



SOUTH EASTERN AND METROPOLITAN TRAFFIC AREA

DECISION OF THE TRAFFIC COMMISSIONER

PUBLIC INQUIRY HELD IN GUILDFORD ON 7 APRIL 2016

OPERATOR: TUNNELL GRAB SERVICE LTD (OK0232355)

Decision

The operator's application to add a new operating centre at Yew Tree Nursery (also known as "Stonescapes"), Guildford Road, Cranleigh GU6 8PA is refused under Section 19(6)(a) of the Goods Vehicles (Licensing of Operators) Act, 1995.

Background

1. Tunnell Grab Service Ltd holds a standard national licence (OK0232355) for six vehicles and one trailer. There are three authorised operating centres on the licence: Cases Yard, Rowhook; Smokejack House, Walliswood; and Norley Farm, Cranleigh. The director of the company and nominated transport manager on the licence is Gavin Tunnell.
2. On 24 August 2015 the operator applied to add a new operating centre to the licence at Yew Tree Nursery (also known as "Stonescapes"), Guildford Road, Cranleigh GU6 8PA. The application was for ten vehicles and no trailers.
3. This operating centre is currently specified on the licence OK1061989 held by Stonescapes Ltd. This operator is authorised to keep two vehicles at the site and has two in possession. Stonescapes Ltd's licence (with the authorised operating centre at Yew Tree Nursery) was granted in August 2006. There do not appear to have been any objections to or representations against the application at that time. Prior to this, Stonescapes Ltd's director Richard Mountain had held a licence for two vehicles at the same site in partnership with Maureen Mountain from October 2002. This licence was surrendered when the limited company licence was granted in 2006. In short, the site has been authorised for use by two vehicles since 2002.

Objections and representations

4. Objections to the application were received from Surrey County Council and Waverley Borough Council. The County Council's objections were largely on

the grounds of road safety, its letter citing the lack of visibility at the point where vehicles would join the public highway and the need for vehicles entering and exiting the site to use the entire width of the Guildford Road carriageway.

5. Waverley Borough Council considered that the likely environmental intrusion constituted by the operation of ten vehicles would be unacceptable in the Green Belt. The Council also stated that “express planning permission might be required for the change of use which the use of the land as an operating centre might constitute.”
6. A large number of representations from local residents were received. Amongst the points their letters made were:
 - a) that the proposed operating centre lay within the Green Belt and therefore could not be used for industrial/commercial purposes;
 - b) the operating centre was surrounded by residential properties which would be subject to visual intrusion, considerable noise, vibration, and emissions from the vehicles, as well as dust thrown up by their movement on the unmade surface and light pollution from the site;
 - c) there were road safety concerns with the stretch of road where the site access lay; there had recently been a fatality;
 - d) there was a history of flooding on the road at the access point, which would exacerbate road safety;
 - e) the access point was not wide enough for vehicles simultaneously to enter and exit: incoming vehicles would have to queue on the public road to let departing vehicles pass and this would constitute a danger to safety;
 - f) the operating centre had a certificate of lawful use which covered only its use as for the storage and display of stone (the centre is currently owned by a business selling stone for landscape gardening), not the operation of HGVs;
 - g) there were fears that the operator (which is in the waste business) would use the site to store and transfer waste;
 - h) there were fears that the operator would store fuel for the vehicles at the site.

Traffic examiner's report

7. In the light of the above objections and representations, a traffic examiner's report was requested. DVSA traffic examiner Giles Dennison visited the site and reported on 27 January 2016. His report stated that the site was in a rural area with no neighbouring residential properties [this was disputed by the representors] except for one [in fact two] which stood opposite the access point to the public highway. He concluded that the sight lines at the access point were adequate and that, provided vehicles were of the rigid rather than articulated

type, there should be no need for them to cross the carriageway when turning left on exiting or entering. Mr Dennison made a number of further recommendations as follows:

- a) there should be a clear separation or barrier between any parking area and areas where members of the public might pass;
- b) a log should be kept of any out of hours movement;
- c) during lighting up time, vehicles exiting the centre should turn right, so as to minimise nuisance caused by their headlights to the property opposite the access point;
- d) all markers, reflectors and lights should be cleaned and functional before vehicles left the site.

Public inquiry

8. In the light of the strong and numerous objections to the operating centre, I decided to hold a public inquiry to consider the application. The call-up letter was sent on 26 February 2016, citing Sections 13, 19 and 21 of the Goods Vehicles (Licensing of Operators) Act 1995. The inquiry was held in the chamber of Guildford Borough Council on 7 April 2016.

Further information

9. In the run-up to the public inquiry I received a great many further representations from residents. In the main they repeated or elaborated upon the points set out above. Some further elements were introduced which I did not consider material or relevant, such as the complaint that the DVSA traffic examiner had written his report on old VOSA-stock paper [this showed commendable economy with public funds in my view].
10. I also received copies of letters dated 29 March from Waverley Borough Council to the owner of the prospective operating centre Richard Mountain and to Gavin Tunnell, the director of the applicant company. The Council stated that the lawful use of the land was for the storage and display of stone, and storage of material for agricultural contracting and landscape gardening businesses. Any change from the above use would require express planning permission. The proposed use of the site as an HGV operating centre would not be ancillary in any way to the lawful use and therefore would require planning permission to lawfully operate as such.
11. On 6 April, the day before the inquiry, I received a letter dated 5 April from Surrey County Council in which it stated that its concerns about the safety and environmental impact of vehicles associated with the operating centre could be overcome if I imposed the following conditions on the licence:
- a) authorised vehicles will at all times park in the areas identified for that purpose on the plan;
 - b) the authorised vehicles shall not exceed 32 tonnes gvw or 11 metres in length;

- c) only rigid vehicles shall use the operating centre;
 - d) the authorised vehicles shall make no more than two movements per day [the Council subsequently clarified that each entry and each exit would constitute a separate movement].
12. Immediately before the public inquiry, the operator circulated a paper to all attendees in which it clarified its intention to use the site only to park its vehicles: there would be no new buildings or machinery of any kind. There was no intention to store or transfer any waste or fuel at the site.

Attendees

13. Present at the public inquiry was director of Tunnell Grab Service Ltd, Gavin Tunnell; Paul Carless Snr, transport consultant, representing the operator; site owner Richard Mountain; Waverley Borough Councillors Colin Giddings, Victoria Choularton and Patricia Ellis; DVSA traffic examiner Giles Dennison; and around twenty local residents whose principal spokesperson was David Harris.
14. Opening the public inquiry I explained that I had conducted a site visit earlier that morning. I outlined to the attendees the scope of the environmental factors I was able to take into account. I explained that I could consider the environmental impact of noise, visual intrusion, vibration and emissions pollution but only in relation to properties in the vicinity of the operating centre and that the level of impact had to amount to a real interference with the comfort or convenience of living and the enjoyment of property according to the standards of the average person.

Evidence

15. For the operator, Mr Carless repeated the assurances given in the leaflet (described above). He stated that it was a legitimate ambition to operate vehicles from the Stonescapes site. The operator had an excellent compliance record and could be trusted to abide by any conditions which I saw fit to impose. The Stonescapes site, although within the Green Belt, was not a greenfield site and had been the subject of light industrial use for many years.
16. For Waverley Borough Council, Ms Choularton said that the use of the site as an operating centre was unacceptable as it was in Green Belt land. The use by HGVs in the furtherance of Tunnell Grab Service Ltd's business was "highly likely" to constitute a change of use of the land and therefore to require express planning permission. She accepted that the Council was not aware that the site was already in use as an authorised operating centre on another operator's (Stonescapes Ltd's) licence.
17. For the representors, Mr Harris stressed that there were 120 houses within 500m of the proposed operating centre which stood to be severely affected by noise, visual intrusion, vibration, exhaust fumes, dust and light pollution from vehicle headlights and flashing orange beacons. There were serious safety concerns with the vehicles entering the public highway at a point where there was limited visibility and previous accidents had occurred. The purpose of the

Green Belt was to prevent the kind of sprawl which Tunnell Grab Service Ltd was proposing. Previous planning applications in the vicinity had been rejected in order to preserve the rural nature of the district. The traffic examiner's report was inadequate as he had failed to notice nearby houses and had omitted mention of the inadequate width and surface of the operating centre's access road. As planning permission for the site's use as an HGV operating centre did not exist, the site could not be said to be available for use as it needed to be under Section 13C(5) of the 1995 Act.

18. For the applicant, Gavin Tunnell stressed that there would be no fuel stored or waste kept or transferred at the site – it would be for parking vehicles only. Vehicle maintenance would be carried out at main dealers' premises, not at the site. His plan was to purchase the Stonescapes Ltd business and site and base Tunnell Grab Service Ltd's vehicles there (in addition to the two vehicles on the Stonescapes Ltd licence). Tunnell Grab Service Ltd had five vehicles at the moment: he had applied for ten vehicles to give the company a margin. The plan was to keep all the vehicles at the Stonescapes site, as the other three operating centres the company currently used were earmarked for development by their owners.
19. The company's vehicles were rigid tippers with cranes. They picked up waste (aggregate and other rubble) and took it to waste transfer stations or tips. Normal hours of business would be from 0600 to 1800 on Mondays to Fridays and from 0600 to 1400 on Saturdays. Some emergency work could be carried out outside these hours: for example a grab lorry had recently been needed to pick up debris after an accident on the M25. An 0600 start time was needed as vehicles were often required to be at a pick-up point in London or elsewhere before or at 0700. He was willing to consider mitigating measures such as a limit on the number of vehicle movements, switching off orange flashing lights until away from the operating centre, as well as the conditions suggested by the traffic examiner and Surrey County Council. He would be happy to give out his personal mobile phone number to residents so that they could complain directly to him. If the application were granted, he would apply for planning permission to park HGVs at the centre (although he drew back from undertaking not to operate in advance of such planning permission).
20. There was a short discussion about the condition (suggested by the traffic examiner) that vehicles would turn right on leaving the centre during lighting up time in order to avoid the disturbance their headlights would cause to the house opposite the access road if they turned left. Such a solution was found to cause almost more problems than it solved, as it would involve vehicles going up the road past representors' houses and then back down again after turning at a small roundabout.
21. I asked Mr Harris if the other mitigating measures suggested were sufficient to allay the representors' objections. He said that they were not.
22. Summing up for the operator, Mr Carless said that the site had been an HGV operating centre since 2002. The applicant had offered numerous compromises. If the application were granted, the operator would apply for

planning permission for the use as an operating centre and the local authority could always issue an enforcement order or a stop notice if they objected to its use. Modern emissions standards meant that exhaust fumes were unlikely to be a problem. Noise and light pollution was more problematic but the operator had offered mitigating solutions. He was also prepared to reduce the application to seven vehicles if that helped.

Conclusions

23. In considering this application I have asked myself the following questions:
- a) Will approving the application by Tunnell Grab Service Ltd mean an increase in real terms in the number of vehicle movements in and out of the site, especially in the number of such movements at night?
 - b) What level of interference to the residents' comfort or convenience of living and enjoyment of their properties will there be according to the standards of the average person?
 - c) Can the level of interference be sufficiently mitigated by any conditions and/or undertakings on the licence?
 - d) Is the level of anticipated interference sufficient to outweigh the legitimate commercial interests of the operator?
 - e) Whether the site was free from planning restrictions that could impact on my decision?
24. As the applicant currently has no operation of any kind at the site (although I understand it makes occasional deliveries to the Stonescapes business) movements by its vehicles if the new operating centre were granted would almost all be additional to current vehicle movements at the site.
25. At my visit to the prospective operating centre early in the morning of 7 April, I saw that the area in which it is proposed that the vehicles are parked is largely screened by mature trees from any residential buildings. The parking place is also at a sufficient distance from any residential building as to make it unlikely that residents would be unduly disturbed by vehicle noise, vibration or emissions, at least not to the level of real interference with the enjoyment of property according to the standards of an average person.
26. The point at where vehicles from the operating centre will join the public highway is a different matter. I saw little to concern me from a safety point of view, given the proposed low-level intensity of vehicle use and the views expressed both by the traffic examiner and Surrey County Council. But I did conclude that there are in fact two residences (Thorns Flush Cottage and Thorns Flush Barn) which are likely to be affected by vehicle noise, vibration and headlights (the traffic examiner confirmed this at the inquiry) as vehicles join or leave the public highway. During normal waking hours my judgement is that the level of operation (especially if the number of vehicle movements is capped) is unlikely to be so concentrated as to meet the test of real interference with the enjoyment of the property.

27. However, were vehicles to operate during night hours (which I take as being from 2200 to 0700) then there would be a strong likelihood of significant disturbance to the sleep of the residents in those properties even if (as seems likely) the operation of vehicles during night hours until 0600 would be sporadic. The 0600 start which the applicant stated was necessary to the business would also bring an early end to the residents' peace as vehicles began leaving the centre at this time. It does not appear to me that the traffic examiner's suggestion that vehicles make a right turn out of hours will address the problem satisfactorily, as residents would still be subject to noise and (in the traffic examiner's judgement) vibration as vehicles accelerated away. It is at this point that I consider that the operator's legitimate commercial interests should give way to the interests of the affected residents. Vehicles leaving their overnight parking place between 0600 and 0700 on a routine basis, and during the night on an "emergency" basis (which the operator proposes to define in rather wide terms as any urgent work for essential service utilities or the railways) would in my view constitute real interference with the affected residents' enjoyment of their property.
28. I have also considered whether the site can be said to be "available for use" under Section 13C(5). Under that section I have to disregard environmental grounds. Because the site has been an operating centre since 2002, I conclude that, technically speaking, it is indeed available for use. I recognise that there are planning issues, but paragraph 17 of the Senior Traffic Commissioner's Statutory Guidance Document 4 states that traffic commissioners should take planning matters into account only where the site has not previously been used as an operating centre. I stress that, for an operator to be able to use an operating centre, both a licence to do so from the traffic commissioner **and** local authority planning permission or a certificate of lawful use are necessary. Operating in defiance of planning law could affect a company's good reputation and could therefore have implications for its licence.

Decision and reasons

29. Taking into account all the conflicting opinions and evidence, I concluded that I would be prepared to grant an application to add this operating centre to the licence, for six vehicles rather than the requested ten, under the following conditions:
- a) vehicles must be rigid, not articulated, and must not exceed 32 tonnes gvw;
 - b) vehicles must be parked at the northern end of the site, in the area on the attached plan;
 - c) vehicles must switch off their orange revolving lights when on the site;
 - d) each vehicle shall be limited to four movements per day (a movement is defined as one departure from the site or one entrance to it);

- e) vehicles may not exit or enter the operating centre before 0700 hours or after 2200 hours Mondays to Fridays, before 0700 and after 1400 hours on Saturdays or at all on Sundays and public holidays.
30. I consider the proposed limit of six vehicles (the operator said at the inquiry that it could agree to seven) as justified on the grounds that even this limit would constitute a quadrupling of the number of heavy goods vehicles currently permitted at this environmentally sensitive site.
31. I consider conditions a) to d) as essential if the balance between the legitimate commercial interests of the operator and the need to avoid overly adverse environmental effects on residents in the vicinity is to be preserved. Condition e) is essential to preserve enjoyment of property by the residents of the two specific properties opposite the entrance to the operating centre.
32. I was given to understand at the inquiry that the applicant would not agree to all of these conditions, with the limit of six vehicles and condition e) causing particular difficulty. I thus gave the applicant, in a reasoned document dated 4 May 2016, the opportunity to give a final answer as to whether the proposed conditions were acceptable to it. The answer I received on 16 May 2016 from Mr Carless was that the proposed start time of 0700 hours was unacceptable as the operators' vehicles had to be at their first call by that time or earlier. The start time of 0600 suggested by the operator was essential. Mr Carless also stated that the suggested conditions (as amended to an 0600 start time) would only apply "if and when the site was used as an operating centre" which I take to mean that if the operator were making deliveries to the site then such deliveries would not count against the limit on vehicle movements.
33. I indicated in my reasoned document of 4 May that if the operator found my proposed conditions unacceptable, the application would be refused at that point pursuant to Section 19(6)(a) of the 1995 Act.
34. The departure of up to six vehicles from the site between the hours of 0600 and 0700 would constitute, in my view, an unreasonable interference in the enjoyment of their property for two residences, Thorns Flush Cottage and Thorns Flush Barn, which are likely to be affected by vehicle noise, vibration and (for around half the year) headlights at a time of day when they might reasonably expect to sleep. The operator still has other operating centres which are not subject to environmental conditions which it could use for vehicles which were required to be at their first call early.
35. My suggestion of limiting the vehicles to four movements per day was an attempt to reach a compromise between the limit of two which was the maximum acceptable to Surrey County Council and the operator's wish to leave room for vehicles to make deliveries of stone to the site during the day. Mr Carless's reply considers that such deliveries will be entirely outside the limit on movements, which was not my intention at all. This condition too therefore appears to be unacceptable to the operator, whereas I had considered it essential if the opposition of the highway authority was to be overcome.

36. As the operator is not able to accept the proposed conditions, I am accordingly refusing the application under Section 19(6)(a) of the 1995 Act.



Nick Denton
Traffic Commissioner
23 May 2016