



DECISION OF

SHERIFF GEORGE JAMIESON

**ON AN APPLICATION FOR PERMISSION TO APPEAL
(DECISION OF FIRST-TIER TRIBUNAL FOR SCOTLAND GENERAL REGULATORY
CHAMBER)
IN THE CASE OF**

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

Appellant

- and -

Glasgow City Council, 45 John Street, Glasgow, G1 1LY

Respondent

FTS Case reference: GP00321-2010

Paisley 13 November 2023

Decision

The Upper Tribunal for Scotland grants the Appellant permission to appeal to the Upper Tribunal for Scotland against the Decision of the First-tier Tribunal for Scotland dated 15 January 2021 refusing his appeal against the decision of the Respondent to reject his representations against a charge notice issued by the Respondent in respect of an alleged bus lane contravention by the

Appellant on 9 March 2020 at Dumbarton Road/Burnham Road, Glasgow, but only to the extent referred to in this Decision.

Introduction

[1] The First-tier Tribunal for Scotland refused the Appellant permission to appeal its Decision dated 15 January 2021 by a subsequent Decision to that effect dated 19 January 2023.

[2] The Appellant has accordingly applied to the Upper Tribunal for Scotland (the “UTS”) for permission to appeal. The UTS initially refused permission to appeal without a hearing by Decision dated 3 July 2023. The Appellant applied for reconsideration of that Decision. A Permission to Appeal Hearing was therefore held before the UTS by way of webex on 27 September 2023 in terms of rule 3(7) of the Upper Tribunal for Scotland Rules of Procedure 2016 to enable me to consider the reconsideration application. I have decided to grant permission to appeal for the reasons set out in this Decision. Before coming to those reasons, I briefly refer to the issues in this appeal and thereafter I discuss at greater length the relevant law necessary to an understanding of those issues.

The Issues in This Appeal and Permission to Appeal

[3] The Appellant submits that a bus lane road marking must be “solid, unbroken and continuous” and as the bus lane in question did not meet that description, then he did not contravene the relevant regulations discussed in this Decision by entering the bus lane.

[4] I do not agree with the Appellant that this is an accurate statement of the law. However, bus lane road markings must, in law, give adequate notice of the bus lane restriction to road users such

as the Appellant. I am not satisfied that the First-tier Tribunal for Scotland (the “FTS”) adequately addressed this legal requirement in refusing the Appellant’s appeal.

[5] Arguably, this amounts to an error of law on its part and I therefore grant the Appellant permission to appeal to the Upper Tribunal for Scotland against its Decision to refuse his appeal.

Relevant Law

[6] Approved local authorities, as in the case of the Respondent, may impose charges in respect of bus lane contraventions in accordance with regulations made under section 44(1) of the Transport (Scotland) Act 2001 (asp 2).

[7] Equivalent provision is made for England and Wales by section 72 of the Traffic Management Act 2004 (formerly section 144 of the Transport Act 2000).

[8] The Scottish Ministers in Scotland, and the Lord Chancellor in England and Wales, are empowered to make regulations concerning appeals in respect of the imposition of penalty charges for bus lane contraventions by virtue of section 44(7) of the Transport Act (Scotland) 2001 and section 80 of the Traffic Management Act 2004 respectively.

[9] The relevant regulations currently in force are:

- The Bus Lane Contraventions (Charges, Adjudication and Enforcement) (Scotland) Regulations 2011 (SSI 2011/442);
- The Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013 (SI 2013/359); and
- The Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (England) Regulations 2022 (SI 2022/576).

[10] A similar scheme applies in Scotland, Wales and England.

[11] The local authority issues a “charge notice” for a bus lane contravention (“CN”) (this is referred to a “penalty charge notice” (“PCN”) in England and Wales) against which the person issued with the notice may make representations to the local authority; the local authority must cancel the CN (or the notice to owner in Wales or enforcement notice in England) if one of the statutory grounds for cancellation applies; if it rejects the representations, it must issue a “Notice of Rejection” (“Decision Notice” in England), against which the person to whom the CN or PCN was issued may appeal, in Scotland, to the First-tier Tribunal for Scotland, General Regulatory Chamber, Transport Appeals (“The Transport Appeals Tribunal for Scotland”) or in England and Wales to an adjudicator; most appeals outside London are made to an adjudicator within the Traffic Penalty Tribunal.

[12] In each of Scotland, Wales and England, the appeal to the relevant tribunal will succeed if, amongst other appeal grounds, the tribunal concludes that “the alleged contravention did not occur”: regulation 9(2)(a), Bus Lane Contraventions (Charges, Adjudication and Enforcement) (Scotland) Regulations 2011; regulation 4(4)(a), Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013; and regulation 5(4)(a), Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (England) Regulations 2022.

[13] It is well-established that a failure to comply with the statutory duties as to road signage is a proper ground on which the transport appeals tribunal or the traffic penalty tribunal may allow an appeal against the issue of a penalty charge notice on the ground that the alleged contravention of the relevant traffic regulation order did not occur.

[14] This follows from established case law: see *R (on the Application of Nottingham City Council) v Bus Lane Adjudicator* [2017] EWHC 430 (Admin) (per Lang J, paragraph 38); *R (on the application of Herron) v Parking Adjudicator* [2011] EWCA Civ 905; [2011] R.T.R 34 (per Stanley Burnton LJ, paragraph 35). This line of authority is ultimately traced back to the Scottish case of *Macleod v Hamilton* 1965 S.L.T. 305; approved in *James v Cavey* [1967] 2 Q.B. 676.

[15] This principle is explained by reference to the statutory definition of a bus lane contravention. In Scotland, the relevant definition is found in section 44 (3) of the Transport (Scotland) Act 2001 which provides, amongst others, that a bus lane contravention is a contravention of any such provision of a traffic regulation order as relates to the use of an area of road which is or forms part of a bus lane. A traffic regulation order means, amongst others, an order under the Road Traffic Regulation Act 1984 regulating the use of roads by public service vehicles (section 48(1), Transport (Scotland) Act 2001).

[16] The procedure for making a traffic regulation order is, in Scotland, set out in the Local Authorities' Traffic Orders (Procedure) (Scotland) Regulations 1999 (SI 1999/614).

[17] Regulations 17(1)(f)(i) and (ii) provide:

- (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.

[18] It is thus a statutory duty, placed on the local authority, by way of erecting traffic signs on or near the road, to secure that adequate information as to the effect of the traffic regulation order is given to persons using the road and to maintain such signs for so long as the order remains in force. If it fails in that duty, then the transport appeals tribunal or the traffic penalty tribunal may allow an appeal against a local authority's decision to refuse to cancel a charge notice/notice to owner/enforcement notice on the ground the alleged contravention did not occur.

Traffic Signs

[19] "Traffic sign" is defined by section 64(1) of the Road Traffic Regulation Act 1984 as including any line or mark on a road for conveying warnings, information, requirements, restrictions or prohibitions of any description to traffic on roads specified by regulations made by the "relevant authority". Section 64(6A) defines the relevant authority in Scotland as the Scottish Ministers acting within devolved competence, or the Secretary of State otherwise.

[20] Also relevant is section 65(1) of the 1984 Act which allows a traffic authority (in this case, the local authority) to cause or permit traffic signs to be placed on or near a road, *subject to and in conformity with such general directions as may be given by the relevant authority* (emphasis added).

[21] The relevant regulations and directions for the purposes of this appeal were made by the Secretary of State under sections 64(1) and 65(1) of the 1984 Act and apply to the whole of Great Britain.

[22] These regulations and directions are contained within the Traffic Signs Regulations and General Directions 2016 (SI 2016/362) which, subject to savings provisions in regulation 14 and direction 13, replace the Traffic Signs Regulations and General Directions 2002 (SI 2002/3113).

[23] Regulation 11(1) of the 2002 Regulations required various road traffic signs “for conveying information or a warning, requirement, restriction, prohibition or speed limit” to be of the “size, colour and type” shown in the diagrams set out in the schedules to the Regulations. A bus lane road marking is shown as diagram 1049 in schedule 6 “road markings” as a line that would fit with the Appellant’s description of the line as being “solid, unbroken and continuous”.

[24] Regulation 3(1) of the 2016 Regulations is worded differently from regulation 11(1) of the 2002 Regulations. It provides that a traffic sign that conveys “a warning, information, requirement, restriction or prohibition of a description specified in these Regulations” is of a prescribed size, colour and type “if it complies with all applicable requirements provided for in these Regulations”.

[25] A diagram of a bus lane appears as item number 11 in part 6 of schedule 9 to the 2016 Regulations. Schedule 9 is headed “regulatory signs at junctions and miscellaneous regulatory signs” and part 6 thereof is headed “regulatory road markings”. The diagram of a bus lane at item 11 is numbered diagram 1049A. It corresponds to former diagram 1049 (Department for Transport Circular 01/2016, *The Traffic Signs and General Directions 2016*, Appendix B, Table 23.6).

[26] “Bus lane” is defined for the purposes of the 2002 and 2016 Regulations as, amongst others, a traffic lane reserved for buses (2002 Regulations, regulation 23; 2016 Regulations, schedule 1, definitions of bus and bus lane).

The Traffic Order

[27] There is no dispute in this case that the Appellant drove his vehicle into a bus lane contrary to the prohibition in the applicable traffic regulation order made by Glasgow City Council under the Road Traffic Regulation Act 1984.

[28] The Respondent has supplied me with an Order dated 2003 whereas the FTS Decision refers to an Order dated 2004. In either case, both of these Orders were made when the Traffic Signs Regulations and General Directions 2002 were in force. The earlier Order was amended to refer to definitions in the 2002 Regulations.

[29] Regulations 14(1) (a) and (2) of the Traffic Signs Regulations and General Directions 2016 Regulations provide that a sign in place immediately before the coming into force of the 2002 Regulations which was of a size, colour and type prescribed by the 2002 Regulations is to be treated as being of a size, colour and type prescribed by the 2016 Regulations.

The Traffic Signs Manual

[30] The Department for Transport issues statutory guidance on traffic signs, known as the *Traffic Signs Manual*, for the benefit of traffic authorities and their contractors, designers and managing agents in the United Kingdom. The current version was issued in 2018 onwards to take account of the coming into force of the Traffic Signs Regulations and General Directions 2016 in Great Britain. Northern Ireland has its own traffic signs regulations separate from the 2016 Regulations. The Manual is a United Kingdom document as it contains information on Northern Ireland.

[31] Chapter 3, issued in 2019, is entitled “Regulatory Signs”. It contains guidance on bus lanes at section 9 of the chapter, pages 89 – 104. Paragraph 9.3.2 of chapter 3 of the *Manual*, in relation to “with-flow bus lanes”, as in this case, states that the bus line is separated from the rest of the carriageway by a *continuous line* to diagram 1049A (S9-6-11). The width of the line is 250 or 300 mm depending upon site conditions, particularly the width of road available. The wider line might be appropriate where the speed limit is 40 mph or greater.

[32] This is the closest I can find to the Appellant's suggestion that the *legislation* requires all bus lane lines to be "solid, unbroken and continuous"; by "unbroken", he meant the lines must not be broken, fractured or damaged; and by "solid", he meant they required to be firm and stable in shape. However, I cannot find any legislative provision to this effect.

[33] The Appellant explained to me at the oral hearing on permission to appeal that he found this phrase in a book he bought in a second hand book shop in Glasgow on road traffic signs some years previously.

[34] The book had been published by HMSO. He had misplaced the book so could not refer me to its terms.

[35] I accept the Appellant may have come across the phrase "solid, unbroken and continuous" in an HMSO publication he purchased in a second hand book shop in Glasgow some years ago; however, this publication was not available for me to check; moreover, if this publication were guidance from the Department for Transport on road traffic signs, then it has probably been superseded by the current version of the *Traffic Signs Manual* issued from 2018 onwards to take account of the Traffic Signs Regulations and General Directions 2016.

Grounds of appeal and the Hearing on Permission to Appeal

[36] With this lengthy introduction, I come now to consider the Appellant's submissions that the FTS had erred in law in determining his appeal. I had the benefit of hearing in person from the Appellant in this regard at the Permission to Appeal Hearing held by way of webex on 27 September 2023. Mr Andrew Beglin, the Group Manager of Parking Services for Glasgow City Council, appeared on behalf of the Respondent at this hearing.

[37] The Appellant's first ground of appeal was that the bus lane did not conform to the description of a "solid, unbroken and continuous" white line shown in diagram 1049 of the 2002 Regulations.

[38] Since diagram 1049A shown in the 2016 Regulations is the equivalent of diagram 1049, it appears to me to be immaterial whether the 2002 or 2016 Regulations apply to this case.

[39] The Appellant's second ground of appeal was the FTS had not taken into account, in its Decision, evidence the Appellant had presented to the FTS showing that the bus lane was not a solid and unbroken line for its whole length.

[40] His position was he had entered the bus lane on leaving a parking bay at a point where the road signage was significantly degraded with a view to joining the main carriageway, but had been forced to continue in the bus lane as no driver in the carriageway would initially allow him to exit the bus lane. He was only able to exit the bus lane at a point where the bus lane was not in a degraded state; the Respondent's camera recorded him being in the bus lane at a point when the lane was shown as "solid, unbroken and continuous".

[41] Mr Beglin's position was that the Appellant did not dispute entering and driving along the bus lane.

[42] He submitted that the bus lane was a continuous white line at the point the Respondent's camera photographed the Appellant driving his vehicle within the bus line and therefore the alleged contravention had been established.

[43] He therefore submitted that permission to appeal should be refused because the FTS had reached the correct conclusion in this regard.

Discussion

[44] The Bus Lane Contraventions (Charges, Adjudication and Enforcement) (Scotland) Regulations 2011 do not allow the FTS or this Tribunal to consider the appeal on the basis of compelling circumstances. The issue, therefore, is whether the Appellant has an arguable ground of appeal that the alleged contravention did not occur.

[45] In my opinion, the first ground of appeal is not arguable. This matter has been settled by the decision of the Court of Appeal in *R (on the application of Herron) v Parking Adjudicator* [2011] EWCA Civ 905; [2011] R.T.R 34.

[46] As has been pointed out above, the legislative scheme in Scotland is similar to that in England. The issue is not strict compliance with the Traffic Signs Regulations and General Directions 2002 or 2016, but whether in terms of regulations 17(1) (f)(i) and (ii) of the Local Authorities' Traffic Orders (Procedure) (Scotland) Regulations 1999 (SI 1999/614) the Respondent erected and maintained traffic signs on or near the road "for the purpose of securing that *adequate* information as to the effect of the order [was] given to persons using the road" (see *R (on the application of Herron) v Parking Adjudicator* per Stanley Burnton LJ, paragraphs 35, 37, 41 and 43, emphasis added).

[47] The question of adequate notice is of one fact and degree, for assessment and evaluation by the traffic appeals tribunal in Scotland or by the traffic penalty tribunal in England and Wales (*R (on the application of Herron) v Parking Adjudicator* per Stanley Burnton LJ, paragraph 47; *R (on the application of Oxfordshire County Council) v Bus Lane Adjudicator* [2010] EWHC 894 (Admin); *R (on the Application of Nottingham City Council) v Bus Lane Adjudicator* [2017] EWHC 430 (Admin)).

[48] In addressing this issue, the question to be asked by the tribunal is whether the road traffic sign was:

“in substantial compliance with the statutory specification, and not such as to mislead or fail to inform the motorist”; “absolute and strict compliance with the [statutory] specification of the sign” is not essential (*R (on the application of Herron) v Parking Adjudicator* per Stanley Burnton LJ, paragraph 43, emphasis added).

[49] I am however of the opinion that the Appellant’s second ground of appeal is arguable for three reasons.

[50] First, the Decision of the FTS refers only to the evidence of the alleged contravention submitted by the Respondent; it does not specifically refer to nor discuss the Appellant’s photographic evidence showing the bus lane road line was significantly degraded at the Appellant’ point of entry to the bus lane.

[51] Secondly, the FTS did not consider the requirement set out in paragraph 9.3.2 of chapter 3 of the *Traffic Signs Manual* that the bus line required to be separated from the rest of the carriageway by a continuous line to diagram 1049A (S9-6-11); instead, the FTS focused only on the condition of the bus lane at the point the alleged contravention was recorded by the Respondent’s camera.

[52] Thirdly, the FTS did not identify and ask the specific question identified by Stanley Burnton LJ at paragraph 43 of *R (on the application of Herron) v Parking Adjudicator*.

[53] That question was whether the road traffic sign, in other words the line marking out the bus lane, was “in substantial compliance with the statutory specification, and not such as to mislead or fail to inform the motorist”.

Conclusion

[54] The Appellant is granted permission to appeal. His submission that absolute and strict compliance with diagram 1049/1049A is required is not arguable. His appeal will proceed on the basis of the three arguable errors of law in the approach adopted by the FTS discussed in paragraphs [50] – [53] above.

[55] This concludes my Decision in respect of the Appellant's application for permission to appeal against the Decision of the First-tier Tribunal for Scotland dated 15 January 2021.

George Jamieson
Sheriff of North Strathclyde
Judicial Member of the Upper Tribunal for Scotland