



NCN: [2022] UKUT 00245 (AAC)

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

Appeal No. UA-2022-000072-T

ON APPEAL from the DECISION of the TRAFFIC COMMISSIONER for London and the South East of England Traffic Area

Before: L J Clough: Deputy Judge of the Upper Tribunal
K Pepperell: Member of the Upper Tribunal
R J Fry: Member of the Upper Tribunal

Appellant: Peter Blandon Firepro (UK) Ltd

Reference No: OK2023826

Heard at: The Rolls Building, London

On: 23 August 2022

Date of Decision: 2 September 2022

DECISION OF THE UPPER TRIBUNAL

THE APPEAL IS ALLOWED.

Subject matter:

Variation of Goods Vehicle Operator's Licence; Variation of operating centre address; publication of notice of application for variation; correct advertisement details

Cases referred to

Bradley Fold Travel Ltd & Anor v Secretary of State for Transport [2010] EWCA Civ 695.
Clarke v Edinburgh & District Tramways Co Ltd [1919] UKHL 303; (1919) SC (HL) 35; 56 SLR 303. 2003/116 A. Reid. 2004/374 Andrew Coid

REASONS FOR DECISION

1. This is an appeal to the Upper Tribunal brought by Mr Peter Blandon (“the appellant”) as Transport Manager for Firepro (UK) Ltd (“the company”), against a decision of the Traffic Commissioner (“the TC”), contained in a letter dated 7 February 2022. The company had sought to amend the location of the company’s Operating Centre but the application to vary the existing Goods Vehicle Operators Licence was refused.

2. The appeal was considered at a hearing, at the Rolls Building in London, on 23 August 2022. The appellant attended and was accompanied by the Director of the company, Mr A. Hanley. The Respondent, as is standard practice, was not present or represented at the hearing.

The facts

3. The appellant applied to vary the company’s Good’s Vehicle Operator’s Licence on the standard form (pages 11-12 of the appeal bundle) and this was accepted by the TC by letter on 13 September 2021. The company sought to remove the existing operating Centre in West Drayton, and replace it with premises at Rosedean Stables, Rosedean Farm, Fenn’s Lane, Woking GU24 9QE. In accordance with the required process to vary an Operator’s Licence, and prior to submitting the online application for consideration, the company had placed an advertisement in the local newspaper, the Woking News and Mail, to highlight their intention to change operating centre. The purpose of such an advertisement is to inform landowners and occupiers in the vicinity of the proposed new operating centre, that vehicles are going to operate near their property, thus providing an opportunity for any valid objections to be made. The company had advertised the proposed new operating centre to be “The Stables, Fenn Lane, Woking, GU24 9QE” (“the 9QE address”) (see page 10 of the appeal bundle).

4. In the online application to the TC, the company stated their proposed new operating centre to be “Rosedean Stables, Rosedean Farm, Fenn’s Lane, Woking GU24 9QF” (“the 9QF address”) (see page 11 of the appeal bundle) which differed from the address stated in the advertisement. Of particular significance was the difference in the final letter of the postcode, which may appear a trivial matter but in fact lead the Office of the Traffic Commissioner (the “OTC”) to search for and investigate an address elsewhere on the same road. To add to the confusion, the address found by the OTC at the 9QF address was an existing operating centre

for Knowles Construction Ltd, in use since 2018, and with conditions attached to that use (listed at pg 40-41 of the appeal bundle).

5. While the OTC was considering the application, an objection was received from someone in the locality of the advertised 9QE address (“the objector”) (page 13 of the appeal bundle). He lived directly opposite the address placed within the advertisement as the proposed new operating centre – the 9QE address. Interestingly, in placing his objection, he used the incorrect postcode of “GU24 9QF”, within his letter to the OTC, when setting out his objections. In dealing with the objection, the OTC referred to the existing operating centre at the 9QF address and highlighted the conditions placed upon the operator (Knowles Construction Ltd) at that site. In the letter to the objector, the OTC in fact stated the correct address and pointed to the correct address on a map (pages 51-53) but was referring to and discussing conditions at the 9QF address. The objector wrote back to the OTC, clearly in some confusion, stating that the address proposed by the company was the 9QF address (this was incorrect), which was elsewhere along the road, but he agreed to withdraw his objection if the proposed conditions were put in place for Firepro (UK) Ltd in their use of the 9QF site (pages 54-55 of the appeal bundle).

6. From this correspondence, the confusion with the two addresses became apparent, and on 7 February 2022, the OTC wrote to the appellant stating:

“I refer to your application to vary your operator’s licence and previous correspondence from this office requesting additional supporting documentation.

The advert you submitted did not meet the requirements because the incorrect operating centre address was used.

As an operator you must ensure records and public notices are accurate. As the incorrect address was used in the advertisement, it cannot be guaranteed that further opposition may not have been received if the correct address had been given.

As you failed to provide an advert meeting the requirements, the Traffic Commissioner has refused your application under section 18(1) of the Act.”

(page 57)

The objector was then informed, by letter, that the company's application to vary its operating centre was refused on the basis that the wrong address was used in the newspaper advertisement intended to give notice of the requested variation to the licence.

The appeal

7. The appellant lodged an appeal with the Upper Tribunal on an official appeal form signed and dated 12 April 2022. The appeal indicated the appellant's embarrassment for the incorrect address being utilised, apologising for the "trouble caused", but stating, "[w]e don't believe that is beyond reasonable doubt that the address given was not accurate enough for people within the local area to understand exactly where we meant [to be the new operating centre]." (page F of the application to appeal).

8. The appeal was heard in the Rolls Building, London on 23 August 2022. At the hearing, the panel sought clarity on the address that the appellant wanted the new operating centre to be situated. In evidence, he confirmed that company wanted its new operating centre to be situated at the address of *Rosedean Stables, Rosedean Farm, Fenn's Lane, Woking GU24 9QE* i.e., the 9QE address, accepting that the address they utilised in their advertisement, placed as per the requirements of s.18 of the 1995 Act, was slightly different namely, "*The Stables, Fenn's Lane, Woking, GU24 9QF*". The appellant also acknowledged his error in stating the address of their proposed operating centre, in the online variation application, to be *Rosedean Stables, Rosedean Farm, Fenn's Lane, Woking GU24 9QF*. From further enquiry, it became clear that the objector resided opposite the advertised address of "*The Stables, Fenn's Lane, Woking, GU24 9QE*" although had stated an incorrect address of "*The Stables, Fenn's Lane, Woking, GU24 9QF*" in his letter of objection. Different variations of these addresses with the difference in postcodes had been used by the appellant, the OTC and the objector throughout their correspondence regarding the application to vary the operator's licence, sometimes correctly and sometimes incorrectly. The appellant confirmed that in preparing the online application to vary, he had undertaken a "google map search" of the area and utilised the address presented by "Google maps" without conducting a site visit to check the precise details. He again stated in evidence that the company sought to use the 9QE address as the proposed new operating centre. It was stated by the appellant, and accepted by the Tribunal, that there had been no intention to mislead anyone or to prevent objections being placed. This was particularly

so as the company licences just one vehicle of 5.1T in weight and 8m in length and uses it fairly infrequently. The appellant confirmed in evidence that he would be willing to accept any conditions imposed upon a variation to the company's operator's licence in order to establish a new operating centre at the 9QE address.

The Law

9. 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”.

10. 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.

11. The task of the Upper Tribunal, therefore, when considering an appeal from a decision of a Traffic Commissioner is to review the material which was before the Traffic Commissioner; the Upper Tribunal will only allow an appeal if the appellant has shown that “the process of reasoning and the application of the relevant law require the tribunal to take a different view” (*Bradley Fold Travel Limited and Peter Wright v. Secretary of State for Transport* [2010] EWCA Civ 695, [2011] R.T.R. 13, at paragraphs 30-40). In essence therefore the approach of the Upper Tribunal is as stated by Lord Shaw of Dunfermline in *Clarke v Edinburgh & District Tramways Co Ltd* 1919 SC (HL) 35, 36-37, that an appellate court should only intervene if it is satisfied that the judge (in this case, the decision of the Traffic Commissioner) was “plainly wrong”.

12. With regards to the variation of an existing Goods Vehicle Operator's Licence, s.17 of the Goods Vehicles (Licensing of Operators) Act 1995 (“the 1995 Act”) allows for the variation of existing operator's licences in a number of ways, subject to the requirements of s.18 of the 1995 Act. Section 18 of the 1995 Act requires publication of a notice of any application to vary an operator's licence in any locality affected by the proposed amendment:

“18 Publication of notice of applications for variation of heavy goods vehicle licences in any locality affected.

(1) Subject to subsection (4), a traffic commissioner who is dealing with an application for a heavy goods vehicle licence shall refuse the application for any of the directions mentioned in subsection (2) without considering the merits unless he is satisfied that subsection (3) has been complied with in respect of each locality affected by the application.

(2) The directions referred to in subsection (1) are ...

(c) any direction under section 17(1)(g) that a new place be specified in a licence as an operating centre of the licence-holder...

(3) This subsection has been complied with in respect of a locality affected by an application if, within the period beginning 21 days before the date on which the application is made and ending 21 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...

(5) For the purposes of this section a locality is affected by an application for the variation of a heavy goods vehicle licence if—

(a) it contains any place in the traffic area concerned that will be an operating centre of the licence-holder if the application is granted; or

(b) it contains an existing operating centre of the licence-holder in the traffic area concerned and—

(i) the granting of the application would or could result in an increase in the number of heavy goods vehicles, or the number of heavy goods vehicles above a certain weight, that have that centre as their operating centre; or

(ii) any undertaking recorded in, or condition attached to, the licence that the application seeks to have varied or removed relates to that centre.”

13. Objections can be made to the proposed variation(s) and applications can be refused on the basis of such objections, in accordance with s.19 of the 1995 Act:

“19 Objection to, and refusal of, applications to vary heavy goods vehicle licences on environmental grounds.

- (1) This section applies where notice of an application for the variation of a heavy goods vehicle licence has been published under section 17(3).*
- (2) Where the application relates to an existing operating centre of the licence-holder in the traffic area concerned –*
- (a) any of the persons mentioned in section 12(2) may object to the grant of the application on the ground that the use of that operating centre in any manner which would be permitted if the application were granted would cause adverse effects on environmental conditions in the vicinity of that centre;*
- (b) subject to subsection (5), any person who is the owner or occupier of any land in the vicinity of that operating centre may make representations against the grant of the application on the ground mentioned in paragraph (a); and*
- (c) whether or not anyone objects or makes representations under paragraph (a) or (b), a traffic commissioner may refuse the application on the ground mentioned in paragraph (a).”*

The decision

14. The appellant’s application to vary the company’s Goods Vehicle Operator’s Licence was undeniably hampered by confusion over the proposed operating centre address. It was not assisted by the fact that everyone involved in correspondence regarding this application used differing but similar addresses at various times, and the addresses both intended and used in correspondence were virtually identical. Ultimately, the company wanted Rosedean Stables, Rosedean Farm, Fenn’s Lane, Woking GU24 9QE to be its new operating centre, but the appellant advertised the proposed site as the address of “The Stables, Fenn’s Lane, Woking GU24 9QE” thus omitting “Rosedean” from the published details. Ultimately, the address provided in the advertisement was the correct one, as the postcode was precisely that of the proposed new operating centre address and it was correctly identified as “stables”.

15. The difficulties started when the appellant subsequently stated the address of “Rosedean Stables, Rosedean Farm, Fenn’s Lane, Woking GU24 9QF” on the online application to vary the operator’s licence. The only difference between what he sought to be the address and the address provided on the application was the final letter in the postcode that should have been “E” and not “F”. The “F” postcode, as stated in the online application, led the OTC to an address further along Fenn’s Lane, which incidentally was the site of another operating centre and from there, the confusion commenced. The objector provided photographs of his concerns with the use of the correct address (the 9QE address) but when writing to the OTC, he quoted the 9QF address. Then, when later presented with the conditions for the 9QF address, he became confused in his own right. It is clear to see why the OTC reacted straight away with a refusal of the application as all parties had been confused.

16. However, the question we must ask ourselves is, “Was the TC “plainly wrong” in this decision?” As a matter of fact, the decision is plainly wrong. The application to vary was refused on the basis that the wrong address was provided on the advertisement however, it was the correct address that was used, albeit with slightly varied wording. The subsequent online application form, submitted electronically, stated the incorrect address, as did the various subsequent communications, and this brought attention to the address confusion. The address used on the advertisement referred to “stables” and used the correct postcode; the only thing missing from the advertisement was the reference to “Rosedean” which in the view of the Tribunal, was not a misleading detail, especially given that the addresses in this location had uncertain names in any event. The single objector was able to object in his capacity as an “owner or occupier of land directly in the vicinity of the [correct] operating centre” and therefore anyone else who satisfied the same definition would have been able to identify the property correctly and would have been able to submit their objection(s) too. No one was prejudiced from objecting to the variation in operating centre based on the details in this advertisement. We find therefore that, factually, the TC’s decision is plainly wrong and we allow this appeal.

17. This, however, is something of a minor victory for the appellant, as by allowing this appeal, the matter effectively returns to the TC for re-consideration. In so doing, the objection effectively still stands, as it cannot be said to have been correctly dealt with - conditions relating to a different site were proposed to the objector and it was the suggestion of these unrelated

conditions which caused him to withdraw his objection. Had the correct address (the 9QE address) been identified at the point of negotiating the objector's objection, he may not have withdrawn his objection. In essence, he did not make a fully informed decision in the withdrawal. It seems to be the case, that the application should be re-considered and thus the objector should be re-contacted, hence negotiations should open up once again to deal with his concerns. It is fair to say that during the hearing, the appellant confirmed that there was no issue in accepting any conditions imposed upon the proposed site (the 9QE address) so the OTC can bear this in mind when dealing with the application to vary from this point.

18. Ultimately, while the objection was made against the correct address, the handling and subsequent withdrawal of that objection was made on the basis of incorrect information. Anyone who wished to object had been fairly informed about the proposed amended operating centre address, but it cannot be said that the one objector was fairly dealt with (albeit mistakenly). Consequently, the matter is now returned to the TC to be finalised, in the knowledge that the correct address to be utilised for the purposes of the application to vary is Rosedean Stables, Rosedean Farm, Fenn's Lane, Woking GU24 9QE.

L J Clough
Deputy Judge of the Upper Tribunal

K Pepperell
Member of the Upper Tribunal

R Fry
Member of the Upper Tribunal

Authorised for issue on 2 September 2022