



Appeal No.: T/2018/23

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

**IN AN APPEAL FROM THE DECISION OF THE TRAFFIC
COMMISSIONER FOR THE EAST OF ENGLAND DATED 6 APRIL 2018**

Before:

**Judith Farbey QC, Judge of the Upper Tribunal
Stuart James, Specialist Member of the Upper Tribunal
John Robinson, Specialist Member of the Upper Tribunal**

Appellant: Camiers Group Limited

Mr John Daly, Solicitor, appeared on behalf of the appellant.

Heard at: Field House, 15-25 Bream's Buildings, London EC4A 1DZ

Date of hearing: 12 July 2018

Date of decision: 18 July 2018

DECISION OF THE UPPER TRIBUNAL

IT IS HEREBY ORDERED that the appeal be ALLOWED to the extent that the case is remitted to the Traffic Commissioner for hearing at a public inquiry.

SUBJECT MATTER: Traffic Commissioner's reasons for decision; fairness

CASES REFERRED TO: *Bradley Fold Travel Ltd v Traffic Commissioner for the North Western Area* [2010] EWCA Civ 695

REASONS FOR DECISION

1. This is an appeal from the decision of the Traffic Commissioner for the East of England ('the TC'). The decision was communicated to the appellant company by letter dated 6 April 2018 with reasons sent in an email dated 26 April 2018. In short, the TC rejected the appellant's application for a goods vehicle operator's licence on the basis that the company had failed to make comments about the availability of its operating centre. The decision was taken under section 13C(5) of the Goods Vehicles (Licensing of Operators) Act 1995 without a public inquiry.
2. The background can be shortly stated. Mr Matthew Eames applied (as sole director) on behalf of Camiers Group Limited for a restricted licence. He has not previously held any kind of goods or public service vehicle licence but applied for ten vehicles and two trailers for the purpose of hauling waste. The proposed operating centre was the Old Ministry Airfield in Marsworth, Hertfordshire.
3. In a letter dated 29 December 2017, the Office of the Traffic Commissioner ('the OTC') requested supporting documentation, namely financial evidence and details of Mr Eames' and the company's links with Amalgamated Skips Ltd. By email to the OTC on 12 January 2018, a Senior Environmental Crime Officer at the Environment Agency ('the EA') flagged the Old Ministry Airfield as an illegal waste site. In a letter dated 16 January 2018, the OTC chased Mr Eames to supply the previously requested documents but did not raise the EA's concerns. Following further correspondence, the OTC was satisfied that the necessary documents in relation to finance and links to Amalgamated Skips had been supplied.
4. Following internal email discussion within the OTC about how to approach the EA's concerns, the OTC wrote to Mr Eames in the following terms:

'The application has been referred to the traffic commissioner who is concerned about the availability, suitability and capacity of the operating centre, so he has requested that the company provides any comments along with photographs maps etc to confirm whether it is suitable or not'.
5. Although Mr Eames had not previously been put on notice of these concerns, the letter went on to say that it was 'a final attempt to resolve these issues by correspondence'. Mr Eames was told that, if the application remained incomplete on 12 March 2018, it would be refused.
6. Mr Eames responded on 8 March by supplying an annotated aerial view of the proposed operating centre showing the location of Camiers Waste Management Ltd (a different company) which had been downloaded from the internet. His covering email essentially repeated his handwritten annotations, presumably to ensure that they were legible to the TC. In an email sent on the afternoon of 12 March, the OTC asked whether Mr Eames wished to submit comments.

7. Having received no further comments, the TC refused the application. In a letter dated 6 April, the OTC informed Mr Eames that the application had been refused because it was incomplete following a failure to supply supporting documentation as requested, or to offer an explanation as to why he was unable to do so. Mr Eames emailed the OTC on 24 April asking for further and better reasons for refusal. By email of 26 April, the OTC apologised for failing to give details of the decision and provided the following reasons from the TC:

‘I have reviewed the letter sent to the applicant on 12 March and to which a partial response was received. The letter clearly refers to the availability of the operating centre and invites comments. Some images are sent in return but no comments are received. The caseworker sends a chaser email on 12 March and again receives no response’.

8. In his grounds of appeal, Mr Eames says that the company does not understand the reasoning behind the TC’s decision and that all relevant information was provided to the TC as requested.
9. As we indicated at the appeal hearing, we are bound to set aside the TC’s decision. The request for information about the availability of the proposed operating centre was not particularised and did not in our view do enough to put Mr Eames on notice of the nature of the concerns. At that stage, Mr Eames was unaware of the EA’s view of the proposed operating centre and could not reasonably have been expected to comment on it. Fairness required that the concerns be plainly put to Mr Eames. Nor did the TC consider whether, as a matter of procedural fairness, the concerns might properly fall to be considered at a public inquiry.
10. We have therefore concluded that this is a case where the law and the facts impel us to interfere with the TC’s decision in accordance with the decision in *Bradley Fold Travel Ltd v Traffic Commissioner for the North Western Area* [2010] EWCA Civ 695. We do not regard him as precluded from further involvement in the case which will be remitted for a public inquiry before any TC. The scope of the public inquiry will be a matter for the TC.
11. As we observed at the hearing, Mr Eames would be advised to make fuller comments about the operating centre and also explain why the aerial photograph relates to a different company but one with a similar name.

(signed on the original)

JUDITH FARBEY QC
Judge of the Upper Tribunal
18 July 2018