



NCN: [2021] UKUT 135 (AAC)
Appeal No. T/2021/05

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

ON APPEAL from the DECISION of the TRAFFIC COMMISSIONER

Before: M Hemingway: Judge of the Upper Tribunal

Appellant: R D Richards Ltd

Reference: OG2034056

Considered on the papers: 9 June 2021

DECISION OF THE UPPER TRIBUNAL

This appeal to the Upper Tribunal is dismissed.

SUBJECT MATTER

Suitability of a proposed 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 R D Richards Ltd (the appellant) from a decision of the Traffic Commissioner for Wales (the TC) embodied in a letter of 5 January 2021 refusing to grant its application for a restricted goods vehicle operator's licence.

2. On 16 March 2021, the Upper Tribunal issued directions requiring the appellant to indicate whether it was seeking a face-to-face hearing of the appeal, or a remote hearing, or whether it preferred a decision to be made on the papers. The appellant was also invited to express a view as to whether it wanted the appeal to be decided by a panel comprising a Judge of the Upper Tribunal and one or two Members of the Upper Tribunal or whether it preferred the decision to be made by a Judge sitting alone. The appellant was directed to

respond within 14 days and told that, if it did not do so, the above matters would be decided without further recourse. No response was received.

3. Having reviewed the file I gave further directions which were issued on 23 April 2021. Those directions gave the appellant another opportunity to respond to the previous directions and an opportunity to provide written submissions in light of the file of papers relating to this case which had been sent to the Upper Tribunal by the Office of the Traffic Commissioner (OTC). Despite a month being given for a response none was received. The latter directions made it clear that if there was no response, I would decide the appeal on the papers, sitting alone, and on the basis of the material then before me. In the circumstances and in the absence of any request from the appellant for me to do anything else, that is what I have done.

4. The licence application, which was accompanied by some supporting documentation, was acknowledged by the OTC on 15 June 2020. The OTC requested, amongst other things, an ariel view image of the proposed operating centre with the parking bay highlighted. Images of the entrance and exit points were also sought. It appears that there was no response so a further letter was sent by the OTC on 30 June 2020. This time, it was stated that the letter was “*intended as a final attempt to resolve these issues by correspondence*”. A response was sought by 14 July 2020 and it was said that if by that time the application remained incomplete, it would be refused. Photographic evidence was then provided by the appellant.

5. On 5 January 2021 the OTC wrote to the appellant informing it that the TC had decided to refuse the application “*due to the suitability of the operating centre*”. The letter did not elaborate. But the file provided by the OTC, which has been sent to the appellant for comment albeit that none have been forthcoming, contains internal memoranda which confirms the TC’s thinking. It is relevantly stated by the TC “*I have a clear image of the o/c entrance on Google maps. It is clearly identified by the name over the door. It is on a road junction with traffic bollards immediately opposite. The entrance is flush with the building line, relatively narrow with very poor visibility and straight across the pavement. It is in a terrace of residential properties. The app is refused on the lack of a suitable o/c. Images uploaded. I have not considered the other matters*”. The reference to other matters relates to potential concerns which had been flagged up by an OTC caseworker concerning what is often referred to as “*fronting*” but which, in the circumstances, I need not say anything more about. As to relevant legislation, section 13C(5) of the Goods Vehicles (Licensing of Operators) Act 1995 sets out requirements concerning the availability and suitability of operating centres or proposed operating centres.

6. The appellant’s grounds of appeal to the Upper Tribunal (which would have been prepared without the benefit of a proper explanation as to why the proposed operating centre was considered to be unsuitable) contained assertions that the same site had been used as an operating centre in the past, for an extended period, and that the appellant was in need of a licence for business purposes.

7. Paragraph 17(1) of Schedule 4 to the Transport Act 1985 provides:

“The Upper Tribunal are to have full jurisdiction to hear and determine on 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”.

8. Paragraph 17(3) of that Schedule provides that 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. The Upper Tribunal's jurisdiction was examined by the Court of Appeal in *Bradley Fold Travel Ltd & Anor v Secretary of State for Transport* [2010] EWCA Civ 695. It was stated that the Upper Tribunal has the duty, on an appeal to it, to determine matters of fact and law on the basis of the material before the TC but without the benefit of seeing and hearing from witnesses. It was further stated that the burden lies on an appellant to show, in order to succeed on appeal, that the process of reasoning and the application of the relevant law requires the Upper Tribunal to take a different view to that taken by a TC.

9. I am concerned that the decision letter of 5 January 2021 did not set out the reasoning as contained in the written observations of the TC in the internal memoranda. Proper reasoning ought to have been provided. But the TC's reasoning appears to be reasonable and cogent. The appellant has had, in consequence of the above directions, an opportunity to address those points and it has not done so. Indeed, since the lodging of the appeal it appears to have become disinterested in pursuing it. In light of the above I have concluded it has not been shown that the decision of the TC was plainly wrong nor that it was made in error of law.

10. This appeal to the Upper Tribunal is dismissed.

M R Hemingway
Judge of the Upper Tribunal
Dated: 9 June 2021