



REDACTED PUBLIC VERSION

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TRAFFIC COMMISSIONER FOR SCOTLAND

PUBLIC PASSENGER VEHICLES ACT 1981

**APPLICATION BY DOUGLAS THOMSON AND BARRY LITTLE T/A WOODGROVE TRAVEL
PM2012060**

PUBLIC INQUIRY HELD AT EDINBURGH ON 9 OCTOBER 2018

DECISION OF THE TRAFFIC COMMISSIONER

Background

1. By application dated 26 March 2018, Mr Douglas Thomson (b.1970) and Mr Barry Little (b.1979), a partnership trading as Woodgrove Travel, 52c Edinburgh Road, Dumfries, DG1 1JU, sought a restricted public service vehicle operator licence to operate 2 vehicles from that address. Safety inspections would be carried out by James H Glen, Motor Engineers of Dumfries. Nothing adverse was declared on the application form.
2. A restricted operator licence can only be granted if certain criteria can be met, including that the entity seeking the licence has a main occupation; has financial standing; a suitable operating centre; and proper arrangements to meet the licence undertakings.
3. From documentation and answers provided during the processing of the application by the Central Licensing Unit at Leeds ("Leeds") it appeared that the applicants were operating already using permits issued by Dumfries and Galloway Council and that the answers to the main occupation test required further probing. I was not satisfied by the application and a "propose to refuse" letter was issued by Leeds on 17 July 2018. The applicants requested a Public Inquiry.

Public Inquiry

4. The usual call up letter and brief of papers were issued calling the applicants to a Public Inquiry at Edinburgh on 9 October 2018. Mr Douglas Thomson duly attended accompanied by Mr Brian Lorimer designed as office manager. Mr Thomson explained that Mr Little did not keep well and that was why he did not attend.

5. As a preliminary matter, given that there has to be a good relationship between the Office of the Traffic Commissioner and any operator (which is what Mr Thomson and partner sought to be), I had to raise with Mr Thomson that he had upset the young caseworker who had to phone him about an error in the timing for the Inquiry (it had to be put back from 10:00 to 11:15). She had to pass the call to her manager to complete. Mr Thomson assured me he had not intended to be rude and could only apologise.

Productions

6. Mr Thomson produced the undernoted either in response to the call up letter or at the Public Inquiry. I have had regard to all of these.

Finance:

Bank statement from [REDACTED] in name of Woodgrove Travel (A Firm)
[REDACTED];

[REDACTED];

[REDACTED];

Applicant's list of minimum daily balances on [REDACTED];;

27 sheets for period 6/9 – 6/10/18 showing Mr Thomson's cash taxi earnings.

Non finance:

3 page statement in support of the application;

Sample vehicle defect report form.

Oral evidence at the Inquiry

7. Mr Thomson said his full time occupation is as a taxi driver employed by Woodgrove Taxis (a trading name not a limited company) which was set up some 10 months before in 2017. He has a taxi driver licence from Dumfries & Galloway Council. Barry Little and himself have 2 cars on the rank and 1 private hire and also 3 x 8 seaters for private hire. They are applying for a taxi operator licence.
8. They have a partnership agreement drawn up by solicitors for the Travel and Community side but he didn't have it with him. He could get it. It was signed about a year ago.
9. The taxi driving is by self-employed drivers, one for each vehicle i.e. 6 drivers. He drives a Vauxhall Insignia 4 seater as a private hire. The money from the rides goes to him and Barry Little as Woodgrove Travel in cash. Then they pay the self-employed drivers. Woodgrove Taxis does not have an office.
10. Woodgrove Travel (not limited) was set up 17 months ago. It is not a charity. Barry Little put money into it. It does transport for schools, community centres, sea cadets, for the community. It does not do school contracts in sense of start and finish of the school day and has not done.
11. They have 5 section 19 permits and are using 3 for schools and groups. They do charge, but as low as possible. They pay the drivers. His money comes from the taxi side.

12. I asked him if they had used the section 19 permits for outings and he said they had done in the past when they first started but a lady from “yourselves” (meaning DVSA) told them they couldn’t. They had been unlawfully operating under the section 19 permits.
13. They have 4 minibuses, 2 as self-drive. He admitted “hands up” that they had built up an unlawful operation. Over 5 years they got a lot of community work, originally with 3 community badges. They have just re-applied to the Council for them.
14. I put it they were making themselves out to be a not for profit organisation entitled to a section 19 permit and he said the section 19s were for school purposes.
15. I asked Mr Thomson if “Woodgrove Community Transport” has a constitution, a committee, its own bank account and he said that there was a bank account but no committee; Barry Little funds it all; Barry Little wanted to help the groups. The application to Dumfries and Galloway was an application without a view to profit.
16. Before the 10 months of taxi driving, Mr Thomson was employed for 14 years full time with Gibsons Blacksmiths. He gave it up to have a different career.
17. I asked if Woodgrove Community Transport had separate accounts and he said “no”. I asked if it was part of Woodgrove Travel, the business, and he said it was in the same depot. If someone phones for a community bus, it gets given to them. Community Bus is to give the general public where they want to go.
18. Barry Little won the lottery 5 years ago. He’s always had disability problems. Neither he nor Barry had been in taxis before or in any transport operation. They met at the football. They got one minibus, which belonged to Barry. Mr Thomson had Cat D1 not for profit on his licence. Barry didn’t make any money out of it nor did he charge for use of the minibus. Mr Thomson was at the football club for 7 or 8 years so if he left, the bus would go. This bus was not used for anything other than the matches. People did come and ask for the use of the bus and Barry would give them the bus as a self-drive, with no payment at all.
19. Another bus was bought as they wanted to get into the travel side, as a business. There are now 4 minibuses to do the work. They hadn’t known what they were getting themselves into. I asked Mr Thomson if when the DVSA Examiner came down in March 2018, they stopped what they were doing and he replied “yes”. They had applied for everything and as much as they could to go forward. They had not handed back any section 19 permits.
20. I looked at the 27 sheets he’d produced and asked him to interpret them for me. These were a month’s worth of jobs he’d been doing, his earnings, not what the business makes.
21. The office is where they keep all the records and phones and is for Woodgrove Taxis, Woodgrove Travel and Woodgrove Community Transport. Mr Lorimer is based in the office and is more or less full time and had been there for probably 10 months. Mr Lorimer’s duties are to answer the phones for the taxis and to keep the paperwork.
22. Mr Brian Lorimer gave brief evidence. He has a taxi badge but does not use it unless he has to. He could sit on the rank with one of the Woodgrove vehicles. There is a separate phone for the taxis and one for travel – a small business card has one side for the different numbers. There is no separate line for Community – it goes through Travel by email.
23. I asked him about a minibus for me to hire for a night out in Carlisle and what would happen and he said he would ask what I required, date and where needed picking up and destination and when to be picked up again at night. So, if I phoned up for a minibus and driver and a price, I would get it and he said “yes”. I asked on what licence and he said

they had 8 seaters. I put it that he had already given the game away and that there was the commercial hiring of the minibus and he agreed. Mr Douglas Thomson then said he held his hands up. He wanted to rectify the problems of the past.

Consideration of the evidence and my decision

24. It is a fundamental of operator licensing that an operator must satisfy the Traffic Commissioner of their repute.
25. There does now appear to be a partnership of Messrs Little and Thomson – the **[REDACTED]** Bank has recognised them as such in the setting up of the bank account **[REDACTED]**. Mr Thomson said there was a legal document between them. It would have been useful had that been lodged or sent in afterwards but I don't have it. In Scots law, of course, there can be a partnership "at will". I am prepared to accept that there is an entity which is the partnership of Messrs Little and Thomson.
26. I am also able to accept, though I did not meet him due to his indisposition on day of the Inquiry, that Mr Little through winning the national lottery kindly put a minibus free of charge at the disposal of a local football club which he and Mr Thomson supported.
27. It then appears that Mr Little, for he appears to be the only one resourced to do this, branched into community transport and applied as Woodgrove Community Transport to Dumfries and Galloway Council for section 19 permits.
28. What has become very clear from this Inquiry is that Messrs Thomson and Little, whether as individuals or partners, went way beyond the purposes of section 19 and created a transport operation. They operated the minibuses for hire and reward, for commercial journeys outwith any community purposes of the section 19 permit. They began to be excited and interested in transport as a business, drawing on their local contacts in the community. They began to operate taxis and trade as Woodgrove Taxis. They operated 8 seater and 16 seater minibuses as Woodgrove Travel. The finances of Woodgrove Travel and Woodgrove Community Transport were not kept separate. Notwithstanding express advice from a DVSA Examiner that they must stop, they did not do so.
29. The balances in the **[REDACTED]** Bank account **[REDACTED]** are sufficient financial standing for a 2 vehicle restricted licence had all else been satisfied.
30. I cannot find the evidence of principal occupation here. The principal occupation of the partnership appears to me to be transport and the minibus operation as part of that. Mr Thomson's taxi earnings are too modest when compared with what minibuses draw in.
31. However, this application also fails on repute. The partnership has not satisfied me on repute. It cannot hide behind the original philanthropic intentions of Mr Little. I have to be able to trust operators and I cannot trust that a restricted licence would be operated properly by this partnership. Also, I have to put down a marker to fair competition. What Messrs Thomson and Little have done is not the way to enter and grow a market. Mr Thomson was prepared to mislead me at the Inquiry and have me believe that unlawful operation had ceased after the Examiner's visit, when it had not.
32. My Office will now make further inquiries regarding the section 19 permits and further proceedings may be needed.

Summary of my decision

33. I refuse the application by Douglas Thomson and Barry Little trading as Woodgrove Travel as I am not satisfied as to repute and principal occupation in terms of sections 14ZB and 13 of the 1981 Act.

Joan N Aitken
Traffic Commissioner for Scotland
Edinburgh
7 November 2018