



WEST MIDLANDS TRAFFIC AREA

DECISION OF THE TRAFFIC COMMISSIONER

VIRTUAL PUBLIC INQUIRY HELD ON 6 JULY 2020

APPLICANT: MOHAMMED SHABIR T/A H S TRAVEL

Decision

1. The application made by Mohammed Shabir t/a H S Travel for a restricted PSV operator's licence is refused pursuant to Section 13(3)(b)(ii) of the Public Passenger Vehicles Act 1981 (the 1981 Act").

Background

1. On 31 January 2020 Mohammed Shabir t/a H S Travel applied for a restricted PSV operator's licence for one vehicle.
2. Section 13(3)(b)(ii) of the 1981 Act states that a restricted PSV licence must be held by a person whose main occupation is not the operation of PSVs.
3. In his application, Mr Shabir declared his main occupation to be a newsagent. In subsequent correspondence with the central licensing office in Leeds (CLO) it transpired that he ran a newsagent's business jointly in a partnership with his wife and that Mr Shabir's share of the annual income (according to unaudited accounts for the year 2019/20) was £8,420: he spent 20 hours per week in this occupation. Mr Shabir further explained that he received £XXXXX per annum from renting out a property, making a total annual personal income from the two sources of £XXXXX. His projected gross annual income from his PSV business was £18,500 from a school contract, with an annual profit after maintenance, insurance, fuel and other expenses of around £XXXXX. Vehicle depreciation would reduce that profit to between £XXXXX and £XXXXX per annum. He would be spending 4 hours per day on this contract. His contention was that operating PSVs would not be his main occupation if the licence were granted.
4. In its decision T/2017/2 *Mohammed Akbar*, the Upper Tribunal stated that "neither do we consider that the receipt of investment or other income which does not require the operator to dedicate anything more than a minimal amount of time to it, can be considered to be an "occupation". I was therefore unconvinced that Mr Shabir's property rental income could be considered an occupation. Nor was I convinced that £18,500 was a realistic forecast of the gross income from running a PSV. This

forecast was based on the school contract being the vehicle's *only* business activity. But it would make no sense to use a valuable asset for only four hours a weekday in school term time and leave it idle in the evenings, weekends and school holidays. Vehicles of this type are in demand for airport transfers and other private hire work. In reality, both the income from the PSV business and the time spent on it by Mr Shabir were very likely to be much higher than his estimates. I concluded that, if granted, operating the PSVs was almost certain to be Mr Shabir's main occupation, in terms of both income received and time spent.

Public inquiry

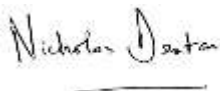
5. For these reasons, I proposed to refuse the application, with the offer of a public inquiry. Mr Shabir duly requested an inquiry: a virtual inquiry on MS Teams was arranged for 6 July 2020.
6. A week before the inquiry Mr Shabir submitted a revised forecast for income/profit from the PSV business. He was now forecasting a reduced gross income of £15,600 per annum, leaving a net profit of £XXXXX after insurance, fuel, maintenance and depreciation were taken into account.
7. At the virtual inquiry on 6 July 2020 Mr Shabir explained these revised figures. He was now being offered a shorter school run than previously, which would necessitate the vehicle being used only 2.5 hours per school day and would bring in a lower gross income than previously forecast. He insisted he would not be using the PSV other than for the school run: he was normally busy at weekends sourcing supplies for the newsagent's.

Conclusions

8. Mr Shabir proposes to use an asset, purchased for £15,000, for 2.5 hours a day for 39 weeks of the year. I have several concerns about the realism of this plan. First, it stretches credulity that 2.5 hours each day will be sufficient time in which to carry out a driver walk round check, drive to the first pick-up point, collect various students, take them to school, drive back to the operating centre, drive back to the school in the afternoon, wait for the students to come out of school, drop off the students at various points and then drive back to the operating centre, all in Birmingham's traffic. In practice, the school run work is likely to take at least the originally forecast 4 hours per day.
9. Second, during the course of the application Mr Shabir has varied his forecast annual profit from £XXXXX initially to £XXXXX now, as a function of the type of school contract available. Again, it stretches credulity to conclude that the vehicle would never be used for other private hire work or for longer, more lucrative, school runs. Because of the limited time spent by Mr Shabir on his newsagent's business (20 hours per week declared on his application form) and the limited amount of income he receives from it, I conclude that the PSV operation (if a licence were granted) is almost certain to be his main occupation.

Decision

10. As explained above, I do not consider that Mohammed Shabir fulfils the main occupation criterion necessary to be granted a restricted PSV licence. I am therefore refusing the application pursuant to Section 13(3)(b)(ii) of the 1981 Act.



Nicholas Denton

Traffic Commissioner
7 July 2020