



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

**IN THE CASE OF**

Mr John Hazard,

**Appellant**

- and -

Glasgow City Council,

**Respondent**

FTS case reference: GP00202-2210

**17 October 2024**

**Decision**

The Upper Tribunal refuses permission to appeal.

**Introduction**

1. Mr John Hazard (hereinafter referred to as 'the Appellant') has submitted an application for permission to appeal against a decision of the First-tier Tribunal of the General Regulatory Chamber (hereinafter referred to as 'the Tribunal') dated 22 March 2024, refusing him permission to appeal to the Upper Tribunal against a decision of the First-tier



Tribunal dated 16 February 2024. In support of this application for permission 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 refusing 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."*

3. The matter was originally considered and refused by the First-tier Tribunal on 2 February 2023, however the Upper Tribunal allowed the appeal against this decision to the extent that it was remitted back to the First-tier Tribunal for their consideration. That decision was issued under reference UTS/AP/23/0014 on 18 August 2023. A telephone hearing subsequently took place on 16 February 2024, when the Appellant was present, although the Council were not present or represented. The First-tier Tribunal issued its determination on 16 February 2024, refusing the Appeal. The full reasons for refusal are set out at length in the aforementioned determination of the First-tier Tribunal.

4. On 13 March 2024 the Appellant 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:

*I dispute the [sic] solicitors opinion that the photographs I submitted were not clear enough to show the poor condition of the lines and that he bases part of his decision on this.*

*The decision he came to was dismissal of my case.*

*I have already had a point of law accepted by the Upper Tribunal that “all lines must be solid unbroken and continuous as per schedule 6 etc...”*

*I am content with this.*

*I would also like to stablish the point of law:- that as is their statutory duty placed on the local authority they must be compelled to maintain their lines to match those in diagrams in schedule 6 of the legislation.*

*I would like the Upper Tribunal to quash this decision and remake the decision.*

5. The Application for permission to appeal was considered by the President of the First-tier Tribunal on 22 March 2024, at which time permission to appeal was refused. The President of the Tribunal concluded that the grounds of appeal raised no arguable points 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 also concluded that the Legal Member had correctly identified the issues he was required to determine.

6. The president concluded that the Legal Member had considered the photographic evidence and accepted that they showed signs of deterioration and significant wear and tear. However, they were said to be still legible and obviously demarcated parking bays. The photographic evidence which had been submitted by the Appellant for the re-constituted Tribunal were said to have been of such poor quality and resolution as to be of little assistance, with the colour photographs lodged by the Council having been of better quality. The Legal Member had therefore been in a position to gauge whether the lines, albeit worn



were visible. The Legal Member considered that the lines were sufficiently legible to confirm the position to an ordinarily observant motorist, and combined with the fact that the Appellant had not looked for signage which was legible and in a good position 20 metres from the place where the vehicle was parked, he had concluded that there was sufficient warning to the average motorist to advise of the nature and extent of the restrictions. The Chamber President concluded therefore that the Legal Member had been justified in reaching the conclusion he did and in dismissing the appeal. Permission to appeal was accordingly refused.

7. As well as the Grounds of Appeal the appellant has lodged further written submission on 20 April 2024, referring to the terms of Regulation 17(1)(F) (ii) of The Local Authorities Traffic Orders (Procedure) (Scotland) Regulation 1999 which state that the Council are obliged to maintain all road markings. He states that there is a statutory duty to maintain their lines to match those in diagrams in Schedule 6 of the Legislation.

## **Discussion**

8. 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 18 May 2024. The Grounds of Appeal as stated thereon were as follows:

# Upper Tribunal for Scotland

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*“Sheriff Dunipace had quashed the First Tiers original decision and as I explained to the First tier solicitor had sent his decision back. I believe he did this as a courtesy (sic) and did not intend that they would remake his decision.*

*This they have done and I believe thus does not serve natural justice and would result I a miscarriage of justice.*

*The public (who give consent to legislation would I feel be dismayed that I had followed all the steps in appeal, established a point of law and had a quashed decision, found myself back at square one and no justice had been served.*

*I also draw your attention to Point No 19 of the solicitors findings regarding the photographs supplied by me. I contest his findings regarding their quality.*

*All along I feel they ignored the evidence I had submitted and did not give me a fair hearing.*

*I am requesting that Sheriff Dunipace remake his decision as before and does not send it back to the First Tier as this would be contrary to natural justice and would undermine the Appeals process.*

*I wish to the establish the point of law that if Regulation 17(1) (F)(ii) of the Local Authorities Traffic Order (Procedure) (Scotland) Regulation 1999 state that the Council are obliged to maintain all road marking. Then it is a statutory duty to maintain their lines to match those in diagrams in Schedule 6 of the legislation”*

9. For the avoidance of doubt the Appellant the decision refusing permission to appeal by the First-tier Tribunal was dated 22 March 2024, and the application to the Upper Tribunal seeking permission to appeal was not lodged until 18 May 2024, this clearly being outwith the 30-day time limit for such applications. In this regards the Appellant explained that the form had been accidentally misplaced by his wife or himself. He had been preparing for another case and had mixed up his paperwork. In these circumstances, notwithstanding the late submission I will extend the time limit for lodging the application to the Upper Tribunal and will consider this matter on its merits. The Appellant also lodged further submissions on 20 June 2024. Having considered these submissions I have concluded that they appear to relate to a separate appeal regarding a Bus Lane matter. I have however



taken account of the Appellant's further submissions regarding the requirement of the Council to maintain road marking lines.

10. The Council submitted no further submissions.

## **Discussion**

11. 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.

12. 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.

13. 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**

14. 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 and in particular paragraphs 4 and 8 above. The procedural history of this appeal is set out above.

15. 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.*

16. Accordingly, from an 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)

17. The position of the Appellant as stated above, are that the Council has not complied with the terms of the Regulation 17(1)(f)(ii) of the Local Authorities Traffic Order (Procedure) (Scotland) Regulation 1999. For the avoidance of doubt the terms of section 17(1)(f) state:

*(f)where the order relates to any road, forthwith take such steps as are necessary to secure—*



*(i) the erection on or near the road of such traffic signs in such positions as the authority may consider requisite for the purpose of securing that adequate information as to the effect of the order is given to persons using the road;*

*(ii) the maintenance of such signs for so long as the order remains in force; and Traffic Signs Regulations & General Directions 2002.*

18. In the Appellant's original appeal, the question arose as to whether the signage, or perhaps more accurately the road markings given that the nearby signage was not challenged as being defective, were adequate to comply with the appropriate Regulations, and therefore sufficed to warn the Appellant about the parking restrictions which were in force at the relevant time. As pointed out in the Determination of the Legal Member the Appellant does not dispute that he did not display a voucher or ticket at the relevant time, and no exception has been taken in relation to the applicability of the Glasgow City Council (Park) (Traffic Management) Order 2005.

19. In his Determination the Legal Member has clearly acknowledged and taken cognisance of the terms of Regulation 17(1) of The Local Authorities' Traffic Orders (Procedure)(Scotland) Regulations 1999 relating to the maintenance of signage and has clearly taken this Regulation into account. Further the Legal Member has identified a number of relevant cases dealing with these issues, all as set out in the Determination. The Legal Member was clearly aware of the correct approach to take in considering the question of signage and road markings.

20. As pointed out in my previous decision dealing with this matter, questions such as the adequacy of road markings are properly questions of fact and a matter for determination by the original fact finder. In the present instance the Legal Member has clearly taken account of the photographic evidence which has been provided to the Tribunal, both provided by the Council and also by the Appellant. The Legal Member observed that the road markings showed signs of deterioration and significant wear and tear, however they are still said to be legible and to obviously demarcate parking bays. The Legal Member has had the benefit of





considering these photographs, which this Tribunal has not. What to make of these photographs is a matter entirely for the judgement of the Legal Member who is the fact finder in these matters. It is not for this Tribunal to interfere with findings in fact made by the Legal Member. It is a matter of fact therefore that the road markings are legible and give adequate warning to the Appellant of the parking restrictions in force at the locus. The Legal Member also points out that there was signage and a ticket machine nearby which would also have pointed to the existence of parking restrictions. These were matters which the Legal Member was entitled to consider and take account of when assessing the merits of the Appellant's position. Whilst I accept that the Appellant does not agree with this assessment, and acknowledge his reasons for doing so, I am unable to interfere in matters of fact. The Legal Member is the fact finder, and their position in this regard cannot be overturned.

21. An appeal can only be successful if there has been an error of law, such as:

(i) an error of general law;

(ii) an error in the application of the law to the facts;

(iii) making findings for which there is no evidence, or which is inconsistent with the evidence of contradictory of it: or

(iv) a fundamental error in approach to the case; for example, by asking the wrong question, or by taking account of manifestly irrelevant considerations or by arriving at a decision that no reasonable tribunal could properly reach (see *Advocate General for Scotland v Murray Group Holdings* 2016 SC 201.)

22. In the present appeal I see no evidence that the Legal Member has erred in a matter of law having regard to the foregoing criteria. The question is one of fact. The appellant does not believe that the markings were of a sufficient standard to satisfy the necessary requirements of Regulations 17(1) of The Local Authorities' Traffic Orders (Procedure) (Scotland) Regulations 1999, whereas the Legal Member has concluded as a matter of fact that



they did. This was a decision which was entirely for him to take, and I cannot interfere with that decision.

23. On the basis therefore that no question of law has been established by the Appellant I am unable to conclude that permission to appeal should be granted given that no error of law has been identified.

### **Decision**

24. Permission to appeal is accordingly refused.

*Sheriff Colin Dunipace*

**Sheriff Colin Dunipace**

**Sheriff of South Strathclyde Dumfries and Galloway at Hamilton**