWCA Civ 695. It was stated that the Upper Tribunal has the duty, on an appeal to it, to determine matters of fact and law on the basis of the material before the TC but without the benefit of seeing and hearing from witnesses. It was further stated that the burden lies on an appellant to show, in order to succeed on appeal, that the process of reasoning and the application of the relevant law requires the Upper Tribunal to adopt different view to that taken by a TC.

8. Section 13D of the 1995 Act contains a requirement that the provision of the facilities and arrangements for maintaining vehicles operated under a licence in a fit and serviceable condition is not prejudiced by reason of the applicant having insufficient financial resources for that purpose. That is why the OTC sought evidence of finance in the name of the appellant company. Section 13 of the 1995 Act makes clear that, where a TC sees fit to apply the requirement contained within section 13D (which clearly the TC did in this case) an application for a licence must be refused if the requirement is not met. The need for financial evidence in the form of bank statements and the like, where the applicant

for a licence is a limited company, to be in the name of that company was recently restated in *Transform Driveways* [2020] UKUT 372 (AAC).

9. On the material before me, no evidence of finance had been provided in the name of the appellant. That being so, it was not possible for the TC to be satisfied as to the requirement contained in section 13D of the 1995 Act. The TC was, therefore, bound to refuse the application. That being so, and to state the obvious, it could not be viably argued that the TC's decision was plainly wrong.

10. The appeal is dismissed.

M R Hemingway
Judge of the Upper Tribunal
Dated: 11 May 2021