



NCN: [2021] UKUT 124 (AAC)
Appeal No. T/2020/30

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

ON APPEAL from the DECISION of the TRAFFIC COMMISSIONER

Before: M Hemingway: Judge of the Upper Tribunal
S James: Member of the Upper Tribunal
D Rawsthorn: Member of the Upper Tribunal

Appellant: Phantom Limo Hire Limited

Reference: PD2029709

Considered on the papers: 11 May 2021

DECISION OF THE UPPER TRIBUNAL

This appeal to the Upper Tribunal is dismissed.

SUBJECT MATTER

Main occupation test.
Finance.

CASES REFERRED TO

Bradley Fold Travel Ltd & Anor v Secretary of State for Transport [2010] EWCA Civ 695.

REASONS FOR DECISION

1. This appeal to the Upper Tribunal has been brought by Phantom Limo Hire Limited, (“the appellant”), from a decision of the Traffic Commissioner for the West Midlands (“TC”) embodied in a letter of 21 April 2020 refusing to grant its application for a restricted public service vehicle operator’s licence.

2. The applicant, through one Mr Parvis Khan who appears to be the sole director, consented to the appeal being decided on the papers. We are satisfied it is fair and appropriate to do so. It is not apparent that the holding of a hearing would take matters any further.

3. The licence application was made on 13 January 2020. On 24 January 2020 the Office of the Traffic Commissioner (“OTC”) wrote to the appellant requesting further information and evidence concerning a range of matters. As to the appellant’s financial circumstances, it was asked to provide evidence that it had available to it the sum of £4,800 (we think the figure should have been £3,100 but nothing turns on that) over a 28 day period the last date of which was not more than 2 months from the date of receipt of the application. It was explained that evidence provided had to show that the funds were “held within the company”. The appellant responded to the letter and, as to finance, provided a copy of a building society account book which covered the period from 2 March 2017 to 20 January 2020. On 28 January 2020 the OTC wrote to the appellant once again, seeking detailed financial and other information concerning the nature of the appellant company’s main business as well as projections concerning the commerciality of the activity which would be undertaken under the licence. The OTC indicated that, applying Regulation 6 of the Public Service Vehicle (Operators’ Licences) Regulations 1995, a TC might refuse the application without the offer of a public inquiry (“PI”). The appellant responded with a degree of relevant albeit not detailed information and provided a similar response to a subsequent chase-up letter of 18 February 2020.

4. On 21 April 2020 the OTC wrote to the appellant informing it that the application had been refused because the requirements set out at section 13(3)(b); section 14ZB(b) and section 14ZB(1)(b) [an intended reference to section 14ZC(1)(b)] of the Public Passenger Vehicles Act 1981 (the 1981 Act) had not been met. It was also confirmed that Regulation 6, referred to above, had been relied upon so that the application was being refused without the offer of a PI. The appellant, through Parvis Khan, appealed to the Upper Tribunal.

5. The grounds of appeal offered very little in terms of content or substance. All that was said was an unexplained or unadorned assertion that the TC’s decision had been made “without reference to all the available documents”. The OTC, in consequence of the appeal being lodged, forwarded a bundle of papers which had been before the TC when the decision to refuse had been made. The Upper Tribunal issued directions affording the appellant an opportunity to comment upon the content of that material and to make any further submissions it may wish to make. No response has been received.

6. Paragraph 17(1) of Schedule 4 to the Transport Act 1985 provides:

“The Upper Tribunal are to have full jurisdiction to hear and determine on all matters (whether of law or of fact) for the purpose of the exercise of any of their functions under an enactment relating to transport”.

7. Paragraph 17(3) of that Schedule provides that the Upper Tribunal may not take into consideration any circumstances which did not exist at the time of the determination which is the subject of the appeal. The Upper Tribunal’s jurisdiction was examined by the Court of Appeal in *Bradley Fold Travel Ltd & Anor v Secretary of State for Transport* [2010] EWCA Civ 695. It was stated that the Upper Tribunal has the duty, on an appeal to it, to determine matters of fact and law on the basis of the material before the TC but without the benefit of seeing and hearing from witnesses. It was further stated that the burden lies on an

appellant to show, in order to succeed on appeal, that the process of reasoning and the application of the relevant law requires the Upper Tribunal to take a different view to that taken by a TC.

8. Section 13(3)(b) of the 1981 Act has the effect of imposing a requirement that the operation of public service vehicles adapted to carry more than 8 passengers (the proposed activity under the terms of the restricted licence sought) is not the main occupation of the operator. Section 14ZB(b) contains a requirement that the operator has appropriate financial standing. Section 14ZC(1)(b) imposes a requirement that there be adequate arrangements for securing compliance with the requirements of the law relating to the driving and operation of those vehicles.

9. The grounds of appeal do not engage with the stated statutory bases for the refusal of the application. No detail is given as to the documents said to have been overlooked and no explanation has been given as to how, if any such documents which may have been overlooked had not been, the outcome would or could have been any different. We accept that Parviz Khan, when the company was asked, made some attempt to provide some documentation which informed as to the satisfaction or otherwise of the main occupation test. But much of what was provided amounted to little more than assertion and skeletal financial information. There was clearly insufficient to enable the TC to be satisfied that the proposed business activity under the licence would not amount to the main occupation of the appellant company. There was some evidence of finance but such as there was did not properly demonstrate available funds in the company name. To repeat, the building society account was not in the name of the company or, if it was, that had not been demonstrated. So, the TC could not be satisfied as to financial standing. As to the arrangements for compliance with the law, we are unclear as to why this was included as a basis for refusal. It has not been explained and, if it was to be relied upon, it should have been. But given our conclusions as to the other bases for refusal it does not matter. The outcome is unaffected. As to the TC deciding to refuse the application without the offer of a PI, the appellant has not complained about this. On the material before him the application was bound to fail and the appellant had been given opportunities to provide what one would have thought to be easily obtainable evidence and it had not adequately done so. We are satisfied it was appropriate to rely upon regulation 6 and not offer a PI.

10. In light of all the above this appeal is dismissed.

M R Hemingway
Judge of the Upper Tribunal
Dated: 20 May 2021