



2024UT16

Ref: UTS/AP/23/0032

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

IN THE CASE OF

Dominic Gillespie

Appellant

- and -

City of Edinburgh Council

Respondent

FTS case reference EP00178-2306

11 February 2024

Decision

1. The Upper Tribunal refuses the Appeal.

Introduction

2. Mr Dominic Gillespie (hereinafter “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 14 July 2023 refusing his appeal against the imposition of a Penalty Charge Notice (hereinafter referred to as the ‘PCN’) at 16.34 on 9 January 2023 in Newhaven

Road, Edinburgh. In support of his Appeal the Appellant has submitted the following documents, namely:

- a. Form UTS-1
- b. Legal Member's decision dated 14 July 2023
- c. Decision of First-tier Tribunal granting limited Permission to Appeal dated 21 August 2023

3. By way of background, the Appellant was issued with a PCN in relation to a parking contravention involving his motor vehicle registration number YC14KKY on 9 January 2023. The nature of the alleged contravention was that the Appellant was:

“Stopped on a restricted bus stop or stand”

4. Neither the Appellant nor the Respondent elected to have a telephone or oral hearing and the original appeal was decided by the Legal Member of the Tribunal on the basis of documentary evidence provided and submissions. The original 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 dated 14 July 2023.

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

“The issue in dispute is whether the restriction is, or is not applicable at the time in question. I have some sympathy with the position narrated by the Appellant who plainly genuinely states his position as set out above. It might be suggested that the assumption that the restrictions were not in force arises from the operation of common sense given the works which were ongoing and the temporary restriction of services to the bus stop. The matter is however, slightly more complex than that. It is clear that the locus is as appropriately established bus stop. It is clear that signage and road markings are in place to that effect. However, the signage which is in place to suspend the operation of the bus stop is clearly that only – it states that the operation of 2 bus services is re-routed. It does not state that the parking restrictions are suspended. The parking restrictions are still appropriately intimated by signage/road markings as evidenced by the photographs have been helpfully

produced by both parties. In the circumstances I prefer, on balance, the position of the Council who point out that where the parking restrictions are to be suspended, different signage is employed to convey that information to motorists. In this case the Appellant has made an erroneous assumption, which is not appropriate to infer given the information available to him by way of signage and road markings. Whilst I note that the Appellant would accept the original restricted charge, it is not within the power of this tribunal to order payment at that rate. It may be that, given this concession, the Appellant may be able to negotiate with the Council in relation to same, but that is a matter between the parties.

I accordingly accept that the vehicle was parked at the locus in contravention of the prohibition. The Appellant's position is not supported by the evidence lodged by him. The Applicant's grounds of appeal are not substantiated by the evidence before me. The appeal is accordingly dismissed."

6. 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') on 28 July 2023. This application for Review was refused by the Chamber President of the Tribunal on 31 July 2023 as being wholly without merit. However the reasons for the refusal of the Review 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.

7. On 9 August 2023 the Appellant thereafter timeously 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 grounds of appeal as stated were that:

" The grounds for permission to appeal are that the decision statement provided by the adjudicator is not adequate because it does not sufficiently deal with all of the main points raised by the Appellant. The Appellant accepts that the adjudicator may

well have considered all of the points but contests that the decision statement is not adequate because it does not give explicit consideration to them nor reference any legal framework which should be applied.

The adjudicator's account of his decision refers only to the Appellant's point about the nature of signage at the bus stop and the adjudicator has, in his verdict, incorrectly defined this as the main issue. Much of the commentary given by the Appellant in the application to the lower tribunal makes it clear that, no matter the reader's judgement on whether the bus stop signage ought to have been interpreted as representing a suspension of normal parking restrictions, the Appellant's decision to park in the bus stop was in the context of very particular circumstances, was certainly not detrimental (to anyone other than the Appellant) and in actual fact beneficial (consider the alternative action by the Appellant, that if he had simply left his vehicle in place for the rest of the day after the roadworks staff came along that morning. Which he would have been quite within his rights to do, there would have been no grounds to issue a PCN and a lot more hassle and delay for the contractor and the Council).

The Appellant's comments on potentially regretting paying the original fine refer not to a willingness to accept the fine, but rather are a reference to said detriment to the Appellant because the appeal was not about avoiding monetary loss but rather a point of principle about the Council exerting improper judgement and making decisions which are not in the public interest in terms of both the direct impact of the decision and the resource use (read public money) in coming to that decision and allowing escalation of the appeal to the lower tribunal adjudicator.

Notwithstanding that the Appellant will argue here that the lower tribunal as placed too much weight on the issue of signage in the context of the whole appeal, the Appellant also does not accept the adjudicator's judgement that it was unreasonable for the Appellant to interpret the "bus stop closure" notice as a communication of temporary suspension of clearway restriction on the basis that the Council use a different type of signage even though the sign does not mention any suspension of parking restrictions, because the adjudicator has stated in his verdict that there is no doubt that The Traffic Signs Regulations and General Directions 2016 apply to this case but has not referenced whether any specific part of this act governs the specification of signs communicating the temporary suspension of bus stop restrictions.

The main points being made by the Appellant are that 1. It was quite reasonable to park the car in the bus stop even if the council had not formally suspended parking restrictions because it should have done and in any case the action of the Appellant was benign and 2. It is quite unreasonable for the council to be pursuing the penalty charge notice because doing so represents no legitimate purpose (public interest) and is therefore an arbitrary use of power.

The higher tribunal may wish to consider that the New Roads and Street Works Act 1991 S.118 1b holds that A road works authority shall use their best endeavours to co-ordinate the execution of works of all kinds (including works for road purposes) in the roads for which they are responsible to minimise the inconvenience to persons using the road. The Appellant proposes that City of Edinburgh Council, knowing that parking was already challenging for residents should have suspended parking restrictions on the bus stop while it was not being serviced by any bus services.

The higher tribunal may also consider that, if interpreted with broad scope, The Traffic Signs regulations and General Directions 2016 schedule 7 part 6 para 4.2.b conveys that prohibition of stopping a vehicle in a bus stop does not apply to a vehicle which is prevented from proceeding by circumstances beyond the driver's control, and this applies to the Appellant who, all circumstances considered including family circumstances as mentioned in the appeal, wasn't in a position to move the vehicle to another relocation because surrounding parking areas were highly congested due to the roadworks.

When coming to a decision about whether City of Edinburgh Council was correct to reject the appeal at all stages so far (in relation to this PCN issued for parking in a bus stop when actions taken by the Council caused parking in the bus stop to be necessary), the higher tribunal may wish to take in to account guidance issued to Scottish local authorities by the Scottish Government (Right First Time: a practical guide for public authorities to decision-making and the law- second edition: epub 20 Jan 21; url: <https://www.gov.scot/publications/right-first-time-practical-guide-public-authorities-scotland-decision-making-law-second-edition>). This guidance is highly relevant to this case because the Appellant argues that the Council's enforcement of a legal power is in this case arbitrary ie it is not in keeping with the spirit of parking regulations and the Council should therefore have exercised discretionary power to cancel PCNS when they are not serving any public interest.”

8. The application for leave to appeal was considered by another Legal Member of the First-tier Tribunal on 21 August 2023. Reference at that time was made to the grounds which had been referred to in the aforementioned application for review. Leave to appeal was allowed on the following grounds:

1. The decision dated 14 July 2023 provided by the legal member is not adequate because it does not give explicit consideration to the main points raised by the Appellant nor reference any legal framework which should be applied.

5. The Appellant also does not accept that it was unreasonable of the Appellant to interpret the “bus stop closure” notice as a communication of temporary suspension of clearway restriction on the basis that the Council use a different type of signage.

6. The Legal member stated in the decision that there is no doubt that The Traffic Signs Regulations and General Directions 2016 apply to this case but has not referenced whether any specific part of these regulations govern the specification of signs communication the temporary suspension of bus stop restrictions.

8. The Traffic Signs Regulations and General Directions 2016 schedule 7 part 6 para 4.2.b conveys that prohibition of stopping a vehicle in a bus stop does not apply to a vehicle which is prevented from proceeding by circumstances beyond the driver’s control, and that this applies to the Appellant who, all circumstances considered including family circumstances as mentioned in the appeal, was not in a position to move the vehicle to any other location because surrounding parking areas were highly congested due to the road works.

9. 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. The Upper-tier Tribunal therefore can deal only with those aspects of this appeal which have been allowed permission to appeal.

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.

11. This appeal is brought by the Appellant under the provisions of section 46 of the Tribunals (Scotland) Act 2014 (“the 2014 Act”) and the procedural rules contained within The Upper Tribunal for Scotland (Rules of Procedure) Regulations 2016 (“the 2016 Regulations”). Permission to appeal on restricted grounds has been granted in accordance with the decision of the First-tier Tribunal for Scotland (General Regulatory Chamber) (“the Tribunal”) dated 21 August 2023. The Tribunal reference is ED00178-2306.

12. 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

Conclusion

13. Whilst the Appellant lodged his appeal on a number of grounds, he has been granted permission to Appeal on the foregoing restricted grounds to the Upper-tier Tribunal. The Upper-tier Tribunal can only consider the grounds of appeal in respect of which leave to appeal has been granted. 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. No further written submissions have been received.

14. 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.

15. 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)).

16. The grounds upon which leave to appeal were granted are as stated at paragraph 8 above. I would intend to address each of these grounds in order.

17. The first grounds of appeal states as follows:

1. The decision dated 14 July 2023 provided by the legal member is not adequate because it does not give explicit consideration to the main points raised by the Appellant nor reference any legal framework which should be applied.

The reasons for the decision are as set out at paragraph 5 above. The Legal Member states at the outset that he considers that there are grounds for sympathy with the Appellant, and suggests that the assumption of the Appellant to the effect that it is understandable that the Appellant adopted the position that he did having regards to the application of “common sense,” and also having regard to what appeared to be the temporary restriction of the services at the bus stop. The Legal Member does however thereafter go to explain his view that the signage in place does not actually state that he parking restrictions previously in force

are no longer in force having regard to the ongoing works and the re-routing of the bus services. Reference was made to photographs which were produced by the parties (and which have not been included with this Appeal Binder). The Legal Member states that they preferred the position of the Council to the effect that where restrictions are to be lifted that appropriate signage will be at the locus. The Legal Member also states that they accepted that the photographic evidence produced demonstrated that the signage at the locus confirming the restrictions in force remained visible. As the original finder of fact, the Legal Member was entitled to so conclude. The position as stated was that it was not for motorists to draw their own inferences from the fact that the services at the bus stop had been suspended. Whilst an understandable inference, given that the reason for the restrictions no longer appeared to be applicable, in the absence of any specific direction to this effect, it was not open to the Appellant to unilaterally conclude that the restrictions no longer applied.

18. Having regard to the reasoning of the Legal Member, I am not satisfied that that they have failed to consider the submissions of the Appellant. The Legal Member expressly states that they have considered the position of the Appellant, and the terms of their decision does address the factors which have been mentioned by the Appellant. Whilst I appreciate that the Appellant may disagree with the determination of the Legal Member, this does not demonstrate that they did not take full cognisance of his submissions. I am not satisfied therefore that this ground of appeal has been established, and this Ground of Appeal therefore fails.

19. The second ground of appeal states:

“The Appellant also does not accept that it was unreasonable of the Appellant to interpret the “bus stop closure” notice as a communication of temporary suspension of clearway restriction on the basis that the Council use a different type of signage.”

The Appellant again references the fact that he considers that it was reasonable for him to infer from the “Bus Stop Closure” signage that this automatically led to the suspension of the existing parking restrictions. Again, and whilst recognising that the Appellant’s interpretation of the situation could not necessarily be regarded as unreasonable, the fact remains that there was no signage to indicate that the restrictions had been lifted. It was entirely possible that other reasons existed for the Council to wish to ensure that vehicles did not park at that locus, and accordingly in the absence of specific signage indicating that the restrictions had not been suspended, the Appellant was not entitled to simply assume that they had been. The Legal

Member specifically referred to this matter indicating that they appreciated that the Appellant may have applied “common sense,” the fact remains that the legal position is that in the absence of specific indications that the restrictions had been removed, that the restrictions remained in force. I am not satisfied therefore that this ground of appeal has been established, and this Ground of Appeal therefore fails.

20. The third ground of appeal states:

“The Legal member stated in the decision that there is no doubt that The Traffic Signs Regulations and General Directions 2016 apply to this case but has not referenced whether any specific part of these regulations govern the specification of signs communication the temporary suspension of bus stop restrictions.”

The terms of the Traffic Signs Regulations and General Directions 2016 at Schedule 7 Part 6 paragraph 1(1) make clear that, subject to subparagraphs (1) and (4) which do not apply in the present circumstances, that a vehicle must not cause a vehicle to stop within the clearway. The terms of the section in this regard are clear. If a sign states a time period then the vehicle must not stop between those times, and if not then it applies at all times. They do not state that the clearway in question must be in use at any one particular time. There are specific exceptions as to vehicles which can park in such clearways as set out in subparagraphs (4) and (4), again none of which are currently applicable. The Regulations do not provide for persons to make assumptions about their applicability according to temporary circumstances. Had the Council wished to suspend these restrictions then this would have been open to them to do so. They chose not to do so in the present circumstances and it is not for individual motorists to unilaterally make such decisions for them.

21. In ascertaining why the Council may have chosen not to suspend the conditions, it may be instructive to consider the Edinburgh City Council Parking Enforcement Protocol¹ at Section 7 in relation to Bus Stop Clearways, and which states:

“PCN Contravention Code 47 – Parked on a restricted Bus Stop.

- Bus stop clearways can be identified by yellow bus stop bay markings, a thick (200 mm) single yellow line through the bus stop, a road legend reading ‘BUS STOP’ and there is a sign stating ‘no stopping except buses’ or ‘no stopping except local buses’.

¹ The City of Edinburgh Council Parking Enforcement Protocol

- Bus stop clearways are in operation 24 hours a day, 365 days a year unless the sign states otherwise.
- They continue to operate even if the bus service is temporarily diverted as services may return at short notice.

The foregoing makes clear that these restrictions remain in force even in the event that a bus service is temporarily diverted, given that the services may return at short notice. In these circumstances the Council did make its policy clear in advance, and had the Appellant had recourse to same then he may have adopted a different course of action. I am not satisfied therefore that this ground of appeal has been established, and this Ground of Appeal therefore fails.

22. The fourth ground of appeal lodged by the Appellant states:

“The Traffic Signs Regulations and General Directions 2016 schedule 7 part 6 para 4.2.b conveys that prohibition of stopping a vehicle in a bus stop does not apply to a vehicle which is prevented from proceeding by circumstances beyond the driver’s control, and that this applies to the Appellant who, all circumstances considered including family circumstances as mentioned in the appeal, was not in a position to move the vehicle to any other location because surrounding parking areas were highly congested due to the road works. “

The Appellant refers to the terms of the foregoing paragraph which states:

*“ (2) The prohibition in paragraphs 1(1) and 3 does not apply in respect of
 (b) a vehicle which is prevented from proceeding by circumstances beyond the driver’s control or which has to be stopped in order to avoid injury or damage to persons or property”*

In the present Appeal the Appellant asserts that he was prevented from proceeding from the clearway due to family circumstances beyond his control. The Appellant makes reference to “family circumstances.” In this regard I have concluded that the Appellant has misdirected himself as to the intention of this provision. The paragraph refers to a vehicle being “prevented from proceeding” which indicates that the circumstances must cause the vehicle to stop and be unable to proceed further. It speaks to a physical impossibility in the vehicle being able to travel further. This was not the situation in the present case. There was nothing to physically prevent

the Appellant's vehicle travelling further. He chose not to do so however and to avail himself of parking facilities which were clearly more convenient him than seeking other, albeit less convenient, facilities elsewhere. In such a situation where there has been such a conscious choice the terms of the paragraph have clearly not been met. The high bar set in this section is demonstrated by the latter part thereof which states that the only other circumstances available is to avoid injury or damage to persons or property. There appears to have been no such risk in the present instance. I am not satisfied therefore that this ground of appeal has been established, and this Ground of Appeal therefore fails.

Decision

23. In these circumstances I am satisfied that the Penalty Charge Notice was validly issued and accordingly I refuse the Appeal.

24. Despite this decision, it remains open to the Appellant to ask the parking authority to look again at the imposition of the PCN and request that it should exercise its discretion not to insist on payment on compassionate grounds. That is a matter for the parking authority and I make no comment on whether they should do so

Parties Aggrieved by Decision

25. 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