



NCN: [2022] UKUT 191 (AAC)
Appeal No. UA-2021-000329-T

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

ON APPEAL from the DECISION of the TRAFFIC COMMISSIONER for the West of England Traffic Area

Before: L J Clough: Judge of the Upper Tribunal
A Guest: Member of the Upper Tribunal
G Roantree: Member of the Upper Tribunal

Appellant: Wychwood School Oxford Ltd

Reference No: PH2046388

Heard at: Field House, London

On: 8 June 2022

Date of Decision: 9 June 2022

DECISION OF THE UPPER TRIBUNAL

THE APPEAL IS DISMISSED.

Subject matter:

Restricted PSV Operators Licence, Limited Company, Managed Preventative Maintenance System, Maintenance Contract, maintaining vehicle in fit and serviceable condition

Cases referred to

Bradley Fold Travel Ltd & Anor v Secretary of State for Transport [2010] EWCA Civ 695.
Clarke v Edinburgh & District Tramways Co Ltd [1919] UKHL 303; (1919) SC (HL) 35; 56 SLR 303

REASONS FOR DECISION

1. This is an appeal to the Upper Tribunal brought by Mr Peter Granville for and on behalf of Wychwood School Oxford Ltd (hereinafter “the appellant”), from a decision of a Traffic Commissioner (“TC”) contained in a letter dated 20 September 2021, refusing the application for a Public Service Vehicle (PSV) Operator’s Licence. The appeal was originally lodged in the name of Mr Peter Granville, the Bursar of the Wychwood School Oxford Ltd, as he was undertaking the application process, but the appellant has been officially amended to that of Wychwood School Oxford Ltd, as the legal owner of the vehicle and operator of the licence in question.

2. The appeal was considered at a traditional face-to-face hearing, in London, on 8 June 2022. The appellant attended and was represented by Mr B. Coulter of Counsel. The Respondent, as is standard practice, was not present or represented at the hearing.

The facts

3. The appellant, through the School Bursar, applied for a PSV Operator’s Licence signed on 24 June 2021 (received on 29 June 2021). The appellant school had previously been operating as a registered charity with the use of a minibus to drive the pupils to and from various places such as sporting events, field trips etc. It was agreed at that time, that there was no requirement to have a licence for the running of the minibus. The appellant school later became a limited company after which it was agreed between the parties that a PSV Operator’s Licence was required to continue the use of the school minibus. Authority was therefore sought to run one minibus in the same manner as the school had always done while operating as a charity. The application set out the required financial evidence, vehicle details, operating centre location, and confirmed that the use of the minibus was not the main occupation of the appellant. The school Bursar, Mr Peter Granville, was specified as the safety inspector for the vehicle, and it was confirmed that arrangements had been made to keep the vehicle in a fit and serviceable condition at all times, with a maximum of 12 weeks between safety inspections. It is the latter specification that became the subject matter of this appeal.

4. Section 14 of the Public Passenger Vehicles Act 1981 (as amended) (“the Act”) provides that in order for a Restricted PSV Operator’s Licence to be granted, the requirements set out in sections 14ZB and 14ZC of the Act must be satisfied. These provisions read as follows:

“14ZB. Requirements for restricted licences

The requirement of this section is that the traffic commissioner is satisfied that the applicant —

(a) is of good repute (as determined in accordance with paragraph 1 of Schedule 3),
and

(b) has appropriate financial standing (as determined in accordance with paragraph 2 of Schedule 3).

14ZC. Requirements for standard and restricted licences

(1) The requirement of this section is that the traffic commissioner is satisfied —

(a) that there will be adequate facilities or arrangements for maintaining in a fit and serviceable condition the vehicles proposed to be used under the licence; and

(b) that there will be adequate arrangements for securing compliance with the requirements of the law relating to the driving and operation of those vehicles.

(2) In considering whether the requirement of this section is satisfied, the traffic commissioner may take into account any undertakings given by the applicant (or procured by the applicant to be given) for the purposes of the application and may assume those undertakings will be fulfilled.

(3) Where the traffic commissioner grants an application for a PSV operator's licence, any undertakings taken into account by the commissioner under subsection (2) that the commissioner considers to be material to the granting of the application must be recorded in the licence issued to the applicant."

5. The question of the arrangements for maintaining the vehicle in a fit and serviceable condition were of significance in this particular application and subsequent appeal.

6. On 6 July 2021 the Office of the Traffic Commissioner (OTC) wrote to the appellant to confirm receipt of the application, and attaching an annex containing a list of outstanding supporting information/documentation required to be sent to the OTC before 20 July 2021 so that the application could be considered complete and therefore ready to be forwarded to the TC for determination. Amongst other matters, the OTC requested evidence that Mr Granville, the proposed safety inspector, was suitably qualified and had the necessary facilities to complete the maintenance contract on the vehicle. On 5 August 2021, the OTC wrote again to the appellant stating that the application continued to remain incomplete and requested, amongst the same matters as in the initial letter, for confirmation that vehicle inspections would take place every 10 weeks (or provide exceptional circumstances as to why the inspections would take place at longer intervals than this). The OTC also repeated the request for confirmation of Mr Granville's competence to perform the vehicle safety inspections and, that the school workshop facilities were suitably equipped for this purpose. This information was to be provided by 19 August 2021.

7. The appellant, through Mr Granville, replied via email on 27 August 2021, explaining:

"[t]he minibus is leased and maintained by the leasing company, with annual service and MOT, we do less than 3,000 miles per year. My team at the school carry out weekly checks on the minibus." [page 036 of the bundle].

The application was passed to the TC who indicated to the OTC via email on 1 September 2021, that the application seemed satisfactory save for the issue of maintenance. A letter was sent by the OTC on 2 September 2021 seeking sight of the maintenance contract indicating that

inspections of the vehicle should take place at no more than 10 weekly intervals and stating that if the maintenance contract was provided by 12 September 2021, the application would be granted with a strong recommendation that the directors of the company attend a new operator seminar when invited. A weblink to the official DVSA Maintenance Guide detailing the nature and requirements of a maintenance contract was provided in the letter to the appellant.

8. On 27 August 2021, the appellant responded by letter, sent from Mr Granville, in the same terms as the email dated 27 August 2021. There was no evidence of a maintenance contract provided or discussed. On 20 September 2021, the TC determined the application as follows:

“The operator has been directed towards the DVSA maintenance guide which sets out in detail what is expected of operators in terms of satisfactory arrangements for keeping public service vehicles fit and serviceable. It is far more than an annual service and MOT and requires a proper managed preventative maintenance system. It would appear that the application has not even read the reference text which was supplied to him. There is no maintenance contract and no preventative maintenance regime proposed. I cannot find that there will be adequate facilities or arrangements for maintaining in a fit and serviceable condition the vehicle proposed to be used under the licence. Section 14ZC(1)(A) fails to be satisfied.

This applicant has received more assistance than is normal with the application yet he fails to provide a straightforward maintenance contract. This is frivolous conduct. The application is refused and no public inquiry is offered.”

9. The OTC wrote to the appellant on 20 September 2021, stating that the application had been refused in the above terms as stated by the TC. The appellant was also informed that they were not permitted to lawfully operate any PSV vehicles for hire or reward until they either submitted a fresh application which was granted by the TC- or until they lodged an appeal with the Upper Tribunal which successfully overturned the decision of the TC.

The appeal

10. The applicant lodged an appeal with the Upper Tribunal on an official appeal form signed and dated 4 November 2021. In his grounds of appeal, the appellant stated:

“Wychwood School has operated a minibus for many years as a charity and has always maintained its vehicles to a high standard, using it to take pupils to sporting fixtures, field trips and the occasional educational visits.

As the only change we had made to the company was to become a for profit company no longer a charity we had not seen any need to change the way we operated. The school had operated under a c19 charities licence.

In light of the decision, we have contacted our leasing company who we lease the school minibus through and have now implemented a new preventative maintenance program. They will now inspect the vehicle on a 8 week cycle on top of the annual service and MOT. The minibus does not normally do more than 3,000 miles PA.

We now believe that we now meet the requirements for keeping a public services vehicle fit and serviceable”.

11. The appellant was effectively arguing that although the school had not arranged for, and had not provided details of, a vehicle maintenance contract when requested to do so, it had done so since the date of decision, and was therefore content that the application requirements were satisfied such that the Upper Tribunal would find itself able to allow his appeal.

12. The appeal was heard in Field House, London on 8 June 2022. At the hearing of his appeal, the appellant, through Counsel, provided a copy of the vehicle maintenance contract which had been agreed between Wychwood School Oxford Ltd and the contractor, Rivus Fleet Solutions in Solihull. The agreement was dated 15 October 2021 (post-dating the decision of the TC on 20 September 2021). It was accepted by the appellant, through Counsel, that there was difficulty with this appeal, in that the request of the TC to provide the maintenance contract had not been met and therefore the decision of the TC as of 20 September 2021 was not “plainly wrong” in that regard. When asked why the appeal was proceeding, given that the maintenance contract handed in on the date of appeal was fresh evidence which was not before the TC at the date of decision, the appellant explained that he had been advised an appeal was the only option. The appeal was not withdrawn on the date of the hearing as the appellant was present and able to demonstrate that the application requirements were now likely to be satisfied.

13. 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”.

14. 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. For that reason, the evidence of the maintenance contract was not taken into account in the determination of this appeal as it was fresh evidence which was not available for consideration by the TC at the date of decision.

15. The task of the Upper Tribunal, therefore, when considering an appeal from a decision of a Traffic Commissioner is to review the material which was before the Traffic Commissioner; 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” (*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). In essence therefore the approach of the Upper Tribunal is as stated by Lord Shaw of Dunfermline in *Clarke v Edinburgh & District Tramways Co Ltd* 1919 SC (HL) 35, 36-37, that an appellate court should only intervene if it is satisfied that the judge (in this case, the decision of the Traffic Commissioner) was “plainly wrong”.

16. Section 14ZC of the Public Passenger Vehicles Act 1981 (as amended) clearly imposes a requirement that to acquire a licence, PSV vehicles must be maintained in a fit and serviceable manner, and it is within the powers of the TC to make enquiries and to seek documentation which confirms that this requirement will be met. The appellant, even on his own admission, failed to provide the documentation to evidence the maintenance arrangements for the vehicle which was the subject of the PSV Operator’s Licence application, and thus failed to meet that requirement. The TC was bound to apply the legislation when making his decision with respect

to the appellant's licence application and given the failure of the appellant to provide the evidence requested, the outcome of the application was therefore inevitable. The Upper Tribunal are unable to identify any error of law or any error of fact on the part of the TC and are therefore unable to conclude that either the application of the relevant law nor the consequential decision of the TC to refuse the application was "plainly wrong" as at the date the decision was made. We are therefore, despite the submission of the appellant's Counsel, obliged to dismiss this appeal.

17. The appellant, in hindsight, may have been better off making a fresh application for a licence upon receipt of the signed maintenance contract, rather than pursuing this matter to an appeal. We appreciate that wires may have been crossed in the communications between the OTC and the appellant after the original licence application was refused, and when determining the next steps to take. Whilst it is entirely a matter for the appellant, the school may wish to pursue a fresh licence application now.

L J Clough
Judge of the Upper Tribunal

A Guest
Member of the Upper Tribunal

G Roantree
Member of the Upper Tribunal

Authorised for issue on 18 July 2022