



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

Appeal No. UA-2022-000044-T

Neutral citation number: [2022] UKUT 255 (AAC)

ON APPEAL from a DECISION of the TRAFFIC COMMISSIONER for SCOTLAND

Before: M Hemingway: Judge of the Upper Tribunal
S Booth: Member of the Upper Tribunal
R Fry: Member of the Upper Tribunal

Appellant: Secure Transit Solutions Ltd

Reference No: OD2050620

Representation:

For the appellant: No attendance

Heard at: Birmingham

Date of Hearing: 16 September 2022

Date of Decision: (21 September 2022)

DECISION OF THE UPPER TRIBUNAL

This appeal is dismissed.

Subject matter: Operating Centre

Cases referred to:

Bradley Fold Travel Ltd & Anor v Secretary of State for Transport [2010] EWCA Civ 695.



REASONS FOR DECISION

1. This appeal to the Upper Tribunal has been brought by Secure Transit Solutions Ltd (“the appellant”) in the person of Mr Rhman Abdul, its director. The appeal is directed towards a decision of the Traffic Commissioner (“the TC”) embodied in a letter of 26 January 2022, to refuse its application for a restricted goods vehicle operator’s licence.

2. The application was made on 27 October 2021. The appellant, in making its application, gave the address for its proposed operating centre as 82, Rupert Street in Birmingham. On 2 November 2021, the Office of the Traffic Commissioner (OTC) wrote to the appellant indicating that the application was incomplete and asserting that the proposed operating centre appeared to be a residential property as opposed to commercial premises and might not, therefore, be an appropriate site for an operating centre. Further evidence as to the nature of the site, in the form of an aerial map, photographs, and information as to the size and accessibility of the site was sought. The appellant was also asked to provide evidence of the placing of a notice of the licence application in a local newspaper circulating in the relevant locality. On 4 November 2022, the appellant had published in a local newspaper a notice of the licence application which specified the proposed address of the operating centre as 82 Rupert Street, Aston, Birmingham. In response to the OTC’s letter of 2 November 2022, the appellant provided a copy of that notice and some additional evidence concerning the site. It was explained that the site comprised 4 acres of land.

3. On 23 November 2021, the OTC again wrote to the appellant. On this occasion it sought information and evidence concerning financial aspects of the application and the ways in which the appellant had met its transport needs in the past. The appellant responded. At some stage, possibly as part of that response, it provided Land Registry extracts relating to premises at 180, Rupert Street, in Birmingham. It also provided a copy of a lease which related to “*Land and Buildings on the North West Side of Rupert Street, Aston, Birmingham*” and which specified it as the tenant.

4. Matters were considered by the OTC in January 2022. On 25 January 2022 a member of the OTC’s staff made an internal recommendation that the application for a licence be refused. It was suggested, in an internal memorandum, that a failure to “*declare the correct address*” in the notice as published in the local newspaper might have been misleading to local residents. The recommendation to refuse was made “*as the wrong address has been used within the advertisement*”. The reference to an advertisement was a reference to the published notice. As to relevant legislation (see below) reference was made to section 13(5) of the Goods Vehicles (Licensing of Operators) Act 1995 (“the 1995 Act”) and to the requirement contained therein that an operating centre had to be suitable. On the same date a Traffic Commissioner (TC) indicated he agreed with that recommendation and indicated the application was to “*be refused on the grounds that the wrong address for the o/c was published in the advert*”. The term o/c was used as an abbreviation for operating centre.

5. On 26 January 2022 the OTC wrote to the appellant informing it that the application had been refused. It was explained that a TC had “refused your application on the grounds that the wrong address for the operating centre was published in the advertisement” and that, in consequence, the TC was “not satisfied that the proposed operating centre is available to you, as required under Section 13C(5)” of the 1995 Act.

6. The appellant lodged an appeal to the Upper Tribunal on 13 February 2022. On 17 February 2022 the appellant placed a new notice in the same local newspaper which, this time, indicated the address of the proposed operating centre as 180, Rupert Street, Aston, Birmingham.

7. As to legislation which has relevance to this appeal, Section 11 of the 1995 Act provides that an application for a heavy goods licence (and so an application of the type made by the appellant) shall be refused without a consideration of the merits, unless the TC considering it is satisfied that notice of the application in such form and containing such information as may be prescribed, has been published in one or more local newspapers circulating in the locality affected by the application, unless the TC is also satisfied that the only failing relates to a lack of compliance with the form or content of the notice as prescribed and that no person’s interests are likely to have been prejudiced by that failing. Section 12 of the 1995 Act provides for the making of objections to and representations against the issuing of a licence. Regulation 7 and Schedule 1 of the Goods Vehicles (Licensing of Operators) Regulations 1995 (“the 1995 Regulations”) provides that the notice published pursuant to section 11 of the 1995 Act must give information as to “*The place or places proposed to be used as an operating centre or centres including, if available, the postal address or addresses*”. Section 13C(5) of the 1995 Act provides that an applicant for such a licence must specify an operating centre which is both available and suitable.

8. In its grounds of appeal, the appellant asserted that the blame for an incorrect address being specified in the initial notice (the 82 Rupert Street address) lay with its landlord who had provided it with incorrect information; that the correct address is 180, Rupert Street as specified in the Land Registry documentation provided; that the OTC had not raised any concerns about the notice “*at an early stage of the application*”; and that a new notice was shortly to be published (the one which, in fact, was published on 17 February 2022). The appeal was listed to be heard at Birmingham (a venue suitable for the appellant) on 16 September 2022. Written notice of the time, date and place of hearing was provided but there was no attendance by or on behalf of the appellant. In those circumstances, having satisfied ourselves that it was just and in accordance with the overriding objective as enshrined in rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008, we resolved to determine the appeal on the papers.

9. As to the approach we must take with respect to an appeal such as this, paragraph 17 of Schedule 4 to the Transport Act 1985 (as amended) provides that 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 their functions under an enactment relating to transport*”. However, it was explained by the Court of Appeal in *Bradley Fold Travel Ltd & Anor v Secretary of State for Transport* [2010] EWCA Civ 695 that the Transport Tribunal (now the Upper Tribunal) will not be required to rehear all the evidence by conducting what would, in effect, be a new first instance hearing. Rather, it has the duty to hear and determine matters of fact and law on the basis of the material before the TC but without having the benefit of seeing and hearing from witnesses. The appellant assumes the burden of showing that the

decision appealed against was wrong. In order to succeed an appellant must show that the process of reasoning and the application of the relevant law requires the adopting of a different view. Further, paragraph 17(3) of the same Schedule provides that in deciding an appeal 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.

10. As to disposal, the Upper Tribunal has power, if allowing an appeal, to make such order as it thinks fit or to remit the matter back to the TC for rehearing if it considers such a course to be appropriate.

11. As to our analysis, the address of the proposed operating centre was, when the licence application was made, stated to be 82, Rupert Street, Aston, Birmingham. The appellant subsequently provided the Land Registry documents and the lease referred to above, the former of which referred to 180, Rupert Street, Aston, Birmingham, whilst the latter contained a description but not an address. Of course, an address will not always be required if a description is sufficient to suffice. But the appellant did not, at any stage, seek to amend the terms of the application with respect to the address or identification or specification of the proposed operating centre. Further, there was no evidence to suggest that 82, Rupert Street was a location the appellant owned or otherwise controlled. That being so, the TC was entitled to conclude the specified operating centre was not available to the appellant (the TC seemingly taking the view that a refusal on the basis of availability rather than suitability which had been suggested by the OTC staff member) and that the application must be refused.

12. The grounds of appeal, we have concluded, do nothing to suggest otherwise. Whilst it is true there was documentation referring to the other address, as we say, the terms of the application had not been amended. The appellant must take responsibility for specifying the correct address and location of a proposed operating centre in both an application and a notice of that application. As such, any error made by the landlord is not of relevance. The OTC may not have raised the precise concern about the address in the notice being incorrect in its initial letters, but it was for the appellant to ensure the address was correct, that the operating centre had been correctly identified and that it had complied with all of the applicable statutory requirements. The placing of the notice of 17 February 2022 has no impact because the fact of the placing of that notice is a post-decision circumstance which we are not permitted to take into account in deciding this appeal.

13. Further, although the internal memoranda and the decision letter do not refer to this in terms, we take the view that the requirements of section 11 of the 1995 Act have not been complied with. That is because the prescribed information as set out in the 1995 Regulations was not fully included in the notice. We say that because the giving of an incorrect address in the notice meant that it could not be said that the place of the proposed operating centre had been properly specified (see paragraph 1 of Schedule 1 to the 1995 Regulations). Further, since the specification of an incorrect address for the operating centre was obviously misleading to any reader of the notice and to any potential objector, there was no basis for the TC to be satisfied that no person's interests were likely to be prejudiced by the failing. Such a basis for refusal might, on one view, have better reflected the specific concern of the OTC and the TC that the notice was misleading but the decision to refuse on the basis of availability was nevertheless sound.

14. In light of all the above, we conclude that it has not been shown that the process of reasoning and the application of the relevant law requires us to reach a different conclusion to that reached by the TC.

15. This appeal to the Upper Tribunal is dismissed.

M Hemingway
Judge of the Upper Tribunal

R Fry
Member of the Upper Tribunal

S Booth
Member of the Upper Tribunal

Authorised for issue on (21 September 2022)