

TRAFFIC COMMISSIONER FOR THE WEST MIDLANDS



MOHAMMED MALIK KHAN
Applicant

-v-

DRIVER AND VEHICLE STANDARDS AGENCY
Respondent

DECISION OF THE TRAFFIC COMMISSIONER

Decision

The application by Mohammed Malik Khan for the release of vehicle FL02 GJY is refused. The reasons for this decision are set out below.

Background

1. On 9 January 2020, DVSA traffic examiner Kathrine Cox impounded a minibus FL02 GJY being driven by Mohammed Malik Khan. Her subsequent report stated that this was the third occasion on which Mr Khan had been stopped without an operator's licence while appearing to carry passengers for hire and reward – the previous such occasions being 25 July and 3 September 2019. On each occasion evidence such as a receipt book and post-it notes in the vehicle, information from passengers themselves or a TE witnessing a passenger handing cash to Mr Khan suggested strongly that passengers were paying to be transported between a Tesco Distribution Centre and Wolverhampton

2. On all three occasions Mr Khan was driving the vehicle while, according to DVLA records, lacking the entitlement to do so. His vehicle was also issued with multiple roadworthiness prohibitions on both 25 July and 3 September 2019.
3. On 21 January 2020, Mohammed Malik Khan applied for the return of vehicle FL02 GJY. The ground for appeal was that the vehicle was not being and had not been used in contravention of Section 12 of the Public Passenger Vehicles Act 1981 (the requirement to hold a PSV operator's licence if carrying passengers for hire and reward). Mr Khan stated that "the vehicle has been used solely for my own personal use and to travel with my family. I have not used the vehicle for any business purposes."
4. Mr Khan requested a hearing, which duly took place in Birmingham on 25 February 2020.

Hearing

Ownership

5. Mr Khan produced a hand written bill of sale from an unknown person which stated that he (Mr Khan) had purchased the vehicle FL02 GJY on 17 July 2019. Mr Khan was also the registered keeper of the vehicle. As no other claimant had come forward, I was just satisfied, on the balance of probability, that he was the owner of the vehicle.

Evidence of Mr Khan and DVSA

6. Mr Khan had nothing substantive to add to the details in his application. He had only used the bus three times to take people to or from the Tesco Distribution Centre as a favour to a friend "Dennis". He had not taken any money: whether or not his passengers paid Dennis he did not know. He had not been able to produce Dennis as a witness to confirm this account because the phone number he had for him was no longer in use.
7. TE Cox said that ANPR sightings of the vehicle showed that it was in regular use on the road network. Mr Khan said that he had sometimes lent the vehicle to others: he did not know what they had used it for. This appeared to contradict the statement made in his application that the vehicle had been used solely for his personal and family use.
8. TE Cox also stated that Mr Khan had phoned her the day after the impounding and said that he needed the vehicle back for his work. Mr Khan denied that he had ever said this.

Conclusion

9. In an application for the restoration of an impounded vehicle, the onus is on the applicant to persuade me that, on the balance of probability, its application is justified. Mr Khan has failed so to persuade me. He adduced no hard evidence – beyond assertion - in support of his statement that the vehicle was used for personal business only.
10. All the evidence there is, in the form of notes found in Mr Khan's vehicles, comments made to the TE by passengers and TE Cox's own visual observations, supports rather the case that Mr Khan was operating for hire and reward.

Decision

11.1 therefore conclude that the ground for application for the return of the vehicle is not made out: the application is thus refused. This decision will be notified to the applicant and to DVSA and it will be for DVSA to dispose of the vehicle once the 28 day period for appeal against this decision has ended.

Nicholas Denton

Nick Denton
Traffic Commissioner

26 February 2020