



**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Appeal No. UA-2022-000725-T

On appeal from the Decision of Richard Turfitt, Traffic Commissioner for the East of England dated 1st May 2022

Fresh Start for Hens CIC

Appellant

Before: Upper Tribunal Judge Her Honour Judge Beech
Specialist Member of the Upper Tribunal Stuart James
Specialist Member of the Upper Tribunal Gary Roantree

Hearing date: 23rd May 2023

Representation:

Appellant: Andrew Wigley who made the application on behalf of the Appellant, requested that the appeal be determined in his absence

DECISION

The appeal is DISMISSED

Subject Matter: Application for an operator's licence; failure to provide all the required information

Cases referred to: Bradley Fold Travel & Peter Wright v Secretary of State for Transport (2010) EWCA Civ.695.

REASONS FOR DECISION

1. This is an appeal from the decision of the Traffic Commissioner for the East of England ("TC") dated 1st May 2022 when he refused the Appellant's application

for a restricted operator's licence for one vehicle under section 13B of the Goods Vehicles (Licensing of Operators) Act 1995 ("the 1995 Act"), as the TC could not be satisfied that the applicant was not unfit to hold a licence.

2. The background to this appeal can be found in the appeal bundle and is as follows. On 4th January 2022, Andrew Wigley applied for a standard national operator's licence on behalf of Fresh Start for Hens CIC ("FSFH"), an animal welfare rescue operation. Mr Wigley stated that he was the Transport Manager and identified the operating centre as Cleave House, High Street, Ellington, Huntingdon PE28 OAD. In section 10 of the application form he stated that the maximum time between safety inspections would be one week and that he would be responsible for undertaking them at the operating centre.
3. On 14th January 2022, the Office of the Traffic Commissioner ("OTC"), wrote to Mr Wigley advising that the application was incomplete. The following information was required:
 - A copy of the advertisement which had been placed in a local newspaper.
 - Evidence of financial standing, none having been submitted with the application.
 - An online transport manager application.
 - His original CPC qualification.
 - Confirmation of the full legal name of Mr Wigley as the application stated "Andrew Wigley Wigley".
 - Aerial images of the operating centre showing the site and surrounding areas and the parking spaces.
 - Clarification of the frequency of preventative maintenance inspection (reference was made to the Guide to Maintaining Roadworthiness).
 - Confirmation as to how the persons responsible for the company had familiarised themselves with the licence requirements prior to submitting the application.
 - Confirmation of the address of the proposed PMI inspector. A check of the address shows that the operating centre appeared to be residential. Where was the vehicle to be inspected?
 - A Community Interest Company by the same name as the Applicant appeared in the records of Companies House. Confirmation was required as to whether the Applicant is Fresh Start for Hens CIC.
 - If it is the same company then Andrew Wigley is not listed as a director. A completed application declaration must be signed by one of the directors of the company.
 - An explanation as to why he did not declare that FSFH was linked to the existing restricted licence OK2042779 which was also in the name of FSFH. Will that licence be surrendered if this application is granted?
4. Mr Wigley submitted the following:

- A transport manager form in his name. He described himself as being an internal transport manager and declared that he was the person who would be the licensed operator. He would work 8 hours a week as a transport manager. He did not upload a transport manager CPC certificate. He added that he had been a Metropolitan police officer for 36 years and had dealt with HGV's on a regular basis. He would be the only driver and was trained as an advanced emergency response driver. His neighbour was an HGV mechanic and he would look at any issues found with the vehicle (it is apparent that Mr Wigley does not hold a transport manager CPC).
 - Bank statements in the name of FSFH for the requisite period which showed adequate financial standing.
 - An aerial photograph of the proposed operating centre and another which had been so badly photocopied that it is difficult to ascertain what it depicts.
 - In a separate document he referred to an advert that he had previously submitted online; confirmed his correct name; that he would be responsible for weekly inspections prior to vehicle use. Otherwise 12 weekly inspections by Manchetts of Newmarket; he confirmed that the Applicant and the company of the same name were the same entity; he asked for information about the director's declaration form; he informed that the *"previous user of the vehicle has left the company and has failed to co-operate with any handover. Therefore, I was not aware of this exiting licence (sic). My enquiries with the directors suggest they believe that licence is being surrendered; I was asked by the director to apply for a licence. I have now confirmed that the vehicle will only be used to transport our own goods so a restricted licence would suffice"*.
5. The OTC wrote to Mr Wigley again on 24th February 2022 advising him that he needed to use the VOL system to upload the documents that he had provided. The following information remained outstanding:
- The OTC was unable to open the advert attached to the email. Mr Wigley needed to upload it again.
 - A completed application declaration by one of the company's directors and returned to the OTC by post.
 - Completed director declarations for each company director listed at Companies House. The application would need to be republished with the names of the directors, which would extend the opposition period for statutory objectors.
 - Clarification of the role of Mr Wigley within the company as he was not listed as a director at Companies House. If he is a director, then the Companies House records needed updating. This action needed to be taken before a decision could be made to grant the application.
 - The photographs confirmed that the proposed operating centre was a residential property and did not appear to be suitable for use as an operating centre. It was now not possible to add a new operating centre to the application because there was no time to re-advertise. Mr Wigley

was advised that he may wish to withdraw the application until such time as more suitable premises were available.

- If the application was to proceed using Cleave House as an operating centre, then a site assessment may be required to further assess its suitability which may significantly delay a decision on the application although it may be refused without such an assessment.
6. On 8th March 2022, Mr Wigley emailed a member of the OTC staff stating that he believed that the company had been mis-advised prior to the application being made. FSFH was a not for profit CIC and he volunteered for them. They had previously used Luton transit vans until a member of the management team, Martin Holgate, bought a 6.5 tonne vehicle which was the subject of the application. He owned a bus garage and he obtained the operator's licence. It would appear that he was in fact using the vehicle for hire and reward "*on the side*". He had now left the organisation on bad terms and Mr Wigley had been asked to drive the vehicle as he already held the appropriate driving licence. Martin Holgate advised Mr Wigley that he needed a standard operator's licence which he now knew to be flawed. Even if FSFH needed a licence it would only be a restricted one. The vehicle was used twice a month to attend a farm to collect chickens and ducks and then driven to collection points where volunteers took the birds to rehome them. He queried whether a licence was needed at all. He then went onto address the outstanding issues raised in the letter of 24th February 2022:
- He had uploaded the advert again.
 - He had sent the Directors Form to the directors and he could forward these to the OTC.
 - He was not a director of the company.
 - The proposed operating centre is a residential property which is away from the built up areas and housing of a tiny village but it was attached to a farm with a substantial drive and the neighbours were happy with the vehicle being parked there. If necessary, a site assessment would be supported.
7. On 19th April 2022, the OTC sent another email to Mr Wigley advising him that it would appear that a goods vehicle operator's licence would seem to be necessary for FSFH. However, the application was still incomplete:
- The full page of the newspaper needed to be re-loaded. If necessary, Mr Wigley was advised to forward the email sent by the Hunts Post with the advertisement attached.
 - A completed application declaration by one of the company's directors.
 - Completed director declarations from each company director. The application would then need to be republished with the names of the directors included which would extend the opposition for the statutory objectors.
8. Mr Wigley duly re-uploaded the advertisement which the OTC could open. It revealed a discrepancy between the postcodes of the operating centre recorded

on the application form and the advert: “PE28 OAD” and “PE28 OAN”. He also sent in a Director’s declaration signed Lisa Shakespeare, one of the two directors.

9. By a letter dated 1st May 2022, Mr Wigley was notified that the TC had refused the application for the following reasons:

“The traffic commissioner notes from your application that the application did not declare the named Directors of the Company in line with what is on Companies House, we requested that the application declaration be signed by a named Director and that a Director questionnaire be completed and returned for the two named Directors Jaki Hann and Lisa Shakespeare we only received one Director Questionnaire for Lisa Shakespeare and have not received one for Jaki Hann. We have also not received the application declaration page signed by a named Director so their remains (sic) a question of fitness to hold a licence as we cannot be certain that the licence undertakings have been read and understood by a director. Due to this, the traffic commissioner is not satisfied that you are not unfit to hold a licence as set out in Section 13B of the Act”.

The appeal

10. By way of an Appellant’s Notice filed on 25th June 2022, Mr Wigley appealed. His explanation for the late receipt of the Notice was accepted by Judge Hemingway. The application states:

“The appeal is based on the fact that a simple error was made with no intention to deceive or hiding any facts due to being misled by a previous manager.

We completed the forms in good faith under poor advice and will now be financially punished if we have to re-apply bearing in mind the Traffic Commissioner now has all the required information”.

The Grounds of Appeal repeated the above and added:

“The two directors J. Hann and L Shakespeare were not asked to sign a form on our previous licence and so due to having been misled by M. Holgate, the previous operator, were wary of the requirement by the Traffic Commissioners. Mrs Hann was also ill which delayed our submission. I submitted it at the earliest opportunity but the Commissioner just refused our application.

We are a CIC looking for charity status doing animal welfare with just 1 vehicle. We have nothing to hide and will comply with all regulations but just want to get on with our animal welfare work.”

In a later submission, Mr Wigley accepted that the director’s declaration signed by Mrs Hann had not been produced when required but was later submitted but had missed the submission date. He contended that they had “*done all they asked*”.

Discussion

11. There is nothing in the appeal file to confirm that both director declarations have been submitted or that the declaration page of the application has been signed and submitted. At the date of refusal of this application by the TC, there were the following issues with the application:

- a) The application declaration had not been signed by a director of FSFH.
- b) The names of the directors were not recorded on the application.

- c) Only one director had completed a director's declaration.
- d) The postcodes between the application and the advertisement were slightly different.
- e) The application was not made in the name of FSFH as a company.
- f) The advertisement described the applicant as "Andrew Wigley trading as Fresh Start for Hens" rather than the company FSFH. This could not be remedied by another advertisement because the period permitted for advertising an application ended on 4th February 2022.
- g) The operating centre was a residential property and an on-site assessment would have been required once the above matters had been remedied.
- h) As a result of the failure to name the directors in the application or to provide a director's declaration from both directors, the traffic commissioner could not be satisfied that FSFH was not unfit to hold a licence.
- i) There was no maintenance contract with an external provider and no evidence of sufficient workshop facilities at the proposed operating centre.

The above problems with the application could not be described as a "*simple error*" as submitted by Mr Wigley. Having given FSFH ample opportunity to address the deficiencies in the application including the giving of advice that a new application was required, the TC could not have granted an operator's licence with the information provided as FSFH had failed to satisfy the requirements of s.13B of the 1995 Act and indeed s.13C. Moreover, whilst we sympathise with the position that FSFH finds itself in, this Tribunal is not in a position to overturn the TC's decision and remit the application for reconsideration or to grant the application ourselves. A correctly completed application is required, along with an appropriately worded advertisement accompanied by all of the information and declarations required which will satisfy s.13B and s.13C of the 1995 Act.

12. In all the circumstances we are not satisfied that the TC's decision was plainly wrong in any respect (indeed he was plainly right) and neither the facts or the law applicable in this case should impel the Tribunal to allow this appeal as per the test in *Bradley Fold Travel & Peter Wright v Secretary of State for Transport (2010) EWCA Civ.695*. The appeal is dismissed.



Her Honour Judge Beech
Judge of the Upper Tribunal
31st May 2023