

Neutral Citation Number: [2016] UKUT 0551 (AAC)

Appeal No. T/2016/45

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

**ON APPEAL from the DECISION of
Richard Turfitt, Traffic Commissioner
for the East of England dated 27 June 2016**

Before:

Her Honour Judge J Beech, Judge of the Upper Tribunal
George Inch, Member of the Upper Tribunal
John Robinson, Member of the Upper Tribunal

Appellant:

MANDEEP BAINS trading as MIDLAND MINIBUS HIRE

Attendances:

For the Appellant: Appellant appeared in person

Heard at: Field House, 15-25 Bream's Buildings, London, EC4A 1DZ

Date of hearing: 6 December 2016

Date of decision: 14 December 2016

DECISION OF THE UPPER TRIBUNAL

IT IS HEREBY ORDERED that the appeal be DISMISSED

SUBJECT MATTER:- Application for restricted PSV licence; whether the Appellant satisfied the requirements of good repute, main occupation and adequate arrangements for compliance with the law (ss.14ZB(a), 14ZC(1)(b) and s.13(3)(b) of the 1981 Act).

CASES REFERRED TO:- Bradley Fold Travel Ltd & Peter Wright v Secretary of State for Transport (2010) EWCA Civ. 695; Ladd v Marshall (1954) 1 WLR 1489

REASONS FOR DECISION

1. This is an appeal from the decision of the Traffic Commissioner for the East of England ("TC") made on 27 June 2016 when he refused the Appellant's application ("Mr Bains") for a restricted PSV operator's licence.

Background

2. The factual background to the appeal appears from the documents and the TC's written note of his decision. By an application received on 21 September 2015, Mr Bains, trading as Midlands Minibus Hire, applied for a restricted PSV operator's licence authorising two sixteen seat minibuses. In the main occupation section of the application, he stated that he was employed by Bains Travel for an average of thirty hours a week. The address of Bains Travel was the same as Mr Bains home address. In the convictions and penalties section of the application, Mr Bains recorded that in 2009, he had been imprisoned for a period of three years for an offence of causing grievous bodily harm without intent.
3. By a letter dated 12 October 2015, the Office of the Traffic Commissioner ("OTC"), made ten requests for further information, including details of the nature of the work to be undertaken under the licence and the projected income to be generated under the licence; details of Mr Bains' main occupation, including proof of income; details of the connection between the application and Midlands Minibus Hire Limited, a company previously incorporated by Mr Bains. In response, Mr Bains described the work to be undertaken as "*school transportation mainly*". He anticipated that the main operational hours would be 8am – 4pm and that the generated income would be between £400 and £500 per week. The main drivers of the vehicles would be himself and his father, Sohan Singh Bains. His main occupation "*at this current time*" was that of Taxi Driver. As for his conviction, he highlighted that he had been charged with a s.20 offence rather than the more serious, s.18, grievous bodily harm with intent. The conviction resulted from an altercation when he was a young adult. However, he had been released early "*due to my exceptional good character before the charge and whilst imprisoned*". He had since obtained a PSV driving licence and received a private hire badge from Leicester City Council. As for Midlands Minibus Hire Limited, he had "*closed*" that company and would be operating in his own name. Attached to the response were a number of wage slips showing Mr Bains employer to be "*Bains*"

Travel” and that his gross income from that employment was less than that anticipated from operating vehicles under a restricted licence. Further, the bank statements he also enclosed, did not show payments from Bains Travel, but rather from a company called “*P&R Cars*”.

4. On 19 November 2015, the OTC wrote to Mr Bains again in a final attempt to resolve outstanding issues. There were five requests for further information including an explanation as to whether Midlands Minibus Hire Limited had operated vehicles prior to the company’s closure and there was a request for the details of Mr Bains’ connection with Sohan Singh trading as Bains Travel and Mehboob Asmal who both held restricted PSV licences operating from the same operating centre as that proposed by Mr Bains. His response was that the limited company had not operated any vehicles and that whilst Sohan Singh was his father, he had no connection with Mehboob Asmal.
5. On 20 January 2016, a Case Worker within the OTC prepared a written submission for the TC. It was noted amongst other points, that as a result of the financial information he had provided, Mr Bains had failed to satisfy the main occupation requirement. Further, he had failed to provide any details about the circumstances in which he came to be imprisoned for a serious offence of violence. The Case Worker then failed to properly interpret the provisions in relation to good repute as set out in paragraph 1 of Schedule 3 of the 1981 Act and concluded that by reason of having been convicted of one offence and sentenced to a period of custody exceeding three months, Mr Bains could not satisfy the good repute requirements. In the circumstances, a recommendation was made that Mr Bains’ application be refused with an offer of a public inquiry. A Team Leader adopted the reasoning and recommendations. She also highlighted the links between Mr Bains and his father and raised concerns that Mr Singh may also have been unable to fulfil the main occupation requirement. The TC’s decision was that Mr Bains had failed to provide details of his conviction and that as a result, the TC remained to be satisfied about good repute and he was concerned about the motives for Mr Bains’ application and its links with his father’s restricted licence.
6. By a letter dated 11 February 2016, Mr Bains was advised that the TC was proposing to refuse his application because it failed to meet the criteria of good repute and adequate arrangements for securing compliance with the law relating to the driving and operation of PSV vehicles by reference to the main occupation requirement. Mr Bains was requested to provide details of his conviction and further details of his employment and the reasons for making the application and its relationship with his father’s licence. Mr Bains was advised of his right to request a public inquiry and that failure to respond or request a public inquiry within fourteen days from the date of the letter would result in his application being refused.

7. The OTC received Mr Bains' response on 29 February 2016. Whilst he made reference to his sentence, previous good character prior to the offence and his good character since, he did not provide any details as to the events leading up to and surrounding the offence itself. He did however highlight that that he was a university graduate in business studies. As for his main occupation, he was a taxi driver and he also worked part time, when required, to drive for Bains Travel. His motivation for applying for a PSV licence was that he wanted to start his own company and hopefully increase his annual salary. The application was not connected to his father's licence.
8. The submission to the TC was revisited on 4 March 2016. It rightly described Mr Bains' response to the letter of 11 February 2016 as "*brief*" and noted that the response did not fully address all of the outstanding issues surrounding Mr Bains' conviction; it did not provide sufficient detail about his employment or how Mr Bains was going to meet the main occupation criteria. It was noted that the original application for a restricted licence made by Sohan Singh had been on behalf of a partnership with his son Mr Bains who at the time was unemployed. As this was likely to be adverse when it came to the main occupation requirement, the application was changed to that of Mr Singh alone as a sole trader. It was unclear as to why Mr Singh was now trading as Bains Travel. The recommendation was that the application be refused. The TC agreed with the recommendation, finding that he remained to be satisfied regarding ss.14ZB(a) and 14ZC(1)(b) of the 1981 Act and further determined that the application was unreasonable and/or frivolous under regulation 6 of the Public Service Vehicles (Operator Licensing) Regulations 1995 and accordingly refused the application on the papers.

Upper Tribunal Appeal

9. Mr Bains appealed out of time. It transpired that both notices informing him of the refusal of his application were sent to his proposed operating centre rather than the correspondence address he had given on his application form. Leave to appeal out of time was granted on 29 September 2016.
10. In his grounds of appeal, Mr Bains submitted that his main occupation was that of taxi driver, working for Bains Travel. It followed that if he were to obtain a PSV licence, then his main occupation would not change. That of course demonstrates a misunderstanding as to the main occupation requirements. He was further concerned by the fact that correspondence from the OTC was addressed to him trading as Midland Minibus Hire and he thought that this may have had an adverse impact upon his application. In making this submission, Mr Bains had failed to appreciate that when he submitted his application he did so, stating that he would be trading as "Midland Minibus Hire" and that it was for that reason that the correspondence was addressed

in the way that it was. He was further concerned about the TC's finding that he had not established his good repute. The conviction was seven years old and since then he had worked with the public, including children and vulnerable adults. That demonstrated that he was of good repute. He told the Tribunal at the hearing that he thought that he had explained the circumstances of his conviction to the OTC and that in relation to the good repute and main occupation requirements, he had misunderstood what was required of him. Prior to the hearing, Mr Bains did submit further details of his main occupation and sources of income which was received on 28 July 2016 but of course, this information was not before the TC when he came to make his decision.

The Tribunal's decision

11. During the course of the appeal hearing, the Tribunal pointed to the deficiencies in the information that Mr Bains provided to the OTC, not only in the application form but in his responses to the requests for further information. We have already indicated to Mr Bains that he simply did not answer in an adequate fashion the particular concerns of the TC in respect of his good repute, his main occupation or the links there might be to his father's restricted licence. Whilst he has now put before the Tribunal further information (which still did not include the circumstances surrounding his conviction) we are not satisfied that the conditions laid down in Ladd v Marshall (1954) 1 WLR 1489 have been made out. In the circumstances, we are satisfied that the TC's decision cannot be faulted. Neither the law nor the facts of this case impel us to come to a different view to that of the TC as per the test in Bradley Fold Travel Ltd & Peter Wright v Secretary of State for Transport (2010) EWCA Civ. 695.
12. The appeal is dismissed.



**Her Honour Judge J Beech
14 December 2016**