

REDACTED



**DECISION
OF THE TRAFFIC COMMISSIONER
FOR THE NORTH WEST OF ENGLAND**

In the matter of the
Public Passenger Vehicles Act 1981 (The Act)

**David Sweeney
trading as Kye Buzz Travel
PC2001496**

Public Inquiry held at Golborne
on 31 May 2019

Decision

On findings made in accordance with Section 13 (3) (b) and Section 14ZC (1) (a) of the Act, I refuse this application.

Background:

1. **David Sweeney trading as Kye Buzz Travel** (PC2001496) is an applicant for a new Restricted Public Service Vehicle (PSV) operator's licence for 2 vehicles. The application had originally been pursued by Christina Sweeney (his wife) in January 2017 but was "taken over" by him and submitted on 12 November 2018.
2. David Sweeney has no previous history with the Traffic Commissioner.
3. The application has been called into Public Inquiry because of concerns about his financial standing, the suitability of facilities which would permit licensed vehicles to be kept in fit and serviceable condition and whether the 'main occupation' test has been met.
4. The so-called 'main occupation' test requires that the operation of any licence granted to an applicant can only be a "side-line" or peripheral or part-time activity and may not constitute the main occupation of its holder. The applicant had

REDACTED

provided during the application process a series of descriptions of his intentions for the proposed PSV business, as well as clarifications of what his 'main occupation' was constituted by, but none had resolved that uncertainty.

The Hearing:

5. Written representations and a hearing bundle had been usefully provided for the Public Inquiry by the applicant's solicitors. David Sweeney was present with his solicitor, Eliot Willis, for the Public Inquiry held on 31 May 2019 at Golborne.
6. Having heard representations from Mr Willis, to supplement the oral testimony of David Sweeney, I had reserved my decision.
7. In the paragraphs set out below, I record my conclusions in respect of the pertinent issues raised at the hearing.

Financial standing

8. I have been satisfied financial standing would be met in respect of this application.

Suitability of the proposed Operating Centre

9. Concerns were raised with David Sweeney during the application process about the suitability of the proposed operating centre. The applicant chose not to pursue an alternative; this on the basis that he believed the forecourt (my description) of his residential address would be adequate.
10. Having reviewed the photographs available to me and heard Mr Sweeney's evidence, I find that it would not be possible for vehicles to enter and exit the operating centre in a forward gear. The site itself, shown in a series of photographs provided by the applicant, shows a tarmac forecourt separated only by some contrast stonework from the public pavement itself. I was told that the manoeuvring of the PSVs (so that reversing out directly onto the road might be avoided) would include reversing onto the frontage of his neighbour's property for which permission had been given. I was not satisfied that this would provide a suitable solution since whether there was room to do so would not be in the applicant's hands, and that it would be dependent how the two licensed vehicles were lined up together with the applicant's personal vehicle and any visitors' cars.
11. I have concluded therefore that the proposed operating centre is technically unsuitable for its purpose. As is clarified in paragraph 34 of the Senior Traffic Commissioner's Statutory Guidance Document *No. 4: Operating Centres, Stable Establishments and Addresses for Service*, I am entitled to consider road safety issues. I find there is an unacceptable and heightened risk to passers-by in this largely residential area, as the vehicles would be reversing across a public pavement in the ordinary course of their operation.

REDACTED

Main Occupation

12. From the written materials before me, and the oral evidence heard, I find that David Sweeney has several business interests:

- a) At the outset of the hearing, he confirmed that his directorship of DCJ Partners Ltd should not be regarded as his main occupation. This business venture had not proved successful [REDACTED];
- b) His tax return produced for the year April 2018, however, also disclosed income from the letting of a series of properties (in partnership with his wife) but this had accrued taxable profit (for him) of £[REDACTED] in that financial year;
- c) He did however contend that his role within a business as a building contractor, where he was one of three directors – DPL Building Services Ltd – should be regarded as his main occupation;
- d) The accountant-prepared profit and loss account for the year ended 31 March 2018 for DPL Building Services Ltd was provided to me during the hearing. It however recorded an increased loss of £23,815 for the financial year, following a smaller loss in the year to March 2017 of £10,327. No dividend had been distributed in either of those financial years;
- e) The tax return did however disclose the wage he had taken for the tax year 2017–2018 of £[REDACTED] which was confirmed within the DPL Building Services Ltd accounts;
- f) I noted that his wage was very close to the then current level of the personal allowance for the tax purposes, which was £11,500 in that tax year. Such a sum equates to an income of £221 per week. In the ordinary course of events, no income tax would be payable on such an income level;
- g) David Sweeney was unable to tell me whether for the 2018-2019 financial year that had just ended, if the company's fortunes had improved. I was surprised by that bearing in mind his claim that he worked in the business, carried out the estimating for new kitchens, ordered them and delivered the product to site, throughout liaising with clients. Whilst he did believe that the business had been 'busy', his [REDACTED] was such that he had not paid as full attention to it as he might have wanted. I did however see evidence of monthly wage payments for 2018-2019 implying an annual income of £[REDACTED] the current level of the personal allowance for the tax purposes;
- h) I have seen no evidence of the profitability of the company (or any reliable estimate thereof) for the most recent tax year, despite it being requested. If the trend in increasing losses of the company were to continue, I judge payment of a dividend to be unlikely. In fact, the capability of maintaining his wage at current levels would be compromised by further losses suffered;

REDACTED

- i) Asked about the PSV business he proposed to run, David Sweeney exemplified airport transport work, transport to football matches and stag/hen party travel, as desired work streams;
- j) In addition, he provided a clear understanding of the sums to be earned, if he was successful in obtaining school contracts, which were part of his plan. I agreed with his estimate that contract values were worth between £400-500 per week for local authority term-time contracts. At such rates per week, each vehicle could provide an income, albeit before expenditure, of between £15200 and £19,000 (so £30,400 to £38,000 for 2 vehicles) on any school contracts alone;
- k) A spreadsheet has been provided for me which Mr Sweeney had himself prepared, which sought to provide a cash flow forecast for proposed PSV operations. This showed an income of £4,800 on predicted sales of £41,200 (a return of 11.6%). I find the figures provided as likely to underestimate income and to overestimate expenditure. I consider it to be more likely than not that even deploying a single vehicle to school contract work, when coupled to other PSV activity (of the sort described in paragraph i) (above) that it is significantly likely that the income from PSV operations would outstrip that of the main occupation.

13. Whilst I note the sincerity of David Sweeney's assurance that if the state of affairs that I find to be more likely that not to come about (that PSV profit would exceed wages from building work done), this would lead to an application for a standard national licence, I am not minded to grant a licence on that basis. It is simply the case that there is a manifest mismatch between a claimed main occupation producing an income from a role which is so low that income tax would not be charged, and which might be under threat, on the one hand, and a two vehicle licence where earnings much in excess of that are realistic, on the other.

14. The Upper Tribunal decision in the case of Ibrar Anif trading as Local Minibus Travel T/2015/50 provides support for the view that £500 per week was capable of being earned from a school contract.

15. In these circumstances, not having been satisfied, as I must be, that Section 13 (3) (b) of the Act is met, or that the technical suitability of the operating centre nominated for the purposes of Section 14ZC (1) (a) is acceptable, I refuse this application.

REDACTED

A handwritten signature in black ink, appearing to read 'Simon Evans', with a horizontal line underneath the name.

Simon Evans
Traffic Commissioner
for the North West of England
18 June 2019