



NCN: [2021] UKUT 0271 (AAC)  
Appeal No. T/2021/51

**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  
A Guest: Member of the Upper Tribunal  
S James: Member of the Upper Tribunal

**Appellant:** Belistore Limited

**Heard at:** Field House (London)

**On:** 28 October 2021

**Date of Decision:** 2 November 2021

**DECISION OF THE UPPER TRIBUNAL**

The appeal is dismissed.

**SUBJECT MATTER**

Finance (Restricted Licences)

**CASES REFERRED TO**

*Bradley Fold Travel Ltd. and Another v Secretary of State for Transport* [2010]  
EWCA Civ 695

*T/2013/77 Hughes Bros Construction Ltd*

*T/2019/76 Armthorpe Skips Ltd*



## REASONS FOR DECISION

1. This is an appeal to the Upper Tribunal brought by Belistore Ltd (effectively by Mr Richard Reynolds who owns and runs the company and whom we shall now call “the appellant”) from a decision of the Traffic Commissioner for the East of England Traffic Area (“the TC”), embodied in a letter of 23 June 2021 sent by the Office of the Traffic Commissioner (“OTC”) refusing to grant his application for a restricted goods vehicle operator’s licence. The refusal decision was expressed to have been made under section 13(5) of the Goods Vehicles (Licensing of Operators) Act 1995 in reliance upon the content of section 13A(2) (c) and section 13D.

2. The appeal was considered at a traditional face-to-face hearing which took place at Field House in London on 28 October 2021. The appellant represented himself. We are grateful to him for his frankness and his helpfully straightforward approach.

3. The appellant made the licence application on 6 April 2021 with the intention of using a single vehicle (authority for only one vehicle had been sought) to aid a branch of the appellant’s business as an event caterer. The OTC wrote to him, on 14 April 2021, seeking evidence concerning the financial position of the Company. The appellant’s response was deemed not to be satisfactory, so a further letter was sent on 28 May 2021. The appellant, in response to those letters, sent bank statements some of which related to Belistore Ltd and some of which related to his own personal bank accounts. The resultant position was that the appellant was not able to show available funds of £4,800 over a 28 day period the last date of which was not more than two months from the receipt of the application (which is what the TC had sought) if relying solely upon the funds in the Belistore Ltd accounts but was able to do so if relying on those funds in addition to funds in his personal accounts.

4. On 23 June 2021 the application was refused. In arriving at that refusal decision, the TC took into account the business accounts but not the personal accounts. It was said that personal bank statements were not acceptable. One of the twin bases for refusal (the one under section 13D) was that the appellant had failed to show that the provision of the facilities and arrangements for maintaining

the vehicle in a fit and serviceable condition would not be prejudiced by reason of the appellant's having insufficient financial resources for that purpose. The appellant appealed and argued that since the letters which had been sent by the OTC prior to the refusal letter had not stipulated that the required funds should be in a business account, the funds in his personal accounts should be taken into account as well. He also explained that his ability to show the required funds in his business accounts had been adversely impacted by the economic damage caused to his business by the coronavirus pandemic.

5 As to the approach which the Upper Tribunal must take on an appeal such as this, 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 related to transport”.

6. Paragraph 17(3) of that Schedule provides that the Upper Tribunal may not take into consideration any circumstances that 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 and Another v Secretary of State for Transport* [2010] EWCA Civ 695. It was stated therein 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 which had been 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 the TC.

7. The TC's request for evidence of available financial resources in the sum of £4,800 for a 28 day period was in line with statutory guidance set out in Senior Traffic Commissioner: Statutory Document No 2: Finance concerning restricted licences. Further, when a licence is sought by a limited company (as here) money in the personal bank account of a director is not “available” because it is not money which belongs to the company (*T/2013/77 Hughes Bros Construction Ltd*). The principle was applied with respect to restricted licences (such a licence was sought in this case) in *T/2019/76 Armthorpe Skips Ltd*. All of that being so, the TC was entitled to insist on funds being contained in a business account. Certainly, we are quite unable to say he was plainly wrong in doing so. That is the case notwithstanding the fact that such a requirement was not made clear (though we agree it would have been helpful if it had been) in correspondence issued by the OTC prior to the decision under appeal being made.

8. It is right to say there are some imperfections in the TC's decision. Firstly, he was not entitled to refuse the application under section 13A(2)(c) of the 1995 Act because that provision relates to standard licences only. Secondly, with respect to the reliance upon section 13D, that is a provision which may only be applied if discretion to apply it has been exercised (see section 13(1)(b)). There was no clear statement in the decision letter to the effect that there had been a positive discretionary decision to apply the provision. As to the former difficulty, it matters not that the TC had relied upon an impermissible ground for refusal if the other basis for refusal was sound. As to the latter difficulty, it is clear that the TC

had appreciated he was dealing with an application for a restricted licence such that discretion had to be exercised before section 13D could be relied on and we infer such discretion was exercised. Nevertheless, TC's and the OTC should bear in mind that it is good practice to make it clear in a decision letter that such discretion has been exercised and that, in some cases, the absence of such an indication might result in a decision being set aside for legal error.

9. In the circumstances we conclude that this appeal must be dismissed. But we would stress that the mere failure of this appeal is not something which ought to be held against the appellant if he were to make a fresh licence application. Indeed, it appears from what the appellant was able to tell us that he might well be in a position to comply with the requisite financial requirements through reliance upon money belonging to the Company. But, of course, if such an application is made, it will be for the TC to consider and decide it on the basis of the material then presented.

10. The appeal is dismissed.

**M R Hemingway**  
**Judge of the Upper Tribunal**  
**Signed: 2 November 2021**

**A Guest**  
**Member of the Upper Tribunal**

**S James**  
**Member of the Upper Tribunal**