



NCN: [2022] UKUT 00095 (AAC)

IN THE UPPER TRIBUNAL

Appeal No. UA-2021-000225-T

ADMINISTRATIVE APPEALS CHAMBER

(TRAFFIC COMMISSIONER APPEALS)

ON APPEAL from a DECISION of the TRAFFIC COMMISSIONER for NORTH WEST ENGLAND

**Decision dated:** 7 September 2021  
**Appeal dated:** 5 October 2021  
**Before:** Judge Rupert Jones: Judge of the Upper Tribunal  
Mr D Rawsthorn: Member of the Upper Tribunal  
Mr S James: Member of the Upper Tribunal  
**Appellant:** Paul Bamber  
**Reference:** PC1143611  
**Attendances:** Paul Bamber - the Appellant in person  
**Heard at:** Remotely by BT MeetMe telephone  
**Date of Upper Tribunal Hearing:** 17 March 2022  
**Date of Decision:** 22 March 2022

**DECISION OF THE UPPER TRIBUNAL**

The appeal against the Traffic Commissioner's decision dated 7 September 2021 varying the Appellant's Operator's Licence and authorising Whitby Sports & Social Club as the only operating centre is allowed on the grounds that it was wrong. The Upper Tribunal re-makes the decision substituting the Appellant's current residential address, 23 The Paddock, Great Sutton, Ellesmere Port, CH66 2NN as the only authorised operating centre for the licence.

**Subject matter:**

Variation of Public Service Vehicle Operator's Licence: Section 14ZC(1)(b) Public Passenger Vehicles Act 1981 – application to vary the location and number of operating centres.

## REASONS FOR DECISION

1. The Appellant (Mr Paul Bamber) appeals the decision of the Traffic Commissioner ('TC') dated 7 September 2021 varying his Public Service Vehicle operator's licence under the Public Passenger Vehicles Act 1981 ('the Act').
2. In January 2021, as a result of moving house, the Appellant applied to change the operating centre for the licence to be his new residential address. Previously there were two operating centres authorised on the licence – his former residential address and the Whitby Sports and Social Club – because at that time the Appellant owned and operated two vehicles. He now operates using only one vehicle - a Mercedes Sprinter Minibus (with 6.9-metre-long wheelbase) for hire or reward. He provides a minibus service such as to drive clients and customers to and from sporting events and pick them up from Liverpool city centre.
3. The TC's decision varying the operator's licence was contained in a letter dated 7 September 2021. The letter referred to the Appellant's application to vary the operator's licence which was granted in modified terms as per the TC's decision:

'The best outcome here is to reduce the authority on the licence to one vehicle. The operator then only needs one operating centre and the Whitby social club is clearly the most suitable of the two centres currently available. The operator has conceded he still has access to that facility if needed.

Clearly if in future he wishes to increase the authority on the licence, consideration can be given to the proposed operating centres at that time.

As stated above, my concern must be suitability and safety and not matters such as convenience to the operator.'

4. The amended licence was enclosed. It decreased the number of authorised operating centres to one, removing the Appellant's former residential address and confirming the Whitby Sports and Social club as the only operating centre.
5. The TC's decision followed an earlier internal memo dated 25 August 2021 from within the Office of the TC ('OTC') which stated:

'This application has again been returned following the reply from the operator. Firstly I note the operator no longer has 2 vehicles in possession and has indicated he is willing to reduce the authorisation to 1 vehicle. The operator has also indicated that he still has the option to park at the social club, but it is not being used as he doesn't have the second vehicle. The operator has stated that he does not want to park both vehicles at the social club as it is not cost effective. However he does not indicate it is not possible. But given the fact this is to reduce to 1 vehicle, the option to still have social club and park the vehicle at that location must be the obvious choice. I note the comments about the distance [from his home], but suitability must take preference. In addition, the operator has not indicated the possibility of having a banksman as recommend previously. I

therefore recommend the licence is reduced as requested by the operator, and the operator is advised to use the social club as the sole operating centre.’

### **The Appellant’s grounds of appeal**

6. The Appellant lodged a notice of appeal to the Upper Tribunal dated 5 October 2021.

7. His grounds of appeal were as follows:

‘In applying to vary my operator’s licence following a change in home address, the Traffic Commissioner has concluded that my new address is not suitable as an operating centre. Further, they have identified that a third-party site should be recorded as my sole operating centre.

I currently have no agreement with the third-party site to effectively operate my business from their premises. I had an agreement with them to store and operate a spare bus as required for which I paid them a ground rental. Having a spare bus became financially unviable so I sold the bus and walked away from the agreement.

I wish to appeal that my current home address is more suitable and safer (to operate one minibus from) than operating from the third party site which holds many functions and events and has a high footfall from the general public at many times of the day & night. The third party site has a large car park which can be busy with the general public being dropped off or picked up or parking their own vehicles for functions.

I have held my operators licence since March 2016. I had approval for just under 5 years to operate one vehicle (16 passenger minibus) from my home address:.....(A semi detached property). The road on which the premises were located was used by the general public (incl. traffic) as a through road which meant it was more busy at times due to this use. The road also had 2 schools in very close proximity. At key times during the day the road was heavily congested (traffic) and had a heavy footfall. I was able to manage my business around this and there were no safety issues arising as a result of operating from this centre.

I moved house on 29 January 2021 to a quieter road with no schools in close proximity and with a much lower footfall from the general public. My new address:.....(a detached property) has a larger parking area / drive. Although this property is on an apparent through-road it is not used as such generally as traffic uses 2 bigger nearby roads....As such I believe the new address to be a safer operating centre than my formerly approved address and than the third party premises for the reasons previously outlined.

As a professional driver I appreciate that safety of the general public is the highest priority and I exercise caution at the many events & functions for which I provide a service. So whether picking up or dropping off at eg. schools, concerts, race meetings, city centres, including reversing manoeuvres as required, I have not had any safety issues, given the caution I have exercised with regards to driving into (reverse parking) & out of my property, whilst this has a lower level of risk than the many events I undertake, I believe the visibility from the minibus (incl reverse camera) and around the property is more than adequate to safely manage these risks.’

8. The Appellant also provided numerous photographs of his parking area / driveway at the front of his house with the vehicle parked in situ together with photographs of his residential street, including aerial views. He also included a sketch plan with relative dimensions of his parking area / drive.

### **The hearing of the appeal**

9. With the consent of the Appellant, the hearing was heard remotely through BT-meet-me telephone facility. We were satisfied it was just and fair - in accordance with the overriding objective - to proceed in this manner. The Appellant received a reasonable opportunity to make his representations in writing and orally before and during the hearing. The Appellant fully participated in the hearing by telephone. We are grateful to him for the clarity of his written and oral submissions.

### **The Law**

10. Applications for the grant and variation of Public Service Vehicle (PSV) licences can be only granted by the TC if various conditions are satisfied. These include those under section 14ZC of the Act as follows:

#### **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

[Emphasis Added]

### *The Upper Tribunal’s jurisdiction*

11. Paragraph 17 of Schedule 4 to the Transport Act 1985 provides:

“(1) The Upper Tribunal are to have full jurisdiction to hear and determine all matters (whether of law or of fact) for the purpose of the exercise of any of their functions under an enactment relating to transport”.

- (2) On an appeal from any determination of a traffic commissioner other than an excluded determination, the Upper Tribunal is to have power-
  - (a) to make such order as it thinks fit; or
  - (b) to remit the matter to the traffic commissioner for rehearing and determination by the commissioner in any case where the tribunal considers it appropriate.
- (3) The Upper Tribunal may not on any such appeal take into consideration any circumstances which did not exist at the time of the determination which is the subject of the appeal”.

12. The Upper Tribunal’s jurisdiction was examined by the Court of Appeal in *Bradley Fold Travel Ltd and Anor v Secretary of State for Transport* [2010] EWCA Civ 695. The court applied *Subesh and ors v Secretary of State for the Home Department* [2004] EWCA Civ 56, where Woolf LJ held:

“44....The first instance decision is taken to be correct until the contrary is shown...An Appellant, if he is to succeed, must persuade the appeal court or tribunal not merely that a different view of the facts from that taken below is reasonable and possible, but that there are objective grounds upon which the court ought to conclude that a different view is the right one...The true distinction is between the case where the appeal court might prefer a different view (perhaps on marginal grounds) and one where it concludes that the process of reasoning, and the application of the relevant law, require it to adopt a different view. The burden which an Appellant assumes is to show that the case falls within this latter category.”

13. The Tribunal is not required to rehear all the evidence by conducting what would, in effect, be a new first instance hearing. Instead it has the duty to hear and determine matters of both fact and law on the basis of the material before the Traffic Commissioner but without having the benefit of seeing and hearing the witnesses.
14. The Appellant ‘assumes the burden’ of showing that the decision appealed from is ‘plainly wrong’ or at least ‘wrong’.
15. In order to succeed the Appellant must show not merely that there are grounds for *preferring* a different view but that there are objective grounds upon which the Tribunal ought to conclude that the different view is the right one. Put another way it is not enough that the Tribunal might *prefer* a different view; the Appellant must show that the process of reasoning and the application of the relevant law *require* the Tribunal to adopt a different view.
16. That is the approach which we have followed in deciding this appeal.

### **Discussion, analysis and decision**

17. We are satisfied that this appeal should be allowed because the TC’s decision only authorising the Whitby Sports and Social Centre as an operating centre on the Appellant’s licence was wrong.

18. We are satisfied that the TC failed to consider, address or give any or sufficient reasons for deciding that the Appellant's new residential address was unsuitable or unsafe to be authorised as an operating centre. We also note that the TC does not appear to have conducted a site visit of the Appellant's new address - his proposed operating centre.
19. Further, the reasoning that the TC did rely upon was wrong for the reasons that the Appellant relied upon during oral argument and set out in his grounds of appeal.
20. The reference to both vehicles by the TC in the reasoning was not valid and was incorrect - as the Appellant had made clear that he only had the one vehicle at the time of the decision and this was known at the time. The Applicant had sold the other vehicle in June 2021. The TC also stated that it was not impossible to park two vehicles at the Sports and Social Club. This was wrong – the letter from the Sports and Social Club which had previously been received by the TC clearly stated that only one vehicle could be parked there. The club gave the Appellant permission from 15/7/19 to park one minibus in the required space (the size 2 of normal car spaces) and the OTC had previously received a copy of that letter in the post.
21. The TC's reasoning went on to suggest that the Social Club was the obvious choice for the operating centre but it was not the obvious choice. Contrary to the OTC's reasoning it was not even an option as mentioned earlier - the Appellant had made clear he had given up his second vehicle and parking space at the club. Further, from the Appellant's business perspective, it made more sense to have his vehicle parked at his own address rather than some distance away.
22. Most importantly, the Appellant was correct to submit that the TC had failed to address the suitability and safety of his new residential address to be authorised as an operating centre. This was the real and key issue to be decided by the TC which he failed to do adequately (or at all).
23. We are satisfied that the Appellant's new residential address can safely be authorised as the operating centre on the licence. We are satisfied that it is a quiet residential street with low footfall and low volumes of traffic. We are satisfied that the risk of the Appellant endangering people, vehicles or property when reversing into his parking area / driveway can be safely managed. This is because a) the Appellant is an experienced professional driver with an impeccable safety record who is used to operating in busy city centres; b) there is a dash cam in the vehicle with a reverse camera so, when used together with the vehicle's rear view mirrors and adequate inspection of the road and pavement, the Appellant will have good visibility when reversing; c) there is a wide entrance to the driveway to his home and the vehicle is 6.9 metres long (many long wheelbase vans are frequently reversed and parked on residential streets and driveways where they do not require licences as they are not carrying passengers for hire or reward); d) there is a low footfall of people and volume of traffic that the Appellant may expect to encounter when reversing at this address; e) there is sufficient room on the Appellant's drive

for daily checks to be performed of the vehicle. Therefore, it would be unnecessary and disproportionate for him to employ a banksman to reverse or to fit reversing beepers to the vehicle or mirrors on his driveway.

24. Furthermore, there have been no objections from his neighbours to the Appellant's application. We accept the Appellant's evidence in his notice of appeal that all risks can be adequately and safely mitigated. We have also had due regard to the photographs and plan the Appellant provided.
25. We agree with all that is said by the Appellant that he was previously authorised to operate from his former residential address which presented a higher risk than his current residential address which is safer. We accept his submissions and evidence that the former address had two schools in close proximity – one within a hundred metres behind it and another 2-300 metres away. Therefore, traffic and footfall around that area was significant around peak times of the day – albeit the Appellant managed to operate without incident.
26. In contrast, we accept the Appellant's submissions and evidence that the nearest school to his new property is a mile away and the property is on a middle road of three roads. His road is a small quietish road so that drivers use the two other roads when seeking a cut-through. We accept his submission that it is a quieter area than his previous address and are satisfied that the drive on his property is adequate for safety checks to be performed without issue or impact.
27. We accept the submission that the Social Club is no longer a realistic or sensible option for the Appellant to utilise as an operating centre – given its cost, distance from his house, lack of a second vehicle and its relative busyness. The Appellant has already given up his agreement to use that site. We also note, but have not taken into account, the Appellant's suggestion that unless his current address is authorised as an operating centre, he may no longer be able to continue in business. Our primary concern is to ensure public and vehicular safety in the authorisation of operating centres.

### **Conclusion**

28. We allow the appeal against the TC's decision dated 7 September 2021 on the basis that it was wrong. For the reasons set out above we exercise our jurisdiction under Paragraph 17(2)(a) of Schedule 4 to the Transport Act 1985 to make such order as we see fit. Our order is to vary the Appellant's operator's licence to authorise only one operating centre, namely his current residential address 23 The Paddock, Great Sutton, Ellesmere Port, CH66 2NN (in substitution for the Whitby Sports & Social Club). This authorisation is to have effect retroactively from the date of the Appellant's application to the TC for variation which was received on 10 February 2021.

**Judge Rupert Jones**  
**Judge of the Upper Tribunal**

**Authorised for release**

**Dated: 22 March 2022**