



2023UT27

Ref: UTS/AP/23/0014

**DECISION NOTICE OF SHERIFF COLIN DUNIPACE,
JUDGE OF THE UPPER-TIER TRIBUNAL FOR SCOTLAND (GENERAL
REGULATORY CHAMBER)**

IN THE CASE OF

Mr John Hazard, 5 Dunkeld Avenue, Rutherglen, Glasgow, G73 3PT

Appellant

- and -

Glasgow City Council, PO Box 25068, Glasgow, G1 1ZE

Respondent

FtT case reference GP00202-2210

18 August 2023

Decision

The Upper Tribunal allows the appeal and remits the matter to the First-tier Tribunal.

Introduction

1. Mr John Hazard (hereinafter referred to as ‘the Appellant’) has submitted an Appeal against a decision of the First-tier Tribunal of the General Regulatory Chamber (hereinafter referred to as ‘the Tribunal’) dated 2 February 2023, refusing his Appeal against the imposition of a Penalty Charge Notice at 11.04 on 18 March 2022 in Park, Drive, Glasgow..



In support of this application for leave to Appeal the Appellant has submitted the following documents, namely:

- a. Form UTS-1
- b. Legal Member's decision
- c. Decision of First-tier Tribunal granting Permission to Appeal

2. By way of background, Mr John Hazard was issued with a Penalty Charge Notice (hereinafter referred to as the 'PCN') in relation to a parking contravention involving his vehicle registration number SB55PUK on 18 March 2023. The nature of the contravention was that the Appellant:

“Parked in a residents or shared use parking place, zone without either clearly displaying a valid permit or voucher or pay and display ticker issued for that place or without payment of the parking charge.”

The matter was set down for a telephone hearing on 2 February 2023, at which time the Appellant did not attend. The Appeal thereafter proceeded on the basis of the respective parties' written representations and lodged supporting documentation. The Appeal was refused by the Legal Member on that date, and full written reasons for this decision were provided by the Legal Member in their decision of that date.

3. The written reasons given by the Legal Member for the refusal of the Appeal were as follows:

“In light of both parties' representations and the 'GCC' (Park) (Traffic Management) Order 2005 as amended, I am satisfied that the alleged parking contravention occurred. This is because having examined all the documentary evidence incorporated herein, I found that there was no evidence before me to indicate that the Appellant had either displayed a valid permit/voucher or pay and display ticket, or purchased parking time. In reaching this view, I did not consider the Appellant's representations concerning the alleged degradation of the bay road markings to be



relevant as the vehicle was parked within the bay markings at the material time and was accordingly not the reason for the issue of the 'PCN.'”

4. The Appellant thereafter lodged an application for a Review of that decision in terms of Rule 17(3)(b) of the First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Lane Appeals (Rules of Procedure) Regulations 2020 (hereinafter referred to as ‘the Rules’) by letter received on 1 March 202. This application for Review was refused by the President of the First-tier Tribunal on 3 March 2023. However these are of no relevance to the determination of this present application for Leave to Appeal, given that that this was an excluded decision having regard to the terms of sections 51 and 52 of the Tribunals (Scotland) 2014 Act, (hereinafter referred to as “the Act”).

5. On the same date, 1 March 2023 the Appellant thereafter sought permission to appeal against the original decision of the Legal Member in terms of section 46 of the Tribunals (Scotland) Act 2014, and in terms of Rule 18 of the First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Rules of Procedure 2020 (contained in the Schedule of the Chamber Procedure Regulations 2020 (SSI No 98) (“the Procedure Rules”). The Ground of Appeal founded upon by the Appellant stated as follows:

1. When the Council apply for permission to designate an area as a parking restricted zone they must submit drawings showing clearly where they will mark out all parking bays.

Their drawings must comply with the examples in the Rules (see figure 1026 or figure 1049) of the Traffic Signs Regulations & General Directions 2002.

So their initial application & drawings would match the dimensions, lengths and widths of the lines in Regulations on which their submissions was made.

The Regulations also state that “All lines must be solid, unbroken & continuous”

I have sent you proof that their lines are not compliant & therefore are invalid.

They are compelled by law to maintain their lines.

The failed to do this. So could you re look at your last decision.



6. The Application for leave to appeal was considered by the President of the First-tier Tribunal on 3 March 2023, at which time leave to appeal was granted. The President of the Tribunal concluded that the grounds of appeal raised an arguable point of law having regard to the previous cases of *Patrick Doherty v City of Edinburgh Council [2021] UT8*, and *Jonathan Sammeroff v East Renfrewshire Council [2021]UT40*. The president concluded that whilst the Appellant did not make formal representations to the Respondent on the state of the road markings at the time when he received the Notice to Owner, he did make those points about road markings in his appeal to the Tribunal. The original Legal Member had concluded that these representations were irrelevant on the basis that the contravention set out that the vehicle was parked in a residents or shared use parking place or zone without either displaying a valid permit of voucher or pay and display ticket for that place or without payment of the parking charge. It was observed that the photographic evidence before the Tribunal indicated that the state of the road markings was very poor, and as such it was arguable that had the Legal member considered this evidence that the could have reached a different decision given that the Appellant may not have known that he was required to pay for parking given the poor state of the road markings. The Appellant may not have known that he was parking in a bay that required him to pay for parking. Reference was made to the fact that the legislation referred to by the Appellant had been replaced by the 2016 Regulations which provided that there was no legal requirement for road markings to be in pristine condition. They did require to be in sufficiently good condition to give motorists adequate notice of the applicable parking restriction. Leave to Appeal was accordingly bgranted.

7. The terms of section 46(1) the Tribunals (Scotland) Act 2014 (“the 2014 Act”) provide that the Upper Tribunal for Scotland may only hears Appeals in cases where permission to Appeal has been granted either by the First-tier Tribunal or by the Upper Tribunal itself. Permission can only be granted in accordance with section 46(2)(b) of the 2014 Act if the Appellant identifies an arguable error on a point of law in the decision of the First-tier Tribunal which he wishes to Appeal.



8. The Appellant subsequently lodged his appeal on form UTS-1 on 19 March 2023. The Grounds of Appeal as stated thereon were as follows:

“The point of law is that the legislation clearly states that “All lines must be solid, unbroken and continuous.” As in Schedule 6 Road Markings of Traffic Signs Regulations and General Directions 2002. This requirement was inserted in Parliament prior to legislation being passed in order to compel the Council (or other bodies) to maintain their lines. The lines where I was parked have not been maintained and no longer comply.

Prior to Council gaining restrictions on parking they must submit drawings that comply with the legislation. They then must maintain the lines. They have failed to do this.”

9. No further representations have been received from the Council.

Discussion

10. The Parking and Bus Lane jurisdiction was brought within the integrated structure of Scottish Tribunals within the General Regulatory Chamber of the First-tier Tribunal for Scotland as part of its rolling programme of reform on 1 April 2020. Prior to that date there was no statutory right to seek permission to Appeal decisions of adjudicators to the Upper Tribunal for Scotland. On that date the Adjudicators of the Parking and Bus-Lane Tribunal for Scotland became Legal Members of the General Regulatory Chamber of the First-tier Tribunal for Scotland. In the present application there is a statutory right to seek permission to Appeal to the Upper Tribunal for Scotland in relation to this matter.

11. The terms of section 46(1) the Tribunals (Scotland) Act 2014 (“the 2014 Act”) provide that the Upper Tribunal for Scotland may only hear Appeals in cases where permission to Appeal has been granted either by the First-tier Tribunal or by the Upper Tribunal itself. Permission can only be granted in accordance with section 46(2)(b) of the 2014 Act if the Appellant identifies an arguable error on a point of law in the decision of the First-tier Tribunal



Conclusion

12. The Appellant has requested permission to Appeal to the Upper Tribunal. His application for permission to Appeal is as set out in his completed Form UTS-1 dated 20 February 2023. The procedural history of this appeal, is as above narrated. Neither party has indicated that they wished a full oral hearing in relation to this matter.

13. In terms of the relevant law, Section 46 of the Tribunals (Scotland) Act 2014 (hereinafter referred to as “the 2014 Act”) provides:

46. Appeal from the Tribunal

(1) A decision of the First-tier Tribunal in any matter in a case before the Tribunal may be Appealed to the Upper Tribunal.

(2) An Appeal under this section is to be made—

(a) by a party in the case,

(b) on a point of law only.

(3) An Appeal under this section requires the permission of—

(a) the First-tier Tribunal, or

(b) if the First-tier Tribunal refuses its permission, the Upper Tribunal.

14. Accordingly from application of the foregoing Section 46 of the 2014 Act, it is apparent that the Appellant may only Appeal to the Upper Tribunal on a point of law (section 46(2)(b) of the 2014 Act)

15. The grounds of this application for leave to Appeal the position of the Appellant are as stated above. The Appellant asserts therefore that in effect the Council has not complied with the terms of the Traffic Signs Regulations & General Directions 2002.



16. A question has arisen as to whether the signage was adequate to comply with the appropriate Regulations. This would in normal circumstances be a question of fact and a matter for determination by the original decision maker. In the present instance however it would appear that the original Legal Member has deliberately not taken account of the photographic evidence which has been provided on the basis that it was not considered to be relevant to the circumstances of the specific contravention alleged.

17. As pointed out by the President of the First-tier Tribunal the question of the signage is relevant when considering whether the Appellant had been provided with notice that there were parking restrictions in force at all. In these circumstances the matter of signage was of some relevance to the question of whether there was adequate notice provided to the Appellant of the existence of the restrictions in the first place. In these circumstances whilst the position of the initial Legal member was entirely understandable, the photographic evidence was of relevance and as such should have been considered at the time of the original decision. I am satisfied therefore that a point of law has been established in this matter.

18. At this stage I express no opinion as to whether the markings at the locus were compliant with the relevant Regulations, as this is a matter for determination by the original fact finder. It is for the Legal Member dealing with this matter to consider the factual position in relation to the road markings at the locus, and to specifically address the question of whether they were compliant with the appropriate Regulations.

Decision

19. Accordingly I will allow this Appeal and quash the original decision of the Legal Member dated in terms of section 47(1) of the Tribunals (Scotland) Act 2014, and further in terms of Section 47(2)(b) of the aforementioned Act remit the matter back to the First-tier Tribunal with a direction that they should consider the photographic evidence lodged by the Appellant in the course of considering this Appeal.

A party to this case who is aggrieved by this decision may seek permission to appeal to the Court of Session on a point of law only. A party who wishes to appeal must seek permission to do so from the Upper Tribunal within **30 days** of the date on which this decision was sent



to him or her. Any such request for permission must be in writing and must (a) identify the decision of the Upper Tribunal to which it relates, (b) identify the alleged error or errors of law in the decision and (c) state in terms of section 50(4) of the Tribunals (Scotland) Act 2014 what important point of principle or practice would be raised or what other compelling reason there is for allowing a further appeal to proceed.

Sheriff Colin Dunipace

Sheriff Colin Dunipace

Sheriff of South Strathclyde Dumfries and Galloway at Hamilton