



NCN: [2022] UKUT 136 (AAC)
Appeal No. UA-2021-000467-T

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

ON APPEAL from the DECISION of the TRAFFIC COMMISSIONER for the North West of England Traffic Area

Before: M Hemingway: Judge of the Upper Tribunal
A Guest: Member of the Upper Tribunal
G Roantree: Member of the Upper Tribunal

Appellant: D A Prime Log Ltd

Reference No: OC2049311

Heard at: Leeds Employment Tribunal Buildings

On: 22 April 2022

Date of Decision: 14 March 2022

DECISION OF THE UPPER TRIBUNAL

This appeal is dismissed.

Subject matter:

Statutory Notices

Cases referred to

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

REASONS FOR DECISION

1. This is an appeal to the Upper Tribunal brought by DA Prime Log Ltd, through the person of Mr Faize Mohammad (hereinafter “the appellant”), from a decision of a Traffic Commissioner (“TC”) embodied in a letter of 23 November 2021, refusing his application for a Standard National Goods Vehicles Operator’s Licence.

2. The appeal was considered at a traditional face-to-face hearing, in Leeds, on 22 April 2022. The appellant attended and represented himself. We are grateful to him for his assistance.

3. By way of background, the appellant applied for the licence on 18 September 2021. In doing so he indicated that he was or proposed to be in the business of “*general haulage*” and that he was seeking authority to operate one vehicle and one trailer. He sent a number of supporting documents with his application, but did not, at that stage, submit any evidence to the effect that he had placed a notice of his application in one or more local newspapers circulating in the locality in which he proposed to operate.

4. Section 11 of the Goods Vehicles (Licensing of Operators) Act 1995 (“the Act”) relevantly provides:

“11. – Publication in locality affected by Notice of Application for Heavy Goods Vehicle Licence.

- (1) Subject to subsection (3), a traffic commissioner who is dealing with an application for a heavy goods vehicle licence shall refuse the application without considering the merits unless he is satisfied that subsection (2) has been complied with in respect of each locality affected by the application.
- (2) This subsection has been complied with in respect of a locality affected by an application for a heavy goods vehicle licence if, within the period beginning twenty-one days before the date on which the application is made and ending twenty-one days after that date, 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.
- (3) A traffic commissioner is not required by this section to refuse an application for a heavy goods vehicle licence if –
 - (a) he is satisfied as mentioned in subsection (1) save only that the form or content of the notice of application as published in any newspaper did not comply with the prescribed requirements, and
 - (b) he is satisfied that no person’s interests are likely to have been prejudiced by the failure to comply with those requirements.
- 4) For the purposes of this section a locality is affected by an application for a heavy goods vehicle licence if it contains any place in the traffic area concerned that will be an operating centre of the licence-holder if the application is granted”.

5. Accordingly, the question of the newspaper notice, or advertisement, was a matter of some importance in the application process.

6. On 28 September 2021 the Office of the Traffic Commissioner (OTC) wrote to the appellant indicating that it regarded the application as being incomplete. The letter informed the appellant that the OTC required evidence that a notice had been placed in a local

newspaper within the vicinity of the operating centre on any date between 28 August 2021 and 19 October 2021. As to the nature of that evidence, it was indicated that the full page of the newspaper where the notice or advertisement had appeared was required. It was stressed to the appellant that, with respect to the requirements concerning the timing of the notice, as set out in section 11 above, there was no discretion.

7. The appellant, as part of his response, sent an undated written communication to the OTC in which he appeared to ask for the requirement to place a notice to be waived. But he did not provide any evidence of the placement of any such a notice. So, the OTC wrote to the appellant once again in what it described as a “*final attempt*” to resolve matters. It effectively repeated the request which had been contained in the letter of 28 September 2021.

8. The appellant responded by providing a copy of a small notice which had been placed in a free national newspaper called “*the Metro*”. The date of the edition of the Metro in which the notice had been placed was 8 November 2021. We pause to note that that was outside the period or window afforded by the legislation and by the OTC in its correspondence. On 23 November 2021 the OTC wrote to the appellant informing him that the application had been refused. This was said:

“Our previous letters warned of the consequences should you fail to prove that you have placed a valid newspaper advertisement as required under Section 11(2) of the above Act.

An online application was submitted on the 18/9/2021 applying for 1 vehicle and 1 trailer on a standard national licence.

When the application was submitted the applicant did not provide evidence of an advertisement appearing in a local newspaper circulating within the vicinity of the nominated operating centre. Therefore, a first letter was issued to the applicant on the 28/09/2021 requesting evidence of an advert worded using the prescribed format (as per the template with the application) within the period of the 28/08/2021 and 19/10/2021 and other financial evidence was requested.

The application responded to the letter and uploaded financial evidence on the 01/10/2021. Correspondence was also uploaded to the application on the 05/10/2021 which indicated that they had not yet advertised. Therefore, a final letter was sent on 02/11/2021 requesting evidence of the advert between 28/08/2021 and 19/10/2021.

The applicant responded to the final letter and uploaded evidence of a small advert on the 10/11/2021. This advertisement is unacceptable and can not be accepted due to the following three reasons:

- The advert wording is not acceptable as it is not in the prescribed format per the application per format.
- The advert is out of time with the application.
- The advert has been placed in the Metro newspaper which is unacceptable. The newspaper does not satisfy legislative requirements because it is not classed as a local newspaper.

For the above reasons the application has been refused under section 11(1)”.

9. The OTC informed the appellant that he had a right of appeal to the Upper Tribunal. Notwithstanding the nature of the mandatory requirements with respect to notices as contained in section 11 of the Act, the appellant exercised his right of appeal. Prior to doing so he submitted, direct to the Upper Tribunal, evidence that he had gone on, since the placing

of the notice in the Metro, to place a further notice in a local newspaper circulating in the relevant locality. We are not sure, on the basis of the material before us, what the name of that newspaper is but it appears to be the Manchester Evening News or something similar. Be that as it may, it is obvious that that notice, like the one in the Metro, appeared later than the expiry of the date specified in the OTC's correspondence which was, itself, based upon the requirements in the above legislation.

10. In his grounds of appeal the appellant said

“I have sent the correct advertisement published in the correct newspaper. I agree that the timing lapse made between my application and the add being published in the right newspaper, but I have made it and I hope my appeal will be heard and decided in my favour. Thank you”.

11. So, what the appellant was effectively saying was that although he had not published his notice within the required period he had subsequently done so and hoped that, in such circumstances, the Upper Tribunal would find itself able to allow his appeal.

12. At the hearing of his appeal the appellant took a similar stance. He said that he was not criticising the Traffic Commissioner but urged us to allow his appeal. He pointed out that the obtaining of the licence was important to him for business and financial reasons. He accepted he had been “*a bit late*” with respect to the notice. He explained that he continues to pay certain business expenses whilst he is awaiting the issuing of a licence.

13. As to the approach which the Upper Tribunal must take on an appeal such as this, 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 related to transport”.

14. 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. In *Bradley Fold Travel Ltd and Anor v Secretary of State for Transport* [2012] EWCA Civ 695, it was explained by the Court of Appeal 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 which had been 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 the TC.

15. It may be seen from the content of section 11 of the Act that the requirement regarding the timing of the placement of a notice or advertisement is mandatory and inflexible. The OTC, in its correspondence to the appellant, correctly identified the time period within which the notice or advertisement had to be published. The appellant, even on his own account, failed to meet that requirement. In effect he seeks to persuade us that that failure should not be a barrier to our allowing his appeal because he subsequently had published two notices one of which was in a local newspaper.

16. The TC, of course, had to apply the relevant legislation when making his decision with respect to the appellant's licence application. In doing so, given the above, the outcome

before the TC was utterly inevitable. It follows that we are unable to identify any error of law or any error of fact on the part of the TC and are further unable to conclude that the process of reasoning and the application of the relevant law requires us to take a different view to that taken by the TC. Indeed, we would conclude that the opposite is the case and that, in fact, given the content of the legislation, the process of reasoning and the application of the law requires us to dismiss the appeal. That is what we do.

17. The appellant, it occurs to us, might have been better off not pursuing this appeal and, instead, simply making a fresh application for a licence and ensuring compliance with the legislative requirements including the one relating to the publishing of a notice or advertisement. Whilst it is entirely a matter for him, he may wish to pursue a fresh licence application now.

M R Hemingway
Judge of the Upper Tribunal

A Guest
Member of the Upper Tribunal

G Roantree
Member of the Upper Tribunal

Authorised for issue on 14 May 2022