Upper Tribunal for Scotland

2026UT81
Ref: UTS/AP/26/0078

DECISION OF

Sheriff Colin Dunipace

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

Mr Alasdair MacKenzie

Appellant

- and -

The City of Edinburgh Council

Respondent

FTS Case Reference: EB00020-2502

28 October 2026

Decision

The Upper Tribunal refuses permission to appeal.

Introduction

1. Mr Alasdair MacKenzie (hereinafter referred to as "the Appellant"), has submitted an application seeking permission to appeal a decision of the First-tier Tribunal (hereinafter referred to as "the Tribunal") dated 16 October 2025 following a Hearing that day refusing the Appellant's

appeal against the imposition of a Bus Lane Charge Notice (hereinafter referred to as the "Charge Notice") issued on 28 November 2024 relating to an alleged incident on 22 November 2024, when the Appellant was said to have driven his motor vehicle registration number WF17FRJ in a Bus Lane on Liberton Road, Edinburgh at 09.01

2. At the initial hearing the Appellant represented himself and the Council was unrepresented. The Appellant asserted that the bus lane in question was not properly marked and was therefore non-enforceable. He stated that there was no 962 sign on the Esselmont Road/ Gordon Terrace approach to the Craigmillar park / Liberton road traffic lights, and the 962 sign on the Lady Road approach to these lights was dirty and heavily grown with green algae, meaning that they were not readily readable. The Appellant also asserted that the 958 sign was at an angle that made it unreadable, whilst the 959 sign was also heavily grown with green algae and at an angle which made it unreadable. This sign was also said to have been obscured by buses on the approach making it unreadable, and further a parked/ broken down car in the bus lane distracted from observance of the aforementioned sign.

3. Having heard submissions from the Appellant and considered the written submissions of the Council in response, the Appellant's appeal was refused and full written reasons for this decision were provided in the aforementioned determination by the Tribunal. I do not at this stage intend to rehearse the reasons provided by the Legal Member in this determination.

4. The Appellant sought a review of this decision, which was refused on 31 October 2025 on the basis that the application was wholly without merit, given that the matters raised did not amount to points of law. The statement of the review decision was issued on 16 April 2026.

5. The Appellant thereafter submitted an application for permission to appeal on the grounds that:

- The Bus Lane was not properly identified due to inadequate signage.
- The Legal Member misdirected himself in discounting evidence of obstruction of the signage by the traffic

- The Legal Member misdirected himself, disregarding probability that drivers would be unable to see signage blocked by buses.

6. Permission to Appeal against this decision was refused on the basis that the Grounds of Appeal as stated did not constitute points of law as required with full reasons for that decision being provided by a Legal Member on 17 May 2026

7. At this stage the Appellant now seeks permission to appeal in respect of the Following Grounds:

- Paragraph 15 of the legal member accept my statement that the bus lane start sign becomes visible at 21 metres. The minimum sighting is 30 meters at 30 MPH. The legal member is wrong in law to regard this as acceptable signage. Paragraph 18 the legal member describes signage obstructed by a row of buses as a fact that road users have to cope with, despite my video evidence clearly shoeing the bus lane advance sign screened by a convoy of buses for several minutes during which 45 vehicles passed the bus lane advance sign. This is wrong in law.
- Paragraph 20 the legal member describes the signage and road markings as adequate, this directly contradicts the evidence presented and is an error in law.

The Relevant Law

8. 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"). It is also submitted in terms of rule 3(6) of the Upper Tribunal for Scotland (Rules of Procedure) Regulations 2016, where the First-tier Tribunal has refused permission to appeal, the Upper Tribunal may give permission to appeal if "the Upper Tribunal is satisfied that there are arguable grounds of appeal. The phrase "arguable grounds for the appeal" is not defined within the statute.

9. In essence, therefore, the task of the Upper Tribunal is to ascertain, with reference to the material submitted, whether the Appellant has identified an error of law that is capable of being stated or argued before the Upper Tribunal at a Hearing. As indicated, that is a relatively low threshold.

10. 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 Rule is to be made—*
>
> *(a) by a party in the case,*
>
> *(b) on a point of law only.*
>
> *(3) An Appeal under this Rule requires the permission of—*
>
> *(a) the First-tier Tribunal, or*
>
> *(b) if the First-tier Tribunal refuses its permission, the Upper Tribunal*

11. Accordingly, and 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)). The grounds of this appeal are as stated above at paragraph 7 above.

The Application for Permission to Appeal

12. As indicated above, permission to appeal is now sought on the foregoing Grounds.

The Hearing

13. The Hearing in respect of this matter took place on 21 October 2026 by WebEx. The Appellant appeared on his own behalf, and the Council were not represented, and had lodged no further written submissions. I have taken cognisance of all of the submissions, oral and written received in this case.

14. At the Hearing the Appellant adopted his earlier written submissions. He also expanded upon these with oral representations. He stated that he was not aware that there were active bus lane restrictions in place at the locus. Due to the state of the signage he had concluded that the bus lane had been abandoned, given that he thought that there were signs missing and that the whole thing was a "shambles". The Appellant thought that the road markings were not properly visible and that the lack of adequate signage and markings were indicative of the fact that the bus lane was not longer active.

15. He accepted that he had crossed a solid white lines to enter what may previously have been a bus lane but stated that he did so as he was approaching a junction where he intended to turn left, and as he considered that the bus lane had been abandoned that he ascribed no particular significance to this.

16. The Appellant accepted that he had been aware of the previous existence of the bus lane at the locus, and that he had already paid a Charge Notice for encroaching on this bus lane, however he maintained that it was only at that stage that he accepted that the bus lane in question was operational, and that thereafter, due to its condition, he came to regard it as having been abandoned. At the relevant time he considered that due to the lack of maintenance and proper signage that the bus lane had been abandoned at some point after the time of his first contravention.

Discussion

17. 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"). It is also submitted in terms of Rule 3(6) of the Upper Tribunal for Scotland (Rules of Procedure) Regulations 2016, where the First-tier Tribunal has refused permission to appeal, the Upper Tribunal may give permission to appeal if "the Upper Tribunal is satisfied that there are arguable grounds of appeal. The phrase "arguable grounds for the appeal" is not defined within the statute.

18. Case law in other situations is of assistance. For example, in Czerwinski v HM Advocate 2015 SLT 610, the court was formulating the appropriate test for the grant of permission to appeal in an extradition case in the absence of statutory guidance. It settled on adopting the test applicable to criminal appeals: "do the documents disclose arguable grounds of appeal?" in terms of Rule107 of the Criminal Procedure (Scotland) Act 1995.

19. In Wightman v Advocate General 2018 SC 388 Lord President Carloway (at paragraph 9) observed that arguability and stateability were synonyms. That was said to be a lower threshold than "a real prospect of success", the test applicable in deciding whether to grant permission for an application to the supervisory jurisdiction to proceed, in terms of Rule27D(3) of the Court of Session Act 1988, as amended. The threshold of arguability is therefore relatively low.

20. Advocate General for Scotland v Murray Group Holdings Ltd [2015] CSIH 77; 2016 SC 201 (affirmed by UKSC in [2017] UKSC 45; 2018 SC (UKSC) 15) concerned an appeal from the Tax & Chancery Chamber of the First-Tier Tribunal under Rule13 of the Tribunals, Courts & Enforcement Act 2007. An appeal to the Upper Tribunal was available "on any point of law arising from the decision made by the First-Tier Tribunal." The appeal thereafter to the Court of Session is "on any point of law arising from a decision made by the Upper Tribunal." It was in this context that the Inner House examined what was meant by "a point of law." It identified four distinct categories that an appeal on a point of law covers:

(i) General Law, being the content of rules and the interpretation of statutory and other provisions;

(ii) The application of law to the facts as found by the First-Tier Tribunal;

(iii) A finding, where there was no evidence, or was inconsistent with the evidence; and

(iv) An error of approach by the First-Tier Tribunal, illustrated by the Inner House with examples: "such as asking the wrong question, or by taking account of manifestly irrelevant considerations or by arriving at a decision that no reasonable tax tribunal could properly reach." ([41]-[43])

21. 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 an arguable point of law (section 46(2)(b)). A disagreement of opinion or over factual findings or conclusions is insufficient. Permission can only be granted if there is arguably a relevant or material legal error in the Tribunal's decision. Simply disagreeing with the Tribunal's original decision is not in itself a point of law.

Discussion

22. Dealing with the Appellant's Grounds, whilst these are expanded upon in some detail and are supported by video evidence, his basic premise is that he was not aware that there was an operational bus lane at the locus because of inadequate signage. As indicated the Appellant has submitted that for a variety of reasons, the signage did not meet acceptable standards, including because of being at an oblique angle, and due to being dirty and coated with green algae. Further the positioning of the signage was such that it often could not be viewed due to passing vehicular traffic. The fact that signage must be adequate was accepted by the Legal Member in his Determination, wherein reference is made to the cases of MacLeod v Hamilton 1965 SLT 30, and R (Herron and Another) v Parking Adjudicator [2011] EWCA Civ 905. It is clear therefore that the

Legal member was fully aware of the requirements of signage and road markings, and took these into account.

23. The Legal Member also had the benefit of considering the photographic and video evidence submitted by both Council and by the Appellant. In his Determination it is clear that the Legal Member has fully considered the extent of this evidence in concluding that whilst not perfect, that perfection is not necessary in this context, and that the proper approach was to look at the signage as a whole. Account must also be taken of road markings as well as the signage and in this regard the Legal Member was able to observe that there was a clearly visible broad white painted line separating the bus lane from the main carriageway.

24. I consider that the question of whether the signage in the individual circumstances of this particular matter was adequate was a matter of fact for the Legal Member as the original fact finder to determine. It is clear that the Legal Member approached this matter in an appropriate manner applying the proper tests, all as set out in the Determination. Looking at all factors together, the Legal Member concluded that the signage was adequate. That was a finding of fact and not a question of law such as would justify the granting of permission to appeal. Having viewed the evidence, the Legal Member was well placed to come to the conclusion that he did, and this was a finding of fact for him to make which did not disclose any arguable error of law.

25. I consider also that the fact that the Appellant had previously driven in this particular bus lane on 27 February 2024, some nine months before, was of significance and was clearly indicative of the fact that he was well aware of the existence of this bus lane. He had accepted his culpability on that previous occasion and had paid that particular Charge Notice. The Appellant's present position to the effect that he was not aware of this bus lane or believed that it had been "abandoned" was difficult to reconcile with the surrounding circumstances. In this regard I noted that the Appellant had been somewhat unclear on this point at the time of the original hearing. The existence of some dirt or algae on a sign, or its being at a slight angle were hardly indicative of a bus lane, that he was well aware of, had been abandoned in the absence of any other indicators

that this was the position. Indeed, there remained plenty of contra-indicators, such as the fact that the signs remained in situ, and the fact that there was a clear solid white line separating the bus lane from the main carriageway, the crossing of which the Appellant accepted in the absence of any explanation from him as to what he believed this signified. As indicated by the Legal Member, any lack of adequate signage (which was not accepted by him) would not have justified allowing the appeal in the absence of any indication that there was a causal link between any inadequacy and the actions of the driver in committing the contravention. I agree with this summation.

26. Accordingly I am not satisfied that the Appellant has demonstrated any error of law in terms of the case of Advocate General for Scotland v Murray Group Holdings Ltd [2015] CSIH 77, as set out in paragraph 20 above.

27. Particularly in light of the Appellant's previous contravention in the same bus lane, (which the Legal Member was entitled to take account of in terms of the case of Strathmore Group v Credit Lyonnais 1994 SLT 1023), I am satisfied that the proposed appeal discloses no arguable point of law and is wholly without merit.

28. In light of this fact I did consider whether an award of expenses might be awarded against the Appellant given that the Appeal was so obviously devoid of merit in terms of section 64 of the Tribunals (Scotland) Act 2014. However I have ultimately determined that the test for making such an award has not on this occasion been met, and accordingly I will decline to make such an award.

Decision

29. Having regard to the foregoing, permission to appeal is refused.

Sheriff Colin Dunipace
Judge of the Upper Tribunal