Upper Tribunal for Scotland

[2021] UT 10
UTS/AP/20/0025

DECISION NOTICE OF SHERIFF COLIN DUNIPACE

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

in the case of

MR PATRICK DOHERTY, 17 Douglas Crescent, Edinburgh EH12 5BA

Appellant

and

CITY OF EDINBURGH COUNCIL, City Chambers, High Street, Edinburgh EH1 1YJ

Respondent

FTT Case Reference ED00275-1911

27 January 2021

Decision

Permission for leave to Appeal is refused.

Introduction

[1] By letter of 24 November 2020 Mr Patrick Doherty (hereinafter referred to as "the appellant") submitted the following documentation in support of his application for permission to appeal a decision of the First- tier Tribunal, namely:

a. Form UTS-1

b. Adjudicator's decision

c. Decision to refuse Review

d. Application to First-tier Tribunal for Permission to Appeal

e. Decision of First-tier Tribunal refusing Permission to Appeal

[2] By way of background it can be noted that a Penalty Charge Notice ED33010520 was issued to the appellant in respect of an alleged parking contravention at 09.38 on 29 October 2019 in Douglas Crescent, Edinburgh, the nature of said allegation being that the appellant had parked in a restricted street during prescribed hours. The appellant lodged an appeal against this Penalty Charge Notice on 15 November 2019 to the Parking and Bus Lane Tribunal for Scotland.

[3] Given that the appellant had requested that his appeal be dealt with by way of a personal hearing, the matter was set down for an In-Person Hearing on 29 July 2020. At this Hearing the appellant was personally in attendance, represented by Mr Drummond. (The status of Mr Drummond is not clear, but in any event he was permitted to act as a representative by the Tribunal). Edinburgh City Council were represented at this Hearing by Mr Hutchison. The appellant gave evidence on his own behalf, as did Ms Jacqueline Kirkpatrick, who also gave evidence on his behalf.

[4] The Tribunal subsequently determined that the contravention had occurred, that the Penalty Charge Notice had been properly issued, and that that it should not be rescinded. Further it was determined that the vehicle tow release fee should not be refunded. The Appeal was accordingly dismissed. The full reasons for the decision of the Tribunal are as set out in the decision of 29 July 2020.

[5] The appellant thereafter requested a review of the foregoing decision under Rule 17 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 of Procedure') on 27 August 2020. This request was considered by the Chamber President, on 9 September 2020. The foregoing decision is referred to for its terms in relation to the procedural history of the Appeal to that date.

[6] This application for review was refused on 9 September 202 on the basis that the appellant had not lodged his application for Review within 14 days of the date of the decision of the Tribunal in terms of Rule 17(3)(b) of the foregoing Rules of Procedure. This decision made reference to the fact that the original decision of the Tribunal to refuse the appeal had been made on 29 July 2020, and that the terms of Rule 17(3)(b) of the Rules of Procedure required that an application for a review must be made within 14 days of the decision being made, or within 14 days of the date upon which the written reasons were sent to the applicant. It was accordingly observed, and I do not understand that issue has been taken with this assessment, that an application for review should have been submitted by 12 August 2020.

[7] In terms of the chronology of the application for review as set out in the decision of the Chamber President the following occurred:

a. On 6 August 2020 the appellant wrote to the Tribunal indicating a desire to appeal the decision of 29 July 2020, stating that he was unclear on the method of appeal and also questioning the forum for any such appeal. The First-tier Tribunal responded to the appellant indicating that they were at that stage unclear as to whether he was intending to apply for a review of the decision of the Tribunal, or rather was intent upon appealing that decision to the Upper Tribunal.

b. As a result of the perceived ambiguity of the appellant's position the Proper Officer of the First-tier Tribunal contacted him by email, advising him regarding the procedure for an application to review the decision, and also advising that if he did wish to lodge an appeal against the decision, that he should contact the Tribunal intimating his intention to do so. It was stated that further information regarding the review procedure was furnished to the Appellant by email.

c. The appellant subsequently contacted the Tribunal on 10 August 2020 advising that having considered the grounds available allowing him to seek a review of the Adjudicator's decision, that he had concluded that he in fact wished to lodge an appeal against that decision. Upon receipt of this clarification the approach adopted by the Tribunal at that time was to consider that the Appellant had removed any lingering ambiguity regarding his intentions, and that it was apparent that he did not wish to review the previous decision but instead wished to lodge an intention to appeal that decision.

d. On the same date, namely 10 August 2020, the appellant stated in another email to the Proper Officer that unfortunately he believed that she may have misread his earlier message as he had asked not about how to seek a review but instead how to lodge an appeal. He also sought further information from the Proper Officer regarding the appeal process, and from this request the Tribunal concluded that he had expressed his intention clearly to the extent that he wished to appeal against the decision previously made rather than to seek to review the decision.

e. The appellant contacted the Proper Officer again (presumably by email) on 13 August 2020 seeking a response from the Proper Officer given his anxiety about the appeal process. The appellant does not appear to have made any reference to any

review of the previous decision within this email. A further email was sent by the appellant to the Proper Officer on 19 August 2020 requesting that progress be made in relation to his proposed appeal given that he presumed there might be a time limit for lodging same. The Tribunal again observed that there was no suggestion in this further email of any intention on his part to apply for a review of the decision.

[8] The position of the Tribunal appears to be that the purported application for review by the appellant was in any event out of time. The matter was formally considered by Chamber President Green in terms of Rule 17 of the First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Lane Appeals (Rules of Procedure) Regulations 2020 on 9 September 2020. In reaching his decision the Chamber President made reference to the foregoing chronology which he concluded demonstrated that the intention of the appellant was to appeal the decision to the Upper Tribunal and not to seek a review had been made clear and that he was aware of the difference between these procedures given that he subsequently applied to the First-tier Tribunal on 27 August 2020. Accordingly this application was out of time.

[9] The Tribunal observed that Rule 4 of the aforementioned 2020 Rules of Procedure conferred case management powers on the Tribunal and that in particular that Rule 4(3)(a) provided that the Tribunal may by order extend or shorten the time for complying with any rule, practice direction or order. In the present case the Chamber President indicated that he was unable to consider making any such order given that the appellant had not explained why he had delayed making his application for a review until 27 August 2020. The Chamber President thereafter went on to observe that the appellant's application may have been clear, but that it did not explain or give any reason for the delay in the making of that application, and as such said application was to be disallowed as having been lodged too

late. In his decision the Chamber President further observed that the terms of the Tribunals (Scotland) Act 2014 section 43(4) provided that the exercise of discretion whether a decision should be reviewed was a decision which could not in itself give rise to any further review or appeal.

[10] Following the issuing of the aforementioned decision the appellant contacted the Proper Officer by email on 18 September 2020, referring to the aforementioned decision of the Chamber President, indicating his disappointment with that decision given his position that he had not been aware that his application for review was out of time, and advising that if he had he been so aware that this factor was to be considered that he would have explained in his application the reason for the delay in its lodging, which he attributed to correspondence with the Tribunal 'straightening out what was needed etc'. The appellant indicated that he wished to know what he could do to further to progress matters, and enquired about the procedure and time-limits for lodging an appeal.

[11] The appellant contacted the Tribunal by email on 23 September 2020 indicating that he had not received a reply to his email of 18 September 2020 and had called the offices of the tribunal on a number of occasions. The appellant stated that he considered that he had no option other than to seek permission to appeal to the Upper Tribunal and that his correspondence of 23 September 2020 should be treated as constituting his application for such permission. The appellant made reference to the fact that his application for review had been refused on the basis that it was lodged out of time and that no(t) request for it to be received and considered late had been made along with his application for review. The appellant requested that the contents of his correspondence be taken into consideration when his application for permission to appeal was to be considered.

[12] The appellant opined that he had always considered that an appeal rather than the review was the correct way to proceed in his case although previous correspondence and in particular a telephone conversation of 25 August 2020 meant that he had been persuaded by the Tribunal that he should lodge an application for review and not an appeal. The appellant stated that that having done so on 27 August 2020 that at no time had he been advised that time that the time for lodging his application had passed and that when lodging the application that he should ask for it to be received late. He stated that had he been so asked that he would have complied with this request. The appellant observed that had such information be provided by him then the likelihood was that the review would have proceeded, and stated that the reason his application for review was late was because he had been in correspondence with the Tribunal about best to proceed with this case. The appellant stated that he now wished to appeal to the Upper Tribunal on a number of points of law. These points of law were as follows:

a) The Adjudicator erred in law by failing to specify the 'range of factors' where which were taken into account in reaching her decision;

b) The Adjudicator erred in law by failing to specify what weight was attached to any of the said factors;

c) The Adjudicator's decision states that she considered 'all of the evidence in the round'. The Adjudicator asked in law by failing to specify what evidence was accepted, what evidence was rejected and what weight was attached to the pieces of evidence which were before the Tribunal and which resulted in the Adjudicator's decision;

d) The Adjudicator out in law by failing decision to detail or explain her acceptance or rejection of any part of the 13 pages of Final Submissions lodged by me or how those submissions were taken into account in coming to her decision;

e) The Adjudicator erred in law by wrongly determining that the issue to be determined in my appeal was whether or not a Northern Ireland Organisational Blue Badge on my vehicle was valid at the time based on the Northern Ireland Blue Badge Scheme. The correct issue for determination was whether or not the use of that Badge at the relevant time was in accordance with the terms and conditions of the Scottish blue badge scheme. The proper issue for determination was not whether or not the badge was being used here to drop off or pick up a disabled person but whether issues with a valid and proper use of the badge terms of the terms and conditions of the Scottish Blue Badge Scheme. In terms of that Scheme my vehicle could be validly part for up to 3 hours. My vehicle had been observed for a period of only 20 minutes before the issue of the relevant penalty notice;

f) The Adjudicator erred in law in finding that there was evidence before the Adjudicator to enable a determination to be made that my vehicle was not part in order to drop off or pick up a disabled person.

[13] This matter was subsequently considered by a Legal Member on 27 October 2020 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) (hereinafter referred to as 'the Procedure Rules') in relation to a request for permission to appeal under section 46(3) of the Tribunals (Scotland) Act 2014. The decision of the Tribunal was to refuse permission to appeal on all grounds in terms of Rule 18 of the Procedure Rules.

[14] Full written reasons for the refusal of leave to appeal were provided by the Legal Member on 27 October 2020. In this decision the Tribunal observed that by letter dated 6 August 2020 that the appellant had written to the Tribunal indicating that he wished to appeal against the decision of 29 July 2020. Reference was made to the various communications which had taken place between the appellant and the Tribunal administration regarding the grounds upon which he could seek a review and the format any appeal or review might take. Particular reference was made to the appellant's correspondence of 10 August 2020 in which he stated that 'having looked on the grounds available to request a review of the decision in my case I have come to the view that I will in fact required to appeal this decision'. At that time the appellant sought further information in relation to whether he required to complete a separate form, and following further correspondence between the appellant and the Tribunal between 10 August 2020 and 19 August 2020, on 27 August 2020 that the appellant had duly lodged a review application which was subsequently rejected as being out of time by the Chamber President on 9 September 2020, all as set out above.

[15] It was noted thereafter that the appellant had subsequently written to the Tribunal on 23 September 2020 seeking leave to appeal to the Upper Tribunal following the rejection of the Review request. The Legal Member made reference to section 2 of the Scottish Tribunal's (Time Limits) Regulations 2016 which provides that an application for permission to appeal against a decision must be received within 30 days of the date that decision was sent to the applicant. Further reference was made to Rule 18(7) of the foregoing Regulations which provided that the time limit excluded 'any review period in terms of rule 17'. Further reference was made to the terms of Rule 18(8) of the relevant Regulations which provides that the review period should 'start on the day the request for review under rule 17 is

received by the First-tier Tribunal … and ends on the day that the First-tier Tribunal decision under review is sent to the parties.'

[16] It was observed by the Legal Member that in the present case the review was requested on 27 August 2020 and the date on which the decision on that review was sent to the parties was 9 September 2020. It was further observed that the original decision was made and intimated to the parties via the FOAM Case Management System on 29 July 2020. It was calculated therefore that the 30 day period to seek permission to appeal would thus have expired on 28 August 2020. In the present case there was also a review period of 14 days which should be taken into account allowing for the Review process which took place between 27 August 2020 and 9 September 2020, which period fell to be disregarded in the calculation of the 30 day period in terms of Rule 18(7) of the Rules. Taking account of these time periods the Legal Member had come to the conclusion that the period during which leave to appeal could be sought expired on 11 September 2020. Given that the present Appeal was lodged on 23 September 2020, this suggested that it had not been timeously lodged.

[17] Reference was subsequently made by the Legal Member to the terms of section 2(2) of the aforementioned Scottish Tribunals (Time Limits) Regulations 2016 which permit the Tribunal to extend said period on cause shown, and consideration was given to whether the Legal Member should allow this to be received. The Legal Member of the First-tier Tribunal noted that in the appellant's letter of 23 September 2020 seeking leave to appeal, that he asked that his application to be allowed although late. The Legal Member indicated that the Tribunal was in fact prepared to extend the period on cause shown given the explanation provided by the appellant and having reference to the extensive correspondence between him and the First-tier Tribunal administrative staff which correspondence indicated that he

sought assistance to ascertain the form and any time limits involved in the review and appeal process, and that any delay in the process might have been attributable to a misinterpretation on the part of the administrative staff in providing information on the lodging of a review rather than on lodging an appeal.

[18] Reference was thereafter made by the Legal Member to the terms of Rule 18(3) of the Procedure Rules which provides that the written application to the Tribunal for permission to appeal must:

a) identify the decision of the First-tier tribunal to which it relates;

b) identify the alleged point or points of law on which the person making the application wishes to appeal; and

c) state the result the person making the application seeking.

[19] The Legal Member of the First-tier Tribunal has concluded that the letters of 6 August 2020 and 23 September 2020 when taken together identified clearly the Tribunal decision to which the application for permission to appeal relates. In particular the appellant's letter of 6 August 2020 quotes information from the Tribunal's website on appeals and specifically references the paragraph which clearly identifies the three requirements outlined above. From this reference the legal member indicated satisfaction that the appellant was clearly aware of these requirements, and that despite this that his letter of 23 September 2020 did not state the result that he was seeking. In particular the aforementioned letter of 23 September 2020 from the appellant states: 'I look forward to hearing from you in acknowledgement of this application for permission to appeal and that is now under consideration'. The legal member thereafter concluded that whilst this letter clearly identifies that the appellant wishes leave to appeal, that it does not state the result that he is seeking.

[20] The Legal Member accordingly refused leave to appeal on the basis that the application for leave to appeal lodged by The appellant did not meet the requirements stated in rule 18(3) (c) of the aforementioned Procedure Rules.

[21] The Appellant now appeals against the foregoing decision.

Grounds of appeal

[22] In his notice of appeal dated 24 November 2020 the appellant states on form UTS-1 that:

> "The First Tier Tribunal erred in law in determining that my Application for permission to appeal did not state resulting was seeking. It is clear in all the papers which were before the First Tier Tribunal when it considered my Application for Permission to Appeal exte4nding *(sic)* to 20 pages that the result which was being sought was the quashing of the Adjudicator's Decision of 29 July 2020. Indeed as a matter of law this is the only possible result I could seek which could be granted."

Discussion

[23] 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, whilst the index contravention was alleged to have occurred on 29 October 2019, that is prior to the integration of the Parking and Bus Lane Tribunal into the General Regulatory Chamber, given that the appellant's appeal was considered by the Legal Member of the First-tier Tribunal and the determination issued on

29 July 2020, there does exist a statutory right to seek permission to appeal to the Upper Tribunal for Scotland in relation to this matter.

[24] 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.

[25] Certain First-tier Tribunal decisions are excluded decisions in terms of section 51 of the 2014 Act which cannot be appealed to the Upper Tribunal. All of these matters are set out in detail at Part 6 Chapter 1 of the 2014 Act. In particular so far as relevant, section 51 provides:

> "A decision falling within any of sections 52 to 54 is an excluded decision for the purposes of— … (b) an appeal under section 46 or 48."

Section 52 deals with decisions on review. So far as relevant, it provides:

> "(1) Falling within this section is—
>
> (a) a decision set aside in a review under section 43 (see section 44(1)(b)),
> (b) a decision in such a review, except a decision of the kind mentioned in subsection (2).
>
> (2) That is, a decision made by virtue of section 44(2)(a) … (and accordingly a decision so made is not an excluded decision)."

[26] Section 44(2)(a) of the 2014 Act relates to situations where the First-tier Tribunal has re-considered the case. The drafting of these provisions is such that it requires they are looked at together in order to understand what is an excluded decision under the 2014 Act. The effect of sections 51 and 52 is that a decision by the First-tier Tribunal to refuse to

exercise its discretion to re-make the original decision is an excluded decision. Accordingly such a decision cannot be made the subject of an appeal to the Upper Tribunal.

[27] In the present instance the decision of the legal member of 29 July 2020 was made subject to a Review in terms of section 43(1)(b) at the instance of the appellant. The matter was considered by Chamber President Green on 9 September 2020, under Rule 17 of The First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Lane Appeals (Rules of Procedure) Regulations 2020, at which time the review was not allowed on the basis that the application for review had been lodged late.

[28] In the present case the First-tier Tribunal has decided to refuse to exercise its discretion to re-make the decision of the Legal Member following a detailed review by the Chamber President, and as such, this decision is an excluded decision having regard to the terms of sections 51 and 52 of the 2014 Act all as set out above. The appellant is not therefore entitled to appeal against the excluded decision of Chamber President Green made on 9 September 2020. Accordingly this decision cannot be made the subject of an appeal to the Upper Tribunal

[29] Following this refusal to allow his appeal following review, the appellant thereafter sought leave to appeal against the index decision of 29 July 2020 on 23 September 2020 in terms of section 46(1) of the 2014 Act. The grounds of appeal were as set out at paragraph 12 above. Accordingly and in terms of section 46(3)(a) of the 2014 Act permission was sought from the First-tier Tribunal for permission to appeal. The matter was subsequently considered by a legal member on 27 October 2020, at which time permission was refused in terms of Rule 18(3) of the Procedure Rules 2020. The detailed reasons for refusal are as set out at paragraphs 19 and 20 above, but broadly permission was refused on the basis that the appellant did not comply with the terms of Rule 18(3) of the Procedure Rules as he had not

complied with the terms of Rule 18(3)(c) in that he did not state the result that he was seeking. It is against this decision that permission to appeal is sought.

[30] In his reasons for requesting permission to appeal, in summary, The appellant states that he believes that the First-tier Tribunal erred in refusing permission to appeal, given that it was clear from the papers lodged by him with the First-tier Tribunal that that the result being sought by him was the quashing of the original decision of 29 July 2020, and indeed he states that as a matter of law that this was the only possible result he could seek or be granted.

Conclusion

[31] 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 24 November 2020.

[32] In terms of the relevant law, Section 46 of the Tribunals (Scotland) Act 2014 (hereinafter referred to as "the 2014 Act") provides:

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.

(4) Such permission may be given in relation to an appeal under this section only if the First-tier Tribunal or (as the case may be) the Upper Tribunal is satisfied that there are arguable grounds for the appeal.

(5) This section—

(a) is subject to sections 43(4) and 55(2),

(b) does not apply in relation to an excluded decision."

[33] Rule 3 of The Upper Tribunal for Scotland Rules of Procedure 2016 (hereinafter 47 referred to as "the 2016 Rules") provides:

(6) The Upper Tribunal may, where the First-tier Tribunal has refused permission to appeal—

(a refuse permission to appeal;

(b) give permission to appeal; or

(c) give permission to appeal on limited grounds or subject to conditions;

and must send a notice of its decision to each party and any interested party including reasons for any refusal of permission or limitations or conditions on any grant of permission.

(7) Where the Upper Tribunal, without a hearing—

(a) refuses permission to appeal; or

(b) gives permission to appeal on limited grounds or subject to conditions, the appellant may make a written application (within 14 days after the day of receipt of notice of the decision) to the Upper Tribunal for the decision to be reconsidered at a hearing.

(8) An application under paragraph (7) must be heard and decided by a member or members of the Upper Tribunal different from the member or members who refused permission without a hearing.

(9) Where the First-tier Tribunal sends a notice of permission or refusal of permission to appeal to a person who has sought permission to appeal, that person, if intending to appeal, must provide a notice of appeal to the Upper Tribunal within 30 days after the day of receipt by that person of the notice of permission or refusal of permission to appeal."

[34] Accordingly and from 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) and that permission to appeal to the Upper Tribunal can only be granted where the Upper Tribunal is satisfied that there are arguable grounds for appeal. Further, Rule 3(6) of the 2016 Rules makes clear that the Upper Tribunal is entitled to: refuse permission to appeal; give permission to appeal on all grounds sought; or give permission to appeal on limited grounds. The question therefore to be considered at this stage, is whether the Upper Tribunal is satisfied that the purported points of law, as identified by the appellant, set out arguable grounds for appeal. It is incumbent therefore upon the appellant, at this stage to establish that there are arguable grounds for appeal. This necessitates that the appellant establish that there has been an error of law, which would include: (i) an error of general law, such as the content of the law applied; (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 and contradictory of it; and (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 at paras 42 to 43).

[35] In the present appeal however the appellant does not however seek to engage to any meaningful extent with the reasoning set out in the decision of the legal member of the First-tier Tribunal dated 27 October 2020. It is quite apparent from the wording of the decision by the legal member on that date that permission to appeal was refused on the grounds that the appellant had not complied with the requirements of Rule 18(3) of the Procedure Rules, and specifically the requirements of Rule 18(3)(c) of said Rules which requires that a written application to the tribunal for permission to appeal must state the result the person making the application is seeking. The reasoning of the appellant appears to be to the effect that when taken as a whole that the written terms of his application readily disclose the remedy sought by him, and that it could reasonably be inferred that the remedy sought by him was the quashing of the decision of 29 July 2020, given that this was in his submission as a matter of law the only possible result that he could seek or that could be granted.

[36] In the reasons provided by the appellant for requesting permission to appeal at section 7 of the form UTS-1 he does not any stage indicate that he had been unaware of the requirements of Rule 18(3)(c) at the time when he lodged his initial application for permission to Appeal, but rather he states that the requirements of Rule 18(3)(c) should have been inferred from the substantive grounds of appeal lodged by him. Indeed the terms of the grounds specified in section 7 of the UTS-1 appear to indicate that the appellant chose not to specifically address the terms of this section, believing that there was no requirement upon him so to do.

[37] Having considered the terms of Rule 18 of the Rules, the requirements for parties seeking permission to appeal under section 46(3)(a) of the 2014 are set out in detail in Rule 18(1). At Rule 18(3) it states clearly that an application under paragraph (1) must:

(a) identify the decision of the First-tier Tribunal to which it relates,

(b) identify the alleged point or points of law on which the party making the application wishes to appeal, and

(c) state the result the party making the application is seeking.

[38] Having considered the foregoing terms it is apparent that the requirements of an application for permission to appeal are mandatory and that they are cumulative. In other words any such application must comply with all three requirements to satisfy the terms of Rule 18(3). The Rule makes clear that the requirement to state the result sought by the applicant requires to be specifically stated, and that in addition to setting out the grounds for the appeal. Given that the relevant rules specifically require this ground be stated, it is not sufficient for a party to simply omit this requirement on the basis that it might be possible for it to be inferred from the other grounds of the appeal. Put simply, if there had been no requirement to specifically state the result sought, then there would have been no need for the terms of Rule 18(3)(c). Accordingly in the absence of compliance with Rule 18(3)(c) specifically identifying the remedy sought by the party, the requirements of this section have not been satisfied.

[39] As set out above in his stated grounds of appeal the appellant states that the First Tier Tribunal erred in law in determining that my Application for permission to appeal did not state the result he was seeking, but having considered the terms of the appellant's application, it is not clear what error of law is said to have been made by the First-tier Tribunal. Indeed it would appear that on any reasonable examination of the position that

the appellant did not state any such grounds and as indicated earlier it is not for the Tribunal to seek to infer grounds from general appeal grounds. It is not clear from all the papers which were before the First Tier Tribunal what result was being sought by the appellant and in these circumstances I am unable to conclude that there was any error in law on the part of the legal member of the First-tier Tribunal. It appears to be clear that in lodging his appeal to the First-tier Tribunal that the appellant has not complied with the terms of Rule 18(3)(c), and I am unable to conclude that in so holding and refusing permission to appeal, that there has been any error in law on the part of the First-tier Tribunal.

[40] In the circumstances the appellant has failed to identify any point of law and I am therefore not satisfied that there are arguable grounds for appeal. Permission to appeal is therefore refused. This however is not the only reason for refusal.

[41] In terms of the arguability of the appeal, the appellant has stated grounds of appeal all as set out at paragraph 12 above.

[42] On the factual position, there are a large number of issues where the appellant simply disagrees with the decision of the First-tier Tribunal, and says that the First-tier Tribunal made the wrong findings and came to the wrong conclusions. Unfortunately, that does not allow an appeal to succeed, given that an appeal is not simply a rehearing of the case from the beginning. An appellate court is not permitted to overturn a decision made by a Tribunal at first instance just because that court disagrees with that decision (on the hypothesis that it did so disagree). That is because the Tribunal at first instance in this instance had the benefit of seeing and hearing witnesses, and assessing the whole of the evidence. Having done so and having assessed the questions of credibility and reliability, it was their task to make findings about the truth of the matters. An appellate court cannot go

behind that, unless the appellant shows that their findings of fact are not rational, or fail to take proper account of the accepted evidence, or were otherwise findings which a reasonable Tribunal could not make. Determinations of questions of credibility and reliability of witnesses, and of determining the weight to be attached to such evidence are matters for the Tribunal. In the present case the First-tier Tribunal has discharged its function as required. The legal member of the Tribunal has demonstrated that the evidence and the submissions have been considered by summarising the salient points applicable to the decision after the hearing. The summary provided by the legal member clearly sets out what evidence was accepted by and what evidence was not, which assessment is apparent from the findings of the legal member.

[43] Having considered the evidence and submission the legal member has stated that the Tribunal was not satisfied that the blue badge was validly displayed at the relevant time. Further the legal member has stated that the Tribunal was satisfied that the appellant's vehicle was parked as recorded on the penalty charge notice and in so doing has also stated that it was not accepted that the appellant was parked there to drop off or pick up Ms Kirkpatrick within the ordinary and intended meanings of those words. From the terms of the original decision is quite apparent what evidence was accepted and what evidence was not and further what weight had been attributed to that evidence in coming to that decision. It is not necessary for the Legal Member to specifically outline every piece of the evidence that has been accepted and what weight should be attributed to that evidence where, as in the present case this can be readily inferred from the findings in fact made by the legal member. Whilst I accept that the appellant may not agree with the assessment of the legal member in relation to that evidence, for the reasons given above that is not a matter for the Upper Tribunal to consider further.

[44] In relation to the question of whether the legal member erred in law by wrongly determining the issue of whether a Northern Ireland Organisational Blue Badge should be considered in the context of the Northern Ireland Blue Badge Scheme or the Scottish Blue Badge scheme, the Legal Member has clearly stated in the written decision the reasons for holding that the Northern Ireland government rules apply. It is not sufficient for the appellant to simply state that the legal member has erred in law in this regard. It is noted that the appellant has provided no authority or further evidence to support his position. It is not sufficient simply for the appellant to disagree with the decision of the legal member but rather he must provide a foundation in law for his proposition. In the present case that has not been provided by the appellant who has provided no basis for his assertion that the legal member has erred in law. The mere fact that the appellant disagrees with the findings in fact or in law of the First-tier Tribunal is not sufficient to allow an appeal.

[45] Accordingly, and for that reason also, I refuse permission to appeal on the basis that the appeal is not arguable.