

**THE HEALTH AND SAFETY AT WORK (NORTHERN IRELAND) ORDER 1978
THE PETROLEUM (CONSOLIDATION) ACT (AMENDMENT OF LICENSING
PROVISIONS) REGULATIONS (NORTHERN IRELAND) 2012
THE DEREGULATION (MODEL APPEAL PROVISIONS) ORDER (NORTHERN
IRELAND) 1997**

THE HEALTH AND SAFETY TRIBUNAL FOR NORTHERN IRELAND

Appeal Reference: HS/1/21

Between

ANITA BYRNE, Trading as DAY TODAY

Appellant

-and-

ANTRIM AND NEWTOWNABBEY BOROUGH COUNCIL

Respondent

Heard remotely in public by WebEx in Belfast on 17 December 2021

Before

**Damien J. McMahon, Legal Chairman
Dr. Peter Watters, Lay Member
Dr. Brian Gough, Lay Member**

The Appellant appeared in person.

Ms. E. Keenan, Solicitor, appeared for the Respondent.

STATEMENT OF REASONS

This Statement of Reasons shall be read in conjunction with the summary Decision Notice dated 17/12/2021 issued by the Tribunal.

Introduction

1. The Appellant appealed against an Order of the Respondent made on 07/12/2020 ('the Decision') made pursuant to Section 3(1)(a) of the Petroleum Consolidation Act (Northern Ireland)

1929, as amended, ('the Act') and the Deregulation (Model Appeal Provisions) Order (Northern Ireland) 1997 ('the Model Rules'), refusing to grant a renewal of the petroleum licence held by the Appellant in respect of her premises at 83 Church Street, Antrim, BT41 4BE.

2. The Appellant, by a Notice of Appeal dated 25/01/2021 appealed the Decision, pursuant to Rule 3(2) of the Model Rules.
3. Following a number of Direction Hearings, the appeal came on for substantive hearing before the Tribunal on 17/12/2021. The Appellant attended the hearing and gave oral evidence. She was not represented but was accompanied her son. The members of the Tribunal were introduced to the parties and the nature of the proceedings explained to them.

Factual Background

4. The Appellant operated a petroleum dispensing business at her premises at 83 Church Street, Antrim, BT41 4BE.
5. The Appellant required, by statute, a petroleum licence, issued annually, from the Respondent to carry on a petroleum-dispensing business. Her application for renewal of that licence for 2019 was refused by the Respondent. It was that decision of the Respondent that gave rise to this appeal.
6. The Respondent is the local government authority for the local government district in which the Appellant's said premises are situated. Accordingly, it is the Respondent that has the statutory authority and responsibility to grant, refuse or renew petroleum licences.
7. At a Directions Hearing held on 18/10/2021, following which Case Management Directions were issued in preparation for the substantive hearing, the Appellant had asserted that the Decision was made in error of fact, namely, that the inspection report of an officer of the Respondent that led to an Enforcement Notice being issued to the Appellant, followed by the issue of the Decision, was factually incorrect; secondly, that the Decision was made in error of law, namely, that no issue had been taken with the Appellant's petroleum-dispensing methodology when her petroleum licence had been renewed each year between 2012 and 2018 inclusive, and thirdly, that the Respondent had failed to properly exercise its discretion in refusing to renew the Appellant's petroleum licence in 2019. Accordingly, the Appellant appealed the Decision on all three available grounds of appeal.
8. As directed by the Tribunal, the parties adduced an agreed bundle of documents and an agreed bundle of authorities and

statutory provisions, that were relied upon by the parties in support of their oral evidence and oral submissions in the hearing.

9. The Tribunal was satisfied that the Respondent's decision-making process that led to the decision under appeal being made was lawfully made in accordance with the Respondent's Scheme of Delegated Functions.

The Respondent's Case

10. The Respondent's solicitor summarised the written evidence contained in the agreed bundle. She referred, in particular, to the various photographs of the location of the Appellant's premises; the Appellant's application for renewal of her petroleum licence (page 51); notes of inspections of the Appellant's premises (pages 52-63); the Inspection Report dated 15/08/2019 (pages 64-80), containing identification of both major and minor areas of concern and the hazardous location of the Appellant's petroleum-dispensing operation; a letter dated 05/09/2019 from Ms. K. Squance, an Environmental Health Officer of the Respondent, to the Appellant, following a meeting between them on 03/09/2019, setting out, in detail, the concerns of the Respondent and a series of recommended actions to be undertaken by her to address those concerns; a letter dated 07/10/2019 (page 87) from the Appellant in reply maintaining, *inter alia*, in effect, that the relevant legislation did not apply to her premises and her petroleum-dispensing methodology; a report commissioned by the Respondent dated 14/01/2020 (pages 90-104) from an independent expert, Mr. D. Jackson, of Fuelcom; a further letter dated 05/10/2020 (page 105) sent by the Respondent to the Appellant enclosing a further Consideration of Enforcement Action, also dated 05/10/2020 (pages 107-108) offering the Appellant a further opportunity to make representations thereon; a reply thereto dated 14/10/2020 from the Appellant (page 109) that merely referred to the service provided by her, and her family predecessors, to the local community – for some 77 years – but not addressing the safety concerns identified by the Respondent.
11. The said Ms. K. Squance, having provided a written witness statement, attended the hearing at the request of the Appellant, for cross-examination purposes only, in accordance with the Case Management Directions issued by the Tribunal on 18/10/2021.

The Appellant's Case

12. In addition to the written evidence of the Appellant contained within the agreed bundle of documents, the Appellant, in her

oral evidence, stated that the written evidence submitted by the Respondent did not reveal any danger or fault in the site that comprised the Appellant's premises for the purposes of the dispensing of petroleum. She maintained that the 'Design, Construction, Modification, Maintenance and Decommissioning of Filling Stations, 4th Edition ('the Blue Book guidance') referred only to new sites and that kerbside sites, that had been in existence before 1979, could not comply with this guidance. She stated that the occupants of neighbouring properties were notified of prospective deliveries of petroleum and that those occupants had priority in the vicinity of the site except for 15 minutes once per week when a delivery of petroleum was being made.

13. The Appellant, when cross-examining Ms. Squance, made a number of assertions that were treated by the Tribunal, in ease of her being unrepresented, as the Appellant giving additional evidence on her own behalf. She made reference to the agreed bundle of documents not containing documents concerning corrosion or contaminated soil disposal or minutes from within the Respondent where discussions may have taken place as to whether the Appellant's petroleum installation and petroleum-dispensing methodology was dangerous or photographs showing any delivery of petroleum other than in the morning. The Appellant maintained that there was no need for a risk assessment since that was only necessary, she maintained, if there were four or more staff employed in dispensing petroleum.
14. While the Appellant had not provided a written statement of evidence, a fact that, strictly-speaking, was non-compliant with the Case Management Directions issued by the Tribunal on 18/10/2021, the Tribunal, again in ease of the Appellant, particularly when she was not represented, and since she was a party, permitted her to give evidence and to be cross-examined on behalf of the Respondent. In cross-examination, the Appellant stated that re-fuelling of petroleum would be halted if there were any pedestrians walking on the public highway past the petroleum pump until they had passed. The Appellant also maintained that there was no risk of ignition except when, if at all, re-fuelling of petroleum was taking place.
15. The Appellant stated that the pipe into the petroleum pump had been replaced in 2011. She confirmed that petroleum was only dispensed by attended service and that customers were advised not to smoke or to use mobile phones while re-fuelling of petroleum was taking place. She confirmed that a break-away device existed between the petroleum dispenser and the nozzle arm.
16. In concluding comments, the Appellant pointed out that she and her predecessors had been in business, including dispensing

petroleum, since 1943. She stated that the main reason she brought her appeal was in memory of her father. She emphasised again that she had a 'clear record' (a remark that the Tribunal took to be a reference to petroleum having been dispensed without incident since 1943).

Findings and Conclusions

17. This appeal was dismissed and the Decision of the Respondent confirmed, that is, that the Appellant's application for renewal of her petroleum licence was properly refused by the Respondent.
18. This is because the petroleum-dispensing pump, located on the public highway, along the frontage of the Appellant's said premises, adjoining a neighbouring residential property, creates a hazardous zone which is not contained wholly within the site boundary and the petroleum dispenser is not located at a safe distance from openings in the neighbouring residential property, contrary to current statutory Regulations governing the licensing of petroleum as set out in current industry guidance (the Blue Book guidance), that recommends the hazardous area of the petroleum dispenser to be located wholly within the boundary of the said premises and not encroach into any opening of any occupied buildings.
19. The petroleum dispenser is against the wall between the Appellant's business premises and the adjoining occupied residential property. The petroleum-dispensing hose is clipped to a swinging arm that hangs near the window of the next home as shown in photographs 73, 74, 75, 103 and 117 in the agreed bundle of documents. This equipment is full of petroleum spirit. It is an old design to allow a person dispensing petroleum to stand in the street at the off-side fill point of a motor vehicle parked in a bay outside the Appellant's shop premises, with the footpath running under the overhead hose. The emergency stop device is inside the shop window out of sight of the petroleum pump as shown in photograph 103 in the agreed bundle of documents.
20. This appeal raised issues of public safety. Regulation 3 in Part 2 of the Health and Safety at Work (Northern Ireland) Order 1978 ('the 1978 Order') provides that, in connection with work and control of dangerous substances, the Regulations are intended to –
 - (a) *secure the health, safety and welfare of persons at work;*
 - (b) *protect persons other than persons at work against the risks of health and safety arising out of or in connection with the activities of persons at work;*
 - (c) *controlling the keeping and use of highly flammable or otherwise dangerous substances, and generally preventing the unlawful acquisition, possession and use of such*

substances.

21. There was some apparent confusion in the approach of the Respondent as between the questions of design (governed by the provisions of the Blue Book guidance) and questions of compliance (governed by the provisions of a complementary risk assessment guide known as 'the Red Book'). However, any such matters did not override the fact that the installation of, and the petroleum-dispensing methodology used by the Appellant at her said premises was contrary to the overarching issue of public safety in dealing with a highly flammable substance. The fact that there had been no accident in the past did not excuse the fact that suitable public safety standards should be applied in this case accordance with statutory requirements by reference to existing relevant expert guidance – the Red Book – to undertake a suitable risk assessment whilst accounting for any relevant technical matters by reference to the guidance in the Blue Book. Nevertheless, the report of Ms. Squance, that was the basis of the decision under appeal made by the Respondent, affirms that guidance.
22. The installation for the purposes of the dispensing of petroleum at the Appellant's premises is not in compliance with current expert guidance. Further, there was no, or no adequate evidence of mitigation of the risks having been undertaken by the Appellant, as evidenced by the information on Hazardous Area Classification in Chapter 3 of the Blue Book. This provides relevant information on the danger zones and was accepted as probative evidence of that fact by the Tribunal. This information should have informed any risk assessment that had been carried out, if carried out, by the Appellant. No suitable DSEAR risk assessment had been carried out by the Appellant.
23. There was nothing in the Appellant's evidence that convinced the Tribunal, on the balance of probabilities that the installation and methodology used to dispense petroleum was safe, or that any risk assessment that had been undertaken on her behalf was suitable or sufficient for the circumstances of this case. In essence, the Appellant's argument came down to an assertion that there was no issue before 2012, when new legislation, the Petroleum (Consolidation) Act (Amendment of Licensing Provisions) Regulations 2012 came into force, coupled with the fact that her petroleum licence had been renewed each year between 2012 and 2018. The Tribunal was not dealing with previous petroleum licence renewal applications since 2012: it was only dealing with an appeal against the Decision, that is, the decision of the Respondent to refuse to renew the Appellant's application for a petroleum licence at her said premises in 2019. Even if it might be argued that, perhaps, licences should not have been renewed between the years 2012 and 2018, a scenario upon which the Tribunal expresses

no opinion as those decisions are not before it, each renewal application fell to be treated on its own merits. Subject to that, it is somewhat puzzling that the Respondent did not, seemingly, issue a Prohibition Notice upon receiving a renewal application in 2019 and investigating the merits of that application, resulting in the issue of an Enforcement Notice and, ultimately, the Decision refusing to renew the Appellant's petroleum licence. However again, whether or not a Prohibition Notice should, or could have been issued was not a matter before the Tribunal for determination in this appeal.

24. In her letter dated 03/03/2021, the Appellant made a number of points. However, the Tribunal found no evidence, written or oral, to support these assertions. There was a question, indeed, as to the relevance in law of those points in respect of the matter at issue in this appeal, namely whether the Appellant's petroleum-dispensing installation and methodology was safe and in compliance with relevant expert guidance. Further, despite the Appellant's assertions in that letter, there existed documented evidence of spillage of petroleum having occurred in the past.
25. The Tribunal was also troubled that the Vapour Recovery System ('VRS'), that had been added to the petroleum installation by the Appellant, was only a measure utilised when a tanker was delivering a fresh supply of petroleum and was not utilised when re-fuelling of vehicles was taking place, or that a separate VRS was in place for that purpose. The Appellant described this methodology in her evidence as 'temporary'. VRS is now standard in petroleum-dispensing methodology. There was no evidence adduced by the Appellant that the 'temporary' VRS was designed to enhance the standards of her petroleum installation to meet the original concerns of the Respondent.
26. The Tribunal was satisfied, on the written and oral evidence and submissions of the parties, on the balance of probabilities, that there was no basis to find that the Decision was flawed on any of the three permissible grounds of appeal.
27. There was a history of complaints from adjoining properties regarding the petroleum-dispensing methodology and the petroleum installation itself.
28. At a meeting held between the Appellant and officers of the Respondent in 2019, the Appellant accepted and agreed with the concerns expressed by the officers of the Respondent concerning the petroleum installation and petroleum-dispensing methodology but nothing was done by the Appellant to address those concerns. The letter recorded that the Appellant had agreed to remedy the concerns identified, albeit the letter did record, too, that the premises had major design and layout

deficiencies that were non-compliant with legislative requirements and 'cannot be remedied'.

29. The Appellant's premises was not the only petroleum site without an interceptor within the Respondent's local government district but it was the only such site with adjacent neighbouring properties without an interceptor.
30. A petroleum spillage kit was not, but should have been, available at the front of the Appellant's premises where petroleum was dispensed as well as at the rear where petroleum was delivered.
31. The existence of a petroleum-dispensing pump located on the street, a public highway, adjacent to an adjoining residential property, was non-compliant with the Blue Book guidance and no evidence was adduced by the Appellant to suggest that any mitigations had been considered to address that fact.
32. Relevant sections of the Blue Book guidance did apply to the Appellant's petroleum installation and her petroleum-dispensing methodology.
33. While there existed a small number of other sites with the same petroleum delivery arrangements as utilised in the Appellant's premises, the Tribunal found, on the evidence, that none of these created the same safety concerns to the extent that existed in the Appellant's premises due to the confined space, particularly if an emergency arose during delivery of petroleum.
34. Petroleum deliveries did not on the evidence, only take place in the morning. The Tribunal did, however, find that it was usually only in the morning and was prepared to accept that it took 15-20 minutes to complete a delivery. The delivery methodology, however, raised safety concerns.
35. The Respondent had asked the Appellant for a DSEAR risk assessment but this had not been provided by her. Whilst it is a requirement to undertake such a risk assessment, it is correct that the requirement to record the significant findings applies only in a workplace where five or more employees are employed. However, on the evidence presented to the Tribunal, the Tribunal concluded that any such risk assessment that may have been undertaken, did not sufficiently take account of the risks posed in this case.
36. The Tribunal found that there were potential ignition sources in the identified hazardous zone including the pavement, neighbouring residential property and passing motor vehicles
37. The Blue Book guidance, at page 44, addressed petroleum re-fuelling of vehicles and, at page 53, addressed the

recommended safe distances at which other buildings should be located away from petroleum-dispensing equipment. These were significant factors to be taken into consideration in determining this appeal.

38. The overriding concern in determining this appeal was that of the adequacy of site safety at the Appellant's premises – only in respect of the dispensing of petroleum – not in respect of the dispensing of diesel – an activity that did not fall to be licensed by the Respondent (or any other authority) as there were no ignition risks associated with diesel.
39. While the Appellant's petroleum-dispensing business had been in existence at the Appellant's premises for very many years, health and safety concerns generally in respect of all manner of businesses, not least that of the business of dispensing petroleum, increased over the years. This is underpinned by the said Regulation 3(2) in Part 2 of the 1978 Order in the following terms –

“The provisions of this Part relating to the making of health and safety regulations and the preparation and approval of codes of practice shall in particular have effect with a view to enabling the existing statutory provisions to be progressively replaced by a system of regulations and approved codes of practice operating in combination with other provisions of this Part and designed to maintain or improve the standards of health, safety and welfare established by or under the existing statutory provisions.”
40. The Red Book (petrol Stations – Guidance on Managing the Risks of Fire and Explosion) provides guidance on assessing the risks relevant to this case and the Blue Book guidance provides supporting technical information and guidance on the requirements of the legislation governing the dispensing of petroleum.
41. The fact that the complaints contained in the agreed bundle of documents from the occupants of adjoining properties were unsigned did not mean that they were not made or, if made, that no weight could be attached to them. The Tribunal was satisfied that complaints from the occupants of adjoining premises, as recorded in the agreed bundle of documents, had been made by those persons.
42. The Tribunal accepted that the Appellant had an unblemished record in the dispensing of petroleum.
43. There was no law preventing the Appellant's petroleum-dispensing methodology. However, since 2012, a petroleum installation of this type would not comply with planning requirements and would not be granted a new licence to

dispense petroleum. Nothing has been done by the Appellant in 10 years to date to bring her petroleum installation and her petroleum-dispensing methodology into line with current legislation and expert guidance.

44. The Appellant's stated main reason for bringing this appeal was in memory of her father. While that was a noble stance, it did not override or allow the appeal to succeed where there are significant public safety concerns as was the case here.
45. The report of Ms. Squance was not factually inaccurate.
46. The Tribunal could not find any basis to hold that the decision under appeal made by the Respondent was made in error of law, whether on the basis asserted by the Appellant, namely, that her petroleum licence had been renewed each year between 2012 and 2018, or at all; on the contrary, the said decision was entirely lawful.
47. The Appellant did not explain in any convincing fashion, or at all, her assertion that the Respondent failed to properly exercise its discretion in making its decision to refuse the Appellant's application for renewal of her petroleum licence for 2019: when serious issues of public safety arise and those issues do not appear to have been addressed, it is inconceivable that an exercise of discretion should be allowed to override those concerns and to renew the Appellant's petroleum licence.

Costs

48. The Tribunal makes no Order as to costs on the basis set out in the summary Decision Notice in this appeal.

Right of Appeal

49. The parties are reminded of their right of appeal, on a point of law only, set out in the summary Decision Notice in this appeal. For the sake of completeness, time will start from the date of this Statement of Reasons for the Decision of the Tribunal.

Dated 27 January 2022

Signed:



**Damien J. McMahon
Chairman**