



Able 1 Scaffolding Ltd
[2023] UKUT 171 (AAC)

**IN THE UPPER TRIBUNAL
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ADMINISTRATIVE APPEALS CHAMBER**

Appeal No. UA-2023-000097-

On appeal from the Decision of Sarah Bell, Traffic Commissioner for the South East & Metropolitan Traffic Area dated 4th January 2023

ABLE 1 SCAFFOLDING LIMITED

Before: Upper Tribunal Judge Her Honour Judge Beech
Specialist Member of the Upper Tribunal Phebe Mann
Specialist Member of the Upper Tribunal Martin Smith

Hearing date: 11th July 2023

Representation:
Appellant: Mr Kearns, director of the Appellant company

DECISION

The appeal is DISMISSED

Subject Matter: Failure to notify material changes; failure to respond to correspondence; immediate revocation

Cases referred to: None

REASONS FOR DECISION

1. This is an appeal from the decision of the Traffic Commissioner for the South Eastern & Metropolitan Traffic Area (“the TC”) dated 4th January 2023 in which the Appellant’s restricted operator’s licence was revoked under s.26 of the

Goods Vehicles (Licensing of Operators) Act 1995 (“the 1995 Act”) with immediate effect.

2. The factual background (obtained from Mr Kearns as the appeal bundle does not include any operator licence details) is as follows. The Appellant (“the company”) was granted a restricted operator’s licence in 2021 authorising four vehicles and two trailers. The company had one vehicle and two trailers in possession and its authorised operating centre was at Grove Farm, Brook Street, Brentwood.
3. In about November 2020, the company (along with the owner of the farm) was “evicted” from the operating centre by Highways England as the land was required for expansion work to the A12 and M25. Mr Kearns informed the Tribunal that at that time, the company’s Transport Consultant (Shane O’Hara) advised Mr Kearns to remove the vehicles from the licence and “park them up” which Mr Kearns did. The company from then on, operated the business using smaller vehicles. What the transport consultant did not do was to advise Mr Kearns that he should inform the Office of the Traffic Commissioner (“OTC”) of the eviction from the operating centre and how he was proposing to operate in the absence of a suitable operating centre and the difficulties he had encountered in finding a suitable operating centre. Mr Kearns informed the Tribunal that the company had operated from four yards in two and a half years.
4. At the end of 2022, the DVSA attempted to undertake a maintenance inspection at Grove Farm. The officers were advised of the eviction and were given the address of the company’s yard in Hoddesdon.
5. By a “minded to revoke” letter dated 21st November 2022, the company was advised that the TC was concerned that the company was not using its authorised operating centre and that it was in breach of section 26(1)(a), (1)(c) (iii), (1)(e) & (1)(h) of the 1995 Act. The letter was sent to both the Grove Farm operating centre, Mr Kearns home address (the company’s correspondence address) as well as the email address recorded on the licence. The company was advised of its right to request a public inquiry.
6. Mr Kearns accepts that he received the letter sent to his home address but that his cleaner had put it in a cupboard. He accepts that he had changed his email address without informing the OTC and as a consequence, did not receive the letter sent by email. He did not receive the letter sent to the operating centre because he had left it in November 2020. As a consequence of the company’s failure to respond to the letter, the operator’s licence was revoked with immediate effect.
7. At the hearing of this appeal, we asked Mr Kearns what errors the TC had made. He readily agreed that in the circumstances, she had “done the right thing” in revoking the company’s licence. It follows that there is no merit in this appeal. On Mr Kearns’ account, it would appear that he has been through a tumultuous time since November 2020 as a result of the loss of his operating centre and he further advised that the owner of Grove Farm had recently been successful in legal proceedings concerning the legality of the actions taken by Highways England. He is hopeful that he may also have a claim.

8. We advised Mr Kearns that now that he has recently found a yard which is or may be suitable to be an authorised operating centre, he should make a further application on behalf of the company as soon as possible.
9. This appeal is dismissed.

Footnote: We are conscious that we have set out the account given by Mr Kearns before us which was not available to the TC when making her decision and that this, in the ordinary course of events, would offend paragraph 17(3) to Schedule 4 of the Transport Act 1985 (the prohibition against taking into consideration evidence that was not before the TC). As Mr Kearns accepted that there was no merit in the appeal, we were not required to consider the account that he gave. However, we did consider that a summary of his account was permissible in order to set out the background.



Her Honour Judge Beech

Judge of the Upper Tribunal

13th July 2023