Neutral Citation Number: [2026] UKUT 153 (AAC)
Appeal No. UA-2025-000841-NT

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

Between:

SPS Logistics Limited

Appellant

- v -

Department for Infrastructure (NI)

Respondent

Before: Ms L. Joanne Smith: Judge of the Upper Tribunal
Mr D. Rawsthorn: Member of the Upper Tribunal
Ms K. Pepperell: Member of the Upper Tribunal

Hearing date: 18 March 2026
Heard at: Tribunals Hearing Centre, Royal Courts of Justice, Belfast

Representation:
Appellant: Litigant-in-person
Respondent: Ms A Jones, BL

On appeal from: The decision of the Central Licensing Office within the Department for Infrastructure (NI)

Reference No: ON2079085
Decision under appeal: 5 June 2025

Date of Decision: 14 April 2026

KEYWORDS: Application for operator's licence (100.1); establishment (100.3) -operating centre; suitability; capacity; refusal of licence; decisions and reasons (100.19)
Cases referred to: *Fergal Hughes v DOENI & Perry McKee Homes Ltd v DOENI* [2013] UKUT 618 AAC NT/2013/52 & 53*; 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*.*

SUMMARY OF DECISION

The Upper Tribunal dismisses the appeal brought by SPS Logistics Limited against the Department for Infrastructure's refusal of its application for a Standard International Operator's Licence. The Tribunal concludes that although the Department erred in the particular reason given to refuse use of the proposed operating centre for the purposes of the licence under s.12C(6) of the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010, the decision to refuse the application was nonetheless lawful because the proposed operating centre was not "suitable", by virtue of being oversubscribed, under s.12C(5). The tribunal expresses concern that the Department dealt with the application in a manner that was lacking in clarity and cooperation, particularly by failing to address the other statutory requirements for an operator's licence, and leaving the operator unsure whether those conditions had been satisfied when considering whether to submit another application. Nonetheless, these observations do not affect the outcome of the appeal.

Please note the Summary of Decision and table of contents is included for the convenience of readers. It does not form part of the decision.

DECISION

The decision of the Upper Tribunal is to DISMISS the appeal.

The Presiding Officer's decision dated 5 June 2025 does not involve a material error of law and is not "plainly wrong".

REASONS FOR DECISION

Introduction

1. This is an appeal to the Upper Tribunal brought by Mr J.P Scott ("the Director"), on behalf of SPS Logistics Limited ("the Appellant" or "the operator"), against the decision of a representative from the Central Licensing Office (the "decision maker" or "DM") within the Department for Infrastructure for Northern Ireland ("the DfI"), dated 5 June 2025. The decision under appeal is to refuse the Appellant's application for a Standard International Operator's Licence under s.12(5) of the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010, as one of the requirements for a licence (operating centre) was not satisfied.

2. The Upper Tribunal granted an application by the DfI to be made Respondent to the appeal. The appeal was considered at an oral hearing, at the Tribunal Hearing Centre within the Royal Courts of Justice, Belfast, on 18 March 2026. The

Appellant was represented by its director. The Respondent was represented by Ms A. Jones, BL.

3. Within this decision, numbers contained in square brackets "[ ]" refer to page numbers within the Upper Tribunal bundle of papers in relation to this appeal.

Factual background

4. The Appellant applied for a standard international operator's licence (undated) seeking authorisation for one vehicle and two trailers. It proposed an operating centre at 19 Mullanary Road, Middletown, Armagh BT60 4HW [1-11]. Mr Scott is the sole director of the Appellant company, and the proposed Transport Manager for the operation.

5. Upon receipt of the application, the DfI wrote to the Appellant, by letter dated 7 April 2025, to say that the application had been held in abeyance by the Transport Regulation Unit ("TRU") pending the outcome of an operating centre assessment which would be carried out by the Driver and Vehicle Agency ("DVA") [12].

6. The assessment took place on 16 May 2025 (returned on 19 May 2025) [13–41]. In the assessment report, it was noted that the site proposed by the Appellant was already in use as an operating centre for seven other operators, with a combined authorisation for 75 vehicles and 58 trailers. The report recorded that the area of the proposed site is "vast" but noted the presence of scrap vehicles and stored product occupying areas within the yard which left "very little available space to accommodate vehicles and trailers" [21]. The examiner recorded that a designated parking space had been identified for the Appellant's use and that, "from the measurements of the dedicated parking area, one vehicle up to 44,000kg could be accommodated here" [21]. Having spoken with the landlord of the site, the assessor was not provided with details of any dedicated allocation of space within the yard but was informed that vehicles always got "fitted in somewhere" [21]. The assessor concluded with concerns that there was not the capacity on site for the current combined authorities thus it would not be possible to authorise another vehicle plus two trailers to operate from there.

The decision

7. In refusing the application for an operator's licence, set out in a letter dated 5 June 2025, the DM stated that the proposed operating centre did not meet the requirement of s.12C(6) of the Act as it had "been deemed not to have enough capacity for the authority requested" [42]. The DM noted that from the site assessment, the assessor observed as follows:

> *"Whilst the operating centre area is vast, I noted that there is very little available space to accommodate vehicles and trailers. From my assessment I have concerns that there is not the capacity for current combined authorities. The majority of the parking areas that I viewed appear to be housing either scrap vehicles, or product stored or manufactured on site."*

The appeal

8. The Appellant lodged an appeal against the decision. He presented the following grounds of appeal:

   "After taking legal advice in reference to your letter dated 05/06/2025 regarding refusal of transport licence to SPS Logistics Limited due to the operating centre, the company is appealing the decision not to grant it an operating licence.

   The DVLA carried out an inspection on the 16/05/2025 at the proposed operating centre and as a result there was concerns there was not enough capacity at the site for this licence application.

   Following the inspection & assessment of the site a letter was issued to to [sic] *all licence holders at the site which in summary has resulted with one operator removing 50 vehicles & 40 trailers from the site.*

   Given that SPS Logistics Limited is applying for a licence with 1 vehicle and 2 trailers and a large number of vehicles have already been removed the proposed operating centre should not be acceptable.

   Given that there is no other reasons provided in your letter not to grant an operator licence to SPS Logistics Limited and it has met all other requirements needed as part of the application, a transport licence should not be granted." [53]

9. The Appellant, represented by its director, repeated this submission at the oral hearing of the appeal. The director further advanced that he chose to appeal the decision, rather than re-apply for a licence, as he did not want the operator's regulatory record to be tarnished by a refused licence application. He stated that he had been unable to ascertain the capacity of the proposed operating centre such that he was undecided as to whether he should re-apply for a licence at the same operating centre now that he knew the current capacity was much less, or to propose a different operating centre for a further application.

10. The DfI, represented by Ms Jones, submitted a skeleton argument (dated 24 October 2025) in advance of the appeal hearing, which reflects the oral arguments she presented on the day of the appeal hearing.

The Approach of the Upper Tribunal

11. As to the approach which the Upper Tribunal must take on an appeal such as this, it was said, in the case of *Fergal Hughes v DOENI* & *Perry McKee Homes Ltd v DOENI* [2013] UKUT 618 AAC, NT/2013/52 & 53, at paragraph 8:

    "There is a right of appeal to the Upper Tribunal against decisions by the Head of the TRU [and by extension, decisions of the Department for Infrastructure] in the circumstances set out in s. 35 of the 2010 Act. Leave to appeal is not required. At the hearing of an appeal the Tribunal is entitled to hear and determine matters of both fact and law. However, it is important to remember that the appeal is not the equivalent of a Crown Court hearing or an appeal against conviction from a Magistrates Court, where the case, effectively, begins all over again. Instead, an appeal hearing will take the form of a review of the material placed before the Head of the TRU, together with a transcript of any public inquiry, which has taken place. For a detailed explanation of the role of the Tribunal when hearing this type of appeal see paragraphs 34-40 of the decision of the Court of Appeal (Civil Division) in Bradley Fold Travel Ltd & Peter Wright v Secretary of State for Transport [2010] EWCA Civ. 695. Two other points emerge from these paragraphs. First, the Appellant assumes the burden of showing that the decision under appeal is wrong. Second, in order to succeed the Appellant must show that: "the process of reasoning and the application of the relevant law require the Tribunal to adopt a different view". The Tribunal sometimes uses the expression "plainly wrong" as a shorthand description of this test.'

12. At paragraph 4, the Upper Tribunal stated:

    "It is apparent that many of the provisions of the 2010 Act and the Regulations made under that Act are in identical terms to provisions found in the Goods Vehicles (Licensing of Operators) Act 1995, ("the 1995 Act"), and in the Regulations made under that Act. The 1995 Act and the Regulations made under it, govern the operation of goods vehicles in Great Britain. The provisional conclusion which we draw, (because the point has not been argued), is that this was a deliberate choice on the part of the Northern Ireland Assembly to ensure that there is a common standard for the operation of goods vehicles throughout the United Kingdom. It follows that decisions on the meaning of a section in the 1995 Act or a paragraph in the Regulations, made under that Act, are highly relevant to the interpretation of an identical provision in the Northern Ireland legislation and vice versa."

13. The task of the Upper Tribunal, therefore, when considering an appeal from a decision of the DfI in Northern Ireland, is to review the information which was before the DM, along with the decision based on that information. 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). 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 DM on behalf of the DfI) was "plainly wrong".

ANALYSIS

14. The DM refused the Appellant's application for an operator's licence under s.12(5) of the Act. It was stated that the proposed operating centre did not meet the requirement of s.12C(6) as it had "been deemed not to have enough capacity for the authority requested" [42].

15. Section 12 of the Act states, as far as is relevant to this case (our underlining):

> ***"Determination of applications for operators' licences***
> ***12****—(1) On an application for a standard licence the Department must consider—*
> *(a) whether the requirements of sections 12A and 12C are satisfied; and*
> *(b) if the Department thinks fit, whether the requirement of section 12D is satisfied.*
> *…*
> *(5) If the Department determines that any of the requirements that it has taken into consideration in accordance with subsection (1) … are not satisfied, it must refuse the application.*
> *(6) In any other case the Department must grant the application, unless either of the following provisions applies—*
> *(a) section 13(2) (power to refuse application on environmental grounds);*
> *(b) section 47(2) (power to refuse to proceed until fee is paid)."*

16. Section 12A of the 2010 Act sets out the primary requirements that must be satisfied to hold a Standard Operator's Licence as follows:

> ***"Requirements for standard licences***
> *12A.—(1) The requirements of this section are set out in subsections (2) and (3).*
> *(2) The first requirement is that the Department is satisfied that the applicant—*
> *(a) has an effective and stable establishment in Northern Ireland (as determined in such manner as may be prescribed);*
> *(b) is of good repute (as determined in such manner as may be prescribed); and*

(c) has appropriate financial standing (as determined in such manner as may be prescribed);
(d) …
(3) The second requirement is that the Department is satisfied that the applicant…
(a) is an individual who –
(i) is professionally competent (as determined in such manner as may be prescribed) and;
(ii) has designated a suitable number of individuals (which may include the applicant) who satisfy such requirements as may be prescribed, or
(b) if the applicant is not an individual, or is an individual who is not professionally competent, has designated a suitable number of individuals who satisfy such other requirements as may be prescribed.
(c)…
(4) For the purposes of subsection (3), a number of designated individuals is suitable if the Department is satisfied it is proportionate to the maximum numbers of motor vehicles and trailers that may be used by the applicant in accordance with section 5 if the standard licence is issued.
(5) In this Act, "transport manager" means an individual designated under subsection (3)(a)(ii) or (b).

17. This required the DfI to assess the Appellant's application and determine whether it: had an effective and stable establishment in Northern Ireland; was of good repute; had appropriate financial standing; was professionally competent; and had a designated transport manager deemed proportionate (in number) to the number of vehicles specified on the licence. The Appellant's application for an operator's licence made proposals in respect of each of these matters but there was no mention of any of them in the decision letter, dated 5 June 2025, which refused the licence application. It is unclear whether the DM had considered these elements of the application and deemed them to be satisfied or otherwise.

18. Section 12C of the Act sets out the additional requirements that must be satisfied to hold a standard and restricted licence (our underlining):

"Requirements for standard and restricted licences
12C.*—(1) The requirements of this section are that it must be possible (taking into account the Department's powers under section 14(3) to issue a licence in terms that differ from those applied for) to issue a licence in relation to which—*
(a) in the case of a light goods vehicle licence, subsections (2) to (4) will apply, or
(b) in the case of a heavy goods vehicle licence, subsections (2) to (6) will apply.
(2) There must be satisfactory arrangements for securing that the following are complied with in the case of vehicles used under the licence—

(a) Article 56 of the Road Traffic (Northern Ireland) Order 1981 (drivers' hours); and
(b) the applicable Community rules, within the meaning of Article 2 of that Order.
(3) There must be satisfactory arrangements for securing that vehicles used under the licence are not overloaded.
(4) There must be satisfactory facilities and arrangements for maintaining the vehicles used under the licence in a fit and serviceable condition.
<u>*(5) A heavy goods vehicle licence must specify at least one place in Northern Ireland as an operating centre of the licence-holder, and each place so specified must be available and suitable for use as an operating centre of the licence-holder (disregarding any respect in which it may be unsuitable on environmental grounds).*</u>
<u>*(6) The capacity of the place specified as an operating centre (if there is only one) or both or all of the places so specified taken together (if there is more than one) must be sufficient to provide an operating centre for all the heavy goods vehicles used under the licence.*</u>
(7) In considering whether the requirements of subsections (2) to (4), or (2) to (6), are satisfied, the Department may take into account any undertakings given by the applicant (or procured by the applicant to be given) for the purposes of the application, and may assume that those undertakings will be fulfilled.
(8) In considering whether subsection (5) will apply in relation to a heavy goods vehicle licence, the Department may take into account any conditions that could be attached to the licence under section 20(1)(a) (conditions of licences) and may assume that any conditions so attached will not be contravened.
(9) In considering whether subsection (5) or (6) will apply in relation to a heavy goods vehicle licence, the Department may take into account whether any proposed operating centre of the applicant would be used—
(a) as an operating centre of the holders of other heavy goods vehicle licences as well as an operating centre of the applicant; or
(b) by the applicant or by other persons for purposes other than keeping heavy goods vehicles used under the licence.

19. As this was an application for a heavy goods vehicle licence, s.12C(1)(b) requires the DfI to also ensure there are: satisfactory arrangements for compliance with drivers' hours (s.12C(2)); satisfactory arrangements to ensure vehicles are not overloaded (s.12C(3)); satisfactory facilities and arrangements to ensure vehicles on the licence are kept in a fit and serviceable condition (s.12C(4)); a specified operating centre which is available and suitable for such use (s.12C(5)): and that operating centre has sufficient capacity for all vehicles under the licence (s.12C(6)). In considering the operating centre requirement, the DfI may take into account any conditions that could be attached to the licence under s.20(1)(a) (conditions of licences) and may assume that any such conditions will not be contravened (s.12C(8)). In addition, the DfI may take into account the fact that a proposed operating centre is used as an operating centre for other licence holders, or indeed

for purposes other than for keeping heavy goods vehicles (s.12C(9)). In its consideration of the totality of these requirements, the DfI may take into account any undertakings given by the applicant and may assume that any such undertakings will be fulfilled (s.12C(7)).

20. Within its application for a standard international operator's licence, seeking authority for one vehicle and two trailers, the Appellant had provided the location of the proposed operating centre, as required by s.12C(5) of the Act. The letter dated 5 June 2025, refusing the application, mentioned only one of the s.12C requirements, stating that the proposed operating centre did not meet the requirement of s.12C(6). The DM continues that the site "has been deemed not to have enough capacity for the authority requested" highlighting the assessor's concerns "that there is not the capacity for current combined authorities".

21. It is a statutory requirement, by virtue of s.12C(6) of the Act that the capacity of the operating centre "must" be sufficient to provide an operating centre for "all the heavy goods vehicles used under the licence". The measurements completed by the DVA assessor in relation to the area specified for use by the Appellant, was that one 44,000kg vehicle could be accommodated there. While there is no finding that the same identified space could accommodate two trailers, technically the area, upon inspection, was deemed sufficient for "all the heavy goods vehicles used under the licence" thus the DM is incorrect to reason that s.12C(6) was not satisfied. Of course, s.12C(9) permits the DfI to take into account the fact that other licence holders use the proposed site, or that the site is used by any person, for other purposes. Consequently, it is fair to say that in light of the assessor's concerns regarding the site's overall capacity, the proposed operating centre, while available, could not be deemed "suitable" for use as an operating centre for another licence holder under s.12C(5).

22. In the letter stating that the application had been refused, the DfI advised the Appellant that he could re-apply and explained, in basic terms, what was needed in order to do so. The letter also set out his right of appeal. It was open to the Appellant to either re-apply or to appeal to the Upper Tribunal. He chose the latter.

23. At the appeal hearing, the Director explained that after his licence application had been refused, he checked the online system and realised that letters having been sent to the other operators using the site, had resulted in a significant reduction in the number of vehicles to be housed there. He therefore believed that his request to add one more vehicle and two trailers to the site could now be granted given the reduction in the total number of vehicles to be parked there. The director stated that he had been unable to obtain a definitive answer from either the DfI or the DVA assessor as to the number of vehicles that the site was permitted to hold. He sought that information to determine whether he should re-apply for a licence proposing the same operating centre (with reduced usage) and risk a refusal once

again on the basis that the capacity was still over the limit, or whether to propose an alternative operating centre.

24. There is no documentary evidence of a reduction in usage within the bundle. Equally, Ms Jones on behalf of the DfI, was unable to confirm that this was the present position. Nevertheless, there was no reason to disbelieve what the director said, on behalf of the Appellant, in this regard. It was this information that had prompted his decision to appeal the decision of the DfI, rather than to make a fresh application as he did not want to have a licence refusal on the operator's record which would reflect poorly upon its professional relationship with the regulator.

25. It was explained at the hearing that the Upper Tribunal was not in a position to grant or refuse the licence application, nor was it in a position to approve the use of the site or to advise how many vehicles the site was authorised to hold. Equally, the Upper Tribunal understood the director's frustrations when it appeared that the decision of the DfI was to penalise him for its own administrative error of permitting too many vehicles to be housed at the one operating centre. The director was reminded that the Upper Tribunal, on an appeal such as this, was restricted to the determination of whether the DfI's decision to refuse the application was, in the circumstances existing at the time of the decision, "plainly wrong".

26. As this appeal is brought under s.35 of the Goods vehicles (licensing of Operators) Act (Northern Ireland) 2010, the Upper Tribunal's appellate jurisdiction is analogous to that set out in paragraph 17(3) of Schedule 4 to the Transport Act 1985 which provides that:

> *"The tribunal may not on any such appeal take into consideration any circumstances which did not exist at the time of the determination which is the subject of the appeal."*

27. Accordingly, the tribunal must determine the appeal on the basis of the material before the DM at the time of the decision. The reduction in vehicles at the site occurred after the decision to refuse the Appellant's application for a licence, hence this information was not available to the DM to weigh into the balance.

28. Despite the requirement to only take account of circumstances existing at the time of the decision subject to appeal, fresh evidence can be permitted in an appeal such as this, where the four conditions in *Ladd v Marshall* (1954) 1 WLR 1489 are satisfied. The second condition states that the evidence must be evidence that could not have been obtained, with reasonable diligence, for use at the public inquiry; for our purposes, for use in the decision making. Given that the information did not exist at the time of the decision, but transpired at an unknown time afterwards, this principle provides no assistance to the Appellant either. Consequently, the subsequent alleged reduction in vehicles authorised to use the

site as an operating centre cannot be considered by the Upper Tribunal in determining this appeal.

29. The decision of the DfI was to refuse the application on the basis that the proposed operating centre lacked capacity for the vehicles used under the licence (s.12C(6)), but there was a space identified to accommodate the Appellant's single vehicle as requested by the licence application. Nevertheless, on the information before the decision maker, the DfI was entitled to find that the site was saturated and that spare capacity was not in fact available to support the authority sought by the Appellant. Consequently, while the DfI was wrong to say that s.12C(6) was not satisfied, it would have been entitled to refuse the application regardless, on the basis that the site was not suitable to house a further vehicle under s.12C(5). It cannot therefore be said that the decision was "plainly wrong", despite the incorrect reasoning, hence this appeal must be dismissed.

Observations on the DfI's approach

30. While we have dismissed this appeal, we feel that this application could have been dealt with in a more constructive manner, particularly given that trust and cooperation are the foundations for a successful regulatory relationship between the DfI and an operator within the transport industry. The application was put on hold pending assessment of the proposed operating centre, which is entirely appropriate. However, that assessment revealed the full extent of the authorisations at the site, and the practical state of the yard. It was within the powers of the DfI to continue to hold the application in abeyance while the capacity issue was scrutinised, and while further enquiries were made to establish whether the site was being used to the full capacity indicated by the other licence authorisations. Such enquiries would have provided a more transparent evaluation of capacity at a shared site such as this and may have demonstrated that a reduction in capacity would have allowed for the Appellant's vehicle and two trailers to be housed there. The application could then have been granted (assuming the other requirements had been met) without the need to draw the application to a close so abruptly.

31. Furthermore, by addressing only the operating centre requirement, and by failing to address any other aspect of the application, including the possibility of conditions or undertakings, the operator is left in the position where it cannot be certain (a) whether any of the other statutory requirements were satisfied; (b) whether there were any requirements that remained to be satisfied; and (c) what the capacity for the site actually is. This information would have assisted the director in determining whether a fresh application with the same proposed site would be successful or whether a new operating centre should be identified, as well as indicating whether there were weaknesses in the remainder of the application that needed to be addressed within the fresh application. Such an approach would have better

informed the director, who is clearly keen to comply with the regulatory regime, and who is reluctant to have any failed applications on his very new regulatory record. It would have facilitated better communication between the operator and the DfI to develop a cooperative relationship from the outset. Additionally, it would have avoided the delay that has been caused by the appeal process, which was an entirely legitimate course of action for the operator to take, particularly given the limited information provided to it upon refusing the application.

32. It is only fair to say that while we may have responded differently in the circumstances of this application, that is not the test to be applied on appeal. Our observations do not alter the outcome of this appeal but are intended to promote clarity, efficiency and fairness in the DfI's handling of licence refusals, particularly where shared operating centres are in question. The decision to refuse the application was within the remit of options available to the DfI on the evidence before it, and we cannot therefore say that it was "plainly wrong".

33. Nothing in this decision prevents the Appellant from making a fresh application and we trust that the DfI will assist in providing the director with the information he requires regarding the capacity of this site, and whether the other licence requirements are satisfied, so that he can make an informed decision about how best to proceed.

Ms L. Joanne Smith
Judge of the Upper Tribunal
Mr D Rawsthorn
Member of the Upper Tribunal
Ms K Pepperell
Member of the Upper Tribunal

(Authorised for issue on)
14 April 2026