



**IN THE UPPER TRIBUNAL  
ADMINISTRATIVE APPEALS CHAMBER:  
TRAFFIC COMMISSIONER APPEALS**

**Appeal No. UA-2024-000343-T  
[2024] UKUT 448 (AAC)**

**IN AN APPEAL FROM THE DECISION OF:  
THE TRAFFIC COMMISSIONER FOR THE NORTH EAST OF ENGLAND TRAFFIC  
AREA  
DATED 5<sup>th</sup> FEBRUARY 2024**

**Before:**

**Elizabeth Ovey, Judge of the Upper Tribunal  
Richard Fry, Specialist Member of the Upper Tribunal  
Sarah Booth, Specialist Member of the Upper Tribunal**

**Appellant: HIGH NOON HOSPITALITY SERVICES LIMITED, trading as You  
Can Hire**

**Attendance:** The Appellant was represented by Mr. James Williams, a director

**Heard at:** The Rolls Building, 7 Rolls Building, Fetter Lane, London EC4A 1 NL

**Date of hearing:** 18<sup>th</sup> September 2024

**Date of decision:** 4<sup>th</sup> October 2024

### **DECISION OF THE UPPER TRIBUNAL**

IT IS HEREBY ORDERED that the appeal be DISMISSED.

**SUBJECT MATTER:** Application to vary licence; suitability of operating centre

**CASES REFERRED TO:** *Bradley Fold Travel Limited and Peter Wright v. Secretary of State for Transport* [2010] EWCA Civ; [2011] R.T.R. 13

## **REASONS FOR DECISION**

### **Preliminary**

1. This is an appeal by High Noon Hospitality Services Limited trading as You Can Hire (“the Company”) against the decision of the Traffic Commissioner for the North East Traffic Area (“the TC”) given by a letter dated 5<sup>th</sup> February 2024. By that decision the TC refused the Company’s application to vary its existing operator’s licence by adding a new operating centre on the ground that the TC was not satisfied that the proposed operating centre was available to the Company, as required by section 13C(5) of the Goods Vehicles (Licensing of Operators) Act 1995 (“the Act”), or that it had enough space, as required by section 13C(6) of the Act.

2. The Company was represented before the Upper Tribunal by Mr. James Williams as envisaged in the case management directions made by Judge Mitchell on 27<sup>th</sup> June 2024. Mr. Williams is one of the two directors of the Company, the other being Mr. Jonathan Noonan.

3. The appeal was brought by a notice of appeal received on 15<sup>th</sup> March 2024 and thus was some days out of time. The Company was asked the reasons for the delay and apologised, explaining that it had got the dates mixed up. The appeal was then accepted for registration. Mr. Williams candidly told us at the hearing of the appeal that the fault had been his because he was tied up on something else.

### **The facts**

4. The Company is the holder of a restricted operator’s licence no. OB2043995. On 15<sup>th</sup> December 2023 it applied for a variation to the licence to add a new operating centre for use by two vehicles. On 18<sup>th</sup> December 2023 the Office of the Traffic Commissioner (“the OTC”) wrote to the Company stating that the application was incomplete and further information was required to satisfy the TC of the suitability of the proposed site. The information in question was:

- 4.1 an aerial image of the proposed operating centre showing the location of the site in relation to the surrounding area and parking spaces for the requested authority.
- 4.2 an aerial map clearly indicating where each of the vehicles would be parked and the entrance and exit to the site from the public highway.
- 4.3 confirmation whether vehicles could enter and exit the proposed site in forward gear at all times.

5. In response, on 21<sup>st</sup> December 2023 the Company sent two aerial images with explanations of how they met the requirements referred to in paragraphs 4.1 and 4.2 above and made the following statement:

“I can also confirm that it is not possible to always enter and exit the proposed site in forward gear, as there is not enough space to complete a full turning circle. The vehicles are able to pull into the site, then reverse into the specified parking spaces. This allows them to exit the site in forward gear.”

6. Internal documentation from the OTC shows that the application was then referred to the TC with a recommendation for refusal. The TC agreed with the recommendation, stating:

“Noting the point of access and egress in relation to the junction, the applicant has failed to satisfy me on the papers of the suitability of this site. I am concerned that the operator would consider it suitable to reverse in or out of the site. I propose to refuse, putting it on notice that section 13C(5) remains to be addressed. On that basis there is not prima facie evidence upon which I can safely permit interim operations. If a hearing is requested, it may be necessary to request a TE statement.”

7. This led to a letter dated 17<sup>th</sup> January 2024 from the OTC to the Company notifying it that the TC was proposing to refuse the application under section 13(5) of the Act as applied by section 17. The reasons given were in effect the first two sentences of the quotation in the previous paragraph. The letter went on to state that before refusing the application the TC would consider further written representations and a request for a public inquiry.

8. The Company responded with a letter dated 29<sup>th</sup> January 2024 stating that the site had previously been approved on the operator’s licence for Castle Stanton Limited, licence no. OC1047384. The letter continued:

“Unfortunately, Castle Stanton Ltd. fell into liquidation in 2021 after suffering the effects of Covid-19 restrictions, therefore the operator’s licences held by the company were revoked.

High Noon Hospitality Ltd. has since taken over the You Can Hire trading name and rebuilt the company. We are now at a point where further expansion is vital to our day-to-day operations and we hope to operate out of the Eckington site as Castle Stanton Ltd. trading as Thorns Group had previously done. The set up which we are planning to put in place is exactly the same as that operated previously by Castle Stanton, so we are just looking to get the same operator’s licence as before.”

9. This response was referred to the TC with a recommendation for refusal. The OTC internal documentation shows that the TC agreed, stating:

“The applicant has referred to the commercial reasons why it is making the application, but needs to satisfy the statutory requirements. I am unclear how a site in Sheffield could have come to be specified on an OC/OL, but in any event use ceased over 6 years ago. I have put the applicant on notice of the issues and sections 17 and 13C(5) remain to be addressed. I must therefore refuse the application.”

10. The result was the decision letter dated 5<sup>th</sup> February 2024 referred to in paragraph 1 above refusing the application.

11. At the request of the TC the appeal bundle contains a cover note explaining that the licence OC1047384 held by Castle Stanton was issued in the North West Traffic Area rather than the North East Traffic Area as a result of an anomaly in the Area allocation for the relevant postcode. A copy of the licence has been included, showing that it was revoked on 30<sup>th</sup> July 2021. As the cover note correctly states, that means that at the time the application for variation was made the site had not been actively in use as an operating centre for over two years.

### **The appeal**

12. The grounds of appeal as stated in the notice of appeal are as follows:

“I believe [the application] has been rejected due to 7.5 tonne lorries not being able to turn around on the site in the yard. We have moved obstacles in the yard that prevented this and we are now able to turn a lorry around in the yard so we no longer need to reverse in, which I believe is why the application was rejected and we are happy to show this.

Pre Covid the site has held an operators licence for over 10 years for You Can Hire and now we have rebuilt the business we would like to re-establish this.”

13. In his oral submissions Mr. Williams explained that the Company is a small offshoot of a larger company which has been operating a hire business for 20 years. He used to work for Castle Stanton and when it went into liquidation he and his fellow director bought the business. He told us that the site is commonly known as You Can corner. Before Covid the business operated with 7.5 tonne lorries using the site and it was completely safe to do so, since there is quite a large forecourt. He accepted that when the application was first made vehicles could not turn around within the site because there had been a lot of containers which prevented them from doing so, but that was no longer the case.

14. On reading the papers before the hearing and looking at the aerial images, it appeared to us, drawing on the experience of the specialist members of the tribunal, that there was a possible manoeuvre by which a lorry could be driven on to the site in forward gear, using the forecourt, reversed into a parking space and then driven off the site in forward gear. Such a manoeuvre appeared to us to be in substance what is described in the second and third sentences of the statement quoted in paragraph 5 above. If so, there is a clear inconsistency with the first sentence. We explored this with Mr. Williams at the hearing and he told us that the manoeuvre can be carried out as we have described it, so that it is possible for vehicles both to enter and to exit the site in forward gear. He accepted that the Company had, as he put it, “shot themselves in the foot” by what was said in the statement. In concluding his submissions he made clear that what the Company wants to do is to have an opportunity to demonstrate that the site can be safely used and is a suitable operating centre.

## The legal framework

15. Under section 17(1)(g) of the Act, the holder of a heavy goods vehicle licence (i.e. an operator's licence authorising the use of a good vehicle with a maximum laden weight exceeding 3.5 tonnes: see section 58) may apply to a traffic commissioner that a new place in the same traffic area be specified as an operating centre. Section 17(3) requires that the traffic commissioner should publish notice of the application and section 17(5) provides that where such an application is published, various specified provisions including sections 13 to 13D apply in relation to the variation application as they apply in relation to an application for an operator's licence.

16. Where the application relates to a restricted licence, section 13(2) requires the traffic commissioner to consider whether the requirements of sections 13B and 13C are satisfied and, if the commissioner thinks fit, whether the requirement of section 13D is satisfied. Under section 13(5), if the commissioner determines that any of the requirements taken into consideration are not satisfied, the commissioner is required to refuse the application. As is clear from the decision letter dated 5<sup>th</sup> February 2024, in the present case it is the requirements of section 13C. and specifically section 13C(5) and (6) which are relevant. They read as follows, so far as material:

“(5) A heavy goods vehicle licence must specify at least one place in the traffic area concerned as an operating centre of the licence-holder, and each place so specified must be available and suitable for use as an operating centre of the licence-holder ...

(6) The capacity of the place specified as an operating centre (if there is only one) or both or all of the places so specified taken together (if there are more than one) must be sufficient to provide an operating centre for all the heavy goods vehicles used under the licence.”

17. It is well established that the task of the Upper Tribunal when considering an appeal from a decision of a traffic commissioner is to review the material before that traffic commissioner, and the Upper Tribunal will only allow an appeal if the appellant has shown that “the process of reasoning and the application of the relevant law require the tribunal to take a different view”, as explained in *Bradley Fold Travel Limited and Peter Wright v. Secretary of State for Transport* [2010] EWCA Civ 695, [2011] R.T.R. 13, at paragraphs 30-40. This is sometimes summarised as requiring the Upper Tribunal to conclude that the traffic commissioner was plainly wrong.

## Discussion

18. The Company was put clearly on notice of the TC's concerns about the suitability of the site by the warning letter dated 17<sup>th</sup> January 2024 referring to the points of access and egress in relation to the junction and to the fact that the operator considered it suitable to reverse in or out of the site. Those were the matters which needed to be addressed in response.

19. We understand why the Company may feel that if the site was previously used satisfactorily in exactly the same way over a period of many years, it ought to be regarded as suitable now and why the Company wished to draw that information and

its current commercial position to the attention of the TC. Unfortunately, the letter of 29<sup>th</sup> January 2024 did not deal with the specific concerns raised by the TC and in particular the issue of whether or not it was necessary to reverse into or out of the site. Given what Mr. Williams told us at the hearing, it seems that the Company missed the opportunity to clarify or correct the statement set out in paragraph 5 above. If it had done so, the effect might have been both to reassure the TC that the site could be operated safely and to dispel any concern that the operator had an unduly casual attitude towards the risks arising from reversing into or out of the site close to a junction.

20. We note that in making the final decision the TC seems to have been under the misapprehension that it was more than 6 years (rather than more than 2) since the site ceased to be used by Castle Stanton, but it does not appear to us that the length of the period since use ceased was a material factor in the TC's decision compared with his continuing concerns about the suitability of the site for the reasons which he had given previously and which had been notified to the Company.

21. Although, as we have said, it seemed to us that there was a potential inconsistency between the first sentence of the statement in paragraph 5 and the second and third sentences, we do not take the view that the TC was under an obligation specifically to investigate that possibility. The warning letter of 17<sup>th</sup> January 2024 was sufficient to enable the Company to restate its position more clearly if indeed, as we understand is the case, it had ceased to be necessary for vehicles to reverse in following the removal of the containers.

22. It follows that in our view the TC correctly applied the relevant statutory provisions and was required by the combined effect of sections 17(5) and 13(5) to refuse the application. The decision was certainly not plainly wrong.

23. We recognise that both at the hearing and in its letter dated 29<sup>th</sup> January 2024 the Company has expressed willingness to work with the OTC to find ways in which the proposed new operating centre can again be found to be suitable. The papers before us include reference to the possibility of a site assessment and a traffic examiner's report. Section 13(7) and (8) of the Act refer to the possibility of undertakings being given by the applicant or conditions for securing road safety to be attached to the licence. If the Company makes a fresh application for variation, supported by a clear explanation of what is now possible on the site and with reference to the TC's concerns, it may be that, in the light of that information and having regard to the possibilities just mentioned, there is scope for a traffic commissioner to be satisfied as to the suitability of the site. Those matters, however, are not matters for us.

## **Conclusion**

24. For the reasons given above, we dismiss the appeal.

**E. Ovey**  
**Judge of the Upper Tribunal**

(Authorised for issue on 4<sup>th</sup> October 2024)