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WRITTEN CONFIRMATION OF THE ORAL DECISION OF THE TRAFFIC COMMISSIONER FOR THE NORTH WEST OF ENGLAND

In the matter of the
Goods Vehicles (Licensing of Operators) Act 1995

NSG SCAFFOLDING LTD
OC2019292

Public Inquiry at Golborne
on 20 June 2019

Decision

Pursuant to findings under Section 13B of the Act, this application is refused.

Background

1. This is a new application by this operator for a Restricted Goods Vehicle Operator's licence for 2 vehicles made on 7 December 2018. The company's sole director is Wayne Wallace.
2. The applicant made two previous applications for licences in the name of this company in April 2017 (this was refused) and again in April 2018 (this was later withdrawn).

Circumstances leading to the Public Inquiry

3. Papers served in respect of the hearing referred to concerns about the fitness of the operator to hold the licence in the light of activities and the director's conviction, as well as the sufficiency of the applicant company's financial resources. (No evidence of any conviction was contained in the brief, so this was not pursued).
4. In respect of fitness, the circumstances and implications of the failure to pursue the earlier applications, the discrepancies in the completion of the current application and the suitability of the proposed operating centre were raised within the hearing. The application form submitted had made no reference to the earlier applications. The nature of the operating centre appeared not to allow for entry and exit of vehicles in a forward gear, and the state of its location (with large volumes of scaffolding equipment and a narrow parking area) restricted the applicant's ability to carry out effective first use checks.

The Public Inquiry

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5. I had the opportunity to ask Mr Wallace about his company's application at the Public Inquiry at Golborne on 20 June 2019. I have carefully listened to his representations. He attended alone and was unrepresented, having been legally represented in the earlier stages of the case when an adjournment request because of a pre-booked holiday had been made and granted.
6. The applicant produced a file of papers which included photographs of the proposed operating centre, which had been prepared at the time of the submission of the application. These included pictures of fully loaded large goods vehicles, which I later established were the ones to be used under the licence.
7. I have been satisfied that financial standing is met; the applicant is able to demonstrate availability of at least £4800. The company has been trading for some time and is engaged both in its own building works, as well as erecting and dismantling scaffolding for other clients.
8. I was told the applications for an operator's licence had been prompted by the company coming to appreciate a need to operate a larger vehicle to move its equipment than the out-of-scope light goods vehicles then in possession. I was told that an opportunity to build on the ground of the location originally identified as the operating centre for the first application had prevented it being taken forward. Mr Wallace though, had been denied any knowledge that the first application had been refused. Having also asked him about the second application, at the end of the hearing, I still remained unclear about the reasons for its withdrawal.
9. Mr Wallace admitted that administration was not a strength for him and that he had not completed the new application himself. He accepted that he "might not have read the application form" properly before signing it. It appeared more likely than not that these circumstances (poor administration and not attaching to the completion of the application the priority it obviously deserved) that his application had not contained particulars disclosing earlier applications.
10. I noted that the application form itself referred to two 7.5 tonne vehicles to be used, one of which, I was told, was already in possession. They were confirmed as MV04 UYU (although this was stated in the form as being NV04 UYU, in error) and PO12 FDA. Mr Wallace confirmed that the vehicles were those pictured some months earlier, when the application was made. I asked about the use of the vehicles, as the photographs before me appeared to demonstrate that they were probably in use, despite the absence of any operator's licence: no interim authority had been sought or granted.
11. I was told that MV04 UYU had been used by the business under a "man and van" arrangement. Pressed further however, I was told that it was the applicant's nominated maintenance contractor, Audsley & Son Ltd in Southport, which had "rented" the vehicle to the applicant. There was no paperwork to support the provision of the vehicle, under that arrangement. I was told the vehicle had been deployed "as and when we needed it" but not since March 2019. The applicant was uncertain whether Audsley might have had an operator's licence, but subsequent searches did not reveal any such licence. The vehicle was supplied without a driver. The driver during periods of rental was one of the applicant's staff, who received his instructions from Mr Wallace. I was satisfied that MV04 UYU had been used by the applicant when that use was not covered by an operator's licence.
12. PO12 FDA had been purchased six months' earlier from Ditchburn Motors in Maghull. It was said to be parked up on the drive and was not presently in use. Again, it was not said to have been used in March 2019.

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13. Mr Wallace told me that the operating centre was now in a state that was different from that shown in the photographs. Less equipment was stored there but the stillages remained. He had not thought to produce photographs to show the position as it presently stands. He accepted that entry and exit in a forward gear was not possible and that usually the vehicles were reversed into the site.
14. On balance however, I would (in other circumstances) have been prepared to accept the location as a suitable operating centre. The entrance to the unit is at the end of a cul-de-sac and this is within an industrial unit complex, not a residential area where passers-by could be expected. With care vehicles could be safely manoeuvred into the parking places provided the clearing of spaces had been achieved in the manner described by Mr Wallace. I further accept that if the unit were to be retained for use for the storage of equipment (as opposed to vehicles in an operating centre) that my jurisdiction would not extend to it but that use might continue, if the vehicles attended to pick-up or drop off equipment.

Consideration

15. I reminded myself of the leading Upper Tribunal decision in the case of Aspey Trucks Ltd (2010/49) where the judge described traffic commissioners as “gatekeepers to the industry” acting in a role to ensure that the public expectation that only those who would “not blemish or undermine its good name, or abuse the privileges it bestows” would be allowed to enter it.
16. I conducted a weighing exercise to determine whether the applicant, through its director had satisfied me of the likelihood of compliance with the requirements of the licence. In short, I needed to be satisfied that the operator was not unfit taking into account activities Mr Wallace had been involved in.
17. On the positive side:
 - It was the case that when pressed Mr Wallace was transparent in his answers,
 - No serious attempt was made to hide the unlawful use of vehicles,
 - He accepted some naivety in his actions.
18. The negative aspects included:
 - The unlawful use of vehicles without a licence. I found that this was a serious matter compounded by Mr Wallace’s clear knowledge and understanding that if he were to operate a large goods vehicle that a licence was needed. This was recognised by the applicant in the two earlier applications in 2017 and 2018 but which were never followed through. It is more likely than not that vehicles have been used for an extended period without a licence;
 - Admitted weaknesses in administration, themselves compounded by the failure of Mr Wallace to check the application made for accuracy;
 - The lack of evidence of any attempt by Mr Wallace to prepare himself to be a licence holder; he described himself as having only “flicked through” some documents.
19. On consideration of these findings, I was satisfied that very significant reliance would be placed on Wayne Wallace himself, and that there were no grounds for me to believe that he would have the knowledge and skills necessary to oversee and manage the licence. Admissions made include a blatant and unlawful use of large goods vehicles.
20. In these circumstances, I have concluded that Mr Wallace has not satisfied me of the applicant company’s fitness. I am therefore obliged to refuse this application. I would not

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be doing my duty if I were to allow an operator which has manifestly breached the rules to be allowed to enter the regulated industry, without first showing me that there is a likelihood of future compliance by demonstrating *during the application process* that it will comply by the rules. In the longer term, I judge that the public and other operators would probably be better protected by this business operating within the regulated system than outside it.

21. Any future application should include photographs that show the unit parking arrangements, demonstrate how a proper walk round check could be carried out, would evidence the safety arrangements proposed for reversing any vehicle into the unit, would confirm how the business' administrative function would be carried out and include evidence of the prior attendance of Mr Wallace on an Operator licence Awareness Training course.
22. The application is refused in accordance with Section 13B of the Act.



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