



DECISION OF

SHERIFF GEORGE JAMIESON

**QUASHING A DECISION OF THE 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

Kilmarnock 14 February 2024

Decision

The Upper Tribunal for Scotland:

1. Quashes the Decision of the First-tier Tribunal for Scotland dated 15 January 2021 refusing the Appellant's 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; and



2. Directs the Upper Tribunal for Scotland Administration to fix a webex hearing, after consulting parties as to a suitable date therefor, in relation to further procedure in respect of the appeal, in terms of rules 7(3)(f), (g) and (h) of the Upper Tribunal for Scotland Rules of Procedure 2016.

Introduction

[1] By Decision dated 13 November 2023, the Upper Tribunal for Scotland (the “UTS”) granted the Appellant permission to appeal to the UTS against the Decision of the First-tier Tribunal for Scotland (the “FTS”) dated 15 January 2021 refusing the Appellant’s 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 set out in the Permission to Appeal Decision of the UTS dated 13 November 2023.

[2] The Appellant, for reasons I hereafter explain, does not appear to understand the limited function of the UTS. Its function is to consider appeals against decisions of the FTS, but on a point of law only. I was not satisfied, having examined the law in detail, that the Appellant had been able to point to any rule of law specifying that a bus lane marking must be “solid, unbroken and continuous” (in those three precise words). Permission to appeal was limited to three matters.

[3] First, the Decision of the FTS referred only to the evidence of the alleged contravention submitted by the Respondent; it did 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.



[4] 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.

[5] Thirdly, the FTS did not identify and ask the specific question identified by Stanley Burton LJ at paragraph 43 of *R (on the application of Herron) v Parking Adjudicator* [2011] EWCA Civ 905; [2011] R.T.R 34. , namely 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".

[6] The UTS having granted permission to appeal, the Respondent was given an opportunity of submitting a written Response to the notice of appeal, and the Appellant an opportunity of submitting a written Reply thereto, by the UTS Administration in terms of rules 4 and 5 of the Upper Tribunal for Scotland Rules of Procedure 2016.

[7] Permission to appeal does not equate to the granting of the appeal. The appeal has still to be determined by the UTS with or without a hearing. The Respondent did not wish a hearing; the Appellant wished the UTS to fix a hearing in respect of the appeal (the first misunderstanding).

[8] The Respondent's Response argued that the bus lane was a continuous white line at the point the Respondent's camera photographed the Appellant's vehicle in the bus lane; the FTS was correct to conclude the road marking was sufficient at that point; and that the Decision of the FTS should therefore not be disturbed.

[9] The Appellant's Reply was in the form of a response to my Decision dated 13 November 2024.



[10] The main thrust of this “response” was to criticise my Decision in various ways, to maintain the law required the bus lane marking to be “solid, unbroken and continuous”, either explicitly or as a matter of inference, and that I was wrong to follow the judgment of the Court of Appeal in *R (on the application of Herron) v Parking Adjudicator* [2011] EWCA Civ 905; [2011] R.T.R 34.

[11] The UTS may grant permission to appeal with or without conditions in terms of rules 3(6) (b) and (c) of the Upper Tribunal for Scotland Rules of Procedure 2016. A refusal to give permission is not reviewable or appealable, in terms of section 55(2) of the Tribunals (Scotland) Act 2014. The Appellant had, in these circumstances, to apply to the Court of Session for judicial review of my Decision to grant permission to appeal on a conditional basis, if he wished to challenge that Decision on legal grounds (the second misunderstanding).

[12] Since I have not formally allowed the appeal until this time, it was improper of the Appellant to enter into further communication with the UTS Administration before receiving intimation of this Decision and before the UTS had decided upon further procedure in connection with the appeal (the third misunderstanding). He has sent four such letters or emails to the Administration:

1. An email dated 21 January submitting videos and photos as part of his appeal.
2. A letter received by the Administration date stamped 23 January 2024 submitting a drawing to be viewed along with the video and photographic evidence.
3. A letter received by the Administration date stamped 5 February 2024 advancing a new ground of appeal based on a claim to be exempted from the restriction on entering the bus lane in terms of rule 141 of the Highway Code.



4. A letter date stamped 13 February 2024 submitting a newspaper article in support of his appeal.

The Appellant's Third Misunderstanding

[13] The Appellant requires the permission of the UTS to advance a new ground of appeal in terms of rule 7(3) (d) of the Upper Tribunal for Scotland Rules of Procedure 2016 (permission to amend a document, namely his notice of appeal).

[14] The UTS may, on allowing an appeal, quash the decision of the FTS and then either: (a) remake the decision; (b) remit the case to the FTS; or (c) make such other order as the UTS considers appropriate (section 47(2), Tribunals (Scotland) Act 2014). It is only if the UTS were to decide to remake the decision that it would be appropriate for a party to lodge further evidence and then only after a case management hearing at which the UTS would make directions for additional evidence, if considered appropriate by the UTS. It is not open to a party to an appeal to submit supplementary evidence to the UTS without such procedure and orders made by the UTS.

Hazard v Glasgow City Council 2023 S.L.T. (Tr) 116

[15] This was a successful appeal by the present appellant against a decision of the FTS refusing his appeal against a Penalty Charge Notice in respect of the Appellant contravening a parking restriction. The UTS (Sheriff Dunipace) allowed the appeal and remitted to the FTS for reconsideration as the FTS had erred in law by not considering photographic evidence submitted by the Appellant for the purposes of the hearing before the FTS. The legal member of the FTS had not considered such evidence to be of relevance to the determination of the appeal.



[16] While the issues in that and the present appeal may appear similar, there are important differences too. I did not think I would benefit from reading Sheriff Dunipace's decision at the permission to appeal stage, as I had to decide specific issues relating to permission to appeal in this case. As the Appellant has referred to this decision at this, the appeal stage, I am now bound to consider the terms of that decision. The Appellant's (fourth) misunderstanding is that because his earlier appeal was allowed by Sheriff Dunipace, I am in some way bound to allow his present appeal.

The Appeal

[17] In my opinion, there would have been a clear error of law on the part of the FTS in this appeal if it refused to consider evidence relevant to the consideration of the appeal before that tribunal.

[18] The position of the FTS, adopted by the Respondent in its Response to the appeal, was there was sufficient evidence before the FTS that the bus marking was a continuous line at the point its camera photographed the contravention.

[19] The Appellant's position is the road marking must be a continuous line for the whole length of the bus lane, so that his evidence, which was before the FTS, of a degraded bus lane at the earlier point of entry should have been considered by the FTS.

[20] In my opinion, the earlier decision by Sheriff Dunipace does not assist in answering this specific question. However, I prefer the position of the Appellant. This seems to me to accord with the purpose behind the Traffic Signs Regulations and General Directions 2002 (assuming those to be the regulations applicable to this appeal) and paragraph 9.3.2 of chapter 3 of the *Traffic Signs Manual*, in relation to "with-flow bus lanes".



[21] These documents require a bus lane road marking to be separated from the rest of the carriageway by *a continuous line* to diagram 1049A (S9-6-11) (formerly number 1049). The use of the word “continuous” implies that the FTS should concern itself with the whole of the bus lane.

[22] There are sound policy reasons for requiring this. If it were otherwise, it would encourage local authorities not to maintain the whole length of the bus lane road marking in contravention of their duty to do so in terms of regulation 17(1)(f) (ii) of the Local Authorities’ Traffic Orders (Procedure) (Scotland) Regulations 1999. Secondly, it would be unfair on road users if the local authority were only to maintain the bus lane road marking at the point it sited its enforcement camera, thus depriving road users of the opportunity of demonstrating the line did not give adequate notice of the road restriction at an earlier point of entry.

[23] It follows that I allow the Appellant’s appeal, without necessity of a hearing, on grounds of appeal one and two: first, the Decision of the FTS referred only to the evidence of the alleged contravention submitted by the Respondent; it did 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; and, 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) (formerly 1049); 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.

[24] As I have allowed the appeal on these grounds, I accordingly now formally quash the decision of the FTS dated 15 January 2021.



Further Procedure

[25] It appears the Appellant disagrees with my conclusion that it is for the UTS, if it remakes the decision, or the FTS, if the appeal were remitted to that tribunal, to consider only whether there was a failure by the Respondent to give *adequate* notice of the bus lane through its road signage, in other words, there is no onus on the Respondent to show the line was “solid, unbroken and continuous” for its whole length, or that absolute and strict compliance with the statutory specification of the sign was required; all it has to show is there was “substantial compliance with the statutory specification, and [it was] not such as to mislead or fail to inform the motorist”; (*R (on the application of Herron) v Parking Adjudicator* per Stanley Burnton LJ, paragraph 43, emphasis added). The Appellant’s remedy, if aggrieved with my decision on this point, is to seek permission to appeal to the Court of Session.

[26] If the UTS were to remake the decision or the FTS were to re-determine the appeal on remit from this tribunal, either Tribunal would require to ask itself that question. As the FTS failed to do in the original appeal heard before it, I quash its decision dated 15 January 2021 for that reason also.

Conclusion

[27] The Appellant’s appeal is allowed. I shall fix a preliminary hearing to determine further procedure in the appeal, including whether: the UTS should remake the decision; allow the Appellant’s further evidence to be submitted to the UTS; and permit him to amend his notice of appeal; or alternatively remit the case with directions to the FTS to consider the whole evidence



submitted to it and to determine the appeal having regard to whether there was, at the date of the alleged contravention:

“Substantial compliance with the statutory specification, and [it was] not such as to mislead or fail to inform the motorist” (section 47(4), Tribunals (Scotland) Act 2014).

[28] I do not consider that my decision on the latter point differs from that of Sheriff Dunipace in *Hazard v Glasgow City Council* 2023 S.L.T. (Tr) 116, where at paragraph [17] of his judgment he states that it was for the FTS on remit to it to consider “whether there was adequate notice provided to the Appellant of the restrictions in the first place” (emphasis added).

Further Appeal

[29] 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 from the UTS within 30 days of the date on which this decision was sent to that party. Any such request must be in writing and must: (a) identify the decision of the UTS to which it refers; (b) identify the alleged error or errors of law in the decision; and (c) state what important point of principle or practice would be raised in that appeal, or specify any other compelling reason for allowing a further appeal to proceed (see section 50(4), Tribunals (Scotland) Act 2014).

George Jamieson

Sheriff of North Strathclyde

Judicial Member of the Upper Tribunal for Scotland