



Neutral citation no: [2025] UKUT 207 (AAC)

Appeal No. UA-2025-000017-T

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Appellant:

JT Construction (NE) Ltd

Before:

S Buckley

Judge of the Upper Tribunal

D Rawsthorn

Specialist Member of the Upper Tribunal

S James

Specialist Member of the Upper Tribunal

Hearing date: 17 June 2025

Mode of Hearing: Cloud Video Platform (remote video hearing)

Representation:

Appellant: In person

On appeal from:

Decision maker: Traffic Commissioner in the North East of England Traffic
Area

Commissioner's ref: OD2075766

Date of decision: 18 December 2024

SUMMARY OF DECISION

100 Transport (Traffic Commissioner and DoE NI) appeals

100.1 Applications

Judicial Summary

The Traffic Commissioner's decision to refuse the Appellant's application for a

standard national operator's licence did not involve any error of law or mistake of fact as per the test in **Bradley Fold Travel & Peter Wright v Secretary of State for Transport** (2010) EWCA Civ.695

Please note the Summary of Decision is included for the convenience of readers. It does not form part of the decision. The Decision and Reasons of the Upper Tribunal panel follow.

DECISION OF THE UPPER TRIBUNAL

The appeal is **DISMISSED**.

REASONS FOR DECISION

SUBJECT MATTER: Applications - Standard Operator's Licence – Financial Standing

CASES REFERRED TO: *Bradley Fold Travel Limited and Peter Wright v. Secretary of State for Transport* [2010] EWCA Civ 695

Preliminary

1. This is an appeal by J T Construction (NE) Ltd (the Company) from the decision of the Traffic Commissioner for the North East Traffic Area (the Commissioner) on 18 December 2024 to refuse the Company's application for a standard operator's licence under section 13(5) of the Goods Vehicles (Licencing Operators) Act 1995 (the Act). The Commissioner was not satisfied that the Company satisfied the applicable financial standing requirements under section 13A(2)(c) of the Act.
2. The Company was represented before the Upper Tribunal by Mr Wilson, proposed external transport manager, assisted by Mr Towson Smith, managing director.

The facts

3. The Company applied for a standard operator's licence on 13 August 2024 authorising one vehicle and one trailer at an operating centre at Roman Way Industrial Estate, Bishop Auckland.

4. On 28 August 2024 the Office of the Traffic Commissioner (the OTC) wrote to the Company to notify it that the application was incomplete and further information was needed. The OTC specified the documents and information needed in an Annex and stated that the Company needed to respond in full by 11 September 2024. The Company was warned that if it did not respond, the application would be refused.
5. The information requested was specified in an Annex as follows:
 - a. An advert worded using the prescribed format and evidence that the advert appeared in a local newspaper in the relevant period
 - b. Financial evidence showing that the applicant had ready access to sufficient resources to support the application. The OTC specified that the type and size of licence applied for requires a sum of £8000 to have been available during a 28 day period, the last date of which must be no more than 2 months before the date of the application, i.e. no earlier than 13 June 2024.
 - c. Further information to demonstrate that Craig Wilson can ensure continuous and effective management of this and other licences they are specified on.
 - d. An explanation of how the Company has been meeting its transport needs after the licence OB2042074 was revoked on 6 March 2024 and an explanation of why the disqualification order was not declared.
 - e. The V5 document for the specified vehicle.
6. The Company provided some information by letter dated 25 September 2024, which was received by the OTC on 7 October 2024.
7. The OTC wrote to the Company on 8 October 2024 to inform the Company that the application remained incomplete. The letter stated that it was intended as a final attempt to resolve the issues raised in earlier correspondence. The OTC stated that the Company must provide additional documentation listed in the Annex. It stated that the Company must comply in full by no later than 22 October 2024. The letter warned the Company that if the application remained incomplete on that date, it would be refused and the Company would have to re-apply for a licence.
8. The Annex specified that the following information/documentation was required:

- a. Financial evidence showing that the applicant had ready access to sufficient resources to support the application. The OTC specified that the type and size of licence applied for requires a sum of £8000 to have been available during a 28 day period, the last date of which must be no more than 2 months before the date of the application, i.e. no earlier than 13 June 2024. The OTC reiterated that the bank statements submitted were unacceptable because the last date shown was 30/12/2023 which was more than 2 months before the application was submitted.
 - b. Further information to demonstrate that Craig Wilson can ensure continuous and effective management of this and other licences they are specified on.
9. The Company supplied further information on 9 October 2024 including a letter from Craig Wilson intended to demonstrate continuous and effective management of the licences he was specified on.
10. By email dated 15 October, the Company asked the OTC if bank statements for the director's personal account would be sufficient evidence. The OTC replied by email dated 16 December 2024 to say that personal bank statements would not be accepted because the Company was a limited company.
11. On 18 December 2024 the Commissioner refused the application under section 13(5) of the Act. The Commissioner stated that the financial information provided was not acceptable because they were from December 2023 and the Company had not shown that it met the requirements of section 13A(2)(c) of the Act.

The law

12. By section 13(5) of the 1995 Act, a Traffic Commissioner must refuse an application for a standard operator's licence if the Commissioner determines that any of the requirements of sections 13A of the Act are not satisfied.
13. Under section 13A(2)(c) the Traffic Commissioner must be satisfied that the appellant has appropriate financial standing as determined in accordance with paragraph 6A of Schedule 3.

14. Under paragraph 6A of Schedule 3 an operator has financial standing under section 13A(2)(c) if the operator is able to demonstrate that it has at its disposal at all times capital and reserves in an amount determined by the type and number of vehicles that would be authorised under the licence.
15. 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 at paragraphs 30-40. This is sometimes summarised as requiring the Upper Tribunal to conclude that the traffic commissioner was plainly wrong.

Grounds of appeal and arguments

16. The grounds of appeal dated 14 January 2025 stated that the business was now strong enough to be able to share the 28 days statements that showed a consistent balance of £8k. The grounds of appeal stated ‘... can we appeal against the decision to refuse, and we will attach the statements separately as promised. Hopefully, that will then allow us to progress the licence application.’
17. The main thrust of the Company’s oral arguments was that they were now able to demonstrate that the Company had appropriate financial standing.

Analysis

18. I explained to Mr Wilson and Mr Towson Smith that the jurisdiction of the Tribunal is one of review rather than rehearing and that the Upper Tribunal could not, unless certain conditions were met, take account of material that was not before the Traffic Commissioner and that we had to consider the Appellant’s financial standing at the date of the Commissioner’s decision.
19. In the present case, that means that it does not help the Company to produce to us evidence showing that as a matter of fact the Company satisfies the financial standing requirement either during or following the relevant period, if that information was not before the Commissioner. We have to consider whether there is something wrong with the Commissioner’s decision on the basis of the material the Commissioner had.

20. The Company was put clearly on notice of the Commissioner's concerns about the financial evidence and given a proper amount of time to provide further evidence before the decision was made.
21. Mr Wilson accepted that the Company was not able to satisfy the financial standing requirement at the time, although he maintains that it can now satisfy the requirement.
22. We find that the Commissioner correctly applied the relevant statutory provisions and was required, on the evidence before the Commissioner, to refuse the application. The decision was certainly not plainly wrong.
23. As I indicated to Mr Wilson, it is open to the Appellant to make a further application for a licence, relying on more recent evidence of the financial position.

Conclusion

24. Taking all the circumstances into account, we are not satisfied that there was any procedural unfairness in this case or that the Commissioner's decision was plainly wrong in any respect and neither the facts nor the law applicable should impel the Tribunal to take a different view as per the test in **Bradley Fold Travel & Peter Wright v Secretary of State for Transport** [2010] EWCA Civ.695. The appeal is dismissed.

Sophie Buckley
Judge of the Upper Tribunal
Authorised by the panel for issue on 25 June 2025

This decision is given under s.37(1) of the Goods Vehicles (Licensing of Operators) Act 1995.